EXPLORING OPTIONS IN INFRASTRUCTURE FINANCING IN AFRICA: STEERING OF PUBLIC PRIVATE PARTNERSHIPS (PPPs) IN KENYA

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Thesis submitted in partial fulfilment of the requirements for the degree of Doctor of Philosophy in Management at Royal Holloway, University of London

November 2019

Declaration of Authorship

I, Edwin Oluoch Orero hereby declare that this thesis and the work presented in it is entirely my own. Where I have consulted the work of others, this is always clearly stated.

Signed: *Edwin O Orero*____________________

Date: 15 November 2019________________________

Word Count: 94,358

Acknowledgements

I would like to express my heartfelt thanks to my Supervisors, Professor Gloria Agyemang and Professor Jane Broadbent, for their time, encouragement, support and patience, through the years that it took to complete this study. Their knowledge, guidance and inspiration enabled me to navigate different challenges encountered throughout the research journey and to finally cross the finishing line. I am forever grateful to them. Thank you also to Professor Eivor Oborn, who initially accepted me to the programme and supervised my work for the first few months of the study.

Thank you to my friends Antoinette Absaloms, Jackton Ochieng Obuola and Gichira Maina, all in Nairobi, who each introduced me to different interviewees, thereby enabling me to obtain access to most of the interview research data that has been used in this thesis. I am most grateful. Thank you too, to the interviewees from different organizations in Kenya who took the time to meet me, despite having their own work commitments. Their knowledge, experience and insights into the Kenya PPP process have been valuable and are much appreciated.

My journey started many years back, before the formal registration for this study. I therefore acknowledge and thank my parents, Samson Orero and Hellen Ang'wech, for their support, from those early years until today. I also acknowledge my four brothers for sharing in this journey with me. Thank you all and God bless.

I would also like to thank my family who watched, observed and participated in this research study more closely. To my wife Mary, for her constant support and words of encouragement at critical junctures in the study, as well as making it possible for me to dedicate time consistently to the study. And to my children Helena, Bora and Moses, who let me study. This thesis is dedicated to you.

Lastly, but most important, thank you to the Almighty God, who has made all this possible.

ABSTRACT

The purpose of this PhD Research Study is to investigate the reasons behind the adoption of Public Private Partnerships (PPPs) in Kenya, within the context of sub-Saharan Africa, as a policy option in infrastructure financing. Using Broadbent, Laughlin and Read's (1991) interpretation of Habermas (1984, 1987) as the theoretical framework, the thesis uses the concepts of "steering" and "steering mechanisms" and seeks to determine, at a macro level, why Kenya has decided to adopt the use of PPPs.

The Research Methodology used is "middle range thinking" (Laughlin, 1995; Broadbent and Laughlin, 2009). Middle range thinking argues that theory presents the researcher with a "skeletal framework" that can then be "fleshed out" using the empirics (Laughlin, 1995). In this thesis, the skeletal framework is the theoretical framework on steering, advanced by Broadbent, Laughlin and Read (1991). Kenya has been selected as the case study and the use of interviews and documents analysis have been employed as the research methods.

This study finds that with a large infrastructure deficit in critical areas, Kenya has decided to employ the use of PPPs to bridge this gap. Moreover, Kenya has also adopted the use of PPPs for macro-economic reasons, the need to provide for services within budgetary constraints and to rein back on the increasing percentage of debt as a proportion of GDP.

In addition to economic factors, the empirics suggest that Kenya's PPP policy has been established due to "supranational steering" by the World Bank and its associates through various "steering mechanisms". Through consultations with the Public Private Infrastructure Advisory Facility (PPIAF) of which the Bank is a member, Kenya has been able to establish the PPP regulatory framework and set up its PPP Secretariat. Through funding from the World Bank's Infrastructure Finance Public Private Partnerships (IFPPP) project, Kenya has been able to boost the capacity of the PPP Unit and to roll out its PPP programme. The national government, on the other hand, has carried out societal steering by passing the required PPP laws and creating the necessary institutional framework.

This thesis contributes to the increasing literature on why different countries are increasingly adopting the use of PPPs. It also contributes to theory by adding to the concept of "societal steering" (Broadbent, Laughlin and Read, 1991) and suggesting that with respect to PPPs in developing countries, there is also "supranational steering" by the World Bank.

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LIST OF ABBREVIATIONS USED

AfDB - Africa Development Bank Group

DFID - Department for International Development

DSA - Debt Sustainability Assessment

GOK - Government of Kenya

IBRD - International Bank for Reconstruction and Development

ICSID - International Centre for Settlement of Investment Disputes

IDA - International Development Association

IAP - Infrastructure Action Plan

IFIs - International Financial Institutions

IMF - International Monetary Fund

LIC - Lower Income Country

MIGA - Multilateral Investment Guarantee Agency

OECD - Organisation for Economic Co-operation and Development

PFI - Private Finance Initiative

PPIAF - Public Private Infrastructure Advisory Facility

PPP - Public Private Partnership

PSC - Public Sector Comparator

SAP - Structural Adjustment Programme

SIAP - Sustainable Infrastructure Action Plan

SSA - Sub-Saharan Africa

UNECA - United Nations Economic Commission for Africa

VfM - Value for Money

WBG - World Bank Group

CHAPTER ONE: INTRODUCTION

This PhD Research Study seeks to investigate why more countries, including lower middle-income countries, are increasingly taking up the use of Public Private Partnerships (PPPs) as a policy option within infrastructure financing. Additionally, the study investigates the role played by transnational institutions in advancing the use of PPPs. Using the case of Kenya, within the context of sub-Saharan Africa, the study investigates the reasons behind the adoption of PPPs as a policy and how Kenya has gone about implementing the PPP programme. While some countries have had a deeper and broader experience with PPPs, such as the UK since 1992 (Ball et al, 2000; Grout, 2003), Kenya's experience is relatively recent following the enacting into law of the PPP Act in 2013 (Government of Kenya, 2013). Using Broadbent, Laughlin and Read's (1991) adaptation of Habermas' Discursive Framework (Habermas, 1984, 1987) as the lens with which to view the implementation of PPPs, the study reviews the options that governments in Africa have had to choose from in infrastructure financing, the increasing use of PPPs, the development of the PPP policy in Kenya, the role of transnational institutions such as the World Bank, the creation of the PPP regulatory framework and the establishment of PPP related institutions that have the mandate to facilitate the implementation of PPPs.

This study advances the scholarship on PPPs (Andon, 2012) in low income and lower middle-income countries, by focusing on the following PPP research agenda as proposed by Broadbent and Laughlin (1999; 2004): 1) what is the nature of PPPs and who regulates them? 2) what is the underlying nature and rationale for deciding to pursue PPP developments in different countries? Using the lens provided by the theoretical framework in Broadbent et al (1991), the study highlights the choices that the Kenyan Government has had to grapple with in pursuing PPPs, with regards to infrastructure financing. It also shows the nature of PPPs in Kenya, how they are regulated and the role of transnational institutions. Further, given the complexities of PPPs and their eclectic use in the provision of public services in different areas such as health, education, transport infrastructure, prisons, wastewater management and information technology, the study adds to the international scholarship on PPPs as one of the options available within infrastructure financing.

1.1 Background to the Study

Studies carried out on infrastructure financing are considerable and growing, making this a major area for research. A review of the literature on infrastructure found that thirty six percent of all studies on infrastructure related to infrastructure financing. Moreover, the use of PPPs further formed a significant portion of this percentage (Kumari and Sharma, 2017, p. 55). The following sections introduce key concepts around infrastructure, the significance of infrastructure and the rise in the use of PPPs.

1.1.1 Infrastructure: An Introduction

Grimsey and Lewis (2002, p. 108) argue that infrastructure is "easier to recognise than to define." By stating this, they imply that roads, railways and even subways can easily be identified as infrastructure, even without the definition. Most of the literature therefore describe different items that encompass infrastructure. The World Bank describes infrastructure as an "umbrella" for various activities (World Bank, 1994, p. 2), again showing that it is easier to identify what infrastructure is, as opposed to giving a clear definition, possibly, because of the different types of infrastructure and the different uses to which they can be put.

However, it goes further and says that "Infrastructure is an umbrella term for many activities referred to as 'social overhead capital' by such development economists as Paul Rosenstein-Rodan, Ragnar Nurkse, and Albert Hirschman. Neither term is precisely defined, but both encompass activities that share technical features (such as economies of scale) and economic features (such as spill overs from users to nonusers)" (World Bank, 1994, p. 2). In this definition, the World Bank identifies two characteristics of infrastructure and gives examples of what the characteristics could entail. The use of economies of scale demonstrate the large-scale nature of infrastructure while the use of spill overs from users to non-users shows that infrastructure impacts both users and non-users. These characteristics of infrastructure are further discussed in section 1.7 and how they influence and determine who provides infrastructure services.

Infrastructure can be broadly classified into physical infrastructure and social infrastructure (Grimsey and Lewis, 2002; Kumari and Sharma, 2017). The activities described in the literature as physical infrastructure are also referred to as economic infrastructure by the World Bank (World Bank, 1994).

1.1.1.1 Physical or Economic Infrastructure

The World Bank describes economic infrastructure as “services received from:

- Public utilities such as power, telecommunications, piped water supply, sanitation and sewerage, solid waste collection and disposal, and piped gas.
- Public works such as roads and major dam and canal works for irrigation and drainage.
- Other transport sectors, including urban and inter urban railways, urban transport, ports and waterways, and airports” (World Bank, 1994, p. 2).

Physical or economic infrastructure are those that cover the sub-sector that contributes directly to economic production (Grimsey and Lewis, 2002; Kumari and Sharma, 2017). Public utilities such as power and public works such as roads enable other economic agents to produce goods and services by providing the energy or providing transportation to the relevant markets. Their classification as physical infrastructure also points to their nature as large physical structures. Additionally, the physical nature of infrastructure and huge dimensions give additional characteristics to infrastructure - they “exist for long durations of time, are illiquid and are difficult to value” (Grimsey and Lewis, 2002, p. 108). These peculiarities must all be considered when governments opt to establish and finance infrastructure.

1.1.1.2 Social Infrastructure

Social infrastructure, on the other hand, includes those which can be seen to directly contribute to the quality of life (Kumari and Sharma, 2017, p. 51). These include hospitals, prisons, courts, museums, schools and Government accommodation (Grimsey and Lewis, 2002, p. 108). With social infrastructure, key services such as Education and Health can be provided to the citizens of a country.

Social infrastructure can therefore be argued to contribute to the welfare of people in a country or in each jurisdiction or geographical area. It raises their quality of life and general wellbeing and makes life more liveable. As opposed to physical/ economic infrastructure which enables economic agents to carry out production activities, social infrastructure directly impacts the lives of people. Nevertheless, the two can also be said to contribute to each other, indirectly. For instance, through social infrastructure, good health and education can result in an educated and healthy workforce that further promotes economic production.

Conversely, physical / economic infrastructure enable economic production, higher incomes and the ability to invest more in Social Infrastructure such as schools and hospitals.

The table below summarises the classification of infrastructure:

Table 1.1 Classification of Infrastructure

Description	**Physical/ Economic Infrastructure**	**Social Infrastructure**
Purpose	Contributes directly to economic production	Contributes to an improved quality of life
Categories	- Public utilities (such as power, piped water supply or telecommunications) - Public works (such as roads) - Urban transport, waterways and airports	- Hospitals - Prisons - Courts - Museums - Schools and Government accommodation

Source: The World Bank, 1994; Grimsey and Lewis, 2002; Kumari and Sharma, 2017

1.1.2 Significance of Infrastructure for Economic Development

To make a financial investment in infrastructure, governments in Africa must first consider why it is important to do so. While the answer to the question on why they should invest may seem straightforward, several studies have been carried out in various countries showing that infrastructure has an impact on the economic growth of a country. These are discussed in sections 1.1.2.1 to 1.1.2.5 below. The studies seem to present a more objective basis for making decisions on infrastructure financing. While not all the studies support the view that infrastructure leads to economic growth, a significant number support the view that investing in infrastructure results in growth and has “both direct and indirect effects on the economy” (Duffield, 2010, p.197 citing Duffield and Regan 2004). From the literature reviewed, there is a broad consensus emerging that “public investment typically stimulates regional economies” (Brueckner and Picard, 2015, p. 123). If this is the case, then investing in infrastructure would be a key priority for any government, even more so for those governments whose countries have a large deficit in infrastructure and significant backlogs in repairs and maintenance of existing infrastructure.

The importance of investing in infrastructure as a “public investment decision” by governments was drawn out by Aschauer (1989), who argued that that there were parallels in investing in infrastructure to investments made in military structures. In making investments to the military, there should be a correspondent addition “to the stock of non-military structures such as highways, streets, water systems and sewers, when assessing the role that the government plays in the course of economic growth and productivity improvement” (Aschauer, 1989, p. 197). If the key role of the government is regarded as the defence of the nation through military means, then its other key role would be in promoting the economic wellbeing of the country. The non-military structures (infrastructure) would promote economic growth and productivity. The following sections discuss the impact that infrastructure can have on the economy.

1.1.2.1 Impact on Private Economic Output

An investment in infrastructure can have a high return and contribute to economic growth, while at the same time enabling the government to contribute to the improvement of productivity in the economy (Aschauer, 1989). In a survey carried out investigating the possible impact of public capital on private investment, it was concluded that there is “a very large impact of aggregate public capital on the output by the private sector. Additionally, the impact of aggregate public capital on productivity is very large” (Munnell, 1992, p. 191). This study suggested that any public investment decision would therefore result in an increase in private sector output. An investment in rail infrastructure, for instance, could enable quicker and cheaper transport of both raw materials and finished goods.

In a study based in India, Tripathi and Gautam (2010, p. 148) found that in the long run, the elasticity of private output with respect to public capital was positive, meaning that public investment resulted in increased output. This view further supports the thesis by Aschauer (1989) that aggregate public capital has a direct impact on the productivity of private capital. Cavalo and Daude (2011), on the other hand, investigated the marginal productivity of private capital following a public investment and confirmed that the marginal productivity would rise. However, they also pointed out that “weak institutions and restricted access to financing could diminish the positive effects of public investment projects and crowd-out private investment" (Cavalo and Daude, 2011, p. 78). Although public investment is expected to increase the marginal productivity of private capital, there could be other factors that hinder that or reduce the overall effect, such as a lack of access to finance by private capital and the presence of weak institutions. These should be identified by respective governments and dealt with through policy interventions (OECD, 2001), if the public investment made is to have the desired impact on private output.

1.1.2.2 Highways and Regional Economies

Public investment typically stimulates regional economies (Brueckner and Picard, 2015, p. 123), thereby opening areas that were previously not well accessed. Following a study of the US Interstate Highway System (Michaels, 2008), it was found that the highway opened areas not previously well accessed when it cut across "various rural area settings." This contributed to an opening up of these areas, thereby allowing trade to take place and contribute to economic growth (Michaels, 2008, p. 683).

Moreover, movement through the highway resulted in movement of supplies and skilled labour. Both aspects further had a direct impact on the local economies. The study observed that "highways increased trucking income and retail sales by about 7% - 10% per capita in rural counties they crossed, relative to other rural counties" (Ibid.). The highway therefore moved capital and labour across the counties to enable production of goods and services. Once these were produced, the highway enabled the transfer of finished goods and services.

The building of roads therefore links up isolated communities and ensures that they can have access to goods and services, while also enabling the skilled members of the community to seek for jobs elsewhere. At the same time, it impacts the economic production process and leads to economic growth (Streatfeild, 2017).

In addition, still with respect to highways, Duranton and Turner (2012, p. 1431) found that after reviewing a 20-year period, the elasticity of employment within a city was 15 per cent for a major road, following a 10 per cent increase in a city's stock of interstate highways. An increase in the stock of roads by 1 unit thereby increased employment by 1.5 units over a 20-year period. Simply, investing in key road arteries is argued to have a direct and positive impact on employment over an extended period. In many low income and lower middle-income countries that have unemployment as a major economic issue, this study would encourage them to finance and build more roads. Highways therefore not only open areas, but also contribute to an increase in employment. Transport policy decisions can therefore be viewed as important in affecting the mobility of people and businesses and thereby "influence prosperity, growth in GDP and employment across the economy" (OECD, 2001, p. 9).

1.1.2.3 Air Transport and Service Industries

In addition to studies showing that highways have contributed to economic development, air transport has also been found to have a direct impact on regional or local economies. Evidence has been found linking "airline traffic and employment in a metro area" (Brueckner, 2003, p. 1467).

This study found that a good airline service can contribute positively to the economic development of an urban area. The study cited frequent services to a variety of destinations which resulted in more passengers boarding and hence more face to face contact with businesses, resulting in new firms being attracted to the metro area and increasing employment for already existing businesses. However, the study also found that air transport has a bigger impact on employment in service industries than in manufacturing industries, "suggesting that air travel is less important for such firms than for service-related businesses" (Ibid.).

This does not in any way downplay the importance of air transport services to manufacturing, but perhaps points out that manufacturing concerns would probably use road and rail transport more to transport their heavy cargo. Air transport, on the other hand, transports passengers and therefore has a more direct impact on service industries. More studies should assess the impact of transporting skilled personnel and industry experts to manufacturing entities.

1.1.2.4 Industrial Transformation and Information Technology

Some studies have argued that investing in infrastructure has a direct impact on industrial development, while others suggest that an investment in information technology also has a direct economic impact. One of the studies reviewed the growth of several East Asian countries, including Japan, South Korea and Taiwan and suggested that there was a "co-evolution of public infrastructure and industrial transformation" (Daido and Tabata, 2013, p.

343). The study also argued that weak transportation systems in poorer countries acted as a great hindrance to their manufacturing sectors and hence to their economic development (Daido and Tabata, 2013, p. 330).

A positive correlation has also been found between developments in information technology infrastructure and economic growth (Pradhan et al, 2015). In addition, there is a reduction in firm input costs, where transport infrastructure is well developed and "agglomeration economies" form. In this case, economic agents including businesses and workers benefit from being near each other, an advantage provided to them by good transport (Melo et al, 2013, p. 695).

1.1.2.5 Alternative Views to Infrastructure and Economic Growth

Although the preceding sections have presented the argument that infrastructure leads to economic growth, some studies present alternative critical views. For instance, some critics of Munnell (1992) argue that there is a mismatch of the time series, implying that investments in one time phase cannot be directly linked to output in that phase. Critics also mention that "output is what leads to public investments and not the reverse" (Brueckner and Picard, 2015, p. 123). It could be argued that the point on time mismatch may have some rationale to it, given that investments in infrastructure are long term and any benefits may not necessarily accrue in the first year. A person using the road ten years after it was first built, still derives some benefits long after the cost was incurred.

Secondly, while investment in infrastructure leads to increases in private sector output, it is also possible for private sector output to lead to increased public investment. This is because, more output from the private sector would increase government revenue in the form of taxes, which could be used to further make more investments.

1.1.2.6 Significance for Governments

Governments, the world over, are primarily responsible for the provision of infrastructure services and will be seen "to bear the larger cost" even where a policy to involve the private sector in various forms, including as PPPs, is used (Fourie and Calitz, 2010, p. 188). This means that decisions need to be made on what to invest in, when to invest and ultimately, how to finance it.

Investments in public services with a view to stem socio-economic decline and improve the lives of citizens in developing countries can be referred to as development projects (Rahaman and Lawrence, 2001a and 2001b). From the foregoing arguments suggesting that investment in infrastructure promotes economic development and opens regional economies, it is in the interest of governments in low income and lower middle-income countries to make such investments. Indeed, the public sector in such countries is seen as “a major vehicle (the sole vehicle in some cases) in their quest for advancement in socio-economic development” (Rahaman et al, 1997, p. 39 citing Buchanagandi, 1991). An investment in roads or railways has the capacity to open previously remote areas, provide a means of transporting goods to far flung markets and facilitate the movement of labour and capital, thus facilitating economic growth.

For countries in Africa, this would be even more critical if it could be established that indeed, such infrastructure services are lacking and/ or there is a significant backlog in repairs and maintenance of such services. The next section seeks to demonstrate that there is an acute shortage of basic infrastructure services in Africa, which make it imperative for the governments across the continent to position infrastructure financing as a key economic decision.

1.2 Demand for Infrastructure in Africa: Shortfalls in Infrastructure Services

Provision of infrastructure, including infrastructure financing, affects the supply side of infrastructure. However, one important aspect to consider when making decisions on infrastructure is the demand for infrastructure, as highlighted by the need for certain infrastructure services (McCawley, 2010). The demand for infrastructure shows what is needed in a country with respect to either physical/ economic or social infrastructure. This can include roads, railway lines, airports, water supply, schools and even hospitals.

The shortage of infrastructure in Africa, more so economic/ physical Infrastructure has been documented in various studies and official reports, notably, the Africa Infrastructure Country Diagnostic Report by the World Bank in conjunction with the African Development Bank, which highlighted various infrastructure gaps (Foster and Briceno-Garmendia, 2010; Arezki and Sy, 2016). Some of these gaps have been discussed in this section to show that African governments have a lot to do, to put in place infrastructure services, and also maintain existing infrastructure. An emphasis is made that “Africa’s infrastructure network is very weak” in comparison to global standards (Janneh, 2012, pp. 58 - 59). This shortage also means that middle-income countries can apportion more of the funds available to maintenance of existing infrastructure, while low income countries spend a higher proportion on investment of new infrastructure (Foster and Briceno-Garmendia, 2010).

More importantly for this thesis, the large deficit in infrastructure shows that more financing is needed to provide for these services. How to obtain this funding, whether from public or private sources, remains a key debate. This debate has been carried out against the background of the increased use of Public Private Partnerships (PPPs). Public finance is usually the main source of financing for energy, water and transport in most states and is raised through taxes in the government’s central budget (Streatfeild, 2017). Central government budgets are constrained and therefore governments must begin to look for other sources, including private sources of financing (Noumba Um, 2010).

Some of the shortages highlighted with regards to infrastructure in Africa are discussed in the next sections.

1.2.1. Inadequate Transport Networks

There are inadequate transport networks across Africa, including roads, railways, air transport and even transport on waterways. In health care, roads and transport are important for reducing maternal mortality and reducing the time spent waiting to get to treatment facilities. Transport networks are therefore seen as complementary to healthcare services (Wagstaff and Claeson, 2004, p. 16). For instance, several hundred thousand “die every year due to childbirth complications that could have been prevented if all-weather roads were available everywhere to ease their timely access to childbirth related care” (Noumba Um, 2010, p. 457 also citing Wagstaff and Claeson, 2004). Proper roads and rail networks, together with other transport links, serve to reduce the time and space between two different locations and thereby quickly facilitate movement from one location to another. A well-developed transport network would therefore be of great help in various emergencies such as childbirth, medical emergencies and to alleviate logistical constraints.

Janneh (2012, pp. 58-59) describes in detail some of the gaps currently experienced by African countries in the provision of infrastructure-based services. For example, while 90 percent of urban transport is by roads, the road density is extremely low with an “estimated 7 kilometres per 100 square kilometres." In addition, there are only about "2,299,070 km of road" across the continent and "only about 28 per cent of it paved." In order to gauge the requirements on roads alone, the World Bank estimates that on average, it costs about USD 960,000 to construct 1 kilometre of a new roads (Streatfeild, 2017 citing Archando-Callao 2000).

With respect to sub-Saharan Africa, only 16 percent of roads are paved, thereby making transport costs to be quite high. For instance, in Rwanda, at some point, farmers only received about 20 percent of the price of their coffee as it was loaded onto ships in Mombasa as the other 80 per cent disappeared into the cost of poor roads (and red tape) (Agenor, 2010, p. 932 also citing Yoshino, 2008).

Similarly, when it comes to railway transport, it is noted that the "African rail network is currently estimated at 89,380 km, and the density at 2.97 km per 1,000 square km." However, the usefulness of railways across various countries on the continent is curtailed given the differences in the type of gauge used within and across the continent. Additionally, several African countries "do not have railway lines at all" (Janneh, 2012, pp. 58-59). These differences in the types of gauge used could be attributed to different colonial legacies as the British and the French were the major colonial powers in Africa, with other European powers, including the Portuguese and the Belgians, colonizing some parts of Africa as well and leaving their own form of railway design on those countries. The British, for example, established the first tracks of the Kenya-Uganda Railway. In respect of the two major colonial forces, the British and the French, it has been suggested that different countries practise the French or British model of governance and civil service depending on the former colonial power (Caulfield, 2006).

Other gaps in infrastructure include weaknesses in inland waterways among the "29 African countries" who "have one form of navigable waterway or another," seaports that are below international standards even though "maritime transport accounts for over 90 per cent of Africa's international trade," and the need to improve air transport (Janneh, 2012, pp. 58-59). Within Africa, improving air infrastructure would be of great importance too, as African countries try to integrate more into the world economy (Goldstein, 1999). Governments should therefore consider investing in air infrastructure as well.

1.2.2 Water Supplies

The World Bank estimates that there are "approximately 854 million people without access to safe drinking water, 2.5 billion without adequate sanitation, 1.6 billion without access to electricity and more than 1 billion people without access to telephone services. Access gaps remain large across regions and in particular in Sub-Saharan Africa (SSA) and South Asia (SA)" (Noumba Um, 2010, p. 458 citing World Bank, 2008). Moreover, due to the scale of underinvestment in the water sector in Africa and the developing world generally, the United Nations designated the 1980s as the International Drinking Water Supply and Sanitation Decade (Rahaman, et al, 2007, p. 645 also citing UN, 2005).

These large-scale shortages point to the scale of under investment in water supply and how much more needs to be provided, highlighting the requirement for additional financing. The importance of effective and quality water supply is clear - in an "impact evaluation study of the water sector privatization in Argentina, Galiani et al (2005) show that child mortality dropped by 5 - 7 % more in areas with private water providers" (Noumba Um, 2010, p. 457), the implication being that these providers were able to not only provide water services to particular locations but also serve water of better quality, thereby reducing the chances of some illnesses occurring.

1.2.3 Energy

The provision of energy in Africa is one of the biggest challenges that governments face, with a yearly per capita consumption of 124 kilowatt hours only, representing just "10 per cent of the consumption in the developing world" (Janneh, 2012, pp. 58-59). This low consumption, coupled with frequent power shortages and interruptions to normal services, means that large investments are required to ensure regular uninterrupted energy supplies. It is estimated that private firms lose about 5 per cent of their sales due to the power outages and that "the economic costs of power outages stand at around 1-2 per cent of GDP" (Ibid.). In sub-Saharan Africa, "less than one in five Africans has access to electricity" (Agenor, 2010, p. 932).

This shows that Africa and more so sub-Saharan Africa has a severe shortage of energy to power its economies and to light up the lives of its people. To illustrate this further, "in 2014 the 49 Sub-Saharan African countries, with a combined population of more than 800 million, had less generating capacity (92 GW) installed than Spain (106 GW), a country with a population of 45 million" (Eberhard et al, 2017, p. 390 citing Findt et al., 2014; U.S. EIA, 2014). These statistics, though shocking, are even further made surprising when considering that over 50 per cent of the region's installed capacity is based in only one country - South Africa. The balance of 46 GW is shared among the other 48 countries in the region "with only 14 countries having power systems larger than 1 GW" (Eberhard et al, 2017, p. 390).

1.2.4 Financing Infrastructure in Africa

The need for additional investments in infrastructure in Africa, either to create new infrastructure where previously none existed, or to maintain and rehabilitate existing infrastructure, has therefore been well documented. Given pressing development needs, recurrent expenditure and even wastages and corruption in some cases, and coupled with limited budgets, governments in developing countries only managed to allocate "approximately half" of what they should have invested in the "period (1995 - 2005)" "in order to sustain their economic growth prospects at current levels." This shows a very limited amount of investment, given that the public sector has been found to contribute between "70 per cent to 80 per cent" of the financing in infrastructure investments from 1990 to 2010. Private financing only amounted to "15 per cent to 20 per cent" while "Grants from donors to low income countries, though in decline, have represented between 5 per cent and 10 per cent" (Noumba Um, 2010, p. 461).

The amount needed to develop Africa's infrastructure is "around US$93 billion a year (about 15 per cent of Africa's GDP)" (Foster and Briceno-Garmendia, 2010, p. 6). More recent studies suggest a much higher figure, with the African Development Bank Group estimating that this figure can be as high as $130–170 billion a year, with a financing gap in the range $68–$108 billion (AfDB, 2018).

One way of increasing the amounts spent on public infrastructure investments is therefore to increase the private sector component of financing. The public sector component of financing has reached its ceiling and is likely to be further constrained as new and extra demands are made on it. This includes the financing of Education and Health, for instance, for a growing population or a National Police Service to meet a country's security needs or even to meet debt repayments on "huge IMF, WB and private loans" (McGregor, 2005, p. 171). As the focus turns on the private sector and the ways in which this sector can contribute, discourse over

PPPs has become relevant and the PPP policy a possible option to consider, without considering the merits or lack of, of PPPs at this point.

1.3 Public Private Partnerships (PPPs) in Infrastructure Finance

The use of PPPs to deliver public services and to finance infrastructure has become quite prevalent in recent years. In the UK, whose PPP framework the IMF once described as "perhaps the best developed programme" in the world (IMF, 2004, p. 5), the use of PPPs began with the introduction of the Private Finance Initiative (PFI) by the Conservative Government in 1992, with the main objective of introducing private finance for public sector projects. The main reasons for introducing PFI was to get "value for money," given the private sector's reputation for efficiency and management expertise and to ensure that the government controls its own expenditure. In 1994, the government introduced the 'universal testing rule' that required that private finance should be considered for every public sector project.

When the Labour Government took over in 1997, it embraced the PFI idea but renamed it as PPP after passing some changes to the earlier PFI concept (Ball et al, 2000; Spackman, 2002). Among changes passed by the Labour Government were the scrapping of the 'universal testing rule' and a broadening of the participation by the private sector. The private sector could now also participate through "(a) complete or partial privatisation; (b) contracting out with 'private finance at risk,' still described as 'PFI' projects; and (c) selling government services in partnership with private sector companies" (Spackman, 2002, p. 285 citing HM Treasury, 2000). Chronologically therefore, PFI came first, but with the broadening of the ways through which the private sector could participate, including contracting out and partial privatisation, the term PPPs became increasingly used. Perhaps, it could be argued that in involving the private sector, there were both **P**ublic and **P**rivate elements in PPPs. What changed was the use of **P**artnerships when the government sought to sell government services "in partnership" with private sector companies. There are now different forms of PPPs and different ways through which the government can involve the private sector partner (Duffield, 2010).

1.3.1 Global Spread of PPPs

Geographically, PPPs are in use in many countries across the world. As among the earliest programmes, the UK PPP programme has helped deliver public services in sectors as diverse as Health, Education and Roads Transport. According to the UK National Audit Office (2011, p. 12), “As of 2011, there are around 700 PFI contracts in the United Kingdom. Over 500 of these are in England with a combined capital value of almost £50bn.” This is a significant number of projects, showing the prominence of PPPs in the UK. PPP programmes have also been implemented in other parts of the world. In Europe, there are developed PPP programmes in various countries including Italy, Spain and Ireland (Hodge, Greve and Boardman, 2010). PPPs have also been used in North America and in Australia (Boardman and Vining, 2010; English, 2007; English et al, 2010). Moreover, developing countries, including in sub-Saharan Africa, the geographical area of focus for this study, are increasingly using PPPs too (Noumba Um, 2010; Appuhami et al, 2011; World Bank, 2014).

Globally, the number of PPPs has increased over the last two decades, with Europe leading in the number of PPPs implemented. Citing from IFSL Research (2008), Hodge, Greve and Boardman (2010, p. 7) noted the importance of PPPs to the inception of new projects over the period 2001 - 2007 and gave a breakdown of their prevalence in various European countries. They quoted their “micro-economic and systemic importance” in “the UK (with 5.71 per cent of project expenditure), Spain (at 5.6 per cent), Italy (at 4.8%) and Ireland (at 4.0%), with a total of 694 projects throughout Europe involving deals of €73,821 Million”. Citing from a European Investment Bank (2007) report, Hammerschid and Ysa (2010, p. 333) also concluded that “the UK is still a forerunner in terms of both number of PPP projects and volume. Out of a cumulative value of € 194.7 billion that has been signed until the end of 2006, the UK accounts for 57.7%”. The literature on PPPs therefore shows that the UK is leading in implementing PPPs. However, PPPs are also being implemented more and more in other countries and now cover a diverse geography and in varied sectors, while increasingly taking part of a significant portion of the public expenditure of countries adopting PPPs.

PPPs therefore extend “the role of the private sector in the provision of what are generally considered to be public services (such as health, education, transport infrastructure, prisons and the administration of the functions of the state) by signing contracts with private sector partners to design, finance, build and manage assets and to deliver associated services” (Froud, 2003, p. 567). They have also begun to move from “traditional sectors” into “information technology, waste management and water” (Hodge et al, 2010, p. 7 citing IFSL, 2008). A PPP “thus embraces concepts that have become familiar in the management of public services: competition, efficiency and contractualism" (Froud, 2003, p. 567). Through competition, it is thought that the public will be able to obtain the best services possible; through efficiency, the taxpayer is thought to obtain a good deal for the amount of money that they are investing; and through the use of contracts, the relationship between the public and the private sectors is defined with clear measurable goals and targets.

PPPs can therefore be argued to have become an established facet of many countries in the West and a key policy option, given their proportion of project expenditure. In developing countries, more and more PPPs are being implemented, partly as a result of the involvement of the World Bank and other International Financial Institutions (IFIs) (Noumba Um, 2010; IMF, 2004). Given that most developing countries experience serious shortfalls in the supply of basic infrastructure and the resultant lack of access to roads, schools, hospitals, etc. there is a move towards involving the private sector more to meet this shortfall.

Declining government revenues or increasing needs to be met due to a burgeoning population or developing technology have not made it any easier for governments in such countries. Additionally, in section 1.1.2, the significance of infrastructure, with respect to its impact on economic growth, has been discussed. This could also have led to various developing countries beginning to experience PPPs from Latin America (Guasch, 2004; IMF, 2004) to Asia (Appuhami, 2011) to Africa (Farlam, 2005; Rintala et al, 2008; Awortwi, 2004; Lemair, 2011; Tati, 2005; Caulfield, 2006). The need to try and meet budgetary constraints, while at the same time providing key services, could therefore be one of the reasons behind the adoption of PPPs by developing countries. By focusing on one country, Kenya, this thesis has sought to understand more on the reasons why one country in sub-Saharan Africa has decided to take up PPPs.

Despite the adoption of PPPs by developing countries, taking Africa for instance, there is still much less literature on the use of PPPs in these locations. This could partly be explained by the fewer number of PPP projects implemented as compared to that in the developed world. As noted earlier, the UK alone, for instance, had a total of "700 PFI contracts in 2011" (National Audit Office 2011, p. 12) while the whole of sub-Saharan Africa has had the private sector involved in various forms in a total of 499 projects only in infrastructure as of December 2013. These include 84 Concession projects, 44 Divestiture projects, 310 Greenfield projects and 61 Management and lease contracts (World Bank PPI Database, 2013). Included are Divestiture projects, (where the government divests itself of the ownership of organizations through outright sale to the private sector) and Management and lease contracts, (where the private sector is only involved in the management and operations of public entities for a given period while ownership remains with the government) (Locussol et al, 2006). This leaves a total of 82 Concessions and 254 Greenfield projects, all of which could have different forms of private sector involvement. A subsequent review of the World Bank PPI Database in 2017 reveals a total of 365 projects (World Bank PPI Database, 2017) an increase of 8.6 percent from 2013. This is not a like and like comparison, but it goes to illustrate the fact that there are fewer PPPs in developing countries compared to Europe, North America and Australia. Unlike in 2013 though, the World Bank PPI Database in 2017 did not give a detailed breakdown of the projects.

Despite the lower number of PPPs in locations such as Africa, the use of PPPs can therefore be demonstrated to have become widely spread globally. They are therefore an important area of study because they are used to deliver public services to millions of people across the world. Moreover, they are long term in nature, which means that they will be around for a long time. A PPP contract signed today for, say, 30 years will be in force long enough to see a new generation of taxpayers paying for the unitary charges (Broadbent and Laughlin, 2003). The longevity of the contract for vital public services provides a compelling reason to understand this approach to service delivery.

1.3.2 Public or Private

Governments have always involved the private sector in different ways in the provision of public services over time, "since the time of the Roman Empire (e.g., the use of private tax and toll road collectors) and in the United States since its founding" (Forrer et al, 2010, p. 475). However, "the private component of governance… retreated as nation states became stronger in the 1700s and 1800s and centralized the performance of many public functions with their own establishments" (Wettenhall, 2010, p. 17). Over time, governments have again involved the private sector in different forms. This has been through privatization in the 1980s and 1990s (Richardson, 2000; Broadbent and Laughlin, 2003) and through Public Private Partnerships.

Privatization involved “the provision of public services by the private sector,” which would ordinarily have been provided by the public sector, with the private sector taking up aspects of the provision of public services and even influencing some of the public processes (Grossman, 2012a, p. 597 citing Bozeman, 1987; Grossman, 2012b). Public services in this case being those services provided to the general population free, or where there is a charge levied for services but there is “the existence of a regime of state price regulation” (Broadbent and Laughlin, 2003, p. 333). This definition recognises that there are instances where a public service, such as a road, can be subject to charges, such as road tolls. In such cases, the service remains public as far as the state regulates the price to be set for the service. The private sector on the other hand comprises private companies or entities formed by persons in their private capacity (whether as individuals or as corporations), to “maximise the utility of firms and producers” to earn profits and increase wealth (Plant, 2003, p. 565). These two definitions set the divergence between public and private with one being concerned with the provision of public services, while the other aims at wealth maximization for shareholders and profits. The pursuit for profits is not restricted to non-public services, but the private sector is to be found whenever there is a profit to be made. Because governments usually concern themselves with the provision of public services, the private sector is ordinarily less involved. However, this is changing in different ways, PPPs being one way.

The public sector is also involved in economic activity, however, as that part “which is traditionally owned and controlled by government" with “heavy involvement of the central government in either (or both) policy making and funding” (Broadbent and Guthrie, 1992, p. 3). This sector can therefore be viewed as synonymous with the state or the government in authority and has “a vocation to serve the public,” by “providing public goods” and upholding the “public interest” (Plant, 2003, p. 562, p. 565). Such public goods and services could include the provision of law and order, education, health and security, which impact on the entire population in a country. Governments are the ones that usually provide such services for various reasons. These include the scale of services to be provided, the capital required to provide for such services and the nature of some of the goods or services such as trust goods (an example of a trust good being justice), where the public expects the government to provide the services in a fair, just and equitable manner (Plant, 2003). Again, the private sector is increasingly being used to help in providing these services. And again, PPPs represent one form in which the private sector is used.

Infrastructure provides services that are used by the public and would "therefore assume some kind of public sector involvement. Three types of market failure are relevant to infrastructure provision - public goods (goods with the usual characteristics of non-rivalry and non-excludability), externalities (marginal private benefit is smaller than the marginal social benefit) and incomplete markets (of which natural monopolies with decreasing average costs are the best example). Each type requires a different kind of government intervention: pure public goods require government to prompt the process and incur the cost of provision, externalities and incomplete markets may require government to take a more regulatory role, and incomplete markets may at times also require a financing role" (Fourie and Calitz, 2010, p. 178). These impact the decision on whether to privatize infrastructure or not. Where it is a pure public good, only the government should provide for the service, for instance in the case of security and policing. Certain services such as Prisons that have traditionally been the province of governments are now privatised in some countries (the UK and South Africa are two countries that have put Prisons under a PPP). It is possible that if these were previously considered as pure public goods, then the concept of a pure public good may also change over time. In the case of externalities, the government may be a regulator, such as in the case of telecommunications or utilities. Lastly, investments requiring a huge capital outlay may be part or wholly financed by governments, such as in the case of railways.

1.4 Research Motivation

The research is informed by my interest in the challenges that governments face, especially in the developing countries, in providing for public services and in establishing infrastructure through which such services can be provided. It is widely recognized that the development of infrastructure plays a "catalytic role" in "growth, social inclusiveness and poverty reduction". Gaining access to "basic infrastructure services such as water, sanitation, electricity, transport and telecommunication" is critical in creating new economic opportunities and thereby "lifting millions of people out of the poverty trap" (Noumba Um, 2010, p. 457). Better infrastructure means an easier access to markets and quick movement of both capital and labour. This would ultimately affect the economies of the countries that are improving their infrastructure. In a way, this is cyclical as a growing economy will in turn be able to generate sufficient revenues that can provide for and support better infrastructure.

This research is also partly in response to Broadbent and Laughlin's outline for PPP research, as suggested by Broadbent and Laughlin (1999, 2004) and seeks to focus on two of the research questions proposed: 1) what is the nature of PPPs and who regulates them? 2) what is the underlying nature and rationale for deciding to pursue PPP developments in different countries? By extension, by answering those two questions the research further addresses the internationalisation of PPPs across different countries, by contributing the case for Kenya. Following a review of PPP literature since the research agenda was first proposed by Broadbent and Laughlin in 1999, Andon (2012) found that these questions remain as valid for research today as they were then.

In Kenya, there has been a robust debate on the uses to which PPPs can be put whether in road transport, university hostels or even information technology, for instance, the Konza Technology City (Government of Kenya, 2012). In Chapter Five, the details of the Kenyan PPP process have been discussed showing the passing of the PPP Act by the Kenyan Parliament in December 2012, its coming into effect in 2013 as well as the setting up of the PPP Unit at the Ministry responsible for Finance (GOK, 2013). This has informed my choice of research topic and research case. I am therefore interested in seeing the steering process of PPPs in Kenya and how PPPs are being implemented there.

Due to significant infrastructural deficits in Africa (World Bank, 2010), governments in developing countries "will require annual investments of about $1.1 trillion (6.6 per cent of GDP) through to 2015 to satisfy demand for infrastructure by residential and business consumers" (Noumba Um, 2010, p. 460 citing Fay and Yepes, 2003 and Yepes, 2008). The huge financing required is not easy to put aside given that governments also have recurrent expenditure to finance and only limited amounts to put down for capital expenditure. For this reason, the drawing in of the private sector has become more important.

The publication of the Sessional Paper on Kenya Vision 2030 in 2012 gave PPPs a prominent role by putting them at the centre as a means of delivery on the objectives and goals of Kenya Vision 2030 (Government of Kenya, 2012). The Kenya Vision 2030 aimed to help Kenya achieve certain economic, political and social goals by the year 2030. Kenyans and by extension other citizens in sub-Saharan African countries are therefore likely to continue hearing about PPPs for a long time to come. In this case, it can be argued that PPPs are not being implemented as a standalone policy, but as part of a cocktail of policies that is aimed at improving the overall economic situation of the country. The inclusion of PPPs as a key strategy for the delivery of Kenya Vision 2030 heralds its importance in Kenya's policy framework and from a scholarly perspective, a timely and relevant area of study.

1.4.1 Policy Transfer

Given the geographical widespread of PPPs, PPPs could also be viewed as a form of policy transfer from one country to another, with the earlier adopters becoming a template from which the new adopters learn and obtain guidance. Dolowitz and Marsh (2000, p. 5) define policy transfer as "the process by which knowledge about policies, administrative arrangements, institutions and ideas in one political system (past or present) is used in the development of policies, administrative arrangements, institutions and ideas in another political system." However, it should be noted that policy transfer is not in itself always successful as the requirements and terrain of a given area or country may be ill suited to the policy being adopted. With respect to sub-Saharan Africa, this study would like to determine the extent to which policy transfer has played a role and whether this transfer has been initiated by the countries themselves. Given the prominence of PPPs in the UK and its long history of the use of PPPs, has the UK model of PPPs been transferred elsewhere or not? Is that the version of PPPs that is being implemented in Kenya?

The literature on policy transfer distinguishes three kinds of policy transfer. These are: voluntary transfer, where a policy is borrowed voluntarily; negotiated transfer, where a policy is negotiated (for example with the World Bank) and then adopted; and a coerced policy transfer, where one state or organisation imposes its will on another (such as colonialism) (Dolowitz and Marsh, 1996; Dolowitz and Marsh, 2000; Evans, 2006). Following on from the question on whether there has been a policy transfer, the next step is to determine what type of policy transfer it is, whether voluntarily accepted, negotiated or coerced.

Lastly, literature also suggests that in the case of policy transfer in Africa, countries have taken after their former colonial powers (Caulfield, 2006). For instance, Francophone Africa has carried out privatizations following a typically French model while Anglophone Africa has followed the UK (Ibid.). Again, this could affect the policy transfer being made and Kenya's path may therefore be closely mirrored to that of the UK.

1.4.2 Development Projects

As mentioned in section 1.1.2.6, development projects are an investment in public services in developing countries, with a view to turn the tide against socio-economic decline and improve the lives of citizens (Rahaman and Lawrence, 2001a and 2001b). Such projects, however, remain under-researched, remaining "neglected in many countries," despite their potential to drastically alter the economic landscapes in which they are formed (Rahaman and Lawrence, 2001b, p. 191 citing Dean, 1989).

In light of the scale of investment in PPPs and their aim of providing a service to the public, PPPs located in developing countries could be argued to be development projects and thus need to be researched. A PPP investment in roads or railways has the capacity to open up previously remote areas, provide a means of transporting goods to far flung markets and facilitate the movement of labour and capital, thus facilitating economic growth. This makes them an important area of study. In addition, the long term nature of PPPs imply a long term significance of such a project. This is important too, as the benefits and costs of the project could cut across different generations.

Lastly, a study of PPPs expands the discourse on privatisation, where studies have been carried out, with "much of the research on privatisation approaches, including in Africa," being carried out "from a particular economistic theoretical lens that envisions privatisation to bring benefits" (Josiah et al, 2010, p. 376). Privatization is, however, not always positive, with some viewing politicians and those in current leadership as being the ones who ultimately benefit by either directly or indirectly (through cronies and associates) acquiring ownership of the privatized companies. Alternatively, the companies could be purchased by transnational companies, who then repatriate any profits raised to their mother companies (McGregor, 2005; Josiah et al, 2010; Schneider, 1999).

In some cases, wealth has been transferred from the public to families, with a resulting watering down in management controls, more focus on budgets and markets, less focus on labour and production thereby resulting in declining profitability (Uddin, 2005). Privatization has also not led to a reversal of losses or better management control of companies in all cases

(Uddin and Hopper, 2003). Although a detailed review of privatization is not within the scope of this thesis, the use of PPPs involves the private sector, though in a different way and this too, calls for more research.

This research therefore hopes to further contribute to the scholarship of large-scale infrastructural projects that have the potential to change the socio-economic landscape of countries, PPPs being examples of such projects.

1.5 Research Aims and Objectives

The aim of this study is to investigate reasons behind the adoption of PPPs as a policy in Kenya, the role of transnational organisations in promoting PPPs, the implementation of PPPs and establishment of PPP organizations. The study also seeks to determine how the Kenya government has been able to identify specific PPP projects.

The central research question is therefore phrased as follows:

"Why has the Kenya government taken PPPs as a policy for the provision of public infrastructure?"

In order to support the stated research aim and using the concept of steering as described in the theoretical framework (Broadbent, Laughlin and Read, 1991), the study further addresses the following research questions:

1. To what extent do transnational organizations such as the World Bank influence PPPs in Kenya and why?

2. How has the PPP Policy been steered in Kenya and what are the steering mechanisms used?

In answering these questions, the thesis will discuss the factors that have led to the adoption of PPP policy in Kenya and the process of implementing the PPP policy. It will also examine the role that has been played by transnational organisations in the adoption of the PPP policy in Kenya. This research study attempts to answer these questions by first studying the general rise of PPPs in Africa, establishing a detailed study of the implementation of PPPs in Kenya and examining the factors at play that have influenced the development of PPPs in Kenya.

1.6 Research Methods and Research Methodology

The research methods used in this study is the use of documents analysis (Bowen, 2009; Bryman, 2012) and interviews (Bowen, 2005; Silverman, 2013) with various officials in Kenya that have been involved in the PPP process, Kenya being the case study (Eisenhardt and Graebner, 2007) identified. At the outset, the study examined official documents of the Kenya Government, the World Bank and International Finance Corporation (IFC) and relevant websites on PPPs in Kenya such as the PPP Unit website. Interviews were later held with different officials in the Kenya PPP process.

The Research Methodology used is middle range thinking (Laughlin, 1995; Broadbent and Laughlin, 2009). This is discussed in Chapter Four.

While documents on PPPs studied were from official sites, interviews were carried out in order to obtain responses from various stakeholders within the Kenyan PPP process. These include representatives of the PPP Unit, different organizations that have made use of PPPs or are in the process of implementing PPP projects, representatives from SPVs formed as part of the PPP concessioning process, representatives of the multi-donor facility PPIAF which is based at the World Bank and other public/private sector stakeholders. Interviews were carried out over a two-week period in October 2013 and a three-week period in July/ August of 2014 and a total of 14 organizations agreed to participate in the interview process. Following the results obtained from the interviews, an analysis on the qualitative data has been performed in order to draw out themes from the interview data.

1.7 Findings and Contributions

The research has added to the international knowledge of PPPs by presenting the case of Kenya (Broadbent and Laughlin, 1999; 2004; Andon; 2012). In this way, it has added to the body of literature on PPPs in developing countries. It points out why a country like Kenya has decided to adopt PPPs as a policy, the challenges noted and how PPPs are being implemented. It has found that the push and pull between budgetary constraints and the need to provide for public services, including large-scale infrastructure such as roads, railways and electricity grids, has been one of the considerations in the adoption of PPPs. It has also shown that given the budgetary constraints, the government may have limited option but to either increase the public sector debt or pursue other options such as the use of PPPs.

Additionally, the close working relationship between governments in developing countries and International Financial Institutions (IFIs) in developing and implementing policy has been revealed. By reviewing the PPP activity before and after the enactment of the PPP Act (2013), the study shows that IFIs are deeply involved in policy, in the setting up of regulatory frameworks and in boosting capacity to implement a given project. The study also contributes to the literature on policy transfer where policy from one country or region can be developed and implemented in another region voluntarily, through coercion or through negotiation (Dolowitz and Marsh, 2000).

From a theoretical perspective, the research study has added to the role of national governments in "steering" as described by Broadbent et al (1991), by showing that "supranational steering" also takes place. By highlighting the role of the World Bank and other IFIs in the case of Kenya, the thesis traces the development of the PPP policy in Kenya, the "steering" of this process and the "steering mechanisms" involved.

Although the theoretical framework in Broadbent et al (1991) does not cover international steering, given that it considered steering carried out between national institutions in England, this study has found out that with respect to PPPs, international steering is carried out by the IFIs. The study has therefore further contributed to the theoretical framework in Broadbent, Laughlin and Read (1991), by showing that in addition to "societal steering," international steering takes place. It therefore helps to answer Broadbent and Laughlin's question: who regulates PPPs and how (Broadbent and Laughlin, 1999; 2004).

1.8 Thesis Structure

This PhD thesis is divided into nine chapters. In this Introductory Chapter, a brief background to the study has been given, with the definition and types of infrastructure discussed. The significance of infrastructure to any country has also been analysed and the demand for infrastructure in Africa highlighted. In addition, the global spread of Public Private Partnerships (PPPs) has been discussed, the research motivation stated and the research questions identified. The Research Methodology has also been briefly described and the key findings and contributions briefly highlighted. The rest of the chapters are summarised, briefly, below.

Chapter Two discusses the financing of infrastructure, given that financing is a key determinant for the supply of infrastructure (McCawley, 2016). It further debates the sources of finance, whether public, private or donor funded and further highlights the role that China is playing in financing infrastructure in Africa (Noumba Um, 2010; Collier, 2014; McCawley, 2016). It finally considers why countries are turning to the use of Private Public Partnerships (PPPs) in the financing of infrastructure (Spackman, 2002; Grout, 2003; IMF, 2004; PPIAF, 2007; Andon, 2012).

Chapter Three presents a comprehensive overview of PPPs, giving their definition (Broadbent et al, 2003), looking at the nature of PPPs and examining the concept of Risk (Ball et al, 2000; Spackman, 2002; Froud, 2003; Grout, 2003) which is central to PPPs. Further, the chapter identifies the different types of PPPs (Dudley, 2010), the characteristics of PPPs and also touches on the reasons for and against the use of PPPs (Ball et al, 2000; Spackman, 2002; Broadbent et al, 2003; Shaoul and Edwards, 2003; Shaoul 2010, Shaoul et al, 2006). It also checks how PPPs have been used in different parts of the world from the UK to Continental Europe, Asia-Pacific to the Americas.

Chapter Four establishes the Theoretical Framework, as adapted by Broadbent, Laughlin and Read (1991) from Habermas (1984, 1987). Concepts within Habermas' argument such as "modern society" being "theoretically defined as an amalgam of lifeworlds", "steering media" and "systems" have been explored in detail. The linkages between lifeworlds, steering media and systems are also examined, and the results of such steering stated.

Chapter Five reviews the Research Methodology used. It explores Laughlin's (1995; 2004) middle-range theory as the research approach to be used. By taking this approach, the study seeks to adopt a "medium-medium-medium" position on the three schema of theory, methodology and change. Each of these schema is reviewed in detail and the researcher's position, being a middle position on each schema examined. By taking a middle position on each of these, the chapter evaluates what this means to the research and the discursive process allowed by such positions, thereby enabling the researcher to go back and forth and make changes to the research strategy as it evolves. Laughlin describes the "skeletal framework" provided by theory which is then "fleshed out" by empirics. The theoretical framework discussed in Chapter Three forms the skeletal framework used in this thesis.

Chapter Six discusses supranational steering and analyses the responses obtained from the carrying out of interviews with various stakeholders involved in the PPP process in Kenya as well as the documents studied. Interviews involved actors in the Kenyan PPP process such as representatives of the PPP Unit, different organizations that have made use of PPPs or are in the process of implementing PPP projects, representatives from SPVs formed as part of the PPP concessioning process and representatives of the multi-donor facility PPIAF. Official documents of the Kenya Government, the World Bank and the IFC have also been used in this analysis.

In **Chapter Seven** the use of various documents within the Public Private Partnerships (PPP) framework in Kenya have been examined through the theoretical framework of Broadbent et al (1991) so as to chart the evolution of the use of PPPs in Kenya. The emergence of PPPs as a key policy option in Kenya and its inclusion in Kenya's Vision 2030 are detailed. In addition, interviews involving actors in the Kenyan PPP, such as PPP Unit, different organizations around PPPs and a representative from the multi-donor facility PPIAF, have been reviewed, analysed and discussed. The chapter also reviews the evolution of the promotion of the private sector in providing public services in Kenya by the Kenya Government. Various Acts of Parliament and official documents have been reviewed. These reveal how societal steering of PPPs is carried out.

In **Chapter Eight** a discussion has been carried out on both supranational and societal steering, using the theoretical framework of Habermas to clearly draw out the steering process, the steering mechanisms being used and the lifeworld values that are conveyed.

Finally, **Chapter Nine** concludes on the thesis. In this chapter, the research aims and objectives have been revisited once more and the conclusions drawn from the study shown alongside the research aims and objectives. The chapter also gives a summary of the research study carried out, the contributions made to literature and suggests areas for future research. It also links the various chapters, starting from the introductory chapter.

1.9 Summary and Conclusion

This chapter has provided a brief but important introduction to this PhD study and has laid down the framework around which the other chapters have been written. At the beginning of this chapter, a brief background to the study was given, the significance of infrastructure highlighted and the demand for infrastructure in Africa discussed. The global rise in the use of PPPs has also been highlighted, the research motivation behind the study stated and the research questions identified. Further, the Research Methodology used and the theoretical framework have been identified. Lastly, key findings and contributions to knowledge have been mentioned. This chapter therefore provides a brief overview of the rest of the thesis, on a chapter by chapter basis, stating what is to be expected from Chapter Two, through to Chapter Nine.

CHAPTER TWO: INFRASTRUCTURE FINANCING IN DEVELOPING COUNTRIES: KEY DEBATES

2.1 Introduction

This chapter is the first of two literature review chapters. It reviews the literature on infrastructure and considers the key debates in infrastructure financing. While Chapter One has introduced the concept of infrastructure, its economic significance and the demand for infrastructure across African countries, this chapter examines what determines the supply for infrastructure and focuses on the financing of infrastructure, given that financing is a key determinant for the supply of infrastructure (McCawley, 2016).

The chapter then reviews the sources of financing for infrastructure and what each country must consider in deciding on the source of finance, more so, lower income countries. The chapter discusses the debates between the use of public or private sources of finance, the role of donors and funding from other countries or organizations (Noumba Um, 2010; Collier, 2014; McCawley, 2016) and considers why countries are increasingly turning to the use of Private Public Partnerships (PPPs) in the financing of infrastructure (Spackman, 2000; Grout, 2003; IMF, 2004; PPIAF, 2007; Andon, 2012). The role of transnational organisations in the approach to PPPs, as well as China's role in infrastructure financing in Africa, is also discussed (Collier, 2014).

2.1.1 Supply of Infrastructure

The supply of infrastructure is the provision of infrastructure for use within a given jurisdiction, such as the building of roads or rail in a country. According to McCawley (2010, p. 1), there are seven key issues that dominate the concerns of policymakers with regards to the supply of infrastructure. These seven issues are as follows: the selection and preparation of appropriate projects, finance, pricing, access, governance and management, policy and regulatory policies, and climate change. Of these seven, the financing of infrastructure is often seen as the most challenging for countries that seek to carry out infrastructure developments, due to the limited sources of financing (Tortajada, 2016). Each of the other six issues mentioned are important too, in the provision of infrastructure. However, this thesis seeks to address the issue of financing infrastructure.

In Africa, the demand for infrastructure is great, as discussed in the previous chapter. There is a great need for additional investments in infrastructure, either to create new infrastructure where previously none existed, or to maintain and rehabilitate existing infrastructure. Given pressing development needs, recurrent expenditure and even wastages and corruption in some cases, and coupled with limited budgets, governments in developing countries only managed to allocate “approximately half” of what they should have invested in prior periods so as “to sustain their economic growth prospects at current levels” (Noumba Um, 2010, p. 461).

The issue of finance or to be more precise, shortage of finance, is therefore a constant theme in the literature on provision of infrastructure in Africa. If the public sector struggles to meet the infrastructure needs of a country, then it follows that alternative sources could be sought, including increasing the private sector component of financing. The public sector component of financing has reached its ceiling in many countries and is likely to be further constrained as new and extra demands are made on it (Estache, 2007; Noumba Um, 2010). Such demands include the financing of Education and Health, for instance, for a growing population or a National Police Service to meet a country’s security needs or even meeting debt repayments on “huge IMF, WB and private loans” (McGregor, 2005, p. 171). The next section examines how the financing of infrastructure has been carried out and the options that governments have considered.

2.2 Financing of Infrastructure in Africa

The literature argues that there are four key sources of financing with respect to low income and lower middle-income countries, of which many countries across Africa fall. These four are the financing by the public sector, financing by private sector institutions (through provision of debt or equity), financing through donor grants (Noumba Um, 2010; Collier, 2014) and financing by China (Collier, 2014). These four sources are, however, “not of equal importance” (Noumba Um, 2010, p. 461) and more weight could be placed on one or more of the sources by a given country. Moreover, these sources could also change in importance over time as a country begins to rely more on one source while reducing reliance on a different source.

The table below shows the overall trend in financing for infrastructure in Africa over time.

Table 2.1 Trends in Infrastructure Finance in Africa, by Source (in USD Billions)

Source	2012	2013	2014	2015	2016	Average
African Governments	26.3	30.5	43.6	24	26.3	30.01
Donors (ICA members)	18.7	25.3	18.8	19.8	18.6	20.02
MDBs and other bilaterals	1.7	2	3.5	2.4	3.1	2.5
China	13.7	13.4	3.1	20.9	6.4	11.5
Arab Countries	5.2	3.3	3.4	4.4	5.5	4.4
Private Sector	9.5	8.8	2.9	7.4	2.6	6.2
Total	75.1	83.3	75.4	78.9	62.5	75.0

Source: AfDB, 2018, p. 82 (citing data from ICA, 2017)

From the table, governments are still the main financiers of infrastructure at an average of USD 30bn out of a total of USD 75bn. China by itself has contributed a significant amount of USD 11.5bn. However, the total average financing of USD 75bn is still insignificant compared to the infrastructure requirements of an annual investment of "about $1.1 trillion… to satisfy demand for infrastructure by residential and business consumers" (Noumba Um, 2010, p. 460 citing Fay and Yepes, 2003 and Yepes, 2008).

2.2.1 Public Sector Financing of Infrastructure

For African countries, the largest source of financing for infrastructure has traditionally been the public sector through government funding, as part of the public revenues raised through taxes or even as part of government borrowing (Noumba Um, 2010; Collier, 2014; Estache et al, 2015; Arezki and Sy, 2016; Eberhard et al, 2017). It could be argued, therefore, that the finance to build new infrastructure and maintain existing infrastructure has been the preserve of governments. However, it is considered that pressure on the public budget, increasing expenditure coupled with stagnant or declining revenues in some sectors have meant that the public sector as a source of financing is providing less than before and the governments are increasingly looking to the private sector and to bilateral lenders such as China (Noumba Um, 2010; Collier, 2014; Eberhard et al, 2017). Within the power sector, for instance, governments are increasingly unable to meet the needs of the sector, with the public sector now funding just about 50 percent of the investment in the power sector, while "Official Development Assistance (ODA) and development finance institutions (DFIs) have only partially filled the funding gap," leaving the private sector and Chinese funding as the fastest growing source of finance (Eberhard et al, 2017, p. 391 also citing Eberhard et al, 2016).

During the 1990s and 2000s, public financing represented "between 70 per cent and 80 per cent of the financing available for infrastructure." Although this subsequently declined and is no longer at such high levels, public financing remains an important source of financing for the development of infrastructure (Noumba Um, 2010, p. 461). This implies that the national government is still responsible directly for the financing of significant portions of infrastructure. Given that the tax base for revenue in such countries is not large, "infrastructure must compete with other sectors, particularly health and education for financing" (Estache et al, 2015, p. 280). Moreover, the population in such countries are of generally low income, thereby making the option of financing infrastructure through user fees challenging. Governments therefore fund infrastructure to a large extent (Ibid.).

The public sector also has the added objective of ensuring that the state does not fail and therefore has no option but to provide for the infrastructure. This is unlike the private sector, which considers a return on the capital and has options on where to best invest (Collier, 2014, p. 40). Nonetheless, from the 1990s onwards, many governments facing fiscal constraints attempted to reduce their role in providing for public finances and increasingly turn to the private sector to attract private capital with different levels of success (Estache, 2007, p. 2).

The literature therefore points to a gradual reduction in financing by the public sector. While the responsibility to provide for infrastructure remains within the public sector, as pointed out in Chapter One, governments are attempting to find other sources of finance, outside of the traditional tax revenues and government borrowing. If governments are successful in obtaining alternative sources of finance for infrastructure, then it could be argued that a fall in financing by the public sector is an indicator of success in obtaining such alternative finance. The worse scenario is to have a fall in such financing without a corresponding increase in the alternative funding sources. Even where the relative importance of financing by the private sector has increased, the public sector continues to finance and often also deliver many services (Estache, 2007, p. 2).

2.2.2 Financing through Donor Grants

According to Noumba Um, grants and financing from donors to low income countries, for the purposes of infrastructure, have previously represented between 5 per cent and 10 per cent of financing (Noumba Um, 2010, p. 461). Donor funds from multilateral and bilateral development agencies have totalled over 1 billion dollars over time, to rebuild and repair deteriorating infrastructure, given that donors have viewed the shortage of roads, for instance, to constrain economic growth (Streatfeild, 2017). However, despite this provision of financing by donors, just like in the case of the public sector, donor financing has been steadily declining too (Noumba Um, 2010).

The reasons for the decline in donor financing are considered to be somewhat different from the reasons advanced for the public sector decline. Firstly, from the moment of the Wolfenshon presidency at the World Bank (between 1995 to 2005), an effort and an expectation was built that the private sector would meet the shortfall. This is examined in detail in section 2.5. The thinking was that private capital markets would take the initiative to increase capital flow towards infrastructure in low income countries. This of course presumes that private capital would be keen to do this and that there would be an effective mechanism through which to finance the flows (Collier, 2014; World Bank, 2017).

Secondly, the other reason cited is that taxpayers in OECD countries, who fund the international development agencies, were "often ambivalent about paying for modern infrastructure due to environmental and social concerns; something most evident in respect of dams. There was much stronger acceptance of expenditures that were directly child focused, such as health and education" (Collier, 2014, p. 38). In addition to health and education, international donor support also shifted to governance issues (McCawley, 2010, p. 16, citing ADB et al., 2005). This possibly signified a change in priorities for the donor community, with respect to low income countries.

Furthermore, as donors tried to counter critics of further funding to infrastructure needs in OECD countries, they went to a great length to show that such projects were viable and demanded for a "range of procedural checks which raised costs and slowed implementation"

(Collier, 2014, p. 38). This may have served to further increase aversion to funding for infrastructure. Despite the decline in funding, however, official development finance, from International Finance Institutions such as the World Bank and the African Development Bank (AfDB), continues to represent an important source of finance (Arezki and Sy, 2016, p. ii63).

Just like in the case of the public sector, donor funding began to decline as well. One common factor in each case, in addition to other different factors such as fiscal constraints for the public sector and a change in priorities by donors, was the increasing focus on the private sector. The public sector reduced its financing for infrastructure, with its eye on the private sector to increase the funding. On the other hand, the donors began to reduce their funding too, hoping that the private sector would take up the shortfall.

2.2.3 Private Sector Financing of Infrastructure

Given the decline in revenues by the public sector and donors, it is considered that private sector funding for infrastructure has increased significantly, especially with respect to specific sectors of the economy. Though, not every country has been successful to attract private capital in the same way (Estache, 2007, p. 2). In the 1990s and 2000s, private financing was at an all-time high of between 15 per cent and 20 per cent of the total financing available for infrastructure (Noumba Um, 2010, p. 461).

Since then, there has been an increase in private sector finance, broadly targeted at telecom in many countries and at the energy sector in fewer countries (Arezki and Sy, 2016, p. ii63). This has, however, not translated to as much investment in economic infrastructure projects such as roads and rail, given their perception as being very risky (reputation wise or financially), too involving to undertake, or too small with respect to the investment to be made, the returns and the costs (Collier, 2014, p. 38). The literature thus suggests that tapping into private sector funds, while plausible, remains a challenge. The continued shortage of infrastructure in such countries points as an indicator to a general lack of funds, including that of the private sector.

Another reason cited in the literature is that private sector investors are unsure of the regulatory certainty within developing countries, in the various sectors that they want to invest in. They consider that infrastructure policy can be easily swayed by political changes (McCawley, 2010, p. 17). Regulations could be a barrier where no legislative framework has been put in place to govern the sector, or where the sector has advanced beyond the legislative framework in place. This could be argued to be certainly true of the telecommunications sector, where mobile telephony certainly overtook earlier legislation when the available technology was only fixed line telephones.

The private sector investors can therefore move their capital from place to place or from sector to sector, based on their anticipated returns (Collier, 2014, p. 40). Despite the challenges encountered with tapping private capital, across many developing countries, the telecommunications sector is seen as an exception, having attracted significant private capital (McCawley, 2010, p. 38). This sector stands out and presumably ranks better in terms of returns against the investments to be made.

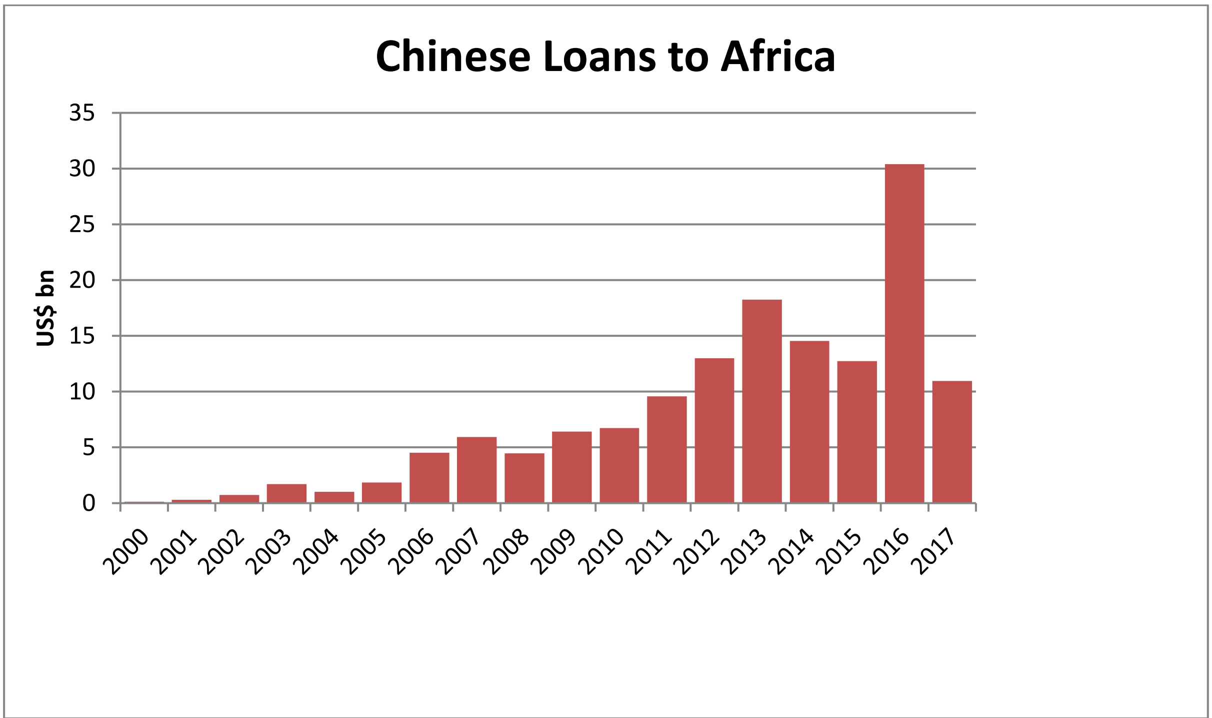
2.2.4 China in Africa

To obtain financing from China, is only but one of the bilateral agreements that a country can get into with another country, to obtain funds whether as a loan or as a grant. However, that financing from China is now considered by some of the literature as a distinct source for infrastructure financing in Africa, perhaps highlights the scale and importance of China's financing. As sources from the public sector and donors have declined, as shown in preceding sections and private sector financing has not risen as quickly, financing from China "has filled the resulting vacuum through a distinctive package in which infrastructure is financed and built in return for rights to resource extraction" (Collier, 2014, p. 38). In some of the countries, therefore, China would enter into an agreement to obtain natural resources in exchange for a direct investment in infrastructure.

Unlike the concentration of private sector investment in Telecoms in a number of countries, widely spread, China's financing has been concentrated on a few sectors such as Energy, Transportation and Mining and in only a few countries (Arezki and Sy, 2016, p ii63; Hwang et al, 2016). Five countries in Africa constitute more than 50 percent of all Chinese loans to Africa. These are Angola with a total of 21.2 billion USD, Ethiopia at 12.3 billion USD, Sudan at 5.6 billion USD, Kenya at 5.2 billion USD and the DRC at 4.9 billion USD (Brautigam and Hwang, 2016; Hwang et al, 2016). In Angola and Mozambique, from 2005 onwards, Chinese financing increased dramatically, with China Eximbank extended financing in the form of loans worth 2 billion USD, particularly for Benguela, a mineral reach area, to rehabilitate roads and railways in the area (Goldstein and Kauffman, 2006, p. 2).

Transportation loans include loans provided for the construction or renovation of railways, roads, airports and harbours, as well as the purchase of the vehicles to be used in the railway, roads or air transport (Hwang et al, 2016). Energy loans go to hydroelectric projects, power transmission lines, gas pipelines, gas power-plants and coal power-plants, while most of the mining loans have gone to Angola's Sonangol, the Sicomaines Copper and Cobalt mine in the DRC and two gold mines in the Niger (Ibid.).

Figure 2.1 Chinese Loans to Africa, from 2000 to 2017



Source: Atkins, Brautigam, Chen and Hwang, 2017 (CARI, John Hopkins University Database)

The table above shows the increase over time in loans by China to Africa, showing a peak of 30 billion USD in 2016.

Chinese contracts have been claimed to deliver overall good quality outputs, within schedule and much cheaper than the offers from competitors (Goldstein and Kauffman, 2006, p. 2). In addition, financing from China has been lauded for its scale and for supplying much needed funds for new infrastructure as well as rehabilitating old infrastructure. Nevertheless, Chinese agreements and proposals are often considered as "opaque" and "difficult to evaluate" thereby preventing any comparisons (Collier, 2014, p. 38), and also making it difficult to determine the true cost of financing.

In addition, non-Chinese bidders are excluded from the bidding process and the workforce for the construction is mostly brought in from China. Chinese contractors are involved as their involvement is tied to the contract and again, this prevents the local workforce from directly benefitting from the opportunities brought about by the new infrastructure being built (Goldstein and Kauffman, 2006, p. 2).

2.3 The Choice between Public and Private Finance for Infrastructure

The use of public financing and financing from China both involve borrowing, with governments borrowing from China or Chinese development banks, in the case of financing from China, or borrowing from other bilateral and multi-lateral relationships, including from the World Bank and the IMF. With declining support from donor financing and excluding private sector financing, governments may therefore have to grapple with increasing debt levels. Growing levels of debt have made it challenging for governments to meet their requirements. These requirements would include both recurrent expenditure to keep the government running and capital expenditure, such as the putting up of infrastructure projects. It is not only lower income countries, found in Asia, Latin America and Africa that are faced with this problem; countries in Europe and North America have been affected too. Nevertheless, lower income countries are more vulnerable if their circumstances change as a result of global shocks or increased debt levels, such as the debt crises of the 1980s and the 1990s (Fincke and Grainer, 2010, p. 745).

As governments grapple with the issue of where to obtain more funds from, given the constraints imposed on additional borrowing, one option is to involve the private sector to invest in such projects. However, according to Khmel and Zhao (2016, p. 140), the financing of large infrastructure projects require huge amounts of funds and therefore pose a significant level of business risk. Private organizations would therefore be wary of putting in their own money as equity, given the significant levels of risk. Sponsors who are willing to take up such projects would therefore want to put in only a bit of their funds and then borrow additional funds from lenders and financial institutions. Based on the lenders' assessment of the risk, they would provide the funds and price them accordingly. As discussed later in this chapter and in Chapter Three, the use of PPPs is therefore one way that sponsors of projects can be able to do this and allow the government to obtain additional financing for infrastructure.

The cost of finance “is a key driver of the overall cost of delivering infrastructure, and is primarily driven by the nature of the risks associated with the delivery and operation of infrastructure” (Bhattacharya et al, 2012, p. 13). With respect to Africa, it has been noted that the risks and hence the costs of investments in infrastructure is even higher. Investors would therefore expect a much higher return (Collier, 2014; Khmel and Zhao, 2016). The effect of this is that governments in Africa would struggle still to raise private finance for infrastructure and must therefore structure their attempts to raise funds in a way that appeals to international investors. This involves carefully managing risks (Collier, 2014, p. 38). Again in PPPs, the idea of carefully managing risks is discussed in Chapter Three. One other way of obtaining such funds is to place infrastructure bonds. While this has been done by some countries, it requires the “development of a deep and liquid infrastructure bond market in Africa” and a “strong legal and regulatory framework” (Arezki and Sy, 2016, p. ii69; AfDB, 2018).

Where governments are able to address institutional weaknesses, common in developing countries, such as ensuring that legal contracts are enforceable and creating an effective institutional and legal framework, they may be able to attract private finance. Additionally, governments being accountable makes it easier to attract private capital (Estache et al, p. 281). Private organizations would be more comfortable knowing that an inability to enforce legal contracts will not lead them to undue financial distress.

The ability to have the private sector provide its own capital, or even funds that they have borrowed from banks and other lenders, has the effect of saving the government some money which can then be applied to a different expenditure that would not have been met. This implies that there is an opportunity cost for borrowed funds by the government. If the opportunity cost is high, it may be better to let the private sector borrow on behalf of the government (Estache et al, p. 296). In addition, there is an overall reduction in government borrowing levels, which may make it easier for the government to come back and borrow at a cheaper cost in future.

This section has briefly considered public borrowing against private sector borrowing and how the use of PPPs is one way through which the private sector can bring in private finance for infrastructure projects. The next sections outline the rise of PPPs in developing countries and the role that the World Bank and other International Financial Institutions (IFIs) have played (Noumba Um, 2010; IMF, 2004; UNECA, 2003). The World Bank and the IMF, for instance, have provided the "technical infrastructure and organizational capacity" to promote privatization and introduce other ideas considered as market friendly (Uddin and Hopper, 2003; Uddin, 2005 also citing Cook, 1986; Cook and Kirkpatrick, 1995; Craig, 2000). The result of this is that countries in developing countries, Africa included, have pursued privatization and also adopted other policies involving the private sector, such as PPPs.

2.4 Historical Review of PPPs in Africa

This section carries out a historical review of the use of PPPs in Africa by examining the involvement of the private sector in the provision of public services in Africa, starting with the privatization phase throughout the 1980s. A major theme that emerges in this section is that the World Bank and other IFIs have played a significant role in the choices that governments make, with respect to infrastructure financing and the involvement of the private sector.

2.4.1 African Economies and Structural Issues

Pessoa (2010, p. 571) states that "the movement towards PPPs in developing economies did not begin as an exclusively endogenous process. Rather, international organizations under controversial guidance known as the "Washington Consensus" advised and propelled the move towards PPPs." The Washington Consensus refers to a development strategy that "emerged during the early 1980s." It is defined as a type of free market capitalism based upon extensive market de-regulation, privatisation and liberalisation and was widely advocated by the West and the major policy making Washington institutions such as the International Monetary Fund and the World Bank (Cowling and Tomlinson, 2011, p. 831 also citing Williamson, 1990).

From the outset, therefore, the literature points to a significant role played by IFIs and especially by the World Bank and the International Monetary Fund (IMF) in promoting privatization and liberalisation of the economies of developing countries. Throughout the 1980s, the World Bank and the IMF had prescribed for the developing countries a suite of policies that they needed to implement in order to rise up from the economic doldrums of the previous years and attain growth. These were collectively referred to as the Structural Adjustment Programme (SAP). SAPs were a set of policies that were in response to external shocks that had threatened the growth path of national economies. The policies were meant to return the economies to the “pre-shock growth path” and in the period of adjustment, the primacy of growth over distribution and of production over social justice was emphasized (Jiah, 2006 p. 53 citing Balassa, 1981 as quoted in Dasgupta, 1988). The key SAP’s objective was therefore to structurally alter the economic direction of developing countries so that they step back into positive territory. An emphasis was thus placed on economic growth but without corresponding emphasis on effects on labour, employment and working conditions (Uddin and Hopper, 2003). The oil shocks of the 1970s had led to a dismal economic performance in many countries and an adjustment was thus needed to realign the growth trajectories of these countries. The majority of the countries that received funds through the Structural Adjustment Facilities were African Countries (Neua et al, 2010, p. 403).

The structure that was to be adjusted was the national economy, through the use of different economic policy instruments (McGregor, 2005, p. 170). Neoclassical economic theory, which is the core component of the World Bank and IMF restructuring programs, posits that “socioeconomic and spatial inequalities are merely short-term aberrations that arise from structural factors, in an otherwise well-functioning system” (Konadu-Agyemang, 2000, p. 470). It is in attempting to sort out these structural factors, that ‘structural adjustments’ are carried out. This concept was thought of in the 1970s during the economic crisis in sub-Saharan Africa. These structural factors included the growing debt crisis in developing countries that hit the continent during that decade provoking acute financial distress. In addition, there was a fall in the export earnings of these countries, due to a fall in commodity prices and the “OPEC oil curtail that led to the global crisis in 1974,” as well as “poor domestic policies, emanating from the Marxist development paradigm” (Lopes, 1999, p. 511).

The broad objectives of privatization for countries in Africa who received these SAP prescriptions were chiefly macro-economic in nature and based on three main objectives: improve the investment climate, reduce government deficits and enhance foreign exchange earnings. The means to do this was for governments to reduce their trade and investment regulations, so as to improve the investment climate, reduce public expenditure and aggressively promote exports (Neua et al, 2010, p. 405). These prescriptions were further broken down into ten different requirements that the country in question would need to fulfil.

2.4.2 The Washington Consensus

In 1989, John Williamson looked at the policies that had been prescribed by the World Bank to developing countries in the 1980s, referring to them as the "Washington Consensus." Policies making up the Washington Consensus were the following:

(1) Fiscal discipline (keeping budget deficits under control);

(2) Public expenditure priorities (redirecting expenditure away from white elephants towards neglected fields, including primary health and education, and infrastructure);

(3) Tax reform (broadening the tax base and cutting marginal tax rates);

(4) Financial liberalisation (abolition of preferential interest rates);

(5) Exchange rates (ensuring competitive exchange rates);

(6) Trade liberalisation (reducing or phasing out tariffs and quantitative restrictions on trade);

(7) FDI (abolition of barriers to inward FDI);

(8) Privatisation of state enterprises;

(9) Deregulation (especially of regulations that impede the entry of new firms); and

(10) Provision of secure property rights (Lee and Mathews, 2010, pp. 88-89; Williamson, 2000, p. 251; McGregor, 2005).

Some writers have referred to these prescriptions by the Bretton Woods Institutions as the "Ten Commandments" (Arestis, 2004), perhaps in jest but underlining the rigidity of adopting these requirements with possible stiff penalties if not adopted. This term also underscores the larger than life image that the Bretton Woods Institutions showed, in the management of developing countries' economies, and indeed, the role that they continue to play. One of the recommendations made in the Washington Consensus was privatization or the eighth commandment and throughout the 1980s, developing countries disposed of some of their key assets in the form of parastatals and State Owned Enterprises (SOEs). This emphasis on privatization would thus be a precursor to Public Private Partnerships.

Privatization in Africa therefore took several forms. These included commercializing of government services by contracting them to an outside agency, Joint ventures between government agencies/ministries and private entities and the outright sale of some government services or functions, such as water supply or telecommunications, to the private sector. In some cases, there was the signing of Management contracts for the private sector to manage specific government functions or services such as postal services. There was also the leasing of government assets that are used to provide public services and granting concessions to private entities to operate and finance public services delivery in part (UNECA, 2003, pp. 12-13 citing Hope, 2002). The private sector was therefore involved, although in different ways, even before the onset of PPPs.

The forms of privatization applied in African countries were therefore varied, ranging from total divestiture on one end of the scale to the use of management contracts or joint ventures on the other end. The most common method of privatisation used in sub-Saharan Africa, however, was the sale of shares. This was followed by liquidations and sale of assets. Additionally, though used less frequently, were: "leases, public flotation, transfers, management contracts, buyouts, joint ventures, concessions, trustees and swaps" (Berthelemy et al, 2004, p. 43). The use of concessions, which could be argued to be a precursor to PPPs, has therefore been used much less before, as compared to an outright sale.

The Washington Consensus, however, began to break down and to lose credibility in the late 1980s and early 1990s, "in the face of slow economic growth, crippling instability in global financial markets, growing inequality and the degradation of working conditions and quality of life for billions of people" (McGregor, 2005, p. 170). Following this breakdown, in 1999, the World Bank changed "the label SAPs to Poverty Reduction Strategy Papers (PRSP)." These papers marked a change from the older "tripartite Policy Framework Paper (PFP)" in which three parties were involved in any concessional loan: the IMF, the World Bank and a country's government. Instead, these papers encouraged participation not only of the country involved, but also of the civil society and development partners (including the World Bank and the IMF). The rationale for participation was that the developing countries would then own the process and not blame the World Bank (as in the case of SAPs), in case it didn't work out as envisaged (Ibid.).

A review of PRSPs however shows that while they were intended to help in poverty reduction, the general macro-economic objectives of many countries included “fiscal reform, restructuring, downsizing, privatization, cost-recovery,” which in some cases, had the unintended adverse effect on poverty reduction (Mazur, 2004, p. 68). This possibly points out that any prescription by an outsider for a country could go wrong, no matter how well intentioned and that there are no standard or quick fixes to problems faced by countries in their attempt to provide public services. In addition, some studies have found that “success or failure of reform depends on domestic political-economy forces” (Dollar and Svensson, 2000, p. 894).

While the Washington Consensus therefore aimed at helping developing countries to solve their structural economic problems, this is seen as having been a policy imposed from outside these countries. The PRSPs that followed were similarly considered as imposed by the World Bank and the IMF and were not initiated from within the countries.

2.4.3 The World Bank Group and the Move Towards PPPs

Five institutions together make up the World Bank Group (WBG) and these have participated in various ways in the promotion and set-up of PPPs. The International Bank for Reconstruction and Development (IBRD) which is generally referred to as the World Bank has the aim of reducing poverty “in middle-income countries and creditworthy poorer countries by promoting sustainable development through loans, guarantees, risk management products, and analytical and advisory services” (World Bank website). The World Bank was established in 1944 and is the first institution to be formed within the World Bank Group. It is owned and operated for the benefit of its 188 member countries. The World Bank raises most of its funds from the world's financial markets and first issued a bond in 1947. The income raised allows it to fund for development activities in client countries, on good borrowing terms (Ibid.).

The bulk of lending by the World Bank between 1946 and 1987 was mostly for infrastructure projects. These represented “between 50 per cent and 60 per cent of its total lending.” “Infrastructure loans reached US$8.5 billion in 1987. By 1998, World Bank lending in infrastructure went down to represent only 40 per cent of its total lending, and by 2013 infrastructure lending was just approximately 30 per cent.” This decline in lending in the infrastructure sector can be attributed to an increase in lending in other sectors, a change in policy by the World Bank or increasing disillusion from investment in the infrastructure services sector. The greatest decline in funding by the World Bank can be seen in the energy sector, where this was interpreted to mean that the bank had a “high expectation about private participation in this sector” (Noumba Um, 2010, p. 462) and therefore reduced its own participation in the sector.

There is some evidence to support the view that the bank had become disillusioned with the public sector delivering on infrastructure in the 1980s. The bank considered the “cost of failure in foregone growth and poverty reduction” as “being unacceptably high” and by the “mid-1990s, the bank became reluctant to lend to governments to finance bricks-and-mortar infrastructure projects, and opted increasingly for pro-market-based solutions wherever possible” (Noumba Um, 2010, p. 463). Also, the shift towards market-based solutions shows a bank shift in policy in the 1990s, thus setting the background for a move towards supporting more PPPs.

The actual shift towards Public Private Partnerships in the developing world can be attributed to the World Development Report 1994, whose objective, among others, was “to ensure efficient, responsive delivery of infrastructure services, incentives need to be changed through the application of three instruments: commercial management; competition; and stakeholder involvement” (World Bank, 1994; Noumba Um, 2010, p. 464). Others trace the moment of the shift to the end of the 1990s, such as when the “President of the World Bank” significantly “avoided the use of the words structural adjustment in his communication of 21 January 1999” (Adedeji, 1999, p. 522), thereby marking a shifting approach to World Bank policies on developing countries.

Noumba Um, (2010, p. 464) further describes the first experiences of the World Bank from making this shift in policy towards involving the private sector more in the financing of public infrastructure. As might be expected, this involvement was slow to pick up and there was a slow uptake by the private sector in the 2000s, although the rate had been higher in the mid-1990s. Only in the telecommunications sector did private investments continue to flow. The reasons for this were varied and included “the East Asia financial crisis, difficulties with independent power producers in Indonesia, Pakistan and elsewhere; stalled water privatizations in Bolivia, Argentina, the Philippines and Tanzania; distressed toll-roads projects in Latin America (primarily in Mexico); and Argentina economic crises." This could have affected the views of investors and held them back from investing. It was therefore a tricky time for private investors to move into the financing of projects and an uncertain time for the World Bank and for governments in developing countries.

The World Development Report 1994 "advocated explicitly for the multiplication of public private partnerships (PPPs). Surprisingly, the public component of such partnerships was limited to Policy and institutional reform support. The report did not envisage a situation whereby the public sector would channel capital contribution to a PPP project. Private sector would - as long as right policy and institutional environment was in place" (Ibid.). It might be useful to note that 1994 was only two years after the Conservative Government in the UK embarked on the Private Finance Initiative (PFI) and thus began a large-scale experiment with the involvement of the private sector as partners in the delivery of public services. This initiative by the UK government could have contributed to the adoption of the PPPs by the World Bank. Granted, this was just the initial phases and any challenges or issues with PPPs would not have been envisaged at this point. But the idea that some of the difficulties in funding infrastructure could be overcome may have been a chance not to be bypassed.

By 2000, the uptake of the private sector in PPPs had not gone up significantly and in 2003, the World Bank adopted the Infrastructure Action Plan (IAP) which committed the World Bank to scale up financial and analytical support to client countries for the delivery of basic infrastructure services. By the end of implementing the IAP in 2007, the World Bank had increased its financing in infrastructure "from US$22.3 billion over the preceding four time periods to US$ 32.8 billion". The IAP was followed by the Sustainable Infrastructure Action Plan (SIAP) in 2008 which sought to improve the World Bank's experiences with infrastructure funding (Noumba Um, 2010, p. 465).

The SIAP sought to further improve PPPs, stating as one of its objectives that it aimed "to crowd in the private sector by expanding PPPs and strengthening the capacity of public agencies to perform as reliable and effective partners in PPPs." The SIAP further committed to mobilize more funds for infrastructure from both the private sector and overseas development agencies (Noumba Um, 2010, p. 466).

Other members of the World Bank Group include the International Development Association (IDA), whose aim is to help the world's poorest countries who may not have the creditworthiness to pursue the IBRD loans. The IDA therefore provides a large portion of help to the world's 82 poorest countries, 40 of which are in Africa. It is the single largest source of donor funds for basic social services in these countries, having a population of 2.5 billion people, the majority of whom survive on less than $2 a day. The IDA has also helped to fund projects in various areas including roads and water which are part of the infrastructure services (World Bank website, 2013). It has also helped set up PPP frameworks and developed institutional capacity for PPPs in various countries including in Egypt and Nigeria in Africa (Noumba Um, 2010, p. 472).

The International Finance Corporation (IFC), also a member of the World Bank Group, was established in 1956 and is owned by 184 member countries. It is the largest global development institution focused exclusively on the private sector in developing countries (IFC website, 2013). The IFC has provided transaction advisory services for PPPs and extended financing to project sponsors through direct lending (A loan) or syndication (B loans). In 2007, IFC lent about US$ 3 billion to infrastructure PPP projects in the developing world (Noumba Um, 2010, p. 473).

The fourth member of the World Bank Group is the Multilateral Investment Guarantee Agency (MIGA) whose mission is to promote Foreign Direct Investment (FDI) into developing countries to help support economic growth, reduce poverty and improve people's lives. This is done by providing political risk insurance guarantees to private sector investors and lenders. In 2012, MIGA provided US$ 2.6 billion of guarantee exposures, with US$ 636 million being in sub-Saharan Africa (SSA) and US$ 433 million being in the Middle East and North Africa (MIGA 2012 Annual Report).

Lastly, the International Centre for Settlement of Investment Disputes (ICSID) is an autonomous international institution established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID or the Washington Convention) with 140 member states. The Convention sets forth ICSID's mandate, organization and core functions. The primary purpose of ICSID is to provide facilities for conciliation and arbitration of international investment disputes (ICSID website, 2013).

The World Bank Group can therefore be argued to seek to involve, develop and promote the private sector more. However, the wider push by the World Bank and IFIs towards more neo-liberal policies in developing countries has not been without its critics, the argument being that they aggravate the condition of the poor (see for instance Caulfield, 2006; Miraftab, 2004). Also mentioned are power inequities in these partnerships, with the private sector often being the more powerful partner (Miraftab, 2004).

Others have even argued that the use of the World Bank and the IMF to implement development projects in Africa is an attempt by the previous colonial regimes to re-emerge as dominant in the affairs of their previous colonies (Rahaman, 2010; Rahaman et al, 2007). Whether their intentions are noble or not, the World Bank and the IMF cannot quite get rid of the tag of being agents of a new "colonial" policy. In the study of privatization and even the rise of PPPs in Africa, the two organizations must always be mentioned. In Ghana, for example, the World Bank "has been or is currently involved in approximately 140 development projects with the first of these occurring in 1962" (Rahaman et al, 2007, p. 651). The role of the World Bank is therefore extensive.

PPPs are however costly and may not always be affordable to developing countries. These must then be balanced against the other budgetary requirements of the country. There is a "PPP paradox" in that advocating for PPPs must be weighed against what can be realistically achieved (Noumba Um, 2010, p. 456). In an effort to develop their infrastructure, governments in developing countries may thus turn to PPPs not necessarily because they have had a detailed study on the costs and benefits of such an approach. However, it could be because "the neoliberal economic policies often are due to the lack of a perceived alternative, the interests of the ruling elite, and/or the powerful pressure on governments by international lending agencies" (Miraftab, 2004, p. 90 also citing Bond, 2000b and George, 1997) such as the World Bank and the IMF.

2.5 PPP Approaches by National Governments

Following the gradual shift in World Bank policy from 1994 onwards, there was a gradual move to involve the private sector in the provision of infrastructure-based services through the use of PPPs.

2.5.1 Initial Moves towards PPPs

Although privatization in Africa is said to have been prescribed by the World Bank in the 1980s as part of the SAPs, the first privatisation on the continent actually took place in 1960. SAPs in the 1980s, therefore, only accelerated the process. This transaction was in Côte d'Ivoire and it was a concession contract in the water sector that was signed between the Ivorian government and SAUR in 1960. Further, two Malian companies were liquidated and restructured in 1979 and 1982 and French-speaking African countries then led in the privatization process from 1983 to 1986. Portuguese and English-speaking countries then followed from 1989 onwards, "with six transactions recorded in Mozambique and two in Gambia, followed in 1989 by Nigeria (15 transactions), Ghana (six transactions), São Tomé & Principe and Guinea- Bissau (one transaction each)" (Berthelemy et al, 2004, pp. 26 - 27).

Caulfield (2006) has tried to draw distinctions between the French and British models of governance. It could be argued that the French model of governance was perhaps more favourable to earlier privatization as opposed to the British model, even though more countries now "look to the UK and Australia and other leading PPP countries for advice on how to proceed. They look to the government, but also to the other companies that have expertise with PPPs" (Greve, 2010, p. 505). The idea about a legacy of British or French governance (and indeed of any other colonial power) is really a question of institutions that have been shaped and left behind by the colonialists. This has thus affected various facets of life in these countries, including in privatization.

In French West Africa, for instance, there are specialized lease agreements referred to as "Affermage contracts" which have been used, for example, in the privatization of water services in Senegal (UNECA, 2005, p. 19). Affermage are a mix of lease and concession contracts and are specific to French-speaking countries such as Senegal, Guinea, the Central African Republic and Côte d'Ivoire. Affermage contracts, like concessions in PPPs, are usually long term for a period of up to 20 years, yet they contain aspects of a Management contract as well (Bethelemy, 2004, p. 54). In these contracts, "a state asset-holding company" is "formed, which would retain the assets and the right to extract water, and that an operating company should be created to produce and distribute water." In the case of Senegal, "it was decided that a professional operator would own at least 51 per cent of the capital; the other 49 per cent, being owned by a mixture of Senegalese investors, former workers of Société

Nationale d'Exploitation des Eaux du Sénégal (SONEES) and the State" (UNECA, 2005, p. 18). From the definition of the Affermage contract, it seems closest to a Management contract where the state does not privatize the enterprise but instead allows a management company to run it for a specific period of time.

The concept of the French or British model in public management in different countries in Africa, following their colonial masters (Caulfield, 2006), ensures that they have certain distinctions in their institutions, their policies and their approach to governance. In addition, the colonial influence on such countries continued even after independence, thereby having a significant impact on public policy. For example, "among the francophone countries within the sub-Sahara are those concentrated in West and Central Africa, which include Senegal, Benin, Burkina Faso, Mali and Cote d'Ivoire. These countries, along with Cameroon, signed up to the World Bank's structural adjustment programme, trading public sector reform for funding. This was not without some political pressure from the French African policy of the Mitterrand government, which aimed at persuading francophone countries to submit to 'good economic governance' as defined by the IMF, to be eligible for continuing French aid" (Caulfield, 2006, p. 17 also citing Renou, 2002).

This is different from countries which were previously ruled by the British where, "in contrast, the United Kingdom's public sector policy for Africa focused most heavily not only on civil service reform (in partnership with the World Bank), especially personnel reforms around pay and skills development, but also included the creation of service delivery 'agencies' and performance contracting. This focus reflects Britain's own preference for civil service reform in Whitehall, notably the establishment of 'Next Steps' executive agencies in the 1990s. Divestment of SOEs and restructuring of public utilities have also been high on the donor-shaped reform agenda in the formerly British East African countries of Tanzania and Uganda, and also Ghana" (Caulfield, 2006, p. 17).

The approaches taken by different governments towards PPPs or even privatization are therefore informed by colonial legacies in which institutions left behind by colonialists continue to shape the way of life in these countries. Additionally, current pressure from previous colonial powers still continues to shape policy at different levels. Countries formerly colonized by the British, for example, are still members of the Commonwealth, from where policy is viewed from a specific angle.

By the end of 2002, there were only 11 sub-Saharan countries which had not recorded any privatisation transactions. These included Botswana, Mauritius and Namibia, which did not have significant fiscal pressure. Eritrea, Liberia and Somalia, on the other hand, did not enjoy sufficient political stability to carry out privatization, while the other countries were Comoros, Djibouti, Equatorial Guinea, Seychelles and Swaziland (Berthelemy et al, 2004, pp. 26-27). This goes to show how popular privatization had become, whether through voluntary or forceful adoption.

2.5.2 Policy Transfer

Dolowitz and Marsh (2000, p5) define Policy Transfer as "the process by which knowledge about policies, administrative arrangements, institutions and ideas in one political system (past or present) is used in the development of policies, administrative arrangements, institutions and ideas in another political system". To what extent therefore is the use of PPPs in Africa a result of policy transfer? Given the dominance of the UK PPP policy globally, could the UK have exported this policy to other countries including those in Africa? The literature on policy transfer distinguishes three kinds of policy transfer. Voluntary transfer is where a policy is borrowed voluntarily; negotiated transfer, where a policy is negotiated (for example with the World Bank) and then adopted and a coerced policy transfer, where one state or organisation imposes its will on another (such as colonialism) (Dolowitz and Marsh, 1996; Dolowitz and Marsh, 2000; Evans, 2006). There are aspects of negotiation and coercion in the rise of PPPs. Negotiation is prevalent where the World Bank arranges through discussions with a client state to embark on a project through PPPs; coercion arises where the client state has little choice but to implement the project as part of aid conditions.

Caulfield (2006) has also described the way policy transfer takes place between countries sharing a similar heritage. In Africa, countries that were formally colonised by the French would be more likely to adopt policies that are French in origin while Anglophone countries would pick up those policies that have been used by the UK. There is a third option where international agencies such as the World Bank and the IMF impose a policy through negotiation on a country.

Language also plays a key role in policy transfer (Caulfield, 2006). This is part of the heritage shared and English-speaking countries will tend to follow the UK, while Francophone countries will follow the French policy. In the case of PPPs, external agencies have imposed the policies on Africa. Given that PPPs have been most prevalent in the UK and in Australia, "internationally, we have seen that other countries look to the UK and Australia and other leading PPP countries for advice on how to proceed: they look to the government, but also to the other companies that have expertise with PPPs" (Greve, 2010, p. 505).

Once a country adopts a certain policy, it may stick with it for a while. This could mean that PPPs are here to stay for a while. "The way that countries follow certain paths and not others has been addressed in that part of the literature on political economy dealing with institutional change and development. This literature argues that once a specific policy course of action is chosen, institutions will be directed towards that 'path' and other alternatives will be excluded or not prioritized in the same way as the preferred policy" (Greve, 2010, p. 500 citing Streck and Thelen, 2005). This is also referred to as path dependency and it demonstrates the difficulty with which a new policy may be adopted or an old one gotten rid of. An existing policy may therefore be kept for a long time. PPPs, being long term in nature, have the added difficulty of strict contracts over a long timeline. Any country adopting PPPs would therefore be doing so for the long term.

The continued influence by former colonial masters, either directly or indirectly through bodies such as the IMF and the World Bank, raises the spectre of continued involvement by the West in the socio-economic spheres of developing countries. Despite the differences in approach in the various countries as informed by the British and French models of governance, there is a common thread "in their reform experience, largely because of aid dependency and the policy conditionalities of multi-lateral donors" Caulfield, 2006, p. 15). The involvement of the World Bank and the IMF, with their prescriptions and conditions, best captures this common thread.

The World Bank and the IMF therefore play a key role in policy transfer. It could be seen as coercion in a way, because there are strict conditionalities imposed on a country for it to act in a certain way and to adopt a specific policy. Former colonial masters also try to push their weight behind the scenes by attempting to influence the World Bank and the IMF. In the case of bilateral relationships, such former colonial powers could also seek to directly influence policy. Such attempts by external parties, point to a more coerced than negotiated policy transfer. Some of the conditions imposed by the bank have not just been general to a country but even specific to a project such as "fixed percentage contributions to capital costs, minimum proportion of people demanding latrines in a community, and private sector involvement" (UNECA, 2005, p. 23)

The French model is argued to have been passed around more than the British model, even though the UK, since the 1980s during the period of rule under Margaret Thatcher, have been bigger proponents of privatization. "In France, the government owns the fixed assets and one of the three major private companies takes full responsibility to operate the systems, as in a lease contract…. It is the French pattern that is now being promoted around the world, though the process was started in the UK in early 1980s (where private company profits have been high)" (Mehrotra and Delamonica, 2005, p. 159).

2.6 Research Gaps

From the foregoing sections, the literature on infrastructure has discussed Africa and its experience with the involvement of the private sector, in various forms, including as PPPs.

2.6.1 How the World Bank Promotes PPPs in Africa

The influence of the Bretton Woods Institutions and other IFIs in Africa in the increasing use of PPPs is well documented in the literature (Noumba Um, 2010; Pessoa, 2010; Rahaman, 2010; Rahaman et al, 2007). The World Bank and the IMF have promoted the involvement of the private sector, over time, in the provision of public services. Pessoa (2010) states that it is the World Bank that has done this, progressively over time, from the time of the promotion of the Washington Consensus through the 1980s and 1990s. If this is the case, what has not been documented sufficiently is how they have gone about doing this. In using the case of Kenya, this study seeks to follow up on a specific country PPP policy to determine how this has been done and lessons learnt.

Secondly, the literature identifies the reasons behind the drive for reforms in the West, including the use of PPPs, as "rising production costs in the context of stagnating demand necessitated restructuring." In Africa, the literature then claims that in contrast, "the problems of supply are the main issue exacerbated by an inability to finance expansion, especially in the networked industries such as water and electricity" (Caulfield, 2006, p. 17). This is an important point and it would be useful to confirm whether the empirics back this claim. Is it an issue of supply or increasing costs that drive the involvement of the private sector in infrastructure finance? This is one of the questions that this thesis seeks to answer. The literature seems to suggest that the involvement of a PPP in the UK, for instance in the provision of Roads or Prisons, involves an extension or restructuring of services already provided, but handed over to the private sector to provide them in a more efficient way. In Africa, however, where such a road or rail is non-existent, this is suggested as one of the reasons for the involvement of PPPs.

2.6.2 Why Adopt PPPs If Costly

The literature suggests that PPPs are costly to implement (Noumba Um, 2010, p. 456). If this is the case, why then are governments across Africa increasingly adopting PPPs? Secondly, Khmel and Zhao (2016) aver that the provision of infrastructure is a costly business that the private sector will not just easily get into. In section 2.3, this has been discussed in detail.

This thesis therefore seeks to find out how governments adopting the policy in Africa have reviewed their costs and benefits and the basis on which the PPP policy has been approached. The literature suggests that in some cases, "neoliberal economic policies often are" adopted "due to the lack of a perceived alternative, the interests of the ruling elite, and/or the powerful pressure on governments by international lending agencies" (Miraftab, 2004, p. 90 also citing Bond, 2000b and George, 1997) such as the World Bank and the IMF. This is an area that needs to be explored further and will be tested using the empirics.

In Chapter Three, additional research gaps are identified following the discussion on Public Private Partnerships (PPPs).

2.7 Conclusion

This chapter has looked at the options in infrastructure financing and discussed the great need for financing in Africa. It has further reviewed the sources of financing for infrastructure, arguing that there are four main sources, being the public sector, the private sector, donor funds and China. China is included in its own category given the increased funding from China for African countries over the last 10 years.

The chapter has also discussed Africa and its experience with the involvement of the private sector in the provision of public services. At the centre of this role has been the World Bank and the IMF who are shown in the literature as promoting the private sector's involvement in the provision of public services. Initially, through outright sale of government owned entities, the World Bank promoted privatization, but lately is seen to promote other forms of private sector involvement. Through the Washington Consensus and the Structural Adjustment Programme, the two institutions sought to change the economic direction of poor countries. Using the lens of policy transfer, policies can be transferred either voluntarily or through coercion. Policies can also be negotiated. Privatization comes across as an imposed policy and was therefore a part of the coerced policies. While some African countries may have adopted privatization voluntarily, its inclusion as the "eighth commandment" (Aretsis, 2004) among the SAP prescriptions and the accompanying conditions for implementation made it a policy that was more coerced than voluntarily adopted.

Lastly, this chapter has reviewed the initial approaches to PPPs and the gradual change in infrastructure financing from donors and governments, to increasing involvement of the private sector. The next chapter discusses what PPPs are.

CHAPTER THREE: PUBLIC PRIVATE PARTNERSHIPS (PPPs)

The purpose of this chapter is to provide a more detailed discussion of what PPPs are and review PPPs within the context of developing countries. The chapter presents an overview of PPPs as a policy measure and the nature of PPPs in practice. Firstly, it seeks to determine the reasons for the adoption of PPPs in various jurisdictions as shown in the literature and objections to these reasons. While this thesis concerns itself with the case of Kenya and why Kenya has decided to take up PPPs as a policy, scholarly literature already shows why some countries, especially the early adopters, decided to make use of PPPs. This is useful as it will enable a determination on the case of Kenya, whether the reasons are similar to other countries or whether this is a unique case with its own distinguishing reasons.

Secondly, the chapter reviews key attributes of a PPP and discusses the nature of a PPP. Thirdly, it discusses the concept of Risk, whose transfer is considered as central to the establishment of a PPP (Asenova and Beck, 2003; Froud, 2003) and highlights the different types of PPPs (IMF, 2004; Duffield, 2010). The chapter also discusses the technical considerations and the approaches taken to make decisions on PPPs such as the use of the Public Sector Comparator (Grimsey and Lewis, 2005) and the criteria to consider when embarking on a PPP (Spackman, 2002; Grout, 2003). Finally, it describes the use of a PPP Policy Framework (UNECE, 2008; World Bank, 2014) in the establishment of PPPs. The ideas and concepts discussed in this chapter will then guide the subsequent chapters.

This chapter begins by considering the reasons given for the adoption and use of PPPs in different countries. The earliest literature on PPPs has been found to have been mostly UK based (followed by other countries such as Australia and New Zealand), given the early experience of the UK with PPPs and the situation of most of the early scholars on PPPs. While the International Monetary Fund (IMF) considered the UK as having perhaps the best PPP programme in place, the Public Private Infrastructure Advisory Facility (PPIAF) found that the early experiences of the UK influenced the substance of PPP programmes in other regions (IMF, 2004; PPIAF, 2007; Andon, 2012). This influence in the literature from the UK PPP programme is also evident in this chapter, even though the literature on PPPs across many other countries is included as well in the review.

3.1 Economic Arguments for the Adoption of Public Private Partnerships (PPPs)

Economic arguments that explain the adoption of PPPs can broadly be categorised as macro-economic arguments, accounting for public expenditure and the need for value for money.

3.1.1 Macro-Economic Arguments

The key macro-economic arguments that are discussed in the literature are the need to keep inflation low and rein in public expenditure (Ball et al, 2000; Spackman, 2002). According to Ball et al (2000 citing Terry, 1996 and HM Treasury, 1995), in the UK, "the origin of the Private Finance Initiative lies in a fundamental belief by the former Conservative government that tighter control of public expenditure" was "necessary to control inflation." By reducing public expenditure, the government would then be able to target inflation at a level that it deemed acceptable. By keeping the public expenditure low, the government would then have to look to the private sector to help in delivering public services, by investing in the same. The use of PPPs would be one way through which the private sector would participate.

This attempt to control inflation, however, may not have taken into consideration that both the private and public sectors will source for funds from the same international financial markets through the issue of bonds or outright borrowing. In any case, the bulk of the funds put up for the establishment of PPPs are usually bank debt (Asenova and Beck, 2003). However, the objective of controlling public expenditure while at the same time meeting the requirements of public service delivery made the government then to consider the involvement of the private sector as an option.

Spackman (2002, pp. 288-289) also contends that the UK government was keen to ease "macro-economic constraints" and ensure that public expenditure was kept "off balance sheet," with respect to the Maastricht Treaty, which led to the formation of the European Union. Three key constraints are mentioned: the requirement to satisfy the self-inflicted "golden rule" which required that "over the economic cycle, the government" would "borrow only for investment," a "sustainable investment rule" which required that the "ratio of net public sector debt to GDP should not exceed a 'stable and prudent' level, defined as 40%" including any commitments to PFI liabilities. These rules sought to cut down on the government's recurrent expenditure by only allowing for borrowing for investment and further keeping this capped at 40 percent of GDP. The third constraint related to the

"Maastricht convergence criteria, followed by the current Stability and Growth Pact for Euro countries, requiring that government deficits should generally not exceed 3% of GDP."

The specific requirement to keep the public sector debt below a certain percentage of the GDP made it necessary to consider where additional funds would come from. Giving specific percentages of GDP for public borrowing and government deficits meant that there was no wiggle room for the government and no more capacity to borrow. The only option for the UK government then was to look outside of government and find alternative sources of funding. This led to the involvement of the private sector, using PPPs, to keep public debt low. In effect, the private sector would now be the one borrowing on behalf of the public sector. Of interest to this thesis is whether these reasons would apply to a country outside the European Union in principle, even if not in exact terms. For instance, in the case of Kenya, whether public borrowing and budgetary deficits were considered.

3.1.2 Off Balance Sheet Accounting

One other factor that made PPPs attractive to implement was that they could be recorded as off-balance sheet items when preparing government accounts (Spackman, 2002; Jenkinson, 2003). The UK government thus wanted to move off liabilities from its balance sheet (Jenkinson, 2003, p. 324), thereby entering PPPs for accounting reasons. By keeping PFI commitments off the balance sheet, the government sought to meet the criteria of showing total investment to be within the golden rule and reduce what is showing as government deficits, given that these would be on the private sector's books instead (Spackman, 2002).

However, this reason does not consider the fact that even if the PFI commitments are not shown on balance sheet but appear as contingent liabilities, the government is ultimately responsible for paying for these liabilities should they fall due, such as in the event that the contract fails. The government is the ultimate guarantor of all PPP debts and would have to inject capital should a PPP fail. This was noted in the case of the National Air Traffic Services PPP, where the government had to bail out the PPP after the private sector operator was unable to raise the required funding (Shaoul, 2003).

3.1.3 "Fiscal Crisis of the State"

Other scholars referred to the increasing involvement of the private sector in the provision of public services as being in response to the "fiscal crisis of the state" (Broadbent and Guthrie, 1992, p. 3 citing O'Connor, 1973) that has been experienced by many states where the public revenues are unable to fully meet the public expenditure. Whereas this relates to the macro-economic strategy to control public expenditure already discussed, the distinction in this thesis is that the earlier control is a condition that had to be met. The condition could also be an externally imposed requirement such as in the case of the Maastricht Treaty, while in this case, the funds are not available and the government, of its own volition, moves to bridge the gap between its fiscal needs and its fiscal capacity.

By looking at the UK, Australia and New Zealand, Broadbent and Guthrie (1992) argue that the use of PPPs came about partly to help the government deliver services that they would have been constrained to deliver anyway, given the shortfalls in revenue as compared to required levels of expenditure. The private sector is thus involved to provide budgetary support to the government. In this instance therefore, a government would pursue a PPP strategy voluntarily as part of its overall fiscal strategy.

The "fiscal crisis of the state" led the governments to carry out a "reduction in the public sector in the name of economic rationalism" (Broadbent and Guthrie, 1992, p.3) and begin to think of alternative ways in which to provide public services. This crisis is not one that is restricted to some states only but could affect many states given that tax revenues are a finite resource while the requirements of the state are many, necessitating a large expenditure. If looked at in the short term, the provision of a PPP offers some budgetary relief as the government can forego building, say, a road that would then be built by the private sector, who would show the asset on their books. If this is funded through bank loans, then they would show that as liabilities on their books too. However, in the long term, the government will still have to meet the entire liability by making regular payments to the private sector operator. If it were only one PPP project, then the regular payments made might not be so much. However, where the projects are many, as in the UK, with over 700 projects (NAO, 2011), the regular payments being made could still be substantial. Over time, pressure will be put on the annual budgets as well. Indeed, as Flynn (2002, p. 254) states, "once long term contracts are entered, there is no cheap way of exiting."

The use of PPPs therefore provides a relief to the fiscal pressure, at least in the short term and depending on the scale of projects, as well as the payment mechanism. Where the government pays for the service, many projects would still have a big fiscal burden over time. Where users pay for the service, such as through tolls, there could be a real reduction in the fiscal pressure. However, even in cases where the user pays, the service is still guaranteed by the government who may be required to step in if it fails or to make up for any shortfalls in the projected revenues (Guasch, 2004).

3.1.4 Value for Money

Additionally, governments also consider getting into PPPs so as to obtain "value for money" (Ball et al, 2000; Edwards et al, 2004; Power, 1997; Grimsey and Lewis, 2005). Value for money implies seeking for the provision of a service at the lowest possible cost. In order to determine whether value for money can be attained, comparisons in public expenditure are made between the state provision of a service and the provision of the same service by the private sector. To facilitate this comparison, a "Public Sector Comparator" is used (Ball et al, 2000; Heald, 2003; Grimsey and Lewis, 2005). The Public Sector Comparator identifies what the costs would be if a public service is provided by the private sector and this is reviewed side by side with the possible costs under the public sector. A decision is then taken to pursue the option that is lighter on the public purse while still delivering quality public services. The concept of value for money presupposes that the private sector will provide services at a much cheaper cost than the public sector.

There has been a lot of debate on whether or not PPPs actually deliver value for money (Jenkinson, 2003; Grout, 2003; Ball et al, 2000; Spackman, 2002). The main argument being made is that in some cases, the government has entered into PPPs for political reasons and not economic reasons, with the use of PPPs being advanced even in cases where it may not make economic sense (Jenkinson, 2003, p. 331). There is also challenge in monitoring the value for money, including the use of value for money audits. It is not clear, the extent to which value for money audits are effective, or whether the creation of auditable performance measures are an end to themselves in providing "comfort" and little else (Power, 1997, p. 44, p. 91, p. 126). Finally, there is the use of the "public sector comparator" at the beginning of the project to compare the cost of the project if it is carried out by the private sector as opposed to the public sector (Ball et al, 2000, p. 100). The public sector comparator is not without its criticisms, a key one being that it does not carry out this comparison to the end of the project (Ball et al, 2000, p. 103). Instead, it estimates costs at the beginning of the project, costs which may not be nearer the actual costs many years later into the project. The public sector comparator is discussed in more detail in section 3.4.

3.2 Political Arguments for the Adoption of Public Private Partnerships (PPPs)

In addition to the economic arguments that proponents of Public Private Partnerships have given in establishing PPPs, there are also political arguments that have been used to promote PPPs.

3.2.1 Ideological Stance

In the UK, the introduction of PPPs could also be explained to have been part of an ideological stance of the Conservative government's belief that the private sector would provide better public services than if they were supplied solely through the public sector (Broadbent and Laughlin, 2003, p. 335). This could be that the party then in power believed in the supremacy of the private sector's capacity to execute public programs as compared to the public sector. This belief, although framed as a belief in the markets, an economic feature, can also be argued to be a political reason, given that it is backed by an ideology that sought to have the markets solve the problems of the day. However, the question that could be posed at this point is: why 1992? The conservatives had been in power through the 1980s but only introduced the concept of PFI in 1992. This can partly be answered from a review of the literature.

Privatization had actually taken place through the 1980s and now there was a move from the privatisation of the 1980s given that there was "nothing else to sell" in the UK, while in other countries, such as New Zealand, the privatisation process began to experience political and economic problems. There was thus a need to engage the private sector in a different way (Broadbent and Laughlin, 2003, pp. 334-335). There was also the growth of the "neoliberal agenda" which was based on a belief that markets are better than organizations or bureaucracies at delivering economic outcomes (Edwards and Shaoul, 2003, p. 397). This neoliberalism was best epitomised through "political and ideological elements such as Thatcherism in the UK, Reaganomics in the USA and even Rodgernomics in New Zealand" (Broadbent and Laughlin, 2003, p. 336 citing Laughlin 1991a, Russell and Sherer 1991a).

The decade before 1992 can therefore be seen as one that moved to embrace the markets in providing for solutions to public policy problems and public programmes. Neoliberalism reasserted itself and was embraced by some of the world's biggest powers. This ideological move towards a greater involvement of the private sector assumed that the markets would be able to provide services much better than the public sector and thereby deliver superior economic outcomes (Edwards and Shaoul, 2003). The introduction of PPPs, therefore, following on Privatization, was a means to draw on the perceived efficiencies of the private sector in a different way. It can also be argued that different segments of society have different political persuasions underpinned by different ideologies with a whole body of knowledge supporting their beliefs. Whether correct or not, an underlying set of beliefs prompted the move to increasingly involve the private sector, firstly through privatization and later through PPPs, in providing public services.

The concept of neoliberalism and how it has impacted on PPPs has also been explored in Chapter Two. It could be argued that the implementation of Privatization as a policy through the 1980s and later PPPs from the 1990s in countries such as the UK, Australia and New Zealand actually mirrors the experience of developing countries, but with different actors.

3.2.2 New Public Management (NPM)

The rise of the New Public Management (NPM) can also be argued to have contributed to the increasing involvement of the private sector. The public sector, through an infusion of private sector ethos, attempted to improve its own performance through the inclusion of private sector ideas as part of NPM. The ideals of NPM have been described "simply as a desire to replace the presumed inefficiency of hierarchical bureaucracy with the presumed efficiency of the markets" (Power, 1997, p. 43) in a bid to improve the delivery of public services or the performance of the public sector. The public sector sought to get a good quality service at a cost that is reasonable, or even cheaper than they would have obtained if the services were to be delivered solely by the public sector.

Related to this is the increased demand for more accountability, which has in itself contributed to the rise of the NPM. Power states that "the rise of the NPM has been the success of the political discourses which have demanded the improved accountability of public service." This has led to the development of "Value for Money" audits in which the three Es, - Economy, Efficiency and Effectiveness" are carried out (Power, 1997, p. 44). The three Es - Economy, Efficiency and Effectiveness - imply that the service must be delivered through an optimal use of the available resources; minimum resources must be used to obtain maximum output and that outcomes must conform to intentions as defined in the programme. While this does not directly explain PPPs, it does give a rationale for the greater involvement of the private sector, with PPPs just being one form of involvement of the private sector.

Plant (2003) alludes to a perceived difference in “ethos” between the public sector and the private sector. These ethos provide the values which distinguish between the two, with the public sector being focused on service and the private sector on profit. The outcome is a view of the public service as a bureaucracy and full of hierarchies, while the private sector is seen to be efficient and innovative. In a bid to generate profit, the private sector therefore becomes more and more innovative in a bid to keep costs down and increase its revenue. This perceived innovativeness is what the public sector seeks to tap into (Hood, 1991; Pollitt and Bouckaert, 2011).

The foregoing sections therefore present some of the reasons, both economic and political, that could have contributed to the use of PPPs in countries such as the UK.

3.3 The Operationalisation of PPPs

PPPs have unique characteristics in their setup given that within a PPP, there is representation of the private sector actor as the investor in the project and the public sector as the procurer of the service and as a regulator. A PPP may involve the use of Special Purpose Vehicles (SPV) in its structure or have a direct working relationship between the private and public sectors (Duffield, 2010, p. 189).

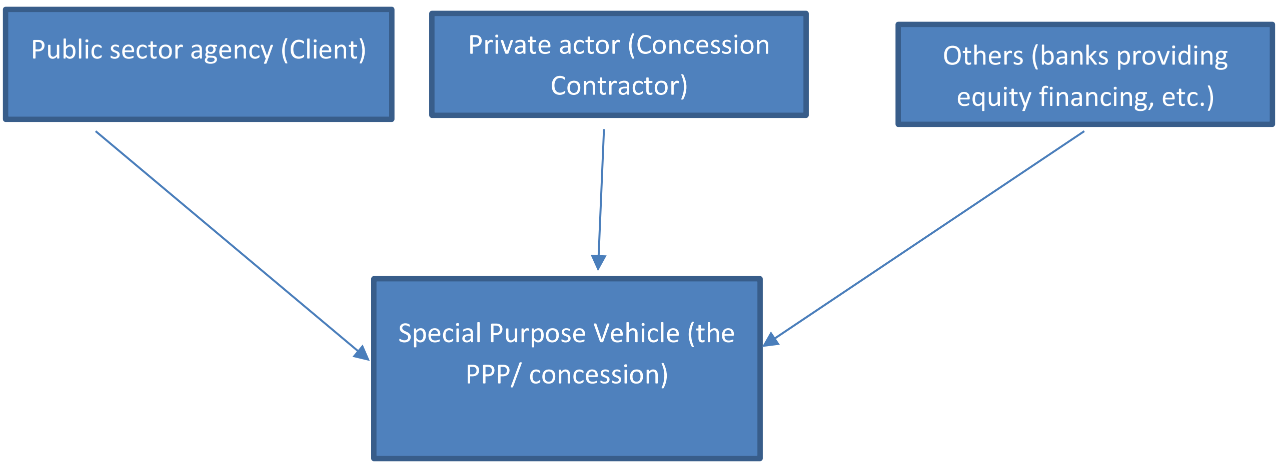
3.3.1 Special Purpose Vehicle (SPV) Structure

In many cases, the public and private sectors form an SPV through which the service delivery takes place. The public and private sector actors become shareholders in the SPV, while the SPV is structured to act independently of the shareholders. The SPV can therefore enter into contracts with banks, suppliers and employees of the PPP. This way, both the private and public sectors attempt to create an arm’s length organization that executes the PPP’s mandate.

Within a PPP, “the primary parties are client, concession contractor, the Special Purpose Vehicle (SPV), and constituent members of the SPV” (Smyth and Edkins, 2007, p. 232). The client is usually the contracting public sector organisation such as the Highways Agency or a local authority. The concession contractor is responsible for putting up and operating the requisite infrastructure, while the SPV "is a 'virtual organisation', the management company comprising of members from the other organisations within the SPV, namely the installation or construction contractor, the operating company responsible for prescribed functional service operations, maintenance and facilities management. There will be a debt and equity financier for most projects, except where government has chosen direct capital financing" (Smyth and Edkins, 2007, p. 234).

This is illustrated in the diagram below:

Figure 3.1 - Use of SPV in PPPs



Source: Author's own illustration

The use of the SPV creates a separate legal entity that can sue or be sued and that can enter into debt agreements with banks. By being separate and independent, the SPV is expected to act quickly, efficiently and in the interest of the founding members without necessarily consulting the founding members on its decisions.

3.3.2 Critique of SPV Structure

The use of SPVs in PPPs, however, has some limitations and there are critiques against the SPV structure. According to a study carried out by Barlow and Koberle-Gaiser (2008, p. 1396) on the design of UK hospitals financed under the PFI system, they found that "the SPV potentially acts as a barrier between the project delivery and healthcare operational systems, disrupting communication patterns and creating difficulties for collaboration between the project stakeholders". Although the SPV attempts to create a more professional management system by appearing to be arms-length away from each of the members of the SPV, this very distance can become real and institute barriers between the members. The use of the SPV structure can therefore be good or bad and may aid or hamper the effectiveness of the PPP.

The SPV has also been found to lack overall control over the project that is entrusted to it to manage. Although "the SPV carries risk associated with the use of the building it does not have direct control over users who include employees from other syndicate members, Trust staff, patients and the general public" (Shaoul et al 2011, p. 10). The effect of this is that the SPV may have some good ideas for improving performance of the project, but it still has to collaborate with the public sector client and the users of the service who are members of the public. In this instance, the criticism of the SPV is not just directed at the private sector side of the SPV but at the public sector side too. The other downside to this is that the SPV could be constrained in making quick but difficult decisions and may have to first consult with the public sector.

Even attempts at collaborating better and marking boundaries for the SPV members so as to enforce performance may not always work. Shaoul et al found in a study that "months of discussions led to the creation of an adversarial atmosphere in which any attempt to challenge performance and withhold payment quickly led to threats of legal action, even though both sides maintained their desire to work in partnership" (Shaoul et al, 2011, p. 12). The adversarial atmosphere, perhaps, shows that though the two have come together, the public and the private, there are real fault lines with each side having its own objective - one to provide a public service cheaply and efficiently and the other to maximize shareholder wealth. This also refers to the differences within the public and private sector ethos (Plant, 2003). The PPP is thus essentially a partnership that can break down and create a bad working relationship for the members in the PPP.

The SPV may also lead to the private sector profiting more from the PPP than was envisaged. Profits "could be recorded in related parties rather than the SPV. This in turn means that the parent companies may profit from the DBFO in several ways: their equity stake in both the SPV and the subsidiaries that carry out work for the SPV, and interest on any loans to the SPV.

Since the SPVs operate as close companies, they are not required to disclose the size of the payments made to related parties" (Shaoul et al, 2006, p. 266) and this will have an effect on the payments made by the public sector. The SPV is essentially not transparent. Although one of the founders, the public sector, would be expected to be transparent ordinarily, its joint creation, the SPV, does the opposite. This could lead to the project becoming more expensive as the financial affairs of the SPV are basically a secret, yet they are providing a public service.

The NPM view that a PPP is "a separate organization (i.e at a distance from the confusing world of politics) that can go on implementing urban regeneration in schemes, attracting private money and getting the job done" (Klijn, 2010, p. 77) gets challenged when you look at the actual operations of the PPP through the use of an SPV. While it attempts to improve efficiency and effectiveness in public service delivery, it could also complicate the bureaucratic and administrative processes through the use of the SPV and thereby pose new challenges to the initial objective of providing a public service. The PPP is ultimately, therefore challenged, whether it can deliver on what is contained in the PPP contract. How the PPP is controlled and managed, firstly at a macro level and secondly at an organizational level, is therefore quite important.

In a PPP, the "public sector only purchases the flow of services as they occur, albeit through a long term commitment" (Grout, 2003, p. 54) while the private sector builds and manages the asset that delivers the service required, while ensuring that the service is actually delivered. The two would therefore have to agree on certain terms, how these would be measured and how compliance with these terms would be monitored. This section has shown that the PPP is structured in such a way as to make it act independently of both the public and private sectors that constitute it, yet that very structure has several limitations that threaten the partnership between the public and private sectors.

PPPs therefore make use of SPVs as a key part of PPP operations, as a vehicle to bring together the private and public sector actors. In addition, the SPV is the executor of the operations of the PPP and can also enter into agreements and borrow funds on behalf of the PPP. The SPV structure therefore plays a key part in the success of the PPP project.

3.4 Project Appraisal for PPPs

Although the reasons for the rise of PPPs have been discussed in the first section of this chapter, governments still have to make a decision on a case by case basis on which projects to fund traditionally and which projects to submit to a PPP process. Grout (2003), building on Ball et al (2000), gives three main criteria under which a PPP would be formed. These are: (i) funding is to be predominantly (usually fully) from the private sector and the contractual structure relates to the consumption of services not the asset itself; (ii) a 'substantial' amount of risk must be transferred into the private sector; and (iii) the project must be shown to offer value for money to the taxpayer. Ball et al (2000) also mention three items that should be considered if a PPP would be a "good deal for the public purse." These items are "additionality," "value for money" and "risk transfer" (Ball et al, 2000, p. 97). The three issues to consider correspond to Grout's (2003) criteria for PPPs. Whereas Ball et al's (2000) definition of additionality is more broad to include aspects of innovation that the PPP project would bring to the public services, Grout (2003) focuses more on funding. The second and third criteria of risk transfer and value for money have been mentioned in both sets of literature. In this section, each of these is discussed briefly.

3.4.1 Additionality of Investment Funds

Ball et al (2000, p. 97) ask the following question with regards to the additionality of investment funds: "does the use of the PFI allow a higher level of capital investment, i.e. is it additional to the level of traditional infrastructure procurement?" Within the financial markets, both the public sector and the private sector virtually have the same sources of funding to tap into (Ball et al, 2000, p. 98). However, the question posed here seeks to find out if the government would be obtaining extra funding for its projects if it reached out to the private sector. This question corresponds directly to the fiscal reasons of PPPs, where the government embarks on a PPP to enable a third party (private sector) to pay for the project, so that the government can have less outflows and reduce its deficits. This ties in with Grout's (2003) first criteria that funding would usually be from the private sector. This first criteria requires that the funding should always be from the private sector within a PPP.

Most of the funding of a PPP comes from "bank debt" (Asenova and Beck, 2003, p. 195) which must be repaid with interest. Both the government and the private sector can borrow from the international markets. Even though the private sector could have additional access to funds, beyond that which the government has, it may well be that the government would borrow much cheaper, being a sovereign and having a possibly better rating than the private sector actor. If this is the case, then the PPP contract would be expensive as the private sector will tie in its high cost of capital into the PPP contract.

It can also be argued, where the government uses the private sector to borrow on its behalf, that governments are better debtors and have an almost limitless ability to back their obligations. The public sector partner is seen as having "a much higher (almost infinite) ability to absorb risk, while the private partner has limited legal and financial responsibility" (Monteiro, 2010, p. 262). Nevertheless, the financial crisis of 2008 and the inability of some states such as Greece to meet their debts puts paid to the argument that governments' coffers are limitless. It also illustrates that as government borrowing rises, so does its cost.

Related to additionality is the concept of being "innovative" where the private sector is thought to be able to make processes more efficient in the provision of public services. The private sector is therefore perceived as being more efficient and more innovative (Ball et al, 2000, p. 96) and quicker at coming up with solutions that can lead to better public service delivery. In this case again, such innovations could be tied to funding as some of the innovative ideas need to be funded in order to be implemented. The increasing use of PPPs in themselves, in recent years, could also be viewed as an innovation in the provision of public services. The idea that the world is open to transformation by human invention reveals the propensity to innovate, to have new ideas and to try to solve old problems in new ways (Giddens, 1990). PPPs involve the private sector in public projects with the intention of delivering these economically, efficiently and effectively. Private capital is thus courted so as to flow to newer areas including the public sector.

The expansion of capitalism is considered in some cases to be the most significant driving force of change (Giddens and Pierson, 1998, p. 97). Governments that are hard pressed to meet certain fiscal constraints while still having to provide public services and wanting to drive the "force of change" through have to turn to capitalistic forces as partners in a PPP. The private sector, being profit making, looks forward to making a good return out of its investment in a PPP. And banks that are involved in providing both equity and debt financing

(Asenova and Beck, 2003, p. 195) look forward to being repaid and to reap a healthy interest rate and make a profit.

3.4.2 Public Sector Comparator (PSC)

Both Ball et al (2000) and Grout (2003) state that for a PPP to be established, one of the criteria is that there must be value for money. Value for money has been discussed in section 2.1, in addition to the use of the Public Sector Comparator (PSC) (Grimsey and Lewis, 2005). In order to obtain value for money, the service being provided must be obtained at the least possible cost and provide the best quality or outcomes. This alludes to the three Es - Economy, Efficiency, Effectiveness (Power, 1997). Comparisons therefore have to be made between the cost and outcomes under the private sector, as well as the cost and outcomes under the public sector. A decision is then taken to pursue the lower cost, better quality option.

In making this comparison, the literature shows that the UK Government, for example, has opted to use the Public Sector Comparator (PSC) (Ball et al, 2000; Heald, 2003; Grimsey and Lewis, 2005). This is essentially a calculation of all the accumulated costs now and in the future, on building and maintaining a public project, such as a road, under both public and private options and comparing the cost. While this is one way of arriving at a decision, Grimsey and Lewis (2005, p. 353) contend that the "calculation of the PSC is necessarily theoretical since any attempt at a 'live testing' of procurement options, through running separate (or multi-tracked) competitions under two different procurement methods, would unlikely be well received by bidders. Thus, the PSC is based on estimates of full costs, revenues and risks, set out in cash flow terms, discounted at a public sector rate to an NPV." The starting point of the PSC is therefore the use of estimates, with the underlying implication that accuracy and completeness could be compromised. The concern with this is that the PSC may incorrectly assess the full costs to be incurred.

In some of the PPPs early adopting countries, the PSC provided a much clearer basis of reaching a decision. The PSC has been regarded as having been "an integral component of all PPPs in the UK and Australia, and many jurisdictions active in the PPP market have adopted this concept" (Ibid.). It is therefore widespread in use despite its key limitation as being theoretical in nature. Another possible limitation of the PSC may be that it requires a level of expertise as it is a complex process. This requirement for experts and consultants to prepare the PSC would drive the overall PPP cost up too.

Ball et al (2000) also posit that the PSC is only performed at the beginning of the project but is not constantly carried out to the end of the project. Once the calculation is done in the beginning, as the project years go by, being a long term project, the costs could easily revise upwards or downwards. However, there is no way to capture this. The PSC therefore only provides an entry point. If the project is to last for 25 years, it may be impossible to tell what the costs will be in, say, the 15th year.

To try and counter this, Power (1997) suggests that there could be value for money audits through the life of the project. However, it should be noted that the PPP projects themselves are based on contract and as such, there could be little room for manoeuvre even if the costs begin to move adversely. Also, the parties to the PPP contract must be careful to ensure that the audits do not become an end to themselves, which only provide “comfort” (Power, 1997, p. 44, p. 91, p. 126) to the parties in the PPP but fail to identify critical underlying issues.

Finally, Jenkinson (2003) challenges the whole notion that value for money is a key consideration when entering into PPPs. Jenkinson contends that governments actually enter into PPPs for political reasons and not for economic reasons. This in itself challenges both Ball et al’s (2000) and Grout’s (2003) three point criteria for entering into a PPP.

3.4.3 Risk Transfer

Grout (2003) places “risk” at the centre of PPPs and implies that without the transfer of risk to the private sector from the public sector, there would be no need to have the PPP. In fact, what the private sector is compensated for is the risk transferred to them that they then bear. Risk is considered as central to a PPP because it is argued that the key reason for engaging in a PPP is to transfer or share the risk with the private sector (Asenova and Beck, 2003; Froud, 2003; Ball et al, 2000; Spackman, 2002). Where risk has not been properly transferred, the projects could fail with the public sector eventually bearing this burden (Edwards et al, 2004; Shaoul, 2003, Shaoul, 2004; Shaoul et al, 2006, Shaoul, 2010).

The extended nature of the PPP project’s life itself creates an intrinsic level of risk. The extended duration of time in which a PPP is in existence offers advantages to both the government and the private sector. In this time, the private sector is able to not only recoup their initial investment, but also make some profits. For the government side, a long term implies much lower annual payments to the private sector over the project’s life. The long term nature of PPPs also derives from the capital nature of the PPP projects. It may take a year or two for the project to be up and running and it will therefore take time to recoup the investment. These advantages, however, can only be achieved if risk is correctly assessed and dealt with. In PPP Accounting, if the government is unable to transfer demand risk and also retains some residual risk, then the PPP will be shown in the government's books. Given that this is not the government's objective and that governments would like to show PPPs as off balance sheet, it follows that this transfer is important (Edwards et al, 2004).

The PPP contract specifies the outputs to be obtained from the PPP project, but does not mention any inputs (Broadbent and Laughlin, 2003, p. 336). It is therefore a unique type of contract. This is because the public sector is only interested in procuring a service which is seen as output from the project. Outputs are therefore the benchmark, yet some unspecified inputs have gone into the process for the output to emerge. This presents a difficulty in apportioning risks as one side would only view what comes out of the PPP process, while the other side would be watching what goes in. This dichotomy of views could contribute to risk within the PPP not being properly identified and priced. If this happened, then the government might have to intervene for the sake of the project in order to support the PPPs capital base (Shaoul, 2003).

Risk has gained prominence generally and has led to what Power (1997) refers to as the audit explosion. Indeed, "the audit explosion reflects a distinctive response to the need to process risk" (Power, 1997, p. 123). In this case, numerous audits, including value for money audits, are carried out with a view to keeping on top of the present as well as unfolding risks. Power's argument seems to be that risk has opened up whole new industries around it, with some trying to identify and calculate it and others seeking to monitor it.

Risk, taken simply in day to day use, is the chance that something could go wrong. Where that chance can be measured, it is referred to as risk. Where it cannot be measured, it is referred to as uncertainty (Froud, 2003). "The existence of risk in the sense of the possibility of things going wrong is, paradoxically, a positive force providing the motivation for and the possibility of new forms of finance for public infrastructure. Through drawing up contracts that identify, allocate and manage risk, the ex-ante demonstration of value for money is made possible"

(Froud, 2003, p. 568) and the chance that the project plans do not work as envisaged is pre-empted.

The whole idea of PPPs is fraught with risk from the start. Firstly, the use of PPPs has advanced as part of a political solution aimed at providing public services. The involvement of the state, a political actor, raises a political risk. Even for the private sector actor, political risk has to be dealt with given that the private sector signs a contract with a government which may be voted out and then go on to deal with a new government which wants to renegotiate the contract or alter it, if not abandon it. Although the PPP will have been founded on a contract, the close interaction between the state actor and the private sector implies that any half-hearted measures from either party will result in key deliverables not being met. There is also the possibility of simply losing the backing of the government of the day, even after previously agreeing, even if the private sector has already sunk funds into the project, both as equity and as debt.

For banks, which primarily provide debt or equity financing to PPPs, the "identification, allocation, evaluation and management of PFI risks" (Asenova and Beck, 2003, p. 195) is of critical importance and they take a key role to ensure that these have been properly addressed. The risk has an effect on the pricing of the contract and its terms. Froud (2003) emphasises on risk identification and its transferability stating that risk "has emerged as the key feature that legitimates the shift in public services management. The concept of risk is important in the demonstration of value for money and in determining the balance sheet treatment of the infrastructure assets" (Froud, 2003, p. 568). Faced with risk in an increasingly complex environment, the public sector has an incentive to transfer this to the private sector.

In the pricing of PPP contracts, "the cost of finance depends on an investor's perception of risk" (Jenkinson, 2003, p. 324) and the riskier the venture appears to the investor, the higher the cost of finance. Where risks are unclear, then the PPP contracts will be incorrectly priced with one or both of the parties in a PPP incurring more cost than they should. Banks base their lending or financing on risk, as they perceive it. Both the government and the private actor should therefore correctly assess risk. The case of the National Air Traffic Services is again cited as an instance where "politics triumphed over economics." This is because the public sector ended up shouldering a failing project when the private investor failed to inject more capital when risks previously not anticipated (a fall in revenues following the September 11 attacks) led to the PPP becoming financially distressed (Jenkinson, 2003, p. 331). It was also noted that "there was little public discussion of the financial plans and viability of the PPP itself" (Shaoul, 2003, p. 189).

One of the main difficulties in pricing risks is determining "whether the additional risk taken on by the private sector equals the amount of risk reduced from the public sector" (Grout, 2003, p. 56). The public sector comparator, already mentioned in previous sections, is used to compare the costs of carrying out a project in a PPP against doing so through the public sector. In this determination, an evaluation of risks forms a key component. However, in computing this comparator, differences can arise in the manner in which the PPP project is evaluated from the private sector side as compared to the public sector side. The Treasury may calculate the present value of cash flows of the costs of the project while the private side may compute the present value of cash flows of the revenues side (Grout, 2003, p. 62). This may lead to incorrect comparisons being made and risks not being properly priced. Also, if the private sector takes on too much risk, this could lead to default or financial distress (Ball et al, p. 103). Alternatively, if the public sector retains too much risk, then it does not make sense to have carried out a PPP in the first place.

Grimsey and Lewis (2005, p. 346) cite the Arthur Andersen, 2000 report in which six determinants of value for money were raised, "risk transfer; the long-term nature of contracts (including whole-of-life cycle costing); the use of an output specification; competition; performance measurement and incentives; private sector management skills. Of these, competition and risk are seen to be the most important." Risk and risk transfer go hand in hand in PPPs. If the risk cannot be transferred, then there would be no PPP as the government would have to shoulder the risk.

Other than political risks, there are many types of risk within a PPP. These include financial risk, perceived of as the "uncertainty that an asset will earn an expected rate of return, or that a loss may occur" (Asenova and Beck, 2003, p. 196 citing Fitch, 1997); Performance-related risks, Time, Cost, Legal, Construction, Technical, Technological obsolescence, Design and Volume risks (Asenova & Beck, 2003, p. 199). Additionally, there are Services risk and Maintenance risks during the lifetime of a project. Services risk "… is ongoing throughout the life of the partnership. Issues of availability and performance are elements that require continuous monitoring…" (Broadbent, Gill and Laughlin, 2008, p. 56).

In a study by Asenova and Beck, they found that the main risk identification methods used by the interviewees were experience and external consultants (Asenova and Beck, 2003). This leaves some room for the improvement of risk identification techniques in PPPs, because each project is unique and so reliance on experience alone may not be sufficient, while external consultants could have a vested interest in the project starting, given that they are part of the "corporate and financial elite" (Shaoul, 2011, p. 209) who participate in every project. Experts may therefore promote PPPs because they are self-interested in the success of the PPPs. Also, with regards to experience, countries that are only just implementing PPPs may not have the benefit of experience and have to rely on the experience of others, even if the contexts between the two vary considerably.

Finally, there are risks that cannot be transferred. Asenova and Beck state that financial companies may be able to transfer many of the operational and financial risks to other companies, however, they may not be able to transfer reputation and political risk (Asenova and Beck, 2003, p. 201). This brings the challenge of accurately pricing residual risk and the implication to costs given that it cannot be transferred. The government may also be unable to transfer the key political risks of embarking on a PPP to the private sector contractor. If anything goes wrong with the PPP, it will be the government's initial wrong decision that led to that.

This discussion shows the importance that risk plays within a PPP and it demonstrates why both Ball et al (2000) and Grout (2003) considered risk as one of the three key criteria to consider before embarking on a PPP. Risks must be properly identified, priced and transferred for the PPP to work. In establishing PPPs, the prevalence of risks within and around the PPP must be assessed. In risk mitigation, there are three ways of dealing with the risk. These are "risk elimination", "risk transference" and "risk reduction" (Monteiro, 2010, p. 285). By using a PPP, governments therefore seek to transfer risks that they may not effectively mitigate against by eliminating or reducing those risks.

Finally, in the "private sphere", management is seen to be done "through horizontal networks" while in the "public sphere", this is done through "a hierarchical chain of command

and control" (Greve and Morth, 2010, p. 452). This is bound to affect the risk levels of an organisation which has elements of both the public and private spheres such as a PPP and how risk is dealt with on an ongoing basis. Through the use of horizontal networks, there is more consensus making and involvement of all practitioners, while hierarchical command chains are more bureaucratic and administrative. In a PPP, elements of both may be found. This alludes to Plant's (2003) public and private ethos of the public sector and the private sector. Given their different outlooks and objectives, bringing them together could create new risks that are currently not visible.

This section on risk has described the basic risks that may be encountered within a PPP. Risk is key with a PPP and any inability to transfer it will ensure that the PPP does not proceed. Where it has been incorrectly transferred, the PPP may have to be renegotiated.

3.5 Regulation of PPPs - The PPP Policy Framework

This chapter has focussed on what a PPP is; its structure and why a country can opt to use PPPs. However, how does a country regulate PPPs and what is the overarching PPP framework? In Chapter One, reference was made to Broadbent and Laughlin's (1999) question on areas that still need to be researched on: what is the nature of PFI and who regulates them? In this chapter, the nature of PPPs has been described based on the literature on PPPs. Before considering the second part of the question - who regulates PPPs, this section reviews the regulation currently in place on PPPs. By doing this, the chapter then prepares for Chapter Six in which the key research question - who steers PPPs - is answered. By reviewing what is already known and what is in place, it will be easier to draw the same lines and to determine how the steering of PPPs takes place. While previous sections have drawn mostly on the literature on PPPs in the UK, Australia and New Zealand, this section looks at PPPs regulation generally.

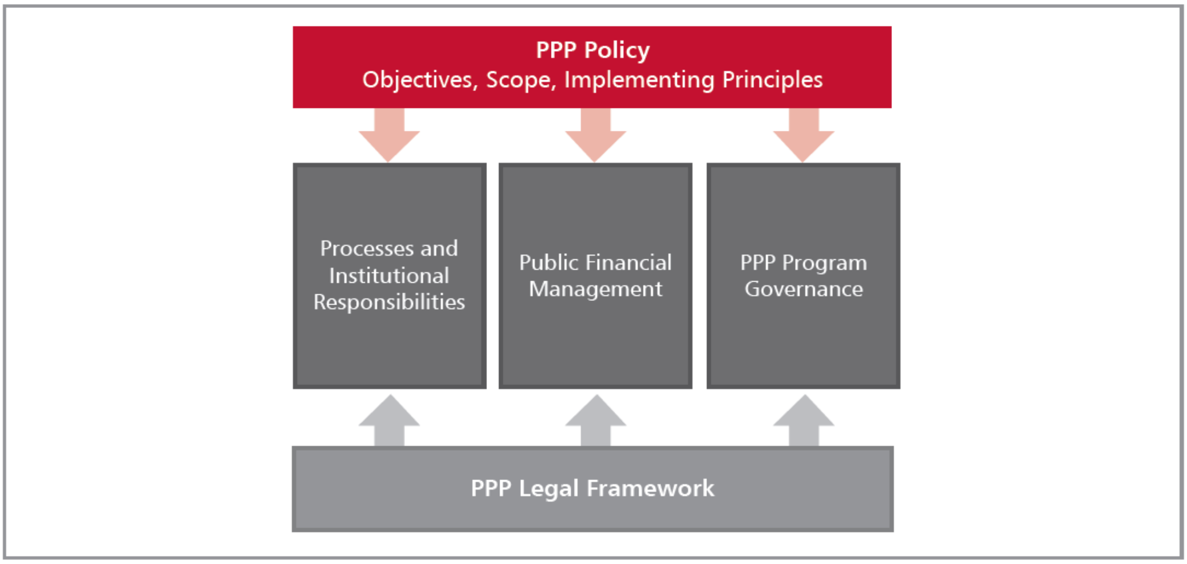
3.5.1 PPP Policy Framework

The World Bank has carried out a study across countries with PPPs and considers that in a country where only one PPP project is being carried out as a one off activity, with little chance of another ever being carried out, it may not be worth having a PPP Policy Framework in place. However, where there is a chance of continuous projects being carried out, it determines that there should be a PPP Policy Framework that establishes the PPP "policy, procedures, institutions, and rules that together define how PPPs will be implemented - that is, how they will be identified, assessed, selected, budgeted for, procured, monitored, and accounted for" (World Bank, 2014, p. 65). Such a framework shows the government's commitment to PPPs and ensures a strong private sector response to PPP projects as they are assured of a strong regulatory structure for PPPs and are therefore confident that an investment in the PPPs is based on a solid footing (Farquharson et al, 2011; World Bank, 2014).

A PPP Policy is used to create certainty and would consist of different elements. These include the public policy rationale for using PPPs; guidelines on selecting, preparing and procuring for projects; defining the actors and institutions in the PPP process who guide the different PPP steps; the process of resolving disputes and arrangements for the monitoring of contracts (Farquharson et al, 2011). Establishing a clear legal and regulatory framework is therefore considered key before a government can involve the private sector in PPPs.

The World Bank has provided a representation of the PPP Framework as follows:

Figure 3.2 - PPP Framework



Source: World Bank, 2014, p. 67

The PPP policy sets out the PPP objective, the purpose for using PPPs and the general principles around the PPP Program. The Legal Framework establishes the laws and regulations around PPPs, while the processes and institutional responsibilities identify the actors within the PPP program and the various stages of PPPs. The public financial management approach describes the various fiscal commitments under PPPs while the broader governance arrangements provide for the governance arrangements around PPPs, including oversight and monitoring of PPP activities (World Bank, 2014).

An appropriate PPP Legal Framework provides certainty around the honouring of legal agreements and contracts (IMF, 2004) given that PPP contracts are central to the PPP itself (Hart, 2003). Various countries, including Italy, Spain, Australia, Brazil, the UK, Tanzania, and Chile among many others, all have different forms of PPP Legal Frameworks (IMF, 2004; World Bank, 2014).

3.5.2 Institutions within the PPP Policy Framework - PPP Unit

The PPP Policy Framework not only helps to establish the guidelines that promote and establish PPPs in different countries, but also describes different actors within the PPP process and their roles and responsibilities (Farquharson et al, 2011; World Bank, 2014). Included and consistently mentioned in the literature is the Public Private Partnership Unit (PPP Unit) (PPIAF, 2007; OECD, 2010; Farquharson et al, 2011; World Bank, 2014).

PPP Units are usually government teams bringing together staff with specific knowledge on PPPs to provide policy guidance and capacity building; promote PPPs within and beyond government; offer technical support to PPPs from pre-feasibility to implementation and evaluation and to provide gatekeeping services by vetting potential PPP projects (World Bank, 2014). PPP Units also help in quality control of the procurement process of government projects and in standardization and control of transaction costs (PPIAF, 2007). Moreover, a PPP Unit can act as a knowledge centre for PPPs in a country (OECD, 2010).

PPP Units are usually established at a key ministry that is closely involved in government projects such as Treasury of Infrastructure. In some cases, the PPP Unit is established as a government agency. A survey by the Organization for Economic Co-operation and Development (OECD) found that the UK, Belgium and Japan had their PPP Units located at the Ministry of Finance or equivalent. South Africa’s PPP Unit was also found to be located at the Ministry of Finance (PPIAF, 2007; OECD, 2010). The positioning of a “dedicated unit within the Ministry of Finance provides a direct link to other expenditure and capital investment expertise and decision making processes.” However, positioning it within a government ministry could also result in political interference and the staffing of the unit with poorly qualified staff or staff not sufficiently knowledgeable on PPPs (OECD, 2010, p. 32). Other countries had their PPP Units located in an independent agency, including Czech Republic, Germany, Korea and Portugal, while Denmark and Poland had the PPP Unit located at the Ministry of Infrastructure (OECD, 2010).

However, PPP Units can only be as successful as the governance in place in the country in which they are situated. From a PPIAF review of "PPP Unit success" in different countries, it was concluded that the countries considered to have weaker governance also had poorly performing PPP Units that did not effectively meet their objectives. In spite of this, PPP Units are used in different countries as a central hub for co-ordinating PPP activities in the country.

3.6 Evaluation of PPPs

PPPs have now been used over a period of time in some countries and as such, an evaluation of the PPPs has been carried out in the literature, while a critique against the various reasons for which the public sector would enter into a PPP has been advanced. In section 2.3, it has been argued that the use of an SPV creates a barrier between the public and the private sectors and hampers genuine collaboration. This section goes beyond the structure and nature of PPPs to discuss some of the experiences with PPPs so far.

One of the key arguments on the experience of the use of PPPs is that governments are perhaps giving away their power to the private sector, whose own objectives and interests are quite different from the governments' objectives and interests. While the public sector is keen to provide for public services, the private sector is portrayed as keen to maximize shareholders' wealth (Plant, 2003). Shaoul (2011, p. 209) states that "in essence, the argument is that governments now share power with, or are subservient to, corporate and financial elites." Shaoul's conclusion followed a study which partly found that the same bankers and consultants, including accounting and legal firms, are used in most of the PPP transactions over and over again. This seems to suggest that the private sector is gaining much more and that a clique of consultants are the real beneficiaries of the PPP process. Given the complexity of the PPP transactions, various professionals are involved in providing transaction advice, structuring the deal and carrying out due diligence on the successful bidders as well as on any public assets already in place.

Other studies have cited the difficulty "of enforcing the (PPP) arrangements and/ or dissolving the partnership" as "severely circumscribed for both legal and operational reasons" (Edwards and Shaoul, 2003, p. 418), meaning that the contracts are complex and are not easily renegotiated. If the contract fails, therefore, the loss is borne by one of the actors. If, as Shaoul (2011) states, that the governments are basically subservient to the financial and corporate elite, then it follows that the government would probably be the one to bear the loss in case of a failure. In the case of a renegotiated contract, again the subservient party (arguably the government) would have the contract tilted against them.

For the purchaser or government agency looking to provide a public service and thinking about a PPP, there is a “lack of neutrality in professional advice available to purchasers on the choice between PFI and alternatives” (Heald, 2003, p. 343) because in many cases, the same parties giving advice are interested in seeing the deal go through. This is because they are going to benefit, being part of the elite that reaps advantages from the PPP process. This decision to pursue or not to pursue a PPP and who makes it, may shed light on who stands to gain most.

Financial information emerging out of the PPP may also not be timely given the “retrospective disclosure and reporting of expenditure, assets and liabilities in the annual reporting cycle as it relates to the procurement of services via contractual arrangements under PFI” (Shaoul et al, 2010, p. 232). This means that the government is ill positioned to make important decisions as the contract progresses and has to rely on historical and now out of date information.

Moreover, the issue of opacity in the PPP processes has received some light too. “The limitations of the public sector’s reporting mean that stakeholders must rely on the SPV’s accounts to obtain some of the necessary information about payments and costs on individual projects and to hold decision-makers to account for the use of public money and the stewardship of assets” (Shaoul et al, 2010, p. 245). Given that PPPs are meant to help deliver public services, the public would be interested in knowing what goes on behind the SPV. However, this has been found to be difficult. Also, there is “little transparency, there is little external financial scrutiny of DBFO projects” (Shaoul et al, 2010, p. 251).

This opacity and lack of transparency around the SPV and in effect around the PPP means that any problems emerging out of the PPP suddenly appear as a surprise as there was little information beforehand to inform of the developing situation. Conversely, one party, the private sector, may use costs at whim to its own advantage and to the disadvantage of the public sector implementing agency.

In other studies, the involvement of the private sector in the provision of services which are of public good and whose quality must be high, presents a contradiction of sorts, where the private sector actor is seen as being too easy to wield the knife over quality and "sacrifice quality in the pursuit of efficiency" (Chalkley and Malcolmson, 1998). This can be seen in critical operations such as surgery where cost cutting may not necessarily be the correct course of action. There is also the argument that the private sector may have some information that the public sector does not, leading to "information asymmetry" and "incomplete contracts" where not all information has been captured in the contract (Elke et al, 2010, p. 516).

Lastly, although PPPs were presented as an alternative to the delivery of services through the public sector, Heald (2003, p. 343) paints a different picture from the UK Treasury's statement that PPPs were only to be pursued where they presented the best value for money (citing Treasury, 2002c, p. 115). Instead he mentions the talks going on that "in political and media discussion, the PFI is often described as "the only show in town", a presentation sometimes confirmed by ministers through "nudges and winks." If the use of private finance was indeed not a choice but a supposedly imposed policy, then this negates the very concept of better service delivery through PPPs.

This relates quite clearly with this study which seeks to find out how societal steering of PPPs has taken place and whether various considerations have been made or if PPPs are actually "the only show in town."

3.7 A Review of PPPs in Africa

The World Bank PPI Database lists all the projects and enterprises where the private sector has been involved in different capacities. This includes through divestiture, concessions, Greenfield projects and management leases. The data is divided by regions and shows the number of projects only without specifying the names of the projects. The prevalence of PPPs in Africa can also be ably demonstrated through scholarly literature as well as through publications of the Bretton Woods Institutions such as World Bank Reports on various projects.

One of the earliest PPPs in Africa is the Borough of the Dolphin Coast (BODC) Water PPP in South Africa. This PPP began in the 1990s and by 1999 the BODC had signed a 30-year concession contract with Siza Water Company (Siza). The private partner, Siza Water Company, was a local company created specially by SAUR Services and a consortium of five South African empowerment partners. SAUR Services parent firm, SAUR International, is a large international firm (UNECA, 2005; Farlam, 2005).

In South Africa, the BODC has been seen as having been successful in that the municipality freed itself of debt and was then able to borrow again, water loss was reduced from 30 per cent to 16 per cent in the first year alone, service delivery improved and customer complaints were dealt with more efficiently (UNECA, 2005). It should be pointed out however, that "in the first year after Siza took over, there were 140 cases of cholera in the area as a result of people drawing unhygienic water from streams rather than paying for treated water" (Farlam, 2005, p. 23). The PPP, being a provider of an essential commodity, water, thus found itself among the rich who could pay for their services and the poor who could not. The balance between charging an affordable price and being able to recoup one's cost is a challenge that any PPP must face if operating in areas with a largely poor population and where the service is provided on a pay as you go basis.

Another challenge that was not previously anticipated in the BODC project was that the initial contract did not anticipate changes in the boundary of the BODC. Almost two years after the concession, Siza found itself unable to pay its concession fees. This would have collapsed the deal, but the municipality made modifications to the contract including substantially reducing the annual concession fees to be paid for the period up to 2006, allowing for a reduced investment commitment and increasing cost of water (UNECA, 2005, p. 33 also citing Maharaj, 2003; Farlam, 2005).

Another study in Congo-Brazzaville looked at the implementation of a PPP in the Water Sector within the context of a previous socialist country under the influence of Soviet Russia, with a centralized command economy. The tendering and bidding processes were not open and the huge subsidies in the previously centralized economy were taken away leading to little demand and difficulty for the new private actors in recovering their costs (Tati, 2005). Still within the water sector, another study found that a PPP for the Ghana Water Supply Company was not the first policy choice, but was the compromised result following huge opposition from the Ghana National Coalition Against the Privatization of Water to an outright privatisation (Caulfield, 2006).

Rintala et al (2008) studied the bid process for the concession of the Chapman's Peak Drive in South Africa and noted that there were several factors affecting the bid process including the amount and timing of information disclosed to those submitting their bids. Awortwi, (2004) looked at the implementation of PPPs among Solid Waste Companies in three of Ghana's cities - Accra, Tema and Kumasi and found some of the tendering processes to have been opaque, politics and patronage became key considerations in the process and overall efficiency was not gained as envisaged. Other PPPs studied include a PPP within Ghana's mineral industry (Dansereau, 2005); a toll road from South Africa to Mozambique with its attendant demand risk (see section 3.4.4); Maputo Port; Prisons in South Africa; Telecommunications in Uganda; Water concessions in South Africa (Farlam, 2005).

In Kenya, the Kenya-Uganda Railway is a 25 year concession that was financially closed in December 2006 after a seven year preparation. The concessionaire, Rift Valley Railways (RVR), was mandated to operate a total of 2,352 route-km linking the Indian Ocean port of Mombasa in Kenya to the interiors of Kenya and Uganda (Heinmann, 2012; PPIAF, 2011). During the initial consultations about the concession in 1998, international consultants hired to look at the project stated that the project would not be feasible if only the Kenyan side of the rail was offered to the concessionaire. A subsequent study by the Public-Private Infrastructure Advisory Facility (PPIAF), a multi-donor facility, confirmed in July 2000 that having a joint concession would work best. Finally in 2003, Mwai Kibaki, the Kenyan President and Yoweri Museveni, the Ugandan President, announced that a joint concession would be prepared (PPIAF, 2011).

However, the deal almost collapsed, a day to the takeover of the assets by RVR. "A key member of Sheltham's consortium (the main bidder) pulled out, meaning that the equity was no longer in place and the financial closing with lenders (KfW and IFC) scheduled for later that day, had to be called off. Collapse of the deal with RVR would have meant starting the procurement process over" (PPIAF, 2011). The government had to be involved in the negotiations and search for new equity partners (Ibid.).

In Uganda, the Umeme Concession provides an agreement for the supply of electricity within 1.0 km beyond the existing grid, with an expected 60,000 new connections in the first five years and 25,000 new connections per year thereafter. The customer service standards are expected to be of high quality. Following the implementation of the conception, revenue collection is said to have increased from 65 per cent to 98 per cent, accounts receivable reduced from 7 months of sales in 1997 to 1 month of sales and access increased from 5 per cent of the population to 10 per cent (Ssebabi, 2012, p. 18).

South Africa has had a varied experience with PPPs, including prisons. Faced by a "significant shortage of prison space, South Africa's departments of Correctional Services and Public Works imported a model of privately built and operated prisons from the UK and called for bids from the private sector for the design and construction of 11 maximum security prisons." They eventually signed two 25-year concessions for maximum security prisons in Bloemfontein and Louis Trichardt" (Farlam, 2005, p. 15). South Africa has therefore been one of the first countries in Africa to explore the use of PPPs outside the traditional transport infrastructure and to experiment with other areas.

In 2002, the National Treasury and the Departments of Correctional Services (DCS) and Public Works found that the "prisons provided significantly higher quality facilities and levels of service than the public prisons and that the operating costs per prisoner per day were comparable with those of the public sector prisons" (Farlam, 2005, p. 6). However, the review also found that the "DCS design and operating specifications were too high and that proper feasibility studies were not conducted to establish the department's affordability limits prior to procurement. The specifications were based on ideal prisons (in the UK)," (Farlam, 2005, p. 16) and not on local Prison service's needs. This calls into question the aspect of policy transfer and whether a policy should be adopted wholesome or adapted to suit the local conditions.

South Africa has also attempted a PPP in Health, where the Inkosi Albert Luthuli Central Hospital, a central tertiary care, referral hospital, located in Mayville, Durban, has partnered with the Impilo Consortium, a private partner for the provision of nonclinical services under a 15-year public private partnership agreement with the KwaZulu Natal Department of Health (KZN DoH). "The general opinion of stakeholders over the past seven years of operation is that this PPP is helping to deliver a level of service that could not have been achieved by the public sector alone" (Farquharson et al, 2011, p. 126).

Other examples of PPPs include a 20 year concession contract between Societe d'Energie et d'Eau du Gabon (SEEG), which is majority-owned by French multinational Vivendi Water in 1997, and the government of Gabon for the provision of both water and electricity services (Farlam, 2005, p. 25). In addition, the Tanzanian Government signed a power purchasing agreement in 1995 between the state-owned electricity company Tanesco and Independent Power Tanzania Limited (IPTL), a joint venture between a Malaysian company and a local investor, for the purchase of 100MW of power from diesel generators for 20 years. This project turned out to be a huge burden on the country's economy (Farlam, 2005, p. 28). There has also been a concession to operate shops and restaurants at the South African National Park (Farlam, 2005, p. 30) and a PPP touted as the first ever "South-South PPP" which is an "affermage contract for water supply services in Cameroon awarded to a public entity from Morocco" (Fall et al, 2009, p. 4). Other affermage contracts have been noted in Corte De Ivoire, Burkina Faso, Senegal and Niger.

Liberia and Ghana are two countries which have experimented with PPPs in mining (Kaplan et al, 2012; Dansereau, 2005). In Liberia, Firestone Rubber first signed a concession agreement in 1926, and re-signed their concession to last until 2041. In recent years, the Government of Liberia has entered into several large natural resource and mining concession contracts that will see large sums of private sector capital invested onshore (Kaplan et al, 2012). There are currently a "total of 30 concession contracts" in operation in Liberia. Of these, "seven are in the agriculture sector including rubber, seven in mining, and 16 in forestry. Another eight mining concessions and approximately 48 forestry concessions are anticipated in the near future" (Kaplan et al, 2012). Liberia's use of PPPs outside the traditional Roads and Railways kind of infrastructure makes it interesting to envisage other ways in which concessions can be used. Given that Liberia is experiencing a Post-Conflict situation, there is an absolute need to provide for all kinds of infrastructure, though.

In Post-Conflict situations, the chronological order for involvement of the private sector, including in PPPs, "tends to be: first, mobile telephony; second, power generation (IPPs), fixed line telecom services and seaports; finally rail, roads, power distribution, and water &

wastewater. This pattern also tends to follow the scale of private sector participation in PPPs, with the private sector initially taking less commercial risks and engaging in service contracts, management contracts and sometimes operations and maintenance contracts and then over time moving toward BOO and BOT concessions" (Kaplan et al, 2012, p. 12). Risk transfer therefore guides the private sector (Asenova and Beck, 2003; Froud, 2003). By starting with a management contract, the implication is that this is less risky given that each party would like to bear the risk that "they are best at managing" (Farquharson et al, 2011, p. 20). In apportioning risks, the government must ensure that they get Value for Money for the projects in place. "The use of the VfM is less prevalent in developing countries, although South Africa adopted this approach in 2000 to appraise PPP projects" (Farquharson et al, 2011, p. 20).

3.7.1 Research Gaps on PPPs in Africa

Despite the literature on PPPs and PPPs in Africa, a number of research areas remain. These are discussed below.

3.7.1.1 Basis for Taking up PPP Projects

An investment in infrastructure can have a high return and contribute to economic growth. Firstly, there is need to find out more on how the decision is made to take up PPP projects and how risk is apportioned between the private and public sectors. In the UK for instance, a Public Sector Comparator (PSC) is used to determine whether the project is better provided by the public or private sector from a VfM perspective (Grimsey and Lewis, 2005). In Africa, the literature determines that VfM is not used in determining whether to go private or stay public, except in South Africa where this is used (Farquharson et al, 2011). The literature also claims that "Value for Money determination is often insufficiently assessed" (Shendy et al, 2011, p. 34). Without the use of the PSC or VfM considerations, the basis on which governments in Africa have entered into PPPs remains open to scholarly investigation.

One possible reason for governments to enter into PPPs would be the pressure from the World Bank and the IMF, especially given the "similarity of reforms across countries, it seems reasonable to assume that a reform template or general rationale exists in the minds of the IMF and other agencies responsible for providing technical assistance. Unlike the industrialized countries where "the scope and speed of structural reforms" have differed significantly, particularly among European countries, the magnitude, speed, timing and direction of structural reforms in the less-industrialized world have been almost identical across countries and continents. In addition, these processes were all kicked off in various countries within the same decade (1983-1993). It is therefore no coincidence that in Latin America, Africa, the Caribbean, and Asia most countries that liberalized their financial sector also adopted structural adjustment programs" (Neua et al, 2010, p. 407 also citing Brownbridge, 1998 and Heibling, 2004). However, this needs to be validated further with empirics.

The problem with a template kind of mindset that the IMF and the World Bank would use in their approach to PPPs in Africa is that local conditions and peculiarities are not taken into consideration, and this ends up being a policy that does not suit the local environment properly, akin to wearing an ill-fitting suit.

3.7.1.2 The Role of International Financial Institutions

There is emerging literature on PPPs in sub-Saharan Africa (described below), which this thesis seeks to add to, as well. However, the role of International Finance Institutions in the adoption, implementation and monitoring of PPPs has not been clarified despite being noted in some of the literature as having played some role (Noumba Um, 2010). In addition, not much has been written on the control carried out by National Governments as well as International Financial Institutions on PPP Organizations. How the decisions are made to pursue a specific PPP project and how this is monitored to ensure that the PPP Agreement is complied with remain grey areas for which research needs to be carried out. Nevertheless, there is an abundance of literature on PPPs in other areas as described in the rest of this section.

Although the rise of PPPs in Africa and the rest of the developing world can be attributed to the influence of the Bretton Woods Institutions and other IFIs (Noumba Um, 2010; IMF, 2004), this needs to be empirically tested and confirmed. The idea that PPPs can be influenced by transnational organisations also goes to show that there is more to PPPs than just the local political or economic contexts.

3.7.1.3 Operation of PPPs

The literature points out that once a PPP partner is selected, things do not always work out well between the private sector partner and the public sector, leading to issues in the operation of PPPs. This, including the financial ability of private sector partners and how they lead to PPPs failing, is an area for further research. The literature cites cases where a PPP partner has been selected, but then fails to meet the requisite requirements and withdraws such as in the case of the Water PPP in Congo-Brazzaville where there was "threat of dismantlement due to the withdrawal of its Italian partners, disappointed by the company's poor performance" (Tati, 2005, p. 322). In Kenya also, one of the partners in the Kenya-Uganda Railway concession had to drop out (PPIAF, 2011). However, the details of how this happened need to be researched.

Even when the contract has been awarded competitively, it was noted in the case of a Ghanaian waste management process that "many of the agents in Accra and Kumasi were given absolute monopolistic powers to operate without any form of competition" (Awortwi, 2004, p. 217). This could also be attributed to a lack of an effective regulator. The role of politics and patronage also comes to the fore. In Ghana, "the potency of an arm's length relationship in contract management was negated because politics and patronage became a factor in awarding contracts. Other reasons for this negative relationship seem to be explained by the fact that the act of writing a contract is different from the act of implementing it" (Awortwi, 2004, pp. 218-219). The actual implementation of a PPP following the signing of a contract, again, remains open to further research.

Other areas that the literature touches on, but need more clarity, include the enforcing of contracts and having a proper legal framework in place. In some cases in "sub-Saharan Africa, difficulties in negotiating and enforcing credible contracts have led concessions in the water to come under stress, and in some cases (e.g. Uganda, Mozambique) to be terminated" (Kikeri and Kolo, 2005, p. 22). Where PPPs are not anchored in an appropriate legal framework, any issues with the PPP contract could bring problems to the parties to the contract. The role of a proper legal framework in the operation of PPPs therefore needs to be researched.

3.7.1.4 Obtaining Finance for PPPs

More needs to be written on how Africa has been able to obtain funding for PPPs, given the difficulty of attracting funds, being perceived as a high-risk area (Collier, 2014). PPPs in Africa also face funding issues with limited access to international financial markets when the sovereign risk rating of a country is low or non-existent, or there is a lack of proper long term funding facilities in the local markets. This could force a PPP to place reliance on equity capital. Access to international funding depends on the sovereign credit ratings.

However, where a country has a low or non-existent rating, this makes it difficult for them to access international financial markets. Additionally, local financial markets are sometimes shallow and do not have long term funding sources, thereby making equity the only easily accessible form of funding. There are no bonds or other long term funds. “To date only Kenya pension funds have been indirectly involved in infrastructure financing through investments in the bond issuance of Kenya Electricity Generating Company (Kengen) and in the telecom company Safaricom” (Shendy et al, 2011, p. 15). Additionally, not many African countries have public bond markets “beyond five to seven years. With the exception of South Africa, this includes only Kenya and Nigeria” (Shendy et al, 2011, p. 44). The role of local financial markets is thus important, but remains a grey area for PPP research.

3.8 Conclusion

This chapter has discussed the concept of Public Private Partnerships and their role in the provision of public services. Arguments for the use and adoption of PPPs were discussed and a range of reasons from ideology, the need to balance books, a requirement to be more efficient and effective, to provide value for money and even just political reasons have been weighed. Conversely, arguments against the use of PPPs have been advanced as well. The structure of PPPs, important concepts within PPPs such as risk, value for money and additionality have also been explained, thereby setting the stage for later chapters. One of the key arguments emerging is that risk is at the centre of PPPs and must be transferable from the government to the private sector for a PPP to be established. It has been argued that without risk, and the need to transfer this risk, there would be no PPPs.

By examining and discussing the concepts behind PPPs, this chapter has built up a picture of PPPs. In determining why Kenya has adopted the use of PPPs as a policy and how this is being implemented, this chapter acts as reference point on PPPs, their attributes and purpose. The chapter essentially addresses the questions: what is a PPP, why have a PPP and lastly, what are the limitations of a PPP.

CHAPTER FOUR: THEORETICAL FRAMEWORK

4.1 Introduction

In this chapter, the theoretical framework used to discuss the adoption of PPPs as a policy option for infrastructure finance in Kenya and their implementation is discussed. This is Broadbent, Laughlin and Read's (1991) interpretation of the Habermas' critical theory of societal development as described by Jurgen Habermas (1979, 1987). Broadbent, Laughlin and Read (1991) consider the theory to provide "a discursive framework which enables a theoretical and practical understanding of the appropriateness of particular changes…., set within the context of some overall model of societal development" (Broadbent et al, 1991, p. 1). The development of PPPs in Africa and in Kenya can therefore be placed within the context of developing countries and the role played by development institutions such as the World Bank and the IMF, as considered in Chapters Two and Three. In evaluating the changes brought about in the provision of public services through PPPs, using this framework allows for a judgement to be made on the appropriateness or not of these particular changes. This framework, therefore, enables the PPP policy in Kenya to be weighed, whether as a distinct event in Kenya's socio-economic development, or rather as a continuation of a set of ideas that have influenced policy in developing countries over time.

4.1.1 Other Frameworks Considered

Before adopting the theoretical framework presented in Broadbent et al (1991), this thesis also considered using Institutional Theory (Powell and DiMaggio, 1983; Meyer and Rowan, 1977; Scott, 2001) which can be used to study the roles that institutions play in formulating and establishing processes, rules, guidelines and even policy, in the case of PPPs. The pressures exerted by institutions further cause organizations to conform and become more similar. This would be useful in determining how PPPs in different sectors have been able to carry out their activities and the extent to which such activities copy from each other.

However, the use of Institutional Theory in this study was discounted for a number of reasons. Firstly, the relevant PPP institutions in Kenya, such as the PPP Unit, were then just being established in law at the start of study, the PPP Act in Kenya having come into force in early 2013 (GOK, 2013). Secondly, this study sought to look at the overall PPP framework and why Kenya had decided to adopt a PPP policy. In the beginning, it was therefore that much harder to pinpoint which institutions would be responsible in exerting such pressure. Moreover, as the PPP framework was only being established, PPP related organizations were also just beginning to be created or to adopt PPPs. This theory was therefore not used.

Also considered was the use of Policy Network Theory (Dolowitz and Marsh, 2000; Rhodes, 1990, 2006), in which the linkages between different organizations, government-based organizations, non-government organizations and other interested parties act together, in both formal and informal ways to make common interest policy. Again, while this was thought to be quite relevant with respect to PPPs, bringing both government and private sector actors, it was considered to be supplementary and would not sufficiently provide the context within which these parties with a common interest act.

4.1.2 The Use of Broadbent et al's (1991) Steering Concept

Broadbent et al's (1991) interpretation of Habermas' critical theory of societal development (Habermas, 1979; 1987) followed an examination of the changes in the National Health Service (NHS) in the UK. The use of this theory allowed them to be able to "evaluate" whether changes in the NHS were "beneficial" or not by "appealing to a distinctive interpretation of rational processes" and illuminating "recent changes in the NHS." From this study, they determined that "it would be inappropriate to approach these changes with a predetermined view about their damaging nature. Equally it would be wrong to start with an attitude that all are vitally necessary for the good of the future of the NHS and UK society more generally. The advantage of the rational evaluatory model of Habermas is that it cuts across both of these perspectives by the application of predefined discursive processes and models to reflect upon appropriateness or otherwise. This broad-based model of societal development is certainly not value-free but, as argued in this chapter, it allows a more open, less predetermined means of evaluating particular societal and institutional changes" (Broadbent et al, 1991, p. 2). Habermas' theory uses the concepts of "lifeworlds", "systems" and "steering media" in a bid to explain the changes taking place in society and the effect of such changes.

In adopting the use of this theoretical framework in this thesis, the adoption of the PPP policy and its implementation are examined in a more open manner without inferring any value judgements as to the importance or not of PPPs in Kenya. In evaluating the changes that the adoption of PPPs would bring and finding out why they have been adopted, this study seeks to evaluate the appropriateness of such changes in Kenya at this point in time, considering Kenya's socio-economic development.

Broadbent et al (1991) also found that there was "societal steering" in the case of the NHS. The UK Government's Department of Health (DoH) acted as the societal steering medium and the NHS as the societal organization. The societal steering medium, through a range of steering mechanisms, sought to steer the societal organization towards a specific direction as determined by the lifeworld of the steering medium. In the next section, these concepts in steering are discussed.

This theoretical framework has also been used to study the chain of Accounting Control in different UK government departments such as the Department for Education; Department for Innovation, Business and Skills and the Department of Trade and Industry (Broadbent and Laughlin, 2013).

4.2 Lifeworlds, Steering Media and Systems

Habermas argues that "modern society can be theoretically defined as an amalgam of lifeworlds", "steering media" and "systems". In broad terms "lifeworlds" are the communicatively formed (over time) life experiences and beliefs which guide attitudes, behaviour and action… "Systems" on the other hand are expressions of these lifeworlds in terms of functionally definable, tangible organizations. According to Habermas these economic and administrative "systems" are guided to follow lifeworld concerns. At the same time these systems are held together, despite differences of function and nature, by "steering media" such as money and power. Such media… "become concretely represented in and through defined societal institutions" (Broadbent et al, 1991, p. 2).

Habermas states that "society is conceived from the perspective of acting subjects as the lifeworld of the social group. In contrast, from the observer's perspective of someone not involved, society can be conceived only as a system of actions such that each action has a functional significance according to its contribution to the maintenance of the system" (Habermas, 1987, p. 117). The lifeworld can therefore be seen to represent all that is intangible and not seen, but that drives what is tangible such as organizations and directs their behaviour towards certain objectives. Systems and organizations are therefore a visible representation of what the lifeworld consists of.

4.2.1 Lifeworlds

According to Habermas, lifeworlds comprise “the objective world” which represents “the totality of entities about which true statements are possible”, the social world which denotes “the totality of legitimately regulated interpersonal relations” and “the subjective world” which represents “the totality of experiences” to which one “has privileged access” over time (Habermas, 1987, p. 120). Any differentiation that occurs would therefore be across the objective, the social and the subjective. “Increasing discursive skills allow this evolutionary differentiation process to occur. Society becomes more discursively able as we recognize and demarcate between the “natural, social and subjective worlds.” As this differentiation process occurs we create “increasingly complex organizational systems, which, in some ways, objectify and reproduce these expanding discursive skills (Habermas uses examples such as organizations devoted to scientific discoveries, legal concerns and artistic endeavours to reflect these three “worlds”) (Broadbent et al, 1991, p. 4 also citing White, 1938).

Habermas further describes “the structural components of the lifeworld: culture, society, person” (Habermas, 1987, p. 138). According to Broadbent et al (1991, p. 4), these “reflect discursively formed understanding of the three (natural, social and subjective) worlds.” Habermas clarifies the use of the three terms, culture, society and person by stating thus, “I use the term culture for the stock of knowledge from which participants in communication supply themselves with interpretations as they come to an understanding about something in the world. I use the term society for the legitimate orders through which participants regulate their membership in social groups and thereby secure solidarity. By personality I understand the competences that make a subject capable of speaking and acting, that put him in a position to take part in a process of reaching understanding and thereby to assert his own identity” (Habermas, 1987, p. 138). Broadbent et al contend that “according to Habermas social evolution occurs as these three elements of the lifeworld develop, leading to shifts in both steering media and institutional systems” (Broadbent et al, 1991, p. 4).

From the lifeworld, therefore, spring all the actions that ultimately direct systems (organizations) to behave in a certain way. The values, knowledge and experiences of the lifeworld drive the systems or organizations to follow a specific path and carry out specific activities to meet the lifeworld objectives.

4.2.2 Steering Media

Within Habermas' critical theory of societal development, the concepts of "lifeworld," "systems" and "steering media" have been used. In this section, the idea of "steering media" is discussed in more detail. Systems are held together, despite differences of function and nature, by what (Habermas) calls "steering media" such as money and power. Such media become concretely represented in and through defined societal institutions (Broadbent et al, 1991, p. 2). The steering media is therefore used to direct the systems and organizations in the direction that the lifeworld demands.

Steering media use various steering mechanisms to convey lifeworld values. Although the steering media communicates lifeworld values, the steering media could also lead systems "into new levels of activity and concern," thereby leading to "a growing loss of meaning, anomie etc. at this level" (Broadbent et al, 1991, pp. 5-6). The steering media can therefore steer the systems into the directions that the lifeworlds demand or into other directions, thereby resulting in internal colonization. Money and power have been described as steering media too, as opposed to the law only.

The law, money and power as steering media can be used to achieve the demands or objectives of the lifeworld. The steering media can, however, also direct the systems into totally different avenues that may not be in tandem with the demands of the lifeworlds. Different steering media could therefore have colonizing tendencies. Habermas has described the different rules that apply for a steering media to be deemed as colonizing. These are discussed in section 4.3 below.

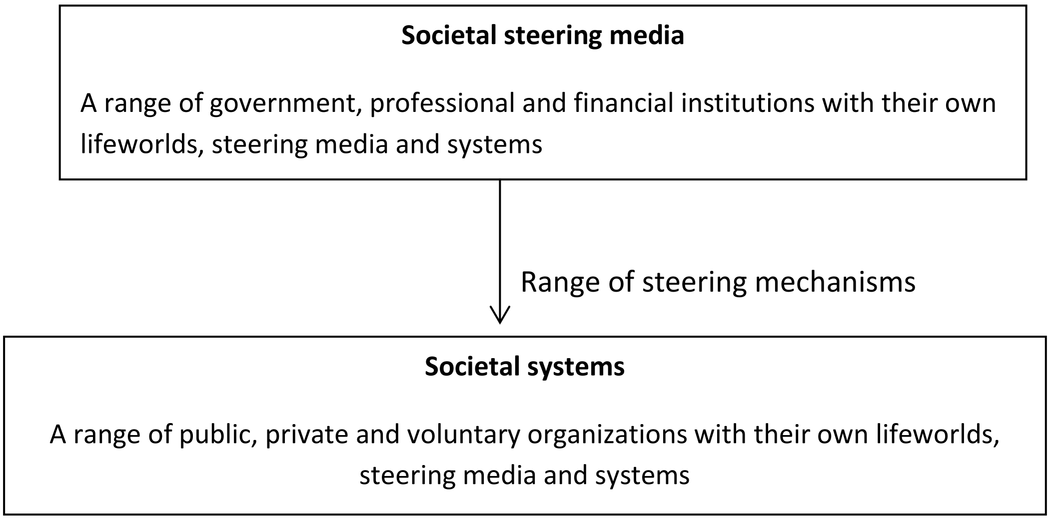
4.2.3 Systems

"Systems" on the other hand are expressions of the lifeworlds in terms of functionally definable, tangible organizations. According to Habermas these economic and administrative "systems" are guided to follow lifeworld concerns. At the same time these systems are held together, despite differences of function and nature, by what he calls "steering media" such as "money and power" (Broadbent et al, 1991, p. 2). The differentiation of the lifeworld results in greater sophistication and complexity. This in turn results in more complex systems and organizations.

The societal steering media and systems are themselves made up of "a wide range of institutions and organizations with their own micro lifeworlds, steering media and systems." As society grows in its complexity both the steering media and the systems become diverse and institutionalized. In addition the very fact that the steering media and systems can "get a life of their own" suggests an institutional ethos and power to act….and depicts a micro-model of society. Each system or organization therefore "has distinct and interrelated micro lifeworlds, steering media and systems" (Broadbent et al, 1991, p. 7).

The diagram below shows the relationship between societal steering media and societal systems:

Figure 4.1 - Relationship Between Societal Systems and Steering Media



Source: Broadbent et al (1991, p. 8)

Given the diversity of systems and organizations, "both the steering institutions and organizational systems are deemed to have their own distinct lifeworlds, steering media and systems which guide and direct the behaviours of each". Each of them is therefore a microcosm of society, representing an evolution "over time through different historical processes and will reflect many of the facets of the particular participants/stakeholders over time but not without some relationship to the society of which they are part" (Broadbent et al, 1991, p. 8). Each of the micro lifeworlds "will, in a complex way, reflect part of the current societal lifeworld. Alternatively, because of the potential of the institutions and systems to colonize and thus break away from the guiding societal lifeworld, they may be developing micro lifeworlds which are alien to (i.e. not reflecting part of) the societal schema" (Ibid.).

4.3 Internal Colonization

For Habermas, the more complex the lifeworlds, the greater the complexity of the related systems and organisations as the systems attempt to reflect the desires of the lifeworld. During the process of differentiation of the lifeworld, "the greater the sophistication of our discourse the greater the lifeworld is differentiated (aligned to the three worlds) and the greater the resulting complexity and diversity of the organizational systems. As this complexity increases steering media find it harder to direct the behaviour of the systems, leading often to a growing distance between these media, the systems and the lifeworld" (Broadbent et al, p. 4). In this case, the systems no longer represent the values and experiences of the lifeworld. Instead, they represent what Habermas has described as an "internal colonization of the lifeworld" (Habermas, 1987, p. 332). This internal colonization of the lifeworld occurs "when subsystems make their way into the lifeworld from the outside - like colonial masters coming into a tribal society - and force a process of assimilation upon it" (Habermas, 1987, p. 355). It implies that values and knowledge that are foreign to a system find their way into that system or organization and thereby influence the organization to move away from the objectives that its lifeworld demands and to take up the new values introduced.

An internal colonization of the lifeworld is where the steering media actually "get out of hand" and steer the systems into domains which are not locked into or reflecting lifeworld demands. Ultimately, the effect is a crisis in the lifeworld where loss of meaning, anomie and psychopathologies become the norm. …the thesis of internal colonization states that the subsystems of the economy and state become more and more complex as a consequence of capitalist growth, and penetrate ever deeper into the symbolic reproduction of the lifeworld" (Broadbent et al, 1991, p. 5 citing Habermas, 1987, p. 367). Broadbent et al (1991), however, contend that "although Habermas maintains that it is the organizational systems that colonize, a closer investigation suggests that his understanding of the process actually emanates from the institutional steering media "getting out of hand". It is not, therefore, surprising that Habermas illustrates the nature of internal colonization by exploring the steering media of law and, more specifically, the increasing "juridification" (increase in formal or positive written law) of social life" (Broadbent et al, 1991, p. 5 citing Habermas, 1987, p. 357).

4.3.1 Steering Media Has Regulative or Constitutive Character

Steering media that is "regulative" is less likely to have colonizing tendencies as opposed to steering media that is "constitutive" in character. Constitutive steering media are therefore more likely to colonize the systems that they are attempting to steer.

Broadbent et al (1996, p. 6) give two general differences between regulative rules and constitutive rules. Firstly, citing White (1988, p. 114) they state that "regulative rules regulate some pre-existing, on-going activity e.g., rules of safe driving. Constitutive rules, on the other hand, constitute some form of activity, e.g., rules of chess."

Secondly, "regulative rules are claimed to be "freedom-guaranteeing" in the way they moderate systems behaviour to reflect existing lifeworld norms and values. Constitutive rules, on the other hand, are deemed to be "freedom-reducing" and actually constitute systems behaviour distinct from accepted norms and guiding lifeworld" (Broadbent et al, 1991, p. 6 citing Habermas, 1987, p. 367). Regulative rules therefore have less colonizing tendencies and simply moderate systems behaviour without actually constituting the systems behaviour.

One point to note though is that regulative rules may change at some point and become constitutive. Likewise, constitutive rules may change and become regulative. This highlights the dynamic nature of the steering media and the changes that can take place over time or in different situations. This also suggests that the colonizing tendency of a steering media could be time bound and can therefore only be determined at a specific time and not generalised.

4.3.2 Comprehensibility of the Steering Media to the Average Individual

The other way to determine if steering media has colonizing potential, according to Habermas, is to consider whether the steering media can be either "amenable to substantive justification" or can be only "legitimized through procedure" (Broadbent et al, 1991, p. 7 citing Habermas, 1987, p. 365). The extent to which ordinary individuals in their daily life can comprehend the steering media determines whether the steering media can be "amenable to substantive justification" or whether it can only be "legitimized through procedure." According to Habermas, steering media that is amenable to justification has less colonizing tendencies. However, steering media that can only be "legitimized through procedure" has more colonizing potential.

Broadbent et al (1991, p. 7 citing White, 1988, p. 115) state that the distinction between the two can be further clarified as follows: "In the former case, since law is embedded in the lifeworld context, it is more comprehensible to the average individual and must be defended by elites on material grounds. In the latter case, law becomes far less comprehensible and easier to defend purely on the grounds that it has been appropriately enacted by competent and responsible elites…. Put simply, all steering media will be directed by official bodies ("elites" using White's terminology). Where it is comprehensible to the "average individual" and, therefore, somehow reflects "informed common sense", it will not need much defending by the elites. Thus it is "amenable to substantive justification". If these circumstances arise, according to Habermas, the particular form of steering media will be following lifeworld demands. If, on the other hand, the particular legislation is far less comprehensible with more questions raised about the appropriateness of the elite to formulate the rules, Habermas believes the particular form of steering media has a colonizing potential."

It seems therefore that where the steering media can only be legitimised through procedure, it has to be defended by the "elites". This act of defence by itself shows that it has not been entrenched into the lifeworld and does not necessarily reflect the values of the lifeworld.

The table below summarizes the characteristics of the steering media that would make it have tendencies to carry out internal colonization.

Table 4.1 Characteristics of Steering Media in Carrying out Internal Colonization

Characteristic	**Internal Colonization**	**No Internal Colonization**
Regulative or constitutive	Constitute some activity	Regulate some pre-existing or ongoing activity
Comprehensibility of the steering media to ordinary individuals	Legitimized through procedure	Amenable to substantive justification

Source: Author, adapted from Broadbent, Laughlin and Read (1991)

4.4 Evaluatory Model

In order to determine if rules are regulative or constitutive, it may be useful to get everyone's opinion. However, this is not possible and therefore such a judgement is only made from the organizational system's viewpoint. This "reduces the numbers involved in this process to the active organizational participants. However, even here there are problems since taking this perspective we still need to make judgements concerning whether the views of the organizational participants are "justified" and "informed" using defined discursive processes reflecting, as far as possible, the ideal speech situation. If the focus is shifted to the perception of organizational systems, it can be deduced these may be interpreted differently than they would be from a societal perspective" (Broadbent et al, 1991, p. 10).

It is argued that if the "if the participants of a particular organizational system perceive any defined mechanisms (emanating from an institutional steering medium) as regulative and amenable to substantive justification then similar views are likely from a societal viewpoint. The argument for this is more intuitive rather than necessarily empirical. If the participants, who are, of course, part of society, perceive particular mechanisms as regulative then the chances are that similar attitudes would be present in a wider spectrum of the populace." Organizational and societal perceptions could however differ as well, with different outcomes. Additionally, whether rules are regulative or constitutive, this needs to be looked at in conjunction with the other requirement of "amenable to substantive justification" or can only be "legitimised through procedure". Broadbent et al (1991, p. 10) have come up with different possibilities and outcomes depicting a combination of these criteria. Any judgement made must therefore be from the perspective of the organization in question. In their study on the NHS, Broadbent et al (1991, p. 12) emphasised that in their work, any judgement made would be from the point of view of the NHS.

4.5 International Steering by International Finance Institutions (IFIs)

International Finance Institutions (IFIs), led by the World Bank, have been noted in the literature to have contributed to the adoption of PPPs by developing countries (Noumba Um, 2010; Pessoa, 2010). However, the literature does not point out how the IFIs have been able to promote the spread of PPPs across the world. Given the notions of "steering" and "steering mechanisms," as presented in Broadbent, Laughlin and Read (1991), the theoretical framework presented in Broadbent et al (1991) has been used in this thesis to find out the steering mechanisms used by IFIs in influencing PPPs in developing countries.

It should be noted though that the theoretical framework presented by Broadbent, Laughlin and Read (1991) was used in studying the steering carried out by the National Health Service (NHS) in England. The framework therefore highlighted the role of "societal steering," as it investigated the steering between the Department of Health and the NHS, both institutions being national institutions within England. This implies that the framework, though useful in terms of the use of the concepts on "steering," does not mention what happens in cases where steering could be carried out internationally by transnational organisations.

This study has therefore selected the theoretical framework on steering in order to investigate how the notions on "steering" and "steering mechanisms" could apply in the case of international steering. While international steering is not covered explicitly by the theoretical framework in Broadbent et al (1991), this study does not consider this as a limitation to the framework. Instead, the study aims to find out how international steering is carried out and therefore further contribute to the theoretical framework in Broadbent, Laughlin and Read (1991), by showing that in addition to "societal steering," international steering takes place.

4.6 Conclusion

In this chapter, Broadbent, Laughlin and Read (1991) has been used as the theoretical framework for this thesis. The framework presents the concepts of lifeworlds, systems and steering media. Lifeworlds are the life experiences as expressed by the values and beliefs, while systems are distinct organizations. Systems are, on the other hand, guided by steering media such as "money and power." "Such media… become concretely represented in and through defined societal institutions" (Broadbent et al, 1991, p. 2), which ought to reflect the lifeworld.

This theoretical framework was used to study financial and administrative changes in the UK's National Health Service (NHS). This study identified societal steering by the Department of Health, an institutional steering medium.

The study also found that steering media will try to direct systems' behaviour to conform to the nature of the lifeworlds. However, this is not always the case as the steering mechanism can direct the systems to a route that is different from that of the lifeworlds. In this case, “internal colonization” occurs with resultant negative effects. Habermas has also given set criteria for identifying steering mechanism that has colonizing potential. Such media is constitutive as opposed to being regulative. In addition, such media can only have rules that can be legitimised through procedure as opposed to being amenable to substantive justification. The theoretical framework, however, does not mention international steering, as in the case where transnational organisations are involved in the steering process. This thesis seeks to contribute to the theoretical framework by advancing the notion of international steering.

CHAPTER FIVE: RESEARCH METHODOLOGY

5.1 Introduction

According to Burrell and Morgan (1979, p. 10), "all approaches to the study of society are located in a frame of reference of one kind or another. Different theories tend to reflect different perspectives, issues and problems worthy of study, and are generally based upon a whole set of assumptions which reflect a particular view of the nature of the subject under investigation." Any approach of study is therefore replete with its own assumptions and views about the object of study. Laughlin (1995, p. 65) points out that "when undertaking any empirical research", the researcher launching "into data collection" should make "deliberate choices" in tackling any "theoretical and methodological problems" before carrying out the study. The reason for this is that "all empirical research will be partial, despite any truth claims to the contrary, and thus it would be better to be clear about the biases and exclusions before launching into the empirical detail."

This chapter therefore presents the approach that has been used in this PhD Study. In the preceding chapters, the concept of PPPs, how they have become a real option in infrastructure finance and in the provision of public services, their spread across different regions as well as their attributes have been discussed. In Chapter One, an introduction to the PhD study was given, with the general objectives of the research as well as justifications for the study. Chapters Two and Three went further and reviewed the trend of infrastructure finance in Africa and how the shift towards involving the private sector has brought about the involvement of PPPs. It also looked at the structure and attributes of PPPs and set the context for the study of PPPs in Kenya by reviewing literature on PPPs in Africa. Chapter Four further reviewed the theoretical framework that is used in the study. In this chapter, the study is placed within a specific approach of study with a clear research methodology.

Burrell and Morgan's description of an approach of study being located within one frame of reference or another, with a specific theory showing its own perspective or view about the study and the phenomenon being studied and a whole set of assumptions reflecting "a particular view of the nature of the subject under investigation" (Burrell and Morgan, 1979, p. 10), sums up the concept of a research methodology. Research methodology refers to "alternative approaches to science" that social researchers can choose from with each approach having "its own set of philosophical assumptions and principles and its own stance of how to do research" (Neuman, 2006, p. 79). The research methodology used in a study refers to the entire approach to the study based on a specific philosophical assumption and principles which then determine how the research will be carried out. The philosophical assumptions used in this study are discussed in the next section. Research methodology and research methods are related but different concepts used within the research process and are also discussed in subsequent sections in this chapter.

5.1.1 Research Methodology and Research Methods

Research methodology has been shown to be a specific research approach based on certain philosophical assumptions. A research method on the other hand refers to the ways in which data will be collected within a particular research approach (Bryman, 2012). For instance, data could be collected through the use of interviews or questionnaires or through a review of archival documents (Denscombe, 2010). These are methods for collecting data and are only examples. There are many other methods of collecting data.

Llewellyn (1992, p. 18 citing Bryman, 1984) states that methodology is "the epistemological framework for the research and method" is "the technique for doing that research." Epistemology, as one of the philosophical assumptions underlying methodology, is discussed in section 5.2. Llewellyn further states that "methodology is fundamental in the sense of being dependent on the values and beliefs of those engaged in the research process: both researchers and sponsors of research. Methods are secondary concerns. Their selection and roles are influenced by the epistemological position adopted for the research. Pragmatism about methods makes sense." As the researcher in this study, my own beliefs and values have thus played the key role in the research process and on the research methodology adopted.

5.2 Philosophical Assumptions and Principles

The philosophical assumptions underlying any research methodology adopted have been well described by Burrell and Morgan. They state at the outset of their work that "it is convenient to conceptualise social science in terms of four sets of assumptions related to ontology, epistemology, human nature and methodology", given that "all theories of organisation are based upon a philosophy of science and a theory of society" (Burrell and Morgan, 1979, p. 1). The first two assumptions on ontology and epistemology relate to Burrell and Morgan's 'philosophy of science,' while human nature and methodology relate to their 'theory of society'.

The work by Burrell and Morgan (1979) has been used as the key literature in discussing the philosophical assumptions. This is to later enable a clearer understanding of Laughlin's (1995) "middle-range theory" which is the research approach adopted in this study. The philosophical assumptions are discussed in some detail below, while the theory of society will be mentioned briefly.

5.2.1 Ontology

The first assumption of an ontological nature concerns "the very essence of the phenomena under investigation" (Ibid.). This essence concerns itself with questions which every social scientist must address. These are questions such as "whether the 'reality' to be investigated is external to the individual - imposing itself on individual consciousness from without - or the product of individual consciousness; whether 'reality' is of an 'objective' nature, or the product of individual cognition; whether reality is a given 'out there' in the world, or the product of one's mind" (Ibid.). Ontology is the "starting point for most of the debates among philosophers" (Easterby-Smith et al, 2002, p. 31) on the approaches to the study of social science.

In viewing ontology as a spectrum, there are two extreme sides at each end of the spectrum. The "nominalist position revolves around the assumption that the social world external to individual cognition is made up of more than names, concepts and labels which are used to structure reality" (Morgan and Burrell, 1979, p. 4). This is the subjective view which considers reality as "being built up from the perceptions and actions of social actors" (Bryman, 2012, p. 32). At the other end of the spectrum is the realist position. "Realism, on the other hand, postulates that the social world external to individual cognition is a real world made up of hard, tangible and relatively immutable structures" (Morgan and Burrell, 1979, p. 4). This is the objective view. Reality in this case is "external to social actors" (Bryman, 2012, p. 32). A research approach that takes this ontological view will therefore disregard or place less value on the view of social actors around the object of research study.

5.2.2 Epistemology

Philosophical assumptions of an epistemological nature are about "the grounds of knowledge - about how one might begin to understand the world and communicate this as knowledge to fellow human beings." The nature of knowledge is deemed as either "being hard, real and capable of being transmitted in tangible form, or whether knowledge is of a softer, more subjective, spiritual or even transcendental kind, based on experience and insight of a unique and essentially personal nature." The nature of knowledge also determines "whether knowledge can be acquired on the one hand or is something which has to be personally experienced on the other" (Burrell and Morgan, 1979, pp. 1-2). Again, this points to a kind of spectrum from one end where knowledge is deemed to be hard and real to the other end where it is considered as softer and more subjective.

5.2.2.1 Positivism

Where knowledge is seen as hard and real, this is referred to as being "positivist". "Positivist epistemology is in essence based upon the traditional approaches which dominate the natural sciences" and it seeks to "explain and predict what happens in the social world by searching for regularities and causal relationships between its constituent elements" (Burrell and Morgan, 1979, p. 5).

Positivism "entails a deductive approach and an inductive strategy" (Bryman, 2012, p. 27). A deductive approach is one where existing theory is used to outline specific hypotheses which then guide the data collection process as data is gathered to prove or disprove the hypotheses. On the other hand, an inductive strategy is one where observations or findings from a research study are then used to generate theory. The role of research in positivism is therefore to "test theories and to provide material for the development of laws" (Bryman, 2012, p. 27).

Given the use of a deductive approach as well as an inductive strategy, positivism has been associated with a quantitative research strategy. Positivism employs the same methods used in the natural sciences to carry out research. It therefore follows that quantitative research also employs such reasoning. A quantitative research strategy employs measurement and quantification in the collection and analysis of data (Bryman, 2012, pp. 35-36).

5.2.2.2 Interpretivism

On the other hand, there is an alternative view that postulates that "the social world is essentially relativistic and can only be understood from the point of view of the individuals who are directly involved in the activities which are to be studied" (Ibid.). This alternative view that is opposite to positivism has also been referred to as "interpretivism" in other literature (Bryman, 2012, p. 28).

Interpretive approaches maintain that a researcher can only be able to understand what is being studied by occupying the frame of reference of the participant in action. One has to understand from the inside rather than the outside. Social science is therefore seen as being subjective rather than objective, from this perspective (Burrell and Morgan, 1979, p. 5). This view therefore gives much more weight to the actions and perceptions of social actors. The nature of knowledge is captured within their actions and perceptions relative to the object of study.

Given the prominence attached to the actions and perceptions of social actors, interpretivism is associated with the qualitative research strategy. A qualitative research strategy “can be construed as a research strategy that usually emphasizes words rather than quantification in the collection and analysis of data” (Bryman, 2012, p. 36). This strategy has been discussed in more detail in section 5.4.2.

5.2.3 Human Nature

This assumption concerns the “relationship between human beings and their environment.” It seeks to determine whether “human beings and their experiences are regarded as products of the environment; one in which humans are conditioned by their external circumstances,” or whether human beings are attributed a “much more creative role: with a perspective where ‘free will’ occupies the centre of the stage” (Burrell and Morgan, 1979, p. 2). This is essentially a philosophical question pitting “the advocates of determinism on one hand and the voluntarism on the other” (Ibid.).

Determinism “regards man and his activities as being completely determined by the situation or ‘environment’ in which he is located,” while the voluntarist view is that “man is completely autonomous and free willed” (Burrell and Morgan, 1979, p. 6). In determinism, man is subject to his environment and reacts to the environment rather than have his own will impact the environment. In voluntarism, however, the role of human actors is more pronounced as they are able to initiate their own actions without necessarily responding to their environment.

5.2.4 Methodology

According to Burrell and Morgan, the assumptions made under ontology, epistemology and human nature determine the kind of methodology that is employed. On the one hand, if one considers the social world to be a “hard, external, objective reality, then the scientific endeavour is likely to focus upon an analysis of relationships and regularities between the various elements which it comprises." These will include "their measurement and the identification of underlying themes" and for "universal laws which explain and govern the reality which is being observed" (Burrell and Morgan, 1979, p. 3). This summarises positivism.

However, "if one subscribes to the alternative view of social reality, which stresses the importance of the subjective experience of individuals in the creation of the social world," then in that case, "the principal concern is with an understanding of the way in which the individual creates, modifies and interprets the world in which he or she finds himself." rather than on "what is general and universal" (Ibid.). These two alternative views give rise to the subjective-objective dimension in which the assumptions of ontology, epistemology and human nature take either one extreme view or the other, thereby giving rise to a specific methodological approach (Burrell and Morgan, 1979, p. 4). The ideographic approach "places considerable stress upon getting close to one's subject and exploring its detailed background and life history," and analysis of "subjective accounts which one generates by 'getting inside' situations and involving oneself in the everyday flow of life".

On the other hand, the nomothetic approach places "emphasis on the importance of basing research upon systematic protocol and technique. It is epitomised in the approach and methods employed in the natural sciences, which focus upon the process of testing hypotheses in accordance with the canons of scientific rigour. It is preoccupied with the construction of scientific tests and the use of quantitative techniques for the analysis of data" (Burrell and Morgan, 1979, pp. 6-7).

5.2.5 Nature of Society

Burrell and Morgan have also distinguished two different kinds of views with regard to society. The "sociology of regulation" refers to the writings of theorists who are primarily concerned with providing explanations of society in terms which emphasise its underlying unity and cohesiveness. On the other hand, "the sociology of radical change" has its basic concern as finding "explanations for the radical change, deep seated structural conflict, modes of domination and structural contradiction which its theorists see as characterising modern society" (Burrell and Morgan, 1979, p. 17). This push and pull between those who prefer stability and cohesiveness and those who want radical change is central to one of the key tenets, change, in Laughlin's (1995) middle-range theory.

5.3 Middle-Range Thinking

Laughlin (1995; 2004) has built on Burrell and Morgan's (1979, p. 10) view that different theories tend to have different perspectives. Laughlin (1995, p. 65) states that "different schools of thought… all have characteristics which can be encapsulated on a range of key continuums, the position on which needs to be decided prior to undertaking any empirical investigation." The manner in which Laughlin (1995) breaks this down into different components explains how research is influenced by epistemology and ontology. The word "continuum" has come up again here denoting some kind of spectrum with two extreme and diametrically opposite points at each end with different combinations of the point along the "continuum".

Laughlin states that "middle-range" thinking "argues a case for taking a mid-point on each of the three continuums (theory, methodology and change)" (Laughlin, 1995, p. 78). The three continuums are fundamental aspects of any research carried out. Taking a mid-position on each therefore requires knowledge of the extreme points in each case. By mentioning these three, Laughlin appears to guide the entire research journey. Theory as the underlying body of existing knowledge forms the foundation for the research. Methodology directs the course that the research takes and, lastly, change implies the overall objectives of the research, whether the researcher wants to contribute to keep the existing status quo or make contributions towards changing it.

Building on Burrell and Morgan's (1979) "two-by-two matrix based on two bipolar continuums, one continuum posits alternative approaches to social science (ranging from "subjectivist" to "objectivist") the other contains different assumptions about the nature of society (ranging from the "sociology of regulation" to the "sociology of radical change"). The multiple nature of the social science continuum is actually a five-part schema related to ontology, human nature, nature of society, epistemology and methodology" (Laughlin, 1995, pp. 65-66). Laughlin (1995) has therefore taken Burrell and Morgan's (1979) five different assumptions and presented them as three - theory, methodology and change.

Each of the five-part schema has its own set of assumptions. There are assumptions of an ontological nature. These concern the very essence of the phenomena under investigation. There are assumptions of an epistemological nature. These concern the grounds of knowledge and how one understands the world and communicates this understanding. There are also assumptions on human nature. These concern relationships between human beings and their environment (Morgan and Burrell, 1979, p. 1).

Further, "each of the three sets of assumptions outlined above has direct implications of a methodological nature. Each one has important consequences for the way in which one attempts to investigate and obtain 'knowledge' about the social world" (Morgan and Burrell, 1979, p. 2) and could therefore determine the method of study of a particular research topic. Laughlin has rephrased these as "a position on being (ontology), on the role of the investigator (human nature), on perceptions of society (society), on perceptions on understanding (epistemology) and ways to investigate the world (methodology)" (Laughlin, 1995, p. 66). Moreover, "expressing these in the context of choices that have to be made before undertaking any empirical investigation it is possible to cluster these concerns under three broad bands which can be conveniently labelled "theory", "methodology" and "change" choices" (Ibid.). We will look at each of these in turn.

5.3.1 Theory

Laughlin (1995, p. 66) has tied ontology and epistemology to "theory" and states that theory involves deciding on a view of the world and what constitutes knowledge either past or present and how it relates to the current focus of investigation. The continuum in theory is then characterised as "prior theorizing" with the extreme ends being "low levels of theorizing" and "high levels of theorizing". High levels of theorizing assume a material world that has high levels of generality and order and that has been well researched in the past. Low levels of theorising on the other hand "assume that the world is not material - it is a projection of our minds - and since such projections differ, generalities are impossible" (Laughlin, 1995, p. 66). This has been somewhat clarified by Broadbent and Laughlin (1997, p. 624) who have stated that "at one extreme is the high /high position which is strongly quantitative and has a firm theoretical base which invariably needs to be tested through controlled rational processes. At the other is the low/low position which is qualitative in approach and seeks to discover inherent meaning from the point of view of organizational actors."

Theorizing in this particular study can be viewed in two ways. Firstly, there is a theoretical framework used to guide this study. This has been discussed in Chapter Three and is further discussed a bit more, later in this chapter. Secondly, with respect to PPPs, there is a lot in the literature on what PPPs are, why they are used, where they have been used and the arguments against using them. Additionally, there is theorizing with respect to technical attributes of PPPs such as the value for money concept and the use of the Public Sector Comparator (PSC). It could thus be argued that there is already high theorizing on PPPs. However, there are also areas within PPPs not fully researched, such as the use of PPPs in developing countries, thus representing low theorization; hence a middle range is considered through "middle range thinking."

5.3.2 Methodology

"The choice in relation to "methodology" involves taking a position on an amalgam of the nature and role of the observer in the discovery process (Burrell and Morgan's "human nature" assumption) and the level of theoretical formality in defining the nature of the discovery methods (Burrell and Morgan's "methodology")" (Laughlin, 1995, p. 66). The "methodology" aspect therefore "links to the role of the observer as well as the assumptions concerning human nature." In a situation with "a high theoretical definition for the resulting methods then there is an implicit assumption that the observer is largely irrelevant to the process and his or her subjectivity or bias, which at the far extreme are assumed not to exist, plays no part in the process. At the "low" end of this continuum, on the other hand, the individual observer is permitted and encouraged to be free to be involved in the observation process completely uncluttered by theoretical rules and regulations on what is to be seen and how the "seeing" should be undertaken" (Laughlin, 1995, p. 67). The methodology dimension therefore seems to form a kind of objectivity-subjectivity continuum. The more objective the study should be, the more irrelevant the observer. This could be the case in studies carried out using quantitative research methods.

The case study approach used in this study falls within qualitative methods of research. This method was selected because the perceptions and actions of the social actors (Bryman, 2012) is considered to be important in establishing the facts of the process of implementing PPPs. It was recognised at the outset that there will be some element of subjectivity as it would be necessary for both the researcher and the social actors to make some interpretations of what has been observed. Also, where the researcher is immersed together with the subjects of study in the process at any point and in any form, this may affect the researcher's objectivity to some extent. A totally objective process without any bias, though ideal, would not be possible where the researcher has to become a part of the environment of study, at least for the duration of the fieldwork. Again “middle range thinking” seems to be the ideal so as to avoid total subjectivity from the researcher, while also accepting that it may not be possible to have total objectivity in a research setting where the researcher is personally present.

5.3.3 Change

The last “choice in relation to “change” involves taking a position on whether the investigation is intentionally geared to achieve change in the phenomena being investigated (Burrell and Morgan’s “society” assumption)” (Laughlin, 1995, p. 66). In a high change situation, the researcher will be highly critical of the status quo and seek to change it, or at least want to change it. In a low change situation, the researcher is content with the status quo or is less inclined to make any changes. “Those in the “middle” on this continuum are more strategic in their attitude to change – open to maintaining certain aspects of current functioning but also open to challenging the status quo” (Laughlin, 1995, pp. 67-p68).

With respect to the study on PPPs, the objective of this study is not to seek to maintain the status quo or to suggest some significant changes. The objective is simply to understand and to document the steering of PPPs in Kenya. A “middle range” approach is therefore considered as the best. This is because the researcher will be seeking to understand the steering of PPPs in Kenya without advocating for any change. In any case, change is only possible once you fully understand the present status with its weaknesses and strengths. Only then can one propose what aspects to change. A “middle range” approach also allows for some changes to be proposed if considered necessary. The theoretical framework has been used to interpret the data collected.

5.3.4 Argument for Middle-Range Thinking

Laughlin has attempted to give a brief historical overview of the various schools of thought found in Burrell and Morgan’s (1979) two-by-two matrix. On the one hand, Laughlin mentions the rationalists and on the other hand, the empiricists and later the positivists (Laughlin, 1995, pp. 70-73) as evidences of the choices available for a researcher. However, Laughlin (1995, p. 77) states that “choices are contestable, as are the criteria which drive them.” Additionally, “a simple amalgamation of all the alternatives...is not a satisfactory solution to the choice problem due to the mutually exclusive nature of these alternatives” (Laughlin, 1995, p. 78). From these two statements, Laughlin is setting the ground for “middle range thinking”.

Although the term "middle-range" thinking was first associated with Merton (1968), Laughlin (1995) has attempted to differentiate between Merton's meaning of "middle range thinking" and the concept he uses in Laughlin (1995) (Laughlin, 1995, p. 79). In presenting "middle range thinking", Laughlin (1995) talks of the "medium/medium/medium" approach, which "recognizes a material reality distinct from our interpretations while at the same time does not dismiss the inevitable perceptive bias in models of understanding. It also recognizes that generalizations about reality are possible, even though not guaranteed to exist, yet maintains that these will always be "skeletal" requiring empirical detail to make them meaningful…The "skeleton" metaphor is intended to paint a picture of incompleteness yet also reasonable stability" (Laughlin, 1995, p. 81).

In this study, the theorizing in place on PPPs has provided some kind of "skeletal" framework, which has been "fleshed out" with the empirics of the study. With respect to the theoretical framework discussed in Chapter Five, again this framework provided a "skeletal" of the steering process, as evidenced in the case of the National Health Service (NHS) in the UK (Broadbent et al, 1991). This presented a starting point as well as a lens through which to view the empirics and then further build on the theoretical framework. Through the use of concepts such as "steering," "steering mechanism" and "steering media," the framework has been "fleshed" out based on the empirical data. Middle range thinking has therefore informed the use of the theoretical framework in this study.

Within accounting research, Laughlin argues that middle range thinking is the best approach given that "accounting practices are not some technical, context-free phenomenon" (Laughlin, 1995, p. 82) but is also conducted by "diverse social actors" thereby making it difficult to "generalize" (Laughlin, 1995, p. 83). This seems to acknowledge that having a purely objective research would not be possible because of the role of the individuals within the organization (and the researcher's role as well). In this study, it has been noted that there were actors within the Kenyan PPP process who participated in the implementation of PPP policy. These would have their own views of the process, even as they are part of the process. Middle-range thinking acknowledges the role of the social actors too. They provide the context and the background to the study and cannot be ignored.

Through Laughlin's clear illustration of the concepts of low, medium and high in the various schema in research, his concept of "middle range thinking" gave this research clear choices with which to proceed. By providing a "skeletal" framework, which must then be "fleshed out" by carrying out an empirical investigation, the research was guided because there was already a framework on which to start the process. Middle-range thinking also provided the recognition that "there is always a possibility of some level of generalization but that the nature of that generalization is such that it provides some idea of what might be important to understand but not how it will be affected. As such it rejects the high level of prescription which accompanies the "high/high" position, its roots being more closely associated with those of the other "low/low" positions in Laughlin's matrix." Middle-range thinking also provides a "strategic" attitude to change "in that it will seek to challenge the status quo, but does not necessarily desire change in all situations" (Broadbent and Laughlin, 1997, p. 625).

During the process of research, details not previously known may come to light, thereby requiring the researcher to revisit the entire research approach. Middle-range thinking "suggests that the empirical situation might well reflect back and lead to a change in the methodological framework" (Broadbent and Laughlin, 1997, p. 640). Middle range thinking therefore informs the research approach and allows for a reflection on the approach and changes that the researcher may consider, as the study progresses.

5.3.5 Issue of Context within Accounting Research

Laughlin has argued that the medium approach is the best given that "accounting practices are not some technical, context-free phenomenon" (Laughlin, 1995, p. 82). This brings up the concept of context within the research process. Other writers have also highlighted the importance of context (Hopwood, 1983; Broadbent and Laughlin, 1997) with Hopwood decrying the fact that "accounting research has tended to isolate itself from accounting in practice, if not accounting practice" (Hopwood, 1983, p. 302). Context is therefore of key importance and this research has studied the steering of PPPs within the context of the "PPPs movement" across the world, but also within the context of PPPs in Africa.

By putting 'change' as one of the three schema to be considered in middle-range thinking, Laughlin puts this research approach within critical theory (Neuman, 2006). Through critical theory, an understanding of the structures underlying a phenomenon is obtained with a view to helping people "change conditions and build a better world for themselves" (Neuman, 2006, p. 95). According to Laughlin (1987, p. 482), “theory becomes the vehicle for an historically grounded interpretation and transformation to occur. Critical theory is a vehicle through which understanding about reality can be achieved and transformation of concrete institutions occur” (Laughlin, 1987, p. 482). Critical theory therefore does not ignore context. Unlike the case presented by Hopwood (1983) in which accounting research seems to be delinked from accounting practice, “critical theory proposes dynamically linking theory to practice. Theory, to a critical theorist, must always have some sort of effect on practical "real world" phenomena” (Laughlin, 1987, p. 483).

Critical theory also “sees critique, change and development as vitally necessary components of the practically based research endeavour” (Ibid.) and that social organisations must be viewed “in an historical and societal context” so as to go “beyond the tangible to the unseen and unclear contextual elements to discover the "real" meanings and factors which produce change” (Laughlin, 1987, p. 484). Hopwood avers that “the tension between the technical and the organizational bases of the accounting task is a theme which pervades other papers” (Hopwood, 1983, p. 295) and there is therefore a need to identify the “forces that either influence accounting change or help to shape the different forms that the accounting craft can take” (Hopwood, 1983, p. 289).

From the foregoing, it can be argued that middle-range thinking best provides a platform from which the idea of change can be best argued, based on the context of the item under study. By using the principles of critical theory which seek to go deeper and understand what lies hidden below the surface, middle-range thinking has provided an opportunity for the researcher to have a total understanding of the PPP process in Kenya and thus be able to make a meaningful contribution that provides further insight into the PPP process. This can be used to effect real change and transform the PPP policy and organizations in Kenya and elsewhere.

Middle-range thinking provides for the “development of a Habermasian discourse based approach… which can be used to explore and understand organizations in a general sense and not simply the accounting systems within them.” By using the “methodological and theoretical elements provided” as a starting point” (Broadbent and Laughlin, 1997, p. 640), middle range thinking then allows the researcher to go back and forth as the researcher formulates the best research strategy.

5.4 Research Strategy

A research strategy refers to “a general orientation to the conduct of social research” (Bryman, 2012, p. 35). A research strategy can be qualitative or quantitative. Quantitative research strategy is often grounded in a positivistic epistemology while interpretivism draws on a qualitative approach. Quantitative research strategy focuses on measurement and quantification in the collection of data while qualitative research strategy uses words (Bryman, 2012, pp. 35-36). Other writers have described the difference between the two by stating the kind of data that they each focus on. Neuman (2006, p. 151) states that qualitative research strategy focuses on “soft data, in the form of impressions, words, sentences, photos, symbols, and so forth” while quantitative research strategy focuses on “hard data in the form of numbers.”

The use of numbers within a quantitative research approach is argued to allow for generalisations to be made and thereby allow for predictions. On the other hand, a qualitative research approach provides for a rich context in understanding the setting of the data, even if it is less predictive (Polit and Beck, 2010). The involvement of the researcher in the research process and the uniqueness of the context within which the data is found can be considered to be a hindrance to prediction in qualitative studies.

The research strategy that is chosen therefore depends on the researcher’s philosophical assumptions. If the researcher has a positivistic epistemology and a realist ontology then they will adopt a quantitative research strategy. On the other hand, a researcher that has interpretivism as an epistemology and nominalism as an ontological position will adopt a qualitative research strategy. In this research, my belief is that the role of social actors with respect to social reality cannot be ignored. If one was to employ the methods of natural science to social science, then the actions and thoughts of people would not be considered. In addition, the issue of context is given prominence in qualitative research, while quantitative research does not consider the context of the research study. Context, as described in the section on critical theory, is important in showing a real life setting from which ideas about change and transformation can be construed. In this study, therefore, I have decided to make use of a qualitative research strategy.

5.4.1 Qualitative Research Strategy

The role of the social actor and the context in which the social actor acts are key in qualitative research strategy. This includes the actions and perceptions of the social actors. The world is seen through the eyes of those who are involved. The context or setting of the study is also considered. There is a "simultaneous expression of preference for a contextual understanding" of the issues under research and the background information is obtained as well (Bryman, 1984, pp. 77-78).

Qualitative research emphasizes "the social context for understanding the social world." It holds that "the meaning of a social action or statement depends on the context in which it appears" (Neuman, 2006, p. 158). The importance of context has already been discussed. The support for this under critical theory has been examined as well and its importance established (Hopwood, 1983; Laughlin, 1987). Qualitative research strategy therefore attempts to find meaning from the views and perceptions of social actors, within the context in which they are acting. Qualitative techniques used to gather data are "interviews, observation and diary methods" (Easterby-Smith eta al, 2002, p. 85). These could be used each on its own or combined in a particular study. This PhD has made use of a case study setting and used interviews and observations as part of data collection. A documentary review of material on PPPs has also been carried out.

Qualitative research is concerned mainly with the following: seeing through the eyes of those being studied and interpreting the social world from the perspectives of those who are being studied. In this study, the role of social actors within the Kenyan PPP process has been considered and interviews held with them. The researcher has tried to understand the views of the actors and why they hold these views. Secondly, qualitative research concerns itself with description and emphasis on context. There is need for explanations and these are noted so as to understand a particular setting. Through description, one is able to draw out the contextual setting of the matter or organization being studied. Again, in this study, the historical and local economic and political contexts within which PPPs have been adopted and implemented have been considered. Thirdly, qualitative research emphasises the process through which events have unfolded. Process can be investigated in real time through observation or through the eyes of participants. Qualitative research is also keen to be seen as flexible and of a limited structure so as to allow the researcher to form their own opinions, devise their own questions and be able to change as they go along (Bryman, 202, pp. 401-403). This part of qualitative research has some similarity to the Habermasian discursive process in which the researcher interacts with the subjects of research to clarify their meanings, as adapted to Laughlin's (1995) middle-range thinking.

5.4.2 Reliability in Qualitative Research Strategy

According to Neuman (2006, p. 194), "most qualitative researchers accept the basic principles of reliability and validity," although they rarely use the terms because of their association with quantitative measurement. It is also true, as Neuman asserts, that qualitative researchers apply the principles differently. Nevertheless, rigour - as reliability and validity might be construed - remains essential.

In qualitative research strategy, reliability is still concerned with the consistency of the measure of a concept. As we are dealing with social constructions that are interpreted in context, replicability is problematic, and as noted earlier, this is a key issue as qualitative research is not concerned with prediction. However, inter-observer consistency, where there is more than one observer and members of the research team agree on what they have witnessed and heard (Bryman, 2012, p. 390), may be relevant, as well as adopting the discourse approach suggested by Laughlin (1995). As a lone field researcher, it is the latter that I adopted in the context of the supervisory process of my PhD.

5.4.3 Validity in Qualitative Research Strategy

Validity "refers to the issue of whether an indicator (or set of indicators) that is devised to gauge a concept really measures that concept" (Bryman, 2012, pp. 171-173). In qualitative strategy, validity can either be internal validity or external validity. Internal validity seeks to determine whether there is "a good match between researchers' observations and the theoretical ideas that they develop". Conversely, external validity refers "to the degree to which findings can be generalized across social settings" (Bryman, 2012, p. 390).

While it may not be easy to generalize one's findings across different social settings, given that each setting would be within a unique context, the findings should bear some level of similarity to other such organizations or phenomena. In this study, it has been understood that every country has its own context and reasons for adopting PPPs and that there is no similarity in the setup of PPPs in two different countries, because each country is unique. However, being PPPs, we also expect some level of similarity in some of the PPP details.

5.4.4 Limitations of Qualitative Research Strategy

Given the fact that a qualitative research strategy places social actors or the participants being studied at the centre of the research process and takes their views into consideration, this research strategy can be viewed as subjective. In addition, the researcher is also involved in the process and, being too close to the research process, may also have biased views on the outcome of the research. Moreover, at each stage of the research process, the researcher will make a decision and choose one path over another. Each of these decisions can be said to be subjective too.

Although external reliability is where research findings are expected to be replicated, in qualitative research strategy, this replicability can be difficult to achieve. This may be so because of the process of research: two different researchers taking two different paths; or even a decision on what is important that should be included as part of the findings, who to interview and so on.

Moreover, within quantitative research, the establishment of laws from research findings that are then generalized is a key part of this research strategy. However, in qualitative research strategy, this may not be possible given that research is carried out within a given setting which has its own unique context. As discussed in section 5.4.3 above, the Kenyan PPP process is distinct and unique, even though PPPs in other countries will have the same structure and method of operation. The uniqueness is brought about by issues of context and background and so it is not possible to generalize the findings to fit in every situation. Nevertheless, in this study, the researcher has placed an importance on issues of context and the role of social actors and thereby adopted a qualitative research strategy.

5.5 Kenya as the Case Study

This PhD study has adopted "middle range thinking" and Kenya was selected as the case study from which the empirics have been obtained to flesh out the skeletal framework. The case study is an important research strategy because "it is a research strategy which focuses on understanding the dynamics present within single settings" (Eisenhardt, 1989, p. 534). The reason for selecting Kenya was not only because of reasons of access to data, the researcher being from Kenya, but also because Kenya is at a critical moment in its experience with PPPs, a PPP law having just been enacted in 2013. The methods used to collect data were the use of interviews, some observation and a review of archival documents.

A case study can also be exploratory, descriptive or explanatory (Yin, 1984). An exploratory case study is one in which there is a hypothesis and the research study seeks to test this hypothesis. Exploratory case studies also usually try to answer “what” questions. An explanatory case study on the other hand, seeks to explain by answering “how” or “why” (Yin, 1984, pp. 4-6). Lastly, a descriptive case study will seek to analyse a phenomenon in great detail. Data collection is often guided by theory and this theory should be stated before the process of data collection begins (Yin, 1993). Guided by the theoretical framework in Chapter Three, this could be argued to be a descriptive case study. Additionally, given that the thesis seeks to understand why Kenya has taken up PPPs, it could be argued that it has aspects of an explanatory case study as well.

Given the context, a case study is relevant because of the emergent nature of the PPP initiative. The study on the steering of PPPs in Kenya has therefore been carried out within the context of Kenya as a developing country, located in Africa and being in the process of implementing PPPs. As part of the study, official documents of the Kenya government, the World Bank and other organizations were reviewed. Fieldwork was also carried out in September 2013 and in July/ August 2014. Although there was no observation of the PPP process, the researcher was immersed in the research process and participated as an interviewer. Interviews were arranged with different actors within Kenya’s PPP process, the PPP Unit, some PPP implementing agencies and representatives of the private sector. By selecting the Kenya PPP process and studying the setting within which it exists, relationships and networks of the different organizations working on PPPs in Kenya were drawn.

Where there are social actors or participants in the case study being studied, the complexity of the networks in place cannot be underestimated. The case study helps in unravelling these relationships as “establishing the how and why of a complex human situation is a classic example of the use of case studies” (Yin, 1984, p. 24). The setting up of a PPP organization is a complex and difficult process. Firstly, it is a political process as governments have to take the decision to pursue this as part of public policy. Relevant legislation then needs to be enacted and private sector players involved. All these, including the reason for selecting the PPP as a policy, make it very complex. This research study therefore sought to draw out all the relevant strands so as to establish the steering process of PPPs in Kenya.

The use of a case study also presents an opportunity to use a number of different methods to collect data. Within case studies, there can be up to "six sources of evidence" as the "focus of data collection." These include "documentation, archival records, interviews, direct observations, participant-observation, and physical artifacts" (Yin, 1984, p. 79). In reviewing the implementation of PPPs in Kenya, the use of interviews and documentation analysis has been employed. A review of existing documentation on PPPs, including government publications and publications from donors such as the World Bank, was also carried out. Interviews were held with the PPP Unit in Kenya and with representatives from various organizations involved in the PPP process including government agencies, one private investor in a PPP and an SPV in a concession that was established before the PPP Act 2013. Interviews were held in the premises of these organizations to a large extent and therefore a limited amount of observation was carried out too. The case study approach enabled this to happen.

In conclusion, the case study approach was considered as the most appropriate in this research study. Eisenhardt has summarised the main uses of the case study and stated that "case studies can be used to accomplish various aims: to provide description, test theory, or generate theory" (Eisenhardt, 1989, p. 535 also citing Kidder, 1982; Pinfield, 1986; Anderson, 1983; Gersick, 1988 and Harris and Sutton, 1986). In Chapters Five, Six, Seven and eight, all these three have been touched on in different ways.

5.6 Methods of Data Collection

Laughlin (2004) refers to the need to flesh out the "skeletal" theory with empirical details. The research strategy guides the methods of data collection and a qualitative research strategy would employ the use of words in the collection and analysis of data and make use of "soft data" such as words, sentences, symbols and so on (Neuman, 2006, p. 151). Methods of data collection in a qualitative research strategy include the use of documents, interviews and observation (Bryman, 2012). These are the three methods that have been employed in this thesis.

5.6.1 Documents and Archival Evidence

According to Bowen (2009, p. 27), "document analysis is a systematic procedure for reviewing or evaluating documents - both printed and electronic (computer-based and Internet-transmitted) material." Subsequent to the literature review on PPPs, a systematic search of documents relating to PPPs in Kenya was obtained from different sources, the main sources being the World Bank and the Kenya Government PPP website. A comprehensive list of documents is shown in section 5.6.1.3 below.

The use of document analysis was the primary method of collecting data in this study, given their relevance and availability of information contained on the Kenya Government PPP Unit and World Bank websites. In addition, given that the PPP Act 2013 was only recently passed, some of the actors and PPP procuring agencies are just beginning to experience the use of PPPs. Other than documents, interviews have been carried out and are discussed later in this chapter.

Given that the theoretical framework used is Broadbent, Laughlin and Read (1991), the use of documents also provides an insight into the values of the lifeworld. As discussed in section 4.2.1, the values of the lifeworld drive the actions that ultimately direct systems (organizations) to behave in a certain way. While the values, knowledge and experience of the lifeworld may not be apparent, communication from an organization can give an insight into the entity's lifeworld. The use of documents in this case is therefore important as it would provide an insight into the lifeworld that has directed the steering of PPPs in Kenya.

5.6.1.1 Significance of the Use of Documents

The use of documents is important when "finding out retrospective information about a program and may be the only way that certain information may be obtainable" (Caulley, 1983). With the implementation of PPP Policy in Kenya, the use of documents can be useful in finding out the details behind the programme and how it has been developed to its present form. Documents contain information and details that may not be obtained in any other way, for instance the National Priority PPP List of Projects (GOK, 2014). Even if the entire list was to be memorised, the actual document provides more details than memory can hold and provides a resource that can be reviewed and revisited.

Additionally, in some cases, document analysis is the only feasible means of carrying out qualitative research. Bowen (2009) cites a study carried out by Wild, McMahon, Darlington, Liu and Culley (2009) who carried out a “diary study” that examined engineers’ information needs and document usage. In such a case, therefore, this information had to be gleaned from the records kept.

Documents are also useful in helping produce “rich descriptions of a single phenomenon, event, organisation, or program” (Bowen, 2009, p. 29 citing Stake, 1995; Yin, 1994). This information is very useful in a qualitative research strategy as information about the context or background is provided (Brymans, 2012). In using documents in this study, the history, background and context within which PPPs have been implemented in Kenya are shown. This kind of information helps to “uncover meaning, develop understanding, and discover insights relevant to the research problem” (Bowen, 2009, p. 29 citing Merriam, 1998).

Documents also do not impose themselves into the research process, while at the same time, providing useful information. Archived materials, especially, are considered to be "one form of unobtrusive method" (Brymans, 2012, p. 543). Such documents do not stand in the way, attempting to influence the researcher to go in a certain direction. The researcher can also not pre-empt the findings from the research because the documents have been in existence, independent of the researcher and without any anticipation that such a research would be carried out at some point in time. The validity of such data can therefore be considered as reliable. Documents are therefore seen as being “non-reactive” where they have “not been produced specifically for the purpose of social research" and, in this way, they contribute to the validity of the data contained in the contents (Bowen, 2009).

Other reasons for the use of documents are that they are cheap, mostly readily available such as on the internet and exact (Bowen, 2009). The cost of reviewing the documents is mostly the time spent while exactness implies that they provide you the bare information that a researcher is looking for, without embellishing it in any way.

Lastly, documents in qualitative research are usually used to provide for triangulation with other methods of research such as the use of interviews and observation. In this way, the data obtained from interviews is corroborated by the documents and vice versa. The data provided, therefore, complements each other (Bowen, 2009).

5.6.1.2 Official or Personal Documents

Scott distinguished between personal documents and official documents, with personal documents including diaries, autobiographies and other documents that have been produced by an individual. On the other hand, official documents include state documents and official documents from private sources such as websites of companies and private organizations. In reviewing all these documents, Scott came up with four criteria for assessing the quality of documents to be used in obtaining data. These were as follows: "Authenticity - is the evidence genuine and of unquestionable origin?; Credibility - is the evidence free from error and distortion?; Representativeness - is the evidence typical of its kind and if not, is the extent of its untypicality known?; Meaning - is the evidence clear and comprehensible?" (Bryman, 2008, p. 544 citing Scott, 1990). These four criteria have been discussed further below with respect to this study.

Official documents may be considered to be more authentic than personal documents, because they will presumably have gone through a process of compilation, review and publishing and will possibly have been checked by more than one individual. They are the official account. However, this is not to say that official documents are better than personal documents. This would probably depend on what is being researched. For instance, research into a major figure of a gone era would probably make more use of personal documents including diaries, letters, and observations of friends and family. In carrying out a documentary analysis of the steering processes and mechanisms on PPPs in Kenya, this study has relied on official documents from the state (government websites including government ministries and government agencies) and on official documents from private sources (documents from organizations such as the World Bank and the International Finance Corporation).

5.6.1.3 List of Documents Used in the Study

A systematic document search was carried out on PPPs in Kenya (Bowen, 2005; 2009). The Kenya Government PPP Unit website was the first point to be searched. From this website, all the documents on PPPs that had been uploaded were obtained for review. These documents then further pointed to other sites, notably, the World Bank site where additional documents were obtained and reviewed. In addition to these two major sources, internet searches were performed on PPPs in Kenya and more documents were reviewed. An initial search was carried out on the Kenya Government PPP Unit's website (http://pppunit.go.ke/) and from the World Bank website (http://www.worldbank.org/) on 22 and 23 March 2014. A second search was performed to check for any updates to the documents on 18 January 2015. One more search was carried out on 28 and 29 July 2017. Lastly, at the point of finalising this thesis in February 2019, a last search was performed to review for any additional documents.

In order to be systematic, “material is consistently included or excluded on the basis of rules” (Caulley, 1983). The only criterion with respect to the documents reviewed was whether they had any information or data on PPPs in Kenya, whatever the nature of the information. This was then reviewed with respect to the key research question: who steers PPPs in Kenya? And how is the steering carried out?

A list of the key documents is shown in Appendix 4. This list contains documents from the Kenya Government websites, from the World Bank website and from the World Bank’s associates.

5.6.1.4 Documents Analysis

In performing document analysis, the objective is to make sense of the information contained in the data and to synthesise this information so as to produce clear themes and categories of information from the data (Labuschagne, 2003 cited by Bowen, 2009).

It can also involve tracking which is a “process of working through documents looking for information that will confirm some hypothesis” (Caulley, 1983, p. 21). The researcher sieves through a large number of documents looking for those pieces that confirm the hypothesis or not. Bowen (2009, p. 32 citing Fereday and Muir-Cochrane, 2006) further breaks it down as involving “skimming (superficial examination), reading (thorough examination), and interpretation.” This is an “iterative process” that has both content analysis and thematic analysis. “Content analysis is the process of organising information into categories related to the central questions of the research,” while “thematic analysis is a form of pattern recognition within the data, with emerging themes becoming the categories for analysis.”

In reading through the documents on PPPs in Kenya, there were elements of both content analysis and thematic analysis. First, the content of each document was laid out and its key points noted. In addition, the nature of data contained was highlighted whether historical in nature, giving background information, whether technical in nature giving technical information on PPPs, whether contextual in nature or if just descriptive of an aspect of the PPP process. All the documents can therefore be argued to have contributed to content analysis, each explaining a different aspect of PPPs in Kenya.

With respect to thematic analysis, some documents were more useful in providing information that directly relates to the central research question. Again, a reading of the documents was carried out with the research questions in mind (in practice, these two activities took place at the same time, with the content and the theme being considered in each case). The documents were reviewed to shed light on the steering process of PPPs, the institutions and organizations that have been involved and the nature of the PPP programmes. In addition, information showing how the steering has taken place was reviewed too.

The primary objective of this study was therefore not just to analyse the contents of the documents, but to also glean from them information on the PPP programme. Content analysis views documents as "windows onto social and organizational realities" (Bryman, 2008, p. 554). This implies that the documents that were studied have shed light on a certain reality. By reading them and understanding them, these documents enabled the researcher to see into the PPP world generally and more specifically in Kenya. In addition, themes were drawn that directly help to address the research question, by informing on the reality of the Kenya PPP process. Other writers have also argued that "documents should be viewed as a distinct level of 'reality' in their own right" (Bryman, 2008, p. 554 citing Atkinson and Coffey, 2011). Taking this later view impresses on the reader the suggestion that the document was a key part of the process and not just "a window" into the process. In the case of Kenya PPPs, one key document is the Government's Sessional Paper on Public Private Partnerships which served as the blueprint for the implementation of PPPs. While it was quite rich in content and described past experiences with PPPs as well as charted new paths, it also signalled that the use of PPPs had become a key policy for the government of Kenya. This use of documents as part of the process is useful in viewing the interlinking chains in the development and evolution of PPPs in Kenya.

5.6.2 Use of Interviews

As part of data collection, the study also made use of interviews and, through a reading of the PPP activity in Kenya, interviewees were selected based on their experience with PPPs in Kenya. Interviewees were therefore selected for their knowledge of the PPP process in Kenya (Bowen, 2005; Rosenthal, 2016). Interviews also want to find out how a specific group of people perceive things (Silverman, 2013). A “specific and limited” group of potential interviewees was therefore targeted, “being experts in institutions who have specific insights and knowledge because of their professional position and expertise” (Flick, 2014, p. 227). The questions to be asked would therefore be “knowledge questions” (Patton, 2002, p. 350) which are facts about the PPP programme or process in Kenya. In this study, therefore, the specific group of people had to have knowledge of PPPs in Kenya or had to have been involved in one way or another, from their work or experience.

Specific groups of interviewees targeted were a representative from the Kenya Government PPP Unit; representatives from the World Bank Group network, including the World Bank, the International Finance Corporation (IFC) and representatives of procuring agencies and authorities as listed in the Kenya Government National Priority List of PPP Projects (GOK, 2013). In addition, local knowledge experts identified through their writings or practice on PPPs were also selected. These were the (then) Business Editor of a leading daily newspaper and the Transaction Advisory Partner of a big four accounting and audit firm with local presence in Nairobi that has been involved in providing transaction advice on PPPs.

The interviews were carried out in two phases in October 2013 and in July/ August 2014. During the interviews, semi-structured questions were used that would allow for the respondent to provide more information while at the same time sticking to the defined key areas of discussion. While structure eases the researcher’s task of organizing and analysing interview data (Bowen, 2005), a semi-structured approach is loosely structured, thereby allowing the interviewer to ask follow-up questions and the interviewee to answer at length and in “vivid detail” (Rubin and Rubin, 2012, p. 31). The two phases of the interviews are described below.

Initial contact was made on email to the organization in question and was later followed up with a phone call where the email response was late. In all cases, where possible, the email was sent directly to the person being requested for interview. However, where it was not possible to determine such a person from the organisation’s website, an email was sent to the official email contact provided, stating the objectives of the research and requesting for direction to the relevant person in the organization.

5.6.2.1 Interviews Phase One

This first phase of the interviews targeted International Finance Institutions (IFIs) that have been involved in PPP work, together with associated organizations such as the Public Private Infrastructure Advisory Facility (PPIAF).

In preparing for this phase, a confirmation for an interview by the head of the Public Private Infrastructure Advisory Facility (PPIAF) in Nairobi was obtained. Secondly, a confirmation for a second interview by the person in charge of public relations and external communications at the International Finance Corporation (IFC) offices in Nairobi, was also obtained, that an interview would be arranged with one of the senior staffers at the IFC. Thirdly, there were two pending replies from the office of the World Bank Country Representative in Kenya and the office of the IMF Country Representative in Kenya. These last two had been sought, but no concrete confirmation had been obtained. These would therefore be followed up by a telephone call in Nairobi.

The PPIAF was based at the regional offices of the World Bank headquarters in Nairobi at the time of the interview and helped governments in the region to prepare in various ways before involving the private sector in the provision of public services and more so in Public Private Partnerships (PPPs). This included enacting the relevant legislation as well as building capacity for government personnel so as to be able to effectively participate in the design and implementation of PPP projects. A meeting with the head of PPIAF was scheduled for 18 October 2013.

Having arrived in Nairobi, I followed up on the emails and phone calls that I had made before to the World Bank country director's office and to the IMF resident representative's office. An officer at the World Bank who took my call did not get back to me as promised, while the IMF referred me to the PPP Unit at the Ministry of Finance. It seemed then that I had only two interviews to proceed with: at the IFC and at the PPIAF office. I thus called the IFC, where a date and time was yet to be confirmed but I was informed that my contact was out of the office. Persistent calls over the next three days yielded the same kind of information.

During the phase of carrying out initial research for my literature review, I had come across a presentation done by an IFC Officer, whose name was attached to the presentation. I decided to try and get in touch directly with the said officer and gave him a call. He was quite open and polite and after I described my attempt to arrange for an interview with the IFC, he mentioned four key issues. Firstly, that he was working on a different country desk but would ask a colleague who was working on Kenyan projects to speak to me about Kenyan PPPs. Secondly, that he expected some difficulty however, as they were all in the process of moving to the new World Bank offices around this period. Thirdly, that my initial contact at the IFC had just left the organization. Lastly, he stated that one of the issues that I wanted to talk about, a project in which the IFC had been involved, was then regarded as sensitive by the donor community and by the Kenyan government itself and that it may not be easy to find someone who was willing to talk about it freely.

From this moment, I began to prepare myself for any difficulties in obtaining access for interviews (Bryman, 2012; Rubin and Rubin, 2012; Silverman, 2013). In the end, I was not able to get an interview with the IFC but my new contact promised to facilitate a meeting during the next phase of interviews. We discovered that we had a shared acquaintance and that he had also attended university in the UK. As Rubin and Rubin (2012) describe, it is sometimes easier to carry out an interview where the interviewer and the interviewee have a shared culture or some shared connection. Otherwise, some information may not be shared or some kinds of messages or hints may be ignored. This link was therefore one that I hoped to follow up on in subsequent fieldwork trips.

5.6.2.2 Interviews Phase Two

The second phase of the interviews was carried out in July/ August 2014. Again, emails were sent out, but this time targeting the PPP Unit in Kenya, various government agencies that are procuring authorities for PPP projects and individuals regarded as knowledge specialists on PPPs in Kenya, based on their writings or profession. One other consideration was the ease of access (Denscombe, 2010; Silverman, 2015), as there were instances in which I was introduced to the person by a mutual acquaintance.

Email correspondence was sent to a total of 19 people. Again, the World Bank, the IFC and the IMF were included in these requests. No meetings were however arranged with the three organizations, despite follow-ups. For the rest of the cases, in one case, the director of a PPP procuring authority agreed to a meeting, but later opted to respond on email with respect to the outlined agenda of the meeting. In two cases, interviews were agreed on email, but when later followed up, the meetings were cancelled and no reasons given. In one other case, a meeting was finally arranged after I had completed the fieldwork, though I was required to attend in person. As I had already left Nairobi, I was not able to make it. Lastly, in one case, a meeting was again arranged after I had completed the fieldwork, but the person being interviewed agreed to a telephone interview. As Oltmann (2016) argues, time and financial costs, as well as the geographical location of a respondent, are some of the factors to be considered in having a telephone interview. There were therefore some challenges in obtaining access to the interviews. In total, 13 meetings were held during phase two, making it a total of 14 meetings, including phase one, from an initial sample of 20.

During the interviews, I took detailed notes and also noted down my observations such as the setting of the interview. When the interviewee said something that I considered significant or insightful, I requested for a repeat or clarification to get down the exact words (Patton, 2002). Immediately afterwards, I reviewed my notes again, going over the notes for any comments that might require further clarification and to fill in any gaps. There was hesitation to record interviews in some cases and I therefore took detailed notes so as to have a comfortable interview setting. Interviewees can on occasion decline to be recorded for various reasons, including political reasons or if sensitive information is to be discussed (Denscombe, 2010). In addition, the active listening while taking notes can ensure that meanings that are essential to the topic and the purpose of the interview are retained (Brinkman and Kvale, 2015).

The table below shows the organizations that were selected and representatives from those organizations that were actually interviewed. Also included is the rationale for selecting these organisations (only the ones that responded and participated in the interview are shown).

Table 5.1 List of Organizations Represented in Interviews

#	Organization	Rationale for Inclusion in Interview
1	PPIAF East and Southern Africa	PPIAF enables governments to put in place the regulatory framework necessary for implementing PPPs. The World Bank is one of the members.
2	IFPPP Project/ PPP Unit	Kenya Government's PPP Unit is in charge of co-ordinating PPP activity in the country. IFPPP is the World Bank project through which the bank aims to build up the capacity of the PPP Unit and the country to undertake PPPs.

3	Trans Century Limited	Transcentury was one of the investors/ shareholders in the Rift Valley Railways Concession.
4	Ernst & Young Kenya	Ernst & Young, a big four accounting and audit firm, has been involved in Transaction Advisory work in the Eastern Africa region.
5	Kenya Railways Corporation	Kenya Railways is one of the participants in the Kenya - Uganda Railway Concession, carried out through Rift Valley Railways.
6	Rift Valley Railways	Rift Valley Railways (RVR) was the Special Purpose Vehicle (SPV) operating the Kenya - Uganda Railway Concession.
7	Geothermal Development Corporation	Geothermal Development Corporation is a government agency in Kenya charged with the development of geothermal power by taking up the risk of drilling wells. It was also the procuring authority for a PPP project under the Ministry of Energy.
8	KENGEN	Kenya Electricity Generating Company (KENGEN) is tasked with the generation of electricity from hydro, thermal, oil and wind sources. KENGEN. It was also the procuring authority for a PPP project under the Ministry of Energy.
9	Business Editor, Daily Nation	Daily Nation is the largest circulating daily newspaper in the East African Region, including Kenya. The Business Editor wrote or was responsible for extensive coverage of macro-economic changes in Kenya, including the development of PPPs in Kenya.
10	Former PS, Ministry of Information and Communication Technology	The ICT Ministry was responsible for setting up one of the flagship projects in the government's National Priority List of PPP Projects - The Konza Techno City, which intends to become Africa’s "Silicon of the Savannah."
11	Konza Techno City	Responses were received on email, from project staff, on behalf of the CEO. Konza City is one of the flagship PPP projects included in the Kenya Vision 2030 and also

		appeared in the initial list of the projects earmarked for PPPs.
12	Encomm	Encomm was a private bidder in a PPP project for Geothermal Development Corporation's (GDC) "pre-qualification for supply and installation of two Geothermal Modular Power Plants each of 30-35MW at Menegai Field under Public Private Partnership on a Build Own Operate Basis."
13	Kenya Investment Authority	The Kenya Investment Authority (KIA) is a government body tasked with promoting investments in Kenya. This includes Foreign Direct Investment (FDI) and PPPs. They facilitate and provide information to investors seeking to invest in Kenya.
14	Kenya Private Sector Alliance (KEPSA)	KEPSA is an umbrella body that seeks to promote the interest of the private sector in Kenya. Its membership is composed of private companies in Kenya.

Source: Author

5.6.2.3 Analysis of Interview Data

Miles and Huberman (1994) point out that data in qualitative research comes in the form of words and there are therefore three stages to be involved in analysing this data. These are data reduction, data display and drawing of conclusions from the data. Data reduction makes it more meaningful with respect to the objectives of the research, data display assembles and organizes the information while the drawing of conclusions is to address the research question.

Flick (2014 citing Roulston, 2014) contends that the identification of the relevant passages is the first key step in making sense of the data. Given that expert interviews were carried out and the interviewees chosen on the basis of their profession and expertise, the relevant passages were taken (Flick, 2014 citing Meuser and Nagel, 2009), for instance, why Kenya had decided to pursue a PPP policy. The passages were then manually coded into broad themes and then this was used to organize the information in a systematic manner, making associations with the research questions (Bryman, 2012). Through the coding, data was reduced to meaningful categories that are easy to make logical associations, with the research questions (Bowen, 2005). Conclusions were then drawn from the organized data.

The use of Computer Aided Qualitative Data Analysis (CAQDA) tools such as NVivo and, ATLAS.ti was considered and training in NVivo obtained. However, the analysis of the data was manually carried out as the key concern was to identify information showing how the steering of PPPs is carried out in Kenya.

5.6.3 Observation

All the meetings, except one, were held at the organization's offices and I was therefore able to observe the settings and some aspects of the organizations. This was direct observation as opposed to participant's observation as I was not participating in the study but was present in my role as the interviewer (Bryman, 2012; Silverman, 2013). One of the interviews was held at a sports club.

From my observations, I was able to draw some conclusions. For instance, while attending the interview at the PPIAF offices, I noted that the office was hosted at the World Bank offices in Kenya. The World Bank, until the week that I had my meeting, had its offices located at the Hill Park Towers in Upper Hill, a suburb of Nairobi. Within a week after the interview, the World Bank relocated to new premises within the same Upper Hill suburb and PPIAF also moved to new offices at a different building in the same locality. However, during the interview, the closeness of the two organizations could be observed and PPIAF staff used the World Bank email syntax as well, at that time (@worldbank.org). This information proved quite useful when analysing the data.

5.6.4 Ethical Considerations

During the process of carrying out the research and specifically the interviews, emails were sent out to the potential interviewees, outlining the broad objective of the research and broad agenda items for discussion. I also disclosed my identity, my university and the purpose of the study, being a doctoral study. It is important to disclose the objectives of the study and the researcher's identity so that the interviewees are aware and can make informed consent (Bowen, 2005). Responses were then received on email and dates and time further agreed on email.

During the interview process, the interviewees were again informed of the purpose of the study and reminded that they had the option to stop the interview at any time. In addition, they could choose not to answer specific questions. In one case, the interviewee opted to send an email response to the broad agenda rather than have a meeting. Interviewees were therefore fully aware of their rights as interviewees throughout the interviews. Lastly, issues of confidentiality were discussed (Silverman, 2013) and the interviewee was made aware that the interview data would be used for the sole purpose of the study.

Given that qualitative researchers interact with respondents (Bowen, 2005), issues of ethical concern are key, and these were addressed in the study.

In order to obtain Ethics Clearance from the university, a Simplified Ethical Approval Form was completed. The form provided the working title of the thesis and confirmed that all resulting data would be used only for the purposes of this study. Following the completion of this form, it was submitted to my supervisor for approval. It was subsequently sent to the PhD Director at the School of Management for approval. Approval was duly obtained.

5.7 Conclusion

Laughlin's (1995) middle-range theory is the research approach used in this study. By taking this approach, the study has adopted a "medium-medium-medium" position on the three schema of theory, methodology and change. By taking a middle position on each of these, the study has allowed for a discursive process to inform the research by allowing the researcher to go back and forth and make changes to the research strategy as it evolves.

The middle-range thinking theory is also rooted in critical theory which aims at not just understanding the nature of things or organizations, but also transforming things and making changes for the better. Through the third schema of change, the researcher can take a position on whether the status quo should be maintained or changes should be made. By adopting a middle position, the researcher is left open to these two options even as the research progresses.

Also, the position on theory allows the researcher to review whether there has been a high or low theorizing before. Again, by taking a middle position, the researcher is allowed room to incorporate high prior or low theorizing. With respect to PPPs, it has been argued in this chapter that there is lots of theorizing on technical aspects of PPPs, but limited theorizing on PPPs in Africa and more specifically in Kenya. A middle range is therefore adopted. With respect to the theoretical framework, based on Broadbent, Laughlin and Read's (1991) adaptation of Habermas (1984, 1987), again, there is a framework to be built upon with the results from the empirics. In this case, there is a “skeletal framework” already in place, which has then been fleshed out by the details of the empirical work.

Lastly, middle-range thinking ensures that the researcher does not have to entirely take a positivist or an interpretivist approach on the methodology schema. By taking a middle position, the researcher can then employ the methods that are most appropriate for the research study. A purely positivist approach or, conversely, a pure interpretivist approach may not be able to fully capture the issue under research. The middle-range approach allows for the context to be brought into picture as well.

The case study of Kenya’s PPP process was selected for in-depth study and the methods used to collect data have been an analysis and review of official documents on PPPs and the use of interviews of various actors in PPPs.

CHAPTER SIX: EMPIRICAL ANALYSIS: SUPRANATIONAL STEERING OF PPPs IN KENYA

6.1 Introduction

In Chapter One, the central research question was stated as follows: why has Kenya adopted the use of PPPs? The subsidiary research questions were stated as follows: who steers the PPP process in Kenya and what are the steering mechanisms used in steering PPPs in Kenya? This is the first of two chapters on empirical analysis that seek to answer these questions, following a review of documents on PPPs and interviews carried out in September 2013 and in July/ August 2014 on the steering of PPPs in Kenya. The analysis has been carried out through the lens of Broadbent et al's (1991) interpretation of Habermas' critical theory of societal development as described by Jurgen Habermas (1979, 1987). The theoretical framework has been discussed in detail in Chapter Four, but its key concepts are re-examined again in this chapter as they relate to supranational steering. Details of the research methods used during the fieldwork were discussed in Chapter Five. The empirical chapters are divided into two, with Chapter Six discussing the supranational steering of PPPs and Chapter Seven discussing the national steering of PPPs.

The empirics suggest that the steering of PPPs in Kenya is carried out in two distinct ways: through supranational steering, where International Finance Institutions such as the World Bank have provided a policy, intellectual and financial direction (Payer, 1974; Uddin and Hopper, 2003; Annissette, 2004; Goldman, 2007; Noumba Um, 2010; Pessoa, 2010; Appuhami et al, 2011). The national government, on the other hand, has carried out societal steering through the establishment of the necessary regulatory and institutional framework (Broadbent et al, 1991; English and Guthrie, 2003) to enable the setting up of PPPs. In the next section, a conceptual framework is presented to show how the steering of PPPs has taken place in Kenya. This is then used to guide the presentation of the findings.

The empirics also show that, given Kenya's aspirations to become a middle-income country by 2030 (Government of Kenya, 2012) amidst resource constraints, the use of PPPs has been made central to the implementation of flagship projects in the Kenya Vision 2030 programme (Ibid.). This builds on the experience that Kenya has with the private sector involvement in infrastructure, including on electricity power, telecommunications and a railway concession (Castalia Limited, 2011; Cambridge Economic Policy Associates Ltd, 2015; The Economist Intelligence Unit Limited, 2015).

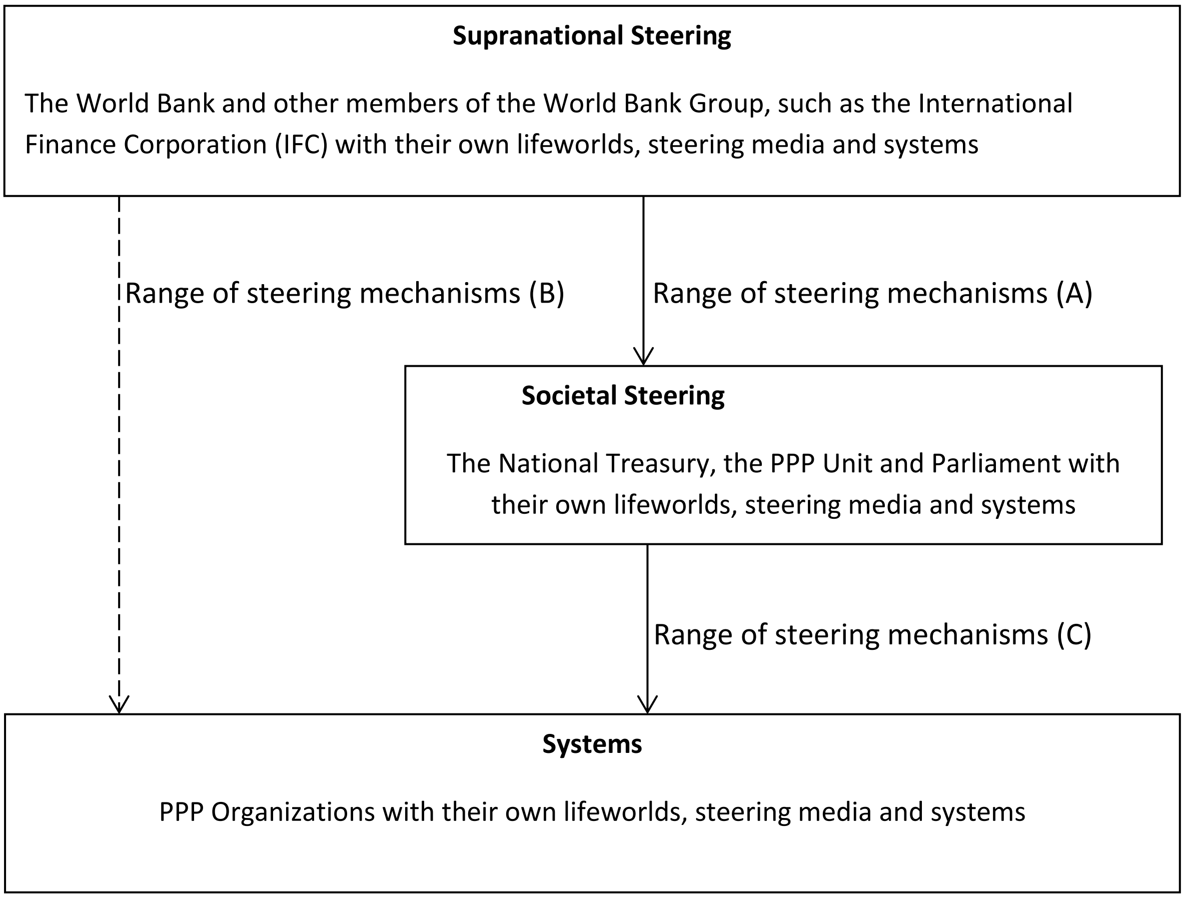
6.2 Public Private Partnerships Steering Framework

In Figure 6.1 below, the Public Private Partnerships Steering Framework has been conceptualised by the author, drawing from the theoretical framework in Chapter Five as presented by Broadbent et al (1991) and the empirical work carried out. This framework shows two distinct levels through which steering takes place. The first level, which has been discussed in this chapter, is the supranational steering level. The main organization that is carrying out this steering is the World Bank. The second level of steering is carried out by the national government in Kenya. The steering by the World Bank is referred to in this thesis as "supranational" because the World Bank is an international organization, being an International Finance Institution (IFI), but whose thoughts and actions can be seen within the national borders of a country. This is the external steering of a national organization and will become more apparent through the chapter.

In the first level, supranational steering is carried out by the World Bank, as the steering media and reveals the World Bank's involvement in the steering of PPPs, suggesting that there is a lifeworld behind the steering mechanisms of PPPs. In addition, there are a range of steering mechanisms (A), through which the World Bank ensures that its lifeworld is conveyed. There is also a range of steering mechanisms (B), that the World Bank uses directly over individual PPP organizations. This is represented by a dotted line, as the steering in this case may not be apparent at first and could involve non-formal means such as making a suggestion on what project to pursue or not to pursue (Miraftab, 2004; Goldman, 2007; Neua et al, 2010).

The second level of steering shows the steering performed at the national level through the Public Private Partnership Unit (PPP Unit) (OECD, 2010), a department at the National Treasury. Steering at the national level is carried out through a range of steering mechanisms (C), as depicted in the figure. This will be discussed in Chapter Seven and is the level through which the government implements and controls the PPP policy in Kenya. The PPP Unit, although formed in 2009, initially as the PPP Secretariat (GOK, 2011), is now entrenched in the PPP Act and its roles and functions as well as its structure specified in the Act (GOK, 2013). The key legislation of PPPs in Kenya, the PPP Act 2013, is also discussed.

Figure 6.1 - Framework of Public Private Partnerships Steering in Kenya



Source: Broadbent et al (1991, p. 8), Adapted by the Author

This framework, thus, presents a summary of the steering of PPPs in Kenya from the supranational organization and its lifeworld and from societal steering. In the sections below, this framework is reviewed and forms the guidepost for the analysis.

6.3 Lifeworld - International Financial Institutions (IFIs) and PPPs

In order to determine how the steering mechanisms work at the supranational level, it is important first to establish the 'lifeworld' that underlies the efforts to promote the use of PPPs in infrastructure based projects. According to Habermas, "modern society can be theoretically defined as an amalgam of lifeworlds", "steering media" and "systems". In broad terms "lifeworlds" are the communicatively formed (over time) life experiences and beliefs which guide attitudes, behaviour and action… "Systems" on the other hand are expressions of these lifeworlds in terms of functionally definable, tangible organizations. According to Habermas these economic and administrative "systems" are guided to follow lifeworld concerns. At the same time these systems are held together, despite differences of function and nature, by "steering media" such as money and power. Such media… become concretely represented in and through defined societal institutions (Broadbent et al, 1991, p. 2). International Financial Institutions such as the World Bank are therefore institutional steering media, with their own lifeworld.

The 'lifeworld' represents the life experiences and beliefs from which spring the ideas and direction of PPP activity. The 'lifeworld' thus provides the basis on which PPP policies are promoted and established, the setting up of a PPP institutional framework and the initiation of individual PPP projects. While the lifeworld of an organization such as the World Bank may be difficult to directly identify, an examination of "the communications which comprise the societal steering mechanisms emanating from the" (Broadbent et al, 1991, p. 12) Bank may be taken as evidence of the Bank's lifeworld. In the case of the World Bank, a range of communications from policy documents, reports and knowledge portals in websites show the Bank's thinking over time with respect to the participation of the private sector in the provision of public services. Some of these are discussed below.

6.3.1 World Bank Policy Documents - World Development Reports

The World Bank produces on an annual basis the World Development Reports which present the Bank's thinking on a key global issue. In a Foreword to the first edition in 1978, the Bank's President, Robert McNamara stated that "This first report deals with a number of fundamental problems confronting the developing countries and explores their relationship to the underlying trends in the international economy. Since it is not possible to address every major question in this initial volume, the analysis will be extended to other aspects of development in subsequent years" (World Bank, 1978). The Bank has since stayed true to this mission with each year tackling a different significant theme. A review of the reports and their themes since 1978 highlights a few of the reports that present the first international policy on the involvement of the private sector in the provision of public services. These reports signal the bank's view and strategies on different issues (Noumba Um, 2010) and provide guidance for the bank's staff and, by extension, the countries that the Bank is working with.

Throughout the communications from the bank, a constant running narrative is the objective to deal with the "fundamental problems confronting developing countries" (World Bank,

1978) against limited resources and budgetary constraints, thereby exploring different ways in which these fundamental problems can be resolved.

In tracing the World Bank's evolving views on the involvement of the private sector in providing public services, the World Development Reports have been reviewed from 1978, until the report for 1994 which clearly mentioned Public Private Partnerships and also outlined their structure. Only relevant reports based on their themes and titles, with respect to the private sector, have been included below. Each of these is examined individually to provide an insight into the Bank's thinking over time, with respect to the private sector involvement, culminating in the 1994 report on PPPs.

In the 1985 World Development Report with the theme *International Capital and Economic Development, World Development Indicators*, the World Bank increasingly distinguished between the private sector and the public sector. The Bank emphasised the importance of having each sector develop, stating that its arm the International Financial Corporation (IFC) played the role of a "catalyst for the private sector" (World Bank, 1985, p. 91). The role of the private sector in capital flows, as a conduit through which international finance can flow into a country either as debt or equity, was further discussed. The private sector's importance was therefore highlighted. The World Bank also identified the role of the private sector in taking up investments in previously State Owned Enterprises (SOEs). With reference to the Bank's structural adjustment lending, the Bank said that it offered advice and support in the:

> Privatization of state-owned enterprises that the government no longer wishes to hold. The IFC may advise on strategic aspects of privatization: whether to sell, lease, or offer a management contract; the sequence in which enterprises should be privatized; the kinds of buyers to seek and how to seek them; and how to evaluate the enterprises. The IFC may also participate in the financing when particular enterprises are sold to private buyers. Acting directly as an investor, but always as a minority participant, the IFC promotes the flow of foreign investment to developing countries and seeks to stimulate the domestic private sector (World Bank, 1985, p. 132).

In the excerpt shown above, the Bank tries to show that the private sector has a key role to play in developing countries and that its arm, the IFC has been involved in private sector funding and will continue to help boost the domestic private sector. More importantly for this thesis, the Bank highlights its role in privatization and shows its promotion of the private sector to acquire state owned enterprises, being on standby to advise on such transactions. Moreover, the Bank reveals that privatization does not only involve the sale of SOEs, but could also take the form of a lease, or a management contract, which are both types of PPPs (Edwards et al, 2004; Duffield, 2010). The 1985 report therefore showed the Bank's thinking on the private sector and the role that it plays in promoting privatization.

The World Development Report in 1987 had a theme of *Industrialization and Foreign Trade*, but again had a few paragraphs for the reform of SOEs, citing the different ways through which divestiture could take place. These were through liquidation, involving the closure of an enterprise and the sale of its assets or the suspension of some or all of its operations; privatization through the direct sale of an ongoing enterprise to the private sector and the privatization of management using leases and management contracts (World Bank, 1987).

The World Development Report, 1988, further focused on *Public Finance in Development.* This report spoke of the strengthening of public finance through various strategies, including through the reform of state owned enterprises. The report mentioned that although some SOEs have succeeded over time, there were also quite a number that had failed commercially and were basically a burden on public finances as governments had to meet deficits arising from the SOE operations. Moreover, where governments had provided guarantees to SOEs when borrowing, the government is forced to pick up these debts when the SOE is no longer able to pay for the debts (World Bank, 1988).

In this bid to improve on the commercial success of SOEs, the World Bank states that,

> Private sector involvement can often improve the efficiency of SOE operations and reduce their drain on fiscal resources. Because the barriers to full and rapid privatization are often daunting, intermediate solutions such as subcontracting, leasing, or allowing private competition are often more feasible (World Bank, 1988, p. 10).

The World Bank implies that the private sector can help resuscitate collapsing SOEs, drawing on the neoliberal theme that markets are best placed to deliver "economic outcomes" (Edwards and Shaoul, 2003). Given the limitations of privatization and what can be privatized, with selling SOEs being difficult transactions and there being “nothing” else “to sell” (Broadbent and Laughlin, 2003), to improve the public finances, governments should then look at “subcontracting, leasing, or allowing private competition” (World Bank, 1988, p. 10).

The concept of efficiency, in addition to economy and effectiveness (the three Es), is one that is associated with the private sector and the markets (Power, 1997). When this is brought into the public sector, it is argued by the Bank to be able to transform the sector. Subcontracting and leasing are mentioned as ways through which governments can begin to reform the SOEs.

A reform of the worlds’ financial systems was the theme in the 1989 World Development Report, *Financial Systems and Development*. Given the focus on the financial services sector, the bank highlighted the efficiencies inherent in state owned banks and suggested their privatization. Given the critical importance of banks in the economy, the Bank suggested a monitoring of the process to ensure that the banks do not end up in concentrated industrial groups (World Bank, 1989).

The World Development Report 1991 had as its theme, *The Challenge of Development.* This report provided a view of privatization over the previous decade in one section and concluded that,

> Privatization is necessary and highly desirable, even though difficult and time-consuming (World Bank, 1991, p. 144).

A review of World Bank thinking through that decade shows a strong pointer to the bank’s ideology, its values and belief in the good of the markets to allocate resources better and to deliver on various programmes (Broadbent and Laughlin, 2003; Edwards and Shaoul, 2003).

Finally, in 1994, the World Bank released its Development Report, titled *Infrastructure for Development* and in this report began to articulate more clearly the vision that it had for a “partnership” between the public and the private sectors. The report stated, as one of its key messages,

> Public-private partnerships in financing have promise. Private sector involvement in the financing of new capacity is growing. The lessons of this experience are that governments should start with simpler projects and gain experience, investors'

returns should be linked to project performance, and any government guarantees needed should be carefully scrutinized (World Bank, 1994, p. 2).

The report viewed Public Private Partnerships (PPPs) as an innovation in the financing of public infrastructure. From a review of the World Development Reports, this is the first time that the Bank begins a marked step towards the use of PPPs (Noumba Um, 2010). The Bank provided four options A, B, C and D with option B outlining the details where public ownership and private operation of an infrastructure facility took place. The complete list of options are Option A (Public ownership and public operation), Option B (Public ownership and private operation), Option C (Private ownership and operation, often with regulation) and Option D (Community and user provision) (World Bank, 1994, p. 8).

The involvement of the private sector was outlined under Option B. In this case, the government would be the owner of the project and the private sector would be the operator. Their relationship would be governed by a contract, which would include any regulatory provisions. The private operator would assume the commercial risks involved in the operation and share in the investment risk under concessions. Concessions would also include contracts to build and operate new facilities under the BOT arrangement and its variants (World Bank, 1994, p. 9). According to the Bank, private financing of infrastructure only stood at 7% then, with bilateral and multilateral financing coming to 12%. The Bank, therefore, viewed this as extra capacity for the private sector to be involved and hoped that the private sector would double its share by the year 2000 (World Bank, 1994, p. 10).

The description of Option B by the Bank outlines the key aspects of PPPs from the contracts (Edwards and Shaoul, 2003; Hart 2003) at inception and the regulatory environment (Broadbent and Laughlin, 1999; Broadbent and Laughlin, 2003; English and Guthrie; 2002; Andon, 2012). It also details the separation of risks between the private and public sectors (Froud, 2003; Asenova and Beck, 2010) and the structuring of PPPs to include concessions with different types of arrangements such as Build, Operate, Transfer (BOT) (Broadbent and Laughlin, 2003; Duffield, 2010). The World Bank Development Report of 1994 can be argued to have provided a framework on which the use of PPPs would be built over the years.

The information contained in the World Bank Reports, as discussed above, is summarised in the table below:

Table 6.1 Roles of the Private Sector from Selected World Bank Reports

Source	Title of Report	Theme on Private Sector Role
World Bank, 1978	World Development Report, 1978	Identified "fundamental problems confronting the developing countries" that would be tackled in subsequent reports.
World Bank, 1985	International Capital and Economic Development, World Development Indicators	The role of the IFC as "a catalyst for the private sector," advising on privatization and forms of privatization. Also acting as a financier when particular enterprises are sold to the private sector.
World Bank, 1987	Industrialization and Foreign Trade	Privatization through the direct sale of an ongoing enterprise. Privatization of management using leases and management contracts.
World Bank, 1988	Public Finance in Development	Strengthening of public finances through various strategies, including the reform of SOEs. Such reform can include privatization or "intermediate solutions such as subcontracting, leasing or allowing private competition."

World Bank, 1989	Financial Systems and Development	Reform of the financial services sector, including of state-owned banks.
World Bank, 1991	The Challenge of Development	Review of privatization over the last decade. “Privatization is necessary and highly desirable, even though difficult and time consuming.”
World Bank, 1994	Infrastructure for Development	The use of Public Private Partnerships (PPPs) in the financing of infrastructure projects.

Source: Author

The World Bank also laid out its vision for infrastructure to include the private sector in its ‘Private Sector Development Strategy - Directions for the World Bank Group in 2002’ (World Bank, 2002). Following this strategy document, the World Bank “made a sustained effort to scale-up its support for infrastructure since 2003. In FY10, the Group emerged as the largest multilateral financier for infrastructure—transport, water, energy and information and communications technology (ICT). It now represents 43 percent of the Group’s assistance” (World Bank, 2012). In 2012, the bank adopted a three-year strategy, termed “Transformation through Infrastructure,” which guided the Bank’s activities in this sector, including the mobilization of private capital and the use of PPPs.

6.3.2 The World Bank Public Private Partnerships Site

The World Bank’s views on the use of private capital in helping to deliver public services is also apparent on the Bank’s own Public Private Partnerships website (http://www.worldbank.org/en/topic/publicprivatepartnerships - accessed on 5 September 2016). Through this site, the Bank has put together a comprehensive database of information on PPPs including the current PPP projects in the world, technical information on how to establish a PPP framework, knowledge on what PPPs are, lessons on PPPs from various countries that have used them and a comprehensive guide on the establishment and use of PPPs.

The World Bank states its objective in establishing the knowledge portals as follows: "The World Bank Group is committed to helping governments make informed decisions about improving access and quality of infrastructure services, including, where appropriate using Public-Private Partnerships (PPPs) as one delivery option" (World Bank PPP website, 2016). The Bank acknowledges that there are other options and seems to refer to its own categorisation of different Options A, B, C and D, already discussed in the section above, in its earlier reports (World Bank, 1994).

Through the ***PPP website***, the World Bank has a significant say throughout the PPP process. The Bank states as its strategy that many "units of the World Bank Group, with a wide range of expertise, instruments and services, contribute to the PPP agenda - from upstream policy advice for regulatory and institutional reforms to downstream transaction support." These include "a multibillion-dollar lending, investment and guarantee portfolio along with several hundred capacity-building, analytical and advisory activities" (World Bank PPP website, 2016). This ranges from the establishment of a regulatory framework, the selection of projects and the establishment of PPPs.

The ***PPP Toolskit*** page provides countries with a list of tools to use in determining how to make use of PPPs, including a tool for diagnosing the readiness of a country for PPPs. Additionally, there is a model for carrying out a fiscal risk assessment for the use of PPPs. There is also a report on recommended PPP contractual provisions to be included in PPP contracts and a framework for the disclosure of PPP projects.

The ***Global Infrastructure Facility (GIF)*** is "a global open platform that facilitates the preparation and structuring of complex infrastructure public-private partnerships (PPPs) to enable mobilization of private sector and institutional investor capital" (World Bank PPP website, 2016). Countries can therefore reach out to this platform to obtain information and technical assistance that they may require in developing their own PPPs.

The ***PPPs Knowledge Lab*** is described by the Bank as being the first comprehensive online resource that pools the knowledge and experience of industry leaders in public-private partnerships (PPPs). The Knowledge Lab has been created through a collaboration of multilateral development agencies from around the world (World Bank PPP website, 2016).

The World Bank has also created a ***Public Private Partnership in Infrastructure Resource Centre***, which contains "sample public-private partnership (PPP) agreements and concessions, checklists and sample clauses, terms of reference, risk matrices, standard bidding documents developed by government agencies and sample PPP and sector legislation and regulation." This site is designed for government officials and experts in the PPP process and has materials in "English, French, Spanish, Portuguese, Arabic and Mandarin Chinese" (World Bank PPP website, 2016).

A significant inclusion by the bank is the ***Private Participation in Infrastructure (PPI)*** website. This PPI database "tracks PPI trends in the developing world" and shows details of projects across different sectors (World Bank PPI Database, 2015). Through this database, the involvement of the private sector is highlighted and projects reaching financial close for every year since 1990 are shown.

Different measures for the projects are shown for greenfield projects, divestiture projects, management and lease contract projects and concessions. Projects are also shown across different regions. This database goes to demonstrate the importance attached to the private sector involvement in infrastructure projects by the World Bank and the level to which the World Bank monitors data on such projects. Given that the private sector forms one part of PPPs, the World Bank has also promoted the use of PPPs through different ways, including publications, guides on PPPs such as the World Bank Public Private Partnerships Reference Guide (World Bank Institute, 2012) and programmes for PPPs in different regions. Both the World Bank and the IFC also have dedicated PPP pages on their websites with details of PPP programmes and how these can be supported as well as their benefits.

The World Bank has also promoted private sector participation through the ***Public Private Infrastructure Advisory Facility (PPIAF).*** The PPIAF says on its website that the "PPIAF was launched in 1999 as a joint initiative of the governments of Japan and the United Kingdom, working closely with the World Bank. It was built on the World Bank Group's Infrastructure Action Program and designed to reinforce the actions of all participating donors. Today PPIAF's members include bilateral and multilateral development agencies and international financial institutions" (PPIAF, 2015). This is one of the organizations that participated in the interviews during the fieldwork.

The World Bank is one of the organizations that form the Public Private Infrastructure Advisory Facility (PPIAF). The PPIAF offices for East, Central and Southern Africa (at the time of the fieldwork) were also housed at the World Bank's offices in Kenya. The PPIAF,

> *supports an enabling environment for the private sector to participate in the investment in public services by coming up with legislation; regulations (government's policy) and different sectors laws. It also helps in institutional setups (such as the creation of PPP units)* (East and South Africa Leader, PPIAF).

PPIAF therefore tries to build capacity, help in facilitating PPP legislation and support the overall PPP framework.

The World Bank, as a key member of the PPIAF, has influence over PPIAF programs. Even though the World Bank is not the only member of the PPIAF (there are 17 members according to the PPIAF website, 2015), it hosted the PPIAF offices within its own building at the time of the fieldwork in 2014, before both later moved to new premises at the end of 2014. PPIAF staff also shared the bank's email syntax and used the bank's facilities. It could therefore be argued to have been implementing the Bank's programmes and requirements.

The involvement of the private sector and the promotion of this involvement can thus be argued to be one of the values of the 'lifeworld' of the World Bank, in a bid to promote its objective to address the "fundamental problems confronting the developing countries" (World Bank, 1978). The 1994 World Bank Development Report put infrastructure as one of these problems and again identified the involvement of the private sector. This involvement, of the private sector, has been promoted in different ways, among them, the use of PPPs.

6.3.3 A Role for the Markets as Lifeworld Value

The communications reviewed and the World Bank's documents suggest a belief in the power of the markets to allocate resources for better "economic outcomes" (Edwards and Shaoul, 2003). By seeking to involve the private sector, the World Bank seeks to tap into private capital and private expertise to help deliver on projects. The World Bank's belief in the markets to promote efficiency and economy (Power, 2007) and the necessity to obtain private capital to meet funding gaps (Foster, 2008) have made the bank to increasingly come up with ideas that involve the tapping of private capital.

A review of the Bank's thinking through the publishing of the World Development Reports shows an increasing encouragement of the private sector in different formats, over the years. The very first report acknowledged that there were "fundamental problems confronting the developing countries," and that the bank would use these reports to address different problems from time to time (World Bank, 1978). Different volumes would be used as the problems were many and it would not be "possible to address every major question" in the first volume (Ibid.).

Through the years, the role of the private sector is discussed and re-examined. From the 1985 report, the Bank emphasised the importance of both the public and private sectors, suggesting that each should develop. In the case of the private sector, the Bank highlighted the role to be played by the IFC as a "catalyst for the private sector" (World Bank, 1985, p. 91). The IFC would advise on the "strategic aspects of privatization, whether to sell, lease or offer a management contract" (World Bank, 1985, p. 132). Different ways through which "divestiture" could take place were further discussed in the 1987 report (World Bank, 1987).

The role that privatization could play was further discussed in the World Bank Report 1988, including improving "the efficiency of SOE operations" and reducing "their drain on fiscal resources" (World Bank, 1988, p. 10). The 1989 report explored the role of privatization in financial services, including on state owned banks, while the 1991 report reviewed the previous decade's progress on privatization (World Bank, 1988; World Bank, 1991). Finally, in 1994, the World Bank looked at the role of the private sector in infrastructure and proposed that there should be "Public-private partnerships" (World Bank, 1994).

Furthermore, the Bank has actively promoted the use of Public-private partnerships by creating portals with knowledge and information on the use of these partnerships. This is demonstrated in section 6.3.2. Many different parts of the Bank have been brought together to complement each other in providing knowledge, tools and information on PPPs. Countries may therefore be encouraged to adopt the use of PPPs given the availability of information, templates and toolkits that can be easily deployed. The private sector, on the other hand, may also involve itself more as the information needed to make decisions on PPPs is made easier to access.

This increasing use of markets and market mechanisms, and the shrinking of state power, coupled with a belief in the role that markets can play, can be referred to as neoliberalism (Holmes, 2011). The World Bank can thus be argued to support neoliberal ideas, embedded in its prescriptions to developing countries (Annisette, 2004). This can be demonstrated to be a key lifeworld value of the World Bank. Indeed, "the neoliberal economic policies often are due" partly to "powerful pressure on governments by international lending agencies" (Miraftab, 2004, p. 90 also citing Bond, 2000b and George, 1997), including the World Bank.

The Bank has argued that the private sector is a partner to international development efforts and to governments. In doing this, the Bank has prepared the ground by coming up with policies that make the involvement of the private sector much easier, such as the work performed by the PPIAF. Through its annual World Development Reports, the Bank shows that involving the private sector in its projects and programmes, is a key strategy.

6.4 Steering Mechanisms

Figure 6.1 shows that the supranational steering media use a range of steering mechanisms to steer societal systems towards achieving the lifeworld objectives. The World Bank and its associates, as an institutional steering media, make use of various steering mechanisms (A) to steer societal systems and a range of steering mechanisms (B) to steer PPP systems and organizations directly in Kenya. In order to determine the steering mechanisms used in the steering of PPPs in Kenya, key phases in the implementation of the PPP process have been identified and the Bank's role highlighted. This helps to illustrate how the Bank has used different steering mechanisms in order to pursue specific objectives.

These phases have been summarised below and form the basis of discussion in subsequent sections. Each phase has a distinct objective.

The World Bank has used various steering mechanisms to achieve the following (as discussed in the different sections):

6.4.1 - Set up a governance and regulatory framework for PPPs

6.4.2 - Build up capacity for the implementation of PPPs.

6.4.3 - Identify suitable projects for PPPs.

6.4.4 - Control and monitor the ongoing PPP projects.

6.4.1 Setting up a Governance and Regulatory Framework for PPPs

In order for countries to adopt PPPs as a policy, they need to have in place a suitable regulatory framework that will enable the involvement of the private sector in the specific ways required by PPPs (World Bank, 1994; Broadbent and Laughlin, 2003; OECD, 2010; Andon, 2012; World Bank, 2014). This would require the passing of the relevant legislation and setting up institutions that can oversee the process. In the case of developing countries, the World Bank has come forward to promote the use of PPPs (Noumba Um, 2010; Appuhami et al, 2011). In the case of Kenya, the evidence suggests that the World Bank was involved in steering the initial process for setting up the relevant governance and regulatory framework. This was carried out through the work done by the Public Private Infrastructure Advisory Facility (PPIAF).

6.4.1.1 The Public Private Infrastructure Advisory Facility (PPIAF)

The PPIAF is a multi-donor organisation that has been formed to offer assistance to low-income and middle-income countries through both technical assistance and funding. Additionally, PPIAF supports an enabling environment for the private sector to participate in the investment in public services by coming up with legislation; regulations (government's policy) and different sectors laws. It also helps in institutional setups (such as the creation of PPP Units), PPPs being nascent in the region. PPIAF carries out capacity building (knowledge management) by creating centres of excellence and facilitating the improvement of the skills of the public sector professionals involved in PPPs. Further, it facilitates private sector involvement in the provision of public services and gives grants to governments to help in this process (PPIAF website, 2015).

There are 17 multilateral and bilateral donors who form PPIAF, with the World Bank being one of them. At the time of the field research, the PPIAF offices for East, Central and Southern Africa were housed at the World Bank's offices in Kenya. Although the PPIAF operates mostly in low and middle-income countries ("South to South Learning"), its focus is mostly on low income and fragile states (PPIAF website, 2015). This means that it therefore has a large presence in sub-Saharan Africa, among other regions in Asia and South America. The program council members meet once a year to set the strategy for the year. Co-ordination is carried out by the secretariat, if there are any issues to be considered outside Nairobi. In carrying out its roles,

> *PPIAF is quite upstream* (East and South Africa Leader, PPIAF)

This is significant as it reveals that PPIAF comes in first and involves itself with the setting up of the overall regulatory framework and not the actual project implementation (Farquharson, 2011; OECD, 2010; World Bank, 2014). This then enables the private sector participant to join the PPP. Downstream activities (project implementation) are therefore to be carried out by governments, the private sector and the funding organisations such as the World Bank. This could be interpreted to mean that the World Bank, keen to carry out downstream activities with respect to the private sector involvement in infrastructure, first helped in the formation of the PPIAF so that PPIAF could carry out upstream activities and prepare the way for downstream activities to take place. Without the work carried out by PPIAF in low and middle-income countries, there may be less progress in the implementation of PPPs in these countries. PPIAF thus facilitates the process for PPP investments to take place.

> *PPIAF supports an enabling environment for the private sector to participate in the investment in public services by coming up with legislation; regulations (government's policy) and different sectors laws. It also helps in institutional setups (such as the creation of PPP units)* (East and South Africa Leader, PPIAF).

PPIAF therefore lays the groundwork for the establishment of PPPs by putting in place the necessary help in facilitating PPP legislation and support the overall PPP framework. This has also involved sensitising Members of Parliament on PPPs,

> *PPIAF also helps governments in drafting PPP policy and sensitises Members of Parliament, as well as professionals and other technical people. Following PPIAFs involvement, the Kenyan parliament passed the PPP legislation in December 2012* (East and South Africa Leader, PPIAF).

In addition, PPIAF also helps governments prepare a pipeline of projects with the governments liaising with each agency to see which ones are viable (“scoping”). The implementing agency then owns the project. Throughout these processes, PPIAF provides the experts and hires the consultants.

Other PPIAF roles were obtained both from the PPIAF website (2015) and from interviews with the Leader, PPIAF, East and South Africa. PPIAF also helps governments to carry out value for money analysis (vs. Public Sector Comparator (PSC) (Grimsey and Lewis, 2005) and carry out an initial assessment on the potential cash flows. This ensures that governments come up with a pipeline of viable projects that can be put up through PPPs. In sub-Saharan Africa, South Africa uses the PSC as a means for making decisions on the adoption of PPPs (Farlam, 2005).

As far back as 2000, in Kenya, the Public Private Infrastructure Advisory Facility (PPIAF) was already funding projects that enable the private sector to participate in the delivery of public services. According to the PPIAF website, since 2000, they have been involved in 23 activities in Kenya worth USD 5.8m, involving the private sector working together with the government, not only as PPPs. The PPIAF’s “second multi-sector activity” provided “advice on the development of a PPP strategic implementation framework, which would create an environment conducive for investment in PPPs. This supported the development of a legal, regulatory, and institutional framework for PPPs in Kenya, and led to the government issuing detailed PPP Guidelines as well as setting up a PPP unit in March 2010” (PPIAF website, 2015).

In addition, in February 2011, “the Ministry of Finance requested PPIAF funding to support the PPP Secretariat by: i) providing the requisite advice and support in fulfilment of its mandate to assist ministries, departments, and government agencies in identifying and developing PPP projects; and ii) helping contracting authorities review the work of PPP transaction advisors” (PPIAF website, 2015). Some of the clauses that ended up in the PPP Act 2013 were therefore in existence before, through the PPIAF.

Some of the PPIAF outputs included “establishing a PPP Program - Institutional Framework for Kenya, April 23, 2012; Comments on Draft PPP Bill approved by Cabinet in November 2011 and to be submitted to Parliament in December 2012; Review of PPP Legal Framework in Kenya, April 2012” (Ibid.). PPIAF was thus involved very much with the PPP Act 2013, even before it had become a piece of legislation. Lastly, although “a PPP Unit was set up at the ministry of Finance in March 2010," the capacity of the PPP Unit was enhanced through advisory support in 2012 (Ibid.).

PPIAF also helps in the financing of operators (for operational contracts) where risks can be apportioned. In such cases, the government's commitment is sought so that the private sector is assured that the risks to be borne by the government will be underwritten by the government. Decisions by PPIAF on different projects may bring different organisations together such as various partners and donors' organizations. Initially, PPIAF brings on board people to support the government. The carrying out of feasibility study is not cheap and many different professionals are brought on board such as transaction advisors, lawyers, accountants, engineers etc.

PPIAF facilitates the negotiation, new transaction initiation and replication of pioneering transactions. PPIAF has also assisted "the Kenya PPP unit to develop finance regulations for the PPP Bill and direct agreement for funding and providing follow-up assistance and mentoring for two pilot transactions." In addition, it is currently helping provide "policy analysis and recommendations that will help strengthen the design and implementation of the Government of Kenya's PPP program through identification of current knowledge gaps and policy challenges in the implementation of the PPP program" (PPIAF website, 2015).

6.4.1.2 PPIAF as a Steering Mechanism

The PPIAF's role is therefore to help steer countries that have not yet set up PPPs to establish the necessary governance and regulatory framework. This includes the setting up of the regulatory and institutional framework for PPPs in Kenya and in the region. In this case, the lifeworld of the World Bank, as expressed in its strategy to involve the private sector in infrastructure development, is conveyed through steering mechanisms to the national organizations, by first preparing them for the eventual adoption of the PPP policy, through the setting up of the initial regulatory framework. In the case of Kenya, the PPIAF helped the PPP Unit to develop the draft regulations for the PPP Bill.

In this case, it can be argued that the World Bank has used an affiliate organization within its network, the PPIAF, to steer the initial regulatory set-up of PPPs in a country, including training Members of Parliament on what PPPs are and encouraging them to pass the bill. The PPIAF could be considered to be one of the World Bank's transnational policy networks

(Goldman, 2007) through which the Bank ensures that its objectives are met. In this case, the PPIAF acts as a steering mechanism through which the World Bank ensures that countries set up the necessary regulatory framework for the involvement of the private sector.

6.4.2 Building up Capacity for the Implementation of PPPs

The World Bank derives its immense power from its ability to provide funding for projects. Where the bank has provided funds, it can provide additional funds to ensure the success of its projects (Annisette, 2004). Having established the relevant regulatory framework in a client country, the World Bank then seeks to build up the necessary capacity framework. In the case of Kenya, the World Bank provided funding for a project to help build capacity for PPP institutions. This was the Kenya Infrastructure & Finance Public Private Partnership Project (IFPPP).

6.4.2.1 The Kenya Infrastructure & Finance Public Private Partnership (IFPPP) Project

The Kenya IFPPP Project was a World Bank project ID P121019, Credit No 51570KE for USD 40 million that was meant to build up and support the development of PPPs in infrastructure in Kenya. The project was approved on 15 November 2012 and as at 28 February 2014, USD 2.79 million had been disbursed. The project's closing date was 31 December 2016. The project had a maturity period of 40 years, with a grace period of 10 years (World Bank website, 2015).

It should be noted that at the time of writing the final thesis, a second agreement had been signed between the Kenya Government and the World Bank for USD 50 million. This was signed on 7 August 2017, Credit No 6121KE (World Bank, 2017). However, this thesis makes reference to the first tranche of the IFPPP Project, given it was effective during the study.

According to the World Bank website, this project was "to increase private investment in the Kenya infrastructure market across sectors and to sustain this participation over an extended period of time." Four programs were each allocated a portion of the USD 40 million. This was allocated as follows: "USD 11.50 million for technical support (institutional/ regulatory reform); USD 20 million for the PPP pipeline of transactions as well as individual PPP deals; USD 5 million for the infrastructure fiscal commitment and risk framework and USD 3.5 million for PPP program support" (World Bank website, 2015).

The IFPPP Project is one way through which the World Bank has been able to steer the PPP Policy in Kenya as it seeks to build the capacity of Kenya to be able to undertake PPP projects. Part of this is done through the funding and equipping of the PPP Unit.

> *Since the funding, the PPP Unit and the Kenya Government have been able to do several things. Firstly, the PPP Unit has now become fully functional, supported by this facility. Secondly, the Government was able to pass the PPP Act through Parliament and the President signed it into force in February 2013* (PPP Project Manager).

Through this facility, the Kenyan government was able to get its PPP process off the ground and start the initial stages of preparing for the bid process for different PPP projects, thereby developing Expression of Interest documents, Request for Proposal documents and even reaching the bidding stage.

According to the World Bank website, the IFPPP Project has "four components to the project. The first component of the project is institutional support and regulatory reform. This component was established based on an assessment of needs and lessons learned from prior technical assistance projects in Kenya, particularly the Financial and Legal Sector Technical Assistance Program (FLSTAP).

The second component of the project is Public-Private Partnership (PPP) pipeline preparation. This component for US$20 million will assist the government of Kenya (GoK) in ensuring that the first projects to come before the PPP Steering Committee (PPPSC) and PPP Secretariat (PPPS) are well-prepared, 'bankable,' and take into account lessons learned from previous PPP projects, the privatization program in Kenya, and regional and international experience. The third component of the project is improvements to Fiscal Commitment and Contingent Liability (FCCL) risk management framework. This component for US$5 million will provide support and guidance to the Ministry of Finance (MoF) and other relevant agencies on the fiscal commitment and risk framework associated with infrastructure, with an emphasis on contingent liabilities from PPPs. The fourth component of the project is support for program management. This component for US$3.5 million may include equipment, operating costs, organizational and systems development, training, capacity building and technical assistance" (World Bank website, 2015).

This project therefore has four main aims that can be summarised as follows: institutional support and regulatory reform; PPP pipeline of transactions/ Individual PPP projects; infrastructure fiscal commitment and risk framework and PPP program management, with the allocations in funding already mentioned.

The Project Manager at the PPP Unit had a second reporting line to the World Bank on this project.

> *I report to the Director of the PPP Unit at Treasury and also report on the IFPPP project to the World Bank* (Project Manager, PPP Unit).

This dual reporting line shows how closely the PPP Unit worked with the World Bank on the Kenyan PPP process. For the lifeworld, concerns, this close working through the IFPPP Project is one way to ensure that the PPP programme is monitored and also efficiently carried out.

Through this facility, the World Bank has helped the PPP Unit to carry out a number of activities. Although the PPP Unit's actions are really a part of the national steering discussed in Chapter Seven, it can be demonstrated that the USD 40 million has been spent so far on activities that could constitute the steering process.

The PPP Unit has been involved, firstly, in the publication of the government's National Priority List of PPP Projects. A previous list showed 47 projects (GoK, 2013), however, this was subsequently increased,

> *the number of projects is now 59. New projects have been added to the initial list* (Project Manager, PPP Unit)

The projects are spread out across various sectors and are to be implemented on a case by case basis. However, they represent what the government is keen to implement as PPP projects.

On a case by case basis, the PPP Unit was also to hire technical expertise where there is a skills shortage. This requires advance planning as the available skills must be mapped against future requirements so as to highlight the skills deficit.

> *PPP Unit works closely with the World Bank which has a ready pool of experts that can be drawn on in individual PPP projects* (Project Manager, PPP Unit).

The PPP Unit is also able to,

> *hire consultants to provide technical expertise for the different projects* (Project Manager, PPP Unit).

One of the PPP organisations, KENGEN, also acknowledged the role played in providing for skilled personnel for the projects:

> *The PPP Secretariat advises on the Request for Proposal (RFP). This was already done internally last year. The PPP Secretariat manages queries, as the private partner wants an independent opinion.*
>
> *The PPP Secretariat also hires the Transaction Adviser, the Financial and the Legal Adviser for the project. We already had a technical adviser on the ground.*
>
> *The Financial and Legal Adviser refine the RFP and reissue to bidders* (Economist, KENGEN).

In this case, the PPP Unit seeks to hire for required technical skills, where such skills are lacking.

Having external experts in the PPP process could therefore transfer much needed expertise to the local PPP environment and ensure that the PPPs are actually implemented. This transfer of skills and knowledge from one region or entity to Kenya is one way of transferring the substance of policy (Dolowitz and Marsh, 2000). The funding has enabled the PPP Unit to obtain the technical expertise that it requires and also to build up its own capacity. Building capacity has also included facilitating, together with PPIAF and the national government, the drafting and enacting of PPP regulations in Kenya. The IFPPP has therefore helped form the backbone of the Kenya PPP process in its early years, to the end of the project in 2016 (according to the World Bank website, 2019, this project has now been extended to October 2022).

The IFPPP is also instrumental in helping boost future capacity for the implementation of PPPs in Kenya. This is by helping set up the Fiscal Commitment and Contingent Liabilities (FCCL) Management Framework, for the tracking, monitoring and honouring of PPP liabilities, being off balance sheet items. It has also been aimed at the establishment of a Viability Gap Fund (VGF) which will seek to provide funding for projects that may be socially viable, even though not economically viable. Lastly, it has helped facilitate the hiring of an adviser to help the Central Bank/ Ministry of Finance come up with instruments that can support the tenor of PPP projects for 25 years/ 30 years.

6.4.2.2 Steering of PPP Capacity through the IFPPP Project

Through the IFPPP Project, the World Bank is helping build capacity for the primary PPP co-ordinating and implementing institution in Kenya, the PPP Unit (OECD, 2010; Farquharson, 2011; World Bank, 2014). The World Bank can be argued to have used the IFPPP Project to protect its interest in ensuring that the PPP Policy becomes fully implemented. By ensuring that the IFPPP Project Manager also has a dual reporting line to the Director of the PPP Unit, the World Bank had an overview on each activity and expenditure of the PPP Unit. This gave the Bank a means to steer the PPP Unit in the direction that is consistent with the Bank's objectives.

6.4.3 Identification of PPP Projects

The World Bank has been involved in the identification, selection and compiling of the list of the National Priority List of PPP Projects. This was done through the Financial and Legal Sector Technical Assistance Project (FLSTAP), before the IFPPP Project was started. In addition, members of the World Bank Group have been involved in individual projects in Kenya.

6.4.3.1 Financial and Legal Sector Technical Assistance Project (FLSTAP) - National Priority List of PPP Projects

Through the publication of the National Priority List of PPP Projects, the government of Kenya identified which projects it would like to pursue. However, this list was earlier compiled by consultants working on behalf of the World Bank and the Kenya government.

This process of drawing up a list of bankable projects began in 2011, even before the passing of the PPP Act 2013. In "November 2011, the Government, through the Financial and Legal Sector Technical Assistance Project (FLSTAP), engaged Ecorys Nederland BV and Gibb Africa Ltd to undertake a PPP pipeline study/analysis. The main objective of the assignment was to identify and prioritize potential PPP projects, which have a high degree of success with minimal risks to the Government. The analysis consequently developed a long list of potential projects including Vision 2030 flagship projects. After further analysis of this long-list of projects, the GoK reduced it to a "priority" list. Nyali Bridge Project, Nairobi Southern Bypass and Kisumu Port were identified as "First Mover" projects of the highest priority for IFPPP support" (Kenya PPP Unit, 2015). The Financial and Legal Sector Technical Assistance Project was an earlier project funded by the World Bank.

The process of preparing the National Priority List of Projects dates back to the FLSTAP (Financial and Legal Sector Technical Assistance Programme), which was a World Bank funded project. As part of this project, a study was carried out on the pipeline of potential PPP projects. This was in 2010, before the PPP Act was established.

The study took place between December 2010 and the end of 2012 and involved a visit to different ministries to assess viable projects. A pre-feasibility study was carried out and the "first mover" projects identified. These were the projects that could easily gain consensus. They were

> *the most visible projects identified for easy support* (Project Manager, PPP Unit).

This implies that identifying a PPP project and gaining consensus from different stakeholders is a key part of getting the PPP off the ground. This could involve different parts of government such as the implementing agency, Treasury and other stakeholders such as the World Bank.

6.4.3.1.1 Report on the PPP Pipeline Study/ Analysis

The report by Ecorys Nederland BV and Gibb Africa is very important as it sets the pace for the implementation of PPPs in Kenya. PPPs being long term projects, it means that for the next 20 - 30 years, this report will dictate the projects to be implemented. Already, it has identified the "first mover" projects that are to be implemented. Ecorys Nederland BV state on their website and in their reports that "At Ecorys we aim to deliver real benefit to society through the work we do. We offer research, consultancy and project management, specialising in economic, social and spatial development. Focusing on complex market, policy and management issues we provide our clients in the public, private and not-for-profit sectors worldwide with a unique perspective and high-value solutions" (Ecorys Nederland and Gibb Africa, 2012, p. 2).

On the other hand, "GIBB Africa Ltd (formerly Sir Alexander Gibb & Partners, Africa) and associated companies have been involved in development projects in East and Central Africa since the early 1940s. Since then, the company has successfully completed over 1,000 consultancy assignments, covering a broad spectrum of sectors and specialisations" and "GIBB Africa Ltd is registered with a number of international funding agencies and organisations. These include the World Bank, African Development Bank, European Union, United Nations, BADEA, CIDA, DFID, DANIDA, IDA, KfW and SIDA" (Gibb Africa website, 2015).

As part of their terms of reference, the two consultants were specifically tasked with the identification of all major projects currently proposed as PPPs in Kenya by line ministries and other government agencies. This was to include potential public projects, not currently proposed as PPPs and which could present good opportunities for PPPs and the collection and assessment of available technical and economic information relating to these projects among other tasks. They were also to conceptualize the projects based on the information available, to rank them in order of probability of success as PPPs and to identify the critical path items necessary to successfully implement all identified projects (Ecorys and Gibb, 2012, p. 5).

Among the deliverables were to be an Inception report (including work plan and projected schedule at the beginning of the assignment) and a Pipeline analysis report (outlining the ranking of proposed PPPs in Kenya and the methodology used for screening the projects). There was also to be a Priority PPP Program report (detailing the five proposed PPPs, including a detailed description of the technical, economic and financial parameters, as well as a preliminary risk allocation structure and procurement plan). Other deliverables were a Cabinet Memorandum, a presentation to stakeholders and a final report (Ecorys and Gibb, 2012, p. 5).

Following the work done by the consultants, a total of a possible 187 projects were forwarded by various stakeholders. Of these possible PPP projects, 171 were sufficiently documented to be screened and 137 of these were considered eligible for PPPs. Finally, using a "multi-criteria analysis," a final list of projects was arrived at. The multi-criteria analysis included a well advanced project in preparations and a project with a clear scope and with SMART (Specific, Measurable, Attainable, Realistic, Timely) output specifications. Also to be included was a project "championed by politicians and embedded in the country's development policy," and an affordable project, one with manageable risks to both the government and the private sector. The projects were also those that could be "delivered by numerous private entities allowing for competitive pricing," one that could be replicated and lastly "a project that has sufficient size to attract market interest though not too large to discourage prospective bidders and lenders" (Ecorys and Gibb, 2012, p. 7).

Following a presentation to the government, the following five were selected for further feasibility study: Kisumu Port Development; Mombasa Special Economic Zone Development; Second Nyali Bridge in Mombasa; Widening of the Mombasa - Nairobi - Malaba Road and a Hotel at Jomo Kenyatta International Airport (Ecorys and Gibb, 2012, p. 11).

These projects formed the first part of the National Priority List of PPP Projects, comprising forty seven projects and published in 2013 (GOK, 2013). Following the passing of the PPP Act and the establishment of the IFPPP Project, a further number of projects have been added to this earlier list.

> *the number of projects is now 59. New projects have been added to the initial list* (Project Manager, PPP Unit)

There are now 12 additional projects added to the initial list. The earlier list, funded through the FLSTAP project therefore forms a core part of the National List of Priority PPP Projects.

This involvement of a consultant, funded through a World Bank project, means that the first set of projects to be implemented by Kenyans will have been selected through a Bank funded process. In this case, the steering media has sought to involve itself with actual projects and come up with a long list of projects. It is of note that the National Priority List of Projects is enshrined in the PPP Act 2013 and, although changes can be made to it, the concept of a set of bankable projects cannot be altered.

The FLSTAP project, which was also funded by the World Bank, pre-dated the PPP Act 2013. However, through this project, the initial list of PPP projects was identified. This formed the basis of the National Priority List of PPP Projects that was eventually published by the government. The World Bank, again, steered the process through which the projects identified for implementation of PPPs were selected and paid for the consultant who carried out the work.

6.4.3.2 Involvement in Individual Projects

Members of the World Bank Group have been involved directly as well in individual projects. As the PPP Act came into law in 2013, some of the projects mentioned here pre-date the PPP

Act. However, their structure, through the use of concessions, Build Own Operate (BOO) or Build Own Transfer (CEPA, 2015), provides a relevance to the study of PPPs as these are forms of PPPs (Duffield, 2010). Of note has been the Rift Valley Railway Concession and the Independent Power Producers (IPPs). A brief review of these examples in this section will show how a range of steering mechanisms (B), can be used by the supranational organization to directly influence the organization/ system.

6.4.3.2.1 The Rift Valley Railway Concession

A member of the World Bank Group, the International Finance Corporation was involved in the Rift Valley Railway Concession, a joint concession for the Kenya - Uganda Railways. Beginning in 2002, until 2005, the IFC provided transaction advisory services to the Kenya Government on the concession of the Kenya - Uganda Railway (World Bank, 2012). The idea for the concession first came from the IFC

> *Initial thoughts of the railway concession were driven by the IFC (International Finance Corporation) who rolled out a project to promote railway concessions across Africa* (Official, Rift Valley Railways).

The thoughts to have the RVR concession were driven by huge debt accumulated during the 1990s by both the Kenya and Uganda railway operators. This led to poor performance and high costs associated with the line (Cambridge Economic Policy Associates Ltd, 2015). Much of the infrastructure had fallen into a state of disrepair and coupled with competition from trucks in the cargo transporting business, the organization encountered serious challenges. Given its size, Kenya Railways had

> *a huge impact on the National Debt as the government kept giving them money to keep them afloat. The national budget was therefore constrained* (Business Editor, Daily Nation).

Following the transaction advisory work by the IFC, in 2006, the IFC financed the concessionaire of the Kenya-Uganda Railways, Rift Valley Railways (RVR), with a USD 22 million loan and USD 10 million quasi loan (World Bank, 2012). This joint concession with Uganda Railways, although formed in the period before the PPP Act 2013, would be a precursor to PPPs given that its structure would bear some similarities with PPPs: 25-year concession; creation of an SPV and a build operate transfer model. The transaction was completed under the Public Procurement and Oversight Authority Act (PPOA) (GOK, 2006, 2009) as the PPP Act was yet to be enacted.

In 2005/ 2006, the Kenya and Uganda governments began to put in place the framework for a joint concession.

> *A Request for Proposal was put in place.*
>
> *Kenya and Uganda felt that there would be synergies in putting together a joint concession. The concession thought of the Locomotives being able to move from Kenya to Uganda. Each of them had assets from which the concessionaire would obtain revenues. The Joint Railways Commission was established with the PS Transport, Kenya and the PS Treasury, Uganda as joint chairs.*
>
> *An Interface Agreement was put in place which determined that no steps would be taken without consultation.*
>
> *The main aim was to maximise any synergies between the two countries. This was the whole intent of the Interface Agreement* (Official, Rift Valley Railways).

The Request for Proposal specified three requirements:

> *financial (ability to meet the concession fee), technical and legal.*
>
> *The concession fee was meant to be a percentage of the gross revenues. For the technical requirement, bidders had to show that they had the ability to run the railway, were railways experts and could carry out technical management of the railway.*
>
> *Legally, the concession created two companies - a holding company and the SPV. In the holding company, there was to be a lead investor who would be the major shareholder and the face of the project. The lead investor had to have a minimum of 35% shareholding which could not be diluted. Sheltam of South Africa was named as the lead investor.*
>
> *A Concession Agreement was then signed and this together with the Interface Agreement formed the main legal documents around the concession* (Official, Rift Valley Railways Concession).

With Sheltam as the lead shareholder, the total shareholding was as follows: Sheltam as the Lead Investor (35%). Others included Transcentury, (20%), Primefuels (15%), Centum (10%), Mirambo (10%), Babock and Brown (10%) (World Bank, 2012). However, the concession soon ran into operational and financial challenges. This led to the concessionaire "recording huge losses. As a result of this, the ownership of the concession was restructured and a new majority shareholder was introduced to replace the incumbent" (Cambridge Economic Policy Associates, 2015, p. 9).

One of the issues in the concession arose from the structure of the concession agreement that allowed for a lead shareholder, which also unwittingly set in motion the chain of events that would arise should the lead investor fail.

> *The problem with the lead investor concept was that the 35% shareholding of Sheltam could not be diluted. This prevented the other shareholders from putting in more capital once Sheltam showed financial problems.*
>
> *Due diligence should have revealed that they would have financial problems.*
>
> *The only way to solve this was to go back to the government for a restructuring of the concession. This was done in 2008, with the following changes: there would be independent directors and amendments would be made to allow for a change in the shareholding structure. In October 2010, a new agreement was signed* (Official, Rift Valley Railways).

The issue of inability to dilute the shareholding of the lead investor, therefore, incapacitated the concessionaire initially and made it less flexible. The World Bank contends that this made the task of restructuring financially and legally difficult (World Bank, 2012, p. 18). In addition, RVR found the payment of the concession fees to be a challenge.

> *The concession fees is to be paid out of gross revenues* (Official, Rift Valley Railways).

This constantly created the constraint of having to choose between revenue expenditure or capital expenditure, leading to underinvestment in capital expenditure over the years.

The IFC thus provided not only funding, but also performed transaction advisory work for the concession. The IFC, being a member of the World Bank Group, therefore helped steer the adoption of railway concessions in different countries, provided transaction advisory services and further provided funding. This also calls into discussion the possibility of conflicts of interest, in which an entity provides transaction advisory while also provides funding and being a self-interested party in the project (Annisette, 2004; Miraftab, 2004). The IFC thus showed how money can be used as steering media directly within an organization.

Others have however noted that IFC were the cheapest in that process,

> *IFC were the cheapest and it was therefore the right thing to do to give them the role* (Senior Investment Officer, Kenya Investment Authority).

According to this viewpoint, the question of conflict of interest does not arise or is insignificant. The key question is the cost of the Transaction Adviser. Could the IFC have given slanted advice for the project to go through as they would also be involved in the funding? That is a question that ought to be addressed in future research.

As of August 2017, the termination of Rift Valley Railways' concession to operate the Kenyan section of the metre gauge railway was agreed 'by joint consent,' after the high court in Nairobi backed Kenya Railways' attempts to end the contract. Kenya Railways claimed that the concessionaire had not "complied with the terms of the 25-year contract, which was signed in January 2006 and restructured in 2011." Among other things, "RVR defaulted in its payment of concession fees, rent and other key performance indicators under the concession agreement" (Railway Gazette, 2017).

The World Bank states that "on hindsight, it may be noted that the actual investment requirements (US$311 M) turned out to be far greater than originally estimated (US$ 111 M) which has implications for the required financial and managerial capability of potential investors at the time of pre-qualification" (World Bank, 2012). The case of the Rift Valley Railways goes to show that concessions can be challenging and must be well thought out. Of note, though, is the direct involvement by the supranational entities in steering individual organizations.

6.4.3.2.2 Power Sector

Kenya's experience with the Independent Power Producers (IPPs) is described in more detail in section 7.2.4.1. However, the focus in this section is to draw out the involvement of the

World Bank Group in the energy sector in Kenya. The World Bank contends that "following the shift in the 1990s from concessionary funding for power projects toward private sector participation in infrastructure and a wave of sector reforms, IPPs began to be introduced in Kenya in 1996" (World Bank, 2012, p. 16). The sector has seen the involvement of the IFC, which has given it greater credibility and made it attract additional funding (World Bank, 2012, p. 17).

IPPs increased from 1996 onwards, with the first plant being Westmont (World Bank, 2012). This increase is also said to be partly due to pressure from the World Bank, which in November 2000 threatened to withhold a "newly approved USD 72 million emergency loan if the government did not hold to its promise to privatise power generating and supply enterprises" (Berthelemy, 2004, p. 66). Nevertheless, in 2000, the IFC injected USD 85m in the first fully competitively-procured and project-financed IPP in Kenya. This was the Kipevu II Power Plant (Castalia Strategic Advisors, 2011). See section 7.2.4.1 for a list of IPPs in Kenya.

Experience with the Independent Power Producers (IPPs) is considered to be one of the success stories of the involvement of the private sector in providing a key service in Kenya that was previously provided through a government agency. The sector is also considered to be well developed by the commercial lenders and development finance institutions (Cambridge Economic Policy Associates, 2015).

> *Given the problems of Energy through the 80s and 90s, Energy was the first place to involve the private sector as Independent Power Producers (IPPs). The IPPs were formed to disaggregate the power institutions. There was no regulator as well* (Business Editor, Daily Nation).

The IPPs can thus be seen to have come in as a solution to a problem that the government was facing. Their success was also due to the reliability of Kenya Power and Lighting Company as an off-taker, with a good payment record (World Bank, 2012, p. 16). Other than the IPPs, IFIs have also been involved in other institutions within the Energy sector in Kenya.

In Kenya Electricity Generating Company (KenGen), following a PPIAF funded study analysing potential structures for the utilities going forward, an Initial Public Offer (IPO) of 30% of KenGen's equity was made. This IPO was heavily oversubscribed (Cambridge Economic Policy Associates, 2015).

Additionally, within KenGen, at the time of the fieldwork, the PPP Unit was in the process of obtaining a Transaction Adviser for one of their projects. The PPP Unit would be acting through the IFPPP Project which is funded by the World Bank.

The TA will act on Kengen's advice in coordination with the PPP Secretariat. The Transaction Adviser will be on Kengen's side and help from the

- *Request for Proposal (RFP)*
- *evaluation of bids*
- *preparation of contract and signing*
- *help raise the equity part*
- *financing for SPV* (Economist, Kengen).

In this case, the PPP Unit, backed by the IFPPP Project, would help procure a Transaction Adviser for Kengen.

Before PPPs were introduced, KenGen already had some projects that it was considering implementing.

PPPs were first introduced to us by the government in 2011 and the PPP Act was passed in 2012.

PPPs have been promoted by the World Bank and they have even established a secretariat.

They invited organizations to submit projects they felt could be PPP. Kengen already had a pipeline of projects.

Kengen is 30% public (listed on the Nairobi Securities Exchange) and 70% government owned.

Kengen has had an ambitious capacity expansion from 2007, stretching the balance sheet.

We placed an infrastructure bond in the markets and were looking at other methods to finance projects.

> *Before the PPP, we had even done an Expression of Interest (EOI) Joint Venture, to do a coal plant.*
>
> *We were therefore looking for off balance sheet and so embraced the PPP idea.*
>
> *We submitted 5 projects for which we had capacity building and support from the World Bank. All five passed, but the World Bank picked one. This is the Geothermal Olkaria project* (Economist, KenGen).

Eventually, they pursued the PPP route, thereby showing that the Bank had used its position and authority to steer towards a given direction and also to select a given project.

The use of power can also be direct on PPP organizations or on government agencies and departments that have chosen to adopt the PPP route. During the fieldwork carried out, two instances were encountered. The World Bank, having adopted a strategy of promoting carbon free energy sources, encountered a case of fossil fuels:

> *In 2009, we had the idea of a coal plant. However, Olkaria started attracting a lot of financing. The World Bank was not keen on fossil fuel. Financial arrangement was already being sought when the PPP came* (Economist, KenGen).

There were alternatives, in this case, between the financing of a coal plant and Geothermal energy. However, the World Bank seems to have added an extra conditionality that the energy source be carbon free and non-fossil fuel. In this way, Geothermal energy gained the added impetus. This was, again, a means of steering the selection process towards one that is favoured by the Bank.

Within the Geothermal sector still, the Geothermal Development Corporation (GDC) has also had the World Bank's influence.

In this case one of the projects,

> *Menengai is funded by AfDB, AFD France and the World Bank.*
> *The World Bank is also the Transaction Adviser* (Official, Geothermal Development Corporation).

Again, this calls up the question of whether there is a conflict of interest as the bank is both a funding agency and a transaction adviser.

The IFC also provided transaction advisory services for the student hostels project at Kenyatta University.

> *the Transaction Adviser is the PwC/ IFC Advisory* (Transaction Advisory, Ernst & Young).

The IFC is thus involved again as the Transaction Adviser. Both the World Bank and the IFC continue to provide transaction advisory services, especially for projects on the National Priority List of PPP Projects. This is not necessarily a negative point. Given the breadth of their experience, they would probably be better placed to provide such services. However, their position as funding entities to the projects raises such questions of conflicts of interest.

6.4.4 Control and Monitoring of the Ongoing PPP Projects

Given that the Kenya IFPPP Project is an ongoing funded project of the World Bank, the Bank monitors the use of the funds provided with respect to the objectives of the project. Through a dedicated page on its website, the World Bank has details of the project, including different procurement contracts and notices used in the project, as well as ratings on the project, whereby the different phases are rated, whether they are satisfactory or not (World Bank website, 2018).

The notices on the site are Requests for Expression of Interest for providing various consultancy services and a general procurement notice. The documents are published by the Kenya government through the PPP Unit and the National Treasury. The World Bank, however, maintains and keeps copies of these as well. In addition, the Bank also prepares a report that provides the latest implementation status and results. This report describes the different phases/ objectives set up between the Bank and the PPP Unit and the progress on meeting the targets (World Bank, 2018).

A Results Framework also provides objective indicators, target dates and where these currently are. Examples of the objectives for which answers are sought have been listed below. Each objective has a start date, current progress and target date of completion:

1. Whether Expression of Interests (EOI) have been issued to prospective sponsors for three targeted PPP transactions.
2. Whether the PPP Regulations associated with the new Law have been agreed with the Ministry of Finance/ National Treasury.
3. What number of PPP Projects have reached financial close.
4. How much private capital has been mobilized to date.
5. Whether five PPP feasibility studies have been completed and submitted by contracting authorities to the PPP Committee, which are acceptable and include safeguards and are ready for market entry.
6. Whether the PPP Training Curriculum has been developed and implemented.
7. The number of government officials with PPP certification from recognized institutions (World Bank, 2018).

From the Results Framework objectives, the World Bank therefore seems to monitor the progress of the Kenya PPP process, while also monitoring the use of the funds provided by the Kenya IFPPP Project. Each objective has a target set, whether numerical (such as the number of Government staff with PPP certification or expertise) or as a value (such as whether a curriculum has been set, developed and rolled out). These are then monitored over time, until October 31 2022, which is the current project end date. By monitoring the progress of the Kenya PPP process, the World Bank seems keen to ensure that objectives as set by the Kenya IFPPP Project are met and not deviated from.

6.5 Steering Media Revisited

In the previous sections, the discussion has centred on the steering media and how it seeks to direct organizations or systems to follow the lifeworld values. By looking at the PPPs in Kenya, it has been shown how the World Bank and other related organizations such as the International Finance Corporation have steered the PPP regulatory framework in Kenya using a range of steering mechanisms including the PPIAF, the IFPPP Project, the FLSTAP Project and its positional authority to steer the PPP process in Kenya. The PPP process has been traced from the time when it entered national dialogue as a policy option in infrastructure finance in Kenya, to the setup of the institutional and regulatory framework and to the identification of the National Priority PPP List. Throughout these processes, it can be seen that the World

Bank as a steering media has made use of various steering mechanisms in order to steer the PPP process in Kenya.

The steering media can, however, also direct the systems into totally different avenues that may not be in tandem with the demands of the lifeworlds. This is referred to as internal colonization, where the steering media leads the organisation to attain unintended objectives (Broadbent et al, 1991). Steering media can therefore have colonizing tendencies. The theoretical framework in Chapter Four describes the different rules that apply for a steering media to be deemed as colonizing. With respect to PPPs in Kenya, the next section applies these rules to determine if the steering media has colonizing tendencies or not.

6.5.1 Constitutive vs Regulative Steering Media

Steering media that is “regulative” in character is less likely to be colonizing as opposed to steering media that is constitutive (Broadbent et al, 1991). Through the funding by the World Bank of USD 40 million, the World Bank has set out to help Kenya develop its institutional and regulatory framework on PPPs, prepare individual PPP analysis and set up a PPP pipeline of bankable projects, create a fiscal risk framework and provide PPP management through the PPP Unit.

A review of all the activities to be funded by the World Bank facility shows that the government with the aid of the World Bank is putting together the structures that would enable PPPs to be successfully identified and implemented. The facility has also been used to set up an institutional and regulatory framework for PPPs and to manage the PPP program in Kenya.

It can be argued that the steering media on PPPs in Kenya has been constitutive rather than regulative. Although there was a concession, i.e. the Rift Valley Railways Concession, before the PPP Act 2013, as well as the Independent Power Producers (IPPs), following the World Bank facility, the government has had to start off anew on PPPs. It would have been regulative if the steering media simply directed for the regulation of existing PPPs. However, this is not the case. In addition, through the FLSTAP facility, the government of Kenya has been able to make use of a consultant to identify possible PPP projects to be included in the National Priority List.

The steering media has therefore been constitutive in various ways. By using the PPIAF, the steering media has played a key role in the setting up of a governance and regulatory framework for PPPs in Kenya. This resulted in Kenya being able to pass the PPP Act 2013, following discussions and consultations over time, in which PPIAF participated. As already shown, although Parliament passed this law, PPIAF was involved in consultations and the sensitization of Members of Parliament on PPPs. Additionally, PPIAF has helped in building up the capacity for the Kenya PPP Unit.

Through the World Bank's funding of the IFPPP Project, Kenya has built up its technical capacity and began to implement PPPs. This facility provided for the equipping of the PPP Unit, obtaining skilled staff and beginning to roll out Kenya's PPP programme.

Additionally, through the World Bank funded FLSTAP programme, the steering media was able to help Kenya identify its priority PPP projects and publish the National Priority List of PPP Projects. This list provides the basis on which Kenya will be able to roll out PPP projects over time. Lastly, the World Bank, together with Kenya's PPP Unit, continues to monitor individual projects from the issue of Request for Proposals to the financial close.

Steering media that is constitutive seems to impose on the systems being directed. The setting up of the PPP Act, the PPP Unit, the National Priority List and so on, show a guiding hand that is telling the Kenyan government what to do on PPPs. The steering media in this case is constitutive in character.

6.5.2 Comprehensibility of Steering Media

The rules on steering media further state that you can determine if a steering media has colonizing tendencies by applying a set of rules to determine if "steering media can be either "amenable to substantive justification" or can be only "legitimized through procedure" (Broadbent et al, 1991, p. 7 citing Habermas, 1987, p. 365). Steering media that is amenable to justification has less colonizing tendencies. However, steering media that can only be legitimized through procedure has more colonizing potential.

Through the IFPPP process, the World Bank has detailed the process through which Kenya establishes its PPP Policy. The PPP Unit has experts funded by the project and the regulatory and governance framework has been established. Through the PPIAF, the steering media has also contributed to the setting up of the PPP legislation and the associated regulations.

Broadbent et al (1991, p. 7 citing White, 1988, p. 115) state that when a law is comprehensible to the average person, then it does not need defending by the elites. It is kind of self-explaining. However, when the law is not so clear, then the elites go to great lengths to defend it on "material grounds" by claiming that "it has been appropriately enacted by competent and responsible elites" and that "all steering media will be directed by official bodies ("elites" using White's terminology)." They therefore attempt to legitimize the law through procedures.

It can be argued that the setting up of PPPs is not amenable to substantive justification and must therefore be explained away to the masses through complex laws, the setup of official bodies to oversee different aspects of it and through complex guidelines. This can be seen through the enactment of the PPP Act, 2013 which lays out the procedure and the framework for PPPs in Kenya and the establishment of the PPP Unit to ensure that PPPs are implemented. Again, these can be argued to be colonizing attributes, where the World Bank, through the steering media, ensure that the steering media directs the systems in the direction not envisaged. The act of defending by the elites means that it has not been entrenched in the lifeworld and does not necessarily reflect the values of the lifeworld. PPPs, given that they have not been used before in the country, may not be a familiar policy option, hence the defending and legitimizing through procedure.

It should, however, also be pointed out that the World Bank can only work with a country that has accepted to work with the Bank. Kenya, as it grapples with the challenges of financing its infrastructure, has therefore accepted to work with the Bank, to develop its own PPP Policy Framework. It is not within the scope of this thesis to debate whether such acceptance has been voluntary or the Kenya government has had no choice but to pursue the PPP policy.

6.6 Conclusion

This chapter has discussed supranational steering of PPPs in Kenya by the World Bank and reviewed a range of steering mechanisms that the Bank uses to steer the process. By summarising the bank's key objectives with respect to the implementation of PPPs, the steering mechanisms can be determined. These key objectives are broken down as: setting up a governance and regulatory framework for PPPs; building up capacity for the implementation of PPPs; identify suitable projects for PPPs and control and monitor the ongoing PPP projects.

Firstly, in order to set up a suitable governance and regulatory framework that can allow for the private sector to be involved in PPPs, the World Bank, as the steering media, has used the Public Private Infrastructure Advisory Facility (PPIAF) as a steering mechanism. The PPIAF prepares countries to come up with the appropriate legislative framework that will allow for the involvement of the private sector.

Secondly, the World Bank has also put in place the Kenya Infrastructure Finance Public Private Partnership (IFPPP) Project, through a funding of USD 40 million, to help kick start the process of PPPs in Kenya. The main objective being to help the societal systems, being the Kenya government, to build capacity for the implementation of PPPs. Through the use of these funds, a proper institutional and regulatory framework has been established, a fiscal risk framework has been assessed and a PPP program management has been put in place.

Thirdly, through the use of the Financial and Legal Sector Technical Assistance Programme (FLSTAP), and later, the IFPPP Project, the World Bank was able to hire a consultant, Ecorys, to be able to conduct a survey and come up with a list of projects, which formed the core of the National Priority List of PPP Projects.

Lastly, through the IFPPP Project, the World Bank works closely with the PPP Unit in Kenya and the head of the IFPPP Project also doubles as the PPP Unit Project Manager, with a dual reporting line to the World Bank and the Director of PPP Unit.

The World Bank, as the steering media, has therefore put in place various steering mechanisms in order to achieve its lifeworld objectives. Steering can be argued to have taken place at both a regulatory level and an operational level. From the work carried out by the World Bank and the PPIAF, directing and monitoring of PPP activities has taken place both at the regulatory and at the operational levels. Lastly, using Habermas' rules, the steering process in PPPs has colonizing attributes because it has been found to be more constitutive than regulatory in character and can only be legitimized through procedure as it is less amenable to substantive justification.

CHAPTER SEVEN: SOCIETAL STEERING OF PUBLIC PRIVATE PARTNERSHIPS IN KENYA

7.1 Introduction

Broadbent et al (1991) have, in their studies at the national level, suggested that steering media guide societal activity through a range of steering mechanisms and have highlighted the role of legislation. The legislative devices that are in use in Kenya include a range of laws and policy documents. These were in fact preceded by a set of privatization projects that the government has carried out over the years. Steering media are concretely represented in and through defined societal institutions (Ibid.). In Kenya, the Kenya Government, through the National Treasury, is responsible for the steering of the PPP process. The Kenya Government is the societal steering medium as it dominates the country's legislative agenda through Parliament and also has the resources and capability to control both economic and commercial activity (English and Guthrie, 2003).

Following the supranational steering, the Kenyan government, as a steering medium, has a dedicated Public Private Partnership (PPP) Unit, which acts as the technical secretariat for issues relating to PPPs (OECD, 2010; Farquharson et al, 2011; World Bank, 2014) and which is a department at the National Treasury (GOK, 2013). Through the use of various steering mechanisms, the societal steering medium steers the PPP process in Kenya to achieve the lifeworld objectives. In discussing the steering mechanisms, reference is made to Figure 6.1 in Chapter Six, where the societal steering medium with its own lifeworld, values and beliefs uses different steering mechanisms to steer societal systems to achieve lifeworld objectives.

This chapter will start by discussing the lifeworld values of the societal steering medium by reviewing legislative communications over time, as evidence of the values of the lifeworld (Broadbent et al, 1991). Legislation reviewed are those that have defined and provided a governing framework for the involvement of the private sector in the delivery of public services, more so, infrastructure financing, since 2002 and suggest that there has been a trend to increasingly strengthen the regulatory framework governing such involvement over time. This part of the chapter ends with the enactment of the Public Private Partnership Act, 2013.

7.2 Lifeworld Values of the Societal Steering Medium

In order to determine the lifeworld values of the societal steering medium, legislation in the period leading to the passing of the PPP Act 2013 have been reviewed. Additionally, during this period, the Kenya Government published the Kenya Vision 2030 document and the PPP Policy Statement. These have been reviewed as well and are summarised in Table 7.1 below.

The first period of 2002 to 2005 saw the enactment of the Water Act, 2002 and the Privatization Act 2005. The second period 2006 to 2009 saw the introduction of concessions specifically within legislation through the Public Procurement and Disposal Regulations in 2006 and ends with the Public Procurement and Disposal (Public Private Partnerships) Act 2009. In 2010, the PPP Secretariat was formed in the Ministry of Finance and would be a precursor to the fully fledged PPP Unit at the National Treasury.

The period 2011 onwards saw a decisive move towards PPPs in Kenya with the publication of the PPP Policy Statement in 2011, the passing of the PPP legislation in December 2012 by the Kenyan Parliament and the signing into law of the PPP Act 2013 in January 2013. These have been discussed in the following sections and form the basis for drawing out the values of the societal lifeworld and for identifying the steering mechanisms in place to guide the use of PPPs in Kenya.

Table 7.1 Key Legislation over Time, since 2002

Period	Key Legislation/ Policy Statement/ PPP Event
2002 - 2005: Increased Regulatory Framework on Private Sector Involvement	- Enactment of the Water Act, 2002 - Enactment of the Privatization Act, 2005
2006 - 2009: Regulatory Framework on the Use of Concessions	- Enactment of the Energy Act, 2006 - The Public Procurement and Disposal Regulations issued in 2006 under the Public Procurement and Disposal Act 2005. - Amendment of Public Road and Tolls Act (Cap 407) in 2007. - Government Study on Public Private Partnerships in 2007. - The Launch of Kenya Vision 2030 - Amendment to the Kenya Communications

	Act, 2009 - Public Procurement and Disposal (Public Private Partnership) Regulations, 2009
2010: Public Private Partnerships	- Formation of PPP Steering Committee and PPP Secretariat in 2010. - Government's Review of Kenya's Legal and Regulatory Framework. - The Promulgation of the Constitution of Kenya, 2010.
2011: Public Private Partnerships Policy Statement	- Publication of the Public Private Partnerships (PPP) Policy Statement.
2012 - 2013: Public Private Partnership Act 2013	- PPP Legislation passed by the Kenyan Parliament in December 2012. - Signing into Law of the Public Private Partnership Act 2013 in January 2013.
Since 2013, Operationalization of the PPP Act	- PPP Committee - PPP Appeals Committee - Draft County Regulations

Source: GOK, 2011, pp. 2-3; GOK, 2011; GOK, 2012; GOK, 2013

7.2.1 Increased Regulatory Framework on Private Sector Involvement

The period 2002 - 2005 saw the enactment of the Water Act, 2002 and the Privatization Act 2005. The Water Act "allows for the commercialization of water services by introducing the concept of licensing to anyone who is supplying water." The Act states that "no one shall provide water services to more than twenty households or supply more than twenty five thousand litres of water a day for domestic purposes or more than one hundred thousand litres of water a day for any purposes except under the authority of a licence" (GOK, 2002).

Applicants for licenses are required to, among other requirements, furnish their financial and technical capacity to undertake the supply of water and also provide their proposed tariff structure. The Act therefore lay the groundwork for the involvement of private sector providers in the Water sector, through the introduction and monitoring of licences as a key control activity. The Water Act recognised that there had been underperformance by the water sub-sectors in both urban and rural areas and sought to improve these sectors (WSP, 2011), even though rural areas were noted to continue to lag far behind and did not receive the intended boost (Mumma, 2007).

Following the publication of the Water Act, 2002, there was some level of investment by private actors, but "large-scale private investment" was "unlikely due to the complex institutional setup in the sector, still evolving tariff regulation, and low political support for private sector participation (PSP)" (WSP, 2011).

The Privatization Act 2005 (GOK, 2005a), on the other hand, created a Privatization Programme whose desired benefits were meant to be the following:

"(a) the improvement of infrastructure and the delivery of public services by the involvement of private capital and expertise;

(b) the reduction of the demand for government resources;

(c) the generation of additional government revenues by receiving compensation for privatizations;

(d) the improvement of the regulation of the economy by reducing conflicts between the public sector's regulatory and commercial functions;

(e) the improvement of the efficiency of the Kenyan economy by making it more responsive to market forces;

(f) the broadening of the base of ownership in the Kenyan economy; and

(g) the enhancement and development of the capital markets."

The Privatization Act identified the need for the improvement of public infrastructure and the role that the private sector could play, thereby foreshadowing the use of PPPs in public infrastructure. This Act also separated the roles of regulation from commercial roles. As the various Acts of Parliament passed with sector focus show, in each case, legislation established a regulatory body, with the commercial services expected to come from the private sector. The government was therefore increasingly becoming a regulator (Edwards and Shaoul, 2003) and not just being the commercial provider of the services. Additionally, the Act emphasised on the improvement of efficiency within the economy (Power, 1997) and thus sought the vehicle of privatization as a means to achieve this.

In section 25 of the Act, one of the methods shown is the use of concessions as a method of privatization. This was later shown as replaced by the passage of the Public Private Partnership Act of 2013. Of note is that the use of concessions was first touted as early as 2005, in the Privatization Act 2005. The importance of the two Acts of Parliament in this section was to place the use of private capital as an alternative for the government in the delivery of public services. The Water Act 2002 was more specific to the Water sector, while the Privatization Act 2005 extended this to all the other sectors. The Act also established the Privatization Commission to oversee privatizations taking place in Kenya.

The Privatization Act 2005, therefore, anticipated the involvement of the private sector through concession and management contracts. It gives specific methods of privatization. It states that privatization may be through a "public offering of shares," "concessions," "leases," "management contracts and other forms of public-private partnerships," "negotiated sales resulting from the exercise of pre-emptive rights," "sale of assets, including liquidation or any other method approved by the Cabinet in the approval of a specific privatization proposal" (GOK, 2005a, p. 27). In part b) of this section, the Act also included the words "public-private partnership," thereby recognising PPPs as a unique kind of privatization. From this time on, other Acts of Parliament began to make use of terms such as "concessions" and "public private partnerships".

7.2.2 2006 – 2009: Regulatory Framework on the Use of Concessions

The period 2006 - 2009 is important in the setting up of PPPs in Kenya, as it saw the issuing of specific regulations regarding the use of concessions (Guasch, 2004; Duffield, 2010). This included the enactment of the Public Procurement and Disposal Act 2005 in 2006 and ended with the issue of regulations specific to PPPs under the amended Public Procurement and Disposal (Public Private Partnership) Regulations in 2009. It was under the regulations issued in 2006 that Kenya would have a major concession, the Kenya - Uganda Railways. In 2006, the Energy Act was also enacted. First, this section will discuss the Energy Act briefly and link it to the Water Act 2002.

The Enactment of the Energy Act 2006 enabled the Kenya Government to create the Energy Regulatory Commission, the energy sector regulatory agency. As already shown in the attempt to delink regulatory roles from commercial roles by the Privatization Act, 2005, the Energy Regulatory Commission would have various responsibilities detailed in the Act, including the regulation of the

"i) importation, exportation, generation, transmission, distribution, supply and use of electrical energy;

(ii) importation, exportation, transportation, refining, storage and sale of petroleum and petroleum products;

(iii) production, distribution, supply and use of renewable and other forms of energy."

This Energy Act 2006, therefore, began to envisage the involvement of the private sector in the provision for Energy and to ensure that they would be regulated. The Act also gave a requirement for a licence or a permit for a private sector actor to participate as an importer, generator or supplier of the different forms of energy. Among other requirements, an entity was required to obtain a licence if it would have a capacity "not exceeding 3,000 kWs" for supply to others or a permit if it had a "generating plant of over 1000 kW intended for own use" (GoK, 2006a). This regulation of private sector capital in Energy included the use of concessions as earlier laid down in the Privatization Act, 2005.

Just like in the case of the Water Act, 2002, the Kenyan Government placed a sectoral focus on Energy and outlined the roles that could be played by private capital. In both Acts, a licensing regime was introduced and put in place and key requirements for the obtaining of licences outlined. In addition, a sector-based regulatory agency was put in place to ensure that the players in the sector are properly regulated.

Following the enactment of The Public Procurement and Disposal Act 2005, regulations to operationalize the Act were issued in 2006. Although the Act came into force in 2005, it is the issue of the regulations in 2006 that showed how it would be applied, hence the reason it is placed in period 2006 to 2009. In addition, under this Act, the Kenya – Uganda Railway Concession was carried out in 2006 (GOK, 2012), a significant transaction for Kenya, given that it was the concessioning of the only railway network in the country.

The Public Procurement and Disposal Act, 2005, in section 92 sub-section 1, stated that “A procuring entity may use a procurement procedure specially permitted by the Authority which may include concessioning and design competition.” Further, in sub-section 2, concessioning is defined as a “means of procurement that encourages the mobilization of private sector resources for the purpose of public financing, construction, operation and maintenance of development projects and may include build own and operate, build-own-operate and transfer, build-operate and transfer or similar types of procurement procedures” (GOK, 2005b, p. 110).

Key provisions of the Act were as follows: firstly, the Act, just like in the case of the sector-based Acts, created a regulatory agency, the Public Procurement and Oversight Authority, whose functions included the monitoring of procurement activity and to ensure that the Act was complied with. However, the Act also set up the Public Procurement Oversight Advisory Board, which would provide advisory services to the authority to make sure that the authority carries out its mandate. Secondly, the Act applied to procurement by any public entity, meaning that any public department or agency that required services to be provided by the private sector would need to abide by the Act.

Thirdly, the Act explicitly mentioned Contract Management, a type of PPP (Hodge et al, 2010). This was further included in the Second Schedule to the PPP Act 2013. The schedule states that a Management Contract is where “a private party is responsible for the management and performance of a specified obligation, within well-defined specifications for a specified period of time not exceeding ten years, and the contracting authority retains ownership and control of all facilities and capital assets and properties." The Act therefore went further than the Privatization Act 2005, which only mentioned concessions to introduce a sub-type of PPPs.

Fourthly, the Public Procurement and Disposal Act outlined the procedure to be followed in procurement from the Request for Proposal Stage, to the Expression of Interest stage, receiving of bids and ultimately to the award of the tender. The PPP Act 2013 has further built on these and stated the process to be followed when getting into a new PPP project. Lastly, the Public Procurement and Disposal Act, 2005 stated its objectives as being, partly, to:

"(a) to maximise economy and efficiency;

(b) to promote competition and ensure that competitors are treated fairly;"

These are objectives that can be seen to acknowledge that the private sector will be involved in the procurement process. The use of words such as 'economy' or 'efficiency' are almost prevalent with the market process. Power (2007) identifies the ideals of the private sector that the public sector would like to adopt as being economy, efficiency and effectiveness - the three E's. The use of such terms in the Act show the government's thinking and intent in using the private sector's capital in public projects.

Also, during this period, an Amendment was carried out to the Public Road and Tolls Act (Cap 407) in 2007. This Act provided for the use of toll roads by stating that "The Minister may declare any public road or a portion thereof, including any bridge or tunnel on a public road, as a toll road for purposes of this Act." Further, it gave the Minister in charge of Public Roads the power to appoint toll collectors. This again introduced the concept of toll roads which has been used in PPPs in some countries to finance and maintain public roads (Guasch, 2004; Farlam, 2005), where a private sector operator is given permission to manage a road for a number of years and charges tolls as a way of recouping its costs. In the same year, the government commissioned a study on PPPs (GOK, 2011).

Lastly, in this period, the year 2009 saw two important changes to existing Acts of Parliament. The Amendment to the Kenya Communications Act, 2009 established the Communication Commission of Kenya with the power to, among other things, "licence and regulate postal, information and communication services in accordance with the provisions of this Act." Again in this case, a sectoral focus by the Act is seen in order to ensure that applicants for licences meet the requirements and that the sector is properly regulated.

In the same year as well, the Public Procurement and Disposal (Public Private Partnership) Regulations, 2009 were issued, being a more PPP focused version of the Public Procurement and Disposal Act, 2009.

Table 7.2 Summary of Key Legislation before the PPP Act 2013

Act of Parliament	Selected Objectives	Agency/ Body Created by Act	Selected Functions of Agency
Water Act, 2002	To promote the investigation, conservation and proper use of water resources throughout Kenya.	Water Resources Management Authority.	1) To provide licences and permits to providers of water. 2) To regulate and monitor provision of water services.
Privatization Act, 2005	1) To improve infrastructure and the delivery of public services by the involvement of private capital and expertise. 2) To improve regulation of the economy by reducing conflicts between the public sector's regulatory and commercial functions. 3) To improve efficiency of the Kenyan economy by making it more responsive to market forces.	Privatization Commission	1) To identify public assets for transfer/ sale to the private sector. 2) To oversee and monitor the privatization process, including the use of concessions.

	4) To enhance and develop capital markets.		
Energy Act, 2006	Regulations over licensing and monitoring of players in the Energy Sector.	Energy Regulatory Commission	To promote the regulation over supply and use of electrical energy; petroleum and petroleum products; and renewable and other forms of energy.
Public Procurement and Disposal Act, 2005	1) To regulate procurement by a public entity, contract management and supply chain management, including inventory and distribution. 2) To regulate any disposals by a public entity.	Public Procurement Oversight Authority	To ensure procedures in the Act are complied with.

Public Roads and Tolls Act (Cap 407), 2007	To provide regulation over use of Tolls.	Minister in charge has powers over tolls and toll roads.	Minister in charge can appoint toll collectors and designate roads as toll roads.
Kenya Communications Act, 2009	Amendment carried out with a view to enhance regulation of the Communication sector.	Communications Commission of Kenya	To licence and regulate postal, information and communication services in accordance with the provisions of this Act.

Adapted from GOK, 2011; See also GOK, 2002; GOK, 2005; GOK, 2006, GOK, 2007, GOK, 2009

7.2.3 Kenya Vision 2030

Separate from the passing of key legislation, in this period, the Kenya Government also launched the Kenya Vision 2030 (GOK, 2012). Kenya Vision 2030 is a long-term development blueprint for the country that aims for a better society for all Kenyans by 2030. It aimed to create “a globally competitive and prosperous country with a high quality of life by 2030” and to transform Kenya into a “newly-industrialising, middle-income country providing a high quality of life to all its citizens in a clean and secure environment.” It also aspires to help Kenya meet its Millennium Development Goals (MDGs) by 2015.

The Kenya Vision 2030 is anchored on 3 pillars: Economic Pillar, Social Pillar and Political Governance. Each of these pillars was supposed to provide an anchor through which Kenya would transform itself through "macroeconomic stability; continuity in governance reforms; enhanced equity and wealth creation opportunities for the poor; infrastructure; energy; science, technology and innovation (STI); land reform; human resources development; security as well as public sector reforms."

More specifically each of the pillars had its own clear objective with the Economic Pillar aiming to “achieve an average economic growth rate of 10 per cent per annum and sustaining the same till 2030 in order to generate more resources to meet the MDGs and vision goals. The Vision identified a number of flagship projects in every sector to be implemented over the Vision period and to facilitate the desired growth rate. The identified flagship projects directly address priorities in key sectors such as agriculture, education, health, water and the environment. The social pillar seeks to create a just, cohesive and equitable social development in a clean and secure environment. The political pillar aims to realise an issue-based, people-centred, result-oriented and accountable democratic system" (GOK, 2012, p. ii).

The Kenya Vision 2030 sought to build upon the Economic Recovery Strategy (ERS) for the period 2003 to 2007, which was a strategy for economic recovery and rapid growth. The Kenya Vision 2030 therefore began in 2008 with 5 year Medium Term Plans, the first having been 2008 - 2012 and the second one from 2013 - 2017. The ERS had its own pillars as Growth and Macroeconomic Stability; Rehabilitation and Expansion of Infrastructure; Equity and Poverty Reduction and Improving Governance. As part of the ERS Pillar on Rehabilitation and Expansion of Infrastructure, "in November 2006, the government of Kenya and Uganda concessioned the running of their railways to Rift Valley Railways for 25years with the goal of making export, import and domestic freight-handling more efficient" (GOK, 2012, p. 3). It was therefore under the ERS (2003-2007) that Kenya carried out one of its largest concession projects, in the era before the PPP Act 2013, but after the passing of the Privatization Act 2005.

The Kenya Vision 2030 gives Public Private Partnerships a prominent role. The Second Medium Term Plan (2013-2017) states that the PPP Act 2013 aims "to mobilize funds for infrastructure and other development projects under PPP arrangements. The Act also provides for county governments to approve and undertake PPP projects which do not pose contingent liabilities to the national or county governments. For those programs that will generate liabilities, counties will seek clearance from National Government" before undertaking any PPP project (GOK, 2013b, p. 113). The Second Medium Term Plan thus continues to recognise the key role of PPPs as part of the government's public policy plan.

In the Sessional Paper on Kenya Vision 2030, the role of Public Private Partnerships is mentioned severally as part of the delivery of specific services and as a method of implementing key flagship projects. PPPs have been included in various sections of the

Sessional Paper. These include the commissioning of "public-private partnerships (PPPs) for improved efficiency in water and sanitation delivery;" use of PPPs in the co-generation of power in sugar factories; PPPs in healthcare policy; PPPs in combating municipal waste and PPPs in housing development (GOK, 2012, p. vii, p. 20, p. 105, p. 110, p. 111, p. 129, pp. 149 - 151).

The Sessional Paper on Kenya Vision 2030 therefore foresees an increased use of PPPs in various sectors in order to ensure that some of the objectives of the Vision 2030 are met and the key flagship projects are implemented. In this section and in the previous section, it has been demonstrated that there has been a lot of activity around PPPs, the setting up of institutional structures and the inclusion of PPPs in key policy frameworks. For the PPPs that have been implemented so far, or are in the process of being implemented, the PPP Act 2013 has been the most important legislation that has created a kind of divide between the period before the Act and the period after the Act.

The Kenya Vision 2030 further gave key prominence to PPPs as a means of delivery on the big projects. This is summarised in Figure 7.1 below.

Figure 7.1 Kenya Vision 2030 Document - PPP Flow Chart

Theme	**Mention in Kenya Vision 2030**
Aim	- To create a globally competitive and prosperous country with a high quality of life by 2030
	↓
Pillars	- Economic, Social, Political
	↓
Selected Pillar Aims: Economic	- To achieve an average economic growth rate of 10 per cent per annum till 2030 - To identify a number of flagship projects in every sector - Flagship projects to address priorities in key sectors such as agriculture, education, health, water and the environment.
	↓

Means of delivery on Flagship projects	- Public Private Partnerships
↓	
Public Private Partnerships	- PPPs for improved efficiency in water and sanitation delivery - PPPs in the co-generation of power in sugar factories - PPPs in healthcare policy - PPPs in combating municipal waste and - PPPs in housing development

Source: Author, Adapted from GOK, 2012

7.2.4 Lifeworld Values of the Societal Steering Medium

The review of relevant legislation and the Kenya Vision 2030 document shows that the Government of Kenya is keen to provide for more infrastructure facilities to meet the country's requirements. In addition, the Government of Kenya is also keen to involve private sector capital in this provision of public infrastructure. The government is therefore increasingly taking up the role of a regulator as opposed to commercially providing for the service. Through the country's legislative agenda in Parliament, the government has been able to facilitate a debate on what it would like to be carried out and how this is to be done. The Kenya Government dominates this agenda (English and Guthrie, 2003) by virtue of it being able to control the country's resources. The results of these debates, in the form of Acts of Parliament, could thus be argued to reflect the societal lifeworld.

From the foregoing sections, the following can be deduced to be the societal lifeworld. This is further discussed in the sections below and is summarised in the following table.

Table 7.3 Lifeworld Values - PPPs in Kenya

Value	Sources
Role of the markets ability to promote economy and efficiency.	Objectives of the Acts of Parliament. Established functions of the regulators.

Government has a role as a regulator of providers and not just a provider of public services.	Establishment of regulators/ commissions by legislation in each sector.
To make improvements required in the provision of infrastructure and delivery of public services.	Overarching goal of the Acts. Interviews held.

Source: Author's illustration

7.2.4.1 Role of the Markets in Promoting Economy and Efficiency

From the legislation and policy papers reviewed, it can be argued that the government is increasingly turning to private capital and to the markets to assist in providing for public goods and services, the latest being through the passage of the PPP Act, 2013. In Chapter Six, it was discussed that through supranational steering, the World Bank has attempted to assert its neoliberal view of the role of markets onto its member states, Kenya being one of them. Whether this is partly responsible for the views held by the government or not is beyond this thesis. However, what is clear is that a key lifeworld view of the Kenya state is that the involvement of the private sector is a harbinger of good to the Kenyan economy.

There is also the view that Kenya's capital markets are well developed and can therefore come up with the necessary frameworks to allow for private participation in the provision of public services. Firstly, the country is seen as being ahead of its peers in the region in having a well-developed financial market. This is why its PPP policy is ahead of the curve in the region. This readiness was argued thus,

> *Is Kenya ready for PPPs? Kenya has a developed money and capital market. The World Bank would also push its agenda only in a country that is ready* (PPP Project Manager).

This view that Kenya is ready is therefore both internal, from the government itself, as well as external. This could be the reason that the World Bank chose to promote a PPP policy in Kenya. The Bank seems to have set a criteria for countries whose PPP policy should be given a "push" and Kenya would have met such a criteria for PPPs to be promoted. For example, compared to one of its immediate neighbours, Uganda, following a meeting with the Public Private Infrastructure Advisory Facility (PPIAF), Kenya's PPP policy seems to have been pushed forward first and other countries would then follow,

> *The Kenyan parliament passed the PPP legislation in December 2012 and PPIAF is currently working with the Ugandan government to prepare PPP legislation* (Head of PPIAF East and Southern Africa).

A Cabinet approved PPP policy in Uganda was subsequently passed in July 2014 and PPP legislation activity was ongoing in 2015 (The Economic Intelligence Unit Ltd, 2015).

Secondly, the PPP Act 2013 anticipates gaps in the capital markets that would prevent the proper involvement of the private sector and suggests a way out. It alludes to the Fiscal Risk and Contingent Liabilities project (Government of Kenya, 2013) given that PPP liabilities will be those that the government is bound to honour. In order to meet the requirements on fiscal risk and contingent liabilities, the PPP Unit will be helping set up a framework through which these liabilities can be tracked and honoured.

> *The Fiscal Commitment and Contingent Liabilities (FCCL) Management Framework. Through this framework, any contingent liabilities are anticipated and honoured. This framework will be used to manage off balance sheet items* (PPP Project Manager).

Being off balance sheet items (Jenkinson, 2003), it is important to ensure that no liability is omitted and that all are tracked and monitored. This framework will therefore help the government in addressing the completeness of the information that they have on PPP liabilities.

Thirdly, with respect to the private sector, there are those projects that may be important but are not viable economically (World Bank, 2014). The Act has again addressed these by identifying an alternative route for funding such projects. The government will still seek to ensure that such projects are still implemented for the good of the country.

> *The establishment of a Viability Gap Fund (VGF) which will seek to provide funding for projects that may be socially viable, even though not economically viable* (PPP Project Manager).

Such projects could involve social welfare and be projects that help in providing a safety net to the more vulnerable segments of the population. As such, their economic non-viability notwithstanding, they will be important to the country. This is an important aspect of the view as it sheds some light on the lifeworld value that promotes the use of markets in the provision of public services. In one way, it can be argued that it acknowledges that there is a limit to the use of markets and suggests that there are areas where the private sector will not want to be involved. The risk involved in terms of investment versus rewards may not appeal to the private sector and given that risk is at the centre of PPPs (Asenova and Beck, 2003; Froud, 2003), the private sector opts out. On the other hand, it also highlights the profit seeking motives of the private sector (Plant, 2003) by implying that the private sector is ultimately in it for themselves. This means that the government must be careful even in the contracts that it eventually signs to make sure that the public sector obtains a fair deal.

Lastly, with respect to the local financial markets being able to fund for PPP projects, the government acknowledges that some changes should be put in place within the capital and financial markets to allow for longer tenor instruments. Through the PPP Unit, the government will,

> *seek to hire expertise/ adviser to provide the Central Bank of Kenya (CBK)/ Ministry of Finance to come up with instruments that can support the financing of PPPs. These would be instruments that can support the tenor of PPP projects for 25 years/ 30 years* (PPP Unit Project Manager).

Such instruments would ensure that PPP funding can be obtained locally, thereby reducing any costs that could be associated with the obtaining of PPP funding externally. As this is still in the process of being developed, it could imply that the country will have to look externally for most of the PPP funding for the moment. Given that most of the PPP funding is bank debt (Asenova and Back, 2003), the local banks may also have to re-structure their lending to incorporate long term funding for PPPs.

Outside of the Act, the Kenya Government has also promoted the involvement of the private sector in the provision of public services through its major policy statements. Of note is the Kenya Vision 2030, already discussed, where it identified several flagship projects in the key areas of Health, Education, Agriculture and Infrastructure and clearly stated that the use of PPPs would be one of the mechanisms of delivery. Given that this is a project that was intended to go on till 2030, the involvement of the markets in the delivery of public services will continue for a long time. Moreover, the publication of the PPP Policy Statement in 2011 made it even more clear that the private sector would not only be involved through outright sale of public assets in the process of privatization, but through the use of PPPs as well. This would, for example, be over a period of, say, 25 years in a typical Build Operate Transfer (BOT) model or any other model as agreed by the private actor and public sector contracting agency.

There is also the view in government that making use of the private sector has been beneficial, especially in the Power sector. This is in reference to Independent Power Producers (IPPs) working under a Build, Own Operate (BOO) or a Build Own Transfer (BOT) structure (Castalia Ltd, 2011; CEPA, 2015).

In the case of the IPPs,

> *Kenya has also had a successful experience with IPPs (Independent Power Producers). It has also had experience with the Rift Valley Concession, though this has not been so successful.*
>
> *It should therefore work* (PPP Unit Project Manager).

The first wave of IPPs were set up in the period 1996 to 1999, comprising of four BOO contracts. These were Westmont, IberAfrica, Olkaria III/ OrPower4 and Kipevu II/ Tsavo Power. Since then, there have been more IPPs (Castalia Ltd, 2011; CEPA, 2015). The investment in electricity generation took place in two waves. The first wave, from 1996 to 1999, consisted of four BOO contracts comprising $238 million in private investment. Following the "enactment of the Energy Act in 2006," "a second wave" commenced with the "Government selling 30% share of the Kenya Electricity Generating Company Limited (KenGen)" (Castalia Ltd, 2011).

The table below shows the increasing number of IPPs and their contribution to electricity generation:

Table 7.4 IPP Projects in Kenya and their Generating Capacity

Project	Financial Close	Capacity (MW)
Westmont	1996	46

IberAfrica	1996	56
Olkaria III/OrPower4	1999	13
Kipevu 2/Tsavo Power	1999	75
Rabai	2008	90
Mumias Sugar Cogeneration	2008	26
Olkaria III – expansion	2009	48
Triumph HFO Plant	2012	83
Thika power Plant	2012	87
Gulf Power Plant	2012	80
Olkaria III – expansion and refinancing	2012	62
Kwale Sugar Plantation	2013	18
Kinangop Wind	2013	61
Lake Turkana Wind	2014	310

Source: Cambridge Economic Associates Ltd, 2015, p. 6

Other than the IPPs, but closely related to them in power generation, the Geothermal sector is also considered to have been successful.

> *Other experiences include the GDC (Geothermal Development Corporation) and coal wells* (PPP Project Manager).
>
> *Geothermal Development was created to help in resource development and the construction of plants. It is a body meant to do all the drilling and thus take off the risks.*
>
> *GDC therefore does resource development while the others just come and take over generation* (Economist, Kengen).

The strategy of the Geothermal sector is therefore to make it easier for the private sector to participate by first tackling the big risk of successful drilling. Only once the drilling is complete, and the private sector does not have to sink its own money in wells that might turn out not to be viable, then the private sector is invited to build a power plant around the well. The Geothermal Development Corporation (GDC) has "succeeded in de-risking geothermal projects in Kenya making investment in geothermal energy very attractive and very viable" (GDC Website, 2017). Again, the aspect of risk transfer comes up (Monteiro, 2010), as it seems that the prohibitive costs of drilling ensure that this risk cannot be transferred and has to be borne by GDC, a government agency. The success of the Geothermal sector is also seen in its bid to diversify the sources of power from its traditional hydro sources.

> *Kenya has relied a lot on hydroelectric power in the past. However, the hydros are very old and need a lot of capital to rehabilitate. The dams are old* (Economist, Kengen).

Geothermal energy adds to the national grid and increases the overall energy capacity of the country. In addition, in the attempt to have more green sources of energy and move away from fossil energy,

> *Geothermal also has no carbon emissions. We'll also increase our national assets* (Economist, Kengen).

That Geothermal energy is seen as carbon free, adds to its perceived success. Developing these wells also adds to the national assets that could serve for many years ahead. While these two last reasons are laudable, they do not necessarily point to the financial success of using PPPs in the geothermal sector, nor do they point to the sustainability of such ventures for many years to come. Nevertheless, the fact that more sources of energy have been opened up could lead to cheaper electricity generated which would result in economic benefits for the entire country. Following the government's investment in Geothermal energy, "since August 2014 the cost of power to industrial and domestic consumers has fallen by over 30%" in Kenya (World Bank, 2015 quoting Geothermal Chief Executive Officer). In this respect, Geothermal can be viewed as a success.

One of the organizations that was identified as a flagship project in Kenya Vision 2030, and whose head responded on email to the interview questions, referred to the perceived efficiency and innovativeness of the private sector which would arguably be transferred to the public sector. They stated thus, that the private sector plays,

> *a complementary role alongside, the Government in the provision of infrastructure* (Director, Flagship Project).

The private sector therefore adds to the government's role in the provision of infrastructure in order to,

> *achieve high levels of efficiency and accountability in joint mobilization and allocation of resources drawn from the Private Sector and the Government* (Director, Flagship Project).

In this case, it can be deduced that the private sector is seen as a contributor to efficiency and accountability in public projects. In addition, the organization, which was putting up a city on a PPP basis, wanted

> *to anchor the city's development on the innovation drawn from the Private Sector and Public Sector* (Director, Flagship Project).

The private sector is thus portrayed as a harbinger of good, in terms of efficiency, accountability and innovation.

The advantages that the private sector would bring are cited in other privatization cases, not necessarily where concession has been used and is considered to have succeeded. In one instance, a detailed case for the involvement of the private sector was given,

> *Privatization has brought many benefits. If you look at the privatization of Telkom, many people lost their jobs. But out of that grew Safaricom, one of the largest companies in Kenya. Safaricom and Orange Telkom have created thousands of jobs through their agent network.*
>
> *If you look at the universities, the staff-student ratios have improved. There has been deregulation of foreign currency and you don't have to apply to the Central bank for foreign exchange. Banks have improved and Kenya Airways is profitable.*

> *Taxes paid by companies such as Safaricom are of huge amounts. Competition has been increased in different sectors* (Investment Officer, Kenya Investment Authority).

These examples therefore add to the desire to involve the private sector more. It should be noted, though, that since the time of the interview, one of the companies mentioned, Kenya Airways, had moved into loss territory when it posted a Kenya Shillings 25.7 billion loss (Daily Nation, 1 September, 2015). Nevertheless, the sentiments on the involvement of the private sector across the representatives from government agencies interviewed suggest that this is a view that was shared across the board and that the involvement of markets is a key strategy for the Kenya government.

7.2.4.2 Role of the Government as a Regulator and not just a Provider of Commercial Services

The legislation passed over the years from 2002 - 2005 that have been highlighted in section 7.2 above give a pointer to the government's perceived role in the wake of the invitation of the private sector to be involved in the provision of public services. In each of the Acts of Parliament passed, the government has adopted the role of a regulator.

In cases of Public Private Partnership, the government ceases to be the provider of the service with respect to the commercial role and becomes more of a "procurer and regulator" of public services (Edwards and Shaoul, 2003; Edwards et al, 2004). Through the establishment of the PPP Unit, the government seeks to oversee the implementation of the PPP Act.

However, the earlier Acts of Parliament also point to the government starting to assume this role. Through the Water Act, 2002, the Water Regulatory Body was established. Through the Energy Act, 2006, the Energy Regulatory Commission was established. Through the Public Procurement and Disposal Act, 2005, the Public Procurement Oversight Authority was established. Through the Kenya Communications Act, 2009, the Communication Commission of Kenya was established, and so on. Each Act, therefore, spells the requirements for the private sector to come on, while also spelling an alternative role for the government.

While it can be argued that this is perhaps inevitable, that the role of a regulator becomes an automatic role for the government, the question remains whether this is a preconceived role that the government takes up as it involves the private sector more. To what extent does it decide that this will be the role or is the role forced on it by the necessity to cede some functions? Again, is it a framework that is locally developed, or is it as a result of policy transfer? In so far as the establishment of the regulator's office remains pervasive through each piece of legislation, it is a central theme in the successive Acts of Parliament that have sought to develop a framework for the involvement of the private sector.

7.2.4.3 Budgetary Constraints versus Improvements Required in the Provision of Infrastructure and Delivery of Public Services

The Kenya National Vision 2030 talks at length about the gap between what is available and what is needed with respect to investment in infrastructure and public services. The document mentions various challenges that the country is facing with respect to infrastructure. These are: high energy costs, over reliance on hydro-electricity with frequent power shortages, high telecommunication costs, low water availability, system losses where "unaccounted-for-water losses average 60 per cent while electricity transmission losses average 18.5 per cent" and a "poor urban transport system in Nairobi" (GOK, 2012, p. 14).

This theme of shortages in infrastructure is a theme that has been taken up by the PPP Policy Statement which has gone to some length to establish why the government is keen to pursue PPPs. As part of the objectives of establishing PPPs in the country, the policy seeks to "eliminate the deficit in core infrastructure that currently persists in Kenya" (GOK, 2011). What comes across is the identification that there is an insufficient provision of public services and inadequate infrastructure that needs to be improved (Guasch, 2004; IMF, 2004; Noumba Um, 2010). There is a sense of urgency that something should be done about it and the involvement of the private sector is seen as one way of addressing this.

In the background is the prospect of the national debt and the fact that just paying off the debt reduces what is available for spending on infrastructure and other services. The usefulness of PPPs in reducing the squeeze on the recurrent budget, as well as alleviating the effects of the national debt, is seen as part of the reason for PPPs. One respondent felt that,

> *Kenya's debt is currently pegged at 48% of GDP. This is a very high level and would affect Kenya's Credit Rating if any of the debts was to be recalled. There has therefore been an interest to transfer part of the risk to the private sector. This can be achieved through the use of PPPs…. the use of PPPs can allow for more projects to be carried out than would have been done before* (Investment Officer, Kenya Investment Authority).

Subsequent to this interview, the IMF published its Debt Sustainability Assessment (DSA) on Kenya in December 2016. In this assessment, the IMF noted that "Gross public debt increased from 44 percent of GDP at end-2013 to 52.4 percent at end-2015. In the baseline, public debt is expected to stabilize around 54–55 percent of GDP in 2017-18 and gradually decline thereafter" (IMF, 2016, p. 2). Most of the increase in debt was used to finance infrastructure, notably, the first phase of the Standard Gauge Rail, from Mombasa to Nairobi. A commitment had also been obtained on a second loan of USD 1.5bn for the second phase from Nairobi to Naivasha (Ibid.). There is therefore pressure to deliver on the flagship projects in National Vision 2030, as well as increase and maintain other infrastructure, against budgetary constraints. Inviting the private sector through a PPP therefore seems like one way to ease this burden.

As a Lower Income Country (LIC), a public debt rate of 54-55% of GDP remains below the "LIC DSA public debt benchmark" of "74 percent of GDP" in present value terms. This means that "external debt distress remains low," but could change due to "vulnerability to export shocks" which have increased (IMF, 2016, p. 1, p. 5). Kenya is therefore still below the danger point with respect to the DSA benchmark but is not too far away. This makes it necessary for the government to consider other sources of funding or invite the private sector through PPPs, for instance.

However, as of October 2017, Moody's, the rating agency, placed "the B1 long-term issuer rating of the government of Kenya on review for downgrade." Included as part of the reasons for the possible downgrade are "persistent, large, primary deficits and high borrowing costs continue to drive government indebtedness higher and Government liquidity pressures risk rising in the face of increasingly large financing needs" (Moody's website, 2017). The government's indebtedness and the potential for it to go even higher, therefore, places a burden on current resources.

There is also a drive for PPPs to open up areas not considered before or invested in sufficiently that makes PPPs be seen as an attractive means to fund public services. Within the energy sector, PPPs are seen as a possible means to unlock vast energy resources that are currently not utilized. One respondent at the Geothermal Development Corporation stated,

> *There is a large opportunity, mostly in the energy sector. Resources are abundant but not yet well developed* (Official, Geothermal Development Corporation).

The desire to open up new opportunities is not tied to the energy sector alone. Even in healthcare and education, PPPs are being involved or are being conceptualised.

> *There is even a plan to put up a Cancer PPP at Kenyatta Hospital* (Economist, Kengen).

In fact, in the case of education, a number of universities have planned to use PPPs to put up student hostels. One university was nearing the financial close during the research study while a few others were preparing for the process,

> *The PPP Unit is also about to bring the first PPP post the Act to a commercial close. This is the case of Kenyatta University which is in the final stages of negotiation. This is a PPP for student hostels.*
>
> *Five other public universities have followed the case of Kenyatta University and are now in the process of preparing their Expression of interest documents* (PPP Project Manager)

These five public universities are included in the published list of 59 projects that constitute the National Priority List of PPP Projects, 2014 (see Annexe 1).

> *The government cannot afford infrastructure needs at present. It has to obtain loans from the development partners, other countries or implement PPPs (*PPP Project Manager).

PPPs therefore seem to offer a third alternative, other than bilateral and multilateral loans. Even though the private sector is involved and there is an aspect of debt as well, it is seen to be private sector debt, distinguishing it from the government obtained loans.

7.3 Societal Steering Mechanisms

The Kenya Government as the societal steering media, makes use of various steering mechanisms in order to achieve its objective in developing and implementing a PPP Policy. In this section, the PPP Policy Statement, the PPP Act 2013 and the PPP Unit are discussed as key steering mechanisms within the PPP process.

7.3.1 PPP Policy Statement

In November 2011, the Government of Kenya published a PPP Policy Statement through the then Office of the Deputy Prime Minister and Ministry of Finance to clearly state the position of the Kenyan Government on PPPs. The key purpose of the policy was "to articulate the Government commitment to Public Private Partnerships (PPP) and to provide a basis for the enactment of a PPP Law to strengthen the existing legal and regulatory framework. The policy is also expected to provide a foundation for the establishment of institutions to champion the PPP agenda, facilitate mobilization of domestic and international private sector investments, and to provide for Government support for PPP projects, as well as providing a clear and a transparent process for project development" (GOK, 2011, p. 1).

The publication of this Policy Statement was the clearest signal that the Kenyan Government intended to make PPPs a key component of its public policy framework, finally resulting in the PPP Act 2013. The Policy Statement positioned itself within the overarching Kenya Vision 2030 by stating that "PPP arrangements are consistent with the Kenya's Vision 2030" (Ibid.). Indeed, the Kenya Vision 2030 project aimed at increasing private sector participation in the delivery of public services. Kenya Vision 2030 "is the national long-term development blue-print that aims to transform Kenya into a newly industrialising, middle-income country providing a high quality of life to all its citizens by 2030 in a clean and secure environment" (GOK, 2011).

The Policy Statement acknowledged that the "provision of adequate and high quality infrastructure services remains the biggest challenge to development of the country. Currently, the Government faces a growing gap between public investment needs and available resources. Indeed, the Government and development partners have in the past been the main financiers of public infrastructure and services. The level of investment that can be mobilized from these sources is however, far below the requirements needed to support the accelerated economic growth as set forth in Vision 2030" (GOK, 2011, pp. 3-4).

The PPP Policy Statement is therefore significant in that it formally defined the rationale behind PPPs, the scope and the institutional framework (Farquharson et al, 2011; World Bank, 2014) for the setting and monitoring of PPPs such as the PPP Unit in the Ministry of Finance. It also defined the specific arrangements of PPPs that would be pursued which would include, but not be limited to "management contracts, leases, concessions, Build-Own-Operate-Transfer (BOOT), Build-Own-Operate (BOO), Build-Operate-and-Transfer (BOT), Build-Lease-and-Transfer (BLT), Build-Lease-Maintain-Transfer (BLMT), Build-Transfer-and-Operate (BTO), Develop-Operate-and-Transfer(DOT), Rehabilitate-Operate-and-Transfer (ROT), Rehabilitate-Own-and-Operate (ROO), Land Swap and output based maintenance contracts"

(Duffield, 2010; GOK, 2011, p. 4). Details of each of these arrangements are further described in Annex 1 of the Policy Statement, included in this thesis also, as Appendix 3.

In establishing the institutional framework, the PPP Policy Statement stated that “the Government will establish an institutional framework for implementing PPPs, consisting of the PPP Committee, responsible for developing and implementing PPP policy initiatives; the PPP Unit, domiciled at the State Department responsible for Finance, to act as a national centre for PPP expertise; PPP Nodes in the public entities responsible for the development and management of PPP projects; and a Project Facilitation Fund to provide an avenue for government support to PPP projects” (GOK, 2011, p. 6). These intentions were later acted on and included in the PPP Act 2013.

Lastly, the PPP Policy Statement prescribed the PPP process from project identification, project appraisal, project implementation and post-project monitoring. The policy states that key considerations for any project would be “value for money” and “affordability.” The Policy Statement states that “the best value for money outcome in public services is the key consideration at all stages of a project's development and procurement. Government will test value for money (VfM) by comparing the costs of PPP proposals against established benchmarks wherever possible” and that “two kinds of affordability will be tested in the assessment of PPP projects: (1) affordability to consumers which will be determined by conducting a consumer demand, affordability and a willingness to pay survey; and (2) affordability to Government which wiIl be assessed by determining whether the proposed PPP project can be financed from the government budget over its life” (GOK, 2011, p. 9).

The inclusion of value for money and affordability as considerations reflects a drawing on the experience of PPPs elsewhere. In the UK, for example, value for money, through the use of the Public Sector Comparator, has been used to identify projects for which PPP is to be used. This is, however, not without debate. There have been arguments whether value for money was effectively achieved once the project was implemented (Spackman, 2002; Grimsey and Lewis, 2005).

Table 7.5 Key Summary of PPP Policy Statement, 2011

Theme	Selected Themes as Included in the PPP Policy Statement
Purpose	- To articulate the Government commitment to PPPs - To provide a basis for the enactment of a PPP Law - To strengthen the existing legal and regulatory framework - To provide a foundation for the establishment of institutions to champion the PPP agenda
Policy Context	- Policy arrangements are consistent with Kenya's Vision 2030. - Aim to increasing private sector participation in the delivery of public services (also as envisaged in the Kenya Vision 2030 project).
Highlight Government Challenges	- Inadequate provision of adequate and high quality infrastructure services. - Growing gap between public investment needs and available resources.
Identify Types of PPPs	- For example, Build - Operate - Transfer (BOT) - See Appendix 2 for complete listing of types stated in the PPP Policy Statement.
Define the institutional framework	- The PPP Committee to develop and implement PPP policy initiatives; - The PPP Unit, domiciled at the State Department responsible for Finance, to act as a national centre for PPP expertise - PPP Nodes in the public entities responsible for the development and management of PPP projects - Project Facilitation Fund to provide an avenue for government support to PPP projects
Basis for PPPs	- Value for Money - Affordability

Source: Author, Adapted from the PPP Policy Statement, 2011

Through the use of the PPP Policy Statement, the government therefore began to steer the PPP process in Kenya, by providing an overall framework of what its vision about PPPs would be. Following the publishing of the PPP Policy Statement in 2011, the government of Kenya set forth to introduce a bill in Parliament, which was debated and the legislation passed in December 2012. This was then signed into law in January 2013 as the PPP Act, 2013 (GOK, 2013). The PPP Act drew a line between the use of concessions before the Act where there was an element of concessioning and privatization after the Act.

7.3.2 Public Private Partnership Act 2012 - 2013

In the last quarter of 2012, starting in August (see particularly the debate on 8th August 2012), the Kenya Parliament Hansard reveals debates on the Public Private Partnership Act, which culminated in the passing of the legislation in December 2012 by Parliament (The Hansard, 2012). This was then signed into law in January 2013.

The PPP Act 2013 is the main legislation governing the identification, appraisal, implementation and post-project monitoring of PPP projects. It is therefore the primary steering mechanism of the steering medium, because it spells out each aspect of PPPs and how this should be dealt with. In Part II of the Act, the Act establishes a Public Private Partnership Committee which is a high-level committee that is composed of Principal Secretaries from various ministries and the Attorney General (or his delegate) among others. This committee is tasked with various roles including formulating the Public Private Partnership Guidelines, approving project proposals as well as approving identified projects.

Part III of the Act establishes the Public Private Partnership Unit, “within the State department responsible for matters relating to finance,” (GOK, 2013, p. 318) thereby leading to the current PPP Unit being under the Ministry of Finance. Sub-section 14, in Part III, states the key functions of the PPP Unit as to “(a) serve as the secretariat and technical arm of the Committee; and (b) provide technical, financial and legal expertise to the Committee and any node established under this Act” (GOK, 2013, p. 320). The Act further lists specific roles and activities to be carried out in satisfying these functions. The Act further establishes the PPP Petitions Committee to hear any disputes arising from private tenders of PPPs.

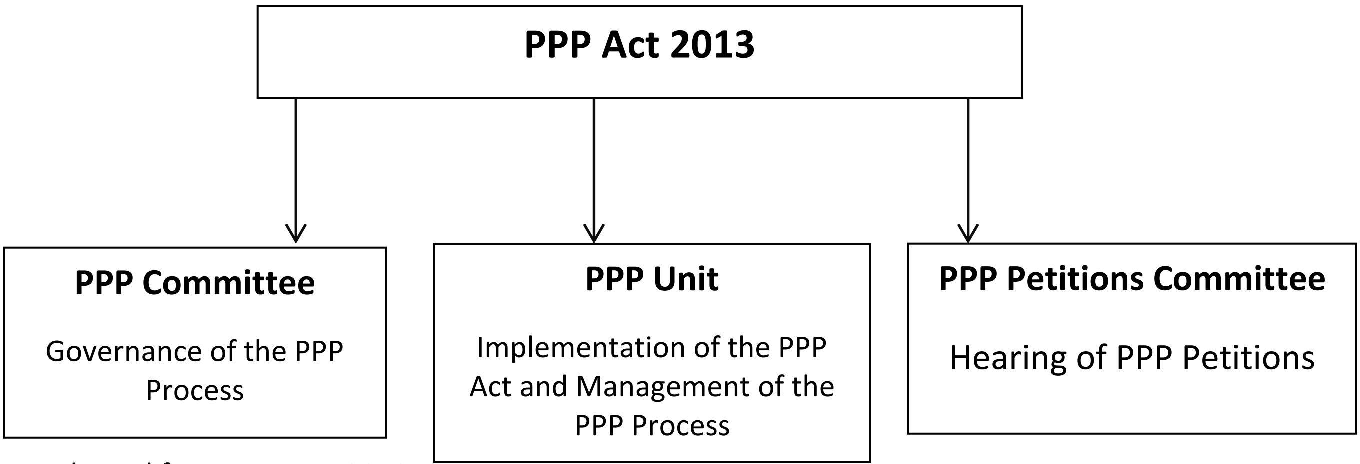
For the different ministries and public organisations that set out to use a PPP, the Act describes clearly how this should be done. Such organisations or bodies are referred to in the Act as contracting authorities and are required to prepare a list of the projects that they intend to undertake on a priority basis and have these submitted to the PPP Unit for assessment. The PPP Unit will then give its own assessments and make recommendations to the PPP Committee on the projects. “Upon receipt of the project lists, the Committee shall” then “consider lists and the recommendations of the unit and prepare and submit to the Cabinet for approval, a national priority list” (GOK, 2013, p. 325).

The Act is therefore very clear on the process of undertaking a PPP project and engaging the private sector. The Act issues specific rules, guidelines and procedures to be followed in the process.

Part VI of the Act deals with project identification and selection of the Private Party. In sub-section 30, the Act requires the PPP Committee to issue “guidelines for the identification, selection, pre-tender approval, tendering, negotiation, post-tender approval and monitoring processes of public private partnerships” (GOK, 2013, p. 327). Other rules issued are around solicited proposals, privately initiated investment proposals and project agreements. The Act therefore anticipates and attempts to deal with unsolicited proposals as well.

Figure 7.2 below outlines the institutional framework that has been created by the PPP Act 2013.

Figure 7.2 Institutional Framework as Established by the PPP Act 2013



Adapted from PPP Act, 2013

While the Act has regulations on a variety of other areas regarding PPPs, the Act also requires the establishment of a fund, “a Fund to be known as the Public Private Partnership Project Facilitation Fund” (GOK, 2013, p. 345). The sources of finance for this fund are specified as “a) grants and donations; (b) such levies or tariffs as may be imposed on a project; (c) success fees paid by a project company to the unit; (d) appropriations-in-aid; and (e) moneys from a source approved by the State department responsible for matters relating to finance" (Ibid). The inclusion of grants and donations seems to suggest that the government expects donors, whether bilateral or multilateral, to contribute too, towards the establishment of the PPPs.

The uses of the funds are to support the PPP Unit in its functions, support contracting authorities in the preparation phase of a project, the tendering process and project appraisal. They are also to be used to extend viability gap finance to projects that are desirable but cannot be implemented in the absence of financial support from the Government and to provide a source of liquidity to meet any contingent liabilities arising from a project (Ibid.). One other use is to pay the transaction adviser's retainer fees where the contracting project did not have sufficient technical capacity and has opted to employ a transaction adviser in the project so as to assist in the procurement process, as allowed in section 36, sub-section 2 (GOK, 2013, p. 346, p. 329).

Lastly, the Act has included, as one of the annexes, the Second Schedule which gives a list of the different PPP arrangements that the government can get into, with the definitions of each arrangement. This is similar to that included in the Annex on the PPP Policy Statement and is shown as Annex 2 in this thesis.

7.3.2.1 National Priority List of Projects

Section 25 of the PPP Act, 2013 requires the PPP Unit to "publish in the electronic and print media, the national priority list of projects that has been approved under section 24" of the same Act. Section 24 of the PPP Act, 2013 requires the PPP Unit to "1) assess the project lists submitted to it by the contracting authorities under section 23 and submit the lists, together with its recommendations, to the Committee for approval." Following this submission, the second part states that upon "receipt of the project lists, the Committee shall consider lists and the recommendations of the unit and prepare and submit to the Cabinet for approval, a national priority list." Lastly, "(3) The Cabinet Secretary shall prescribe the thresholds for approval and the carrying out of projects by the county governments under this Act" (GOK, 2013, p. 325).

The PPP Act therefore envisages the preparation of a National Priority List of Projects that will have been submitted to the PPP Unit by the contracting authority, presented to the PPP Committee and finally submitted to the Cabinet. According to section 23 of the Act, "each contracting authority shall prepare a list of projects that it intends undertake on a priority basis under this Act and shall submit the list to the unit for assessment" (Ibid.).

In complying with this Act, Cabinet Secretary responsible for Finance published on 31 December 2013 a National Priority List of 47 projects. Subsequent to this in September 2014, a second list was published with an increased number of projects to 59. A list of the 59 projects has been reproduced in Appendix 1. In Chapter Six, a background to the National Priority List of PPP Projects was given, with the initial list of projects discussed as having been obtained through the Financial and Legal Sector Technical Assistance Project (FLSTAP). Through this project, Ecorys Nederland BV and Gibb Africa Ltd were engaged to undertake a PPP pipeline study/analysis (Ecorys and Gibb, 2012). This analysis was the genesis of the current list, as described in Chapter Six. The list was then enacted into law.

The PPP Act has therefore created two key institutions through which it steers the PPP process in Kenya. The law thus acts as a legislative steering mechanism. The law has then further created institutions which, although described in the law, will further have their own lifeworlds and steering mechanisms (Broadbent et al, 1991). These are two major levels of steering, one drawing from the other, but at the same time performing its own steering. The Act has also created the PPP Unit, which carries out its own steering processes.

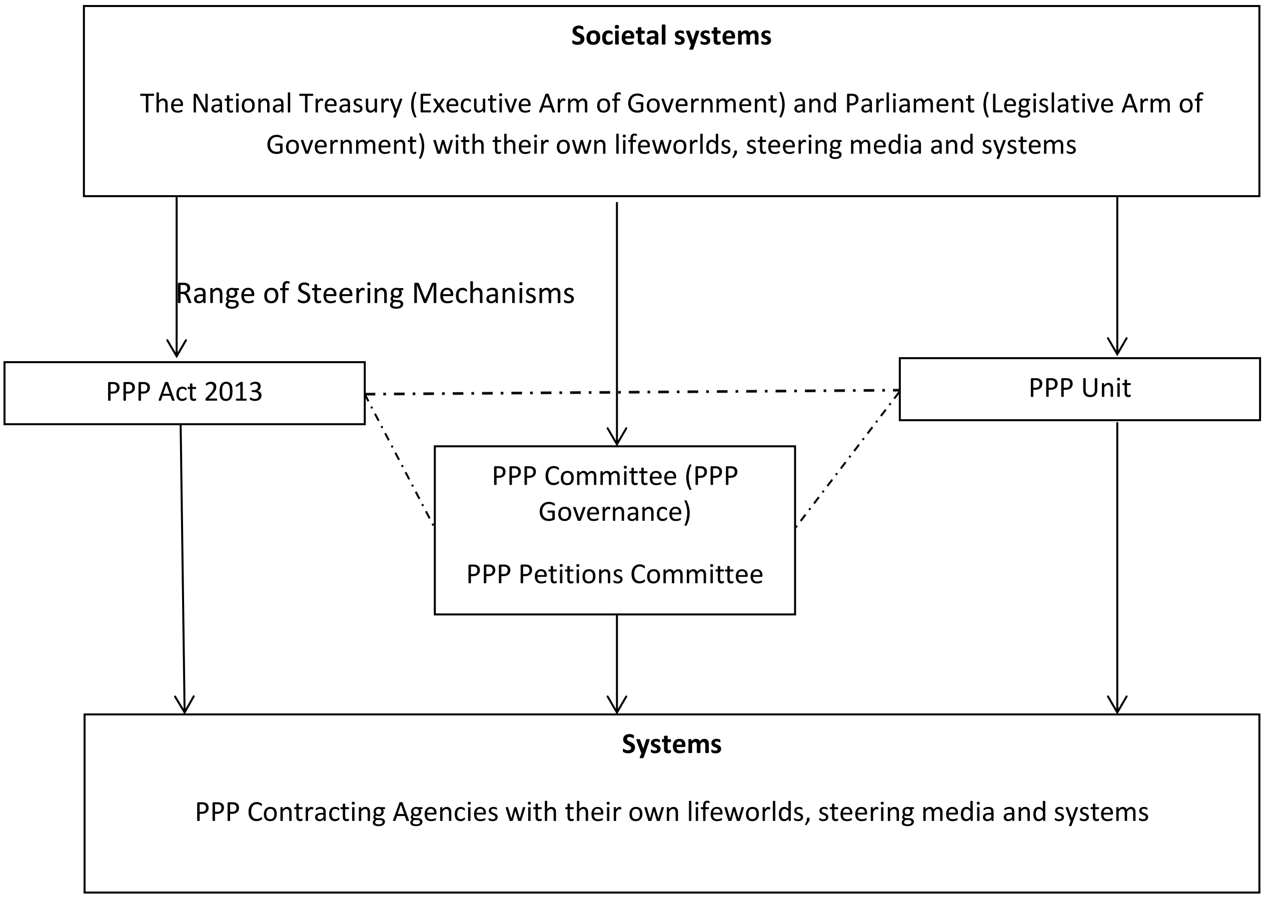
The other institution that has been created by the PPP Act 2013 is the PPP Petitions Committee to hear any disputes on PPPs arising. In a Gazette Notice in October 2014, the government gazetted the PPP Petitions Committee (GOK, 2014).

The PPP Act 2013 further details the PPP process, how to deal with solicited proposals and privately initiated investment proposals. It thus anticipates and seeks to offer solutions in the event of PPPs coming up that have not been initiated by the government or that do not appear on the National Priority List of PPP Projects.

The PPP Act is the overriding legislation for PPPs. While its various clauses give guidance on how to go about establishing PPPs in Kenya, it is also quite prescriptive with specific rules and requirements. For instance, in the Third Schedule to the Act, the minimum contractual obligations required to be specified in a project contract lists 25 requirements that must be included. This is good in one way in that it attempts to protect the government from any eventuality by anticipating many different scenarios. However, this can be quite rigid and ensure that PPPs have to be done in a certain specific way. In addition, PPP scenarios develop over time and the contract would not have envisaged all possible eventualities. Hart (2000) describes "incomplete contracts" with respect to PPPs, saying that PPP contracts are never quite complete. Given the long-term nature of the contract, this rings true. The PPP Unit, though a creation of the PPP Act, is a key steering media as well. The PPP Committee provides governance of the PPP process including the approval of projects following recommendations by the PPP Unit, while the PPP Petitions Committee hears any disputes in the PPP process.

These can be represented as follows:

Figure 7.3 Public Private Partnerships Steering in Kenya



Source: Broadbent et al (1991, p. 8), Adapted by the Author

In Figure 7.2 above, the National Treasury is responsible for the PPP process in Kenya. Following legislation by Parliament, the National Treasury through the PPP Act 2013 and the PPP Unit direct the PPP process. The Act also creates the two committees. How steering takes place through each of these is discussed further below.

7.3.3 PPP Committee

The PPP Committee is the overall governing organ created by the PPP Act, 2013. Some of its key roles are given as follows:

"1. Formulate policy guidelines on public private partnerships;

2. Approve project proposals submitted to it by a contracting authority;

3. Authorise allocations from the Fund established under section 68; (the Act refers to the Project Facilitation Fund which is described in more detail in this chapter).

4. Formulate or approve standards, guidelines and procedures for awarding contracts and standardized, bid documents;

5. Examine and approve the feasibility study conducted by a contracting authority under this Act;

6. Review the legal, institutional and regulatory framework of public private partnerships;

7. Approve the organisational structure of the unit;

8. Oversee the monitoring and evaluation by contracting authorities, of a public private partnership from the - commencement to the post completion stage" (PPP Act, 2013).

From the selected functions, the PPP Committee basically has to approve the PPP at every stage from inception to completion, in addition to putting in place standards and guidelines on how PPPs should be conducted.

By giving such powers to the PPP Committee, the Act has effectively placed the key steering process in the hands of this committee. One of the required members to sit on the committee is the Cabinet Secretary currently in charge of the National Treasury. The National Treasury is therefore represented at the highest level in the steering process.

7.3.4 Public Private Partnership Unit

The year 2010 saw the establishment of the Public Private Partnership Steering Committee and the PPP Secretariat (GOK, 2011), a precursor to the PPP Unit which was later established by the PPP Act 2013. In addition, the Government of Kenya conducted a Review of Kenya's

Legal and Regulatory Framework (Ibid.). The PPP Unit provides technical support to the PPP Committee.

Section 11 of the PPP Act 2013 requires the setting up of the PPP Unit, "within the State department responsible for matters relating to finance" (GOK, 2013a, p. 318). Following this requirement, the PPP Unit in Kenya is now formally established at the National Treasury (previously referred to as the Ministry of Finance before the passing of the new Constitution in 2010) and is responsible for the co-ordination of PPP activities in Kenya. These activities include receiving proposals for PPP activities, studying them, making assessments and recommendations to the PPP Committee.

One of the PPP Unit's roles in order to fulfil its functions is to "serve as a resource centre on matters relating to public private partnerships" (GOK, 2013a, p. 320). In performing this role, the PPP Unit has created a website to serve as "a centre of PPP Expertise" that contains relevant and pertinent information on PPPs in Kenya. The site contains details of the possible PPP projects identified as well as key documents within the PPP identification, appraisal and monitoring process. The unit is expected to "maintain a record of all project documentation" and is therefore the first port of call for any enquiry into PPP activities in Kenya. The PPP Unit is also a key steering mechanism for the steering media and this can be drawn out by breaking down the key roles of the PPP Unit.

7.3.4.1 PPP Unit Involvement in Implementing the Act

The PPP Unit is responsible for the implementation of the PPP Act. This has been done in different ways and is ongoing, given that the Act only came into force in 2013. The PPP Unit has helped in the process of setting up the structure that is prescribed by the Act.

> *The PPP Unit has also helped establish the various sectoral nodes. This is required by the Act. Each node is responsible for a specific sector. For instance, the Transport Working Sector is responsible for Transport and Infrastructure and is chaired by the PS (Permanent Secretary) Nduva Muli. The Energy Working Sector is responsible for Power generation and distribution in the country. It is chaired by PS Musonik* (PPP Unit Project Manager).

The sectoral nodes help in determining which PPP projects are suitable for implementation in the various sectors. Various sectors have been identified and the sectoral nodes put in place.

There are currently 25 formally established nodes (PPP Unit Project Manager).

Closely linked to this is the establishment of the PPP Committee to oversee the overall PPP process in Kenya.

> *The PPP Committee has also been established as required by the PPP Act. The committee is made up of the Permanent Secretaries of 4 ministries, among them Treasury and Devolution* (PPP Project Manager).

It can be inferred that the Treasury, being the home of the PPP Unit, would be represented on the committee. In addition, the Treasury is the custodian of public funds. The Cabinet Secretary in charge of the Treasury is thus represented. The Devolution Ministry is also a key ministry.

The PPP Unit is represented too in the PPP Committee. The PPP Director holds a key role within the PPP Committee.

*The Director of PPP Unit is also the secretary to the PPP Committe*e (PPP Unit Project Manager).

The PPP Committee and the PPP Unit are therefore closely linked through the PPP Director. Their views would therefore be heard in the PPP Committee. Likewise, any directions from the PPP Committee would be received first hand by the Director, who sits in the committee.

In addition, during the research study, the PPP Unit was working to set up the PPP Petitions Committee.

> *We are also in the process of establishing a PPP Petitions Committee* (PPP Project Manager).

This is a key committee that would listen to any disputes arising from the PPP process such as rejected bids or interpretations of various PPP documents. The Kenya Gazette subsequently published the establishment of the PPP Petitions Committee in October 2014.

7.3.4.2 PPP Unit Involvement in Actual Projects

The PPP Unit has been involved, firstly, in the publication of the government's National Priority List of PPP Projects. A previous list showed 47 projects (GOK, 2013), however, this has since been increased:

> *the number of projects is now 59. New projects have been added to the initial list* (PPP Unit Project Manager).

The projects are spread out across various sectors and are to be implemented on a case by case basis. However, they represent what the government is keen to implement as PPP projects. PPP projects are listed in Appendix 1.

Secondly, the unit is helping the projects that are ready to start to develop their technical documents while at the same time helping them work through the process from Expression of Interest to the financial close.

> *The PPP Unit is also about to bring the first PPP post the Act to a commercial close. This is the case of Kenyatta University which is in the final stages of negotiation. This is a PPP for student hostels.*
>
> *Five other public universities have followed the case of Kenyatta University and are now in the process of preparing their Expression of Interest documents.*
>
> *The Ministry of Environment and Natural Resources is also preparing for a number of PPPs to do with dams, water and fishing* (PPP Unit Project Manager).

At each stage of the PPP process, the PPP Unit helps the project owners to prepare adequately before going out to the market with the project and all through to the financial close.

> *The unit is also involved in the design of each project, participating in the preparation of the Expression of Interest (EoI) and Request for Proposal (RFP) documents* (PPP Project Manager).

The unit therefore provides a guiding hand to the project owners and helps them through the maze of PPP laws and regulations. Indeed, the National Treasury, through the unit (PPP Unit website), has prepared a review of the Request for Expression of Interest and Request for Proposal documents for each project.

As part of implementing a PPP, the PPP Unit relies on the experts that sit at the PPP Unit. However, in cases where additional technical expertise is required,

> *the PPP Unit is able to hire consultants to provide technical expertise for the different projects. Hiring of technical advisory capacity is required in different sectors such as Rail, Water, Energy, Education, Airports, Ports and Counties* (PPP Unit Project Manager).

Consultants hired include the Transaction Adviser, finance and legal experts. Following an expression by five universities to follow in the footsteps of Kenyatta University to build student hostels through PPPs, the PPP Unit was to,

> *place an advertisement in August for the hiring of one transaction adviser to provide support to the 5 universities who are seeking to implement student hostel PPP projects* (PPP Unit Project Manager).

The hiring of one Transaction Adviser for the five projects may be due to the need to keep costs low and also because of the similarity of the projects, for which the implementing agencies may have the same things to consider.

For the project owners or the implementing agency, the PPP Unit also ensures that they have additional guidelines to help them through the process.

> *The PPP Unit is also enabled to prepare PPP Guidelines, Terms of References and Checklists* (PPP Unit Project Manager).

This ensures that the implementing agency, who may be implementing PPPs for the first time, is aware of the various requirements to be met, even as they are guided through the process on a step by step basis.

7.3.4.3 Building up Capacity for the Future

The PPP Unit also works towards building the country's capacity to understand and implement the PPPs. Following the establishment of county governments, the PPP Unit is seeking to build capacity at the county levels. This includes the training of county officials and executives.

> *We are also aiming to bring the county cabinet members to Nairobi for consultations and training as part of drawing up the Draft County Regulations* (PPP Unit Project Manager).

The county executives will be involved in the PPP process at different levels, should they decide to implement a PPP project in their counties. As such, it is important to train them and let them familiarise themselves with the PPP legislation.

In addition to training county officials, the PPP Unit is also aiming at building a broad pool of people across the country who would be knowledgeable in PPPs and would thus ensure that this knowledge is further spread.

> *The PPP Unit also seeks to train 200 - 300 people to help build capacity on PPPs across the country* (PPP Unit Project Manager).

Given that the country is planning to implement PPPs on such a large scale for the first time, covering a total of 59 projects on the National Priority List, it would perhaps be useful for more and more people to be knowledgeable about PPPs. This can then enable them to interact with the PPP process in an informed manner.

Moreover, the PPP Unit wants to benchmark Kenya's PPPs with other countries that have already implemented PPPs. In this respect,

> *the unit also organises for benchmarking visits to other countries such as India, where PPPs have been implemented* (PPP Unit Project Manager).

The unit considers that there is some learning that can take place from countries that have implemented PPPs before, the challenges that they have encountered and how they have managed to deal with these.

On a case by case basis, the PPP Unit will also hire technical expertise where there is a skills shortage. This requires advance planning as the available skills must be mapped against future requirements so as to highlight the skills deficit.

> *PPP Unit works closely with the World Bank which has a ready pool of experts that can be drawn on in individual PPP projects* (PPP Unit Project Manager).

The PPP Unit is also able to,

> *hire consultants to provide technical expertise for the different projects* (PPP Unit Project Manager).

Having external experts in the PPP process could therefore transfer much needed expertise to the local PPP environment and also ensure that the PPPs are actually implemented.

In KenGen, one of the PPP contracting agencies, the role of the secretariat was once more spelt:

> *Yes, the PPP Secretariat advises on the Request for Proposal (RFP). This was already done internally last year. The PPP Secretariat manages queries, as the private partner wants an independent opinion.*
>
> *The PPP Secretariat also hires the Transaction Adviser, the Financial and the Legal Adviser for the project* (Economist, Kengen).

With respect to the publishing of the National Priority List of PPP Projects, with 59 projects included, it may not be possible to implement all at once. Therefore,

> *the PPP Unit also prepares a strategic plan to help in prioritising PPPs* (PPP Unit Project Manager).

This will ensure that the projects are staggered and only those that are much needed and most viable can be implemented right away, while others come later on. It will also depend on the readiness of the implementing agency.

As part of the strategic planning, there are some projects that have already been prioritised. These are,

> *the Thika Highway, Nairobi - Nakuru Highway, Southern Bypass, Kisumu Seaport and the 2nd Nyali Bridge* (PPP Unit Project Manager).

These are projects that could have a major economic impact and that could be one of the reasons why they have been earmarked. Thus, the PPP Unit's role in PPPs in Kenya is extensive from the broad policy and strategy level to the details of individual PPP projects. This shows how the PPP Unit is an institutional steering media, whose impact can be felt at every stage and every level in the implementation of PPPs in Kenya.

7.4 Internal Colonization

Steering media can direct the systems away from the lifeworld values, thereby carrying internal colonization (Broadbent et al, 1991), and an anomalie therefore occurs as the values of the lifeworld that were intended to be conveyed are not conveyed. Habermas (1984, 1987) gives certain characteristics of steering media that become colonising. In this section, we look at these qualities and consider them with respect to the Kenyan case of PPPs to determine whether internal colonization has taken place.

7.4.1 Steering Media on PPPs as Regulative or Constitutive in Character

Habermas has argued that steering media that is "regulative" in character is less likely to be colonizing as opposed to steering media that is constitutive. In this chapter, the PPP Act 2013 together with the institutions that it has created has been identified as the societal steering media for PPPs in Kenya.

It can be argued that the steering media on PPPs in Kenya has been constitutive rather than regulatory. Although there were some concessions before the PPP Act 2013 in Kenya, the government, through the Act, has in effect "constituted" a PPP framework that was previously not in existence. It has created institutions such as the PPP Unit, described who sits on those institutions in terms of their official functions and even prescribed the functions of those institutions. The PPP Act 2013, as stated earlier in this chapter, is very prescriptive, recommending even key clauses for PPP project agreements.

On the other hand, the institutions created by the Act are constitutive too, as they have established and helped implement the PPP framework in Kenya. The PPP Unit was involved in the identification and publication of the 59 PPP projects that are shown in the National Priority list of PPP Projects. Through a review of the PPP process, the PPP Unit and the PPP Committee have also been involved in approving projects and in monitoring every step of a project from the Request for Expression of Interest, the Request for Proposal, the Prequalification stage, the bid and tender stage and even the financial close of projects. This is an almost domineering presence of the PPP process. Basically, there can be no PPP without the input of these institutions.

Steering media is therefore seen as constitutive and not regulatory as it has created a PPP framework almost from scratch. The Act does not seek to regulate PPPs, rather, it comes with new PPPs, starting from the National Priority List of PPP Projects. The use of this list leaves no room for debate as these are the projects that the government considers to be of key priority.

Steering media that is constitutive seems to impose on the systems being directed. The setting up of the PPP Act, the PPP Unit, the National Priority List and so on, show a guiding hand that is telling the Kenyan government what to do on PPPs. The steering media in this case is therefore constitutive in character.

While the funding of the setup of PPPs in Kenya constitutes money as a steering media, it can be seen that through the use of the law, the government has been able to set up a PPP Unit and the PPP Committee. The PPP Act 2013, therefore, guides the PPP process in Kenya. This is akin to the "juridification of the law" described by Habermas (Broadbent et al, 1991) and the Act will continue to guide the PPP process for years to come.

7.4.2 Comprehensibility of the PPP Steering Media to the Average Individual

Habermas states that you can determine if a steering media has colonizing tendencies by applying a set of rules to determine if steering media can be either "amenable to substantive justification" or can only be "legitimized through procedure" (Broadbent et al, 1991, p. 7 citing Habermas, 1987, p. 365). According to Habermas, steering media that is amenable to justification has less colonizing tendencies. However, steering media that can only be legitimized through procedure has more colonizing potential.

Although it is better to anchor the PPP processes and activities into a PPP law, such as the PPP Act 2013, the policies, legislation and frameworks around PPPs suggest that it can only be legitimized through procedure. Indeed, the PPP Act comes across as very prescriptive with a rule for basically all parts of the PPP process. There are rules around the identification of the project, its appraisal and monitoring. There are also rules around the setting up of the PPP Committee and the PPP Unit.

Broadbent et al (1991, p. 7 citing White 1988, p. 115) state that when a law is comprehensible to the average person, then it does not need defending by the elites. It is kind of self-explaining. However, when the law is not so clear, then the elites go to great lengths to defend it on "material grounds" by claiming that "it has been appropriately enacted by competent and responsible elites" and that "all steering media will be directed by official bodies. In the case of the PPP Act 2013, the official bodies established by the Act to direct it and help in its implementation are the PPP Unit and the PPP Committee. These can be argued to be elite institutions from the composition and membership, which is also described by the law.

The setting up of PPPs is therefore not amenable to substantive justification and must be explained away to the masses through complex laws and the setup of official bodies to oversee different aspects of it and through complex guidelines. It therefore has colonizing attributes. This act of defending by the elites means that it has not been entrenched in the lifeworld and does not necessarily reflect the values of the lifeworld.

Through this second criteria, it can be argued that the PPP Act 2013, the law steering PPPs in Kenya, is constitutive and not regulative.

7.4.3 Policy Level Steering and Operational Steering

Steering by the PPP Act 2013, and the institutions that it has established, is therefore carried out both at the broad strategy or policy level and at the more detailed operational level.

From a broad policy perspective, the PPP Act 2013 has established the legal, regulatory and institutional framework for PPPs in Kenya, which has then been entrenched in the law. Institutionally, the PPP Committee, the PPP Unit and PPP Nodes in contracting authorities have all been established and entrenched in the PPP Act 2013. The PPP Policy Statement initially set the pace for PPPs in Kenya and this was followed by the passing of the PPP Act 2013. The inclusion in the Act of a specific list, to be known as the National Priority List of PPP Projects, is almost exclusionary as projects not on the list will have to go through a more formal approval process, whose outcome is uncertain. The projects on the list therefore have a head start.

Steering has also taken place at an operational level. Firstly, a consultant was appointed to help identify possible PPPs that can be put on the National PPP Priority List. Secondly, the process in place is governed by the PPP Act which specifies how projects are to be identified, appraised and selected. The whole project cycle is therefore accounted for in the Act. Lastly, there is a PPP Petitions Committee for any aggrieved parties who would like to bring up a PPP dispute.

7.5 Conclusion

In this chapter, the emergence of PPPs as a key policy strategy for the government of Kenya has been discussed and the legislation increasingly allowing for the private participation in the delivery of public services during the period 2002 - 2013, reviewed. This thesis argues that the legislation gives us an insight into the lifeworld values of the Kenya government. Broadbent et al (1991) suggest that "communications" emanating from the steering media can give a glimpse of the values of the lifeworld. In the case of Kenya, these values have been found to be a seeming belief in the power of the markets to transfer the perceived efficiency and economy of the private sector to the public sector.

Moreover, the private sector has been viewed as giving a helping hand, helping the government to meet deficits that the national budget together with any bilateral and multilateral borrowing can no longer satisfy. Against the background of this help is an ever increasing debt assessed by Moody's, at 56.4% in June 2017 (Moody's website, 2017). The government is therefore finding that turning to the private sector to partner in PPPs is becoming an important option.

The Acts of Parliament through the specified period have, therefore, laid down the framework for the private sector participation through licences and permits, in different sectors. They have specified the requirements for the licence and in all cases apportioned the role of a regulator and procurer of services to the government.

Through the PPP Act 2013 and the institutions that it has created, namely, the PPP Committee, the PPP Unit, the PPP Nodes and the PPP Petitions Committee, the Kenya government can be seen to carry out the societal steering of PPPs. The PPP Act 2013 has been seen to be very prescriptive and to have a say on almost everything to do with PPPs. This steering hand is also seen through the PPP Unit and the PPP Steering Committee, which together carry out institutional steering.

While the Government of Kenya (GOK) has participated in and promoted privatization from the 1980s, through the 1990s, 2000s to date (see Chapter Three on Structural Adjustment Programmes and Privatization), the publication of the Government of Kenya PPP Policy Statement in November 2011 made clear the government's intentions to pursue PPP and to include it in public policy. Secondly, the publication of the Sessional Paper on Kenya Vision 2030 in 2012 further strengthened this focus on PPPs because PPPs have been selected as a means of delivery in achieving some of the goals of Kenya Vision 2030. Lastly, the PPP Act 2013, passed by the Kenyan Parliament in December 2012 and signed into law in January 2013, gives clear rules and procedures on the use of PPPs in Kenya.

Societal steering media is seen, in this chapter, as colonizing because it comes across as constitutive rather than regulative, by creating the PPP framework and guiding every stage of the PPP process in Kenya. It is also colonizing because it is not "amenable to substantive justification" but can only be "legitimized through procedure" and through the law (Broadbent et al, 1991). This means that there is a possibility for PPPs to steer the societal systems from the lifeworld values, in this case, being providing for infrastructure against limited resources, using the private sector expertise to increase economy and efficiency and the government reducing its role in commerce and becoming more of a regulator and not a procurer.

Societal steering media also carries out steering at the policy or strategy level, while at the same time making sure that operational steering takes places in the details of individual PPP projects.

CHAPTER EIGHT: ANALYSIS AND DISCUSSION - STEERING OF PUBLIC PRIVATE PARTNERSHIPS IN KENYA

8.1 Introduction

Chapter Six and Chapter Seven discussed supranational steering and societal steering of Public Private Partnerships (PPPs) in Kenya. The objective of this chapter is to draw out the key themes arising from the empirics and to discuss the findings. The literature on PPPs in earlier chapters is used in the analysis and discussion of the findings. This chapter uses the language used by Broadbent et al (1991) which describes three key terms: lifeworlds, steering media and systems. Key themes drawn from the literature and the empirics are the role of transnational networks in policy transfer, the commonality in the overarching PPP regulatory framework and reasons why the Kenya government has decided to adopt PPPs as a policy. The chapter also examines the centrality of the PPP Unit as a key institutional steering media and the use of money, law and positional power. Institutional steering media being a range of government, financial and professional institutions. Lastly, the chapter discusses the new conceptual contributions on supranational and societal steering and whether there is a basis for internal colonization, as provided for in the theoretical framework.

In Chapter One, the central research question was phrased as follows:

> **"Why has the Kenya government taken PPPs as a policy for the provision of public infrastructure?"**

In order to support this question, using the concept of steering (Broadbent et al, 1991), as described in the theoretical framework, the following research questions were further asked:

> **1. To what extent do transnational organizations such as the World Bank influence PPPs in Kenya and why?**
>
> **2. How are PPPs steered in Kenya and what are the steering mechanisms used?**

In answering these questions, the thesis will discuss the factors that have led to the adoption of PPP policy in Kenya and the process of implementing the policy.

8.2 Reasons Behind the Adoption of Public Private Partnerships (PPPs) in Kenya

From a review of the empirics and the discussions in Chapters Six and Seven, Kenya can be argued to have adopted the use of PPPs because of the need to address large infrastructure deficits (GOK, 2012; World Bank, 2010, 2012a, 2012b) within the context of budgetary constraints (GOK, 2012; World Bank, 2012b; IMF, 2016) and against the backdrop of rising public debt (IMF, 2016). In addition to these reasons, the role played by International Financial Institutions (IFIs) in the promotion of PPPs in developing countries (Noumba Um, 2010; Appuhami et al, 2011; World Bank, 2014) can also be demonstrated through the discussion in Chapter Six on supranational steering. Through supranational steering, the World Bank and its associates have been able to influence the adoption of a PPP regulatory framework and the boosting of PPP implementation capacity in Kenya.

8.2.1 Meeting Infrastructure Deficits within the Context of Budgetary Constraints

One of the reasons that developing countries take up PPPs is the need to meet large infrastructure deficits (Noumba Um, 2010; Janneh, 2012; World Bank, 2010). In the case of Kenya, significant infrastructure constraints have been noted (World Bank, 2011). In its long term plan, the Kenya Vision 2030, the Kenya Government highlights various areas with such deficits. These include high energy costs, over reliance on hydro-electricity with frequent power shortages, high telecommunication costs, low water availability, system losses where "unaccounted-for-water losses average 60 per cent while electricity transmission losses average 18.5 per cent" and a "poor urban transport system in Nairobi" (GOK, 2012, p. 14). The National Vision 2030 considers infrastructure to be one of the foundations of the vision. This also fits in with the larger narrative of huge infrastructure gaps in Africa (Noumba Um, 2010; Janneh, 2012).

In its summary on infrastructure, the vision states as follows:

> The 2030 Vision aspires for a country firmly interconnected through a network of roads, railways, ports, airports, and water ways, and telecommunications. It should provide water and modern sanitation facilities to her people. By 2030, it will become impossible to refer to any region of our country as "remote". To ensure that the main projects under the economic pillar are implemented, investment in the nation's infrastructure will be given the highest priority (GOK, 2012, p. iii).

The Kenyan government is therefore aware of the challenges that it faces with respect to infrastructure and has articulated its objectives on meeting these challenges. By identifying infrastructure as one of the foundations required to achieve the Vision 2030, the government has taken responsibility for the provision of infrastructure. It has been argued that even in cases where the government allows the private sector to participate in the provision of infrastructure services, it would still retain the primary responsibility and “bear the larger cost” in all cases, even in the case of PPPs (Carlitz and Fourie, 2010, p. 188).

The first part of the implementation under the National Vision 2030 envisioned that USD 23 billion would be required in infrastructure investment “through FY2013, about 80% of which was expected to come from PPPs” (World Bank, 2011). An amount of USD 23 billion in 2013, for instance, against a GDP of USD 55.1 billion in 2013 (World Bank website, 2017), shows that the level of investment required in infrastructure to bring Kenya to the level required is quite high as a proportion of the GDP. As of 2016, Kenya’s GDP stood at USD 70.53 billion (World Bank website, 2017). Citing from the Africa Infrastructure Diagnostics study, the World Bank reckons that if Kenya spent 20% of GDP in infrastructure in the period 2006 – 2015, the infrastructure contribution to per capita growth “could be enhanced from 0.5% to about 3%” (World Bank, 2011).

These high requirements in investments in infrastructure present a challenge to the Kenya government.

> *The government cannot afford infrastructure needs at present. It has to obtain loans from the development partners, other countries or implement PPPs* (Project Manager, PPP Unit).

Other than obtaining loans and increasing debt levels, the use of PPPs appears to be a viable option that the Kenya government can pursue. By expecting about 80% of the new investment in infrastructure from PPPs, the Kenya government seems to have put PPPs at the very core of its mandate to provide for infrastructure. This is a very high target, “extremely aggressive, and has not been achieved anywhere in the world”, but it evidences the importance of PPPs for the Government” (World Bank, 2012b, p. 2).

When the Kenya government published its PPP Policy Statement, it stated that it aimed to “eliminate the deficit in core infrastructure that currently persists in Kenya” (GOK, 2011). Further, in the National Vision 2030, it not only identifies infrastructure as one of the foundations for the successful implementation of the Vision 2030, but consistently refers to the role of Public Private Partnerships in delivering on this vision. Included are statements such as “this will be done through public-private partnership” (GOK, 2012, p. 20), aims to "develop a policy on Public Private Partnerships" (GOK, 2012, p. 110) and establish "legislation involving Public Private Partnerships" (GOK, 2012, p. 111).

Meeting the infrastructure deficit in Kenya has therefore provided the Kenya government with a rationale for inviting the use of Public Private Partnerships. This is because, in order to meet or even just reduce the infrastructure gap, the Kenya government has to invest huge amounts into the sector. One way to do this is to invite private finance through the use of PPPs (Spackman, 2000; Grout, 2003).

8.2.2 Dealing with Rising Public Debt

While governments are considered to have traditionally financed public projects themselves, "one of the most frequent reasons governments employ to justify" the use of PPPs "is that they are cash- strapped and too debt-laded already, and therefore need an infusion of capital from the private sector if the project is to proceed" (de Bettignies and Ross, 2004, p. 146). In letting in the private sector, private financing is obtained as the private sector would then borrow from the banks for the project as opposed to the government borrowing (Asenova and Beck, 2003).

In the case of Kenya, the issue of public debt could be argued to have also informed the decision to adopt the use of PPPs.

> *Kenya's debt is currently pegged at 48% of GDP. This is a very high level and would affect Kenya's Credit Rating if any of the debts was to be recalled. There has therefore been an interest to transfer part of the risk to the private sector. This can be achieved through the use of PPPs…. the use of PPPs can allow for more projects to be carried out than would have been done before* (Investment Officer, Kenya Investment Authority).

As at the end of June 2018, the Kenya Government's Annual Public Debt Management Report reported Kenya's debt to be standing at 57.1% of the GDP (GOK, 2018). This has come closer to the public debt benchmark for a country in the Lower Income Category of 74% of GDP (IMF, 2016). Given an increase of almost 10% from the time when this research study was began, it shows that Kenya cannot continue on a borrowing path sustainably. It will therefore have to meet its requirements for recurrent and capital expenditure in other ways too. Other than striving to increase revenue through taxes, the other option is to involve the use of PPPs and have the private sector borrow on behalf of the government (Asenova and Beck, 2003).

Increases in debt also lead to increases in debt repayments and this leaves little for development expenditure, as the government would have to be making higher regular payments to its lenders.

The concern over public debt and its effect on the budget could be referred to as “macro-economic constraints” (Spackman, 2000, pp. 288-289). These constraints have led to the establishment of PPPs in other countries as well, notable in the case of the UK where there was a concerted effort to rein in public expenditure with a view to joining the Maastricht Treaty (Ball, 2000; Spackman, 2000). While the objectives for reining in the public expenditure were different in each case, the expected result was to ease the government’s budgetary position.

In Kenya, the increase in development expenditure (Moody’s website, 2017) included the financing of the first phase of the Standard Gauge Rail, from Mombasa to Nairobi. A commitment was also obtained for USD 1.5bn for the second phase from Nairobi to Naivasha (IMF, 2006). In addition, there would be a third phase from Naivasha to Kisumu.

Although governments have been argued to be a better debtor with an almost limitless capacity to back their obligations, as compared to the private sector (Monteiro, 2010), nevertheless, increasing government debt limits this ability as it reduces the capacity to take up more debt for projects. In addition, it reduces the capacity of governments to repay already existing debts and also makes the cost of debt much higher (Khemel and Zhao, 2016).

Despite increasing debt levels in Kenya, the government is expected to keep on providing for public services. The government can therefore be argued to be constrained in the provision of such services (Broadbent and Guthrie, 1992). Despite these constraints, they must still find a way, one way being the establishment of PPPs. By including private finance, the risk of funding for the projects is transferred to the private sector. The private sector then assumes the risk to source for loans on their own account as bank debt (Asenova and Beck, 2003) or from International Finance Institutions, in the case of developing countries (Noumba Um, 2010).

8.2.3 Supranational Steering - The World Bank and Its Associates

In the sections above, it has been argued that the Kenya government has promoted and adopted the use of PPPs to reduce infrastructure deficits and provide much needed infrastructure in key sectors such as roads and energy; to ease budgetary constraints and to counter rising public debt. However, the role played by the World Bank in promoting the use of PPPs in Kenya through supranational steering is also demonstrated in Chapter Six.

The World Bank Group, comprising the World Bank itself, the International Monetary Fund (IMF) and the International Finance Corporation (IFC), seem to have played a major role in the steering of concessions and PPPs in Kenya. In addition, an organisation in which the World Bank is a member, the Public Private Infrastructure Advisory Facility (PPIAF), has also been involved in 'upstream services,' preparing Kenya to develop a suitable regulatory framework and put in place PPP institutions, such as the building of capacity of the PPP Unit.

8.2.3.1 Transnational Networks

The role played by members of the World Bank Group is well documented in the literature (see Chapter Two). Goldman (2007) alludes to the role of transnational networks in promoting "neoliberalism" across many different countries and argues that the World Bank is at the centre of this network. Throughout the 1980s and the early 1990s, the World Bank and the IMF promoted the privatization of state owned enterprises, the reduction in government revenue expenditure through the laying off of large numbers of public sector workers and the liberalization of the different countries' economies. These were carried out through the Structural Adjustment Programmes (SAPs) (McGregor, 2005; Mirafatab, 2004; Dansereau, 2005; UNECA, 2005; Neua et al, 2010; Rahaman, 2010).

In this study, the empirics show that the World Bank has been able to steer the PPP process in Kenya. The World Bank considered and made a decision that PPPs would be a policy worth pursuing in Kenya.

> *Is Kenya ready for PPPs? Kenya has developed money and capital markets. The World Bank would also push its agenda only in a country that is ready* (PPP Project Manager).

Positively, for Kenya therefore, the country is one that can make use of PPPs, in the estimation of the World Bank. This implies that in spite of Kenya's own reasons in pursuing PPPs, arising from macro-economic constraints (Ball et al, 2000; Spackman, 2000) and the need to provide for infrastructure (Noumba Um, 2010; Janneh, 2012), these reasons have merged with the Bank's own aspirations in seeking to promote a PPP policy.

The alternative view is that the Bank has seen the challenges that Kenya is grappling with and suggested that the country adopt a PPP Policy. The Bank has been argued to support neoliberal ideas in its prescriptions to developing countries (Annisette, 2004; Miraftab, 2004). The promotion of PPPs in Kenya, through supranational steering of PPPs, first began through the push to adopt a PPP Policy. Given that PPPs have been used elsewhere before, the World Bank, through policy transfer (Dolowitz and Marsh, 2000), would want other member states to adopt this policy as well. This is, however, not straightforward as the adoption of such a policy would require the setting up of a legislative framework that would be able to allow for the involvement of the private sector in the provision of public services in Kenya.

In the World Bank's transnational network is the PPIAF which was tasked with getting Kenya ready for the involvement of the private sector in partnering with the public sector. The PPIAF has helped in setting up the legal and institutional framework and in creating the capacity for the PPP Unit and for local knowledge management. Some of the roles of the PPIAF include supporting an enabling environment for the private sector to participate in the investment in public services by coming up with legislation; regulations (government's policy) and different sectors' laws (World Bank, 2014). It also helps in institutional setups (such as the creation of PPP Units) and in capacity building (knowledge management) by creating centres of excellence and facilitating the improvement of the skills of the public sector professionals involved in PPPs. With respect to the Kenya PPP process, the organization helped provide education to key stakeholders and legislators prior to the passing of the PPP law. In this respect, Kenya was prepared for the PPP policy.

The World Bank has played a key role in bolstering the capacity of the PPP Unit to be able to perform its roles. Through a World Bank credit of USD 40 million, the bank has funded the Infrastructure Finance Public Private Partnership (IFPPP) Programme which seeks to help Kenya build up its capacity to implement PPPs. Through this, the World Bank has used money as a steering media to influence Kenya's PPP process.

Through the IFPPP Project, the World Bank has sought to hire experts and provide for technical capacity gaps within the Kenya government on PPPs. This is a key role that the IFPPP plays given that PPPs are complicated large-scale projects and the technical expertise available during the structuring of the PPP agreement could have a large bearing on the success of the projects.

The IFPPP hires individual consultants on behalf of the Kenyan government to provide technical support. There is a large skills shortage in this area and we aim to help meet that gap (PPP Unit Project Manager).

This ability to identify (together with the PPP Unit) appropriate consultants and hire them leads to the building of technical capacity in different sectors.

One of the consultants hired that have provided transaction advisory services, both before the PPP Act 2013 and after, is the International Finance Corporation (IFC). The IFC is a member of the World Bank Group and also, arguably, a member of the World Bank's transnational network. With respect to the Rift Valley Railway Concession, before the PPP Act 2013,

The International Finance Corporation (IFC) and KfW, a German Bank provided the funding for the concession (Official, Rift Valley Railways).

Additionally, the IFC provided transaction advisory services.

The IFC was both a donor as well as the Transaction Adviser. This presented a potential conflict of interest (Business Editor, Daily Nation).

As a member of this transnational network, the IFC is seemingly helping individual projects to be able to boost their capacity to execute complicated transactions, such as concessions and even PPPs.

One of the earliest projects following the coming into force of the PPP Act 2013 is the student hostels project, where IFC also provided transaction advisory services,

the Transaction Adviser is the PwC/ IFC Advisory (Transaction Advisory, Ernst & Young).

The World Bank and its transnational network appear to actively try to increase the "technical infrastructure and organizational capacity" to promote market friendly policies (Uddin and Hopper, 2003; 2005), by helping boost capacity to execute. In addition, through the funding by the World Bank itself, through the IFPPP Programme, the PPP Unit has been able to boost its own capacity.

PPP Unit has now become fully functional, supported by this facility (PPP Project Manager).

The World Bank and its transnational network can therefore be argued to have helped Kenya to build up its capacity to involve itself in PPP projects. This includes the setting up of the regulatory network, the involvement in boosting the capacity of the PPP Unit and the identification of projects, as discussed in Chapter Six.

8.3 Steering Media Revisited

Broadbent et al (1991) have suggested that money, power and the law as well as societal institutional steering media can be used to direct societal systems to achieve lifeworld concerns. Societal institutional steering media can be a wide range of government, professional and financial institutions with their own values and practices, which further seek to direct the activities of societal systems. In this section, these are reviewed again based on the empirics to demonstrate the steering of PPPs in Kenya. In the following sections, we revisit the empirical chapters on supranational and societal steering to clearly show how the theoretical framework has informed the empirics and how the empirics in turn inform the theoretical framework.

8.3.1 Money as Steering Media - The Infrastructure Finance Public Private Partnership (IFPPP)

The grant of a credit of USD 40 million to the Kenya government to enable it to build its capacity to implement PPP projects demonstrates the clearest role that money as a steering medium has played in Kenya's PPP process. This grant from the World Bank gives the Bank an insider's view in the process. The Kenya's PPP process is still nascent following the passing of the PPP Act, 2013, and this makes the IFPPP facility significant in that it can be seen to literally help build from the ground Kenya's PPP process. This facility has been used, as shown in section 8.2 above, to hire technical experts for the PPP Unit, to help fund the PPP Unit's own internal capacity building by putting in place the necessary structures that will make them effective to conduct feasibility studies and to even help determine which project should first be implemented.

Broadbent et al (1991) show that steering media guide societal systems to follow lifeworld concerns and in turn hold the systems together. The grant of a World Bank credit to the Kenya Government to help fund the setting up of its PPP administrative infrastructure and to enable it to implement a PPP policy can be argued to act as guidance to Kenya to develop and implement a policy that the World Bank, following its own internal values, regards as key for the development of a country. Money, as steering media, facilitates the process and makes it easier for the policy to be implemented. Additionally, the establishment of the IFPPP programme, to help Kenya build its PPP process, makes it difficult for the Kenya government to brush aside the policy, even if there were reservations about it, by saying that there is a lack of funds.

By establishing the IFPPP Programme, the World Bank has intricately linked itself to the PPP policy in Kenya right from the start by helping craft guidelines and hire experts whose work will guide the PPP process for a long time.

> *The role of the IFPPP is to help Kenya build capacity to be able to undertake PPP projects. It does this by supporting consultancy services through the hiring of technical experts required to put together PPPs. It also supports the overall PPP framework in Kenya. The IFPPP hires individual consultants on behalf of the Kenyan government to provide technical support. There is a large skills shortage in this area and we aim to help meet that gap* (PPP Project Manager).

The Bank has therefore been there from the inception of Kenya's PPP programme and has made a contribution to its take off. However, on another front, this funding increases the overall indebtedness of the Kenya government to the World Bank and contributes to "huge IMF, WB and private loans" which are difficult to service and repay over time (McGregor, 2005, p. 171). Nevertheless, once the PPP programme takes off, it would then have an impact in the government borrowing less, as risk is transferred to the private sector in PPPs (Grout, 2003).

The involvement of the PPIAF, using funds obtained from its members (with the World Bank included as one of them), also to a smaller extent demonstrates the use of money to steer the process. The PPIAF is able to carry out its activities in empowering countries to develop legislation and regulations that promote the involvement of the private sector in providing public services because it has the money to do so, obtained from the donors. The donors, who are members of the organization, therefore have a say on what activities will be funded, the promotion of PPPs being one of them.

In Kenya's case, the use of money as a steering media features prominently in supranational steering. This is not to say that the national government will not itself provide for a budget to the PPP Unit in order to promote PPPs as a policy. However, the granting of the credit and the timing of the grant at the point when the PPP policy was being implemented shows its importance as a steering media in Kenya's PPP policy.

8.3.2 The Law as Steering Media - The Public Private Partnership (PPP) Act, 2013

Chapter Seven has discussed the societal steering of PPPs in Kenya. This is best demonstrated by the passing of the PPP Act, 2013. The PPP Act, 2013 provides the legislative framework for the implementation of PPPs in Kenya and covers PPPs from project identification, project appraisal, project implementation to the monitoring of ongoing projects. The Act can now be operationalized through national regulations.

> *Now that there is concrete PPP legislation in place, National Regulations to operationalize the PPP Act are currently being prepared through the Attorney General's office and the PPP Steering Committee* (PPP Project Manager).

In addition, the Act provides for a mechanism, through the PPP Petitions Committee, for disputes emanating from the PPP bid process to be resolved. This single piece of legislation can therefore be argued to steer PPPs through the whole PPP project cycle from identification to monitoring and dispute resolution.

In addition, the Act establishes a governance framework over PPPs in Kenya by establishing a PPP Committee, which is the overall governing committee that is involved in the formulation of PPP Guidelines and in approving identified projects. All projects must be submitted to this body for approval. The Act also stipulates who are to serve in this committee including Principal Secretaries from given ministries and the Attorney General. Additionally, the Act establishes the PPP Unit which acts as the "secretariat and technical arm of the Committee; and (b) provide technical, financial and legal expertise to the Committee and any node established under this Act" (GOK, 2013, p. 320). The Act therefore creates the PPP Unit as a steering mechanism to ensure that the Act is abided with and its tenets kept.

Further, the Act has established the PPP Petitions Committee to hear and resolve disputes arising from the PPP bid process and in the review of tenders.

The creation of the law as a steering media alludes to Habermas' "juridification" of social life in which there is an increased tendency to adopt formal law (written or positive law) (Habermas, 1987; Broadbent et al, 1991). In this case, the PPP Act, 2013 can be said to be quite prescriptive, creating different organs and stipulating their functions, specifying the process for identifying new projects as well as the monitoring of ongoing projects.

The aim of the PPP Act, 2013 is thus to steer the PPP process in a way that the national government through the National Treasury envisages. The law also has provisions to be followed by the contracting authorities, government agencies and departments that are setting out to implement PPPs.

Lastly, the Act anticipates the need of funds by the PPP Unit to facilitate the PPP process and requires that there shall be established "a Fund to be known as the Public Private Partnership Project Facilitation Fund," with the sources of finance for this fund being "(a) grants and donations; (b) such levies or tariffs as may be imposed on a project; (c) success fees paid by a project company to the unit; (d) appropriations-in-aid; and (e) moneys from a source approved by the State department responsible for matters relating to finance" (GOK, 2013, p. 345). These funds will be used for different purposes again as specified by the Act, the result being that the Act has anticipated different scenarios and attempted to respond to each scenario in advance.

The PPP Act, 2013 is therefore a powerful steering media, guiding the PPP process with the weight of the law and with prescriptive measures that seem not to leave any scenario to chance.

8.3.3 Power as Steering Media

Within the PPP steering process in Kenya, power has been used as a steering media as well, to guide societal organizations which are the contracting authorities for PPPs to act in a certain way only. Firstly, at a societal level, the power of the national government is seen in its publication of the National Priority List of PPP Projects. Although the PPP Act 2013 stated that there shall be a National Priority List of PPP Projects, it does not say which projects these are. However, the government exercised its power through the National Treasury and published a list of 59 projects. By publishing these projects, the contracting authorities are limited to these projects. The Act does specify the procedure for unsolicited projects, but these would still have to undergo approval unlike the 59 projects which have been published.

It has been noted that the use of power is more subtle and less apparent as it results in outcomes but may not be directly visible, unlike in the case of money or the law. Within the involvement of the private sector in the provision of public services, the use of power as a steering media can be seen in the following ways. Firstly, in the pre-PPP Act 2013 period, the IFC promoted the use of concessions for railways in Africa. This was done in a number of countries as has been discussed, Kenya included, where the Kenya-Uganda Railway concession was promoted and established. Given that the IFC is a member of the World Bank Group and a key lender to private sector related projects, this gave it positional power to influence the adoption of the use of railways as a key policy option. Granted, this can only be inferred as the use of power is subtle.

Other clearer uses of power in the steering of PPPs in Kenya can be seen in instances where the World Bank used its position to influence what government agencies can do. In the case of energy, the World Bank sought to promote the use of geothermal energy, as a renewable resource, rather than fossil fuels. When KENGEN, one of the government agencies involved in the generating of electricity, sought to embark on a given project, the World Bank used its influence to direct it towards another project.

> *In 2009, we had the idea of a coal plant. However, Olkaria started attracting a lot of financing. The World Bank was not keen on fossil fuel. Financial arrangement was already being sought when the PPP came* (Economist, KenGen).

In the end, KENGEN pursued the geothermal project at Olkaria and let go of the fossil fuel project. This is a case where there were alternatives and KENGEN was keen on pursuing the coal plant alternative.

> *We placed an infrastructure bond in the markets and were looking at other methods to finance projects.*
>
> *Before the PPP, we had even done an Expression of Interest (EOI) Joint Venture, to do a coal plant* (Economist, KenGen).

Eventually, they did not pursue the infrastructure bond financing route, but adopted a PPP. In addition, they abandoned the coal plant idea at the time and took up the Geothermal project at Olkaria.

8.3.4 Institutional Steering Media

Broadbent et al (1991) cite the use of institutional steering media as one of the ways through which the lifeworld can seek to guide societal systems or organizations and mention that institutional media comprise a range of government, professional and financial institutions.

In the case of the steering of PPPs in Kenya, a number of institutional steering media can be seen. These have already been discussed in various preceding sections and in Chapter Seven. However, they will be revisited in this section. Institutional steering media that steer the PPP process in Kenya are the PPP Committee, the PPP Unit, a department at the National Treasury (formerly Ministry of Finance), the World Bank, the IFC and PPIAF. These are the organizations that can be seen to be directly involved in the steering process of PPPs in Kenya.

The PPP Committee is the overall governance organ and has been created by the PPP Act 2013. The Committee includes Principal Secretaries from designated ministries and the Attorney General. The committee is responsible for approving PPP guidelines and approving PPP projects, among other roles.

The PPP Unit, though established in 2010 (GOK, 2011) prior to the passing of the PPP Act 2013, has now been entrenched in the PPP Act and has a key and central role in the steering of PPPs in Kenya. The PPP Unit was involved in the discussions leading to the passing of the PPP Act, 2013 and is currently involved in the drafting of regulations that will operationalize the Act.

> *Now that there is concrete PPP legislation in place, National Regulations to operationalize the PPP Act are currently being prepared through the Attorney General's office and the PPP Steering Committee* (PPP Project Manager).

This will ensure that the various clauses in the law are implemented and specific guidelines and regulations put in place. In 2014, draft county regulations were published to guide the county governments that would like to use PPPs.

The PPP Unit is also involved throughout the PPP project cycle from the identification of the PPP Project, the approval of the project by the PPP Committee, the PPP bidding process and its results, to any petitions seeking to address flaws within the PPP process.

> *The PPP Secretariat advises on the Request for Proposal (RFP). This was already done internally last year. The PPP Secretariat manages queries, as the private partner wants an independent opinion.*
>
> *The PPP Secretariat also hires the Transaction Adviser, the Financial and the Legal Adviser for the project. We already had a technical adviser on the ground.*

> *The Financial and Legal Adviser refine the RFP and reissue to bidders* (Economist, KENGEN).

The PPP Unit's input in individual projects is therefore key too as they provide the technical expertise for transaction advisory and legal services. In order to ensure that contracting agencies have the knowledge and information on the PPP process, the unit also produces guidelines.

> *The PPP Unit is also enabled to prepare PPP Guidelines, Terms of References and Checklists* (PPP Project Manager).

Lastly, the PPP Unit facilitates the provision of training to various national government and county government officials and promotes learning of the PPP process.

The roles of the World Bank, the IFC and PPIAF have been the subject of discussion in Chapter Seven on supranational steering and in earlier sections of this chapter. As institutional steering media, the World Bank and the IFC can be considered to be financial, because they usually provide lending services to governments and the private sector as well. PPIAF is a professional institutional steering media that is tasked with the role of helping governments to build up capacity and put in place the requisite legislative framework that can enable them to participate in the provision of public services.

Supranational steering takes place through the three financial institutions and primarily through the World Bank, as its role in the Kenyan PPP process has been described. Through the use of its positional power as a lender and through the provision of a grant to help the PPP Unit build up its capacity, it has also been noted where power and money have been used as steering media. The World Bank has helped the PPP Unit to hire for technical expertise needed by contracting authorities during the establishment of PPPs. Through the establishment of a USD 40 million grant and the creation of the Infrastructure Finance Public Private Partnership (IFPPP) Project, the World Bank has also helped the PPP Unit to build up its own internal structures and to be able to discharge its duties as specified in the PPP Act, 2013.

The World Bank also facilitated the identification of the projects on the National PPP Priority Projects List through the Financial and Legal Action Task Force (FALTF). This earlier project provided the basis on which the 59 identified projects were later published. Lastly, the World

Bank has influenced contracting authorities to pursue certain projects and abandon others as seen in the case of KENGEN.

The IFC on the other hand was seen to influence the adoption of railway concessions in Africa. In addition, it participated in the transaction advisory services and lending for the Kenya-Uganda Railway Concession. These organizations have therefore acted as institutional steering media in various ways.

8.4 Internal Colonization

Habermas states that steering media can also direct the systems into totally different avenues that may not be in tandem with the demands of the lifeworld. Habermas refers to this as internal colonization, where the steering media leads the organisation to attain unintended objectives (Broadbent et al, 1991; Habermas, 1987). In such cases, the steering media directs the systems away from the lifeworld concerns and internal colonization takes place. In the context of the steering of PPPs in Kenya, different steering media have been discussed. These are money, law, power and the use of institutional steering media. Each of these can have colonizing tendencies. Habermas has described two different rules to be applied in order to determine whether the steering media has colonizing tendencies or not.

8.4.1 Constitutive vs Regulative Steering Media

Habermas has argued that steering media that is "regulative" in character is less likely to be colonizing as opposed to steering media that is constitutive (Broadbent et al, 1991). Regulative steering media is described as that which regulates an already existing activity while constitutive steering media is that which constitutes or establishes an activity that did not exist previously.

In the case of money as a steering media, it can be seen from the empirics that the Infrastructure Finance Public Private Partnership (IFPPP) Programme, funded by the World Bank through a USD 40 million grant to help build the capacity of the PPP Unit, is constitutive in nature rather than regulative. This is because the World Bank has provided this grant to enable Kenya to develop its institutional and regulatory framework on PPPs, to identify a set of projects through the National Priority List of PPP Projects and to provide technical expertise and ongoing management of PPP projects as they are implemented.

Through this facility, the PPP Unit has been enabled to hire for technical expertise to aid the Kenya PPP process. The facility has also enabled the preparation of PPP guidelines, the drafting of PPP national regulations and the start of PPP bid processes.

It could therefore be argued that money as steering media has been constitutive in the case of Kenyan PPPs rather than regulative. Despite the existence of the Kenya-Uganda Railway Concession before the PPP Act 2013, following the World Bank facility, the government has been able to start off the PPP process as enacted in the PPP Law. At the time of the fieldwork, the first set of PPPs had just started going through the bid process and the building of hostels as a PPP at Kenyatta University, was expected to be the first one to reach financial close. In addition, the Kenya government has been able to come up with projects to be included in the National Priority List of PPP Projects, following the injection of funds from this facility.

In this case, money as a steering media has been constitutive rather than regulative. Going by this criterion, it could be argued that money as a steering media has the capacity to carry out internal colonization and to push societal systems, being PPP contracting authorities, away from the societal lifeworld. Constitutive steering media imposes its own demands on the systems being directed.

The enacting of the legislation on PPPs, the PPP Act, 2013, being the law as steering media, is also constitutive. This is because it has created a legal framework for PPPs in Kenya, which did not exist before. Previous concessions have been carried out under the Privatization Act 2005 and the Public Procurement and Oversight Act, 2006. This is the first time that a PPP specific law is created. This is the law to be followed by all the actors in the PPP process. This law can therefore be argued to be constitutive rather than regulative.

The use of power as a steering media by the World Bank and by the PPP Unit due to their positions can also be said to be constitutive. The World Bank in its position as a lender to governments has promoted the use of PPPs and urged the government to adopt this policy. As explained in the case of KENGEN, the contracting authority was hoping to obtain funding through an infrastructure finance bond, but was later directed to take up the PPP. The World Bank has then provided the grant, which as money is a further steering media to help the PPP Unit build up its capacity.

Through the Public Private Infrastructure Advisory Facility (PPIAF), where the World Bank is a member, governments in the region have been aided, Kenya included, to come up with the regulatory framework that can enable the involvement of the private sector in the delivery of public services. Additionally, PPIAF helped in enhancing the capacity of the PPP Unit, "through advisory support in 2012" (PPIAF website, 2014). The PPIAF therefore began the process of helping Kenya to prepare for PPPs, even before the passing of the PPP Act, 2013. This is steering media that is constitutive rather than regulative.

Lastly, through the use of institutional steering media, the PPP process in Kenya is being established. The World Bank, the PPIAF, the IFC and the PPP Unit as created in law have been argued to be institutional steering media in this thesis. Together, they are helping to build up the PPP process and to establish guidance for PPP actors. All this is constitutive and not regulative.

8.4.2 Comprehensibility of Steering Media

Habermas further states that you can determine if a steering media has colonizing tendencies by applying a set of rules to determine if steering media can be either "amenable to substantive justification" or can only be "legitimized through procedure" (Broadbent et al, 1991; Habermas, 1987). According to Habermas, steering media that is amenable to justification has less colonizing tendencies. However, steering media that can only be legitimized through procedure has more colonizing potential.

Although it is better to anchor the PPP processes and activities into a PPP law, such as the PPP Act 2013, the policies, legislation and frameworks around PPPs suggest that it can only be legitimized through procedure. Indeed, the PPP Act came across as very prescriptive with a rule for basically all parts of the PPP process. There are rules around the identification of the project, its appraisal and monitoring. There are also rules around the setting up of the PPP Steering Committee and the PPP Unit.

Broadbent et al (1991, p. 7 citing White, 1988, p. 115) state that when a law is comprehensible to the average person, then it does not need defending by the elites. It is kind of self-explaining. However, when the law is not so clear, then the elites go to great lengths to defend it on "material grounds" by claiming that "it has been appropriately enacted by competent and responsible elites" and that "all steering media will be directed by official bodies." They therefore attempt to legitimize the law through procedures.

The setting up of PPPs is thus not amenable to substantive justification and must therefore be explained away to the Kenyan people through the setup of complex laws, the setup of official bodies to oversee different aspects of it and through complex guidelines. It therefore has colonizing attributes. This act of defending by the elites means that it has not been entrenched in the lifeworld and does not necessarily reflect the values of the lifeworld. A review of the PPP Act 2013 shows very detailed steps that have to be taken in the Kenya PPP process and this therefore shows that the law has to be detailed in order to legitimize the process.

8.4.3 Regulative vs Operational Steering

Steering media, as described in this chapter, can be seen to be regulative, in that Kenya has been aided to establish a regulatory and institutional framework for PPPs and this has been entrenched in the law, through the PPP Act 2013. Institutionally, the PPP Steering Committee, the PPP Unit and PPP Nodes in contracting authorities have all been established and entrenched in the PPP Act 2013. Additionally, the PPP Unit, working together with other stakeholders and the Attorney General's office, drafted the national PPP regulations in 2014 (GOK, 2014). Through the law and the national regulations, steering media is able to regulate PPPs.

Steering is also taking place at an operational level. Following the publication of the National PPP Priority List, different contracting authorities have now started the PPP bid process. The details of the bid process are governed by the PPP Act and PPP guidelines issued by the PPP Unit. The PPP Act specifies how projects are to be identified, appraised and selected. In addition, for PPP projects after the PPP Act 2013 period, it has been observed that the government of Kenya and the World Bank are working closely through the IFPPP Project. For instance, for the first mover projects, requests have already been made for Expressions of Interest. These have been done jointly with the World Bank. As of September 2017, a detailed PPP Projects Pipeline Report has been published (PPP Unit, 2017).

The empirics thus suggest that both the government of Kenya and the World Bank are working closely on the operational details of each PPP bid process. Once the PPPs have been implemented and are in operation, it can be anticipated that both the PPP Unit and the World Bank will still be closely involved in the monitoring of the PPPs during the post-implementation phase.

8.4.4 Internal Colonization: Implication for PPPs in Kenya

It has been established in the sections above that the steering media influencing the setup of PPPs in Kenya has the capability to carry out internal colonization and direct systems away from their own lifeworld objectives. In the case of PPPs in Kenya, this can happen if the initial objectives to be addressed are forgotten and instead PPPs are pushed for other reasons. It has been argued that the Kenya government would like to get into PPPs so as to meet the country's infrastructure needs, to mitigate against budgetary constraints and to ease the burden on public debt. However, if the World Bank as a supranational steering media pushes for PPPs and ends up not meeting these objectives, then it could be argued that internal colonization has taken place. Additionally, if the societal steering media in Kenya also push for PPPs for other reasons, other than to meet the societal values of reducing infrastructure gaps and providing infrastructure at more cost efficient rates, then again internal colonization could be argued to have taken place. This could be seen from some examples below.

Firstly, Jenkinson (2003) argues that in some cases, governments may enter into PPPs for political reasons and not economic reasons. In such cases, it no longer makes economic sense to pursue PPPs, but because it would be good politically, PPPs are still pursued. This eventually results in more debts to the country (Noumba Um, 2010) and even more strain on the country's budget as the country would be making periodic payments (Broadbent and Laughlin, 2003) for a project that it does not really need or that would have been sourced in a different way. In this case, the societal lifeworld objectives to reduce debt, or ease the budgetary constraints would not be met.

In order to be economically viable, the PPP project should also deliver value for money (Jenkinson, 2003; Grout, 2003; Ball et al, 2000; Spackman, 2002). In a situation where it is clear that the PPP is more expensive than if sourced through normal procurement, it may be prudent not to take up the PPP. However, where the PPP is pursued irrespective of negative value for money indicators, then the societal lifeworld objectives may no longer be served. PPPs should not be pursued for their own sake, but rather as part of a set of policies that help to propel the country forward economically.

It has also been argued that in some cases, PPPs are pursued as part of an ideological persuasion believing the private sector's ability to provide for public services to be better than the public sector's (Broadbent and Laughlin, 2003, p. 335). Closely related to this is the World

Bank, which has been argued to promote neoliberal policies (Miraftab, 2004; McGregor, 2005) and to be part of a transnational network that believes in the market (Goldman, 2007; Pessoa, 2010). In both cases, therefore, there is a chance that PPPs could be pursued for their own sake, given the private sector element and a belief in market-based policies. This may not be the right approach as PPPs should be considered on a case by case basis and PPP projects only allowed to go on based on their economic viability and need.

8.5 Conclusion

This chapter has reviewed the process of steering of PPPs in Kenya and discussed how steering has taken place from a supranational level, with the involvement of the members of the World Bank Group and the PPIAF, as well as at the societal level following the passing of the PPP legislation which resulted in the PPP Act, 2013. In addition, in using the empirics and the theoretical framework as described in Broadbent et al (1991), the chapter has discussed the nature of steering media and how they have been applied in Kenya.

The use of law, money and power as steering media have been discussed, with the World Bank USD 40 million grant through the IFPPP Project being shown as a means for money to act as steering media. The passing of the PPP Act, 2013 provided the basis for the law to be used as steering media, while both the position of the World Bank as a lender and that of the PPP Unit, within the process, gives them the power to influence the process. Lastly, the role of institutional steering media, being a range of government, financial and professional bodies, has been discussed as well.

The chapter has also reviewed the role of transnational networks (Goldman, 1997) and argued that such networks have had a major role to play in influencing the development of the PPP policy in Kenya. The World Bank again lies at the centre of these networks and the networks are responsible for the generation of a set of ideas that have been used to help develop PPPs.

The last part of this chapter has looked at the concept of internal colonization where the steering media can steer the systems away from the lifeworld concerns. Using the criteria given by Habermas (1987) and as described by Broadbent et al (1991), this thesis has found the steering media to be constitutive rather than regulative. In addition, the steering media is not amenable to substantive justification but can only be legitimized through procedure, thereby making it have colonizing tendencies.

CHAPTER NINE: CONCLUSION

9.1 Introduction

This study has explored the options available for lower middle-income and low-income countries in infrastructure financing, as well as the reasons why such countries are now taking up PPPs. Using sub-Saharan Africa as the area of focus and Kenya as the case study, the study used Broadbent, Laughlin and Read (1991) as the theoretical lens with which to view how Kenya has adopted and embarked on the implementation of its PPP policy. The study has found that with a constrained fiscal capacity and increasing public borrowing levels, the Kenya government has had to draw in the private sector through PPPs to be able to access additional capital for infrastructure development. The study also finds that, in addition to steering by the national governments, supranational steering by the World Bank has taken place.

Drawing on the previous eight chapters, this chapter presents an overview of the research in **section 9.2** and revisits the research aims and objectives in **section 9.3**. This section also reviews the research questions and discusses the key findings. **Section 9.4** highlights the contribution of the study to the existing literature on PPPs, more so PPPs within a developing country context, as well as to the literature on the theoretical framework. **Section 9.5** reviews the limitations of the study and makes suggestions for further research. Lastly, **section 9.6** concludes on the chapter.

9.1.1 Supranational Steering

In taking up PPPs as a policy by the Kenya government, the study found that there was a lot of steering coming from outside the national structures, more so from the World Bank. While societal steering has been carried out by means of legislation as a steering media, as well as through institutional steering by the PPP Unit and other PPP institutions, supranational steering of PPPs in Kenya has taken place too, primarily using money and institutional power as steering media by the World Bank. In addition, it has been found that Kenya has adopted the use of PPPs to meet huge infrastructure deficits in the country, to mitigate against budgetary constraints and to help reduce the burden of public debt. In the context of PPPs in developing countries, the thesis argues that it is obvious that a different level of steering is introduced, that of supranational steering.

9.2 Research Overview

This section of the study provides an overview of the different chapters in the study. It highlights the key themes covered in each chapter and shows the contribution to the thesis.

Chapter One provides a background to the study, highlighting the importance of infrastructure, the role that public investment has in increasing private output (Aschauer, 1989), the opening of regional economies (Michaels, 2008; Duranton and Turner, 2010; Brueckner and Picard, 2015) and the role in promoting Air Transport and Services (Brueckner, 2003). The role of infrastructure in promoting the growth of ICT (Daido and Tabata, 2013) and in bringing services such as healthcare closer to the people it serves (Noumba Um, 2010) are also discussed. The key role played by governments in providing infrastructure is highlighted too, emphasising that it is the primary responsibility of the government to provide infrastructure (Carlitz and Fourie, 2010).

Chapter One further highlights the significant gaps in infrastructure in Africa (AfDB, 2008; Noumba Um, 2010; Arezki and Sy, 2016) and the financial implication of these shortages (Janneh, 2012). This chapter then introduces Public Private Partnerships and their history (Ball et al, 2000; Spackman, 2000; Grout, 2003; Broadbent and Laughlin, 2003; Froud, 2003), their geographical spread across many different countries (Guasch, 2004; Farlam, 2005; English, 2007; Hodge, Greve and Boardman, 2010; Boardman and Vining, 2010; English et al, 2010; Noumba Um, 2010; Appuhami et al, 2011; World Bank, 2014) and their use in different sectors (Froud, 2003). This chapter therefore emphasises the importance of infrastructure and its central place for any government. Finally, the chapter outlines the research aims and objectives and describes the thesis structure.

In ***Chapter Two***, the various sources of finance to fund infrastructure and their evolution over the years have been explored. Funding by the government, including through public borrowing, was shown to be the primary source of funding for infrastructure projects (Noumba Um, 2010; Collier, 2014; Estache et al, 2015; Arezki and Sy, 2016; Eberhard et al, 2017). Other funding sources have included Grants (Noumba Um, 2010; McCauley, 2010) and the private sector (Estache, 2007; Noumba Um, 2010; Arezki and Sy, 2016). Lastly, in the last few years, financing by China has come to be considered a prominent source of financing for infrastructure projects in Africa (Goldstein and Kauffman, 2006; Collier, 2014). Although financing from China is essentially a bilateral facility, the large increases from the 2000s onwards make it a special category. This chapter then argues that public sector borrowing has become constrained and governments may therefore want to involve the private sector to access more capital and that it may be better for the private sector to borrow instead.

Chapter Three has then carried out a review of the literature on PPPs and why governments are selecting them as an option, examined the key literature on different aspects of PPPs stating their definition and types (Broadbent and Laughlin, 2003; Duffield, 2010), looked at the nature of PPPs and examined the concept of Risk (Grout, 2003; Asenova and Beck, 2003; Froud, 2003), which is central to PPPs. Chapter Three further examined the use of PPPs across different parts of the world, from the UK to Continental Europe, Asia-Pacific to the Americas. The chapter also reviewed the concept of Value for Money (Grimsey and Lewis, 2005). In summary, Chapter Three reviewed the options available in infrastructure finance and then gave a comprehensive view of PPPs as a policy option, in use by governments across the world.

Chapter Four presents the theoretical framework through which this PhD Study has been carried out. This thesis has used Broadbent, Laughlin and Read (1991) as the theoretical lens through which the development of the PPP Policy in Kenya has been viewed. This chapter introduces the concepts of "lifeworlds", "steering media" and "systems" and further uses the arguments contained in the theoretical framework, as a basis for discussing the steering of PPPs in Kenya.

Chapter Five examines the research approach used in this PhD study. This is the use of Laughlin's (1995) "middle-range" thinking, stating that there is a case for taking a mid-point on each of the three continuums of theory, methodology and change. These three continuums are key within any research process. The chapter argues that by taking a middle position on each of these, a more discursive process is allowed during the research process, thereby allowing the researcher to go back and forth and revisit the research strategy as it evolves. Most importantly, the chapter argues that middle range thinking enables the use of a "skeletal" framework which is already in place and which can then be further "fleshed out" by findings from the empirical work. The theoretical framework, by Broadbent et al (1991), presents the skeletal framework in this study.

Chapter Six finds that there has been supranational steering of the PPP process by the World Bank and its associates. The chapter examines the use of money and power as steering media by the World Bank to convey its own lifeworld to the Kenya Government and by extension to PPP implementing agencies. The chapter discusses the roles played by the IFIs in the establishment of the regulatory framework and the setting up of the PPP Unit. Further, the chapter discusses the role played by the PPIAF in helping governments in the region to come up with the legislative framework that will allow for private sector involvement in the provision of public services. Using money, power and the law as steering media, supranational steering of the PPP process has been carried out by IFIs.

Chapter Seven discusses societal steering of PPPs by the Kenyan Government, through the National Treasury and the PPP Unit, as well as the use of the law as steering media through the setting up of the PPP Act 2013. The chapter describes the various institutions that have been established and entrenched in the law through the establishment of the PPP Act 2013. These include the PPP Unit itself, the PPP Committee, the PPP Nodes and the PPP Petitions Committee. The chapter describes the steering carried out by these institutions, particularly the PPP Unit which also acts as the technical secretariat of the PPP Committee. This chapter also presents the case that faced with high borrowing levels and a constrained fiscal capacity, the Kenya government has opted to take up the use of PPPs.

Finally, in ***Chapter Eight***, an analysis and discussion of the findings has been carried out. The analysis has been done using the language provided in the theoretical framework by Broadbent et al (1991). This chapter uses the empirics from the fieldwork to argue that there is evidence to suggest that both supranational and societal steering of PPPs have taken place. The chapter presents evidence from both interviews and official documents to state that supranational steering takes place, as carried out by International Finance Institutions (IFIs), notably the World Bank. It also highlights the role played by the Public Private Infrastructure Advisory Facility (PPIAF) of which the World Bank is a member, in helping facilitate the establishment of the necessary legislative framework that then allows the private sector to be involved in the provision of public services. Societal steering by national structures are further discussed.

9.3 Conclusion on Research Aims and Objectives

This section revisits the research aims and objectives. The study set out to explore options available in infrastructure finance and why more countries are increasingly taking up PPPs. The study noted that PPPs are now used in various sectors, such as roads, rail transport, water and sewerage, schools, health facilities and even prisons (Froud, 2003).

While the spread of PPPs is quite well documented as shown in Chapter One and Chapter Two, more research needs to be carried out with regards to PPP projects, as well as the use of PPPs by different countries. By focusing on Kenya as a case study, this thesis has sought to identify the reasoning and rationale behind the use of PPPs by Kenya. Rather than focusing on individual PPP projects, the thesis has reviewed the adoption of the PPP policy at the national level.

The central research question to be answered was shown as follows in Chapter Two:

“Why has the Kenya government taken PPPs as a policy for the provision of public infrastructure?”

In order to support this question, the following research questions were further asked:

1. To what extent do transnational organizations such as the World Bank influence PPPs in Kenya and why?

2. How has the PPP Policy been steered in Kenya and what are the steering mechanisms used?

This thesis has sought to answer these questions using the concept of steering as presented by Broadbent et al, (1991), which has been used as the theoretical framework, in Chapter Four. The thesis has also used Laughlin’s (1995) Middle Range Thinking, which argues that the theoretical framework presents a “skeletal framework,” which needs to be fleshed with empirics. The thesis has made use of empirics gathered from documents reviewed and interviews held with various officials from different PPP related organizations in Kenya and from the PPP Unit.

The research aims and objectives were informed by the researcher's interest in seeking to find out how developing countries, including Kenya, can tackle the huge infrastructure deficits (AfDB, 2008) and help provide basic services to the people in those countries, thereby increasing the quality of life and economic growth. The use of PPPs is one way through which investments in infrastructure can be made. Additionally, the thesis sought to address questions from Broadbent and Laughlin’s (1999; 2004) research agenda in which they pose: 1) what is PFI and who regulates it? 2) what are the factors that have led to different countries adopting PPPs?

The thesis shows that there is an existing framework that deals with shortages in infrastructure in Kenya, but that this framework is not enough to effectively address the shortages. The framework involves the use of public finance, which is constrained given the demands on it by other areas and sectors and not just infrastructure. In addition, the option of public borrowing is curtailed by borrowing costs and increased borrowing levels that make it that much harder for the Kenya government to borrow at an affordable cost, if at all. Using PPPs, the private sector can bring in private capital to supplement the government's efforts. This could include borrowing from banks, rather than have the government borrow (Asenova and Beck, 2003). The government has therefore adopted the use of PPPs to augment its own current, inadequate efforts, to provide for new infrastructure and to maintain existing infrastructure.

Standing at 56.4% of GDP, in June 2017 (Moody's website, 2017), Kenya's debt was further projected to reach 60% of GDP by June 2018. Borrowing from China for infrastructure projects, key of which has been the Standard Gauge Rail, has also contributed to the increase in debt (Moody's website, 2019). This would begin to approach the public debt benchmark for a country in the Lower Income Category of 74% of GDP (IMF, 2016). This has pushed the government to begin looking at other options, including the use of PPPs.

The thesis also shows that through the national structures, including the PPP Unit, the national government has been able to steer the PPP policy in Kenya. Steering by the national structures is referred to as societal steering (Broadbent et al, 1991). Societal steering of PPPs has ensured that PPPs are enacted in law and given a clear focus and objective, through the PPP Act, 2013 (GOK, 2013). Although the use of concessions in Kenya was present even before the PPP Act 2013, a significant concession being the Kenya-Uganda Railway concession in 2006, the publication of the Sessional Paper on Kenya Vision 2030 (GOK, 2012a) in 2012 gave PPPs a central role in the achievement of Kenya's vision, by ensuring that PPPs were mentioned as a key means of delivery on the flagship projects cited in the Kenya Vision 2030 document. Secondly, the publication of the PPP Policy Statement in 2012 (GOK, 2012b) signalled the government's forward drive to establish the policy and legal framework for PPPs in Kenya, culminating in the PPP Act, 2013.

Finally, the thesis shows that in addition to societal steering, a significant amount of steering has also come from outside the national structures through transnational organisations, the key organisation being the World Bank. The framework by Broadbent et al (1991) refers to societal steering, following the work performed on the National Health Service (NHS) in the

UK. However, this framework does not have steering coming from sources outside the national context. This thesis, however, shows that in addition to societal steering by the national structures, there has been supranational steering of PPPs in Kenya by the World Bank.

9.4 Research Contribution

By investigating Kenya, a low middle-income country, based in sub-Saharan Africa, this thesis has not only added to the wider literature on PPPs, but has offered insights into PPPs in developing countries.

The contributions to the literature on PPPs and to the theoretical framework are further discussed below.

9.4.1 Contribution to the Literature on Public Private Partnerships

Noumba Um (2010) alludes to the role played by International Financial Institutions (IFIs) and more so the World Bank, in the promotion of the use of PPPs in developing countries. The first contribution to the literature on public private partnerships is the investigation of how a developing country has approached the PPP policy, from the decision to take it up, to enacting appropriate legislation and the steering from a societal level. There are several studies looking at specific PPP projects across different countries (for instance, Gausch, 2004; Awortwi, 2004; Tati, 2005; Caulfield, 2006; Rintala et al, 2008). However, more needs to be written on how individual countries have been able to grapple with the idea of PPPs before deciding to pursue this as a policy measure. Within the context of Africa, there have been broad overviews of PPPs on the continent, with a lot more in-depth study on South Africa (see Farlam, 2005), so this study adds to such literature by looking at Kenya's PPP policy in depth.

Using the case of Kenya, the study also shows that for a developing country, the unique aspect of its PPP policy could be the impetus of steering, which is demonstrably coming from outside the country. This supranational steering is carried out by IFIs, notably the World Bank.

Secondly, this thesis has extended one of the arguments given in the literature as a reason for involving the private sector, being a response to the "fiscal crisis of the state" (Broadbent and Guthrie, 1992 citing O'Conor, 1973). This is where governments attempt to bridge their deficits by involving the private sector investments and the need to incorporate the private sector's perceived efficiency (Power, 1997) into public service delivery. In their work, Broadbent and Guthrie (1992), looked at such developed countries like the UK, the USA, Australia and New Zealand. However, within a developing country context, it could be argued that it is not just a fiscal crisis. Rather, there is no fiscal capacity to deal with the severe infrastructure shortages, unless the government reaches out to the private sector to bring in new capital for investment.

The close working relationship between governments in developing countries and International Financial Institutions (IFIs) in developing and implementing policy is also shown through the interactions of the World Bank and the Kenya government on the PPP policy. The study shows a deep involvement of the World Bank and its associates both before the enactment of the PPP Act (2013) and after, the setting up of regulatory frameworks and the boosting of Kenyan capacity to implement PPPs. This can also be seen as a form of policy transfer where policy from one country or region can be developed and implemented in another region voluntarily, through coercion or through negotiation (Dolowitz and Marsh, 2000).

In essence, therefore, the use of PPPs in Kenya can be seen as an extension of neoliberalism, where the markets are thought to be better at delivering economic outcomes (Broadbent and Laughlin, 2003; Edwards and Shaoul, 2003). Given the promotion of SAPs by the World Bank in the 1980s to developing countries (Aretse, 1989), a programme that included the promotion of privatization and the liberalization of the economy as part of the cocktail of prescriptions, the steering of PPPs by the World Bank and its affiliates could be thus argued to extend the neoliberalism argument further. This thesis has therefore sought to draw the link between the SAP programme of the 1980s and today's push for PPPs. Granted, the scale and scope of the two are different and while one is thought to have ended in failure (Adedeji, 1999; McGregor, 2005; Rahaman, 2010), it is yet to be seen how PPPs in Kenya will fare, as some of the contracts are just being negotiated at the time of writing this thesis.

Thirdly, this thesis has shown that value for money (Grimsey and Lewis, 2005), though key in the PPP literature, is not always a key element for consideration. According to the Ecorys Nederland BV and Gibb Africa Report, prepared for the PPP Unit, the main consideration for projects to be identified was a "high degree of success with minimal risks to the government" (Ecorys Nederland and Gibb Africa, 2012). Nowhere is value for money indicated, even though the literature considers this as one of the three conditions for a PPP, the others being private sector financing and risk transfer (Grout, 2002). There is also no mention of the Public Sector

Comparator (Ball et al, 2000) which adds to the debate that value for money is not always a key consideration for governments (Jenkinson, 2003). Moreover, given the usually long and drawn out process of establishing a PPP, even in countries with more experience of using PPPs, it would be quite involving carrying out a detailed review of each of the 59 projects that are shown on the National Priority List of PPP Projects (GOK, 2014).

Fourthly, the thesis shows that there have been aspects of policy transfer (Dolowitz and Marsh, 2000) too, with regards to PPPs, because of the similar structure and mode of operation as envisaged in the PPP Policy Statement, 2012 and the PPP Act, 2013. The Policy Statement and the Act outline the different types of PPP contracts, such as Build Operate Transfer (BOT), like other PPPs outlined in the literature (Broadbent and Laughlin, 2003; Duffield, 2010). A full list of these contracts is shown in Appendix 1. In addition, in the case of the Kenya-Uganda Railway, a concession that pre-dates the PPP Act, 2013, the use of Rift Valley Railways as a Special Purpose Vehicle (SPV) (Smith and Edkins, 2007; Duffield, 2010) again shows an element of policy transfer. In this case the use of the Rift Valley Railways was found to have similar problems faced by other PPPs such as the lack of complete information given that though the public sector is involved in the project, the SPV in effect makes a PPP project "opaque" to the outside world (Shaoul et al, 2011). This also goes to show that PPPs must be approached carefully, despite the great need for infrastructure, as they have their own unique challenges. A further point of note is that the policy transfer is imposed by owners of capital, such as the World Bank.

Fifthly, this thesis confirms the rise of "corporate and financial elites" that governments may find themselves subservient to with regards to PPPs (Shaoul, 2011). Such elites comprise international accounting and legal firms who are involved in transaction advisory, legal and financial advisory expertise and International Finance Institutions (IFIs) such as the World Bank. The IFIs hold the purse strings, but also use various steering mechanisms to ensure that their lifeworld values are implemented. Within the developing countries context, the elite is thus supranational in its nature, operations and steering of the PPP policy. The elite is also a part of a transnational network that believes in the market (Goldman, 2007; Pessoa, 2010). Over time, a small club of those that have been involved with PPPs forms, with their expertise being sought repeatedly. In the case of the Kenya - Uganda Railway Concession, the IFC was involved as a lender and as a transaction adviser, thereby giving rise to questions of conflict of interest. From the steering process, it can be deduced that the lifeworld of these organisations and their interests could be different from societal interests.

9.4.2 Contribution to the Theoretical Framework - Supranational and Societal Steering of Public Private Partnerships in Kenya

This PhD Study has also made a contribution to the theoretical framework as described by Broadbent et al (1991). According to Laughlin's (1995) Middle Range Thinking, the theory provides a "skeletal framework" that is then "fleshed out" by empirics. Through the concept of steering and steering media as detailed in Chapters Five, Six and Seven, the study has been able to show that the steering of PPPs not only takes place at a societal level, as described by Broadbent et al (1991) in their study of the administrative changes of the National Health Service (NHS) in the UK, but also takes place at a supranational level through the World Bank and other IFIs. It therefore helps to answer Broadbent and Laughlin's question: who regulates PPPs and how? (Broadbent and Laughlin, 1999; 2004).

Through the use of National Legislation (the PPP Act, 2013) and institutional steering (PPP Unit), societal steering of PPPs is carried out in a detailed and prescriptive manner with the Act specifying the procedures to be followed in identifying and setting up a PPP. The PPP Unit acts as the technical arm of the PPP Committee and oversees virtually every aspect of the PPP process. The PPP Petitions Committee hears any petitions arising from the PPP process. The PPP legislation describes the functions and roles of these committees and further states that there shall be a National Priority List of PPP Projects. Societal steering is dealt with in detail in Chapter Six.

In addition to societal steering, this thesis has identified supranational steering, where the PPP process in Kenya has been steered by the World Bank and other IFIs. Through the use of the Infrastructure Finance Public Private Partnership (IFPPP) Programme, the World Bank provided a USD 40 million facility to help the Kenya Government set up and operationalise the PPP Unit. The theoretical framework describes the use of money as a steering media. This facility has enabled the PPP process in Kenya to be pushed forward, confirming the steering process, as described in Chapter Four.

Other than the use of money, the World Bank and its affiliates have also used their positional power as a lender to member countries to influence the PPP process. The theoretical framework describes this as the use of institutional steering media and the use of power.

Various instances have been cited in Chapter Five to show how such steering has taken place. This has ranged from the setting up of the institutional and legal framework, the strengthening of the capacity at the PPP Unit, to the identification of PPP projects. While the list of projects is shown as the National Priority List of PPP Projects and is embedded in the PPP Act 2013, an early draft of this list was first put together by the Finance and Legal Action Task Force (FLATF), which was also funded by the World Bank (Ecorys Nederland and Gibb Africa, 2012).

The study has also shown that through a prescriptive and detailed legislation, it can be argued that the PPP process is not "amenable to substantive justification" but can only be "legitimized through procedure." Likewise, as the institutional and legal framework has been set up and built from scratch, resulting in the PPP Act, 2013, the steering media could be said to be constitutive and not regulative. Both set of conditions show that the steering media has the capacity to carry out "internal colonization" of the process. (Broadbent et al, 1991; Habermas, 1987). However, it should also be noted that the World Bank can only carry out such reforms in a country that has agreed to embrace such. It cannot force a country to do so. This, on the other hand, is debatable as well, given the "power inequities" between the Bank and its poorer members (Miraftab, 2004).

9.5 Limitations of the Study and Future Research

This PhD Study has been carried out using limited time and resources and has focused on one specific area only. In this section, the limitations of the study are discussed, and suggestions are made for future research.

9.5.1 Limitations of the Study

Some limitations have been identified as follows: firstly, this is an in-depth qualitative study carried out at a given location and at a given point in time. Although the study has outlined the role played by the World Bank and its affiliates in the PPP process in Kenya and expects that this is the same in other developing countries, this can only be speculative, as the findings from this study cannot be generalised. Separate studies might need to be carried out to confirm this. Each country has its own context within which it operates, and complete generalisations may therefore not be possible. Each country will have its own unique reasons for adopting and implementing PPPs, even if there is a common factor that is driving them. Nevertheless, the use of the middle range approach has provided conceptual ideas of steering that can be transferred to other areas and countries, even if the empirics cannot be transferred.

Secondly, most PPPs have been implemented in developed countries and most PPP literature is based on PPPs in developed countries also. This means that the context in which most PPP literature is based, is different from that of developing countries. For instance, while PPPs in developed countries may focus more on efficiency and effectiveness of infrastructure, in the developing countries, the infrastructure does not exist in the first place in many cases. In addition, while some of the PPPs in developed economies target the maintenance of existing infrastructure, again, developing countries may have to put up this infrastructure first. Developed economies may use the value for money as the basis for a project (Grimsey and Lewis, 2005); however, as found in the Kenya case, only those projects that were likely to succeed and would not embarrass the government were selected.

Thirdly, this study has been carried out within a dynamic global context. At the time of writing, trade war between the USA and China, for instance, could have an impact on the flow of funds for investment in infrastructure. Additionally, the rise of China and the role of China in Africa, both as a development partner and financier, are major issues whose impact on a policy such as that of PPPs, is yet to be fully understood.

9.5.2 Suggestions for Future Research

One area of research that should be considered in future, which would be an extension to this study in some way, would be to investigate how steering takes place at the organizational level. This would require a detailed study of one or more PPP implementing organizations and the nature of steering being directed at the organization. The entity that is carrying out this steering should also be examined and the response from the organization reviewed.

It would also be useful to carry out a study, a few years after the first PPP contracts have been signed, to find out how the PPP is actually operating. Weihe (2010) decries the dearth of information after the signing of the contract. This could partly be explained by the use of the SPV which makes the obtaining of information difficult (Shaoul, 2011). An in-depth study of one of the PPPs reaching financial close would be useful, following the completion of the transaction.

Noumba Um (2010), suggests that IFIs have been keen to promote a sustainable PPP policy, striking a sensible balance between forceful advocacy for PPPs and effective management of client countries' expectations of what can be achieved through PPPs. This is as to avoid the PPP paradox, where the detailed costs have not been studied and so the government finds itself with expensive PPP bills to pay, with less rewards from the same projects. From a macro level, it would be useful to compare the costs that Kenya incurs on PPPs against the usefulness of the projects to the people of Kenya.

Lastly, even though this thesis provides an insight into the PPP process in a developing country, similar or related studies could be carried out in other countries to confirm if supranational steering equally takes place in those countries.

9.6 Conclusion

This thesis has reviewed the increased use of PPPs, the nature of PPPs and the reasons, both ideological and pragmatic, that governments have used to promote the use of PPPs. In the case of Kenya, while there is evidently a great shortage of adequate infrastructure and the involvement of the private sector in the provision of public services does make sense, this thesis has shown that there is also the aspect of steering of PPPs as a policy measure that is taking place. The thesis posits that steering takes place both at the societal level, through the use of legislation and institutional steering as steering media, but also at the supranational level by IFIs and notably the World Bank, through the use of money, power and institutional steering.

Using Broadbent et al (1991) as the theoretical framework, the thesis has shown that the use of the PPP Act (2013) as the national legislation in effect shows how the law can be used as steering media. In the same way, the provision by the World Bank of a World Bank USD 40 million facility through the IFPPP Project shows how money can be used as steering media. The PPP process in Kenya has also been steered by the PPP Unit and the World Bank, through the use of institutional power.

Lastly, this thesis has made use of the criteria given by Habermas (1987) and as described by Broadbent et al (1991) and found that the steering media is "constitutive" rather than "regulative." In addition, the steering media is not "amenable to substantive justification" but can only be "legitimized through procedure," implying that the steering media could carry out internal colonization.

APPENDIX 1
National Priority List of Public Private Partnership Projects

No.	Ministry	Contracting Authority	Project Name
1	Ministry of Transport & Infrastructure	Kenya Urban Roads Authority (KURA)	2nd Nyali Bridge
2	Ministry of Transport & Infrastructure	Kenya National Highways Authority (KeNHA)	O & M of Nairobi Southern Bypass
3	Ministry of Transport & Infrastructure	Kenya National Highways Authority (KeNHA)	O & M of Nairobi - Thika Road
4	Ministry of Transport & Infrastructure	Kenya National Highways Authority (KeNHA)	Dualling of Nairobi - Nakuru Road
5	Ministry of Transport & Infrastructure	Kenya National Highways Authority (KeNHA)	Dualling of Mombasa - Nairobi Highway
6	Ministry of Transport & Infrastructure	Kenya Airports Authority (KAA)	O & M of JKIA Terminal 2 (Greenfield Terminal)
7	Ministry of Transport & Infrastructure	Kenya Airports Authority (KAA)	Development and Management of Inflight Catering Kitchen at JKIA
8	Ministry of Transport & Infrastructure	Kenya Airports Authority (KAA)	PPP Structure for Food Courts at JKIA
9	Ministry of Transport & Infrastructure	Kenya Civil Aviation Authority (KCAA)	Government Flying School
10	Ministry of Transport & Infrastructure	Kenya Ports Authority (KPA)	Mombasa 2nd Container Terminal Phase 2 and 3
11	Ministry of Transport & Infrastructure	Kenya Ports Authority (KPA)	Conversion of Berths 11 – 14 into Container Terminals
12	Ministry of Transport & Infrastructure	Kenya Ports Authority (KPA)	Kisumu Sea Port
13	Ministry of Transport & Infrastructure	Kenya Ports Authority (KPA)	Lamu Port Development Project

14	Ministry of Transport & Infrastructure	Kenya Ferry Services Ltd (KFSL)	Multi Storey Terminal at Likoni
15	Ministry of Transport & Infrastructure	Mombasa County Government	Integrated Marine County System
16	Ministry of Transport & Infrastructure	Kenya Railways Corporation (KRC)	Nairobi Commuter Rail Services
17	Ministry of Transport & Infrastructure	Mombasa County Government	Multi-level Car Park Facility in Mombasa
18	Ministry of Energy & Petroleum	Geothermal Development Corporation (GDC)	400MW Menengai Phase I Geothermal Development Project
19	Ministry of Energy & Petroleum	Geothermal Development Corporation (GDC)	800MW Menengai Phase II Geothermal Development Project
20	Ministry of Energy & Petroleum	Geothermal Development Corporation (GDC)	800MW Bogoria-Silali Phase I GDC
21	Ministry of Energy & Petroleum	Ministry of Energy & Petroleum (MoE&P)	800MW Liquified Natural Gas (LNG) Power Plant at Dongo Kundu
22	Ministry of Energy & Petroleum	Kenya Electricity Generating Company (KenGen)	560MW Geothermal Project Pipeline at the Olkaria Field
23	Ministry of Energy & Petroleum	Ministry of Energy & Petroleum (MoE&P)	960MW Coal Plant in Lamu
24	Ministry of Energy & Petroleum	Ministry of Energy & Petroleum (MoE&P)	40MW Solar Power Plant at Muhoroni, Kisumu County
25	Ministry of Energy & Petroleum	Geothermal Development Corporation (GDC)	300MW Geothermal Plant at Suswa
26	Ministry of Energy & Petroleum	National Oil Corporation of Kenya (NOCK)	Off Shore Jetty
27	Ministry of Environment, Water and Natural Resources	Nairobi Solid Waste Management	Nairobi County Government

28	Ministry of Environment, Water and Natural Resources	Mombasa Solid Waste Management	Mombasa County Government
29	Ministry of Environment, Water and Natural Resources	Nakuru Solid Waste Management	Nakuru County Government
30	Ministry of Environment, Water and Natural Resources	Athi Water Services Board (AWSB)	Nairobi Bulk Water Supply
31	Ministry of Environment, Water and Natural Resources	Coast Development Authority	Mwache Multipurpose Dam
32	Ministry of Environment, Water and Natural Resources	Kerio Valley Development Authority (KVDA)	Turkwell Downstream Irrigation
33	Ministry of Environment, Water and Natural Resources	Kerio Valley Development Authority (KVDA)	Arror Multipurpose Dam
34	Ministry of Environment, Water and Natural Resources	Tana and Athi Waters River Development Authority	Munyi Multipurpose and Greater Kibwezi Irrigation
35	Ministry of Environment, Water and Natural Resources	Tana and Athi Waters River Development Authority	Tana Delta Irrigation
36	Ministry of Environment, Water	Tana and Athi Waters River Development Authority	Tana Delta Irrigation Sugar Project

	and Natural Resources		
37	Ministry of Environment, Water and Natural Resources	Lake Basin Development Authority	Nandi Forest Multipurpose Dam
38	Ministry of Environment, Water and Natural Resources	Lake Basin Development Authority	Magwagwa Multipurpose Dam
39	Ministry of Education, Science & Technology	Kenyatta University	Kenyatta University Students Hostels
40	Ministry of Education, Science & Technology	Moi University	Moi University Students Hostels
41	Ministry of Education, Science & Technology	Embu University College	Embu University College Student Accommodation Hostels
42	Ministry of Education, Science & Technology	Maseno University	Maseno University Student Accommodation Hostels
43	Ministry of Education, Science & Technology	Egerton University	Egerton University Student Accommodation Hostels
44	Ministry of Education, Science & Technology	South Eastern Kenya University (SEKU)	SEKU Student Accommodation Hostels
45	Ministry of Education, Science & Technology	Kenya School of Government - Embu	Kenya School of Government (KSG) – Embu

46	Ministry of Education, Science & Technology	JKUAT	Jomo Kenyatta University of Agriculture and Technology (JKUAT) Projects
47	Ministry of Land, Housing and Urban Development	Ministry of Land, Housing and Urban Development	Civil Servants Housing Project
48	Ministry of East African Affairs, Commerce and Tourism	Kenya Tourism Development Corporation (KTDC)	Mombasa International Convention Centre (MICC)
49	Ministry of East African Affairs, Commerce and Tourism	Kenya Tourism Development Corporation (KTDC)	Development of Marina in Shimoni
50	Ministry of East African Affairs, Commerce and Tourism	Kenya Tourism Development Corporation (KTDC)	First Class Hotel at Bomas of Kenya
51	Ministry of Health	Ministry of Health	Equipment Lease and Infrastructure Improvement
52	Ministry of Health	Kenyatta National Hospital (KNH)	300 - bed Hospital at KNH - Private Wing
53	Ministry of Health	Ministry of Health	ICT Services at Kenyatta National Hospital (KNH)
54	Ministry of Health	Ministry of Health	Oxygen Plant
55	Ministry of Information, Communications and Technology	Ministry of ICT	National Data Centre
56	Ministry of Information, Communications and Technology	Kenya ICT Authority	National Land Information Management and National Spatial Database
57	Ministry of Information,	Ministry of Interior and Coordination of National Government	National Police Housing

	Communications and Technology		
58	Ministry of Information, Communications and Technology	Ministry of Interior and Coordination of National Government	Prison Housing
59	Ministry of Industrialization and Enterprise Development	Ministry of Industrialization and Enterprise Development	Special Economic Zone (SEZ)

Source: Extract from the National Priority List of PPP Projects, Kenya PPP Unit Website, 2015

APPENDIX 2

A selection of PPP contract abbreviations

Abbreviation	Description
BLT	Build, Lease Transfer
BLTM	Build, Lease Transfer and Maintain
BOL	Build Operate Lease
BOO*	Build Own Operate
BOOR	Build Own Operate Remove
BOOST	Build Own Operate Subsidize and Transfer
BOOT*	Build, Own, Operate, and Transfer
BOT*	Build, Operate, Transfer
BRT	Build, Rent, Transfer
BTO	Build, Transfer, Operate
DBFM	Design, Build, Finance and Maintain
DBFO	Design, Build, Finance and Operate
DBFOM	Design, Build, Finance, Operate and Maintain
DBOM	Design, Build, Operate and Maintain
DBOT	Design Build, Operate Transfer
DCMF	Design Construct Manage and Finance
DOD	Design, Operate and Deliver
FBOOT	Finance, Build, Own, Operate and Transfer
LROT	Lease Renovate Operate and Transfer
ROT	Rehabilitate, Operate and Transfer

*Common forms of early concession contracts

Source: (Duffield, 2010, p 190 as compiled from Duffield 2001 and Grimsey and Lewis 2004)

APPENDIX 3

There are several well defined models of Public Private Partnerships, differing in purpose, service scope, legal structure and risk sharing, and over time there have been permutations and combinations of these structures some of which are defined hereunder:

a) management contract whereby a Contracting Authority awards a private party the responsibility to manage and perform a specific service, within well-defined specifications for a specified period of time not exceeding ten years, and the Contracting Authority retains ownership and control of all facilities and capital assets and properties;

b) output performance based contract whereby the Contracting Authority awards a private party the responsibility to operate, maintain and manage infrastructure facility for a specified period of time not exceeding ten years and the Contracting Authority retains ownership of the facility and capital assets;

c) a lease whereby the private party pays the procurement entity rent or royalties and manages, operates and maintains the facility or utilises leased land for the purpose of exploration, production and development of minerals and receives fees, charges or benefits from consumers for the provision of the service or sale of products for specified time not exceeding thirty years;

d) a concession whereby a private party through a contractual license issued by the public entity is granted the right to operate, maintain, rehabilitate or upgrade the infrastructure facility and to charge a user fee while paying a concession fee to the public entity;

e) a Build-Own Operate scheme whereby a private party designs, finances, constructs, owns, operates and maintains the infrastructure facility and provides services for an agreed time period

f) Build-Operate-and-Transfer - A contractual arrangement whereby the private party undertakes the construction, including financing, of a given infrastructure facility, and the operation maintenance thereof and transfers the facility to the Contracting Authority at the end of the fixed term which shall not exceed thirty years

g) Build-Lease-and-Transfer - A contractual arrangement whereby a private party is authorized to finance and construct an infrastructure or development facility and upon its completion turns it over to the Contracting Authority concerned on a lease arrangement for a fixed period after which ownership of the facility is automatically transferred to the Contracting Authority Unit concerned

h) Build-Transfer-and-Operate - A contractual arrangement whereby the public sector contracts out the building of an infrastructure facility to a private party such that the contractor builds the facility on a turn-key basis, assuming cost overrun, delay and specified performance risks. Once the facility is commissioned satisfactorily, title is transferred to the Contracting Authority and the private party operates the facility on behalf of the Contracting Authority under an agreement

i) Develop-Operate-and-Transfer - A contractual arrangement whereby favourable conditions external to a new infrastructure project which is to be built by a private party are integrated into the arrangement by giving that private party the right to develop adjoining property, and thus, enjoy some of the benefits the investment creates such as higher property or rent values. The infrastructure facility shall be transferred the Contracting Authority within a period not exceeding 30 years while the developed property remain a property of the private party in perpetuity

j) Rehabilitate-Operate-and-Transfer - A contractual arrangement whereby an existing facility is turned over to the private party to refurbish, operate and maintain for a franchise period, at the expiry of which the legal title to the facility is transferred to the Contracting Authority

k) Rehabilitate-Own-and-Operate - A contractual arrangement whereby an existing facility is transferred to the private party to refurbish and operate with no time limitation imposed on ownership. As long as the operator is not in violation of its franchise, it can continue to operate the facility in perpetuity;

l) Land Swap - A contractual arrangement whereby existing public land or asset is transferred to the private party without limitation in exchange of an asset or facility developed by the private party.

Source: GOK, 2011, pp. 13 – 14.

APPENDIX 4

Table 1 - List of Key Documents Used in the Study - Kenya Government Documents

Document Reviewed	Data Obtained and Analysed
Public Private Partnerships Bill, 2012	Key legal clauses defining and laying down the regulatory framework for PPPs in Kenya
Public Private Partnerships Act, 2013	Key legal clauses defining and laying down the regulatory framework for PPPs in Kenya
National Priority List of PPP Projects	Project names, parent ministries, contracting authorities within the project and brief details of the projects.
Pipeline Analysis of Public Private Partnerships Projects in Kenya – Final Report by Ecorys and Gibbs	How the projects listed on the National Priority List of PPP Projects were identified and the context and history of coming up with this list.
Policy Statement on Public Private Partnerships in Kenya	The Kenya Government's PPP laid out plan on the PPPs enabling and implementing framework
Draft County Regulations	Proposed involvement of county governments in implementing PPP projects
PPP Petitions Committee Guidelines	Guidelines on PPP petitions.
Kenya PPP Pipeline Report, October 2014	Progress on PPP implementation
Kenya PPP Pipeline Report, February 2015	Progress on PPP implementation
Consultancy Services for the Consolidation, Strengthening and Harmonization of the Policy, Legal and Institutional Framework for the Public Private Partnership Programme in Kenya – Contract no 7141918, 2007	Recommendations to the World Bank by the Institute of Public Private Partnerships (IP3) in 2007 on essential requirements and prerequisites for a PPP Policy Framework in Kenya

Kenya Vision 2030, Sessional Paper, 2012	Kenya's Economic, Social and Political aspirations over the next 2 decades to 2030.
Kenya Vision 2030	Second Medium Term Plan (2013 – 2017)
Expression of Interest (EOI) and Request for Proposals (RFP) for PPP Projects; advertised recruitment for various PPP experts	Procurement information on PPP projects
Water Act, 2002	Regulatory framework on water sector, including private provision of water services
Privatization Act, 2005	Regulatory framework over disposal of public assets to the private sector
Energy Act, 2006	Regulatory framework on Energy sector, including on private sector involvement
The Public Procurement and Disposal Act, 2005	Regulatory framework on public procurement and disposals including on the use of concessions in the provision of public services
Amendment of Public Road and Tolls Act (Cap 407) in 2007.	Regulatory framework on the use of tolls in public roads.
Communications Act, 2009	Regulatory framework on the involvement of the private sector in the provision in Communication services, including Telecommunications
Public Procurement and Disposal (Public Private Partnership) Regulations , 2009	Amendment to the Public Procurement and Disposal Act, 2005 to include the use of Public Private Partnerships.
Constitution of Kenya, 2010	Changes to the Constitution of Kenya following a referendum in 2010

Public Private Partnerships Policy Statement, 2011	Kenya Government's vision and suggested regulatory framework on the use of Public Private Partnerships.
Kenya Vision 2030 Policy Statement, 2012	Government vision on Kenya's Social, Economic and Political development and the role of Public Private Partnerships in delivering the flagship projects
Public Private Partnership Bill, 2012	Proposed regulatory framework on PPPs
The Hansard, Parliament of Kenya, 2012	Parliamentary debate on the Public Private Partnerships Bill
Public Private Partnerships Act, 2013	Regulatory framework on PPPs
PPP Draft County Regulations, 2013	Proposed regulatory framework on use of PPPs by county governments

Source: Author

The second table shows documents drawn primarily from the World Bank and World Bank associates.

Table 2 - List of Key Documents Used in the Study - World Bank

Document Reviewed	**Data Obtained and Analysed**
World Development Report, 1978	A summary of "fundamental problems confronting the developing countries" and how the bank would tackle on key item each year.
World Development Report, 1985	Key legal clauses defining and laying down the regulatory framework for PPPs in Kenya
World Bank's World Development Report, 1988	Project names, parent ministries, contracting authorities within the project and brief details of the projects.

World Development Report, 1991	How the projects listed on the National Priority List of PPP Projects were identified and the context and history of coming up with this list.
World Development Report, 1994	The Kenya Government's PPP laid out plan on the PPPs enabling and implementing framework
The Infrastructure Finance & Public Private Partnership (IFPPP) Project Procurement Plan	Planned procurement from the World Bank funded IFPPP project.
Project Information Document (PID) Concept Stage, Report No. AB6331	Provides the key development issues in Kenya and the rational for the Bank's involvement
Project Information Document; Concept Stage; Report No AB 6331,	Provides the key development issues in Kenya and the rational for the Bank's involvement
Project Appraisal Document on a Proposed Credit in the Amount of SDR 26.4 Million (USD 40 Million Equivalent) to the Republic of Kenya For an Infrastructure Finance and Public - Private Partnership Project (IFPPP); Adaptable Program Lending Phase I.	Project Appraisal Document with details of the IFPPP project
Consultancy Services for the Consolidation, Strengthening and Harmonization of the Policy, Legal and Institutional Framework for the Public Private Partnership Programme in Kenya - Contract no 7141918, 2007	Recommendations to the World Bank by the Institute of Public Private Partnerships (IP3) in 2007 on essential requirements and prerequisites for a PPP Policy Framework in Kenya
Public-Private Partnerships; Reference Guide;	Detailed guidance on the setting up of Public Private Partnerships.

Financing Agreement (Additional Financing for the Infrastructure Finance and Public Private Partnerships Project) between REPUBLIC OF KENYA and INTERNATIONAL DEVELOPMENT ASSOCIATION	World Bank - Kenya Financing Agreement
Report of the Auditor General on The Financial Statements of Infrastructure Finance and Public Private Partnerships Project (IDA Credit No 5157 KE) for the Year Ended 30 June 2014,	Financial Details of the IFPPP project for 2014.
Report of the Auditor General on The Financial Statements of Infrastructure Finance and Public Private Partnerships Project (IDA Credit No 5157 KE) for the Year Ended 30 June 2015,	Financial Details of the IFPPP project for 2015.
Report of the Auditor General on The Financial Statements of Infrastructure Finance and Public Private Partnerships Project (IDA Credit No 5157 KE) for the Year Ended 30 June 2016,	Financial Details of the IFPPP project for 2016.

Source: Author

APPENDIX 5

Sample of Questions in the Interviews (Meeting with PPP Unit Project Manager)

Q1: What is your role as Project Manager of the PPP Unit and as head of the IFPPP programme in Kenya?

Q2: Does this mean that you have two reporting lines?

Q3: What is the role of the IFPPP Project?

Q4. How is the IFPPP helping build up and develop Kenya's PPP Projects?

Q5: The government has published the National Priority List of PPP Projects. Are these the projects that the government is seeking to implement?

Q6: How is the IFPPP linked to the PPP Unit? What is the role of the PPP Unit?

Q7: From the documents on the PPP Unit website, I noted that the National Priority List of PPP projects was compiled using a "multi-criteria" analysis. How was the "multi-criteria" analysis used in compiling the National Priority List and the First Mover projects?

Q8: Why has the Government of Kenya chosen to implement PPPs?

Q9: What are the challenges encountered so far/ anticipated and how are these being resolved?

Q10: How does the implementation of PPPs sit with the Kenya Vision 2030 given that PPPs are included in the Vision as a means of achieving the objectives?

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