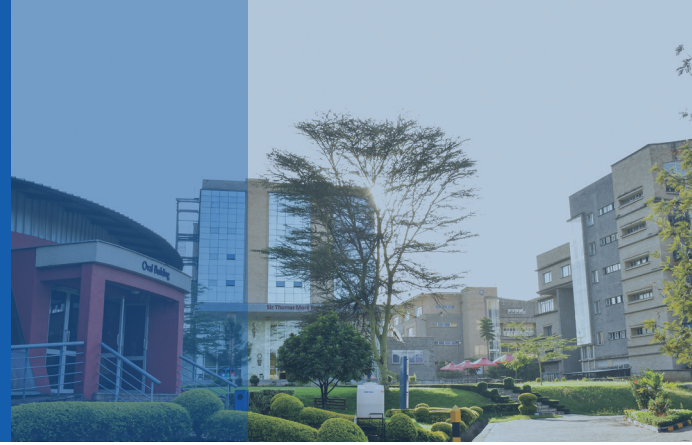




POLICY BRIEF

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PUBLIC-PRIVATE DEVELOPMENT PARTNERSHIP: A RIGHTS-BASED APPROACH TO DEVELOPMENT

David Chiawo, Peggy Ngila, Jane Mugo, Mumbi Wachira, Linet Mukami, Titus Kuria, Jackson Obare

Executive Summary

In its First annual report, the Public- Private Partnership (PPP) Directorate indicated that since commencement of the PPP programme in 2023, the Government of Kenya (GoK) mobilized Sh90 billion in form of private capital investments, with Sh80 billion realised in 2021/22. Despite this enactment and the ongoing PPP projects, many local communities in Kenya are yet to realise the full impact of such projects, since they still lack life's essentials (rights-based needs) such as clean water, quality healthcare, and education.

The PPP Act has gaps in the application of rights-based principles. Some of the weak areas include accountability, inclusivity, community participation, climate action, community empowerment, and rights protection. Beyond PPP projects meeting feasibility criteria, there is need for a clear framework and guidelines to hold PPP projects accountable to ensure development outcomes that meet the needs and expectations of communities.

Therefore, good development should be anchored on human-based principles to effectively impact community development. This gap

highlights the need to strengthen the PPP Act (2021) by embedding rights-based, inclusive, and climate-responsive principles through a Public-Private Development Partnership (PPDP) model, an inclusive rights-based approach to development, as evidenced in a study carried out in Narok and Nakuru counties.

Keywords: Public-Private Partnership, rights-based principles, inclusivity, PPDP model

Introduction

The right to development is a fundamental human right enshrined in Article 1 of the Declaration of the Right to Development. It means everyone has the right to participate and benefit from economic, social, cultural, and political progress. This development should fully realise all human rights and fundamental freedoms. In 2015, the United Nations (UN) Member States co-signed the 2030 Agenda for Sustainable Development, agreeing on the 17 Sustainable Development Goals (SDGs). The aim was to address the challenges that human beings face, such as the provision of clean water and sanitation, health care, and quality education. This led to a

prominence in the development of Public-Private Partnerships (PPPs).

PPPs are long-term agreements between the government and private sector institutions that drive economic development. Typically, it involves financing government projects and services upfront and then drawing revenues from taxpayers and/or users for profit throughout a PPP contract. Their creation shows a big change in how public policies are made, moving from a traditional 'government' model to a wider idea of 'governance'.

In demonstrating how the PPP model works, for instance, between 2012 and 2020, Kenya's infrastructure development required a total investment of USD62,176 million. The government contributed USD25,000 million, leaving a funding gap of USD37,000 million. To bridge such funding gaps, the government is focusing more on PPPs for the growing demand for quality and affordable infrastructure for its citizens.

Problem Statement

The PPP Act of 2021 was enacted to improve infrastructure delivery in Kenya by enhancing partnerships with the private sector. However, the Act has several limitations that must be addressed to ensure inclusivity, equity, and community empowerment. One of the glaring gaps is the lack of an explicit benefit-sharing framework. Sections 3(c), 19(2)(b), and 69(7) omit explicit provisions for how local communities benefit from PPP projects.

Oversight mechanisms under Sections 57 and 58 are weak. The Act merges negotiation and compliance roles, compromising the principle of separation of powers (the "maker-checker" principle). This raises concerns about accountability, particularly regarding the monitoring and enforcement of community rights, socio-economic impacts, and environmental safeguards.

The definition of local content within the Act prioritizes national-level value addition but fails to consider county-specific or community-level contributions and needs. Consequently, local communities are excluded from the project value chain. Equally critical is the Act's omission of climate change adaptation, mitigation, and resilience strategies.

Inclusivity and meaningful participation are inadequately addressed. While Section 19(2) mentions equity, it lacks language guaranteeing inclusivity and community representation. Project-affected people are not explicitly guaranteed a

voice in decision-making processes. Without proper frameworks for inclusive engagement, projects risk alienating stakeholders and inciting resistance or conflict.

The Act also lacks effective tools for data transparency. The current disclosure mechanisms are not user-friendly, especially for local communities. There is no mandate for the dissemination of accessible, language-sensitive, or mobile-compatible information.

The existing power imbalances limit the meaningful participation of disadvantaged groups. A transparent and inclusive grievance redress mechanism is absent, increasing the likelihood of conflict and undermining justice. The PPP Act does not specify how affected communities can lodge complaints. Without a clear and accessible framework, communities lack an effective means of redress, undermining both accountability and the legitimacy of PPP projects.

Policy Options

Given the noted loopholes, the PPP Act requires comprehensive reform to embed rights-based, climate-responsive, and community-centred development principles. These changes will not only uphold Kenya's constitutional values in Articles 10, 69, and 159 but also enhance public trust, de-risk private investments, and foster equitable, inclusive development outcomes.

This exposes a policy gap in the PPP Act that may need to be addressed by applying a Public-Private Development

Partnership (PPDP) model, an inclusive rights-based approach to development. A PPDP model tested by a study in Suswa and Olkaria wards in Narok and Nakuru counties revealed a significant impact on community development in the provision of clean water, quality education, and healthcare, among several other amenities.

The public-private development programme (PPDP) method was developed by Swedish International Development Agency (Sida) to mobilise the private sector, in Sweden and elsewhere, to pro-actively engage in and contribute to the development of sustainable societies in low-income countries. The approach encourages the private sector to proactively develop strategies to improve key community development dimensions, including community business ecosystems, skill sets and capability enhancement, socio-economic empowerment, partnership networks, and access to rights-based needs.

The PPDP model strengthens public-private partnerships, leveraging rights-based approaches to improve access to clean water, healthcare, quality education, climate change resilience and create decent jobs. Initially implemented in Narok and Nakuru counties since 2018 around the Ken-Gen Geothermal PPP project, the model has shown significant results towards inclusive growth.

Key results

The study revealed a significant impact of the PPDP model on community development in Narok and Nakuru. It further revealed a significant development impact on communities in the provision of clean water, quality education, healthcare, skill development, green jobs, entrepreneurship, community rights empowerment, and leadership. Areas where PPDP was not implemented registered low levels of development by 36.9% compared to areas where PPDP was implemented registering 16.0% (Figure.1). This affirms that PPDP holds great potential as a catalyst for socio-economic growth and environmental progress in regions hosting large-scale development initiatives.

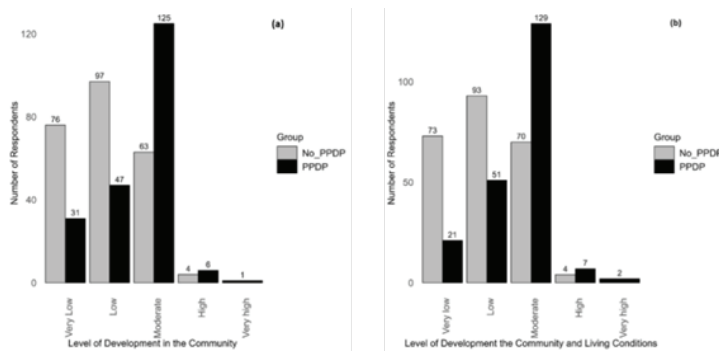


Figure 1: Development characteristics in Olkaria and Suswa, Naivasha and Narok counties, focusing on PPDP implemented since 2018. Results depict (a) comparison of level of community development, (b) evaluation of level of living conditions.

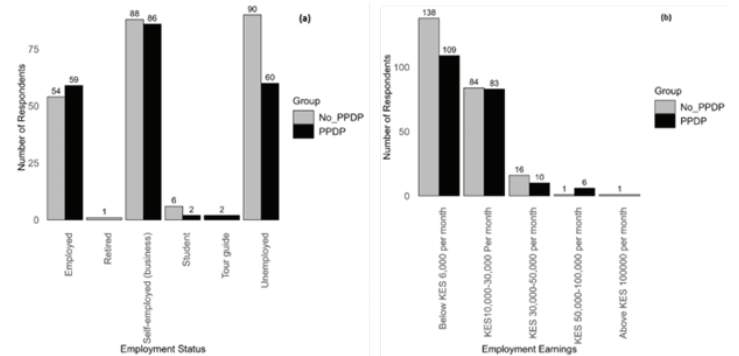


Figure 2: Development characteristics in Olkaria and Suswa, Naivasha and Narok counties, focusing on the impact of PPDP implemented since 2018. Results depict (a) comparative analysis of employment status, and (b) assessment of employment earnings between PPDP-implemented and non-implemented areas.

The unemployment rate in areas where PPDP was not implemented was 20.1% compared to 12.1% in areas where PPDP was implemented. Most individuals earning less than \$1.50 a day were from areas without PPDP (Figure. 2).

Policy Recommendations

To address the gaps identified in the current PPP Act and better align development projects with the needs of local communities, we propose the following practical, policy-relevant recommendations based on the study in Narok and Nakuru:

1. Clarify benefit-sharing provisions by amending Sections 3(c), 19(2)(b), and 69(7) to include an explicit formula for benefit sharing with host communities for development projects. For example, a minimum of 10% of net revenue or 3% of gross earnings, whichever is higher.
2. Amend Sections 3(c), 19(2)(b), and 69(7), and introduce a new Section 32A to establish a unified framework for equitable benefit-sharing and climate action.
3. Establish an independent oversight body, such as a PPP ombudsperson, to ensure impartial monitoring and compliance, financed through 5% overhead cost built into each PPP project.
4. Ensure the representation of local communities, particularly Project-Affected Persons (PAPs), in PPP project committees.
5. Create a county capacity fund, allocating 0.5% of the national PPP pipeline annually to strengthen technical skills and data systems at the county level.
6. Improve transparency and community feedback mechanisms by upgrading the public disclosure portal which is mobile-friendly, available in local languages, and include tools like SMS or USSD.
7. Promote domestic investment in PPPs by prioritising Kenyan pension funds and local banks through a dedicated Domestic Resource Mobilisation Policy to reduce overreliance on foreign financing.
8. Balance investor protection with

community safeguards by strengthening dispute resolution procedures that protect both parties.

9. Introduce a Marginalised County Incentive Window to promote equitable regional development by offering viability gap grants of up to 15% for PPP projects located in Arid and Semi-Arid Lands (ASALs).
10. Standardize impact measurement and reporting by gazetting clear indicators for employment, training, SME involvement, gender/youth inclusion, environmental performance, and grievance redress.
11. Embed community engagement throughout the entire project cycle, from initial planning to final evaluation. This must be people-centred and uphold the constitutional values of participation, inclusion, and social justice.
12. Encourage use of local expertise by developing a clear policy on domestic resource mobilization and technical participation.
13. Reserve two voting seats for PAP delegates (inclusive of women and youth) on every project committee.
14. Fasttrack arbitration under the Nairobi Centre for International Arbitration but condition eligibility on compliance with EBF and Climate Action Safeguards.
15. Gazette a standard M&E framework tracking: (i) local employment & skills training, (ii) SME subcontracting, (iii) gender & youth empowerment,

(iv) climate resilience metrics, (v) grievance-redress turnaround time. Annual performance to be tabled in Parliament.

Conclusion

The PPP framework has mobilized private capital for infrastructure. However, the communities targeted by these projects have not fully benefited. Lack of clear benefit-sharing criteria, weak oversight, limited inclusivity, and inadequate climate safeguards exclude many individuals and communities from the development gains that PPPs are supposed to deliver.

The Public-Private Development Partnership (PPDP) model evidence based on the study conducted in Narok and Nakuru shows that communities experience improved access to services, reduced unemployment, and stronger local economic development if rights based inclusive approaches are adopted.

There is need to review the PPP Act to embrace accountability, inclusivity, climate action, and transparent benefit-sharing to protect community rights and build public trust and investor confidence. By rebalancing public and private interests, Kenya can ensure that PPPs promote sustainable and inclusive growth to enhance the constitutional values of equity, participation, and social justice, as well as promote the Sustainable Development Goals.

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About the Authors

This policy brief was authored by Dr David Chiao, Dr Peggy Ngila and Jane Mugo (Centre for Biodiversity Information Development, Strathmore University); Mumbi Wachira, and Linet Mukami (Strathmore Business School, Strathmore University); Titus Kuria and Jackson Obare (ForumCiv, Kenya). The study was sponsored by ForumCiv, Kenya.

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Ole Sangale Road
P.O Box 59857-0200
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