



Strengthening Africa in World Trade



TERMS OF REFERENCE

**CALL FOR ARTICLES TO BE PUBLISHED IN
THE NEWSPAPERS TO INFORM THE COURT
CASE ON UNCONSTITUTIONALITY OF THE
PUBLIC PRIVATE PARTNERSHIPS (PPPs) ACT,
2015 OF UGANDA**

OCTOBER 2020

Introduction

The Southern and Eastern Africa Trade Information and Negotiations Institute (SEATINI-Uganda) is a regional non-governmental organization founded in 1996 soon after the WTO Singapore Ministerial Conference, after realizing that Africa in particular and Third World countries in general were marginalized in the WTO negotiations and other global processes. Today, SEATINI Uganda works to promote pro development Trade, Fiscal and trade related policies for sustained equitable development and improved livelihoods in Uganda and the EAC region.

SEATINI Uganda with financial support from Diakonia is running a campaign on “*Life Before Profits*”. The campaign is aimed at making investment work for people through a projected entitled “Promoting investment regimes for inclusive and sustainable development”. As part of the interventions for the project, SEATINI- Uganda and Center for Food and Adequate Living Rights (CEFROHT) filed a case in the Constitutional Court of Uganda challenging the unconstitutionality of the PPP Act 2015 which is inconsistent with the principles of transparency, accountability and limited citizens’ participation.

One of the strategies adopted by SEATINI and CEFROHT in pursuing the case is to publish newspaper articles in order to influence the judge’s decision on the case. This call is therefore to seek the services of competent individuals to write well research newspaper articles that can Influence the Judge’s decision on the PPPs case.

Background

Public-Private Partnerships (PPPs) are increasingly being used as part of the financing mechanisms for implementation of development projects in many developed and developing countries. Though PPPs, proponents have argued that countries have been able to leverage on private sector finance, technology and expertise. The term PPP is broadly used to describe collaboration between the public and private sectors to achieve a public policy goal, including a private company financing, building or operating a public (or government) service or facility. The 2030 Agenda and the Addis Ababa Action Agenda, which sets out the financial roadmap for sustainable development, both specifically encourage governments to adopt PPPs.

Currently, Uganda has several development projects financed through the PPP financing mechanism. Among them include: The Kampala - Entebbe Express Way; Umeme; Mulago National Referral Hospital Car Park project; Mulago Specialized Women and Neonatal Hospital; Bujagali Hydro Power project; Namanve Power plant; Karuma Hydroelectric Power Station project; Kampala Solid Waste Management Project; Nakawa - Naguru Housing Project; the Uganda People's Defence Force Housing Accommodation, and the Lubowa International Specialized Hospital Uganda. The most recent project is the Kampala – Jinja Express way.

However, the adoption and implementation of PPPs by countries has not been flawless. International experience on implementing the PPP strategy reveals that in a number of cases, implementation of PPPs has had unintended consequences that have constrained local development and resulted into fiscal distress. Among the observed unintended consequences of PPP projects are the following: cost escalation of goods and services delivered under the strategy, financial risks skewed to the government side, tendency of PPP projects to benefit some but not all intended beneficiaries, vulnerability to corruption and general lack of transparency of PPP projects, lack of people's voice at all levels of PPP project design and implementation, and putting little emphasis on long term environmental and socio concerns of communities. An example of the considerable financial risks involved is a large-scale road-building programme in Mexico in the 1990s that involved more than 50 PPPs. Unanticipated costs and macroeconomic shocks led to the government bailing out over half of the PPPs and the taxpayers had to pay more than US\$8 billion for a particular project.

Problem

PPPs are generally new to many African governments. They are highly technical, involving extensive legal obligations especially for the state party. They also require a broad and objective analysis of the costs and benefits of adopting the financing mechanism. Even the officials within the PPP unit in Uganda rely heavily on foreign expatriates.

Following a series of civil society consultations, research and policy analysis, including specifically analyzing the PPP Act of Uganda, it was found that the Act is unconstitutional, marred with democratic deficiency, limited transparency and no public participation. This is also in addition to the fact that the implementation of these projects, and more specifically the mode of financing could have far reaching implications on the country's economy and its citizens. The Act also in many ways falls short of the United Nations Economic Commission for Europe (UNECE)'s Eight Guiding Principles on People-First PPPs. A further analysis of the Act done in comparison with the PPP Acts of Kenya, Tanzania, and Rwanda also revealed that in many ways, these PPP legal frameworks are to some extent better frameworks compared to the Ugandan Act.

Following civil society outcry about these gaps, both in the media and through technical meetings held with policy makers, and yet with no government (executive or legislative) action to hold back on designing and approving PPP financed projects under the Act, SEATINI-Uganda and CEFROHT filed a case in the Constitutional Court seeking for the amendment of the Public Private Partnerships (PPP) Act 2015.

It is against this background therefore that SEATINI Uganda wishes to invite stakeholders to develop articles that will be published in the Newspapers in Uganda and the EAC with a view to inform and influence the judges' decision on the case, whose hearing has been scheduled for end of November 2020.

Rationale for the News articles

Public opinion plays an important role in informing the decisions of judges in public interest litigation cases. The media particularly have the potential to reach wider spectrum of the public, and thereby shape public opinion and influence decision making.

The use of newspaper articles can therefore be an important strategy for influencing a court decision such as the current PPP case in the constitutional court. Through these articles, key stakeholders will contribute to putting specific issues in the public domain and hence stimulate debate and advocacy by the public. Through the articles, stakeholders will also be able to share information from beneficial jurisprudence in other jurisdictions to support decision making.

Objectives of the Newspaper articles

The objective of the articles is to influence the judges' decision on the case that was filed by SEATINI-Uganda and CEFROTH on unconstitutionality of the PPP Act 2015 in favor of the complainants.

Specific Objectives

1. To raise public awareness about the gaps within the country's PPP Act as well as the challenges associated with PPP projects, if not properly implemented.
2. To expose human rights and business related abuses by Multinationals Companies that are operating under the PPPs in Uganda and East Africa.
3. To share jurisprudence from other parts of the world around PPPs that has facilitated the promotion of public good, and ensured state's capacity to regulate the private entity for protection of human rights and environment sustainability
4. To raise public awareness on the Eight principles of people first PPPs
5. To share policy and practice recommendations that can guide Judge's decision on the case.
6. To ignite and influence public debates on the PPPs in Uganda.

Methodology

The prospective participants are expected to collect, review and analyze evidence based information on specific PPP arrangements by government of Uganda and how they have negatively affected sustainable development and livelihoods of the people. The articles should further identify key gaps within the PPP Act, 2015 that have perpetuated human rights violations and marginalization of the most vulnerable.

Outputs

Produce a well-written and comprehensive article of not more than **600 words** highlighting policy gaps in the PPPs in terms of fiscal impacts, Human Rights abuses, democracy, transparency and public

participation and how these have perpetuated human rights violations and marginalization of the citizens.

Eligibility of articles

The articles should be written in English. The articles should make specific reference to existing and /or ongoing investments under PPP arrangements. The articles should be well researched, with credible evidence on the challenges associated with PPPs, both as a financing mechanisms for development financing such as energy and infrastructure projects, or for the provision of public services such as health, education, water supply among others; and propose policy options towards a more supportive policy framework.

Civil society, national private sector actors, academia, and government officials are invited to write and submit articles.

Submission of Articles

Interested writers should submit their Articles to: communications@seatiniuganda.org not later than **10th November 2020**. **The articles will be published on a first come first serve basis.**

Please indicate in the email subject line - **ARTICLE ON UNCONSTITUTIONALITY OF THE PUBLIC PRIVATE PARTNERSHIPS (PPPs) ACT 2015**. Please **NOTE** that this subject line **does not necessarily have to be the title of your article.**

Articles should be submitted as attachments to the email.