

IMPACT STORIES

PPIAF Support to the Enabling Environment for Public-Private Partnerships in Malawi



PPIAF support to the government of Malawi has led to a strong legislative and institutional public-private partnership (PPP) framework that will pave the way for increased private sector participation in the provision of basic infrastructure services. PPIAF support began in 2000 to design regulatory and institutional arrangements for oversight of key infrastructure sectors, which led to legislative and regulatory reform in the energy sector. In 2005 PPIAF provided additional assistance to mobilize a national PPP program through the drafting of a PPP Law and PPP policy framework, and the establishment of a PPP unit. The PPP policy framework was passed by Cabinet in May 2011, and the PPP Law was passed through Parliament in November 2011. As part of the new legislation, the Privatization Commission will transition to become the PPP Commission.

In the late 1990s the government of Malawi chose to pursue greater private participation in and the liberalization of its infrastructure services, with a view to increasing the quality of and access to infrastructure services while minimizing the drain on public resources. A survey of the private sector conducted for the 1997 World Development Report had identified the deterioration of Malawi's infrastructure to be the principal constraint to private business. In response, the government began a long process of improving the enabling environment for PPPs, with the aim of lowering investors' risk perceptions and increasing government capacity to develop, implement, and monitor PPP projects.

The government of Malawi had successfully developed a comprehensive policy, legislative, and institutional framework to serve the needs of its privatization program. However, the concept of introducing private sector participation in the delivery of public services through PPPs was still new in Malawi. Thus, the government decided that the establishment of a strategic PPP framework, consisting of a clear guiding policy, appropriate legal and regulatory provisions, and an institutional set-up capable of efficient implementation of PPP projects, was necessary.

Between 2000 and 2007 the government of Malawi sought assistance on three occasions from the Public-Private Infrastructure Advisory Facility (PPIAF) to improve the legal, regulatory, and institutional framework for private participation in infrastructure.

PPIAF SUPPORT

The government of Malawi requested PPIAF support in 2000 to help design an appropriate regulatory framework for private participation in infrastructure. The PPIAF-funded report assessed regulatory options for utilities and recommended the establishment of two new regulatory bodies, a combined energy and water regulator, and a transport regulator. The activity also designed an appropriate institutional structure, draft enabling legislation, and an implementation plan for the operationalization of the regulatory bodies.

In 2005 the government approached PPIAF for further assistance in developing an appropriate PPP framework. PPIAF provided support to the development of policies, laws, and regulations that defined the

scope of authority within the various spheres of government to enter into PPP contracts. PPIAF also designed an institutional set-up to support and streamline PPP implementation, guided by a set of institutional development principles.

Following the recommendations of the 2005 activity, the government of Malawi requested support for a third time to establish detailed PPP procedures and guidelines for project conception, preparation, procurement, and management, to create the right environment for the transparent and successful development of infrastructure PPP projects. In addition to the preparation of the operating procedures and guidelines for PPP implementation, PPIAF also provided funds for the drafting of PPP policy framework and the review of a draft PPP Law.

OUTCOMES

Following the first PPIAF activity, the government passed a new legal framework for the energy sector, consisting of the Energy Regulatory Act No. 20 of 2004, the Rural Electrification Act No. 21 of 2004, and the Electricity Act No. 22 of 2004. The Malawi Energy Regulatory Authority was established under Act No. 20 of 2004 as Malawi's energy sector regulator. The authority's mandate is to regulate the energy sector in Malawi in a fair, transparent, efficient, and cost-effective manner for the benefit of the consumers and operators. In 2007 the first Commissioners of the energy regulator were appointed.

The second and third PPIAF activities have also garnered solid outcomes. The operations guidelines and standard documents and procedures prepared under the PPIAF activity were subsequently published on the Privatization Commission's website. In May 2011 the Public-Private Partnership

Since 1999 PPIAF, a multidonor technical assistance facility, has helped developing countries use public-private partnerships to improve their infrastructure. A key focus has been upstream technical assistance to support the development of an enabling environment for such partnerships.

This series highlights how PPIAF's support has made an impact on the ground.

Policy Framework was passed by Cabinet, laying out the government's commitment to promoting private infrastructure investment, setting out the policy framework for the initiation, design, and implementation of PPPs, and promoting PPPs as a new form of procuring and financing infrastructure projects and services. In November 2011 the Malawian Parliament passed "Bill No. 13 of 2011: Public-Private Partnership." The law provides the legal framework for the participation of private entities in government projects. Following the passing of the PPP Law, the Privatization Commission will be strengthened and assume new responsibilities, formally becoming the implementation agency for PPPs, and will be renamed as the PPP Commission.

DONOR COORDINATION

Several donors are active in support of private sector participation in infrastructure development in Malawi, including the World Bank, the UK's Department for International Development, and the United States Agency for International Development.

IMPACTS

Since 2000 PPIAF has supported three activities in Malawi to identify and define the most appropriate enabling environment for PPPs. PPIAF is currently providing assistance for the renegotiation of the concession of the Malawi Rail Network, and the extension of the railway by Vale. It is expected that government commitment to the PPP agenda and the sound enabling environment for PPPs facilitated by PPIAF will help to build a pipeline of PPP transactions in Malawi.

RELATED PPIAF ACTIVITIES IN MALAWI

- 2001: Harmonization of the Institutional and Regulatory Framework, **\$200,000**
- 2005: PPP Legal and Regulatory Framework, **\$269,000**
- 2006: Create the Enabling Policy and Legal Environment for Improved Access to Information and Communication Technology (ICT) Services in Rural and Remote Areas, **\$365,000**
- 2007: PPP Implementation—Development of Regulations and Procedures, **\$251,500**