UNIVERSITY OF GHANA

IMPLEMENTATION CHALLENGES OF PUBLIC-PRIVATE PARTNERSHIP IN INFRASTRUCTURE DEVELOPMENT PROGRAMME IN GHANA

BY

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THIS THESIS IS SUBMITTED TO THE UNIVERSITY OF GHANA, LEGON IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR THE AWARD OF MPHIL, PUBLIC ADMINISTRATION DEGREE

JULY, 2018

DECLARATION

I do hereby declare that with exception of identified quotations which are duly acknowledged, this work is entirely a true result of my own research I conducted under the supervision of Dr. Thomas Buabeng, a senior lecturer of the Department of Public Administration and Health Service Management, University of Ghana Business School, Legon. This study has not been presented by anyone for any academic award in this or any other university. I am therefore responsible for any shortcomings, marginal or substantial which may be found in this work.

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CERTIFICATION

I hereby certify that this thesis was supervised in accordance with procedures laid down by the University.

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THOMAS BUABENG (PhD)   DATE

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DEDICATION

I dedicate this work to God and my family and friends.

ACKNOWLEDGEMENT

Gratitude they say is the least of all virtues but ingratitude is the greatest of all vices.

My warm appreciation and thankfulness goes to God, whose inspiration has made the study a success. I express my deepest appreciation to Dr. THOMAS BUABENG for his excellent editorial reading and constructive criticisms and corrections helped put this study in shape. I sincerely appreciate the pieces of advice by the Head of Department, Prof. J.N Bawole which kept me on my toes. I am grateful to Dr. Albert Ahenkan and to the Administrative staff Auntie Matilda and Auntie Mary Larbi for their patience and warm reception.

I also extend my gratitude to Mr. Kwesi Amanor, Madam Nafisa Winnifred, and Mr. Dominic Osam Duodu, and to Mr. William Dokyi Asare, and Mr. Kwame Baffour Awuah Madam Hilda Agyennim, and Naa Amaaley Akowuah as well as Hannah and Charles.

Special thanks to my wife (Eunice Owusuah) who has been very supportive. I owe these people a great deal - Ms. Lydia Aidoo Tailor, Ms. Evelyn Apeba Kolena, Winky, Mrs. Juliet Essien and all my Mphil mates.

The extensive use of application of various resourceful materials in the form of Acts, L.Is, papers in the study cannot be skipped for acknowledgement. I am grateful for the use of the information from the Economic office of PID, the legal office of PPA and the Policy Development Unit of NDPC, the planning department of AMA as well as the Attorney General Department.

My appreciation also goes to Mr.J. K. Oduro, Atiemo George Mutala Kofi Alao and Charles Gyamfi for their great inspiration.

Finally, I also acknowledge the support of Mr. Bill Andy, Ms. Comfort Abena Kotima, Mr. Alfred Fiifi- Mensah (Landlord), Mr. Bright Nyarko (Obohene), Mr. Brobbey Patrick and Francis Kwami Sarpong ESQ.

God bless every one of you.

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ADR:	Alternative Dispute Resolution
AfDB:	African Development Bank
AICD	Africa Infrastructure Country Diagnostic
AMCOW:	African Ministers’ Council on Waters
ATRCL:	Arterial Toll Road Company Limited
AU:	African Union
AVRL:	Aqua Vitens Rand Ltd
BC:	Before Christ
BOO:	Build, Own, Operate
BOOT:	Build, Own Operate and Transfer
BOT:	Build, Operate and Transfer
CAC:	Corporate Affairs Commission
CAs:	Contracting Authorities
CSO2:	Country Status Overviews (second round)
DBOM:	Design, Build, Operate and Transfer
DFBOT:	Design, Finance, Build, Operate and Transfer
DFIs:	Development Finance Institutions
EBRD:	European Bank for Reconstruction and Development
ECG:	Electricity Company of Ghana
ECOWAS:	Economic Community of West African States
EU:	European Union
GDP:	Gross Domestic Product
GHA:	Ghana Highways Authority
GIIF:	Ghana Infrastructure Investment Fund
GIPC:	Ghana Investment Promotion Centre
GLO:	Global Telecommunications
GNA:	Ghana News Agency
GoG:	Government of Ghana
GWCL:	Ghana Water Company Limited
Ibid:	ibidem
ICB:	International Competitive Bidding
IDA:	International Development Association
IFF:	Infrastructure Finance Facility
IMF:	International Monetary Funds
IPPs:	Independent Power Producers
KIA:	Kotoka International Airport, Ghana
MCC:	Millennium Challenge Corporation
MDAs:	Ministries Departments and Agencies
MDGs:	Millennium Development Goals
MMDAs:	Metrpolitan, Municipal and District Asemblies
MOFEP:	Ministry of Finance and Economic Planning
MOF:	Ministry of Finance
MW:	Megawatt
NCB:	National Competitive Bidding
NDP:	National Development Plan
NDPC:	National Development Planning Commission
NEDCo:	Northern Electricity Distribution Company

NGOs:	Non-Governmental Organizations
NLAs:	National Lotteries Authority
NPM	New Public Management
NIP:	National Infrastructure Plan
O & M:	Operation and Management
OECD:	Organisation for Economic Cooperation and Development
PAIDF:	Pan-African Infrastructure Development Fund
PDF:	Project Development Facility
PFAU:	Project Finance and Analysis Unit
PFI:	Privately Financed Infrastructure
PFP:	Privately Finance-Project
PID:	Public Investment Division
PMI:	Project Management International
PMU:	Project Monitoring Unit
PMUs:	Project Monitoring Units
PPA:	Public Procurement Authority,
PPAs:	Power Purchase Agreements
PPIAF:	Public Private Infrastructure Advisory Facility
PPP:	Public-Private Partnership
PPPAU:	PPP Advisory Unit
PSP	Private Sector Partnership
PPPs:	Public-Private Partnerships
PURC:	Public Utilities Regulatory Commission
RFP:	Request for Proposal
RAGB:	Revenue Agencies Governing Board
SAP:	Structural Adjustment Programme
SEC:	Securities and Exchange Commission
SPV:	Special Purpose Vehicle
SSNIT:	Social Security and National Insurance Trust
STDs:	Standard Tender Documents
TA:	Treasury Approval
TICO:	Takoradi International Company
UK:	United Kingdom
UNCITRAL:	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UN:	United Nations
UNDP:	United Nation Development Programme
USPs:	Unsolicited Proposals
US:	United States
USA:	United State of America
USAID:	United State of America Aid
USD:	United States Dollars
VATS:	Value Added Tax Service
VfM:	Value for Money
VRA:	Volta River Authority
WAPP:	West African Power Pool
ZDA:	Zambia Development Agency

ABSTRACT

The provision of key economic infrastructure such as roads, railways, ports, power plants, water treatment plants, among others remains prominent in the development of a country's economy. In Ghana however, the immediate requirements for these projects coupled with inherent budget constraints in the public sector makes it difficult for government to bridge the infrastructural gap. Public-Private Partnership has been identified as the innovative approach to finance public projects to enhance economic growth; a shift from 'government providing' to 'government enabling', approach where the private sector takes a center stage in the provision of public infrastructure. This comes as a result of perceived inefficiencies, lack of skills and technical know-how coupled with corruption and budgetary constraints associated with the public sector.

The study adopted a qualitative approach which involved interviews and the use of statutory documents and reports as well as empirical data.

This study reviewed the challenges that confront the implementation of PPP in infrastructure development in Ghana, and identified; inadequate legal and regulatory framework, low level of government capacity, over reliance on unsolicited proposals, politicization of concessions, Leadership and Public resistance and lack of understanding of PPP by local investors as the challenges that confront the implementation of PPP in infrastructure development in Ghana.

CHAPTER ONE

THE RESEARCH BACKGROUND

1.0 Introduction

Investment in infrastructure is an essential component to ensure rapid economic growth, improve quality of life, and reduce poverty and access to other social services. The evolving phenomenon of countries moving towards integrated approach to economic development where private politics are now considered as the engine of growth has led to worldwide movement towards the public-private partnership (PPP) as a development mechanism.

This study focuses on analyses of the challenges that affect the implementation process of Public-Private Partnership in infrastructure development in Ghana.

1.1. Background to Studies

Economic and Social Infrastructure deficit in Africa is enormous as compared to other regions in the world. This stems from lack of financial resources to facilitate their construction. According to The United Nations Conference on Trade and Development (UNCTAD), Africa loses 1 percent of its per capita growth each year as a result of poor or inadequate infrastructure (UNCTAD, 2011).

Conventionally, governments' ability to tackle public needs efficiently and effectively through the traditional means is been impeded as a result of rapid population growth and its related urbanization, and changing trends in development all over the world. These have provoked the debate of public-private partnerships where government engages the private sector players to augment public investment to ensure adequate provision of public services. Public-Private Partnerships are regarded as the *best-of-both-worlds* since it ensures adequacy and efficiency in public provision of infrastructure and return on private investment.

Most developing countries are finding it difficult to provide efficient and effective public service to the citizenry. The private sector has in diverse means been brought into the scene to inject "capital, expertise, technology, prudent management, and flexibility among others to effectively and efficiently provide such essential public services" (Asare, & Frimpong, 2013, p114). The adoption of public-private partnerships in the provision of public service and infrastructural development is a response to the resource constraints and capacity challenges the government faces.

Indeed, Ghana has since involved private individuals in the provision of infrastructure and other services. However, it became more prominent with the introduction of the SAP in the 1980s (Ayee, 1998). SAP was the brainchild of 'Washington Consensus'[1] which emphasised free market and private initiative to get most developing nations from their economic doldrums. The implication is that market-based policies will produce beneficial social change (Morgan, 2007). This includes infrastructure policies.

Because PPP is not complete privatization, it allows for actors (both public and private sector) to become involved and accountable to the public and to be more innovative in solving urgent economic and social problems (Grossman, 2012). The partnership allows both the public sector authority and the private sector counterparts to bring together their expertise to play. According to Grossman (2012), PPPs have seemingly become a cooperation and collaboration between actors in the public and the private sector that bear common principles in the long-term effects of their decisions. The combination of legislative and regulatory authority as well as the obligation to sustain the public interest by the public sector, and the risk taking capacity, innovativeness, marketing and ability to mobilise resources by the private sector generates the best benefits (Finney and Grossman, 1999). Thus the partnerships give room for the public sector to tap the expertise, resources, skills and the experience of the private sector (Awortwi, 2004). Not only is public-private partnership a public

[1] The term "Washington Consensus, usually credited to John Williamson (1990) refers to the set of policy prescriptions

sector reform mechanism, it is an innovative management tool which is consistent with the New Public Management (NPM) principles.

By engaging the private sector, efficiency, responsiveness and effectiveness are brought to bear in the delivery of basic services.

It is argued that PPP is an effective instrument to fighting poverty and ensuring sustainable development (Ahmad, et al, 2014). Theoretically and empirically, the issue of infrastructure in general and private participation in particular is associated with poverty alleviation, efficiency gain and economic growth (Sharma, and Sehgal, 2010; Sharma, 2012).

According to UNDP Commission for private enterprise development, PPPs enhance access to financing options, assist skill and knowledge development, and ensures sustainable basic service delivery (UNDP , 2004). It is therefore not surprising that the term has become a “jargon” in political and policy discourse in most developing nations including Ghana.

The growing inability of government to manage large and complex public projects due to budget constraints led to the widening of the private sector involvement in the provision and management of public services. Efficient and sustainable infrastructural development has been the bedrock of the great economies (Ekpenyong, & Mmom, 2015).

The traditional transactional model is what has been used to provide infrastructure to the public until recently (Cruz, and Marques, 2011).The scale of infrastructure poses high level of complexity and thus demands huge capital (Bosch-Rekveldt, et al, 2010). For this reason, they remain the responsibility of government even when they are delivered under market- based. As a result, an innovative way of increasing investment in infrastructure development is sought for, hence the adoption of PPP.

PPP is increasingly viewed as the preferred option to accelerate the provision of infrastructure in many countries since it proffers an opportunity to finance public projects in conjunction with the private sector (Slaba, 2011). The World Bank reports indicated that in 2000 to 2005, the private sector financed about 22 percent of infrastructure projects in developing countries (World Bank, 2009). PPP is considered a risk allocation approach in infrastructure development and a way of assisting government to cut public spending and continue to maintain investment level in infrastructure up (Bing et al., 2005; Mfunwa, et al, 2015). The concept is found to be applied in many domains of socio-economic life, often in capital-intensive projects and programmes.

The main aim of PPP is to provide public services, maintain public infrastructure, provide funding for project and programmes as well as ensure effective administration and management.

Countries all over the world grow their economies through accelerated infrastructure development. The late President J.F Kennedy of America once said that; "America is rich because it has good roads". This is an indication that good and adequate infrastructure is a sine qua non to economic development. It is from this premise that Ghana has adopted Public-Private Partnership model as an alternative to the traditional procurement system to accelerate its development process.

Investment in public infrastructure has not seen much improvement to match the growing demands of the population. The quest for government to spur development is seriously been challenged by under-investment in areas such as transportation (railway, roads and ports), power generation, housing as well as water and sanitation. These are the critical components to rapid economic development.

The Africa Infrastructure Country Diagnostic (AICD) 2010 report by World Bank has it that Ghana needed an estimated amount of USD1.5 billion per year to meet her infrastructure demands over the next ten years[2]. This clearly exceeds government's short term total revenue.

In fact infrastructure funding is a global issue. According to the OECD, investment in infrastructure worldwide is likely to hit an average of $4trillion per annum between 2011 and 2030 (Airoldi. et al,

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[2]See Government of Ghana. (2011, June). National Policy on Public-Private Paetnership: Private Participation in Infrastructure and Services for Better Public Service Delivery. Ghana

2013). This is a clear manifestation of the need for active involvement of the private sector through Public-Private Partnerships schemes to augment government's effort in the provision of infrastructure.

Given the strict budget limitations that Ghana faces within the last few decades, it becomes almost impossible for government to allocate the required resources to infrastructure development. Public-Private Partnerships are now considered prominent among government's economic transformation agenda and an innovative approach to increase private sector involvement in public infrastructure development.

The adoption of PPP approach to infrastructure development invariably reflects the quest to improve the quality, value for money and timely provision of infrastructure, better potential for ongoing maintenance, and leverage public sector resources (Amponsah & Gatete, 2014; Meyer, 2012). Partnerships provide organizations the opportunity to put resources together, reduce risk, and bring in innovations in order to stimulate sustainable development (Musah-Surugu, & Hamid, 2014) since government alone lacks the capacity to build and operate the variety of sub-sectors .

The 1992 constitution gives the private sector the right to take part in economic activities to augment government's effort in increasing investment in infrastructure and other economic engagements[3].

The government of Ghana has in recent times begun shifting attention to involving the private sector in infrastructure creation through the public-private partnerships framework. The shift of focus is informed by resource constraints on the part of government to fund the infrastructure deficit and also fill the investment gap required to achieve infrastructure development in Ghana. The private sector participation adds value in several aspects of innovation, and efficient projects management process. The legal and regulatory framework that guides the implementation process of PPP projects is imperative

[3] See Article 36 (2) of the 1992 Constitution of Ghana.

It is against this background that this study seeks to examine the policy guidelines and the legal and regulatory framework[4] as well as the strides made since the adoption of PPP in infrastructure development and the challenges thereon.

The study brings to bear the infrastructure projects that have been provided through PPP in Ghana and the issues confronting the PPP process.

1.2. Research Problem

The concept of public-private partnerships has won the interest of many government leaders all over the world as a mechanism to improve the managerial skills as well as attract private capital to provide public infrastructure (Grimsey, and Mervyn, 2007; Hammami, et al, 2006; Adekilekun, 2014). It therefore allows government to tap private expertise and sources of financing to provide large infrastructure. Electricity, transport as well as water and sanitation serve as the wheels on which economic activities run. The challenge therefore has been capital investment in the sector to develop the nation's infrastructure to a level that will place it on a pedestal of economic transformation. As a result, many nations have resorted to public-private partnerships in a move to develop their countries.

Indeed urbanization and industrialization in most developing countries has widened the demand-supply gap of infrastructure in most of these countries (Sharma, 2012). Budgetary constraints in most of these countries have led to inadequacy of funds to meet these infrastructure demands. Unfortunately privatization of government activities could not prove suitable for infrastructure provision in these countries making Public-Private Partnerships the preferred mechanism to leverage public sector infrastructure.

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[4] See Ghana PPP-projects. Available at http://www.worldbank.org/projects/P125595/ghana-ppp-project?lang=en accessed on 08/03/2016: The objective of Public Private Partnership Project (PPP) for Ghana is to improve the legislative, institutional, financial, fiduciary and technical framework to generate a pipeline of bankable public private partnership projects. This informs the decision to embark on this study.

There is an increasing reliance on PPP model by most developing countries to plan, finance and build as well as operate its infrastructure projects. Indeed the gains from PPPs cannot be overemphasized.

Governments in most developing countries are therefore using PPP contracts to improve the quality and quantity of infrastructure services. This rising acceptability of PPPs is a manifestation that it is the easier financing mechanism and tool to bridge the infrastructure gap.

The PPP arrangement is characterised with efficient use of resources, incorporation of modern technology and expertise, better project design and implementation coupled with improved project management. These together, lead to efficiency and effectiveness which are lacking in the public sector[5].

Public-Private Partnerships however, will be more successful within the environment of sound legal and regulatory regime. This notwithstanding, most countries develop PPP projects in a spate of limited legal and regulatory mechanisms leading to a gamut of impediments in its implementation process.

Ghana has used the PPP model in recent years to procure public infrastructure in a number of sub-sectors of the economy; including water and sanitation, electricity and transportation among others. The question that comes to mind is what legal and regulatory provisions govern the implementation of the PPP process in Ghana and what are the challenges that confront its implementation? It is also not farfetched to want to know the gains made in infrastructure provision following the adoption of PPPs as a mechanism to curb the infrastructure deficit in the country. Studies in recent times have attempted to look at Public-Private Partnerships in Ghana. For instance, Amponsah and Gatete (2014) examined the level of involvement of the private sector in road infrastructure development in

[5]Regional Workshops of Chief Secretaries on Public-Private Partnership Workshop Report, Department of Economic Affairs (DEA) Ministry of Finance, Government of India and Asian Development Bank (ADB), December, available at: www.adb.org/documents/reports/consultant/39659-ind/39659-ind-tacr.pdf Accessed 14/04/2016

Ghana. Their work concentrated on the prospects of PPP in providing road infrastructure without recourse to the legal and regulatory framework for PPP transactions and the challenges that confront its implementation process. In related studies, Owusu (2014) explored the challenges associated with road construction through PPPs. On his Part, Ellimah (2014) probed the controversy of PPP and Public procurement and how their differences affect the provision of Public infrastructure. The Zambia development Agency (ZDA) (2014) assessed the level of infrastructure in the major economic subsectors with reference to potential for PPP. The findings highlighted the opportunities that exist in PPP agreements. In a similar study, Siemiatycki (2015) examined the state of PPPs in Canada after 20 years of practice. The findings highlighted the common deal structures, the types of risks transfer and the role government funding play in the success of PPPs. On his part, Habibija (2012) analysed PPPs in Bosnia And Herzegovina. It appears to be the only study that has so far examined the level of infrastructure development provided through PPPs in Herzegovina and other EU countries. There has been an increasing adoption of PPP all over the world, however, many countries are still lacking the expertise, and skills as well as enabling environment for the success of the PPP programme in infrastructure development (Babatunde et'al, 2013). Ghana has embraced the concept in delivering infrastructure projects as it has gradually become a global phenomenon. The huge capital outlay that characterises the implementation of the PPP programme and the shortfall of expertise and knowledge in the field requires an investigation into the implementation process. This study is motivated by these studies and attempts to analyse Public-Private Partnerships as system for the procurement of public infrastructure to identify the challenges that confront PPP in the delivery of public infrastructure.

The study is informed by the numerous challenges that confront the execution of PPP projects in most developing nations and Ghana in particular. The study therefore seeks to inform public policy formulation and implementation with reference to PPP policies in Ghana and Africa as a whole. The findings of the study would add to knowledge and practice in the public sector.

1.3. Research Objectives

The main objective of the study is to examine factors that confront the PPP process in infrastructure development in Ghana. Specifically, the study seeks to achieve four objectives.

1. To examine the legal and regulatory framework of public-private partnerships in infrastructure development in Ghana.
2. To evaluate the factors confronting the implementation of Public-Private Partnership in infrastructure development in Ghana.
3. To examine the level of infrastructure development in some key economic sub-sectors under PPP arrangement.
4. To suggest ways to improve PPP process in infrastructure development

1.4. Research Questions

The research seeks to answer the following questions to satisfy the objectives set.

1. What legal and regulatory framework governs public-private partnership in infrastructure development and provision in Ghana?
2. What are the challenges that confront Public-Private Partnership project implementation in Ghana?
3. Has Public-Private Partnership improved infrastructure provision in Ghana?
4. What measures can be taken to improve PPP in infrastructure development in Ghana?

1.5. Significance of the Study

All forms of intervention to augment government efforts in the provision of essential goods and services to the people must be guided by policy, legal and regulatory framework to ensure that such services are delivered in accordance with the laid down procedures.

It is indeed true that PPPs have gained prominence in the delivery of public infrastructure in Ghana over the years. Empirical examination of the policy and regulatory framework of PPP in infrastructure development and its implementation process as a procurement system would add to the theory and practice of public sector management which this research seeks to achieve.

The outcome of the research would guide policy framers and implementers to adopt international best practices in the implementation of public-private partnerships projects and programmes in various areas of public demand apart from infrastructure development.

An in-depth scrutiny of the public-private partnership programme as practised in Ghana is therefore imperative. The study will in no doubt bring to the fore useful recommendations that will inure to the benefit of both the public and the private sector institutions.

1.6. Scope of the Study

Geographically, the study is limited to the national capital – Accra; where the ministries and the head offices of the institutions involved in the study are located.

The respondents were drawn from the Ministry of Finance and Economic Planning, the National Development Planning Commission, The Public Procurement Authority among others (the roles of these institutions in the public-private partnership process are examined in chapter 4 of this study).

Public infrastructure in the three key economic sub-sectors is chosen for the study due to the huge demand of investment required to improve infrastructure which is the fundamental for economic development, but which could not be provided by the government alone.

1.7. Definition of Terms

It is important to understand the terminologies that are used in this research work. Thus this section gives brief explanation of the main concepts that are addressed in this study.

Public-Private Partnership

The concept is defined differently under different contexts as could be seen in appendix II of this study.

Public-private Partnerships have been defined as an agreement between government and private sector entities on each side for delivering public service such as infrastructure on contract based or on concession arrangement. In other words it is the partnerships between a public sector entity and a private sector entity for the creation and management of infrastructure for public use (Sharma, & Bindal, 2014).

The government of Ghana defines PPP as "a contractual arrangement between a public sector party, with clear agreement on shared objectives for the provision of public infrastructure and services traditionally provided by the public sector" (Government of Ghana, 2011; p2). The private sector party bears the risks associated with it for a period of time per the PPP arrangement. The partnership ventures are usually centered around the expertise and capacity of both the public and the private actors mostly on contractual agreement to ensure mutuality in the allocation of resources, risk and benefits (Gupta, and Biswas, 2010). This ensures integrity and trust among parties and relieves government from huge capital intensive projects. In effect, it brings together the managerial competence within the private sector to deliver services to meet the social priorities of the nation.

The key elements in the various definitions of Public-Private Partnership includes; long-term arrangement between public sector entity and a private sector party where the design, the construction, financing and operation of the public facility are all done by the project company (Yescombe, 2007).

Other key features of the definitions are; the private sector is paid on the fees charged over the use of the facility or by the public sector party for the contract period; and maintenance of ownership of the facility by the public sector entity or reversal of the facility to the public sector party at the end of the contract period.

Even though many reasons could be given for the creation and adoption of PPPs, the justification rests on one basic *assumption* and one basic *presumption*.

The *assumption* is that the public sector lacks in-house knowledge of delivering public goods and services in a most cost-effective manner. The *presumption* on the other hand is that the public sector can partner the private sector party in order to gain access to the technical expertise it requires and thus assess the cost-effectiveness of private delivery of public service (Forrer, et al, 2010)[6]. The creation of PPP binds the parties in a common objective - the success of the project.

Private partners' readiness to trade their expertise for long-term service contract makes it possible for the adoption of PPPs.

The government's role is redefined as one of facilitator and enabler, while the private partner plays the role of financier, builder, and operator of the service or facilities under PPP format (Gupta, and Biswas, 2010). The government is responsible for the quality of service delivery, pricing as well as value for money and the price of the partnership. In order to facilitate the management of PPP project, a participating government or its agency must demonstrate a certain level of credibility as a responsible party in contractual arrangements (Yang, et al, 2013). Political stability, check and balances, an independent judicial system to ensure smooth arbitrations and legal and regulatory mechanisms among others are identified by many scholars (Henisz, 2002; Stasavage, 2002; Neshkova, and Kostadinova, 2012; Yang, et al, 2013) as key contributors to government credibility.

[6]The world is increasingly becoming integrated and more complex making governments fall short of the required capacity as well as the managerial skills to provide adequate infrastructure. Hence, the need to engage parties with the necessary expertise, and managerial adeptness becomes imperative.

Public Infrastructure

Public infrastructure is defined as facilities which support the nation's economy and social activities including ancillary facilities such as public offices or accommodation. These facilities are therefore not ends in themselves but a means to an end.

Public infrastructure can therefore be categorised under; economic infrastructure considered essential for the day-to-day economic activities such as transportation facilities, and utility networks; and social infrastructure which is considered essential for the structure of society such as schools, hospital, prisons, among others. Further distinction can be made between 'hard' infrastructure basically involving physical facilities and 'soft' infrastructure involving the provision of services either economic or social services.

Yescombe raised argument to support government role in the provision of public infrastructure[7]. The provision of merit goods such as schools, and hospitals, require state intervention. Since the provision of public infrastructure requires high initial capital there will be the need for some amount of public sector support to be able to raise capital for such projects.

Public Procurement

Public procurement involves the process of acquiring goods, services and works from third parties by public sector organizations. It ranges from the provision of routine items to complex spending area such as the construction of major projects as well as the provision of key services directly to the citizens by third parties (Office of Government Commerce, 2011). In other words it refers to the process by which government or public agencies such as local authorities, government departments

[7] See Yescombe (2007) Public-Private Partnership: Policy and principles. He posited that; the private sector cannot take account of the general economic and social benefits (externalities) and thus the need for public sector intervention. Again, public infrastructure remains 'public goods' and without government intervention, infrastructure that is supposed to be made freely available to all may not be built.

and ministries acquire goods and services from companies[8]. Example includes building a state hospital or school, purchasing furniture for government office or contracting cleaning services for high way. Public procurement can be defined as the acquisition of works, supplies and services by public bodies whether under contract or not which ranges from the purchase of routine supplies or services to formal tendering and placing of contracts for large infrastructural projects[9].

The fundamental pre-requisite of public procurement is that a competitive process should be used unless there are justifiable reasons. Such competitive process involves tendering and bidding processes. This is done to prevent fraud, waste and corrupt practices. The traditional public procurement involves actors engaging in separate and unrelated operations with government being the sole financing agent[10]. See Appendix IV for differences between traditional public procurement and procurement under PPP.

1.8. Organization of the Study

The study is organised into five chapters as the main study and a bibliography.

It begins with general introduction which includes the Background to the study, Statement of problem, research objectives and questions, and Significance of the study. This is followed by review of relevant literature and the theoretical underpinnings and the conceptual framework of the study in the second chapter. The third chapter deals with the methodology which discusses the research paradigm as well as methods employed for collecting and analysing the data for the study. This is followed by the presentation of discussion of the findings in the fourth chapter.

The study concludes with summary of findings of the study, recommendation conclusions, as well as contribution to future research, knowledge and theory.

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[8] See public procurement forum: Facts sheet No.1 http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/reform/fact-sheets/fact-sheet-01-overview_en.pdf: Accessed 10/03/2016.

[9] See http://www.epa.ie/about/procurement Accessed 10/03/2016. A key principle is that public procurement function is discharged honestly, fairly, and in a manner that secures best value for money.

[10] Yescombe (2013); the public sector is responsible for designing of a given public project and engages private-sector contractors to carry out construction on its behalf; (design-bid-build).

CHAPTER TWO

LITERATURE REVIEW

2.0. Introduction

This chapter provides a review of relevant literature to give empirical evidence in support of PPP in the provision of public sector infrastructure. The efficacies of PPPs and the various contractual arrangements under PPPs are also discussed to bring a better understanding of the concept. Further, the theoretical and conceptual frameworks that underpin the study are expatiated.

2.1. Evolution and overview of Public-Private Partnership

Public-Private Partnership is termed differently in different jurisdictions; however, the concept remains the same. While it is referred to as public-private partnership in Ghana, and other jurisdiction including Malaysia, it is referred to as private finance initiative (PFI) and privately-finance project (PFP) in England and Australia respectively. Others refer to it as private sector participation (PSP), Partnerships, P3 and the like.

The World Bank agrees that the term Public- Private Partnerships has no one single definition (See Appendix II). It however referred to it as mutual engagement of the private sector in the provision of public service or infrastructure ranging from the medium to long-term. The World Bank therefore defines PPPs as *a long-term contract between a private party and a government entity, for providing a public asset or service, in which the private party bears significant risk and management responsibility* (World Bank, 2014, p.2). The term as explained by World Bank does not include privatization on public utilities where the authority of the public sector is much limited.

The process of Public-Private Partnerships suggests a greater and active involvement of the public sector throughout the execution of the project. However, the efficiency of the entire project from design, building, finance, operation and maintenance remains the responsibility of the private sector.

Several other organizations including the OECD and the European Union have also defined the term in other perspectives. For instance, the OECD defines it as an agreement between government and one or more private actors to deliver public service. The private partners may be operators or financiers. Thus the private partners deliver the services in alignment with its profit objective without compromising the objective of the public authority (OECD, 2008). The definition of the OECD suggests that the effectiveness of the alignment depends largely on a sufficient transfer of risk to the private associate.

E. R. Yescombe and the World Bank define Public-Private Partnership as "a long-term agreement between the government and a private sector party *whereby the private sector is handed the responsibility* to design, finance, construct and operate a public infrastructure with payment over the period of the Partnership arrangement to the private actor for the use of the facility" (Yescombe, 2007, p.3) (Emphasis mine).The private actor therefore bears significant amount of risk. The facility however remains the property of the public or is reverted to public-ownership at the end of the contract arrangement(World Bank, 2014).The partnership therefore relieves government from huge capital intensive projects since the risk and cost is transferred to private sector. In effect, it brings together the managerial competence within the private sector to deliver services to meet the social priorities of the nation. The private sector is therefore allowed to inject capital and ensure efficiency while the ownership is retained by government to ensure it serves the public good (Awortwi, 2004).

The U.S. National Council for PPPs defines a PPP as: "a *legal* arrangement between a public sector entity and a private sector party, as a result of which the skills and assets of each sector (public and private) are shared in providing the service or facility for the use of the general public. Potential risks and reward in the service delivery; are also shared among each party" (Yescombe, 2013, p 5) (emphasis mine).

The government of Ghana defines PPP as "a contractual arrangement between a public sector party, with clear agreement on shared objectives for the provision of public infrastructure and services traditionally provided by the public sector"(Government of Ghana, 2011, p.2). The private sector party may perform part or all of the government service delivery functions and thus bear the risks associated with it for a period of time per the PPP arrangement. The private party however enjoys financial remuneration per predefined performance benchmarks.

From the ongoing discussion, it is clear that the term public-private partnership is subjected to various interpretations by various writers.

For the purpose of this research Public-Private Partnership is defined as long term arrangement whereby the public sector and some private sector entities act together to design, finance, construct, operate and maintain public infrastructure in the effort to deliver service to the public and also get the returns on the investment.

The reasons underpinning the adoption of PPPs lie in the embedded differences between the public and the private sectors which indicate that given the right conditions PPPs can provide an effective mechanism for exploiting the uniqueness and strengths of each sector in the pursuit of common objective (Jamali, 2004).

Public agency and private organizations can actually enjoy mutual advantages in developing a PPP. Thus the public agency stands to enjoy improved programme performance, cost efficiency, appropriate allocation of risks and responsibilities as well as better service provisions from the private sector agency in the partnership (Pongsiri, 2002; Scharle, 2002; Jamali, 2004). A major feature of public-private partnerships is that the construction of the facility and the provision of the service are bundled and delegated to a single private sector institution (Grimsey, and Lewis, 2004). It is often argued that such bundling encourages innovativeness during execution phase leading to a reduction in cost of service delivery (Hoppe & Schmitz, 2012). The main objective of the PPPs is to inject investment and efficiency into the system with the government retaining ownership due to the excludability and externality nature of public goods.

PPP is not something entirely new. In the sixteenth and seventeenth century roads and bridges and canals were built and water distributed on concessions in France and by 1820s there were about six private water companies operating in London, and almost all the waterworks in USA were operated by private entities in the early 19th century.

The general disappointment that characterised privatization in the 1980s has paved way for explicit attempts to engage with the private sector in a more sophisticated way. It is clear that privatization did not achieve the goal of reducing national debts neither did it exhibit the philosophical underpinnings, being superior in running businesses as observed in a number of studies(Broadbent and Laughlin, 2003; Leitch and Motion, 2003).

Public-Private Partnership in Developed Economies

Private participation in the provision of public infrastructure and public service delivery has been practised at various levels of governance in the advanced countries. In the United States, PPP is largely applied to federal level projects[11] and used in Germany to provide a variety of infrastructure projects (Gaffey, 2010).

Public-Private Partnership has increasingly become a popular mechanism to finance and manage infrastructure projects across Europe, US and Canada (Ahmad, et al, 2014). In China, however, PPP has not received the popularity as it has in USA, UK Canada, Germany, and other developed nations. This is because it has a strong central plan culture in procuring public projects (Lu, et al, 2013).

The adoption of neoliberalism as a political ideology and also as an economic policy in the early 80s by the UK and the US governments signifies the genesis of public-private partnerships[12]. The development of the PFIs in the 1980s by the Conservative Government in Britain marks the real time PPP came into the lime light with the Labour Government, under the leadership of Tony Blair, changing the name to "Public-Private Partnerships" in 1997(Wettenhall, 2007).

[11] U.S. Gov't Accountability Office, GAO-08-44, Highway Public-Private Partner ships: More Rigorous Up-Front Analysis Could Better Secure Potential Benefits and Protect the Public Interest 3 (2008)
[12] See Evans & Sewell (2013).The neoliberal era: Ideology, policy, and social effects.

Around this same period , the Australian government introduced what they called *financial engineering* schemes which provided the guiding principles on how to refinance existing properties or build new ones through leases and *'sale-and-buy-back'* arrangements similar to build own operate and transfer (BOOT) schemes using off balance sheet arrangements (Wettenhall, 2007) .

Siemiatycki study on PPP in Canada reveals that PPP has been in practice in the country for over two decades building over 200 projects. It is envisage that the Canadian PPP project pipeline remained active during the global economic crisis rendering Canada an attractive PPP marketplace (Siemiatycki, 2015).

The approach to governing, structuring and delivering PPPs in Canada has gained international admiration and has been touted a potential model to be emulated. In fact it is recommended by the UK government as the one to follow in developing UK's new approach to public private partnerships (HM, Treasury, 2012).

Most PPP models applied in Canada are those that allow for public ownership and regulation of facilities while offering a long-term bundled concession to the private entities to undertake the design, construction financing, operation and maintenance of the facilities.

Portugal is also not left out in the adoption of PPP to develop infrastructure. Portuguese quest to revamp the economy after the 74 Revolution resorted to PPP. Indeed it was identified as the "preferred procurement option for developing the nation's infrastructure investment plan" (Cruz, and Marques, 2011; p.2). The rational for the adoption of PPP as postulated in (Martins et al, 2011), was to provide an avenue for the public sector to extract value from a profit oriented approach, and to adopt a financing scheme that would relieve the government from large investment in infrastructure.

Indeed the advanced economies had always partnered with the private sector to build infrastructure as far as in the sixteenth - and seventeenth- centuries. Roads, bridges, and canals were built in France under concessions (Gupta and Biswas, 2010). Utilities such as water and electricity were provided by private entities in the early nineteenth century in London, USA, Brazil, Mexico and other advanced economies. Railways in South American countries were built and operated by private developers from USA, Britain, and France in the nineteenth and twentieth centuries.

Public-Private Partnerships in Ghana

Infrastructure development has always been the sole responsibility of government, thus the provision of both soft infrastructure and hard infrastructure rested on government shoulders.

The global economic crisis in the 1980s however rendered government ineffective in the provision of public infrastructure leading to the adoption of SAP introduced by the World Bank and of course IMF to help tap private funding for the provision of public services and infrastructure.

The adoption of the SAP initiative did not mark the end of Ghana's infrastructure deficit. Despite the fact that Ghana has grown to become a middle level income economy, its infrastructure supply remains poor both in quality and in quantity. There is a complete mismatch between the demands for infrastructure owing to the rapid population growth and the investment in infrastructure.

It is said that Ghana requires a sustained spending of about USD 1.5 billion a year for ten years to address its infrastructure deficit at the moment (Government of Ghana, 2011).

Almost all the sectors of the economy have suffered a level of neglect or underinvestment. The transportation system, viz the railway, roads, aviation and marine transports have not seen much improvement over the years due to funding. For instance the railway system that used to transport bulk commodities had been given a lopsided attention for quite a long time. Government's quest for rapid economic development is threatened as a result of underinvestment in those areas including energy (electricity) water and sanitation.

This devastating phenomenon made government to tilt towards adopting the new trend of attracting investment in public infrastructure; public-private partnerships. The programme allows for government to partner with the private sector to provide public infrastructure.

As part of effort to support Ghana's PPP programme, the International Development Association (IDA)[13] of the World Bank granted Ghana USD30 million interest free credit to facilitate the new public-private partnership programmes aimed at developing infrastructure in Ghana. This is meant to close the critical funding gap and also leverage private sector investment from 2012-2016[14].

The support was meant to assist Ghana to develop a better framework and build the capacity of government to undertake such development path.

As a result, attempts were made to formalise private participation in economic activities in 2003 when the government created a ministry responsible for private Sector development[15]. The formation of the ministry marked the formal attempt to develop a framework for Public-Private Partnerships in Ghana. Cabinet approved a policy document dubbed Policy Guidelines for the Implementation of Public-Private Partnerships in Ghana in 2004. Indeed, the private sector was classified as the *engine of growth.*

The policy did not actually satisfy its intended purpose; however, it served as a reference point to begin work on a new framework to ensure private participation in public service provision. The government then established the Public Investment Division (PID) within the Ministry of Finance and Economic Planning (MoFEP) responsible for developing the legal, institutional and regulatory framework for the PPP Programme[16].

A national Policy Framework was adopted in 2011 to serve as a guide for PPP programmes in Ghana. The policy framework among others proposes the establishment of; Project Development

[13]The International Development Association (IDA) is the part of the World Bank that helps the world's poorest countries. Established in 1960, IDA reduces poverty by providing interest-free credits and grants that boost economic growth, with a repayment period of over 25-40 years, including 5 to 10- year grace period. Read more at: http://www.modernghana.com/news/386267/1/new-partnership-project-to-mobilize-private-invest.html Accessed 5, April, 2016.

[14] See New Partnership Project to Mobilize Private Investment for Ghana's Infrastructure (Ibid)

[15] A ministry responsible for private sector development was created under the Kufuor regime to facilitate public private synergy in national development. An attempt was made to integrate the public sector and the private sector to facilitate development by coming out with a policy guideline in 2004.

[16] See Apenteng, M (2011), *Public Private Partnership (PPP) In Ghana*

Facility (PDF), Viability Gap Scheme (VGS) and Infrastructure Finance Facility (IFF) as government support and intervention.

2.2. Public-Private Partnership and other Procurement Processes

Governments all over the world explore various ways to ensure effective and efficient delivery of services to its citizenry. Acquiring adequate resources to ensure that this goal is achieved is prominent among government decisions. Government's ability to acquire resources to satisfy its economic, and social developmental goal is basic to ensure sustainable development. The usefulness of government is manifested in its ability to provide infrastructure and effectively manage public procurement since this serves as panacea for rapid infrastructural development of a nation.

Over the years government of various nations has relied on public procurement and privatization as the only methods to provide public infrastructure. However, in recent times especially following the New Public Management, another trend of procurement that advocates the involvement of the private sector in the public service delivery as a partner rather than a provider with sole responsibility has emerged, though with different names in various jurisdiction but same nomenclature. Thus, the emergence of Public-Private partnerships as a new form of public procurement gave the public sector the impetus to accelerate development.

Attempt is made here to bring out the distinguishing features between PPPs and the earlier procurement systems.

Public-Private Partnerships versus Privatization

Privatization of state-owned enterprises is another form of private sector involvement in the public service delivery. It involves the transfer of part or whole entity which hitherto was operated by the public sector entity either through sale, concession or lease or other form of arrangements. With this arrangement, the government gives the direct control and ownership of the entity and the provision of services to the private entity (full privatization). In some cases the government retains some level of control by holding shares in the privatized entity. The effect is to leave the day-to-dayproduction and delivery of service to private operators while the government only regulates the private sector activities (Forrer, et al, 2010). PPP procurement does not involve the transfer of public ownership. Thus, while the private sector expertise is sort to ensure efficient delivery of public goods, ownership remains with the public sector which is accountable to users.

Public-Private Partnerships versus Outsourcing

Outsourcing of government functions involves the transfer of such public function to the private sector entity or non-profit entity with the intention of achieving greater fiscal control to ensure efficient service delivery (Forrer, et al, 2010). Outsourcing involves government decision on make-or-buy operations with the idea that the private sector can provide the public service at a cheaper rate as compared to the government agency.

Public-Private Partnerships versus Public Procurement[17]

Public sector procurement involves a situation where the public sector designs a given public project and "engages private-sector contractors to carry out construction on its behalf (design-bid build)" (Yescombe, 2013, p.6).PPP procurement process however, involves the design and building of a project by a single party, usually the private partner.

The traditional public procurement involves actors engaging in separate and unrelated operations with government being the sole financing agent while PPP procurement is bundled and often financed by the private entity. Bundling brings about innovative design during the construction of a facility leading to a reduction in the cost of service delivery. Grimsey and Lewis (2004), postulates that the underlying feature of public-private partnerships is that the tasks of designing and building a

[17] See appendix III for differences between PPP and Traditional Public Procurement process.

facility as well as operating it later are incorporated within a single private-sector party. Under traditional procurement however, there are separate contractors for construction and management. Yescombe explains that the private sector entity will be ready to spend more in the construction stage so as to reduce the costs that may be incurred later in the operation stage since the responsibility to construct and operate rests on the given private entity (2007).

While this is so, government under the traditional procurement method contracts with different parties to respectively build and provide the public goods and services. All parties remain risks neutral since they operate under the conditions of limited liability.

The argument again is that the long-term relationship intrinsic in PPPs creates a room for information lopsidedness to develop between the public sector entity and private party as compared to the traditional procurement process (Hoppe, & Schmitz, 2012). The private sector entity therefore gains advantage over the public sector entity in terms of information regarding costs of future investments in the delivery of service (Chong, et al, 2006; Yescombe, 2007, p.3; De Palma, et al, 2009).

Even though the private entity may exaggerate the cost as postulated by(Vickerman, 2004), it motivates the private entity to put in more effort to reduce the cost in order to make profit.Unlike public-private partnership, the traditional procurement process may contract out infrastructure projects without necessarily involving the bidders in the design specifications, financing and operations of the project.

2.3. Public-Private Partnerships and Infrastructure Development

Increasingly, PPP is becoming popular as it is being widely used for infrastructure development world over. The concept is a panacea to government's inability to finance the construction of major infrastructure (Kulasingam, 2012). Cheung (2009) describes PPP as a procurement approach where the public and the private sector come together to deliver public services. Awortwi, (2004) argues that there is a serious deterioration in public infrastructure and services. It is true that economic crisis and rapid urbanization contributes to this infrastructure handicap in most part of Africa, and over reliance on government for the provision of such services however, cannot be overemphasized. It is important to adopt an innovative way of providing public infrastructure which has always been a major constraint on growth and development worldwide especially the developing countries.

Available infrastructure services are often of low quality and unreliable rendering some areas under-served. The ubiquitous challenges facing governments is indeed a reflection of the poor performance in infrastructure. It is envisaged that most countries are not investing much in infrastructure in order to provide the needed infrastructure while the limited resources are often spent on wrong projects due to poor planning and coordination, weak analysis during project selection, pursuit of political gain and corrupt practices (World Bank, 2014).

The inherent advantages of PPP have made it attractive to governments in most developing nations including Ghana. It enhances the provision of needed infrastructure services since they may not require immediate financial obligations by government, and thus relieves government from the cost of design and construction. In addition to the transfer of projects risks to the private actor, it promotes better projects design, construction, choice of technology, project operation and service delivery (Ogunsanmi, 2013; Yescombe, 2013).

Ogunsanmi (2013) postulated that PPP is becoming more and more popular in the procurement of public infrastructure globally. Cheung (2009) explains that PPP is a procurement method where the public sector joins force with its private counterpart to provide public infrastructure or services. In the process, expertise and resources are jointly contributed by both parties and the risks shared as well. The private sector partner gets involved in the design, funding, operation and ownership of a public facility (Egbewole, 2011). According to Kulasingam, (2012), PPP arrangements are now seen as the way forward to tackling government’s difficulties in financing the construction of public infrastructure. In effect the increasing use of the PPP approach would enable the government to secure the required public infrastructure while minimizing government expenditure in the short and long-term (Gaffey, 2010). Increasing the use of PPPs to provide government infrastructure is thus invaluable. Gaffey (2010) postulates that besides reducing government's expenditure for infrastructure, the private sector involvement in the design, building, operating, maintaining and operating such PPP projects brings about a greater efficiency. PPP is associated with efficient use of resources and better project design and implementation. Literature has it that infrastructure has a direct impact on economic growth as well as increase productivity and poverty (Bartholomew, et al., 2006; Sharma, and Sehgal, 2010). The private sector is considered more efficient because it approaches problem with commercial orientation focusing on cost-effectiveness devoid of politically oriented decision making. Delmon argues that the hidden cost that characterises the public sector is revealed and the potentiality of corrupt practices reduced due to the healthy competition amidst transparency in PPP transactions (Delmon, 2011). By exposing Public services to competition as a result of the private sector involvement, the cost of public services are benchmarked against market standards to ensure that best value for money is achieved(European Commission, 2003), since it is the core drive for PPP.

PPPs are identified as the "preferred procurement option for developing a nation's infrastructure investment plan" (Cruz, and Marques, 2011; p.2). Private involvement yields benefits, however it has the potential to subsume public interest following the quest of the private sector to maximize profit.

PPP arrangements are such that both parties do not only share resources, but also share potential risks and rewards in the process of delivering the services or building the infrastructure (Baird, 2012). Sharma (2011) posited that rapid economic growth in developing countries has led to a steady increase in the demand for infrastructure in recent years.

Indeed the pressure on existing infrastructure in these developing economies contributes to the widening demand-supply gap of infrastructure (Yang, 2008; Sharma, 2012). PPP brings about fiscal stabilization and is seen as an easy financing and institutional instrument with the ability to bridge the infrastructure gap (Estache, 2006). Lack of infrastructure affects economic activities negatively (Bartholomew, et al., 2006; Estache, 2006). Studies have shown that investment in infrastructure reduces poverty and spur up economic growth (Van de Walle, 1998; Ogun, 2010). Sahoo and Dash (2009) and Sharma and Seghal (2010) identified the provision of infrastructure as one of the most important factor growth. McCawley therefore proposes an increase in investment in infrastructure especially in developing countries (2010). Public-Private Partnership is therefore found to be the instrument for improved services (WaterAid and Tearfund , 2003). "Improved infrastructure is inextricably linked to enhancing the quality of life. The viability of private sector investments hinges on a robust and functional infrastructure of roads, rail, sufficient and efficient energy, stable water supply, and a seamless communications and ICT infrastructure" (Mahama, 2013, p 14).

Studies reveal that PPPs provide budgetary room to sustain government finances, create fiscal position to propel medium-term growth as well as increase accountability transparency and reduce corruption(Akintoye, & Beck, 2009; World Bank, 2009). PPPs help government to avoid budget over-runs and also reduce budget deficits (Mfunwa, et al, 2015). PPP enables government to clean the debt in the balance sheet which allows for easy allocation of scarce resources and reduction in government administrative costs.

Creation of contractual legal frameworks to expedite PPP projects and the development of guidelines and regulations for the promotion of PPP contracts are among the factors identified as enabling factors for the development of PPP (Akintoye, & Beck, 2009). Mfumwa, et al., (2015) agreed that for countries to realise the potential for PPPs there must first be a flourishing legal, political institutional and administrative conditions.

One other crucial factor to build and maintain confidence in PPP schemes is political support (Habibija, 2012) which ensures that concerns of the private sector are addressed adequately. The import of clear legal and regulatory framework is essential in PPP agreement. It is found that clear legal and institutional framework provide both the public and the private parties a certain level of certainty with regards to the legal protection and justice that could be guaranteed in the event of contract disagreement (Van Dijk, 2009; Koppnjan, & Ensrink Bert, 2009). This further reduces the risk for the private entities.

Government is able to diversify financial as well as non-financial risks through PPP arrangements. The government's exposure to market and product risks is minimised since the responsibility to finance, construct ad mange the project lies on the private party.

Quality and efficiency of infrastructure can be improved through PPP partly as a result of the multiple competing consortia at the bidding stage (Mfunwa, et al, 2015; Yescombe, 2010) and the transparency involve in the PPP procurement processes. Moreover, government gets access to skills and innovative techniques and expertise by involving the private sector in the discharge of its functions. It is found that market and government failures necessitate the cooperation between the public and the private entities in the provision of economic infrastructure in the developing countries (Netherlands Ministry of Foreign Affairs, 2013). The attainment of the MDGs as well as the desire to empower disadvantage segments of society have been part of the motivation for countries adapting PPP programme (Barrera-Osorio, et al., 2011).

Experience by countries with somewhat long PPPs history suggest improved project selection, better infrastructure management, timely infrastructure service delivery at relatively low cost. PPP contracts enjoy adequate maintenance due to its long-term investment phenomenon (World Bank, 2014; Airoldi. et al, 2013). PPPs can facilitate the mobilization of additional sources of funding for infrastructure under the right environment.

Studies reveal that public provision of infrastructure particularly in developing countries is inundated with lack of innovation, high degree of inefficiency, and low coverage area. It therefore benefits the well to do, leaving out the poor (Kessides, 2004; Koppenjan, & Enserink, 2009).

The World Bank and OECD, the advocates of PPPs argue that efficiency, extended public service delivery and better quality of service can be achieved through PPPs which has the potential of relieving governments of budget deficits (Koppenjan, & Enserink, 2009).

The level of infrastructure of a nation has a direct effect on its competitiveness as well as its attraction to investors. Thus, infrastructure is a critical component of the socio-economic development. Poor infrastructure stifles economic growth and international competitiveness (Delmon, 2011) since infrastructure serves as the wheels on which a nation's economy runs.

Infrastructure is defined as "the large-scale public systems, services, and facilities of a country or a state that are *essential* for economic activity, including power and water supplies, public transportation, telecommunications, roads, and schools" (Underhill, 2010 p. 163) (emphasis mine). Yescombe defined the term to include ancillary facilities such as government offices (2007).
Infrastructure is different from other public services because it is public goods which are non-excludable and must be provided by the state, but are difficult to get users to pay. It is also merit goods which are provided based on need rather than ability to pay for it – example; hospitals, schools, etc. Infrastructure also exhibits both positive and negative externalities (Yescombe, 2013). Infrastructure however, has been grouped into two categories namely; economic infrastructure and social infrastructure.

Economic Infrastructure **-** Economic infrastructure is usually user-paid or concession. Projects such as toll roads, tunnels, bridges, railways and some water and waste treatment plants are built under concessions. The economic infrastructure plays a key function in the daily economic activities of a nation. They enhance productivity and innovations (Grimsey, and Mervyn, 2007).

Social Infrastructure - On the other hand, the social infrastructure is usually but not always public sector-paid. Such include 'availability-based' infrastructure such as accommodation projects, schools, hospitals, prisons, training centres, government offices and the like.
Social infrastructure helps improve the quality of lives and the welfare of the people. They are the kind of infrastructure that provide socially desirable services.

OECD identified "core" physical infrastructure such as roads, railways, bridges, dams, airports, telecommunications among others as the hard infrastructure as compared with the intangible products such as healthcare, education and sanitation as the soft infrastructure (Carranza, Daude, and Melguizo, 2011). Infrastructure in which ever form forms the bedrock for economic advancement of every nation, developed and developing alike.

The inherent advantages of PPP have made it attractive to governments in most developing nations including Ghana. It enhances the provision of needed infrastructure services since they may not require immediate financial obligations by government, and thus relieves government from the cost of design and construction. In addition to the transfer of projects risks to the private actor, it promotes better projects design, construction, choice of technology, project operation and service delivery (Ogunsanmi, 2013).

The bane of public infrastructure services is the unavailability of capital on the part of government. Often, the huge demand for public infrastructure and the growth in public debt which respectively outweighs the entire government budget and dislocates the foundation of fiscal discipline makes it imperative for PPPs (Puplampu, 2013).
The benefit derived from mobilizing private capital to finance public infrastructure development thus become obvious thereby attracting government to resort to the private sector for partnerships.

PPP present an opportunity to meet the investment needs of the government that can translate into win-win situation for all (Wadhwa, 2013). The shift in economic development worldwide is directed towards PPP, which has led to banking and financial institutions devising means to contain the needs of PPP transactions. This is manifested in the change in length of time for repayments of loans by financial institutions (Avery, 2006). This development has seen banks and other lending institutions extending their repayment period to 35 years. For PPPs the repayment period ranges from 25-35 years and sometimes beyond.

"Lenders rely on project cash flow, not corporate balance sheet or past profit record" (Yescombe, 2013, p.5). High degree of certainty is assured due to the structure of the infrastructure transactions.

2.4. Prerequisites for Effective Public-Private Partnerships

This section discusses some basic requirements as well as some basic principles to ensure effective implementation of PPPs.

It is important to consider certain factors when government decision is directed to adopting and implementing PPP as mechanism to exploit the comparative advantages of mutual collaboration between the public sector and the private sector.

The key requirement for PPPs is that there must be a pubic authority and a private participant. The public authority can be National, Regional, States or Local government units which normally are the Contracting Authorities (CAs). The private sector is a consortium which comprises of contractors, maintenance companies, private investors, consortium of financial institutions, consulting firms and non-governmental organizations (NGOs) which form the concessionaires.

Besides, there are other statutory bodies which are public institutions and quasi-public authorities such as agencies and commissions of the national or central governments, which technically are independent but rely on the central government for funding and supervision (Avery, 2006). These bodies and institutions play regulatory and supervisory role in PPP process.

There is also a Special-Purpose Vehicle (SPV) which is the private sector; registered to undertake business activities. The SPV which may include investors, lenders, and other companies that provide operational and construction services is established as a legal entity in order to protect the interest of the shareholders, and thus cannot go into other business transaction rather than the specific projects. The SPV is responsible for the signing of contract with the government and then build and maintain the given facility together with sub-contractors (Gupta, and Biswas, 2010). What makes the establishment of SPV imperative is the complex and complicated nature of PPPs project for which a single investor cannot undertake. The SPV which is a consortium of financial institutions and private companies is accountable for financing and the delivery of the services in PPPs projects in most cases.

The sustainability of PPP is determined by three main standards namely; affordability, Value for Money, and risk transfer (OECD, 2008). Government choice between public procurement and PPPs is therefore based on which of the two will be affordable and deliver the highest value for money with less risk on government.

Value for Money

Sustenance of PPPs project expenditure into the future and the ability to contain it within the budget constraints of the public authority will accord it affordable. Since affordability applies to both traditional government procurement and the PPP projects, it is important for government to determine the feasibility of accommodating the expenditure of the proposed PPP projects vis-a-vis the government revenue. Grimsey and Lewis (2007 p.135) define Value for Money as “the optimum combination of whole life cost and quality - fitness of purpose to meet the requirements of the users”. The fundamental objective of PPP projects must be VfM, and thus should exhibit that users will enjoy the value for the money they part. Proper allocation and adherence to standards are fundamentals for VfM. VfM is actually the driver for adopting PPP system for infrastructure development rather than scarcity of resources and balance sheet treatment. Value for money can only be achieved when there is an efficient allocation of risk in PPP projects.

Ability to Pay

PPP is not privatization and thus must consider the end user's ability to pay for all projects. The policy demands that PPP projects demonstrate long-term affordability to the public. It should also ensure the sustainability of government budget as well as commitments in relation to government expenditure while considering the returns on the private sector investment.

Risk Transfer

The success or otherwise of PPP projects is affected by risks. Thus identification of risks and the analyses and allocation of risks by both public and private sector is essential to achieving value for money. Risks bearing actually determine whether a particular procurement falls under public procurement where risks is solely born by government or PPPs where risk is transferred to the private sector. Risks should be transferred to the party that will *be in the best position to manage it*. It does not however mean transfer of maximum risk to the private partner, but the view that it could manage it at the least cost in order to reduce the long-term cost of the projects (OECD, 2008). Government considers risks allocation as a way to optimise the transfer of project risks to the private sector and ensure that the public interest is protected. Risks allocation determines the model of PPP to be adopted. Affordability, value for money and risk bearing are intrinsically interwoven and thus are the fundamental principles of Public-Private Partnerships.

2.5. Public-Private Partnership Policy in Ghana

The emergence of PPP as a new paradigm for infrastructure development in Ghana in the early 2000s led to the drafting of a policy document dubbed Policy Guidelines for the Implementation of Public-Private Partnership in 2004 (Apenteng, 2011). Building on the 2004 policy guidelines, the government came out with a national policy on Public-Private Partnerships in June 2011 through the Ministry of Finance and Economic Planning. The Policy among others seeks to provide a certain level of clarity and consistency in the PPP process in the country. The policy encompasses all aspect of PPP projects from its development to its implementation. Thus it covers such areas as Project identification, appraisal, selection, procurement, operation, maintenance, monitoring and evaluation. The Policy which operates at every level of government (MDAs) is guided by certain fundamental principles; value for money, risk transfer, ability to pay (affordability), local content and technology transfer, public interest and environmental sustainability.

Besides, the policy encompasses fundamental principles of public procurement processes namely; accountability, transparency, competition, adequate stakeholder consultation among others.[18]

The policy highlights the key objectives of the PPP programme as follows;

a. *"To leverage public assets and funds with private sector resources from local and international markets to accelerate needed investments in infrastructure and services;*
b. *To encourage and facilitate investment by the private sector by creating an enabling environment for PPPs where value for money for government can be clearly demonstrated;*
c. *To increase availability of public infrastructure and services and improve service quality and efficiency of projects;*
d. *To ensure the attainment of required and acceptable local and international social and environmental standards;*
e. *To protect the interests of all stakeholders including end users, affected people, government and private sector;*
f. *To set up efficient and transparent institutional arrangements for the identification, structuring and competitive tendering of PPP projects;*
g. *To provide a framework for developing efficient risk sharing mechanism; and*
h. *To encourage and promote indigenous Ghanaian private sector participation in the delivery of public infrastructure and services."* (Government of Ghana, 2011, p.3).

[18] See the National Policy on Public Private Partnerships in Ghana. Retrieved from http://www.mofep.gov.gh/sites/default/files/docs/pid/ppp_policy.pdf. Accessed on October 14, 2015.

The policy enjoins Government to deploy a range of instruments to support the PPP programme. Among which are the establishment of Product Development Facility (PDF) (to finance upstream investments among others), establishment of Viability Gap Scheme (VGS) (as an incentive for economically justified projects which are not financially viable), and establishment of Infrastructure Finance Facility (IFF) (a fund or company to raise required long-term financing scheme for PPP projects).

2.6. Legal and regulatory framework of PPP

For PPP to effectively yield results it takes time. Successful initiation and implementation of PPP requires a conducive and enabling legal and regulatory framework as a prerequisite (Bing et'al, 2005; Zhang., 2005). Disputes and conflict in PPP contract cannot be down played. It is therefore imperative to have a functioning legal and regulatory framework to help reduce such tendencies. PPP derives its strength from the availability of enforceable legal and regulatory framework (Ndandiko, 2006). Effective legal and regulatory framework helps to resist political interference from the government agencies.

The provision of the existing legal, policy and regulatory framework also influence PPP contract agreement. The establishment of a transparent and sound regulatory framework in a PPP serves as precursor to private sector involvement in PPP (Pongsiri, 2002). He posited that the existence of effective legal and regulatory framework strengthens the interest of partners and provides the private partners a higher level of confidence. The legal and regulatory framework gives assurance to the private partner of protection from expropriation, commercial disputes resolution, respect for contract agreements, as well as legitimate recovery of cost and profit proportional to the risks undertaken (Jamali, 2004). Again benefit to the government is increased as a result of sound regulatory framework since it ensures efficient operation of partners and thus optimize available resources (Zouggari, 2003). Baker (2003) reiterates that the nature of regulation is crucial in deciding on PPPs.

He explains that PPPs bring about a more direct interaction between the public and the private sector.

The structuring of the project to attract private resources as well as generate future returns is put into consideration as well. PPPs contract involving infrastructure is structured such a way to facilitate payment of long term service fees over the life of the contract usually pre-agreed to give returns to the private investors (Brown, and Norton, 2006). The construction cost must not exceed the projected cost. The public sector entity earns the *respect* of discharging its social obligations, and earns revenue through the lease of state-owned resources to the private sector, while the private sector also gets reimbursement of its investments.

Another fundamental consideration is a clearly stated enforceable rights and obligations, and liabilities of the stakeholders in contract arrangements. It is imperative to have a comprehensive agreement that will cater for all foreseeable eventualities. All documentations - regulations, guidelines, as well as codes of ethics relating to the PPPs project should be made available to the public and private sectors at no cost.

The government needs to maintain its involvement in its capacity as a party or regulator to ensure proper accountability, and more importantly where cost-shifting is likely to raise a number of problems, and where societal choice is of more importance than cost (Spackman, 2002). Monitoring of product safety, its efficacy and quality, as well as ensuring easier access to these products and services by citizens should continue to be the responsibility of the public sector. The potency of PPPs does not in any way suggests “less government” (Scharle, 2002; Jamali, 2004). It is pervasively regarded that the private sector enjoys a number of resources that could be beneficial to public service delivery. Thus, the combination of greater flexibility and focus on value for money manifest that partnership with the private sector would lead to improved efficiency (Andrews and Entwistle, 2010). In general terms, the foundational underpinnings of successful PPPs are; trust, openness and fairness. The focus of the partnership should be on identifying common goals and defining responsibilities.

Development of legal as well as regulatory framework is a pre requisite for successful PPP. As part of its report the Institute of Public-Private Partnership recommended for the development of a sound policy and legal and regulatory framework for PPP projects (World Bank, 2007).

Drawing from the experiences of some countries such as Zambia[19], Uganda[20] and India (Wadhwa, 2013) among others, Ghana government established the Ministry for Private Sector Development in 2003 which saw to the approval of a Policy Guidelines for the Implementation of PPP in 2004 and a launch of new policy document in June, 2011.

2.7. Authority and Functions of the Regulatory Agencies

The Ministries, Departments and Agencies as well as the Metropolitan, Municipal and Districts Assemblies are vested with the authority to grant PPP contracts and concessions upon approval from the PID.

Even though there are quite a number of key institutions in the PPP procurement process, the main regulatory agency is the Public Investment Division within the Ministry of Finance and Economic Planning. Its establishment within the Ministry of Finance is strategic, and meant to ensure sound financial management by the MDAs and MMDAs. It also enables the Ministry to monitor activities of the M-MDAs and also ensure they comply fully with the rules for financial and project approval.

The NDPC is a responsible for developing the National Infrastructure Plan which the PPP infrastructure projects must fall within.

[19]The government of Zambia introduced a regulatory framework consisting of PPP policy and Act No.14 in 2009. The act facilitates private sector participation in infrastructure
See Zambia Development Agency report 2014. Available www.zda.org.zm accessed 11/03/2016

[20]In August 2015, Uganda passed a Public-Private Partnership Act 2015. The act provides for public private partnership agreements; to establish PPP Committees and PPP units and project development facilitation fund. The area of application of the act and the principles of implementing PPP programmes are made obvious in the act. Available at; http://ppp.worldbank.org/publicprivatepartnership/sites/ppp.worldbank.org/files/documents/uganda_the_public_private_partnership_act_2015.pdf Accessed on 26/04 /2016

Another agency responsible for procurement is the Public Procurement Authority. Its role in procurement process cannot be overemphasized

2.8. Analysis of the Various Sectors

This section presents some analysis of infrastructure development in selected sectors of the economy viz electricity, water and sanitation and transportation.

Electricity Sub-sector

The economy of every country largely depends on the reliability of the power supply. Though Political stability is important the energy supply plays a significant role in the stability of a country's economy. There is therefore the need to address the challenges that confront the power sub-sector to ensure consistent economic growth.

The power sub-sector enormously influences the country's GDP growth. For instance the country experienced a significant decrease in GDP growth from 7.1% in 2013 to 4.2% in 2014[21], and a further decrease to a little over 3% in 2015 due to the challenges in the Power sector. The phenomenon affected "the manufacturing sub-sector and the industry in general"(Government of Ghana, 2015, p.7). About 1000 workers were suspected to be laid off by their employers between December 2014 and end the First quarter of 2015, attributable to the effects of power crisis on industries[22].

Ghana's installed capacity stood at 2,831 Megawatt (MW) in 2014, with 64.7% hydro, 34.75% thermal and 0.05% of solar power.

[21] See energy outlook for Ghana, 2015. Available at: http://energycom.Gov.gh/files/energy%25200

[22] ibid

The estimated figures for 2015 remained an installed capacity of 3,250 MW and a dependable capacity of 2,922 MW - far below the amount required to eliminate the load-shedding menace of 3200 MW and 3500 MW dependable and installed capacity respectively.

The estimated requirement however would have been between 4000-4,200 MW installed capacity for 2015 but for the crises (Energy Commission, Ghana, 2015).

It is estimated that the power sector requires an amount of US$1.255 billion annually to provide the needed power for accelerated development[23]. This clearly demonstrates the need for Capital injection into the power sub-sector to build more power infrastructure to generate enough power to accelerated economic growth.

The need to tap private sector resources through partnerships to improve infrastructure in the power sector cannot be overemphasized. Partnership with the private sector to build power infrastructure would allow for the Akosombo and the Bui Hydro dams to recover to appreciable levels, enable the major thermal plants undergo mandatory maintenance. The practice would restructure the power sector market and also allow for construction of basic infrastructure for Greenfield plants (Energy Commission, Ghana, 2015).

The country's current generation capacity indicates a shortfall in the power sector. The intended generation capacity of 4,000 in 2017 may not be achieved following the challenges the power sector is currently facing.

Water and Sanitation

[23] PPP Law to address infrastructure gap (23/10/2015) available at; http://thebftonline.com/business/economy/15683/PPP-law-to-address-infrastructure-gap.html#sthash.ZR6MdYAp.dpuf accessed 20/02/ 2016

Water and sanitation is one of the issues that emerged in the MDGs. 76 percent of rural water supply and 80 percent of urban water supply was prescribed to be achieved by 2015 as MDG+. The Joint Monitoring of Programme (JMP) reports the use of improved water sources in Ghana at 82 percent in 2008 exceeding the MDG target of 77percent[24].

Even though such improvements are experienced in the water sector, cost recovery and revenue collection as well as distributions losses is on the high rate at about 50 percent impacting adversely on service quality. This results from poor infrastructure; as the old distribution lines are full of leaks. The poor quality of water supply has had negative impact on the achievement of the MDG in water supply.

The main actor in the water sector is the Ghana Water Company limited (GWCL). The GWCL continues to face a number of challenges including institutional, administrative, managerial, operational and financing crisis as admitted by the managing director in 2013 (GNA 3 Aug. 2013).[25]Other challenges include political interference and lack of investment in the water sector (supply and treatment plants) among others.

The high need for more investment in the water sector cannot be overemphasized. In 2006 the government of Ghana signed a management contract with Aqua Vitens Rand Limited (AVRL).It was reportedly financed through IDA World Bank Water Project facility through a USD6.5million budget line. The creation of Urban Water Supply Project by the World Bank promotes private sector involvement in the water sector (DFID, 2015). The key objectives of the Project were to improve access and reliability; and to ensure financial sustainability of GWCL.

While there seem to be some level of improvement in water supply and access, the situation with sanitation is more challenging. The JMP coverage reports that 13 percent of the population have

[24]The MDG target derived from the latest JMP report defers from the Ghana's MDG+.

[25] GhanaNewsAgency.org (3 August 2013), G*WCL MD catalogues problems facing company.*

improved access, with 54 percent using shared facilities while 20 percent practise open defecation (AMCOW CSO2, 2011). It is reported that a whopping figure of 16 million people do not have access to cleaned latrines while about 1.8 million people do not have access to latrines at all.

Capital investment required for the country to achieve its target is estimated at USD237million per year.

An annual funding requirement of USD63 million was estimated to take care of rural water supply between; 2008-2015 and an annual requirement of USD171 million for urban water supply to meet the MDG target of 76% and 80% respectively.

The annual requirement of USD217 million continue to experience a deficit of USD119 million annually. With regards to sanitation, the annual capital requirement to meet the MDG target was estimated at USD402 million[26].

The Road Sub-sector

The road sub-sector accounts for 94% freight and 97% passenger traffic movements, making it the predominant mode of transport in Ghana.

Ghana's road network is estimated to be about 67,291 km of which 12,785 km are trunk road, 42,394 km are feeder roads and 12,112 km are urban roads. Of this, 83% of trunk roads, 36% of urban roads and 72% of feeder roads are considered to be in good or fair state, representing a little over 41%. The road network which grows at 8% per annum has only about 17% paved (Ghana National Commission for UNESCO, 2015). There is the need to give urgent attention to roads in Ghana to ensure Ghana meets the requirement for economic growth. Investment in urban, highway and feeder roads is imperative since the road sector controls a large amount of investment. For instance in 2008 the cost of road infrastructure stood at USD546million[27].

[26] See an AMCOW Country Status Overview; Water Supply and Sanitation in Ghana: Turning Finance into Services for 2015 and beyond page 9 available at www.wsp.org/CSO.Ghana. Accessed 20/04/2016.

[27] See Ghana National commission for UNESCO, 2015. Transport: Bedrock for Economic Development. Available at www.natcomreport.com/../transport.pdf Accessed 04/04/2016

The Rail sub-Sector

The rail sub-sector share in the transport market is less than 2% of freight and less than 1% of passengers. The total rail network is about 1,300 km of mostly single track rail.

The rail network which links the capital city with the two major cities in Ghana; Takoradi and Kumasi, has been the major means of transporting bulk freight such as minerals, cocoa and timber. The sector has however suffered major setbacks over the years leading to partial operation of the Western rail and collapse of the Eastern and Central rails (Ghana National Commission for UNESCO, 2015). The current situation presents a negative effect on the development of the mining and the emerging oil sector. Despite the situation at the moment, the rail system has the potential of becoming a key transport system in Ghana. As the economy grows there will be an increasing demand for transport system.

Marine and Inland Water Transportation

Most of the export and import trade activities take place at the ports. Ghana has two major ports that serve other West African countries. Even though the sub-sector has received some level of upgrading, the sharp increase in volumes of activities and freight has led to serious congestions and capacity constraints. As a result, the government has embarked on a number of programmes to increase the competitiveness of the two main ports in the sub-region. These include; dredging of the ports, construction of new dockyard and development and extension of the superstructures as well as upgrading of mechanical equipment. The sector has benefited from private sector participation in recent times following the 70% handling of cargo and the 6 Off-Dock container terminals in Tema Port by private operators[28].

2.9. Classification of Public-Private Partnerships

[28] Ibid

PPP arrangements usually fall under two broad categories namely; PFI and Concessions. Where in the latter, debt repayment is done through user charges while in the former, payment is made by the public authority[29].

Further classification of PPPs based on the nature of risks transfer and the contracted service between the public and the private parties includes; usage-based and availability-based. Yescombe (2007) stipulates that "classification of PPPs on the bases of the nature of the service and the level of risks transfer is more useful" (p. 13). On that base, PPPs are grouped into two broad sections; the Usage-Based, and the Availability-Based.

Under the usage-based, the risks associated to the usage of the facility are transferred to the private partner. Example includes; the concessions with user-tolls, fares or user fees. Projects under this include roads, bridges, and other transportation facilities.

The risks of having the facility available for uses are transferred to private partner under the availability-based. Availability-Based PPP is process plan; which involves the original BOT model for power generation; (though not common these days); as well as water and waste-water treatment plants.

It is envisaged that most usage-based PPP contracts are drawn as concession arrangements and availability-based projects on the other hand structured on the bases of PFI model adopted earlier in UK (Pantelias, 2009; Yescombe, 2013).

PPPs have also been classified under legal nature of the private sector involvement in the provision of public infrastructure. Giving rise to the various PPPs typologies such as Build-own-operate,-

[29] See Yescombe (2010). PPP: A Practical Guide for Market Participants. City & Financial Conference

transfer (BOOT), Build-Own-Transfer (BOT), design-build-finance-own(DBFO), and the like (Pantelias, 2009) which are discussed in details as follow:.

2.10. Public-Private Partnership Models

Attempt is made to examine the various models/typologies of PPPs in this section. Several models or typologies of PPPs are available for developing PPP project. The choice therefore depends on the nature of the infrastructure project. The following are some of the PPP models:

Build Operate Transfer

Build Operate Transfer (BOT) is a contractual arrangement in which the responsibility of financing, building and operation of a facility rests on the private sector party. Thus, the private sector entity finances and constructs the facility, maintains the facility for a given period of time for which fees and charges to recover investments and make profit are collected. Transfer of facility is therefore made after the end of the contractual arrangements for a maximum of 50 years (Mfunwa, Taylor, and Kreiter, 2015). Government role in this form of contractual arrangement includes the provision of franchise if it is required, regulation of activities and acquisition of ownership of the facility at the end. BOT is usually used for complex and long-term projects such as power plants and water treatment plants. BOT contracts have the following characteristics:

i. The private company owns the projects assets until it is handed over to the government at the end of the concession period.

ii. It is often used in building new projects especially those with little or no risks associated with existing facilities.

iii. There is the special purpose vehicle which forms the project company to coordinate the construction and operation of the project according to the contractual agreement.

iv. The special purpose vehicle assumes more risks and therefore seeks some level of guarantee and commitments from government.

Build Own Operate Transfer

Yescombe (2007) indicates that BOOT is often used interchangeably with BOT. However, under this arrangement, the private partner has a legal ownership of the project after it is designed and built. The project company charges users of the facility in order to plough back the investment and make profit during the lifespan of the infrastructure. The private sector partner then transfers the facility to the public authority at the end of the contract period for an amount or for free based on the contract arrangements.

Build Own Operate

Build Own Operate (BOO) is a contract where the private sector finances, constructs and owns the facility with government providing authorization and assistance in order to secure approval for the contract. The responsibility to design, finance, construct, operate and maintain rests on the private partner. As such, the private partner operates and maintains the facility in perpetuity and thus collects fees and charges to recover investments and profit. However, the government has the option of renegotiating the contract to purchase the facility from the private party. It is mostly used in the design and building of power plants.

Build and Transfer

Build and Transfer (BT) is another PPP contract where the government partners the private sector to fund and construct a public facility after which ownership is transferred to the public authority upon completion of the construction of the project. The government after acquiring the project compensates the private entity at an agreed amortization schedule.

This arrangement is suitable for projects that are critical; and for strategic and security reasons must be operated by government.

Build Lease and Transfer

BLT involves Government entering into partnership with a private actor to finance and construct a facility and turn it over to government after completion. The government compensates the proponent by way of lease of facility on agreed terms and schedule(Mfunwa, et al, 2015).The government then remains the owner of the facility after the lease period.

Build-Transfer and Operate

Build-Transfer Operate (BTO) is contract arrangement where the private entity is provided the opportunity to finance and construct public facility on a turnkey basis. That is a situation where the facility is transferred to the government after it is commissioned. The government or the public authority owns the facility after the commissioning but gives the power to operate to the private entity under an agreement.

Design-Build Finance-Operate-Maintain

This is also referred to as design-build-finance-operate (DBFO) in some jurisdictions.

Under this arrangement, the contract type is described by the functions transferred to the private actor. The private party is left with the responsibility to design, build operate and finance the project facility for a defined period after which the facility is reverted to the public sector. Where it is described as DBFO the management aspect is implied. The private party owns the facility for the contract period and recovers it costs through government subvention. One key driver is the utilization of private finance and the transfer of risk associated with the design, construction and operating. This kind of contract is well suited to projects that constitute essential operating content;

particularly water and waste projects. The increased risks transfer provides greater incentive for private sector contractor to adopt a whole life costing approach to design.

Rehabilitate-Operate-Transfer

Under this contract arrangement, the private party refurbishes an existing asset, operates and maintains it for an agreed period and then transfers to the public agency. The government provides franchise to ROT and reclaims ownership of the facility after the franchise period. It is also used to describe the purchase of or importing a facility from abroad, to refurbish plant and consume it within the host country.

Buy, Build and Operate

Buy Build and Operate (BBO) is a type of private involvement in public service provision where public asset is sold to a private investor, of which the private investor then develops, repairs expands and rehabilitates the facility to make it more profitable(Amponsah & Gatete, 2014). The private entity thus operates the facility under government regulations to maintain it as public good. A case in point in Ghana is the State Transport Corporation (STC) now Vanef STC.

Design-Build-Operate-Maintain

Closely related to DBFO is DBOM. It is referred to as “turnkey” projects and BOT in some jurisdictions. This is a type of contract where the private party combines the responsibility to design, construct operate and maintain a facility. As a result it professes maximum advantage to private party on a number of efficiencies. The project designed can easily be tailored to the equipment and materials required for the execution of the project. Long-term maintenance program together with estimates of the associated costs are established up front by the contract team.

Besides the main PPP models discussed earlier, there are quite a number of contractual agreement that give more insight into the understanding of the roles of the two parties involve in the PPP arrangements. Among these are: concession; contracting; Operations and Management (O&M); Management Contract; Lease or Affemage; Offtake-Purchase agreement.

2.11. The PPP Process

This sections outlines the processes involve in the PPP projects as stipulated in the National PPP policy. The process ensures that a PPP project is credible and within the NIP.

A variety of players with differing interests are involved in PPP projects. There is therefore the need to formalise the partnerships and also follow the processes laid down in a very orderly and transparent manner. There is also the need to prepare detail documentation at all phases of a PPP project. Projects are to be selected from the sectors which have been captured in the National Infrastructure Plan (NIP) on the basis of their potential for development under PPP as per the policy objective.

Credibility and transparency in PPP project are paramount; the Policy provides that at all phases of the project development, the input of both government and the private partner shall be assessed to determine their level of compliance with the provisions of the PPP policy guidelines. Special emphasis is laid on the compliance with the bidding processes and the composition of the Special Purpose Vehicle and the local content component.

All projects identified by contracting authorities and other stakeholders involve in PPP process shall go through the following steps:

Project Inception

This is the identification of a project as appropriate for PPP. Once a project is identified, the said Contracting Authority is required to prepare a project brief or Concept Note and then follow these procedures:

1. Register the project with PID;
2. Inform the PID of MoFEP of the expertise within that institution to proceed with the project planning;
3. Appoint a project officer within or outside the institution; and
4. Appoint a transaction advisor if requested by the PID of MoFEP.

Pre-Feasibility Study - Approval Stage I

1. To ensure the proposed PPP project serves the interest of the nation, the PID supports the Contracting Authority to undertake a Pre-feasibility Study to ensure that the project;

I. Makes Business sense in terms of;

a. explaining the strategic and operational benefits to the Contracting Authority in line with the authority's objectives;

b. demonstrating that the project is in alignment with government policy objectives through NIP.

II. Describes in specific terms;

a. the nature of the functions of the contracting authority and the extent to which such institutional function should be carried out by a private sector entity. This is required when the private partner is engaged to provide a new facility.

b. full description of the state property concerned, the uses of the property prior to inception and a clear description of what the private party intends to use the property for. This is also requiring in the case of managing an existing government property.

III. Show the location(s) and provide an estimate of the total project costs and initial indication of affordability and viability or otherwise.

2. All Sector ministries shall have the responsibility to review and approve the reports of the feasibility studies of contracting authorities under their sectors through their PMUs.
3. The said approval by the sector ministries shall be the first approval herein referred to as **Approval I**
4. Without a prior written approval and review of their respective PMUs and the PID of MoFEP respectively, no contracting Authority shall have the mandate to proceed to full stage of feasibility studies.

Feasibility Study - Approval II move to literature

Paragraph 49 of the policy stipulates that all Contracting Authorities shall

1. undertake and submit a full report of the feasibility study together with the appraisal to the MoFEP- PID. The report shall;

a. demonstrate affordability of the PPP for the institution, in respect of projects where the Contracting Authority incurs any financial commitment;

b. clearly state the proposed risk (financial, technical and operational) between the institution and the private party;

c. demonstrate the anticipated VfM to be achieved from the partnership;

d. explain in details the capacity of the institution to procure, implement, manage, enforce, monitor and report the partnership;

2. The Contracting Authority may source funding from the Project Development Fund (PDF) to carry on the feasibility study or include it in their procurement process in consultation with the PID and pass such cost to the private party.
3. Proceeding to procurement is subject to approval of the feasibility studies by the Approval Committee. Where the estimated cost of the project exceeds the level of the Approval Committee of the Contracting Authority, approval must be sought from the cabinet or Parliament. All approval however, shall be communicated to cabinet on quarterly basis.

4. The Approval here shall be referred to as **Approval II**[30]**.**

Procurement Stage - Approval IIIA & IIIB

This is the Procurement stage of the PPP process where the policy demands that a contracting authority obtains approval from the MoFEP-PID before issuing any procurement documentation to any prospective bidder. The draft PPP agreement or concession is required to be approved at this stage also. This approval referred to here is regarded as Approval IIIA[31].

The Policy stipulates that procurement process must;

a. be in accordance with a fair, transparent and cost-effective system;
b. ensure that such PPP activities that fall within the scope of Public Procurement are guided by the Public Procurement Act; and
c. encourage the maximum use of local content and Technology transfer.

Before a winning bidder is appointed, the Contracting Authority is required to submit an evaluation report through the MoFEP-PID to the respective approving authority for the approval of the winning bidder after the evaluation of the bids. This is referred to as Approval IIIB[32].

Contracting Stage - Approval- IV

After the procurement process has been completed but prior to the conclusion of a PPP concession by the Contracting Authorities, the Contracting Authority must obtain approval from the respective approving authorities subject to the provisions of the Approval Schedule. Detailed regulations which propose mechanisms and procedures to implement, monitor and report on the Partnerships are therefore provided. The approval obtained with regards to paragraph 59 of the national policy is referred to as Approval IV.

[30] See paragraph 52 of the National PPP Policy
[31] See paragraph 54 of the National PPP Policy
[32] See paragraph 57 of the National PPP Policy

2.12. Theoretical Framework

This study is underpinned by the neoliberal theory.

> Neoliberalism is in the first instance a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets and free trade. The role of the state is to create and preserve an institutional framework appropriate to such practices. State interventions in markets (once created) must be kept to a bare minimum because, according to the theory, the state cannot possibly possess enough information to second-guess market signals (prices) and because powerful interest groups will inevitably distort and bias state interventions (particularly in democracies) for their own benefit (Harvey, 2005, p.2).

The ideology of neoliberalism is associated with Adam Smith and his great work, the wealth of nations. Neoliberalism proposes economic transactions that benefits both parties involved in it. Friedman posited that neoliberalism rests on the "basic idea that both parties to economic transaction benefit from it provided the transaction is bilaterally voluntary and informed" (Friedman, 1952, p.55). Neoliberalism is thought of as reincarnation of economic liberalism that characterised the traditional liberalism.

Economies all over the world were governed by state-centred regulatory regimes. This followed a major political and economic transformation manifested in the last three decades of the twentieth century from a state-centred economy to a neoliberal form (Evans, & Sewell, 2013). The rich countries such as those in Western Europe and North America and Japan enjoyed free market economies which were regulated by democratic Keynesian welfare state. Authoritarian state institutions took care of the communists states with the government imposing ambitious state-led development on countries in Africa, Asia and Latin America.

> In the wake of the 1970s crisis of the state-led economic regimes Most countries therefore abandoned their nationalists elements and adopted new regulatory framework which involve capital inflow; some under the advice of the IMF. This new regulatory framework of the world economy is commonly called *neoliberalism* (Evans & Swells, 2013; p2).

Evans and Sewell (2013) identified four facets of neoliberalism viz neoliberalism as economic theory, neoliberalism as political ideology, neoliberalism as policy paradigm, and neoliberalism as social imaginary.

This study implored neoliberalism as a political ideology and policy paradigm; where market allocation of goods and services over public provision is commended. As a policy paradigm, its intention is to increase the role of markets in regulating the economic policies to include private sector in the provision of public infrastructure. It proposes the abstinence of the state from the economic activities while encouraging individual participation in free and self-regulating markets (Thorsen, and Lie, n.d). Neoliberalism calls for reinventing of government to inspire entrepreneurial spirit by taking many programmes as practicable from government, and as well contract out programmes that must remain in government's control (Awortwi, 2004). Neoliberals believe that "the market would make the provision of public services *self-regulating* in three major *spheres*; efficiency, cost minimisation and quality delivery" (Awortwi, 2004, p.213) (emphasis mine). These arguments have influence the involvement of the private sector in the provision of Public infrastructure and service in the form of partnerships. Perhaps in the annals of political ideologies, Margaret Thatcher and Ronald Reagan could be pointed as purveyors of neoliberalism[33].

[33] Margaret Thatcher and Ronald Reagan adopted the policy to involve private sector in the provision of public service in the 80s see (Adekilkun, 2014)

Neoliberal theory favours the private sector as against the public in the delivery of services. Proponents of the theory believe that limited involvement of government in the economy and the injection of the private sector high expertise will bring about efficiency and competitiveness. Adam Smith, one of the proponents of classical liberalism posited that government supervision and interference in the economy impedes competition, efficiency, growth and prosperity (Asare, & Frimpong, 2013). The bottom line is that, the public benefits from the competition enjoined by the private actors. Thus the rudiments of the theory clearly support Public-Private Partnerships.

2.13. Conceptual Framework

Beside the theory underpinning the study, this study is also guided by a conceptual framework adapted from the World Bank[34] and modified to suit the objectives of the study. The framework is illustrated in figure 1 below.

The conceptual framework shows how public-private partnerships help resolve the issue of infrastructural challenges of a nation.

Government and for that matter the public sector is inundated with low coverage of public service provision including infrastructure, for those available are of poor quality. In addition in areas where public infrastructure are provided they are often times not reliable in terms of serving its purpose for a longer period. The crux of the matter is that the government is handicapped in terms of raising funds to embark on infrastructure development. Thus in the end projects are poorly planned and selected. One can agree that public sector provision of infrastructure facilities is characterised with inefficiencies and ineffectiveness emanating from lack of expertise and innovativeness. Infrastructure projects executed by the government through the traditional procurement process often

[34] See (World Bank, 2014). Public Private Partnership: Reference Guide 2.0 available at https://openknowledge.worldbank.org/handle/10986/20118accessed on 15/11/2015

suffer maintenance deficit. Thus many government infrastructure projects are short- lived leading to losses rather than the benefits.

The critical issues raised above demands that government join hands with the private sector to raise capital to finance infrastructure projects – a move that increases the financial resources for infrastructure projects. The private sector parties bring to bear the expertise and innovativeness with the profit making motive as a motivating factor and the fact that they enjoy long-term investment go to improve public sector capacity and governance. Thus PPPs ensure greater accountability and transparency, and increases financial resources and its associated improvement on public-sector capacity and governance. This brings about improvement in public infrastructure. PPP is not just an option to provide solution to infrastructure service problem but a potent project implementation mechanism for a better option of procurement process.

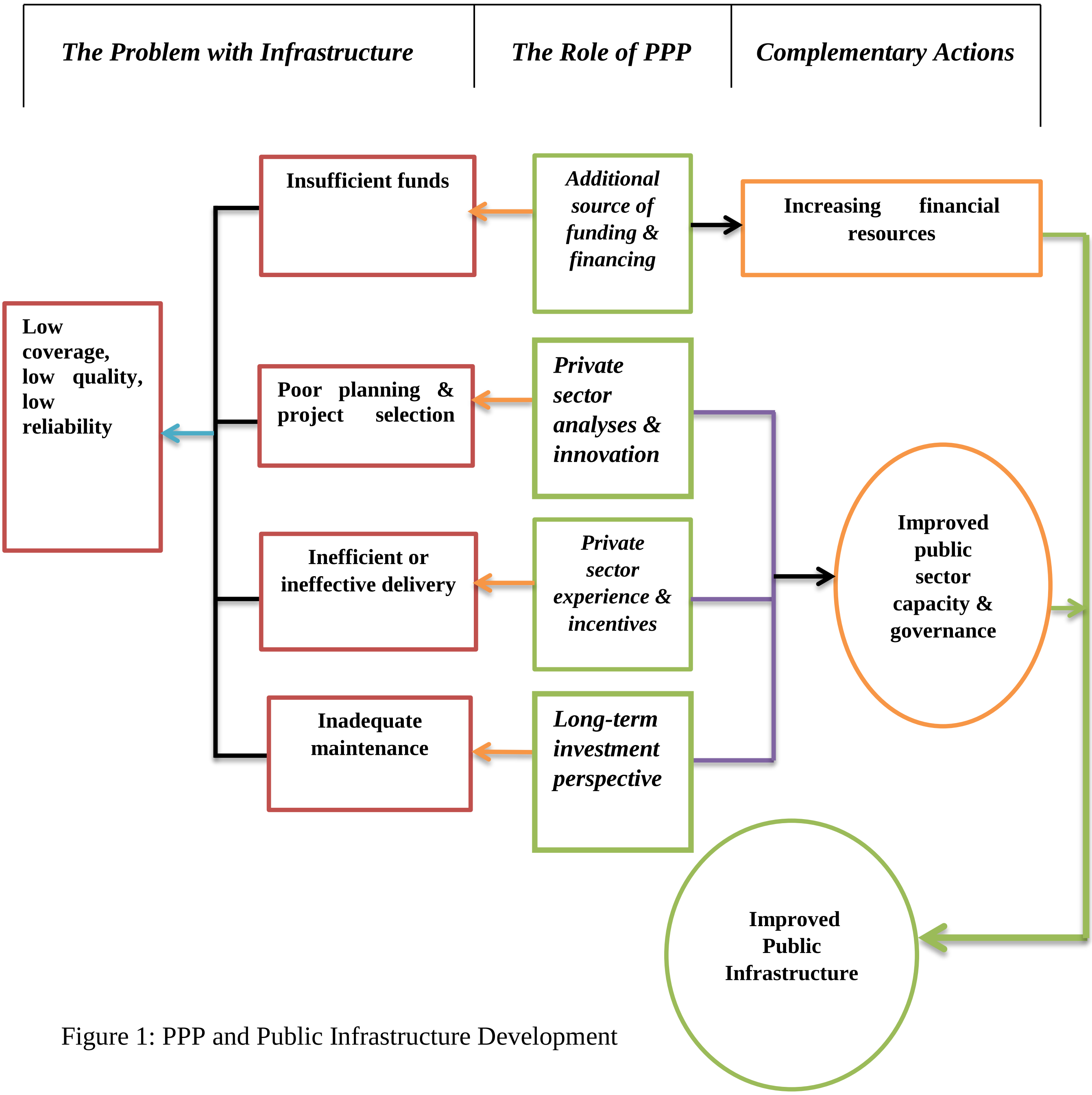

Figure 1: PPP and Public Infrastructure Development

Insufficient funds, poor planning, inefficient and ineffective delivery of public service as well as inadequate maintenance are the main variables that bring about low coverage, low quality as well as low reliability of public infrastructure.

PPP is adopted to bring in additional source of funding and financing to curb the problem of insufficient funds and increase the source of funding for the execution of Public projects.

The public sector is characterised with poor planning and project selection. The role of the PPP programme is to leverage not only the financial resources but the expertise as well. The private sector therefore brings to bear the expert analysis and innovativeness in project planning and selection.

PPP has long-term investment perspective and therefore ensure adequate maintenance that is usually lacking in the public service delivery.

These roles as played by PPP in public infrastructure result in the increase of financial resources, and improved public sector capacity and governance. The overall effect is the improvement in public infrastructure delivery.

CHAPTER THREE

RESEARCH METHODOLOGY

3.0. Introduction

The purpose of the study is to examine the implementation challenges of PPP in infrastructure development in Ghana. This chapter gives a vivid account of the procedure and processes adopted in carrying out this research. The chapter is sub-divided into; the research Paradigm, the research methods, unit of analysis, data management, experiences and ethical considerations.

3.1. Research Paradigm

In the quest to achieve the objectives of the study, the qualitative research paradigm is employed. The choice is informed by the fact that it helps to explore and explain a phenomenon; as a kind of research that derives its findings from the real-world where the subject of interest usually unfolds naturally (Patton, 2001) and serves as a tool for generating meaning in different aspects of life (Krauss, 2005). The concept of Public-Private Partnerships in infrastructure development in the public sector can best be explained using qualitative research approach.

The qualitative research approach according to Denzin & Lincoln, (2009) explores the meaning, attitude, values and beliefs people associate with a phenomenon in order to establish a better understanding, rather than to test to either support or disprove a relationship. This informed the decision to adopt the qualitative approach for this study.

The goal of qualitative investigation is to understand the complex world of human experience and behaviour from the perspective of those involved in it in the given situation. This approach makes the design and data collection as well as the analysis very flexible which is key to ensuring deeper understanding and better presentation of the participants' viewpoints

The qualitative approach allows the investigator to easily interact with people involve in a study since it involves the use of soft data in the form of gestures, impressions, and symbols of the respondents. As a result, interviews, and documentary analysis are used as the main instruments in the study. This research approach is useful for describing problems, situations, issues and phenomenon (Boateng, 2014).[35]It afforded the participants who were interviewed to express themselves on issues relating to PPP in infrastructure development in the public sector, and by extension, allowed for better explanation of the issues given by the participants.

3.2. Research Design

The case study design is adopted for this study within the qualitative research paradigm. This approach provides a variety of information sources that are very interactive and natural

Stemming from the interpretive research paradigm, it allows for in-depth understanding of the phenomenon under discussion.

Public private partnership is widely applied in the provision of goods and services in many spheres; however, the domain of infrastructure is what the study considers for examining the challenges in its implementation and the efficacies of PPP. The case study represents a descriptive intensive analysis of a bounded system and thus restricts or narrows the focus to one or more towns, organizations, processes, groups, activities, and so on, which are studied in detail (Boateng, 2014).Case study is believed to have the ability to deal with a wider variety of evidence viz documents, interviews and direct observation (Yin, 2003). The choice enabled the researcher to focus on infrastructure development through PPP among the many PPP programmes that are embarked upon.

The exploratory case study is employed for this study since it is appropriate for studying an area where little is known (in this case PPP in infrastructure development). This enabled the researcher to explain the concept of PPP as a tool to facilitate the provision of public infrastructure in Ghana.

[35] Boateng explains that qualitative research is more about explanations, and de-emphasizing generalizations to a given population (Boateng, 2014; p. 133).

Emphasis is placed on the legal and regulatory framework and the challenges that face the implementation of the PPP programme in Ghana.

3.3. Unit of Analysis

The study was carried between the months of March, 2016 to June, 2016. A lot of time was spent in the various ministries and departments involved in the study.

3.3.1. Study Organizations

Geographically, the scope of the study is limited to the national capital – Accra, where the ministries and the head offices of the institution involved in the study are located. The objectives of the study made it crucial for the study to be carried out in the following organizations based on the role they play in Public-Private Partnership programme and their capacity to enhance the economic prospects of the country and the contribution of it in addressing the research problem and questions. The organizations included the Ministry of Finance and Economic Planning (MoFEP), the National Development Planning Commission (NDPC) and Public Procurement Authority (PPA) among others. These institutions are the key institutions involve in PPP. Respondents were drawn from these organizations for this study. These entities were chosen as a unit of analysis because they have been at the forefront of implementing PPP programmes and projects.

The Ministry of Finance and Economic Planning

MoFEP is the government ministry responsible for the economic and monetary health of Ghana[36]. The ministry is involved with the economic planning, fiscal policy, national accounting, as well as the national budget and thus creates an enabling environment for investment and growth.

The ministry respectfully has the following government agencies under it; Securities and Exchange Commission, Institute of Accountancy Training, which provides in-service training in public sector

[36] See https://en.wikipedia.org/wiki/Ministry_of_Finance_and_Economic_Planning_%28Ghana%29 accessed on 22 May, 2016.

administration and financial management for the staff of civil and public service – mostly from the Controller and Accountant General's Department and the Auditor General's Department. Ghana Revenue Authority, and Value Added Tax Service (VATS). It also has oversight responsibilities on; Bank of Ghana (BoG), National Lotteries Authority (NLA), PPA, Revenue Agencies Governing Board (RAGB).

It has other divisions including the Public Investment Division (PID). This division has the mandate to develop a national public investment policy and ensure efficient allocation of resources for public investments; coordinate and implement the national PPP program. It has oversight responsibility in the management of state investments in SOE's and Joint Ventures; and also provides interdepartmental coordination and strategic direction for projects of immense economic and social significance to Government. The division is responsible for the establishment and enforcement of policy, institutional, legal and regulatory framework for PPPs in Ghana. It also provides transaction advice for PPP projects; and monitors and evaluates PPP projects. Also, standardized PPP provisions, manuals/guidelines aimed at ensuring effective PPP project management are issued by the ministry[37]. The following units are found under the PID; Project & Financial Analysis, PPP Advisory, Strategic Project, and Public Entities.

The National Development Planning Commission

The NDPC is a government entity established by an Act of Parliament Act (1994) Act 479 to advise the president on development planning policy and strategy. As part of its mandate, the NDPC formulates comprehensive national development planning strategies and ensures that such strategies are effectively carried out.[38] It operates under four major divisions namely; the policy development,

[37] See PPP policy page 7 available at http://www.mofep.gov.gh/sites/default/files/docs/pid/ppp_policy.pdf Accessed 02/11/ 2015

[38] See section 2 of Act 479 (1994) available at https://s3.amazonaws.com/ndpc-static/pubication/Act+479-+NDPC.pdf Accessed 20/04/ 2016

monitoring & evaluation, Plan coordination and the General services. These divisions are headed by directors.

The development policy division is responsible for the coordination and formulation of long-term and medium-term development plans and policy frameworks among others. The division operates through four special units (social development, economic development, environmental development and institutional development) responsible for macroeconomic policy and structural reforms; private sector development; public sector reforms; social sector development; and sustainable development.

The NDPC has the mandate to prepare the national infrastructure programme (NIP) in collaboration with the relevant Contracting Authorities under PPP programme before embarking on the project. The NDPC is responsible for identifying projects that could be carried out within a specific period of time. An agency or Contracting Authority must seek prior approval from the Commission when embarking on projects that do not emanate from the NIP[39].

The Public Procurement Authority

The PPA is established under the Public Procurement Act, 2003 Act 663 as a body responsible for formulating procurement policies and having oversight responsibility on procurement processes. It ensures transparency and accountability in procurement processes, and applies sanctions to entities that defy the procurement rules. The Authority has the mandate to train public officials involve in procurement processes and thus plays a key role in PPP programme. The amendment Act 194 of some sections of Act 2003 Act 663 provides for the concept of local content in any investment deal that has to do with provision of infrastructure.

The Authority has a staff capacity of eighteen (18) employees for the five departments namely; Corporate affairs and administration, Finance, Human resource, Audit, and Procurement unit.

[39] See PPP policy page 10 available at http://www.mofep.gov.gh/sites/default/files/docs/pid/ppp_policy.pdf accessed on 02/11/2015

The Attorney General's Department

The department is under the Attorney-General and ministry of Justice. It has the following sections; the civil section that represents government in all industrial and commercial negotiations among others; the Prosecutions section which initiates and conduct all prosecutions of criminal offences; and the Legislative Drafting section which is responsible for drafting of all Legislations, Bills and Subsidiary Legislation i.e. Legislative Instruments, Constitutional Instruments, Executive Instruments, Gazette notices of a Legal nature and By-Laws;) for both the Central and Local Government among others.

The department is head by the Attorney General who doubles as the minister for Justice. It is the only ministry which is constitutionally sanctioned.

3.3.2. Source of Data

The source of data defines the methods at cold be used to address the specific objectives and and answer the research questions. Both primary and secondary data were employed for the research. The primary data were gathered from the study area through interviews of the respondents, while existing literature were reviewed to augment the primary data. The review of the secondary data guided the formulation of the research problem, objectives, the literature review and the final presentation of the research findings.

3.3.3. Target Population

According to Burns & Grove (2011), the target population is the entire aggregation of the respondents that meet the designated set of criteria. Interviews were chosen as the data collection method. The reason is that it provided the avenue to interact directly with people who are directly engaged in PPP programme and processes.

The research targeted respondents from the PID of the MoFEP. The division is charged with the responsibility to spearhead the implementation of the Public-Private Partnership projects and programmes. Respondents from the National Development Planning Commission, the Public Procurement Authority, and the Attorney general's department were targeted for their role in PPP Programme. Other targeted group included the Ghana Investment Promotion Centre (GIPC) and the PPP Unit- Office of the President. What informed the choice of the above respondents is the fact that they form the key stakeholders in the establishment of PPP policies and regulations as well as its implementation. They are also the bodies responsible for facilitating its process.

3.3.4. Sampling Size

Qualitative research paradigm is not so much concerned with numbers and figures but the depth and detail of information and data provided by key informants. In all eight (8) interviews were conducted from the organizations involved in the study. These include two (2) persons from MoFEP. The two respondents from the Ministry of Finance and economic Planning were drawn from the PPP Advisory and the project and financial analysis units of the PID. The PPP Advisory unit is primarily comprised of a transaction advisor. The unit is responsible for providing advice to resolve obstacles to the use of PPP and to prepare draft internal regulations of the Approval Committees. The unit serves as the centre of expertise and assists in the development of experts in the M-MMDAs, and has oversight responsibility to ensure that there are efficient monitoring systems in place. The Project and Financial Analysis Unit (PFA) provides the core functions of public investment management and monitoring within the PID. The two (2) respondents from the NDPC comprised one (The Principal Planning Analyst) from the Development Policy division in charge of PPP (this division works with the other two divisions to bring together the forces needed to develop national policies), and the other from the Plan Coordinating Division. The division develops and issues planning guidelines for the preparation of sector and district plans. Two (2) people from the PPA were also interviewed. The two included the head of legal service department and the other from the corporate Affairs and Administration department. Others included one (1) respondent each from the Attorney General's (AG) Department and Accra Metropolitan Assembly (AMA). From the AG's department, the respondent was selected from the Legislative Drafting Division. The division is responsible for the drafting of all Legislations, Bills and Subsidiary Legislations. One (1) interview was granted the AMA PPP unit of the Works Department. It is the unit responsible for the development of PPP project and implementing them thereof. The study population was sampled from these institutions due to their direct or indirect involvement in the implementation of PPP in infrastructure development as well as the development of legal and regulatory framework for Public-Private Partnership programme was concerned.

Organizations that declined to grant interview were the Ghana Investment Promotion Centre (GIPC) and The PPP unit – Office of the President. Besides, respondents were very economical in sharing information and in some cases they failed to grant interviews therefore limiting the researcher to these institutions.

3.3.5. Sampling Technique

Purposive sampling also referred to as judgmental sampling was employed in this study. Since it helps to interact with participants directly involve in a study. The use of purposive sampling technique helps to acquire greater information for a detailed study.

Participants were purposively selected from PID of the Ministry of Finance and Economic Planning, the NDPC, PPA; the Attorney General's Department among others because of their direct or indirect involvement in the implementation of PPP in infrastructure development in the public sector.

3.4. Instruments of Data Collection

The main instrument of data collection adopted for this research was interview guide. An interview guide with a number of semi-structured questions was used to solicit primary information from participants. The all-encompassing questions demand prompts supplement from understanding of the literature. Eight (8) interviews were conducted, and supplemented with a number of industry and institutional reports and statutory documents.

The data collected through interviews were taken through the standard qualitative data analysis techniques of content analysis. The patterns and themes that run through the interview were used to produce text codes that go to answer the research questions.

The interview gave the researcher the opportunity to have one-on-one interrogation with the respondents. It afforded the researcher the advantage of interrogating the respondents in a way to obtain answers to all questions with the aid of an interview guide and a tape recorder. Hand written notes were also taken to serve as a backup.

The face-to-face interview allowed the researcher to gain more information from the participants since it allowed the participants to express their opinion and experiences about the issue under study. The use of the statutory documents allowed for the researcher to get in-depth understanding of the policies and regulatory framework of PPPs. It also accorded the researcher the opportunity to acquire information with regards to the challenges Ghana faces in the PPP process which are discussed in the next chapter.

The questions were purposely designed to guard against deviation and thus ensure that the salient issues are kept to. Because of the high level of flexibility associated with this method, the researcher was able to probe further on issues that require clarification without following predetermined order.

3.5. Data Management and Analyses

A digital voice recorder was used to record information from the participants during the interview sessions. To ensure the security of information, detailed field notes were taken with pen and paper to serve as a backup in case the recorder fails. The recorded interview was manually transcribed and typed together with the handwritten notes after all the questions had been answered.

The transcribed and the written data were organized in respect to its relevance to the research questions to be addressed. The sifted data were coded and categorized into concepts and patterns to give it a deeper meaning by summarizing the central theme of the data. That is, the data were condensed through summaries and paraphrasing, and coded into meaningful segments which were combined into themes and then displayed in a manner to allow for conclusion drawing and verification.

The themes include; General overview of PPP in Ghana; legal and regulatory framework of PPP in Ghana; Contribution of PPP in infrastructure development; challenges facing PPP process.

A detailed description and interpretation of data using narratives and sometimes direct quotations from the participants in the research work was undertaken. The analysis enabled the researcher to identify the main findings intrinsic in the study using the main themes identified and thus organized it into sub-themes and sections.

3.6. Ethical Considerations

Since social science research involves human beings with emotions and feelings, there is the need to observe certain ethical issues in conducting field work.

This section therefore addresses the ethical considerations observed by the researcher during data collection. The essence of it is to ensure quality and integrity in the study process. Being fully aware of the above, the following ethical considerations were observed;

Informed consent which proscribes the right of an individual either to participate or not to participate in a construct is a key to ensuring the ethical issues in research work. As such introductory letter obtained from the university authority was offered to the prospective participants and the informed consent part of the interview guide read to participant before interview commenced.

Confidentiality and Anonymity are crucial in conducting social research. Thus all participants were assured of trust and confidentiality in terms of what they say. Again they were assured that their privacy would not be intruded neither would names be made public unless there was the need, of which permission would be sought. Thus information derived from participants is kept out of the public domain except for the purpose of the research work. As such names and portfolios of participants are not referenced in the study

A careful consideration is needed in choosing a language to interact with research participants since it plays a crucial role in research work. The research is conducted in the English language since all participants could communicate well in the English language. Officials at the various institutions used for the study are proficient in the English language and therefore preferred to be interviewed in the English Language. This made the interview less burdensome since it did not require any translator. It also made the transcription easier.

3.7. Challenges and Lessons

A number of challenges were encountered by the researcher in the course of the research particularly during the data collection. The challenges encountered and how they were handled as well as the lessons learned are discussed in this section.

To begin with, the initial scheduled date for data collection could not be met and thus data collection started rather late. This is attributable to the sitting for end of semester examination which took place in November and December 2015.

The latter part of the year and the beginning of the year are always characterised with busy schedules by officials of public institutions since it is the time they round up and plan for the activities of the year respectively. It was therefore difficult to make appointments with the persons required for the study. Opportunity gained at first instance was used to introduce the subject to the officials and then arrange for interview session later.

The research work is carried out in a political season, thus all public institutions were very economical in giving out information. This posed a great challenge since respondents were not willing to answer questions at initial stages, and in some cases failed to participate in the study. Some participants refused to be recorded on tape for personal reasons in some cases. This accounted for the inability to get the entire population estimated for the study on tape.

In order to surmount this challenge, participants were constantly reminded of the fact that the information was solely for academic work. They were also reassured of confidentiality and anonymity of the information and the informant.

Other challenging issue was failure to grant interview by some of the selected institutions.
For instance, the researcher never had the opportunity to interview respondents from the Office of the President (PPP Unit). Also, GIPC declined the interview indicating that they were not directly responsible for PPP projects and process. Finally, the work suffered funding challenges since the research allowance was not paid at the time of research.

CHAPTER FOUR

DATA ANALYSES AND DISCUSSION OF FINDINGS

4.0. Introduction

The analysis and discussions of the research findings involved a detailed description and interpretation of data using narratives and direct quotations from the research participants. Through the analysis the researcher was able to identify the main findings inherent in the study using the main themes identified earlier. This section presents the analysis of the data and the discussions of the findings thereof.

4.1. Legal and Regulatory Framework of Public-Private Partnerships in Ghana

The first objective of the study requires the examination of the legal and regulatory framework of Public-Private Partnership in Ghana. This section provides detail examination of PPP policy, legal and regulatory framework and how effective or otherwise they are. The researcher first sought to examine the existence or otherwise of a policy framework before delving into the legal and regulatory framework.

Policy Framework

The government of Ghana in 2004 drafted a policy document dubbed "policy Guidelines for the implementation of PPP. In June 2011, a new PPP Policy was launched under the MoFEP.

Introduction of a new policy requires a wider stakeholder consultation and the PPP policy is not exceptional. The study finds that there was a wider range of consultations with the stakeholders. *Consultations were made with government ministries, departments and agencies (MDAs), MMDA, financial institutions, professional bodies as well as industry representatives to ensure a clear understanding of the policy and also show the reflection of the views of the stakeholders* (respondent).

Currently, PPP projects are guided by the policy framework.

"This is what we use for the PPP procurement process since the act is not yet passed into law. The provisions are not binding though, but it is working for us."

The policy framework alone does not guarantee investor confidence. Since infrastructure projects require huge investment, investors will feel secured where there are clear guidelines and regulations governing the procurement process which are lacking as admitted by a respondent;

"In fact the guidelines and regulations will be established after the PPP law is fully passed. We have contracted some consultants to develop the guidelines and regulations in line with the PPP law when it is finally passed".

Legal Framework

The need for sound legal and regulatory framework to guide the various forms of private participation in infrastructure development is imperative.

"The current PPP programme as it is has no explicit legal framework governing it". However some provisions in the 1992 Constitution provide the foundation for private sector participation in public activities".

Excerpts from the Public Procurement Act, the Financial Administration act, are also adopted to ensure the smooth implementation of the PPP programme in infrastructure development as confirmed by respondents as follows;

"The amendments of some sections of the Public Procurement Act 2003, Act 663 Amendment Act 194 is to ensure local content which is key in PPP procurement". There is currently no act solely for PPP but some provisions in the Procurement act are used".

The following enactments constitute the legal framework governing implementation of PPP in infrastructure development in Ghana:

The 1992 Constitution of Ghana

The 1992 constitution is the supreme law of the nation, thus, every enactment derives its roots from it. Even though the 1992 constitution is not explicit on the promotion of PPP, it gives the fundamental requirement of private sector participation in economic activities in the country.

Chapter six of the constitution, titled; *The Directive Principles of State Policy* enjoins government to take and implement policy decisions that will lead to the establishment of "a just and free society".[40] Article 35 (3) also enjoins the state to ensure access to public facilities by all citizens as reasonable as they deserve. Since government finds it difficult to carry such responsibility alone, the constitution provides the private sector the right to complement government efforts to realize the objectives of the constitutional provisions. Article 36 (2) (b) and (c) of the constitution provides that;

> *"(2) The State shall, in particular, take all necessary steps to establish a sound and healthy economy whose underlying principles shall include -*
>
> *(b) affording ample opportunity for individual initiative and creativity in economic activities and fostering an enabling environment for a pronounced role of the private sector in the economy;*
>
> *(c) ensuring that individuals and the private sector bear their fair share of social and national responsibilities including responsibilities to contribute to the overall development of the country;"*[41]

It therefore means that private sector participation in the national economy is enshrined in the nation's constitution and therefore paves the way for government to adopt Public-Private Partnerships for infrastructure development.

[40] See Article 34 (1) of the 1992 constitution.
[41] See http://www.politicsresources.net/docs/ghanaconst.pdf to read the full version of 1992 constitution of Ghana. Accessed 22 April, 2016

The Public Procurement Act 2003 Act 663

One of the pervasive forms of corruption is that which occurs in the process of public procurement (Republic of Ghana, 2013). In a bid to reduce corruption in public procurement, the government of Ghana enacted the Public Procurement Act 2003 Act 663. The Act establishes the Procurement Authority which is responsible for formulating procurement policies and regulating procurement process in Ghana. It is given the powers to supervise and monitor all public procurement processes involving all MDAs. Section 3 (h) and (k) of the Act mandate the Authority to assess the operations of the procurement and come out with measures to deal with the lapses that might occur as well as provide periodic training to ensure adherence to ethical standards.

Assessment of procurement process and consistent review of contracts are essential ingredients for Public-Private Partnerships. Thus, the procurement Act serves as a fundamental requirement for successful PPP programmes[42].

"Sections of the Act which have been amended to Act 914 with effect from 1st July, 2016[43] will ensure local content of all public procurements which is a key element in PPP projects".

Most of the respondents agreed that PPP procurement process differs from the traditional procurement process, but maintained that the PPP procurement process is guided by some regulations in the procurement Act.

Financial Administration Act 2003, Act 653

Public-Private Partnership as a system of procurement does not exonerate government entirely from financial commitment. As such government spending on PPP programmes needs to be accounted

[42] See http://www.ppaghana.org/documents/Public%20Procurement%20Act%202003%20Act%20663.pdf section 3 of the procurement act, Act 2003 Act 663 to read more about the functions of the Procurement Authority (Board).

[43] Amendment of Act 2003, Act 663. Read more from the New Business Guide, Thursday 16 June, 2016.

for. In order to promote public sector accountability and combat corruption government passed the Financial Administration Act into law in 2003. This is clearly stated in the preamble of the Act, thus;

> *AN ACT to regulate the financial management of the public sector; prescribe the responsibilities of persons entrusted with financial management in the government; ensure the effective and efficient management of state revenue, expenditure, assets, liabilities, resources of the government, the Consolidated Fund and other public funds and to provide for matters related to these*(Government of Ghana, 2003).

The act therefore provides and empowers the Minister of Finance to put in place systems to ensure transparency in government procurement and the use of government resources. Section 1 (3) further empowers the minister to ensure that full account of public funds and resources are brought before parliament for scrutiny. The Minister is mandated to ensure that systems in place shall ensure "the exercise of regularity and propriety in the handling and expenditure of public funds"[44].

The Act spells out clearly the conditions under which payment for work done in connection with the public service could be made[45].The Act empowers the Minister of Finance to set conditions under which contracts may be entered through the legislature[46].

Since PPP involves transfer of government property, the Act provides the condition under which government property could be transferred or leased[47].

To ensure sound financial management, the government in 2004 came out with the Financial Administration regulations to augment the Financial Administration Act 2003, Act 654. The regulation among other things spells the financial responsibilities of public authorities[48].

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[44] See section 1 (3) (c) (II)

[45] See section 16 of Act 2003 Act 653

[46] See section 17 of Act 653

[47] See Section 65 of Act 653

[48] Section 2 and section 73 of the Financial Administration act empowers the Minister of Finance to establish any regulations that comply with the Act to ensure sound financial management. The government therefore promulgated the

Both the financial Administration Act and the Financial Administration regulation are key enactment to ensure transparency and accountability in the public spending which are key elements of PPP transactions.

Though the above legislations appear to provide some legal ingredients to the implementation of PPP in infrastructure development, they are not explicit.

According to the respondents government is making every effort to pass the Draft PPP Bill into law.

"The *Bill when passed into law will give strong legal framework for PPP programme in Ghana".* *"It will serve as the framework for developing PPP regulations and rules to ensure strict adherence to the provisions in the PPP Policy".*[49] "*If we have the law in place it will boost the confidence of the actors. Yes, the absence of the law is stifling the implementation process".*

"The bill will set out modalities for PPP contracting, the institutional framework for the PPP procurement processes, as well as dispute resolution and contract reviews".

"Clearly, the passing of the Bill into law would improve PPP deal flows considering the major provisions of the Draft Bill. The delay has however affected the provision of public infrastructure through PPP".

4.2. Regulatory agents in the implementation of PPP

These are government establishments and agencies that are responsible for proper implementation of PPP programme and therefore serve as the regulatory agencies for PPP programme.

Thus the key functions of such institutions cover the following broad functions:

Financial Administration Regulations of 2004. Retrieved from; http://www.gaccgh.org/publications/Financial_Administrative_Manual.pdf Accessed on 20 April, 2016.

[49]being interview with an official from MoFEP-PID 08/06/2016

i. Develop, disseminate, monitor and enforce PPP policy
ii. Support individual project sponsorship, design, prepare and execute
iii. Ensure proper financial management of funded and contingent obligations
iv. Serve as gate-keeper and give approval of PPP projects and
v. Give advice, support and promote PPP projects.

On the question of the regulatory agencies that ensure effective implementation of the scheme, the following were identified:

The Public Investment Division

The Public Investment Division which was established in 2010 under the Ministry of Finance to spearhead the development of PPP programme remains the key regulatory agent.

"*It is the Ministry's baby*. *It is responsible for ensuring efficient management and delivery of Public investment especially in PPPs"*.

The unit performs a critical role in the management and implementation of PPP programmes in the country. It is also responsible for promoting a flow of bankable, sustainable and viable PPP deal. As the major regulator, it has the following units under it to perform such distinct functions:

The Project and Financial Analysis Unit;

This serves as a secretariat to the PPP Approval Committees and analyses the financial requirements of PPP projects and coordinates all activities required within and outside of MoFEP as part of the gate keeping and approval process.

The PPP Advisory Unit (PAU);

This unit is responsible for promoting bankable, viable and sustainable PPP projects. It is responsible for advising and supporting the Contracting Authorities in the public sector to enhance the identification and feasibility analysis of negotiations and procurement of PPP projects.

Debt Management Division

This division is responsible for ensuring fiscal sustainability for PPP projects in relation to direct and contingent liabilities on government. It therefore assesses and manages the long-term fiscal risks and impact of PPP projects, and determines whether it is acceptable considering other national priorities. The unit is also responsible for confirming the appropriateness of PPP projects for sovereign guarantee and other forms of government support.

The Budget Division

This division incorporates PPP projects development into the annual budget. It also funds both direct and unanticipated calls on the budget, and thus ensures that payments made by MDAs under PPP arrangements are consistent with the national budget.

The Government Contracting Agencies

Other regulatory agencies identified are classified as the government Contracting agencies or Authorities. "*PID is the actual body in charge. The ministries and departments, the Contracting Authorities, since they bring the projects they also play a key role to ensuring that the processes are well executed*".

The contracting authorities (CAs) are the MDAs and the MMDAs that carry out government activities. The CAs are encouraged to empower themselves to assist in identifying projects, managing contracts, monitoring projects, reporting and evaluating contract process under PPP agreements.

"We are organizing capacity building training sessions for the M-MDAs to empower them so they can develop their own projects".

As a result project management units (PMUs) are to be set up within the various Ministries Departments and Agencies to assist project identification in particular, needs and options analysis, initial definition of PPP concept and PPP contract Management as well as monitoring and evaluation.

The Approval Committee

This is a committee established to consider requests by contracting entities to undertake PPPs and serve as the approving authority for PPPs subject to the Approval Schedule. The PPP Approval Committee however qualifies to approve PPP projects which estimates do not exceed Fifty Million Ghana Cedis (GH₵50m).

Other Approving Authorities include the Cabinet and the Parliament. These are bodies mandated to approve PPP contracts that require government compliance with Article 174 or 181 of the 1992 Constitution; and contracts which exceed Fifty Million Ghana Cedis (GH₵50m) at inception or planning stage[50].

The National Development Planning Commission

The NDPC is responsible for developing the National Infrastructure Plan which the PID projects must come from. It is found that all infrastructure projects, except those that come from USPs must

[50] See the approval schedule in the PPP policy

fall within the NIP projects. *We develop the policy but the PID is the implementing agency. After we developed the policy, everything was handed to them (PID).*

The Public Procurement Authority

Even though PPA is a key procurement institution, its role in PPP procurement is limited, apart from the fact that some components of the Public Procurement Act are applied in the PPP transactions.

"*We really do not play a major role in PPP procurement process. It is entirely different. Except that the rules governing public procurement in the procurement act are applied since the PPP law is not yet operational. The amended procurement Act, Act 194 has provision of local content which is a key requirement for PPP projects".*

One important revelation is that the various contracting agencies are able to carry their roles well without conflicting others. Thanks to the unitary governance system.

4.3. The Private Sector Proponent

This is the private sector entity that participates in the PPP process. Though the Private sector Proponent is not a regulatory agent, it plays a key role in the implementation of PPP. A little is said about the qualification of the Private sector entity that tends to participate in the PPP procurement process. Nonetheless, PPA Act (2003) Act 663 is binding on all public procurements which include PPPs. As a result the provisions spelled out in the Act with regard s to qualification of tenders are applied to PPP procurement process[51]. The qualification of tenders is therefore spelled in section 22 (1) of the Public Procurement Act (Government of Ghana, 2003). The requirements in the provision are inseparable and an entity entering into PPP process requires satisfying all in addition to other

[51] Article 93 (2) of the 1992 constitution empowers parliament to pass laws for the country. Such laws are binding on all persons and entities (both private and public) in Ghana.

requirements that may be specified in the contract. Again, the Act provides that all tenders meet the qualification of the procurement entity and thus enjoins procurement entities to embark on prequalification proceedings[52].

4.4. Key Principles of Public-Private Partnership

On the question of whether or not there exist some critical principles to ensure effective implementation of PPP; the study identified some principles besides Value for money, Ability to pay, and Risk transfer.

Respondents agreed that "PPP was different from the traditional procurement process.

"*The PPP process requires Transparency, accountability, competition and openness. These are to be adhered to in the implementation of the programme"*.

These are also elements that ensure that public procurements are devoid of corrupt activities that seem to inundate the traditional procurement process.

Accountability

Respondents maintained that good governance requires accountability and all PPP projects must be guided by this principle. It also requires decisions to be objective; and be taken in accordance with law and government policies.

"*The policy provides that all PPP engagements follow the laid-down rules and regulations. The regulatory framework is under development, though".*

All contracting authorities must follow the prescribed processes for taking decisions within their respective organization

Transparency

[52] See Section 23 (1) and (2) of the public procurement Act.

"*One thing about the PPP procurement system that makes it unique is the transparent nature of the process. this ensures integrity in procurement processes"*. PPP projects must be guided by the following principles to ensure transparency in the transactions as stated in the policy;

1. the procurement process must be well defined with clear and unambiguous instructions to bidders to avoid manipulations and abuse of the process.
2. the conditions set out for biding and the criteria for evaluation must be made available to all interested parties to ensure value for money, economy and efficiency of the process. Thus, all bidders must have equal opportunity to access information.
3. decisions to consider unsolicited bids must conform to the national policy backed with objective reasons to support such decisions.
4. the Policy further stipulates that access to information concerning a project under PPP shall be guaranteed except where it interferes with national security.

Competition

The public procurement requires competition to ensure that bidder with the most economically viable bid is selected. PPP projects are therefore required to be subjected to competitive bidding to ensure value for money and efficiency per the provisions of the policy.

Openness and Confidentiality

The PPP procurement system demands that all transactions are made open allowing the public to have access to information regarding the project. *We publish projects for bidding in both national and international news portals. We have them in our newsletters too and on our website". However, information that is commercially sensitive or bothers on national security issues are required to be kept secret and confidential.*

4.5. Contribution of PPP in infrastructure development

The study sought among other things to examine the contribution of PPP in the area of infrastructure development. This section presents the level of infrastructure provided in the various sectors through PPPs.

Electricity Sub-sector

Electricity generation is the only sub-sector that is open to private sector participation through Independent Power Producers (IPPs) with the Ministry of Power as the Contracting Authority. The Power produced by the IPPs is then purchased by Government through the Volta River Authority (VRA) and Electricity Company of Ghana (ECG).

As a result, five IPP projects have been developed since 2000. The licensing authority (energy commission) has provided about 30 licenses to unsolicited bidders to develop IPP projects.

The contribution made in the power sector through Public-Private Partnership is summarised in the table (see Appendix VI). Considering the need, the track record and the pipeline of electricity generation, it is considered the most potential for increased private sector involvement.

However, the funding constraints, and the microeconomic challenges in the country culminated with the unstructured way that the IPPs have been allowed into the market pose a grave risk in the sector.

The infrastructure development would reduce technical and commercial losses that emanate from inadequate equipment, capacity and obsolete cables in order to improve service quality (DFID, 2015).

Water & Sanitation

In order to salvage the nation from the increasing sanitation and water problem, the government has adopted PPP to leverage public sector resources for water infrastructure. As a result, the government has entered into a PPP programme to build a water treatment plant to treat see water for domestic use. The project known as the Befesa desalination plant is carried out by a consortium led by Abengoa, a Spanish construction company. The project which cost USD126million reached financial closed in 2012. *"It is the only infrastructure project fully executed under PID initiated PPP programme since 2011*."

The Asutsuare water treatment plant where water will be drawn from the Volta River at a cost of about USD660million has been completed as well. Besides, various municipalities are developing PPPs in the water sector. The municipalities are also working with the PPIFA's Sub-National Technical Assistance Programme to improve the provision of public toilets in Kumasi[53] and other places.

The need for improved service provision in the country is imperative. Though this is true, it becomes a bit difficult to develop PPPs in the sector since there are no cost-reflective tariffs.

The entrenched civil and political opposition to private involvement in the water sector as experience since 2005 is enough evidence to prove that assertion. On sanitation a respondent from ministry of finance indicated that; *"there are indeed private sector companies that have built infrastructure in the area of sanitation especially toilet facilities, but such facilities are purely private facilities that provide public services"*.

"Apart of the Teshie Desalination Plant which is government initiated project, the Assembly has embarked on PPPs to provide toilet facilities and community markets"

The Transportation Sector

Ghana's quest to improve access to social amenities and facilitate domestic and international trade as well as strengthen international integration and attract foreign investment has led to its sustained

[53] PPIAF report, *Ghana: Assessing PPP Options to Improve the Provision of Public Toilets in Kumasi* available at www.ppiaf.org/node/3183 Accessed 22/11/2015

effort to create essential transport infrastructure. The transportation sector is key to socio-economic and industrial development and thus accounts for huge proportion of public investment. The Transportation sector is made of road, rail, aviation (air) and marine sub-sectors. Emphasis is laid on the road, rail and marine and inland transportation sectors since they are the sectors that have received PPP *recognition*.

Road Sub-Sector

The adoption of PPPs to facilitate development in the road sector has not gone unnoticed. The PID has identified and carried out pre-feasibility studies on two road projects which are now included on the pipeline projects of the PID. They are the Accra-Takoradi Highway Dualisation and the Accra-Tema Motorway Expansion which is estimated at USD600 million and USD200-350 million respectively (DFID, 2015). The Accra-Takoradi road that stretches over 245km is being executed under DBFOM or BOT model.

Rail Transport sub-sector

As a result, government has resorted to PPP to leverage public sector resources to build the railway system of Ghana. Government has included the Eastern Railway Line Project in The PID pipeline projects. The project which is at the early stage is estimated at USD1.5bn.It involves the construction and rehabilitation of 330km of cape-gauge (Fulbright, 2014). This will improve the rail transport as well as facilitate the transportation of goods and passengers.

Marine and Inland Water Transportation

Government has adopted PPP to expand and rehabilitate the Takoradi Port to decongest the ports. The Takoradi Port Rehabilitation and Expansion and the Boankra inland Port are among the Pipeline Projects of the PID to ease congestion at the ports.

The Volta Lake transport system that spans about 450km is also an important means of Transportation in Ghana. It provides a useful and low cost alternative to road and rail transport between the north and the south. The Government is developing a multi-modal transportation system on the Volta Lake.

4.6. Justification of the Conceptual Framework

The conceptual framework adopted for this study stipulates that low coverage, low quality and poor reliability of public infrastructure emanates from insufficient funds; poor planning &project selection; inefficient and ineffective delivery; and inadequate maintenance associated with the public sector.

Thus, government quest to resolve these impediments requires private sector involvement in the form of partnership. The private sector role therefore is to bring additional funding and financing; to increase the financial resources for carrying out infrastructure projects. The private sector also brings on board the expertise and proper analysis and innovativeness in project planning and selection from the long-term investment perspective to improve public sector capacity and governance. There is no doubt that increased financial resources and improved public sector capacity and governance will lead to improved public infrastructure. This is manifested in the provision of infrastructure in the key sectors of the economy through PPPs. This goes to answers the question whether PPP has led to improvement in public infrastructure or not? The pipeline projects are manifestations of the efficacies of PPP in Ghana.

Pipeline Projects

The establishment of the PID to spearhead the implementation of PPP programme has led to the identification and development of projects in various sectors of the economy.

A little over 20 PID pipeline projects are identified; a number of which have reached procurement stage. However a large number of these projects are USPs which are being developed by private companies outside the PID Pipeline. It is estimated that about 20 unsolicited projects mostly Power Purchase Agreements (PPAs) have been signed.

The PID Pipeline Projects are however being developed by the various CAs with support from the PID. Such Projects will undergo competitive bidding process to select the builders of such infrastructure.

The pipeline projects cover a broader spectrum of sectors as compared to the projects that have reached financial close. Again, the pipeline contains larger infrastructure projects than the financial close projects. A case in point is the Ghana 1000. Ghana 1000 is a 1,300MW gas-to-power with a floating storage and re-gasification unit to facilitate LNG imports estimated at USD1.8billion. It is to be constructed in two phases 750MW and 550MW Phases I and II respectively (see Appendix VIII).

The Accra-Kumasi road was initiated in the early 2000s as one of the project assessed by PPIAF PPPs. The project failed to be implemented because the World Bank rejected the preferred bidder after due diligence was conducted[54]. An Arterial toll Road Company Limited (ATRCL) then submitted an USP and was awarded the contract in 2005 as the first Government of Ghana PPP highway (DFID, 2015). The project was again delayed as a result of political process in 2008. The project obtained cabinet approval in 2010 but required further negotiations upon Parliamentary scrutiny[55].

[54] ibid

[55] See Brocklebank, P (2014) Private Sector Involvement in Road Financing; available at http://docplayer.net/2659514-Private-sector-involvement-in-road-financing-peter-brocklebank-working-paper-no-102.html accessed on 06/04/2015

Other Pipeline Projects include[56]

Health Diagnostic Centre – delivery of lab and imaging services for Korle-Bu Teaching Hospital; National Sports College, Winneba; Pedestrian Foot Bridges – in selected locations within the Agona West and Awutu Senya East Municipal Assemblies; Urology/Nephrology Centre of Excellence at Korle-Bu Teaching Hospital;[57] Accra Plains Irrigation; Martey-Tsuru Community Development; and Model Markets.[58]

4.7. Challenges That Militate Against Public-Private Partnership Process in Ghana

According to P. V. Obeng[59], "PPP is one of the surest ways of *tapping* the efficiency and dynamism of the private sector to support Government development targets" (Ministry of Finance, 2014, p.2) (emphasis mine). The main objective of this study seeks to highlight the challenges that impede PPP implementation in Ghana. The challenges that impede the implementation of PPP in infrastructure development as drawn from the data are identified as follows:

Inadequate Legal Framework

Public policies and programmes thrive on comprehensive legal framework. The legal regime has a consequential effect on PPP process in Ghana. Mfumwa, et al (2015) agreed that for countries to realise the potential for PPPs there must first be a flourishing legal, political, institutional, and administrative conditions. The study reveals that there was no designated legislative framework governing PPPs in Ghana. The available regulation governing PPPs in Ghana still remains the PPP National Policy that was developed by the MoFEP in 2011.

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56 See PPP News Letter (2014, Issue 1); Partnering the Private Sector for improved delivery of Public Infrastructure and Services |

57 This centre is undergoing feasibility studies.

58 About 9 market projects by Accra Metropolitan Assembly have been advertised in the market for concessionaires to bid (An interview with official from PID and AMA official on the 3rd June, 2016 and. 14 June, 2016 respectively) *"They are in the market, we've finished with the Feasibility studies. We are now looking for investors.*" Other market projects developed by Tamale Metropolitan have also reach feasibility stage he added.

59 P.V. Obeng was the chairman of the NDPC and The PPP Champion

"The National Policy does not constitute a legal framework since it is not an Act of Parliament. It lacks legal status. It is therefore not comprehensive enough even though it is working for us."[60] *"Well, the bill will be passed soon. I know that the provisions in the draft are applied for most of the contracts being signed;" currently, the draft Bill is at the consideration stage".*

The policy is silent on pertinent issues such as termination of contract, dispute resolution mechanisms and handling of complaints as well as guidelines for PPP processes.

"The PPP Law addresses this concern, however, since it is still a draft bill, interpretations of concessions are likely to be done by the courts;" reiterated a respondent from PPA

"Investors will be more relaxed and secured where the legal framework is clearer considering the long-term nature of PPP contract". The PPP law is still in the draft form (Draft 2) under consideration stage in parliament. It is likely to be passed into law by end of 2017."[61]

Participants agreed that the current PPP policy does not provide enough legal standing for PPP agreements. "*Draft bills are not laws and therefore could be enforced".*

"Even though provisions in the Public Procurement Act are referred to as part of ensuring that PPP projects conform to procurement procedures, the two are completely different.

The absence of the PPP Law is a great challenge to the implementation of PPP in infrastructure development.

[60] The researcher interview with official from the MoFEP-PID
[61] Ibid

Low Level of Government Capacity

One major factor that impedes PPP process is the limited capacity within the PID and the Contracting Authorities. This phenomenon restricts the progress of projects. Experts within the PID which form the team to develop Pipeline projects are small. The PID does not have adequate full time staff to undertake the time consuming and complex projects development activities. The World Bank through the IDA has improved the performance of the PID with regards to the overall implementation process; these few experts are those responsible for managing and implementing PPP projects in the whole country.

"Though there are experts in PPP procurement, these are private consultants. There are no Transaction Advisors currently in the country to undertake prefeasibility studies. Most of them are Foreigners."[62] Other respondents agreed that "*the area is very new in the country even though there had been private partnerships in the past; this is a different dimension and therefore requires experts at various levels to develop PPP projects. The various MDAs lack PPP experts."*

The capacity of MDAs and other government departments appears weaker.

"*The wider capacity problems cannot be overcome by the World Bank interventions".* According to a respondent at the PID, PPP units are formed at the local level (MMDAs) on identifying a priority project, personnel from the PID then assist to build their capacity. This appears to be adhoc in nature, since the various MMDAs do not have *resident* experts at the various CAs. "*We are new, and will get there*" reiterated the respondent.

Leadership and Public Resistance

Leadership in PPP is fragmented. The reason is that there is no one key PPP champion in Ghana to take the leadership role of all PPP projects. This culminated with broad range of stakeholders slows down the PPP process, since many of these stakeholders exhibit their vested interests and resistance

[62] Ibid

to PPP programmes. Most of the institutions identified as key PPP institutions in the policy document have no clue about the current PPP process.

There seem to be little independence on the part of the National Development Planning Commission to push the infrastructure agenda farther. The complex nature of PPP approval process also slows the process, since all Projects exceeding Ghc50 million demands cabinet and Parliamentary approval.
"P. V. Obeng was the PPP Champion who spearheaded the development of the PPP policy and programmes. Since his demise there has not been any one to take up the role to champion the programme"; lamented a respondent.

Beside the leadership issue is the public distrust of PPP, following high dependency on the public sector. Ghana has a history of being a socialist state as such private provision of public infrastructure face the challenge of domestic support. This is manifested in the public agitation against the Millennium Challenge Corporation (MCC) demands for Management concession of ECG. Citizens appear to find no difference in PPP and privatization hence the public outcry. A respondent admitted that *"it is actually a challenge". "The public do not understand the PPP programme, so they will always resist it as it is with the current ECG management concession"*.
In reality there is an opposition to private sector central involvement in the provision of public infrastructure. Infrastructure Projects are susceptible to public protests. They easily provoke "vociferous protests among local communities, and prove fatal to private concessions"(European Commission, 2003, p.54).The phenomenon is however not peculiar to Ghana. In UK, one protester singlehandedly stopped the construction on Newbury Bypass by lying under a hand dug tunnel at the site for five days.[63]

[63] European Commission (2003) guidelines for successful PPPs available at http://europa.eu.int/comm/regional_policy/sources/docgener/guides/PPPguide.htm accessed on 20/10/2015

Reliance on Unsolicited Proposals

Mostly private sector involvement in infrastructure is often structured in the form of solicited bidding process which adheres to market competition under the various procurement legislations and Public Financial Management (PFM). The identified priority project is then taken through the various procurement processes to ensure VfM.

Ghana has had its fair share of USPs since majority of PPP infrastructure projects undertaken in recent years are unsolicited projects. Currently there is no comprehensive strategy in Ghana to effectively manage USPs. Most of these Proposals have not been subjected to proper examination and benchmarking; and thus prevent participation of credible international investors.

USPs are mostly sole sourced and thus relatively expensive as compared to competitively bid projects (Turley, 2015). There is no clear policy governing USPs and how to advance it at the moment in Ghana. This creates uncertainty and deterrence among developers to undertake early stage project development activities which involve high risks. The practice however poses serious problems to PPP process in Ghana.

Participants agreed that USPs prevent competition and due diligence in the PPP process and creates opportunities for corruption and political patronage; public officials take it as the easiest way to achieve *political glory* (for want of a better phrase).

Indeed there is the tendency that unsolicited proposals could lead to more speculative projects or politically connected projects. It thus makes it difficult to avoid corruption in the procurement process. In responding to the issue of unsolicited proposals, this is what a respondent posited; *"Depending on how it comes. It comes with political and certain personality influence, and that is a big problem"* (PID, 2016). Other respondents intimated that USPs should not be encouraged since they can easily obscure the procurement process.

Lack of continuity in infrastructure development

The lack of bipartisan support for the ownership and market structure of key economic sectors always leads to change in government policies which PPPs are not immune. There appears to be a general view among practitioners that there exist political obstacles on the path of PPPs (Algarni, et al, 2007). Some government agencies also resist change in the context of adopting PPP as delivery and financing approach (Tang & Cheng, 2007).

Respondents cited reluctance of government from different political ideology continuing projects initiated by past government is being detrimental to the implementation of PPP in infrastructure development in Ghana. Mention could be made of the dualization of the Accra - Kumasi Highway, the Boankra In-land Port, the various affordable housing projects in the country; the current one is the AMERI power deal is having its fair share of this negative development.

The tendency that the current PPP framework will change under a new government is glaring.

Political commitment and clear understanding of how PPPs can be implemented are the requirements to make PPPs a reality (Habibija, 2012). "Political interests dominate the decision of what projects will be taken forward and there is a risk that a change of government removes support for projects that have been in development for time" (DFID, 2015, p.10). Respondents were of the view that politicians always thwart the efforts of the technocrats in development planning.

Other challenges that confront the implementation of PPPs include lack of understanding of PPPs by local investors. Many local investors lack knowledge in PPP process and therefore do not want to be part in the bidding process. Also, the method adopted in PPP project may not be understood and well received by most government agencies who handle it (Tang & Cheng, 2007). The study finds that the local investors do not understand the PPP procurement concept and thus find it difficult to participate in it process. The study further reveals that lots of the projects are giving to foreign companies because they understand the process and are willing to form a consortium to undertake long-term investment infrastructure projects.

Even though funding is a challenge to PPP implementation process, the findings of the study could not establish that. It is found that in Ghana, government guarantees for private investors to secure loans to provide public infrastructure under PPP contractual arrangement.

"*Lots of Projects are given to the foreign investors, because the local investors do not understand the process". "People do not understand the process, the government officials at the ministries and at the local level do not have a clue what it is. How can they develop projects for contracting?"*

The respondents however indicated that development partners such as USAID, the World Bank and others are working with Ghanaians to increase understanding about the importance of a market driven economy and the benefits thereof.

Related to this is low capacity of local investors. The local investors lack the capacity to undertake long-term capital intensive PPP projects. The challenging issue is that the MoFEP-PID finds it difficult to build the capacity of local investors. The Reason as stated by an official from the PID is that *"we cannot choose someone we trained to develop a project; it will amount to compromising the process"*.

From the view point of the respondents, "*Ghanaian investors can undertake PPP projects, but it was just because they do not know the opportunity lying in it*".

One other challenge to PPP project implementation in Ghana is the non-consultation of the PID unit, which is the national institution responsible for ensuring proper PPP concessions. Many of the projects classified as PPP do not pass through the PID for scrutiny and approval. *"The fact is that most of the infrastructure projects that are classified as PPP projects never passed through PID for approval*". Even though they are concessions in the form of PPP they lack the *endorsement* of the

Division. Notable among these projects are the IPPs. The practice does not only obscure the PPP process, but also undermines the relevance of the PID.

4.8. Public-Private Partnership Contract Management

Effective management of the PPP contracts is required to ensure that the objective is achieved. The responsibility to ensure that PPP contracts are well implemented, managed, enforced, monitored and well reported on rests on the Contracting Authority. The Contracting Authority must ensure that all the laid down procedures spelled in the approval stage are maintained and adhered to, so as to help; measure the outputs of the contract arrangements; monitor the implementation and performance of the PPP; liaise with the private party to resolve disputes that might ensued in the agreement; oversee the day-to-day management of the Agreement; and report on the PPP Agreement With this, the functions performed by the private entity should maintain the public interest while the Contracting Authority ensures that state property is protected. To avoid conflict, mechanisms are instituted to ensure timely settlement of government's financial obligation under the arrangement.

4.9. Amendments and Variation of Agreements

The capital intensiveness of PPP contracts is such that amending the contracts midstream may lead to huge financial implications. As a result, amendments or variations are rarely allowed in PPP agreements.

The National Policy however provides that any material amendment or variation to the output or waivers must be approved by the MoFEP-PID in writing. Besides, such amendments, variation or waiver would have been contemplated on in the PPP agreements. If such is not contemplated, then the amendments could not be granted.

The Policy further maintains that material amendment or variation could be allowed only when it continues to satisfy the PPP principle of Value for Money, Affordability, andRisks Transfer.

The need for regular review of the PPP process is imperative, as this will ensure that the implementation of the PPP programmes does not deviate from the provisions enshrined in the policy. Review and monitoring of the PPP process remains the responsibility of the MoFEP. Open, transparent and timely reviews of PPP process which specify the implications for procurement of Public infrastructure shapes the future of PPP programmes and ensure consistency in infrastructure development.

4.9. Dispute Resolutions

One cannot take away the contribution that proper handling of disputes makes in the quest to ensure transparency, accountability and fairness in contract agreement. The handling and proper way of disputes settlement mechanism also provides fair and equal opportunity to parties involve in a transaction.

Though the National Policy on PPP does not prescribe the mode of resolving disputes that may arise from PPP contracts, the Amended Arbitration Act of 1961 (Arbitration and Conciliation Act of 2010) has provisions that are applicable to all matters including commercial disputes which covers disputes in PPP transactions. The Arbitration and Conciliation Act conforms to the UNCITRAL Model Law and thus governs all arbitral proceedings as well as the enforcement of both foreign and domestic arbitral awards within the country.[64] The arbitration and Conciliation Act gives parties the opportunity to determine the arbitration procedures thus upholding the rights of the contracting parties to arbitrate.

4.10. Conclusion

The need for proper policy, legal and institutional framework for PPP cannot be overemphasized. In order to accelerate economic growth, there is the need to encourage private participation in the

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[64]Section 59 of the Arbitration and conciliation Act, 2001 (Act 798) empowers the High Court of Ghana to enforce the provisions in accordance with the New York Convention

provision of such. This therefore demands sound and comprehensive legal and institutional environment since the certainty of the legal and regulatory regimes remain fundamental in attracting private sector investment in infrastructure development.

In fact government programmes can only succeed in an environment where commitment, transparency and appropriate systems exist within a proper legal structure. "Progressive and committed politicians and bureaucrats (saints); supported by appropriate policy analysts with available information (wizards); that manage hostile and apathetic groups (demons) and *subsequently deliver* the policy from the vagaries of implementation" (Ayee, 2000, p.2) (emphasis mine) remain the fundamental requirements for policy success.

Public-Private Partnership is the only way Ghana can bridge its infrastructure Gap without compromising affordability and value for money. There is the need to build the capacity of stakeholders in PPPs and also strengthen the institutions involve in the implementation process.

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.0. Introduction

This chapter presents a summary of the findings of the study. It also presents conclusions drawn from the findings. The final part presents recommendations based on the findings.

5.1. Summary of Findings

This section presents a summary of the main findings of the study under the various themes to reflect the study objectives. An extensive review of the relevant laws and regulations governing PPPs and the level of infrastructure in the key economic sub-sectors, as well as the challenges facing PPP process in Ghana was carried out in this study. The findings were explained under five themes namely: Existing legal and regulatory framework, Transparency and fairness in PPP programme and Process, contribution of PPP in infrastructure development, Challenges that militate against implementation of PPP in Ghana, and Improving PPP process.

Existing legal framework

The findings suggest that Ghana has no specific legislation for Public-Private Partnerships. The PPP Draft law is still awaiting parliamentary approval. The Constitution 1992 of Ghana, The PPA Act, 2003, Act 663, the Financial Administration Act 203, Act 653 are the available legislations hat are used in the discharge of PPP programme. The World Bank guidelines are also not legal and therefore cannot be a perfect substitute. To conclude it is found that the legal framework for PPP is not comprehensive.

Transparency and Fairness in PPP procurement process

The guidelines provided in the National PPP policy indicate some level of transparency in the PPP procurement process. However, it is found that a Competition Law which promotes sound competitive trade practices and encourages full and free participation in the economy has not been enacted in Ghana. A Competition law is therefore eminent to a sound procurement process under PPPs since it ensures fair competition in selecting the most competent bidder.

Engagement of foreign companies

The study finds that foreign companies are allowed to participate in the provision of infrastructure through PPP initiatives. Many of the projects undertaken during the last five years are carried out by foreign companies as found by this research. The study finds that the trade and investment laws allow foreign investors to partner with local entrepreneur or company to participate in infrastructure development. For PPP projects, Transaction Advisors and Financial Investors at the respective stages team up with local entrepreneurs to execute their functions. There is no law in Ghana that discriminates against foreign investors. Incentives are even provided where the project in question is considered crucial to national development. Probably the only condition is the threshold spelled by the GIPC Act, 194, Act 478, which enjoins a foreign company to have a capital of not less than USD10000 and partner with a Ghanaian in order to form a company.

The study reveals that most PPP transactions are capital intensive, and the free entry of the foreign companies is an advantage to the implementation of PPP projects.

The study sought to find out the level of infrastructure development in the various sectors through PPP contracts.

Electricity

The study reveals that a number of generating plants are built through Public-private partnerships. These include; TICO,TAPCO, Sunon-Asogli Power 1&2, Cenpower, CENIT Energy Ltd, Takoradi T3, Tema thermal Power Plant 1&2 and Mines Reserve Plant with a total installed capacity of 1,878 MW and Dependable capacity of 1,735MW. It is found that these power plants are built by Independent Power Producers through USPs. The findings reveal that the power sub-sector had the highest number of PPP projects as compared to the other sub-sectors within the last decade.

One most important driver of the concept of PPP is ability to gain access to the financial resources of the private sector to build infrastructure facilities. About USD2734m is raised by the private sector entities to provide infrastructure in the power sub-sector. The study also reveals a six more pipeline projects in the power sub-sector totaling about 2,258MW with total estimate funding at USD3150m[65]. This clearly indicates an improvement in the funding of infrastructure and the final improvement in the provision of infrastructure in the sector in line with the PPP concept.

The water and sanitation sub-sector

Two main water projects have been embarked on through PPP; the Tessie Desalination Project which cost USD126m was started in 2012, and the Asutsuare Bulk Water DBFO Project which is estimated at USD565m. Others include Sogakope-Lome Trans Boundary Water Supply Project. Clearly the amount of money involved in the implementation of these two projects in the Water sub-sector is enormous, and could not have been possible with government traditional procurement initiative.

[65] These projects are outside the PID pipelines projects.

Road Transport

The findings by this study reveal that there is no completed road project under PPP contract. It is found that the Accra-Kumasi highway was signed under unsolicited proposal in 2005 but annulled after World Bank's due diligence.

The study however reveals a number of pipeline road projects that are at various level of implementation. These include the 245km Dualisation of the Accra-Takoradi road, the Accra-Tema Motorway Expansion Project and the Accra-Kumasi Daulisation Project. The Accra-Tema Motorway Expansion project and the Accra-Kumasi Highway expansion project are in the late stage of feasibility studies, while the Accra-Takoradi road Expansion project is in the early stage of feasibility studies. These three road projects are estimated at USD1.35bn; an amount closer to what the nations requires each year to be able to meet its supply for road infrastructure.

Railroad

The railroad is the transportation sub-sector that has received very little attention in the last decades. Infrastructure in the rail sector leaves much to be desired. Findings of the study established that a major railway project dubbed the Eastern Railway Line Project that seeks to link the country to the landlocked countries is among the PID pipeline. It is found that the project is at the early stage of feasibility studies. The findings reveal that the project requires USD1.5bn to be fully implemented. The project is tied to the Boankra Inland Port project which is also being executed under PPP contract.

Marine and Inland Water Transportation

This study has established that government has adopted PPP to increase the capacity of the two main ports –Tema and Takoradi and also build an inland Port. The findings reveal that the Takoradi Port

Rehabilitation and Expansion project and the Boankra Inland Port are among the project pipelines of PID. The Volta Lake Transport Corridor Project[66] is also among the project pipelines.

5.2. Challenges that Militate Against PPPs

The major question; "what are the challenges that militate against the PPP implementation process? Challenges confronting the implementation of the PPP programme in infrastructure development identified include; inadequate legal and regulatory framework, low level of government capacity, over reliance on unsolicited proposals, politicization of concessions, Leadership and Public resistance and lack of understanding of PPP by local investors.

Inadequate Legal Framework

The study establishes that Ghana has no comprehensive legal framework for the implementation of PPP programme since the draft Bill is still not passed into law. As a result the regulations and rules are still under preparation awaiting the PPP law to give it legal backing. This poses a challenge to the PPP deal flow. PPP contracts and its associated issues are likely to be determined by court decisions where there is no sound and comprehensive legal regime. Such situation brings about uncertainty and dumping investment confidence.

Needs of Experts

The only way to experience appreciable increase in the deal flow of PPP projects is to develop experts to take charge of contract management, and effect funding for PPPs, since PPP transactions are complex. The study establishes that the country lags behind with regards to PPP experts especially in the Public sector to embark on PPP projects.

[66] This project is outside the PID pipeline projects. Refer to table 6.2.

Public Resistance

Findings of the study established that PPP projects experience high public resistance since the public do not see the difference between pure privatization and Public-Private Partnerships. Not only do PPP contracts surfer public resistance, it also surfer political opposition. Cases are the management contract for Ghana Water Company Limited in the early 2000s and the recent Concession arrangement for the management of Electricity Company of Ghana (ECG).

Continuity of projects

The study also establishes that public policies in Ghana lacks bi-partisan support and thus PPP policy which is not immune to change, is subject to suffer change under different political ideology. Projects initiated by past government are usually discontinued or subjected to reviews which complicate the implementation process.

Unsolicited Proposal

Findings of the study establish that most PPP infrastructure projects so far executed are carried out through unsolicited proposals (USPs), mostly through sole sourcing. The study finds that; all the power sector projects are executed under IPPs underwent such procurement process. Such situation defeats the principle of competition and transparency in the procurement process, since it paves way for political patronage and corrupt practices. It is also established by this study that most of the USPs are implemented outside the PID and thus suffer expert impute in the process.

5.3. Recommendations

Public-Private Partnership has become a mantra in many developing countries including Ghana. In spite of its well reception as the best policy for infrastructure development, the implementation of

PPP programme faces a great deal of challenges. The following are recommendations put forward based on the findings.

For Ghana to attract the best and most economically viable bids under PPP, investors must have confidence that the bidding process is transparent and fair devoid of corrupt practices. This can be achieved when there are laws and legislations as well as regulations to promote transparency, accountability and fairness in bidding process. Laws which promote transparency and accountability; and allow for access to information among others should be passed. The government should therefore fast-track the enactment of the PPP law and establish a comprehensive legal and regulatory framework to ensure certainty of the laws on PPP. The Competition law should also be enacted to ensure fairness in competitive bidding.

In order to encourage private parties to participate in PPP projects, government should put in place an effective dispute resolution mechanism to ensure that disputes are amicably resolved in case they arise.

The legal, policy, financial as well as contract management aspects of PPPs require reach expertise. Government and major stakeholders in PPPs should embark on efforts to train more experts to facilitate PPP programmes. It is not farfetched for the universities to develop PPP as a course at the Masters' level to train more experts in the area to ensure effective implementation of PPP programmes in Ghana.

All PPP projects should be carried within the remits of the PID to block tendencies for corruption and political patronage.

PPP projects suffer public rejection and political opposition that often lead to abrogation of contracts and non-renewal of contracts emanating from the lack of understanding of PPPs and the non-involvement of political opponents in taking policy decisions. Conscious efforts should therefore be made to sensitize the public on the PPP policy and programme by engaging the media.

Again government should engage other political parties in taking decisions regarding PPP projects to give it bi-partisan approval. This will ensure project continuity and sustain PPP programme.

Unsolicited Proposals have often posed a challenge to the principles of PPPs, since they are often sole sourced. Clear rules and regulations should be developed to govern the procurement process of unsolicited proposals.

5.4. Conclusions

In the last three decades, there has been a new paradigm regarding the provision of infrastructure through Public-Private Partnership which most countries are shifting towards adopting the new framework for providing public infrastructure efficiently.

This study examined PPP in infrastructure development in Ghana; by first looking at the legal and regulatory framework governing PPP process, and examining the level of infrastructure provided under PPP, and finally reviewed the challenging issues militating against PPP process. The following conclusions are made based on the findings discussed above:

Even though Ghana is making some strides in the use of PPP to provide public infrastructure, it falls short in the development of sound legal framework at the level of its implementation. The PPP draft bill has been under the consideration since 2013. The non-existence of the relevant legal framework poses a grave threat to PPPs in Ghana. Inadequate legal and regulatory framework, lack of PPP experts, public resistance to PPP, reliance on unsolicited proposals, and lack of continuity of PPP projects by successive government were found to be the challenging factors against the implementation of PPP in Ghana.

The study reveals that there has been some level of improvement in the provision of public infrastructure in the power, water and sanitation as well as the transport sectors following the adoption of PPP programme.

Well-coordinated and properly managed partnerships between government and the private sector will surely bring about sustainable socio-economic development in developing countries which includes Ghana.

Ghana's PPP programme is still at the teething stage and cannot be without some impediments. These barriers are not irrepressible, and thus conscious efforts must be made towards the sustenance of the PPP programme as the best alternative to Ghana's infrastructure development.

It can be concluded from the findings that the existing policy does not clearly provide for transparency, accountability and fairness in the PPP procurement process. Though these are spelled in the national PPP policy, it is not a guarantee, since policy documents have no legal obligations.

5.5. Impact on Theory and Knowledge

This study has critical impact on theory and knowledge. The significance of the study is derived from the contribution it makes to knowledge and theory.

The study reviewed the neoliberalism theory which advocates private participation in the provision of public service as revealed by Evans and Swell (2013), Clarke S. (nd) -the Ideological foundations of Neoliberalism as well as the work of Harvey, D. (2005) which sought to explain the Neoliberalism theory.

The study also presented a conceptual framework (adapted from World Bank and modified to suit the study), which explains the concept of PPP in infrastructure development and how private sector resources can leverage public sector infrastructure development. The study also discussed the challenging issues that confront the PPP project implementation process. The theory reviewed and the conceptual framework can be applied in other studies.

The research work provided an in-depth explanation of the PPP concept as a procurement method and as a policy to facilitate infrastructure development. Besides, the study examined the legal and regulatory framework of Public-Private Partnerships in Ghana, and detailed sector level analysis of the strides made in the provision of public infrastructure through PPP. These therefore contribute immensely to knowledge.

The review of the many challenges confronting PPP process and the comprehensive recommendations the study offers provides a learning ground for policy makers, persons in the academia and students.

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APPENDICES

APPENDIX I

Interview Guide

BACKGROUND OF RESPONDENT

1. Institution…………………………………………………………………………..
2. Position in the institution…………………………………………………………..
3. Number of years in this position……………………………………………………….
4. Number of years with the institution………………………………………………..

I. General overview of PPP in Infrastructure Development

1. What do you consider Public-Private Partnership (PPP) to be?
2. Please shed more light on PPP in infrastructure development in Ghana.
3. Please give 3 reasons that account for government's decision to enter into PPP arrangements.
4. Please state the processes involve in PPP contract arrangement in Ghana?
5. Please name any four private organizations (project companies) that partner government in the provision of public infrastructure
6. Please explain the nature of each partnership
7. How are foreign companies contracted for PPP projects?

II. Contribution of PPP in Infrastructure Development

8. Please give the sectors where PPP has been used to provide infrastructure
9. What infrastructure projects have been successfully executed under PPP arrangement so far?
10. Could you explain further on other infrastructure projects being executed under PPP?

11. Please shed more light on Pipeline projects in infrastructure development under PPP contracts.

III. Legal and Regulatory Framework of PPP in Ghana

12. Are you aware of any legal provisions governing the adoption and implementation of PPP in the country?
13. Please explain what you know
14. Are these legal provisions adequate?
15. Please give 2 reasons for your answer.
16. Would you say the available legislations are comprehensive?
17. Please mention 3 regulatory agencies that are in place to monitor and regulate PPPs in Ghana.
18. Please give 2 roles each agency play in the PPP process

IV. Challenges Facing the PPP Process

19. What key principles are considered in PPP transactions?
20. What administrative bottlenecks militate against the implementation of PPP programme?
21. Would you say the PPP process is transparent and open enough to allow for public scrutiny?
22. How do citizens accept PPP as different from privatization?
23. Are there enough experts to ensure better PPP contract arrangements in Ghana?
24. In your view do you think the concept is well understood by various stakeholders?
25. In your view what do you consider as the 3 main challenges facing PPP as a procurement process in this country?
26. Please state 3 recommendations to ensure smooth implementation of PPP process?
27. Give 2 reasons to support your recommendation.

Thank you.

APPENDIX II

Various Definitions of PPPs

Country / Organisation	Definition
Republic of Korea	Public-Private Partnership project is a project to build and operate infrastructure such as road, port, railway, school and environmental facilities – which have traditionally been constructed and run by government funding – with private capital, thus tapping the creativity and efficiency of private sector.
South Africa	Public-Private Partnership is a commercial transaction between a government institution and a private partner in which the private party either performs an institutional function on behalf of the institution for a specified or indefinite period, or acquires the use of state property for its own commercial purposes for a specified or indefinite period. The private party receives a benefit for performing the function or by utilizing state property, either by way of compensation from a revenue fund, charges or fees collected by the private party from users or customers of a service provided to them, or a combination of such compensation and such charges or fees.
The United Kingdom	Public-Private Partnership are "…arrangements typified by joint working between the public and private sectors. In their broadest sense they can cover all types of collaboration across the private-public sector interface involving collaborative working together and risk sharing to deliver policies, services and infrastructure." (HM Treasury, Infrastructure Procurement: Delivering Long-Term Value, March 2008).
HM Treasury	An arrangement between two or more entities that enables them to work cooperatively towards shared or compatible objectives and in which there is some degree of shared authority and responsibility, joint investment of resources, shared risk taking, and mutual benefit.
United Nations	Public Private Partnerships are voluntary and collaborative relationships among various actors in both public (State) and private (non-State) sectors, in which all participants agree to work together to achieve a common goal or undertake specific tasks.
The World Bank	The term "Public Private Partnerships" refers to the existence of a "partnership" that involves a sharing of risk, responsibility, and reward, undertaken in those circumstances when there is a value-for-money benefit to the taxpayers.
European Commission	Public Private Partnership is an arrangement between two or more parties who have agreed to work cooperatively toward shared and/or compatible objectives and in which there is shared authority and responsibility; joint investment of resources; shared liability or risk-taking; and ideally mutual benefits.
Canadian Council for Public Private Partnerships	PPP is a cooperative venture between the public and private sectors, built on the expertise of each partner that best meets clearly defined public needs through the appropriate allocation of resources, risks, and rewards.

APPENDIX III

Differences between Traditional Public Procurement, PPP and Full Privatisation

	Traditional Public Procurement	PPP	Full Privatisation
Definition	Supply by the private sector of works, goods or service as defined by the public authority	PPPs introduce private sector efficiencies into public service by means of a long-term contractual arrangement. They secure all or part of the public service, call upon private funding and private sector know-how.	Privatisation means transferring a public service or facility to the private sector, usually with ownership, for it to be managed in accordance with market forces and within a defined framework.
Main Features	Contracting authority establishes clearly what is to built, how and by what means Invitations to tenders are accompanied by very detailed technical specifications regarding the type of work being procured. Price quote is the single most important criterion in the evaluation of bids. The procurement process is short-term in nature and does not involve long-term occupancy of infrastructure assets, and thus does not lay emphasis on the operational phase of the project.	Contracting authority establishes the specifications of a project and leaves to the private sector the responsibility of proposing the best solution, subject to certain requirements. Price is one of the many criteria in the evaluation of bids. A lot of emphasis is on the technical and financial capability of the bidder, financial arrangements proposed, and the reliability of technical solutions used. Given the long duration of the concession period, emphasis is on the arrangements proposed for the operational phase.	Privatisation authority prepares the divestment plan. Involves transfer of ownership to the Private sector. Is generally a complex transaction with carefully designed contracts and a multi-stage competitive tender process. Generally, the public sector withdraws from Management of the entity on privatisation. Almost all risks are borne by the private sector.

APPENDIX IV

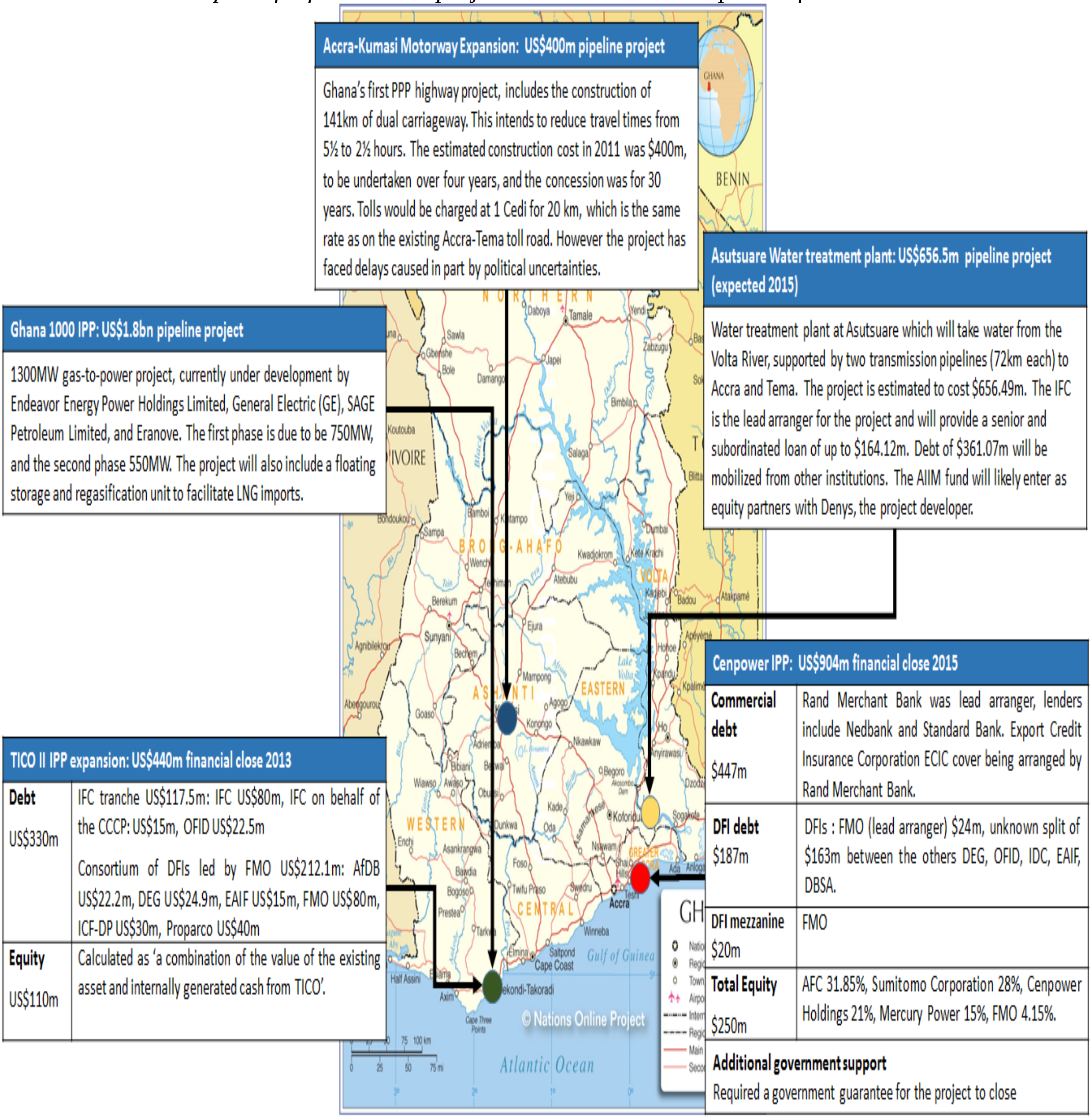
Some Types of PPP

PPP Modality	**Role of the Private Entity**	**Role of the Government**	**Notes/Remarks**
Build-Operate-and Transfer (BOT)	Finances and constructs; operates and maintains facility for a fixed term; collects fees and charges to recover investments plus profit; transfers facility at the end of cooperation period (maximum of 50 years	Provides franchise (if required) and regulates activities of BOT contractor; acquires ownership of facilities at the end of cooperation period	Includes a supply-and-operate scheme, a contractual arrangement whereby the supplier of equipment and machinery for a given infrastructure facility, if the interest of the Government so requires, operates the facility
Build-and-Transfer (BT)	Finances and constructs; turns over ownership of the facility to government after project completion	Acquires ownership of facility after construction; compensates proponent at agreed amortization schedule	May be employed in any project, including critical facilities which, for security or strategic reasons, must be operated by the Government.
Build-Own-and-Operate (BOO)	Finances, constructs and owns facility; operates and maintains facility in perpetuity (facility operator may be assigned); collects fees and charges to recover investments and profits	Provides authorization and assistance in securing approval of BOO contract; possesses the option to buy the output/service provided by the BOO operator	All BOO projects upon recommendation shall be approved by the PPP unit.
Build-Lease-and Transfer (BLT)	Finances and constructs; turns over project after completion; transfers ownership of facility	Compensates proponent by way of lease of facility at agreed term and schedule; owns facility	Akin to Lease-to-Own

	after cooperation/lease period	after cooperation/lease period	
Build-Transfer-and Operate (BTO)	Finances and constructs on a turn-key basis; transfers title of facility after commissioning; operates the facility under an agreement	Owns facility after commissioning	Minimizes construction risk delays
Contract-Add and-Operate (CAO)	Adds to an existing facility; operates expanded project for an agreed franchise period	Collects rental payment under agreed terms and schedule; regains control at the end of lease term	There may or may not be a transfer arrangement with regard to the added facility provided by the Project Proponent.
Develop Operate-and Transfer (DOT)	Builds and operates a new infrastructure; transfers property/ facility at the end of the cooperation period	Regains possession of property turned over to investor after cooperation period	Project proponent enjoys some benefits the initial investment creates such as higher property or rent values; akin to BOT with the option to develop adjoining property
Rehabilitate-Operate and-Transfer (ROT)	Refurbishes, operates, and maintains facility; facility is turned over	Provides franchise to ROT company; regains legal title of property/	Also used to describe the purchase of facility from abroad, importing,

APPENDIX V

Examples of infrastructure projects that have received private finance[67]



[67] Map taken from http://www.nationsonline.org/oneworld/map/ghana_map.htm Accessed on 20/04/2016

APPENDIX VI

PPP in Power production

PROJECT	GENERATION CAPACITY (MW)	
	Installed	Dependable
TICO	330	300
TAPCO	330	300
Sunon-Asogli Power1	200	180
Sunon-Asogli Power 2	180	160
Cenpower	340	-
CENIT Energy Ltd	126	110
Takoradi T3	132	125
Mines Reserve Plant	80	70
Tema Thermal Power Plant 1	110	100
Tema Thermal Power Plant 2	50	45
Total	1,878	1,380

Source: from various report assessed.

APPENDIX VII

Projects that have reached financial close in Ghana since 2005, all in US$m

Project Name	**Close Year**	**Project Type**	**Project Status**	**Total Cost**	**Finance provided**			
					DEBT	MEZZ	EQUITY	GRANTS
Cenpower	2014	Electricity generation	Financial close	904	634	20	250	0
TICO II Expansion	2013	Electricity generation	Operational	440	330	0	110	0
Befesa Desalinati-on Plant	2012	Water treatment plant	Construction	126	88	0	38	0
Tema Osonor Plant Limited (later CENIT Energy Ltd)	2009	Electricity generation	Operational	140	109	0	35	0
Sunon-Asogli Gas Fired Power Plant	2007	Electricity generation	Operational	560	0	0	560	0
Osagyefo Power Barge	2007	Electricity generation	Distressed	100	0	0	0	0
West African Gas Pipeline Company Ltd[68]	2005	Natural gas transmission	Operational	590	0	0	0	0
Totals				**2,860**	**1,160**	**20**	**992**	**0**

Source: Expanded PPI database: *Please note the financing information presented is only what is available from public sources and this list may not reflect all projects that have reached financial close.*

[68] The West African Gas Pipeline is a regional project with Nigeria.

APPENDIX VIII

Current project pipeline

Project	Stage	Estimated cost	Sector	Type of PPP
PID pipeline projects				
Accra-Takoradi Highway Dualisation	Early stage	US$600m	Roads	Concession
Asutsuare Bulk Water DBFO Project	Late stage	US$565m	Water & sewerage	Greenfield
Boankra Inland Port / Eastern Railway Line project	Early stage	US$900m - 1.5bn	Rail / Inland port	Concession
Sogakope-Lome Trans Boundary Water Supply Project[69]	Early stage	N/A	Water & sewerage	Greenfield
Takoradi Port Rehabilitation and Expansion	Late stage	US$750m	Ports	Concession
Accra-Tema Motorway Expansion	Late stage	US$200-350m	Roads	Concession
Pipeline projects outside of the PID				
Project	**Stage**	**Estimated cost**	**Sector**	**Type of PPP**
155MW Ghana Nzema Solar PV Project	Late stage	US$400m	Energy	Greenfield
225MW Ayitepa Wind Farm	Late stage	US$525m	Energy	Greenfield
190 MW Aboadze Amandi Energy Gas Fired Plant	Early stage	US$528m	Energy	Greenfield
28MW Solar PV Plant	Early stage	US$60m	Energy	Greenfield
360MW Aboadze Jacobson Jelco Gas Fired Plant	Early stage	US$637m	Energy	Greenfield
Accra-Kumasi Motorway expansion[70]	Late stage	US$400m	Roads	Concession
Ghana 1000	Late stage	>US$1bnn	Energy	Greenfield
Takoradi Port Expansion- Phase 1 PPP	Early stage	US$197m	Ports	Concession
Ghana LNG Import Terminal	Late stage	US$500m	Transport	Greenfield
Kotoka International Airport Redevelopment	Late stage	N/A	Airport	Concession
Volta Lake Transport Corridor Project	Early stage	N/A	Transport	Other
Tema Port concession	Late stage	N/A	Ports	Concession
Prampram New International Airport	Early stage	N/A	Airports	Greenfield

Source: DFID Ghana case study (2015) available at www.cepa.**co**.uk/.../download.cla *Accessed 24/04/2016*

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[69] AfDB (2013), *Request for expressions of interest (consulting services): Sogakope-Lome Trans Boundary Water Supply Project.* Available at www.afdb.org/fileadmin/uploads/afdb Accessed, 25/04/ 2016

[70] Arterial Toll Roads Company; *'The Road to Ghana: a toll road infrastructure PPP case study.'* Available at www.atrcl.com/**Road_to_Ghana**_~_Joburg_v2.pptx *accessed, 25 April, 2016.*