Laid on table
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Vice Comt on Finance,
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2/12/14

PARLIAMENT OF UGANDA

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REPORT OF THE COMMITTEE ON FINANCE, PLANNING AND ECONOMIC DEVELOPMENT

ON

THE RE-CONSIDERATION OF PUBLIC PRIVATE PARTNERSHIP BILL, 2012

OFFICE OF THE CLERK TO PARLIAMENT
PARLIAMENT BUILDINGS
KAMPALA - UGANDA

November, 2014

THE PUBLIC PRIVATE PARTNERSHIP BILL, 2012

1.0 INTRODUCTION

Rt. Hon. Speaker and Hon. Members, permit me to present the report of the Committee of Finance, Planning and Economic Development on the Public Private Partnership Bill, 2012.

You will recall that the Bill was referred to the Committee on Finance, Planning and Economic Development on Tuesday 30th September 2014 after the H.E President returned it to Parliament for re-consideration in the latter dated 29th September 2014 addressed to the Rt. Hon. Speaker, in accordance with Article 91, Sub-section 3(b) of the Constitution Republic of Uganda which reads as follows;

The President shall, within thirty days after a bill is presented to him or her-

3 (b) return the Bill to Parliament with a request that the Bill or a particular provision of it be reconsidered by Parliament;[1]

1.1 METHODOLOGY

In consideration of the Bill, the Committee;

1. Held an in house meeting on the 19th November, 2014 to consider the Clause 26 (1), (7) and (8) as clearly pointed out by H.E the President in his letter to the Speaker;
2. Reviewed the following documents

   a) The Constitution Republic of Uganda
   b) The Public Private Partnership BIll, 2012

[1] Article 91 Sub-section 3 (b) of the Constitution Republic of Uganda

c) The Amended Public Private Partnership, 2014

d) The Public Private Partnership Act of Ghana

2.0 CLAUSE 26 (1), (7) AND (8) PUBLIC PRIVATE PARTNERSHIP BILL, 2012

Rt. Hon. Speaker and Hon. Members, Clause 26 (1), (7) and (8) of the Public Private Partnership Bill 2012 of the returned Bill provides for Public Private Partnership Agreements.[2]

Clause 26 (1) provides that 'An Accounting Officer shall not sign a Public Private Partnership agreement without the approval of Parliament'

Clause 26 (7) provides that 'The agreement shall only be amended or varied with the approval of the Parliament'.

Clause 26 (8) provides that 'Parliament shall not approve an amendment, or variation to a project agreement under sub-section (7) unless the agreement, if so amended or varied-

a) The project continues to provide value for money;

b) The project continues to be affordable, where such amendment, variation or waiver has a financial implication;

c) The continued transfer of appropriate risks to the private party;

d) The continued provision of efficient and effective services to the public; and;

e) Continued protection and preservation of environment.

3.0 CONCERNS OF THE PRESIDENT

3.1 APPROVAL OF AGREEMENTS AS PROVIDED FOR IN THE CONSTITUTION

Rt. Hon. Speaker, Article 119 Clause (5) of the Constitution of the Republic of Uganda provides that;

[2] Clause 26 of the Public Private Partnership Bill, 2014

'Subject to the provisions of this Constitution, no agreement, contract, treaty, convention or document by whatever name called, to which Government is a party or in respect of which the Government has an interest, shall be concluded without legal advice from Attorney General, except in such cases and subject to such conditions as Parliament may by law prescribe'[3].

The President in his letter noted that Clause 26 Clause 26 (1), (7) and (8) of the returned Public Private Partnership Bill 2012 will usurp the Constitutional mandate of the Attorney General to approve agreements in which Government is a party. His second concern was that parallel approval mechanism for PPP agreements will add another bureaucracy which will cause inordinate delays in implementation of infrastructural projects[4].

3.2 DISINCENTIVE TO INVESTMENTS

The President further noted that the provisions in the Clause and the Sub-clauses as passed by Parliament hinder investors who may consider not investing in infrastructure projects in Uganda as their business decisions will be subjected to Parliamentary approval.

4.0 COMMITTEE OBSERVATIONS

a) The original Public Private Partnership Bill, 2012 Clause 18 (1) and (2) provided for the Public Private Partnership agreement as follows;

(1) 'The Minister shall, with the approval of Cabinet, by statutory instrument, prescribe the value of an agreement for which the approval of Cabinet is required before the agreement is signed by an accounting officer.'

[3] Article 119 Sub-section 5 of the Constitution Republic of Uganda
[4] President letter to the Speaker dated September 29 2014

(2) 'Where the agreement is of a value which the approval of Cabinet is required before it is signed by the accounting officer, the accounting officer shall not sign the agreement without approval of Cabinet'.[5]

The Committee observed this provision will safeguard Public Private Partnership agreements since the principle of collective reasonability shall prevail.

b) Public Private Partnership agreement as defined by the Public Private Partnership Bill, 2012 is a written contract recording the terms of the Public Private Partnership concluded between a contracting authority and a private party.[6]
It's therefore an agreement or concession between Government and the private entities and hence an Executive function.

c) Parliament is empowered under clause 15(2) to appropriate money for Public Private Partnerships[7]. The clause provides as follows;

"(2) An accounting Officer shall not enter into an agreement that in any way binds the contracting authority to a future financial commitment or which results in a contingent liability, except where the future financial commitment or contingent liability is authorized by Parliament in the budget of the contracting authority."

The Committee observes that the clause empowers Parliament to approve future financial commitments and contingent liabilities that arise as a result of the Public Private Partnership agreement.

[5] Clause 18 of the Original Public Private Partnership Bill, 2012
[6] Clause 4 of the Public Private Partnership Bill, 2012(as amended by Parliament)
[7] Clause 15 (2) of the Original Public Private Partnership Bill, 2012

5.0 COMMITTEE RECOMMENDATIONS

Rt. Hon. Speaker, the committee recommends that;

a) For avoidance of doubt and to ensure transparency;

i. The relevant Minister shall lay before Parliament any Public Private Partnership agreement or agreements within one month after it have been signed.

ii. All Public Private Partnerships agreements, amendment or variations thereto should as well as be laid before Parliament within one month after the amendment or variation ;

iii. Ministries, Government Departments and Agencies should indicate in their budget framework papers to Parliament the respective Public Private Partnerships projects to formalize the appropriation of funds for the Public Private Partnerships projects;

iv. Government should specify which Public Private Partnerships are co-founded by Government and the Public Private Partnerships that are wholly funded by investors.

b) Clause 26 of the Public Private Partnership Bill 2012 *(as passed)* by Parliament should be reconsidered and passed as proposed by H.E President.

6.0 CONCLUSION

Rt. Hon. Speaker and Hon. Members, the Committee recommends that Clause 26 of the Public Private Partnership Bill 2012 should be reconsidered and passed as proposed by H.E President. .

I beg to report

PROPOSED AMENDMENTS

1. Substitute for clause 26 (1) and (2) , the following;

   "*(1)* The Minister shall, with the approval of Cabinet, by statutory instrument, prescribe the value of an agreement for which the approval of Cabinet is required before the agreement is signed by the accounting officer"

   "(2) Where an agreement is of a value for which the approval of Cabinet is required before it is signed by the accounting officer, the accounting officer shall not sign the agreement without the approval of Cabinet"

   (3) An agreement shall be forwarded to cabinet for approval where the accounting officer confirms that;
   (a) the best evaluated bid meets the requirements of affordability, value for money and substantial technical, operational and financial risk transfer;
   (b) the contracting authority puts in place a management plan that explains the capacity, including the mechanisms and procedures of the contracting authority, to implement, manage, enforce, monitor and report on the project effectively; and
   (c) satisfactory due diligence is carried out on the private party in relation to the competence and capacity of the private party to enter into the agreement.

2. In clause 26 (9) and (10) , replace the word "***Parliament***" with "***Cabinet***"

3. Insert new sub clause 26 (11) as follows;

   (11) (a) The Minister shall, within one month after signing any agreement, lay before Parliament a copy of the agreement.

   (b) Any amendment or variation made under subsection (10 shall be laid before parliament within one month of the amendment or variation.

   Justification:

   (a) Clause 15(2) of the Public Private Partnership Bill adequately covers the need for Parliament to approve future financial commitments and contingent liabilities that arise as a result of the PPP agreement.

(b) Under Clause 30(3), the Auditor General shall each year present a report to Parliament on each Public Private Partnership project.

(c) Given that the approval of agreements is the preserve of the Attorney General and in order not to inundate Cabinet with requests for approval, the Minister shall set a threshold of projects for which Cabinet approval is required. This will ensure that larger projects and projects of strategic importance will only be signed after clearance by Cabinet.

MEMBERS OF THE COMMITTEE ON FINANCE, PLANNING AND ECONOMIC DEVELOPMENT WHO SIGNED THIS REPORT

NO	NAME	CONSTITUENCY	SIGNATURE
1	Hon. Kasule Robert	Kyadondo North	
2	Hon. Okello Anthony	Kioga County	
3	Hon. Musasizi Henry	Rubanda East County	
4	Hon. Kyooma Xavier	Ibanda North County	
5	Hon. Akol Rose	Bukedea District	
6	Hon. Sejjoba Isaac	Bukoto Mid-West	
7	Hon. Lwanga Timothy	Kyamuswa County	
8	Hon. Adong Lilly	Nwoya District	
9	Hon. Katoto Hatwib	Katerera County	
10	Hon. Amos Lugoloobi	Ntenjeru South	
11	Hon. Emma Boona	Mbarara District	
12	Hon. Ayepa Micheal	Labwor County	
13	Hon. Kakooza James	Kabula County	
14	Hon. Mugabi M. Martin	Buzaaya County	
15	Hon. Geoffrey Ekanya	Tororo County	
16	Hon. Nathan N Mafabi	Budadiri West County	
17	Hon. Odo Tayebwa	Bushenyi-Ishaka Mun	
18	Hon. Mathias Nsubuga	Bukoto South County	
19	Hon. Judith Franca Akello	Agago District	
20	Hon. Maxwell Akora	Maruzi County	
21	Hon. Ssasaga Isaiah	Budadiri East County	
22	Hon. Kevinah Taaka	Busia Municipality	
23	Hon. Jack Sabiiti	Rukiiga County	
24	Hon. Bagoole John	Luuka County	
25	Hon. Capt. Lakot Susan	UPDF	
26	Hon. Ochwa David	Agule County	

PARLIAMENT OF THE REPUBLIC OF UGANDA

A MINORITY REPORT

ON

THE RE- CONSIDERATION OF PUBLIC PRIVATE PARTNERSHIP

BILL, 2012

NOVEMBER 2014

1.0 INTRODUCTION

On the 29th September 2014 the president returned a Bill to House in accordance with Article 91, sub-section 3(b) of the constitution of the republic of Uganda and on the 30th September the Speaker referred the matter to the Committee of Finance Planning and Economic Development.

1.1 What are Public Private Partnerships (PPPs)?

A Public Private Partnership (PPP) may broadly be defined as a long-term contract between a private party and a government agency, for providing a public asset or service, in which the private party bears significant risk and management responsibility[1].

1.2 Do PPPs pose any Challenges/ limitations?

Public Private Partnerships pose limitations which include:

a) Private financing could be viewed as a new form of backdoor borrowing i.e. a financial commitment that does not directly involve the State, but draws on the same resource base or otherwise holds potential implications for the State's finances and other interests. It is important to recognize that private financing does not constitute a new source of funding ultimately, the costs will be borne by the public[2];

b) Increased financing costs i.e. private companies typically pay higher interest rates than government entities to borrow money;

c) Greater possibility for unforeseen challenges i.e. there is a greater possibility for unforeseen issues to arise. Such issues could include disputes regarding certain terms in the contract as well as the private partner being acquired by another company or going out of business,

[1] World Bank Institute, 2012. Public-Private Partnerships Reference Guide Version 1.0

[2] Thomas P. DiNapoli, 2013. Private Financing of Public Infrastructure: Risks and Options for New York State. Office of the State Comptroller

effectively resulting in project schedule delays and additional costs to the government[3];

d) Limits government's flexibility i.e. "lock in" certain government funding priorities based on operational needs determined at the time the contract is negotiated. This can make it difficult to change funding allocations to reflect changes in government priorities;

e) Poorly drafted agreements can be costly and difficult to correct. The legal and administrative costs associated with correction or renegotiation can easily eat up all the benefits that were supposed to accrue from a PPP contract.

1.3 HAS UGANDA HAD ANY PPPS?

Uganda has had examples of PPPs undertaken in Uganda which include:

a) Bujajali Energy Limited (BEL) constructed and is to operate Bujagali dam;

b) Umeme involved in electricity distribution concession regulated by the Electricity Regulatory Authority;

c) Rift Valley Railways involved in a concession and operation of railway tracks and wagon ferries in Lake Victoria;

d) Serena Hotel operated under a consortium comprised of Tourism Promotion Services (a division of the Aga Khan Fund for Economic Development), National Social Security Fund and Proparco (a French property investment company);

e) Oil Palm Uganda Limited (OPUL), a consortium comprised of Wilmar, managers of the plantation and Bidco, responsible for processing and producing palm oil products;

f) Street parking in Kampala which is operated by a private firm, Multiplex on behalf of Kampala Capital City Authority (KCCA);

[3] Mac Taylor, 2012. Maximizing State Benefits from Public-Private Partnerships. Legislative Analyst's Office (LAO)

g) Collapsed Pioneer Easy bus which provided public transport in Kampala and was regulated by the KCCA;

h) Uganda Taxi Operators and Drivers Association (UTODA) which manages the Old and New taxi parks in Kampala contracted by KCCA;

i) Local governments all over Uganda also have contracts with several operators of public markets, abattoirs and other similar entities operated by private investors;

j) Jinja and Nakasongola fuel storage tanks were refurbished, stocked and are operate by private investor; and

k) Entebbe Handling Service (ENHAS) a private company provides consumer services at Entebbe international airport regulated by Civil Aviation Authority.

Hon. Members, What has been of such PPPs in service provided to the citizens we represent here in this August House?

Fellow Hon. Members on the basis of the above information as opposition we dissent from the position from the majority members of the Committee.

2.0 DISSENT FROM THE COMMITTEE POSITION

Under rule no. 194(1), it states that a member dissenting from the opinion of a majority of a Committee may state in writing the reasons for his or her or their dissent, and the statement of reasons shall be appended to the report of the Committee. Rule no. 194(2) provides that the Member dissenting from the opinion of the majority of the Committee shall be given time to present the minority report at the time of the consideration of the Committee report.

POINT OF DISSENT

1. Public Private Partnership is back-door borrowing.

PPP projects indebts present and future generations, Consider an example of a road constructed and citizens have to pay the toll fee to use that road for 20 years but during agreeing on the PPP the cost of the project was inflated, then the flow of traffic reduces yet the investor must recover and what happens if the investor failed to recover?

Hon. Members, we have FRESH lessons from the Bujagali Power Project which a PPP, whose cost has increased gradually and the cost of electricity has not reduced. Imagine what we are building for the future generations in terms of the long term costs and effects on the quality of service delivery. In the best practices of good governance, Parliament is mandated safe guard the interests of present and future generations, hence Parliament must review terms on which back door borrowing is based and that doesn't amount to signing the Contract. Why should PPP project details not be reviewed by the Parliament yet we review all borrowing before the Attorney General organises the final signing agreement- what is to be hidden in those agreements that we should not know but therein are financial commitments to be re- paid by present and future generations?

2. Power of Government to borrow or lend, Article 159.

(1) Subject to the provisions of this Constitution, Government may borrow from any source.

(2) Government shall not borrow, guarantee, or raise a loan on behalf of itself or any other public institution, authority or person except as authorised by or under an Act of Parliament.

(3) An Act of Parliament made under clause (2) of this article shall provide—

(a) that the terms and conditions of the loan shall be laid before Parliament and shall not come into operation unless they have been approved by a resolution of

Parliament; and

(b) that any monies received in respect of that loan shall be paid into the Consolidated Fund and form part of that fund or into some other public fund which is existing or is created for the purpose of the loan.

(4) The President shall, at such times as Parliament may determine, cause to be presented to Parliament such information concerning any loan as is necessary to show—

(a) the extent of the total indebtedness by way of principal and accumulated interest;

(b) the provision made for servicing or repayment of the loan; and (c) the utilisation and performance of the loan.

(5) Parliament may, by resolution, authorise the Government to enter into an agreement for the giving of a loan or a grant out of any public fund or public account.

(6) An agreement entered into under clause (5) of this article shall be laid before

Parliament and shall not come into operation unless it has been approved by Parliament by resolution.

(7) For the purposes of this article, the expression "loan" includes any money lent or given to or by the Government on condition of return or repayment and any other form of borrowing or lending in respect of which—

(a) monies from the Consolidated Fund or any other public fund may be used for payment or repayment; or

(b) monies from any fund by whatever name called, established for the purposes of payment or repayment whether in whole or in part and whether directly or indirectly, may be used for payment or repayment.

(8) Parliament may by law exempt any categories of loans from the provisions of clauses (2) and (3) of this article, subject to such conditions as Parliament may prescribe.

3. Rescinding on clause 26(1) and (2) as passed by the house contravenes clause 6(2) which states that "***An Accounting officer shall not enter into an agreement that in any way binds the contracting authority to future financial commitment or which results in a contingent liability, except where the future financial commitment or contingent liability is authorised by Parliament in the budget of the Contracting Authorities.***". We should be the last to legislate Parliament from the duties it takes as safe guard to avoiding costly indebting to present and future citizens.

Parliament cannot rescind on the position that empowers it to appropriate, which appropriation include for PPP projects. Currently appropriation is being done annually yet many PPP projects cover over five years and beyond. Parliament must at all times understand the projects that have financial commitments that indebt tax payers hence the role of parliament in reviewing the PPP projects before the Attorney General or the accounting officers signs any agreements.

3.0 RECOMMENDATIONS

1. As an institution charged with the main function as provided for by Article 79 of the Constitution of Uganda, we should make laws for peace, order, development and good governance of Uganda.
2. We should uphold the constitution of the republic of Uganda and all provisions therein, especially in relation to any borrowing or loan- an open borrowing or backdoor borrowing in relation to PPP projects.
3. The **clause 26** of the Public Private Partnerships Bill, 2012 as passed by Parliament be maintained and sent back to the President for assent without any changes. Rescinding **clause 26** violates the spirit captured in **clause 6(2)** and violates Article **159(2) (5) (6) (7).**
4. The President should assent to the Public Private Partnerships Bill, 2012 including the **clause 26** as passed by Parliament in observance and respect of the Constitution of the Republic of Uganda which he swore to uphold and defend.

4.0CONCLUSIONS

It is our humble appeal that the house adopts the recommendations laid down in this Minority report for the Good Governance this country.

For God and My Country,

I beg to move.

MINORITY REPORT OF THE RE-CONSIDERATION OF PUBLIC PRIVATE PARTNERSHIP BILL, 2012

S/No	NAME	SIGNITURE
	EKANYIA GEOFFREY	[signature]
	Ssasaga Isaiah	[signature]
	Sabiiti Jack	[signature]
	Odo Tayebwa	[signature]