



XXV FIG Congress

"Engaging the Challenges, Enhancing the Relevance"
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PPP's In Kenya: Opportunities and Challenges (7259)

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Commission 8 Chair

June 20, 2014 at 1130 hrs.

Outline of paper

- Introduction
- Why I am interested in PPP
- Definitions - PPP, PFI, MCL,
- Some Models of PPP
- Principles of PPP
- Principles of MCL
- What necessitates PPP
- Challenges
- Way Forward

INTRODUCTION

- Public Private Partnerships (PPP) is as old as civilization, only it was not called PPP.
- authorities (national and local) have engaged corporates and citizens to meet public need.
- Over time these informal arrangements have taken on a whole new meaning.
- Policies and legislations have been passed

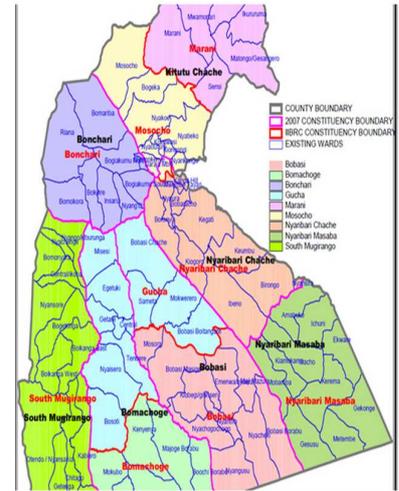
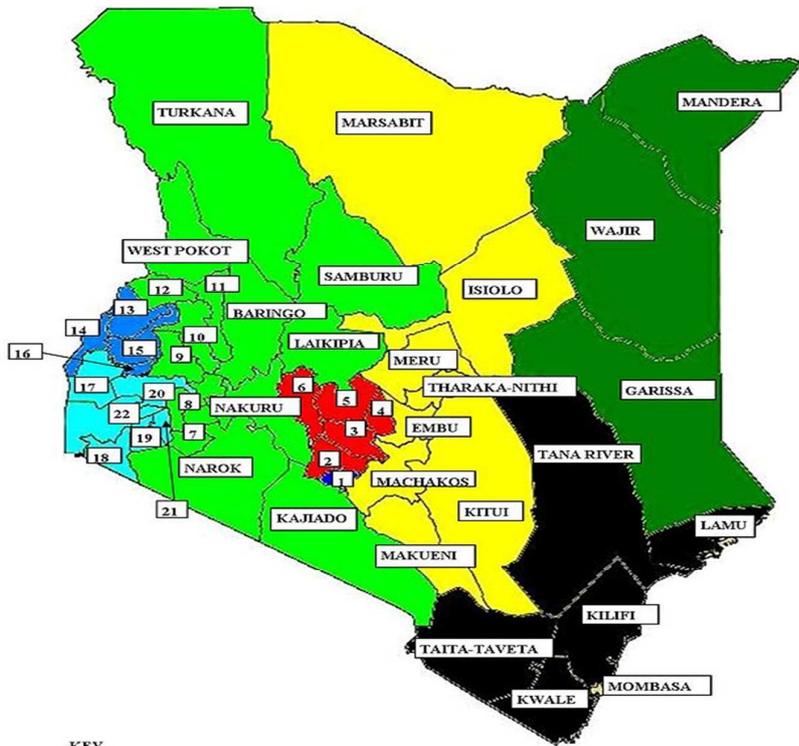
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Why I am Interested in PPP

- Given that the PPP principles and ideals are more or less standard, why is there so much variety in success?
- What are the underlying factors that influence the success or lack of it in these otherwise noble initiatives, which go to fulfill a public need?
- Kenya practised centralized planning for loong.
- Development – became skewed - conflict

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COUNTIES OF KENYA



KEY

- | | | | |
|--------------|---------------------|--------------|--------------|
| 1. NAIROBI | 8. KERICHO | 15. KAKAMEGA | 22. HOMA BAY |
| 2. KIAMBU | 9. TRANS NZOIA | 16. VIHIGA | |
| 3. MURANG'A | 10. UASIN GISHU | 17. SIAYA | |
| 4. KIRINYAGA | 11. ELGEYO-MARAKWET | 18. MIGORI | |
| 5. NYERI | 12. NANDI | 19. KISII | |
| 6. NYANDARUA | 13. BUNGOMA | 20. KISUMU | |
| 7. BOMET | 14. BUSIA | 21. NYAMIRA | |

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WORKING DEFINITION

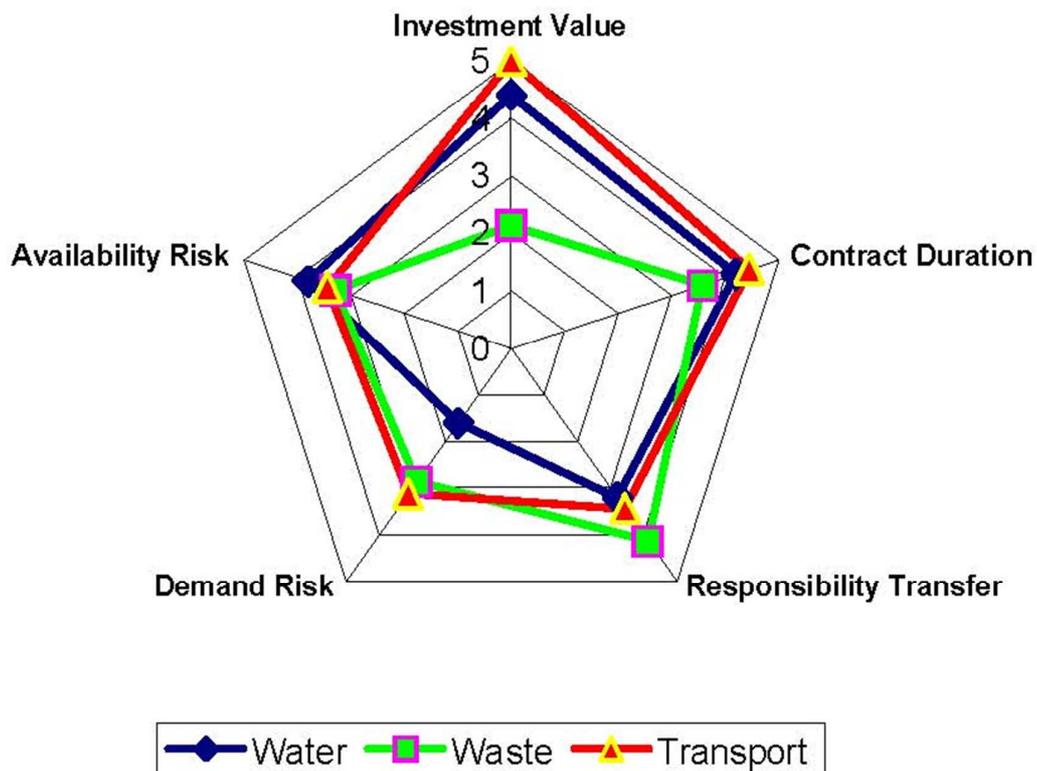
- PPP is a **business relationship** between a private-sector company and a government agency for the purpose of completing a project that will serve the public.
- Public-private partnerships can be used to **finance, build and operate projects** such as public transportation networks, parks and convention centers.
- Financing a project through a public-private partnership can **allow a project to be completed** sooner or make it a possibility in the first place.

RISK APPETITE

- PPP involves a contract between a public sector authority and a private party, in which the private party provides a public service
- Or project and assumes:-
 - substantial financial,
 - Technical
 - and operational risk in the project.
- What is the motive? Audience
- **City of Paris outsourced water supply then took it back**

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Sector Comparison



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VALUE AND POTENTIAL BENEFICIARIES:

- Of what value PPP's; to whom will they be of use?
- National Government of Kenya – Service Delivery
- 47 County Governments - Service Delivery
- The private sector - Business
- Ultimately the citizens
- PPP policy and laws conform to constitution
- Rendering the fears and doubts harmless.

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THE EUROPEAN UNION MODEL

- Cooperation between the public and private sectors for the development and operation of infrastructure for a wide range of economic activities.
- Arrangements were driven by
 - 1. limitations in public funds to cover investments needs
 - 2. Increase the quality and efficiency of public services.

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PRINCIPAL ROLES FOR PRIVATE SECTOR IN PPP

- To provide additional capital;
- Get alternative management and implementation skills;
- Provide value added to consumer and public at large;
- Better needs identification needs
- Optimal use of resources.
- RISKS STILL ABOUND

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PPP IN CANADA

- There are 207 projects across Canada using the public-private partnership approach to deliver innovative solutions to complex public needs.
- The Canadian Council for Public-Private Partnerships meets annually to review.

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CANADIAN COUNCIL OF PPP

- Ontarians benefits from the province's Alternative Finance and Procurement (AFP) model,
- It enables on-time and on-budget delivery while maintaining public ownership, control and accountability.
- The 30-year design-build-finance-maintain contract with Plenary Justice will ensure that
 - the facility is well-maintained,
 - with the flexibility to offer much-needed court services

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CRITICISM OF CANADIAN PPP

- the neoconservative economic model of deregulation, privatization, tax cuts, free trade and unequal growth is bankrupt.
- The shifting rationales of P3s has always been highly dubious. P3s had been used by politicians as a form of off-book accounting to make it appear as if public spending and deficits were lower than they actually were
- But then public auditors forced governments to include these obligations on their books.

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CRITICISM OF CANADIAN PPP

- P3 proponents then claimed that their projects could be less expensive, more innovative, speedier, and more accountable than public service delivery
- But a string of failures, delays, little transparency, and secretive deals proved these claims wrong.
- Most recently, P3 advocates have acknowledged that they cost more, but they try to justify these deals by claiming that P3s transfer massive amounts of “risk” from the public sector to the private sector.

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CRITICISM OF CANADIAN PPP

- By using highly questionable “value for money” accounting, they claim that the higher costs of P3s, particularly on the financing side, are offset by transferring colossal amounts of risk to the private sector.
- While independent experts have criticized these deceptive rationales and faulty accounting for years, the details can be complicated.

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CRITICISM OF CANADIAN PPP

- The misleading accounting practices remain, but the financial crisis has exposed the false economics of P3s in a number of different ways:
- The economic and financial crisis was caused by the same policies behind the push for public-private partnerships.
- Private financing is more costly and risky than public financing
 - The private sector is worse at managing risk than the public sector.
 - Risks can never be completely transferred through P3s.

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CRITICISM OF CANADIAN PPP

- Additional and complicated P3 requirements lengthen the process and add to delays.
- This economic and financial crisis has a number of deep roots, but what propelled both the later stages of the boom and the consequent crisis was
- Systemic cover-up of losses, mispricing, and mismanagement of risk in the private sector.

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WHAT ARE PPP REGULATIONS?

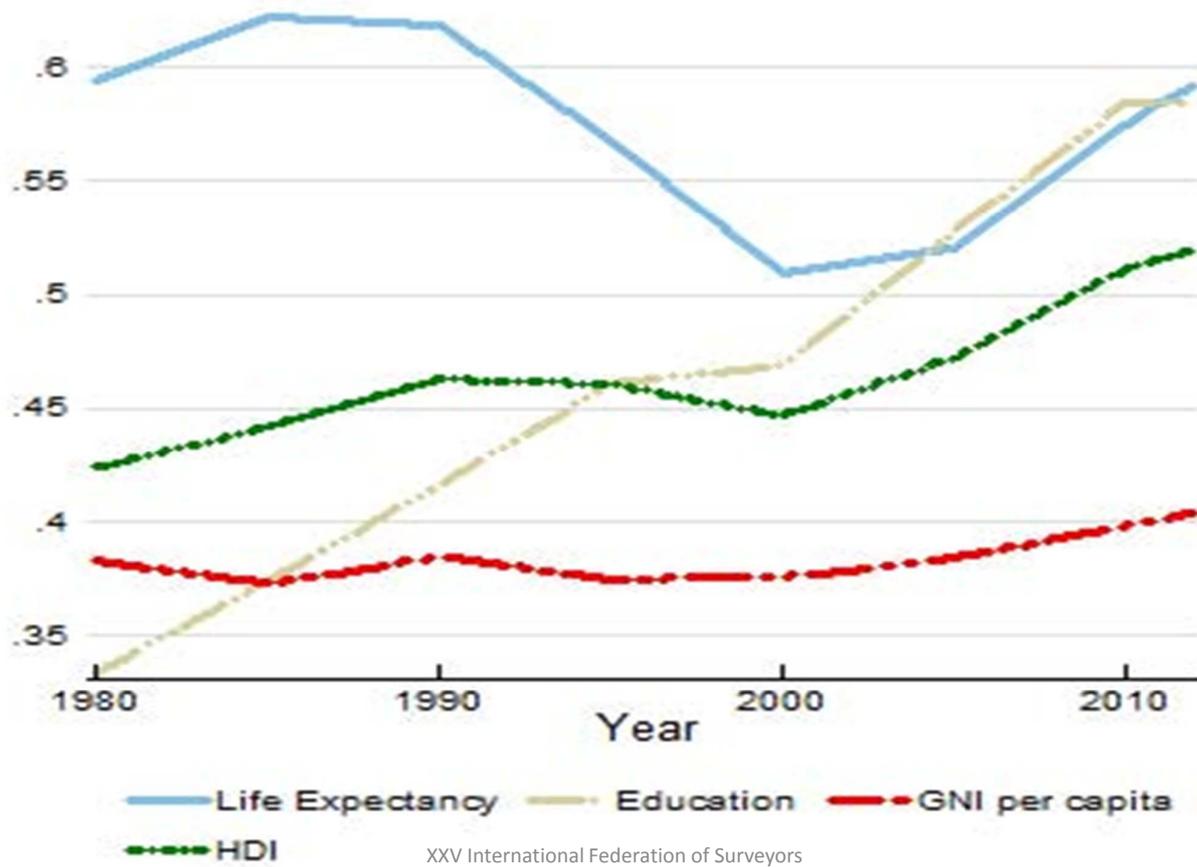
- PPP Act, 2013 provides a broad legal framework for PPPs, the regulations aim to provide:
- Operational details on how PPP projects will be prepared, tendered, approved and implemented and monitored and evaluated
- Operational details on the roles and responsibilities of the parties involved in the PPP transactions.

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STRUCTURAL ADJUSTMENT PROGRAMMES

- Structural Adjustment Programmes (SAP).
- These words that gained fame and notoriety
- World Bank and the IMF introduced SAP's.
Structural adjustment programs (SAPs)
- Loans provided by the International Monetary Fund (IMF) and the World Bank (WB) to countries that experienced economic crises.
- Reducing subsidies, enabling government save??

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GOVERNMENT OF KENYA'S VISION 2030

- *“The Government of Kenya, implementing Vision 2030, the country's development blueprint covering the period 2008 to 2030.*
- ***The strategic goal of Vision 2030 is to transform Kenya into a newly industrialized middle-income country,***
- ***providing high quality of life to all its citizens by the year 2030.***

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FINANCE MINISTER SPEECH: LAUNCH OF PPP POLICY

- *“Vision 2030 aspires for Kenya’s high quality services and facilities*
- *Investment in infrastructure facilities top priority.*
- *The Government recognizes the funds shortfall to*
 - *Fully support the country's development agenda*
 - *Meet the infrastructure deficit*
 - *Requires involvement of the private sector,*
 - *hence Public Private Partnerships (PPP).*

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THE PRIVATE FINANCE INITIATIVE (PFI)

- Way of creating "public–private partnerships (PPPs) by funding public infrastructure projects with private capital.
- Developed initially by the governments of Australia and the United Kingdom, and used extensively there and in Spain,
- PFI and its variants have now been adopted in many countries as part of the wider programme of privatisation and financialisation driven by an increased need for accountability and efficiency for public spending.

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MoU vs. MCL

- There has been uncertainty about the legal process by which PPP contracts should be tendered, procured and awarded.
- Public Toilets – None vs. Need
- City Council Mayor and NCBDA entered an MoU
- The city elected a new mayor who rubbished it
- Now in court – since 2007
- MCL – Modern Concessional Law – More on this later

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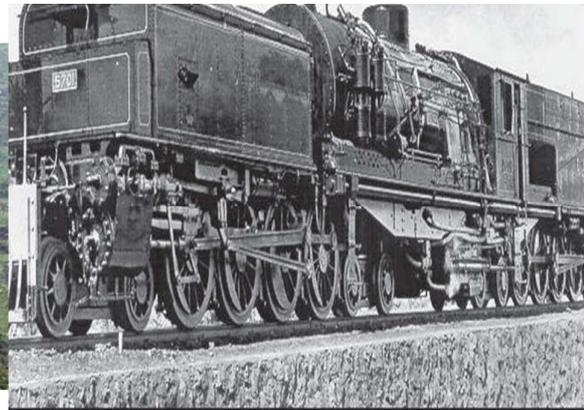
WILDLIFE CONSERVATION AND MANAGEMENT

- Opportunities in the form of Concessions for lodges, hotels and luxury tented camps in the protected areas are.
- *Concessionaires in protected areas has been going on ever since Kenya began practising*
- *Wildlife conservation and management*
- *National Parks and Reserves have a lot of land*
- *Long term leases – 33 years*

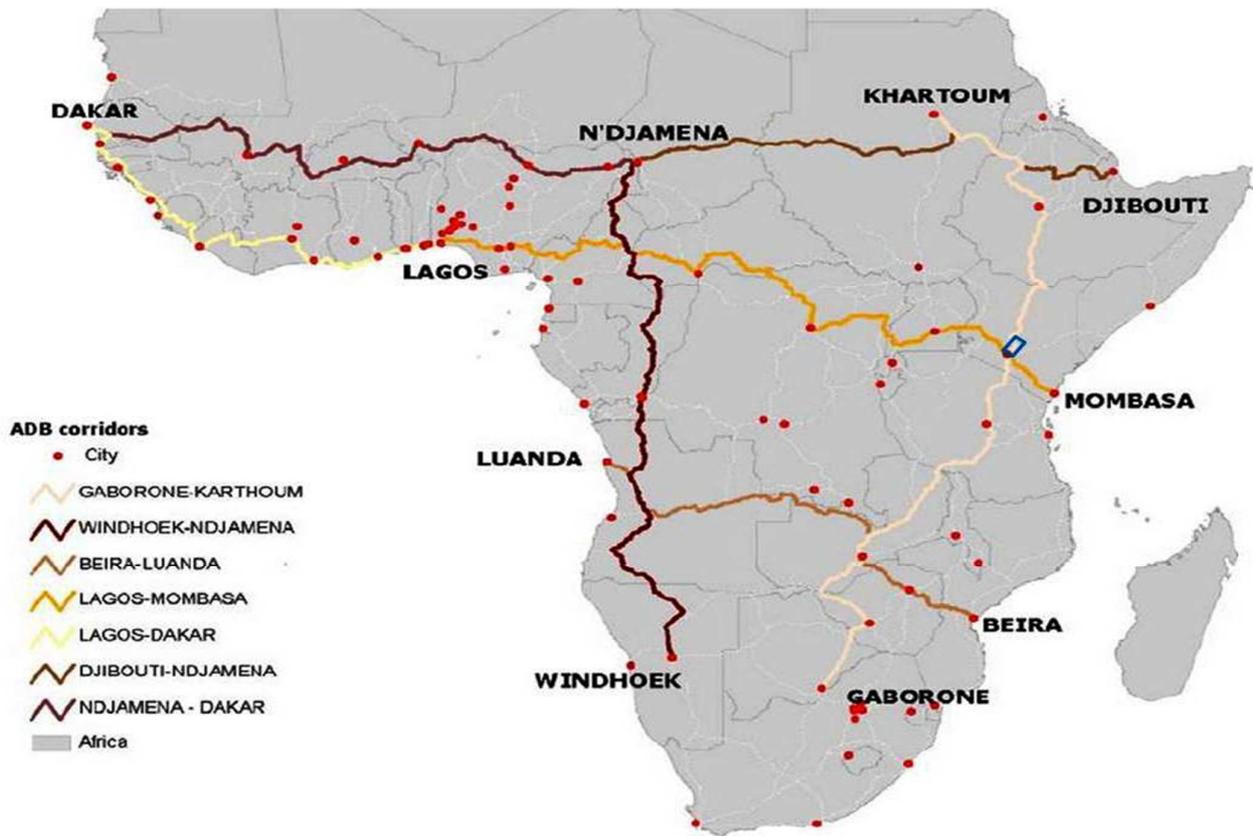
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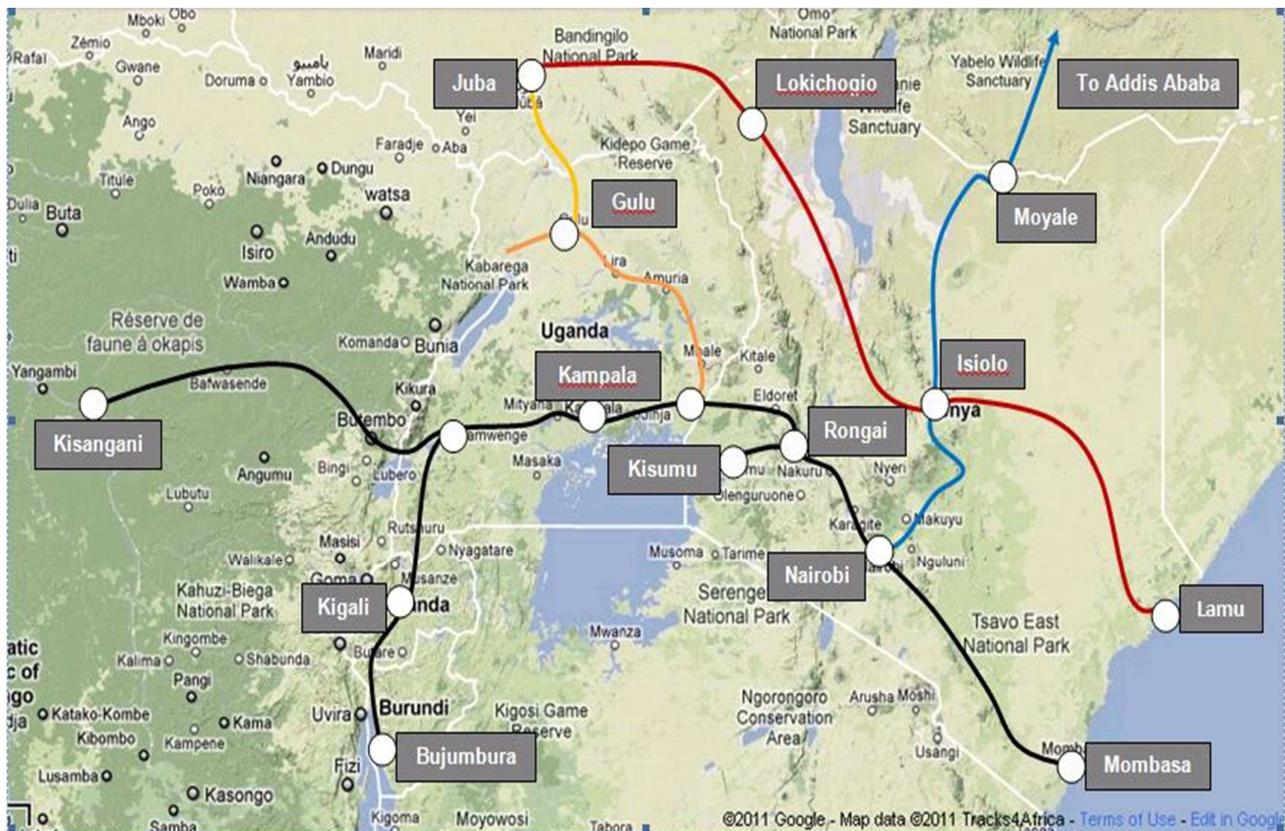
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PRINCIPLES OF MODERN CONCESSION LAWS (MCL)

- MCL should be based on clear policy for PPP
- MCL should create a sound legislative foundation for concession.
- MCL should provide clarity of rules.
- MCL should provide a stable and predictable concession legal framework.
- should promote fairness, transparency and accessibility of concession rules and procedures.
- .

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PRINCIPLES OF MODERN CONCESSION LAWS (MCL)

- should be consistent with the country's legal system and particular laws.
- should allow for negotiability of concession agreements
- should allow for enforceable court or arbitrations
- should allow for state undertakings and guarantees.
- should accommodate security interests

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EMERGING ISSUES

- ROADSIDE PRONOUNCEMENTS
- HINT OF OPACITY – COULD BE CORRUPTION?
- HIGH – HANDEDNESS
- OPPOSITION IS INCITING REBELLION –
- SABRE RATTLING - MERCUTIO

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GOING FORWARD

- We need to develop systems that adhere to the laws and regulations. From time to time we hear on TV or on radio that Government has awarded such and such a contract to so and so.
- Upon further examination, it is noted that the tendering process never happened.
- There was no competitive bidding, and makes it impossible to assess the value for money that is provided for in the legislation. This suspicious, even when it is being done with good intentions, why not follow the law?.

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