

**A POLICY ANALYSIS OF THE GAUTRAIN PUBLIC-PRIVATE PARTNERSHIP IN
SOUTH AFRICA**

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Declaration

I, Edith Wakondiye Chikagwa, declare that:

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DEDICATION

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Your words of wisdom still pertinent

Fondly remembered

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ABSTRACT

The emergence of the New Public Management in the 1980s saw the introduction of several forms of governance aimed at improving efficiency and effectiveness in government. Public Private Partnerships (PPPs) were such forms. However, the use of PPPs in government has received mixed reactions. In one breath PPPs are touted by some as a means of governance which can reduce costs, improve quality of service as well as enhance efficiency in the delivery of public service and infrastructure. In another, PPPs are criticised for compromising the crucial pillars of governance namely accountability, transparency and public participation. This study into in the Gautrain-Rapid-Rail-Link of South Africa reveals that PPPs may bring about both positive and negative outcomes as propounded by advocates and opponents of PPPs. This study further shows that if properly managed, factors that limit positive outcomes of PPPs may be reduced.

ACRONYMS AND ABBREVIATIONS

BBBEE	Broad-Based Black Economic Empowerment
COSATU	Congress of South African Trade Unions
DBSA	Development Bank of Southern Africa
DoT	Department of Transport
EU	European Union
MFMA	Municipal Finance Management Act
MSA	Municipal Systems Act
MSPs	Municipal Service Partnerships
NDP	National Development Programme
NPM	New Public Management
NSCL	National Conference of State Legislators
PFI	Public Finance Initiatives
PFMA	Public Finance Management Act
PPPs	Public-Private Partnerships
PRASA	Passenger Rail Agency of South Africa
SAICE	South African Institution of Civil Engineering
SANRAL	South African National Road Agency Limited
SAPs	Structural Adjustment Programmes
SPG	Strategic Partners Group
SPV	Special Purpose Vehicle
UNDP	United Nations Development Programme
UNESCO	United Nations Economic and Social Council

CHAPTER 1

INTRODUCTION

1.1 Background to the Study

Governments worldwide have adopted Public Private Partnerships (PPPs) as a governance approach in the delivery of public services (Skelcher, 2005: 34). The United Nations Development Programme (UNDP) defines governance as “the exercise of economic, political and administrative authority to manage a nation’s affairs” (UNDP, 1997: 9). According to Abdellatif (2003) the concept of governance

encompasses the functioning and capability of the public sector, as well as the rules and institutions that create the framework for the conduct of both public and private business, including accountability for economic and financial performance, and regulatory frameworks relating to companies, corporations, and partnerships (Abdellatif, 2003: 5).

The 1980s saw the rise of New Public Management (NPM) paradigm which was premised on the grounds that through emulation of private sector principles in the formulation and implementation of government programmes, public service delivery can be improved (Bangura and Larbi; Larbi, 2006). PPPs (Public Private Partnerships) became a popular approach under NPM. Literature on PPPs indicates that the improved efficiency and effectiveness associated with PPPs derive from the flexibility, resource pooling and responsiveness that are conveyed in PPPs through private sector participation (McQuaid, 2000).

While several benefits such as cost savings, improved quality and improved efficiency (European Union, 2003; Skelcher, 2005; Burger, 2006) are touted to ensue from PPPs Teisman and Klijn (2002) and Greve and Hodge (2010) maintain that PPPs erode accountability, transparency and public participation which are the cornerstones of governance.

1.2 Objectives and Research Questions of the Study.

Against the mixed views which PPPs have received, this study aims to ascertain the merits and limitations of PPPs by examining the Gautrain PPP in South Africa. The objective is to provide a detailed description of this case study as well as establish a

thorough understanding of the origins and concept of PPPs; the legislative framework and the governance structure in which they operate in general and in a post-apartheid South Africa in particular.

The South African law defines PPPs as “a contract between a government institution and a private party, where the private party performs an institutional function and/or uses state property in terms of output specifications. Substantial project risk (financial, technical and operational) is transferred to the private party and the private party benefits through unitary payments from government budgets and/or user fees” (National Treasury, PPP Unit, 2007: 5).

The National Development Plan 2030 Our Future – Make it Work, South Africa’s current broad socio-economic policy document that guides development in South Africa, identifies PPPs as a core vehicle for service delivery and infrastructure development (National Planning Commission, 2012: 183).

This thesis has been organized around a number of research questions. The broad questions informing this study are:

- Where do PPPs originate from?
- What are the rationales for the establishment of PPPs?
- What types of PPPs are there and how are they implemented?
- What are the alleged benefits of PPPs?
- What critiques are leveled against PPPs?
- What is the legislative and policy framework for PPPs in South Africa?

The key questions that pertain to the Gautrain PPP are:

- What are the factors that have led to the use of PPPs in the transport sector in South Africa?
- What structures of governance have been set up to oversee the management of the Gautrain PPP?
- What benefits have been conceded in the Gautrain PPP?

- What critiques have been leveled against the Gautrain PPP?

1.3 The Significance of the Study

PPPs are notoriously controversial. The Gautrain PPP, for example, has been cited by some, such as the South African Institution of Civil Engineering (SAICE) (SAICE, 2011: 56) and the Gautrain Management Agency (Gautrain Management Agency 2013: 34) as a successful PPP. While Donaldson (2005) contends that the Gautrain has faced immense governance problems. The verdict remains open. This study aims to provide an analysis of the theoretical and conceptual underpinnings of PPPs as well as explore to what extent PPPs have been adopted in the South African context.

The Gautrain PPP is one of the biggest PPPs in South Africa with a project cost of R26 billion (Dachs, 2011: slide 10) as such it is an initiative which the public and the civil society in South Africa have followed with keen interest (Quintal, 2006; Brummer, 2012). This study is again timely because the Department of Transport (DoT) through the Passenger Rail Agency of South Africa (PRASA) has just called for the procurement of new rolling stock which has resulted in the Department's call for another concession (DoT, 2013: 60). Findings from this study could provide significant insight for any new PPP arrangements in the public transport sector.

1.4 Research Methodology and Methods

This study is a desktop research and entailed the summary, collection and analysis of existing research. Various sources of information were accessed to gather information. The research findings are based on an analysis of both primary and secondary sources of data. Primary sources included newspaper articles, press releases, government reports and strategic planning policies, government budgets and the Gautrain Management Agency's reports. For the general background on PPPs, academic books and journal articles were used. The legislative and policy framework for PPPs in South Africa was established by analyzing government legislation and policy documents. The National Treasury Department, and the Department of Transport provided ample strategic policy documents. Independent research institutions, such as the Human Science Research Council (HSRC), and more technical and scientific publications such as the Engineering News were also

consulted. Journals and newspaper articles provided valuable insight into the controversial debates surrounding the popularity/lack of support for PPPs in South Africa. These same sources provided information on the ongoing debates on the merits of the Gautrain PPP. The data gathered was then used to answer the identified research question.

1.5 Structure of the Dissertation

This dissertation has six chapters. Chapter 1 (this chapter) provides the objectives and research questions to be addressed in this dissertation as well as the significance and methodology of the research. Chapter 1 also provides the outline and the summary for each of the chapters making up this dissertation.

Chapter 2 examines the background of PPPs; the governance structure; financing mechanisms; and the defining characteristics of PPPs. Furthermore, the rationale; the types; the benefits and limitations of PPPs are discussed in this chapter.

Chapter 3 explores the South African experiences with PPPs. In so doing the chapter highlights the enabling legislative and policy frameworks for PPPs in South Africa and processes for PPPs.

Chapter 4 provides an overview of the administration of public transport in South Africa and the factors that have led to the use of PPPs in the sector.

Chapter 5 discusses the Gautrain-Rapid-Rail-Link project (Gautrain) which is one of the PPPs implemented in the transport sector in South Africa. The Gautrain PPP is used as a case study to investigate the arguments posited for and against PPPs.

The last chapter, Chapter 6, highlights the outcomes to date of the Gautrain PPP. The chapter also offers some suggestions that may promote the successful attainment of the objectives of PPPs in South Africa.

CHAPTER 2

CONCEPTUALISING PPPs

2.1 Introduction

This chapter explored the different ways in which PPPs are conceptualized. PPP definitions by selected governments and scholars are used to demonstrate the various meanings PPPs are associated with. The chapter also underscores the defining characteristics of PPPs. The chapter further traces the origins of PPPs and the manner in which they have evolved over the years. Discussion of key benefits and limitations of PPPs are an integral part of the chapter. The chapter concludes by highlighting of mechanisms that can contribute to the successful formulation and implementation of PPPs.

2.2 What are PPPs?

Bangura and Larbi (2006) and Kamarck (2007) points to the New Public Management (NPM) paradigm as the originator of PPPs and further suggest that inefficiencies and ineffective public service delivery prompted NPM principles. While Linder (1999); Teisman and Klijn (2002) and HDR (2005) agree that PPPs are a form of governance, they have diverging views on what amounts to PPPs and whether PPPs are new forms of governance. This section will explore these suggestions and views in detail.

According to Bangura and Larbi (2006) and Kamarck (2007) PPPs which 'may be seen as new forms of governance' (Teisman and Klijn, 2002: 197) may be traced to NPM, a movement that started in the 1980s. Bangura and Larbi (2006) and Kamarck (2007) claim that discontent by the public with the way government delivered public services led to the development of NPM concept. Bangura and Larbi (2006) and Kamarck (2007) contend that government operations prior to 1980 were characterized by delays and inadequate services. According to Bangura and Larbi (2006) and Kamarck (2007) the situation arose from rigid adherence to rules; processes and domination of the State in the provision of public services. Consequently, not only was service delivery not cost-effective but did not also have the effects desired by the public (Bangura and Larbi, 2006; Kamarck, 2007).

Kamarck (2007) argues that poor service delivery by the government was in sharp contrast to the service delivery by private sector. Kamark expounds that through utilization of technology and flexibility in serving clients the private sector provided services which were less costly and less time consuming to access (Kamarck, 2007: 1). Bangura and Larbi (2006) and Kamarck (2007) claim that it was the better service delivery obtaining in the private sector that led to the belief that the structure and principles of private sector were worth emulating if service delivery in government was to improve. The reforms introduced to copy the private sector structure and principles were thus collectively christened NPM (Bangura and Larbi, 2006; Kamarck, 2007).

Technically Hood (1991) and Pollitt (1993) cited in Larbi (2006) define NPM as “an ideological thought-system based on ideas generated in the private sector and imported into the public sector” (Larbi, 2006: 26). According to Larbi, the private sector ideas center on two principles. The first principle is ‘managerialism’ which focuses on delegation of management duties and recognition of the importance of results of services over processes. Use of business ideas of competition, contracting and user-responsiveness in the delivery of public services constitute the second principle (Larbi, 2006).

While some countries such as United Kingdom and United States of America have followed NPM as a matter of policy change or ideology (Skelcher, 2005), for other countries compliance with international requirements has been the main driving force. For example, Hall (2008) observes that some countries in Europe embrace NPM principles in line with the Maastricht Treaty of 1992 which restricts government borrowing (Hall, 2008: 4). Similarly the World Bank Public Sector Reform: What Works and Why? Evaluation Report of 2008 concludes that developing countries have pursued NPM as a consequence of pressure from international donors. According to the Report, the attachment of access to loans to the implementation of Structural Adjustment Programmes (SAPs) compelled governments to put into practice SAPs. SAPs which were introduced by World Bank in the early 1980s to assist in the stimulation of the economies of the developing countries encapsulate NPM principles such as reduction of the role of the public sector in the delivery of

public services and the promotion of market competition in the delivery of public services (World Bank, 2008).

Manning (2001) states that NPM “provides a menu of choices rather a single option” for “getting things done better” in government (Manning, 2001: 298). It is against this background of a variety of NPM choices that PPPs are embedded. The European Commission (EU) (2003) attests that PPPs under the banner of NPM are just but one of the means of governance that the public sector is using to tap “private sector operational efficiencies” (EC, 2003: 6).

There are, however, diverging views on what constitutes a PPP and on whether PPPs are totally new forms of governance or not.

Teisman and Klijn (2002) claim that most of the collaborations currently called PPPs actually are contracting out schemes that governments have ordinarily used to procure services from the private sector. Teisman and Klijn argue that the ideal PPPs assimilate joint decision making between the government and the private party to a PPP from the identification of a policy problem through to the implementation of a solution. Teisman and Klijn contend that most public sector and private sector collaborations tagged as PPPs, such as the Public Finance Initiatives (PFIs) of the United Kingdom, lack this characteristic and therefore do not qualify to be called PPPs (Teisman and Klijn, 2002: 198).

Linder (1999) avows that PPPs are not new schemes of governance but rather veiled privatization schemes. Privatization were schemes of governance implemented by governments in the 1980s and were aimed at reducing the activities directly provided by government (Kamarck, 2007; World Bank, 2008). (HDR (2005) define privatization as “the shifting of whole functions and responsibilities over assets from a public entity to a private entity” (HDR, 2005: 1). Linder explains that the negativity which privatization received in the 1980s as result of loss of jobs and corruption has prompted governments to restyle privatization as PPP (Linder, 1999: 89).

HDR (2005) maintains that PPPs are neither contracting out schemes that have always been used in government nor privatization but rather new forms of

governance. HDR affirms that in PPPs unlike in contracting out, the private sector assumes more risk on capital and resources invested. HDR adds that in privatization government relinquishes all its responsibilities over an asset to the private sector in full and often permanently while in PPPs government retains ownership of assets (HDR, 2005: 1). On that basis, HDR contend that PPPs are new forms of governance (HDR, 2005).

Hodge and Greve (2007) observe that PPPs may be viewed as both new forms of governance and old forms governance. Hodge and Greve suggest that the determining feature to classify PPPs as new or old forms of governance should be the purpose to which the PPP arrangement will be put (Hodge and Greve, 2007: 548).

It seems then that the core objective of NPM is to make the public sector more efficient and more effective. Further, it may be concluded that NPM reforms aim at eliminating the top-down and centralized means of government through the introduction of flexibility and competitiveness in government by importation of private sector ideas and the private sector itself into public service delivery. And PPPs emerge as a subset within the NPM paradigm.

2.3 Governance Structure for PPPs

Means of governance require rules, institutional arrangements and processes to carry them (Diamond, 1999).

According to Abdellatif (2003), governance

encompasses the functioning and capability of the public sector, as well as the rules and institutions that create the framework for the conduct of both public and private business, including accountability for economic and financial performance, and regulatory frameworks relating to companies, corporations, and partnerships (Abdellatif, 2003: 5).

In other words, governance is manifested through rules, institutions and processes that government puts in place to guide the manner the government as well as the non-state actors carry out their business. Accordingly, PPPs need policy and

regulatory frameworks; institutional structures as well as processes to enable their application (World Bank, 2011: 15). The purposes that policy and regulatory frameworks; institutional structures as well as processes serve in PPPs are discussed below.

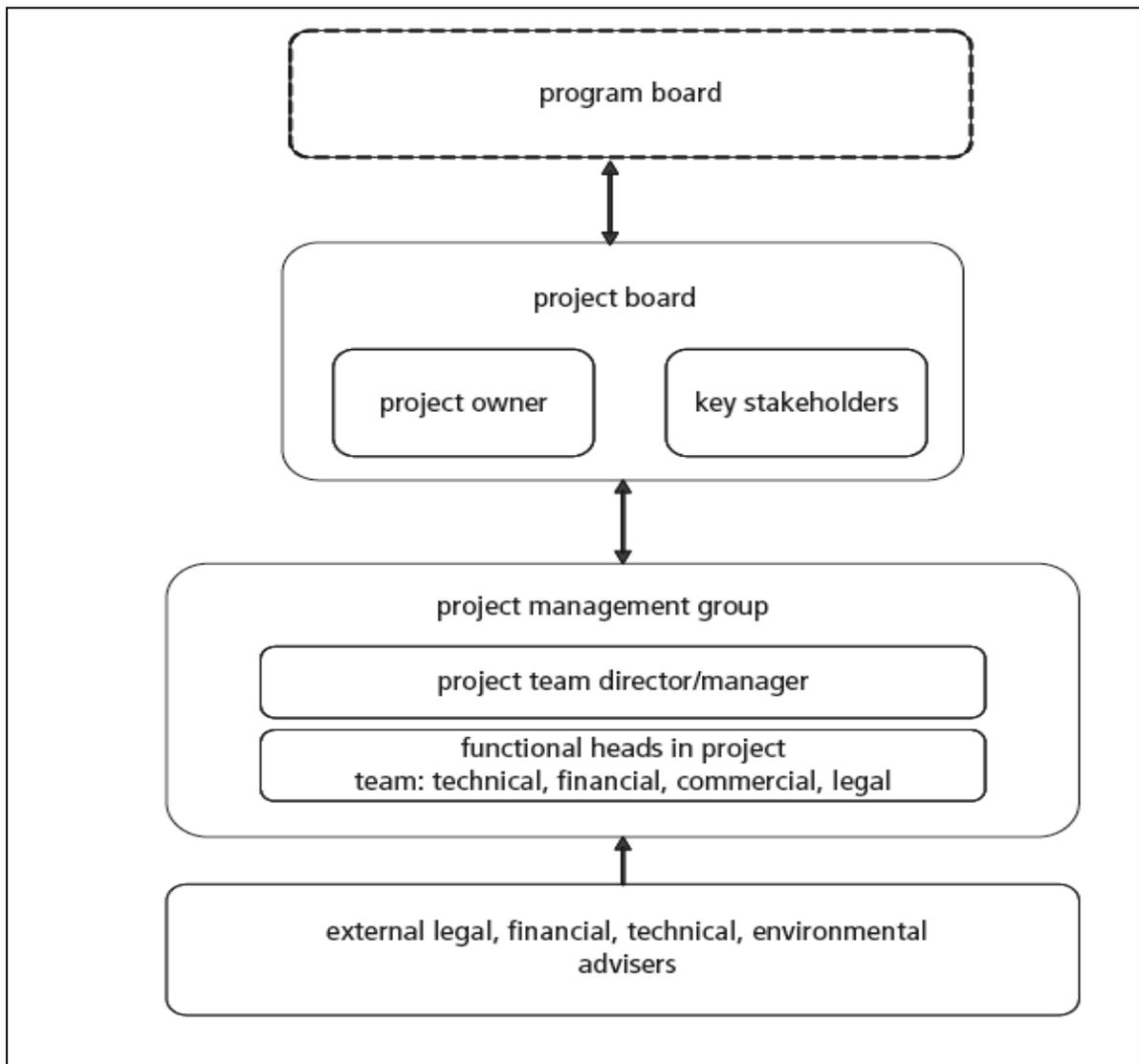
2.3.1 Legislative and Policy Framework

The World Bank (2011) claims that the legislative and regulatory frameworks on PPPs enable government institutions to enter into partnerships with private sector institutions for the provision of services originally provided by government only and enable the private sector to collect user fees. The World Bank adds that policy frameworks provide guidelines for implementation of PPP projects as well as mechanism for monitoring (World Bank, 2011: 17). For example, in America 38 states had enacted laws enabling procurement through PPPs by 2010 (National Conference of State Legislatures (NCSL), 2010: 15). And in 2010 the government of India developed user guide which provides directions on PPPs decision making processes for infrastructure projects (Government of India, Ministry of Finance, 2010).

2.3.2 Institutional Structures

According to World Bank (2011) some of the key government institutions and structures in the governance of PPPs are the PPP Unit, project board and project management team. The World Bank claims that while the PPP Unit provides assistance to governments departments in the preparation of PPP projects; approves PPPs and develops policy documents on PPPs, the actual day to day management of the PPP is carried out by a project management team with delegated powers from a board. Figure 2.1 below shows the governance structure of a PPP.

Figure 2.1: PPP Project Governance Structure



Source: World Bank, 2011: 81

Figure 2.1 illustrates that the project board is the link between the programme board and the project management group. The structure intertwines the programme board; project board, project management group and a set of advisers.

In addition, the World Bank notes that the governance structure of PPPs may have the presence of policy level committee comprising of politicians. According to the World Bank the policy committee selects projects to be procured through PPPs; monitors PPP projects and provides PPP guidelines on financing and approval. According to World Bank, India has such a committee. Furthermore the World Bank points out that the PPP governance structure may integrate project advisors in the

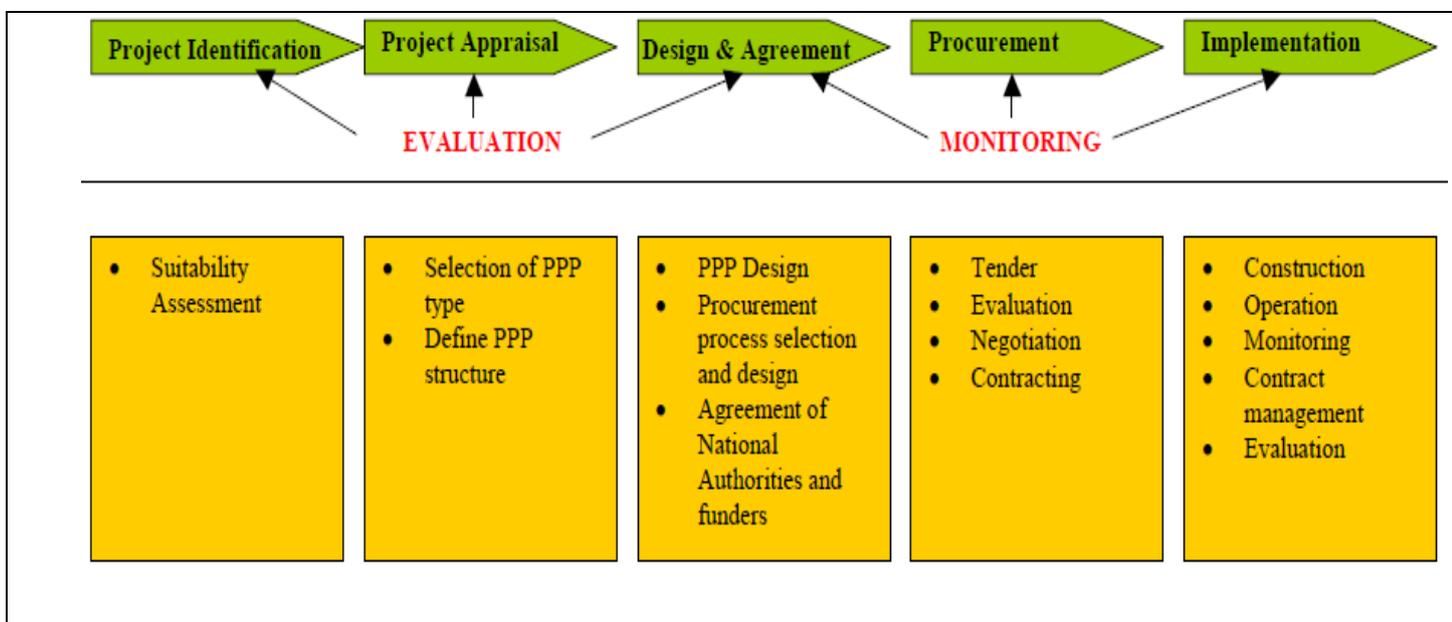
areas of technical; financial; environment; legal and social impact and provide advice to the PPP project teams. For instance, Jordan used the International Finance Corporation in 2007 as advisors in the expansion of Queen Alia International Airport (World Bank, 2011).

According to Greve and Hodge (2010) PPPs also entail creation of special purpose vehicle (SPV) to link up government departments on the one side and private sector institutions on the other. Greve and Hodge claim that government departments may include ministries and agencies connected to the PPP project while the PPP private party to the PPP together with its partners; the financiers and the investors make up private sector side (Greve and Hodge, 2010: 154).

2.3.3 Processes and Project Cycle

The EU (2003) highlights the key processes in PPPs as project identification; project appraisal; project design and agreement; procurement and implementation as shown in Figure 2.2 below.

Figure 2.2 PPP Project Cycle



Source: European Union, 2003: 76

The project identification; project appraisal and project design and agreement processes involve evaluation of the feasibility or viability of the PPP; infrastructure, risks, costs, benefits and type of PPP to be associated with the PPP whereas

procurement and implementation processes entail monitoring of the PPP to ensure achievement of value for money (EU, 2003: 75).

PPP governance therefore call for establishment of regulatory and policy frameworks; institutions and processes to facilitate their carriage.

2.4 PPPs Financing

The World Bank (2011) specifies three main means of financing in PPPs and these are project finance or limited recourse finance; corporate finance and public/private funding. In project finance, the World Bank points out that the private party sources funding from investors who may be contractors within the PPP or third party financial investors as well as through borrowing from banks. With respect to corporate finance, the World Bank observes that the private party finances the PPP project through funds from money lenders such as banks. In relation to public/private funding, according to World Bank, the PPP project is jointly financed by the government and the private party. The World Bank claims that the sources of government funding may include government revenue or loans from national, regional or international lending institutions while the private sector may use sources described in project finance and corporate finance (World Bank, 2011).

PPPS implementation may therefore benefit from three main sources of funding.

2.5 Defining Characteristics of PPPs

PPPs embody certain characteristics that identify them and therefore separate them from other types of public service and infrastructure delivery. This section will assess these defining characteristics. The section will, however, commence with definitions ascribed to PPPs by different bodies.

According to McQuaid (2000) the meaning a PPP takes in any given situation is shaped by historical, economic, social and political factors (McQuaid, 2000: 10). McQuaid adds that the purpose, variety of partners and their roles and means of implementing the PPP further impact on the definition of PPPs (McQuaid, 2000).

In the United Kingdom, PPPs are largely prompted by economic and political factors such as reduction on government borrowing and inclusion of the private sector in

policy implementation (Greve and Hodge, 2010: 151). The British government therefore defines PPPs as

‘arrangements typified by joint working between the public and the private. In their broadest sense they can cover all types of collaboration across the private-public sector involving collaborative working together and risk sharing to deliver policies, services and infrastructure’ (Her Majesty’s Treasury quoted in OECD, 2011: 4).

Countries in Africa use PPPs mostly to meet demands for public services (United Nations Economic and Social Council (UNESCO), 2005: 1), just as is the case in Latin America and the Indian sub-continent (Skelcher, 2005: 348). One could therefore argue that countries in Africa, Latin America and the Indian sub-continent the definitions for PPPs tilt towards defining PPPs according to their purpose. For example, the Republic of Ghana defines PPPs as “a contractual arrangement between a public entity and a private sector party, with clear agreement on shared objectives for the provision of public infrastructure and services traditionally provided by the public sector” (Republic of Ghana, Ministry of Finance and Economic Planning, 2011: 2).

Definitions of PPPs do not only apply across different governments but among different authors as well. Klijn and Teisman (2000: 95) define PPPs as “forms of co-production, cooperation, in which the parties realize products, services or policy outcomes jointly”. For Grimsey and Lewis (2005) “PPP are arrangements whereby private parties participate in, or provide support for, the provision of infrastructure, and a PPP project results in a contract for a private entity to deliver public infrastructure-based services” (Grimsey and Lewis, 2005: xiv).

Despite a wide variety of definitions for PPPs, closer examination of most of the definitions reveals a number of common characteristics that define PPPs. Foremost, it may be apparent from the definitions that PPPs are collaborative arrangements involving the public sector and the private sector that end in the joint provision of public infrastructure or service. Other key defining characteristics of PPPs that may be discerned from the definitions are its participants; the decision making process;

the contractual agreements; and the sharing of risk. Each of these will be discussed below:

Participants: Just like any partnerships, PPPs involve collaboration of one or more partners but as it may be obvious from the different conceptualization of PPPs discussed above, one of them ought to be a public sector institution and the other private. Nevertheless, the established arrangements within PPPs may necessitate courting in of other participants. Bagal (2008) affirms that the various agreements in the PPPs gives rise to the involvement of a wide array of other participants such as “project sponsors, investors, operators, insurers, suppliers, contractors and sub-contractors” (Bagal, 2008: 24). PPPs may therefore bring together a diverse of participants in the delivery of public service.

Resource Sharing: Another aspect that may be gleaned from the PPP definitions is the resource-sharing amongst participants. Teisman and Klijn (2002) observe that as result of competition and increased demand for both public and private services, resource interdependency between public sector and the private sector has increased (Teisman and Klijn, 2002: 198). As Heinz (2005) observes, the public sector may depend on the professional competences and capacity of the private sector to deliver infrastructure while the private sector may depend on the public sector assets to make profit (Heinz, 2005: 4). It may therefore be concluded that participants in PPPs depend on the resources of each other to achieve organizational goals and it is this resource interdependency that sometimes plays a pivotal role in motivating organizations into partnerships.

Joint decision making: Joint decision making appears to be yet another issue in PPPs. Joint decision making in PPPs may manifest in the joint problem specification and solution to be achieved through PPPs by government and a private sector institution. Grimsey and Lewis concur that PPPs “need to be long term and relational” (Grimsey and Lewis, 2005: xv). In other words, “PPPs are closely-knit, intensive and entail combined efforts in resolving policy matters” (Teisman and Klijn, 2002: 204).

Contractual agreements: Bagal (2008) affirms that contractual agreements convey legal, financial and operational principles that then guide PPPs. Bagal adds that the

PPP agreements spell out responsibilities of each partner and performance levels expected of the private partner (Bagal, 2008: 24). HDR (2005) enjoins that contract agreements afford shared use of skills and assets belonging either to the public sector or the private sector for delivery of public services or infrastructure (HDR, 2005: 3). Bagal (2008) cites concession agreements as an example of PPP contractual agreement (Bagal, 2008: 24)

Risk sharing: Another noteworthy feature for PPPs is sharing of risks related to the PPP between the public sector and the private sector. EU defines risk as “any factor, event or influence that may threaten the successful completion of a project in terms of time, cost and quality” (EU, 2003: 50). According to EU the thumb rule for allocation of risks in PPPs is that “the party best able to manage the risk should be allocated the risk” (EU, 2003: 50). The party allocated a risk is therefore responsible for solving potential problems in case of need. Examples of risks include ‘revenue risk which may arise from poor forecasting of PPP project revenues; construction risk which may arise from unknown geological conditions and public acceptance risk which may emanate from non-acceptance of the project by the local communities’ (EU, 2003).

Bagal (2008) claims that some PPP projects are by nature amenable to risks. Bagal cites capital intensive projects and urban construction projects as such risk prone-projects (Bagal, 2008: 24-25). Bagal explains that the vulnerability of capital intensive and urban construction projects arise from their complexity and high debt equity ratio; as well as shifting of utilities and land acquisition components the projects may entail respectively.

PPPs may therefore be differentiated from ordinary partnerships by the participants involved; interdependency on resources; joint decision making; contractual agreements and risk sharing by the public sector and the private sector that eventually lead to the delivery of public services or infrastructure.

2.6 Rise and Rationale for PPPs

While the concept of PPPs is not new, the period between 1945 and 1980 witnessed decreased use of PPPs. PPPs only regained prominence in the 1980s. Various

rationale for the re-emergence of PPPs are put forward. The reasons are need to access private funding; to improve public service and infrastructure delivery; to access private sector competencies and capacities and inescapability of interdependency between organisations. These rationale will now be discussed.

According to Grimsey and Lewis (2005) the concept of PPPs is not new. Grimsey and Lewis argue that PPPs were in use as early as 1638 and cite the funding and construction of the de Briare canal in France in 1638 which was accomplished through a PPP as an exemplar (Grimsey and Lewis, 2005: xiii).

The decline in the use of PPPs may be detected between 1945 and 1980 when provision of public services came to be regarded as the primary responsibility of the public sector. According to Bangura and Larbi (2006) at the height of the welfare state, after World War II the paradigm was one of highly interventionist state. The state took control of developments and most assets and services were nationalized. This view was mostly prevalent in Europe. The emergence of NPM in the late 1970s and 1980s, nonetheless, meant an end to the interventionist state as fiscal crisis alerted governments to the impossibility of a welfare state. NPM therefore re-opened public service provision through PPPs albeit in modified version (Bangura and Larbi, 2006).

EU (2003) affirms that the rekindled interest in PPPs arise from the need to access private funding in the face of public financial limitations faced by the majority of governments. The centralization of public service and infrastructure delivery prior to 1980 led to financial crisis (Bangura and Larbi, 2006). Coupled to that, different exigencies, for instance, Maastricht Treaty and SAPs limited public spending. Thus in view of the public financial constraints government have turned to PPPs to access private funding to support provision of public services and infrastructure (EC, 2003). According to Foster and Briceno-Garmendia (2010) Africa alone require approximately \$93 billion annually to meet public infrastructural needs against an available \$45 billion that the governments in Africa are able to raise every year from public funding sources for delivery of public services (Foster and Briceno-Garmendia, 2010: 6-8). It is therefore such budget deficits that have prompted use of PPPs.

Harris (2003) claims that governments' involvement of the private sector in the delivery of public services and infrastructure is motivated by the need to improve access to public infrastructure. Harris points out that the monopoly of government institutions in the provision of public services widespread after 1939 - 1945 world war led to inefficiencies in the delivery of public services and infrastructure now evident in the large number of the public without access to public infrastructure and the significant infrastructure in need of maintenance, especially in developing countries. Harris therefore argues that PPPs are being employed to enable governments increase access and improve public services and infrastructure (Harris, 2003: 1).

According to Heinz (2005) the driving force behind PPPs is to enable the public sector "access professional competences and capacities of the private sector" (Heinz, 2005: 4). Harris (2003) adds that the efficiency of the private sector is derived from motivation to make profit, clear objectives and rational pricing (Harris, 2003: 5). Kamarck (2007) affirms that the private sector is regarded to be efficient and effective as a result of flexibility, innovation and measurement of performance that typify the conduct of private sector business (Kamarck, 2007). It is therefore argued that by integrating the private sector in the delivery of public service and infrastructure there is anticipation that the public sector will learn from the private sector and therefore enable the public sector improve service and infrastructure delivery (Harris, 2003; Heinz, 2005; Kamarck, 2007).

Klijn and Teisman (2000) contend that in the network society in which public and private sector organizations operate, PPPs are inevitable. O'Toole quoted in Agranoff and Mcguire (1999) defines networks as "structures of interdependence involving multiple organizations or parts thereof, where one unit is not merely the formal subordinate of the others in some larger hierarchical arrangement (Agranoff and Mcguire, 1999: 20). Klijn and Teisman (2000) opine that resources and knowledge that organizations, including government, require to fulfill goals are dispersed in different organizations as such cooperation with other actors is unavoidable if projects, proposals and outcomes are to be accomplished (Klijn and Teisman, 2000: 90). Thus it is as a result of the interdependency of organizations that PPPs have become useful.

PPPs are therefore embraced for a variety of reasons that aim to improve the operations and the provision of public services and infrastructure.

2.7 Types of PPPs

PPPs may be applied using several PPP options. This section will discuss these PPP types and highlight the factors that influence decisions on the type of PPP to be used in particular projects in the transport sector. The section will also highlight instances where each of the PPP types may be applied in the transport sector.

According to World Bank Toolkit for Selecting an Option for Private Participation of 1997, PPPs may be applied using various types. The different types of PPPs are service contract; management contract; lease; concession and build-own-operate contracts (BOO) and divestiture. BOO contracts may be applied with different modifications such as build-own-transfer (BOT) and design-build-finance-operate-transfer (DBFOT) among various models of contracts (Alfen, H.W. et al, 2009: 18). Each of the mentioned PPP types are differentiated from the others by asset ownership; operations and maintenance; capital investment and commercial risk allotment arrangements between the public sector and the private sector. Table 2.1 below shows the different types of PPPs and their corresponding arrangements.

Table 2.1: Types of PPPs

Option	Asset Ownership	Operations and Maintenance	Capital Investment	Commercial Risk	Duration
Service Contract	Public	Public and Private	Public	Public	1-2 years
Management Contract	Public	Private	Public	Public	3-5 years
Lease	Public	Private	Public	Shared	8-15 years
Concession	Public	Private	Private	Private	25-30

					years
Build Operate Own Contracts (BOO)	Private and Public	Private	Private	Private	20-30 years
Divesture	Private or private and Public	Private	Private	Private	Indefinite (may be limited by license

Source: World Bank, 1997: 3

Table 2.1 demonstrates that PPP types may also be distinguished from each other by the period of the contract. For example, service and management contracts have relatively shorter contract periods than lease, concession and BOO contracts. In addition each of the PPP type requires different performance levels from the private party and places different responsibilities on government. The performance levels and government responsibilities are discussed below:

Service Contract: In service contract the private party to the PPP provides technical expertise in the operation of a public service or a facility. However, government retains management and investment responsibilities over the service or facility. Besides, the private party is paid a fee for the provision of the technical expertise (World Bank, 1997; EU, 2003). Examples of service contracts may include provision of legal services during disputes with stakeholders such as construction contractors.

Management Contract: In management contract the private entity is responsible for the operation as well as management of a public service or infrastructure while government controls decisions regarding new investment in the services or the infrastructure. Government pays the private entity a fee for the operation and the management of the public service or facility (World Bank, 1997; EU, 2003). For instance, maintenance of facilities and equipment such as signaling facilities in rail transport may constitute management contract type of PPP.

Lease: With regard to lease, the private party rents a facility belonging to government in order to make profit. Under lease agreements government is obligated to maintain and expand the facility in case of need, nonetheless, the private party may undertake specific repairs. In return for use of the public facility, the private party pays government rental fees (World Bank, 1997; EU, 2003). Examples of lease agreements include lease of port facilities.

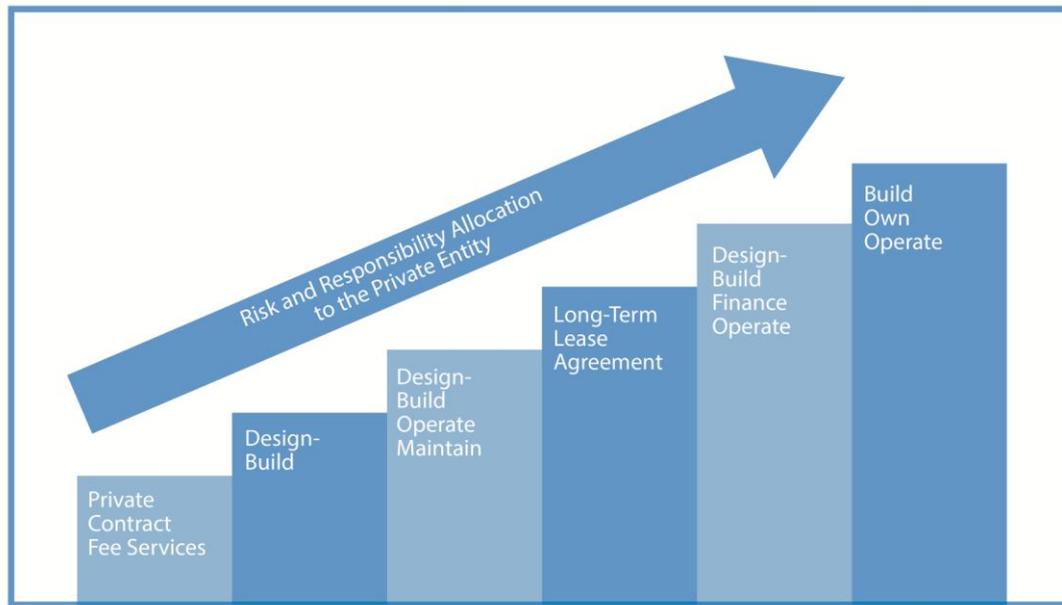
Concession: In respect of concessions, the private party finances and operates a public facility. During the contract period the private party recovers its capital and makes some profit through user fees. Maintenance of the facility becomes the responsibility of the private party while government assumes regulatory role (World Bank, 1997; EU, 2003). Concession agreements for the construction and operation of rail links may constitute instances of concession PPP options.

BOO: In BOO contracts, the private party has the responsibility of designing, constructing and operating an asset or assets for government. At the expiry of the contract, the asset reverts or becomes governments'. In BOO contracts the role of government is to ensure that the asset is constructed according to the specifications of government (World Bank, 1997; EU, 2003). Examples of BOO contracts are designing, construction and operation of roads.

Divestiture: Entail sale of government shares or assets to a private party. Divestiture may be full or partial. In full divestiture the private party assumes full and permanent ownership of a government facility while in partial divestiture government has partial ownership in the management of the facility (World Bank, 1997; EU, 2003). Examples of divestiture are the sale of airports.

Besides the varying performance levels the PPP options apportion on the private party, each PPP distributes different degrees of risk to the private party as shown in Figure 2.3 below.

Figure 2.3 PPP Risk Distribution



Source: HDR, 2012: 3

From Figure 2.3 above it may be argued that the risk associated with a PPP type is interrelated with the duration of the PPPs and the longer the PPP contract the more risk the private party assume. For example, long term contracts such as BOO carry more risks than service contracts.

Under the section on Defining Characteristics of PPPs, historical, economic, social, political factors and purpose, variety of partners and means of implementation a PPP were highlighted as factors which influence the option of PPP to be applied in given situations. However, in the transport sector, according to EU (2003) the key determining factors for the choice of PPP type are size and scope of the project; the degree of risk transfer required and the extent to which user tolls may be applied (EU, 2003: 26). The EU expounds that concessions are best suited to situations such as major road projects where financing, collection of user fees and risk of traffic demand is borne by the private sector while BOT contracts work well in cases where government finances the project and bear the risk of demand and the private sector receives user fees (EU, 2003: 27).

PPPs therefore come in different types and the roles played by government and the private party as well as the risks assumed varies with each option. In respect to

PPPs in transport, magnitude of the project; extent of risk transfer to the private party and toll collection arrangements influence the PPP type applicable.

2.8 Benefits of PPPs

The literature on PPPs points out to a number of benefits of PPPs. The main benefits or advantages identified by various authors are cost savings; improved quality; rapidity; efficiency and economic development.

(i) Cost savings

Skelcher (2005) claims that cost-saving is underlined as one of the benefits of contracting-out in studies conducted on the scheme. Skelcher cites studies conducted by Savas in 2000 which found cost savings of up to 40% in contracting out schemes in United States government services. Similarly, a survey conducted by Domberger and Jensen in 1997 established cost savings of around 20% in the United Kingdom and Australia as a result of competitive tendering (Skelcher, 2005: 359). Management contracts have the potential to lead to the realization of cost savings since the private sector entity may use own resources such as funding and human resources to fulfill contractual agreements thus saving government from paying salaries.

(ii) Improved Quality

EU (2003) maintains that PPPs improve the quality of public services and infrastructure. EU argues that payment based on attainment of performance standards; competition in the identification of PPP private partners by government on the one hand and better supporting assets and novelty by the private party on the other hand stimulate provision of improved services and infrastructure (EU, 2003: 15). The World Bank in a Policy Working Paper on Urban Transport for 2014 contend that scrutiny of PPP projects by institutions with a stake in the PPP such as finance lenders and investors further enhance quality of PPPs. The World Bank argues that finance lenders and investors are wary of their capital invested in projects and will therefore ensure that that the projects achieve quality to avoid loss of the capital (World Bank, 2014: 4). With reference to the PPP options cited above,

service contracts may lead to improved quality as a result of technical expertise provided by the private sector firm.

(iii) Rapidity

HDR (2012) contend that projects under PPPs are completed faster than through purely government process. HDR notes that the private sector institutions are free from some of the procedural and regulatory trappings such as financial and procurement procedures that often delay progress of projects in governments (HDR, 2012: 3). The World Bank (2014) adds that the risks that the private parties carry in PPP projects act as further inducements for private parties to work within time and budget. The World Bank notes that private parties are apprehensive of costs that may arise from working outside schedule and budget hence will endeavor to work within schedule and budget (World Bank, 2014: 4). Gosling cited in Burger (2006) in 2004 indicated that 76% of the PFI projects were finished on time compared to 30% projects procured through ordinary government procurement methods (Burger, 2006: 3).

(iv) Improved Efficiency

Burger (2006) argues that the private party to PPPs brings two types of efficiency to PPP projects. The two types of efficiency are technical efficiency premised on the notion of 'minimum inputs but maximum outputs' and x-efficiency based on the principle of 'prevention of wasteful use of inputs'. Burger contend that the private party is compelled to be efficient in PPP projects as a result of technical and operational risks assumed in PPPs. Efficiency leads to cost savings and reduced time for completion of projects' (Burger, 2006: 2). BOO are likely to benefit from improved efficiency because of the construction and operational responsibilities that the private party acquires in PPP projects.

(v) Economic Development

According to Chollar (1979) and Friesecke (2006) PPPs enhance economic development. Chollar and Friesecke cite the effect PPPs have in uplifting economic viability of urban centers consequently attracting investment and creation of job opportunities as well as other income generating activities. Chollar asserts that the

government of the United States specifically introduced a “negotiated investment strategy” which, among several things included pooling of public and private resources to improve the viability of the cities that were declining (Chollar, 1979: 163). Similarly in 2006 Germany had 100 PPPs in real estate projects in municipalities (Friesecke, 2006: 1). According to the two authors, the introduction of PPPs not only improved the cities but also raised the economic status of the residents in the cities (Chollar, 1979; Friesecke, 2006).

Hodge and Greve (2007) caution that the benefits derived from PPPs do not apply in each PPP project uniformly. Hodge and Greve point out that an assessment of research findings on outcomes indicates instances where PPPs have been successful and instances where their results have not been successful. Therefore the benefits that PPPs may bring to the public sector should not be taken for granted (Hodge and Greve, 2007: 553).

2.9 Limitations of PPPs

There are a number of key limitations of PPPs identified in the literature. These are: accountability; transparency; responsiveness; fraud, corruption and undue influence. These will be discussed below:

(i) Accountability

Teisman and Klijn (2002) argue that PPPs are poor on accountability. Teisman and Klijn observe that the public sector and the private sector operate in different contexts and therefore are answerable to different constituencies. The public sector is accountable to the voting public through, for example, legislatures. On the other hand the private sector is responsible to an appointed board of directors and/or its shareholders. When the public sector and the private sector are brought together under the PPPs umbrella, accountability becomes complex. The day-to-day activities of the private partners are not directly accountable to the legislature. In that respect therefore PPPs fail to meet accountability tenets of the public sector (Teisman and Klijn, 2002).

(ii) Transparency and Public Participation

Greve and Hodge (2010) add that PPPs fall short on transparency. Greve and Hodge contend that as a result of the technical nature of PPPs government often engage consultants to develop and negotiate PPP contracts. Consequently PPP meetings are dominated by the consultants; departments intending to apply the PPPs and investors leaving out the public and other interested stakeholders (Greve and Hodge, 2010: 154). In fact a survey by state departments of transport in America on PPPs reported by NCSL (2010), found that 30% respondents were concerned with lack of transparency in PPPs (NCSL, 2010: 12).

(iii) Institutional Capacity

Furthermore, according to Bagal (2008) the other factor that impedes implementation of PPPs is lack of institutional capacity in government departments. Bagal argues that the manpower in government departments not only lack skills and expertise to develop PPP contracts and identify PPP risks but also lack skills and expertise for PPP project management (Bagal, 2008: 25). World Bank (2014) affirms that institutional challenges are particularly evident when contributions of other governments departments other than the agency employing the PPPs are crucial to the application of the PPP. The World Bank states that poor coordination and limited decision powers of the other governments may constrain outcomes of PPPs (World Bank, 2014: 9).

(iv) Loss of Control over Public Service or Facility

NCSL (2010) points out that one of the limitations of PPPs is loss of control of government over a public service or infrastructure particularly in long term contracts such as concessions. NCSL argues that in contracts such as concessions the powers of government over the service or asset under concession are limited particularly where there are clauses that prohibit government from introducing competition in the area of the concession. NCSL contend that in such cases government may be constrained from introducing more PPPs to enhance provision of service even when the need is apparent (NCSL, 2010: 11).

Governance deficiencies and inadequate institutional capacities thus limit the public image and results of PPPs.

2.10 Factors Affecting the Outcomes of PPPs

The literature on PPPs has identified both PPPs strengths and weaknesses. Based on their findings, authors have identified a number of factors which they regard as significant for the attainment of the objectives of any PPP. Among the key factors are: political will; legal and regulatory framework and monitoring. The subsequent section now discusses each of these key factors based on the literature on PPPs and summarizes the authors' opinions as to why these factors are regarded as integral for the success of a PPP.

(i) Political Will

The UNESCO (2005) maintain that political will is very crucial to the successful outcome of PPPs. The UNESCO notes that political will may be expressed through awareness programmes concerning PPPs, capacity building initiatives such training for actors in PPPs; establishment of offices to manage PPPs and the elimination of political interference and public sector monopoly over the provision of public services. According to UNESCO such mechanisms provide conducive environment for private participation and effective outcomes of PPPs (UNESCO, 2005).

(ii) Legal and Regulatory Framework

According to EU (2003) another fundamental aspect to the outcome of PPPs is the development of legal and regulatory frameworks to guide the operation and management of PPPs. EU observe that legal and regulatory frameworks determine the procedures to be followed in the identification of partners, debt agreement limits and types of PPPs acceptable and thus facilitating smooth implementation of PPPs (EC, 2003).

(iii) Monitoring

According to Bagal monitoring of the operations and the performance of PPPs by requisite government oversight is another backbone to the success of PPPs. Bagal claim that regular spot checks and mandatory submission of progress reports by

management teams running PPPs may guarantee achievement of the objectives of PPPs (Bagal, 2008).

(iv) Management

Klijn and Teisman (2000) claim that PPPs are unique due to the public and the private sector characteristics they embody and therefore require management styles different from ordinary public sector management techniques. Klijn and Teisman suggest a combination of project management; process management and network reconstitution. Klijn and Teisman expound that in project management clarification of objectives, mobilizing of resources and development of contracts take center stage. With regard to process management core activities include luring of important partners and development of rules and procedures that are broad enough to accommodate goals of all various partners. Crucial also in process management is establishment of structures through which partners may interact. Network reconstitution involves development of regulatory frameworks that stipulate rules and procedures for incorporating new actors and ideas as well as distribution of benefits. According to Klijn and Teisman these management techniques increase chances of PPPs being successful (Klijn and Teisman, 2000: 94-96).

It seems the factors affect the outcome of PPPs boil down to how effective the public sector is at managing PPPs.

2.11 Conclusion

PPPs may therefore be regarded as forms of governance aimed at improving public service delivery through the combination of public sector and private sector characteristics. As a result of the combined characteristics, PPPs require particular governance mechanisms to facilitate their application. There are various types of PPPs but their application is dependent upon services required from the private sector. Each type of PPP apportion a certain level of risk on the public and private sector, however, PPPs with long contract periods apportion more risks to the private sector than the public sector. In addition risks are more profound in PPP projects that need a lot of capital and in PPPs projects in urban areas. Various benefits may ensue from PPPs, however, poor governance levels and inadequate institutional

capacities may impact outcomes of PPPs. That as it may be, a number of management techniques exist that may enhance positive outcomes of PPPs if applied.

The next chapter will explore PPPs in South Africa.

Chapter 3

PPPs in South Africa

3.1 Introduction

This chapter explores the conceptualisation of PPPs in South Africa. In so doing the chapter reviews the literature on PPPs in South Africa and examines the legislative and policy framework for PPPs in South Africa; the governance structure and processes of PPPs. The financing arrangements and the defining characteristics of PPPs are highlighted. It demonstrates that value-for-money; affordability; risk transfer to the private sector and the empowerment of black South Africans are regarded as the fundamental principles of PPP policies in South Africa.

3.2 Background on PPPs in South Africa

Since South Africa became a democracy, a number of PPPs have been implemented. For instance, in 2014 approximately 70 PPPs were registered with the National Treasury (National Treasury, PPP Unit, 2014); 22 PPPs were signed in accordance with the provisions of Treasury Regulation 16 as at February, 2013 (National Treasury PPP Unit, 2013) and between 1994 and 2005, 300 PPPs were functional in municipalities (Farlam, 2005: 1).

The literature on PPPs highlights the need to provide public services and infrastructure as the motivation behind PPPs while economic growth is touted as the main benefit to be accrued from PPPs. Poor institutional capacity and poor risk allocation are underscored as the key limiting factor to the implementation of PPPs.

According to Burger (2006) the history of PPPs in post-apartheid South Africa dates to 1997 when a Task Team was appointed by the national cabinet to develop legislation and propose policy and institutional reforms to enable the employment of PPPs. The exercise of the Task Team culminated in various institutional and policy reforms including the establishment of a PPP Unit and experimentation with six PPP projects between 1997 and 2000 (Burger, 2006: 6).

Fourie (2008) claims that interest in PPPs in South arose out of the necessity to provide public services and the need to reduce infrastructure backlogs. Fourie

argues that the government has the constitutional mandate to provide public services and infrastructure, however, as result of financial constraints the government is incapacitated from fulfilling this constitutional mandate. The Bill of Rights in Section 7 of the Constitution of the Republic of South Africa (hereafter referred to as the Constitution) outlines several services which citizens must enjoy and the government is obliged to promote (The Constitution of the Republic of South Africa, 1996). Fourie claims that the need for services and infrastructure is exacerbated by huge backlogs. According to Infrastructure Barometer Report for 2012, infrastructure and service backlogs in South Africa emanate from apartheid policies which confined provision of public services and infrastructure to white settlements and enabled limited infrastructure and services in black owned settlements (Development Bank of Southern Africa (DBSA), 2012: 18). Fourie contends that PPPs are therefore seen as a vehicle to provide public services and infrastructure as enshrined in the Constitution as well as address infrastructure backlogs (Fourie, 2008: 559).

Chege (2001) adds that ongoing population growth and urbanisation have put pressure on the demand for public services. The population of South Africa has grown from 40.5 million in 1996 to 52.7 million in 2013 (Statistics South Africa, 2013: 10). Furthermore 60% of the population now lives in urban areas (National Planning Commission, 2012: 105). Thus Chege argues that the population growth and urbanisation have exerted additional pressure on the demand for services necessitating government to look for alternative options to meet the demand and PPPs are one of those alternatives (Chege, 2001: 1).

Nzimakwe (2006) asserts that the implementation of PPPs has led to the growth of new investments; job creation; improved infrastructure; skills and small businesses development. Nzimakwe confirms that developments arising from PPPs have, in turn, enhanced economic growth and extended service delivery to communities that were previously disadvantaged (Nzimakwe, 2006: 50).

Burger (2006) notes that progress of PPPs in South Africa is marred by a lack of capacity to develop and implement PPPs by the various government departments. Burger argues that the slow pace in the implementation of PPPs is more a result of lack of capacity to manage the PPP process rather than the PPPs not being feasible.

Burger expounds that of the 45 PPPs that were in the pipeline in 2002, five were successfully concluded; 15 were still in the pipeline in 2006 and 25 were deregistered (Burger, 2006: 8). It is the contention of Burger that PPP projects that eventually get deregistered, in most cases, meet the criteria for PPP procurement but progression is inhibited by a lack of capacity within the department to see the projects through the various phases of PPPs in South Africa (Burger 2006: 8).

Another limitation for PPPs in South Africa emanate from poor risk allocation. Ahwireng-Obeng and Mokgohlwa (2002) research findings on risk allocation in PPPs in South Africa concluded that socio-political, regulatory, financial and legal risks' allocation are inequitably distributed between the public and the private sectors while the principle of "best party to manage the risk, bears the risk" is not religiously followed (Ahwireng-Obeng and Mokgohlwa, 2002: 38). Ahwireng-Obeng and Mokgohlwa contend that the inequitable distribution and allocation has consequently led private firms to shunning PPPs and in cases where PPPs have been implemented, the contracts are rigid and difficult to accommodate changes effectively making PPP implementation taxing (Ahwireng-Obeng and Mokgohlwa, 2002).

It seems then that the accumulation of public services and infrastructure needs, compounded by financial constraints in the public sector; growing population and urbanisation have led to the government adopting the use of PPPs in South Africa. While in some cases, improved economic prospects and service delivery have accrued from such PPPs, inadequate institutional capacity and poor risk allocation hinder progress of PPPs in South Africa.

3.3 The Legislative and Policy Framework for PPPs in South Africa

This section will present the legislative and policy framework for PPPs in South Africa. Any legislation, policy or programme on PPPs needs to be aligned with the principles provided for in the Constitution, (The Constitution of the Republic of South Africa, 1996). Of particular relevance to PPPs in general is section 217 which states that:

when an organ of the state in the national, provincial and local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective

Besides the Constitution there are a number of other Acts and policy documents that have implications for the PPPs in South Africa. Table 3.1 summarises the key Acts and their relevance to PPPs, while Table 3.2 summarise general government policies and strategies that are relevant to PPPs.

Table 3.1: Legislation Pertaining to PPPs in South Africa

<p>Public Finance Management Act (PFMA) (Act 1 of 1999): Treasury Regulation 16</p> <p>Provides for procurement of PPPs at national and provincial levels of government. It gives powers to Accounting officers to enter into PPPs on behalf of public entities thereby making Accounting Officers accountable for PPPs outcomes.</p>
<p>Municipal Systems Act (MSA), (Act 32 of 2000); Local Government: Municipal Finance Management Act (Act 56 of 2003): Municipal PPPs Regulations</p> <p>Provides for the procurement of PPPs in local government.</p>
<p>Broad-Based Black Economic Empowerment (BBBEE) Act (Act 17 of 2003)</p> <p>Provides for economic empowerment of black people. It defines black people as South African Africans, Coloureds and Indians. It also gives powers to the Minister of Trade and Industry (DTI) to issue codes of good practice and transformation charters; establishment of the BBBEE Advisory Council. The codes of good practice provides for preferential treatment of black people in the procurement of public services while the advisory council recommends to the minister of Trade and Industry measures to promote black empowerment.</p>

Table 3.2: Policy Documents Pertaining to PPPs in South Africa

<p>Strategic Framework for Delivering Public Service through PPPs (2000)</p> <p>This framework identifies the major impediments to the successful implementation of PPPs in the national and provincial departments. It highlights Acts, regulations and institutional practices and procedures which need reform to strengthen implementation of PPPs. It also provides strategies that support implementation of PPPs in the national and provincial government departments.</p>
<p>A Strategy for BBBEE (2003)</p> <p>This policy document provides a strategy of how to develop a code of good practice and the use of scorecards in PPPs to ensure the empowerment of the black people and black owned businesses in the PPP process.</p>
<p>The White Paper on Municipal Service Partnerships (MSPs) (2004)</p> <p>The White Paper provides guidance to municipalities, service providers and investors on the delivery of municipal services through MSPs. It provides the framework within which resources of public institutions, Community Based Organizations (CBOs), Non-Governmental Organizations (NGOs) and the private sector may be leveraged to meet developmental needs of South Africa through PPPs.</p>
<p>The National Development Plan (hereafter referred to as NDP): Our Future – Make it Work 2030 (NDP 2030)</p> <p>The NDP was drafted by the National Planning Commission, an advisory body to the government, aimed at establishing a holistic socio-economic development plan for South Africa. The Commission which was instituted in 2010 produced a Diagnostic Report in 2011 which concluded that the slow progress of South Africa was due to poor policy implementation and the absence of partnerships between the public, private and civic sector (National Planning Commission, 2012: 15). The NDP proposes the involvement of the private sector in order to achieve active participation of citizens in developmental initiatives; accelerated and inclusive economy and improvement of infrastructure.</p>

The legislative and policy frameworks therefore “supports and reflects government policy objectives for delivering infrastructure and public services, in line with its constitutional mandate” (National Treasury, PPP Unit, 2007: 8) and encourages use of PPPs to deliver the infrastructure and public services needs of South Africa as identified in the NDP.

3.4 Governance of PPPs in South Africa

The key governance issues of PPPs in South Africa are spread amongst the PPP Unit (located in the National Treasury), the different government departments intending to adopt PPPs and the Auditor General (National Treasury, PPP Unit, 2007). The different roles each of the mentioned entities play in PPPs are discussed below.

According section 16.3 of the PFMA (Act 1 of 1999), all PPPs are subject to approval by the PPP Unit, located in the National Treasury, except in situations where such responsibility is delegated to provincial treasuries. Government departments are compelled to request National Treasury approval before any PPP contract can be signed (PFMA Act 1 of 1999: Treasury Regulation 16). The PPP Unit insists that a PPP proposal must demonstrate affordability, value for money and risk transfer to the private party as well as empowerment of black people right from the initial identification of the PPP proposal throughout its implementation if the PPP is to be approved (National Treasury, PPP Unit, 2007).

During a roundtable discussion with cabinet ministers and high-level government officials in 2010, it was argued that the PPP Unit in South Africa plays technical and regulatory roles in PPPs (National Treasury, PPP Unit, 2010: slide 21). Therefore the PPP Unit plays an advisory role for government departments, but also ensures PPPs compliance with the legislative and policy frameworks. However, individual government departments remain responsible for the management functions of the particular PPP in question (Department of Finance, 2000: 5).

Government departments must appoint an Accounting Officer in charge of the overall PPPs. The day-to-day management of the PPPs is the delegated responsibility of project teams specifically appointed for the purpose by the Accounting Officers

(Department of Finance, 2000: 11). While legislation on PPPs mandates the National Treasury and the provincial treasuries when sanctioned by the National Treasury, and the municipal councils to approve procurement through PPPs, the Accounting Officers in respective government bodies are the ones that sign PPP agreements on behalf of departments (PFMA (Act 1 of 1999): Treasury Regulation 16; MFMA (Act 56 of 2003): Municipal PPPs Regulations).

Furthermore, it is a prerequisite for Accounting Officers to appoint transaction advisor in case of inadequate institutional capacity to develop and negotiate PPPs and PPP agreements. According to PPP Manual Module 3, Transaction advisor “is a consortium of professionals with appropriate skills and experience to assist institutions with the preparation and conclusion of a PPP agreement” (National Treasury, 2004: 9).

In South Africa most PPPs entail the creation of special purpose vehicles (SPVs) to operate the PPP. SPV often necessitates the setting up of a single business entity in the form of a private party. The SPV is responsible for overseeing the technical aspects of the project. The SPV itself can subcontract for services or goods and that is where PPPs offer the ideal opportunity for BBBEE through preferential procurement (National Treasury, PPP Unit, 2007).

Section 16.4 of PFMA Regulation 16 mandates individual government departments proposing the PPPs to conduct feasibility studies before PPPs are implemented. Feasibility study ascertains operational and strategic benefits of the PPP to the institution and government as well as areas for achievement of BBBEE. Upon obtaining necessary approvals from the PPP Unit or the relevant delegated provincial treasury, the actual PPP procurement and the contract management of PPPs is the obligation of government departments employing the PPP (PFMA Act 1 of 1999: Treasury Regulation 16).

The office of the Auditor General is another critical department in the implementation of PPPs in South Africa. Section 188 the Constitution mandates the Auditor General to annually audit and report on financial statements and financial management of national and provincial departments; municipalities and other entities provided for in any legislation (The Constitution of the Republic of South Africa, 1996). PPP Manual

Module 7 states that “while a PPP changes the means of delivering services, the institution is still accountable for ensuring that services are delivered and that state property is used properly (National Treasury, PPP Unit, 2004: 1). Thus the auditing process is imperative in PPPs.

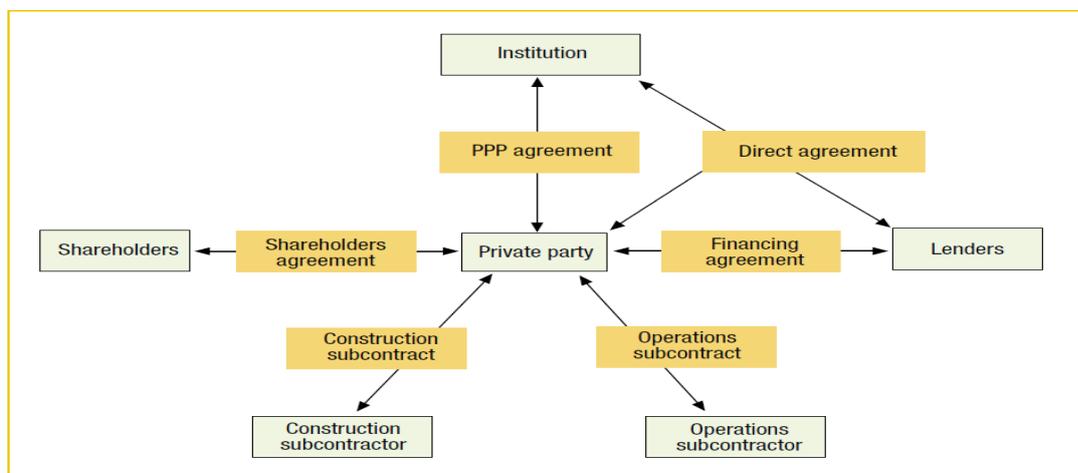
Institutional governance arrangements for PPPs in South Africa, therefore, are not a preserve of one entity. A variety of bodies play different roles in the governance of PPP.

3.5 PPPs Financing in South Africa

According to the Standardised Public-Private Partnerships Provisions for 2004, funding for PPPs in South Africa originate from three main sources and these are project financing; corporate financing and capital contribution by a government institution. In project financing the private party to the PPP sources debt and equity to finance the PPP; in corporate financing the private party funds the PPPs from own resources and in capital contribution by a government institution, the institution intending to apply PPP and/or other public sector contribute significantly towards the cost of the PPPs (National Treasury, PPP Unit, 2004).

Figure 3.1 below illustrates the generic PPP structure and highlights the types of financial sources SPVs may have access to which are equity, shareholding, loan agreements and or debt.

Figure 3.1: Example of PPP Financial Arrangement: South Africa



Source: National Treasury, 2004: 6

The significance of Figure 3.1 above is that the PPP agreement is between the government and the private party (or SPV). The latter is responsible for the management of all subcontract agreements with other private entities. Government may or may not contribute to the project with some of its own revenue sources, but in essence, PPPs are predominantly financed by the private parties involved. The regulatory framework for PPPs in South Africa, and the PPP Unit at the National Treasury aims to ensure that PPP agreements promote black economic empowerment through, for example, approving the establishment of SPVs that meet such criteria.

3.6 Types of PPPs in South Africa

In South Africa PPPs are defined as “a contract between a public institution and a private party where

- the private party performs an institutional function or uses state property in terms of output specifications
- substantial project risk (financial, technical, operational) is transferred the private party
- the private party benefits through unitary payments from government budgets and/or user fees,” (National Treasury, PPP Unit, 2007: 5)

There are five main types of PPPs in South Africa. The five types are service contracts; management contracts; lease; build-operate-transfer (BOT) and concession (Department of Finance, 2000: 6). As will be seen in Table 3.3 below, the five PPP types may be applied in various functional areas of government departments and may range from one year to thirty years. Table 3.3 illustrates the different types of PPPs; the duration for each type; the means of payment to the contractor; the type of services which the private party may perform under each contract and the examples of services that may be performed.

Table 3.3: Types of PPPs in South Africa

Type of contract	Duration	What the contractor usually receives	Nature of contractor performance	Examples
Service contract	Short-term (1–3 years)	A fee from the government for performing the service	A definitive, often technical type of service	Facility repairs and maintenance; laundry
Management contract	Medium-term (3–8 years)	A fee from the government for the service and a performance-based incentive	Manage the operation of a government service	Regional water supply management
Lease	Long-term (8–15 years)	All revenues, fees or charges from consumers for the provision of the service; the service provider pays the government rent for the facility	Manage, operate, repair and maintain (and maybe invest in) a municipal service to specified standards and outputs	Existing airport or port facilities
Build-operate-transfer	Long-term (15–25 years)	The government mostly pays the service provider on a unit basis	Construct and operate, to specified standards and outputs, the facilities necessary to provide the service	Building, construction and maintenance of regional schools, prisons or hospitals
Concession	Long-term (15–30 years)	All revenues from consumers for the provision of the service; the service provider pays a concession fee to the government and may assume existing debt	Manage, operate, repair, maintain and invest in public service infrastructure to specified standards and outputs	New airport or seaport facilities, toll road or bridge

Source: Department of Finance, 2000: 6

According to Department of Finance, service contracts are the most simple to apply due to their short durations (1-3 years) and nature of services (repairs, maintenance and laundry) on the other hand BOT and concessions are complex since they call for substantial capital investment and are long term (over 15 years). Furthermore, lease and concessions generate revenue for government in form of rent and concession fees respectively. BOT may generate fees for government, in the long term (after transfer of facility to government) in form of user fees (National Treasury, 2004: 6).

3.7 The PPP Project Phases in South Africa

The PPP Manual for national and provincial governments, Module 1 outlines six phases through PPPs in South Africa go through. The six phases are inception, feasibility study, procurement, development, delivery and exit (National Treasury, PPP Unit, 2004: II). Some of the main activities for each of the phases are run through in Table 3.4 below.

Table 3.4: PPP Phases in South Africa

No.	Phase	Activities
1	Inception	Registration of the PPP project with the relevant treasury, appointment of project officer and appointment of transaction officer.
2	Feasibility study	Performance of needs analysis, options analysis, project due diligence, value assessment, economic valuation and preparation of procurement plan
3	Procurement	Preparation of bid documents, preparation of draft PPP agreement, pre-qualification of parties, issuance of request for proposals, receipt of bids, , selection of preferred bidder, preparation of value-for-money report, negotiation with preferred bidder and conclusion of PPP agreement management plan
4	Development	Measurement of outputs, monitoring and regulation of performance, consultations and conflict resolutions
5	Delivery	Submission of annual progress reports, monitoring
6	Exit	Examination of the PPP by the Auditor-General Development of options for continuity of service Employee transfer plans Closure Event

Adapted from: National Treasury, PPP Unit, 2004: II

The PPP project cycle is underpinned by four specific points in time during which the national and provincial governments' departments contemplating applying PPPs are under obligation to seek approvals from the National Treasury or the relevant provincial treasury. The first approval is sought after submission of the Feasibility Study report but before proceeding to the procurement phase; the second approval is sought upon submission of the bid documents but before issuance of the bid documents to prospective bidders; the third approval is sought on submission of the Evaluation of Bids report but before the appointment of the preferred bidder and the last approval is sought on tendering the PPP Agreement Management Plan but before entering into PPP agreement with the preferred bidder ((PFMA (Act 1 of 1999): Treasury Regulation 16).

Section 40 of the Constitution stipulates that government in South Africa is made up of three spheres and these are national, provincial and local spheres (The

Constitution of the Republic of South Africa, 1996). Thus while the PPP processes for PPPs implementation in the three spheres is in most respects similar there are a number of differences. The differences hinge on the governing legislation, the source of PPPs' approval, and the involvement of the public.

Whereas national and provincial governments are guided by the PFMA (Act 1 of 1999: Regulation 16) in the procurement of PPPs, Municipal Service Delivery and PPP Guidelines of 2007 indicates that local government is guided by legislation found in the MSA (Act 32 of 2000), MFMA (Act 56 of 2003: Municipal PPPs Regulations and Municipal Supply Chain Regulations) (National Treasury, PPP Unit, 2007: 1). Despite the differences, nevertheless, all legislation whether at national, provincial or local government is underpinned by section 217 of the Constitution which mandates transparency and competitiveness in public procurement (The Constitution of the Republic of South Africa, 1996).

Another point of departure between the national and the provincial governments on one hand and the local government on the other in the implementation of PPPs is the source of authorization of PPPs. Whereas approval to implement PPPs in the national and the provincial departments comes from National Treasury, approval for local government PPP procurement is granted by municipal councils. National Treasury only provides views and recommendations on the municipal PPPs (National Treasury, PPP Unit, 2004; National Treasury PPP Unit, 2007).

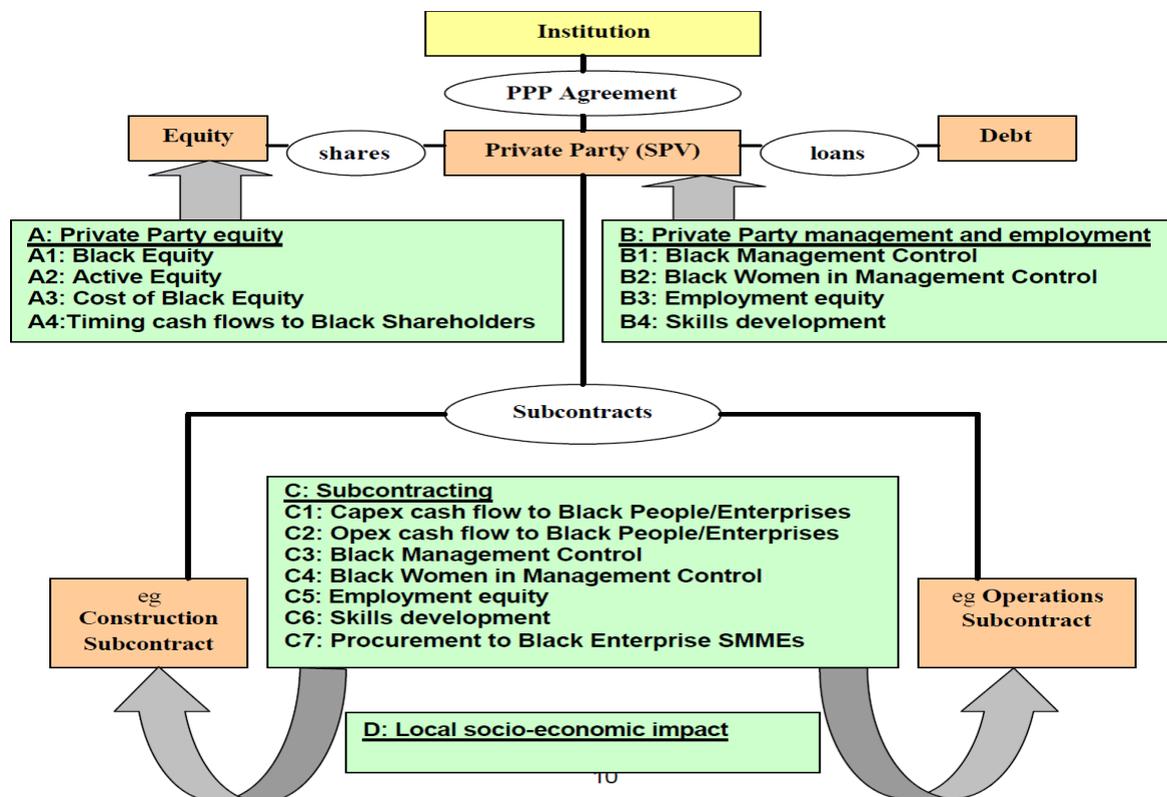
Lastly, municipalities are mandated to notify, consult and seek comments from the public, the National Treasury, the relevant treasury and the Department of Cooperative Governance and Traditional Affairs (Cogta) on the Feasibility Study report and the Contract Management Plan sixty days before the meetings at which the municipal council may approve the respective documents. Additionally, in the case of PPPs involving water, sanitation and electricity, municipalities are compelled to consult and seek views of relevant national government line departments. Municipalities are under obligation to allow thirty days for comments; national and provincial governments are not bound by such provision (National Treasury, PPP Unit, 2007).

Thus the establishment of PPPs in South Africa goes through a mandatory sequence with numerous checks and has to meet a set of legislative and policy requirements before a formal PPP contract can be drafted between a public institution and a private party.

3.8 Black Economic Empowerment in PPPs in South Africa

The integration of BBBEE elements in public procurement through PPPs is central to any procurement in South Africa as attested in the legislations and policy frameworks discussed in the first part of this chapter. According to the Code of Good Practice for BBBEE in PPPs of 2004 incorporation of BBBEE elements is mandatory for all PPP processes including in the feasibility; the procurement of the transaction advisor and the private party to a PPP project (National Treasury, 2004: 6). The Code of Good Practice for BBBEE in PPPs specifies areas for the BBBEE incorporation in PPPs. Figure 3.2 below shows expected areas for the BBBEE incorporation in PPPs.

Figure 3.2: Expected BBBEE Elements in PPPs



Source: National Treasury, 2004: 10

Figure 3.2 above indicates that black people are expected to be incorporated in PPPs as shareholders of the private party; in the management and control of the SPV as managers and employees and in the provision of services to the PPP as subcontractors or suppliers. Additionally PPPs are anticipated to provide employment and skills to black people as well as conduct social corporate functions in the vicinity of the project.

According to the Code of Good Practice for BBBEE in PPPs specially designed balanced scorecards are used to evaluate BBBEE integration in the transaction advisor and the private party to the PPP project (National Treasury, PPP Unit, 2004: 6). Table 3.5 below depicts the scorecard.

Table 3.5: PPP BBBEE Balanced Scorecard

PPP BBBEE Element	Indicative PPP project Target	Recommended bid evaluation weighting
A: Private Party equity		20%
A1: Black Equity	40%	
A2: Active Equity	55% of A1	
A3: Cost of Black Equity	Value for money	
A4: Timing of project cash flows to Black Shareholders	Early and ongoing	
B: Private Party management and employment		15%
B1: Black Management Control	Commensurate with A1 and A2	
B2: Black Women in Management Control	15% of B1	
B3: Employment equity	Compliant with law	
B4: Skills development	1% of payroll	
C: Subcontracting		50%
C1: Capital expenditure cash flow to Black People and/or Black Enterprises	30%	
C2: Operating expenditure cash flow to Black People and/or Black Enterprises	30%	
C3: Black Management Control	25%	
C4: Black Women in Management Control	15% of C3	
C5: Employment equity	Compliant with law	
C6: Skills development	1% of payroll	
C7: Procurement to Black Enterprise SMMEs	30%	
D: Local socio-economic impact	Sustainable, effective plan	15%

Source: National Treasury, 2004: 26

The scorecard attaches value to each BBBEE element expected in the PPPs. According to the 2004 Code of Good Practice for BBBEE in PPPs, bids for transaction advisor must score 50% or above while bids for the private party must achieve a score of 60% and above to be considered for the next round of bid evaluation process (National Treasury, 2004: 6).

It may therefore be concluded that while it is mandatory for PPPs in South Africa to conform to the Defining Characteristics of PPPs in South Africa discussed above, integration of BBBEE' elements in PPPs is not only a legislative requirement but also a defining characteristic of PPPs in South Africa.

3.9 Conclusion

The role of PPPs in the delivery of public services and infrastructure in South Africa gained increased government cognisance in 1997 and since then several PPPs have been implemented across all the three spheres of government. Various legislative and policy frameworks have been developed to enable the application of PPPs. Equally a number of institutions and processes have been put in place to facilitate the regulation and implementation of PPPs. While there are three choices of means for financing PPPs, it appears project financing is the preferred means of financing PPPs in South Africa. The emphasis by legislation and policy directives on PPPs on 'affordability; value for money and appropriate risk transfer to the private party'; approval of PPPs by the National Treasury in respect of national and provincial government PPPs and municipal councils in case of municipal PPPs and signing of PPPs by Accounting Officers provides the defining features for PPPs in South Africa. However, it is clear that the integration of BBBEE elements in PPPs is yet another critical defining characteristic of PPPs in South Africa.

The next chapter provides the background to the case study for this thesis, which is study of the Gautrain PPP. The chapter will examine the public transport challenges which have motivated the use PPPs in the transport sector in South Africa.

Chapter 4

Public Transport in South Africa

4.1 Introduction

The objective of this chapter is to establish the broad context of the case study component of this paper which is an analysis of the Gautrain PPP. This chapter therefore presents an overview of the transport sector in South Africa and the institutions responsible for the various segments of transport in South Africa. The chapter details the main means of public transport and corresponding infrastructure. Challenges in public transport and the limitations of the existing public transport infrastructure are highlighted. The chapter also discusses the key legislative and policy frameworks for transport and demonstrates why government has considered the use of PPPs as a potential governance approach to the provision of public transport.

4.2 The Public Transport Mandate in South Africa

Economic infrastructure, of which transport is an integral part, is fundamental to the economic development of a country (Perkins, nd: 25). In order to enable the critical role of transport in the economic development of South Africa, various Acts confer responsibilities for transport in a number of parastatals under the ambit of the DoT.

According to the DoT's 2012/13 Annual Report, the Department fulfills its mandate by developing policies, strategies and regulations on transport. The DoT is also responsible for capacity building, monitoring, investment and the development of transport programmes (DoT, 2013: 5).

To make the role of the DoT possible, the DoT is supported by twelve parastatals. Table 4.1 below summarises the different state entities that report to the DoT and their legislative mandates, financial relationship with the DoT, and the nature of their operations.

Table 4.1: Entities Reporting to the DoT

Name of entity	Legislative mandate	Financial relationship	Nature of operations
South African Civil Aviation Authority	South African Civil Aviation Act, 2009 (Act No. 13 of 2009)	Transfer payments	To provide control and regulate aviation within the Republic
Cross-Border Road Transport Agency	Cross-Border Road Transport (Act No. 4 of 1998)		To provide for cooperative and coordinated provision of advice, regulation, facilitation and law enforcement in respect of cross-border road transport by the public and private sectors
South African Maritime Safety Authority	South African Maritime Safety Act	Transfer payments	To provide for the establishment of SAMSA and to provide for matters connected therewith
Railway Safety Regulator	Railway Safety Regulator Act	Transfer payments	To provide for safety standards and regulatory practices for the protection of persons, property and the environment
Air Traffic and Navigation Services	Air Traffic and Navigation Services Act, 1993 (Act No. 25 of 1993)		To provide for the establishment of ATNS and to provide for the regulation of air traffic control
Road Accident Fund	Road Accident Fund Act, 1996 (Act No. 56 of 1996)		To provide for the payment of compensation for the loss or damages wrongfully caused by the driving of a motor vehicle
Airports Companies of South Africa	Airports Companies of South Africa Act, 1993 (Act No. 44 of 1993)		To operate the Republic's ten principal airports, providing airlines with world-class, secure infrastructure
Road Traffic Infringement Agency	Administrative Adjudication of Road Traffic	Transfer payments	To promote road traffic quality by providing for a scheme to discourage road traffic contraventions and adjudication of road traffic infringements and support the prosecution of road traffic offences
Road Traffic Management Corporation	Road Traffic Management Corporation Act, 1999	Transfer payments	To enhance the overall quality of road traffic services provision, and in particular ensure safety, security, order, discipline and mobility on the roads.
National Ports Regulator	National Ports Act, 2005 (Act No. 12 of 2005)	Transfer payments	To provide for the administration of certain ports by the National Ports Authority.
South African National Roads Agency	The South African Roads Agency Limited and National Roads Acts, 1998 (Act No. 7 of 1998)	Transfer payments	To manage and control the Republic's national roads system and take charge amongst others of the development, maintenance and rehabilitation of national roads within the framework of government policy
PRASA	Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989) (as amended)		To ensure that, at the request of the Department of Transport, rail commuter services are provided within, to and from the Republic in the public interest and to provide, in consultation with the Department of Transport, for long-haul passenger rail and bus services within, to and from the Republic in terms of the principles set out in section 4 of the National Land Transport Transition Act, 2000 (Act No. 22 of 2000)

Source: Department of Transport, 2013: 10

Table 4.1 above indicates that the entities that report to the DoT are spread across a wide range of transport sectors namely air, road, rail and water. For instance, the Airports Companies of South Africa operates the country's airports; the South African National Road Agency (SANRAL) manages and controls the national road system;

the Passenger Rail Agency of South Africa (PRASA) operates the commuter rail system and the National Ports Regulator oversees some ports in South Africa.

Additionally, the entities that report to the DoT play a variety of other roles. The functions played by the different entities can be regulatory. For example the South African Civil Aviation Authority regulates aviation; coordination manifested in cross-border services for road transport provided by the Cross-Border Road Traffic Agency; operational exemplified in the rail and bus passenger services provided by PRASA and arbitration evident in the adjudication of road traffic offences by the Road Traffic Infringement Agency.

The mandate of DoT is hence extensive and their oversight spread across various parastatals, each with their own vested functions.

4.3 Public Transport Services and Infrastructure in South Africa

Movement of people or goods from one destination to another necessitates one form of transport or another. According to the National Household Travel survey conducted in 2013, the main modes of public transport in South Africa are taxis, buses and trains (Statistics South Africa, 2013). This section of the chapter will examine the challenges the commuting public experience to access public transport services as well as the challenges the government institutions mandated to provide or facilitate public transport face in the fulfillment of their mandates.

4.3.1 Public Transport Services in South Africa

Walters (2008) claims that the DoT has since 1996 intervened to improve already existing public transport as well as extending public transport services (Walters, 2008: 98). Walters cites the replacement of unroadworthy taxis through the taxi recapitalization programme, the objective of which is to enhance safety and reliability of taxi services. In addition, a return of government bus service subsidies, which reduces the cost to the commuting public to access bus services. According to The State of South Africa's Economic Report for 2012 another DoT intervention was the delinking of rail passenger commuter services from freight services, which was aimed at improving the accessibility for passengers to rail services (DBSA, 2012: 12). However, despite the interventions, the literature on public transport services in

South Africa highlights the general public's ongoing limited access to public transport. The National Planning Commission claims that inefficiency and unreliability of public transport remains a key challenge in South Africa (National Planning Commission, 2012: 183).

According to the National Household Travel survey of 2013 the difficulty in accessing public transport is one of the challenges overwhelming public transport services in South Africa. For example, the survey highlights that 94% of the learners who use public transport to get to places of learning walk up to 15 minutes to access public transport (Statistics South Africa, 2013: 30) while 15% of the workers who use public transport walk for more than 15 minutes to access public transport (Statistics South Africa, 2013: 53). Having reached public transport boarding places, 95% of the learners and 10.3% of the workers wait up to 15 minutes for public transport, (Statistics South Africa, 2013: 31;55). The survey maintains that the challenge to access public transport is more acute in train services, where 34.5% of the public walk for more than 15 minutes to access trains (Statistics South Africa, 2013: 54). Poor access to public transport services have in turn made the travelling public become discontented with the levels of public transport services.

In addition, public transport services are marred by inefficiency and unreliability, particularly train services. While the National Household Travel survey states that vehicle overload; road traffic congestion; crime at public transport boarding stations and irresponsible driving particularly by taxi drivers as some of the problems that have put into disrepute public transport services (Statistics South Africa, 2013: 92), the 2011 Utatu Labour Report highlights that train travel is subjugated by high percentages of delays and cancelled train trips. The delays and cancellations are attributed to the extensive breakdown in railway signaling and electricity systems (Utatu, 2011: 2). Consequently the public has become wary of utilising public transport despite its availability.

4.3.2 Road Transport

According to the 2011 Infrastructure Report Card for South Africa, the management and control of public roads in South Africa is shared amongst SANRAL; metropolitan municipalities; provincial road authorities and municipalities. While metropolitan

municipalities, provinces and municipalities are in-charge of road networks within their jurisdictions, SANRAL is in-charge of the national road network (SAICE, 2011: 20).

The 2012 State of South Africa’s Economic Infrastructure Report states that the road network in South Africa comprises of approximately 750,000 kilometers. According to the Report 140,000 kilometers of the road network is ‘unproclaimed’. DBSA defines ‘unproclaimed’ road network “as road network which is not recorded in the official road inventories and has no institution mandated to maintain or upgrade it” (DBSA, 2012: 47). Table 4.2 below displays the division of the road network amongst the four authorities responsible for roads mentioned above.

Table 4.2: Extent of the South African Road Network by Authority

Road Authority	Paved		Gravel	
	Length (km)	%	Length (km)	%
SANRAL	16, 170	10.5	0	0.0
Province roads	48, 176	31.3	136, 640	20.3
Metropolitan (9)	51, 682	33.6	14, 461	2.1
Municipalities	37, 691	24.5	302, 158	44.8
Total proclaimed roads	153, 719		454, 000	
Unproclaimed (estimate)	0	0.0	140, 000	32.8
Total	153, 719	100.0	593, 259	100.0

Source: DBSA, 2012: 47

Table 4.2 above shows that close to half of the road network is under the management and control of municipalities. Again, the proportion of the ‘unproclaimed’ road network is substantial when compared against the road networks under SANRAL, metropolitan municipalities and provinces.

4.3.2.1 Challenges: Road Transport

The key challenges identified in the road transport sector are the lack of qualified engineers to lead in the development and maintenance of road infrastructure; the poor state of roads; vehicle overloading and financial constraints.

SAICE (2011) claims that the absence of engineering professionals to lead in the development and maintenance of the road infrastructure has led to reduced benefits such as improved delivery of basic services which could ensue from road transport (SAICE, 2011: 11). According to SAICE the number of engineers is insufficient and is dominated by ageing whites. SAICE augments that the skills survey it conducted in 2007 revealed that only 200 municipalities out of 283 had civil engineers while 48 municipalities had mere civil technicians performing duties of engineers (SAICE, 2011: 11).

In addition, the efficiency of the road infrastructure is limited by the obsolescence of the road infrastructure. SAICE (2011) contends that 80% of the national road network, despite being in good condition, has outlived the 20-year structural design life span it was intended to last while 50% of the provincial's and 30% of the municipal's gravel road network is in poor to very poor conditions due to lack of maintenance (SAICE, 2011: 7). Besides part of the road network being obsolete and in poor state due to lack of maintenance, SANRAL argues that the other source for the poor state of roads is vehicle overload. SANRAL claims that R1 billion is spent every year on road maintenance costs arising from vehicle overloading (SANRAL, 2012: 33). Subsequently the public is subjected to negative outcomes that originate from poor road infrastructure such as increased vehicle maintenance and fuel costs (SAICE, 2011: 21).

Another challenge impeding the provision of road infrastructure is financial constraints to enable maintenance of the roads. DBSA (2012) argues in The State of South Africa's Economic Infrastructure Report that despite the national government increasing funding for public transport since 2003 and introducing Provincial Road Maintenance Grant (PRMG) to assist provincial governments in road maintenance, the available funding for public transport is still 60% short of the required funding levels (DBSA, 2012: 57). According to SAICE, six to eighteen times more may be

spent to maintain a road when initial maintenance is delayed by five years (SAICE, 2011: 21). In view of the age of the national road network and poor road maintenance regime in the provincial and local governments it may therefore be concluded that substantial amounts of money is required to upgrade the road network in South Africa.

4.3.3 Rail Transport

According to the State of South Africa's Infrastructure Report for 2012 rail transport and the construction of the rail network in South Africa was initiated by private companies in 1859. The Report points out that the rail network was built to support mining, heavy cargo and large scale agriculture industries (DBSA, 2012: 12).

Perkins (nd) maintains that most of South Africa's current rail line was built by 1930 and that the following years were mainly devoted to increasing the numbers of train locomotives, goods stocks and coaching stocks (Perkins, nd: 28). Table 4.3 below summarizes the levels of rail infrastructure and services by 2003.

Table: 4.3 Rail Infrastructure and Services in South Africa: 2003

	Railway lines	Loco-motives	Coaching stock	Goods stock	Goods stock carrying capacity	Passenger journeys	Revenue-earning traffic
	route km	number	number	number	million tonnes	million	million tonnes
1880	1 621						
1910	11 331	1 405	2 071	22 576	0.355	33.7	9.7
1930	18 445	2 193	3 668	37 546	0.783	80.5	20.4
1980	20 353	4 907	10 704	188 799	6.291	691.3	174.9
1995	21 079	3 574	6 740	135 155	6.161	416.0	176.0
2003	20 796	3 253	6 588	114 135	5.593	468.2	179.5

Source: Perkins, (nd): 28

Table 4.3 above, illustrates that the period after 1980 witnessed a decline in rail investment and in some instances a fall in the number of the existing infrastructure. For example, route kilometers dropped from 21,079 in 1995 to 20,796 in 2003 and the coaching stock decreased from 10,704 in 1980 to 6,588 in 2003. While the route kilometers have picked up to reach 21,000 kilometers by 2012 (DBSA, 2012: 21) the

coaching stock investment has continued to decrease. During 2005/6 there were only 4,660 coaches out of which 1,300 were out of service (Utatu, 2011: 2).

The current management of the rail network is divided between Transnet and PRASA. While Transnet is responsible for freight services, PRASA manages passenger commuter services (DBSA, 2012: 12). PRASA therefore has more bearing on public transport.

PRASA was established in 2009 and took over from the South African Rail Commuter Corporation (SARRC) which up to that point in time responsible for rail operations for commuters (DBSA, 2012: 12). The aim of government in establishing PRASA was to improve accessibility of rail transport through provision of integrated rail passenger services (PRASA, 2013: 9). The rail commuter functions of PRASA are accomplished through three entities: Metrorail, which runs urban passenger services; Shosholoza Meyl, which operates long distance rail passenger services; and Autopax bus services, which acts as feeder service for the rail commuter services (DBSA, 2012: 154).

Besides operating the passenger services, PRASA operates and own approximately 400 train stations and shares rail tracks with Transnet, mostly tracks located in cities (DBSA, 2012: 12).

4.3.3.1 Challenges: Rail Transport

The key challenges pervading the rail transport are obsolescence of the rail infrastructure; the sharing of rail infrastructure between Transnet and PRASA; the outdated design of the rail infrastructure and financial constraints.

The Chief Executive Officer (CEO) of PRASA affirms in the Labour Report of 2011 that the last rail line was constructed in 1980 while 83% of the rail fleet operates on 1956 technology. Furthermore, 84% of the signaling system is obsolete. Consequently, most of the fleet and signaling system fail to operate to the optimal levels leading to delayed or cancelled rail trips (Utatu, 2011: 2).

The sharing of rail tracks between freight services and passenger services is another debilitating factor to the rail commuter and passenger industry. For instance, inter-

city rail services operated by Shosholoza Meyl are heavily dependent on tracks and maintenance facilities owned by Transnet (DBSA, 2012: 16). The DBSA argues that Transnet as the owner of most rail tracks prioritises freight services above PRASA's passenger services. As a result, passenger train services are deluged by cancellations and confined to average maximum speeds of 70 kilometers per hour emblematic of freight speeds. The DBSA contends the existing state of affairs not only leads to delays but also longer travel times (DBSA, 2012: 16).

According to the State of South Africa's Economic Infrastructure Report (2012), the mining and agriculture industries the rail network was meant to serve when it was first constructed was typified by long distances between residences and places of work. The rail infrastructure was limited to facilitating movement of black workers from places of residence to work places. The black people were confined in settlements far from cities and there was no integration between the rail transport and other modes of transport. As a result of this background commuters now have to walk long distances or make several transport connections with other modes of transport in order to access trains and thereafter reach final destinations. The walking and the interconnections are not only inconveniencing and expensive but they are also time-consuming (DBSA, 2012: 20).

Financial limitation is another challenge to the provision of public rail services and infrastructure. The DBSA (2012) claims that PRASA only manages to raise 30% of the required operational costs from the services it provides and relies on government subvention to close the gap. While the limited funding impedes PRASA from carrying out services effectively, DBSA argues that the practice is not only unsustainable but also unachievable in the long term given government's financial constraints as well (DBSA, 2012: 21).

The challenges in rail transport are made worse by lack of policy specific to rail transport (DBSA, 2012: 22). According to the Annual Report for PRASA 2012/13 PRASA depends on the National Transport Policy; Public Transport Strategy; National Land Transport Act and the Green Paper (draft policy) on Rail for legislative and policy guidance (PRASA, 2013: 11). DBSA argues that though the mentioned policies and legislations could be relevant to rail transport, the documents fall short

of addressing pertinent issues such as institutional structures which are specific to rail transport (DBSA, 2012: 22).

It is against the backdrop of these challenges of public transport service and infrastructure delivery that legislative and policy documents propose various initiatives to address the challenges.

4.4 The National Land Transport Act (NLTA) (Act 5 of 2009).

The key legislation pertaining to public transport is the National Land Transport Act (NLTA) (Act 5 of 2009). The Act provides for the conditions of land transport which national, provincial and local spheres of government must comply with. In essence, the municipal sphere of government is allocated the vast bulk of the public transport responsibilities with provincial and national government taking a more strategic and oversight role.

Section 11 of the NLTA allocates transport responsibilities to the three spheres of government and these are broadly divided into strategic, regulatory and operational functions. The national sphere of government is primarily responsible for developing national strategic frameworks, guidelines, standards, regulations and draft model contracts. The provincial sphere of government is responsible for formulating provincial transport policy and strategy so that it is in line with the framework of national policy and strategy. These provincial strategies and policies in turn provide the framework for municipal policies and plans.

Furthermore, the national and provincial spheres are given capacity building and co-ordination responsibilities. The national sphere is responsible for capacitating and monitoring provinces and municipalities that lack the capacity or resources to perform their transport functions as well as engaging with other national government departments that have an impact on transport issues. Similarly the provincial sphere is responsible for co-ordinating municipalities in order to ensure that land transport is efficiently executed in the province. The Act also gives the provincial sphere responsibility for ensuring that municipalities that lack capacity are given the resources to perform their land transport functions.

4.5 Policy on Public Transport

The NDP provides some important policy directives for the transport sector.

The pertinent section on PPPs in the NDP is chapter 9. In the chapter, the NDP supports development of affordable, reliable and safe transport services and infrastructure that link all geographical locations and creation of urban transit systems. The NDP suggests prioritization of developments in the transport sector and the conduct of analyses to determine best options for delivery of services and infrastructure – either through private or public means.

The NDP encourages the promulgation of enabling regulations to enable the private sector to participate in the delivery of transport services and infrastructure where it is beneficial to do so. The NDP also advocates for collaboration of efforts between government agencies and the private sector in the expansion or development of huge infrastructure and in the provision of rail-transit services.

Furthermore, the NDP promotes funding of infrastructure developments that generate revenue through balance sheets of the government agencies and the private institutions in carrying out infrastructure developments.

It may therefore be argued that pronouncement in the NDP supports the use of PPPs in the delivery of public transport services and infrastructure, including that of rail-transit services.

4.6 PPPs in the Transport Sector

PPPs have indeed been employed in the transport sector.

According to the Annual report for SANRAL for 2012, SANRAL entered into a 30 year concession contract with the Bakwena Platinum Corridor Concessionaire (Pty) Limited in 2001. The PPP contract arrangement obliged Bakwena to “design, finance, construct, operate and maintain” two stretches of toll roads with a combined length of 585 kilometres in Pretoria. SANRAL claims that the PPP has resulted in an expanded and improved network as evidenced by additional carriage ways on the roads and upgrades of some single lanes to dual lanes. Additionally, SANRAL claims that the PPP has led to BBBEE achievement through the employment of black

people and support to local communities. For instance, between 2011 and 2012 one thousand black people were employed in various positions and since 2002 Bakwena has been providing food support to Leseding Care Center situated along one of the roads under the PPP (SANRAL, 2012).

Again the Eastern Cape provincial government collaborated with Fleet Africa Eastern Cape (Pty) where the latter was responsible for the management of fleet for the provincial government through a management contract which was signed in 2003. The PPP agreement was for a period of five years (National Treasury, 2011: 2). According to a PPPs Benchmarking study of 2005 commissioned by the Department of Economic Development of KwaZulu Natal provincial government, the objective of the PPP was to enable the Eastern Cape provincial government access private sector efficiency and skills in fleet management. The study claims that the provincial government realised R50 million from sale of old assets through the PPP arrangement (KwaZulu Natal Provincial Government, Department of Economic Development, 2005: 63).

4.7 Conclusion

While government has made provision for public transport services and infrastructure numerous challenges remain in the public transport sector. The public transport challenges border on inefficient and ineffective public transport services as well as inadequate infrastructure. This has resulted in a significant number of the public relying on taxi's and private cars for transport. Consequently the roads have become congested. The rail sector which could relieve road congestion is itself so engrossed in operational and technical challenges. The next chapter will examine in more detail the Gautrain Rapid Rail Link which is one of the PPPs being implemented to alleviate the challenges in the transport sector.

Chapter 5

Case Study: The Gautrain-Rapid-Rail-Link PPP

5.1 Introduction

This chapter examines the Gautrain-Rapid-Rail-Link (or better known as the Gautrain) PPP. The background to the establishment of the Gautrain PPP and its geographic location are described. The chapter then explores the technical and structural aspects of the Gautrain such as what type of a PPP it is; the rationale for the PPP and the project cycle for the PPP. The parties and financing arrangements for the project are highlighted. The chapter also underscores some of the issues which have arisen in the course of the implementation of the Gautrain. The arrangements put in place to formalize the Gautrain and the outcomes that have ensued from the PPP are demonstrated in order to illustrate some of the governance issues.

5.2 Background and Geographical Location of the Gautrain PPP

The Gautrain PPP is located in the Gauteng province, one of the nine provinces in South Africa. The Gauteng province possesses several distinctive characteristics that economically and socially distinguish it from other provinces. These characteristics include land size; level of government administrative composition; population size; employee remuneration; contribution to the national economy and industry size.

The Gauteng province is the smallest of the nine provinces in South Africa with a land area of 1.4% of the total national land area, (Statistics South Africa, 2011: 13). However, the Gauteng province is home to two important cities. The cities are Pretoria which is the administrative capital of South Africa and Johannesburg which holds Johannesburg International Airport, one of the major regional and international airports, (Gauteng Provincial Government, 2005; South Africa, 2014). According to SAICE out of the 34 million passenger movements which take place in all airports in South Africa, 18 million passenger movements take place at Johannesburg International Airport (SAICE, 2011: 22). Therefore Pretoria and Johannesburg are quite busy cities. Figure 5.1 below shows the map of Gauteng.

Figure: 5.1 Map of Gauteng



As shown in the map above, the Gauteng province also encompasses three of South Africa's six metropolitan municipalities. The three metropolitan municipalities are Johannesburg, Tshwane and Ekurhuleni. According to section 2 of the Municipal Structures Act, metropolitan municipalities are category A municipalities and may be distinguished from other categories of municipalities by their vibrant but complex diverse economy; their social and economic linkages which are strong and

interdependent and their need for interconnected development planning (Act 117 of 1998).

Besides its three metropolitan municipalities, Gauteng has the highest population and the highest number of workers in South Africa. According to the National Household Travel survey of 2013, 25.2% of the population in South Africa lives in Gauteng (Statistics South Africa, 2013: 10) while the Remuneration of Employees Turnover statistics for 2004 indicates that 49.6% remuneration for all employees in the country originated from Gauteng (Statistics South Africa, 2004: 1).

In addition, the Gauteng province makes the highest contribution to the national economy. The Regional Growth Statistics for 2011 states 34.5% as the percentage Gauteng province contributes the national Gross Domestic Product (GDP) (Statistics South Africa, 2011: 2). Furthermore, most of industries are based in Gauteng. For example, 43.3% of the construction industry; 40.5% of the manufacturing industry and 39.7% of general government services are found in Gauteng (Statistics South Africa, 2011: 4).

5.3 Background to the Gautrain PPP

The Gauteng province is unquestionably a highly populated province with a strong and vibrant economic base. One of the consequences is that the province also faces traffic congestion, especially on the N1 Schoeman freeway which is located between Pretoria and Johannesburg. In the early 2000s (and prior to the Gautrain PPP), the N1 freeway had up to 157,000 vehicles driving on the freeway every day, and was overwhelmed by traffic congestion. With the annual traffic growth rate of 7% for Gauteng province, it was argued that the traffic congestion was bound to get worse (Gautrain Management Agency, 2014: np). Alternative transport arrangements became a topic of discussion – one such proposal was the revival of the passenger rail network system through the introduction of a rapid transit railway between Johannesburg and Pretoria to alleviate the traffic congestion on the N1 freeway.

It was posited that the introduction of the Gautrain-Rapid-Rail-Link would result to one fifth of the private car users on the N1 freeway being attracted to abandon

private car use and opt for use of the rail link as a means of transport and thereby achieve reduced traffic congestion on the freeway (Gautrain Management Agency, 2014: np). It was also envisaged that the link would be carrying over 100,000 passengers per day (National Assembly, 2005: 2990 [4]). The proposal for a rapid-rail-link system was put out for tender in 2000. The successful bidder was the Bombela Consortium. The Bombela Consortium is made up of five shareholders, namely Murray and Roberts (33%), Strategic Partners Group (SPG) (25%); Bombardier (17%), Bouygues Travaux Publics, (17%) and J and J Group (8%).

Figure 5.2: Parties to the Gautrain PPP



Source: Dachs, 2011, slide 14

However, as explained in the previous chapter, the PPP Unit (located in the national Treasury department) first undertakes a rigorous assessment process. The proposed PPP agreement has to meet the extensive legal requirements and processes set out in South Africa's policy framework. The National Treasury eventually approved the PPP in 2006 (Dachs, 2011; National Treasury, PPP Unit, 2013).

5.4 The Governance of the Gautrain PPP

In 2006, a contractual agreement between Gauteng provincial government and the Bombela Consortium was entered into, creating the official Gautrain-Rapid-Rail-Link (Gautrain) PPP. The Gautrain PPP is a 20 year concession contract between the Gauteng provincial government (which is the public sector partner in this PPP) and the Bombela Consortium (which is the private sector partner in this PPP). The PPP is based on a design-build-finance-operate-transfer (DBFOT) agreement (National Treasury, PPP Unit, 2013: 3).

The then premier of Gauteng introduced the PPP as one of the province's ten spatial development initiatives (SDI). (Gauteng Provincial Government, Department of Transport and Public Works, 2000: 1).

As advised by Treasury regulations, the Gautrain PPP is comprised of key governing structures set up for the purpose of managing different aspects of the Gautrain PPP. These are: The Gautrain Management Act (Act 5 of 2006), The Gautrain Management Agency, and The Bombela Concession Company.

The Gautrain Management Act (Act 5 of 2006) provides for the establishment of the Gautrain Management Agency with the mandate to manage and oversee the Gautrain PPP project. To accomplish the functions, section 4 of the Act obliges the Gautrain Management Agency to:

- i. Assist the Gauteng Province in the implementation and achievement of project objectives.
- ii. On behalf of the province, manage the relationship between Gauteng Province and Bombela Consortium and protect interests of the province.
- iii. Manage the assets and the finances of the Gautrain PPP project.
- iv. Promote liaison and cooperation between government structures in all the spheres of government and with other interested persons in relation to the Gautrain project.

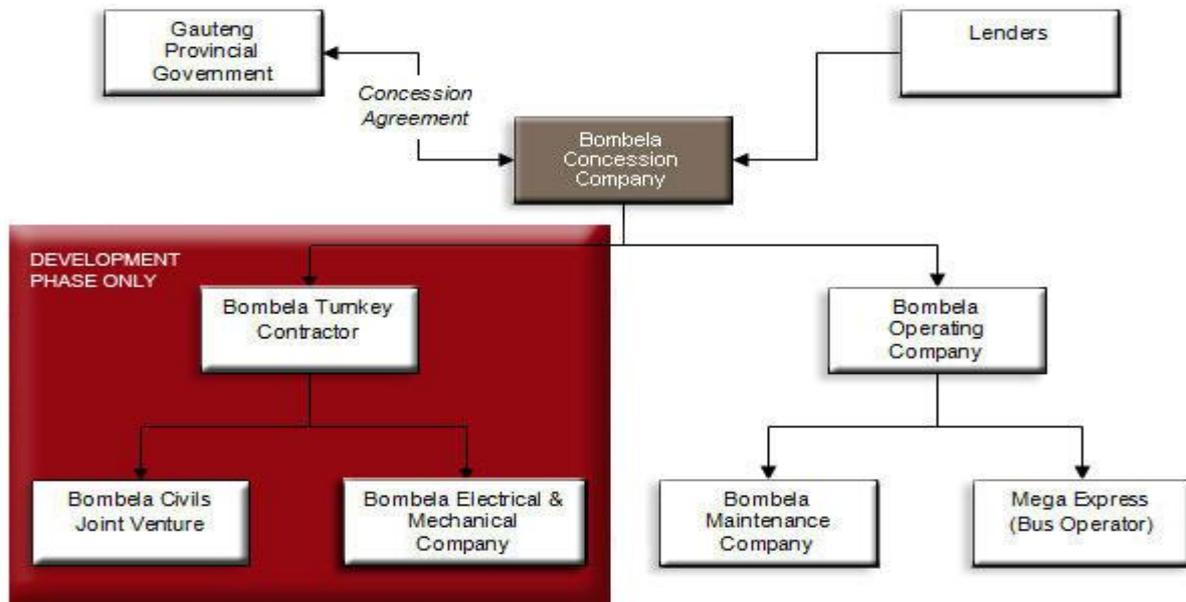
- v. Promote socio-economic development and BBBEE objectives of the Gautrain PPP.
- vi. Monitor the policy and legislation environment of the Gautrain PPP, and
- vii. Enhance integration of the Gautrain PPP project with other transport service and public transport plans.

Sections 32, 35 and 37, respectively require the Gautrain Management Agency to: open a bank account; comply with the Public Financial Management Act (PFMA) regulations; and make a distinction between operational funding and project funding; as well as prepare annual reports (Gautrain Management Act 5 of 2006).

The Act also empowers members of the Gauteng provincial Executive Council (MECs) to appoint the Board of the Gautrain Management Agency. This ensures that the public partner (the Gauteng province) in this PPP has oversight of the activities of the Gautrain Management Agency. Section 14 mandates the Board to monitor activities of the Gautrain Management Agency and ensure compliance with the provisions of PFMA. The section also gives powers to the Board to oversee future contracts with financial implications between the Gautrain Management Agency and other institutions (Gautrain Management Act 5 of 2006).

The Bombela Concession Company is the special purpose vehicle (SPV) set-up with the sole purpose to govern the construction and operation side of the project. Figure 5.3 illustrates the location of the Bombela Concession Company within the concession agreement.

Figure 5.3: The Bombela Concession Company (SPV)



Source: Bombela Concession Company, 2014: np

Figure 5.3 above indicates that the SPV, the Bombela Concession Company, is responsible for managing the operational aspect of the projects such as appointing contractors for the building of the actual infrastructure and the actual operation of the project, including associated services. For example, besides the operation of the Gautrain, it also manages the bus service contracts.

The Gautrain PPP is a DBFOT (build-design-finance-operate-transfer) concession agreement. The Bombela Concession Company must connect the city of Johannesburg with the city of Pretoria - with a detour to connect Johannesburg with the Johannesburg International Airport (Gautrain Management Agency, 2013: 34). To enable the operation of the rapid-rail-link, the Bombela Concession Company is tasked with the responsibility for the provision and operationalisation of depot equipment; trains; signaling systems and feeder/distribution buses (Gautrain Management Agency, 2013). The 2002 Environmental Impact Assessment for the Proposed Gautrain-Rapid-Rail-Link between Johannesburg, Pretoria and Johannesburg International Airport Report explains that “feeder bus services transport passengers from points of destination to the train stations while distributor

bus services transport passengers from train stations to their final destinations”, (Gauteng Department of Public Transport and Public Works 2002: 6).

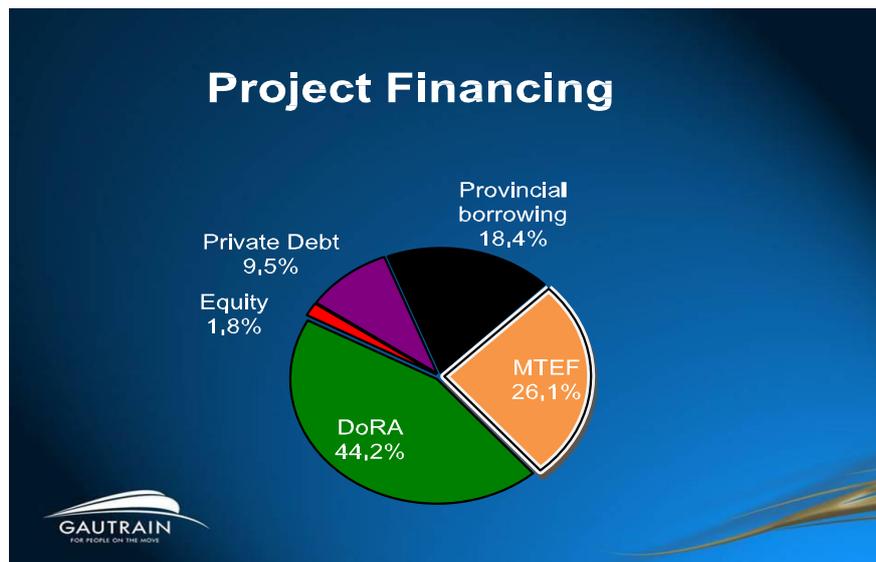
The Gauteng provincial government is tasked under the PPP agreement to provide land for the construction of the track (Gautrain Management Agency, 2010: 46). In addition, the provincial government bears the patronage guarantee obligation which stipulate that regardless of low demand for Gautrain services, the Gauteng provincial government would pay Bombela Consortium patronage fees to cover the capital, maintenance and operational costs of the Consortium, (Gautrain Management Agency 2013: 38).

The lifespan of the Gautrain is divided into two phases: the first phase lasting 54 months and the second, 15 years. The first 54 months were for the designing and construction of the rapid-rail-link system while the remaining 15 years constitute the operational period (Gautrain Management Agency, 2013: 38). The construction phase would commence in 2006 and end in mid-2010 while the operational phase would start in the mid-2010 and end at 2026 after which period the rail-rail-link system will be transferred wholly to the Gauteng provincial government, bringing an end to the PPP agreement (Gautrain Management Agency, 2014: np).

5.5 Gautrain Financing

As explained above, the provincial government is the public sector partner in the Gautrain PPP. It is also the financier of the project. According to Dachs (2011) the total development cost for the Gautrain is R26 billion (Dachs, 2011: slide 10) and the costs are spread across five sources of funding (Dachs, 2011: slide 15). The sources of funding are the national budget allocation (through the annual Division of Revenue Act [DoRA]) which is channeled through the DoT; the Gauteng provincial government budget; private sector equity; private sector borrowing and provincial borrowing (Dachs, 2011: slide 15). The chart 5.1 below displays the percentages that each of the sources makes to the Gautrain.

Chart 5.1: Gautrain PPP Financing



Source: Dachs, 2011: slide 16

As demonstrated in Chart 5.1 the government contributes 88.7% of the costs of the project while the private party, the Bombela Consortium, only contributes 11.3% to the cost of the Gautrain PPP. It must be borne in mind that this type of PPP is one where government is the financier, and the private sector provides the actual infrastructure. The private partners borrow finance from the government (88.7%) and fund the remaining 11.3% with their own revenue (which could be through their own private borrowing, or equity). Government receives a return on their borrowings through the interest charged to the Bombela Consortium, while the Consortium is awarded the rights to the proceeds of the Gautrain for the duration of the PPP. The risk is shared in that the Bombela Consortium is contractually obligated to provide the infrastructure at the standards agreed to as well as repay the government loan on the terms set. On the other hand, the government takes a risk in assuming that Bombela can fulfil its contractual obligations.

5.6 Project Cycle for Gautrain

The phases, timelines and some of the major activities as they happened in the Gautrain are highlighted in Table 5.1 below.

Table 5.1: Gautrain-Rapid-Rail-Link Project Cycle

Cycle	Phase	Timeline	Activities
1	Inception	February, 2000 to June, 2000	<ul style="list-style-type: none"> - Announcement of the Project - Appointment of Project Technical Team - Development of Inception Report
2	Feasibility study	July, 2000 to April, 2005	<ul style="list-style-type: none"> - 2000 – 2001 Feasibility studies - Submission of Feasibility Study report and Request For Qualification (RFQs) to Treasury - Receipt of 1st PPP Treasury approval (2002) - Issuance, receipt and evaluation of RFQs (2002) - Submission of Bid Evaluation report and Request For Proposals (RFPs) documents to National Treasury - Receipt of 2nd PPP Treasury approval (2002) - Announcement of Bombela and Gauliwe consortia as successful bidders (2002) - Evaluation of proposals from Bombela and Gauliwe consortia (2003 –

			<p>2005)</p> <ul style="list-style-type: none"> - Submission of evaluation report on the proposals to PPP Unit - Receipt of 3rd PPP Treasury approval (2005) - Negotiations with Bombela Consortium - Submission of PPP Agreement Management Plan to Treasury - Announcement of Bombela Consortium as the preferred bidder (2005)
4	Development	August, 2005 to June, 2012	<ul style="list-style-type: none"> - Mobilization of resources including finances <ul style="list-style-type: none"> ➤ R7.1 billion set aside in the national budget (2006) ➤ R3.1 billion loan commitment by Rand Merchant Bank and Standard of South Africa to Bombela Consortium (2007) - Relocation of utilities such as water pipes and electricity grids - Finalization of agreements with Bombela Consortium - Preliminary design for all sections of the rapid rail link - Commencement of construction - Dispute settlements

			- Monitoring and receipt of progress reports
6	Delivery	June, 2012 to September, 2026	<ul style="list-style-type: none"> - Construction phase delivered (June, 2012) - Operation phase delivery due 2026 - Dispute settlements - Monitoring and receipt of progress reports
7	Exist	2026	- (Awaiting due date)

Source: GMA, 2014: np

5.7 Outcomes of the Gautrain

The processes of the Gautrain project cycle outlined in Table 5.1 have not been without challenges. While technically, the process has met the legal requirements as stipulated by the Treasury, a number of issues have arisen in the course of the project cycle which threatened the Gautrain project. According to the Business Day Newspaper the rail system has experienced rampant theft of copper cables. The Chief Executive Officer of the Gautrain Management Agency claimed that cable thefts have not only caused disruptions in the schedules for trains but also loss of money from potential train passengers. The newspaper reported that during the 2010/11 financial year twelve cases of cable thefts were reported (Business Day, 26 September, 2011: 3).

Strikes by employees of the Bombela Concession Company have also caused problems for the Gautrain PPP. The Business Day Newspaper claimed that over a period of six months (between August, 2011 and February, 2012) the Company had experienced five employee strikes. Four of the strikes were by bus drivers while one was by security guards. The Bombela Concession Company alleged that the strikes resulted in a loss of train passengers by between 10% and 15% (Business Day, 3 February, 2012: 2).

Disputes between the Bombela Concession Company and the Gauteng provincial government pose another challenge to the Gautrain's planned project cycle. The 2013 Gautrain Management Agency Annual Report notes that despite Bombela Concession Company indicating that it had fulfilled its construction obligations for the construction phase of the project and the Independent Certifier confirming the same in June 2012, the Gauteng provincial government has refused to take delivery. According to the Report, the Gauteng provincial government argued that water leakages along some parts of the underground tunnel of the rapid-rail-link were enough evidence that the construction was not satisfactorily done (Gautrain Management Agency, 2013: 45). The matter has since been resolved by the Arbitration Foundation of South Africa which ordered Bombela Consortium on 23rd November, 2013 to conduct some corrective works along some parts of the link (Gautrain Management Agency, 2013: np).

Thus despite the Gautrain PPP cycle flow within the precepts stipulated in the PPP Manual for national and provincial governments in South Africa, social and environmental issues appear to have presented challenges in the Gautrain PPP.

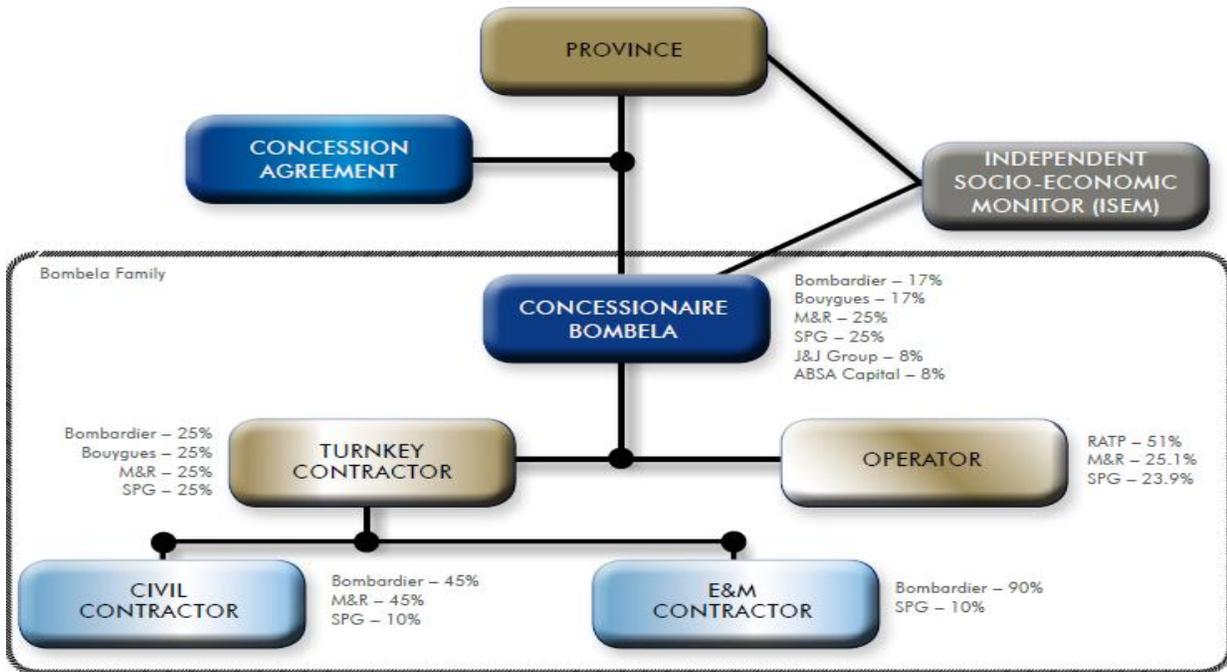
The above discussion shows that while a PPP agreement process may meet the legislative requirements, it still faces socio-economic implementation challenges which those responsible for governing the PPP project need to take into consideration throughout the duration of the project.

The outcomes of the Gautrain are mixed and as such have given rise to both positive and negative results and reactions. The positive outcomes include:

The conclusion of an 80-kilometer rapid rail link with ten train stations which connects Johannesburg and Pretoria; and Johannesburg and Johannesburg International Airport (Dachs, 2011: slides 9 and 10). Merwe claims that the rail link has direct coordination with Metrorail Services at Johannesburg Park Station, Pretoria main station, Hatfield and Kempton Park, (Merwe, 2001: 5). Furthermore, the Gautrain Management Agency Annual Report for 2013 indicates that the Gautrain has physical interfaces with municipal taxis and buses at Park Station (Gautrain Management Agency, 2013: 118). As of March, 2013 the Gautrain was transmitting about 42, 000 train passenger per day (Gautrain Management Agency, 2013: 46).

The Gautrain has led to the promotion of BBBEE. The inclusion of SPG as a partner in the Bombela Consortium and the procurement of employees and services from black South Africans has increased economic prospects of people previously disadvantaged by apartheid. Figure 5.4 and Figure 5.5 below illustrate the extent to which BBBEE has been infused in the Gautrain.

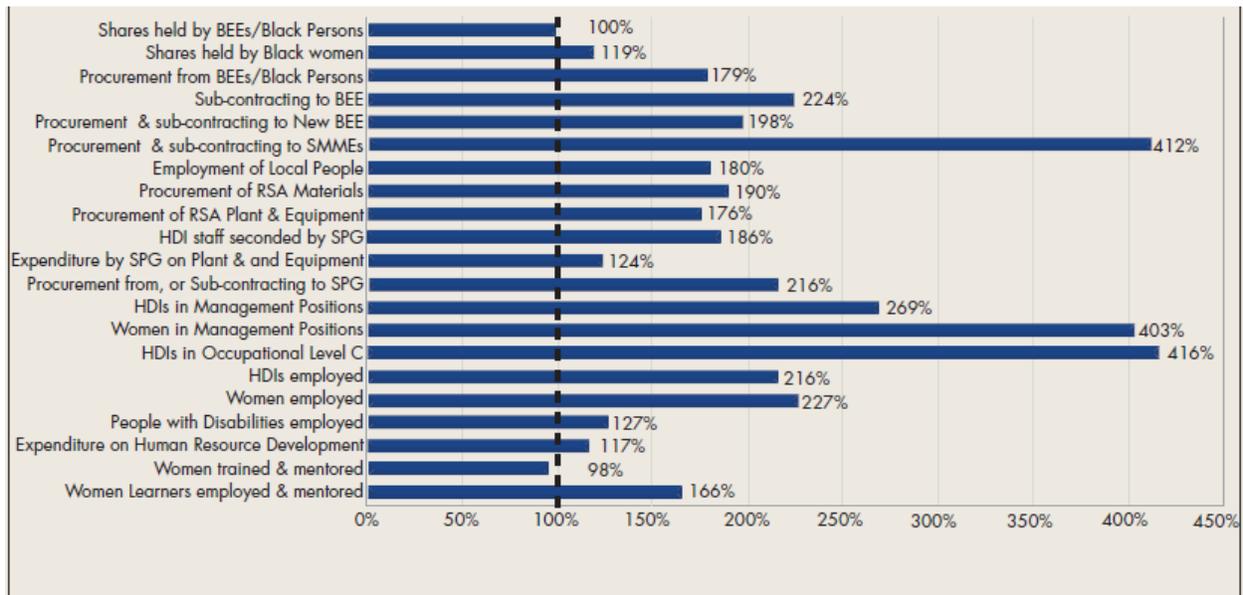
Figure 5.4: BBBEE Equity in the Gautrain



Source: Gautrain Management Agency, 2010: 40

Figure 5.4 shows that SPG equity in Bombela Consortium is in fact above the target set out in the BBBEE scorecard discussed in chapter 3. For example, the recommended weighting for black equity in a private party is 20% (National Treasury, 2004: 26), however in the case of Gautrain the equity has exceeded the recommended weighting by 5%.

Figure 5.5 BBEE Procurement in the Gautrain



Source: GMA, 2013: 54

In respect of procurement from black South Africans, Figure 5.5 shows that in most respects the targets laid down in the concession agreement have been exceeded. For example, procurement and subcontracting from new BEEs; women in management positions and black South Africans in occupational Level C exceed the stipulated targets by over 300%.

The concession agreement between the Gauteng provincial government and Bombela Consortium obliges Bombela Consortium to meet twenty-one socio economic development activities whose objective is to promote BBEE (Gautrain Management Agency, 2013: 52). BBEE in the Gautrain PPP is accomplished at two levels as per the concession agreement. Firstly, through the inclusion of a black South African owned company (SPG) in the Consortium and, secondly through the procurement of employees and services from previously disadvantaged people (Gautrain Management Agency, 2013: 53). The SPG is the fulfillment of equity of black-owned company in the Bombela Consortium (Local Government Supplier, 2005: 50). According to the SPG website, SPG was formed in 2002 and became a shareholder in the Bombela

Consortium who bid for Gautrain project. The website indicates that the SPG comprises of businesses and individuals with a history of being previously discriminated against by apartheid policies. The website further indicates that the individuals include professionals, black businesses, youth and women with skills in construction; financial services and transportation (SPG, 2014: np).

The incorporation of SPG into the Bombela Consortium and the procurement of black South African employees and services enabled Bombela Consortium to comply with the legislative and policy directives aimed at the BBBEE requirements of PPPs. However, the presence of SPG and the subsequent approval of the Bombela Consortium as the preferred bidder in the Gautrain PPP raised controversy in 2006. The Sunday Times newspaper reported that four national government officials had connections with SPG and implied that this influenced the National Treasury's approval of the Bombela Consortium (Sunday Times, 26th November, 2006: 1). Although the then ANC president confirmed the connections of the four government officials to SPG, it was argued that the officials were distanced from influencing the decision on grounds that the selection of Bombela Consortium was made by the Gauteng provincial government and not the national government (ANC Today, 8th December, 2006: np).

Mushongahande, Cloete and Venter (2014) claim that the Gautrain PPP has spurred property development along the route of the rail link. The Impact of the Gautrain on Property Development around Station Precincts' research conducted by the trio in 2014 concluded that property development on areas around the Gautrain-Rapid-Rail-Link stations had increased since 2000. For example, the research noted that twenty-one properties that include offices, residential and retail have been developed at Rosebank station since 2000 while at Midrand station Old Mutual has set up residential and retail property (Mushongahande, Cloete and Venter, 2014: 7).

The socio-economic development which Gautrain has led to contradicts the initial fears of properties owners and residents in the suburbs of Muckleneuk and Lucksrand in Gauteng about their perceived decline in property value. Properties owners and residents in the suburbs of Muckleneuk and Lucksrand in Gauteng complained to the

Court in 2004 that the route would destroy specialist fields and the heritage of their area (High Court of South Africa, 2006). The concerns by the property owners and the residents of Muckleneuk and Lukasrand were supported by the business people of Rosebank who complained that the construction of Rosebank train station had environmentally polluted the area through noise, filth and dust. As such customers were shunning the area resulting in businesses losses of between 40% and 60% (Mail and Guardian, 27 September, 2007). The properties owners and residents of Muckleneuk and Lucksrand, however, lost the case against the Gauteng provincial government in 2006 (Pretoria News, 31 August, 2006). The case, however, points to the government's lack of community involvement in the initial stages of the project.

Notwithstanding the positive outcomes which have ensued from the Gautrain, the PPP has also drawn some negative reactions. Some of the negative reactions include:

The National Assembly Portfolio Committee on Transport (PCT) claimed that the conceptualisation of the Gautrain PPP lacked transparency and that important stakeholders such as Tshwane Metropolitan Municipality and Johannesburg Metropolitan Municipality were not actively engaged in the feasibility and planning studies of the project (National Assembly, 2005: 2990). In fact the PCT recommended reassessment of the whole Gautrain project to ensure public participation before the Gautrain project could commence (National Assembly, 2005: 2990-2995).

COSATU has opposed the Gautrain on the basis that the rail link is not responsive to the needs of the people most in need of public transport. COSATU has maintained that the route of Gautrain does not pass through where most poor people and workers who need public transport live (iol News, 2006: np). In a 2014 Press Statement, COSATU reiterated that Gautrain project benefit a few rich people who already have other means of transport at the expense of poor people (COSATU, 2014: np).

Donaldson (2005) argues that the Gautrain rapid rail link route was misconceived. Donaldson (2005) claims that the rapid rail route did not go through the eastern suburbs of Pretoria where most of trips between Johannesburg and Pretoria originate from and

where most business are located and therefore more employment location. Donaldson contends that political influence and poor research methods diverted the project from the area that could have benefited the population the most (Donaldson, 2005: 57).

Besides the governance issues, the Gautrain has instigated environmental and safety concerns from various quarters. As discussed above the Gauteng provincial government refused to take delivery of the construction phase due to water seepages it regarded as a safety and environmental concerns. Again property owners and the residents of Muckleneuk and Lukasrand as well as business people of Rosebank expressed concern over the destruction of heritage and pollution of the environment as a result of Gautrain construction works.

Whilst the Gautrain is rated highly by some sectors of the society in South Africa, some stakeholders are of the view that Gautrain has been ill-conceived. In short, notwithstanding the positive outcomes which the Gautrain has resulted into, governance issues such as inadequate stakeholder participation; the indifference of the Gautrain to environmental concerns and public transport needs for the majority of South Africans mar the reputation of Gautrain.

5.8 Conclusion

While the Gautrain may not subscribe to all factors that motivate use of PPPs such as cost savings in service provision; improved quality of services and infrastructure and efficiency, the need to improve access to public infrastructure and the need to access private sector's competencies and capacities appear pertinent to the Gautrain. The reduction of traffic on N1 freeway between Johannesburg and Pretoria will not only improve access to the freeway but will also lead to improved access to rail infrastructure.

CHAPTER 6

CONCLUSION

This study has explored the history of PPPs and demonstrated the different conceptualisations of PPPs. It has been shown that the use of PPPs is motivated by various factors such as economic, social and political factors. The various processes which PPPs go through ascertain that PPPs are unique and diverse. They may range from the provision of a small management contract to a government department to large and extensive infrastructure projects. Teisman and Klijn affirm that PPPs “create new and complex arrangements and processes” (Teisman and Klijn, 2002: 200). As such PPPs call for particular forms of governance including legislation, institutions, systems and processes to facilitate their implementation (Teisman and Klijn, 2002).

PPPs may be used using a range of contractual agreements depending on the services expected from the private sector and the role to be played by government in the PPP. However, in general, the longer the contract period the more risks the PPP inherently holds. It would appear governments are keen to include the private sector in large infrastructure projects to reduce their (government’s) risk exposure. (EU, 2003: 26).

South Africa has not been left out in the use of PPPs, including small service management contract agreements and large infrastructure projects. The government has put in place legislation and policies which enable the use of PPPs in all three spheres of government. The legislation and policies spell out the steps to be followed in the procurement of PPPs. Legislation and policy for PPPs in South Africa stresses affordability; value for money; substantial risk transfer and empowerment of black South Africans as pillars for each PPP (National Treasury, PPP Unit, 2007). On top of that, there is a dedicated PPP Unit which provides technical support in the use and implementation of PPPs.

It has been argued that the role of public transport in the advancement of a country’s economy is significant. “Public transport has a significant role to play in enhancing urban mobility, reducing congestion, decreasing the impact on the environment of

harmful emissions and better serving economy.” (Walters, 2008: 98). This paper has shown that the transport sector in South Africa faces numerous challenges. Challenges range from poor services to inadequate and outdated infrastructure. The DoT in South Africa asserts that the demand for road and transport services and infrastructure exceeds available public funding (DoT, 2013: 145). Consequently PPPs have become imperative.

The objective of this study was to analyse the governance of the Gautrain Rapid-Rail-Link PPP and ascertain some of the issues facing PPPs in South Africa, with particular reference to the Gautrain PPP. The case study has shown that PPPs in South Africa are capable of bringing benefits in the form of enhanced technical expertise and efficiency; high internationally comparative service infrastructure as well as socio-economic gains, among other things.

The Gautrain itself has not met its carrying capacity. Currently, only 42,000 train passengers per day as opposed to the projected 100,000 passengers utilize the Gautrain. However, the DoT is still supportive of the PPP because it feels that it has facilitated the integration of bus, taxi and airport transport services through the interface it has with municipal taxis and busses; feeder and distribution bus services and trips to Johannesburg airport. It may be argued that the integration improves the efficiency and access in public transport (DoT, 2013).

Furthermore, the Gautrain has reaffirmed that PPPs entail risk sharing between the public sector and the private sector. Whilst government has had to bear with court cases to access land, as it happened the matter involving properties owners and residents in the suburbs of Muckleneuk and Lucksrand, Bombela will have to find mechanisms to deal with strikes and cable thefts which may decrease its profits.

One could argue that the Gautrain PPP’s general governance approach could have improved on issues such as transparency and accountability. Greve and Hodge (2010) argument made in Chapter 2 pertaining to the use of consultants in PPPs - that the engagement of consultants keeps away the involvement of the public and other

stakeholders is tested in the Gautrain. While the Gautrain has demonstrated that PPPs may be a good vehicle for the attainment of BBBEE, the controversy which SPG courted, as discussed above, may easily overshadow benefits of PPPs. The case stresses the importance of transparency and accountability in the PPP procurement process and it also serves as a caution of the susceptibility of PPPs to political interference or patronage.

Thus while there is still debate on whether PPPs are new forms of governance or not, or indeed if some of the so called PPPs are PPPs, one thing is certain. PPPs have become entrenched as part of governance in the public sector. "The concept (of PPP) promises a new way of managing and governing organizations that produce public services", (Hodge and Greve, 2007: 545). PPPs such as the Gautrain have the potential to reduce urban traffic congestion and integrating public transport. Nevertheless, there is need for further research on how the public and the other stakeholders may be effectively involved in projects such as the Gautrain. While the Gautrain seem to have engaged the public and stakeholders it would appear the participation has not lived up to the expectation of the public and stakeholders.

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