FORUM CIV

Power to change

Rights-Based Approach to Development: A Review of the PPP Act 2021

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What does a good development look like?

The right to development is an inalienable human right under which every human person and all people are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized (Assembly, 1986). The funding gap for capital development projects in Kenya is expected to increase to USD 40 billion over the next eight years. To meet this projected funding gap, the GoK is focusing more on PPPs to meet the growing demand for quality and affordable infrastructure. To create a legislative framework to guide this, Kenya enacted the PPP Act, CAP 430, 2021, into law.

Despite this enactment and the ongoing PPP projects, many local communities in Kenya are yet to realise the full impact of such projects, with these communities still lacking in primary rights-based needs. This exposes a policy gap in the PPP Act, CAP 430, that may need to be addressed (ForumCiv, 2020). Therefore, this policy brief recommends improvements to the PPP Act, CAP 430 (Laws of Kenya), by applying a Public-Private Development Partnership (PPDP) model and an inclusive rights-based approach to development.

Introduction

The right to development is a fundamental human right enshrined in Article 1 of the Declaration of the Right to Development. It means everyone has the right to participate and benefit from economic, social, cultural, and political progress.

This development should fully realise all human rights and fundamental freedoms. (UNGA, 1986). In 2015, the United Nations (UN) Member States co-signed the 2030 Agenda for Sustainable Development, agreeing on the 17 Sustainable Development Goals (SDGs to address the challenges that human beings face, such as the provision of clean water and sanitation, health care and quality education, among other needs. (Andries et al., 2019)

This has led to a prominence in the development of public-private partnerships (PPPs). PPPs are long-term agreements between the government and private sector institutions that drive economic growth. (Government of Kenya, 2021). Typically, it involves private capital financing government projects and services up front and then drawing revenue from taxpayers and/or users for profit throughout a PPP contract. Their creation shows a significant change in how public policies are made, moving from a traditional 'government' model to a broader idea of 'governance' (Casady et al., 2019).

In demonstrating how the PPP model works, for instance, Kenya's infrastructure development between 2012 and 2020 required a total investment of USD 62,176 million.

The Government of Kenya (GoK) contributed USD 25,000 million, leaving a funding gap of USD 37,000 million. (World Bank, 2016; World Bank PPI Database, 2018).

This funding gap for projects is expected to increase to USD 40 billion over the next eight years. To address this projected funding gap, the GoK is focusing more on PPPs to meet the growing demand for quality, affordable infrastructure for its citizens. (Chileshe et al., 2020). This emphasises the significance of PPPs in Kenya's national development.

Kenya enacted the PPP Act, CAP 430 2021, which repealed the PPP Act, CAP 430 2013. In its First annual report, the PPP Directorate indicated that since the commencement of the PPP program in 2023, the GoK mobilised KES 90 billion in the form of Private capital investments, with KES 80 billion being in 2021/22. (PPP Directorate, 22) Despite this enactment and the ongoing PPP projects, many local communities in Kenya have yet to realise the full impact of these projects, still lacking life's essentials (rights-based needs), including clean water, quality healthcare, and education, and still living in poverty. This exposes a policy gap in the PPP Act, CAP 430, that may need to be addressed. (ForumCiv, 2020). Therefore, this policy brief recommends improvements to the PPP Act, CAP 430 (Government of Kenya, 2021), by applying a Public-Private Development Partnership (PPDP) model and an inclusive, rights-based approach to development.

The Swedish International Development Agency (Sida) developed the public-private development partnership (PPDP) method to mobilise the private sector in Sweden and elsewhere to proactively engage in and contribute to the development of sustainable societies in low-income countries. The approach encourages the private sector to proactively develop strategies to improve key community development dimensions, including community business ecosystems, skill sets and capability enhancement, socio-economic empowerment, partnership networks, and access to rights-based needs.

The PPDP model strengthens public-private partnerships, leveraging rights-based approaches to improve access to clean water, healthcare, quality education, climate change resilience, and create decent jobs, thereby lifting local communities out of poverty. Initially implemented in Narok and Nakuru Counties since 2018, as part of the Private sector-led Geothermal Projects, the model has shown significant results towards inclusive growth. (ForumCiv, 2020).

Key results informing policy recommendations

A PPDP model was tested in Suswa and Olkaria Wards within Narok and Nakuru counties. The model was tested within the affected communities resulting from the development of geothermal power-generating plants in Olkaria. This study revealed a significant impact of the PPDP model on community development in the area. It further revealed a significant effect on community development through the provision of clean water, quality education, healthcare, skill development, green jobs, entrepreneurship, community rights empowerment, and leadership development. Areas where PPDP was not implemented registered lower levels of development—36.9% lower than in areas where PPDP was implemented—16.0% (Fig. 1). This indicates that PPDP has great potential as a catalyst for socio-economic growth and environmental progress in regions hosting large-scale development initiatives. Evidence from the initiative suggests that areas where the Public-Private Development Partnership (PPDP) model was not implemented experienced slower development progress. This underscores the significant potential of PPDPs to drive community development and foster inclusive growth in regions where they are established.

The unemployment rate in areas where PPDP was not implemented was 20.1% compared to 12.1% in areas where PPDP was implemented. The majority of individuals earning less than $1.50 a day were from areas without PPDP (Fig. 2).

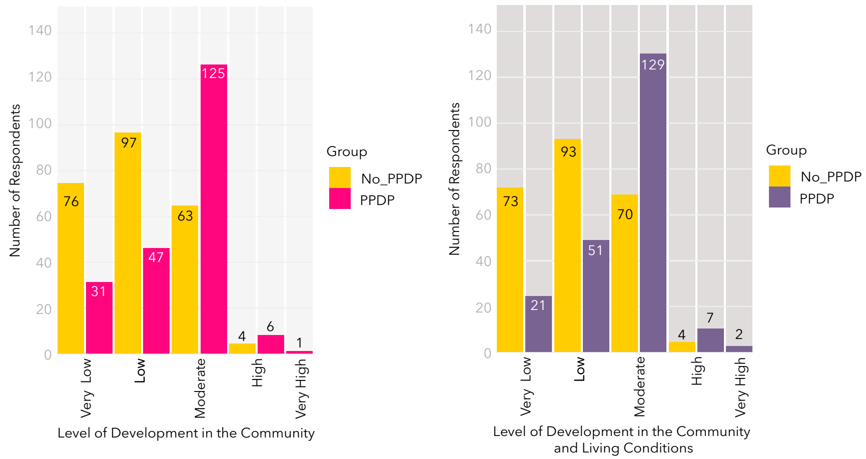


Figure 1: Development Characteristics in Olkaria and Suswa, Naivasha and Narok Counties, Kenya, with a Focus on the Impact of Public-Private Partnerships Development (PPDP) Implemented Since 2018. Results depict a) comparison of the level of community development, b) evaluation of the level of living conditions.

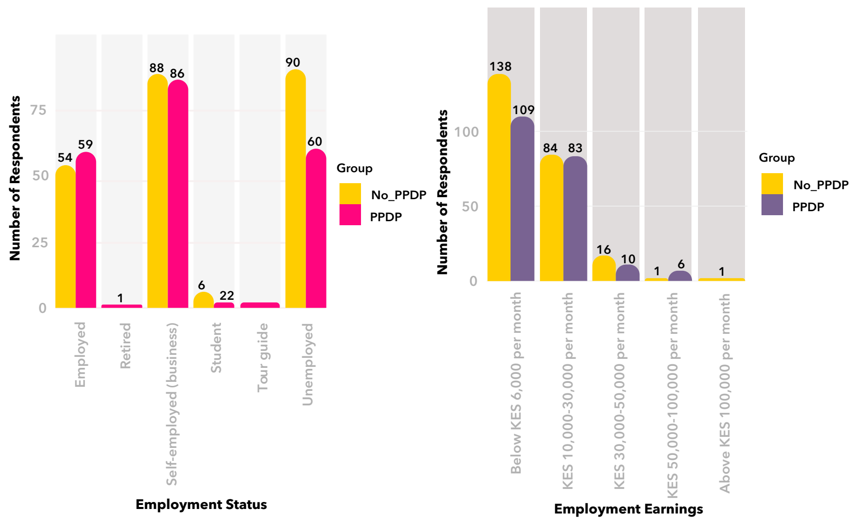


Figure 2: Development Characteristics in Olkaria and Suswa, Naivasha and Narok Counties, Kenya, focusing on the Impact of Public-Private Partnerships Development (PPDP) Implemented since 2018. Results depict a) comparative analysis of employment status, and b) assessment of employment earnings between PPDP-implemented (PPDP) and non-implemented areas (No-PPDP).

Critical analysis of the PPP Act, CAP 430

The PPP Act, CAP 430 of 2021, was enacted to improve infrastructure delivery in Kenya by enhancing partnerships with the private sector. However, the Act has several limitations that must be addressed to ensure inclusivity, equity, and community empowerment.

One of the most pressing gaps is the lack of an explicit benefit-sharing framework. Sections 3(c), 19(2)(b), and 69(7) omit explicit provisions for how local communities benefit from PPP projects, which can result in the exclusion of project-affected persons (PAPs) from the development dividends generated by these investments.

Oversight mechanisms under Sections 57 and 58 are weak. The Act merges negotiation and compliance roles, compromising the principle of separation of powers (the "maker-checker" principle). This raises concerns about accountability, particularly regarding the monitoring and enforcement of community rights, socio-economic impacts, and environmental safeguards.

The definition of local content within the Act prioritizes national-level value addition but fails to consider county-specific or community-level contributions and needs. Consequently, local communities are excluded from the project value chain.

Equally critical is the Act's omission of climate change adaptation, mitigation, and resilience strategies. This gap overlooks Kenya's national and international commitments to climate action, leaving communities vulnerable to environmental harm resulting from the PPP Act, CAP 430 ivities.

Inclusivity and meaningful participation are inadequately addressed. While Section 19(2) mentions equity, it lacks language guaranteeing inclusivity and community representation.

Project-affected persons, including women, youth, and persons with disabilities (PWDs), are not explicitly guaranteed a voice in decision-making processes. Without proper frameworks for inclusive engagement, projects risk alienating stakeholders and inciting resistance or conflict.

The Act also lacks practical tools for data transparency. The current disclosure mechanisms are not user-friendly, especially for local communities.

There is no mandate to disseminate accessible, language-sensitive, or mobile-compatible information. Furthermore, marginalized counties, particularly in arid and semi-arid regions, are not explicitly considered, and the Act provides no affirmative

mechanisms to direct investments toward these areas.

Stakeholder consultations reveal that existing power imbalances limit the meaningful participation of disadvantaged groups. A transparent and inclusive grievance redress mechanism is lacking, increasing the likelihood of conflict and undermining the pursuit of justice.

The PPP Act, CAP 430, does not specify how affected communities can lodge complaints, who is responsible for addressing them, or how such grievances should be resolved in a timely and fair manner.

Without a clear and accessible framework, communities lack an effective means of redress, undermining both accountability and the legitimacy of PPP projects. Lastly, while the Act addresses investor protection, it fails to balance it with community protections and dispute-resolution processes grounded in environmental and social justice principles.

Therefore, the PPP Act, CAP 430, requires comprehensive reform to embed rights-based, climate-responsive, and community-centred development principles. These changes will not only uphold Kenya's constitutional values in Articles 10, 69, and 159 but also enhance public trust, de-risk private investments, and foster equitable, inclusive development outcomes.

Additionally, stakeholder comments from the Multi-Stakeholder Dialogue Forum on Community Engagement in Development, held on May 7, 2025, at Strathmore University, emphasised the importance of early and sustained community involvement throughout the project cycle of PPPs to foster legitimacy and reduce the risks of resistance. Current provisions lack frameworks for community-driven initiatives and inclusive dialogue.

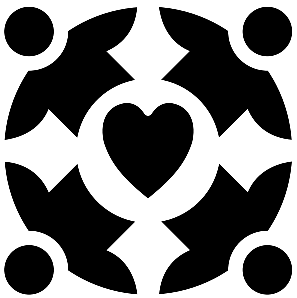
There is a critical need to align project governance with constitutional values and to ensure that PPPs are socially responsible throughout the project life cycle—from identification to Monitoring & Evaluation (M&E). Power imbalances must be addressed to ensure meaningful participation by all groups, especially marginalised populations.

Policy Recommendations

To address the gaps identified in the current PPP Act, CAP 430 and better align development projects with the needs of local communities, we propose the following practical, policy-relevant recommendations:

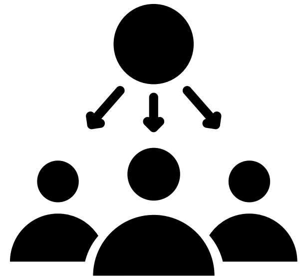
1. Community engagement

1) Embed community engagement throughout the entire project cycle, from initial planning to final evaluation. PPPs must be people-centred and uphold the constitutional values of participation, inclusion, and social justice.
2) Incorporate provisions for capacity-building initiatives or incentives to encourage private sector participation in the community development pathway linked to skills development for the local community & Business Development Services for local communities.
3) Strengthen the Act to include provisions for creating cost-sharing models (e.g., contributions from public and private partners) or integration with existing mechanisms like the Project Facilitation Fund (PFF) to ensure sustainability and fiscal prudence.



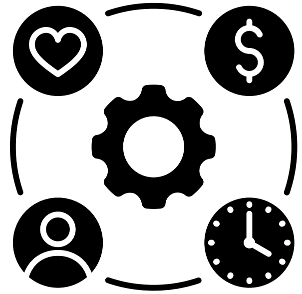
2. Benefit Sharing: Amendment of Sections 3(c), 19(2)(b), and 69(7): Equitable Benefit-Sharing Framework to strengthen the socio-economic impact of PPPs on host communities, the following amendments are proposed:

1) Section 3(c): revise to emphasize inclusive development and mandatory local benefit-sharing.
2) Section 19(2)(b) – amend to require the integration of local benefit-sharing mechanisms in all project proposals and agreements.
3) Section 69(7) – update to enforce the disbursement and public reporting of social investment contributions.
4) Consolidate Sections 3(c), 19(2)(b), and 69(7), and introduce a new Section 32A to establish a unified framework for equitable benefit-sharing and climate action. The amendment should require that all PPP projects allocate a minimum percentage of their net revenue or gross turnover—whichever is higher—to local social investment initiatives, with clear disbursement targets for gender and youth inclusion. Additionally, projects must integrate and budget for climate adaptation, mitigation, and resilience measures in line with Kenya's Nationally Determined Contributions (NDCs), supported by measurable targets and indicators.



3. Oversight Mechanisms, Transparency & Accountability

1) Strengthen the existing redress mechanisms, such as the CAJ/Ombudsperson, to ensure transparency, compliance, and inclusive governance across all stages of Public-Private Partnership (PPP) projects. This body will be mandated to monitor project implementation, investigate complaints, and guarantee the meaningful participation of affected communities—particularly marginalized groups.
2) Improve transparency and community feedback mechanisms by upgrading the public disclosure portal. The system should be GIS-based, mobile-friendly, available in local languages, and include tools like SMS or USSD for submitting feedback.
3) Data-Driven KPIs – Gazette a standard M&E framework tracking: (i) local employment & skills training, (ii) SME subcontracting, (iii) gender & youth empowerment, (iv) climate resilience metrics, (v) grievance-redress turnaround time. Annual performance to be tabled in Parliament.
4) Standardize impact measurement and reporting by gazetting clear indicators for employment, training, SME involvement, gender/youth inclusion, environmental performance, and grievance redress. These indicators should be reviewed annually and reported to the independent PPP ombudsperson.



4. Resource Mobilisation and Local Participation Policy for PPPs that prioritizes the use of Kenyan pension funds, local banks, and national technical expertise. This policy should create enabling conditions for increased local capital participation through incentives such as partial risk guarantees, while also mandating the inclusion of local professionals and firms across the entire PPP lifecycle from project design to implementation and management.

5. Investor Protection Mechanism – Fast-track arbitration under the Nairobi Centre for International Arbitration, but condition eligibility on compliance with EBF and Climate Action Safeguards.

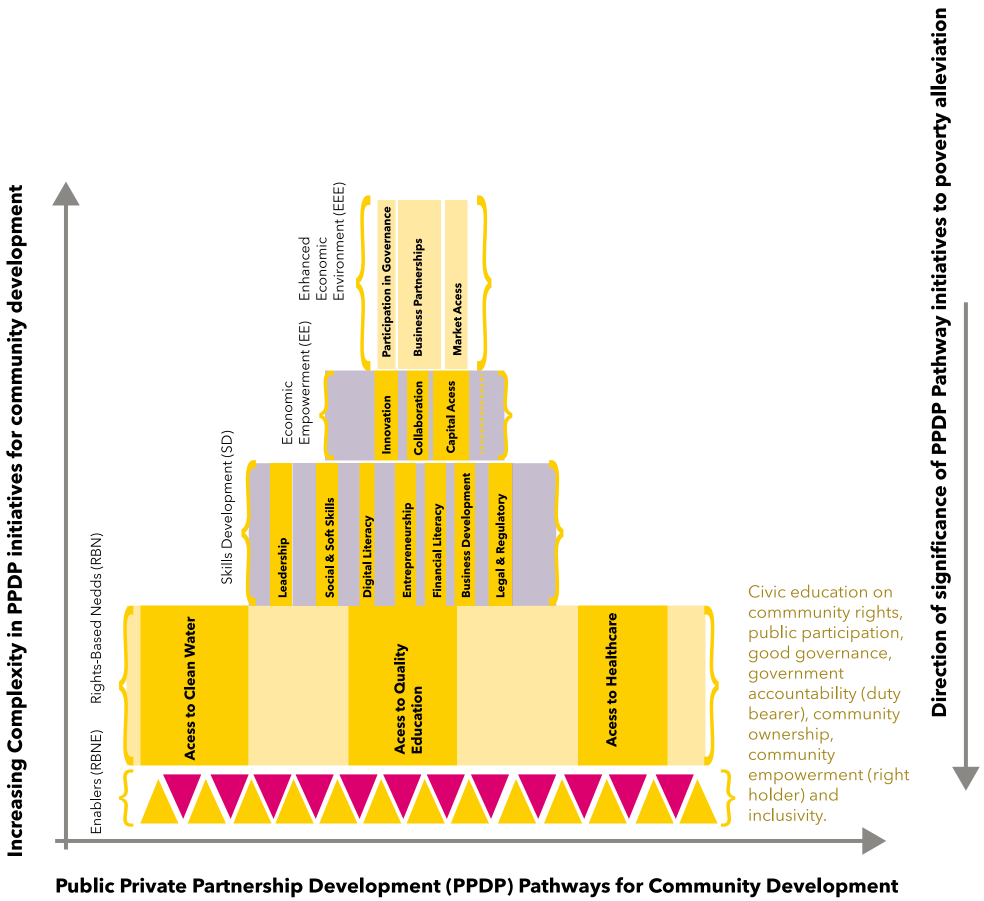


Figure 3: A schematic model of PPDP impact pathways to community development for poverty alleviation and delivery of Rights-Based Needs (RBN) through a human rights-based approach. The broadness and level of the pathway indicate its significance to community development and poverty alleviation. The model proposes five pathway levels: RBNE, RBN, SD, EE, and EEE. Pathways at the lower level of the model are most significant and critical to poverty alleviation and community development. The broader the pathway, the more critical it is for community development.

Conclusion

The PPP Act, CAP 430, has gaps in the application of rights-based principles. Some of the weak areas identified in this brief include accountability, inclusivity, community participation, climate action, community empowerment, and the rights of communities. Beyond PPP projects meeting the feasibility criteria, there is a need for a clear framework and guidelines to hold PPP projects accountable, ensuring tangible development outcomes that meet the needs and expectations of the communities where they are domiciled. Therefore, effective community development should be grounded in human-centred principles to have a lasting impact.

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