

Strengthening Public Private Partnerships for Health

USAID/Uganda Private Health Support Program.

Alignment of the proposed structure of the PPPH
Node and the Terms of Reference for the PPPH
Technical Working Group to the PPP Act, 2015 and
the National Policy on PPPs in Health.

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List of acronyms

CSOs	Civil Society Organizations
HDPs	Health Development Partners
HPAC	Health Policy Advisory Committee
HSSIP	Health Sector Strategic Investment Plan
MoH	Ministry of Health
PHSP	Private Health Support Programme
PPF	Private for Profit
PNFP	Private not for Profit
PPPH	Public Private Partnership for Health
PPPH Policy	National Policy on Public Private Partnership in Health
PS	Permanent Secretary
PSF	Private Sector Foundation
TCMP	The Complimentary Medicine Practitioners
ToR	Terms of Reference
TWG	Technical Working Group
UNACOH	Uganda National Association of Community and Occupational Health
USAID	United States Agency for International Development

Executive Summary

Historically, Uganda's health sector was entirely funded by public resources. Today, it is comprised of public and private actors, operating in formal and informal arrangements.

The Public Private Partnership in Uganda's healthcare system is a trans-national partnership comprised of a complex nexus of government, local and international agencies, and For-Profit Partners working together to promote; service delivery, management of health services, research and development, information systems strengthening, human resources capacity development and financing.

The Ministry of Health (MOH) in partnership with USAID/Uganda Private Health Support Program is implementing a PPPH program in Uganda. One of the program's goals is to strengthen the capacity of the Ministry of Health to translate the PPPH Policy into actions that strengthen coordination between the public and private health sub sectors and to implement partnerships that benefit the health of Ugandans.

The MoH also seeks to review the established structures and the composition and Terms of Reference (ToRs) of the TWG and align them to the PPP Act.

This resultant report presents findings and recommendations to align the ToRs of the TWG to the National PPPH Policy and the PPP Act, 2015. The report is structured as follows:

1. Chapter 1: The Inception report focusses on the terms of reference as understood by the consultant, the methodology, and details from the inception meeting.
2. Chapter 2: Detailed review of the reports from the first two consultancies undertaken by Uganda National Association of Community and Occupational Health (UNACOH) on the structure and composition and terms of reference of the TWG, as well as a review of the findings and recommendations from these reports.
3. Chapter 3: This Chapter elaborates on the legal, policy and institutional framework of PPPs in Uganda. It further assesses PPPs in Health and how they are distinguished from PPPs in other sectors.
4. Chapter 4: This Chapter presents the findings from the assignment and recommendations for alignment of the PPPH structures to the Legal and Institutional framework of Uganda.

The report agrees that in view of the prominence of the role played by the PPP Node, it is advisable that the Node reports directly to the Accounting Officer to avoid bureaucracy that could impede PPP Activities as well as to ensure empowerment and continuous capacity building in the areas of technical analysis, feasibility analyses, negotiation, monitoring, contract management and monitoring.

Furthermore, it is recommended that the role of the PPP project team, as established by the PPP Act to identify, screen, prioritise and implement PPPs is harmonized with the role of the PPPH node.

While the report also notes that the establishment of the TWG is inconsistent with the PPP Act, it is recommended that this role is considered as part of the internal administrative structure of the MoH, relevant for the implementation of PPPs. It is therefore important that the capacity of the members of the TWG is continuously built to enable them understand PPP issues. In addition, the membership of the TWG should be expanded to include more actors and stakeholders, relevant to the PPP implementation process. The revised terms of reference for the TWG would greatly enhance the capacity of the TWG to offer strategic advise on potential PPPHs as they emerge, as well as to effectively manage and monitor PPPH implementation.

1. Background and Scope

The Ministry of Health (MoH) in partnership with USAID/Uganda Private Health Support Program is implementing a public-private partnership in health (PPPH) program in Uganda. The project is aimed at strengthening the capacity of the MoH to translate the National Policy on Public Private Partnership in Health (PPPH Policy) into actions that strengthen the coordination between the public and private health sub sectors and to implement partnerships that benefit the health of Ugandans. The USAID/Uganda Private Health Support Program assigned the Uganda National Association of Community and Occupational Health (UNACOH) to work with the MoH to strengthen the PPPH Node.

As such, in a bid to strengthen the PPPH Node, two consultancies were undertaken by UNACOH to analyze the existing PPPH structure set out in the PPPH policy and make recommendations on the PPPH organization chart and review the composition and the Terms of reference for the Technical Working Group (TWG) on the PPPH. The report on the existing PPPH structure made significant findings and recommendations which included the need to review the reporting structure set out in the PPPH policy and the recommendation for the PPPH Node to be elevated to report directly to the Permanent Secretary in order to raise the level of influence, clout and prominence and also enable effective tracking of performance. The consultant also recommended that the Technical Working Group (TWG) be expanded to include the Ministry of Trade and Industry, Ministry of Gender, Labour and Social Development, office of the Prime Minister and the Private Sector Foundation.

The second consultancy undertaken reviewed the composition and terms of reference of the PPPH Technical working group and made recommendations. The report made key recommendations on the need to include other relevant stakeholders on the TWG and also include as part of the Terms of Reference for the TWG; capacity building, supervision and reporting, research and advocacy. Although the findings from the report acknowledged efforts by the PPPH TWG to fulfill their mandate through holding monthly meetings and making various policy resolutions, it was highlighted that there is a gap with regard to follow up of recommendations given by the PPPH TWG. They thus lacked decision-making power. This and other recommendations were made on how to strengthen and re-constitute the PPPH TWG to ensure PPPH issues attain prominence and priority in MoH.

From the two consultancies undertaken, it was realized that there was need to align the Terms of Reference of the Technical Working Group to the Uganda Private Public Partnership Laws and the Uganda National Policy on Public Private Partnership in Health and to formalize and operationalize the Public Private Partnership Node in the Ministry of Health. This report focuses on the alignment of these findings and recommendations within the PPP act.

1.1 Inception meeting

An inception meeting was held on the 9th May 2017 at the USAID/Uganda Private Health Sector Program offices attended by the PPPH Node, UNACOH and the USAID/Uganda Private Health Sector Program representatives. The meeting discussed the terms of reference provided to the consultant and the client expectations.

It was agreed that the consultant reviews the current legal and institutional framework for PPPs and whether the recommendations made by the reports are within the provisions of the law.

1.2 Purpose and scope of work

The main purpose of this report as set out in the Terms of Reference is to align the terms of reference of the PPPH Technical Working Group (TWG) to the Uganda Public Private Partnership Law and the Uganda National Policy on Public Private Partnership in Health, so as to facilitate the update of the current terms of reference of the TWG.

The objectives of this deliverable are:

- a) To review the terms of reference of the TWG group and align it to the Uganda PPP Law and the Uganda National Policy on PPPH.
- b) To review the proposed PPPH structure and align it to the PPP Act, 2015.
- c) To recommend Terms of Reference and composition of the Technical Working Group.

1.3 Approach

In view of the objectives of this assignment and the scope of work outlined above, this report sets out the following:

- The key findings and recommendations on the terms of reference of the Technical Working Group;
- The key findings and recommendations on the proposed structure of the PPPH node
- The Legal and institutional framework for PPPs in Uganda;
- Analysis of the key findings and recommendations and whether
- Recommendations where necessary to align the key findings and recommendations of the ToRs for the TWG and the proposed PPPH node structure

1.4 Limitations

This report addresses only the issues regarding the alignment of the PPP Act with the findings and recommendations on the Terms of Reference of the proposed TWG and on the proposed structure of the PPPH Node. No comment is made on any other laws other than those covered by this report.

The report has been prepared using information provided by UNACOH. That information has not been tested or otherwise verified. Consequently, any material inaccuracies or omissions in the information provided could affect the reliability of the conclusions reached. This report has been reviewed in draft by UNACOH to confirm that the facts set out herein are accurate and materially complete.

Changes in legislation or other circumstances that may affect the analysis set out here can occur at short notice. Such changes might invalidate some or all the conclusions reached.

2. Findings and recommendations from the reports on the PPPH Node Structure and the composition and ToRs for the TWG

This chapter sets out the key findings and recommendations of the reports on the PPPH node structure and the composition and ToRs for the Technical Working Group which the Consultant is required to review to determine whether they are consistent with the PPP Act.

2.1 Report on the findings regarding the existing PPPH structure

As already highlighted in chapter 1, the first consultancy focused on analysing the existing PPPH structure set out in the PPPH policy. The consultancy was undertaken by UNACOH and the report produced a number of findings as stipulated below;

- a) That the current structure, as provided for in the National Policy on Public Private Partnership for Health, provides for two (2) levels namely; the Central level (constituted by the principle partners who include the Ministry of Health (MoH), Ministry of Local Government, (MoLG) Ministry of Finance Planning and Economic Development (MoFPED), Ministry of Education and Sports (MoES), Ministry of Public Service (MoPS), Health Development Partners (HDPs) which is the highest organ whose role is mainly policy formulation) and the Local Government (LG) level whose function is policy implementation.
- b) It was observed that the structure at the central level is not inclusive enough, as there are other key stakeholders who play critical roles that contribute to the strategic functionality of the partnership, including effective supervision of the LG Level. Additionally, that the seven joint structures at the Central Level (namely: the Joint Review Mission, the Health Policy Advisory Committee, the Working Group on PPPH, Sub-Working Groups, the MoH/PPPH Desk, Umbrella organizations, as well as the Inter-ministerial Standing Committee composed of the MoES and the MoH) do not constructively relate since they do not have a defined reporting mechanism among themselves due to a lack of established coordination guided by mandatory periodic reporting. According to the draft report, this failure affects effectiveness and efficiency. Findings of the draft report also point to the absence of coordination responsibility to guide the functionalization at both levels, which would guarantee timely deliverables and follow-ups on policy related and other crucial resolutions.
- c) At the Local Government level, the report found that the roles of the various constituencies (namely: the District Health Management Team, the District PPPH Desk Officer, the Co-ordination committees, and other key structures such as the Health Sub-District Management Committee, Hospital Board, Health Unit Management Committee, Parish Development Committee, and the Village Health Team) have not been well defined, which normally leads to disconnected and less productive engagements. The coordination committees in place were found to be largely passive and not consultative, hence adding little value to the partnership implementation.

- d) Furthermore, is the lack of defined ceilings to numbers of membership, at both the Central and Local Government levels, which was identified as one of the causes of the ever-increasing demand for more representation from the Private Sector. It was also found that the PPPH issues do not attract the crucial attention at the various high levels such as at the Annual Health Performance Review meetings.
- e) The study also found that the current placement of the Node (that is; reporting to the Director Planning and Development, while the Secretariat is headed by Principal Medical officer) does not reflect the high-level attention and prominence that PPPH deserves at all times. As such, a strategic adjustment that raises PPPH prominence was recommended.

2.1.1 Recommendations

A number of recommendations were made which included the need to strengthen, reconstitute, segregate but also amalgamate the roles of the PPPH structure in order for it to be able to deliver on its mandate. Specifically, the following remedies were prescribed:

a) Enhanced Structure for improved PPPH Node functionality

The PPPH in Uganda is still a grey area, which needs a quick, progressive and practical mechanism of channelling out results. This entails undergoing minimal bureaucracy, but also strategic placement to enable timely decision-making.

Recommendations

- i) The PPPH node should be elevated to report directly to the Permanent Secretary (PS) to raise the level of influence, clout and prominence and enable effective tracking of performance.
- ii) The elevation proposed above must come hand-in-hand with commensurate increase in not just staffing but also resources.
- iii) A new organizational chart should be designed to improve linkages internally and externally. There is need for improved policy and political oversights, coordination and monitoring. A strengthened PPPH structure is critical for effective governance of the partnership.
- iv) The structure should be expanded to include other extremely relevant stakeholders from both the public and private sides, at various levels and units. It is proposed that the following be included in the PPPH Technical Working Group:
 - Ministry of Trade and Industry
 - Ministry of Gender Labour and Social Development
 - Office of the Prime minister, and

- Private Sector Foundation.

v) Further inclusions be guided by the six building block of the health System that include; Health service delivery; Health financing; Health information Management System; Human resources for health; Essential medicines and technologies and Governance and Leadership.

b) Governance, leadership and coordination at the Centre and Local Government Level

i) There is need for a new design of a mechanism that establishes more productive relations among the seven joint structures. An internal hierarchy within the Central Level that guides inter-reporting mechanism should be put in place to promote effectiveness and efficiency. Given that all TWGs in the Ministry report to the SMC, there is need for the PPPH Node to report directly to the office of the Permanent Secretary. However, the dual reporting to the SMC should be maintained as provided in the Ministry management and governance guidelines.

ii) In the same vein, the PS who chairs the HPAC should ensure that during the HPAC meetings, PPPH issues are given required prominence. This will ensure there are practical follow-ups on action points and other crucial resolutions.

iii) There is need to define roles and numbers of the various constituents at the Central and Local Government levels with output-oriented responsibilities. The common demand for more representation from the Private Sector is likely to be addressed through this action.

iv) Coordination Committees at LG level ought to cease being a meeting committee, but transform into a functional committee. They should be tasked to educate communities on the PPPH issues, hold regular consultative meetings and produce minutes, which inform the discussion at the Local Government level meetings.

v) Based on the observation that engagement between the PPPH node and Parliament was irregular yet necessary, innovative ways of engaging parliament should be explored. This could be informally during breakfast meetings but also lobbying Parliamentary Committee on Health to consider issues of PPPH.

vi) The Ministry needs to consider the need to have regional structures in the health sector. As a starting point, selected areas of coordination at regional level should be identified for example a Statistical Region.

vii) Innovative sharing of information should be introduced to enhance communication of the partnership activities. The node should initiate Blog, online discussions, establishment of a website, among others.

viii) Continued efforts to learn from lessons from other countries that should include both the success stories and failures.

2.2 Report of findings from the review of the composition and ToRs of the PPPH TWG

The Draft report from the review of the composition and terms of reference of the PPPH Technical Working Group made a number of findings and recommendations. Below are some of the major findings that the report highlighted:

a) Composition of the PPPH TWG

The reports found that there are mixed opinions about both the composition and the Terms of Reference of the TWG. A number of observations were made showing that there was considerable effort by the PPPH Technical Working Group to deliver on their mandate. Referring to the 2015 MoH Governance Structure, the consultancy reported that the current composition of the PPPH Technical Working Group is constituted by the Chairperson, Secretary, four (4) members from various departments of the MoH, plus representatives from other six (6) stakeholders, who include: Health Development Partners, Medical Bureaus, Civil Society Organizations, Complimentary Medical Practitioners, Private Health Providers and Professional Councils.

The report highlighted a number of challenges of the TWG, which include: a leadership that is not providing enough guidance to the TWG, limited commitment of the team, inadequate mobilization. The report also highlighted a need to expand the current composition of the TWG, which it found to be limited in terms of the membership as some stakeholders in the sector are not included. A need to identify all constituencies and expand the group was therefore emphasized.

Overall, the report concluded that the Technical Working Group performance was sub-optimal compared to the potential it has.

b) Terms of Reference of the PPPH TWG

The report found that the Terms of Reference of the TWG as stipulated in the Governance Structure is generally appropriate and in line with requirements of the TWG, as well with the tasks of other TWGs of the Ministry. However, some inadequacies were observed, as follows:

i) Non provision for supervision of members

The ToRs do not provide for supervision of the TWG members, especially in regard to activities directly under the mandate of the group. This was attributed to the fact that PPPH issues do not receive prominence as ought to be. In this regard, the report recommended the PPPH Node to be elevated to report to the Permanent Secretary such that it can receive the prominence vital for effective decision-making.

ii) No direction on strategic direction and capacity building

The ToR do not provide the TWG guidance on strategic direction for capacity building, specifically in the principles and practice of PPPH, at all levels to facilitate the functionality of the partnership.

iii) Limited mandate to support and guide formation of potential member associations

The TWG does not have the mandate to support and guide the formation of potential member associations, to be able to contribute more strategically towards the achievement of the goals of the partnership.

2.2.1 Recommendations

Arising out of the report were a number of findings and gaps identified, which recommendations were proposed to mitigate the challenges identified in the composition and ToRs for the PPPH TWG. They are stated as follows:

a) Composition of the TWG

i) Identification and expansion of the TWG membership

As regards identification and expansion of the TWG membership, the following recommendations were made:

- Expansion of the TWG to include other extremely relevant constituents from both the public and private sector. It was however recommended that the membership should not exceed 30.
- Inclusion of relevant MDAs and specifically Ministry of Finance Planning and Economic Development by virtue of being the national PPP host, and Ministry of Trade and Industry as they represent the important role of the manufacturers in the partnership.
- Consideration of other relevant MDAs namely: Ministry of Local Government (MoLG); Ministry of Public Service (MoPS); Ministry of Education and Sports (MoES); Ministry of Gender, Labour and Social Development (MoGLSD).
- In respect of the private sector, addition of the representation from the Private Sector Foundation Uganda (PSFU) to be able to effectively coordinate interests coming from the Foundation's network. It was suggested that this would enhance coordination of the PPPH.
- Establishment of a selection criteria for members and clear definition of eligibility based on knowledge, skills and exposure to health related issues within the ambit of PPPH. It was proposed that identification of the members could be guided further by the six building blocks of the health System that include; Health service delivery; Health financing; Health information Management System; Human resources for health; Essential medicines and technologies and Governance and Leadership.

ii) High level representation of both the private and public sectors

In order to facilitate the process of influencing decision making, it was proposed that representation from both public and private sectors should be at the highest level possible. That each of the identified constituents should make provision for having a representative and an alternate who should equally be at senior level in management. The idea of Alternate representative is to allow for effective representation as opposed to common practice of inappropriate delegation to meetings for consistence and follow up of issues.

iii) Establishment of a capacity building program for members which includes:

Continuous sensitization and training of the members of the TWG on PPPH policy issues to enhance their competencies to discuss PPPH issues, as well as Strengthening of the standard operating procedures for the TWG.

iv) Establishment of a monitoring and evaluation system to follow-up on the action points and track progress and outcomes with feedback mechanisms.

v) Elevation of the PPPH Node to report directly to the Permanent Secretary in order to facilitate decision making and better functionality of the Node.

b) Terms of Reference of the TWG

Although the report found the specific objectives of the TWG to be relevant and appropriate in terms of operationalizing the PPPH Node, a number of gaps were identified which influenced the following recommendations:

c) Supervision and reporting

The level at which the PPPH Node reports delays its issues to get to critical decision making centres in MoH. As such, the activities of the PPPH Node seem not to get the desired prominence.

Recommendation

- i) Placement of the Node to report directly to the PS for the prominence of PPPH issues.
- ii) TWG should keep their constituents abreast with PPPH activities in the delivery of health services

d) Capacity building role

- i) The TWG should be mandated to provide guidance on strategic direction for capacity building in the principle and practice of PPPH at all levels to facilitate the functionality of the partnership.

- ii) The ToR should include support and guide the formation of potential member associations and support the growth of nascent ones, to contribute more strategically towards the achievement of the goals of the partnership.

e) Research and Advocacy

- i) There is need for basic research on potential members to facilitate recommendations on the approval into the partnership
- ii) Identify some knowledge gaps and make recommendations on policy oriented research for the effectiveness of PPPH Node activities
- iii) Advocate on behalf of PPPH with appropriate government, line ministries and partners to increase awareness, understanding and prioritization of PPPH issues, to substantiate investment for specific PPPH interventions and ensure that PPPH concerns are kept high on the political agenda

f) Monitor and evaluate PPPH Activities and provide oversight of the District PPPH Desks

- i) The TWG should periodically review the various support supervision mechanisms at the Local Government level across the partnership, with the view to determine their performance and recommend improvements.
- ii) Form TWG sub-committees to address specific issues on and as need arises basis.
- iii) Monitor the implementation of PPPH Node planned activities, with special attention to scaling up PPPH interventions and addressing the bottlenecks in the partnerships to enhance health service delivery.

3. Uganda's Legal and Institutional Framework for PPPs

Uganda has adopted policies and laws that permit and provide a framework for the implementation of public private partnerships. The general regulatory and institutional framework for PPP programs in Uganda includes the PPP Policy which was approved in 2010, the PPP Act of 2015. This section sets out the current legal and institutional framework for PPPs, which will form the basis for the analysis of the recommendations on the structure of the PPPH node and the revised terms of reference for the TWG.

3.1 The legal framework for PPPs in Uganda

3.1.1 The PPP Framework Policy

Uganda adopted a formal PPP Framework Policy¹ in 2010. The GOU's main goals in establishing the PPP Policy were to ensure and promote: (1) better utilization and allocation of public funds (2) more efficient delivery of public infrastructure (3) provision of good quality public services and (4) increased Economic Growth and Foreign Direct Investment. The policy sets forth four core governing principles which include: value for money, public interest considerations including Social Inclusion, appropriate risk Allocation, output orientation, transparency and accountability.

The PPP Framework Policy provides for the lead role of the PPP Unit in the Ministry of Finance as a centre of excellence in PPPs, while the specific sector institutions, including those under the Ministry of Health, are to undertake operational work on project preparation, management, procurement, and be the contracting authority. Nonetheless, each PPP project is required to first be approved by cabinet before it is taken on by the contracting authority in question.

The current PPPH framework policy establishes the following; the

- i) The PPP Unit charged with the duty of undertaking monitoring and evaluation for the entire PPPH
- ii) Requires that each procuring authority undertake public communications for each PPP project.
- iii) Requires project preparation to commence with a feasibility study in order to determine whether any proposed project is a good PPP candidate demonstrating value for money.
- iv) Makes it a requirement for each PPP project has to be led by a project team.

The other key elements of the Policy include the requirements for investment strategies to take into account benefits of bundling and aggregating similar projects; tendering process

¹ Government of Uganda, Public-Private Partnership Framework Policy, Ministry of Finance, Planning and Economic Development, September 2010.

to be competitive; unsolicited proposals to be subjected to competitive tendering while proponent may be compensated for proprietary interest or costs; as well as putting emphasis on building and maintaining a robust project pipeline.

3.1.2 The PPP Act 2015

On August 5th, 2015, Uganda enacted its first PPP Act², which commenced on October 1, 2015 by virtue of Statutory Instrument No. 57 of 2015. The Act details the required institutional framework for PPP implementation in the country and seeks to regulate the procurement, implementation, maintenance, operation, management, monitoring and evaluation of PPPs throughout the project cycle.

The Act applies to all public private partnerships and in particular to the design, construction, maintenance and operation of infrastructure or services projects provided under the projects listed thereunder³ and sets out social infrastructure including health care facilities as one of the core infrastructural areas for which PPP arrangements may be engaged.

The Act defines a PPP as “a commercial transaction between a contracting authority and a private party where the private party performs a function of the contracting authority on behalf of the contracting authority, for a specific period, and

- a) Acquires the use of the property, equipment or other resource of the contracting authority for the purposes of executing the agreement;
- b) Assumes substantial financial, technical and operational risks in connection with the performance of the function or use of the property; or
- c) Receives a benefit for performing the function through payment by the contracting authority or charges or fees collected by the private party from the users of the infrastructure or service, or both.”⁴

The Act sets forth clear roles and responsibilities for different sets of actors with accountabilities for PPP policy and project design and implementation. These include: the PPP Committee, the PPP Unit, Contracting Authority, Accounting Officer, Project Officer, Public Private Partnership Project Team, Process Auditor, Transaction Advisor, Private Party, Evaluation Committee, Cabinet, Auditor General, and Accountant General. The said roles and functions are discussed under the institutional framework for PPPs in Uganda.

3.1.3 The Public Finance Management Act, 2015

² The Republic of Uganda, Public Private Partnerships Act, 2015.

³The PPP Act; section 2(1).

⁴The PPP Act section 4(1).

The PFMA sets out a clear policy by which funds are made available to public sector bodies through the annual budgeting process and the subsequent way in which public finances are managed in Uganda. PPPs create multiyear commitments for the contracting authorities and in this regard, the (PFMA) requires an annual budget be made and prepared by the contracting authority indicating a statement of the multiyear commitments to be made by the Government in the Financial Year, a plan for the Government Debt and any other financial liabilities for the Financial Year to which the annual budget relates and a plan for the guarantees to be issued in the Financial Year. PPPs create multi-year commitments and as such the provisions of the PFMA are relevant to PPPs.

Under section 13 (1), a vote shall not enter into a contract, transaction or agreement that binds the GoU to a financial commitment for more than one financial year or which results in a contingent liability except where the financial commitment or contingent liability is authorized by Parliament. This section is consistent with Section 13(2) of the PPP Act.

The PFMA only authorizes a vote to make a multiyear commitment as long as it is consistent with the objectives of the Charter of Fiscal responsibility and the Budget Framework paper. These provisions may be necessary and shade light on the reasons for engagement with Parliament.

3.1.4 The Public Procurement and Disposal of Assets Act (PPDA Act)

The PPDA Act regulates the processes and practices in respect of public procurement and disposal activities. It is significant to note that whereas the Act does not apply to the procurement of the private sector partner, it applies to the procurement of a transaction advisor, project officer and process auditor by virtue of section 15(3) of the Act.

3.1.5 The National Audit Act, 2008

The National Audit Act, 2008 prescribes the powers of audit of the Auditor General's Office. Section 13 of the National Audit Act requires the Auditor General to audit all government investments and carry out procurement audits. It is noteworthy that the PPP Act, 2015 provides for annual auditing by the Auditor General, of every PPP from inception to conclusion phases, and to report to Parliament within nine months of each audit.

According to the 2010 PPP Policy, the Auditor General is to carry out Value for Money audit of the PPP program under the National Audit Act (section 11). This is in keeping with the 1995 Constitution of the Republic of Uganda, which establishes the Office of the Auditor General under Article 163 (1) which mandates the Auditor General to audit and report on the public accounts of Uganda and of all public offices and public institutions, as well as to conduct Financial and Value for Money Audits in respect of any project involving public funds and submit to Parliament annually a report of the accounts audited by him or her for the financial year immediately preceding.

3.2 The Institutional Framework for PPPs in Uganda

3.2.1 The PPP Committee (section 5-9)

The PPP Committee as provided for under the PPP Acts constituted by the Attorney General or a representative appointed by him or her in writing, the Permanent Secretary of MoFPED who also doubles as the chairperson of the Committee, the Permanent Secretary of the OPM a representative thereof, Permanent Secretaries of the Ministries of the Ministries of Lands, local government, a representative from the National Planning Authority, the Director of the PPP Unit, as well as, four persons who are not public officers namely: a representative of the Private Sector Foundation, representatives respectively from the academia, and Uganda Investment Authority and a retired judge⁵. The Minister is mandated to appoint the four member sand is obliged to observe gender inclusiveness by ensuring that one-third of the persons so appointed are of either gender⁶. However under the current PPP ACT the committees, Committee members are limited to a maximum of two five-year terms.

The Act lays out the PPP Committee's roles under section 7 and these include: ensuring compliance of all project agreements with the provisions of the PPP Act, PPP policy formulation, providing operational oversight, approving projects, formulating standards, guidelines and procedures for the award of contracts and bid documents, approving all management functions pertaining to design and implementation of PPP projects including oversight of monitoring and evaluation activities by contracting authorities, reviewing of the various PPP laws, institutional and regulatory frameworks, approval of organisational structure of the PPP Unit, among others.

3.2.2 The PPP Unit within the MOF (section 10-11)

The PPP Act establishes the PPP Unit⁷ and is prescribed under section 11 as the secretariat and technical arm of the PPP Committee. The Unit is charged with the duty to provide the PPP Committee and project team established under section 15 of the same Act, with technical, financial and legal expertise. The Unit is also required to undertake: (1) research and knowledge management functions pertaining to PPP; (2) capacity building functions; (3) rating and maintenance of a robust pipeline/inventory of PPP project candidates; (4) guiding and assisting contracting authorities, ensuring compliance with the PPP Policy Framework and PPP Act (5) monitoring contingent liabilities, among other functions.

3.2.3 Contracting Authority

A Contracting Authority is a ministry, department of Government or any other body established by government and mandated to carry out a public function⁸. The key roles of the contracting authority include identifying, appraising, developing, procuring and monitoring a PPP in accordance with the Act. The Contracting Authority is expected to conduct its PPP functions through an Accounting Officer.

3.2.4 The Accounting Officer (section 13)

⁵The PPP Act, section 5(2)

⁶Supra.

⁷The PPP Act, section 10.

⁸The PPP Act ; section 4

The Accounting officer has a responsibility of soliciting a Private Party for a project, appointing a Project Team (section 15), among other functions.

Under section 19, the Accounting Officer is also responsible for the appointment of an evaluation committee for each project, which shall evaluate the bids submitted under the PPP Act and the PPP regulations

3.2.5 The Project Team (section 15 and 16)

The project Team is responsible for all day to day operational functions of the PPP project which include identifying, screening and prioritizing projects based on guidelines issued by the committee, preparing and appraising each project agreement to ensure its legal, regulatory, social, economic and commercial viability, liaising with all stakeholders and overseeing the management of a project in accordance with the project agreement entered into by the contracting authority).

3.2.6 The Project Officer

The Project Officer is appointed pursuant to Section 14 (1) of the PPP Act, which makes appointment of a project officer mandatory for each project. The Project Officer has the responsibility of management of the procurement and implementation of the project; monitoring the performance of the private party in the management and execution of the project; and the accounting officer who is his/her direct supervisor may assign him/her performance of such other functions as.

The Project Officer is also mandated to head the Project Team provided for under section 15 of the Act.

3.2.7 Evaluation Committee

The Evaluation Committee is composed of officials, appointed from the staff of the Contracting Authority or any other person appointed from outside the Contracting Authority, with technical skills required for the evaluation of a bid

3.2.8 The Project Auditor

It is a requirement under section 17, that every project to have a Process Auditor who shall ensure that the Contracting Authority complies with the requirements for implementing Public Private Partnerships as provided for in the Act. The Process Auditor is required to support the Accounting Officer's responsibility for the project by checking and ensuring that all necessary processes and procedures as required by the law and the procurement plan have been followed.

3.2.9 Transaction Advisor

The role of the transaction advisor (section 18) is to undertake comprehensive feasibility studies for a project including the commercial, financial and legislative framework for a

Public Private Partnership Agreement, as well as designing and negotiating a Public Private Partnership Agreement that guarantees long lasting social benefits.

3.2.10 The Auditor General

Section 30 of the PPP Act makes it mandatory for the Auditor General to annually audit every PPP from inception to conclusion phases, and to report to Parliament within nine months of each audit. This mandate is derived from the National Audit Act. Under the 2010 PPP Policy, the Auditor General is mandated to carry out value for money audits of the PPP programs as mandated under the National Audit Act (2008).

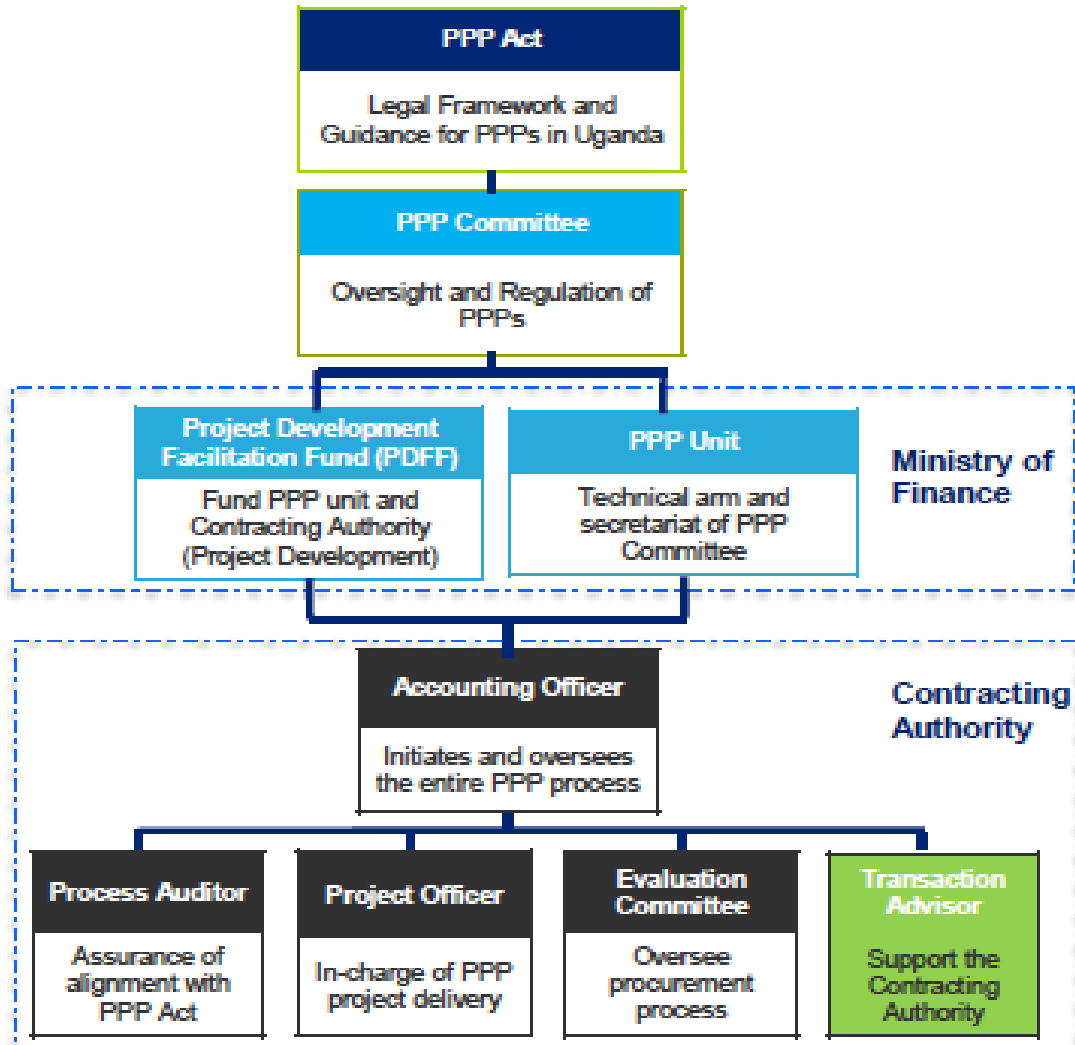
3.2.11 The Accountant General

The Office of the Accountant General is also obligated to prescribe Accounting and Financial Reporting rules to be adopted for PPPs.⁹ This can form part of the fiscal commitments and contingent liabilities reporting of the Government. The Annual Report and the Audited Financial Statements that require to be submitted to the Minister within six months after the end of the Financial Year.

The diagram below illustrates the PPP legal and institutional framework in Uganda.

Fig. 1: PPP Legal and Institutional framework

⁹Section 28(3) of the PPP Act



4. Alignment of the PPPH to Uganda’s legal and Institutional Framework for PPPS in Uganda

This section analyses the recommended structure of the PPP/H node, the revised composition and ToRs of the PPPH TWG and assesses both against Uganda’s PPP legal framework and, where necessary, makes proposals for better alignment.

Proposal(s) made	Status of compliance with Uganda’s PPP legal regime	Recommendations
<i>Report on the findings regarding the existing PPPH structure</i>		
<p>a) Improve the functionality and structure of the PPPH node</p> <p>Enhancing the structure and functionality of the PPPH Node by minimising the bureaucracy of the PPPH process and facilitating timely decision making by elevating the node to report directly to the PS at the MoH; increasing staffing and resources of the node; designing a new organizational chart to improve linkages both internally and externally; expanding the TWG with a view of bringing on board more relevant stakeholders namely MoGLSD, Private Sector Foundation, and the Ministry</p>	<ul style="list-style-type: none"> • These recommendations are broadly consistent with the PPP Act and the Institutional structures under the PPP Act. • However, it should be noted that the PPP Act envisages that the PPP project team will be responsible for identifying, screening and prioritizing projects and overseeing the management of a PPP project. The roles envisaged to be performed by the PPP project team under section 16 are ordinarily roles that would be played by the PPP Node • Ideally, as the PPP project team is composed of different stakeholders and headed by a project officer, there will need to be a functional 	<ul style="list-style-type: none"> • The PPP Node should serve as the secretariat and technical arm of the PPP project team, which will be responsible for the PPP process as prescribed by the Act. • MoH needs to develop clear internal institutional processes and guidelines, which will be used to procure PPPs. • The development of these guidelines should also consider whether the definition of PPPs within the meaning of the PPP act clearly applies to all PPPs in

Proposal(s) made	Status of compliance with Uganda's PPP legal regime	Recommendations
of Trade and Industry.	<p>secretariat, which will serve as the secretariat and the Technical arm of the Committee. The PPP Node can best perform this role.</p> <ul style="list-style-type: none"> • In view of the prominence of this role and Section 14(2) of the PPP Act, which provides that a project officer is under the direct supervision of the accounting officer, it is only logical that the PPP Node reports directly to the Accounting Officer so that you do not create “layers” of bureaucracy that could impede PPP activities. • This will necessitate that the PPP Node is strengthened and the capacity enhanced in order for them to be able to act as the secretariat and technical advisor to the PPP Act. • Enhancing the capacity of the PPP node is in line with Section 3(K) of the PPP act which states that among the principles of the PPP Act is the need to develop institutional capacities for technical analysis, negotiation, monitoring and management of PPP contracts. 	<p>Health and whether they have to be subjected to the PPP process under the PPP Act.</p> <ul style="list-style-type: none"> • MOH PPP Node should therefore play an advisory during the inception, evaluation, approval, management and quality assurance processes of a PPP project. The PPP Node through playing a supporting role and will help the PPPH project Teams to: I) prepare the project, ii) select and manage technical specialist advisers when necessary; iii) ensure the project fits into the MOH's PPPH Strategy; iv) oversee the procurement process; and, v) monitor the PPPH progress and performance.

Proposal(s) made	Status of compliance with Uganda's PPP legal regime	Recommendations
<p>b) Governance, leadership and coordination at the Centre as well as between the Centre and the Local Government level</p> <ul style="list-style-type: none"> • Innovations to improve coordination and inter-reporting were proposed in order to promote efficiency and effectiveness of the node. • Also, given that all TWGs in the MoH report to the SMC, the PPPH Node should report directly to the PS while at the same time retaining the dual reporting to the SMC as per the MoH management guidelines. • Other recommendations relate to prioritisation of PPPH issues at the HPAC level, defining roles and numbers of the various constituents at the two levels and assign members thereof with output-oriented responsibilities; transforming the Coordination Committees at the local government level 	<p>As regards the proposal for there to be coordination between the various PPPH levels, the legislative intent under the PPP Act, 2015 was to provide for a more centralized approach to coordination and tracking of the PPP projects across various agencies. This can only be done through sufficient stakeholder consultation.</p> <p>It is important to coordinate the movement of PPP projects so one agency can track the various PPP processes. This is an important feature as it ensures that all agencies are on the same page in regard to the methodologies and processes to be followed. This also allows for better assessment of the scope of the MoH's and effectively the GoU's exposure to Contingent Liabilities and Fiscal Risk arising out of the projects that are eventually procured by PPPs.</p>	

Proposal(s) made	Status of compliance with Uganda's PPP legal regime	Recommendations
<p>into a functional committee with the responsibility to educate communities on PPPH issues; strategic engagements with Parliament; establishment of regional structures with the MoH, increased information sharing as well as benchmarking from other countries' best practices.</p>		
<p><i>Report of findings from the review of the composition and ToRs of the PPPH TWG</i></p>		
<p>a) Composition of the PPPH TWG</p> <p>Identification and expansion of the TWG membership:</p> <ul style="list-style-type: none"> • Expansion of the TWG to include other extremely relevant constituents from both the public and private sector. It was however recommended that the membership should not exceed 30. • Inclusion of relevant MDAs and 	<p>The establishment of TWG and expanded composition is consistent with the PPP Act. It is not barred by the Act and would best be utilized as part of the internal administrative structures to oversee the work done by the Project Team.</p> <p>In view of the above recommendation:</p> <p>a) Expansion of the TWG to include relevant stakeholders would greatly enhance its capacity to advise the project Team. This is especially because under Section 15(2) of the PPP Act, the</p>	<p>The TWG can be considered as part of the internal administrative structure relevant for the implementation of PPPs.</p> <p>The TWG should act as an internal advisor and play an oversight role on the work done by the PPP project team.</p>

Proposal(s) made	Status of compliance with Uganda's PPP legal regime	Recommendations
<p>specifically Ministry of Finance Planning and Economic Development by virtue of being the national PPP host, and Ministry of Trade and Industry as they represent the important role of the manufacturers in the partnership.</p> <ul style="list-style-type: none"> • Consideration of other relevant MDAs namely: Ministry of Local Government (MoLG); Ministry of Public Service (MoPS); Ministry of Education and Sports (MoES); Ministry of Gender, Labour and Social Development (MoGLSD). • In respect of the private sector, addition of the representation from the Private Sector Foundation Uganda (PSFU) to be able to effectively coordinate interests coming from the Foundation's network. It was suggested that this would enhance coordination of the PPPH. • Establishment of a selection criteria for members and clear definition of eligibility 	<p>project team is only constituted by officials from the staff of the contracting authority unless due to the technical requirements of the PPP, the contracting authority does not have the appropriate staff.</p> <p>b) The inclusion of the Ministry of Finance, Planning and economic Development is particularly fundamental and as PPPs often create contingent liabilities, it is vital that there is representation from the Ministry of Finance.</p> <p>c) Where necessary, other stakeholders for instance the Ministry of Public Service and other MDAs could be appointed having regard to the specific project under consideration.</p> <p>d) Stakeholder consultation is a key cornerstone for the successful implementation of PPPs.</p>	<p>The different stakeholders as recommended should constitute the TWG as this fosters stakeholder consultation and engagement.</p> <p>MoH needs to develop clear internal institutional processes and guidelines, which will be used to procure PPPs. The development of these guidelines should also consider whether the definition of PPPs within the meaning of the PPP Act clearly applies to all PPPs in the health sector and whether they have to be subjected to the rigorous PPP process under the PPP Act.</p>

Proposal(s) made	Status of compliance with Uganda's PPP legal regime	Recommendations
<p>based on knowledge, skills and exposure to health related issues within the ambit of PPPH. It was proposed that identification of the members could be guided further by the six building blocks of the health System that include; Health service delivery; Health financing; Health information Management System; Human resources for health; Essential medicines and technologies and Governance and Leadership.</p>		
<p>b) High level representation of both the private and public sectors</p> <ul style="list-style-type: none"> • Representation from both public and private sectors should be at the highest level possible. • Each of the identified constituents should make provision for having a representative and an alternate who should equally be at senior level in 	<p>Representation from the Private sector is vital for the implementation of PPPs. The Private sector Foundation is also represented on the PPP committee established by Section 5 of the PPP Act. Specifically, Section 5(2) (a) (i) requires that Private Sector Foundation is represented on the PPP committee.</p>	<p>Membership from the Private Sector should be considered.</p>

Proposal(s) made	Status of compliance with Uganda's PPP legal regime	Recommendations
<p>management in order to allow for effective representation as opposed to common practice of inappropriate delegation to meetings for consistence and follow up of issues.</p>		
<p>c) Establishment of a capacity building program for members which includes:</p> <ul style="list-style-type: none"> • Continuous sensitization and training of the members of the TWG on PPPH policy issues to enhance their competencies to discuss PPPH issues, as well as • Strengthening of the standard operating procedures for the TWG. 	<p>Enhancing the capacity of the TWC is in line with Section 3(K) of the PPP act which states that among the principles of the PPP Act is the need to develop institutional capacities for technical analysis, negotiation, monitoring and management of PPP contracts.</p>	<p>There should be a capacity building programme for both the TWC and the PPP Node.</p>
<p>d) Establishment of a monitoring and evaluation system to follow-up on the action points and track progress and</p>	<p>This is compliant and there is need for follow up on the monitoring and Evaluation. The PPP Act specifically requires the contracting authority to</p>	<p>The PPP implementation guidelines should clearly provide for a monitoring</p>

Proposal(s) made	Status of compliance with Uganda's PPP legal regime	Recommendations
outcomes with feedback mechanisms.	monitor project under Section 27 of the Act.	framework for PPPs.
e) Elevation of the PPPH Node to report directly to the Permanent Secretary in order to facilitate decision making and better functionality of the Node.	This has already been discussed above.	

4.1 Conclusion

Broadly, the recommendations made by the reports on the structure of the PPPH Node and the reviews of the terms of reference for the TWG are not inconsistent with the PPP act.

The recommendations seek to align the existing PPP legal and institutional framework with the proposed structure of the PPP Node and the revised terms of reference for the TWG.

MoH needs to set up the internal institutional processes which will be specifically used for the approval and implementation of PPPs and agree on what sort of PPPs will need to go through the rigorous processes under the PPP act considering the nature of PPPs in the health sector.

Appendices

a) Terms of reference



“Health for All and By All”

Terms of Reference for consultancy services to align the proposed new structure and functionality of the MoH PPPH Node and the proposed new Terms of Reference of the PPPH Technical Working Group to the Uganda Private Public Partnership Law and the Uganda National Policy on Public Private Partnership in Health.

1.0 Background

The Ministry of Health (MOH) of the Republic of Uganda in partnership with USAID/Uganda Private Health Support Program is implementing a public-private partnership in health (PPPH) program in Uganda. One of the program’s goals is to strengthen the capacity of the Ministry of Health to translate the PPPH Policy into actions that strengthen coordination between the public and private health sub sectors and to implement partnerships that benefit the health of Ugandans. The USAID/Uganda Private Health Support Program has assigned Uganda National Association of Community and Occupational Health (UNACOH) to work with the Ministry of Health on Strengthening the PPPH Node.

This grant focuses on two main strategies:

- 1) To formalize and operationalize the Public Private Partnership Node in the Ministry of Health
- 2) To build support among key Ministry of Health decision makers and other stakeholders for Public Private Public Partnerships in health.

UNACOH and the MoH PPPH Node are desirous to hire a consultant to align the Terms of Reference of the Technical Working Group to the Uganda Private Public Partnership Law and the Uganda National Policy on Public Private Partnership in Health.

2.0 Purpose of the consultancy

The main purpose of the consultancy is to align the proposed new structure of the MoH PPPH Node and the proposed new terms of reference of the MoH PPPH Technical Working Group to the Uganda Public Private Partnership (PPP) law and the Uganda National Policy on Public Private Partnership in Health.

3.0 Objectives of the consultancy

The objectives of the consultancy will include the following:

- 1) To review the proposed new MoH PPPH Node structure and align it to the Uganda PPP law and the Uganda National Policy on PPPH.
- 2) To review the proposed new terms of reference of the revised structure and functions of the PPPH Technical Working Group and align them to the Uganda PPP law and the Uganda National Policy on PPPH.
- 3) To make recommendations on the appropriateness of the proposed new MoH PPPH Node structure and the proposed new terms of reference and composition of the PPPH Technical Working Group.

5.0 Scope of Work

The consultancy will constitute a review of the proposed new MoH PPPH Node and the proposed new structure and functions of the PPPH Technical Working Group, relate them to the National Policy on Private Partnership in Health and assess their alignment to the enabling Uganda Public Private Partnership law, as well as other relevant legislations/regulations/ policies including the PPP Regulations (draft), the National Policy on Private Partnership in Health, the Public Finance Management Act, and the relevant Public Service law/regulations.

The successful consultant, in addition, will also review the proposals in the new TORs and composition of the TWG.

6.0 Methodology

The consultant will conduct a desk review of the above documents and any other documents he/she deems relevant to the study. These documents will be reviewed and collated for specific information relevant to this assignment.

7.0 Key outputs/Deliverables

- 1) Submission of a brief technical and financial proposal.

- 2) An inception meeting with the PPPH project team and any other relevant stakeholders, to provide clarity on how the consultant intends to proceed with the study, including a detailed methodology of the undertaking.
- 3) A draft 1 report, for review by UNACOH and the MOH PPPH Node, and incorporation of comments thereto, on how the proposed new structure and functions of the MoH PPPH Node and the proposed new terms of reference of the PPPH TWG should be aligned to the Uganda Public Private Partnership law and the PPPH National Policy.
- 4) A draft 2 report, for review by UNACOH and the MOH PPPH Node, and incorporation of the comments thereto, on how the proposed new structure and functions of the MoH PPPH Node and the proposed new terms of reference of the PPPH TWG should be aligned to the Uganda Public Private Partnership law and the PPPH National Policy.
- 5) A final report on how the proposed new structure and functions of the MoH PPPH Node and the proposed new terms of reference of the PPPH TWG should be aligned to the Uganda Public Private Partnership law and the PPPH National Policy.
- 6) A presentation of findings to a validation workshop targeting key project stakeholders jointly identified with UNACOH.

8.0 Tasks to be accomplished

- 1) Submission of a brief technical and financial proposal.
- 2) An inception meeting with the PPPH project team and any other relevant stakeholders.
- 3) Submission of a document review guide to be used during the review process.
- 4) Submission of a draft 1 and draft 2 reports.
- 5) Submission of a final report

9.0. Indicative timeframe

The assignment is expected to take not more than **03 person days**, but the consultancy must be concluded within the below timeframe.

Activity	Time frame
Submission of an inception report	24 th March 2017

Submission of Draft Zero report	29 th March 2017
Validation workshop	12 th April 2017
Submission of final report	19 th April 2017

11. Reporting and Coordination of the consultancy

- The consultancy will be supervised and coordinated by the PPPH Project Coordinator, who will be the UNACOH focal person for this undertaking, and the Head of the PPPH Node.
- Periodic briefs on progress of the work may be presented to the PPPH project's weekly steering committee meetings.

13. Final report Submission and Presentation

The final report will be submitted in three clearly branded soft and hard copies to UNACOH not later than 19th April 2017.

b) Works Cited

- a) Public Private Partnerships Act, No. 13 of 2015
- b) National Policy of Public Private Partnerships in Health
- c) Ministry of Health Guidelines for Governance and Management Structures, 2013
- d) Strengthening Health Outcomes through the Private Sector Primer-Designing Public-Private Partnerships in Health by Jeffrey Barnes.