Public-private partnerships and the financial cost to governments: Case study on the power sector in Uganda

August 2015, by Paul Harper

In 1999 the Ugandan government embarked upon the most extensive power sector reform programme ever witnessed on the African continent[1] as part of the structural reforms required under its debt relief programme.[i] The Uganda Electricity Board was unbundled into separate generation, transmission and distribution companies through legislation that also opened up the generation of electricity to Independent Power Producers (IPPs). An Electricity Regulatory Authority (ERA) was established to oversee these new entities and the Electricity Disputes Tribunal to resolve any conflicts arising between the now fragmented parts of the sector.

Two major Public Private Partnerships (PPPs) with foreign companies arose from the liberalisation of the Ugandan electricity sector; a 20-year concession to run the distribution network, which delivers electricity to the end consumer, and a 30-year Build, Operate and Transfer contract for a new 250Mw hydro-electric plant at Bujagali Falls on the river Nile.

But, the 'private' company created to run Uganda's electricity distribution sector (Umeme) was actually owned by the UK government and has since been described as 'the most corrupt company in the country', accused of defrauding the Ugandan government of hundreds of millions of dollars by overstating losses,[2] for which it is compensated, as well as massively increasing charges to consumers. Domestic consumers in Uganda are now burdened with a tariff of USh531 per unit (18.5 US cents) for 2015,[3] compared to an average in Sub-Saharan African countries of just 13 US cents[4] and from 2005 to 2012 the Ugandan government was forced to subsidise energy costs to the tune of more than $100m each year.[5]

The first PPP scheme for Bujagali Falls faced stiff opposition from local and international NGOs, whilst the World Bank's investigation unit found that its own lending policies had been violated. After $150m had already been spent the project was finally abandoned as the main contractor became implicated in the Enron corruption scandal and World Bank support was withdrawn when fraudulent payments by a subsidiary were uncovered by the US Justice Department.

A second PPP scheme, funded partly through the European Investment Bank, suffered from similar problems but was nevertheless completed 9 years later. However, spiralling costs have made this one of the most expensive large dam projects in the world, with electricity costs some 80% higher than the globally 'acceptable' cost for hydro projects and creating potentially serious financial risks to the Ugandan government.

As a result the recommendation of the Presidential Advisor's 2009 report that the PPP concession with Umeme be terminated has been adopted by the Ugandan Parliament and the Ugandan Electricity Generation Company has confirmed that proposals for nationalisation of the Bujagali Dam are now being actively considered.

[i] Uganda was the first country to enter into the Highly Indebted Poor Country debt relief programme (HIPC) initiated by the World Bank and IMF in 1996. This required a range of structural reforms to reduce the government's budget deficit and liberalise the economy as a condition of debt relief.

Umeme

One of the new companies created as the Ugandan Electricity Board was unbundled was the wholly state-owned Ugandan Electricity Distribution Company Limited (UEDCL)[ii], to which all of the distribution network assets and responsibilities for managing the delivery of electricity to the end consumer were transferred in 2001.

UEDCL remains the owner of the distribution network but, in 2005, leased its assets and transferred management of electricity distribution in a Public Private Partnership involving a 20-year concession with Umeme[iii], described as "a private investor in the electricity distribution and supply business"[6]. This 'private investor', Umeme, was actually a newly created company, ultimately owned by the governments of the United Kingdom and South Africa. A subsidiary of the UK's CDC Group plc[iv], Globeleq Holdings (Conco) limited, registered in the Bermuda tax haven[7], was the majority owner of Umeme (56%), together with the national electricity generating company of South Africa, Eskom[v] (44%). Loans to Globeleq for Umeme's planned investments in the distribution network were underwritten[vi] through World Bank Guarantees[8]

One month after this PPP deal was struck, in April 2005, Uganda's Electricity Regulation Authority approved a 24% increase in domestic tariffs, noting that Umeme would be making significant investment in the sector and that the company was entitled to make a return on this investment.[9]

The following year Globeleq (by now the sole owner of Umeme[10]), threatened the Ugandan government that it would terminate the concession and leave the country because power shortages[vii] were undermining its revenue streams.[11] Globeleq secured concessions in its licence to supply electricity[viii] and consumer charges were increased by a further 37% for domestic users and 58% for businesses.[12]

The Uganda Electricity Users Association challenged price rises in the courts, while the Kampala City Trades Association petitioned the Inspector General of Government[ix] to launch an investigation into Umeme itself.[13] A committee set up in 2009, led by President Museveni's brother, produced a damning assessment of Umeme, indicating it had been overcharging by 44%.[14]

By 2011, the Ugandan Parliament had established an ad hoc committee on energy to investigate problems in the 'reformed' energy sector. Privatisation was supposed to obviate the need for government subsidies, but these were now said to be higher than before, preventing the government from supporting other critical development programmes.[15] Reporting in 2013, the

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[ii] Uganda Electricity Distribution Company Limited (UEDCL) is a limited liability company incorporated in Uganda under the Companies Act and started operations on 1st April 2001.

[iii] UEDCL says it aimed to increase foreign investment, improve and expand the network, access to it and quality of service through this Public Private Partnership http://www.uedcl.co.ug

[iv] CDC Group plc is the former UK Government's Commonwealth Development Corporation, a statutory corporation converted into a plc in 1999. It is wholly owned by the Department for International Development but with an independent board of directors http://taxjustice.blogspot.co.uk/2009/06/can-cdc-assist-poorer-people-by-using.html.

[v] The Government of the Republic of South Africa is the sole shareholder of Eskom http://www.eskom.co.za/OurCompany/CompanyInformation/Pages/Legislation.aspx

[vi] The Multilateral Investment Guarantee Agency (MIGA), part of the World Bank Group, provided Globeleq with $80m of guarantees (90% coverage) for equity and shareholder loans during 2005 – 2007.

[vii] A severe drought had reduced hydro-power generation by up to 50%, meaning Globeleq did not have as much electricity to sell to consumers to recoup its 'investment'.

[viii] Special Provisions allowed Umeme to use forecasts on energy purchases, which it would factor in the power tariff and, if government failed to generate the power needed for its return on investment, the company would be compensated.

[ix] The Inspectorate of Government is an independent institution charged with the responsibility of eliminating corruption, abuse of authority and of public office http://www.igg.go.ug

committee found that that the government had been forced to subsidise the cost of electricity by 55% to ensure tariffs were affordable for its people so that between 2005 and 2012[x] cumulative subsidies of $660m*[xi] had been paid out. An additional sum of nearly $300m* had been paid to Umeme in 'rebates' for technical and commercial losses to Umeme and the committee recommended the company's contract should be terminated.[16]

In 2010 the government had decided to stop the special concessions on its distribution license that Umeme had enjoyed over the previous 5 years[17] but the company contested this through the Ugandan Electricity Disputes tribunal. Umeme remains (2014) locked in dispute with the Electricity Regulation Authority over the claw back of 'excess' tariff income paid by consumers, which arises from incorrect projections of electricity distribution costs by the company.[18] Umeme is allowed to factor all its projected costs into the power tariff, including the income tax it is due to pay[19] and the company stands accused of abusing the system by making grossly exaggerated estimates in relation to tax liabilities and its inaccurate forecasts of electricity to be purchased for distribution.[xii] Whilst Ugandans laboured under the burden of some of the highest power bills in Africa[xiii] and Umeme's communications director was calling for the execution of people convicted of electricity theft[20] a surprising profits turnaround was achieved. After claiming compensation for many years of losses up to 2010[xiv], a net profit of $7.5m* was posted in December 2011[21] and $19m* in 2012, enabling the company's very first dividend payout[22], just as the new managers of the UK government's investment in Umeme, Actis LLP,[xv] were taking steps to cash this in[23] by floating the company on the Uganda Securities Exchange.[xvi]

Following the Initial Public Offering of Umeme in 2012, Actis's holding was reduced to just over 60%[24] and, following the adoption by Parliament of the recommendation that Umeme's concession be terminated[25], it has since sold off most of these shares, reducing its holding down to just 14% by mid-2014[26].

The suggestion is that 7 years into the 20 year contract, in addition to profits[xvii], Actis had recouped the investment[27] originally made with UK government funds through CDC group plc and is pulling out to 'invest' elsewhere.[28]

Bujagali Dam hydro-electricity project

Despite one of the lowest per capita electricity consumption rates in Africa (circa 11%), Uganda has suffered from inadequate power supply for decades, not least due to the impact of drought on the hydro-electricity generation sector, over-abstraction from Lake Victoria outflows and high rates of distribution losses (over 30%). Nevertheless, a further large hydro project, Bujagali Dam on the White Nile flowing from Lake Victoria, was identified as the solution to power shortages in 1996.[29]

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[x] Government subsidies to the power sector were terminated in 2012, no longer being considered 'sustainable'.

[xi] *Values in Ugandan Shillings (UGX) have been converted at a rate of 1 USD = 3,008.97 UGX on 9 March 2015.

[xii] The ERA discovered that Umeme's estimates of its tax liability were grossly exaggerated, calculating the company had made an extra UShs 37.3bn (US$13m) from the power tariff in this way since its contract started in 2005, together with a similar amount from unrealistic projections of power purchases.

[xiii] Domestic consumers pay a tariff of Shs 518 per KwH ($0.19), far higher than the Sub Saharan Africa average of $0.13 and more than double the level in neighbouring Kenya or Tanzania (Ad-hoc Parliamentary Committee on Energy 2012)

[xiv] Umeme did not make its financial results public prior to 2010 but had been paid substantial compensation for losses.

[xv] Actis LLP was 60% owned by (former CDC) management and 40% owned by DfID through CDC Group plc until 2012 when its share was sold, but still retaining a share of Actis profits http://www.bbc.co.uk/news/business-17902050

[xvi] Actis used the IPO to recover shareholder loans made to Umeme in 2005 & 2007 i.e. the 'investments' required under the Public Private Partnership arrangement.

[xvii] Although Umeme did not pay any dividend until 2012, the IPO prospectus makes it clear that 'investors' were paid interest of up to 12% per annum on their shareholder loans as well as reported 20% returns on capital investments.

Bujagali 1

As electricity generation was being opened up to private operators under power sector reforms, the government embarked on negotiations for a Public Private Partnership to build a 250Mw capacity facility at Bujagali, signing a contract in 2001 with US owned company AES Nile Power. The project would be financed through loans and guarantees from the World Bank and African Development bank[xviii], with Ugandan government ultimately providing loan guarantees projected at up to $500m and the legal agreements effectively assigning all project risks to the public sector, whilst essentially guaranteeing AES immunity from financial risk.[30]

From the outset, the Bujagali Dam project faced substantial opposition, Ugandan professional organisations and international NGOs[xix] raised concerns about a flawed needs assessment, likely environmental impacts, treatment of displaced people, high project costs and the potential impact of these on end consumers and Ugandan national finances.[31] When the government was finally forced to make public the Power Purchase Agreement (PPA) with AES, an independent review of this concluded that the PPA did not meet international standards, that the World Bank had given poor advice to the Ugandan government and misled the public about an "excessively expensive" project.[32]

In June 2002 the World Bank's independent investigative unit, the Inspection Panel, found that the project violated five Bank policies, including those on involuntary resettlement and environmental impact assessment. Allegations of corruption also swirled around the project with members of the Ugandan parliament demanding a probe into how the $150m already spent on the project had been used.[33] In July the World Bank eventually suspended its support after a US Department of Justice[xx] investigation revealed that a government minister had received a payment from a subsidiary of the project's main contractor, Norwegian based Veidekke[34], in advance of the award of the contract.

The following year AES, itself now tainted by corruption allegations[35] surrounding disgraced energy trading company Enron[36] and unable to raise the necessary public sector guarantees for its own borrowing to finance the project[37], pulled out of the contract. But, despite the identified problems, long-term risks arising from climate change and opportunities for geo-thermal power at lower cost, a dam at Bujagali continued to be promoted as the solution to Uganda's ongoing energy shortages.[38]

Bujagali 2

Four years later, in August 2007, President Museveni laid the foundation stone for Bujagali Dam alongside the Aga Khan, who informed assembled dignitaries that this new Public Private Partnership project would be the largest single private sector investment in East Africa[39]; now carrying a price tag of $800m. In fact financing for the new dam company, Bujagali Energy Limited (BEL), needed to be backed by over $600m loans and guarantees[xxi] from the World Bank, African Development Bank and European Investment Bank to the Aga Khan's Industrial Promotion Services (IPS)[xxii] and Blackstone's Sithe Global, which had recently created BEL as a special purpose vehicle; the private sector loan guarantees would in turn would be indemnified by the Ugandan government which would also provide a $75m bridging loan to BEL.[40]

[xviii] Loans & guarantees of $280 were agreed by the World Bank and African Investment Bank in December 2001, with further guarantees of $215 by the World Bank's Mulitlateral Invesment Guarantee Agency under consideration.

[xix] In Uganda the National Association of Professional Environmentalists (NAPE) and e.g. International Rivers

[xx] The parent company of AES Nile Power, AES, is registered in the United States of America

[xxi] Loans and guarantees of $360m from the World Bank ($130m loan from IFC, $115m guarantee from the IDA & $115 MIGA guarantee), $136m from the EIB and $110m from the African Development Bank.

[xxii] IPS is the industrial development arm of the Aga Khan Fund for Economic Development (AKFED).

Uganda's National Association of Professional Environmentalists (NAPE), together with other local organisations and individuals had already submitted a fresh complaint to the World Bank's Inspection Panel[xxiii] raising hydrological, social, cultural and economic concerns and alleging that the Bank had again failed to follow its own project approval procedures.[41] As the World Bank produced a promotional video for the project[xxiv], its Inspection Panel report in August 2008 again found several areas of non-compliance with bank procedures, that benefits of the project were overstated, its risks understated and alternatives not properly considered.[42]

Following this important finding, Frank Muramuzi, Executive Director of NAPE, travelled to Brussels[xxv] in 2009 to highlight the failings in due diligence and join with several European NGOs[xxvi] in filing a complaint through the European Investment Bank Complaints Mechanism, demanding that European funding be withheld until the problems identified with the dam were addressed.[43] In 2011 former Energy and Mineral Minister, Hillary Onek echoed concerns that the dam could not generate the power predicted and its unit costs would be too high, whilst presidential advisor General Salim Saleh said costs to consumers would only come down if government renationalised the power companies.[44]

Despite mounting concerns, when it was finally published after nearly three years in August 2012, the EIB Complaints Mechanism report substantially rebutted these criticisms,[45] contradicting the findings of the other international investment banks. At the complainants' request, a further investigation[46] by the European Ombudsman[xxvii] followed, which found that the EIB had exercised 'internal pressure'[xxviii] on the complaints mechanism,[47] delaying its publication to a point where all EIB loan funding had been released and construction of the dam had actually been completed a month before the report was released.

The year after the dam was commissioned, investigations by the Ugandan Ad-hoc Parliamentary Committee on Energy in 2013 found that the cost of the dam had spiralled from the original contract price of $460m in 2005 to an acknowledged $893m by 2011, with a final estimated cost[xxix] of up to $1.3bn including fraudulent approvals of cost overruns,[48] leading the Uganda Observer to state "Taxpayers to fork out extra $438m"[49] alongside ongoing claims that the dam is only capable of producing 70% of the projected generation.[50]

Hydroelectric generation through the PPP facility at Bujagali was intended to end Uganda's reliance on expensive thermal power generation[xxx] and the need for government subsidies to make tariffs more affordable to the consumer. But with (acknowledged) costs that are triple those of the Three Gorges Dam in China and up to five times the cost of big dams in Sudan and Ethiopia the parliamentary committee calculated that tariff rates will range from 12-16 US cents over the 30 year life of the PPP, whilst the internationally 'acceptable' range for hydro-power is 5-7 US cents.[51]

A world Bank project appraisal report in 2007, suggested "the project is financially sound", with a minimum Debt Service Coverage Ratio (DSCR) of 1.5 over the term of the loans"[52] at an assumed

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[xxiii] A similar complaint was made to the African Development Bank's Independent Recourse Mechanism.

[xxiv] World Bank promotional video for Bujagali project (2008) https://www.youtube.com/watch?v=dHT648Q667o

[xxv] Frank Muramuzi on video in Brusselshttp://www.counter-balance.org/bujagali-testimony-of-ugandan-ngos-in-case-against-eib

[xxvi] NAPE, Counter Balance (Europe), CLAI (Italy), Sherpa (France), and legal representatives of locally affected people.

[xxvii] The European Ombudsman was "created" by the Maastricht Treaty of 1992 as an EU institution to which any EU citizen or entity may appeal to investigate any EU institution or body on the grounds of maladministration.

[xxviii] EIB president Werner Hoyer had to formally remind EIB staff to ensure the independence of and cooperation with the Complaints Mechanism office.

[xxix] The committee could not obtain actual construction costs despite requests to the relevant ministries and agencies.

[xxx] Thermal power usually means generators powered by imported heavy fuel oil in this context.

cost of $800m with the plant producing 250Mw, but reducing to a DSCR of 1.3 in the event of a 30% construction cost increase and just 1.1 if electricity output dropped by 50Mw. However, if costs have in fact spiralled by up to 60% and long-term generation capacity is up to 70Mw lower, then it is likely that the income generated by the facility will not be able to meet BEL's debt service obligations to its lenders, leaving the Ugandan government and consumers exposed to picking up the tab.

Whilst the World Bank went on to report that, in its first year of operation (in favourable hydrological conditions), the Bujagali plant has operated at 98% capacity[53], enabling expensive and damaging thermal power generation to cease, anecdotal evidence suggests this output is not consistent.[xxxi]

In fact, an independent report is calling for the plant to be brought into public ownership because "The high cost of electricity in Uganda has reached unsustainable levels that are severely eroding local industries' competitiveness and domestic consumers' disposable income". The head of the government-owned Uganda Electricity Generation Company, has confirmed that discussions are ongoing to explore the viability of this proposal, which is designed to rein in costs and re-establish a degree of sovereign control over Uganda's national energy sector.[54]

[xxxi] An image taken of the Bujagali hydro-electric plant output display in February 2014 by Beatrice Obbo from the National Association of Professional Environmentalits shows output at just over 150Mw.

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