CASE STUDY

1 Furthering Private Sector Partnerships through the Nairobi Expressway

Reality of Aid Africa Network

Introduction

The lack of adequate, quality and accessible infrastructure and services hinders Kenya's development. While public resources and development assistance remain to be the main source of funding for the construction of infrastructure and provision of social services, these have been insufficient amid rising debt, inflation, and the failure of donor countries to uphold their aid commitments. With this, the government of Kenya turned to the private sector to supplement the financing gap, especially in supporting infrastructure development in the country.

Under a Build-Operate-Transfer and Public-Private Partnership model, the Nairobi Expressway project is being implemented with the China Roads and Bridge Corporation (CRBC) to address traffic congestion in the capital city of Nairobi. With a thirty-year concession period and a loan of USD 668 million, the Nairobi Expressway is designed as a four-lane dual carriageway spanning 27 kilometres from Mlolongo to James Gichuru road. It aims to address the problem of traffic congestion in downtown Nairobi. In 2022, the construction of the road was completed and is now commissioned for operation. There are, however, major concerns with how it has addressed the social, economic and environmental concerns of the affected populations.

Country Context

Since 1996, Kenya has welcomed private investments in some sectors such as telecommunications, energy, transport, water and sanitation. An estimated USD 4 billion per year or 20% of its GDP will be needed to address the country infrastructure deficit over the next decade.[1] As of 2006, Kenya needed an additional USD 2.1 billion per year to meet that funding goal.

The role of the private sector in development and its partnership with the government is expounded in Kenya's Vision 2030 and other national policy frameworks. Kenya's Vision 2030, the country's development blueprint, aspires to transform Kenya into a newly industrialised middle-income country, with high quality services and facilities. A specific principle indicated in Vision 2030 is to address the infrastructure deficit in the country to provide high-quality services and to entice tourism and investment in the country.

It gives high priority to investments in infrastructure, with a relevant role given to the private sector in financing and implementing such initiatives. With this, the government has developed a policy framework, which includes the PPP Policy, PPP Act and accompanying regulations, to engage domestic and multinational corporations through public-private partnerships (PPPs). These PPP projects aim to be targeted at priority infrastructure sectors, including the construction of national flagship development projects.

[1] Government of Kenya. (2011). Policy Statement on Public Private Partnerships. https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/documents/Policy%20Statement%20on%20Public%20Private%20Partnerships.pdf.

Nairobi Expressway

About the Project

The Nairobi Expressway is a four-lane dual carriageway with a length of 27 kilometres, stretching from Mlolongo to James Gichuru. This project was developed under a public-private partnership (PPP) and a build-operate-transfer (BOT) model with a thirty-year concession period.

The project seeks to significantly reduce the commuting time between James Gichuru, downtown Nairobi, Jomo Kenyatta International Airport, and the Athi River. The expressway aims to reduce traffic congestion, reduce spent time in traffic, and facilitate transportation of goods and services.

The project is in line with Kenya's Vision 2030, which sets forth the national objective of transforming Kenya into a globally competitive, middle-income country through substantially higher growth rates and more balanced development. The vision seeks to eliminate the deficit in core infrastructure that currently persists in Kenya to provide high-quality services to the citizenry and serve as a basis for improving the attractiveness of Kenya as a touristic and investment destination.

Modality	Finance, Technical assistance
Instrument	Concessional loans and guarantees
Program Type	Build-Operate-Transfer Model, Public-Private Partnership
Duration	The project has a thirty-year concession period, with three years for construction and the remaining years under the operation of the China Roads and Bridge Corporation. After 30 years, the expressway will be transferred to the government of Kenya.
Budget	USD 668 million
Sector	Infrastructure, transport
Development Partner(s)	Kenya National Highways Authority (KenHA)
Type of private sectors engaged	Multinational corporation
Private sector partners	China Roads and Bridge Corporation (CRBC)

Other dev't partners	Not applicable
Role of partners	China Roads and Bridge Corporation (CRBC) is responsible for the contracting, investment, development, and operation of the expressway for a period of 30 years. The CRBC will be collecting tolls to recoup their investment. After the concession period, the facilities are to be handed over to the government of Kenya. Under normal circumstances, the government is expected to commission an independent environmental and social impact assessment (ESIA) to inform its decision on the project. However, for the Nairobi Expressway, the government failed to conduct its own ESIA and instead, relied on the report commissioned by CBRC.
Monitoring	The CBRC conducted their ESIA to assess the impact of the construction and operation of the expressway on affected communities near the project area. There were also some public consultations held by the company before the writing of the ESIA and after the release of the assessment.
Results framework	No information available
Results	During its implementation, the project incurred additional costs that were not initially accounted for, which reached USD 100 million. As the project is only in its first year of implementation, results are yet to be realised. While traffic congestion has marginally improved along the transport corridor, its positive social and environmental impact is yet to be seen. The intended benefits are therefore delayed or are yet to be realised due to poor design and implementation by CRBC.
Evaluation	The project is required to have a monitoring and evaluation plan to review its performance and compliance with the project agreement and design. The plan is also intended to ensure the proper transfer of assets to the government from CRBC, consistent with the terms and conditions stipulated in their agreement.

Adherence to the Kampala Principles

Kampala Principle 1: Inclusive Country Ownership

As it promotes PPPs to receive additional financing for economic growth and development, the government of Kenya has passed several laws to guide its relations with private sector entities. Ultimately, these have provided an enabling environment for the private sector, providing them with benefits and incentives to invest in the country's economy and development.

To promote PPPs, the government has passed reforms to better structure and capacitate itself for private sector intervention. This included the creation of governmental institutions to champion the PPP agenda, the provision of tax incentives and subsidies, facilitating the privatisation of social services, and the creation of a project facilitation fund. While government policies are detailed and expound on how PPPs are promoted, these lack sufficient oversight, regulation, and compliance mechanisms over private sector activities. Without robust mechanisms regulating the private sector, their business operations can adversely impact people's lives, livelihoods and rights, and destroy the environment in the name of profit. The government is also in danger of absorbing all the risks from PPPs, shouldering the additional financing and harmful impacts of these projects.

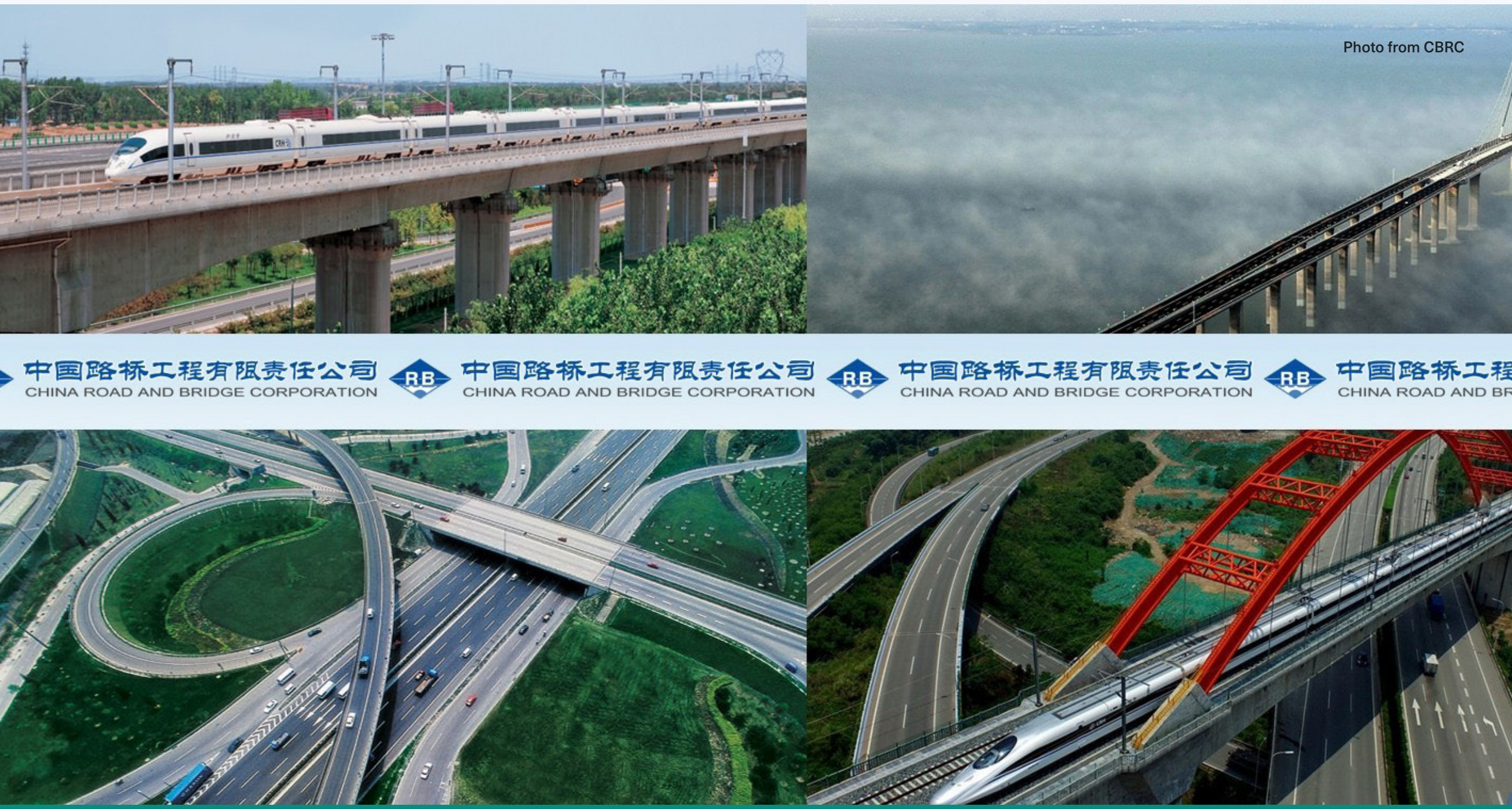
Kampala Principle 2: Results and Targeted Impact

The Nairobi Expressway, with its toll fees and car-centric infrastructure, is deemed expensive and inaccessible for many. According to the ESIA done before the implementation of the project, only 30% of the people would opt to use the expressway due to the costs, while the majority 70% would choose to use the existing highway, which ran parallel to the expressway.[2]

Furthermore, the design ignored the needs of people with disabilities, especially the blind and the physically challenged, who would face challenges when crossing the road as the expressway is fully fenced off. The project continues to pose accessibility challenges to pedestrians and motorists. There are only two footbridges and a few pedestrian crossings along the 27 kilometre-stretch, which leads to pedestrians illegally crossing the road. Turning points are either re-routed or closed.[3] With the expressway located in the middle of the old highway, commuting to the workplace has been made more difficult along these roads. Local businesses that own stalls alongside the expressway have also expressed concern about reduced foot traffic and a decrease in sales. Livestock are often subject to accidents, that have recently recorded a steep increase.

The construction of the expressway has claimed to generate new jobs for the local population, especially the youth. While there were agreements with the CRBC that it will be bringing workers from China, evidence on the ground suggests that the local population were forced to undertake menial jobs, while the semi-skilled and skilled positions were given to overseas workers. While it claims to promote youth employment, there was a lack of criteria in its hiring process to ensure they were employed.

[2]Centric Africa Limited. (2020). Environmental and Social Impact Assessment for the Proposed Nairobi Expressway Project: Volume I. https://naturaljustice.org/wp-content/uploads/2020/02/Nairobi-Expressway-NEMA-Submission-for-printing_centric_Jan-15-2020-FINAL-2.pdf.
[3]Institute for Transportation and Development Policy. (2023, April 30). In an era of climate change, the Nairobi Expressway could still be a green corridor. https://africa.itdp.org/in-an-era-of-climate-change-the-nairobi-expressway-could-still-be-a-green-corridor/.



Kampala Principle 3: Inclusive Partnership

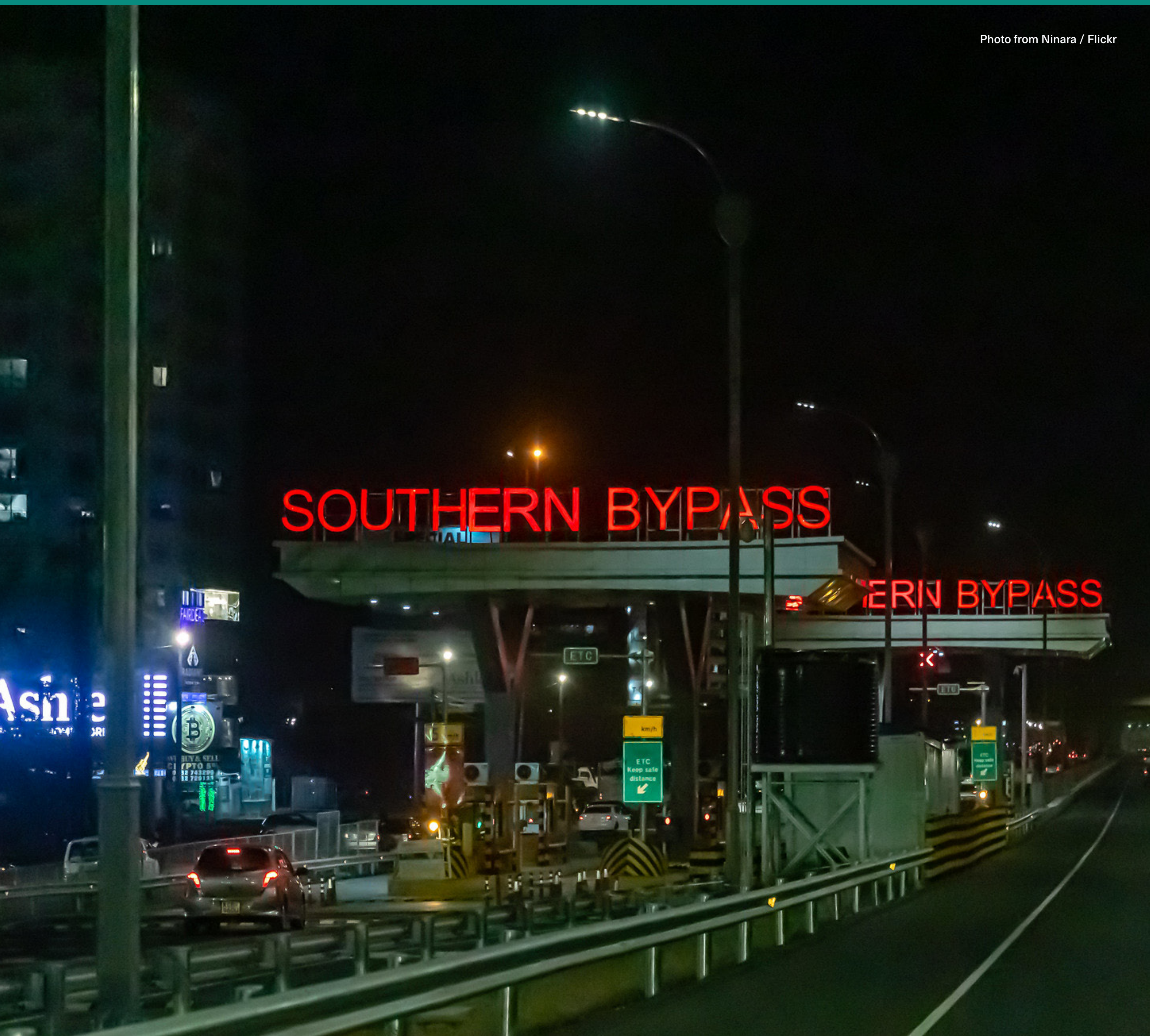
Stakeholders were only identified after the submission of the ESIA study report. This was not only contrary to the law, but it also lacked clarity on how the views of the communities were to be included in the decision-making process. The CRBC conducted only six consultative meetings with communities along the project road corridor. Given the magnitude of this project, its novelty in the Kenyan context, and the potential impacts it may bring to the wider Nairobi population, the narrow scope of consultation reflects its inadequacy in effectively addressing and mitigating social and environmental impacts.

Kampala Principle 4: Transparency and Accountability

The terms of the agreement have not been disclosed publicly despite formal information requests by civil society organisations. Furthermore, the documents on the project design were not made available during the conduct of the ESIA. While government regulations on the ESIA stipulate that the studies should contain an analysis of alternative technology, sites, designs, and processes for the project, the CRBC study did not present any. There is also a lack of detailed analysis on the traffic congestion problems the expressway claims to resolve. These problems could have instead been addressed by promoting multi-modal transport solutions and not depending solely on car-centric infrastructure for transport. The cost-benefit analysis of the construction of the expressway, as opposed to financing bus rapid transit and non-motorised transport systems, was not carried out.

Kampala Principle 5: Recognising, sharing and mitigating risks for all partners

The CRBC benefited from the project at the expense of public resources and the people. Reports state that the debt burden contributed by the project, amounting to USD 80 million, is set to be shouldered by the people. Furthermore, the costs of operations and maintenance of the road estimated at USD 40 billion will be coming from people's taxes. The CRBC also ensured that it would be able to monopolise infrastructure development in the country with a non-competition clause stipulated in its contract with the Kenyan government. This compels the government to give all infrastructure contracts to CRBC, notwithstanding better offers from other contractors



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Conclusion and Recommendations

While the project has slightly reduced traffic along the main highway, its economic and environmental cost-benefit analysis is yet to be seen. The government, meanwhile, had already absorbed some of the initial risks for creating the enabling conditions for the project, without a clear framework for recovering those costs. Furthermore, there is no evidence that citizen participation during public consultation had any impact on the project design or decisions of both the government and the investor.

It is also crucial that development actors adopt the following recommendations:

- **Governments must invest in strengthening its regulatory oversight institutions over private sector activities.** The implementation of the Nairobi Expressway project exhibits how with weak regulatory mechanisms, the private sector will be less likely to comply with government regulations and guidelines. Governments must invest in strengthening their regulatory oversight institutions responsible for the project approval, design, implementation and monitoring of public-private partnerships. Concessions should not be made in critical elements of the project, including the funding and conduct of impact assessments, and the adoption of recommendations arising from the former. For private sector engagement to be effective, governments must ensure that their private sector partners are compliant with the agreements, transparent in their activities, and held accountable for any impacts a project might cause to society and the environment.

- **Abandon PPPs as a model, as it garners more profit for the private sector, at the expense of the government and the people.** During the 30-year concession period, the profit from the current operations of the expressway will solely go to CRBC. The mere fact that the expressway is privatised would entail additional costs and burdens to the people. While the government invested resources and shouldered risks for the project implementation, it further incurred debt from the loan and would have to wait for twenty more years before the transfer of ownership. The people also shoulder the taxes and costs for the use and upkeep of the expressway. PPPs contradict the principle of democratic ownership of development priorities and resources, as these pave the way for corporate interests and the privatisation of essential goods and services.

- **Ensure inclusive and meaningful participation of affected communities and civil society in development processes.** While consultations were held, the concerns raised were not tackled or taken into consideration in the implementation of the project. State and private sector entities undertaking development projects must ensure inclusive, meaningful and genuine consultations to effectively prevent, mitigate and address adverse impacts. Feedback and grievance mechanisms must be also made available, especially to affected communities and sectors. These channels must be accessible and proper redress must be given to those negatively impacted by the implementation of these projects.