



The adequacy of the Infrastructure Concession Regulatory Commission current regime to provide the incentive fundamental to International Investment necessary for the Infrastructural development required for a Nigerian Blue Economy”

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By

Dr. Amanze Okere

Head, Special Projects & Ag. Coordinator, NII3P (A PPP Training Institute of ICRC)

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Outline



- Infrastructure Deficit – Background, etc
- Tapping Into Private Finance
- Government Procurement Options
- PPP Legal, Institutional and Regulatory Framework
- Infrastructure Concession Regulatory Commission (ICRC)
- Nigeria’s PPP Journey: Adequacy of the ICRC
- Some PPP Experiences from Nigeria / Accomplishments

ICRC



.....SCHOOLS



I C

Where We May be



Where We Want To Be



Where We Are



Where We Want To Be



Where We Are



Where We Want To Be



I C

WATER SUPPLY



INFRASTRUCTURE

SOME DEFINITIONS ~ INFRASTRUCTURE

- Infrastructure refers to those physical structures that facilitate the production of goods and services, without themselves being part of the production process.
- Often referred to as the ‘stock of capital goods’, they include highways, airports, harbors, utility production and distributive systems, water and sewer systems, communication networks and energy networks.
- An access road to an agricultural community facilitates speedy evacuation of agricultural products, but does not form part of the agricultural process itself.

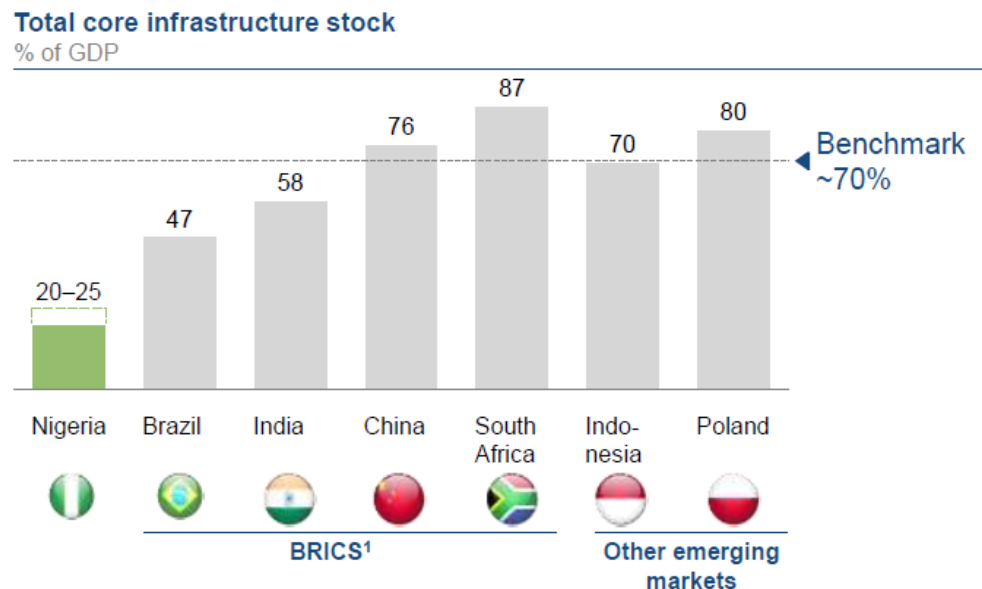
Background



- Nigeria is currently faced with huge infrastructural gap that has hindered its desire to exploit its rich natural and human resources to stimulate its development: For instance, in spite of the country's huge oil and gas, sunlight and hydro resources, Nigeria does not generate enough electricity to drive its development.
- According to the African Development Bank Group (AfDB) the estimated financing requirement to close Africa's infrastructure deficit amounts to USD 93 billion annually until 2030.
- According to the Debt Management Office of Nigeria, capital investments of over \$100 billion, excluding routine maintenance and operating costs, are required to close the yawning infrastructure gap.
- The adequacy and sustainability of infrastructure helps to determine a country's success or failure in diversifying production, coping with population growth, reducing poverty, improving environmental conditions, etc.

The Investment Gap (The NIIMP)

- Nigeria's NIIMP states that *developed economies typically record core infrastructure stock (includes roads, rail, ports, airports, power, water, ICT) of value of about 70% of GDP, with power and transportation infrastructure usually accounting for at least half of the total volume*
- In sharp contrast Nigeria's core infrastructure stock is estimated at about 20% to 25% of GDP (now less than 15% after Naira devaluation.)
- Nigeria's infrastructure stock is lagging far behind other emerging economies with similar demographics
- USD 3 Trillion plus projected over 30 years to address our infrastructure challenge



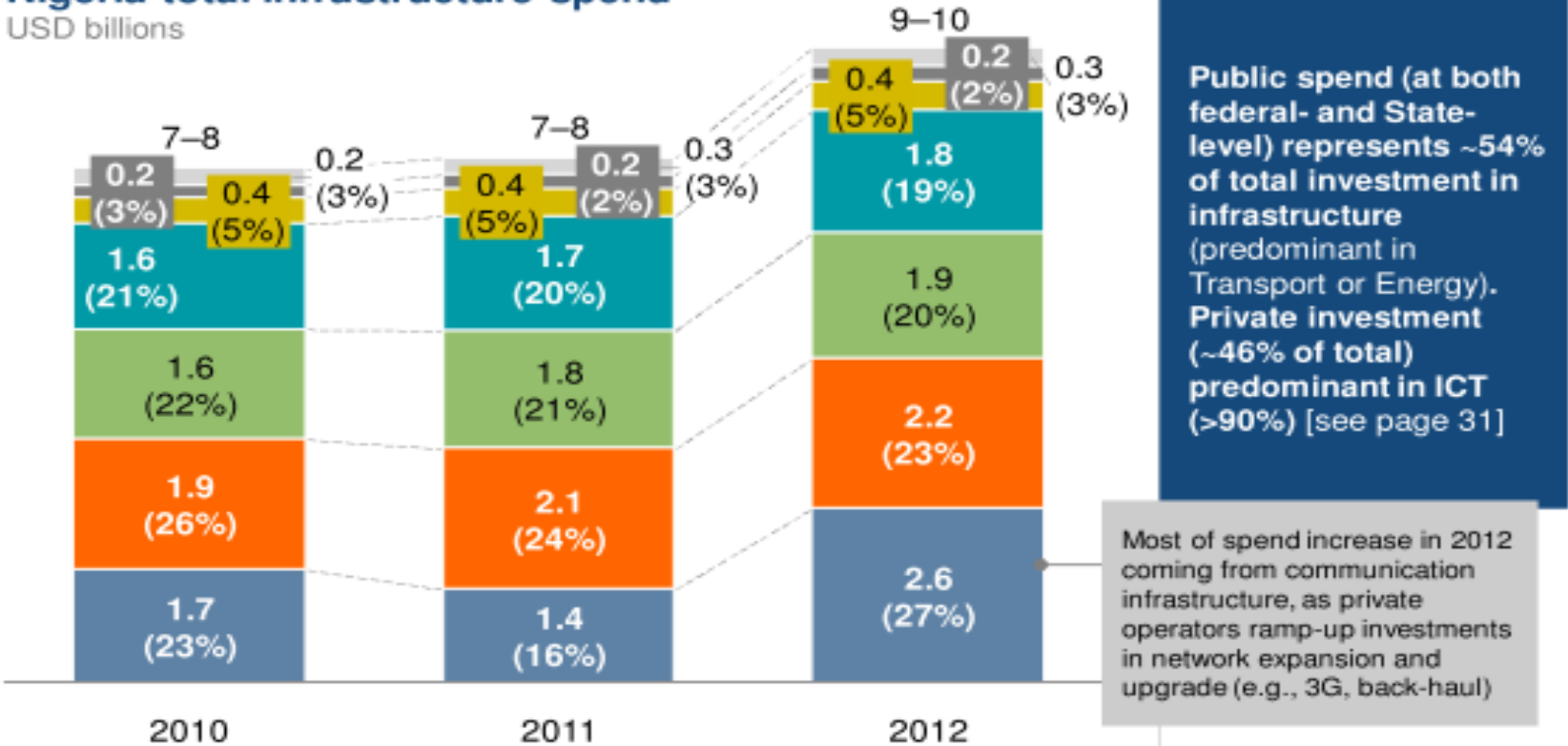
Source: ITF; Global World Index; IHF Global Insight; McKinsey Global Institute analysis

Nigeria currently spends USD 9–10 billion p.a. on infrastructure

- Vital Registration & Security
- Social Infrastructure
- Agriculture, Water & Mining
- IC
- Housing & Regional Development
- Energy
- Transport

Nigeria total infrastructure spend

USD billions



SOURCE: NIP; AfDB; States infrastructure & Regional Development TWG; Governors Forum

NSE Nigerian Infrastructure Scorecard Report 2017



- The overall rating of Nigeria's infrastructure was Nigeria's infrastructure was F1 – Unfit for Purpose. This rating is a further drop by 2 points from E2 in the previous rating carried out 2 years ago (2015). This rating generally portrays a perceived decline in the state of Nigeria's infrastructure.
- As it was observed in the previous edition, operations and maintenance standards for existing infrastructure is unfit for purpose dropping from a poor state (E2) in 2015 to F2 in 2017. Perhaps, this can be deduced to be responsible for the decline in infrastructure rating from previous rating due to the non-existing maintenance standard in place.

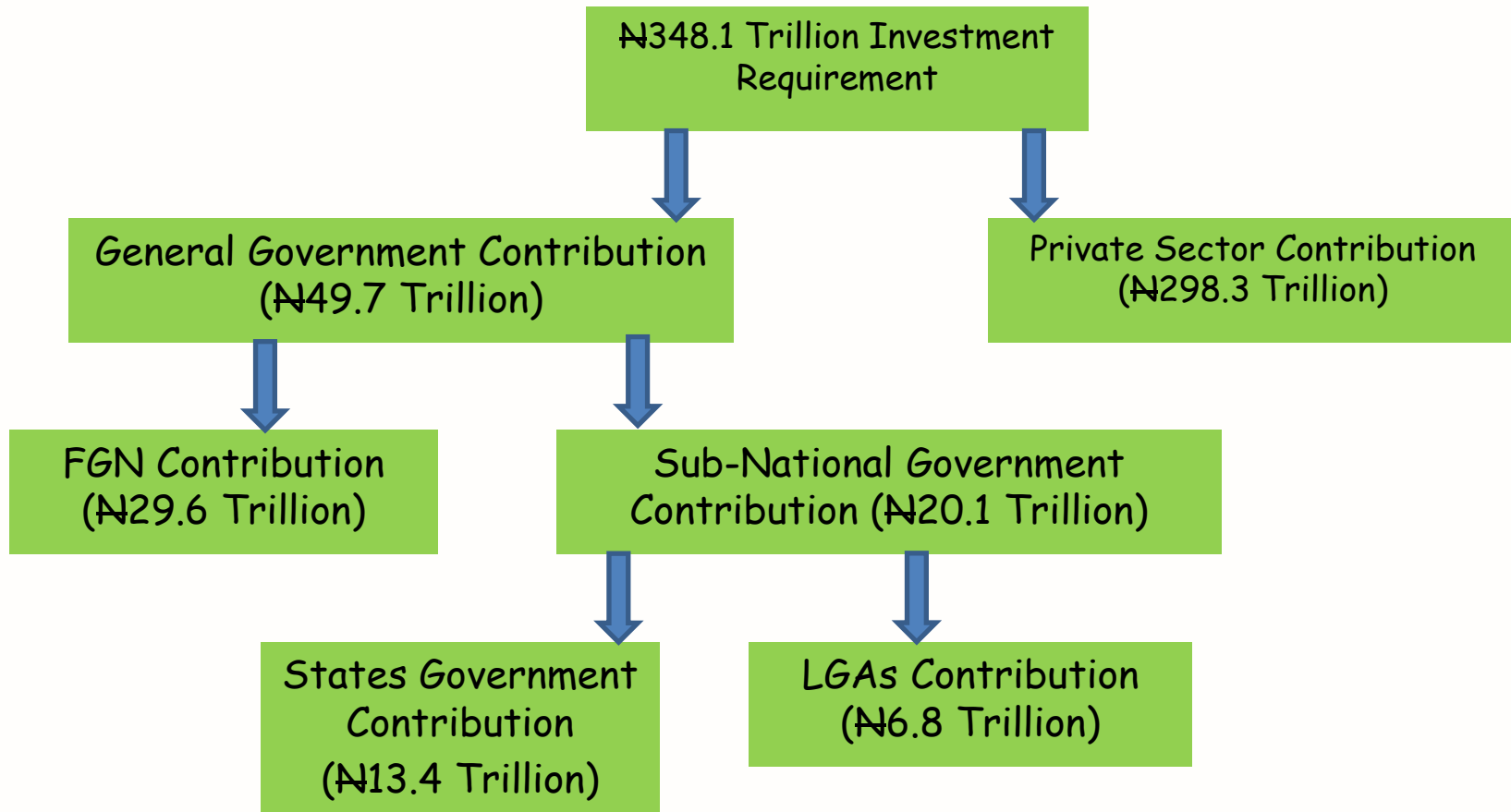
(The above is part of the Executive Summary on page 20 of the Scorecard, as published by the Nigerian Society of Engineers)

Need For Investments In Infrastructure



- Every year, 5.2million Nigerians are born, each one needing hard and soft infrastructure from power to education and healthcare infrastructure, for their daily needs.
- **According to IMF** *“for every dollar of investment in infrastructure, there is a 1.6X multiplier effect...a boost to short-term employment and long-term productivity gains to the economy”*.
- **A World Bank** research posits that for *“developed countries, doubling of infrastructure capital, raises GDP by roughly 10%”*
- **Other OECD studies** suggest that in developing economies, a *“1% increase in physical infrastructure stocks, given other variables, temporarily raises GDP growth by up to 1-2%, in the near term”*.
- These statistics essentially surmise that consistent and sustainable investments in infrastructure, is an avenue for sustaining the nation’s economic recovery.

2021 – 2025 Mid Term National Development Plan



Financing the Plan: Planned Investment –

Source Federal Ministry of Finance, Budget & National Planning, 2021

Overall Plan Targets



- i. The Broad-based economic growth of about 5% on average
- ii. Employment generation ~ projected to increase by about 21 million full time jobs
- iii. Number of people to be lifted out of poverty Projected at 35 million
- iv. Government net revenue at all levels expected to increase to 15 percent of GDP by 2025

Financing the Plan: Planned Investment –

Source Federal Ministry of Finance, Budget & National Planning, 2021

Tapping Into Private Finance



- Unlike government funding, private financing sources portend an uncapped and near-limitless pool of funding for investments in infrastructure. This is because private financing:
 - Spans numerous funding sources (banks, funds, bonds, etc.);
 - Cuts across borders (sectors, as well as international borders);
 - Retains the ability to limit capital allocations on a merit basis; and
 - Exhibits the fluidity to permit reallocation and redistribution of capital on a need/ case by case basis;
- The financing process would typically involve several phases of the project development cycle from origination, transaction appraisal, financial structuring and syndication, offer consolidation and financial close.

Definition of PPP



A Public-Private Partnership is a **contractual agreement** between a **public agency** (federal, state or local) and a **private sector entity**. Through this agreement, the **skills and assets** of each sector (public and private) **are shared** in delivering a service or facility for the use of the general public. In addition to the sharing of resources, **each party shares in the risks and rewards** potential in the delivery of the service and/or facility (Nat. Council on PPP USA)

Wide
Infrastructure
Gap

Growing demand
for private sector
participation in
infrastructure

Small and
depleting
Government
resources

Urgent need for
alternative funding of
Infrastructure

The goal is to combine the best capabilities of the public and private sectors for mutual benefit

7 Essential Conditions That Define Public Private Partnerships



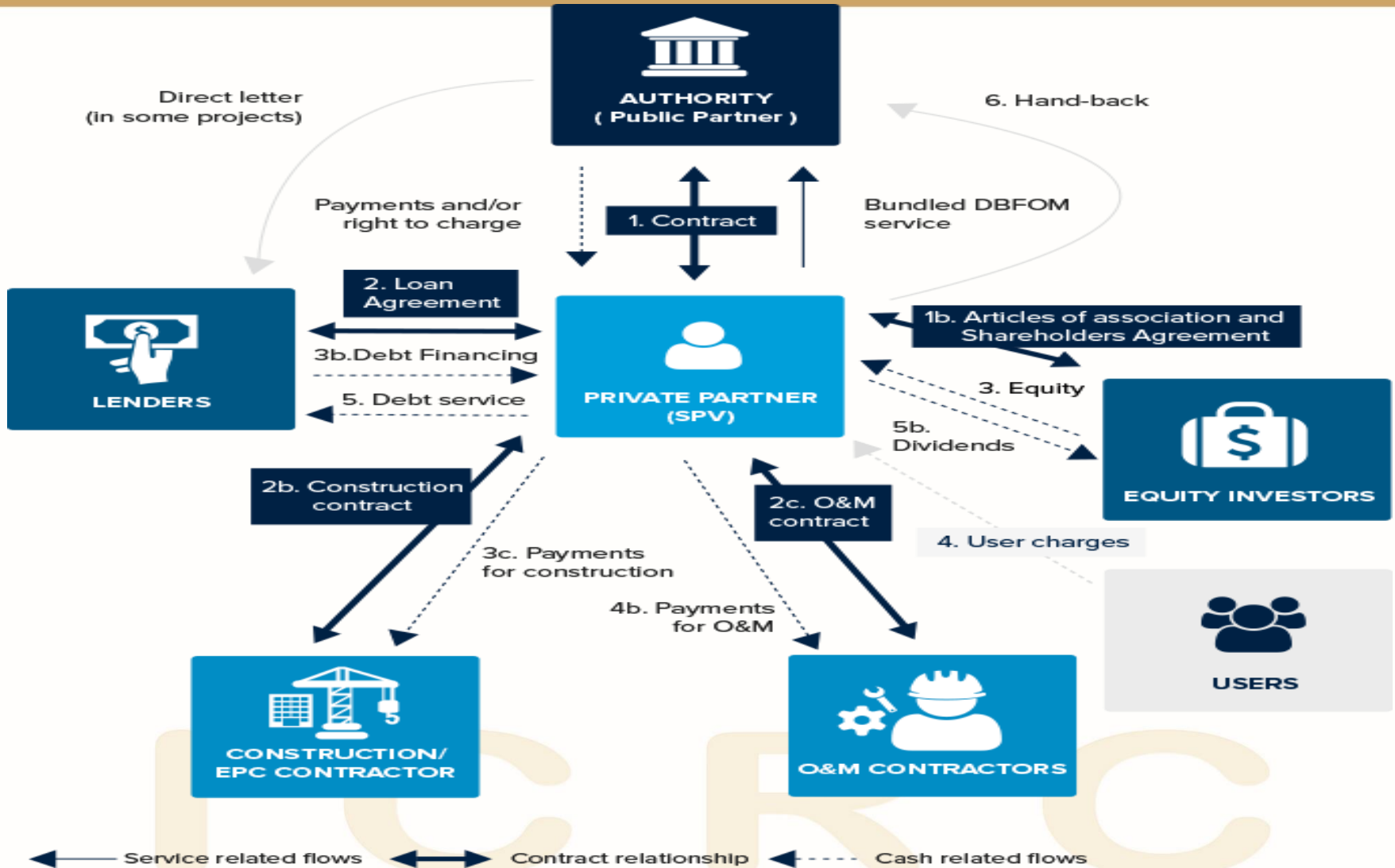
Public Private Partnerships



... Key principles from National PPP Policy

- **Value for Money**
Cost, risks and service quality
- **Public interest**
Adequate consultation with end-users and other stakeholders
- **Output requirements**
Clear and verifiable service standards for output specifications.
- **Transparency**
Transparency and probity can reduce concerns over corruption.
- **Risk allocation**
Risks allocated to the party best able to manage them.
- **Competition**
Ensuring and enforcing adequate competition procedures & laws.
- **Capacity to deliver**
Partners must have adequate capacity to deliver and manage the EPC & commercial processes

The Contractual Structure of a PPP Project



PPP PROJECTS MUST BE BANKABLE & AFFORDABLE

- IRR > Weighted Average Cost of Capital
 - RoE > Shareholders Requirement
 - Debt Service Cover Ratio > Bankers or Lenders Requirements
 - Loan Life Cover Ratio > Bankers or Lenders Requirements
- Focus on not just comparative but competitive advantage !!**

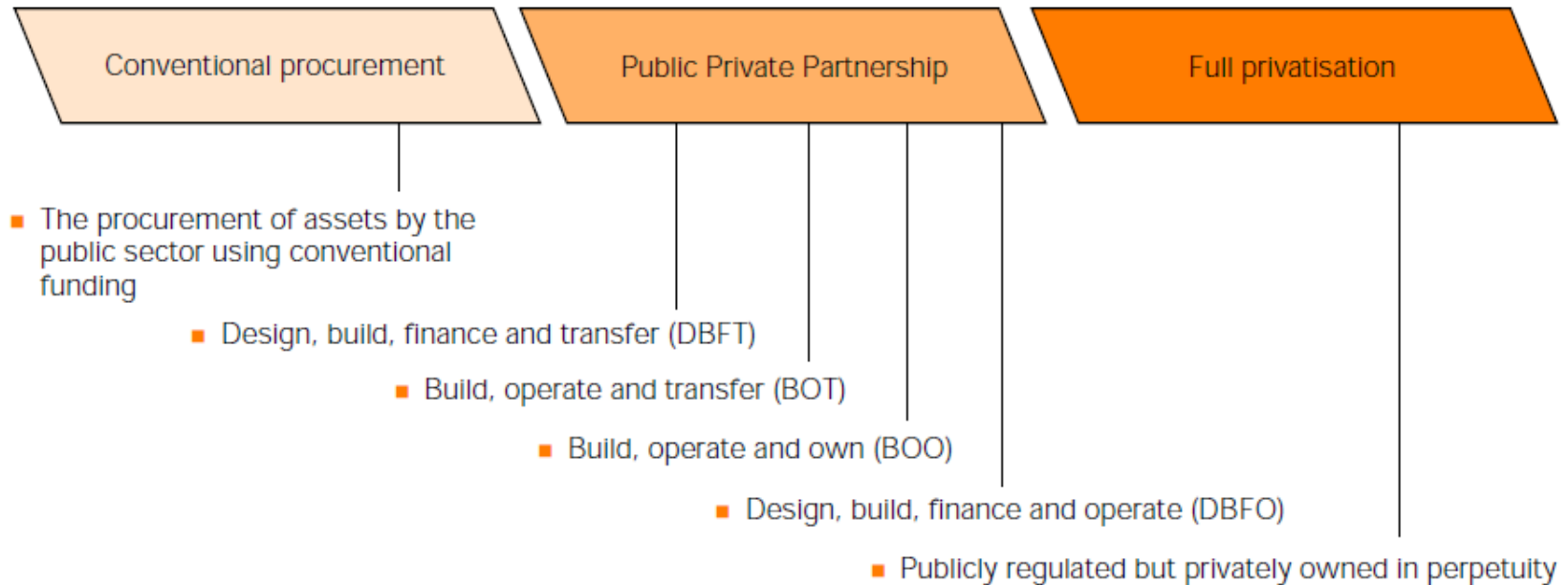
Ideas don't get funded bankable projects get funded.

You must take to market projects with robust cash flows and cost reflective returns

Government Procurement Options

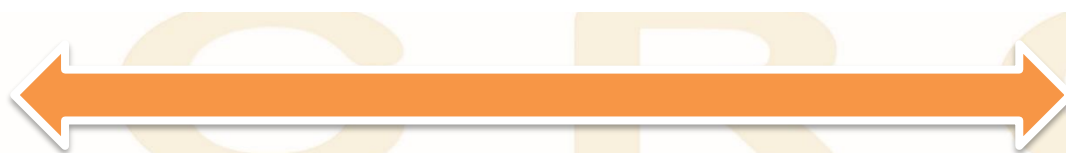


PPP represents a balance between state ownership and privatisation as indicated below:



Source: KPMG, KLegal

Public Sector



Risk Spectrum

Private Sector

Public Procurement: Traditional versus PPP



Characteristic	Public procurement	PPP
Focus	Procuring Assets	Procuring Services
Project management	Public sector is responsible for all project management roles	Private sector manages overall project - design, construction, operations and maintenance. Focus on project life cycle expected to bring efficiency.
Service Delivery	Public sector directly responsible for service delivery to users	Private sector directly responsible for service delivery to users
Financing	Public sector responsible for financing the project. Thus financing impacted by budgetary allocations and then actual disbursements	Private sector may contribute finance through debt and equity issuances
Risk Sharing	Public sector bears all project risks. Risk sharing limited to the extent of warranties.	Risks allocated to parties which can manage them most efficiently
Contractual Arrangement	Short term, generally segregated contracts for asset creation (BOQ based) and maintenance.	Long term contracts- Public sector/users pay for services linked to performance.

PPP:The public sector procures a service, not an asset, from the private sector.

Key Differences between Privatisation & PPPs



	Privatisation	PPPs
Accountability/ Responsibility	Responsibility and accountability for delivery and funding service rests with the private sector	Responsibility and accountability for service delivery lies with the public sector
Ownership	Ownership rights and associated costs and benefits are sold to the private sector	Legal ownership of assets retained by government
Nature of Service	Private sector determines the nature and scope of services	Both public (govt.) and private sector contractually determine the nature and scope of services
Risk and Reward	Private sector assumes all inherent risks	Public and private sector share risks and rewards

Need for PPP Legal, Institutional & Regulatory Frameworks

- To facilitate investments in PPP arrangements
- Reduce transaction costs on the part of the public agency
- Ensure appropriate regulatory controls
- Enable the efficient and speedy resolution of contract disputes
- Make PPP arrangements possible and functional

Typically defined in laws, regulations; policy documents, guidance notes, capacity building and through the design of PPP contracts.

Leadership Commitment and Political Will



EXCERPTS OF SPEECH OF PRESIDENT MUHAMMADU BUHARI, GCFR

“.....We also have a **huge infrastructure deficit** for which we **require foreign capital and expertise to supplement** whatever resources we can marshal at home. In essence, **we seek public private partnerships** in our quest for enhanced capital and expertise.” – 23rd August, 2015

“To maximise impact, we shall continue to increasingly welcome and encourage private capital for infrastructural development through Public Private Partnerships” – 1st October, 2019

Leadership Commitment and Political Will



Excerpts of speech of His Excellency
Vice President Yemi Osinbajo
AT 10th Year Anniversary Lecture of Crescent University,
Abeokuta, Ogun State
June 11, 2016

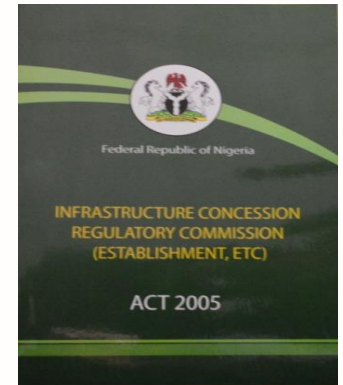
...the Administration will encourage **Public-Private Partnerships** ensuring a **transparent framework** that reduces bottlenecks in doing business.

- Presidential Circular of September 2013 directing All MDAs to engage with the **FMoF** and **ICRC PRIOR** to commencing PPP projects.
- MDAs to establish PPP Units

Infrastructure Concession Regulatory Commission Act, 2005



- The ICRC Act, 2005 is the **PRIMARY** legislation guiding PPPs in Nigeria. Its jurisdiction covers PPPs executed by the Federal Government. Some **key** provisions are:
 - MDAs may enter into contracts or grant concessions to private party for the financing, construction, operation, and maintenance of any Federal Government infrastructure that is financially viable, Section 1(1)
 - Establishes ICRC, its Powers and Functions, Section 14, 19 & 20
 - Competitive bidding for projects and Exceptions, Section 4 & 5
 - Recovery of investment, Section 7
- develop the guidelines, policies, and procurement processes for PPP
- sets out processes and procedure for applying for and securing concessions in Nigeria
- provides a basic framework in the form of guarantees of profitability of PPP projects
- contracts completed in compliance with the Act will be legal and enforceable



Role of ICRC



The ICRC was established to:

- Regulate Public Private Partnership (PPP) by:
 - a. Guiding MDAs in structuring PPP transactions for both **greenfield** and **brownfield** infrastructure – Pre-Contract regulation
 - b. Taking custody of all executed agreements and ensuring compliance with the terms and conditions of such contracts –Post-Contract regulation
- Issue regulations and guidelines to ensure efficient PPP transactions
- Collaborate with state governments to develop sustainable framework for PPP

Functions and Powers of ICRC



- **Functions** – Section 20
 - Take custody and of every PPP contract/concession agreement and monitor compliance.
 - Ensure efficient execution of any PPP contract/concession agreement entered by the Federal Government.
 - Ensure compliance with the ICRC Act
- **Powers** – Sections 10, 19 & 34
 - Power to inspect
 - Power to provide and manage general policies and guidelines of the Commission
 - Power to make regulations
- **Section 11 (Arbitrary Variation etc)** No agreement reached in respect of this Act shall be arbitrarily suspended, stopped, cancelled or changed except in accordance with the provisions of this Act.

What Others Do



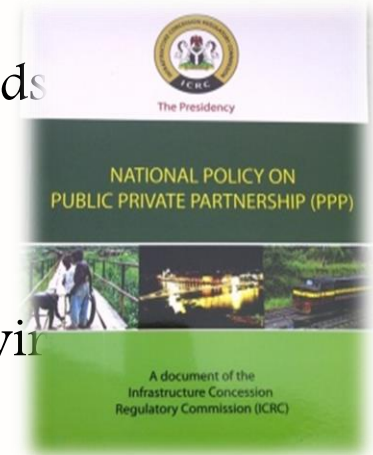
- Initiate PPP projects – **MDA responsibility**
- Develop the Projects – **MDA responsibility**
- Approve PPP projects – **FEC approves**
- Enforce court judgments over PPP transactions – **Law Courts' Mandate**

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National Policy on Public Private Partnership



- In April 2009, the Federal Executive Council (FEC) approved a **National Policy on PPP** which provides guidance on PPP project development, structuring and implementation.
- The Policy sets out:
 - The government objectives and commitments with regards
 - The Key principles of PPPs in the Nigerian context
 - The government's role in the creation of an enabling environment
 - The processes in the PPP project lifecycle



Establishes the:

- PPP Resource Centre – policy, advisory and transaction structuring
- Compliance Centre – to take custody of agreements and monitor compliance₃₃

Other Legal Frameworks



- **Public Procurement Act 2007** - establishes the National Council on Public Procurement and the Bureau of Public Procurement to “monitor and oversee” public procurement and to “regulate and set standards” for public procurement ; Lays down rules for probity and transparency in the manner Government agencies enter into contracts
- **Fiscal Responsibility Act 2007**- strengthen fiscal policy design and implementation; ensuring that Government contributions are prudent, within budgets and available
- **Debt Management Act Office 2003**
- **Insurance Act 2003**
- **Federal Roads Maintenance Agency Act, Cap. F38, LFN1 2004 and the Federal Highways Act, Cap. F13, LFN 2004** - deals with planning, construction, maintenance and supervision of the use of all road infrastructure built by the FGN.; enter into road concession contracts for the purpose of executing relevant projects as well as set guidelines for the working of concession contracts
- **Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Cap. F34, LFN 2004** – deals with exchange controls and repatriation of funds invested in Nigeria.
- **National Inland Waterways Authority Act, Cap. N47, LFN2004** - deals with the development, improvement, regulation of the use of Nigeria’s inland water ways.
- **Nigerian Investment Promotion Commission Act, Cap.N117, LFN 2004** - deals with the coordination of all foreign investments in Nigeria including investments in infrastructure.
- **National Office for Technology Acquisition and Promotion Act, Cap. N62, LFN 2004** - deals with use of foreign technology, which is otherwise not available, in Nigeria.
- **Utilities Charges Commission Act 1992**- regulates prices on certain utilities, This means the price fixing between the Concessionaire and the Government agency, adjustments, limits
- **Land Vesting Title Act 1993**- This Act clearly prohibits a State or Local Government from purporting to grant a Concessionaire ownership of land reclaimed from the Lagoon in the course of the project
- An example of a state law - **Lagos state Public Private Partnership Law 2011**

Procedures for Approval of PPP projects



- All PPP projects are approved by the Federal Executive Council before a contract is signed.
- Outline Business Case (OBC) is approved by ICRC and awarded a certificate of Compliance that will enable the MDA proceed to procurement of a PPP component. This confirms that the project is bankable and viable
- A Full Business Case (FBC), made up of the OBC, the procurement process and negotiations thereof, is subsequently submitted for a further review and certification by ICRC
- The Full Business Case and certificate of compliance are then submitted for a final approval by the Federal Executive Council.

PPP LIFECYCLE in line with National Policy



The Presidency

NATIONAL POLICY ON
PUBLIC PRIVATE PARTNERSHIP (PPP)



A document of the
Infrastructure Concession
Regulatory Commission (ICRC)

Preliminaries

- *Project Identification*
- *Project Prioritization*
- *Project Selection*

Development Phase

Procurement Phase

Implementation Phase

TRANSACTION ADVISER
NEEDS ANALYSIS
PPP OPTIONS APPRAISAL
VALUE FOR MONEY
AFFORDABILITY
SUSTAINABILITY
PRELIM RISK MATRIX
VIABILITY/BANKABILITY
VGF
OBC
OBC Certification by ICRC

TRANSACTION ADVISER
EoI/RFQ Phase AND RFP
BIDDING
BIDDERS CONFERENCE
BID EVALUATION
VALUE FOR MONEY TEST
PREFERRED BIDDER
FULL BUSINESS CASE
BY FEC

INDEPENDENT ENGINEER
MONITOR DESIGN AND
CONSTRUCTION
COMMISSIONING TEST
VERIFY OUTPUT
REQUIREMENTS
CONTRACT MANAGEMENT

**PREPARING AND IMPLEMENTING EFFICIENT
AND EFFECTIVE PPP TRANSACTIONS**

SOLICITED ROUTE

- Well prepared bankable projects to Market
- Transparent and Competitive Bidding
- May Require Government Funding Support
- Timely Financial Closure Required

UNSOLICITED ROUTE

- Bankable Business Case by Project Proponent
- Must be part of strategic plan of government
- Indicative Funding Available
- Negotiate or Subject to Competition via Swiss Challenge etc
- No Government Funding Support

Nigeria's PPP Journey: Adequacy of ICRC



- As at January 2022, there are 77 post-contract PPP projects under implementation at the ICRC Projects Disclosure Portal (www.ppp.icrc.gov.ng or www.icrc.gov.ng). The portal is the first disclosure portal in the world, established in collaboration with the World Bank.
- As at January 2022, there are 186 pre-contract projects at Development and Procurement phases at the ICRC website (www.icrc.gov.ng).
- As at January 2022 ICRC has issued 116 Outline Business Case Compliance Certificates to date
- As at January 2022 ICRC has issued 47 Full Business Case Compliance Certificates to date
- Between 2010 and 2021, under the regulatory guidance of the ICRC, the Nigerian Government has approved PPP projects worth almost USD9 Billion.

Nigeria's PPP Journey: Adequacy of ICRC ~ 2



- ICRC gazetted in April 2021, a pipeline of 51 eligible PPP projects. This list outlines the projects that have received Outline Business Case Compliance Certificates, but which do not have identified bidders. 2022 pipeline in progress
- Due to the need to regularize and document all PPP projects in the country including legacy projects, ICRC issued in 2021 a Regulatory Notice to all MDAs to submit details and contracts of all existing PPPs to the custody of ICRC as stated in the ICRC Act.
- ICRC established in 2019, a PPP Capacity Building arm known as the Nigeria Institute of Infrastructure and Public Private Partnership (NII3P), to focus on PPP trainings for MDAs

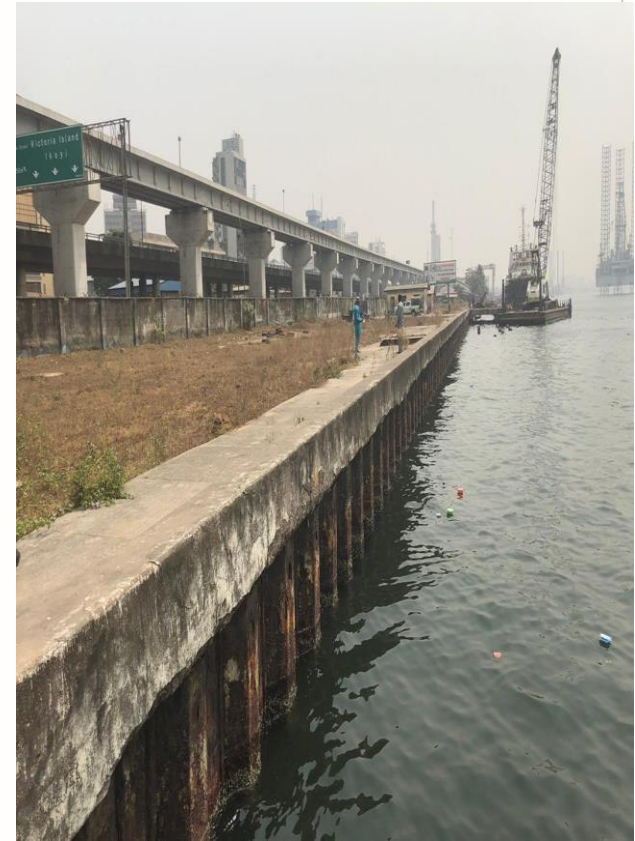


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Nigeria's PPP Journey: Adequacy of ICRC - 3



- The Nigeria Public-Private Partnership Network (NPPPN) was established in 2011 through collaboration between the ICRC, Lagos state PPP office, and the Nigerian Infrastructure Advisory Facility (NIAF) to create a platform for all States (sub-national) Heads of PPP units nationwide and meets quarterly, under the Chairmanship of the NGF.
- The Public Private Partnership Units Consultative Forum (3PUCF) was established in 2013 as a forum designed to provide a platform for Heads of PPP Units in Federal MDAs for knowledge and experience sharing; ensuring symmetry of effort towards institutionalizing FGN PPP programme, provision of training and educational intervention among others, and meets quarterly', under the Chairmanship of the OHCSF



Some PPP Experience From Nigeria

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MMA2 Airport Concession



- BOT contract agreement between the Federal Airports Authority of Nigeria (FAAN) and Bi-Courtney Limited (BCL)
- Original agreement signed in April 2003 (mainly granting concession to BCL)
- A supplementary agreement signed in June 2004 (mainly increasing construction period from 18months to 33months)
- An addendum Agreement signed in February 2007 (mainly extending concession period from 12 to 36 years)
- Main areas of Dispute:
 - Operation of the GAT by FAAN
 - The Tenure of the Concession (36 Years)
 - The Exclusivity Clause in the agreement



Lessons

- Inadequate Experience in Public and Private sectors
- Political Involvement at the implementation level.
- Asymmetry of knowledge between concessionaire and Government; No financial model and traffic risks not properly evaluated
- Not enough due diligence by contracting authority
- Project Development not thorough

Garki Hospital Abuja

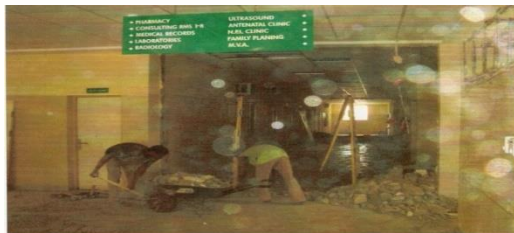


- **Client:** FCT Health and Human Services
- **Sector:** Social Infrastructure~ Health Sector
- **Year the project was signed:** 2007
- This was concession to NISA Premier Hospital Ltd in 2007 for a period of fifteen years (15yrs).
- The introduction of a public private partnership (PPP) arrangement in the hospital has been very effective in the delivery of services. The hospital performed its first successful heart surgery in July 2013 and also performed three (3) successful kidney transplants on the same day in November 2013. The hospital ranks in the top 50 of all evaluated hospitals in Nigeria.



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(Cont...)



AFTER



BEFORE



Hydro Power Plants



- **Client:** Federal Ministry of Power
- **Project Name:** PHCN 3 Large Hydro Power Plants
- **Description:** Concessioneing of Kainji, Jebba and Shiroro in partnership with BPE
- **Preferred PPP Model:** Concluded



- **Client:** Federal Ministry of Power
- **Project Name:** Small and Medium Hydro Power Projects
- **Description:** Hydro Power generation of up to 43 mega watts from existing Ten (10) Small and Medium dams
- **Preferred PPP Model:** Rehabilitate/Build Operate Transfer (RBOT) model



Some PPP Accomplishments



1. Lekki Deepwater Port Flag Off
2. FMWPH Rooftop Solar PPP
3. Warehouse in a Box Medical Stores
4. NIWA Onitsha River Port
5. Kiri Kiri Terminals I and II Modernization
6. Lilypond Terminal Conversion to Agro Processing and Export
7. Ibom Deepwater Port
8. Dadin Kowa Hydro Power Plant
9. Gurara Hydro O & M
10. AKK Pipeline
11. Farm Mechanization PPP
12. Development of Bonny Deep Water Port

Some PPP Accomplishments – cont'd



13. Concession of 18 Agro – silo projects across the Country
14. Transaction process for the Highway Development Management Initiative (HDMI) across the country
15. Presidential Initiative on Custom Modernization “E~Customs Project
16. Abuja – Kaduna railway ticketing PPP
17. The Naval Ship Dockyard, Lagos
18. Development of National Fire Data Repository Centre
19. Deployment of Police Specialised Services Automation project
20. Development of Port Harcourt Railway Industrial Park
21. Rehabilitation, Expansion and Operation of the Nigerian Correctional Service Shoe, Garment and Leather Factories
22. Development, deployment and management of Automated Customs Gateway Portal for Import Duty Exemption Certificate (IDEC) and Imported Vehicle identification Number Registration (VREG)

Some PPP Accomplishments – cont'd



23. Ekiti State and FGN (NAEC) Collaboration to use atomic energy to reduce Post Harvest Losses

24. Establishment of Multi-Specialist Hospitals (MSH) and Intravenous Fluid (IVF) Plants by NNPC

Medical Services

25. Rail line linking the South South Nigeria with the North East

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...in conclusion



- PPPs offer the country a dependable and sustainable funding option, increased accountability, accelerated infrastructure provision and faster implementation of projects.
- Nigeria's huge infrastructure deficit is an opportunity to partner on a win-win basis with the private sector in virtually all economic and social infrastructure spaces, especially as it offers creative financing of Nigeria's Infrastructure
- Project preparation and development is key and PPP also stands for Preparation Preparation Preparation



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Infrastructure Concession Regulatory Commission
Plot 1270 Ayangba Street, Near FCDA Headquarters,
Area 11, Garki, Abuja – Federal Capital City.

Phone: +234 9-4604900, E-mail: nii3p@icrc.gov.ng, info@icrc.gov.ng

Website: www.icrc.gov.ng