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Public-Private-Partnership and Sustainable Development of Infrastructures in Nigeria

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Abstract

There is broad acceptance that Public-Private-Partnership (PPP) can improve cost effectiveness and render more satisfactory performance of infrastructure projects. But it is also widely accepted that the PPP option is yet to be fully utilized for the building and management of infrastructures in Nigeria. The paper reviews PPP practices and institutional framework in Nigeria, compares them with what obtains in selected global best practice countries, and suggests how PPP can become self sustaining. Among other recommendations, the paper calls for mainstreaming of PPP through an institutional restructuring process that creates a cocktail of full service PPP agencies, vested with both regulatory and executive powers as is the case in many global best practice countries. Success with the proposed framework, however, calls for more holistic PPP legislation, sustainable long term financing models, and a comprehensive business dispute resolution framework.

JEL classification numbers: Q43, Q21, M48, L32, H11, H54
Keywords: PPP, regulation, implementation, finance, contract, private investor

1 Introduction

PPP is a contractual arrangement between government and private investor(s) where mutual benefits are sought, and the private sector provides operating services and/or finance. A PPP agency refers to an establishment (either within or connected to government) that provides services related exclusively to PPPs to government and private sector clients (Farrugia et. al., 2008). PPP enables government to focus more on facilitation and regulation, and allows the private partners to build facilities or deliver services often on cost recovery terms. The primary goal is to promote value-for-money

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and risk sharing by private investors in social development. This paper critically examines PPP practices and institutional architecture in Nigeria based on lessons drawn from a review of selected global best practices, and then proposes a self-sustaining framework for PPP in Nigeria.

2 Preliminary Notes

2.1 Public-Private-Partnership Terminologies

The popularly used PPP terminologies and execution models as explained in Afolabi (2011) and CSMI (2010) are summarized in Table 1 below.

Table 1: Public-Private-Partnership Terminologies

Commonly used Terminology	**Meaning**
BOT – Build-Operate-Transfer	Private investor builds a facility, sells the output to the public, and transfers it at the end of the contract.
BRT - Build-Rent-Transfer	Private investor builds facility, rents it out, and transfers at the end of contract.
BTO – Build-Transfer-Operate	Private vendor builds facility, transfers to government, and government either operates directly or contract out. The private vendor either gets full payment at the end of contract or shares in the earnings from operation thereafter.
CONCESSION	Private vendor (concessionaire) may or may not build facility, but is allowed to manage the facility and charge users a fee for use of the facility.
DBB – Design-Bid-Build	Government agency provides design, puts out tenders, and winner builds the facility.
DBFO - Design, Build, Finance and Operate,	Government designs the facility, private vendor finances building and operates for cost recovery.
DBMF - Design, Construct, Maintain and Finance	Government designs, private sector constructs and maintains, and government finances.
EPC CONTRACT – Engineering, Procurement and Construction	Contract whereby the contractor proves a complete installation (e.g. a power plant) to specification, at a fixed price and to a fixed schedule.
FRANCHISE	The service provider (franchisee) is allowed to charge a service fee for the use of the infrastructure or service which has already been built. The franchisee pays a lump sum to government.
Lease/Maintain	Private vendor pays rent for facility and utilizes the resources.
Output specification	Government agency specifies “outputs,” and private vendor designs, finances and builds the infrastructure.
RLT - Rehabilitate-Lease-Transfer	Private vendor rehabilitates a facility, signs lease agreement on facility with government agency, and transfers at the end of contract.
ROT-Rehabilitate-Operate-Transfer	Private entity rehabilitate facility, operates to the extent of full cost recovery, and transfers.

Sources: Afolabi (2011) and Centre for Sustainability in Mining and Industry (CSMI) (2010)

2.2 The Political Economy of PPP Adoption

The conduct of PPP differs from country to country depending on the prevalent political economic conditions and risks. The political case for PPP in Nigeria is at present less compelling; due to the dominant extractive, rent seeking, political culture. There is strong likelihood that the use of PPP for building infrastructures would be resisted, and the prospective private partners frustrated, by self-seeking politicians and top public servants because project prioritization, appointments, and award of contracts are currently, largely, politically motivated. Accordingly, having the *political will* to reform the way government business is carried out is the key determining factor for success of PPP in Nigeria. The economic case for PPP in Nigeria is however quite compelling: first, is that PPP can be used to reduce the funding gap that arises from the mismatch of oil export earnings' flow and the financing needs for infrastructure development; second is paucity of long term funds for financing capital projects in Nigeria, and the global unpredictability of foreign direct investment (FDI) and foreign aid flows; and third is the need to sanitize public procurement through strong commitment to value-for-money project appraisal that private sector involvement can, more candidly, bring to bear.

Akinyosoye (2010) opines that the use of PPP was largely responsible for faster development in Indonesia compared to Nigeria. In 1965, both countries had GDPs of $4-5 billion and comparable populations of about 100 million. Both were in the early stages of becoming major oil exporters, and over the past 50 years have earned roughly similar amounts from crude oil exports. But non-oil exports have grown faster in Indonesia; from about $500 million in 1965 (when it was comparable to Nigeria's), to about $30 billion in 2009 (when Nigeria's non-oil exports was below $1 billion). Over the same period also, Indonesia's GDP grew five times faster than Nigeria's, and electricity generation in Indonesia was seven times more than in Nigeria. Nigeria's GDP per capita was $2,300 while Indonesia's was $3,900 by 2008 estimates. Per capita income performed better in Indonesia despite its faster population growth rate (Indonesia's population was estimated at 240 million in 2008, compared to 150 million for Nigeria). Despite having similar initial conditions, Indonesia performed significantly better than Nigeria due to stronger private sector involvement in infrastructure development.

Attempts to adopt PPP in Nigeria are so far fraught with major disagreements on several sides. For example, two PPP contracts of the Federal Government and Bi-Courtney Limited; one for construction of the Lagos-Ibadan expressway, and the other for a new terminal at the Murtala Mohammed Airport (MMA2) ended in fiasco. Many argue that revocation of the contracts for both projects in 2012 did not follow due process. Moreover, the arrest of Dr. Babalakin, Bi-Courtney's chairman/chief executive officer, by operatives of the Economic and Financial Crimes Commission (EFCC) just after MMA2 was revoked casts doubt on government's commitment to PPPs. Bi-Courtney attributes its incapacity to deliver the projects to non-accessibility of long term funds, and accused the Federal Government of refusing to guarantee its application for mortgage loan. And, while it may be true that Bi-Courtney failed in its obligations, government's readiness to flexibly assist it or follow due process to terminate the contracts was questionable.

PPP mainstreaming would however demand a change in the way public goods are perceived by the people. In particular, the thinking that public goods ought to be free has to give way to acceptability of cost recovery as the bastion of sustainability. The average Nigerian should, for instance, accept that it is cheaper to drive through a well maintained tolled road than drive through a free but poorly maintained and risky road. This calls for persistent reorientation, effective communication, and transparency of PPP procurements. However, cost recovery needs to be balanced with the fact that infrastructural projects generate some measure of externalities, which require reasonable measure of government subsidies and high degree of flexibility in carrying along the private partners and the benefitting public. Equally, a sustainable long term financing model that renders credit accessible and affordable is critical to success of PPP. There is also need for a comprehensive dispute resolution framework for dealing impartially with partnership disputes and ensuring that contracts are enforced. Wading through these concerns with reasonable sensitivity to the needs of all parties, to render PPP an easy-to-adopt infrastructure development option in Nigeria, is the motivation for this paper.

3 Main Results

3.1 PPP Practices in Nigeria

PPP procurements and contracts in Nigeria are currently governed by the infrastructure Concession Regulatory Commission (ICRC) Act of 2005, the Public Procurement Act 2007, and relevant regulations issued by the ICRC. The equivalent state PPP laws are generally in sync with the ICRC Act. The Act empowers ICRC to develop guidelines, policies, and procurement processes for PPP projects in Nigeria. In addition, ICRC takes custody of concession agreements made under the Act and monitors to enforce compliance. Under the Act, the Federal and State Governments can initiate and manage PPPs, but some State PPP projects may require Federal Government guarantee in order to earn the confidence of major financiers. The Act envisages that PPP projects would be initiated by a government Ministry, Department, and Agency (MDA), who is expected to process the application up to when approval is obtained. Where counterpart fund is required, the sponsoring MDA has to ensure it is in place (ICRC, 2012).

The ICRC Act identifies nine steps to packaging a PPP contract. Step I is identification and prioritization of a PPP project by an MDA. Step 2, the MDA obtains clarification from the National Planning Commission (NPC) that the project is in line with plan priorities. Step 3, MDA submits spending plan for PPP project to the Ministry of Finance (MoF) and the Debt Management Office (DMO) for appraisal. In Step 4, MoF and DMO review the costs and contingent liabilities of the proposed projects and advice the MDA on possible revisions, where necessary. Step 5, the MDA includes accepted spending plans in the budget as agreed by MOF and DMO. Budget is approved in Step 6 by the Legislature. Step 7, MDA is permitted to move spending between different budget heads. In Step 8, funds are disbursed to the MDA, and Step 9 is preparation/auditing of annual accounts. Step 10 is consolidation of contractual payments under PPP projects into the national account. Acceptability of a PPP proposal by the MoF and DMO is hinged on the credibility of the private partner, bankability of the project, government prioritization, expected cash flows from the project, and availability of third-party support from development partners, multilateral agencies, and so on (ICRC, 2012).

The PPP approval process outlined above is not different from the regular budget process of government. Counterpart funds for PPP projects are budgeted for like other capital projects of the MDA. There are no special incentives for participating MDAs. No fiscal rule mandates that a share of the capital budget be financed or implemented through PPP. The ICRC Act fails to articulate the funding challenges PPP projects may face. The Act neither has a dispute resolution mechanism nor explains how the private investors can be protected in the event of disagreement with MDAs. There are also no mechanisms for receiving and examining unsolicited PPP proposals from prospective private investors for assessment and sponsorship. Most regrettably, the ICRC is not empowered to package its PPP projects; it merely gives approvals and engages in advocacies. Thus, the critical institutional platform for nurturing PPP projects to maturity is lacking in Nigeria, and the entire institutional architecture for capital budget execution is warped. Two foremost PPP projects in Nigeria; one belonging to the Federal Government, and the other to the Lagos State Government were reviewed from Afolabi (2011), Happiday (2012), and Nigerian Orient News (2013) and presented below for insight on how PPPs in Nigeria can be rendered more effective and sustainable.

3.1.1 Domestic terminal at Murtala Muhammed Airport, Lagos

This was a concession/BOT to build a new domestic terminal and ancillary facilities at the Murtala Muhammed Airport (MMA2) in Lagos. MMA2 was the first major BOT infrastructure project to be contracted by a Nigerian company. The contract was awarded in 2003 to Bi-Courtney Aviation Services (a subsidiary of Bi-Courtney Limited) following direct negotiations with the company for a period of 12 years and subsequently extended to 36 years. The contracting entities were the Minister of Aviation, and Federal Airports Authority of Nigeria (FAAN). The estimated cost of the project was US$200m. The project was part-financed with a loan of US$150m from a consortium of six money deposit banks (MDBs)— Oceanic Bank International Plc, Zenith Bank Plc, GT Bank Plc, First Bank Plc, First City Monument Bank Plc, and Access Bank Plc. The project encountered various difficulties, including; challenges in securing long term financing agreement, and unwillingness of FAAN to support the project by enforcing use of MMA2 by airlines as required in the PPP agreement. There were several claims of breach of contractual rights by both parties. A review of MMA2 PPP brings to fore a number of learning points for rendering PPP more sustainable in Nigeria.

Firstly, the absence of a transparent and sustainable long term financing model for PPPs was a major challenge. Secondly, many of Bi-Courtney's shortcomings were predictable and avoidable with effective planning, and realistic setting of goals and timelines. Thirdly, the framework for periodic monitoring and evaluation of PPP projects was weak, making enforcement of required operational standards difficult. Fourthly, there was little room for review of the project to accommodate unforeseen changes. Fifthly, the absence of dedicated dispute resolution mechanism for PPP projects allowed controversies to escalate. The situation was compounded by FAAN's refusal to obey several court orders, and incapacity of ICRC to defend PPP projects or protect private investors.

3.1.2 Lekki Toll road concession project, Lagos

Lekki Toll Road Phase I was a Lagos State Government PPP project involving upgrading and maintenance of approximately 50 km of the Lekki-Epe Expressway. The concession period was for 30 years. The Concession for Phase 1 was awarded to Lekki Concession Company Limited (LCC), a Special Purpose Vehicle (SPV) formed for the project. The project was funded using a mix of debt and equity with some support from the State and the Federal Government of Nigeria. The major shareholders in the project included Macquarie Bank and Old Mutual of South Africa through the African Infrastructure Investment Fund. The project was able to raise the first ever 15-year tenured local-currency debt financing in Nigeria from Standard Bank. Support from Lagos State Government was in the form of a mezzanine loan.

Lessons learned from the Lekki road project include the importance of stakeholder consultation and ownership as communities living along the Lekki-Epe corridor protested about having to pay tolls, and following a court action tolling was suspended. There is need also for strong capacity for negotiating and managing PPPs by government operatives, and effective planning. More seriously a people-centred mechanism for managing beneficiaries' perceptions during project implementation needs to be developed and sustained. This would have reduced commuter frustration with the perceived lack of progress on the project. There is also need for agreed performance standards that are backed by an effective penalty regime, and a sustainable long term financing model, with monitoring framework for ensuring value-for-money. Generally, it is fair to submit that the contribution of PPP to infrastructural development in Nigeria is very limited.

3.2 Global Best Practices and Lessons for Nigeria

Globally, over 25 national and sub-national government entities established PPP agencies between 1998 and 2008. The commonly used labels are as summarized in Table I. While the different labels may suggest slight variations, the central idea is government partnering with private investors to finance, build, maintain or manage facilities. The PPP agency is essentially the vehicle for planning, implementation, and management of the contracts. PPP agencies are characterized as *review agencies* or *full service* agencies. Review agencies essentially appraise PPP projects and advise government on their workability/viability, and may perform other regulatory roles as provided for by the law establishing them. Full service agencies implement PPP projects in addition to carrying out the functions of review agencies (Farrugia et. al. 2008).

Most PPP agencies, whether review or full service, are funded by the government. But full service PPP agencies with substantial degree of financial self-sufficiency have been found to be more stable, better positioned to defend the integrity of PPP contracts within the larger government, and capable of attracting more local and international players. A PPP agency can become a *Center of Excellence* when it is able to compile and disseminate research information, and educate potential investors on best-practices. Most PPP agencies are under the treasury department of ministry of finance. In Nigeria, ICRC and other sub-national PPP agencies can at best be described as neophyte review bodies, and none qualifies as full service agency or *centre of excellence.*

Typically, a full service PPP agency engages in business planning, procurement processing, project implementation, and market development. Few PPP agencies are involved in a consulting capacity for both project management and technical support. PPP agencies can contribute to market development by providing support services for both potential and successful private investors; offering knowledge, understanding, expertise and practical experience, and lobbying for more friendly legislations and legal framework through improved private – government dialogue. The activities of PPP agencies in selected countries, with substantial successes in planning, design, and implementation of PPP projects, are discussed briefly below (see Gemini Global Group (2013) and Farrugia et. al. (2008) for detailed discussions). The aim is to draw lessons for developing PPP as a major means of delivering infrastructures in Nigeria.

3.2.1 The United States of America

A. Colorado State University (CSU)

Colorado State University (CSU) entered into a design, build, finance, operate contract for developing a 30-acre, 23,000-panel solar power plant. Under the contract, CSU agreed to lease the land and purchase electricity produced by the plant at a fixed rate for 20 years. The contract allowed CSU to pay fixed rate for electricity with no upfront payment, while the energy firm had guaranteed revenue for 20 years. CSU had the option to purchase the plant at the end of the contract term.

B. Shelby County, Alaska

Shelby County sold its old wastewater treatment plant to a private partner, and used the proceeds to fund the construction of a new water treatment plant that the private partner also operated and maintained. This improved the rate of recycling and increased revenue streams to the County and the private investor.

C. University of Arkansas

The University of Arkansas partnered with a private investor for operation of its wastewater facilities to produce biodiesel and preserve its wildlife reserve. The private partner benefited from guaranteed steady revenue streams, the University benefited from a better managed wastewater system and steady supply of biodiesel, and tax payers benefited from the value created without new taxes.

D. Road Project in Texas

The first privately developed and operated open toll road facility in Texas was developed under a PPP. The PPP was to design, finance, construct, operate, and maintain the state-owned toll road for 50 years at an estimated cost of $1.3 billion. The state got a much-needed transportation upgrade that taxpayers could not finance and the private sector partner had guaranteed stable revenue stream for many years.

E. Tourism and Hospitality

The Arizona Game and Fishing Department entered into PPP for design, build, finance, operate, manage and transfer a new building of $20.9 million. The agreement allowed the private investor to manage and maintain the property for 25 years and thereafter transfer facility to the state.

F. United States Army

The US Army in Yuma, Arizona, entered into partnership with a private contractor to design, build, finance, operate and transfer special runway for hot weather vehicle testing. The private partner was allowed to use the facility for testing its products, and after the lease period ownership of the facility returned to the army.

G. JFK Airport Facility

A design, builds, finance and operate PPP for a new terminal at JFK airport worth $1.4 billion. The private partner managed and operated the old terminal while constructing its replacement on the same site. Revenue from the old terminal improved and the private partner continued to operate both terminals even after construction of the new terminal was completed.

3.2.1.1 Learning points for Nigeria from the US experience

PPP is not the exclusive reserve of Federal and State Governments; local governments, parastatals, and communities can also use PPP to implement projects. Doing so, however, calls for flexible PPP models and legislation.

3.2.2 The United Kingdom (UK)

A. Highways Agency

The Highways Agency was established as an executive agency of UK’s Department of Transport in 1994. It operates and manages UK’s road network, which supports nearly one-third of all traffic in the UK and over two-thirds of all freight traffic. The agency can use public or private finance for a project depending on which gives the highest value-for-money, in terms of cost effectiveness and service delivery. The Highway agency does not have a specific PPP unit, but evaluating and managing PPPs is an integral part of the work schedule of its employees. The Agency has eight core departments, namely; procurement, network strategy, traffic operations, major projects, safety standards and research, finance services, human resource services, and the information directorate. Highways Agency earns revenue from consultancy services and profit from PPP projects.

B. Partnerships UK

Partnerships UK (PUK) was established in 1999 and became operational in 2000. Its primary mission is to accelerate the development, procurement and implementation of PPPs. PUK is itself a PPP enterprise with 51 percent private ownership and 49 percent public sector ownership. It supports procuring government MDAs with technical information and facilitation, and has its own capital and the autonomy to make investment and operational decisions without necessarily needing the approvals typical of an entity wholly controlled by a government department. More importantly, PUK has a motivational model that brings out patriotic zeal among private investors, and many of its private partners seriously desire to help ensure effective delivery of public projects, expand options for the delivery of infrastructure, and improve the environment in the UK. PUK has two main roles, namely; regulation and review of PPP projects, and program and policy support. PUK’s project support role is limited to 10-15 percent of the PPP projects in the United Kingdom, and it focuses on pathfinder, strategic projects.

3.2.2.1 Learning Points from UK’s PPP experience

- **Highway Agency** – making PPP an integral part of the job task for its employees, ability to earn and reinvest its revenue from PPPs (not charges extracted from private investors), and use of value-for-money (VfM) calculations to determine whether to use PPP or direct funding for capital projects are key learning points to note.
- **Partnerships UK** – capacity to motivate private firms to invest for patriotic reasons despite, itself, being a PPP venture, and having its revenue and autonomy to undertake PPP investments profitably are the key learning points.

3.2.3 Canada

A. Infrastructure Ontario (IO)

IO is a sub national PPP agency formed in 2005 to expand and maintain public assets, and disseminate best practices for PPP projects. IO is fully funded by the Ontario provincial government. It has projects, and loans and services as the key departments. IO works hand-in-hand with the provincial infrastructure agency (OSIFA) that provides Ontario municipalities, universities and other public bodies with affordable loans to build and renew local public infrastructure. IO solicits private financing for some of the province’s largest projects and also provides access to affordable loans for government parastatals such as municipalities and universities.

B. Partnerships BC

Partnerships BC is a sub national PPP agency set up in 2002 by the British Columbia Treasury Board to promote PPP markets, and ensure effective and efficient management of infrastructure projects. Though Partnerships BC is fully government owned, its financial structure has evolved from a fully government backed model to one that generates the majority of its income using fee-for-service platforms. Partnerships BC determines and manages its budget and business plans. It equally develops PPP policies, conducts feasibility analyses, develops competitive selection processes, and recommends whether a project qualifies as a viable PPP. But the final approval lies with the MoF.

3.2.3.1 Learning points from Canada's PPP experience

- **Infrastructure Ontario (IO)** – ability to combine implementation and funding functions, capacity for attracting finance for building infrastructures, and affiliation with an existing funding agency are key learning points.
- **Partnerships BC** – being a review agency that is able to earn revenue from providing consultancy services is notable.

3.2.4 France

Mission d'Appui aux PPP

France enacted a new PPP procedure in 2004 which set up Mission d'Appui à la Réalisation des Contrats de Partenariat (MAPPP) as a PPP (service) regulatory agency. MAPPP is a fully government funded task force, within the MoF, that is responsible for all PPPs in France. All decisions regarding structure, roles, responsibilities and governance of PPPs are submitted to it for approval. MAPPP promotes the PPP market in France through publication of newsletters and participation in related conferences. But MAPPP is not involved in the day-to-day management of PPP procurements.

3.2.4.1 Learning points from France

MAPPP's roles as central PPP service (regulatory) agency and promoter of PPP markets in France are notable learning points.

3.2.5 Portugal

Parpublica

Although Portugal has been undertaking PPP projects since the late 1980s, the Parpublica PPP Unit was not formed until 2003, when the relevant PPP law was passed. Like MAPPP, Parpublica operates under the MOF and is charged with managing and privatizing government assets. A service agency desiring to conduct a PPP will seek the approval of the Minister of Finance, who will request an assessment of the project from the PPP Unit.

3.2.5.1 Learning points from Portugal

The key learning point from Parpublica is that the central PPP agency can also be charged with the responsibility of managing government assets and privatization/commercialization. By this, it may make sense to consider merging ICRC, the Bureau of Public Enterprises (BPE), the National Council on Privatization (NCP) and other enterprise promotion/development agencies as roles played by those agencies are effectively performed in Portugal by the central PPP agency, Parpublica.

3.2.6 Australia

Partnerships South Australia

Partnerships South Australia (PSA) is a sub national PPP agency of the state of South Australia. During the 1980s and 1990s the state was involved in the private provision of infrastructure. PSA is similar to MAPPP and Parpublica in the sense that it is a branch within the government and not an arm-length organization. It sits within the Treasury and reports to the Under Treasurer (Treasury's Chief Executive). It is funded by the cabinet, including both start-up and operations costs.

3.2.6.1 Learning points from South Australia

Provision of infrastructure through PPP at the sub national level indicates that states with low earnings in Nigeria can still build infrastructures effectively with private sector finance. It is also generally preferred to situate the PPP agency under the MoF, instead of making it a standalone agency.

3.2.7 South Africa

South Africa PPP Unit

The South Africa PPP Unit was established to support policy and regulatory framework for PPPs in the country. PPP projects account for about 6 percent of public infrastructure and service delivery programs. Since its inception in 2000, the South Africa PPP Unit has brought to financial close 20 PPP deals worth a combined $5.5 billion. The South Africa PPP agency resides within the MoF and is fully funded by government. The Unit equally evaluates fully funded government projects to ensure value-for-money, and focuses on social infrastructure and transportation services.

3.2.7.1 Learning points from South Africa

South Africa's capacity to fund infrastructure development with huge private sector funds is notable, equally having the PPP agency to conduct value-for-money assessments for fully funded major capital projects indicates that the current Bureau for Public Procurement (BPP) can become a department of a full service central PPP for Nigeria. The envisaged central PPP agency can as well close contract awards and spare the National and State Executive Councils the task of awarding contracts that, many agree, is currently highly politicized.

3.3 Pillars of Sound PPP institutions

Arising from the review of selected best practices above, the following five pillars of sound PPP institutions were discerned.

1. **Demand-driven** – successful PPP institutions focus on pressing market needs in the industry, sector, and the society.
2. **Transcendence -** strong PPP agencies have capacity for obtaining value out of materials that could normally be wasted, and deriving benefits from collaborating networks that pool different stakeholders together.
3. **Long-term horizon** – capacity for measuring success over time based on established metrics, and track performance based on those metrics.

4. **Financial independence** – seeking revenue streams beyond allocation from government enhances the PPP agency's capacity to operate in highly competitive environments, and drive towards innovation and efficiency.
5. **Core structural integrity** – sound PPP agencies establish a track record of trust, timeliness, reciprocity, and resourcefulness.

4 Frameworks for Sustainability of PPP in Nigeria

Figure 1 illustrates the proposed model for sustainability of PPP in Nigeria as consisting of three sets of vertical building blocks and three sets of horizontal enablers. The vertical building blocks are mainstreaming of PPP, stable source of long term finance, and responsive dispute resolution mechanism. The horizontal enablers are monitoring and evaluation, effective audit processes, and participatory planning. The vertical building blocks ensure steady growth, while the horizontal enablers eliminate the bottlenecks and distortions that inhibit or affect growth adversely.

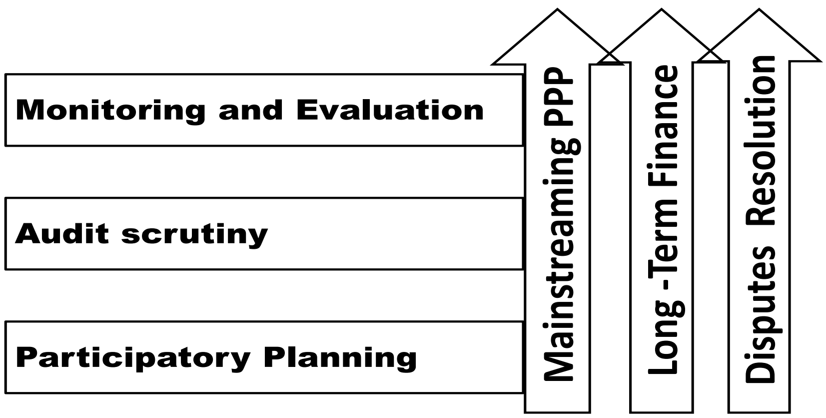

Figure 1: Building blocks for a sustainable PPP framework

Figure 2 presents a framework for mainstreaming PPP in Nigeria. Basically, a three-step PPP mainstreaming framework is proposed. It requires creation of viable PPP institutions with regulatory and executive powers at the national and sub-national levels of government. The first step is to require each MDA and the LGCs to finance/implement a certain percentage of its capital budget through PPP. By such a fiscal rule, MDAs and the LGCs would need to create functional PPP units/departments. The second step is to create specialized PPP agencies for critical infrastructures like electricity, highways, rail system, Internet coverage, and so on, with a view to speeding up their development. The specialized PPP agencies should solicit for private partners and implement PPP projects. The third step is to create a central PPP agency empowered to regulate and participate in PPP projects. The central PPP agency should be a statutory subsidiary of the Ministry of Finance.

The enabling PPP laws envisaged in Figure 2 should be holistic and more encompassing than the current ICRC Act. The double arrows show the importance of effective communication among the stakeholders. The central or General Purpose PPP agency is conceived here as the prime PPP institutions with dual roles as regulators and executors of multi-sector PPP projects. Example of such a project is building of a dam, which apart from being highly capital intensive, has several enterprise chains, including; electricity generation, irrigation, flood control and water management, tourism, and fisheries. The central PPP agencies should coordinate such projects along with PPP units of the relevant MDAs and the relevant specialized PPP agencies. The dual role of the central PPP agencies, as regulators and executors, will allow them have firsthand experience of how the business environment impinge on PPP projects, and ensure optimal regulation and support. Participation in PPP directly exposes the central PPP agency to practical realities and enriches their regulatory capacity while allowing them to earn some revenue through successful PPPs.

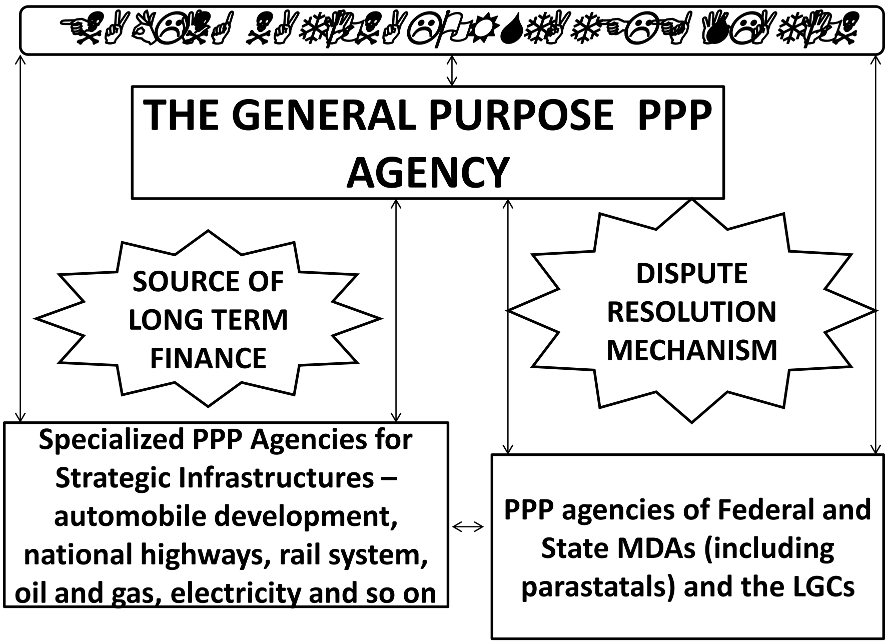

Figure 2: Proposed PPP institutional framework for Nigeria

The specialized PPP agencies are to generate and manage PPP projects in the relevant sectors. Their activities should be regulated by the relevant departments of the central PPP agency and other guidelines specific to the sector. Lastly, the PPP units of Federal and State MDAs, and the LGCs are to execute a specified minimum proportion of their capital budgets through PPP. This is to ensure mainstreaming of PPP in all tiers of government. Figure 2 assumes however that a functional market for long term finance for different categories of finance-deficit units is in place. It equally assumes the existence of a comprehensive dispute resolution framework to handle partnership disputes expeditiously.

Figure 3 proposes that some existing Government MDAs, at the national level, should be merged to create the proposed central PPP agency. These MDAs include; Infrastructure Concessioning Regulatory Commission (ICRC), Nigerian Investment Promotion Commission (NIPC), Nigerian Sovereign Investment Authority (NSIA), National Council on Privatization (NCP), Bureau for Public Enterprises (BPE), Bureau for Public Procurement (BPP), and Nigeria Export Processing Zone Authority (NEPZA). As indicated, ICRC and NEPZA will fit into the regulatory unit of the proposed central PPP agency. NCP and BPE will together become the public enterprises' restructuring unit, while NIPC fit into the market development unit. NISA will constitute the implementation/facilitation unit, and BPP the project assessment unit. Apart from cutting cost and eliminating unnecessary bureaucracy, the merger will put the key aspects of infrastructure development - market development, facilitation, implementation, regulation, and value-for-money assessment - on an institutional platform that can more appropriately be described as one-stop-shop for private sector participation promotion and value-for-money procurement.

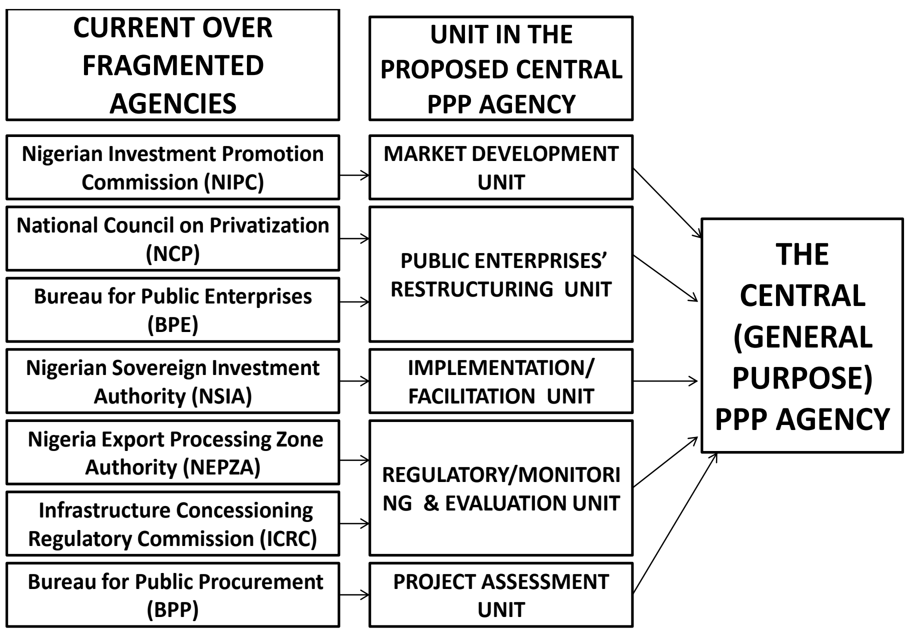

Figure 3: Creating a sustainable central PPP agency

The specialized PPP agencies can as well be created by restructuring existing agencies. For instance, the National Electricity Regulatory Commission (NERC) in Nigeria can be restructured to handle PPPs in the electricity sector in addition to its regulatory functions. Equally Federal and State MDAs and the LGCs can set up PPP units/departments from the existing pool of staff without having to employ additional staff.

4.1 Agenda for Reforming the PPP Framework in Nigeria

Our discussions so far indicate that the following recommendations are pertinent:

i. **Decentralization of PPP planning, authorization, and implementation**
There is utility in emphasizing involvement of the private sector and banks in the financing of capital projects in all government MDAs and the LGCs. This is demonstrated clearly in the US examples where counties (equivalent of local or community governments in Nigeria), universities, the armed forces, and state and federal agencies, alike, package PPP agreements with minimal authorization hurdles. Such a diffused PPP approval and engagement mechanism is necessary for mainstreaming PPP and ensuring value-for-money in capital budget implementation. Decentralized and simplified approval processes can speed up mainstreaming of PPP.

ii. **Necessity of specialized agencies for critical infrastructures**
It is needful to have specialized PPP agencies for key infrastructures like highways, petroleum exploration and refining, gas pipelines, rail systems, ICT broadcasting, electricity, and so on. Such agencies can be given initial working capital, but their success should be assessed by the value of profits earned from direct participation in PPP projects and fee-for-service consultancy platforms. Earnings from investments and consultancies by government agencies should be rated higher than money raised from taxes, charges, and fines. Wholly regulatory agencies should be restructured and required to make profits from PPP projects and consultancy functions. Dependence on taxes, charges, and fines as major sources of government IGR has put far too little pressure on the public service to build capacity for sound service delivery.

iii. **Importance of Central full scale PPP Agencies**
Central PPP agencies equipped with strong capacities for regulation, planning, implementation, facilitation, and market development would make PPP execution and regulation more effective and efficient. The present situation where these functions are performed by different independent agencies creates unnecessary bottlenecks, ring-fencing, and competition (instead of complementarities). The merger of ICRC, NSIA, BPP, NCP, BPE, and NEPZA to form the central PPP agency will attract more private funding; promote value-for-money, and reduce the number of procedures associated with dealing with different government agencies in a corrupt and rent seeking public service. As it is common practice, the central PPP agency should be a revenue earning parastatal of the MoF.

iv. **MDAs and the LGCs use PPP to support capital budget implementation**
Fiscal Strategy Papers (FSPs) of government should encourage MDAs and the LGCs to finance/implement an increasing percentage of their capital budget through PPPs to instill fiscal discipline and the culture of cost recovery. This will prompt MDAs and the LGCs to make PPP an integral part of the budget process.

v. **Creating a comprehensive dispute resolution mechanism**
An unbiased and responsive dispute resolution mechanism, with dedicated courts for business disputes, would reduce sundry risks and render the business environment more investor friendly. The unilateral termination of contracts for Lagos–Ibadan expressway and MMA2 projects could have been averted if comprehensive business dispute resolution mechanisms were in place.

vi. **Inevitability of a sustainable long term financing model**
A sustainable long term financing mechanism is critical for success of PPPs. It is quite inappropriate to finance infrastructure projects having long term payback period with

loans from MDBs. More so, the externalities and uncertainties associated with infrastructure PPPs make building in some measure of government subsidy and flexibility in funding of utmost necessity. Clearly, it is only a government agency that can provide long term finance for building infrastructures sustainably.

5 Conclusion

PPP can enhance sustainability of infrastructure development through value-for-money project assessments and improved delivery performance. But achieving these laudable outcomes call for an institutional architecture, with strong bias for private participation promotion, which handles market development, regulation, facilitation, assessment, and implementation of infrastructure projects in a single hull. Accordingly, the paper emphasizes the need to create full service central PPP agencies from the merger of a number of related MDAs. The proposed PPP agency should be a subsidiary of the Ministry of Finance as is the case in a number of best practice countries. Next in line are specialized PPP agencies for strategic infrastructures. Thereafter, Federal and State MDAs and the LGCs should be encouraged to implement some percentage of their capital budget through PPP to institutionalize cost recovery, and restructure the mindset that government services ought always to be free.

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