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PUBLIC POLICIES: A DRIVING FORCE OF PUBLIC PRIVATE PARTNERSHIP IN NIGERIA

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ABSTRACT: *The study examined public policies as a driving force of Public Private Partnership (PPP) in Nigeria. It utilized the secondary method of data collection. The study found that lack of government continuity in policy and multiple legislations are some of the challenges bedeviling the PPP policies in Nigeria which has also negatively affected its drive of PPPs in the country. Thus, it recommends that there should be more public awareness, orientation and sensitization on the available PPP policies to properly guide individuals and government agencies in the country. The study also recommended that the various pieces of legislation should properly be synchronised with one another and with the wider legislations, to impact positively on PPP transactions in the country. The study concluded that* the enactment of *PPP policies in the country has encouraged private sector support of government through partnerships and has enhanced the operations of PPP, thus, making Public Policy on PPP a major driving force of PPPs in Nigeria.*

KEYWORDS: Public Policies, Public Private Partnership, Government Continuity, Nigeria.

INTRODUCTION

Globally, public policies are adopted to support and help to achieve governments' programmes, projects or plans. There are policies on different sectors of the economy like education, agriculture, health, Public private partnership etc. Partnership generally refers to a contractual agreement between entities to share resources and responsibilities in order to achieve common goals or mutual benefit (Friend, 2006). The insufficiency of funds and the failure of the public sector to provide the most basic of public services led most governments in African nations turn to go into partnership with the private sector to finance, develop and improve its infrastructure (Public Private Partnership (PPP)).

Public Private Partnerships (PPP) is a form of partnership contract, which, in the broadest form, refers to any relationship between the public and private sectors in delivering goods, services and infrastructure (Friend, 2006). A number of projects in different sectors of the economy have been completed using the partnership between the public and private sector model despite some challenges.

Third world nations, over the years are bedeviled with lack of infrastructures, abandoned or uncompleted government projects, even where these projects are completed, they are mostly substandard. Due to the increase in population size, there have been increasing demands on the part of the citizens for more infrastructural provision and maintenance of existing ones. These demands have not been met due largely to the inadequacy of public funds.

The government alone cannot afford to provide infrastructural requirements needed for the economic development of a country, thus there is the need for the involvement of the private sector. Collaboration between the public and private sector is therefore necessary and an important instrument for providing and maintaining public infrastructures and services for socio-economic growth and sustainable development.

To facilitate the operations of PPP, for maximum benefits and legalization, many African countries have introduced different public policies to strengthen and support PPP operations. Among other variables that support PPP operations, policies on PPP are adopted to support PPPs, it is for this reason that the Nigeria government enacted different laws and legislations to support PPP operations in the country. It is in the light of the above scenario that this study examined Public policies as a driving force of Public Private Partnership in Nigeria.

The other objective is to enable readers understand how public policies enhance the operations of PPP in Nigeria. In achieving the objectives of this study, the following questions were asked;

a. What are the Public policies that drive PPP in Nigeria?

b. How does public policy drive PPP in Nigeria?

The study heavily relied on secondary data (existing literatures) as source of data. Books, journals, articles, newspapers, internet and government publications on the subject matter were consulted. The study will greatly benefit policy makers, private investors in the public sector, public administrators and scholars in the field of public administration.

Conceptual Clarification

Public Private Partnership

Public Private Partnership has been defined in various ways; the variations in definitions can be traced to the political and economic consequences of PPPs, which makes their meaning and their desirability susceptible to different interpretations. Some of these definitions are as follows:

The Canadian Council for Public Private Partnerships (2006) defines PPP as "a cooperative venture between the public and private sectors built on the expertise of each partner that best meets clearly defined public needs through the appropriate allocation of resources, risks and rewards".

Public-Private Partnerships is a long-term agreement between the government and a private partner whereby the private partner delivers and funds public services using a capital asset and sharing the associated risks (The Organisation for Economic Cooperation and Development, 2019).

Ughulu and Erah (2020), defined PPPs "as a long-term relationship between public sector and private sector under which the responsibility for designing, financing, construction,

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management and/or operation of public infrastructure and services that were traditionally undertaken by the public sector are contractually shared and jointly undertaken by both the public and private sectors, usually in proportion to the type and quantity of risks each party can best carry".

From the above discussions, PPPs can thus be conceptualized as a long-term contractual relationship between public and private sector where both parties undertake the provision and/or management of public infrastructures or services that were traditionally undertaken by the public sector.

Public Policy

According to Dye, T. (1975), "public policy is whatever governments choose to do or not to do". While Eyestone, R. (1971) defines public policy broadly as "the relationship of government unit to its environment". Anderson, (1975) asserts that "public policy is a purposive course of action followed by an actor or a set of actors in dealing with a problem or matter of (social) concern". Public policies are the final decisions or plans made by government, after reviewing several available options, towards the achievement of set objectives (Ughulu & Nwokike, 2020). Similarly, Ikelegbe (2006) defined public policy as "An integral programme of actions which an actor (or a group of actors) is accustomed to or intends to undertake in response to given problems or situations with which he is confronted".

Public policies are usually expressed in legislative enactments, laws, executive decrees or orders, executive and official statements or speeches, government budgets, judicial decisions and, sometimes, political party manifestoes (Ikelegbe, 2006).

Public policy refers to a government's plan that is put in place, after considering various alternatives, as a response to the demands of the society in different areas such as the economy, education, health, gender, security, and involves expenditure of public resources and the use of coercion, where necessary, to achieve the set objectives.

Public policy is conceptualized in this study as the final strategy or plan made by government to realize established goals.

From the above conceptualization of public policy, we can say that public policies of PPP are the final strategies or plans made by government to realize established goals of PPP; of which PPP's main goal is to meet the increasing demand for infrastructural provision and maintenance.

Public Policies of PPP in Nigeria

PPP policies describe the reasons and/or goals for the government's adoption of the PPP model of infrastructure and service provision. These policies provide the guidance for the implementation of the model in any given jurisdiction. While the policies may not carry the force of law, they are an indication of the direction of the government (European Investment Bank, 2002).

Nigeria Policy on PPP

The National Policy Document sets out the steps that the Government will take to ensure that private investment is used, where appropriate, to address the infrastructure deficit and improve public services in a sustainable way. In line with the Government's commitment to transparency and accountability, it will ensure that the transfer of responsibility to the private sector follows best international practice and is achieved through open competition. The National Policy on Public Private Partnership was approved by the Federal Executive Council (FEC) in April 2009. It was designed to explain and fill in the gaps in the ICRC Act which has been in existence since 2005.

The National Policy on PPP aims to develop regulatory and monitoring institutions so that the private sector can play a greater role in the provision of infrastructure, whilst ministries and other public authorities will focus on planning and structuring projects. The private sector will be contracted to manage some public services, and to design, build, finance and operate some infrastructure. It is the Government's expectation that private participation in infrastructure development through PPP will enhance efficiency, broaden access, and improve the quality of public services.

The Government has inaugurated the Infrastructure Concession Regulatory Commission (ICRC) with a clear mandate to develop the guidelines, policies, and procurement processes for PPP. The ICRC will collaborate with the States to promote an orderly and harmonised framework for the development of Nigeria's infrastructure and to accelerate the development of a market for PPP projects. The Federal Government assures investors that all contracts completed in compliance with the ICRC Act will be legal and enforceable, and that investors will be able to recover their expected returns subject to compliance with the terms of the PPP contract.

The most common reason adduced for the widespread use of the PPP model in the provision of infrastructure by different countries across the world is the inadequacy of public funds to meet the increased demand for infrastructure. It is for this same reason that Nigeria turned to PPPs to help finance her infrastructure and also to provide much needed public services to its people. In order to facilitate the PPP process, the parliament of Nigeria enacted the Infrastructure Concession Regulatory Commission Act (ICRC Act) (ICRCA) in 2005. This Act established the ICRC to manage PPP transactions at the federal level. Even before the ICRC Act came into force, a number of transactions had been completed using the PPP model in different sectors of the Nigerian economy (ICRC, 2009).

Policy Objectives

The Government's key policy objectives for its infrastructure investment programme and for PPP are:

Economic

- To accelerate investment in new infrastructure and ensure that existing infrastructure is upgraded to a satisfactory standard that meets the needs and aspirations of the public;
- to ensure that all investment projects provide value for money and that the costs to government are affordable;
- to improve the availability, quality, and efficiency of power, water, transport and other public services in order to increase economic growth, productivity, competitiveness, and access to markets;
- to increase the capacity and diversity of the private sector by providing opportunities for Nigerian and international investors and contractors in the provision of public infrastructure, encouraging efficiency, innovation, and flexibility;
- to ensure that infrastructure projects are planned, prioritised, and managed to maximise economic returns and are delivered in a timely, efficient, and cost-effective manner;
- to manage the fiscal risks created under PPP contracts within the Government's overall financial and budgetary framework;
- to utilise federal and state assets efficiently for the benefit of all users of public services.

Social

- to ensure balanced regional development; to increase access to quality public services for all members of society;
- to ensure that user charges for new or improved public services are affordable and provide value for money;
- to respect the employment rights and opportunities of existing employees and to ensure that any redundancy or other social safety net issues are resolved before final project approval;
- to enhance the health, safety, and wellbeing of the public;
- to encourage the direct or indirect participation of small and medium sized enterprises in PPP projects.

Environmental

- to protect and enhance the natural environment;
- to minimise greenhouse gas emissions and other pollutants (ICRC, 2009).

Table 1: Institutional framework for Implementation of Policy Initiatives of PPP in Nigeria.

	Institutional Framework for PPP Implementation	Function
1	*Infrastructure Commission Regulatory Commission (ICRC)*	The ICRC Act was enacted into law in 2005, it provides the primary legal framework for private sector participation in infrastructure development in Nigeria and is the principal legislation for Nigerian PPPs (Nwagwu, G. 2016). The first part of the ICRC Act, vests government ministries, departments and other agencies of government with power to enter into a contract with or grant concessions to the private sector for the financing, construction, operation and maintenance of any viable infrastructure. While the second part of the Act establishes the Infrastructure Concession Regulatory Commission (the ICRC), which is managed by a 12-member board (ICRC Act, 2005).
2	*National Planning Commission Act (1993)*	The National Planning Commission was established by Act No.12 (1992) and later amended by Act No. 71 (1993). The main function of the Act as it relates to infrastructure development is in relation to designing, coordinating and monitoring the implementation of the nation's infrastructure master plan.
3	*Ministries, Departments and Agencies (MDAs)*	Ministries, Departments and Agencies are to prepare long-term plans for infrastructure investment and maintenance which will be incorporated into the government's rolling 15-year National Development Plan by the National Planning Commission whether the investment is to be funded through Public-Private Partnership or from the MDA's budget.
4	*Federal Ministry of Finance*	The PPP Unit of the Federal Ministry of Finance is responsible forassessing the financial viability of PPP projects within the country. It has an important role in public financial management of Public-Private Partnership projects, and in evaluating and managing fiscal risks that may result from the terms of the agreements.
5	*The Debt Management Office (Establishment) Act (2003)*	The Debt Management Office (Establishment) Act (2003), established the Debt Management Office (DMO) to prepare and implement a plan for the efficient management of Nigeria's external and domestic debt obligations, and to set guidelines for managing the country's risk and currency exposure with respect to all loans.

6	*Accountant General of the Federation*	The Office of the Accountant General of the Federation is to ensure that funding for payment obligations incurred through a federal Public-Private Partnership contract is safeguarded to ensure prompt payment, subject to appropriate authorisation.
7	*The Public Procurement Act (2007)*	The Procurement Act applies to procurement of goods and services carried out by the federal government of Nigeria and any public body engaged in procurement and all entities which derive at least 35 % of the funds appropriated or proposed to be appropriated for any type of procurement from the Federation's share of the Consolidated Revenue Fund (the Procurement Act, No. 14 (2007).
8	*The Fiscal Responsibility Act (2007)*	The Fiscal Responsibility Act promotes the prudent management of the country's resources by ensuring greater accountability and transparency in fiscal operations, and also by imposing limits on the country's spending and borrowing. The Act established the Fiscal Responsibility Commission to ensure that the objectives of the Act are met.
9	*The Federal Executive Council (FEC)*	The FEC is the highest executive decision-making arm of government. The ICRC Act specifically provides that the FEC must grant approval before PPP contracts may be entered into. The ICRC has interpreted the provision dealing with approvals before the entering into of contracts to mean that approvals must be obtained from the FEC before the undertaking almost all steps of the PPP process.

Source: Authors' Findings, 2020.

PPP Projects in Nigeria

Apapa Container Terminal Concession

The terminal was given as a concession to ensure increased efficiency of port operations, decrease the cost of port services to port users, boost economic activities, and accelerate development. It is expected that the concession will further bring about improvements to the leased properties, as further described in the development plan handed over to the terminal operators during contract execution. Lease of Terminal 'A' at the Apapa Port Complex, which contains immovable property affixed to the premises and together with the premises. The asset also consists of facilities/areas such as a 46,516m long quay deck with appropriate quay hardware, transit sheds, warehouse, and tugwell house.

Azura Power Plant

The project included the construction, operation and maintenance of a 459 MW gas-fired open-cycle power plant near Benin City, Edo State, Nigeria. Azura Power West Africa Ltd. (the project company) includes as project sponsors a consortium of private investors (97.5 percent) and the government of Edo State (2.5 percent). The consortium is composed of a joint venture between Amaya Capital Ltd. and Actis GP LLP (51 percent), AIIF2 Power Holding Ltd. (29 percent), Aldwych Azura Ltd. (14 percent), and ARM- Harith Infrastructure (six percent). The plant will have a sole off-taker; the state-owned Nigeria Bulk Electricity Trader (NBET) under a 20-year power purchase agreement (PPA) backstopped by a Put Call Option Agreement (PCOA) with the Federal Government of Nigeria. Seplat Petroleum Development Company, a Nigerian upstream production and development company, will supply gas to fuel the plant under a 15-year contract. (World Bank Group, 2017).

The project, first conceived under the Goodluck Jonathan administration, has been endorsed by the Muhammadu Buhari government. Work on the project, initially started in 2014, had stalled due to disagreements between the funders and the Nigerian government. Those concerns were resolved and work resumed in 2015. The Phase 1 power station (461MW) came online in May 2018. (Wikipedia, 2020). Its first turbine was connected to the grid in late 2017. Azura has built and is operating the plant in line with international environmental and social standards. It is also providing employment opportunities and vocational training to local communities. (Ladipo, 2019).

Concession of Grain Storage Facilities (Silos)

The 24 silo complexes to be concessioned are Ado-Ekiti-Ekiti, Akure Ondo, Bauchi-Bauchi, Bulasa-Kebbi, Ezillo-Ebonyi, Gaya-Kano, Gombe-Gombe, Ibadan-Oyo, Igbariam-Anambra, Ikene-Ogun, Ilorin-Kwara, Irrua-Edo, Jahun-Jigawa, Jalingo-Taraba, Jos-Plateau, Kaduna-Kaduna, Kwali-FCT, Lafiagi-Kwara, Makurdi-Benue, Minna-Niger, Ogoja-Cross River, Okigwe-Imo, Sokoto-Sokoto, and Uyo-Akwa-Ibom. The silos will serve to increase storage utilization and the efficiency of grain trading and post-harvest services. As a service provider, the silo operator could allow smallholder and commercial farmers, traders, and processors to use the handling and storage facilities in the silo complex for a fee. This operating model is described as “post-harvest handling and storage services.”

Warehouse in a Box project

To increase federal warehouse capacity for central storage, and to ensure the effective maintenance them in response to the substantial supply gap for federal warehousing for the storage of donated public health commodities; and the need to harness best practice O&M processes through a private sector operator, to address ongoing challenges related to inventory management, human resources and quality assurance. The two warehouses located in Lagos and Abuja are prefabricated and identical, with a combined total 6,530m^2 of floor space and the capacity to hold 7,680 pallet spaces. It is to provide an adequately-sized and effectively-maintained pharmaceutical grade central storage hub for donated public health commodities through an operations and maintenance (O&M) PPP process (ICRC, 2020).

How Public Policies Drive PPP in Nigeria

The national policy documents set out the steps that the Government will take to ensure that private investment is used, where appropriate, to address the infrastructure deficit and improve public services in a sustainable way. In line with the Government's commitment to transparency and accountability, it will ensure that the transfer of responsibility to the private sector follows best international practice and is achieved through open competition for selection of the best.

The National PPP Policy defines a public private partnership as: "A wide range of contract forms—in turn represented by numerous acronyms (BOT, DBFO, BOOT, etc.)—falls within the scope of the term 'public private partnership'. It can be said to include: outsourcing and partnering; performance-based contracting; design, build, finance and operate (or build operate transfer) contracts; and, sometimes, concessions." (ICRC, 2009)

The Nigeria Government has inaugurated the Infrastructure Concession Regulatory Commission (ICRC) with a clear mandate to develop the guidelines, policies, and procurement processes for PPP. The ICRC will collaborate with the States to promote an orderly and harmonised framework for the development of Nigeria's infrastructure and to accelerate the development of a market for PPP projects. The Federal Government assures investors that all contracts completed in compliance with the ICRC Act will be legal and enforceable, and that investors will be able to recover their expected returns subject to compliance with the terms of the PPP contract.

Before the inception of the ICRC Act of 2005 in Nigeria, there were few participations of the private sector in provision of infrastructures, but since the formation of the 1999 PPP policy to fill the gap in the ICRC Acts there has been an unprecedented increase in PPP operations in the country.

The policy also promotes and sustains equity, efficiency, accessibility and quality in infrastructural and service provision through the collaborative relationships between the public and private sectors, this is noticed in the activities of Azura power plant in Nigeria.

The policies clarify the governments' functions, the institutional structure for implementation and the process to follow in all PPP arrangements. The Policies emphasizes that projects follow a robust structuring process (addressing social and environmental issues) and a fair and competitive procurement process. The Policies guides on how the contracts would be managed once signed and how amendments to these contracts could be made, it explains what financial Assistance would be available, it also encourages safe guarding public interest and consumer rights, and it does not permit unsolicited proposals due to risk of abuse all these have added to the improved operations and encouragement of the private sector into PPP in both countries while empowering the citizens and improving standard of living. This has made the Policies to be a major framework of PPP and thus a driving force of PPP in the country.

The main role of public policy in PPP is to provide specific guidance towards implementing strategies to achieve PPP operations. The regulatory aspect of PPP policy in Nigeria provides transparency and accountability in PPP operations, where both parties to the contract are fully aware of what the contract entails and how to carry out their own part of the contract, thus acting as a driving force of PPP in Nigeria (ICRC, 2009).

Challenges of PPP Policies

In Nigeria, the legal framework for PPPs comprises a confusing and conflicting web of regulations and policies. Therefore, a potential investor would need to decipher which of the several legislations, or even institutions, would regulate a particular transaction before initiating a PPP project in Nigeria (Nwagwu, 2016).

It is also worth noting that these laws and policies are also generally inadequate, contain conflicting provisions and, thus, contribute to manifest uncertainty, thereby inordinately increasing transaction costs.

The ICRC has interpreted the provision dealing with approvals before the entering into of contracts to mean that approvals must be obtained from the FEC before the undertaking almost all steps of the PPP process. This interpretation has protracted timelines for completing projects. Therefore, while conceding that the buy-in of the FEC is essential to project delivery, it contributes to the slow pace of project approval.

A number of existing infrastructure sector legislations—for example, the Electric Sector Reform Act - are in conflict with the ICRC Act. This is primarily because these laws create sector regulators with whom the ICRC seems to be competing for regulatory space. This is the same with a number of Bills that are currently before the National Assembly. These Bills seem to have been drafted without reference to the ICRC Act.

From the foregoing, it is obvious that any investor coming into Nigeria will be wary of the considerable number of regulatory risks which it is likely to face in Nigeria due to the multiplicity of laws and institutions. The enabling legislations were all separately conceived and therefore confuse and conflict with one another.

The subsequent attempts to cobble these laws together into a coherent legal regime through the use of a PPP policy document is fraught with structural, legitimacy and operational difficulties, which explains why the country's PPP programme is not working effectively.

The existence of multiple laws and institutions is doing more harm than good, part from exacerbating confusion in the system, it is also unduly expensive to run multiple agencies, as this entails the duplication of staff and resources. The efficacy and the legality of the use of a policy document to bridge the gap in an enabling legislation is very doubtful and untidy, to say the least.

The failure of PPPs can often be traced back to the initial design of PPP policies, legislation, and guidance. A common pitfall is placing too many restrictions, conditions and expectations of risk transfer on the private sector, which make it impossible to structure a financially feasible deal.

CONCLUSION

This study examined public policies as driving force of PPP in Nigeria, the study examined the different PPP policies in the country; the study found that the enactment of PPP policies in the country has enhanced the operation of PPP thus, being a driving force of PPPs in Nigeria; the study found that lack of government continuity in policy, multiple legislation;

and inadequate legal framework are some of the challenges bedeviling the PPP policies and also negatively affecting PPPs. For public policy to strife as a driving force in the country's PPP models, the following recommendations may be considered:

- The government needs to step up its efforts toward PPP by forming a formidable PPP law. Moreover, there should be more public awareness, orientation and sensitization on the available PPP policies to properly guide individuals and government agencies.
- The various pieces of legislation should properly be synchronised with one another and also with the wider legislations, to impact positively on PPP transactions in both country.
- Nigeria deserves appropriate PPP legislation that will match its ambitions. Proper legislation must therefore be put in place to ensure that private sector entities, both domestic and foreign, have the confidence to invest in the countries.
- Nigeria does not really require a "regulator" for PPPs in the case of ICRC, being a regulator for PPPs, in the true sense of the word. What the country need is a "facilitator" for PPPs. Most sectors of the economy now have economic and technical regulators; any additional regulator overseeing the same sector is bound to create confusion and increase the cost of compliance for the private sector.
- Governments and citizens should strive for a conducive and stable political environment to achieve sustainable development. New administrations should only abolish or amend policies that have failed or not citizen oriented.

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