



ANALYSIS OF THE LEGAL FRAMEWORKS FOR PUBLIC PRIVATE PARTNERSHIP TO ASSESS THE PERFORMANCE OF NIGERIAN SEAPORTS: LESSONS FROM AUSTRALIA AND UNITED KINGDOM

by
EDEMUMOH A. ESSANG, ESQ.*¹
DR. BOMA G. TOBY**²

ABSTRACT

This article undertook an appraisal of the legal frameworks for Public Private Partnership with the aim of assessing the performance of Nigerian seaports and seaports in United Kingdom and Australia. The central aim of this article was to appraise the legal frameworks promoting the utilisation of Public Private Partnership for seaport development in Nigeria. The article adopted the doctrinal method of research with primary sources of information drawn from legislations and case laws, while the secondary sources were drawn from journal articles, textbooks, periodicals, and internet sources. The article found that the Nigerian seaports' sector has faced numerous challenges in recent years. These include inefficiencies, corruption, and poor infrastructure. The article identified problems affecting the use of Public Private Partnership to develop Nigerian seaports to include, amongst others, the cost of doing business which is generally high due to inefficiency in port operations and poor port management. In addition, the existing legal frameworks in Nigeria for Public Private Partnership for seaport development are not comprehensive and do not cover all aspects of port development. Thus, relying on funding from the Federal Government alone, to improve port operations and management reduces the likelihood of our seaports becoming competitive within the African Continental Free Trade Agreement framework. The article recommended, amongst others, that despite these limitations, the legal frameworks for assessing the performance of Nigerian seaports can be strengthened by improving the collection and analysis of data on port development and with lessons drawn from other jurisdictions.

Keywords: *Appraisal, Public Private Partnership and Seaports*

INTRODUCTION

Public Private Partnership (PPP) has been recognized as a credible vehicle for the development of Nigeria's economic and social infrastructure³. This form of partnership brings public and private sectors together in a long run partnership for mutual benefits⁴. The continuous need for high level port development and indeed the high level of infrastructure

¹* Edemumoh A. Essang, Esq, LL.B (Hons), (University of Uyo, Uyo, Nigeria); BL (Abuja); LL.M (Candidate) Rivers State University, Nigeria, MNSIL (Lagos); Legal Researcher, African Petroleum Legislation Atlas (APLA); African Legal Support Facility, AfDB, Email: edemumohessang@gmail.com; Contact: +2348134657266; +2347083599338.

² **Dr. Boma G. Toby, Senior Lecturer, Department of Business Law, Rivers State University, LL.B (Hons), BL, LL.M, ACI Arb (UK/NIG); NCMG, Dipl. (Computer), PGD (Education), PhD (ABSU); Email: bomag.toby@ust.edu.ng; Contact: +2348143022196.

³ M Itu and E Kenigwa, 'The Role of Public-Private Partnership (PPP) on Infrastructural Development in Nigeria' [2021] (2) (5) *Journal of Global Social Sciences*; 24-26

⁴ Infrastructure Concession Regulatory Commission Act, 2005, Cap. 125A LFN 2004.



deficit with its concomitant effect on socio-economic development in Nigeria has made the government to search for alternative means of providing jobs for the teeming population, and not only that, there is also the problem of inadequate resources on the part of government as well as the penchant of some public officials to divert public funds to private pockets.⁵

All these factors have triggered the Federal Government of Nigeria to shift to the utilisation of the public-private partnership model to provide infrastructural development for the country. However, this effort has been crippled by inadequate legal frameworks for effective implementation of Public Private Partnership in Nigeria⁶.

The public partner is typically represented by the government at a national, state, or local government level. The private partner can be a privately owned business or consortium of businesses with a specific area of expertise⁷. Therefore, PPP is applicable to medium to long term management contracts, with investment requirements which may include funding, planning, building, operation, maintenance, and divestiture. PPP arrangements are specifically useful for large complex infrastructure projects that require highly skilled workers and a significant capital outlay to execute. PPP is also very useful in countries that require the state to legally hold an interest in any public infrastructure but permit a certain level of private sector participation.

There are different models of PPP depending on the level of public sector control and the depth of private sector's participation. In recent years, the Nigerian government has initiated different reforms to facilitate international trade and successes have been recorded in the context of these new initiatives.⁸ Due to the establishment of the Infrastructure Concession Regulatory Commission, in 2006, the Nigerian government concessioned the 26 ports in Nigeria to private companies to aid improve the sector. This particular action led to infrastructure development and improvement of the port's sector through private participation and investment. However, Nigeria has not fully explored the potentials embedded in the port sector, as there are policy initiatives which could be introduced to further deepen the sector's impact on the economy, government, and key industry

⁵ Infrastructure Concession Regulatory Commission 2005, Cap. 125A LFN 2004.

⁶ *Ibid.*

⁷ 'Public Private as an Anchor for Diversifying the Nigerian Economy :Lagos Container Terminals Concession as a Case Study', (March 2017) 5-30.

⁸ *Ibid* 34.

stakeholders. These initiatives will further expand and facilitate international trade and enhance the nation's non-oil contribution to GDP.⁹

Unfortunately, Nigerian ports are underperforming and currently listed among the worst seaports in the world.¹⁰ Most of these seaports merely exist by name as nothing tangible is happening. The Nigerian seaports are known for delay import/export processes, heavy human and vehicular congestion around the ports, and difficulty in gaining access to the ports due to bad roads, security concerns arising from piracy and armed robbery at sea and incidents of corruption and infractions among the key players.

CONCEPTUAL FRAMEWORK

Internal Waters

Article 8 of the United Nations Convention on Law of the Sea, 1982, defines Internal, national, interior, waters as those waters which lie landward of the baseline from which the territorial sea and other maritime zones are measured.¹¹ Internal waters mostly comprise bays, estuaries and ports and waters enclosed by straight baselines.¹²

Port

Section 445 of the Merchant Shipping Act, 2007¹³ defines a 'Port' as 'a place for arriving, loading, and unloading of ships and includes a harbour, pier, jetty and lighter terminals.'

Seaport

The United Kingdom Merchant Shipping Act, 1894, s32 defines a seaport as 'any haven, port, creek, or other place, whether natural or artificial, where a ship or boat may lie or moor, or unload or load goods.'¹⁴

Cargo

'Cargo' means goods carried in or on a vessel whether of commercial value or not, and includes livestock.¹⁵ International Convention for the Unification of Certain Rules of Law

⁹ 'Public Private as an Anchor for Diversifying the Nigerian Economy: Lagos Container Terminals Concession as a Case Study', (March 2017) 40.

¹⁰ Lagos Chamber of Commerce and Industry, 'Costs of Maritime Port Challenges in Nigeria' (September 2021) <https://www.tralac.org/documents/nws/2287-costs-of-maritime-port-challenges-in-nigeria-icciseptember2021/file.html> June 2022.

¹¹ R R Churchill and A V Lowe, *The Law of the Sea* (3rd edn Manchester University Press) 61.

¹² *Nicaragua Case*, ICJ Rep. 14 at 111.

¹³ Merchant Shipping Act, 2007.

¹⁴ United Kingdom Merchant Shipping Act, 1894.

¹⁵ Coastal and Inland Shipping (Cabotage) Act, 2003, s2.



relating to Bills of Lading, 1924, Article 1 defines cargo as ‘ goods, wares, merchandise, and articles of every kind whatsoever,’ which are carried on board a ship.

Public Private Partnership

The United Nations Commission on International Trade Law Model Legislative Provisions on Privately Financed Infrastructure Projects, 2000, Article 1 defines a public-private partnership as ‘ a contract between a public sector authority and a private party for the provision of infrastructure through which the private party bears significant risk and management responsibility and remuneration is linked to performance.’

Admiralty

The International Convention for the Unification of Certain Rules relating to the Arrest of Sea-Going Ships of 1952, Article 1 defines admiralty as ‘ the authority of the court, judge or magistrate to whom an application for the arrest of a ship has been made.’¹⁶

LEGAL AND INSTITUTIONAL FRAMEWORKS FOR SEAPORTS DEVELOPMENT IN NIGERIA

National Legal Frameworks

Constitution of the Federal Republic of Nigeria, 1999 (as amended):¹⁷The Constitution of the Federal Republic of Nigeria (CFRN) 1999 is the apex law in Nigeria. In Nigerian maritime jurisprudence, maritime claims are enforceable in the Federal High Court, which is the Nigerian Court of law vested with exclusive jurisdiction by the CFRN 1999 to hear and determine any question relating to any maritime claim. The present source of the jurisdiction is the Constitution of the Federal Republic of Nigeria, 1999, s251 (1) (h).¹⁸ The CFRN does not contain any specific provisions on seaports development, which has led to a lack of clarity on the role of the Federal Government in this area, and lack of powers for the National Assembly to legislate on seaports.

Admiralty Jurisdiction Act, 1999: The Admiralty Jurisdiction Act of 1999 was enacted by the National Assembly to establish admiralty jurisdiction in Nigeria. The Act was passed to give

¹⁶ International Convention for the Unification of Certain Rules relating to the Arrest of Sea-Going Ships, 1952

¹⁷ CAP. C23 LFN, 2004.

¹⁸ T Osiptan and A Odusote, ‘ Reflections on Some Aspects of the Jurisdiction of the Federal High Court under the Nigerian 1979 and 1999 Constitutions: One or More High Courts? [2016] (12) (3) *Acta Universitatis Danubius Juridica*; 5-30.

effect to the provisions of the United Nations Convention on the Law of the Sea (UNCLOS), which Nigeria ratified in 1999.¹⁹ The Federal High Court, to the exclusion of all other courts, has jurisdiction to hear and determine any matter on seaports in Nigeria.²⁰ Section 251 (1) places admiralty jurisdiction on the Federal High Court. There are a few lapses in the Admiralty Jurisdiction Act that could affect port development in Nigeria. These include the fact that the Act does not provide for the registration of ships owned by foreign companies, and does not provide for the registration of ships that are not registered in any other country.

Nigerian Maritime Administration and Safety Agency Act, 2007:²¹ The Nigerian Maritime Administration and Safety Agency (NIMASA) Act of 2007 was enacted by the National Assembly to establish NIMASA and to provide for the regulation and control of shipping and shipping-related activities.²² Some of the lapses of the NIMASA Act in relation to port development in Nigeria include the fact that the Act fails to provide for the development of new ports, does not provide for the upgrading of existing ports, does not provide for the regulation of port charges, does not provide for the regulation of port services and does not provide for the regulation of port security.

Coastal and Inland Shipping (Cabotage) Act, 2003: The Coastal and Inland Shipping (Cabotage) Act of 2003 was enacted by the National Assembly to promote and regulate the development of coastal and inland shipping in Nigeria. The Act was also enacted to protect the Nigerian maritime industry from unfair competition from foreign vessels and to encourage the use of Nigerian-owned and flagged vessels in domestic maritime trade.²³ While the Cabotage Act has been successful in promoting the development of the Nigerian shipping industry, there are still some challenges that need to be addressed to promote port development and the use of Public-Private Partnerships (PPPs). Some of these challenges include lack of a coherent port development strategy, lack of adequate funding for port development projects, lack of transparency and accountability in the management of port development projects. The lack of a coherent port development strategy is one of the major challenges facing the Cabotage Act.

¹⁹ Admiralty Jurisdiction Act, 1999.

²⁰ CFRN, 1999, s 251 (1) (a-m).

²¹ Cap. 224 LFN, 1990.

²² NIMASA, 2007, s. 20-29.

²³ Coastal and Inland Shipping (Cabotage) Act, 2003, s. 1.

National Shipping Policy Act, 1987: The National Shipping Policy Act of 1987 (NSPA) was enacted by the National Assembly to provide a framework for the development of the shipping industry in Nigeria.²⁴ Some criticisms of the NSPA in relation to port developments in Nigeria and the use of public-private partnerships (PPPs) include the fact that the Act fails to provide for a clear and transparent process for awarding PPP contracts, fails to provide for a clear and transparent process for resolving disputes between the government and PPP partners. It also fails to provide for a clear and transparent process for monitoring and evaluating the performance of PPP projects, and lastly it fails to provide for a mechanism for providing incentives for PPP partners.

Infrastructure Concession Regulatory Commission (Establishment, ETC) Act, 2005: The Infrastructure Concession Regulatory Commission (ICRC) was established in 2005 by the Infrastructure Concession Regulatory Commission (Establishment, etc.) Act 2005, which is now referred to as the ICRC Act. Despite the existence of the ICRC Act, there are still several gaps in the legal framework for PPPs in Nigeria. These include lack of a clear definition of what constitutes a ‘PPP’ under the Act, lack of specific guidelines for the implementation of PPPs, lack of a clear process for the termination of PPPs, lack of a dedicated funding mechanism for PPPs, lack of a dedicated dispute resolution mechanism for PPPs and lack of a clear framework for the monitoring and evaluation of PPPs.

Regional Legal Frameworks

Agreement Establishing the African Continental Free Trade Area (AfCFTA), 2018: The African Continental Free Trade Area (AfCFTA) is a trade agreement signed by 54 of the 55 member states of the African Union. It is the largest trade agreement in Africa, covering a market of 1.3 billion people and a combined gross domestic product of \$2.5 trillion. The agreement was first signed in March 2018, and entered into force in May 2019. It aims to create a single market for trade in goods and services, as well as establish a single market for investment and movement of people. It also aims to promote industrial development and competitiveness of African economies. One of the main criticisms of the AfCFTA Agreement is that it does not address some of the key issues that need to be addressed to facilitate trade and improve infrastructure in Africa. These include Customs and trade facilitation. The AfCFTA Agreement does not provide for the harmonization of customs procedures and rules

²⁴ National Shipping Policy Act, 1987.

of origin across African countries. This could lead to delays and inefficiencies in cross-border trade, infrastructure, the AfCFTA Agreement does not provide for the financing and development of infrastructure to support trade, such as ports, roads, and rail networks.

Foreign Legal Frameworks

Australian Maritime Safety Authority Act, 1990:²⁵ The main objectives of the Act are to promote maritime safety, to protect marine environment from pollution from ships and other environmental damage caused by shipping, provide for a national search and rescue service and promote the efficient provision of services by the Authority.²⁶ The Act also spells out the functions of the Authority which include to combat pollution in the marine environment, to provide search and rescue service, to provide on request services of maritime nature on a commercial basis to the Commonwealth, a State, the Australian Capital Territory or the Northern Territory; or an authority or agency of the Commonwealth, a State or either of those territories, to cooperate with the Australian Transport Safety Bureau in relation to investigations under the Transport Safety Investigations Act, 2003 that relate to aircraft and ships; and to provide consultancy and management services relating to any matter.²⁷ The Act also gives powers to the Authority to enter into contracts, join in the formation of companies and enter into partnerships.²⁸

Australia National Public Private Partnership Policy Framework, 2022: This National Public Private Partnership Policy provides a consistent framework that enables public and private sectors to work together to improve public service delivery through private sector provision of public infrastructure and related services.²⁹ The objectives of the policy framework are to encourage private sector investment in public infrastructure and related services, where value for money for government can be clearly demonstrated; encourage innovation in the provision of infrastructure and related service delivery; ensure rigorous governance over the selection of projects for Public Private Partnership and the competition for and awarding of

²⁵ Act No. 78 of 1990 (as amended).

²⁶ Australian Maritime Authority Act, 1990, s2A.

²⁷ Australian Maritime Authority Act, 1990, s6 (1) (a-g).

²⁸ Australian Maritime Authority Act, 1990, s10 (1) (2) (a-g).

²⁹ Australia National Public Private Policy, 2022, Art 1.

contracts; provide a framework and streamlined procedures for applying Public Private Partnerships across Australia; and clearly articulate accountability for outcomes.³⁰

United Kingdom Harbours Act, 1964: This Act was passed in response to a growing awareness of the importance of ports and harbours to the UK' s economy and trade. The Act replaced the Harbours, Docks, and Piers Clauses Act of 1847, which was no longer seen as sufficient to meet the needs of modern ports. The 1964 Act sought to modernize and streamline the governance and regulation of ports, and it established several new provisions, such as the power to make byelaws and charges for the use of facilities.³¹ There are several key sections of the Harbours Act that relate to Public-Private Partnership (PPP) for seaports development. Section 1 of the Act gives the Secretary of State the power to grant licenses to develop and operate ports, which can be done through PPP. Section 21 of the Act provides for the establishment of Port Authorities, which are responsible for managing the day-to-day operations of the ports. Finally, section 47 of the Act provides for the transfer of a port from public to private ownership.³² There are a few challenges associated with the Harbours Act. One challenge is that the Act is quite outdated and does not fully reflect the changes in the port and shipping industry over the past few decades. Additionally, the Act does not fully address the issue of competition in the port sector, and it does not address the issue of state aid to ports.

United Kingdom Marine Navigation Act, 2013: This Act was passed to update and modernize the UK' s maritime legislation. The Act consolidated several previous maritime laws, such as the Merchant Shipping Act of 1995 and the Merchant Shipping and Maritime Security Act of 1997.³³ There are a few key sections of the Marine Navigation Act that are relevant to PPP for seaports development. Section 87 of the Act provides for the establishment of ' recognised organisations' , which are organisations that can provide certification and other services on behalf of the Secretary of State. This section is relevant to PPP because it allows for the private sector to provide these services, which can help to improve efficiency and reduce costs. Section 109 of the Act provides for the licensing of port facilities, which can

³⁰ Australia National Public Private Policy, 2022, Arts 3-5.

³¹ United Kingdom Harbours Act, 1964.

³² United Kingdom Harbours Act, 1964, s. 1-47.

³³ United Kingdom Marine Navigation Act, 2013, s.1.

also be done through PPP.³⁴ One of the main lapses of the Marine Navigation Act with respect to PPP is that it does not provide for a specific mechanism for dispute resolution between the public and private sector. This could potentially create problems if there are disagreements between the two parties during a PPP project. Additionally, the Act does not provide for a mechanism to ensure that PPP projects are delivered on time and within budget.

International Legal Frameworks

United Nations Convention on Law of the Sea (UNCLOS), 1982: The United Nations Convention on the Law of the Sea (1982) was adopted on December 10, 1982, in Montego Bay, Jamaica, with 159 countries signing the Convention. The Convention is deemed to have entered into force on November 16, 1994, being the mandatory twelve months after the deposit of the sixteenth instrument of ratification which, in this case was by Guyana on November 16, 1993.³⁵ There are several shortcomings of UNCLOS that have been identified, particularly in relation to port development. These include lack of a clear definition of ‘ports’ and ‘other installations’ in the Convention lack of specific provisions for the protection of the marine environment in and around ports, lack of specific provisions for the sustainable management of ports and other installations, and lack of specific provisions for the provision of adequate infrastructure.

Institutional Frameworks

Nigerian Maritime Administration and Safety Agency: The Nigerian Maritime Administration and Safety Agency is a federal government agency responsible for regulating and promoting the maritime industry in Nigeria. The agency was established in 2007 and its role includes the promotion of the development and growth of the Nigerian maritime industry, the regulation of the maritime industry, including the registration and licensing of vessels, seafarers, and other maritime service providers, promotion of maritime safety and security, promotion of environmental protection and pollution prevention and provision of maritime training and education. There have been several criticisms of NIMASA’s performance in relation to port developments in Nigeria. These include lack of transparency and accountability in the agency’s operations, inadequate funding and resources, poor

³⁴ United Kingdom Marine Navigation Act, 2013, s.1-20.

³⁵ I A Ayuba and Others, *The Law of the Sea and the Nigerian Maritime Sector: Issues and Prospects for the Next Millennium* (Nigerian Institute of Advanced Legal Studies 1998) 64.

enforcement of maritime regulations, slow implementation of policies and reforms, lack of coordination with other government agencies, lack of collaboration with the private sector, lack of clear goals and objectives, and insufficient capacity building initiatives.

The Nigerian Ports Authority: The Nigerian Ports Authority was established in 1954 as the port authority for all Nigerian seaports. The NPA was given the mandate to develop, manage, and maintain the ports in Nigeria. The NPA is a federal government agency, with its headquarters in Lagos. This agency has played a significant role in the development of ports in Nigeria. It has been responsible for the construction and maintenance of port facilities, including jetties, breakwaters, and other infrastructure.³⁶ However, the NPA has faced several challenges in carrying out its mandate, including lack of funding, corruption, and inefficiency. It has been criticized for its poor performance in several areas, including lack of efficiency and transparency.³⁷

Nigerian Navy: The Nigerian Navy (NN) is the naval arm of the Nigerian Armed Forces. It was established in 1956 and has its headquarters in Abuja. The NN's primary role is to protect Nigeria's maritime borders and promote maritime security. It also provides a wide range of services to the civilian population, including search and rescue, fisheries protection, and disaster relief.³⁸ While the Nigerian Navy has been involved in many successful operations, it has also been criticized for some of its activities. Some of the failures include the inability to effectively combat maritime crimes, such as piracy and oil theft, lack of capacity to respond to humanitarian crises, lack of transparency and accountability in the NN's operations, misuse of resources and funds, and lack of co-ordination between the NN and other agencies.³⁹

Nigeria Police Force (NPF): The Marine Police was established in the year 1891 in Lagos, Nigeria and was then styled 'Night Water Patrol', with its initial personnel of twelve men headed by a sergeant. The Marine section of Nigerian Police generally conducts security combat and anti-crime operations on the Territorial Inland Waters, (measured from the

³⁶ NIMASA Act, 2007.

³⁷ NIMASA Act, 2007.

³⁸ I A Ayuba and Others, *The Law of the Sea and the Nigerian Maritime Sector: Issues and Prospects for the Next Millennium* (Nigerian Institute of Advanced Legal Studies 1998) 64.

³⁹ *Ibid*, 64.

inward limits of the coastal waterways from the fairway buoy), ports and harbours.⁴⁰ The NPF has faced a few challenges, including corruption, lack of funding, and inadequate training.

Nigerian Shippers' Council: The Council was established in 1977 under the Nigerian Shippers Council Act⁴¹ to provide a forum for the protection of the interest of shippers in matters affecting the shipment of imports and exports to and from Nigeria. The Nigerian Shippers' Council (NSC) was established in 1978 as a regulatory body for the Nigerian shipping industry. The NSC's main objective is to ensure that shippers are provided with efficient and cost-effective services. The NSC plays an important role in port development in Nigeria, particularly in the areas of regulation and infrastructure development. Although the NSC has made some progress in improving the efficiency of the Nigerian shipping industry, there are still a few challenges that need to be addressed. These include lack of capacity and poor infrastructure. The NSC has limited resources and staff, which makes it difficult to effectively regulate the shipping industry.

Gulf of Guinea Commission: The Gulf of Guinea Commission (GGC) is an international organization established in 2001 to promote cooperation among the countries of the Gulf of Guinea. The GGC has seven member states: Angola, Cameroon, Congo, Equatorial Guinea, Gabon, Nigeria, and Sao Tome and Principe. The headquarters of the GGC is in Libreville, Gabon. The GGC has several objectives, including promoting cooperation in the areas of security, trade, transportation, and the environment; in addition to facilitating the development of transport infrastructure in the region. The GGC has faced several challenges in its efforts to promote port development in Africa. These include lack of financial resources as the GGC has limited financial resources, which has hindered its ability to effectively support port development projects; lack of institutional capacity, the GGC has limited institutional capacity, which has made it difficult for the commission to effectively coordinate and implement its programs and initiatives; lack of cooperation. There has been a lack of cooperation among the member states of the GGC, which has limited the commission's effectiveness.

⁴⁰ Information obtained from the Nigerian Police Force Website, available at <http://www.npf.gov.ng/formations/Marine-police.php> accessed on July, 2021.

⁴¹ CAP. 327 LFN, 1990.

International Maritime Organization: The International Maritime Organization (IMO) is a specialized agency of the United Nations that was established in 1948. The IMO is responsible for regulating the shipping industry and promoting safety, security, and environmental protection in the maritime sector. The IMO has 172 member states, including Nigeria. The IMO is headquartered in London, United Kingdom. IMO has faced several challenges in its efforts to promote port development. These challenges include lack of enforcement as the IMO's conventions and codes are often not fully implemented or enforced by member states, which limits their effectiveness; lack of capacity building. The IMO's capacity building programs are often not tailored to the specific needs of developing countries, which can limit their effectiveness.

APPRAISAL OF THE LEGAL FRAMEWORKS FOR PUBLIC PRIVATE PARTNERSHIP TO ASSESS THE PERFORMANCE OF NIGERIAN PORTS

PPPs (Public-Private Partnerships) have become increasingly common for financing port development projects in Nigeria. The legal framework for PPPs is provided by the Public-Private Partnership Act of Nigeria (the PPP Act) and other relevant laws⁴². The PPP Act, s10 sets out the objectives of the law, including promoting effective collaboration between the government and the private sector to accelerate infrastructural development and improve the delivery of services. Section 13 sets out the criteria for selecting PPP projects, while section 14 details the procedures for evaluating and selecting PPP partners. The PPP Act also provides for a Project Development Unit (PDU) to assist with the procurement process and oversee the implementation of PPP projects.⁴³

The PPP Act has generally been well-received, and several PPPs have been established in the port sector under the Act. For instance, the Lekki Deep Sea Port in Lagos was developed through a PPP arrangement.⁴⁴ The project involved the construction of a new deep-water port in Lagos, and the PPP model was used to attract private investment and expertise to the project. So far, the project has been relatively successful, with the port expected to become operational soon. The PPP Act, s45 sets out the criteria for monitoring and evaluating PPP projects.⁴⁵

⁴² Federal Ministry of Finance, *Public Private Partnership Unit, Lekki Deep Sea Port* (Report 2019) <http://pdu.gov.ng/download/Lekki-deep-seaport-project-programme-report> 2019.

⁴³ *Ibid.*

⁴⁴ PPP Act, 1975, ss30-37.

⁴⁵ PPP Act, 1975, ss30-39.

BENEFITS/ IMPACTS OF PUBLIC PRIVATE PARTNERSHIP ON NIGERIA' S ECONOMY

Attraction of Private Investment

Firstly, Public Private Partnership can attract private investment, which is important given the limited resources of government. This is evident in the Lekki Deep Sea Port Project. As mentioned, the private sector is contributing a significant amount of investment to the project. This investment would not have been possible without the PPP structure, and it demonstrates the appeal of PPPs to private investors. Second, the PPP is expected to improve the efficiency and effectiveness of port operations. An instance is the Lekki Deep Sea Port Project. The project is being implemented through a PPP between the Lagos State Government, the Nigerian Ports Authority, and a consortium of private investors led by China Harbour Engineering Company. The total cost of the project is estimated to be \$1.5 billion, of which the private sector is contributing \$639 million. This investment will help to improve the infrastructure and capacity of the port, which will in turn benefit the economy.⁴⁶

Efficiency and Effectiveness of Ports Operations

PPPs can help improve the efficiency and effectiveness of port operations. Improved efficiency can be seen in several ways in the Lekki Deep Sea Port Project. First, the port will have a state-of-the-art container terminal, which will reduce the time required to process and handle containers. Second, the port will have a dedicated berth for oil and gas exports, which will allow for faster and more efficient export operations. Third, the new port will be connected to an existing road and rail network, which will reduce the time required for transportation.⁴⁷

Improving Service Quality and Customer Satisfaction

This is also evident in the Lekki Deep Sea Port Project. The new port will have modern facilities, including a container yard with cranes, a control tower, and a fuel farm. These

⁴⁶ A Adesanya, *Public-Private Partnerships in Nigeria: Opportunities and Challenges* (African Development Bank 2014).

⁴⁷ Nigerian Ports Authority (NPA), 'Benefits of the PPP Model' accessed <http://nigerianports.org/p3-benefits.html> accessed October 23, 2022.

facilities will allow for faster and more efficient operations, leading to improved service for customers.⁴⁸

Creation of Jobs and Stimulation of Economic Activity

Creating jobs and stimulating economic activity is also a key benefit of the Lekki Deep Sea Port Project. During the construction phase, the project is expected to create around 10,000 jobs. Once the port is operational, it is expected to create an additional 40,000 jobs in the surrounding area. In addition, the project will stimulate economic activity in the region, as it will create new opportunities for businesses to export and import goods. The project will also create new markets for local products, which will benefit small businesses in the area.

Promotion of Transparency and Accountability

Promoting transparency and accountability is another benefit of the Lekki Deep Sea Port Project. The PPP structure requires the private sector partner to meet certain performance standards, while the government monitors the performance of the port. This will ensure that the port is operating efficiently and effectively, and that the public interest is being protected. In addition, the PPP structure includes a strong dispute resolution mechanism, which will allow for any disputes to be resolved quickly and fairly. This will promote transparency and accountability in the management of the port.

CHALLENGES OF PUBLIC PRIVATE PARTNERSHIPS FOR SEAPORTS DEVELOPMENT IN NIGERIA

Lack of a Clear Legal Framework

There is a lack of a clear legal framework for PPPs, and the laws that do exist are often inconsistent and unclear.⁴⁹ Nigeria has a more complex and fragmented legal framework for Public Private Partnership. There is no single law that governs all PPPs, and there are gaps and inconsistencies in the existing laws.⁵⁰

Lack of Transparency in the Bidding Process

⁴⁸ A Adesanya, *Public-Private Partnerships in Nigeria: Opportunities and Challenges* (African Development Bank 2014).

⁴⁹ M Abimbola, 'Ports and Maritime Sector: The Nigerian Experience' [2012] *Journal of Globalization and Business in Africa*, 20-35.

⁵⁰ S Nwaru, 'Bidding for Public Sector Infrastructural Projects in Nigeria: Transparency and Accountability' [2016] 5(3) *Journal of Science and Research*, 301-330.

Lack of transparency in the bidding process for port development projects has been a significant challenge for Nigerian ports. This has been due to a lack of clear and standardized procedures, as well as a lack of information disclosure. In some cases, the bidding process has been marred by allegations of corruption and favouritism.⁵¹

Lack of Capacity and Expertise

One of the biggest challenges facing Nigerian seaports is the lack of expertise and capacity. This is particularly evident in the areas of port operations, customs, and security. For example, the Nigerian Ports Authority (NPA) has been unable to effectively regulate port operations, leading to congestion and delays. The NPA has also been unable to effectively collect and manage revenue from port operations⁵². This has led to a shortage of funds for port development and maintenance, further exacerbating the problem.

Lack of Trust between Public and Private Sectors in Nigeria

There is a lack of trust between the public and private sectors, which can make it difficult to build consensus around PPP projects. The Lekki Deep Sea Port Project is a large and complex project, which makes it vulnerable to corruption. There is a risk that the project will be subject to bribery and kickbacks, which could lead to cost overruns and delays. In addition, the project could be subject to nepotism and cronyism, which could lead to unfair bidding processes and substandard construction. The fourth disadvantage is the risk of community displacement. The project could displace local communities who live in the area, and there is a risk that the project will not provide adequate compensation for these communities.⁵³

The Risk of Cost Overruns

Where a project is being funded by a private-public partnership, there is a risk that the costs will exceed the budgeted amount. This could lead to delays in the completion of the project and could also have a negative impact on the local economy. There is also the potential for

⁵¹*Ibid.*

⁵²V Onwuka and A E Nwokoye, ‘ Transparency and Corruption in the Public Procurement Processes in Nigeria: A Review of the Public Procurement Act, 2005’ [2017] (5 (4) *Journal of Science and Research*, 880-899.

⁵³ J Farrington and J McArthur, *Public-Private Partnerships: Principles of Policy and Finance* (World Bank 2000).

environmental damage. Even where the project has been designed with environmental sustainability in mind, there is still a risk of pollution and habitat destruction.⁵⁴

HIGHLIGHTING THE LESSONS FOR NIGERIA FROM OTHER JURISDICTIONS

Adoption of Light Touch Approach to Public Private Partnership Legislations

The UK and Australia have both adopted a ‘light touch’ approach to PPP legislation, meaning that the legal framework for PPPs is relatively simple and flexible. In the UK, PPPs are governed by the Private Finance Initiative (PFI) and the Local Government Act (LGA) 1988, as well as various other regulations. In Australia, Public Private Partnerships are governed by the Public Private Partnerships Guidelines (PPPG) developed by the National PPP Guidelines Board. In contrast, Nigeria has a more complex and fragmented legal framework for Public Private Partnership.⁵⁵

Incessant Government Intervention

The Nigeria’s Public Private Partnerships tend to have a stronger focus on government oversight and control, whereas the United Kingdom and Australia have more of a market-based approach. In Nigeria, the government often plays a more active role in the development and implementation of Public Private Partnerships, including setting tariffs and other regulations. This can make the process more bureaucratic and time-consuming. In the UK and Australia, the government’s role is more limited, and there is more emphasis on allowing the market to determine pricing and other aspects of the project.⁵⁶

Absence of Clear Processes and Procedures

In Australia and the UK, there are clear processes and procedures for tendering and awarding PPP contracts, and the public is kept informed of the process. In Nigeria, however, there have been allegations of corruption and a lack of transparency in the PPP process. For instance, the Lagos Deep Offshore Logistics Base project was awarded without a competitive tender process, which raised concerns about the transparency of the process. One example of the challenges facing PPPs in Nigeria is the case of the Lagos Deep Offshore Logistics Base (LADOL) project. This project was a PPP between the Lagos state government and private investors, and it aimed to develop a new port and free trade zone in Lagos. However, the

⁵⁴ O Ogunleye, ‘Public Private Partnership in Nigerian Ports: Perspectives, Challenges and Prospects’ [2018] 1 (2) *African Journal of Governance and Development*, 58-72.

⁵⁵ V Gregoire and S Proost, *PPPs in Developed and Emerging Countries* (KU Leuven, Working Paper Series, 2008) 20-24.

⁵⁶ *Ibid.*

project has faced numerous challenges, including delays in obtaining the necessary approvals, disagreements over land ownership, and problems with funding. As a result, the project has been significantly delayed and its future remains uncertain. In the UK, the Port of Felixstowe is a good example. It was developed as a PPP between the Felixstowe Port Authority and Hutchison Whampoa, a private investor. The project was successful in increasing the port's capacity and efficiency, and it has been praised for its innovative financing and contracting model. In Australia, the Port Botany Expansion Project is another good example. This project was developed as a PPP between the NSW Government and a consortium of private investors.⁵⁷

Involvement of Local Communities in Ports Development Projects

In the UK and Australia, local communities have been actively involved in the development of port PPPs. For instance, the Port of Felixstowe involved extensive consultation with the local community. In Nigeria, however, there has been little to no involvement of local communities in port PPPs.⁵⁸

Strong Legal and Regulatory Framework for Public Private Partnerships

One lesson from the UK and Australia is the importance of a strong legal and regulatory framework for PPPs. In both countries, there is a clear legal and regulatory framework that governs PPPs. This framework provides transparency and accountability, and it sets out clear guidelines on how PPPs should be managed and implemented. In Nigeria, the absence of a clear legal and regulatory framework for PPPs has been identified as a major challenge for successful PPPs.⁵⁹

CONCLUSION

In conclusion, after a careful appraisal of the legal frameworks and their potential to assess the performance of Nigerian seaports, this article found that there are several limitations to the current frameworks. The focus on the laws and regulations relating to the seaports, rather

⁵⁷ *Ibid.*

⁵⁸ V Gregoire and S Proost, *PPPs in Developed and Emerging Countries* (KU Leuven, Working Paper Series, 2008) 20-24.

⁵⁹ *Ibid* 20-28.

than the practical implementation of these laws, is one limitation. Despite these limitations, the legal frameworks for assessing the performance of Nigerian seaports can be strengthened. One way to strengthen the legal frameworks is to improve the collection and analysis of data on the performance of the seaports. This data could be used to track the progress of the ports over time, and to identify areas where improvement is needed. The data could also be used to assess the impact of legal reforms on the performance of the ports. Additionally, there is a need for greater collaboration between the different agencies and stakeholders involved in the legal frameworks, to ensure that they are working towards the same goals.

RECOMMENDATIONS

The article made the following recommendations:

- a. Reform and harmonize the existing legal frameworks governing port operations in Nigeria.
- b. Establish a central regulatory authority for all ports in Nigeria.
- c. Strengthen the enforcement of laws and regulations governing port operations.
- d. Build the capacity of port authorities and stakeholders in Nigeria to effectively manage and operate ports.
- e. Adopt international best practices in the areas of safety and security, in addition to promoting the use of new technologies in port operations.

