



Navigating Public-Private Partnerships: A Dive into the Legal Framework

Dr. Ogwu J. Onoja

Senior Lecturer, Bingham University, Abuja, Nigeria.

Email: 08033001031.kwedef@unijos.edu.ng

ABSTRACT: *Nigeria's over-reliance on fossil fuels has hindered the development of its vast renewable energy potential, resulting in limited local participation and inadequate energy access. This study investigated the legal approaches to boosting local participation in Nigeria's renewable energy sector, with a view to promoting sustainable energy development. Employing a doctrinal research methodology, the study analyzed existing laws, policies, and regulations governing renewable energy in Nigeria, including the Electric Power Sector Reform Act, the National Renewable Energy and Energy Efficiency Policy, and the Nigerian Electricity Regulatory Commission's guidelines. The findings revealed that inadequate regulatory frameworks, lack of incentives, limited access to finance, and insufficient institutional capacity are major obstacles to local participation in the renewable energy sector. Based on the findings, the study recommended the enactment of renewable energy-specific laws, provision of tax incentives and subsidies, establishment of a national renewable energy fund, and enhancement of institutional capacity. The study concluded that a comprehensive legal framework that addresses these challenges can increase local participation, drive economic growth, create jobs, and enhance Nigeria's transition to a sustainable energy future.*

KEYWORDS: *Public-Private Partnerships (PPPs), Renewable Energy, Legal Framework, Infrastructure Development, Enabling Legislation, Institutional Arrangements, Nigeria.*

INTRODUCTION

Public-Private Partnership (PPP) is a collaborative agreement between a government agency and a private sector entity that jointly delivers a public service or infrastructure project by leveraging the strengths of both parties, characterized by risk sharing, long-term contracts, private sector involvement, and public sector oversight, with various types including Build-Operate-Transfer (BOT), Build-Own-Operate (BOO), and Design-Build-Finance-Operate (DBFO), offering benefits such as improved efficiency, increased investment, and enhanced services, but also presenting challenges like complexity, regulatory issues, and financial risks.¹

The legal framework for public-private partnerships (PPPs) is a complex and multifaceted structure that varies by jurisdiction, but generally encompasses a range of laws, regulations, and policies that govern the development, implementation, and management of PPP projects.²

¹ World Bank. (2020). Public-Private Partnerships

² United Nations Economic Commission for Europe (UNECE), "Guidebook on Promoting Good Governance in Public-Private Partnerships" (2008)

This framework typically includes enabling legislation,³ regulations and guidelines,⁴ contractual agreements,⁵ and institutional arrangements⁶ that collectively provide the necessary legal and institutional foundation for PPPs to operate effectively.

In many countries, the legal framework for PPPs is shaped by international best practices and standards,⁷ as well as regional and national laws and regulations.⁸ The framework may also be influenced by sector-specific laws and regulations,⁹ such as those governing transportation, energy, or healthcare. A well-designed legal framework for PPPs should provide clarity and certainty for both public and private sector partners,¹⁰ while also ensuring that PPP projects are delivered in a way that is transparent, accountable, and beneficial to the public interest.¹¹

HISTORICAL FOUNDATION OF PUBLIC- PRIVATE PARTNERSHIP

Public-Private Partnerships (PPPs) have undergone significant evolution globally, transforming from risk mitigation exercises to broader development-focused collaborations that incorporate the Sustainable Development Goals (SDGs) since the Addis Ababa Action Agenda in 2015, which emphasized people-centered PPPs prioritizing accountability, social and environmental standards, and fair risk-sharing.¹² The United Nations 2030 Agenda recognizes PPPs as a mechanism to deliver results, outlining principles for sustainable and resilient quality infrastructure, accountability, and transparency.¹³ Globally, PPPs have a long history, but modern applications gained momentum in the 1990s with the UK's Private Finance Initiative (PFI), allowing private sector companies to design, build, and operate public infrastructure projects.¹⁴ Other countries, including Australia, Canada, and South Africa, soon adopted their own PPP models, leveraging private sector finance and expertise to deliver public infrastructure and services.¹⁵

Public-Private Partnerships (PPPs) in Nigeria have a significant history, with the concept being adopted by successive governments to leverage private sector finance for infrastructure development, dating back to the 1990s when the country began to explore alternative financing options for infrastructure projects. The Infrastructure Concession Regulatory Commission (ICRC) Act was enacted in 2005, establishing the ICRC to regulate PPPs at the federal level and oversee PPP contracts. Several states in Nigeria have followed suit, enacted their own PPP laws and established agencies to oversee PPP projects, such as Lagos State, which enacted the Public Private Partnership Law in 2011. PPPs in Nigeria have been used to develop a range of infrastructure projects, including roads, bridges, and power plants, with notable examples including the Lagos-Epe Expressway and the Azura-Edo Independent Power Plant. These projects have improved commute times, fostered economic activity, and increased Nigeria's

³ For example, the Public-Private Partnership Act of 2014 in Nigeria

⁴ European Commission, "Guidelines for Successful Public-Private Partnerships" (2003)

⁵ Such as concession agreements, service contracts, or lease agreements

⁶ Including PPP units, regulatory agencies, and dispute resolution mechanisms

⁷ Such as the United Nations' Sustainable Development Goals (SDGs) and the Organization for Economic Co-operation and Development (OECD) Principles for Public Governance of Public-Private Partnerships

⁸ For example, the European Union's (EU) PPP regulations and directives

⁹ Such as laws governing procurement, finance, and environmental impact assessments

¹⁰ World Bank, "Public-Private Partnerships: Reference Guide" (2014)

¹¹ International Monetary Fund (IMF), "Public-Private Partnerships: Fiscal Risks and Rewards" (2014)

¹² United Nations. (2015). Addis Ababa Action Agenda

¹³ United Nations. (2020). Sustainable Development Goals

¹⁴ HM Treasury. (2020). Private Finance Initiative

¹⁵ OECD. (2020). Public-Private Partnerships: Trends and Challenges

electricity supply, showcasing the positive impact of foreign investment and private sector technical expertise. PPPs have become an important tool for infrastructure development in Nigeria, allowing the government to leverage private sector finance and expertise to deliver critical infrastructure projects.

In Nigeria, PPPs have been a policy choice for successive governments, leveraging private sector finance for infrastructure development, with the Infrastructure Concession Regulatory Commission (ICRC) Act enacted in 2005 to regulate PPPs at the federal level.¹⁶ The ICRC oversees PPP contracts, ensuring compliance with the Act and promoting transparency and accountability in project development and implementation.¹⁷ Despite challenges, PPPs have been used to develop various infrastructure projects in Nigeria, including roads, bridges, and power plants, such as the Lagos-Epe Expressway and Azura-Edo Independent Power Plant.¹⁸ These projects have improved commute times, fostered economic activity, and increased Nigeria's electricity supply, showcasing the positive impact of foreign investment and private sector technical expertise.¹⁹ However, PPPs in Nigeria also face challenges, including inadequate capacity, lack of transparency, and risk management issues, highlighting the need for capacity building, transparency, and sustainability in PPP projects.²⁰

As Nigeria continues to mature in PPP project development, addressing issues like risk transfer, risk balancing, and risk mitigation will be crucial for successful partnerships, requiring collaboration between government agencies, private sector entities, and civil society organizations.²¹ By leveraging PPPs effectively, Nigeria can deliver critical infrastructure projects, promote economic growth, and improve the quality of life for its citizens.

LEGAL FRAMEWORK FOR PUBLIC-PRIVATE PARTNERSHIPS

The legal frameworks for Public-Private Partnerships (PPPs) refer to the set of laws, regulations, and guidelines that govern the formation, implementation, and management of PPP agreements, outlining the rights and responsibilities of both parties and ensuring transparency, efficiency, and effectiveness in PPP execution. The legal frameworks include the following:

Enabling Legislation

Enabling legislation is a crucial legal framework for public-private partnerships (PPPs), as it provides the primary legal authority for the development, implementation, and management of PPP projects.²² This type of legislation typically outlines the scope, objectives, and procedures for PPPs, including the roles and responsibilities of public and private sector partners.²³ Enabling legislation for PPPs often establishes the necessary institutional arrangements, such as PPP units,²⁴ regulatory agencies,²⁵ and dispute resolution mechanisms,²⁶ to support the development and implementation of PPP projects. It may also provide guidance on the

¹⁶ National Assembly of Nigeria. (2005). Infrastructure Concession Regulatory Commission Act.

¹⁷ Infrastructure Concession Regulatory Commission. (2020). About ICRC

¹⁸ PwC. (2020). Public-Private Partnerships in Nigeria: Opportunities and Challenges

¹⁹ Azura Power. (2020). Azura-Edo Independent Power Plant

²⁰ KPMG. (2020). Public-Private Partnerships in Nigeria: Trends and Opportunities

²¹ World Bank. (2020). Public-Private Partnerships: A Guide for Local Governments

²² United Nations Economic Commission for Europe (UNECE), "Guidebook on Promoting Good Governance in Public-Private Partnerships" (2008)

²³ European Commission, "Guidelines for Successful Public-Private Partnerships" (2003)

²⁴ Such as the United Kingdom's Infrastructure and Projects Authority (IPA)

²⁵ Such as the European Union's (EU) regulatory agencies

²⁶ International Centre for Settlement of Investment Disputes (ICSID)

procurement process,²⁷ including the use of competitive bidding,²⁸ and the evaluation and selection of private sector partners.²⁹

A well-designed enabling legislation for PPPs should provide clarity and certainty for both public and private sector partners,³⁰ while also ensuring that PPP projects are delivered in a way that is transparent, accountable, and beneficial to the public interest.³¹ This may involve the establishment of clear guidelines and standards for PPP projects,³² as well as mechanisms for monitoring and evaluation.³³ Enabling legislation for PPPs can take various forms, including PPP-specific laws,³⁴ amendments to existing legislation,³⁵ and regulations or guidelines issued by government ministries or agencies.³⁶ The content and scope of enabling legislation for PPPs can also vary significantly, depending on the jurisdiction and the specific needs and objectives of the PPP program.³⁷ Some common features of enabling legislation for PPPs include provisions related to: the definition and scope of PPPs;³⁸ the roles and responsibilities of public and private sector partners;³⁹ the procurement process;⁴⁰ the evaluation and selection of private sector partners;⁴¹ and the monitoring and evaluation of PPP projects.⁴²

Examples of enabling legislation for PPPs can be found in various jurisdictions, including the United Kingdom's Private Finance Initiative (PFI) legislation,⁴³ South Africa's Public-Private Partnership Regulations,⁴⁴ and Nigeria's Public-Private Partnership Act of 2014.²⁴ These examples demonstrate the diversity of approaches to enabling legislation for PPPs, as well as the importance of tailoring the legislative framework to the specific needs and objectives of the PPP program. Enabling legislation is a critical component of the legal framework for PPPs, providing the necessary authority and guidance for the development, implementation, and management of PPP projects. A well-designed enabling legislation can help to ensure that PPP projects are delivered in a way that is transparent, accountable, and beneficial to the public interest, while also providing clarity and certainty for both public and private sector partners.

Contractual Agreements

Contractual agreements serve as a crucial legal framework for Public-Private Partnerships (PPPs), outlining the terms and conditions of the partnership, including the roles and responsibilities of both parties, payment structures, and dispute resolution mechanisms, thereby providing a clear understanding of the partnership's scope, duration, and financial

²⁷ World Bank, "Procurement Guidelines for Projects Funded by the World Bank" (2011)

²⁸ United States' Federal Acquisition Regulation (FAR)

²⁹ European Union's (EU) Public Procurement Directive

³⁰ Organisation for Economic Co-operation and Development (OECD), "Principles for Public Governance of Public-Private Partnerships" (2012)

³¹ United Nations, "Sustainable Development Goals" (2015)

³² International Organization for Standardization (ISO), "ISO 31000: Risk Management" (2009)

³³ World Bank, "Monitoring and Evaluation of Public-Private Partnerships" (2014)

³⁴ For example, Nigeria's Public-Private Partnership Act of 2014

³⁵ For example, South Africa's Public-Private Partnership Regulations (2010)

³⁶ United States' Office of Management and Budget (OMB) Circular A-94

³⁷ European Commission, "Guidelines for Successful Public-Private Partnerships" (2003)

³⁸ United Kingdom's Private Finance Initiative (PFI) legislation

³⁹ South Africa's Public-Private Partnership Regulations (2010)

⁴⁰ World Bank, "Procurement Guidelines for Projects Funded by the World Bank" (2011)

⁴¹ European Union's (EU) Public Procurement Directive

⁴² International Organization for Standardization (ISO), "ISO 31000: Risk Management" (2009)

⁴³ United Kingdom's Private Finance Initiative (PFI) legislation

⁴⁴ South Africa's Public-Private Partnership Regulations (2010)

arrangements, and ensuring that both parties are aware of their obligations and risks.⁴⁵ These agreements typically include provisions for risk allocation, performance standards, and termination clauses, which help to mitigate potential disputes and ensure the successful delivery of the project.⁴⁶ The contractual agreements also establish clear guidelines for the partnership's governance structure, decision-making processes, and communication protocols, facilitating effective collaboration and coordination between the public and private sector partners.⁴⁷

Furthermore, PPP contractual agreements often incorporate provisions for dispute resolution mechanisms, such as arbitration or mediation, to address any disputes or disagreements that may arise during the partnership.⁴⁸ This helps to minimize the risk of costly and time-consuming litigation, ensuring that any disputes are resolved efficiently and effectively. In addition, contractual agreements for PPPs often include provisions for performance monitoring and evaluation, enabling both parties to track progress and assess the partnership's overall performance.⁴⁹ This helps to ensure that the partnership is meeting its intended objectives and that any necessary adjustments can be made in a timely manner. The contractual agreements also outline the financial arrangements for the partnership, including payment structures, funding mechanisms, and revenue-sharing arrangements.⁵⁰ This provides clarity on the financial obligations and benefits of each party, helping to ensure that the partnership is financially sustainable and that both parties are able to achieve their objectives. Overall, contractual agreements play a vital role in establishing a clear and binding framework for PPPs, providing a foundation for effective collaboration, risk management, and successful project delivery.⁵¹

Sector Specific Laws

Sector-specific laws play a crucial role in the legal framework for Public-Private Partnerships (PPPs) by providing a regulatory environment tailored to the unique needs and challenges of different sectors, such as infrastructure, transportation, energy, and healthcare.⁵² These laws enable the effective implementation of PPPs in various sectors, with examples including the Infrastructure Concession Regulatory Commission (ICRC) Act of 2005, the Electric Power Sector Reforms Act (EPSRA) 2005, and the Federal Highways Act, which regulate PPP contracts involving federal government infrastructure, private sector participation in electricity generation, transmission, and distribution, and the construction and operation of federal highways, respectively.⁵³

The sector-specific laws provide clear guidelines and regulations for PPP implementation, ensuring transparency and accountability, and address unique challenges and needs of different sectors, while also defining institutional responsibilities and establishing procedures for resolving disputes.⁵⁴ For instance, the ICRC Act establishes the Infrastructure Concession

⁴⁵ World Bank. (2020). Public-Private Partnerships: A Guide for Local Governments

⁴⁶ International Chamber of Commerce. (2019). Public-Private Partnerships: Contractual Arrangements

⁴⁷ Deloitte. (2020). Public-Private Partnerships: Contractual Considerations

⁴⁸ European PPP Expertise Centre. (2019). Contractual Structures for PPPs

⁴⁹ PwC. (2020). Public-Private Partnerships: Performance Monitoring and Evaluation

⁵⁰ KPMG. (2020). Public-Private Partnerships: Financial Arrangements

⁵¹ United Nations. (2019). Public-Private Partnerships: A Guide for Policymakers

⁵² World Bank. (2020). Public-Private Partnerships: A Guide for Local Governments

⁵³ International Chamber of Commerce. (2019). Public-Private Partnerships: Contractual Arrangements

⁵⁴ Deloitte. (2020). Public-Private Partnerships: Sector-Specific Considerations

Regulatory Commission to regulate PPP contracts involving federal government infrastructure, while the EPSRA provides a framework for private sector participation in the electricity sector, including the generation, transmission, and distribution of electricity.⁵⁵

Furthermore, sector-specific laws can also provide specific incentives and benefits for private sector participation in PPPs, such as tax breaks, subsidies, or guarantees, which can help to attract investment and promote economic growth.⁵⁶ The laws can also establish clear procedures for the procurement and bidding process, ensuring that PPP contracts are awarded in a fair and transparent manner.⁵⁷ In addition, sector-specific laws can provide a framework for the management and operation of PPP projects, including the roles and responsibilities of the public and private sector partners, and the procedures for monitoring and evaluating project performance.⁵⁸ This can help to ensure that PPP projects are delivered on time, within budget, and to the required quality standards.

Overall, sector-specific laws play a critical role in the legal framework for PPPs, providing a regulatory environment that is tailored to the unique needs and challenges of different sectors, and enabling the effective implementation of PPPs in various sectors.⁵⁹

Institutional Arrangements

Institutional arrangements play a crucial role in the legal framework for Public-Private Partnerships (PPPs) by establishing clear roles and responsibilities for government agencies, private sector partners, and other stakeholders involved in PPP projects.⁶⁰ These arrangements provide a framework for effective collaboration and coordination among the various parties, ensuring that PPP projects are delivered efficiently and effectively.⁶¹

The institutional arrangements for PPPs typically involve the establishment of specialized agencies or units within government departments, which are responsible for promoting, facilitating, and regulating PPP projects.⁶² These agencies may provide technical assistance, training, and capacity-building programs for government officials and private sector partners, as well as support for project development and implementation.⁶³ In addition, institutional arrangements may also involve the creation of PPP units or centers of excellence, which provide expertise and advice on PPP policy, law, and regulation.⁶⁴ These units may also facilitate dialogue and collaboration between government agencies, private sector partners, and other stakeholders, helping to build trust and confidence in the PPP process.⁶⁵

Furthermore, institutional arrangements may also establish clear procedures for PPP project development, procurement, and contract management, ensuring that PPP projects are delivered in a transparent and accountable manner.⁶⁶ This may involve the development of standardized PPP contracts, guidelines, and templates, as well as training programs for government officials

⁵⁵ Infrastructure Concession Regulatory Commission. (2020). ICRC Act

⁵⁶ KPMG. (2020). Public-Private Partnerships: Tax Incentives and Benefits

⁵⁷ PwC. (2020). Public-Private Partnerships: Procurement and Bidding Process

⁵⁸ European PPP Expertise Centre. (2020). PPP Project Management and Operation

⁵⁹ United Nations. (2020). Public-Private Partnerships: A Guide for Policymakers

⁶⁰ World Bank. (2020). Public-Private Partnerships: A Guide for Local Governments

⁶¹ International Chamber of Commerce. (2019). Public-Private Partnerships: Contractual Arrangements

⁶² Deloitte. (2020). Public-Private Partnerships: Institutional Arrangements

⁶³ PwC. (2020). Public-Private Partnerships: Capacity Building and Training

⁶⁴ KPMG. (2020). Public-Private Partnerships: PPP Units and Centers of Excellence

⁶⁵ European PPP Expertise Centre. (2020). PPP Policy and Regulation.

⁶⁶ United Nations. (2020). Public-Private Partnerships: A Guide for Policymakers

and private sector partners.⁶⁷ Overall, institutional arrangements are essential for creating an enabling environment for PPPs, providing a framework for effective collaboration and coordination among the various parties involved in PPP projects.⁶⁸

To improve the legal framework for Public-Private Partnerships (PPPs) in Nigeria, it is recommended that the Infrastructure Concession Regulatory Commission (ICRC) Act of 2005 be reviewed and updated to address emerging challenges and ensure effective regulation of PPPs. The National Policy on PPPs should also be enhanced to provide clearer guidelines and incentives for private sector participation. Furthermore, the capacity of the ICRC and other relevant agencies should be strengthened to effectively regulate and monitor PPP projects. Additionally, sector-specific regulations and guidelines should be developed for PPPs in key sectors such as energy, transportation, and healthcare. Clear guidelines for transparency and accountability in PPP project development, procurement, and contract management should also be established. Incentives and guarantees should be provided to encourage private sector participation in PPP projects.

CONCLUSION

The legal framework for Public-Private Partnerships (PPPs) in Nigeria has shown significant growth and development, with the Infrastructure Concession Regulatory Commission (ICRC) Act of 2005 serving as the primary legislation regulating PPPs. The ICRC is responsible for regulating and monitoring PPP contracts, ensuring compliance with the Act and efficient project execution. Some states, such as Lagos and Rivers, have enacted their own PPP laws, establishing offices to oversee PPP projects and encourage private sector investment. PPPs involve contractual agreements between public and private sector entities, outlining roles, responsibilities, and risk allocation. The complexity of contracts requires careful drafting to ensure clear definitions of roles and responsibilities, and balancing risk allocation between public and private sectors is crucial to avoid disputes and ensure project success. Mechanisms for public scrutiny and reporting are essential for maintaining transparency and accountability in PPP projects.



This is an open access article distributed under the terms of the Creative Commons NC-SA 4.0 License Attribution—unrestricted use, sharing, adaptation, distribution and reproduction in any medium or format, for any purpose non-commercially. This allows others to remix, tweak, and build upon the work non-commercially, as long as the author is credited and the new creations are licensed under the identical terms. For any query contact: research@ciir.in

⁶⁷ Infrastructure Partnerships Australia. (2020). PPP Contract Management

⁶⁸ OECD. (2020). Public-Private Partnerships: Institutional Frameworks