



APPRAISAL OF THE LEGAL FRAMEWORKS FOR PUBLIC PRIVATE PARTNERSHIP TO ASSESS THE PERFORMANCE OF NIGERIAN PORTS: LESSONS FROM SINGAPORE AND CHINA

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Abstract

This paper examined the Appraisal of the Legal Frameworks for Public Private Partnership to Assess the Performance of Nigerian Ports and that of Singapore and China. The paper found out that the Nigerian ports sector faced numerous challenges in recent years, including inefficiencies, corruption, and poor infrastructure. The central aim of this paper was to appraise the legal frameworks promoting the utilization of Public Private Partnership for port development in Nigeria. The paper 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 paper identified problems affecting the use of public private partnership to develop Nigerian ports to include the cost of doing business is generally high due to inefficiency in port operation and poor port management. Thus, relying on funding from the federal government to improve port operation and management, the likelihood of our ports becoming competitive within the African Continental Free Trade Agreement framework alone will not be feasible and many other challenges found out amongst others that the existing legal frameworks in Nigeria for Public Private Partnership for port Development are not comprehensive and does not cover all aspects of port development. The paper recommended amongst others that despite these limitations, the legal frameworks for assessing the performance of Nigerian ports can be strengthened by improving the collection and analysis of data on port development and with lessons drawn from other jurisdictions such as Singapore and China.

Keywords: Appraisal, Public Private Partnership and Ports

1.0 Introduction

Public Private Partnership (PPP) has emerged as one of the most dynamic strategies of National and sub-national governments for the successful delivery of public infrastructure and services, it has been recognized as a credible vehicle for the development of Nigeria's economic and social infrastructure⁴.

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⁴ M Itu and E Kenigua, 'The Role of Public-Private Partnership (PPP) on Infrastructural Development in Nigeria' [2021] (2) (5) *Journal of Global Social Sciences*; 24-26



This form of partnership brings public and private sectors together in a long run partnership for mutual benefits⁵.

Furthermore, the continuous need for high level of port development and indeed the high level of infrastructure 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 fund to private pockets⁶. All these factors have triggered federal government of Nigeria to shift to the utilization of public-private partnership model to provide infrastructure development for the country. However, this effort has been crippled by inadequate legal frameworks for effective implementation of public private partnership in Nigeria, especially in the Nigerian port sector⁷.

Across Africa, the public private partnership (PPP) model has become increasingly critical as both a funding and operational mechanism for economic infrastructure such as ports development.⁸ The public partner is typically represented by the government at a national, state, or local agency level. The private partner can be a privately owned business or consortium of businesses with a specific area of expertise⁹. Therefore, PPP is applicable to medium to long term management contract, with investment requirement may range from funding, planning, building, operation, maintenance, and divestiture of PPP arrangement 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 as well, the depth of private sector's participation.

In recent years, the Nigerian government has different reforms to facilitate international trade and successes have been recorded in the context of these new initiatives.¹⁰ Due to the enactment of infrastructure Concession Regulatory Commission, in 2006, the Nigerian government concession 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 stakeholders. These initiatives will further expand and facilitate international trade and enhance the nation's non-oil contribution to GDP¹¹

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

⁶ Infrastructure Concession Regulatory Commission 2005, Cap. 125A LFN 2004.

⁷ Infrastructure Concession Regulatory Commission 2005, Cap. 125A LFN 2004.

⁸ Public Private as an Anchor for Diversifying the Nigerian Economy (Lagos Container Terminals Concession as a Case Study, March 2017); 5-22.

⁹ Public Private as an Anchor for Diversifying the Nigerian Economy (Lagos Container Terminals Concession as a Case Study, March 2017); 5-30.

¹⁰ Public Private as an Anchor for Diversifying the Nigerian Economy (Lagos Container Terminals Concession as a Case Study, March 2017); 34.

¹¹ Public Private as an Anchor for Diversifying the Nigerian Economy (Lagos Container Terminals Concession as a Case Study, March 2017); 40.



Unfortunately, Nigerian ports are underperforming and currently listed among the worst ports in the world.¹² Most of these ports merely exist by name as nothing tangible is happening. The Nigerian ports 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.

2.0 Brief Analysis of the Problems with Nigerian Seaports

Ports in Nigeria are not user friendly and though several administrations had introduced reforms at various times over the years, the cost of doing shipping business at the ports has remained high with no sign of relief in sight.

Firstly, the cost of doing business is generally high due to inefficiency in port operation and poor port management. Inefficiency in port operations lead to delays, high cost of port service and comparatively weakened Nigerian ports in the competition for cargo in West Africa.¹³

In 2005, the Nigerian ports faced major challenges which made it one of the most inefficient ports globally, the average ship waiting time before berthing was 21 days, vessel turn-around time was 5 days, while dwell time for cargo was as high as over 30 days. The ports had poor infrastructure (roads, rail, quay, building, equipment, and yard) and were heavily congested leading to insecurity and pilferage, delays in cargo clearance and inefficiencies in cargo handling due largely to manual processes¹⁴. As a result of the challenges, the Federal Government of Nigeria in 2006, concession the ports to 25 terminal operators over a 25-year licence period¹⁵. During this period of concession, the estimated revenue to government forms the concession agreement was pegged at \$6.54 Billion United States Dollars over the period¹⁶.

Secondly, there is a maritime infrastructure deficit in Nigeria. Thus, relying on funding from the federal government to improve port operation and management, the likelihood of our seaports becoming competitive within the African Continental Free Trade Agreement framework alone will not be visible.¹⁷

Lastly, the inability of the different administration of the Nigerian government to address the inadequacies plaguing the Nigerian ports as well as the number of government agencies present at the

¹² 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-icciseptember 2021/file.html](https://www.tralac.org/documents/nws/2287-costs-of-maritime-port-challenges-in-nigeria-icciseptember%2021/file.html) 10 June 2022.

¹³ G C Emeghara and O B Ndikom, 'Delay Factors Evaluation of Nigerian Seaports: A Case Study of Apapa Port Complex Lagos' [2012] (2) (3) *Greener Journal of Physical Sciences*; 97-106.

¹⁴ Public Private as an Anchor for Diversifying the Nigerian Economy (Lagos Container Terminals Concession as a Case Study, March 2017); 5-22.

¹⁵ Public Private as an Anchor for Diversifying the Nigerian Economy (Lagos Container Terminals Concession as a Case Study, March 2017); 5-22.

¹⁶ Public Private as an Anchor for Diversifying the Nigerian Economy (Lagos Container Terminals Concession as a Case Study, March 2017); 5-22.

¹⁷ Channels Television, FGN to make Transport Sector Public Private Partnership-Amaechi <http://www.channelstv.com/2016/05/23/fgn-to-make-transport-sector-public-private-partnership-amaechi/> accessed 2 November, 2022.



port which has arisen to twelve instead of eight, with each demanding inspection and prescribed fees has further worsened port congestion in Lagos ports.¹⁸

3.0 Conceptual Frameworks

3.1.1 Internal Waters

By virtue of 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 measured¹⁹. Internal waters mostly comprise bays, estuaries and ports and waters enclosed by straight baselines.²⁰

3.1.2 Port

Accordingly, section 445 of the Merchant Shipping Act, 2007,²¹ defines a “Port” as: “a place for arriving, loading, and unloading of ships and include a harbour, piers, jetty and lighter terminals”.

3.1.3 Seaport

“Seaport” from the United Kingdom Merchant Shipping Act, 1894. Section 32 of this act 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.”²²

3.1.4 Vessel

Coastal and Inland Shipping Act, 2003, section 6 defines “Vessel” to include any description of vessel, boat, hovercraft, also to include air cushion vehicles and dynamically support craft, designed, used for capable of being solely or partly used for marine navigation and used for the carriage on,²³ through or under water of persons or property without regard to method or lack of propulsion.

3.1.5 Cargo

“Cargo” means goods carried in or on a vessel whether of commercial value and includes livestock.²⁴ International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 1924. Article 1 of this convention defines cargo as “goods, wares, merchandise, and articles of every kind whatsoever,” which are carried on board a ship.

3.1.6 Public Private Partnership

United Nations Commission on International Trade Law Model Legislative Provisions on Privately Financed Infrastructure Projects, 2000. Article 1 of this convention 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.”

¹⁸ A O Aluko, ‘Trading in Contradiction of the Nigerian Cabotage Act’ www.maritime-executive.com>accessed 10th November 2021.

¹⁹ R R Churchill and A V Lowe, *The Law of the Sea* (3rd edn Manchester University Press 1992); 61.

²⁰ *Nicaragua Case*, ICJ Rep. 14 at 111.

²¹ Merchant Shipping Act, 2007.

²² United Kingdom Merchant Shipping Act, 1894.

²³ Cabotage and Inland Shipping Act, 2003.

²⁴ Coastal and Inland Shipping (Cabotage) Act, 2003, Section 2.



3.1.7 Admiralty

International Convention for the Unification of Certain Rules relating to the Arrest of Sea-Going Ships of 1952. Article 1 of this convention defines admiralty as “the authority of the court, judge or magistrate to whom an application for the arrest of a ship has been made.”²⁵

4.0 Legal and Institutional Frameworks for Ports Development in Nigeria

4.1 National Legal Frameworks

4.1.1 Constitution of the Federal Republic of Nigeria, 1999 (as amended)²⁶

The 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 section 251 (1) (h) CFRN 1999.²⁷

Some of these criticisms include lack of clear and specific provisions on ports development includes the fact that the CFRN does not contain any specific provisions on ports development, which has led to a lack of clarity on the role of the federal government in this area, lack of powers for the National Assembly to legislate on seaports.

4.1.2 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 effect to the provisions of the United Nations Convention on the Law of the Sea (UNCLOS), which Nigeria ratified in 1999.²⁸

The Federal High Court, to the exclusion of all other courts, has jurisdiction to hear and determine any matter on ports in Nigeria.²⁹ Accordingly, section 251 (1) places admiralty jurisdiction on the Federal High Court.³⁰

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, does not provide for the registration of ships that are not registered in any other country, does not provide for the registration of ships that are not engaged in trade or commerce, does not provide for the registration of pleasure craft and also does not provide for the registration of ships that are not used for fishing.

4.1.3 Nigerian Maritime Administration and Safety Agency Act, 2007³¹

²⁵ International Convention for the Unification of Certain Rules relating to the Arrest of Sea-Going Ships, 1952

²⁶ CAP. C23 LFN, 2004.

²⁷ 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.

²⁸ Admiralty Jurisdiction Act, 1999.

²⁹ CFRN, 1999, s 251 (1) (a-m).

³⁰ Section 251 (1) (g) CFRN, 1999.

³¹ Cap. 224 LFN, 1990.



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.³²

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, does not provide for the regulation of port security, does not provide for the regulation of port information systems and does not provide for the regulation of the maritime workforce.

4.1.4 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 the domestic maritime trade.³³

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.

4.1.5 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.³⁴

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, provide for a clear and transparent process for monitoring and evaluating the performance of PPP projects and lastly fails to provide for a mechanism for providing incentives for PPP partners.

4.1.6 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

³² NIMASA, 2007, s. 20-29.

³³ Coastal and Inland Shipping (Cabotage) Act, 2003, s. 1.

³⁴ National Shipping Policy Act, 1987.



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.

4.2 Regional Legal Frameworks

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

4.3 Foreign Legal Frameworks

4.3.1 Maritime and Port Authority of Singapore Act, 1996

MPA Act was enacted in 1996 to replace the Port of Singapore Authority Act, which had been in force since 1964. The main reason for replacing the old Act was to create a separate authority to regulate the maritime sector in Singapore, while the Port of Singapore Authority focused on port management.³⁵ The MPA Act has since been amended multiple times to keep up with the developments in the maritime sector. Specifically, section 19 of the MPA Act provides for the establishment of private port companies and allows for the Singapore government to aid such companies. Also, section 21 of the Act allows for the Port of Singapore Authority to enter into agreements with private port companies to develop and operate port facilities. Section 26 of the Act provides for the protection of public interests and allows for the Minister for Transport to direct the MPA to do so.³⁶

4.3.2 Singapore Infrastructure Protection Act (IPA), 2005

The Act was enacted in 2005 to facilitate the development of PPP projects for critical infrastructure, including ports. The IPA provides for the establishment of a framework for the selection and approval of PPP projects, and for the protection of public interests in such projects.

The background to the use of PPPs for ports development under the MPA Act is that the Singapore government has been looking for ways to attract private sector investment in infrastructure development. This is because the government wants to ensure that Singapore's infrastructure is

³⁵ MPA Act, 1996, s 1-5.

³⁶ MPA Act, s 5-9.



developed and maintained in a sustainable manner, while also reducing the burden on the government's finances. The MPA Act provides for the formation of private port companies, and the provision of assistance to such companies. There are also provisions relating to the protection of public interests, such as ensuring that private port companies operate in a transparent and fair manner.³⁷

One of the key sections of the IPA that relates to port developments is section 4. This section provides for the protection of public interests and defines critical infrastructure as any infrastructure that is necessary for the welfare of Singapore. This includes port facilities, and the IPA provides for the MPA to regulate such facilities. Also, section 6 of the IPA provides for the Minister for Finance to approve projects that involve the use of PPPs. This ensures that the government has oversight over the use of PPPs, and that the projects are aligned with national objectives.³⁸

4.3.3 Maritime Traffic Safety Law of the People's Republic of China, 1984

This law was passed in 1984 and has since been amended multiple times. The Maritime Traffic Safety Law provides for the regulation of maritime activities, including the construction and operation of port facilities. It also sets out the responsibilities of various agencies involved in port management, such as the Maritime Safety Administration.³⁹

One of the key sections of the Maritime Traffic Safety Law that relates to port developments is article 18. This article provides for the establishment of port authorities, which are responsible for the management and control of port facilities. It also sets out the powers of the port authorities, such as the power to approve plans for port development, and the power to impose fines for violations of the law. Similarly, another important section is article 23, which provides for the protection of the environment in the construction and operation of ports. It requires port authorities to take measures to prevent and control pollution, and to promote the sustainable development of ports.⁴⁰

4.4 International Legal Frameworks

4.4.1 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 is in this case was by Guyana on November 16, 1993⁴¹.

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,

³⁷ Singapore Infrastructure Protection Act (IPA), 2005, 1-8.

³⁸ Singapore Infrastructure Protection Act (IPA), 2005, 1-8.

³⁹ Maritime Traffic Safety Law of the People's Republic of China, 1984.

⁴⁰ Maritime Traffic Safety Law of the People's Republic of China, 1984.

⁴¹ I A Ayuba and Others, *The Law of the Sea and the Nigerian Maritime Sector: Issues and Prospects for the Next Millennium* (Lagos: Nigerian Institute of Advanced Legal Studies 1998); 64.



lack of specific provisions for the sustainable management of ports and other installations, and lack of specific provisions for the provision of adequate infrastructure.

4.5 Institutional Frameworks

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

4.5.2 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. The NPA 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.⁴²

However, the NPA has faced several challenges in carrying out its mandate, including lack of funding, corruption, and inefficiency. The NPA has been criticized for its poor performance in several areas, including lack of efficiency and transparency. The NPA has been accused of being slow and inefficient in its operations⁴³.

4.5.3 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.⁴⁴

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

⁴² NIMASA Act, 2007.

⁴³ NIMASA Act, 2007.

⁴⁴ I A Ayuba and Others, *The Law of the Sea and the Nigerian Maritime Sector: Issues and Prospects for the Next Millennium* (Lagos: Nigerian Institute of Advanced Legal Studies 1998); 64.



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, lack of political will to support the NN's operations and lack of coordination between the NN and other agencies.⁴⁵

4.5.4 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 inward limits of the coastal waterways from the fairway buoy), ports and harbours.⁴⁶ The NPF has faced a few challenges, including corruption, lack of funding, and inadequate training.

4.5.5 Nigerian Shippers Council

The Council was established in 1977 under the Nigerian Shippers Council Act⁴⁷ 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, the NSC has limited resources and staff, which makes it difficult to effectively regulate the shipping industry, and poor infrastructure.

4.5.6 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, 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 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.

⁴⁵ I A Ayuba and Others, *The Law of the Sea and the Nigerian Maritime Sector: Issues and Prospects for the Next Millennium* (Lagos: Nigerian Institute of Advanced Legal Studies 1998); 64.

⁴⁶ Information obtained from the Nigerian Police Force Website, available at <http://www.npf.gov.ng/formations/Marine-police.php> accessed on July, 2021.

⁴⁷ CAP. 327 LFN, 1990.



4.5.7 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, including lack of enforcement, 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.

5.0 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 laws⁴⁸. Section 10 of the PPP Act sets out the objectives of the law, including promoting effective collaboration between the government and the private sector to accelerate infrastructure 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 projects⁴⁹.

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 arrangement⁵⁰. 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. Section 45 of the PPP Act sets out the criteria for monitoring and evaluating PPP projects.⁵¹

5.1 Benefits/ Impacts of Public Private Partnership on Nigeria's Economy

5.1.1 Attraction of Private Investment

Firstly, Public Private Partnership can attract private investment, which is important given the limited resources of the government. This is evident in the Lekki Deep Seaport Project and Ibom Deep Port Seaport Project in Akwa Ibom State. As stated, 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. The Lekki Deep Seaport project is being implemented

⁴⁸ 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.

⁴⁹ 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.

⁵⁰ PPP Act, 1975, 30-37.

⁵¹ PPP Act, 1975, 30-39.

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.⁵²

5.1.2 Efficiency and Effectiveness of Ports Operations

Second, PPPs can help improve the efficiency and effectiveness of port operations. The second advantage, improving efficiency, can be seen in several ways in the Lekki Deep Seaport 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 transportation⁵³.

5.1.3 Improving Service Quality and Customer Satisfaction

This is also evident in the Lekki Deep Seaport Project. The new port will have modern facilities, including a container yard with cranes, a control tower, and a fuel farm. These facilities will allow for faster and more efficient operations, leading to improved service for customers.⁵⁴

5.1.4 Creation of Jobs and Stimulation of Economic Activity

Creating jobs and stimulating economic activity, is also a key benefit of the Lekki Deep Seaport 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.

5.1.5 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, and the government will monitor 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.

5.2 The Challenges of Public Private Partnerships for Seaports Development in Nigeria

5.2.1 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.⁵⁵ Nigeria has a more complex and fragmented legal framework for public private partnership.

⁵² A Adesanya, *Public-Private Partnerships in Nigeria: Opportunities and Challenges* (African Development Bank 2014).

⁵³ Nigerian Ports Authority (NPA), 'Benefits of the PPP Model' accessed <http://nigerianports.org/p3-benefits.html> accessed October 23, 2022.

⁵⁴ A Adesanya, *Public-Private Partnerships in Nigeria: Opportunities and Challenges* (African Development Bank 2014).

⁵⁵ M Abimbola, 'Ports and Maritime Sector: The Nigerian Experience' [2012] *Journal of Globalization and Business in Africa*; 20-35.

There is no single law that governs all PPPs, and there are gaps and inconsistencies in the existing laws.⁵⁶

5.2.2 Lack of Transparency in the Bidding Process

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.⁵⁷

5.2.3 Lack of Capacity and Expertise

One of the biggest challenges facing Nigerian ports is the lack of expertise and capacity. This is particularly evident in the areas of port operations, customs, and security. For instance, 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 operations⁵⁸. This has led to a shortage of funds for port development and maintenance, further exacerbating the problem. \

5.2.4 Lack of Trust Between Public and Private Sectors in Nigeria

Finally, 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 Seaport 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 sub-standard 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.⁵⁹

5.2.4 The Risk of Cost Overruns

The first disadvantage is the risk of cost overruns. Since the 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 and the second disadvantage is the potential for environmental damage.⁶⁰

5.3 Highlighting the Lessons for Nigeria from other Jurisdictions

5.3.1 Application of Public Private Partnerships to Port Projects in Singapore

In Singapore, the government has been using Public-Private Partnerships (PPP) to develop ports since the 1990s. One illustration is the PSA Terminal 3, which was developed through a PPP between the Port of Singapore Authority (PSA) and a consortium of companies led by DP World. The PSA invested

⁵⁶ S Nwaru, 'Bidding for Public Sector Infrastructural Projects in Nigeria: Transparency and Accountability' [2016] 5(3) *Journal of Science and Research*; 301-330.

⁵⁷ S Nwaru, 'Bidding for Public Sector Infrastructural Projects in Nigeria: Transparency and Accountability' [2016] 5(3) *Journal of Science and Research*; 301-330.

⁵⁸ V 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

⁵⁹ J Farrington and J McArthur, *Public-Private Partnerships: Principles of Policy and Finance* (World Bank 2000).

⁶⁰ O Ogunleye, 'Public Private Partnership in Nigerian Ports: Perspectives, Challenges and Prospects' [2018] 1 (2) *African Journal of Governance and Development*; 58-72.

S\$2.3 billion in the project while DP World and its partners contributed S\$800 million. The project involved the construction of a new container terminal, which has helped to increase Singapore's capacity to handle growing volumes of trade and cargo.⁶¹

Another illustration is the Pasir Panjang Terminal, which was developed through a PPP between the PSA and a consortium led by ST Engineering. The PSA contributed S\$3.5 billion to the project, while ST Engineering and its partners invested S\$500 million. The terminal, which was completed in 2009, has helped to boost Singapore's status as a key maritime hub in the region. It is one of the most technologically advanced and efficient terminals in the world, and it can handle the largest container ships in operation today.⁶²

In addition to the PSA Terminal 3 and Pasir Panjang Terminal, there are several other illustrations of PPPs in Singapore's port sector. The Tuas Terminal, which is currently under construction, is being developed through a PPP between the PSA and a consortium led by China Harbour Engineering Company. The PSA is also working with a consortium led by Bouygues Travaux Publics to develop a new terminal at the port of Tanjung Pelepas in Malaysia.⁶³

5.3.2 Lessons from Singapore

There are several key lessons that Nigeria can learn from Singapore's experience in using PPPs to develop its port sector.

- a. **Clear and Transparent Process for Awarding PPP Contracts:** The first is the importance of having a clear and transparent process for awarding PPP contracts. In Singapore, the government has a well-established process for evaluating and selecting PPP proposals, which is based on clear criteria and is open to public scrutiny. This helps to ensure that the best possible proposals are selected, and that there is no corruption or favouritism in the selection process.⁶⁴
- b. **Strong Legal and Regulatory Framework to Support PPPs:** In Singapore, the government has established a comprehensive legal framework that sets out the rights and responsibilities of all parties involved in a PPP and provides a clear process for resolving disputes. This framework has helped to build trust and confidence among investors and has been instrumental in attracting investment in the country's port sector.⁶⁵
- c. **Well-defined and Balanced Risk Allocation Between the Government and the Private Sector:** In Singapore, the government and private sector have worked together to develop a risk allocation model that is fair and balanced. This has helped to ensure that PPP projects are viable and can be delivered on time and on budget. Finally, Singapore has demonstrated the

⁶¹ Y M Chee and H A Chye, 'Public Private Partnerships Infrastructure Development: The Singapore Experience' [2008] (3) (4) *Asian Journal of Public Administration*, 437-465.

⁶² Y M Chee and H A Chye, 'Public Private Partnerships Infrastructure Development: The Singapore Experience' [2008] (3) (4) *Asian Journal of Public Administration*, 437-465.

⁶³ C Lockwood and R O'keefe, 'Public Private Partnerships: Singapore Case Studies' [2005] (25) (1) *International Review of Law and Economics*; 93-107.

⁶⁴ Y M Chee and H A Chye, 'Public Private Partnerships Infrastructure Development: The Singapore Experience' [2008] (3) (4) *Asian Journal of Public Administration*, 437-465.

⁶⁵ Y M Chee and H A Chye, 'Public Private Partnerships Infrastructure Development: The Singapore Experience' [2008] (3) (4) *Asian Journal of Public Administration*, 437-465.



importance of strong and effective project management and oversight. The government has established a dedicated agency, the Infrastructure Development Authority of Singapore (IDA), to manage and monitor PPP projects. The IDA works closely with the private sector to ensure that projects are delivered on time and to the required standards.⁶⁶

5.3.3 Application of Public Private Partnerships to Port Projects in China

In China, PPPs have been used extensively to develop and upgrade the country's port infrastructure. One example is the Hong Kong-Zhuhai-Macau Bridge, which is being built through a PPP between the Chinese government and a consortium of companies. The project is a mega-bridge that will connect the cities of Hong Kong, Zhuhai, and Macau, and will include a bridge, tunnels, and an artificial island. The PPP model has allowed the Chinese government to leverage private sector expertise and financing to build a world-class infrastructure project.⁶⁷

Also, another typical application of PPP is the Qingdao Port expansion project, which is being developed through a PPP between the Chinese government and a consortium of international and domestic companies. The project will expand the capacity of the port by building new terminals and dredging the harbour. The PPP has allowed the government to attract significant investment from the private sector and has also helped to promote the development of Qingdao as a major shipping hub. These projects have helped to improve the efficiency and competitiveness of the Chinese port sector and have also created thousands of jobs.⁶⁸

In addition to the Hong Kong-Zhuhai-Macau Bridge and the Qingdao Port expansion, other examples of PPPs in the Chinese port sector include the Dalian Port expansion, the Shenzhen Port Group expansion, and the Guangzhou Port Authority expansion. These projects have all been successful in attracting private sector investment and improving the capacity and efficiency of China's ports. Overall, China's experience with PPPs in the port sector has been positive, and the government has been working to promote the use of PPPs in other infrastructure projects in the country.⁶⁹

5.3.4 Lessons from China

There are several key lessons that Nigeria can learn from Singapore's experience in using PPPs to develop its port sector.

The experience of China's port sector offers several lessons for Nigeria. First, PPPs can be an effective way to finance and build large-scale infrastructure projects. By leveraging private sector investment and expertise, governments can develop world-class infrastructure that would otherwise be difficult to finance through traditional government channels. Second, PPPs can be an effective tool for promoting economic development and job creation. By upgrading port infrastructure, countries can attract more

⁶⁶ Y M Chee and H A Chye, 'Public Private Partnerships Infrastructure Development: The Singapore Experience' [2008] (3) (4) *Asian Journal of Public Administration*, 437-465.

⁶⁷ X Y S Jin and J Ma, 'Public Private Partnership for Ports' Development in China' [2012] (30) (4) *Journal of Project Management*; 468-480.

⁶⁸ J P Lu, 'Public Private Partnership for Port Infrastructure: The Case of the Dalian Container Port' [2013] (4) (2) *Journal of Port Management*; 47-61.

⁶⁹ J P Lu, 'Public Private Partnership for Port Infrastructure: The Case of the Dalian Container Port' [2013] (4) (2) *Journal of Port Management*; 47-61.



trade and investment, which can in turn lead to more economic activity and jobs. Third, PPPs can help to improve the efficiency and competitiveness of the ports sector.⁷⁰

The legal frameworks for supporting PPPs in both Singapore and China are generally considered to be strong and well-developed. In Singapore, the PPP Act provides a legal basis for entering PPP contracts, and the government has also developed standard templates and guidelines for PPP projects. China has also developed a comprehensive legal framework for PPPs, including a series of laws and regulations that govern the use of PPPs for infrastructure projects. Both countries also have strong legal institutions and experienced lawyers who are familiar with the use of PPPs for port development.⁷¹

6.0 Conclusion

In conclusion, after a careful appraisal of the legal frameworks and their potential to assess the performance of Nigerian ports, this paper found that there are several limitations to the current frameworks. The focus on the laws and regulations relating to the ports, rather than the practical implementation of these laws, is one limitation.

Despite these limitations, the legal frameworks for assessing the performance of Nigerian ports can be strengthened. One way to strengthen the legal frameworks is to improve the collection and analysis of data on the performance of the ports. 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.

7.0 Recommendations

The paper made the following recommendations:

- i. Reform and harmonize the existing legal frameworks governing port operations in Nigeria.
- ii. Establish a central regulatory authority for all ports in Nigeria.
- iii. Strengthen the enforcement of laws and regulations governing port operations.
- iv. Build the capacity of port authorities and stakeholders in Nigeria to effectively manage and operate ports.
- v. Adopt international best practices in the areas of safety, security, and promote the use of new technologies in port operations.

⁷⁰ X Y S Jin and J Ma, 'Public Private Partnership for Ports' Development in China' [2012] (30) (4) *Journal of Project Management*; 468-480.

⁷¹ X Y S Jin and J Ma, 'Public Private Partnership for Ports' Development in China' [2012] (30) (4) *Journal of Project Management*; 468-480.