

# **THE CORONA VIRUS (COVID -19) PANDEMIC AND THE CHALLENGE OF HEALTHCARE INFRASTRUCTURE IN NIGERIA: WHAT ROLE FOR PUBLIC-PRIVATE PARTNERSHIPS?**

**Augustine Edozor Arimoro, PhD**

## **Abstract:**

*While it is not new that Nigeria is challenged by a huge infrastructure deficit, the COVID-19 pandemic has exposed the country's comatose healthcare system. Given the country's dwindling revenue, massive debt profile and the inability of the public-sector to efficiently manage public facilities in the country, this paper examines how the public-private partnership model of infrastructure procurement can be deployed as a solution for Nigeria's healthcare crisis. In addition to the above, this paper takes a look at how a partnership with the private sector can aid Nigeria's quest towards achieving healthcare-related Sustainable Development Goals. The paper also considers two healthcare-based projects as case studies to serve as lessons for future projects in the country. Among others, the paper recommends a holistic long-term solution for the country's healthcare needs.*

**Keywords: COVID-19, public-private partnership, healthcare, Nigeria**

## **Introduction**

Since the outbreak of the Corona Virus (COVID-19) pandemic and the record of the index case in Nigeria, the ugly shape of the healthcare sector in the country has raised a cause for concern.<sup>1</sup> Interestingly, Nigeria's Secretary to Government of the Federation (SGF), Mr Boss Mustapha, who is also the chair of the country's Presidential Task Force on COVID-19, was quoted by the media to have said that he never knew that the "entire healthcare infrastructure was in the state at which it is until I was appointed to do this work."<sup>2</sup> The healthcare system in Nigeria is

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<sup>1</sup> Paul Adepoju, 'Nigeria Responds to COVID-19; First Case Detected in Sub-Saharan Africa' (2020) 26 *Nature Medicine* 444-448

<sup>2</sup> Nike Adebowale, 'My Statement on Nigeria's Poor Health Infrastructure Misinterpreted – SGF' *Premium Times* 10 April 2020 available at < <https://www.premiumtimesng.com/news/top-news/387249-my-statement-on-nigerias-poor-health-infrastructure-misinterpreted-sgf-mustapha.html> > accessed 26 June 2020.

poorly developed<sup>3</sup> due to several years of wanton neglect by the political class. Again, even where budgetary allocations are made for the healthcare sector, the reality on ground does not show that the funds have been appropriated for the purpose. For example, Nigeria's First Lady, Mrs Aisha Buhari was quoted in the media to have said that the Aso Rock Clinic could not treat her for a minor illness as there were no working X-Ray machines or even syringes at the clinic despite the annual budgetary allocations made for the clinic.<sup>4</sup> Sadly, the death of the former Chief of Staff to the President, Mallam Abba Kyari, who was a high profile casualty of the COVID-19 pandemic, re-echoed the need for Nigeria to pay attention to the country's healthcare infrastructure.<sup>5</sup> Regrettably Nigeria's healthcare system is reported to rank only better than those of the Democratic Republic of Congo, Central African Republic and Myanmar.<sup>6</sup>

It is certain that upgrading the healthcare sector in Nigeria requires a huge capital outlay given the current state of healthcare infrastructure in the country. Furthermore, given dwindling foreign revenues, competing demands for lean resources and a high debt profile, it is almost an impossibility for the government alone to revamp the state of healthcare in Nigeria. Another challenge with government entirely funding the sector is the problem of massive corruption in that sector. How else can one explain that despite the allocations to a clinic meant to serve the President and Commander-in-Chief, the clinic is a mere consultation facility without the needed equipment budgeted and paid for? The need therefore, to have government partner with the private sector to fund, design, build/rehabilitate, manage and operate healthcare facilities cannot be overemphasised. As a result of the COVID-19 pandemic,<sup>7</sup> it is now clear to the political class and the citizens that a policy re-direction towards improving the healthcare sector in Nigeria is long overdue.

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<sup>3</sup> Menzibeya Osain Welcome, 'The Nigerian Healthcare System: Need for Integrating Adequate Medical Intelligence and Surveillance Systems' (2011) 3(4) *Journal of Pharmacy and BioAllied Sciences* 470-480.

<sup>4</sup> Samson Toromade, 'No 'Single Syringe' in Aso Clinic, Says First Lady' *Pulse* 10 September 2017 available at <<https://www.pulse.ng/news/local/aisha-buhari-no-single-syringe-in-aso-rock-clinic-says-first-lady/p4lr417>> accessed 26 June 2020.

<sup>5</sup> Olu Fasan, 'Abba Kyari: The High-Profile Casualty of Nigeria's Theatre of Misrule' *Business Day* 27 April 2020 available at <<https://businessday.ng/columnist/article/abba-kyari-the-high-profile-casualty-of-nigerias-theatre-of-misrule/>> accessed 26 June 2020.

<sup>6</sup> Anthonia Obokoh, 'How PPP Works and Why it Matters in Nigeria's Health Sector' *Business Day* 11 October 2019 available at <<https://businessday.ng/health/article/how-ppp-works-and-why-it-matters-in-nigerias-health-sector/>> accessed 10 August 2020.

<sup>7</sup> David Baxter and Carter B Casady, 'Proactive Strategic Healthcare Public-Private Partnerships (PPPs) in the Coronavirus (Covid-19) Epoch' (2020) 12 *Sustainability* 5097 DOI: 10.339Q/su12125097.

The aim of this paper is to highlight how the government in Nigeria can revive the healthcare sector through partnership with the private sector. The advantages of doing so include the fact that the government can leverage on private finance and expertise. Again, the government can concentrate on policymaking and allow private entities to run the healthcare sector efficiently and at the same time deal with the corruption bedeviling the sector. In this regard, the words of Laurence Carter, a former director of PPP Transaction Advisory at the International Finance Corporation (IFC) remains apt:

It is impossible to overstate the importance of healthcare – after all, worldwide economic growth and development depend on it – but governments’ ability to provide affordable, quality healthcare dwindles every year. The challenge is now to engage private partners to deliver public benefits. Innovative, forward-looking public-private partnerships in healthcare do this, giving businesses an unparalleled opportunity to do well while doing good.<sup>8</sup>

### **What Are Public-Private Partnerships?**

The huge costs associated with infrastructure funding, budget deficits, competing demands for state resources and the need for efficient management of public facilities mean that the public authority alone cannot cope with modern-day challenges.<sup>9</sup> Whilst there is no universal definition for the term ‘public-private partnership (PPP),’ writers on the subject agree that it is a collaboration between the public-sector and the private-sector for the provision of infrastructure facilities.<sup>10</sup> It is worthy of note also that authors and institutions often define PPP from their various viewpoints.<sup>11</sup> Following from the above, it is pertinent to differentiate between a PPP and other forms of procurement which sometimes appears blurred in many definitions. In the context of the discussion in this paper, a PPP may be defined as ‘any contractual or legal relationship between public and private entities aimed at improving and/or expanding infrastructure services, but excluding public works contracts.’<sup>12</sup> For the sake of clarity, all PPP transactions, in the sense that it is used in this paper, must show at least four

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<sup>8</sup> International Finance Corporation (IFC), ‘Health PPPs’ (2011) *Handshake IFC’s Q.J. Public-Private Partnership* at 3.

<sup>9</sup> Augustine Arimoro, ‘Public Private Partnership and the Right to Property in Nigeria’ (2019) 19(2) *African Human Rights Law Journal* 763-778.

<sup>10</sup> *Ibid.*

<sup>11</sup> George Nwangwu, *Public-Private Partnerships in Nigeria* (Springer nature 2016) 3.

<sup>12</sup> Jeffrey Delmon, *Public-Private Partnership Projects in Infrastructure: An Essential Guide for Policy Makers* (Cambridge University Press 2011) at 3.

important characteristics in order to be so recognised. These elements include – that it is a long-term contract, the existence of a project company responsible for the design of the facility, the private sector financial investment is repaid from revenues generated from the asset and a transfer of the facility back to the government at the end of the PPP contract.<sup>13</sup>

### ***Can PPPs Solve Nigeria's Healthcare Infrastructure Problem?***

The first available option for the public-sector to partner with the private-sector in revamping the healthcare stock in Nigeria is via privatisation, i.e. the transfer of ownership rights in a state-owned enterprise to the private sector.<sup>14</sup> Unfortunately for Nigeria, privatisation has not provided the needed solution to the country's infrastructure problem. For example, the privatisation of the former Nigeria Telecommunications (NITEL) and what has happened to the power sector in Nigeria are clear cases of the country's misadventure with the privatisation option.<sup>15</sup>

In the modern era across the globe, PPPs are now widely deployed to deliver infrastructure projects.<sup>16</sup> There is no doubt that Nigeria is going through a serious challenge in terms of dwindling financial revenues and a massive debt burden. As of March 2020, the Senate put Nigeria's total debt profile at N33 trillion after its approval of \$22.7 billion foreign load for the federal government.<sup>17</sup> With this growing debt profile and the burden of servicing the loans, there is not enough for the federal Government of Nigeria to positively change the fortunes of the country's dilapidated healthcare sector. In addition, Nigeria's growing population<sup>18</sup> which is estimated to grow potentially by 80 million by the year 2050 requires immediate action by the country's policymakers.<sup>19</sup> It is important to begin planning for the long-term. As it is, the available healthcare facilities in the country, even though moribund, are also overstretched.

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<sup>13</sup> ER Yescombe, *Public-Private Partnerships in Sub-Saharan Africa* (UONGOZI Institute 2017) 7.

<sup>14</sup> Augustine Arimoro, 'An Appraisal of the Framework for Public Private Partnership in South Africa' (2018) 13(3) *European Procurement and Public Private Partnership Law Review* 214.

<sup>15</sup> Alimi M Abiola and RO Abiola, 'Impact of Privatisation on the Growth of Nigerian Public Enterprises: A Case Study of Selected Enterprises in Nigeria' (2015) available at <dspace.futa.edu.ng/jspul/handle> accessed 10 April 2015.

<sup>16</sup> Caiyun Cui, Yong Liu, Alex Hope and Jianping Wang, 'Review of Studies on the Public-Private Partnerships for Infrastructure Projects' (2018) 36 *International Journal of Project Management* 773.

<sup>17</sup> Deji Elumoye, 'Nigeria's Debt Profile Now N33tn- Senate' *This Day* 17 March 2020 available at <<https://allafrica.com/stories/202003170021.html>> accessed 26 June 2020.

<sup>18</sup> Currently estimated to be about 200 million people.

<sup>19</sup> IARAN, 'Nigeria: Now and in 2030' (2016) available at <<https://www.accioncontraelhambre.org/en/nigeria-now-and-2030>> accessed 24 June 2020.

PPPs can provide succour to the public authority in Nigeria providing the much-needed funds, expertise and efficient management of the hospitals/health facilities in the country.<sup>20</sup> A holistic PPP strategy for the country, can attract foreign and domestic funding for Nigeria's long-term goals as far as the healthcare sector is concerned. Through the PPP model, the Nigerian government can achieve the following:<sup>21</sup>

- Financing of projects for healthcare facilities;
- The designing of modern healthcare facilities and care delivery models;
- Building of greenfield<sup>22</sup> facilities or the rehabilitation of brownfield<sup>23</sup> facilities;
- Maintenance of the facilities and equipment. This is one area where the public-sector has failed in Nigeria;
- The operation, supply of applicable equipment, information technology, management/delivery of nonclinical services.

### **How Do PPPs Work?**

The public authority (acting via a ministry, department or agency (MDA)) identifies the need for a project and then advertises that need to the public. A competitive process will then follow under which private-sector entities will bid to win the right to deliver the project. The winning private-sector bidder is then awarded the concession to implement the solution.<sup>24</sup> The private-sector party will then contract with the public entity and raise funds from willing investors and lenders to deliver the project. In practice, a special purpose vehicle (SPV) will be set up by the project company to shield the private sector sponsors of the project from the risk of insolvency peradventure the project fails.

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<sup>20</sup> Robert Osei-Kyei and Albert PC Chan, 'Comparative Study of Government's Reasons/Motivations for Adopting Public-Private Partnership Policy in Developing and Developed Economies/Countries' (2018) 22(5) *International Journal of Strategic Property Management* 403-414.

<sup>21</sup> PWC, 'PPPs in Healthcare: Models, Lessons and Trends for the Future' (2017) available at <<https://www.pwc.com/gx/en/industries/healthcare/publications/trends-for-the-future.html>> accessed 26 June 2020.

<sup>22</sup> Greenfield projects refer to new projects that were never in existence before the PPP arrangement.

<sup>23</sup> Brownfield refer to the rehabilitation of existing projects via the PPP arrangement.

<sup>24</sup> Allen Overy and Virginia Tan, 'Public-Private Partnership' (2015) available at <[w.a4id.org/sites/default/files/files/\[A4ID\] Public-Private Partnership.pdf](http://w.a4id.org/sites/default/files/files/[A4ID] Public-Private Partnership.pdf)> accessed

The sponsor will manage the activities of the SPV. Typically, the SPV is set up as a subsidiary of the sponsor. The sponsors in practice are the equity investment arms of large construction firms or asset management companies. The agreement is usually documented in the shareholders' agreement. Thus, the project company enters a contract with the public-sector detailing the terms and conditions of the project. This document is referred to as the concession agreement. The SPV will obtain private funding from lenders and this is done via financing agreement. There will also be direct agreements. Lenders may include commercial banks, export credit agencies (ECAs), multi-lateral agencies (MLAs) and development financial institutions (DFIs). ECAs are government or quasi-government institutions. They provide finance to promote national exports. An ECA can act as a guarantor, an insurer or a lender.<sup>25</sup> MLAs are government institutions owned by several governments. Whereas an ECA's chief aim is to support national economic interests, an MLA's mandate is to further economic development in developing countries. Major MLAs include the Asian Development Bank (ADB) and the African Development Bank (AfDB).<sup>26</sup> DFIs provide long-term development finance for private-sector concerns in developing countries for example, USAid.

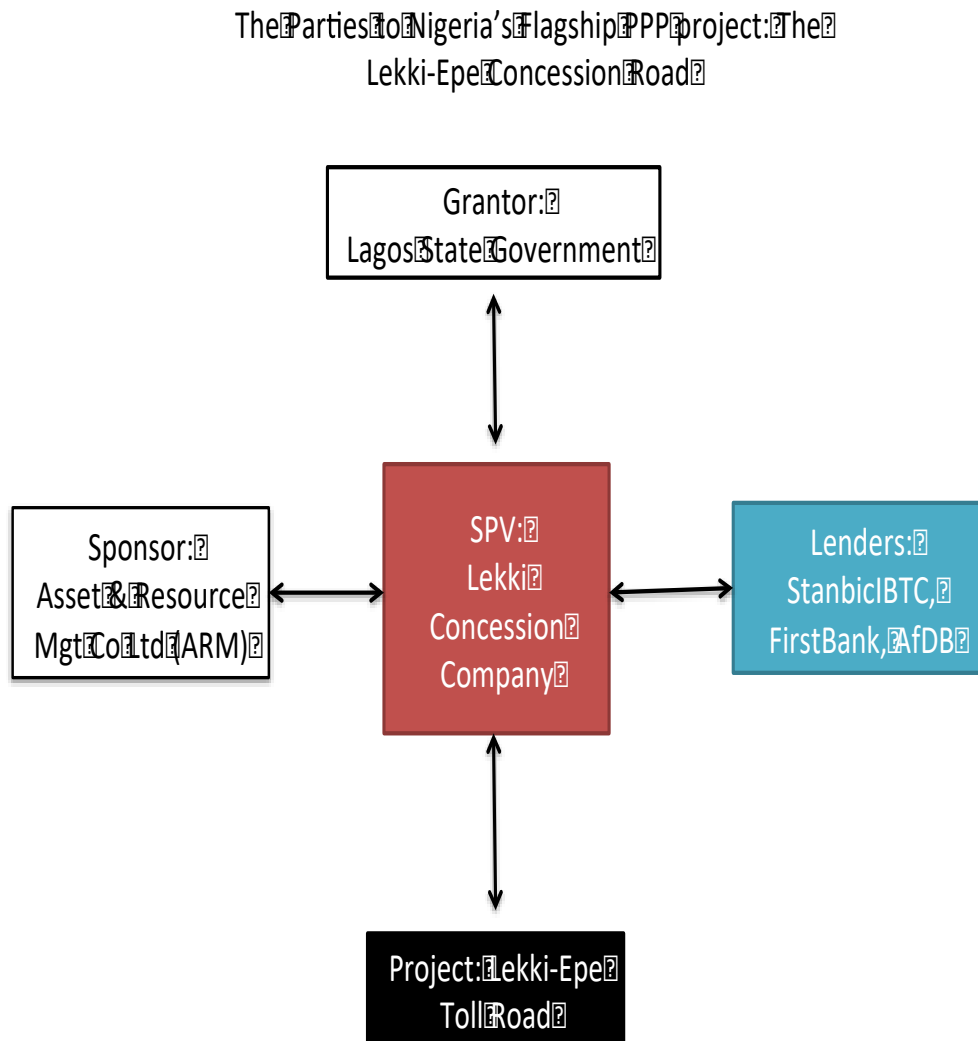
In a PPP, the public authority wins as it performs its role of providing infrastructure through private partners. On its part, the private-sector partner wins as, PPPs provide an opportunity for investors/promoters to get returns on investment (RoI). The general public also benefits as they get to use improved and modern facilities which are usually managed and maintained by experts. When the facility gets ready for use, depending on the type of PPP genre adopted, the government pays the operator for the use of the facility by members of the public or the members of the public pay tolls or charges to the operator for the use of the facility. In the former case, the PPP is regarded as a private finance initiative (PFI), while in the latter case the PPP is known as a concession. It is worthy of note that the Nigeria's main PPP law i.e. the Infrastructure Concession and Regulatory Commission (Establishment Etc) Act 2005 makes provision for concession styled PPPs. However, the wordings of the Rivers State PPP law for example, suggests that the Rivers State Government can arrange PFI-styled PPP projects.

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<sup>25</sup> *ibid.*

<sup>26</sup> *ibid.*

Figure 1: The Lekki-Epe Toll Road Concession Project: Source - Author



### Nigeria's Adoption for the PPP Model of Infrastructure Procurement

The growth of any economy will be truncated without the availability of adequate public infrastructure and services. PPPs offer a good opportunity for the governments around the world to embark on other core social and economic programmes while relying on a structured partnership with the private sector to provide for the infrastructure needs of the populace. With regards to emerging economies, the impact and potential of PPPs in their development cannot be over stressed. For example, the resulting effect of the global financial crisis between 2007

and 2010 was a shortfall of capital inflows into emerging economies.<sup>27</sup> Notwithstanding the global recovery experienced in the last few years before the current global COVID-19 pandemic, the cost of foreign loans and the effect of the loans on the economy make PPP a better option.

To reduce Nigeria's infrastructure deficit, the PDP-led administration of President Olusegun Obasanjo<sup>28</sup> had attempted oil for infrastructure swap deals with Asian Oil Companies. That oil for infrastructure swap deal turned out to be a total failure as was revealed by an audit carried out when the late Alhaji Musa Yar'Adua, also of the PDP, served as president and commander-in-chief of the armed forces of the federal republic of Nigeria.<sup>29</sup>

It is noteworthy that a high incidence of cases of corruption within the public sector in the country made the choice of PPPs an inevitable one. Before Nigeria embarked on a Privatisation and Commercialisation regime during the PDP led-administration of President Olusegun Obasanjo, nearly all the public utility companies were operating at a loss even though taxpayers paid for the use of such facilities. Bad management and outright thievery continued to drain the Nigerian economy and thereby causing monumental losses to the country. For example, the inherent corrupt practices of public sector officials negatively affected the fortunes of the National Electric Power Authority (NEPA),<sup>30</sup> the Nigerian Telecommunications (NITEL)<sup>31</sup> and many other public-sector corporations causing a situation of chaos and despair<sup>32</sup>. There is no doubt that when it comes to management of business concerns, especially in the developing world, the private sector is better placed to succeed. The private sector among other qualities, can offer better management of resources, ensure productivity as well as put a check to the loopholes that encourage corrupt practices on the part of public servants.

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<sup>27</sup> Tony Dolphin and Laura Chappell 'The Effect of the Global Financial Crisis on Emerging and Developing Economies' (2010) *Report of the Institute for Public Policy and Research* at 8.

<sup>28</sup> Mr Olusegun Obasanjo was Nigeria's civilian president between May 29, 1999 and May 29, 2007

<sup>29</sup> Copyright Oxford Analytics Ltd, 'Nigeria: PPPs May Drive Infrastructure Rehabilitation' (2010) *Oxford Analytics Daily Brief Service* at 18.

<sup>30</sup> NEPA used to be the Nigeria's sole power generating and distribution corporation. It was renamed Power Holding Corporation of Nigeria (PHCN) before it was unbundled to give rise to an era of multiple power generating and distribution companies with private sector participation.

<sup>31</sup> NITEL used to be Nigeria's sole telecomm firm with a monopoly on fixed telecom services.

<sup>32</sup> Asaju Kayode, Sunday O Adagba and Felix Anyio, 'Corruption and Service Delivery: The Case of Nigerian Public Service' (2013) 1(1) *Wudpecker Journal of Public Administration* at 3.



Utilities under the management of the public sector in Nigeria have failed over the years and have been a subject of research.<sup>33</sup> The provision of uninterrupted supply of power, efficient telephony services, portable water supply and good quality water, air, rail as well as road transport services have been elusive in the Nigerian economy despite the country's oil wealth.<sup>34</sup> The obvious reason is that the public-sector in Nigeria is ineffectual in the management of resources on the one hand as well as being corrupt on the other hand.<sup>35</sup>

A study of 179 Nigerian manufacturing companies revealed that 92 per cent of the firms surveyed owned power generating plants.<sup>36</sup> This is the same with many small businesses and private homes in the country. Poor management on the part of successive administrators of the country's former sole power company was the chief reason for the several years of decay in the sector. The pitiable state of power supply in the country has been a major source of worry to successive administrations. To provide a solution to the country's constant power outage troubles, the FGN unbundled the Power Holding Company of Nigeria (PHCN) and eventually sold what was left as power generating companies (GENCOs) and power distributing companies (DISCOs) to investors.

In the face of unstable oil prices<sup>37</sup> and resultant shortfall in revenue, it is not realistic to expect the federal government of Nigeria or government at any tier in the country to entirely meet up with the traditional obligation of providing for the infrastructure needs of the country (or states) as other demanding obligations such as providing social services and the payment of salaries and allowances are also challenges that government must cope with.

## **Sustainable Development Goals and Healthcare**

The implementation as well as the achievement of the 2030 Agenda for Sustainable Development and Sustainable Development Goals (SDGs) presents a significant challenge to

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<sup>33</sup> Ademola Ariyo and Afeikhen Jerome, 'Utility Privatisation and the Poor: Nigeria in Focus' (2004) *Global Issue Papers* No.12. at 15

<sup>34</sup> *ibid.*

<sup>35</sup> *ibid.*

<sup>36</sup> *ibid.*

<sup>37</sup> Crude oil is the mainstay of the Nigerian economy. It is estimated to account for over 75 percent of revenue accruing to the country. See Gbadebo O Odularu 'Crude Oil and the Nigerian Economic Performance' *Oil and Gas Business* (2008) available at <[http://www.ogbus.ru/eng/authors/odularo/odularo\\_1.pdf](http://www.ogbus.ru/eng/authors/odularo/odularo_1.pdf)> accessed 23 November 2015

the government.<sup>38</sup> The SDGs are a blueprint to achieve a better future for all. They were designed to address the global challenges mankind faces including poverty, inequality, climate change, environmental degradation, peace and justice.<sup>39</sup> The 17 goals are all related and it is important ensure their achievement by the year 20130.<sup>40</sup> The goals include:

- Goal 1: No poverty;
- Goal 2: Zero hunger;
- Goal 3: Good health and wellbeing;
- Goal 4: Quality education;
- Goal 5: Gender equality;
- Goal 6: Clean water and sanitation;
- Goal 7: Affordable and clean energy;
- Goal 8; Decent work and economic growth;
- Goal 9: Industry, innovation and infrastructure;
- Goal 10: Reduced inequalities;
- Goal 11: Sustainable cities and communities;
- Goal 12: Responsible consumption and production;
- Goal 13: Climate action;
- Goal 14: Life below water;
- Goal 15: Life on land;
- Goal 16: Peace, justice and strong institutions; and
- Goal 17: Partnerships.

This paper addresses Goals 3 and 9 with particular emphasis on the healthcare sector. The SDGs are targets set out by member states of the United Nations to be achieved by the year 2030 in order to ensure sustainable development. There is therefore need for the government of Nigeria to pursue a strategy to use PPP to drive development in the healthcare delivery system in the country and to ensure the realisation of the SDGs.

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<sup>38</sup> Krishnan Sharma, 'Public-Private Partnerships and the 2030 Agenda for Sustainable Development' (2016) available at < <https://blogs.worldbank.org/ppps/public-private-partnerships-and-2030-agenda-sustainable-development>> accessed 25 June 2020.

<sup>39</sup> United Nations, 'About the Sustainable Development Goals' (2020) available at < <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>> accessed 25 June 2020.

<sup>40</sup> Ibid.

## **Important Points to Note for Healthcare-based PPPs**

There are several fundamentals that need to be put in place in order to structure efficient health sector-based PPPs. These fundamentals or drivers are referred to also as critical success factors (CSFs) by PPP experts. These fundamentals include the need to ensure a healthy investment environment for PPPs, the provision of a favourable legal framework, transparency and anti-corruption, ensuring that projects provide the right value for money. According to Babatunde *et al* the CSFs for successful PPP projects are a competitive procurement process, a thorough and realistic assessment of the cost and benefits, a favourable framework, an appropriate risk allocation and risk sharing, government involvement by providing a guarantee, political support, stable macroeconomic policy and the availability of financial market.<sup>41</sup>

### ***Need for a Healthy Investment Environment***

In so far as a healthy investment climate is delivered and the proper practice is put in place to ease doing business in any given economy, investments in infrastructure can become an alternative asset class for private investors provided an acceptable risk/return profile is offered.<sup>42</sup> It is essential that there is political will on the part of the public authority to pursue PPP and the legal and regulatory regime must be appropriate to ensure PPP success. The three elements mentioned above are vital and the lack of any of them will certainly discourage potential investors.

### ***A Favourable Framework for PPPs***

There must be an enabling structure in place prior to initiating PPPs in the first instance. An enabling framework must include a legal framework. There must be legislation or a body of legislation that backs PPP. It has been noted that certain other legislation must be amended and repealed to make PPPs practicable. It may even require constitutional amendments in some cases. For example, in Nigeria, there are some items in the Exclusive Legislative List in the Second Schedule to the 1999 Constitution of the Federal Republic of Nigeria (as amended),

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<sup>41</sup> *ibid* 223.

<sup>42</sup> OECD, *Private Financing and Government Support to Promote Long-Term Investments in Infrastructure* (OECD 2014) 5.

that fall within the purview of the federal government and no matter how needful a project is, a state government may not initiate a PPP project as touching any of the items on that list.

In a similar vein, there must be a regulatory framework to monitor PPP projects. For example, the Infrastructure Concession Regulatory Commission (Establishment Etc) Act 2005 (ICRCA 2005), apart from serving as the primary law for PPP projects involving the federal government of Nigeria and any of its MDAs, also established a regulatory commission to superintend over PPP projects as well as take into its custody all signed PPP agreements. Following from the above, it is fundamental that the framework must be clear and devoid of ambiguities. It is essential for the success of PPPs that the parties i.e. the public-sector and the private party understand what their role is and what part the other party should play.

### ***Transparency and Anti-corruption***

One of the challenges of development in emerging economies is the vexed issue of corruption. It is fundamental that if government must adopt PPP that the transactions must be free of corrupt practices. Good governance advocates transparency, equal treatment and open competition. The lack of these is a source of worry to potential investors whether foreign or local. It is not in doubt, that corruption increases the cost of doing business as well as poor output. To curb corrupt practices in PPP procurement, Delmon recommends the following:

- The use of financial and fiduciary management, ring fencing revenue and subsidy flows from government, to demonstrate project viability and attract investment;<sup>43</sup>
- Improved access to information about the project and the procurement process – for example, through a dedicated project website with all the relevant information for contract bidding and award. This will attract bidders and improve competition;<sup>44</sup> and
- The project procurement must be seen to be transparent and competitive.<sup>45</sup>

It is imperative therefore that for PPPs to succeed in emerging economies, the government must commit to the fight against corruption. In this regard, the efforts by the Nigerian government to fight corruption is well noted especially with the passing into law of the Corrupt Practices

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<sup>43</sup> Jeffrey Delmon, op cit (note 12) 16.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

and Other Related Offences Act No. 6 of 2003 to underscore this commitment. Specifically, the Act in Section 14 provides as follows:

Any person who –

- (a) ask for, receive or obtains property or benefits of any kind for himself or any other person; or agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person, on account of -
  - (i) anything already done or omitted to be done, or any favour or disfavour already shown to any person by a public officer in the discharge of his official duties or in relation to any matter connected with the functions, affairs or business of a government department, public body or other organisation or institution in which the public officer is serving as such or
  - (ii) anything to be afterwards done or omitted, or any favour or disfavour to be afterwards shown to any person, by a public officer in the discharge of his official duties or in relation to any such matter as aforesaid,

is guilty of an offence of official corruption and on conviction be liable to imprisonment for seven (7) years.

### ***Value for Money***

Value for Money (VfM) is a very important concept in PPPs. It is about maximising the impact of each naira spent to improve the lives of the ordinary citizen. The achievement of VfM outcome in the use of public funds is considered vital in the procurement and delivery of each public investment project. VfM is a consideration for the sponsoring agency throughout the process of procurement. The UK Treasury defines VfM as ‘... the optimum combination of whole-life costs and quality (or fitness for purpose) of the good or service to meet the user’s requirement.’<sup>46</sup>

Governments across the globe are gradually shifting towards PPPs to deliver infrastructure to pursue VfM. VfM is not necessarily the choice of goods or services which is based on the lowest bid price, but a choice based on the whole life costs of the project or service.<sup>47</sup> The VfM test is necessary to determine the suitability of a project to be executed as a PPP. Basically, a PPP may provide VfM compared to traditional procurement if the advantages of risk transfer combined with private sector incentives, experience and innovation – in improved service

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<sup>46</sup> The World Bank, *Value-For-Money Analysis – Practices and Challenges* (The World Bank 2013) 10.

<sup>47</sup> D. Morrallos and A. Amekudzi, ‘The State of the Practice of Value for Money Analysis in Comparing Public Private Partnerships to Traditional Procurements,’ (2008) 13(2) *Public Works Management and Policy* at 114.

delivery or efficiencies over the project lifetime outweigh the increased costs of contract and financing.<sup>48</sup> It follows that the granting authority (public sector) must determine the VfM for both traditional procurement vis-à-vis PPP before a choice is made whether the project is PPP viable. Simply put, the purpose for VfM analysis is to indicate whether to implement proposed projects as PPPs or to use other forms of traditional public procurement to execute a given project.

### ***Risk Allocation and Mitigation***

Due to the complex nature of PPP arrangements, it is incumbent that mechanisms are put in place to address the risks involved. To make a project bankable, the SPV would need to enter subcontracts with specialist counterparties better placed to manage and bear those risks. It is also important for insurance to be obtained for the key insurable risks.<sup>49</sup> Risk management and mitigation must be a priority at every phase of the project. The public sector may provide certain guarantees or subsidies for specific risks. Again MLAs, BLAs and ECAs will provide debt, equity, insurance and may guarantee certain risks as well.<sup>50</sup> Some of the risks that need to be addressed in all PPP arrangements include, political risk, performance risk, currency exchange risk, environmental risk, demand risk, financing risk and legal and regulatory risk – for example, land acquisition for hospital construction may raise challenges. In Nigeria, the Land Use Act No. 6 of 1978 transfers ownership of land to the Governor of the state who may claim it for public purposes provided compensation is paid to the owner(s) of the land. The case of communal land has been one that has generated a lot of debate as to whether the Act is draconian in the sense that government can acquire land for the sake of the general interest of the public. It is however settled in the case of *Adole v Gwar*<sup>51</sup> that land can only be compulsorily acquired by the government save in accordance with Section 44(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). The combined effect of the Constitution and the Land Use Act 1978 is that land may not be compulsorily acquired in Nigeria by the authorities except the proper procedure is religiously complied with. Thus, in *Olatunji v Military Governor of Oyo State*<sup>52</sup> the court stated as follows:

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<sup>48</sup> The World Bank, op cit (note 46) 10.

<sup>49</sup> Jeffrey Delmon, op cit (note 12) 114.

<sup>50</sup> *ibid* 115.

<sup>51</sup> (2008) 4 SCNJ 1 at 6.

<sup>52</sup> (1995) 5 NWLR (Pt. 397) 586

...If a property is ostensibly acquired for public purposes and it is subsequently discovered that it has directly or indirectly been diverted to serve private need, the acquisition can be vitiated. The acquiring authority cannot rob Peter to pay Paul by diverting one citizen of his interest in property by vesting same in another.

Again, in *Ibafon Co. Ltd v Nigeria Ports Plc*,<sup>53</sup> the court reiterated the following position:

Without the acquisition of the land by the government, there would be nothing to assign to the first defendant for its use by the government. And if the acquisition of the land suffers some illegality, any subsequent act predicated on an illegally acquired land is null and void. This is so because no one gives what he does not possess, the maxim '*nemo dat quod non habet.*' He gives not who has nothing.

Other legal and regulatory issues that need to be considered include labour relations, tax and accounting, costs, depreciation; VAT offsetting as well as regulatory mechanisms<sup>54</sup>. Changes in the legislative and/or regulatory framework affect the facility during its operations could impact on operational costs and profits. The risk should thus, lie with the public sector since the private sector cannot control this type of risk.<sup>55</sup>

### **Funding of PPPs in Nigeria**

One of the first steps a bidder in a PPP contract must take is to secure funding for the project. Usually a financial adviser, with experience in project finance and PPP is appointed.<sup>56</sup> The role of the financial adviser includes assisting in preparing a financial model for the project; advising on sources of finance; assisting in bid preparations; assisting in negotiation with the grantor; advising on selection of commercial bank lenders or placement of bonds and assisting in negotiation of financing documentations.

The main sources of PPP financing are term loans, bonds and infrastructure funds and equity contribution. Commercial banks are currently the largest providers of debt capital for

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<sup>53</sup> (2000) 8 NWLR (pt. 667) 86 at 100

<sup>54</sup> Jeffery Delmon, op cit (note 12) 101

<sup>55</sup> Elisabetta Iossa, Gianarlo Spagnolo and Mercedes Vellez, 'The Risk and Tricks in Public-Private Partnerships' (2013) *IEFE The Centre for Research on Energy and Environmental Economics and Policy Working Paper* 64 at 18.

<sup>56</sup> ER Yescombe, *Public-Private Partnerships: Principles of Policy and Finance* (Elsevier 2007) 124.

infrastructure in Nigeria<sup>57</sup>. The challenge with this is that loans from Nigerian commercial banks are unsuitable for infrastructure needs due to their short tenure of between 3 to 7 years), high interest rates (up to 25 percent per annum) and their preference for tangible collateral<sup>58</sup>. Bonds are an option that can be used to source for funding for PPP in Nigeria. A bond issued by a project company is like a load from the project company's point of view. Buyers of project-finance bonds are investors who require RoI without taking equity risks, for example pension funds.<sup>59</sup> Some infrastructure funds are now available for investments in PPP projects in the country for example the ARM Infrastructure Fund, a US\$250 million closed end fund.<sup>60</sup> There have also been grants from foreign governments or development financial institutions like the African Development Bank (AfDB) and the World Bank. Private equity has been used to fund a significant percentage of the PPP projects executed so far in the country. This is especially so as project companies bidding for projects must show that they have a solid financial base before their engagement. It is submitted however, that there should be a structured model for financing PPP projects in the country. Such a structure will give assurance to the Pension Commission, pension fund administrators as well as contributors to the pension funds that the assets would be efficiently managed.

### ***Attracting Finance for Healthcare-based PPP in Nigeria***

While it is acknowledged that the future of public healthcare in Nigeria can be improved through the PPP model, there is need to consider the question of viability as well as bankability of projects to be arranged. PPP projects are well known for their high leverage and issues dealing with debt and funding.<sup>61</sup> There is need therefore for the federal and state governments to provide guarantees for healthcare-based PPP projects to enable project companies secure finance for future projects. For example, in Turkey legislation stipulates that “the ministry of health guarantees the lease payments during the term of the agreement.”<sup>62</sup> Furthermore, the

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<sup>57</sup> Detail Solicitors, ‘Infrastructure Financing: Options for Nigeria’ (2013) *Nigeria Public Private Partnership Review* Vol 2 Issue 1, 1.

<sup>58</sup> Usually the security for loans obtained for PPP projects is the project itself and not the other assets of the sponsors of the project.

<sup>59</sup> ER Yescombe, op cit (note 56) 136.

<sup>60</sup> Detail Solicitors, op cit (note 57) 2.

<sup>61</sup> Lei Zhu and David Kim Huat Chua, ‘Identifying Critical Bankability Criteria for PPP Projects: The Case of China’ (2018) *Hindawi Advances in Civil Engineering* 1.

<sup>62</sup> Magnus Rodrigues *et al*, ‘Healthcare PPPs in Turkey’ (2013) *Infrastructure Journal* 3 available at [https://www.inalkama.com/wp-content/uploads/Healthcare\\_PPPs\\_in\\_Turkey.pdf#:~:text=The%20project%20company%20has%20to%20procu](https://www.inalkama.com/wp-content/uploads/Healthcare_PPPs_in_Turkey.pdf#:~:text=The%20project%20company%20has%20to%20procu)



pension assets in the country being managed by several pension fund administrators could provide a source for domestic finance for PPP. As of October 2019, Nigeria's pension asset grew by N228 billion to end the month with an asset value of N9.81 trillion.<sup>63</sup>

### **The Legal Framework for PPP in Nigeria**

One of the critical success factors for a successful regime of private sector participation in the provision of public infrastructure in any given jurisdiction is the provision of a legal, regulatory and administrative structure for PPP governance. First, no matter how well couched a PPP agreement is, it may be void or voidable if it is inconsistent with the country's laws. Secondly, the law may prohibit certain genres of projects within a locality and thirdly, in a constitutional federation like Nigeria, an Act of the National Assembly<sup>64</sup> or a Law of a State Assembly<sup>65</sup> is required to set up any regulatory body as well as provide legitimacy for any transaction involving the private and public sectors. To give legal backing to the PPP policy in the country, the federal government of Nigeria as well as a few states in the federation have passed laws entrenching their respective PPP frameworks. The laws also establish administrative units for the regulation of PPPs in both the national and sub-national levels.

For a potential investor in infrastructure in Nigeria, it is expedient to understand the federal structure in operation in the country. The current structure specifically delineates between what projects the federal and state governments may within their powers execute whether exclusively or concurrently. It is therefore imperative to analyse the laws in order not to enter into an agreement that is *ipso facto* void.

Alkali *et al* note that Nigeria became a federation in 1954 vide the introduction of a federal constitution by the Nigerian (Constitution) Order in Council 1954.<sup>66</sup> The federation at present

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[re%20the%20financing,of%20the%20agreement.%20In%20addition%2C%20it%20has%20been](#)> accessed 10 August 2020.

<sup>63</sup> Uche Ndimele, 'Nigeria's Pension Asset Increased by N228 Billion in October' *Nairametrics* 18 December 2019 available at < <https://nairametrics.com/2019/12/18/nigerias-pension-asset-increased-by-n228-billion-in-october/#:~:text=Nigeria%E2%80%99s%20pension%20asset%20grew%20by%20N228%20billion%20in,latest%20data%20from%20the%20Pension%20Commission%20of%20Nigeria.>> accessed 10 August 2020.

<sup>64</sup> Where it concerns the federation itself.

<sup>65</sup> If it relates to one of the states of the federation.

<sup>66</sup> Alhaji Umar Alkali, US Abbo Jimeta, Awwal Ilyas Magashi and Tijanni, 'Nature and Sources of Nigerian Legal System: An Exorcism of a Wrong Notion' (2014) 5(4) *International Journal of Business, Economics and Law* at 3.

is made up of 36 states and a federal capital territory (Abuja).<sup>67</sup> Although Nigeria is considered a federation, the governance structure of the country is excessively centralised.<sup>68</sup> Due to prolonged periods of military incursion into politics in the country the Nigerian state operates more like a unitary state than a federal one. There is so much power concentrated in the federal government. The federating states rely so much on the federal government for monthly fiscal allocations and as a result, the states remain subservient to the federal authority. Although the governor of a state is the chief security officer of that state, the governor has no control of the police. There have been cases where the security details of a state governor are withdrawn based on orders ‘from above’ (a term used in Nigeria to describe directives issued by the federal authority). For example, due to a conflict between the administration of Dr Goodluck Jonathan and Governor Rotimi Amaechi of Rivers State, the Inspector General of Police withdrew the security details of the Rivers State governor.<sup>69</sup> Unlike the position in the United States federation, states in Nigeria do not have their own appeal courts or supreme courts. Appeals from State High Courts go to a centralised Court of Appeal<sup>70</sup> and further appeals go to a single Supreme Court domiciled at the federal capital territory.<sup>71</sup> The current federal framework in Nigeria has been described as a bad marriage that all dislike but dare not leave.<sup>72</sup>

The states that so desire, like Lagos, Rivers, Cross Rivers and Ekiti have created their own PPP frameworks in line with the country’s federal system.

### ***The Essence of a PPP Framework***

The need for ‘a clear and stable legal environment for PPP projects, to reduce the perception of risk, attract more competition for projects, attract more lending and therefore reduce project costs<sup>73</sup>’ cannot be overstressed. An agency of government must have the necessary powers laid down by statute to enter into an agreement with a private consortium to undertake the

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<sup>67</sup> 1999 Constitution of the Federal Republic of Nigeria (as amended), section 3.

<sup>68</sup> Aderonke Majekodunmi, ‘Federalism in Nigeria: The Past, Current Peril and Future Hopes’ (2015)9(2) *Journal of Policy and Development Studies* at 112

<sup>69</sup> Stanley Azuakola, ‘Just in: Police IG Withdraws Security Details of Gov. Amaechi, Sen. Saraki and Alhaji Baraje’ *The Scoop* 7 September 2013 available at <<http://www.thescoopng.com/2013/09/07/just-in-police-ig-withdraws-security-details-of-gov-amaechi-sen-saraki-and-alhaji-baraje/>> accessed 8 May 2018.

<sup>70</sup> The Court of Appeal is divided into different judicial divisions and sits in certain states in the country. See section 237 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

<sup>71</sup> Section 230 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

<sup>72</sup> Aderonke Majekodunmi, op cit (note 68) 114.

<sup>73</sup> Jeffrey Delmon, op cit (note 12) at 5

obligations of that agreement. It is important that the framework should be clear, predictable and stable as well as commercially oriented. However, it must be noted that in the UK and some other common law countries, ‘PFI-Model PPPs are treated as a variety of government procurement, for which no special legal arrangements are needed.’<sup>74</sup> This approach is considered as mainly contractual. Yescombe asserts that the advantage of the contractual approach is that there is greater flexibility to make changes in the PPP programme.<sup>75</sup> It is important however, that there is a legal framework as it is an opportunity for the government to<sup>76</sup>:

- Confirm its political commitment through explicit legislation;
- Set out the roles of the different arms of the government, including control and approval of individual PPP projects;
- Set out the basis on which a Public Authority may provide support for various risk, e.g. revenue guarantees;
- Provide a procedure for the Public Authority to make changes in the project’s specifications, and a method of compensating the Project Company for resulting extra costs;
- Provide clarity on investors’ rights if the PPP Contract is terminated early, whether because of default by the Project Company or because the Public Authority want to take the Facility back under public sector control;
- Give lenders the ability to take security over the PPP Contract;
- If appropriate, allow for provision of investment incentives such as special tax treatment etc.

No doubt the passing into law of the Nigerian ICRC Act 2005, the setting up of the ICRC to administer federal PPP transactions across the country as well as similar laws enacted by some of the states in the federation are intended to serve as a palpable political will to entrench a successful PPP regime in the country with the main aims *inter alia being* to:

- Bridge the infrastructure gap;
- Create job opportunities;

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<sup>74</sup> ER Yescombe, op cit (note 56) 31.

<sup>75</sup> *ibid* 32.

<sup>76</sup> *ibid*.

- Stimulate FDI into the economy;
- Facilitate economic growth and development;
- Enable government at all tiers to concentrate on policy making and social development programmes; and
- To save scarce government resources.

Simply put, within the context of this research, the legal framework refers to ‘how laws and regulatory structures can be used to encourage PPP, support the institutions implementing PPP and regulate them<sup>77</sup>’. On the other hand, the institutional framework deals with the persons involved, the powers they possess to make decisions and the functions they are permitted by law to perform. It remains to be stated that the absence of a legal framework would lead to uncertainty and chaos. Investors usually consider the legal framework as well as the process for relief in the event of a dispute or a cancellation as very important. Where these are not clearly defined, it is always regarded as a sign not to do business no matter the prospect of the investment and the expected RoI. As such, the law ought to be used as a tool to drive infrastructural development in the country in the light of the above. It follows that the legal framework must be clearly defined, holistic as well as demystified. A situation where there are various laws regulating the same process and with many of the laws overlapping each other breeds confusion and could give rise to disputes which could work against a successful PPP regime.

### ***How PPPS are Administered in Nigeria***

The principal Act that governs PPP in Nigeria is the Infrastructure Concession Regulatory Commission (Establishment Etc.) Act 2005 (ICRCA 2005). This law provides the primary framework for private sector participation in infrastructure development in Nigeria<sup>78</sup> It also established the Infrastructure Concession Regulatory Commission (ICRC) to:<sup>79</sup>

- Take custody of every concession agreement made under the Act and monitor compliance with the terms and conditions of such agreement;

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<sup>77</sup> Jeffery Delmon, op cit (note 12) 3.

<sup>78</sup> The Act was signed into law and came into force on November 10, 2005.

<sup>79</sup> Section 14 and Section 20 of the ICRCA 2005.

- Ensure efficient execution of any concession agreement or contract entered by the Government;
- Ensure compliance with the provisions of the Act; and
- Perform such other duties as may be directed by the President, from time to time, and as are necessary or expedient to ensure the efficient performance of the functions of the Commission under the Act.

### ***Regulations under the ICRC 2005***

The Act stipulates that for a private sector consortium to undertake a PPP concession with the FGN or any of its MDAs, it must possess the financial capacity, relevant expertise and experience in undertaking such infrastructure development or maintenance.<sup>80</sup> Given that PPP is recent phenomenon in Nigeria, it raises the question whether local consortiums may be disadvantaged when bidding for PPP projects with the more experienced foreign consortiums? Again, the Act requires that the consortium to win the bid for a project must be ‘the one that submits the most technically and economically responsive bid’<sup>81</sup>

To offer some assurances of stability to private investors, the Act provides that no agreement reached in respect of the Act shall be arbitrarily suspended, stopped, cancelled or changed except in accordance with the provisions of the Act.<sup>82</sup>

Sections 14 and 15 of the Act establish the ICRC and provides for a Governing Board for the Commission respectively. However, the Act is silent with regards to the funding process for PPP projects<sup>83</sup>. Nwangwu also notes, and rightly so, that ‘the Act does not provide for detailed rules on how the procurement of PPP contracts should be carried out.’<sup>84</sup> The lacuna leaves the ICRC with wide powers to make regulations through policy statements.

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<sup>80</sup> S. 2(3) of the ICRC 2005.

<sup>81</sup> S. 2(2) of the ICRC 2005.

<sup>82</sup> S.11 of the ICRC 2005.

<sup>83</sup> Augustine Edobor Arimoro, ‘Funding of Public-Private Partnership Projects under the Nigerian ICRC Act of 2005: Why is the Act Silent?’ (2015) 40 *Journal of Law, Policy and Globalization* 69-72

<sup>84</sup> George Nwangwu, ‘Does Nigeria Really Need a Regulator for Public-Private Partnerships’ (2016) 11 *European Procurement and Public Private Partnership Law Review* 320.

In his analysis on the ICRC Act 2005, Soyaju points out that the Act is cloudy with regards to the following areas:<sup>85</sup>

- The approval process for PPP projects, the granting of a concession;
- The scale of projects to be considered for private sector participation and mechanism for dealing with unsolicited proposals;
- Dispute resolution process in the event of a dispute arising from a PPP arrangement; and
- The legality or otherwise of a PPP project not in consonance with the provisions of the Act.

Furthermore, the neglect to make a provision within the Act that deals with the funding of PPP projects is less than desired. This lacuna perhaps gave rise to the failure of the Lagos-Ibadan Expressway Concession awarded to Bi-Courtney Ltd.<sup>86</sup>

### **Case Studies of Health Sector-based PPPs**

In this section, the paper examines two health sector-based PPP projects to serve as a template for future health facility PPP projects across the Nigerian federation. The first case study is the Cross River State Hospital while the second project discussed is the South African Pelonomi and Universitas Hospital Co-Location projects.

#### ***Cross River State Hospital***

Given the deteriorating state of hospital infrastructure in Cross River State in addition to shortage of personnel, the people in the state started losing confidence in the facilities available which in turn led to high incidences of self-medication and medical evacuation. The situation caused concern as there were only 36 hospitals and 938 doctors covering all the state's secondary health facilities representing a doctor-population ratio of 0.21 doctors per 10,000

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<sup>85</sup> Olufemi Soyaju, 'Legal Framework for Public Private Partnership in Nigeria' (2013) *De Jure* 826.

<sup>86</sup> The Concession did not consider funding as well. Whilst the Federal Government expected the Concessionaire to fund the project, the latter felt that its position was that of a middleman who is mandated to search for an investor.

patients – One fifth of the sub-Saharan Africa (SSA) average.<sup>87</sup> The state, with just over 0.5 hospital beds per thousand people, had the lowest hospital density in the entire south-south Nigeria.<sup>88</sup>

As a part of the Cross River State Government strategy aimed at reforming the health sector to enable the delivery of effective, efficient, qualitative and affordable healthcare services, it retained the International Finance Corporation (IFC) to provide advisory support towards the setting up of a hospital in Calabar using the PPP model.

Fifteen international firms responded to an invitation for expression of interest issued by the Government of Cross River State in April 2012. Four of the bidders were prequalified. A 10-year concession was awarded to UCL Healthcare Services Ltd,<sup>89</sup> an international consortium comprising Utopian Healthcare Consulting (U.S.), Cure Hospital Management Services (U.S.), Cuningham Group (U.S.), Consultants Collaborative Partnership (Nigeria), ITB Nigeria Limited (Nigeria), Healthfore Technologies (India), Simed International (The Netherlands) and Cure Hospital Management Services, a U.S. based firm that was to provide clinical services. The Consortium was to bear some project development costs, deliver a turnkey hospital, and will operate the hospital under the terms defined in the PPP agreement.<sup>90</sup>

The transaction structure was for a Design-Build-Operate-Transfer PPP model to last for ten years. The construction cost totalling about \$37 million was to be financed by the Cross River State Government, the consortium was to bear some project costs, deliver a turn-key hospital and will then be responsible for the day-to-day management of the hospital. The project is a 105-bed referral hospital to serve the (80 beds reserved for public patients; 20 beds for private VIP treatment at commercial tariffs and 5 beds for ICU) capital city Calabar, and its environs. The hospital is expected to have 6,000 admissions and 60,000 out-patient visits per year.<sup>91</sup> The transaction structure is designed as 10-year project term expected to be operational in 2015.

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<sup>87</sup> International Finance Corporation, 'Cross River State Hospital PPP Project,' Presentation delivered by Bayo Oyewole at the Corporate Council for Africa Health and Infrastructure Working Group Breakfast Meeting, April 2014.

<sup>88</sup> International Finance Corporation, 'Nigeria: Cross River State Hospital,' (2013) available at <[http://www.ifc.org/wps/wcm/connect/5668b20040c913338d3b9d5d948a4a50/PPPStories\\_Nigeria\\_CrossRiverHospital.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/5668b20040c913338d3b9d5d948a4a50/PPPStories_Nigeria_CrossRiverHospital.pdf?MOD=AJPERES)> accessed 1 September 2016.

<sup>89</sup> Incidentally UCL Healthcare Services Ltd had the lowest financial bid.

<sup>90</sup> World Finance, 'Bridging the Healthcare Gap: The Calabar Specialist Hospital Aims to Improve national Access to Quality Healthcare in Nigeria,' (2014) available at <<http://www.worldfinance.com/infrastructure-investment/project-finance/the-calabar-specialist-hospital>> accessed 1 September 2016.

<sup>91</sup> Utopian, 'Calabar Specialist Hospital' (2014) available at <<https://www.estateintel.com/wp-content/uploads/2014/10/Calabar-Specialist-Hospital-Intro.pdf>> accessed 2 September 2016.

The private operator is responsible for operations. The financial structure is CAPEX: approximately \$37m; OPEX: approximately \$2.4m. Executional timeframe was put at build (two years), operate (eight years, option to exercise additional two years.) Out of the CAPEX the Cross River State Government is to fund 49 per cent while the private consortium is to fund 51 per cent.

Some of the lessons learnt from the project are as follows: Political factors like election time table, high level government commitment and a strong champion with Governor's ear are important; dearth of experience in healthcare PPPs can be a setback in such transactions. Another challenge was that there were only a few experienced bidders.

### ***The Pelonomi and Universitas Hospital Co-Location, Bloemfontein***

This project is structured as a co-location PPP. This type of PPP occurs when the public and private sectors operate a similar service and collaborate rather than compete, which results in the public sector receiving revenue while the private sector generates profits.<sup>92</sup>

The project was arranged in the year 2000 at the provincial level, with the aim of providing a better level of healthcare for South Africans, especially those living in the Free State. An agreement was eventually signed as a 16-and-a-half-year contract on 25 November 2002. The PPP for the hospital co-location project is made up of three partners. The public agency in the partnership is the Free State Health Department (FSHD).<sup>93</sup> The FSHD selected its partner after conducting a competitive tendering process: having obtained the requisite permission from the Treasury to proceed, it invited interested parties to submit Registrations of Capability (ROC) and held informational meetings with 30 private parties indicating interest. After studying a blueprint from Australia, the FSHD accepted three of the ROC bids but only two responded to the Request for Proposals (RFP). A consortium of two healthcare companies was selected, the first a South African black empowerment company<sup>94</sup> and the other a healthcare company<sup>95</sup> with branches in South Africa and the United Kingdom. The consortium held a 65 percent stake in

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<sup>92</sup> Shadrack Shuping and Siphon Kabane, 'Public-Private Partnerships: A case study of the Pelonomi and Universitas Hospital Co-location Project' available at < [http://www.hst.org.za/uploads/files/chap10\\_07.pdf](http://www.hst.org.za/uploads/files/chap10_07.pdf) > accessed 24 May 2017.

<sup>93</sup> The FSHD is the branch of the provincial government of the Free State in South Africa that oversees health-related issues and all the public health facilities, which include hospitals.

<sup>94</sup> With a 40% stake in the consortium.

<sup>95</sup> With a 25% stake.



the concession and the remaining 35 percent was offered to investors, doctors and, later, the State.

Under the arrangement, the FSHD receives monthly concession fees from the private partner for the bed and operating theatre space that it uses in both hospitals. In addition, the private partner pays variable fees representing 2 percent of patient turn-over.<sup>96</sup> The inclusion of variable payments in the arrangement means that some operational risk is transferred to the FSHD because a portion of the revenue received is dependent on the success of the private partner. However, the private partner retains the risk associated with construction as it is responsible for all construction, renovations and upgrades.<sup>97</sup>

While the FSHD's role is to provide patient care in both hospitals, the private partner is responsible for all renovations and upgrades.<sup>98</sup> The upgrades at Pelonomi and Universitas Hospitals were completed on shared facilities and facilities for the use of the public hospital.<sup>99</sup> Apart from this, the private partner upgraded the facilities that were for its own private patients and in doing so, the private partner hired local construction companies. At one point, 26 Bloemfontein companies were subcontracted for a period of eight months. The result was an injection of over R10 million into the local economy.<sup>100</sup>

The PPP for Pelonomi and Universitas Hospitals is 'considered extremely successful.'<sup>101</sup> Both hospitals have facilities that are presently functional, with the healthcare needs of the population (whether insured or uninsured) being met daily. Running costs have been reduced and the quality of care has been increased because of the PPP arrangement. Furthermore, the PPP has ensured reduced costs for both the FSHD and the private partner, especially as there was no need to build a new hospital.<sup>102</sup> Again, commitment on the part of the stakeholders contributed immensely to the success of this PPP arrangement.<sup>103</sup>

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<sup>96</sup> According to the contract the private partners are expected to pay a fixed monthly rental fee of R40,000 per month for the use of the co-located facilities within the first five years and R60,000 per month subsequently. In addition, 1.32% of the annual turnover before profit is to be paid back to the public sector.

<sup>97</sup> Ibid.

<sup>98</sup> Shadrack Shuping and Siphon Kabane, op cit (note 92).

<sup>99</sup> The United Nations Office for South-South Cooperation.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> It is significant that both hospitals can attend to all citizens without any form of discrimination based on race.

<sup>103</sup> National Treasury PPP Unit 'Case studies on the public private partnerships at Humansdorp District Hospital, Universitas and Pelonomi Hospitals and Inkosi Albert Luthuli Central Hospital: Overall findings and

## Conclusion

This paper discusses the need to develop a strategy to co-opt the private-sector in providing solutions to the poor state of health infrastructure in Nigeria. The underlying causes for concern include the fact that despite dwindling revenues, funds appropriated for the health sector seem not to be appropriated for the purpose at the end of the day, again another fact is that the public-sector in Nigeria is a poor manager of public facilities. Furthermore, Nigeria can rely on the expertise of the private-sector to develop the delivery of healthcare in the country as well as on private-sector funding. Interestingly, Nigeria's health budget for example, in the year 2018 stood at N340.56 billion i.e. 10 per cent of the national budget and the equivalent of N1,832.62 for each citizen.<sup>104</sup> This even makes a stronger case for public-sector participation. Again, if Nigeria is to meet the 2030 SDG goals as far as the health sector is concerned, now is the time the country took a serious look at revamping the health sector.

The COVID-19 pandemic has exposed the fact that Nigeria's healthcare stock is in comatose and unless urgent steps are taken to reverse this ugly trend, the country will be worse off in the next few years given estimated potential population growth. It appears that the political class had not been concerned as they could easily travel to Europe, India, the United States as well as the United Arab Emirates on medical tourism. The COVID-19 pandemic and the lockdown meant that both the low and mighty had to seek for healthcare domestically.

Nigeria established a PPP framework vide the passing into law of the ICRC 2005. While it is noteworthy that several projects have been arranged and executed under the current PPP regime, the PPP makes a call for deploying PPP as a strategic long-term tool for solving the Nigeria's healthcare infrastructure deficit. It is recommended that the right incentives be put in place to encourage private-sector participation in the delivery of healthcare in the country.

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recommendations' (2007) available at

<<http://www.ppp.gov.za/Legal%20Aspects/Case%20Studies/Humansdorp%20Overall%20findings.pdf>> accessed 29 May 2017.

<sup>104</sup> Healthwise, 'COVID-19 Exposes Nigeria's Wobbling Healthcare System' *Healthwise* 10 May 2020 available at <<https://healthwise.punchng.com/covid-19-exposes-nigerias-wobbling-healthcare-system/>> accessed 25 June 2020.

The federal and other state governments may do well to structure healthcare PPPs similar to the Cross River State model. There is need for amendment of the PPP laws in the country to include the provision of guarantees to support project companies to secure needed finance for critical infrastructure projects such as healthcare-based PPPs. The pension assets managed by the several pension fund administrators in country could be a source for domestic finance for PPP projects. The public authority at the federal level should also encourage investments in infrastructure funds. This is so because foreign loans for PPP projects in Nigeria has been hard to come by given the country's dwindling revenues and foreign exchange risks challenges. Finally, the ICRA Act 2005 should be amended to allow for project finance initiative type of PPPs wherein the government pays for the use of the facility by the citizens in order to make investments in PPP projects in certain areas of the country attractive.

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