



Redefining Nigeria's Public-Private Partnership Philosophy

Olukayode B.A Fabunmi.
Feranmi Kehinde.

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INTRODUCTION.

The extent of infrastructure deficit in Nigeria is well documented and talked about including the potential investment opportunities it presents. The three tiers of Government in Nigeria will be required to make a combined investment of approximately \$ 4 Billion annually for the next 10 years to effectively address Nigeria's infrastructure deficit. This infrastructural gap is a consequence of years of misadministration, wasteful management of public funds, lack of planning and persistent neglect of infrastructural development by successive governments. Chapter 2 of the Constitution of the Federal Republic of Nigeria mandates the three tiers of government namely, the Federal, State and Local Governments, to *"provide necessary social and economic infrastructure, albeit on different levels and scale in order to facilitate the economic development of the country"*.

Since the 1990s, especially from 1999 when Nigeria transited from Military to Civilian rule, concrete institutional steps have been taken by the Nigerian Government to improve the provision of services that were provided by the Government. Firstly, the Public Enterprises (Privatization and Commercialization) Act of 1999 was enacted by the National Assembly to privatize and commercialize companies that were government-owned and of particular significance was the commercialization and privatization of monopolistic companies that ran key infrastructures of Government such as the Nigerian Port Authority (NPA), the Federal Housing Authority (FHA), and Nigerian Electric Power Authority (NEPA) now referred to as Power Holding Company of Nigeria (PHCN) amongst others. One major implication of this is that key government infrastructural services that were provided at subsidized rates now attract commercial rates. Inadvertently, the government became a commercial provider of Infrastructure as opposed to a social provider of the services. This in a way transformed the government's thinking from being a social provider of infrastructural service to a commercial provider of these services. Secondly, with the successes recorded from the Port Reform of 2005 which introduced concession, a model that was used successfully for the Port Reforms, the Federal Government enacted the Infrastructure Concession Regulatory Commission (ICRC) Act, an act which introduced Public Private Partnership (PPP) into Nigeria from a legislative and institutional standpoint.

The Act provided for the establishment of Infrastructure Concession Regulatory Commission (ICRC), a federal government agency set up to regulate PPP projects undertaken by the Federal Government which are aimed at addressing Nigeria's physical infrastructure deficit. The Act also provides for the participation of the private sector in financing, construction, development, operation and maintenance of federal government infrastructure or development projects through concessions or contractual arrangements.

A few state governments such as Lagos, Cross River, Rivers, Ekiti States etc have taken a cue from the Federal government by enacting their own PPP laws. These states have further institutionalized PPP by establishing relevant supervisory agencies to administer the implementation of their respective State PPP policies. From the foregoing, it is clear that PPP enjoys both executive and legislative support in Nigeria. However, there has been little or insufficient financial closures of PPP transactions and/or operational PPP projects in Nigeria. Many reasons may be adduced for this anomaly between genuine intention of the government to execute PPP projects on one hand and the unsuccessful realization of PPP projects in Nigeria on the other hand. Out of the many possible reasons that may be adduced, this article will seek to examine the PPP philosophy in Nigeria today and question whether there is a need to redefine it in order to achieve the set objectives for PPP for Nigeria.

NIGERIA'S PPP PHILOSOPHY

The first set of questions to ask is "*what is Nigeria's PPP philosophy and how has it evolved to this point?*" The PPP philosophy in Nigeria today can be said to be a commercially-based philosophy rather than a socio-economic based philosophy. It is a commercially-based philosophy primarily because PPP projects are seen to be income or revenue-generating for the government. From the government's perspective, the commercial consideration of a project comes before the socio-economic consideration and its sustainable development. For example, the commercial viability of a project as its primary purpose can be inferred from the wordings of the PPP legislations in Nigeria. In other words, the project must be able to make profit by itself without government subsidy or government as the offtaker of the project i.e. the revenue should come from user fees. The demand risk is usually shifted to the end user through user charges and not the government. This largely accounts for the disinterest or refusal of government to give guarantees and financial support to PPP

projects because the government holds the opinion that these projects are profit oriented and that the business plan would have adequately taken care of the cash flow required for the project.

On the other hand, PPPs evolved primarily to provide the 'extra cash' needed by governments to increase the infrastructural services and economic development for its citizens. PPPs are an alternative to the traditional method of procuring large and complex public, infrastructure projects by government because they offer benefits such as better costs, delay controls, optimization of risk and resources, innovation etc from the private-sector and divest from the taxpayer the risks associated with procuring such infrastructure. In Nigeria like many other countries, Governments have a constitutional duty to provide socio-economic infrastructure and PPPs have now become one of the avenues for the governments to do so.

The commercially-oriented based philosophy of governments in Nigeria can be traced to the era of privatization/commercialization. During this period, government began to generate revenue from operation of key infrastructure assets that were hitherto subsidized. This invariably meant government viewed the provision of these services as commercial rather than socio-economic. This distorted the way infrastructure was viewed by the government especially the ones that have socio-economic impact such as Hospitals, Roads, Schools, Housing etc and with a resultant effect that the quality of financial support government gave to projects diminished or did not exist.

To underscore this point, the two main PPP projects that have received public attention, the Lekki-Epe Highway and the Lagos- Ibadan Highway readily come to mind. In these two instances, one project achieved financial close while the other project did not. The Lekki-Epe Highway project received both the Federal and the state government's support in the form of sovereign guarantee and it achieved financial close. The Lagos/Ibadan Expressway which is widely regarded as the main artery into Lagos, the commercial capital of Nigeria and which ordinarily is seen as a more lucrative route did not receive any type of guarantee or support from the government and did not achieve financial closure. What this means is that the financial support of the state is critical to the financial close of any project at these formative years of PPP in order for debt providers to finance a PPP project notwithstanding whether or not a concession has been signed.

For emphasis purposes, where a government provides support for a project whole heartedly, the chances of that project achieving financial closure is high because the reputation and the credit

worthiness of the government is involved and the government will only stake its reputation on projects that would have direct impact on the socio-economic wellbeing of its people.

To further underscore this current philosophy, the types of PPP transaction that are being developed in Nigeria today are mostly in the area of commercial infrastructure. It is rare to find PPP projects for hospitals, schools, prisons and social housing projects etc. Most of the projects are usually within the classification of what can be termed commercial infrastructure.

The inability of the Nigerian PPP market to grow at the expected rate can be attributed to the failure of its PPP projects to achieve financial closure. This failure can be linked directly to how projects are developed by the government. The reason for the inadequacies at the project-development stage of the PPP projects can be attributed to the commercialization 'mindset' that has been adopted by the government at all levels. This mindset has given rise to the notion that for a project to be classified as PPP in Nigeria, it has to be commercially viable which has invariably affected the perception of the private-sector investors.

Indeed, the number of unsolicited proposals by private-sector investors that are 'financially viable' which are received by MDAs far outweighs the number of PPP projects that are developed by the government. The enticement that comes with these unsolicited proposals usually becomes a source of distraction from proper project development and this leads to poorly developed projects in many instances and in some instances, no project development at all. The general presumption in government circles is that if the private sector is interested in a project or transaction, the private sector is in it to make profit and it has carried out the business case that would enable it to attract funding for the project. This presumption is however rebuttable by the number of projects that have eventually achieved financial closure.

WAY FORWARD

PPPs have been successful in many parts of the world largely because governments had effectively leveraged on the finance, innovation, manpower and organization of the private sector. The primary interest of the private sector participants or the project sponsors from a financial perspective is to make returns on their investment and also to do it with the least risk exposure. On the other hand, the primary interest of any government in particular Nigeria, which has a huge deficit in terms of



infrastructure service and a constitutional mandate to provide social and economic infrastructure for its people, is or ought to be the effective delivery of infrastructure.

If the philosophy behind adopting PPP by the Nigerian government is the provision of infrastructure that is badly needed in order to improve the lives and prosperity of its people, then the government ought to redefine its philosophy and strategy to focus on the actual delivery as opposed to speculative delivery of infrastructure.

When a government adopts the actual-delivery philosophy, it will not have difficulty in offering support, guarantee/offtake or any instrument that the private sector will require to enter into a long, complex, contractual relationship with the public sector which characterizes most PPP transactions that reach financial closure. Also, a lot more work would be done or encouraged to be done in terms of project development which is crucial to the eventual delivery of social and economic infrastructure through PPPs. For example, if you take a look at the United Kingdom, most of their PFI/PPP projects are largely focused on social infrastructure such as schools, hospitals, public buildings, and prisons etc which have also had a multiplying effect on the economy of the country which is what any government would seek to promote.

So, as much as the credence will be given to the Nigerian political leadership over the years for their support for the development of PPP in Nigeria, there is the need to review and amend the ICRC Act where necessary, including the National policy on PPP and other PPP legislations. For example, Section 1 (1) of the ICRC Act which mandates that PPPs should be financially viable should be amended to focus on the effective delivery of infrastructure in line with globally accepted PPP principles. Furthermore, the government should reconsider its position on providing financial support to private sector investors for social and economic infrastructure projects or in the alternative, the government should take a leading role in being the offtaker of these projects as opposed to passing it off to its citizens.

Also, the financial support in the form of guarantees that governments will offer on behalf of the private sector investors for PPP projects that they intend to carry out should be included in the legislations and policies, which may not necessarily be in terms of funding for the project, but also in form of guarantees and other financial instruments.

Furthermore, the distinction between PPPs and other contractual relationships such as Joint-Venture should be distinguished statutorily to avoid confusion. A good example of this can be seen in the housing sector. Whilst government can enter into a Joint-Venture with a private sector participant for a commercial housing transaction, it should also enter into a PPP arrangement with a private sector investor for social housing. The only difference is the type of support it gives and the intention on its part to generating revenue from those transactions. In a commercial transaction for instance, the government provides the land while the other party to the Joint Venture provides the capital, builds the houses and the profit realized from the project is divided according to an agreed ratio for the government to increase its revenue generation exercise. In this sort of arrangement, the interest of government is to generate revenue from the relationship with the private sector. In a social housing model however, the government provides the land which social landlords that is, private sector investor build and let the houses at reasonable mortgage rates on owner-occupier basis. In the two instances even though they are both housing projects, they are still different and should not be confused. Whilst government can enter into both transactions, the commercial housing model should not be classified as a PPP housing project. This distinction should be expressly provided for in the PPP legislations.

Finally, the concept of 'universal test' or a similar concept should also be included in PPP legislations in a manner that will enable a project that would ordinarily go through traditional procurement to be benchmarked against a PPP option in order to determine whether it would provide better value for money. In effect, what this will do amongst other things is to bring more core 'government type' procurement such as schools, hospitals, social housing, prisons, roads, water and waste collection and disposal etc into the Nigerian PPP market.

CONCLUSION

The need to actively adopt PPP models for effective infrastructure delivery in Nigeria cannot be overstated. Since the intention by the government to ensure the delivery of infrastructure using PPP has been recognized, what now remains to be done is to adjust the current mindset with the view of achieving the desired result. In order to do this, the philosophy upon which PPP stands in Nigeria needs to change. It has to change from the old commercial-oriented approach to a more pragmatic socio-economic approach. At the end of the day, what Nigeria needs is a boisterous and robust PPP market that would satisfy the appetite of the private sector on one hand and on the other hand increase infrastructure development that would meet the demand of the people upon whom governments are built.

