

**ASSESSING THE IMPACT OF CONCESSIONING ON NIGERIA'S ECONOMIC
DEVELOPMENT**

Prudence Omotese AGBAJINEKE

LAW2002824

**FACULTY OF LAW
UNIVERSITY OF BENIN
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**A LONG PAPER SUBMITTED TO THE FACULTY OF LAW,
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THE UNIVERSITY OF BENIN.**

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CERTIFICATION

I, Prudence Omotese AGBAJINEKE, with Matriculation Number LAW2002824, hereby certify that this work is the product of my own research efforts undertaken under the care and supervision of Dr. (Mrs.) Irene Airen Aigbe and has not been presented elsewhere for the award of a degree or certificate. All resources have been duly distinguished and appropriately acknowledged.

.....

Prudence Omotese AGBAJINEKE

APPROVAL

This is to certify that the research work for this long paper and the subsequent preparation of this discretion by Prudence Omotese AGBAJINEKE (LAW2002824) was carried out under my care and supervision.

Dr. (Mrs.) Irene Airen AIGBE
PROJECT SUPERVISOR

.....
SIGNATURE AND DATE

Dr. (Mrs.) Francisca O. OSUJI
PROJECT COORDINATOR

.....
SIGNATURE AND DATE

PROF. Bright BAZUAYE
DEAN, FACULTY OF LAW

.....
SIGNATURE AND DATE

DEDICATION

This work is dedicated to the Almighty God for His infinite mercies and substance throughout this academic journey. This work is also dedicated to my father, Mr. Jeremiah Agbajineke for sowing the seed of education into my life, Lastly, this work is dedicated to me, for showing up, pushing through, and finishing what I started.

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Indeed all glory is given to the Almighty God for the breath of life, for without Him, I would not have made it thus far neither would I have archived this level of progress. He has made the path smooth for me since my birth up till now and for all these and numerous other reasons, I am eternally grateful.

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LIST OF ABBREVIATIONS

BPE	Bureau of Public Enterprise
CAMA	Company and Allied Matters Act
GDP	Gross Domestic Product
Ibid	Same Author and Same Authority
ICRC	Infrastructure Concession Regulatory Commission
ICRCA	Infrastructure Concession Regulatory Commission Act
IMF	International Monetary Fund
LFN	Laws of the Federation of Nigeria
NCP	National Council on Privatization
NEPA	National Electricity Power Authority
NPA	Nigeria Ports Authority
PEPCA	Public Enterprises (Privatization and Commercialization) Act
PHCN	Power Holding Company of Nigeria
PPPs	Public-Private Partnerships
TCPC	Technical Committee on Privatization and Commercialization
USC	United States Code
USD	United State Dollar

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ABSTRACT

Concession has been acknowledged as a valuable tool for Nigeria authority to retain control and shape the supply side of the terminal market, in the absence of full privatization. A Concession is a practice which involves an agreement or a compromise where one side usually a public authority grants a franchisee the right to own, build, finance, upgrade, maintain or operate a public infrastructure, and charge users for the cost of services for a limited period of time under a contractual agreement. This study explores the impact of concessioning on the Nigerian economy, focusing on key sectors such as transport, power, and ports. It highlights how concessioning has led to improved service delivery, increased private sector investment, and job creation. However, a further investigation into the study examines the unintended consequences (otherwise known as the dark side) of privatization of Public Enterprise (PEs) in Nigeria, such as: unemployment due to mass retrenchment of staff, low standard of living resulting from exorbitant price of products and /or service from privatized enterprises, overconcentration of income and wealth in a few hands, regulatory inconsistencies, weak institutional frameworks, stakeholder resistance, corrupt practices among others. The findings suggest that when effectively implemented, concessioning can significantly enhance infrastructure development and stimulate economic activity, however, policy makers in Nigeria are to determine the level of confidence they would place in privatization. Policy recommendations include strengthening regulatory oversight as relate to concession, ensuring transparency in the concession process, and enhancing stakeholder engagement to maximize the socio-economic benefits of concessioning in Nigeria.

CHAPTER ONE

GENERAL INTRODUCTION

1.0 INTRODUCTION

A Concession is a practice which involves an agreement or a compromise where one side usually a public authority grants a franchisee the right to finance, build, own, maintain, upgrade or operate a public infrastructure, and charge users for the cost of services for a limited period of time under a contractual agreement.

Concession has been acknowledged as a valuable tool for Nigeria authority to retain control and shape the supply side of the terminal market, in the absence of full privatization. It's a policy which has existed in one form or another since antiquity. In ancient Greece, the state retained ownership of land, forests, and mines but ceded the provision of services to the private sector.¹ The ancient Romans and Mesopotamians contracted out virtually all services in the state to private companies and individuals. In the middle Ages, the Catholic Church devised a scheme that allowed landlords and tenant farmers to partner with the state. Although there was a resurgence of privatization during the Industrial Revolution of the 18th century, it was first introduced into the modern economic lexicon in the 1950s, with the privatization of British steel by Winston Churchill.² The word, however, gained prominence as a policy instrument with the

¹ Chiedu Bertram Ndubisi, *Economic Policy Implications of Port Concession in Nigeria*, (Walden University 2016) 1.

²D Parker and D S Saal, *International Handbook on Privatization*, (Massachusetts: Edward Elgar Publishing 2003); Yoffee N, 'Review of Review of Privatization in the ancient near east and classical world, by M. Hudson and B. A. Levine' (2001) *Journal of the American Oriental Society*, 121(2), 303-305. <<https://doi.org/10.2307/606587>> accessed 12th July, 2025.

rise of conservative governments in Britain, the United States, and France in the late 1970s and early 1980s.³

As a prelude to other parts of this study, this chapter will discuss the background upon which the study was initiated, the statement of problems that lead to this study, the Aim and Objectives of the study, Scope of the work, Limitations of the study, Significance of the study, and the Research methodology.

1.1 BACKGROUND OF THE STUDY

Nigeria is the most populous country in Africa with an estimated population of 177.5 million in 2014.⁴ The country lies between Cameroon, Benin Republic and the Gulf of Guinea on the Atlantic coast of West Africa. The area of the Federation of Nigeria is 356,669 square miles, which is more than three times the size of the United Kingdom, and which can be compared with the size of France and Italy put together. The country lies roughly between 3° and 15°E longitude and between 4° and 14°N latitude. The longest distance from east to west is over 700 miles, and from north to south, 650 miles. The country is delimited westwards by the Republics of Dahomey and Nigeri, eastwards by the Cameroons Republic, northwards by the Niger and Chad Republics, and to the south by the Gulf of Guinea, which includes the Bights of Benin and Biafra, with a coastline stretching from a point near Ikingi in Calabar to beyond Badagry.⁵ Nigeria, like many developing countries, has long struggled with poorly maintained and inadequate public infrastructure and services. For decades, certain infrastructure in Nigeria has deteriorated in existence and service delivery, ranging from the Federal and state highways to the crippled power generation and supply, transportation, the health and educational standards

³P Starr, 'The meaning of Privatization' (1998) *Yale Law and Policy Review* 6(1), 6-41.

⁴ World Bank 2015

⁵ R Olujemi Ekundare, *An Economic History of Nigeria 1860-1960*, (Methuen & Co Ltd II New Fetter Lane London EC4 1973)

among other areas. These areas including port operations were managed by government-owned institutions, often characterized by underinvestment, inefficiency, and bureaucratic bottlenecks. In an effort to revitalize these critical sectors and stimulate economic development, the Nigerian government began adopting public-private partnership (PPP) models—most notably concessioning—as part of broader economic reforms.

A Concession is a practice which involves an agreement or a compromise where one side usually a public authority grants a franchisee the right to finance, build, own, maintain, upgrade or operate a public infrastructure, and charge users for the cost of services for a limited period of time under a contractual agreement. It's a Grant⁶

In ancient Greece, the state retained ownership of land, forests, and mines but ceded the provision of services to the private sector.⁷ The ancient Romans and Mesopotamians contracted out virtually all services in the state to private companies and individuals. In the middle Ages, the Catholic Church devised a scheme that allowed landlords and tenant farmers to partner with the state. Although there was a resurgence of privatization during the Industrial Revolution of the 18th century, it was first introduced into the modern economic lexicon in the 1950s, with the privatization of British steel by Winston Churchill.⁸ The word, however, gained prominence as a policy instrument with the rise of conservative governments in Britain, the United States, and France in the late 1970s and early 1980s.⁹

⁶ Black's Law Dictionary (Revised 4th edn 1968) 361 'A Grant; ordinarily applied to the grant of specific privileges by a government'

⁷ Chiedu Bertram Ndubisi, *Economic Policy Implications of Port Concession in Nigeria*, (Walden University 2016) 1.

⁸D Parker and D S Saal (n2)

⁹P Starr (n3).

Nigeria is one of the Senior Special Assistant (SSA) countries that embraced privatization, a policy instrument of the neoliberal growth theory the 1980s. Until the country rebased its economy in 2011, its economy has grown at an average rate of about 7.4% annually over the decade between 2001 and 2010.¹⁰ In the decade before 2000, the average growth rate was only 1.35%, however, since the rebasing of Nigeria economy in 2011, the average growth rate has been fluctuating between 4.89% and 6.31%.¹¹

The main aim or rational behind the adoption of Concession or Public-Private Partnership in Nigeria is purely based on the need to leverage private sector efficiency, innovation and capital while allowing the government to focus on oversight and regulation. According to neoliberal growth movement theory, the property right conferred by way of privatization incentivizes the private sector to make a greater investment, intending to achieve higher efficiency gains, better services, increased productivity, and profitability.¹² Key examples in Nigeria include the privatization of power distribution companies, the concessioning of the Nigerian ports under the Nigerian Ports Authority (NPA) and more recently, initiatives in rail and road infrastructure. Despite its increasing application, the success and sustainability of concessioning in Nigeria remain subjects of debate as its remarkable economic growth has neither reduced poverty nor created necessary jobs. The African Economic Outlook ranked Nigeria at 0.6 on the Multidimensional Poverty Index (MPI). The same report also ranked Nigeria as low (less than 0.5) in the Human Development Index (HDI). About 100 million of Nigeria's estimated

¹⁰ World Bank and National Bureau of Statistics [NBS]

¹¹ African Development Bank [AfDB], Organization for Economic Co-operation and Development [OECD] & United Nations Development Program [UNDP], 2015; World Bank, 2015

¹²J L Tongzon and W Heng 'Port privatization, efficiency and competitiveness: Some empirical evidence from container ports (terminals)' *Transportations Research A: Policy and Practice* (2005) 39(5), 405-424. <<http://dx.doi.org/10.1016/j.tra.2005.02.001>> accessed 12th July, 2025.

population of 177 million lives below the poverty line of less than 1 U.S dollar (USD) per day.¹³

The estimate by the National Bureau of Statistic is that over 4 million people enter the job market each year. These low-ranking scores amidst high economic growth performance are indicative of the paradoxes that characterize the Nigeria economy.

1.2 STATEMENT OF RESEARCH PROBLEM

The Nigerian government has made numerous efforts to improve infrastructure and public service delivery, despite this efforts, the country continues to grapple with inadequate funding, decaying facilities, and poor service management in key sectors such as energy, transportation, and ports. In response, concessioning, an arrangement or a compromise where public assets or services are temporarily transferred to private entities for development, financing and operation, has been adopted as a strategy to stimulate economic growth and bridge the infrastructure gap. However, the implementation of concessioning in Nigeria has been met with mixed outcomes and unintended consequences.

While some concession agreements have led to improved service efficiency and investment inflows, others have been plagued by regulatory inefficiencies, corruption, legal disputes, and lack of transparency. These inconsistencies in outcomes raises fundamental questions about the actual impact of concessioned projects on economic development, the institutional capacity for enforcement, and the effectiveness of the legal framework guiding concessioning. Additionally, the limited empirical assessment of these concessioning arrangements makes it difficult to determine whether they only benefit private operators or genuinely serve public interest.

¹³ Oxfam International. www.Oxfam.org/en/what-we-do/countries/Nigeria accessed 12th July, 2025.

This research is therefore motivated by the need to critically examine how concessioning has influenced Nigeria's economic development, evaluate the underlying challenges, and offer legal and policy reforms to improve its outcomes and implementations.

1.3 AIM AND OBJECTIVES OF STUDY

The aim of the study is to analyze the impact of Concessioning in the Development of Nigeria Economy. The specific objectives are to find out the following to:

1. Assess the extent to which concessioning has contributed to infrastructure development in key sectors such as public utilities, energy, and transportation.
2. Examine the institutional and legal framework governing concessioning in Nigeria, including relevant regulations, statutes, and agencies responsible for oversight and implementation.
3. Evaluate the economic effects of concessioning on employment generation, investment inflows, and service efficiency within the Nigerian economy.
4. Identify limitations and challenges associated with the implementation of concession agreements in Nigeria, including issues of transparency, regulatory enforcement and corruption.
5. Propose legal and policy recommendations for strengthening concessioning practices to enhance their effectiveness in promoting sustainable economic development.

1.4 SCOPE OF THE STUDY

The scope of this study is centered on the assessment of the impact of concessioning on the development of the Nigerian economy, with particular emphasis laid on key sectors of Nigeria economy such as public infrastructure, aviation, and transportation (railways, seaports). The

research will cover the period from the early 2000s when concessioning policies began to gain momentum in Nigeria to the present day. It aims to evaluate how concessioning has influenced key sectors of the economy thereby leading to economic growth, efficiency in service delivery, job creation, infrastructure development, and government revenue generation.

Geographically, the study will concentrate on major concessioned assets across Nigeria, including the Nigeria Ports, selected airports, and other public-private partnership (PPP) projects. It will also examine relevant regulatory and legal frameworks governing concessioning in Nigeria.

The research is limited to development indicators as relate to the economy and does not extensively cover the social or political implications of concessioning. It will rely on available data, case studies, academic literature, and government reports for analysis.

1.4 LIMITATIONS OF STUDY

It is very important to acknowledge certain limitations that may affect the scope and findings of this research work despite its relevance to academic purpose. These limitations include:

- 1. Stakeholder Reluctance:** Some government officials, private concessionaires, and regulatory bodies which makes up the key stakeholders in Nigeria, are usually unwilling and reluctant to disclose sensitive information or grant interviews due to confidentiality obligations or fear of economic or political repercussions.
- 2. Limited Access to Data:** There is inadequate availability of reliable, up-to-date and comprehensive data on concessioning agreements and their economic impact in Nigeria.

This is highly due to the fact that many concession agreements or contracts are not fully disclosed to the public, which in turn restricts the depth of data analysis.

- 3. Time Constraints:** The timeframe allocated for this research was not sufficient to carry out extensive fieldwork or conduct longitudinal studies that would provide a deeper understanding of the long-term effects of concessioning on Nigeria's economy.
- 4. Geographical Scope:** Due to resource limitations, the study may be restricted to selected sector, states, or specific concessioning projects. Based on this geographical factor, the study may not fully capture the diverse experiences and outcomes of concessioning across the entire country.

By recognizing these limitations, the study aims to maintain transparency and provide a realistic context for interpreting the results and conclusions drawn.

1.6 SIGNIFICANCE OF THE STUDY

This study is significant in the growth and development of Nigeria, as it gives critical insights into the role of concessioning in fostering economic policies and development in Nigeria. By assessing the impact of concession agreements in private sector participation, service delivery, infrastructure development, and job creation, the research contributes significantly to understanding how public-private partnerships can be used to effectively drive national growth.

It is particularly valuable tool to policymakers, as it offers practical recommendations for improving the institutional and legal frameworks that govern concession agreements in Nigeria. Furthermore, the study underscores the importance of accountability, transparency, and public interest in concessioning processes, making it a valuable and useful tool for good governance and advocacy in Nigeria.

Academically, it adds to the limited body of empirical literature on the subject within the Nigerian context, while also providing a firm ideological foundation for further research. For students and legal scholars, the study deepens the appreciation of contractual, enforcement, and regulatory mechanisms that underpin concession arrangements in Nigeria, highlighting the need for reforms where necessary.

Ultimately, this study evaluates significantly not just the economic outcomes of concessioning, but its broader implications for institutional effectiveness, legal development and national progress.

1.7 RESEARCH METHODOLOGY

The research methodology provides a construct against which the research topic is investigated and the findings of research are extricated.¹⁴ This in turn, highlights the importance of objectively selecting a proper methodology that fits the contextual setting of the research.

Premised on the foregoing, the research work will employ a library-based doctrinal research methodology combining analytical and historical research approaches to effectively assess the impact of concessioning in the development of the Nigeria economy.

In arriving at the findings of this research, a wide array of legal sources was consulted. These sources can be categorized into primary sources and secondary sources. The primary sources consulted include; relevant statutes, legislations, reported Judicial Authorities etc. The Secondary data will be obtained from materials such as Newspapers, articles by Legal authors, Internet resources, seminar papers, Textbooks. This will in no doubt give a holistic approach to achieving

¹⁴ Mauthner Natasha, 'Research Philosophies and Why They Matter' In Keith Townsend (eds.), *How to Keep your Doctorate on Track* (Edward Elgar Publishing 2020), 76-86.

the objectives and goals of the study, thereby boosting its credibility as a genuine contribution to knowledge.

1.8 RESEARCH QUESTIONS

In order to reach the goals of this research work, some research questions needs to be put in place. These questions include the following:

1. Which sectors have experienced significant development due to concessioning?
2. What is the economic rationale for concessioning in Nigeria?
3. What are the limitations and challenges of the concessioning model?

1.9 CONCLUSION

This chapter has laid the foundational framework for the study by introducing the concept of concession and its relevance to the development of Nigeria's economy. It has laid down the background of the study, clearly stated and explained the research problem and questions as it relates to the study, outlined the aim and objectives of the study, the research methodology, and established the significance of the research within the context of economic, legal and institutional development as it relates to Nigeria concession agreements. The chapter also highlighted the need for a thorough assessment of existing concessioning practices in order to ascertain their impact on the Nigerian economy and fill in the gaps that they create. By setting the stage for further analysis, the study aims to explore the economic, legal, practical, and policy dimensions of concessioning, with the ultimate goal of providing key recommendations that will strengthen its effectiveness as a tool for national development. The subsequent chapters will provide a review of Relevant Literature, Conceptual Clarification, Theoretical Foundations, Historical, Legal and Regulatory Framework and Literature Review.

CHAPTER TWO

CONCEPTUAL CLARIFICATIONS, LITERATURE REVIEW, THEORITICAL FOUNDATIONS, AND HISTORICAL OVERVIEW OF CONCESSION

2.0 INTRODUCTION

All good research proceeds from a thorough exposition and elucidation of the conceptual terminologies associated with the topic of discourse.¹ This research is not an exception, as it consists of several legal concepts that must be holistically and contextually clarified. However, the hallmark of every conceptual clarification is a holistic definition of the terms recurrently employed in the research work. This is due to the ambivalent nature of the words, making them susceptible to multifarious interpretations, depending on the given context.² Thus this chapter is devoted to intricately analyzing the concepts embedded in this research by clarifying their meaning and proportion with reference to leading scholarly authorities and dictionaries.

It is also customary in research endeavors to identify and explain the ideologies or philosophies that underpin the research exercise. Jurisprudential theories usually undergird every legal research endeavor by providing a theoretical lens to understand and address the research problem.³ They act as a linkage between the research aims and objectives, and pre-existing theoretical postulations in the field of discourse.⁴ They equally serve to highlight the antiquity of

¹ Bhat Ishwara, 'Idea and Methods of Legal Research' Oxford Academics (2020).

<<https://doi.org/10.1093/oso/9780199493098.001.0001>> accessed 25th July, 2025.

² E Chianu, *Law of Trespass to Land and Nuisance* (3rd edn, Ambik Press, 2014) 81.

³ C Kivunja, 'Distinguishing between Theory, Theoretical Framework and Conceptual Framework: A Systematic Review of Lessons from the Field' (2018) 7(6), 46. <<https://doi.org/10.5430/ijhe.v7n6p44>> accessed 25th July, 2025.

⁴ L Varpio, E Paradis and S Uijtdehaage, 'The distinctions between Theory, Theoretical Framework, and Conceptual Framework' *Academia Medicine* (2020) 95(7), 989-994. <<https://doi.org/10.1097/ACM.0000000000003075>> accessed 23rd July, 2025.

the research problem, and underscore the importance of addressing the same.⁵ In the light of the forgoing, this research is undergirded by several jurisprudential theories building up into a theoretical framework. These theories will be elucidated with particular emphasis on their origin, proponents, limitations and relevance to the research work.

As a prelude to the other chapters, this chapter will give a thorough conceptual clarification of concession in Nigeria as well as the key terms that will be frequently used in this research work, provide a detailed literature review of Concession in Nigeria, Provide and explain key Jurisprudential Theories of Concession and lastly, provide a brief History of Concession in Nigeria.

2.1 CONCEPTUAL CLARIFICATION OF CONCESSION

There is no universal definition of ‘Concession’. In Europe, Bousquet and Fayard⁶ described the concept as an arrangement that allows the government to approve the right to project funding, construction, ownership, improve and upgraded the facilities, including the operation, to a private sector operator. The operator operates the facilities for a specific duration and charges the users for the cost of services.⁷

In Nigeria, the Infrastructure Concession Regulatory Commission (Establishment etc.) Act, 2005⁸ defined Concession as ‘a contractual agreement whereby the project proponent or contractor undertakes the construction, including financing of any infrastructure, facility and the

⁵ NG Lederman and JS Lederman, ‘What is a Theoretical Framework? A Practical Answer’ *Journal of Science Teacher Education* (2015) 26, 593-597. <<https://doi.org/10.1007/s10972-015-9443-2>> accessed 23rd July, 2025.

⁶ F Bousquet and A Fayard, ‘Road infrastructure concession practice in Europe: A report based on documentation on analysis of highway concessions in Europe’ Working paper. 2001. No 2675.

⁷ B Celik and UMAR Adamu, ‘The impact of Public-Private Partnerships (PPPs) on the performance of Nigeria Seaports: a case study of Apapa Port Complex, Lagos’ *Journal of Global Economics and Business* (2020) 1(1), 18-43.

⁸ Section 36 (Interpretation) of the ICRC Act 2005.

operation and maintenance thereof and shall include the supply of any equipment and machinery for any infrastructure and the provision of any service’.

A Concession is a practice which involves an agreement or a compromise where one side usually a public authority grants a franchisee the right to finance, build, own, maintain, upgrade or operate a public infrastructure, and charge users for the cost of services for a limited period of time under a contractual agreement.

The Public-Private Partnership (PPPs) has varieties, which include design, build, finance, and operate (DBFO), build, operate and transfer (BOT) for a specified duration before the facility is returned to the government; and the build, operate and own (BOO) when the facility is not returned to the government.⁹ According to Quium, there are two main variants connected to concession in the study broad category of concession. They are franchise and build, operate and transfer (BOT). A Franchise is a subject of concession-based public –private partnership. According to the Black’s Law Dictionary, A Franchise is ‘a special privilege conferred by government on individuals or corporation and which does not belong to citizens of country generally of common right’¹⁰ The Private operator takes control takes charge of the existing facility, operate, and maintains it under a fixed –term agreement. The operator is expected to upgrade the facility as part of the bench mark operation.¹¹ The main difference is that franchise does not involve high investment at the initial stage compared to the Public-Private Partnership concession model such as BOT.

⁹ DS Kadiri, SO Ojo, and GO Jagboro, ‘Implications of Adopting Public Private Partnership for Infrastructure Development in Nigeria’ *Journal of Sustainable Development* (2015) 8(9), 169. <<https://doi.org/10.5539/jsd.v8n9p169>> accessed 28th July, 2025.

¹⁰ Black’s Law Dictionary (Revised 4th edn 1968) 786.

¹¹Kadiri (n9).

In many of these concession contracts, the Nigerian Governments (State and Federal) retain ownership of the infrastructure and award the management and operation of the infrastructure to the private sector operators on a competitive platform for a stated duration. However, many have been totally given to the private sector with the government total withdraw from control and operation of such sectors till the stipulated contractual duration has elapsed.

2.2 LITERATURE REVIEW

The Infrastructure Concession Regulatory Commission¹² is the primary legal infrastructure underpinning infrastructure concessions in Nigeria. It formally empowers the ICRC to oversee and regulate Public-Private Partnership (PPP) projects within Nigeria’s federal framework¹³. Under Section 4 of the Statute and accompanying regulations, federal MDAs are required to subject concession contracts to open, competitive bidding, with ethical clearance ensured via the Bureau of Public Procurement’s “Certificate of No Objection” process. In order to increase transparency in Nigeria, the ICRC launched a PPP Contracts Disclosure Portal in 2017, enshrining Freedom of Information standards and enabling publication of contract summaries for public scrutiny.

In Nigeria, the adoption of concessions as a vehicle for infrastructure development has received growing academic scrutiny. Kadiri, Ojo, and Jagboro¹⁴ emphasized that the Infrastructure Concession Regulatory Commission (ICRC) Act 2005 serves as the primary legal instrument enabling public–private partnerships through concession contracts, positioning Nigeria

¹² The Infrastructure Concession Regulatory Commission (Establishment, etc.) Act, 2005.

¹³ Section 1-2 ICRC Act 2005.

¹⁴ DS Kadiri, SO Ojo, and GO Jagboro, ‘Implications of Adopting Public Private Partnership for Infrastructure Development in Nigeria’ *Journal of Sustainable Development* (2015) 8(9), 169.
<<https://doi.org/10.5539/jsd.v8n9p169>> accessed 28th July, 2025.

structurally to bridge its infrastructure-financing gap amid shrinking public resources. Under this legal framework, PPP contracts including brownfield and greenfield concessions are formally monitored, legally sanctioned, and theoretically subjected to competitive bidding procedures as required by Section 36 of the ICRC Act.

From a doctrinal standpoint, Sani¹⁵ argues that Nigeria's legal framework as relate to PPP suffers from limited statutory scope, institutional conflict, and regulatory capacity deficits. In his analysis, the suggestion is made to revise the ICRC Act to broaden the definition of PPP, streamline the institutional architecture for greater investment neutrality and mitigate competing mandates between agencies.

Empirical studies however underscore the complexity of translating legal frameworks into economic outcomes. Nwangwu¹⁶ critical case study of the Lekki–Epe Expressway toll road, Nigeria's first major road-sector PPP, reveals that the project ultimately failed due to mismanaged stakeholder risk, culminating in Lagos State's eventual buy-back of the concession from private operators. The author stressed that stakeholder exclusion and improper risk allocation were central to the scheme's collapse. Arimoro¹⁷ similarly emphasizes the detrimental role of community stakeholders' exclusion in the Lekki toll-road concession, concluding that lack of early public engagement contributed to social resistance and disrupted project viability. It has been stated that the primary reason why the Lagos State government bought of the concession agreement from Lekki Construction Company (LCC) barely 7 years into the

¹⁵ F Sani, 'Legal Challenges and Prospects in the Implementation of Public Private Partnership (PPP) Policy in Nigeria' *Asian Law & Public Policy Review* (2022).

¹⁶ G Nwangwu, 'Overcoming Failure in the Design and Implementation of Public-Private Partnership Projects: Lessons from the Lekki Toll Road Concession' *Journal of Sustainable Development Law & Policy* (2022) 13(2).

¹⁷ AE Arimoro, 'Impact of community stakeholders on public-private partnerships: Lessons from the Lekki-Epe concession toll road' *International Journal of Law and Legal Studies* (2015) 3(7), pp.165-167.

concession project was to save motorists from paying proposed increased toll as LCC had a plan to increase the toll rate by 20%.¹⁸

Omoke,¹⁹ building on theories by Zheng & Caldwell, in analyzing the impact of port concessions on operational efficiency in Nigerian seaports, revealed that berth occupancy rates rose significantly from 51 % pre-concession to 72 % post-concession, while vessel turnaround times declined from an average of 8.18 days to 4.83 days. They conclude that these statistical improvements are directly attributable to concession arrangements and recommend policy measures to enhance the enabling environment for PPP success. Ndikom²⁰ stated that prior to the concession of Nigerian ports in 2006, the productivity and other performance indices were at their lowest ebbs.

From a financing lens, Ojo's 2014 Master's thesis at the University of Cape Town critically assesses whether the toll revenue inflows as relate to the economic benefits of the Lekki-Epe project adequately offset cost overruns intrinsic to long implementation phases. The study questions the sustainability of long-termed privately funded infrastructure, absent robust demand, forecasting and financial modeling.²¹ In corroboration of these concerns, overarching infrastructure literature such as Flyvbjerg²² argues that overly ambitious cost estimates, delays

¹⁸ A Ebokoziem and MS Samsurijian, 'Concession of public infrastructure: pitfalls and solutions from construction consultants perspective' *Asian Journal of Civil Engineering* (2012) 23(5): 5. <<https://doi.org/10.1007/s42107-022-00455-7>> accessed 23rd June, 2025.

¹⁹ V Omoke and others, 'Infrastructure Financing and Management: The Impact of Concession on the Operations and Performance of Nigerian Seaports' *Journal of Behavioural Economics, Finance, Entrepreneurship, Accounting and Transport* (2015) 3(2), 65–70. <<https://doi.org/10.12691/jbe-3-2-1>> accessed 24th June, 2025.

²⁰ OB Ndikom, 'An appraisal of the role of the operational limitations of the private terminal concessioners in landlord port models' *Continental Journal of Social Sciences* (2013) 6(1), 9. <<https://doi.org/10.5707/cjsocsci.2013.6.1.9.16>> accessed 23rd July, 2025.

²¹ T Ojo, 'Infrastructure finance in Africa through the Public Private Partnership (PPP): Is the Lekki-Epe Toll Road (Nigeria) economically sustainable?' (2014) *Master's thesis, University of Cape Town*.

²² B Flyvbjerg, 'Survival of the Unfittest: Why the Worst Infrastructure Gets Built, And What We Can Do about It' arXiv pre-print (2013).

and misaligned incentive structures frequently results in cost escalations and benefit shortfalls, these phenomena are not solely mitigated by private ownership.

Turning to modern port concessions, publicly available commentary suggests that the 45-year BOOT concession for the Lekki Deep Seaport, promises to contribute up to US \$360 billion to Nigeria's GDP by enhancing job creation, trade access and container capacity.²³ Nevertheless, despite such high-level projections, there remains an absence of rigorous legal-economic studies quantifying impact over the concession lifecycle.

Similarly, the Asaba International Airport concession, a 30-year arrangement signed with the Delta State Government in early 2021, is one of the key concession projects illustrating the growing sub-national adoption of PPP models. Despite the master plan development and formal procurement, comprehensive evaluations of legal safeguards, socio-economic impacts and performance monitoring remain limited.

Synthesizing these above positions, the literature depicts a gap between empirical evidence of economic value and Nigeria's well-articulated legal architecture for concessions. While the ICRC Act and supporting regulations stipulate transparency and procedural rigor, studies of concession in Nigeria point to systemic weaknesses in stakeholder inclusion, enforcement and risk management as significant factors that impair the realization of macroeconomic gains.

In conclusion, the literature underscores three future-oriented research opportunities:

1. Rigorous legal-economic evaluation of concession projects on fiscal space, employment and Gross Domestic Product (GDP).

²³ Online commentary, 'Lekki Deep Seaport will contribute \$360bn to GDP' quoting Minister Amaechi via TheCable/reddit (2012).

2. Comparative legal analysis of Nigeria's PPP framework with other developing economy models.

3. Constitutional scrutiny on government delegation of public functions to private entities under concession arrangements.

These interdisciplinary inquiries would deepen understanding and inform reforms to enhance the effectiveness of concession law and its broader economic impact in Nigeria.

2.3 HISTORICAL OVERVIEW OF CONCESSIONING IN NIGERIA

Economic history is primarily the history of growth. In ancient Greece, the state retained ownership of land, forests, and mines but ceded the provision of services to the private sector.²⁴

The ancient Romans and Mesopotamians contracted out virtually all services in the state to private companies and individuals. In the middle Ages, the Catholic Church devised a scheme that allowed landlords and tenant farmers to partner with the state. Although there was a resurgence of privatization during the Industrial Revolution of the 18th century, it reduced into the modern economic lexicon in the 1950s, with the privatization of British steel by Winston Churchill.²⁵ The word, however, gained prominence as a policy instrument with the rise of conservative governments in Britain, the United States, and France in the late 1970s and early 1980s.²⁶

In Nigeria, Concession came about as a result of the Controversial Structure Adjustment Program (SAP) put in place by the government in 1986 which is a policy of International

²⁴ Chiedu Bertram Ndubisi, *Economic Policy Implications of Port Concession in Nigeria*, (Walden University 2016) 1.

²⁵ D Parker and DS Saal, *International Handbook on Privatization*, (Massachusetts: Edward Elgar Publishing 2003); Yoffee N, 'Review of Review of Privatization in the ancient near east and classical world, by M Hudson and B A Levine' *Journal of the American Oriental Society* (2001) 121(2), 303-305. <<https://doi.org/10.2307/606587>> accessed 22nd July, 2025.

²⁶ P Starr, 'The meaning of Privatization' *Yale Law and Policy Review* (1998) 6(1), 6-41.

Monetary Fund (IMF). In 1986, the government gave definite indication of its desire to divest itself of all parts of its investment in most public enterprise. Where government did not divest, it gave indications of its intention to fully or partially withdraw transfer of grants from tax revenue to PEs.²⁷ In 1998, government promulgated Decree No. 25 also known as Privatization and Commercialization Decree, which gave legal backing to the implementation of the privatization policy.

By March 1989, the first sets of enterprises were put up for sale under the recommendation of a government nominated Technical Committee on Privatization and Commercialization (TCPC). About 135 enterprises were listed to be privatized. In 1995, TCPC was renamed as Bureau of Public Enterprises (BPE) and equally became a secretariat for the implementation of all government decisions on privatization in 1999;²⁸ it became the decision maker on enterprises that should be privatized in Nigeria.

By the end of 1993 divestments had been concluded in 34 companies through the stock market. In 2005 alone, the privatization agency had privatized eight companies, some of these enterprises were: Afribank Nigeria Plc, Apapa Port, Leyland Company, Bricks and Clay Companies, as well as oil companies.

According to Mkpuma,²⁹ the federal government privatized 89 Public Enterprises between 1988 and 1993 in the first phase of the three phased privatization programme. In the second phase which ran from 1999 to 2005, the Federal Government privatized more than 32 enterprises, while the third phase ran from 2005 to 2009.

²⁷O OJO and D Fajemisin, 'Nigeria's Privatization Programme: Structures, Strategies and Shortcomings' (2010) *Petroleum-Gas University of Ploiesti Bulletin*, Economic Science Series, Vol. LXII, No. 1.

²⁸ *Ibid.*

²⁹ BB Mkpuma, *Chigbue's BPE: Six Months After*, (Moscow Progress Publishers, September 2005) Financial Standards.

The divestment of public assets occurred through the National Council on Privatization (NCP) in the late 1990s and early 2000s under President Obasanjo. The return to democratic civilian rule under President Obasanjo spurred the passage of the Public Enterprises (Privatization and Commercialization) Act, which created the National Council on Privatization (NCP) and the Bureau of Public Enterprises (BPE). Although the legislation was originally intended for outright privatization and commercialization, it also laid the groundwork for concession-like arrangements involving management contracts, leases and other PPP forms, it was most notably involving the concessioning of entities like NEPA and steel plants, a process widely criticized for lack of transparency and alleged cronyism³⁰.

The mid-2000s marked a shift in the history of concession in Nigeria. A concerted port sector concession programme began around the year 2000 and was concluded in May 2006, underpinned by donor support from CPCS Transcom (Canada), the World Bank, and Royal Haskoning (Netherlands) and culminating in the lease of 26 federal ports to private operators. Applying a “landlord-port” concession model, Nigeria awarded 26 long-term port terminal concessions by mid-2006, transferring operations to private operators while the NPA retained regulatory oversight. These reforms were primarily aimed to correct inefficiencies in port operations such as theft, protracted vessel turnaround, and inefficiency by restructuring the Nigeria Ports Authority (NPA) into regulatory and landlord functions only.

In 2005, the Infrastructure Concession Regulatory Commission Act (ICRC)³¹ was enacted, providing a legal foundation for PPPs and concessions across all economic sectors. Although signed into law by President Obasanjo earlier, implementation of the act lagged until 2008, when

³⁰ Reddit thread, ‘recounting NCP’s privatization controversies under Atiku Abubakar as NCP chairperson’ (2022).

³¹ Cap.125A, Laws of the Federation of Nigeria.

the ICRC was formally inaugurated in November 2008 with Chief Ernest Shonekan as founding chairman and Engr. Mansur Ahmed as Director-General. From 2009 onward, the ICRC issued the National Policy on PPPs and later helped in the drafting of the National Integrated Infrastructure Master Plan (NIIMP) in 2014, further consolidating the country's PPP framework.

In 2009, the government designated the ICRC to assume oversight responsibility for all pre-2005 legacy PPP contracts, reinforcing regulatory continuity. As of 2011, ICRC had taken custody of approximately 50 PPP contracts across aviation, ports, power, health, and more. In addition to all these, the Commission expanded public disclosure of PPP contracts aligned with the Freedom of Information Act, launched the Nigerian Public Private Partnership Network (NPPPN), and developed the National Integrated Infrastructure Master Plan (NIIMP), approved in 2014.

By 2022, ICRC reported having implemented around 173 concessions valued at USD 9 billion, including approvals for Full and Outline Business Case certificates across multiple sectors such as seaports, airports, and rail infrastructure. Recent high-profile concession initiatives include the Badagry Deep Sea Port, Onitsha River Port, Asaba International Airport with significant long-term concession agreements signed in 2021–2022, Snake Island Port, granted a 45-year concession in November 2024 expected to attract approximately USD 1 billion in FDI, and the Lekki Deep Seaport, a BOOT-type concession operational since 2023, projected to add up to USD 360 billion to GDP over time.

In summary, Nigeria's concession history spans from early period of opaque privatization frameworks to a more institutionalized and structured PPP environment anchored on the ICRC legislation and institutional reform.

2.4 MODALITIES OF CONCESSION IN NIGERIA

Concession/Privatization in Nigeria according to Olu Ojo and David Fajemisin,³² manifests in different forms adopted for the privatization of PEs. They include:

- 1.** Private placement of shares of affected enterprises. This method of concession was applied in cases where government holding is so small that it cannot force public offer of shares even where the enterprises fulfill the listing requirement of Stock Exchange. To date only one enterprise has been treated as such.
- 2.** Management Buy Out (MBO): Under this method, the entire or substantial part of the enterprise is sold to the workers of the company or enterprise. It is entirely up to them to organize and manage it.
- 3.** Deferred Public Offer: This is the third method of privatization developed by the Nigerian government. This method of concession occurs in enterprises which are viable but if sold by shares the value to be realized will be far below the value of the underlying assets of the enterprise.
- 4.** Public offer for sale of shares of affected enterprises through the Nigerian Stock Exchange: This is one of the major modes of concession employed by the Nigerian government. The Bureau of Public enterprises privatized 35 Public Enterprise through this approach.
- 5.** The last method employed by the Nigerian government through the Bureau of Public Enterprise is the sale of assets where the affected enterprise cannot be sold either by public offer of shares or by private placement of shares. Such enterprises or PEs have a poor track record and a hopeless future outlook. To date, a total of over twenty-seven enterprises have been privatized in this way including the eighteen dealt with by the Ministry of Agriculture

³² n15.

before the Technical Committee on Privatization and Commercialization (TCPC) was established.

2.5 THEORITICAL FRAMEWORKS

There are several theories that underline or provide justification for Concession taking place all over the world since the early 1980s. These theories include:

2.5.1 Property Rights Theory

The Property rights theory presupposes that the transfer of property right from the public to private investors creates the incentive for the latter to make the additional investments necessary to induce increased efficiency, increased productivity and ultimately increased shareholder wealth.³³ According to De Soto, property rights appear to be the ‘missing ingredients’ that impedes economic development particularly in developing countries going further, he stated that without these rights it will be difficult for investors to justify an additional investment in the state owned enterprise (SOE). It is the formal property rights that assure investors of the security of their investment under concession thereby encouraging the latter to make additional investment to improve productivity efficiency.

The justification for Concession as provided under the Public choice theory is based on the fact that the legislators and bureaucrats who make and implements policies are rational self-maximizers and generally act in their parochial interest rather than in the public interest. For this reason, the allocative decisions made by the government will always be suboptimal and skewed

³³ H De Soto, ‘Missing Ingredient’ *The Economist* [1993] 328(7828), 8-10.

towards the personal preferences of those in government.³⁴ However, as there is no universally accepted modality for combining the individual preference of member of the society into a unified society of preference, it will be inevitable that the state will intervene to prioritize the preference of the society.³⁵

2.5.2 Neoliberal Economic Growth Theory

Concession is one of the policy instruments of neoliberal economic theories, labeled the ‘Washington Consensus’ by Williamson.³⁶ According to the neoliberal school, the universally valid assumption is that individually rational and decentralized decisions dictated by price signals from the market will ultimately lead to an efficient allocation of resources and distribution of income.³⁷ The argument advanced by the proponents of the neoliberal school in support for price determination through unrestricted market equilibrium comprised of two elements, the first element of this argument was political and the other was economical. As the political arguments goes, policymaking in most countries rests with organizations whose control is in the hands of politicians, bureaucrats, and interest groups which makes allocative decisions based on self-interest only, thereby producing socially undesirable outcomes.³⁸ The extensive intervention of the state to create import substituting industrialization resulted only in creating inefficient industries that require permanent subsidization for survival.³⁹ The consequence or the repercussion of these suboptimal decisions by the political state is the existence of excess

³⁴ MD Wright, ‘Critique of the public choice theory case for privatization: Rhetoric and reality’ *A Ottawa Review*, (1993) 25, 1.

³⁵ *ibid.*

³⁶ J Williamson, ‘What Washington means by policy reform’ *Latin American Adjustment: How Much Has Happened*, (1990) 7, 7-20.

³⁷ M Woo-Cumings, *The Developmental State*, (Cornell University Press 1999)

³⁸ *ibid.*

³⁹ Z Onis ‘The Logic of the developmental state’ *Comparative Politics* (1991) 24(1), 109-126. <<https://doi.org/10.2307/422204>> accessed 18th July, 2025.

capacity, rent-seeking costs, protection of high-cost producers, and the like.⁴⁰ The neoliberalist economic argument is that the theoretical static efficiency of market forces is more superior to state allocation by policy makers. In other words, allocative and distributive decisions dictated by unfettered market forces not only ensures Pareto's optimality in the short run (static efficiency), but also lead to long run growth or dynamic efficiency.⁴¹ Secondly, there is the problem of defining what constitutes the 'free market'. Lastly, the neoliberal model has no institutional specification for what constitutes a 'free market' as relate to the criteria for participation in the market, rights and duties of participants, and who regulates the relationship.

In line with the forgoing arguments, neoliberal theorists advocated two closely related policy proposals. The first is economical and supports wholesale liberalization of the economy in the form of totally unregulated domestic and international markets,⁴² On the domestic front, the policy prescribes total deregulation of all products and factor markets within the economy, such policy initiatives as privatization, concession, sector reforms and deregulation were the key strategies of this policy thrust. The proponents of this theory also stressed the liberation of trade, foreign direct investment (FDI), financial markets, and the elimination of barriers to foreign investments.⁴³ The policy recommendations included cutting marginal tax rates and creating less progressive tax administration thereby creating a safety net with a focus on the lower income

⁴⁰ n19.

⁴¹ *ibid.*

⁴² *ibid.*

⁴³ BI Ezema and K Oguijiuba, 'The developmental state debate: Where is Nigeria?' *Journal of sustainable development*, (2011) 5(1), 100-103.

<<https://search.proquest.com/openview/ce894dbde27b8110876eb703e34b2f19/1?pq-origsite=gsscholar>> accessed 22nd July, 2025.

segment of society and developing flexible labor markets also form key policy prescriptions of neoliberals.⁴⁴

In practical term, this policy initiative implies the winding down of the capital-intensive import-substitution industrialization strategy that most developing countries were pursuing previously and replacing them with labor intensive production.⁴⁵

Known also as the neoclassical growth theory, neoliberal economics asserts that the free movement of goods (free trade), services, and capital unimpeded by government regulations will lead to rapid economic growth. Such a deregulated market space, in the neoclassical view, will increase global output and international efficiency due to the gains from the division of labor.

The neoclassical school, however, received criticism from Ha-Joon Chang. According to Chang, the school downplayed the issues of market failure, the lack of specification for the free economy and the definition of free market. The free market institutions reflect a system of rewards and penalties that encourages efforts towards socially productive activities. The existence of market failure limits the effectiveness of economic and political liberalization in the sense that price determination guided by individual self-interest is unlikely to allocate resources to economic activities that do not guarantee rival consumption as the possibility of excluding any citizen from enjoying the benefits of the services is zero. The paradox of this system is that it creates economic prosperity and efficiency where it succeeds. It also creates unbridled inequality and inequity as the free market institutions systematically trade-off equity for economic efficiency and expediency.⁴⁶

⁴⁴*ibid.*

⁴⁵ Woo-Cumings (n19).

⁴⁶ *ibid.*

2.5.3 Coase Theory

This theory is closely related to the property rights theory. This theory proposes that the private sector operators, guided by enlightened self-interest, can arrive at a Pareto-optimal solution through negotiated settlements.⁴⁷ Through private negotiations, parties could arrive at a Pareto-optimal solution, particularly where there are no transaction costs. In other words, the free market is more apt at dealing with externalities associated with allocative and distributive activities in the economy. In such agreements, the legal system and governmental role is limited to establishing and protecting the rights that would allow the private sector to resolve issues in an efficient manner. The shortcoming of the Coase theory is the existence of transaction costs, which could be very high in the case of concession. The Coase theory holds true in the hypothetical world where there are no transaction costs.⁴⁸

2.5.4 Principal-Agent Theory

This theory sought to provide an explanation for the often observed divergence between the efficiency theories of concession and the outcomes disclosed by empirical literature. According to the agency principal-agent theory which was made popular by Sappington and Stiglitz (1987), the transfer of ownership from the state to the private sectors often creates the twin agency challenges of ‘managerial perquisite consumption’ and ‘entrenchment’.⁴⁹ According to Dharwadkar,⁵⁰ managerial perquisite consumption alludes to scheme and pecks designed by the managers of privatized SOEs for argumentating their non-salary income in the short run or

⁴⁷ A Filipovic, ‘Impact of privatization on economic growth’ Undergraduate Economic Review (2005) 2(1), 7.

⁴⁸ J Stiglitz and S Godoy, ‘Growth, initial conditions, law and speed of privatization in transition countries: 11 years later’ Palgrave Macmillian UK (2006). <http://works.bepress.com/joseph_stiglitz/11> accessed 3rd July, 2025.

⁴⁹ A Cavaliere and S Scabrosetti, ‘Privatization and efficiency: from principals and agents to political economy’ (2008) *Journal of Economic Surveys*, 22(4), 685-710.

⁵⁰ R Dharwadkar, G George and P Brandes, ‘Privatization in Emerging Economies: An Agency Theory Perspective’ The Academy of Management Review (2000). <<https://www.researchgate.net>> accessed 31st October, 2025.

providing other on the job consumptions for themselves, Entrenchment denotes managerial actions and practices that diminish the effectiveness of controls by put in place by the owners of the privatized SOEs to regulate management behaviors.⁵¹ .

2.6 Justifications for Government Concessions in Nigeria

Concession came about as a result of the Controversial Structure Adjustment Program (SAP) put in place by the government in 1986 which is a policy of International Monetary Fund (IMF). One of the agenda of the IMF is to push the Nigerian government to drastically reduce spending on public enterprises so that more money can be available for the servicing of the over \$30 billion foreign debts and also to better placed for the procurement of more loans.⁵²

According to the National Council on Privatization (NCP) the justification given by government for its privatization policy is based on need to reduce the prevailing dominance of unproductive investments in the public sector in the light of the continuously dwindling oil revenues and mounting external debts. Secondly, privatization/concession will help re-orientate PEs towards a new horizon of performance improvement, viability and overall efficiency. Thirdly, privatization or concession of key sectors of the economy assures positive returns and overall efficiency of the sectors to the benefit of the country. Fourthly, it is asserted by National Council on Privatization that privatization that privatization will encourage the use of the capital market as a source of funds for PEs rather than the complete and total reliance on the treasury for funding. Also, it is believed that privatization would lead to the repatriation of capital by investors who wish to take

⁵¹CC Asher, and others, 'Towards a property rights foundation for a stakeholder theory of the firm *Journal of Management and Governance* (2005) 9(1), 5-32; Walsh and Seward 1990 cited in R Dharwadkar and others, 'Privatization in emerging economies: An agency theory perspective' *The Academy of Management Economy* [2000] 25(3), 650-669.

⁵² O OJO and D Fajemisin, 'Nigeria's Privatization Programme: Structures, Strategies and Shortcomings' (2010) *Petroleum-Gas University of Ploiesti Bulletin*, Economic Science Series, Vol. LXII, No. 1.

up some of the equity in the affected companies, especially in the wake of a debt/equity conversion policy of the government.⁵³ Lastly, it is hoped that the concession of these sectors of the economy to the private sector would create a better window in the global economy and allow participation in the international trade. These and many others are the justification of concession and concessioned projects of the Nigerian government.

⁵³ *ibid.*

CHAPTER THREE

LEGAL AND REGULATORY FRAMEWORK OF CONCESSION IN NIGERIA

3.0 INTRODUCTION

Under this chapter, several legal and regulatory frame works governing Concession in Nigeria will be critically reviewed, detailing their historical background, outlining their relevant provisions and critiquing their effect economic and legal impact while also comparing these laws with laws on concession of other chosen counties.

3.1 LEGAL AND REGULATORY FRAMEWORK OF CONCESSION IN NIGERIA

In Nigeria, the Privatization and Commercialization Act¹ and Bureau of Public Enterprise Act² explained how state-owned enterprises (SOEs) can be privatized. Omoke,³ asserted that the Act described concession as ‘...the relinquishment of part or all of the equity and other interest held by the Nigerian Federal Government or any of its agencies in enterprises whether wholly or partly owned by the Federal Government’.

The legislation of the Public Enterprises (Privatization and Commercialization) Act⁴ (PEPCA) and other PEPCA linked tasks signified concession as significant and effective financing option to explore by the government in order to deliver their infrastructure desires.

¹ Privatization and Commercialization Act 1988. Was originally enacted as the Privatization and Commercialization Decree No. 25 of 1988.

² 1993.

³ V Omoke and others, ‘Infrastructure Financing and Management: The Impact of Concession on the Operations and Performance of Nigerian Seaports’ *Journal of Behavioural Economics, Finance, Entrepreneurship, Accounting and Transport* (2015) 3(2), 65–70. <DOI: 10.12691/jbe-3-2-1> accessed 31st October, 2025.

⁴ Public Enterprises (Privatization and Commercialization) Act, 1999, [1999 NO.28].

The Act gained extra significance when former President Obasanjo graciously endorsed the Infrastructure Concession Regulatory Commission Act⁵ in 2005. Apart from the ICRC Act as the major legislation, other legislation and PPP instruments relating to concession practice in Nigeria includes the Public Procurement Act,⁶ Utilities Charges Commission Act 1992,⁷ Public Enterprise (Privatization and Commercialization) Act,⁸ Highway Act 1971,⁹ Company and Allied Matters Act (CAMA) 2020¹⁰ amongst others. Some states have taken steps to create laws governing concession in such states, this includes Lagos Public-Private Partnership Law,¹¹ The Lagos State Road, Bridges And Highway Infrastructure Law,¹² Oyo State Public-Private Partnership Law,¹³ etc.

3.1.1 INFRASTRUCTURE CONCESSION REGULATORY COMISSION ACT¹⁴

This is currently the mother of all Concession regulations as far as Federal Government projects are concerned.

In 2005, the Infrastructure Concession Regulatory Commission Act (ICRC)¹⁵ was enacted and was signed into law on the 10th of November 2005 providing a legal foundation for PPPs and concessions across all economic sectors including the participation of the private sector in financing the construction, development operation, or maintenance of infrastructure or development projects of the Federal Government through concession or contractual agreements;

⁵ Cap.125A, Laws of the Federation of Nigeria, 2005.

⁶ Public Procurement Act, 2007 (Act No. 14 of 2007), Law of the Federal Republic of Nigeria.

⁷ Utilities Charges Commission Act, No. 104 of 1992.

⁸ Privatization and Commercialization Act, 1988, which was originally enacted as the Privatization and Commercialization Act, Decree No. 25 of 1988.

⁹ Federal Highways Decree 1971, Decree No. 4 1971.

¹⁰ Company and Allied Matters Act, No. 3 of 2020.

¹¹ 2011.

¹² 2005.

¹³ 2013.

¹⁴ Cap.125A, Laws of the Federation of Nigeria, 2005.

¹⁵ Cap.125A, Laws of the Federation of Nigeria, 2005.

and the establishment of the Commission to regulate, monitor and supervise the contracts on infrastructure or development projects.¹⁶

Although signed into law by President Obasanjo earlier, implementation of the act lagged until 2008, when the ICRC was formally inaugurated in November 2008 with Chief Ernest Shonekan as founding chairman and Engr. Mansur Ahmed as Director-General. From 2009 onward, the ICRC issued the National Policy on PPPs and later helped in the drafting of the National Integrated Infrastructure Master Plan (NIIMP) in 2014, further consolidating the country's PPP framework.

The Infrastructure Concession Regulatory Commission (Establishment, etc.) Act¹⁷ is the primary legal infrastructure underpinning infrastructure concessions in Nigeria. It formally empowers the ICRC to oversee and regulate Public-Private Partnership (PPP) projects within Nigeria's federal framework.¹⁸ The Act has two distinct point of focus set out in Part I and Part II. Part I provides that the Federal Government entities can enter into agreements with the private sector for the provision of infrastructure. Part II establishes the Commission and provides that its functions are to: Take custody of every concession agreement made under the act and monitor compliance and approve any other form of infrastructure and development project.¹⁹

Section 1,²⁰ empowers any Federal Government Ministry, Agency, Corporation or body to grant concessions for the financing, construction, operation or maintenance of any infrastructure.

¹⁶ The explanatory Memorandum and the schedule to the ICRC Act.

¹⁷ Cap.125A, Laws of the Federation of Nigeria, 2005.

¹⁸ Section 1-2 Infrastructure Concession Regulatory Commission (Establishment, etc.) Act 2005.

¹⁹ Section 1,14,19,20 of the ICRC Act, 2005; World Bank (2011) Project appraisal document 53.

²⁰ Infrastructure Concession Regulation Commission Act, 2005.

Under Section 4²¹ of the Statute and accompanying regulations, federal Ministries, Departments and Agencies (MDAs) are required to subject concession contracts to open, competitive bidding, with ethical clearance ensured via the Bureau of Public Procurement’s “Certificate of No Objection” process. In order to increase transparency in Nigeria, the ICRC launched a PPP Contracts Disclosure Portal in 2017, enshrining Freedom of Information standards and enabling publication of contract summaries for public scrutiny.

The functions and powers of the Infrastructure Concession Regulatory Commission established under Section 20,²² is expressly stated under Section 10, 19, 20 and 34 of the same Act. These functions and powers include; the Power to inspect,²³ to provides general policy guidelines, rules and regulations (Powers of the Board),²⁴ to take custody of every concession agreement,²⁵ to ensure compliance with the provisions of the Act,²⁶ to ensure efficient execution of any concession agreement or contract entered by the Federal Government,²⁷ and the Power to make regulations.²⁸

The Commission is the statutory regulatory body established by the ICRC Act with a mandate to evolve and issue guidelines on PPP policies processes and procedures including those for concession and to act as a national center of expertise in PPP. It is expected to, in conjunction with the relevant MDAs, identify potentially “bankable” PPP projects and will act as the

²¹ ICRC Act, 2005.

²² ICRC Act, 2005.

²³ Section 10 ICRC Act 2005.

²⁴ Section 19 ICRC Act 2005.

²⁵ Section 20(a) ICRC Act 2005.

²⁶ Section 20(b) ICRC Act 2005.

²⁷ Section 20(c) ICRC Act 2005.

²⁸ Section 34 ICRC Act 2005.

interference with the private sector to promote communication on national policies and programme.²⁹ The communication envisaged will be continuous, clear, timely and accurate.³⁰

As part of the regulatory Framework and functions of the Infrastructure Concession Regulatory Commission, the Commission will see to the smooth implementation of the Government's policies and processes and give advice to the Federal Executive Council (FEC) on whether projects submitted to it for approval meets the requirements of the regulations.³¹ The Contract Monitoring Unit within the commission framework will be responsible for monitoring of compliance with the terms and conditions between the contracting parties arising from the PPP contract.

The ICRC Act gives MDAs of government the legal authority to enter into concession agreements with the private sector. It provides the legal framework which gives the private sector the confidence to engage with the private sector. It allows for the continuous monitoring of signed contracts by ICRC to ensure compliance.³²

3.1.2 PUBLIC PROCUREMENT ACT (LAWS OF THE FEDERAL REPUBLIC OF NIGERIA) 2007³³

The Public Procurement Act of 2007 was enacted to unify procurement practices across federal ministries, agencies, and parastatals in Nigeria. It lays down rules emphasizing transparency, competitiveness, and value for money and established the Bureau of Public Procurement (BPP) and the National Council on Public Procurement to oversee procurement at the federal level.

The Procurement Act applies to procurement of goods and services carried out by the Federal Government of Nigeria, any public body engaged in procurement and all entities which derive at

²⁹ The World Bank (2011) Project appraisal document 6.

³⁰ *ibid.*

³¹ n 5.

³² Infrastructure Concession Regulation Commission (ICRC). <www.icrc.gov.ng> accessed 23 June 2025.

³³ Public Procurement Act, 2007 (Act No. 14 of 2007), Law of the Federal Republic of Nigeria.

least 35% of the funds appropriated or proposed to be appropriated for any type of procurement from the Federation share of the Consolidated Revenue Fund.³⁴ By implication therefore, the act does not apply to procurements carried out by the constituent states of the federation.

The Procurement Act does not expressly mention procurements carried out by the constituent state of the federation. The Procurement Act does not expressly mention procurements done under the PPPs like concessions and so it is believed that it only applies to traditional forms of procurement done by the Federal Government of Nigeria, this is however questionable because the Procurement Act also applies to procurement of goods and services for infrastructure projects.³⁵

There is interaction between PPA 2007 and Concession (PPPs) as although the PPA does not itself enumerate concession processes, it nonetheless applies in respect of any tendering or procurement of goods, works, or services within concession projects. Its provision governs PPP related procurement components, for instance:

Procurement of transactions advisers, consultants or procurement professionals for PPP projects by MDAs must follow PPA procedures and receive BPP approval or Certificate of No Objection validating bid fairness and transparency,³⁶ competitive bidding requirements, bid submission, opening and evaluation phases in PPP procurement must align with PPA standard of transparency and fairness even as the overall model is regulated under the ICRC Act.³⁷

³⁴ Section 15 of the Procurement Act, 2007.

³⁵ PPA 2007 broadly covers goods, works, services procurement under federal funding but omits explicit reference to PPP style concession projects. It is however silent on the non-tender aspects of PPP transactions or handling of unsolicited bids.

³⁶ ICRC PPP process guidance; outline/full business case, TA procurement under PPA, competitive bidding, certificate of compliance, contract custody under Section 20 ICRC Act on process documentation.

³⁷ ICRC FAQ emphasizes that bid submission /opening/evaluation are conducted per Bureau for Public Procurement procedures.

3.1.3 UTILITIES CHARGES COMMISSION ACT 1992.³⁸

This Act basically established a Utilities Charges Commission that regulates prices or tariff charged by public utilities in Nigeria. The implication of this is that the approval of the Commission may be required in fixing the tariff between the private investor (concessionaire) and the government.³⁹

This means the price fixing between the Concessionaire and the Government agency should in certain instances obtain the blessing of this Commission. The Schedule to the Act mentions specific utilities: Nepa, Nitel, NNPC, Nigerian Airways, Nigerian Railway Corporation, Ferry Services Organizations, Nigerian Ports Authority, Road Transport Organizations, Nipost and such others as Commission determines from time to time.⁴⁰

3.1.4 PUBLIC ENTERPRISE (PRIVATIZATION AND COMMERCIALIZATION) ACT 1999.⁴¹

The Privatization Act provides the legal framework for the privatization and commercialization of various public assets in Nigeria and establishes the National Council on Privatization (NCP) and the Bureau of Public Enterprises (BPE) as the supervisory and implementing agencies respectively for privatization transaction. It however, repeals the Bureau of Public Enterprises Decree.⁴²

The act creates the National Council of Privatization (NCP) as the apex body charged with the responsibility of setting and administering the Federal Government policies and objectives on

³⁸ Utilities Charges Commission Act, No. 104 of 1992.

³⁹ Olufemi Soyaju, 'Legal Framework for Public Private Partnership in Nigeria' De Jure Law Journal (2013) 46 Volume 3, pp 814. <www.dejure.up.ac.za> accessed 12th August, 2025.

⁴⁰ Ayuli Jemide, 'What is the Legal Framework for Concession in Nigeria' Detail Solicitor (2010). <<https://www.detailsolicitor.com>> accessed 31st October, 2025.

⁴¹ Public Enterprises (Privatization and Commercialization) Act, 1999, [1999 NO.28].

⁴² 78 of 1993.

privatization and approving transactions.⁴³ The Council is saddled with the responsibility of determining which public assets the government should divest from.⁴⁴ Under the provision of this act, concessions have been used severally as a means of commercialization of existing government-owned enterprises.

Section 9 (1) of the Privatization and Commercialization Act establishes the National Council on Privatization. Section 11,⁴⁵ however provides for the functions and powers of the council which among others includes approving policies on privatization and commercialization, providing public enterprises to be privatized or commercialized, and the legal and regulatory framework for the public enterprises to be privatized.

In the same vein, the Act specifically sets up the Bureau of Public Enterprise (BPE) and gives them powers to function as the secretariat of the NCP and carry out the actual day-to-day privatization activities and privatize or commercialize certain Federal Government entities listed in the Schedule to the Act.⁴⁶ It follows that some of these entities will be commercialized by the grant of concessions and the BPE is the key driver of such a process. The functions of the Bureau also extends to the implementation of the Councils policy on privatization, preparation of public enterprises approved by the council for privatization, to advise the Council on further public enterprises that may be privatized and to advise the Council on the capital restructuring needs of the public enterprises to be privatized, among others.⁴⁷

⁴³ TU Akpoghome and TC Nwano, 'Public-Private Partnership (PPP) in Nigeria' KAS African Law Study Library (2019) 6. <<https://www.nomos-elibrary.de/agb>> accessed 12 August, 2025; Section 9, 10 & 11 of the Privatization Act 1999.

⁴⁴ n 20

⁴⁵ Public Enterprise (Privatization and Commercialization) Act, 1999.

⁴⁶ Section 12 of the Privatization Act 1999. Several transactions had been consummated under the Privatization Act, for example, the concession of the 26 Ports and mining assets were done under this law and also covered by the ICRC Act.

⁴⁷ Section 12 of the Privatization Act 1999, Section 13 of the Highway Act.

The Act only applies to the privatization and commercialization of the list of the public enterprises set out in the Act. The Act does not apply to the primarily ‘greenfield’ kinds of PPP transactions.⁴⁸

However in practice, the agreement between the two regulatory agencies is that all assets mentioned in the Privatization and Commercialization Act that are to be developed by the PPP will be led by the MDAs with the commission coordinating and the BPE providing technical advice.⁴⁹

The BPE as an agency has driven the privatization process of many state owned business enterprises in Nigeria since 1999. It holds the public assets in trust for the ministry of finance until successfully sold or commercialized.⁵⁰

3.1.5 ELECTRIC POWER SECTOR REFORMS ACT, 2005.⁵¹

The Electric Power Reform Act 2005 was signed into law on 11 March 2005. Generally, it provides the statutory framework for participation of private companies in electricity generation, transmission and distribution. Specifically, the acts provides for the formation of companies to take over the functions, assets, liabilities and staff of the defunct National Electricity Power Authority (NEPA).⁵² It also provides for the development of competitive electricity markets and the establishment of the Nigeria Electricity Regulatory Commission (NERC). The Act also makes provision for the regulation and licensing of the regulation, generation, distribution and supply of electricity.

⁴⁸ n 20.

⁴⁹ The World Bank (2011) Project appraisal document 56.

⁵⁰ ICRC National Policy on PPP (2009) 74; The World Bank (2011) Project appraisal document 55.

⁵¹ The Electric Power Reform Act, 2005, No. 6, Federal Republic of Nigeria Official Gazette No. 77 of August 8, 2005 (Vol. 92, pp. A77-A130)

⁵² Olufemi Soyeju, ‘Legal Framework for Public Private Partnership in Nigeria’ De Jure Law Journal (2013) 46 Volume 3, pp 814. <www.dejure.up.ac.za> accessed 12th August, 2025.

Regulatory issues in respect of enforcement of matters like consumer right and obligation, performance standards and determination of tariffs are also governed by the Act.⁵³

Section 1 of the Act,⁵⁴ provides for the transformation of the defunct NEPA to the Power Holding Company of Nigeria (PHCN) which was then unbundled into autonomous companies comprising of one transmission company, seven generation companies and eleven distribution companies. Part of the reforms which was provided for in the Act was the establishment of the Rural Electrification Agency (REA) and the National Electricity Liability Management Company (NELCO) which was a special purpose vehicle expected to take over and manage the residual assets and liabilities of the defunct NEPA after privatization of the unbundled companies.

Section 83,⁵⁵ empowers the Commission to set up and administer a fund under the name ‘Power Consumer Assistance Fund’ to be used to subsidize under privileged power consumers as may be specified by the appropriate minister.⁵⁶

3.1.6 HIGHWAY ACT 1971.⁵⁷

The Highways Act⁵⁸ empowers the Minister for Transportation to build Toll gates, operate and collect Tolls on Federal Highways. The implication of this section is that in concession of federal roads that requires tolls, the minister in charge has the authority to direct such federal concessions. The Act forms part of the broader legislative infrastructure underpinning highway concession framework often implemented via PPPs under the Infrastructure Concession

⁵³ Explanatory Memorandum to the Electric Power Sector Reform Act 2005.

⁵⁴ Electric Power Sector Reform Act 2005.

⁵⁵ Electric Power Sector Reform Act 2005.

⁵⁶ Transmission Company of Nigeria’s Website. <<https://www.tcnng.org/StatusOfPowder.aspx>> accessed 12th June, 2025.

⁵⁷ Federal Highways Decree 1971, Decree No. 4 1971.

⁵⁸ Section 2 of the Highway Act, 1971.

Regulatory Commission Act 2005 as the ICRC mandates oversight and custody of concession agreements including those pertaining to highways ensuring competence bidding, compliance and value for money across PPP related infrastructure delivery.⁵⁹

3.1.7 THE LAGOS STATE ROAD, BRIDGES AND HIGHWAY INFRASTRUCTURE LAW.⁶⁰

This law is restricted to Lagos state. It was enacted and signed into law on the 24 June, 2011 by the Lagos State House of Assembly as the legal framework upon which the Lekki–Epe Corridor Road Concession is based. It is to date the only Law that specifically deals with Road Concessions in Nigeria as compared to specific Road Concession Laws such as the California Toll Road Law or the United Kingdom New Roads & Streets Works Act 1991. This Law applies only to Lagos State Roads.

The Lagos State Road, Bridges and Highway Infrastructure Law encompasses in one document the framework for PPPs capturing the entire infrastructure spectrum in all facets of the economy, compared to its predecessor which was limited to roads, bridges and highways are suggested by the title of the law.⁶¹

⁵⁹ Section 20 ICRC Act.

⁶⁰ 2005.

⁶¹ n 29.

CHAPTER FOUR

LEGAL AND REGULATORY FRAMEWORK OF CONCESSION IN OTHER COUNTRIES

Concession is a very important factor to a country's development and as such is dominant in every country of the world as a means of economic development. After examining concession in Nigeria as well as the legal and regulatory framework of concession, it is trite to also examine concession from the lens of other countries. In lieu with this project work, the legal framework of Russia, United State of America and India will be examined.

4.1 LEGAL FRAMEWORK OF CONCESSION IN RUSSIA

Concessions are an effective tool for attracting private capital to infrastructure facilities. In 2005, Russia adopted new legislation opening the door for concession agreements into many parts of the public sector including transportation, energy, education, health care, and utilities. The Russian Law "On Concession Agreements"¹ contains the most general provisions on concession, including entities involved in the concession granting process, concession facilities, selection procedures, concession agreements as well as certain financial security and government support issues, but neglects including clear and detailed regulation of issues of the relations between the state and private investigators during implementation of concession projects.² Since then, nine sets of amendments have been made, most of which were substantial and had considerable legal significance. The 10th amendment package has made another attempt to change the situation and make it more flexible and attractive to investors.

¹ The Russian Law "On Concession Agreements," No. 115-FZ (July 21, 2005).

² Yury Tuktarov and Dmitry Sobolev, 'Concession Agreements in Russia' Mondaq (2009). <www.mondaq.com> accessed 24th September, 2025.

Federal Law No. 38-FZ on Amendments to the Federal Law on Concession Agreements and Article 16 of the Federal Law on State Company Russian Highways, and amendment to Certain Legal Acts of the Russian Federation³ was adopted on April 25, 2012. The primary purpose of Law No. 38-FZ was to establish a special legal procedure governing concession agreements with respect to roads or sections thereof, protective and artificial road structure, industrial facilities used in road repairs, repairs or maintenance of roads, facilities for collecting payment and road services.⁴

According to Yatchenko and Yu Lantseva,⁵ The current legislation of the Russian Federation on Public Private Partnership consists of federal laws and various legislative acts of the Russian Federation and the regulatory legal acts of the subjects of the state, in particular the Law on Public Private Partnership,⁶ the Law on Concession Agreements,⁷ etc.

The legal definition of a concession agreement is presented in Article 3 of the Federal Law “On Concession Agreements”⁸ which defines concession as an agreement creating obligation of the concessionaire to create and (or) reconstruct the real estate owned by concession provider and established by the transaction at its own expense with subsequent profit through the operation of the concession agreement object within a certain period.

³ Law No. 38-FZ.

⁴ Karina Chichkanova and Olga Lovtsov, ‘Concessions in Russia: further legislative developments’ Dentons (2013) 1. <www.dentons.com> accessed 24th September, 2025.

⁵ LV Yatchenko and V Yu Lantseva, ‘Problems of legal regulation of concession agreements’ SHS Web of Conferences (2023) 164. <<https://doi.org/10.1051/shsconf/202316400026>> accessed 12th July, 2025.

⁶ Federal Law of July 13, 2015, No 224-FZ (as amended on June 11, 2022) “On Public Private Partnership, Municipal-Private Partnership in the Russian Federation and Amendments to Certain Legislative Acts of the Russian Federation”, Collection of Legislation of the Russian Federation 29 (part I),4350 (July 20, 2015).

⁷ Federal Law of July 21, 2005, No. 115-FZ (as amended on July 14, 2022) “On Concession Agreements” (as amended and supplemented, entered into force on July 25, 2022), Collected Legislation of the Russian Federation 30 (part II) 3126 (July 25, 2005).

⁸ Federal Law of July 21, 2005, No. 115-FZ (as amended on July 14, 2022) “On Concession Agreements” (as amended and supplemented, entered into force on July 25, 2022), Collected Legislation of the Russian Federation 30 (part II) 3126 (July 25, 2005).

The first normative act regulating relations in the field of Public Private Partnership is the Federal Law “On Concession Agreements”. Based on the legal definition of the concession agreements, it can be concluded that the agreements under consideration enables to attract private capital or object owned by the state without privatizing them.⁹

The later Federal Law on Public Private Partnership expanded the list of applicable models of the phenomenon under consideration. At the same time, the PPP law provides for a model to endure the stability of the essential terms of the contract that were in force at its conclusion. Only the terms of the project implementation and the redistribution of the volume of project financing by the state in the conditions of economic or legal transformation that directly affects the project being implemented are subject to revision.¹⁰ These measures aim to create comfortable conditions that are attractive for private investment and reduce the possible risks that the parties may face during the project implementations. The list of objects of the agreement is indicated in Article 4 of the Federal Law “On Concession Agreements”, and the list is open.

In Russia, Concession projects are long termed concluded for 20-30 years or more. Investments from construction and subsequent operation pay back on the fees at infrastructure facilities. In this case, the investors risk lies in the low level of demand for this object due to low solvency of population and low passenger traffic. Therefore, at the stage preceding the project, it is very crucial to regard the dynamics of social-economic development, access the necessary level of traffic intensity by road transport, and other factors affecting the potential return on investment.

As can be seen from the definition of Concession under the Russian law, the current legislation contains a sign of the Concession Agreements complexity not specifying the list of types of

⁹ LV Yatchenko and V Yu Lantseva, ‘Problems of legal regulation of concession agreements’ SHS Web of Conferences (2023) 164. <<https://doi.org/10.1051/shsconf/202316400026>> accessed 12th July, 2025.

¹⁰ *ibid.*

contract that makeup its content, while establishing the nature of individual elements of concession agreements is not so much theoretical as practical at each stage of its conclusion, execution and termination. In particular, a correct assessment of potential of potential risk is impossible without an accurate understanding of the essence of the proposed legal relationship. At each stage of the concession implementation, the nature of the legal relations is different and the determination of the applicable legal norms is necessary for resolving the legal relations of the parties.¹¹

The law provides for two main types of contracts which are the concession agreements the construction of infrastructure which typically focuses on the provision of public services, which typically relates to the construction of roads, bridges, utilities and railway and those for the operation and management of public services which may include waste management, water supply and transportation services.

Concession must be awarded through a competitive bidding process, which promotes transparency and fairness. The law mandates that the concession be awarded through open competitive bidding procedures, aimed at promoting fairness and transparency in the procurement process. This is vital for attracting reputable investors and preventing corruption.¹²

The concessionaire is responsible for financing, constructing, and operating the project while the government retains ownership of the assets but allows the concessionaire to manage and operate

¹¹ MS Popov, 'Features of the legal regulation of investment in infrastructure projects' State and Law (2016) 4, 95-101.

¹² Federal law NO. 115-FZ "On Concessions" (2010).

it for a specified period. Concession can typically last up to 30 years depending on the project nature, complexity and investment requirements.¹³

The various ministries and agencies at federal, regional, and municipal levels oversee the implementation of concession of concession agreements and ensure compliance with regulations as concession falls under the jurisdiction of various ministries, such as the ministry of Economic Development and sector specific agencies. Regional and municipal authorities also play a critical role in supervising local concession agreements.

The law includes provisions to protect the investment of the concessionaire such as compensation for unanticipated regulatory changes and guarantees of equity returns.¹⁴

4.2 LEGAL FRAMEWORK OF CONCESSION IN THE UNITED STATE OF AMERICA

In the United States of America, the 1965 Concession Policy Act¹⁵ historically governed concession contracts and operations. This law authorized numerous policies and procedures regarding concession operations. The Congress of the United State of America enacted the National Park Service Concessions Management Improvement Act of 1998,¹⁶ as amended and codified at 54 United States Code (U.S.C) § 101911-101926 with the objective of improving concessions and increasing competition of contracts in the United States.

Some of the major changes in the 1998 Act include;

¹³ T Lankina, “The Role of Public-Private Partnerships in Infrastructure Development in Russia” European Journal of Law and Economics (2015).

¹⁴ V Maslov, “The Concession Law in Russia: Legal and Economic Aspects” Russian Journal of Law (2013).

¹⁵ Public Law 89-249.

¹⁶ Title IV of Public Law 105-39.1

1. Reduced preferential right situations
2. New competitive bid requirement
3. Franchise fee distribution changes
4. Increased accountability and oversight

The legislation of the United State of America on Public Private Partnership and concession agreement is 54 U.S. Code § 101913- Award of Concession Contracts. It states that:

In Furtherance of the findings and policy stated in section 101913 of this title, and except as provided by this subchapter or otherwise authorized by law, the Secretary shall utilize concession contracts to authorize a person, corporation, or other entity to provide accommodations, facilities and service to visitors to system unit.

Section 1 of the Code provided on the Competitive selection process, and states that:

Except as otherwise provided in this section, all proposed concession contracts shall be awarded by the Secretary to the person, corporation, or other entity submitting the best proposal, as determined by the Secretary through a competitive process. The Competitive process shall include simplified procedures for small, individually-owned entities seeking award of a concession contract.

Section 2 of the Code makes provision on the Solicitation of Proposals and states that ‘Except as otherwise provided in this section, prior to awarding a new contract (including renewals or extensions of existing concession contract) the Secretary shall-

(A) shall publicly solicit proposals for the concession contract; and

(B) in connection with the solicitation, shall-

- (i) prepare a prospectus and publish notice of its availability at least once in local or national newspapers or trade publications, by electronic means or both, as appropriate; and
- (ii) make the prospectus available on request to all interested persons.

The requirements for consideration of proposal and selection of the best proposal is provided for under Section 4 and 5 of the Code and is done by the Secretary in accordance with the provision of the code after which the Secretary shall submit the proposed concession contract to the Committee on Natural Resources of the House of Representatives and the Committee on Energy as a means of Congressional Notification.¹⁷ Under the Code the Secretary has the power to grant a ‘Preferential right of renewal’ to an existing concessioner with respect to proposed renewals of the categories of concession contracts subject to the requirements provided by the code.

In the United States, the legal framework for concessions varies significantly by state and locality influencing how concessions are structured and implemented.¹⁸ Federal laws may also apply, particularly involving federal lands or funds. Concessions often fall under the broad category of Public Private Partnerships which are governed by specific state laws and procurement policies. Each state has different laws governing concession agreements, typically including statutes that outline procurement processes, the duration of agreements, and the rights and responsibilities of the parties involved. State and local government typically have the authority to regulate concessions, with oversight often involving stakeholder engagements and public hearings.

¹⁷ Section 6 of 54 U.S.C § 101913, Award of Concession Contracts.

¹⁸ National Council for Private-Public Partnership (NCPPP), ‘PPP Basics: Types of PPPs (2021).

Similar to Russia, the United State requires a transparent bidding process for agreement relating to concession to ensure fair competition and accountability to tax payers. This often involves requests for proposals (RFPs) and evaluation criteria based on technical and financial capabilities.

4.3 LEGAL FRAMEWORK OF CONCESSION IN INDIA

There is no single “Concession Law” in India, but the concept is governed by a framework of laws related to Public-Private Partnership, with concession often treated as a type of PPP. The Public-Private Partnership model has been in vogue in India since 1991. Concession agreements play a vital role in India’s infrastructure development, especially in the context of Public-Private Partnership. The legal framework is a combination of sector-specific laws, procurement laws, and general contract law, sometimes supplemented by specific concession or PPP laws. It is a lease agreement which enables the government to collaborate with private entities for the development, operation, and maintenance of public assets while retaining ultimate ownership.¹⁹ The expansive definition of lease under the Stamp Act and other stamp legislation brought into its remit concession agreements as per the *Rewa Tollway P. Limited v. the State of Madhya Pradesh*²⁰ where the Supreme court of India upheld that a concession agreement for a road allowing the collection of toll fell within the definition of the term ‘lease’ under the Indian Stamp Act, 1899 (as applicable in the state of Madhya Pradesh) and consequently stamp duty payable on a ‘lease’ should have been paid on such agreements and the *Abhijit Infrastructure Private Limited v. the Joint District Registrar*²¹ and another decision in 2020. Concession agreements

¹⁹ Section 105 of the Transfer of Property Act, 1882 (Property Act); Section 52 of the Easements Act, 1882; India Stamp Act, 1899 (Stamp Act).

²⁰ 2024 INSC 539.

²¹ 2006 Bombay HC, No. 2365.

can fall under the spectrum of competition law issues in cases related to the stage of granting a concession and the nature of the concession agreements. Further, these agreements fall within the preview of the Competition Act, 2002 as per the definition of ‘enterprise’ in Section 2(h) of the Competition Act of 2002.²²

Generally, India’s legal system relies on general laws like the India Stamp Act, 1899, and the Transfer of Property Act, 1882 to interpret the nature of these agreements. Although there is no statutory definition, the term ‘Concession’ has been explained as a right conceded to a private partner for provision of a public asset and service for the purpose over a specific period on the basis of market-determined revenue streams that allow a commercial return on investment.²³

A review of typical concession agreements executed in India clearly shows that there is no interest created in the property underlying the concession granted by the authority. A Concession is merely a license to enter upon the land, undertake certain development works for the creation, expansion or improvement of public assets and provide long-term services from such public assets. In fact the term “Concession” and “License” are often used interchangeably at times in the context of these agreements. Often, a separate lease instrument or agreement is often is often executed in favor of a concessionaire granting a right to use or enjoy or enter upon the underlying land for the purpose of the concession.²⁴

A lease is defined under Section 105 of the Transfer of Property Act, 1882 with reference to immovable property as a transfer of a right to enjoy such property made for a certain time, express or implied or in perpetuity, in consideration of a price paid or a promise, or of money, a

²² Padmamala Madhusudan and Pushpit Singh, ‘A Three-way Critique of Impact of Concession Agreements in the Indian Infrastructure Sector: From a Competition Law, Ports sector, and GST Perspective’ (2022). <www.ijpiel.com> accessed 22nd September, 2025.

²³ Report of the Committee of Revisiting and Revitalizing Public Private Partnership Model of Infrastructure headed by Mr. Vijay Kelkar issued by the Department of Economic Affairs, Ministry of Finance in November 2015.

²⁴ Joshi Aakanksha, ‘Stamp Duty On Concession Agreements’ (2024). <<https://www.legal500.com>> accessed 29th October, 2025.

share of crop, service or any other thing of value, to be rendered periodically or on specified occasion to the transferor by the transferee, who accepts the transfer on such terms. The expansive definition of 'lease' under the Stamp Act and other stamp legislation has now brought into its remit concession agreements as per the Rewa Decision and the Abhijit decision.

CHAPTER FIVE

CHALLENGES AND LEGAL ISSUES IN CONCESSIONING

5.0 INTRODUCTION

Concession agreement is granted by the Federal Government of Nigeria to promote investment opportunities in Nigeria through competition and efficiency. These agreements are typically between public sector and private firms for the provision of public services such as rail transport, water distribution, waste disposal and energy, or to operate, develop, and maintain infrastructure such as ports and toll roads.

There are numerous advantages of Public Private Partnership, which includes optimal risk transfer and risk management, speedy, efficient and cost-effective delivery of projects, upgrade of financing and operation in design, construction and maintenance of public infrastructure, alleviation of capacity constraints and bottlenecks in the system, accountability in the delivery of public services, innovation and diversity in the provision of public services, effective utilization of assets to the benefit of all users of members of the public amongst others.¹

However, Nigerians hold divergent views on the contribution of concession in its three decades of existence in Nigeria and its pertinent that this be reviewed critically. Quite commonly, certain roads and billboards and many jingles are aired on the radio and television sponsored by the National Council on Concession deceptively saying that ‘the people benefit as the nation

¹ O Anyanechi and P Ladenegan, ‘Negotiation of Concession Agreements in Nigeria- An Introduction to Key Concepts in Public Private Partnerships’ Mondaq (2020) <www.mondaq.com> accessed 28th August, 2025 .

concessions'. The question however is: Who are the people that actually benefit from the concession programme? Certainly, they are not the ordinary people and workers of the sold companies who have subsequently lost their jobs, and left their numerous dependents on a bleak future. The mass of workers and ordinary people stand to lose out from the concession programme. This is because the driving force of private ownership is maximization of profits. With this in mind, the immediate concern of the buyers of the newly concessioned companies will be to cut down overhead costs. The first casualties will be the workers of the affected companies, who will lose their jobs in droves and their numerous dependents will suffer thereafter.²

Certain infrastructures in Nigeria have for ages deteriorated in existence and service delivery, ranging from the epileptic power generation and supply to the state and federal highways, the education and health standards amongst other areas. Some of these include NITEL, Nigerian Airways, Railways, Ajaokuta steel etc.

Reportedly, under the contemporary concession policy in Nigeria there are numerous concessioning projects in Nigeria some of the awarded infrastructural projects includes the Tafawa Balewa Square Investment project, the Tinapa Free Trade Zone of Cross River State, the Bi-Courtney Airport management of the Murtala Mohammed Airport 2 Terminal (MMA2), the Lekki Concession Infrastructure Projects in Lagos State, the Bi-Courtney Highways management project for the Lagos-Ibadan expressway, the Murtala Mohammed Airport infrastructure and management concession under the aegis of Maevis Nigeria Limited, the 26 seaports operations concessioning, the Lagos International Trade fair amongst so many. Others underway include

² Olu Ojo and David Fajemisin, 'Nigeria's Privatization Programme: Structures, Strategies and Shortcomings' (2010) *Petroleum-Gas University of Ploiesti Bulletin* Vol. LXII No. 1/2010

Ogun state free Trade blueprints comprising of so many projects from Agriculture, housing developments, cargo airport, industrial park etc., and the Warri Industrial Business Park (WIBP).

There has been several reports and publication on the concession of infrastructural projects. The Tinapa Free Trade Zone in Cross River State established by the former Governor Donald Duke is as of recent a major bone of contention in the countries investment platform. Lingering issues revolve around the context of approved activity with regards to the zone being an Export Processing Zone (EPZ) or an Import Processing Zone (IPZ).³

A second scenario posing challenges in Nigeria concessioning is exemplified by the Tafewa Balewa Square Agreement where there are clear cases of impediments placed before it owing to a dispute between the state government and the Federal Government over ownership of edifice/land as well as allegations and counter allegations over non-compliance with sections of the concession agreement and over remittance of payments. This in a sense has stalled the earlier on-going development approvals intrinsically and brings to fore the legal, structural and investment finance challenges related to this mode of development.

Wale Babalokun's Bi-Courtney Highway Service Limited is also one of the failed infrastructure projects in Nigeria whilst his Murtala Mohammed Airport, MMA2 "Building, Operation and Transfer Arrangement" (BOT) agreement appear to be thriving. It is a sad commentary that the 105km highway project through Lagos-Sagamu Interchange Express Way to Ibadan has since May 26, 2009 witnessed no measure of progress, bogged down with problems from access to roads upon which houses have been built and sold by the state government; approval and other access issues situated within the state control. Recently, it decided that the project will now have

³ 'Concessioning in Nigeria: A Challenge to PPP' Proshare (2012). <www.proshare.com> accessed 28th August, 2025.

to conversely commence implementation from the Ibadan axis of the Express way. The hiccup experienced from the predetermined point of the project execution, Lagos old Toll-gate was said to be due to lack of cooperation from the part of Lagos and Ogun states government. The company complained of the Ogun state government's seizure of purchased \$6.5 million asphalt plant bought for reconstruction works amongst so many other issues, thus properly placing government as a hindrance to its own policy implementation initiative for which resources have been committed.⁴

It is trite knowledge that with any change in governance, most if not all contracts signed by previous office holders are subject to 'probes' and 'review'. The adverse effect of modifications in governmental policies serves as a critical impediment to infrastructural development and financing in Nigeria.

With all this in mind, it is therefore pertinent to go deeper on the common legal pitfalls in Nigeria concession, the economic challenges of concession as well as the reasons for failure of Nigeria's concession.

5.1 COMMON LEGAL PITFALLS IN NIGERIA CONCESSIONING

The Infrastructure Concession Regulatory Commission Act (ICRCA)⁵ stands as the closest legislation in Nigeria that can be easily referred to as the infrastructure law. Breach of contracts, controversies, projects abandonment and protests, failed projects, circumvention of court orders is the other of concerns for most concession projects in Nigeria.

⁴ *ibid.*

⁵ Cap.125A, Laws of the Federation of Nigeria.

Some of the transactions that have been consummated so far in accordance with the legislations governing concession in Nigeria are mainly in the transport sector including a MM2 airport terminal in Lagos, a new toll road in the Lekki area of Lagos, the seaports located around Lagos and Niger Delta Region of the country. It is clear therefore from these projects that Nigeria government has fully embraced concession and the use of Public Private Partnership to finance infrastructure. However, due to the haste and desperation by the government to provide infrastructure, crucial enablers to ensure successful Public Private Partnership transactions were never put in place leading to economic inefficient litigation as exemplified in the case of *BFI Group Corporation v B.P.E.*⁶ The issue in this case was whether on a proper evaluation of both oral and documentary evidence before the trial court, the Court of Appeal was right in affirming the findings of fact by the trial court that there was no contract between the parties that was capable of being enforced by an order of specific performance. The fact was that the respondent advertised for expression of interest by interested bidders for the privatization of the Aluminum Smelter Company of Nigeria (ALACON). The appellant completed the request for proposal (RFP) issued by the National Council on Privatization (NCP). The said RFP completed by the appellant was tendered in evidence at the trial court as “exhibit DI”. Therein, it was confirmed that a bidder would be settled on the basis of evaluation and selection procedures was approved by the NCP and contained in the RFP. By the last provision of exhibit DI, the appellant was made to subscribe to a memorandum of acceptance by which it attested to and sealed the terms of the contract by its seal duly signed by one of its Directors and Secretary.

In tune with exhibit DI, a pre-bid conference was held on 20th May, 2004. At the conference, a number of undertakings and agreements were reached in furtherance of the sale of ALSCON. At

⁶ (2012) 18 NWLR (pt. 1332) 209.

the end of the pre-bid conference, the undertakings and agreements were set down by the respondent and addressed to the appellant. This was “exhibit 3”. The appellant affirmed and returned a duplicate copy of the undertakings agreement (exhibit 5) to the respondent. In compliance with the duplicate, the appellant caused a bid bond in the form prescribed by the respondent to be issued to secure the offer. This was accepted by the respondent and the appellant as declared the preferred bidder on 14th June, 2004. The said bid bond provided by Assurance Bank Nigeria Limited was admitted as exhibit 4 at the trial court.

At the finance bid opening held on 14th June, 2004, the appellant’s bid of US\$410 million was declared the preferred bid. The second bidder, RUSAL submitted a conditional bid in the sum of US\$205 million. Its bid was disqualified. Further to the acceptance of the appellants bid by the respondent by its letter dated on 17th June, 2004-“exhibit 6”- confirmed the same. In the said letter, the respondent introduced a unilateral condition as follows: *“While we wish to congratulate you on this achievement, we wish to remind you that your consortiums must pay 10% of the bid price within 15 working days of receipts of this letter”*.

The above was contrary to the provisions of Clause (F) of exhibit 5 which states that by the standard rule of bid price payment of 10% shall be paid within 15 working days of signing the share purchase agreement. The appellant made effort to fully consummate the sale by having the share purchase agreements signed with the visit of its officials to the office of the respondent on 8th July, 2004. The validity period of the appellant bid was 60 days as per clause 4.8 exhibit D. This was in addition to the fact that the bid bond was given to last for a period of six month (180 days).

On 8th July, 2004, the respondent unilaterally extinguished the contract due to the alleged inability of the appellant to pay 10% initial bid price within 15 days of the receipt of their letter-exhibit 6. As at the date of termination of the contract the share purchase agreement had not been signed by the parties for the purpose of computing time for the payment of the 10% initial bid price.

The appellant was aggrieved by the termination of the contract and it sued the respondent at the Federal High Court claiming a number of declaratory reliefs of specific performance. The trial court, in its judgment, found that there was no valid or enforceable contract between the parties capable of being enforced by the court. The Court of Appeal affirmed the decision of the trial court. Still aggrieved, the appellant appealed to the Supreme Court. The Supreme Court held that an order of specific performance of the contract between the parties is clearly warranted and same is hereby ordered as prayed. The appeal is meritorious in the extreme, It is hereby allowed. The decisions of the two courts below are hereby set aside. The claims of the appellant at the trial court are hereby granted.

Justice Fabiyi, JSC who delivered the judgment reiterated the fact that the state officials should learn to operate within the rule of law. The world has become a global village and all forms of negative tendencies must be avoided, senior officials should operate within firmness of purpose. This must be so if we desire to be taken seriously in international trade relations.

The failure and controversy in the case above is an example of Nigeria experience in Public Private Partnership.

Concerns have been raised over the concession of Nigerian ports because the success or failure of the concession will affect the perception of privatization in Africa.⁷ The Federal Government of Nigeria has transferred the right to use Nigerian ports to concessionaires. It is believed that the transfer of a public monopoly to a private sector works well if there is a proper legal and regulatory environment.⁸ Unfortunately the legal and regulatory environment in Nigeria is porous considering the endemic corruption in the country.

Sanctity of contracts is central to business relationships, this rule assures both parties that the terms of their agreement will be adhered to. Thus, understanding the terms of an agreement and seeking professional advice during negotiation is very essential; alleging unfairness after execution will generally be unhelpful, as the private sector player cannot be expected to bear the brunt of any shoddy preparation on the government side.⁹

In the case of *Maevis Nigeria Limited (MNL) v Federal Airport Authority of Nigeria (FAAN)*,¹⁰ MNL signed a ten year concession contract with FAAN in 2007 to install an electronic payment system for revenue assurance through an Airport Operation Management System (AMOS). Their AMOS was to cover Nigeria's four major airports: Lagos, Abuja, Kano and Port Harcourt. However, some years into the agreement, FAAN started claiming that MNL failed to comply with the fundamental terms of the agreement; and that the contract terms unduly favored MNL. FAAN thereafter asked for a renegotiation but MNL refused, and as a result, FAAN abruptly terminated the concession. MNL sued FAAN and the Federal High Court (FHC), Lagos ordered both parties to proceed to arbitration in line with the arbitration clause in their contractual

⁷ S Cameron, 'The spotlight ids on the privatization process' Portstrategy (2004) 24-26.

⁸ PO Idornigie (n.d), 'Public-Private Partnership: The Issues, Prospects and Challenges'. <<https://www.paulidornigie.org/>> accessed 28th August, 2025.

⁹ A Elebiju and TA Ilesanmi, 'Pitfalls, Issues And Prospects: A Perspective On Some Concessions Of Public Infrastructure In Nigeria' Mondaq (2020). <www.mondaq.com> accessed 28th August, 2025.

¹⁰ Unreported Suit No. FHC/L/CS/1155/2010, (Nyako J), delivered on 17.12.2010.

agreement. However, FAAN disobeyed the court order and refused to appear for the arbitration.¹¹

Subsequently, FAAN used its powers as FG agency to disrupt the concession, and entered into another contract with a multinational, SITA Telecommunications Limited (SITA) in 2012, to perform the same function as MNL. MNL instituted another action before the Federal High Court against SITA for allegedly inducing FAAN to breach the FAAN/MNL agreement and for allegedly converting MNL's equipment for their use. The court held that the FAAN/MNL concession agreement was still subsisting and valid, and awarded N5 billion damages in favor of MNL against SITA.¹²

Another example on breach of sanctity of contractual agreement was the long drawn legal battle between Global Steel Holding Ltd (GSHL) and the Federal Government over the concession of the Ajeokuta Steel Mill and the National Iron Ore Mining Company, Itakpe. Here, President's Yaradua Administration had revoked the concession agreement the Federal Government had with GSHL allegedly without recourse to due process, whilst the Federal Government asserted that the concession was revoked over claims of assets stripping by GSHL. The legal battle that ensued, left both industries idle and depreciating for almost a decade. Eventually, both parties agreed to a settlement at the International Arbitration Court in London, where a modified agreement was signed.¹³

¹¹ O Ola, 'FAAN v. Maevis: One Impunity Too Many' Business News (2012). <<https://businessnews.com.ng/2012/04/10/faan-vs-maevis-n5bn-as-damages.html>> accessed 28th August, 2025.

¹² 'Nigeria Airports Controversy: Court Awards Maevis N5 bn as Damages' *Premium Times*, (2013). <<https://www.premiumtimesng.com/news/138938-nigeria-airports-controversy-court-awards-maevis-n5bn-as-damages.html>> accessed 1st September, 2025.

¹³ Yakeem Akinwale 'INVESTIGATION: The Real Reasons Itakpe and Ajaokuta Steel Companies are Lying Fallow' International Center for Investigative Reporting, (2018). <<http://www.icirnigeria.org/investigating-the-real-reasons-itakpe-and-ajaokuta-steel-companies-are-lying-fallow/>> accessed 3rd 2025.

In *Arjay Ltd v. Airline Management Support Ltd*,¹⁴ the Supreme Court forcefully admonished that ‘...a party cannot ordinarily walk away from a contract or just because he later found that the terms of the contract or agreement are not favorable to him...’.

It is trite that good governance requires respect for the rule of law which states that everyone irrespective of status is subject to the law. However, this principle was observed in breach, in the case of *Bi-Courtney Limited v Attorney General of the Federation*.¹⁵ According to the fact of the case, in 2003, the Domestic Terminal (DT) and General Aviation Terminal (GAT) was concessioned to Bi-Courtney by FAAN under a BOT for 36 years. This was after Royal Sanderton Ventures Limited (Sanderton)’s concession contract was revoked, allegedly due to Sanderton’s lack of funds to develop the facility. However, upon commencement of the concession, a legal tussle ensued between FAAN and Bi-Courtney on aspects of the agreements, including the tenor which FAAN claimed was 12 and not 36 years .

Subsequently, contrary to the exclusivity clause in the PPP agreement, FAAN operated the GAT and opened it to some domestic airlines like Arik Air to rival the DT built by Bi-Courtney, now christened as MMA2. As a result, Bi-Courtney was losing money it could have earned if those airlines were operating from MMA2.¹⁶ Bi-Courtney sued FAAN and the judgment of both the federal high court and the court of appeal were delivered in favor of Bi-Courtney to the amount of N132 billion, for contract breach and FAAN illegal operation of the GAT.¹⁷ Just as in MNL/FAAN matter, FAAN disregarded court orders and continued to manage the GAT, thus leading to lingering disputes between the parties.

¹⁴ [2003] LPELR, SC (pt 555) 1 at 67.

¹⁵ Suit No. FHC/ABJ/CS/50/2009, Judgment of A.Sanusi JCA, delivered on 15th April, 2014.

¹⁶ Maureen Ihua-Maduenyi, ‘Airport Concession: ICRC initiates FAAN, Bi-Courtney Settlement’, *Punch* (Benin City, 23rd January 2012). <<https://punchng.com/airport-concession-icrc-initiates-faan-bi-courtney-settlement/>> accessed 1st September, 2025.

¹⁷ *ibid*

In 2018, the ICRC was said to have intervened in settling the dispute between both parties, for the purpose of regaining investor's confidence for future PPPs,¹⁸ but reports regarding its success or otherwise is still unknown.

Lagos Trade Fair Complex (the complex): Aulic Nigeria Limited (Aulic) and Federal Government, illustrates government's defiance of court orders. In 2008, Aulic was awarded the concession over the complex, but was later revoked in 2017 by the NCP.¹⁹ According to reports, it was revoked on grounds that the concession was not in the best interest of the country²⁰ and Aulic's alleged default on contractual obligations.²¹ Consequently, Aulic filled an action against the federal government for breach, with further claims that there was a subsisting preservative order of the Federal High Court Abuja ordering Federal Government and its agencies to maintain *status quo* pending the determination of an earlier suit.²² The Federal Government yet again out rightly disobeyed the court orders with the announcement of the revocation by the NCP. Although not much has been heard concerning this suit, it was reported in 2019 that through the

¹⁸ Godwin Oritse, 'Infrastructure Concession Infrastructure Commission Wades in on FAAN, Bi-Courtney Faceoff', ICRC (2018). <<https://www.icrc.gov.ng/concession-regulatory-commission-wades-faan-bi-courtney-faceoff/>> accessed 1st September, 2025.

¹⁹ The concession was listed at page 32 of the ICRC's 2016 Annual Reports and Account in a table under 'Post Contract Activities Status of PPP Contracts under Implementation'. <<https://www.icrc.gov.ng/assets/uploads/2018/02/Annual-Report-2016-for-website.pdf>> accessed 2nd September, 2025.

²⁰ Olarenwaju Oyedeji, 'Ripples over Revocation of Lagos Trade Fair Complex Concession Right', Premium Times (Benin City, 10th September 2017). <<https://www.premiumtimesng.com/news/headlines/242855-ripples-revocation-lagos-trade-fair-complex-concession-rights.html>> accessed 2nd September, 2025.

²¹ 'Lagos Trade Fir Complex, Another Wasting Asset' Punch (Benin City, 1st July 2019). <<https://punchng.com/lagos-trade-fair-complex-another-wasting-asset/>> accessed 2nd September, 2025.

²² This suit was reportedly filled by Aulic on grounds of protracted handover of the complex since signing the concession, Thus forcing them to only develop a side of the complex in order to generate funds: Nurudeen Oyewole, 'Anxiety Mounts as Traders, Govt Maintain Claims on Trade Fair Complex' Daily Trust (Benin City, 24th June 2019). <<https://dailytrust.com/anxiety-mounts-as-traders-fg-maintain-claims-on-trade-fair-complex>> accessed 2nd September, 2025; Tony Udemba, 'Police Lock Out Lagos Trade Fair Concessionaire Against Court Order', The Sun (Benin City, 20th November 2017). <<https://www.sunnewsonline.com/140390-2>> accessed 3rd September, 2025; "Aulic, Lagos Trade Fare Concessionaire Faults the VP, NCP Over 'Announced' Revocation", Business Highlight (Benin City, 9th April 2020). <<https://businesshighlights.com.ng/aulic-lagos-trade-fair-concessionaire-faults-vp-ncp-over-announced-revocation/>> accessed 3rd September, 2025.

cooperation of stakeholders and the implementation of the Executive Order on the Ease of Doing Business, the complex generated N500m.²³

In 2008, BHL International entered into a 30 year concession for the redevelopment and management of a section of the Tafawa Balewa Square (TBS) with the Federal Government. However, shortly after the concession, Lagos State Government obtained a restraining order against BHL from further carrying out any activities on TBS. According to Lagos State Government it was entitled to TBS, since the Federal Government was no longer using the facility for public purpose for which the land was originally acquired. Accordingly, Lagos State Government claimed it should the right of first refusal before the Federal Government concessioned TBS to BHL.²⁴ Whilst the ICRC and BPP were reportedly taking measures to resolve the conflict between BHL and the Lagos State Government, not much progress appeared to have been achieved in this regard.²⁵ One can only hope that all issues are resolved and Tafawa Balewa Square can continue to function accordingly.

5.2 ISSUES OF TRANSPARENCY ACCOUNTABILITY AND CORRUPTION

Concessions, especially Public-Private Partnerships are prone to issue of transparency, accountability, and corruption due to the high level of contracts and the complex nature of the

²³ 'Lagos Trade Fair Generates N500 Million in Four Months', The Punch (Benin City, 14th April 2019). <<https://punchng.com/lagos-trade-fair-complex-generates-n500m-revenue-in-four-months/>> accessed 3rd September, 2025.

²⁴ Chinedu Eze, 'ICRC to Resolve TBS Concession Dispute', ICRC (5th February, 2019). <<https://www.icrc.gov.ng/icrc-resolve-tbs-concession-dispute/>> accessed 17th September, 2025.

²⁵ *ibid.*

deals. The primary risk occurs throughout the project lifecycle, from selection to implementation.²⁶

5.2.1 Transparency Issues

A lack of transparency creates an environment ripe for corruption by obscuring details of the decision-making process and financial dealings.²⁷ Example of these transparency issues includes;

1. Non-disclosure of contracts: In many infrastructure and natural resources projects, concession agreements are not disclosed or made public with the frequently cited reason being “Corporate Confidentiality”.

2. Opaque Process of procurement: Bidding of concession agreements can be manipulated through such practices as having biased evaluation committees, delaying the announcement of the winning bidder or giving some bidders privileged information.

3. Lack of opportunity of Public scrutiny: The civil society and members of the public often times than not lack the access to critical information relating to concession agreements which in turn makes it difficult to hold private companies and officials accountable. This issue can be compounded by intentional complex and vague contractual terms that even when disclosed are hard to understand.

4. Information Asymmetry: Private bidders often possess more information than public officials or seldom information and vice-versa, regarding procedural details, financial details or technical information. This disparity can be exploited for private gains.

5.2.2 Accountability Issues and failures

²⁶ Anti-Corruption Helpdesk answer, “Good Practices for Negotiating Leases and Concessions for Natural Resources Exploitation” Transparency International (2018). <<https://knowledgehub.transparency.org> > accessed 30th October, 2025.

²⁷ M Muslim and RS Mais, “The interplay between Transparency, Accountability and Corruption: A contemporary Discourse” *Advanced Jurnal Ekonomi And Bisnis*. <<https://researchgate.net> > accessed 30th September, 2025.

Accountability issues in concession agreements often arise from blurry lines between private profit and public services. When public agencies or the government transfer services to the private sector, citizens may lose the ability to hold a government directly responsible for the outcome.²⁸ These accountability failures or issue includes:

1. **Insufficient Reporting:** Accountability in concession agreements or contracts is compromised when there is no robust system for reporting on a projects financial management, performance and compliance with ethical standards.

2. **Conflicting Interests:** Concession contracts and agreements are made to merge public and private goals, which in return can create conflicts. While the private sector prioritizes profits and gains, the public sector aims for social equity and efficiency. This in the long run can lead to decline in service quality or increase in cost for users.

3. **Principal-agent problems:** These issues often occur when officials making decisions about a concession (agent) have not their interest perfectly aligned with that of the public (the principal) and may prioritize personal gain and profit.

4. **Weak Oversight:** Public sector entities or officials may lack the skills, resources and capacity to effectively manage and monitor complex concession contracts. This inadequate monitoring and enforcement of complex concession contracts create opportunities for private partners to underperform or fail to meet contractual obligations.

5.2.3 Corruption Risks

Concessions are a very significant corruption risk area because they involve substantial sums of money and concentrate power in the hands of those who award the contracts.

²⁸ The Investopedia Team, “Understanding Public-Private Partnership: How They Work and Key Examples” Investopedia (2025). <<https://investopedia.com>> accessed 30th October, 2025.

Corruption in Public procurement can affect all stages of the procurement process and take many forms. Yet, corruption is hard to detect due to the complexity of the procedures involved which often require a high level of technical expertise at all stages of the process.²⁹

At the ‘project selection phase’, needs assessment can be manipulated, inflated or artificially induced to select projects with higher contract value or to serve the interest of particular bidders or the private interest of particular procurement officials.

At the ‘Bidding process’, during the tendering phase, opportunities for corruptions are abound. Some bidders may be given an unfair advantage like exclusive access to information as a result of officials having a private interest in these companies or in exchange for a bribe.

Lastly, at the ‘Contract Implementation’, there are many opportunities for abuse at this stage of the process including underperformance, overbilling, and failure to meet specified standards, among others. It is typically at this stage of the process that corrupt payments made in the earlier stages of the process can be recovered by means of performing less than the contractually agreed services, or by altering the contract through successive re-negotiations.³⁰

5.3 ECONOMIC IMPACT OF CONCESSIONING

Economic theory posits that concession promises superior economic performance for country

²⁹ M Morgner and M Chene, “Corruption risks in public procurement” Transparency International (2015). <<https://transparency.com.org>> accessed 30th October, 2025.

³⁰ *ibid.*

through higher economic efficiency that the policy engenders.³¹ There appear to be some agreement among scholars that concession has an important role to play in stimulating the economy particularly in countries with very strong market institution and protection of property rights. Even in countries with poorly developed market institutions, concession played a catalytic role in economic development.³² The proviso here is that the implementing governments must complement the privatization program with other reforms measures such as trade liberation and deregulation. Developing countries, which were consistent with creating strong market institutions while implementing concession, experienced significant growth.³³

Apparently informed by this notion, and at the instance of the World Bank and International Monetary Fund (IMF), the Nigerian government adopted structural adjustment programs early in the 1980s, seeking better efficiency and enhanced economic growth.³⁴ Through this program, the government concessioned over 167 State-Owned Enterprises (SOEs) including 24 seaports. What was not very clear was the sustainability of the gains of privatization long after the implementation of the concession program. Concession is expected to produce more investment, lower tariffs, more employment and economic growth. These expectations have not been archived since the commencement of concession in Nigeria particularly as regard to the

³¹ P Cook and JW Uchida, 'Explaining African Economic Performance' *Journal of Economic Literature* (2003) 64-111. <<https://www.jstor.org/stable/2564726>> accessed 27th August, 2025; A Filipovic, 'Impact of Privatization on Economic Growth' *Undergraduate Economic Review* (2005) 2(1), 7. <<https://digitalcommons.iwu.edu/uer/vol12/iss1/7/>> accessed 28th August, 2025; P Plane, 'Privatization and Economic Growth: An Empirical Investigation from a Sample of Developing Market Economies' *Applied Economics*(1997) 29(2), 161-178. <<https://dx.doi.org/10.1080/000368497327245>> accessed 28th August, 2025.

³² AM Ai-Obaidan, 'Efficiency Effect of Privatization in the Developing Countries' *Applied Economics* (2002) 34(1), 111-117. <<https://doi.org/10.1080/00036840010007948>> accessed 28th August.

³³ SA Barnett, 'Evidence On The Fiscal And Microeconomic Impact Of Privatization' (2000) *IMF Working Paper*, 1-25, 2000; P Cook and JW Uchida, 'Explaining African Economic Performance' *Journal of Economic Literature* (2003) 64-111.< <https://www.jstor.org/stable/2564726>> accessed 27th August, 2025; A Filipovic, 'Impact of Privatization on Economic Growth' *Undergraduate Economic Review* (2005) 2(1), 7. <<https://digitalcommons.iwu.edu/uer/vol12/iss1/7/>> accessed 28th August, 2025; P Plane, 'Privatization and Economic Growth: An Empirical Investigation from a Sample of Developing Market Economies' *Applied Economics* (1997) 29(2), 161-178. <<https://dx.doi.org/10.1080/000368497327245>> accessed 8th August, 2025.

³⁴ N Boubakri, H Smaoui and M Zammiti, 'Privatization Dynamics and Economic Growth', *Journal of Business and Policy Research* (2009) 4(2), 16-44.

concession of the Nigeria ports in 2005. Evidence of positive effects of the concession of Nigeria port is yet to be clearly seen on the Nigerian society.³⁵ The negative impact of concessions includes but is not limited to the following:

1. Unemployment due to mass retrenchment of staff; as earlier stated, the mass of workers and ordinary people stand to lose out from the concession programme. This is because the driving force of private ownership is maximization of profits. With this in mind, the immediate concern of the buyers of the newly concessioned companies will be to cut down overhead costs. The first casualties will be the workers of the affected companies, who will lose their jobs in droves and their numerous dependents will suffer thereafter.³⁶ A working society is a developed society but where the mass of its citizens is unemployed, the economy will remain undeveloped and unprogressive.

2. Low standard of living resulting from exorbitant price of products and /or service from privatized enterprises; it is no hidden knowledge that one of the major issues of private owned goods and services is the exorbitant prices that comes with them. When concession happens and these public services originally intended to help the public are privatized, it will lead to a high drop in the standard of living of majority of the indigenes due to the exorbitant price of products and/or services. This issue will in turn negatively impact the economy of that country as the standard of living of the citizens of that country is a major determinant of that country's economic progress.

³⁵ AA Akinwale, and MO Aremo, 'Concession as a Catalyst for Crisis Management in Nigerian Ports', *The African Symposium: An Online Journal of the African Educational Research Network* (2010) Volume 10.

³⁶ Olu Ojo and David Fajemisin, 'Nigeria's Privatization Programme: Structures, Strategies and Shortcomings' (2010) *Petroleum-Gas University of Ploiesti Bulletin* Vol. LXII No. 1/2010

3. Overconcentration of income and wealth in a few hands; Concession often times leads to overconcentration of income and wealth in a few hands or the hands of the wealthy or those who own such assets. Very rarely does these income and wealth shift hands to other members of the society or to the economic class in the society this adversely will affect the progress and development of that country's economy.

4. Regulatory inconsistencies; this is another negative impact of concession and concession programs on a society. Often times these concession projects are not in any way consistent with the regulatory framework which ordinarily are put in place to regulate concession projects.

5.4 CHALLENGES/REASONS FOR FAILURE OF CONCESSION AGREEMENTS

Many concession agreements in Nigeria and elsewhere have failed to archive their intended objectives, failures in these concession agreements often manifest as early termination, project abandonment, costly renegotiation or prolonged disputes. Understanding the root causes of these failures is critical for reforming Nigeria's concession framework. The causes or reasons for failure of concession agreements will be broken down and explained categorically. They include:

5.4.1 LEGAL AND REGULATORY CAUSES

(A) Weak Legal Framework and Contractual Design

The Infrastructure Concession Regulatory Commission Act (ICRCA)³⁷ stands as the closest legislation in Nigeria that can be easily referred to as the infrastructure law. Uncannily, the Infrastructure Concession Regulatory Commission (ICRC) was only inaugurated in 2009, four

³⁷ Cap.125A, Laws of the Federation of Nigeria, 2005.

years after enactment of its enabling law (the ICRC) in 2005. One of the ICRC's primary roles is to *'promote, facilitate, support and coordinate implementation of sound PPP contracts and ensure compliance with the provisions of the ICRC on (federal) concession projects'*.³⁸ The ICRC has since made limited progress in concessions in Nigeria, largely because of the constrained macro environment, typified by yet unimpressive capital spend and lack of zealotness on the part of the government. On its own the ICRC has a few lacunas (inconsistent with its well drafted and business friendly objective) which demand review if we are to truly harness the developmental progressions that concession deliver.³⁹

Many concession agreements fail because they most times omit essential clauses, are poorly drafted or rely on outdated statutes. Contracts that do not allocate risks equitably between the state and the concessionaire tend to collapse.

(B) Weak Enforcement Mechanisms

Concessionaires sometimes fail to perform because there are few practical enforcement mechanisms beyond lengthy litigation or arbitration, which discourages compliance.

(C) Overlapping or Conflicting jurisdiction

Multiple agencies often claim regulatory control, creating uncertainty. In Nigeria, port concessions often suffer from jurisdictional clashes between the Nigerian Port Authority (NPA), the Bureau of Public Enterprises (BPE), and the Infrastructure Concession Regulatory Commission (ICRC), resulting in poor monitoring.⁴⁰ Whilst there are no specific provisions in

³⁸ 'Roles of ICRC', ICRC. <www.icrc.gov.ng> accessed 19th September, 2025.

³⁹ A Elebiju and TA Ilesanmi, 'Pitfalls, Issues And Prospects: A Perspective On Some Concessions Of Public Infrastructure In Nigeria' Mondaq (2020). <www.mondaq.com> accessed 28th August, 2025.

⁴⁰ Bureau of Public Enterprise (BPE), Port Concession Programme Report (2006).

the Public Enterprises (Privatization and Commercialization) Act (PEPCA)⁴¹ empowering BPE to control and regulate concession arrangements, unlike the ICRC which is so specifically empowered under Section 11 and Section 20(a), (b) and (c) ICRC, both agencies are still being challenged with overlapping roles in the performance of their duties. The ‘similarities’ however in the functions of commercialization,⁴² part-privatization⁴³ and concession,⁴⁴ can be presumed to be the reason for both agencies taking up crossed roles.

5.4.2 ECONOMIC AND FINANCIAL CAUSES

(A) Macroeconomic Volatility

Nigeria’s dependence on oil revenues exposes concession financing to global shocks, the oil price crash (2014-2016) undetermined both government counterpart funding and private sector confidence in major concessions.⁴⁵ Nigerian ports were performing poorly due to congestions, pilfering, insecurity, delays in cargo clearance, high tariff, corruptions etc.

(B) Overestimation of Revenue Streams

⁴¹ Cap. P38, Laws of the Federation of Nigeria (LFN) 2004.

⁴² Commercialization is the withdrawal of the government from the funding and management of government entities, whilst still retaining ownership of the entities; CT Onyemenam, ‘Privatization and Commercialization in the Nigeria Economy’, ArticlesNG (2016). <<https://articlesng.com/privatization-commercialization-nigerian-economy/>> accessed 18th September, 2025.

⁴³ In part-privatization unlike outright privatization, the government may continue to finance but not to operate services, or it may continue to own but not to manage assets; P Starr, ‘The Meaning of Privatization’(1988) *Yale Law and Policy Review*,6. <<https://www.princeton.edu/~starr/articles/articles80-89/Starr-MeaningPrivatization-88.htm>> accessed 18th September, 2025.

⁴⁴ “Concession is a contractual arrangement whereby the project proponent or contractor undertakes the construction, including financing of any infrastructure, facility and operation and maintenance thereof”; Section 36 of the Infrastructure Regulatory Commission Act, Cap.125A, Laws of the Federation of Nigeria, 2005.

⁴⁵ Central Bank of Nigeria, Annual Report 2016.

Projects are sometimes premised on unrealistic financial projections. The Lagos-Ibadan Expressway concession of 2009 collapsed because traffic volumes and toll revenues were far lower than projected.⁴⁶

5.4.3 SOCIO-POLITICAL CAUSES

(A) Public Resistance to User Charges

Public resistance to user charges is one of the socio-political causes of concession challenges. Infrastructure concessions often rely on user fees (port charges, tolls, electricity tariffs). When government bow to political pressure and suspend tariffs, concession economics collapse.

(B) Community Conflicts and Land Issues

In oil and mining concessions, particularly the concession of ports in the Niger Delta region, local communities often resist operations due to community conflicts, issues of land ownership, environmental degradation, displacement and poor benefit sharing thereby ultimately leading to disruption of oil operations.⁴⁷

(C) Political Instability and Contract Renegotiation

Changes in government frequently lead to review, suspension or outright cancellation of concessions signed by predecessors. An example of this is the revocation of the Ajeokuta Steel concession in 2008 by a new administration.

Notoriously, when there is a change of government in Nigeria, contracts agreements of the previous administration may be subject to ‘review’ or ‘probes’, which are sometimes politically

⁴⁶ Infrastructure Concession Regulatory Commission (ICRC), Review of Lagos-Ibadan Expressway Concession, 2016.

⁴⁷ Michael Watts, ‘Curse of the Black Gold: Fifty Years of Oil in the Niger Delta’ (Powerhouse Books, 2008).

motivated, and not driven by public opinion or consideration. In the Lagos-Ibadan Expressway Concession: (FG and Bi-Courtney), President Yar’adua’s administration granted Bi-Courtney concession over the Lagos-Ibadan Expressway to reconstruct, maintain and toll the road for 25 years, However, 3 years into concession, President Jonathan’s administration cancelled the contract over claims of violation of the terms of the PPP agreement and Bi-Courtney failure to commence construction work in line with the concession⁴⁸ amongst other reasons. The unfortunate reality however was that whilst the PPP arrangement remained unexecuted, the Expressway was a source of grave hardship to travellers with resultant loss of productivity from long travel times, in addition to loss of lives and property through vehicles accidents, etc.⁴⁹

5.4.4 GOVERNANCE AND INSTITUTIONAL CAUSES

(A) Corruption and Political Patronage

Concessions are frequently awarded to firms with political connections rather than technical competence. These ‘briefcase companies’ lack capacity to deliver and often resell rights, creating instability. There is general agreement that the system particularly that of energy supply, currently suffers from inefficiency and corruption,⁵⁰ which in return, is one of the key factors hampering concession development in Nigeria.

(B) Frequent Regulatory Changes

⁴⁸ Ini Ekott, ‘Exclusive Bi-Courtney Faces N30billion Fine For Abandoning the Ibadan-Lagos Expressway’, Premium Times (Benin City, 2nd September 2025). <<https://www.premiumtimes.ng.com/business/98651-exclusive-bicourtney-faces-n30billion-fine-foe-abandoning-lagos-ibadan-road-but-fg-looks-away.html>> accessed 12th September, 2025.

⁴⁹ A Elebiju and TA Ilesanmi, ‘Pitfalls, Issues And Prospects: A Perspective On Some Concessions Of Public Infrastructure In Nigeria’ Mondaq (2020). <www.mondaq.com> accessed 28th August, 2025.

⁵⁰ Sola Fajana, ‘Strengthening Social Dialogue in the Utilities Sector In Nigeria’ (Working Paper) 2008.

In Nigeria and perhaps in most part of the world, frequent regulatory changes is one of the legal and regulatory causes of problems in Public-Private Partnership or concession agreements. Unpredictable changes in taxes, tariffs, or sector policy undermine investor confidence. In the power sector, repeated tariff freezes often times discouraged private operators from fulfilling concession obligations.⁵¹

(C) Weak Institutional Oversight

Agencies tasked with supervising concession performance like the Infrastructure Concession Regulatory Commission, The Nigeria Port Authority, Ministry of Power amongst others, lack the independence, resources, and expertise to monitor compliance effectively.

5.4.5 DISPUTE RESOLUTION AND ENFORCEMENT CAUSES

(A) Sovereign Immunity and Asset Attachment Issues

In most cases, even after arbitral awards or judicial decision is given on a concession issue, investors face difficulties enforcing against state assets, reducing confidence in Nigeria's concession system

(B) Costly and Protracted Arbitration

When disputes arises in relation to concession agreements, resolution often takes years and costs millions of dollars or naira, thereby eroding project value and trust in Nigeria judicial system or the judicial system of the country where such issues arises.

⁵¹ Power Sector Reform Act 2005; Nigerian Electricity Regulatory Commission (NERC) tariff orders.

Further challenges of Public-Private Partnership in Nigeria are as follows;⁵²

1. Inadequate knowledge, skills and capacity of participants in both the public and private sector.
2. Poor evaluation, monitoring and due diligence by government as relate to concession agreements in Nigeria.
3. Non-competitive bidding.
4. Signing of contracts with no design and evidence of financing.
5. Difficulty in accessing credit facility from banks both locally and internationally.
6. Land acquisition problem.
7. Failure of risk allocations between the government and the concessionaire.
8. Politicization of concession in Nigeria.

Other inherent challenges include partner's little confidence in each other, thus providing little or no basis for a lasting relationship, lack of clarity about project objectives and working methods, conflicting interests of the public and private sectors and lack of clarity about the allocation of responsibilities, reward, risks and resources.

⁵² TU Akpoghome and TC Nwano, 'Public-Private Partnership (PPP) in Nigeria', KAS African Law Study Library (2019) 6. <<https://www.nomos-elibrary.de/agb>> accessed 18th August, 2025.

CHAPTER SIX

SUMMARY, CONCLUSION AND RECOMMENDATION

6.1 Summary of Findings

This study set out to critically assess the impact of concession on Nigeria's economic development through an analysis of concession laws as well as decided concession cases and its applicability. The study provided thorough conceptual clarification of concession in Nigeria, provide a detailed literature review of Concession in Nigeria, as well as key Jurisprudential Theories of Concession and lastly, provide a brief History of Concession not only in Nigeria but from its early origin prior to Nigeria's adoption of concession tracing the development from ancient Greece as provided by Chiedu Ndubisi,¹ to how the ancient Romans and Mesopotamians contracted virtually all services in the state to private companies and individuals, the Industrial Revolution of the 18th century and other countries conservative reforms and finally, tracing the origin of Nigeria's concession.

In the findings of this study, chapter three provided the legal framework of concession to include the Infrastructure Concession Regulatory Commission Act² in 2005 as the major legislation, other legislation and Public Private Partnership instrument to include the Public Procurement Act,³ Utilities Charges Commission Act 1992,⁴ Public Enterprise (Privatization and Commercialization) Act,⁵ Highway Act 1971,⁶ Company and Allied Matters Act (CAMA) 2020⁷

¹ Chiedu Bertram Ndubisi, Economic Policy Implications of Port Concession in Nigeria, (Walden University 2016)

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² Cap.125A, Laws of the Federation of Nigeria, 2005.

³ Public Procurement Act, 2007 (Act No. 14 of 2007), Law of the Federal Republic of Nigeria.

⁴ Utilities Charges Commission Act, No. 104 of 1992.

⁵ Privatization and Commercialization Act, 1988, which was originally enacted as the Privatization and Commercialization Act, Decree No. 25 of 1988.

⁶ Federal Highways Decree 1971, Decree No. 4 1971.

⁷ Company and Allied Matters Act, No. 3 of 2020.

amongst others which includes state laws like the Lagos Public-Private Partnership Law,⁸ The Lagos State Road, Bridges And Highway Infrastructure Law,⁹ Oyo State Public-Private Partnership Law,¹⁰ etc. in addition to all these, the legal and regulatory framework of concession in some international countries was also stated and explained in the proceeding chapter.

In critically examining the common legal pitfalls in Nigeria concession, the economic challenges of concession as well as the reasons for failure of Nigeria's concession some major concessioned projects like the Tafawa Balewa Square Investment project, the Tinapa Free Trade Zone of Cross River State, the Bi-Courtney Airport management of the Murtala Mohammed Airport 2 Terminal (MMA2), the Lekki Concession Infrastructure Projects in Lagos State, the Bi-Courtney Highways management project for the Lagos-Ibadan expressway, the Murtala Mohammed Airport infrastructure and management concession under the aegis of Maevis Nigeria Limited, the 26 seaports operations concessioning, the Lagos International Trade fair amongst so many where examined along with the legal cases that originated from this concessioned projects and the total disregard of the judgment arising from some of these cases.

The economic challenges of concession in Nigeria was found to include but were not limited to Unemployment due to mass retrenchment of staff, Low standard of living resulting from exorbitant price of products and /or service from privatized enterprises, Overconcentration of income and wealth in a few hands, Regulatory inconsistencies amongst others. These challenges and issues of concession in Nigeria as relates to its economic development shall underscore the recommendations forthwith.

⁸ 2011.

⁹ 2005.

¹⁰ 2013.

6.2 Recommendations

The moment we think we have found the solution to one problem or question, another problem or question is born. The moment we exclaim ‘eureka,’¹¹ another conundrum is birthed. However, where there are problems, there should be solutions if the problems should be non-existent. In the prevailing chapter, we have categorized the problems prevalent in Nigeria’s concession. Now, I shall provide the recommendations.

1. Building on the comparative analysis conducted, it is evident that Nigeria, while having a robust legal framework on paper, requires a more forceful implementation and practical enforcement of concession law. It is imperative that Nigeria enhances the visibility and enforcement of its laws by creating specific, well-funded units within law enforcement agencies dedicated to handling case of breach of concession contracts. This should be complemented by regular and mandatory training of the judicial members, enforcement agencies and members of the public.

2. The government of Nigeria, through agencies like the Infrastructure Concession Regulatory Commission, should on behalf of Public Private Partnership on concession in Nigeria, create a more robust and unified legal and institutional framework reformation ensuring a consistent approach across all levels of government (federal and state) and ensure clear concession guidelines. There should be enactment and enforcement of anti-corruption laws, right to information laws and whistle blowers protection acts to discourage wrongdoings and empower citizens.

¹¹ This is Greek and it translates to ‘I have found it.’ It was first shouted by Archimedes after discovering what we call the Archimedes Principle today.

3. One of the major issues hunting concession agreements in Nigeria is the Issue of Transparency and Accountability, it is important that the Nigeria government implement world-class standards of public and corporate governance consisting of public disclosure of all concession agreements and relevant document, with justification for any information that must remain confidential in order to ensure transparency in the bidding, selection, awarding, execution and evaluation of concession project. The opinion of members of the public should be properly managed by disseminating information to all stakeholders consistently and also hold public consultations in order to ensure that community interest are represented and that public projects are responsive to public needs.

4. The Nigerian government should encourage concessionaires to focus on local content and employment, encouraging them to prioritize skill transfer and local employment, ensuring that economic benefits are widely distributed and mitigating any potential negative effects on the local labor market.

5. Nigerian government should before awarding any concession, conduct thorough pre-concession analysis in order to determine its potential impact on the economy, country and all stakeholders in order to avoid issues such as social instability, monopolies or the failure of some sectors/ports that might be better left under public ownership.

6. The Nigerian government in order to ensure a good and successful concession should create an enabling business environment that's conducive for investment climate by ensuring political and economic stability, providing necessary infrastructure and offering favorable policies and incentives such as tax break, to encourage private sector participation.

6.3 Contribution to knowledge

The study contributes significantly to the existing body of knowledge by providing a detailed analysis of the legal frameworks addressing concession in Nigeria in comparison of those in the United State of America, Russia, and India. It highlights the gap between the written laws and their practical applications, offering a unique perspective on the systematic changes needed to ensure an effective concession law. Moreover, by integrating international laws with local ones, this research underscores the global standard Nigeria should aspire to meet and provide a model for other countries with similar challenges.

In addition, the study has provided a comprehensive historical and theoretical analysis of concession not only in Nigeria but from its early origin prior to Nigeria's adoption of concession tracing the development from ancient Greece as provided by Chiedu Ndubisi,¹² to how the ancient Romans and Mesopotamians contracted virtually all services in the state to private companies and individuals, the Industrial Revolution of the 18th century and other countries conservative reforms and finally, tracing the origin of Nigeria's concession.

By critically examining judicial decisions, statutory, and scholarly commentaries, the study has illuminated the enduring influence and limitation of concession to Nigeria's economic development.

6.4 Conclusion

From everything, we have seen that while Nigeria has established a legal framework to combat the breach of concession agreements and regulate concession in Nigeria, significant challenges

¹² Chiedu Bertram Ndubisi, Economic Policy Implications of Port Concession in Nigeria, (Walden University 2016) 1.

remain in the effective implementation and enforcement. This study does not only highlight these gaps but also offers concrete recommendations for improvement, drawing lessons from international best practices from countries like Russia, United State of America and India. Addressing concession laws and the issues of the breach of concession contract and total disregard for these concession laws requires a multifaceted approach that includes focus on local content and employment, capacity building and stakeholder's participation, policy, legal and institutional reforms amongst many other solutions. By committing to these areas, Nigeria can make substantial progress towards protecting members of the public and concession in general, fostering an equitable society for economic development and progress for all.

BIBLIOGRAPHY

Books

Akpoghome TU and Nwano TC, 'Public-Private Partnership (PPP) in Nigeria' KAS African Law Study Library (2019) 6

Black's Law Dictionary (Revised 4th edn 1968) 361

Chianu E, Law of Trespass to Land and Nuisance (3rd edn, Ambik Press, 2014) 81

Parker D and Saal DS, International Handbook on Privatization, (Massachusetts: Edward Elgar Publishing 2003)

Mkpuma BB, Chigbue's BPE: Six Months After, (Moscow Progress Publishers, September 2005) Financial Standards

Natasha M, Research Philosophies and Why They Matter' In Keith Townsend (eds.), How to Keep your Doctorate on Track (Edward Elgar Publishing 2020), 76-86

Ndubisi CB, Economic Policy Implications of Port Concession in Nigeria, (Walden University 2016) 1

Olujemi ER, An Economic History of Nigeria 1860-1960, (Methuen & Co Ltd II New Fetter Lane London EC4 1973)

Stiglitz J and Godoy S, 'Growth, initial conditions, law and speed of privatization in transition countries: 11 years later' (Palgrave Macmillian UK 2006).

Watts M, 'Curse of the Black Gold: Fifty Years of Oil in the Niger Delta' (Powerhouse Books, 2008)

Woo-Cumings M, The Developmental State, (Cornell University Press 1999)

Articles in Journals

Ai-Obaidan AM, 'Efficiency Effect of Privatization in the Developing Countries' Applied Economics (2002) 34(1), 111-117

Akinwale AA, and Aremo MO, 'Concession as a Catalyst for Crisis Management in Nigerian Ports', The African Symposium: An Online Journal of the African Educational Research Network (2010) Volume 10

Arimoro AE, 'Impact of community stakeholders on public-private partnerships: Lessons from the Lekki-Epe concession toll road' International Journal of Law and Legal Studies (2015) 3(7), pp.165-167

- Asher CC, and others, 'Towards a property rights foundation for a stakeholder theory of the firm' *Journal of Management and Governance* (2005) 9(1), 5-32
- Barnett SA, 'Evidence On the Fiscal and Microeconomic Impact of Privatization' (2000) IMF Working Paper, 1-25, 2000
- Boubakri N, Smaoui H and Zammiti M, 'Privatization Dynamics and Economic Growth', *Journal of Business and Policy Research* (2009) 4(2), 16-44
- Bousquet F and Fayard A, 'Road infrastructure concession practice in Europe: A report based on documentation on analysis of highway concessions in Europe' Working paper. 2001. No 2675
- S Cameron, 'The spotlight ids on the privatization process' *Portstrategy* (2004) 24-26
- Cavaliere A and Scabrosetti S, 'Privatization and efficiency: from principals and agents to political economy' (2008) *Journal of Economic Surveys*, 22(4), 685-710
- Celik B and Adamu UMAR, 'The impact of Public-Private Partnerships (PPPs) on the performance of Nigeria Seaports: a case study of Apapa Port Complex, Lagos' *Journal of Global Economics and Business* (2020) 1(1), 18-43
- Cook P and Uchida JW, 'Explaining African Economic Performance' *Journal of Economic Literature* (2003) 64-111
- De Soto H, 'Missing Ingredient' *The Economist* [1993] 328 (7828), 8-10
- Dharwadkar R, George G and Brandes P, 'Privatization in Emerging Economies: An Agency Theory Perspective' *The Academy of Management Review* (2000).
- Ebokozi A and Samsurijian MS, 'Concession of public infrastructure: pitfalls and solutions from construction consultants perspective' *Asian Journal of Civil Engineering* (2012) 23(5): 5
- Ezema BI and Oguijiuba K, 'The developmental state debate: Where is Nigeria?' *Journal of sustainable development*, (2011) 5(1), 100-103
- Fajana S, 'Strengthening Social Dialogue in the Utilities Sector In Nigeria' (Working Paper) 2008
- Filipovic A, 'Impact of privatization on economic growth' *Undergraduate Economic Review* (2005) 2(1), 7
- Kadiri DS, Ojo SO, and Jagboro GO, 'Implications of Adopting Public Private Partnership for Infrastructure Development in Nigeria' *Journal of Sustainable Development* (2015) 8(9), 169
- Lankina T, "The Role of Public-Private Partnerships in Infrastructure Development in Russia" *European Journal of Law and Economics* (2015)
- Lederman NG and Lederman JS, 'What is a Theoretical Framework? A Practical Answer' *Journal of Science Teacher Education* (2015) 26, 593-597

- Maslov V, “The Concession Law in Russia: Legal and Economic Aspects” *Russian Journal of Law* (2013)
- Muslim M and Mais RS, “The interplay between Transparency, Accountability and Corruption: A contemporary Discourse” *Advanced Journal Economics and Business*
- Ndikom OB, ‘An appraisal of the role of the operational limitations of the private terminal concessioners in landlord port models’ *Continental Journal of Social Sciences* (2013) 6(1), 9
- Nwangwu G, ‘Overcoming Failure in the Design and Implementation of Public-Private Partnership Projects: Lessons from the Lekki Toll Road Concession’ *Journal of Sustainable Development Law & Policy* (2022) 13(2)
- Omoke V and others, ‘Infrastructure Financing and Management: The Impact of Concession on the Operations and Performance of Nigerian Seaports’ *Journal of Behavioral Economics, Finance, Entrepreneurship, Accounting and Transport* (2015) 3(2), 65–70
- Ojo O and Fajemisin D, ‘Nigeria’s Privatization Programme: Structures, Strategies and Shortcomings’ (2010) *Petroleum-Gas University of Ploiesti Bulletin, Economic Science Series, Vol. LXII, No. 1.*
- Ojo T, ‘Infrastructure finance in Africa through the Public Private Partnership (PPP): Is the Lekki-Epe Toll Road (Nigeria) economically sustainable? (2014) Master’s thesis, University of Cape Town
- Olufemi Soyaju, ‘Legal Framework for Public Private Partnership in Nigeria’ *De Jure Law Journal* (2013) 46 Volume 3, pp 814
- Onis Z, ‘The Logic of the developmental state’ *Comparative Politics* (1991) 24(1), 109-126
- Plane P, ‘Privatization and Economic Growth: An Empirical Investigation from a Sample of Developing Market Economies’ *Applied Economics* (1997) 29(2), 161-178
- Popov MS, ‘Features of the legal regulation of investment in infrastructure projects’ *State and Law* (2016) 4, 95-101.
- Sani F, ‘Legal Challenges and Prospects in the Implementation of Public Private Partnership (PPP) Policy in Nigeria’ *Asian Law & Public Policy Review* (2022)
- Starr P, ‘The meaning of Privatization’ (1998) *Yale Law and Policy Review* 6(1), 6-41
- Williamson J, ‘What Washington means by policy reform’ *Latin American Adjustment: How Much Has Happened*, (1990) 7, 7-20.
- Wright MD, ‘Critique of the public choice theory case for privatization: Rhetoric and reality’ *A Ottawa Review*, (1993) 25, 1.
- Yatchenko LV and Yu Lantseva V, ‘Problems of legal regulation of concession agreements’ *SHS Web of Conferences* (2023) 164

Yoffee N, 'Review of Review of Privatization in the ancient near east and classical world, by M. Hudson and B. A. Levine' (2001) *Journal of the American Oriental Society*, 121(2), 303-305

Online Sources

Aakanksha J, 'Stamp Duty on Concession Agreements' (2024). <<https://www.legal500.com>> accessed 29th October, 2025

Anti-Corruption Helpdesk answer, "Good Practices for Negotiating Leases and Concessions for Natural Resources Exploitation" *Transparency International* (2018). <<https://knowledgehub.transparency.org> > accessed 30th October, 2025

Anyanechi O and Ladenegan P, 'Negotiation of Concession Agreements in Nigeria- An Introduction to Key Concepts in Public Private Partnerships' *Mondaq* (2020) <www.mondaq.com> accessed 28th August, 2025

"Aulic, Lagos Trade Fair Concessionaire Faults the VP, NCP Over 'Announced' Revocation", *Business Highlight* (Benin City, 9th April 2020). <<https://businesshighlights.com.ng/aulic-lagos-trade-fair-concessionaire-faults-vp-ncp-over-announced-revocation/>> accessed 3rd September, 2025

Ayuli Jemide, 'What is the Legal Framework for Concession in Nigeria' *Detail Solicitor* (2010). <<https://www.detailsolicitor.com> > accessed 31st October, 2025.

Bhat Ishwara, 'Idea and Methods of Legal Research' *Oxford Academics* (2020). <<https://doi.org/10.1093/oso/9780199493098.001.0001>> accessed 25th July, 2025

Chinedu Eze, 'ICRC to Resolve TBS Concession Dispute', *ICRC* (5th February, 2019). <<https://www.icrc.gov.ng/icrc-resolve-tbs-concession-dispute/> > accessed 17th September, 2025

Concessioning in Nigeria: A Challenge to PPP' *Proshare* (2012). <www.proshare.com> accessed 28th August, 2025

Elebiju A and Ilesanmi TA, 'Pitfalls, Issues and Prospects: A Perspective on Some Concessions of Public Infrastructure in Nigeria' *Mondaq* (2020). <www.mondaq.com> accessed 28th August, 2025

Flyvbjerg B, 'Survival of the Unfittest: Why the Worst Infrastructure Gets Built, And What We Can Do about It' *arXiv pre-print* (2013). <<https://www.researchgate.net> > accessed 26th October, 2025

Godwin Oritse, 'Infrastructure Concession Infrastructure Commission Wades in on FAAN, Bi-Courtney Faceoff', *ICRC* (2018). <<https://www.icrc.gov.ng/concession-regulatory-commission-wades-faan-bi-courtney-faceoff/>> accessed 1st September, 2025.

ICRC's 2016 Annual Reports and Account, 'Post Contract Activities Status of PPP Contracts under Implementation. <<https://www.icrc.gov.ng/assets/uploads/2018/02/Annual-Report-2016-for-website.pdf>> accessed 2nd September, 2025

Idornigie PO (n.d), 'Public-Private Partnership: The Issues, Prospects and Challenges'. <<https://www.paulidornigie.org/>> accessed 28th August, 2025

Karina Chichkanova and Olga Lovtsov, 'Concessions in Russia: further legislative developments' Dentons (2013) 1. <www.dentons.com> accessed 24th September, 2025.

Kivunja C, 'Distinguishing between Theory, Theoretical Framework and Conceptual Framework: A Systematic Review of Lessons from the Field' (2018) 7(6), 46. <<https://doi.org/10.5430/ijhe.v7n6p44>> accessed 25th July, 2025

Ini Ekott, 'Exclusive Bi-Courtney Faces N30billion Fine For Abandoning the Ibadan-Lagos Expressway', Premium Times (Benin City, 2nd September 2025). <<https://www.premiumtimes.ng.com/business/98651-exclusive-bicourtney-faces-n30billion-fine-foe-abandoning-lagos-ibadan-road-but-fg-looks-away.html>> accessed 12th September, 2025

'Lagos Trade Fair Complex, another Wasting Asset' Punch (Benin City, 1st July 2019). <<https://punchng.com/lagos-trade-fair-complex-another-wasting-asset/>> accessed 2nd September, 2025

'Lagos Trade Fair Generates N500 Million in Four Months', The Punch (Benin City, 14th April 2019). <<https://punchng.com/lagos-trade-fair-complex-generates-n500m-revenue-in-four-months/>> accessed 3rd September, 2025

'Nigeria Airports Controversy: Court Awards Maevis N5 bn as Damages' Premium Times, (2013). <<https://www.premiumtimesng.com/news/138938-nigeria-airports-controversy-court-awards-maevis-n5bn-as-damages.html>> accessed 1st September, 2025

Nurudeen Oyewole, 'Anxiety Mounts as Traders, Govt Maintain Claims on Trade Fair Complex' Daily Trust (Benin City, 24th June 2019). <<https://dailytrust.com/anxiety-mounts-as-traders-fg-maintain-claims-on-trade-fair-complex>> accessed 2nd September, 2025

CT Onyemenam, 'Privatization and Commercialization in the Nigeria Economy', ArticlesNG (2016). <<https://articlesng.com/privatization-commercialization-nigerian-economy/>> accessed 18th September, 2025

Olarenwaju Oyedeji, 'Ripples over Revocation of Lagos Trade Fair Complex Concession Right', Premium Times (Benin City, 10th September 2017). <<https://www.premiumtimesng.com/news/headlines/242855-ripples-revocation-lagos-trade-fair-complex-concession-rights.html>> accessed 2nd September, 2025

Online commentary, 'Lekki Deep Seaport will contribute \$360bn to GDP' quoting Minister Amaechi via TheCable/reddit (2012) <<https://www.thecable.ng>> accessed 27th July, 2025

Ola O, 'FAAN v. Maevis: One Impunity Too Many' Business News (2012). <<https://businessnews.com.ng/2012/04/10/faan-vs-maevis-n5bn-as-damages.html>> accessed 28th August, 2025

Oxfam International. <www.Oxfam.org/en/what-we-do/countries/Nigeria> accessed 12th July, 2025

Padmamala Madhusudan and Pushpit Singh, 'A Three-way Critique of Impact of Concession Agreements in the Indian Infrastructure Sector: From a Competition Law, Ports sector, and GST Perspective' (2022). <www.ijpiel.com> accessed 22nd September, 2025

Maureen Ihua-Maduenyi, 'Airport Concession: ICRC initiates FAAN, Bi-Courtney Settlement', Punch (Benin City, 23rd January 2012). <<https://punchng.com/airport-concession-icrc-initiates-faan-bi-courtney-settlement/>> accessed 1st September, 2025.

M Morgner and M Chene, "Corruption risks in public procurement" Transparency International (2015). <<https://transparency.com.org>> accessed 30th October, 2025

The Investopedia Team, "Understanding Public-Private Partnership: How They Work and Key Examples" Investopedia (2025). <<https://investopedia.com>> accessed 30th October, 2025

Tongzon JL and Heng W, 'Port privatization, efficiency and competitiveness: Some empirical evidence from container ports (terminals)' Transportations Research A: Policy and Practice (2005) 39(5), 405-424. <<http://dx.doi.org/10.1016/j.tra.2005.02.001>> accessed 12th July, 2025

Tony Udemba, 'Police Lock Out Lagos Trade Fair Concessionaire against Court Order', The Sun (Benin City, 20th November 2017). <<https://www.sunnewsonline.com/140390-2>> accessed 3rd September, 2025

Transmission Company of Nigeria's Website. <<https://www.tcng.org/StatusOfPowder.aspx>> accessed 12th June, 2025

Varpio L, Paradis E and Uijtdehaage S, 'The distinctions between Theory, Theoretical Framework, and Conceptual Framework' Academia Medicine (2020) 95(7), 989-994. <<https://doi.org/10.1097/ACM.0000000000003075>> accessed 23rd July, 2025

Yakeem Akinwale 'INVESTIGATION: The Real Reasons Itakpe and Ajaokuta Steel Companies are Lying Fallow' International Center for Investigative Reporting, (2018). <<http://www.icirnigeria.org/investigating-the-real-reasons-itakpe-and-ajaokuta-steel-companies-are-lying-fallow/>> accessed 3rd 2025

Yury Tuktarov and Dmitry Sobolev, 'Concession Agreements in Russia' Mondaq (2009). <www.mondaq.com> accessed 24th September, 2025

