



# IMPROVING TRANSPARENCY AND ACCOUNTABILITY IN PUBLIC-PRIVATE PARTNERSHIPS

DISCLOSURE DIAGNOSTIC REPORT: NIGERIA



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# Acronyms

AFC	Africa Finance Corporation
AGF	Attorney General of the Federation
BPE	Bureau of Public Enterprises
BPP	Bureau of Public Procurement
CCSA	Cross-Cutting Solution Area
CSO	civil society organization
EOI	expression of interest
FBC	Full Business Case
FCDA	Federal Capital Development Authority
FCT	Federal Capital Territory
FEC	Federal Executive Council
FESTAC	Festival of Arts and Culture
FMARD	Federal Ministry of Agriculture and Rural Development
FMOF	Federal Ministry of Finance
FMOH	Federal Ministry of Health
FMWR	Federal Ministry of Water Resources
FOI	Freedom of Information
GIFMIS	Government Integrated Financial Management Information System
ICRC	Infrastructure Concession Regulatory Commission
ICT	information and communication technology
MDAs	ministries, departments, and agencies
MMA2	Murtala Muhammed Airport Terminal Two
MOU	memorandum of understanding
MW	megawatts
NEITI	Nigeria Extractive Industries Transparency Initiative
NIF	Nigeria Infrastructure Fund
NIIMP	National Integrated Infrastructure Master Plan
NSIA	Nigeria Sovereign Investment Authority
OBC	Outline Business Case
PPA	Public Procurement Act
PPIAF	Public-Private Infrastructure Advisory Facility
PPP	Public Private Partnership
RFP	request for proposal
SPV	special-purpose vehicle
TCN	Transmission Company of Nigeria
UNCAC	United Nations Convention Against Corruption

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# Executive Summary

A World Bank Public-Private Partnerships (PPP) team conducted a study in Nigeria between September 2016 and April 2017, using the PPP Disclosure Diagnostic template recommended by the World Bank's Framework for Disclosure of Information in PPPs. This study has been consolidated in the form of a PPP Disclosure Diagnostic Report for Nigeria. The Diagnostic Report examines the political, legal, and institutional environment for disclosure in PPPs. Based on a gap assessment exercise with key political, legal, institutional, and process findings benchmarked against the World Bank Framework, the Diagnostic Report makes specific recommendations to improve disclosure. The recommendations include a suggested enhanced framework for disclosure of PPPs applicable to all federal government projects in Nigeria, and an extended disclosure framework (beyond PPPs) for three types of investments by the Nigeria Sovereign Investment Authority (NSIA).

The findings suggest a move toward greater transparency and openness in all areas of government in Nigeria, with several new initiatives having been launched in recent years. The 1999 Constitution of Nigeria led to increased pressure on public bodies to promote more transparent governance structures. This was enhanced substantially with the Nigeria Extractive Industries Transparency Initiative (NEITI) Act 2007, and the Freedom of Information (FOI) Act 2011, which, among others, promote proactive disclosure of contract information. Nigeria has taken other progressive steps, such as signing the United Nations Convention Against Corruption, joining the Open Government Partnership, launching the Open Data Development Initiative, placing its parliamentary proceedings since 1999 on the Hansard web portal, launching electronic applications for certain services, launching the Government Integrated Financial Management Information System for more transparent financial management, and setting up National eGovernment Strategies as a PPP project with the mandate to facilitate, drive, and implement the Nigerian eGovernment Program. NSIA has been lauded as one of the most transparent among sovereign investment funds globally.

However, given that most of these initiatives are very recent and still in the process of being institutionalized, their impact in improving disclosure in the PPP space, so far, has not been substantial. NSIA discloses substantial information through its annual reports, but ongoing disclosure of information in a more structured manner will be important for the organization as it increases its portfolio of investments, including in PPPs.

The past decade has seen an increase in interest in the use of PPPs in Nigeria, largely driven by the government's Vision 2020. The Private Participation in Infrastructure database indicates that 56 PPP projects with a total investment commitment of US\$39 billion reached financial closure between 1990 and 2015. The Infrastructure Concession Regulatory Commission (ICRC) website lists 90 projects at various stages of development and procurement, and 51 under implementation under its guidance and custody. These projects cover a variety of sectors, key among these being transport, energy, education, housing, and health. NSIA is also participating in the country's infrastructure development



process through PPPs, most notably as an investor and developer of the Second Niger Bridge project.

Currently, Nigeria has a fairly well-developed legal and institutional framework for PPPs. The Infrastructure Concession Regulatory Commission (ICRC) Act 2005 is the key legislation relevant to PPPs at the federal level. Other supporting legislation includes the Debt Management Office (Establishment, Etc.) Act 2003, the Public Procurement Act (PPA) 2007 and the Fiscal Responsibility Act 2007. The ICRC Act 2005, together with the other supporting legislation, provides the legal capacity to government bodies to enter into PPP contracts, address gaps and remove conflicts in existing laws, clarify the roles and responsibilities of various bodies involved in PPPs, and establish institutions to prepare and approve PPP projects. The NSIA Act under which NSIA was set up in 2011 provides the legal framework as well as the management and approval processes through which NSIA invests in PPP (and other infrastructure) projects.

Nigeria has a relatively well-defined legal and policy framework, which directly and indirectly impacts PPP disclosure significantly. Key legislation that enables proactive disclosure are the FOI, ICRC, NEITI, PPA, and Fiscal Responsibility Acts. The FOI Act 2011 provides for proactive disclosure of information relating to project contracts signed by the government. The ICRC Act 2005 puts clear disclosure obligations on the ICRC, as it creates PPP-related information and records, takes major approval decisions, and provides guidance to public institutions in the process. Provisions in the NEITI, PPA, and Fiscal Responsibility Acts emphasize transparency and disclosure requirements across all stages of the procurement process specifically, and on the financial affairs of the government more generally. ICRC has recently published detailed guidelines on disclosure of PPP contract information, following technical assistance by the World Bank in 2012–13. These guidelines have been approved by the Board of ICRC, and it is expected that these will be implemented in a substantial way going forward. NSIA subscribes to the Santiago Principles (formulated by the International Forum of Sovereign Wealth Funds), which emphasize accountability and transparency in Sovereign Wealth Fund investments. The NSIA Act also speaks of transparency as a key principle of its operations.

However, ICRC and NSIA can improve their current disclosure frameworks to ensure that information is disclosed earlier in the project process. Although the ICRC guidelines on disclosure of PPP contract information provide a good framework for disclosure of information following contract execution, these do not cover the project preparation and procurement phases. The NSIA provisions, in contrast, require greater structure in disclosure as well as disclosure beyond what is included in the annual reports. There is a clear need for an enhanced disclosure framework.

At present, there is limited information on PPPs in the public domain. However, ICRC is currently in the process of redacting complete project contracts and preparing these for disclosure. Being a young institution, NSIA has so far been involved in a limited number of PPP projects, and has proactively disclosed information on them to different degrees. It also regularly discloses details of its investments through its annual reports, which are easily accessible in the public domain.

This Diagnostic Report recommends an enhanced framework for ICRC, which includes all phases of the project process. The Diagnostic Report also recommends a systematic structure for NSIA for proactively disclosing information. The recommended disclosure suggests a holistic approach to disclosure through predefined standards, tools, and mechanisms, allowing for increased disclosure efficiency, as outlined in tables ES.1 and ES.2.

The recommended design for ICRC largely follows the World Bank Framework. It is hierarchical and includes a logical framework that moves from a high-level mandate to disclose toward the basic elements that need to be disclosed. Table ES.1 provides a snapshot of the recommended features of the suggested framework for ICRC. Table ES.2 provides a snapshot of the recommended disclosure for NSIA. Although these recommendations follow the World Bank Framework in principle, they go beyond PPPs and suggest three templates for disclosure of information relevant to NSIA investment categories.

TABLE ES.1: SNAPSHOT OF RECOMMENDED DISCLOSURE FOR ICRC

AREA	DESCRIPTION
LEGISLATIVE MANDATE	Widen the legislative mandate as follows, for more effective implementation of the FOI and ICRC Acts: (i) amend the FOI Act to include institutional structure, roles, and responsibilities relating to the implementation of the Act, including the creation of an independent and well-funded appellate body or tribunal; (ii) introduce clauses that place sanctions on public officials for noncompliance with the law and the orders of the appellate authority; (iii) reduce exemption clauses; and (iv) introduce timebound obligations for proactive disclosure. Repealing other Acts (such as the Official Secrets Act) that go against the spirit of transparency also needs to be done in parallel. The ICRC Act would benefit immensely from the introduction of clauses that provide a clear, proactive disclosure mandate for PPPs.
DETAILED GUIDANCE	Applicability of legislation to contracts and project information Elements of disclosure during the various phases of the PPP project process Timelines for disclosure Details of confidentiality provisions Template for disclosure Standard contract clauses
DISCLOSURE DURING PROJECT IDENTIFICATION AND PREPARATION	List of projects under development Basic project information Project progress tracker
DISCLOSURE DURING PROCUREMENT	<i>Pre-tender:</i> Tentative procurement dates; project summary <i>Tender:</i> Expression of interest, short-listed bidders, request for proposal, award
DISCLOSURE FOLLOWING CONTRACT SIGNING	Basic project information Material risks and allocation Reasons for choice of PPP Financing structure Guarantees, grants, annuity and availability payment schedule, land and asset transfers, and other support; revenue share Tariffs Actual performance against targets, performance failures, links to independent engineer, audit, and SPV reports Termination and handback provisions Renegotiations or changes
CONFIDENTIAL INFORMATION	Areas or elements that could be considered confidential (subject to overarching law and project-specific circumstances), where the competitiveness of the private provider may be jeopardized Exceptions and exemptions to the confidentiality clause

AREA	DESCRIPTION	
STANDARD CONTRACT PROVISIONS	<p>Reports, documents, and other information the private provider should maintain and submit to the authority; timelines for submission and disclosure</p> <p>Language on what constitutes confidentiality, format for listing confidential clauses, and clause for disclosure in public interest</p>	
PLATFORM	<p>A single platform with a user-friendly, integrated back end for use by multiple entities, with a hierarchy of roles related to uploading, validation and disclosure of information; a user-friendly front end, with structured content and regular updates to registered users</p>	
TIMELINES	Basic project information	Within 15 days after approval of OBC
	Project Milestones	Within 15 days of each status change
	<i>Procurement Documents</i>	
	EOI	Within 15 days of approval
	List of short-listed bidders	Within 15 days of approval
	Bid Award	Within 15 days of issuance of FBC Certificate of Compliance by ICRC
	Full RFP	Within 15 days of approval
	<i>Disclosure of other documents</i>	
	OBC report	Within 30 days of OBC approval by FEC
	Value-for-money analysis report	Within 30 days of FBC approval by FEC
	Project summary (including basic contract information, parties to the contract, project risk matrix, amounts and types of government support provided to the project, and pricing, termination clauses, handback provisions, and key performance indicators with target levels)	Within 30 days of signature of contract
	Financial Information	Within 30 days of financial close

AREA	DESCRIPTION	
TIMELINES	<i>Disclosure of other documents</i>	
	Contract Documents	Signed PPP Contract disclosed within 30 days of contract signing (after redaction of confidential information)
	Renegotiations	Within 30 days of the signature of the renegotiated contract
	<i>Performance disclosure throughout contract period</i>	
	Performance information	Within one year of financial close, updated annually
TEMPLATE AND DATA STANDARDS	<p>A simple template with details of elements to be disclosed at various project phases</p> <p>Consistent, structured, machine-readable, and exploitable information</p>	

*Note:* EOI = expression of interest; FBC = Full Business Case; FEC = Federal Executive Council; FOI = Freedom of Information; ICRC = Infrastructure Concession Regulatory Commission; OBC = Outline Business Case; PPP = Public-Private Partnership; RFP = request for proposal; SPV = special-purpose vehicle.

TABLE ES.2: SNAPSHOT OF RECOMMENDED DISCLOSURE FOR NSIA

AREA	DESCRIPTION
LEGISLATIVE MANDATE	Widen the legislative mandate as follows, for more effective implementation of the FOI and NSIA Acts: (i) amend the FOI Act to include institutional structure, roles, and responsibilities relating to the implementation of the Act, including the creation of an independent and well-funded appellate body or tribunal with enforcement powers; (ii) introduce clauses that place sanctions for noncompliance, with proactive disclosure clauses by public officials; (iii) reduce exemption clauses; and (iv) introduce timebound obligations for proactive disclosure. Repealing other Acts (such as the Official Secrets Act) that go against the spirit of transparency also needs to be done in parallel. The NSIA Act would benefit immensely from the introduction of clauses that provide a clear, proactive disclosure mandate for NSIA sponsored investments.
DETAILED GUIDANCE	Applicability of legislation to contracts and project information Elements of disclosure for diverse investment portfolio Timelines for disclosure Details of confidentiality provisions Template for disclosure Standard contract clauses
DISCLOSURE DURING PROJECT IDENTIFICATION AND PREPARATION	Basic project information Project progress tracker
DISCLOSURE DURING PROCUREMENT	<i>Pre-tender:</i> Brief description of project, services, estimated cost, likely sources of revenue, and tentative procurement dates; feasibility study report, project summary List of vendors and advisors
DISCLOSURE FOLLOWING COMMERCIAL CLOSE	Basic project information Material risks and allocation Reasons for choice of PPP Financing structure Guarantees, grants, annuity and availability payment schedule, land and asset transfers, and other support; revenue share Tariffs Actual performance against targets, performance failures, links to independent engineer, audit, and SPV reports Termination and handback provisions Renegotiations or changes
CONFIDENTIAL INFORMATION	Areas or elements that could be considered confidential (subject to overarching law and project-specific circumstances) where the competitiveness of the private provider may be jeopardized Exceptions and exemptions to the confidentiality clause

AREA	DESCRIPTION
STANDARD CONTRACT PROVISIONS	<p>Reports, documents, and other information the private provider should maintain and submit to the authority; timelines for submission and disclosure</p> <p>Language on what constitutes confidentiality, format for listing confidential clauses, and clause for disclosure in public interest</p>
PLATFORM	<p>A single platform with a user-friendly integrated back end for use by multiple entities with a hierarchy of roles related to uploading, validation, and disclosure of information; a user-friendly front end with structured content and regular updates to registered users</p>
TIMELINES	<p>Timelines for disclosure of information elements will depend on NSIA's role (investor, sponsor, or developer) and type of investment (public-public, public-private, or regular PPP projects) (see annex D for details.)</p>
TEMPLATE AND DATA STANDARDS	<p>A simple template with details of elements to be disclosed at various project phases</p> <p>Consistent, structured, machine-readable, and exploitable information</p>

*Note:* FOI = Freedom of Information; NSIA = Nigeria Sovereign Investment Authority; PPP = Public-Private Partnership; SPV = special-purpose vehicle.



# 1. Introduction

Based on research and analysis over the past few years, the World Bank Group Public-Private Partnerships (PPP) Cross-Cutting Solution Area (CCSA) has worked on creating a Framework for Disclosure in Public-Private Partnerships, which suggests a systematic structure for disclosing information proactively at different phases of the PPP process. Two documents, “[Jurisdictional Studies](#)” and “[Good Practice Cases](#),” have been developed to provide relevant background and resources complementing the goals of the Framework. The Framework has undergone a public consultation process, and is now being piloted in four countries—Ghana, Honduras, Kenya, and Nigeria. The work in Nigeria involves two projects—with the Infrastructure Concession Regulatory Commission (ICRC), and the Nigeria Sovereign Investment Authority (NSIA).

The Framework suggests the initiation of work with a PPP Disclosure Diagnostic (the Diagnostic) in countries. The objective of the PPP Disclosure Diagnostic is to help PPP policy makers and practitioners to assess the status of PPP disclosure in the jurisdiction and identify customized PPP disclosure solutions for all PPP types, to enable better disclosure. The Diagnostic can also be used by World Bank teams.

The Diagnostic includes an examination of each of the following areas in a country:

- Preliminary overview of the general transparency environment
- History and outlook for PPP disclosure
- Political environment for disclosure
- Legal and policy framework
- Process and institutions
- Guidance on confidential information
- Information systems
- Technology and data standards

Under each of the areas identified, the Diagnostic provides the key questions policy makers and practitioners should ask, analysis and techniques for assessing gaps, resources for learning more, and tools for establishing a customized PPP disclosure framework for the jurisdiction. The relevance of each of the above areas varies based on the unique circumstances within the country.

This Diagnostic Report is structured around the key themes that are relevant to Nigeria’s disclosure environment, as summarized in table 1. The table has a few additional questions pertaining to NSIA, which go beyond PPPs and include two other categories of investments.

**TABLE 1: DISCLOSURE ENVIRONMENT IN NIGERIA**

THEME	KEY QUESTION	SECTION
TRANSPARENCY AND OPENNESS IN GOVERNANCE	Is there a transparent and open governance environment in Nigeria?	2
PPP EXPERIENCE	Does the government have substantial experience in PPPs? Does the government have an ongoing PPP program?	3
INSTITUTIONAL FRAMEWORK FOR PPPs	What are the institutions supporting the preparation, procurement, and implementation of PPPs? What are the respective roles of the ICRC, NSIA, FMOF and others?	4
LEGAL AND POLICY FRAMEWORK FOR PPP DISCLOSURE	Is the legal and regulatory environment sufficiently conducive to PPP disclosure? Is there FOI legislation that supports proactive disclosure? Do PPP legislation/regulations provide clarity on the elements, timing, institutional structure, and processes for disclosure? Do other related legislation and regulation support disclosure? Are there guidelines and processes in place to guide disclosure? Are there standardized disclosure contract clauses and templates? Is there a web portal(s) available with a user-friendly back end and front end design in machine readable format? What are the provisions of the NSIA Act relevant to disclosure? Does NSIA have a disclosure policy or guidelines that apply to its investments?	5
DISCLOSURE IN PRACTICE AND KEY CHALLENGES	What information is disclosed in practice? What are the key challenges to disclosure?	6

*Note:* FOI = Freedom of Information; NSIA = Nigeria Sovereign Investment Authority; PPP = Public-Private Partnerships.

Based on the findings in these areas, an assessment of the specific gaps in the political, legislative, and institutional contexts is detailed in section 7. Section 8 provides specific recommendations. Annexes A and C provide the legal drafting for the suggested amendments to the ICRC and NSIA Acts respectively. Annexes B and D provide the text of the suggested Framework for Disclosure of Information in PPPs in Nigeria, and the Framework for Disclosure of Information for NSIA, respectively. The Frameworks also contain standard contractual clauses and templates for disclosure. Annexes E and F provide a comparison of the World Bank’s recommended disclosure framework, the current disclosure and the agreed disclosure framework of ICRC and NSIA respectively. The key material that was reviewed in the preparation of this Diagnostic is listed in section 9.

## 2. Transparency and Openness in Nigeria

### Introduction

Nigeria has taken several steps to move toward lower levels of corruption and greater transparency and accountability. The Constitution of Nigeria (1999) provides a clear directive through Section 15(5) that the “Government must eradicate all corrupt practices and abuse of power”. Several enabling laws have been enacted to implement this directive, including the Code of Conduct Bureau and Tribunal Act 1990, Independent Corrupt Practices & Other Related Offences Act 2000, Economic and Financial Crimes Commission Act 2004, Fiscal Responsibility Act 2010, and Money Laundering Prohibition Act 2011.

In the past decade, the Federal Government of Nigeria has enacted two major legislations specifically impacting transparency and accountability in governance: the Nigeria Extractive Industries Transparency Initiative (NEITI) Act 2007, and the Freedom of Information (FOI) Act 2011. Although these Acts have resulted in gradual improvement in disclosure at the national level, institutional hurdles remain. For example, the civil service financial and operational guidelines have not been aligned with the new disclosure regime yet. In addition, although the FOI Act overrides the Official Secrets Act (which sanctioned public officers who disclosed information without authorization), a culture of secrecy remains entrenched in government functioning. Another hindrance to the effective implementation of the FOI Act has been the resistance of subnational governments to its aims and principles. Currently, there are at least six different litigations pending on appeal on whether the FOI Act applies to subnational governments in Nigeria. Of the 36 subnational governments in the country, only Ekiti state has passed its own FOI law, and Anambra state has developed guidelines for implementing the federal FOI Act. However, none of the 36 states has shown an inclination to implement the FOI regime. This is not surprising, as even the compliance of public authorities with the mandate of constitutional oversight bodies, such as the Attorney General of the Federation (AGF), remains low.<sup>1</sup>

Despite systemic institutional challenges, Nigeria has consistently made efforts to incorporate international frameworks that promote transparency and anti-corruption in its governance processes. Nigeria was one of the first signatories to the United Nations Convention against Corruption (UNCAC) in 2003, and is one of the few countries that has also subjected itself to the UNCAC country peer review process.<sup>2</sup> UNCAC states that “transparency and accountability in matters of public finance must [also] be promoted, and

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<sup>1</sup> State of Right to Information Report in Africa 2014; <http://r2knigeria.org/index.php/publications/foi-assessments-reports>.

<sup>2</sup> [https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2014\\_10\\_14\\_Final\\_Country\\_Report\\_Nigeria.pdf](https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2014_10_14_Final_Country_Report_Nigeria.pdf).

specific requirements are [to be] established for the prevention of corruption, in the particularly critical areas of the public sector, such as the judiciary and public procurement”.<sup>3</sup> Nigeria is also a signatory to the African Union Convention on Preventing and Combating Corruption, the Economic Community of West African States Protocol on the Fight against Corruption, the African Charter on Human and Peoples’ Rights, the African Union Youth Charter, and the African Statistics Charter, each of which recognizes access to information as a basic right. In addition, Nigeria is a member of the global Extractive Industries Transparency Initiative. Most recently, the current government has formally expressed its intent to join the Open Government Partnership, and has committed to implementing the Open Contracting Data Standard across several sectors, including oil, transportation, power, health, and education.<sup>4</sup>

## Open Data and eGovernment Initiatives

Nigeria introduced the Government Integrated Financial Management Information System (GIFMIS) in 2012. GIFMIS was initially implemented within the Budget Office, AGF, and six pilot ministries, departments, and agencies (MDAs). This initial rollout was to be followed by its implementation across all MDAs and subnational governments in a phased manner. However, it remains unclear how many MDAs, subnational governments and public authorities have been covered under GIFMIS so far. In August 2016, the government announced the introduction of e-procurement on a pilot basis in six sectors, including health; education; agriculture; transport; water resources; and works, power, and housing.

Nigeria has also made some efforts to offer government services online. The Nigeria Immigration Service has a functioning website where certain services, such as passports and visas, can be requested. In 2004, the federal government, through the National Information Technology Development Agency, established the National eGovernment Strategies as a PPP project, with the mandate to facilitate, drive, and implement the Nigerian eGovernment Program. The achievements of this special-purpose vehicle (SPV) so far are unclear.

Nigeria announced the commencement of the Open Data Development Initiative in 2014, under which the country seeks to “open up high-value data sets from across government ministries to Nigerian citizens, businesses, and the rest of the world, for free”.<sup>5</sup> However, the implementation of the initiative has been patchy and inconsistent. Some data sets are publicly available, but these are restricted to the websites of specific MDAs, such as the [National Bureau of Statistics](#) and the [Budget Office](#). The data that have been made available are not comprehensive and well-organized. Some civil society organizations (such as the Public and Private Development Centre through [Budeshi](#)) have attempted to

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<sup>3</sup> <https://www.unodc.org/unodc/en/treaties/CAC/convention-highlights.html>.

<sup>4</sup> The current government (which came to power in 2015) has declared anti-corruption and transparency as its priority, and has carried out several investigations on and court indictments of high-profile public servants as part of its drive against corruption.

<sup>5</sup> See <http://commtech.gov.ng/index.php/videos/news-event/128-fg-kicksoff-opendata-initiative>.

present government data in a structured way, but the content remains dependent on the data sets made available by the government.

Apart from these specialized services, the extent and relevance of the information disclosed through websites remain low. The 2014 State of Right to Information in Africa report found that “many public institutions in Nigeria have very interactive websites, but these sites do not contain information beyond the most basic classes, mostly confined to institutional organograms and mandate. They exclude more ‘sensitive’ disclosures.”<sup>6</sup>

The legal and policy initiatives highlighted here indicate that transparency- and disclosure-related reforms are being driven by the top echelons of the government. This situation suggests that there is significant buy-in at the political level to make government functioning more transparent and accountable.

However, corruption and opacity in decision making continue to feature in public discourse, and a culture of secrecy within government functioning remains a matter of concern. Transparency International’s Corruption Perceptions Index ranked Nigeria 136 of 175 countries in 2015. Other indicators support this assessment. The Rule of Law Index ranked Nigeria 96 of 104 countries in 2015.<sup>7</sup> The Global Competitiveness Report 2015-16 cited corruption as the second most important factor that hindered business in the country.<sup>8</sup> Apart from external assessments, 72 percent of Nigerian citizens believe that corruption in the country has worsened over recent years.<sup>9</sup>

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<sup>6</sup> See <http://www.africafoicentre.org/index.php/reports-publications/139-state-of-right-to-information-in-africa-report-2014>, page 48.

<sup>7</sup> See <http://worldjusticeproject.org/blog/wjp-open-government-index-2015-launches>

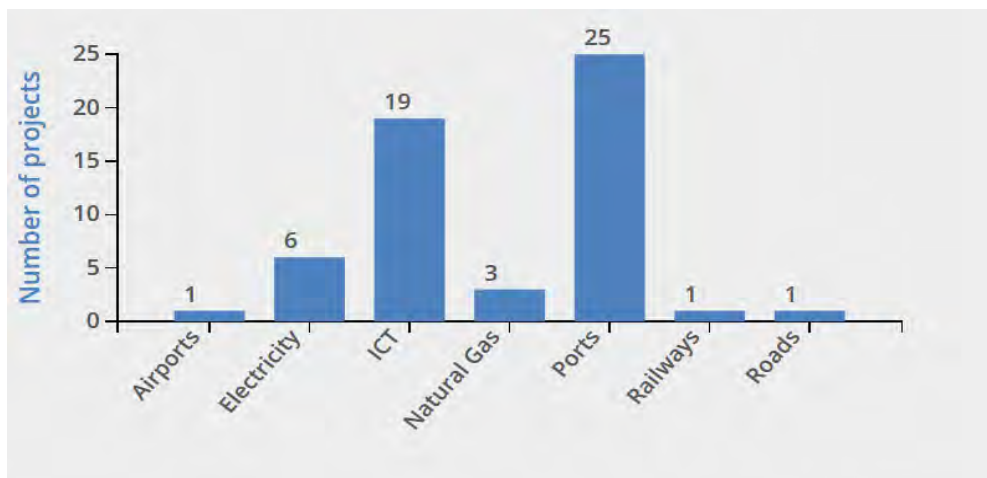
<sup>8</sup> Global Competitiveness Report 2015-16, World Economic Forum, Geneva, p. 282.

<sup>9</sup> See <http://www.transparency.org/gcb2013/country/?country=nigeria>

### 3. PPP Experience

Nigeria has significant experience in PPPs. Port infrastructure concessions that were awarded around 15 years ago were the first set of PPPs that gained visibility. These projects led to the emergence of 25 private terminal operators and one build, operate, and transfer initiative. The World Bank’s Private Participation in Infrastructure database lists 56 projects as having achieved financial close between 1990 and 2015, with a total investment of US\$ 39 billion. The ports sector has 25 projects, the largest number for any single sector, and the information and communication technology sector has the highest proportion of investment, at US\$ 28 billion (figures 1 and 2). Currently, the ICRC website lists 51 projects at various stages of implementation<sup>10</sup> (table 2), 90 projects under development,<sup>11</sup> and 77 projects as having been identified for future development.<sup>12</sup>

FIGURE 1: NUMBER OF PPP PROJECTS, BY SECTOR



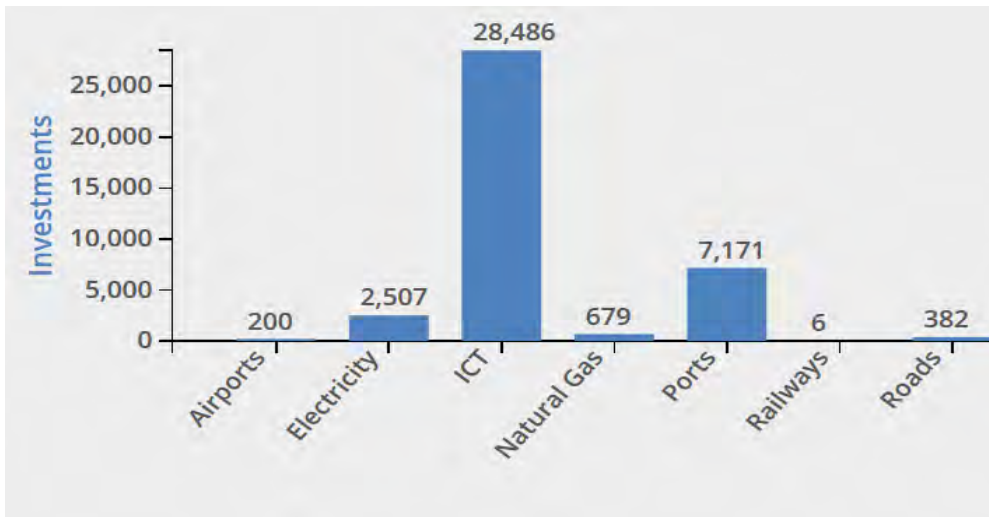
Note: ICT = Information and communication technology; PPP = public-private partnership.

<sup>10</sup> See <http://www.icrc.gov.ng/projects/projects-under-icrcs-custody/>

<sup>11</sup> As of 31 May 2017. See <http://www.icrc.gov.ng/projects/projects-under-conceptualization-development-and-procurement/>

<sup>12</sup> See <http://www.icrc.gov.ng/projects/ppp-projects-pipeline/>

FIGURE 2: PPP INVESTMENTS, BY SECTOR (US\$, MILLIONS)



Note: ICT = Information and communication technology; PPP = public-private partnership.

The Nigerian government's Vision 2020 aims to make Nigeria one of the top 20 economies in the world by 2020. To achieve this goal, the government has recognized the importance of investment in infrastructure as a prerequisite for accelerating Nigeria's growth and development. The country's infrastructure requirements are likely to grow to US\$ 3.1 trillion in the next 30 years, which would need to be financed substantially through private financing.<sup>13</sup>

The ICRC Act 2005 is the most important national legislation relevant to PPPs. Other key legislation includes the Debt Management Office (Establishment, Etc.) Act 2003, and the Public Procurement Act 2007. Sector-specific legislation, such as the Highways Act 1971, the Utilities Charges Commission Act 1992, the Bureau of Public Enterprises (Privatization and Commercialization) Act 1999, and the Electric Power Sector Reforms Act 2005, provide some guidelines that are relevant to the operationalization and management of PPPs in the country. At the subnational level, several states have PPP laws, while most others have an existing framework and/or a bill under consideration.<sup>14</sup> This overall regulatory ecosystem provides the legal capacity for government bodies to enter into PPP contracts, address legal gaps and remove conflicts in existing laws, clarify the roles and responsibilities of various bodies involved in PPPs, and establish legal institutions to prepare and approve PPP projects.

<sup>13</sup> National Integrated Infrastructure Master Plan (NIIMP)

<sup>14</sup> Abia, Anambra, Bauchi, Bayelsa, Cross River, Delta, Ebonyi, Edo, Ekiti, Kaduna, Kogi, Kwara, Lagos, Niger, Oyo, Rivers, Sokoto, and the Federal Capital Territory of Abuja (FCT) have a PPP law and/or an existing PPP framework, while Akwa Ibom, Benue, Enugu, Osun and Plateau have PPP bills under consideration.



TABLE 2: PPP PROJECTS UNDER IMPLEMENTATION IN THE CUSTODY OF ICRC

#	PROJECT	GOVERNMENT AGENCY	DURATION (YEARS)	STATUS
1	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Apapa)	Nigerian Ports Authority	25	Under implementation
2	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Apapa)	Nigerian Ports Authority	25	Under implementation
3	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Apapa)	Nigerian Ports Authority	10 (initially)	Under implementation
4	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Apapa)	Nigerian Ports Authority	10 (initially)	Under implementation
5	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Apapa)	Nigerian Ports Authority	25	Under implementation
6	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Apapa)	Nigerian Ports Authority	25	Under implementation
7	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Ijora)	Nigerian Ports Authority	10	Expired in February 2017; Commission liaising with parties to ensure renewal or handback of leased property to government
8	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Tincan Island)	Nigerian Ports Authority	15 (initially)	Under implementation

#	PROJECT	GOVERNMENT AGENCY	DURATION (YEARS)	STATUS
9	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Tincan Island)	Nigerian Ports Authority	25	Under implementation
10	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Tincan Island)	Nigerian Ports Authority	10	Under implementation
11	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Tincan Island)	Nigerian Ports Authority	15	Under implementation
12	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Tincan Island)	Nigerian Ports Authority	10 (initially)	Under implementation
13	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Onne)	Nigerian Ports Authority	25	Under implementation
14	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Onne)	Nigerian Ports Authority	25	Under implementation
15	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Port Harcourt)	Nigerian Ports Authority	20	Under implementation
16	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Onne)	Nigerian Ports Authority	25	Under implementation
17	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Onne)	Nigerian Ports Authority	25	Under implementation

#	PROJECT	GOVERNMENT AGENCY	DURATION (YEARS)	STATUS
18	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Calabar)	Nigerian Ports Authority	25	Under implementation
19	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Warri)	Nigerian Ports Authority	25	Under implementation
20	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Warri)	Nigerian Ports Authority	25	Under implementation
21	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Port Harcourt)	Nigerian Ports Authority	15	Under implementation
22	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Calabar)	Nigerian Ports Authority	25	Under implementation
23	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Calabar)	Nigerian Ports Authority	25	Under implementation
24	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Warri)	Nigerian Ports Authority	10	Under implementation
25	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Koko Port, Delta State)	Nigerian Ports Authority	10	Terminated
26	Concession for the Development, Finance, Maintenance, Operation, and Transfer of Port Terminal (Warri)	Nigerian Ports Authority	25	Under implementation

#	PROJECT	GOVERNMENT AGENCY	DURATION (YEARS)	STATUS
27	Concession for the Operation, Management, and Provision of Primary, Secondary, and Tertiary Health Care at the Garki Hospital Abuja	Federal Capital Territory Administration	15	Under implementation
28	Concession for the Lease of Real Property, Purchase of Moveable Assets, Improvements to Leased Property, and Performance of Operations and Maintenance of the Building Complex and Trade Centre (Lagos)	Tafawa Balewa Square Management Board	30	Under implementation, although with challenges
29	Building Complex and Trade Centre—Finance, Maintain, and Development Contract (Lagos)	Lagos International Trade Fair Management Board	30	Under implementation, although with dispute
30	Concession for Build, Own, and Operate a Container Freight Station of Inland Container Depot (Abia State)	Nigerian Shippers' Council	30 (from 2007)	Implementation stalled due to absence of legal status and inability of private partner to reach financial close
31	Concession for Build, Own, and Operate a Container Freight Station of Inland Container Depot (Oyo State)	Nigerian Shippers' Council	25 (from 2007)	Implementation stalled due to absence of legal status and inability of private partner to reach financial close
32	Concession for Build, Own, and Operate a Container Freight Station of Inland Container Depot (Plateau State)	Nigerian Shippers' Council	25 (from 2007)	Implementation stalled due to absence of legal status and inability of private partner to reach financial close
33	Concession for Build, Own, and Operate a Container Freight Station of Inland Container Depot (Kano State)	Nigerian Shippers' Council	25 (from 2007)	Implementation stalled due to absence of legal status and inability of private partner to reach financial close
34	Concession for Build, Own, and Operate a Container Freight Station of Inland Container Depot (Katsina State)	Nigerian Shippers' Council	25 (from 2007)	Implementation stalled due to absence of legal status and inability of private partner to reach financial close

#	PROJECT	GOVERNMENT AGENCY	DURATION (YEARS)	STATUS
35	Concession for Build, Own, and Operate a Container Freight Station of Inland Container Depot (Borno State)	Nigerian Shippers' Council	25 (from 2007)	Implementation stalled due to absence of legal status and inability of private partner to reach financial close
36	Provision of Data Capture Services, Personalization, Issuance, and Distribution of General Multipurpose Cards, and Deployment of Card Acceptance Devices–Nationwide	National Identity Management Commission	10	In dispute, matter before arbitration
37	Provision of Data Capture Services, Personalization, Issuance, and Distribution of General Multipurpose Cards, and Deployment of Card Acceptance Devices–Nationwide	National Identity Management Commission	10	In dispute, matter before arbitration
38	Concession Agreement for Design, Build, Finance, and Operate TCN's Fibre Optic Cable Telecommunications Infrastructure for the Western Part of Nigeria	Transmission Company of Nigeria	15 (from March 2006)	Under implementation
39	Concession Agreement for Design, Build, Finance, and Operate TCN's Fibre Optic Cable Telecommunications Infrastructure for the Eastern Part of Nigeria	Transmission Company of Nigeria	15 (from March 2016)	Under implementation
40	Concession to Design, Develop, Finance, Construct, Complete, Test, Commission, Operate, Manage, Maintain, and Transfer the MMA2 Terminal (Lagos)	Federal Airports Authority of Nigeria	12	Under implementation, although faced with challenges and currently under dispute
41	Concession for the Construction and Development of a Hotel and Conference Centre at MMA2, Ikeja–Lagos	Federal Ministry of Transportation, Federal Airports Authority of Nigeria	40	Under implementation, although faced with challenges

#	PROJECT	GOVERNMENT AGENCY	DURATION (YEARS)	STATUS
42	Concession for the Acquisition, Installation, Operation, and Management of World-Class Integrated System in Designated Airports (MMA–Lagos, Abuja, and Kano)	Federal Airports Authority of Nigeria	10	Terminated; case in court
43	Concession for Development of Engineering Infrastructure for Katampe District, Phase II (FCT–Abuja)	Federal Capital Development Authority	5	Under implementation
44	Concession for Tracking of Ships and Cargo, Enforcing Regulatory Compliance, and Surveillance of the Entire Nigeria Maritime Domain–Lagos	Nigerian Maritime Administration and Safety Agency	10 (from 2010)	Suspended
45	Development and Operation of Deep Water Port (Lekki, Lagos)	Lekki Port Lagos Free Trade Zone Enterprise	45 (April 21, 2011 to April 21, 2056)	Efforts being made to achieve financial close and fulfill conditions precedent
46	Concession Agreements for the Operation, Maintenance, Design, and Sales of Electricity Produced–Kainji/Jebba (Niger State)	Federal Ministry of Power, Works and Housing	30 (from February 21, 2013)	Under implementation
47	Concession Agreements for the Operation, Maintenance, Design, and Sales of Electricity Produced–Shiroro (Niger State)	Federal Ministry of Power, Works and Housing	30 (from February 21, 2013)	Under implementation
48	Concession Agreement for the Reclamation and Infrastructural Development of FESTAC Phase II Housing Development Project–FESTAC Town, Lagos	Federal Ministry of Lands, Housing and Urban Development; Federal Housing Authority	30 (from September 8, 2014)	Currently stalled as a result of a court case
49	Concession for the Design, Finance, Build, Operate, Maintain, and Transfer the Debt Management Office's Corporate Office Building, Abuja	Debt Management Office	30 (from effective date)	Efforts ongoing to achieve financial close and fulfill conditions precedent

#	PROJECT	GOVERNMENT AGENCY	DURATION (YEARS)	STATUS
50	Concession for the Design, Construct, Install, Operate and Maintain the Dadin Kowa Multi-purpose Hydro Dam for the purpose of Electricity Generation with a capacity of 39 MW, Irrigation and Urban Water Supply – Gombe State	Federal Ministry of Water Resources	25 (from July 4, 2005)	Under implementation
51	Concession for the Rehabilitation, Completion, Management, and Operation of the National Iron Ore Mining Company Ltd., Including the Right to Expand, Prospect, Explore, Excavate, Extract, and Sell the Ore and Products Therefrom	Federal Ministry of Solid Minerals Development; National Iron Ore Mining Company Ltd.	First entered into February 17, 2005; Following international settlement, entered into modified concession agreement; Commencement date: August 1, 2016	Under implementation

Note: See <http://www.icrc.gov.ng/projects/projects-under-icrcs-custody/>. FCT = Federal Capital Territory; FESTAC = Festival of Arts and Culture; ICRC = Infrastructure Concession Regulatory Commission; MMA2 = Murtala Muhammed Airport Terminal Two; MW = megawatts; PPP = Public-Private Partnerships; TCN = Transmission Company of Nigeria.



## 4. Legal and Institutional Framework for PPPs

### Procurement and Institutional Framework

The ICRC Act 2005 enables private sector participation in infrastructure or development projects of the federal government. The Act also establishes ICRC as a regulatory body that is mandated to issue general policy guidelines, rules, and regulations, ensuring efficient execution of concession agreements and taking custody of all contracts. The Act defines the high-level institutional framework through which PPPs are identified, prepared, procured, and implemented in Nigeria. Key institutional actors in the project identification, development, and procurement phases include the MDAs, ICRC, and Federal Executive Council (FEC). In addition, a PPP Unit was established within the Technical Services Department of the Federal Ministry of Finance (FMOF), which is mandated with the responsibility to track, monitor, and manage contingent liabilities arising from PPPs.<sup>15</sup>

Apart from the ICRC Act, the Public Procurement Act (PPA) 2007 established the Bureau of Public Procurement (BPP) as the regulatory authority responsible for monitoring and oversight of public procurement, harmonizing the existing government policies and practices by regulating, setting standards, and developing the legal framework and professional capacity for public procurement in Nigeria. BPP issued regulations in 2007 that set out procedures for public procurement generally, and have a provision for certain types of public procurement that are typically found in PPP arrangements (such as build, own, and operate; build, operate, and transfer; build, own, operate, and transfer; and so forth).<sup>16</sup> Although these regulations suggest an overlap between the roles of ICRC and BPP in the PPP procurement process, in practice BPP has remained aloof from the PPP procurement process (except for the procurement of transaction advisors by MDAs, which is carried out within the framework of the PPA), and refers any PPP proposals it receives from MDAs to ICRC. In addition, the BPP also issued the second edition of the Procurement Procedures Manual for Public Procurement in Nigeria in 2011. The manual provides specific details of how any type of public procurement must be carried out by MDAs (for example, procedures and timelines for bidding and evaluation processes). However, in practice and within the current PPP process, this public procurement manual applies only to the procurement of transaction advisors.

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<sup>15</sup> Circular from the office of the Secretary to the Government of the Federation, dated September 10, 2013, available at <https://drive.google.com/file/d/0BzaBhwB6XxLWUWh2VU0wSXBqZTg/view>

<sup>16</sup> Section 69, Public Procurement Regulations for Goods and Works, 2007, Bureau of Public Procurement, Government of Nigeria.

In practice, PPP procurement in Nigeria broadly follows the process as delineated by ICRC in a guideline document for solicited proposals.<sup>17</sup> Each MDA or contracting authority initiates its own PPP projects, taking into consideration the priorities set out in the National Integrated Infrastructure Master Plan (NIIMP). The contracting authority conducts preliminary project appraisals to identify viable projects, and prepares Project Concept Notes for each proposed project in line with ICRC guidelines. The concept note provides preliminary details on the proposed project including background, objectives, scope, description, and recommendations. Following ICRC's review and concurrence, the project is included in the PPP Project Pipeline list which must be approved by the FEC. The approved PPP Project pipeline is thereafter published in the print and other media (such as the ICRC website). Currently, there are 77 such projects listed for 2016–17 (see table 2).

Once in the list, MDAs must put together a Project Delivery Team (which works on the project on a day-to-day basis), and a Project Steering Committee (which provides high-level guidance and approvals at various stages of the procurement process). The Project Steering Committee includes a representative of ICRC. MDAs must then engage transaction advisers within the framework of the PPA, and work with the transaction advisers to develop an Outline Business Case (OBC), based on a template developed by ICRC. Broadly, the OBC must establish the need for the project and its outline parameters and scope, including costs and bankability demonstration. Elements that form a part of the OBC typically include a public sector comparator and a value-for-money report. Representatives from ICRC and FMOF may participate in key meetings of the Project Delivery Team as observers, to ensure that the OBC development process remains in line with the objectives of ICRC and FMOF.

The OBC is then sent to ICRC for review, and ICRC assesses each OBC on a case-by-case basis (along with inputs from FMOF on contingent liability aspects). If satisfied, ICRC issues an OBC Certificate of Compliance to the proposed project. MDAs must then submit the OBC along with this certificate to FEC (the Cabinet of the federal government) through the concerned line ministry for approval. Without the Certificate of Compliance for the OBC (and later the Full Business Case (FBC)) from ICRC, the project cannot move forward. If the project is approved by FEC, the MDA's transaction advisers commence a procurement process leading to a competitive bidding process from which a preferred PPP project proponent (investor) emerges.

Pending the finalization of comprehensive guidelines and regulations for procurement / bidding processes that ICRC is currently developing, transaction advisers have been setting out a detailed procurement method in the OBC for competitive procurement of a PPP proponent. (The OBC template shared by ICRC with MDAs does not contain any guidelines for structuring the procurement process.) The procurement process that is typically followed includes preparation of procurement documents by the transaction advisers, and marketing the project to potential investors and other stakeholders through road shows, followed by the issuance of a call for prequalification or expression of interest in local and international media (except for unsolicited proposals). After prequalification,

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<sup>17</sup> See <https://drive.google.com/file/d/0BzaBhwB6XxLWc3JsUEVkvUFEajg/view?usp=sharing>.

bidding documents are issued to prequalified bidders, including information memoranda or other project specification documents. Bids are then received from prequalified bidders before a specified submission deadline. The bids received are examined and evaluated by an evaluation committee of the MDA (which is supported by the transaction advisors). This committee selects the preferred and reserve bidders according to the criteria for selection set out in the bidding documents.

Once the preferred bidder has been identified, negotiations ensue, leading to the development of an FBC. The FBC is prepared by the MDA's transaction advisors prior to financial close and award of the contract. The FBC provides all the information that is needed to support a decision to award a contract and commit actual funding, as well as to provide a basis for the necessary project management, monitoring, evaluation, and benefits realization. ICRC provides a template of the FBC to the concerned MDA, to support its development. ICRC and FMOF participate in the negotiation process to provide technical support to the MDA as well as ensure public interest.

The FBC must then be submitted to ICRC, which then reviews it (along with input from FMOF on the contingent liability aspects). If the FBC is approved by ICRC, it issues an FBC Certificate of Compliance to the concerned MDA, following which the MDA can submit it to FEC for final approval. Once FEC approves the FBC, the contract between the MDA and the preferred PPP project proponent is signed. ICRC thereafter takes custody of the contract, as required under Section 20 of the ICRC Act. The project commences once financial close is achieved. Concerned MDAs are required to supervise the project diligently throughout its life cycle, and ICRC as well as the MDA are required to conduct regular joint inspections until the end of the contract duration.

Overall, although ICRC and FMOF support and advise the concerned MDA throughout the PPP procurement process, this is not done in an institutionalized or systematized way. In practice, MDAs engage with and seek the support of ICRC and FMOF (often independent of the other) at various stages of the process, and on a case-by-case basis.

In the case of unsolicited proposals, no guidelines or regulations currently exist. In practice, MDAs directly receive unsolicited proposals, but still require approval from ICRC to proceed with such projects. In these cases, ICRC typically recommends the concerned MDA to initiate a "Swiss Challenge" process for procurement. However, no guidelines or regulations have been issued so far that could systematize the process.

In sum, in the PPP process, MDAs are the project owners throughout the life cycle of the project; ICRC plays the role of the pre- and post-contract regulatory authority (additionally providing technical support at some stages); and FMOF ensures that government risks and liabilities are kept to a minimum.

The process and institutional framework described above are summarized in tables 3 and 4, respectively.

TABLE 3: PROCESS FOR PPP PROCUREMENT IN NIGERIA

NO	INSTITUTION(S)	ACTIONS
<i>Project Identification Phase</i>		
1	MDA	Project identification and initiation; Preparation and submission of Project Concept Note to ICRC
2	MDA and ICRC	MDA consults ICRC to ensure viability and bankability of proposed projects; If project considered viable, ICRC advises MDA to initiate project development; MDA constitutes Ministerial Project Steering Committee and a Project Delivery Team.
3	ICRC and FEC	ICRC includes project in the pipeline of eligible projects for approval by FEC
<i>Project Development and Preparation Phase</i>		
4	MDA	Where internal capacity is not available, Transaction Advisors engaged by the MDA through a competitive bidding process to produce the OBC
5	ICRC	OBC reviewed by ICRC (with input from FMOF); Certificate of Compliance issued
6	ICRC and FEC	OBC and Certificate of Compliance submitted to FEC for approval
<i>Procurement Phase</i>		
7	MDA (through its transaction advisors)	Procurement commences with a competitive bidding process leading to identification of a preferred PPP project proponent
8	MDA, proponent, ICRC	After negotiations between the MDA and the proponent, the FBC is submitted to and reviewed by ICRC; Certificate of Compliance issued
9	MDA and FEC	FBC and Certificate of Compliance submitted to FEC for approval
10	MDA, proponent and ICRC	Contract signed between MDA and preferred PPP project proponent; ICRC takes custody of the contract
<i>Implementation Phase</i>		
11	Proponent and MDA	Financial close achieved; project commences
12	MDA and ICRC	MDA and ICRC supervise and monitor the project throughout its life cycle

Source: ICRC.

Note: FBC = Full Business Case; FEC = Federal Executive Council; FMOF = Federal Ministry of Finance; ICRC = Infrastructure Concession Regulatory Commission; MDA = ministry, department, or agency; OBC = Outline Business Case; PPP = Public-Private Partnership.

**TABLE 4: INSTITUTIONAL FRAMEWORK FOR PPPs IN NIGERIA**

INSTITUTION	NATURE OF INSTITUTION AND ROLE IN THE PPP PROCESS
MDA or contracting authorities	Initiates all PPP projects; conducts project appraisals, identifies possible projects, and prepares project briefs for FMOF and ICRC; develops OBC and FBC; carries out the procurement process; and monitors progress and implementation.
Infrastructure Concession Regulatory Commission	Evaluates and accepts project briefs, OBC, and FBC; issues regulations and guidelines, ensures efficient execution of contracts, and takes custody of contract documents; and monitors progress and implementation.
Federal Ministry of Finance (PPP Division of the Technical Services Department)	Evaluates project proposals; tracks, monitors, and manages contingent liabilities arising from PPP projects; and provides MDAs with technical support in negotiating financial aspects of PPP transactions.
Bureau of Public Procurement	Provides oversight in the procurement of the transaction advisors by MDAs.
Federal Executive Council	Evaluates and approves the OBC and FBC.

*Note:* FBC = Full Business Case; FMOF = Federal Ministry of Finance; ICRC = Infrastructure Concession Regulatory Commission; MDAs = ministries, departments, and agencies; OBC = Outline Business Case; PPP = Public-Private Partnership.

## Nigeria Sovereign Investment Authority (NSIA)

NSIA is a national agency that was set up by statute to manage Nigeria’s Sovereign Wealth Fund. Statutorily, NSIA is set up to receive, manage, and invest in a diversified portfolio of medium- and long-term revenues of the federal government, state government, Federal Capital Territory, local governments, and area councils, to prepare for the eventual depletion of Nigeria’s hydrocarbon resources.

NSIA’s operations are guided by the Santiago Principles. It has developed frameworks for good corporate governance and risk management, and this has manifested in its early attractiveness as a credible partner to leading private investors, private equity funds, and development finance institutions.

The Nigeria Infrastructure Fund (NIF) is one of NSIA’s three investment mandates, which focuses on investments in infrastructure. NIF is tasked with undertaking project development for potential investments and recommending to the Board projects for investment. By virtue of the NSIA Act and the NIF investment policy, NIF can take on the role of an investor and/or developer and/or project sponsor in any type of infrastructure project.

For PPPs, NSIA has so far been involved as an investor and a developer, where its investment policy obliges it to partner with MDAs to develop infrastructure projects. Given the nature of NSIA, such projects need to be financially viable, and must have development impact. Currently, for public-to-public projects and PPPs, NSIA enters the process after procurement (for example, where an MDA is seeking additional investment) or as the

project sponsor and developer. In the former case, NSIA does not directly bid for the project, but it enters the process as an investor once the preferred bidder has already been selected. To do so, NSIA must carry out its own due diligence before co-funding it through an SPV, and subsequently participate in the negotiations prior to commercial and financial close. In such projects, NSIA plays the role of an investor or project developer.

The latter case (where NSIA plays the role of project sponsor and developer) typically takes place in sectors that have been deemed high-priority by the government. In such instances, NSIA initiates the project and, together with the relevant MDA, carries out the initial project appraisals and studies. NSIA and the MDA then sign a binding memorandum of understanding (MOU) to develop the project together, and may invite private co-developers to participate in the project. The project then follows the same process for approvals and implementation as described in the previous section. In the end, the project may or may not end up as a PPP, as the asset being developed is for the government.

For public-to-private projects, NSIA is empowered under the NSIA Act to enter into transactions as a joint venture. NSIA can therefore receive unsolicited investment proposals, which could be in an infrastructure priority sector, or fall within other sectors in which NSIA seeks to invest. The NIF team then carries out a preliminary analysis of the commercial viability of the project vis-à-vis its development objectives. If the management approves, NSIA carries out due diligence on the project, and then presents it to the Board for approval. In such cases, NSIA is an investor and a co-developer in the project, and remains involved with it from the initial stages to its completion.

For other public-to-private investments, NSIA is merely an investor and not involved in project development or sponsorship. For example, where it acquires stakes in companies investing in infrastructure, it is not involved in the development of the projects, but has equity in the company.

The activities that NSIA is currently carrying out through its three types of investments in infrastructure development are summarized in table 5.

TABLE 5: NSIA ACTIVITIES, BY TYPE OF INVESTMENT

TYPE OF INVESTMENT	NSIA ACTIVITIES
NSIA-to-public	Identify possible projects, prepare project briefs for the NSIA Management Board, initiate projects, conduct project appraisals, prepare due diligence studies, submit potential development projects to the committee set up by the National Economic Council, seek co-developers and investors, carry out procurement of advisors and consultants, sign MOUs with MDAs, develop projects, and monitor progress and implementation
NSIA-to-private	Evaluate project proposals, present to the Board for approval, sign MOUs, conduct preparatory due diligence, enter negotiations, disburse funds, enter into contracts, and monitor progress
Regular PPPs	Conduct project appraisals, prepare due diligence studies, negotiate with preferred bidder as co-developer or investor, form SPVs, seek other co-developers and investors, carry out procurement of advisors and consultants, develop projects, and monitor progress and implementation

*Note:* MDAs = ministries, departments, and agencies; MOU = memorandum of understanding; NSIA =Nigeria Sovereign Investment Authority; PPP = Public-Private Partnership; SPV = special-purpose vehicle.



## 5. Legal and Policy Framework for PPP Disclosure

### Current Framework

Several laws in Nigeria directly and indirectly impact PPP disclosure. The first major legislation, the FOI Act of 2011, establishes the right of any person to request and receive information that is in the custody or possession of any public official or institution. The Act defines public institutions to include “all authorities whether executive, legislative or judicial agencies, ministries, and extra ministerial departments of the government, together with all corporations established by law and all companies in which government has a controlling interest, and private companies utilizing public funds, providing public services or performing public functions”.<sup>18</sup> This definition therefore places the same level of obligations for proactive and on-demand disclosure imposed on public bodies to every private partner in a PPP contract with a public institution. The Act requires public entities to proactively disclose “materials containing information relating to any grant or contract made by or between the institution and another public institution or private organization,” which brings PPPs directly within its ambit.

However, the Act has several limitations, and, as a result, it ranks 53 among 111 FOI laws in the world.<sup>19</sup> First, the main constraint of the Act relates to its implementation. Although the Attorney General’s Office is mandated to oversee the implementation of the Act, the office does not have any enforcement powers. Second, although the law provides for the imposition of monetary fines where information that has been requested is not provided, no administrative or penal sanction can be imposed against any institution or individual for failing to disclose information proactively as required by the Act.

The only appeal mechanism available under the Nigerian FOI Act in the case of denial of information is an action in court within 30 days of the denial.<sup>20</sup> The law allows the court to examine the information sought by the complainant, and places the burden of justification on the institution that denies the information. Although a few citizens’ organizations continue to use this process effectively,<sup>21</sup> the cost and time required to undertake a court action in Nigeria remains a huge constraint for any ordinary citizen. Civil society organizations (CSOs) point to the tendency for public institutions to appeal high court rulings, therefore imposing even higher costs and delays on requesters in a context where most citizens cannot afford such litigation.

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<sup>18</sup> Section 2 (7) of the FOI Act 2011.

<sup>19</sup> See <http://www.rti-rating.org/country-data/>

<sup>20</sup> Section 20 of the FOI Act 2011.

<sup>21</sup> Details of such cases are available at <http://www.r2knigeria.org/index.php/foicasetracker>

The AGF issued implementation guidelines in 2013, which identify the following three categories of information that all public authorities should proactively disclose. All these categories of information have a direct or indirect bearing on PPP disclosure, especially given the inclusion of private companies providing public services under the FOI Act.

- i. Information about the institution's functions and responsibilities, and its organogram;
- ii. Lists and enumeration of records held by the institution, including manuals, guidelines, and other documents used in performing its functions, as well as lists of files that contain applications for contracts, permits, licenses, and agreements with other public or private parties; and
- iii. Information relating to the income and expenditure of the institution; its final planning policies, recommendations, and decisions; factual reports, inspection reports, studies, and other publications undertaken by the institution directly or done on its behalf by others contracted by it; and statements and interpretation of policies that have been adopted by the institution.

These guidelines make it very clear that information related to all stages of the PPP procurement process is included in the list of information to be proactively disclosed. This would include feasibility reports and studies, as well as the OBC, procurement-related documents, and FBC documents. Similarly, information related to decisions and recommendations of the implementing agency, ICRC, and the Federal Executive Council on PPPs would need to be proactively disclosed as per these guidelines.

The FOI Act 2011 also provides a regime of exceptions to publicly held information that can be disclosed to any persons pursuant to a request. From the perspective of PPPs, Section 15(1) of the FOI Act exempts trade secrets and commercial or financial information obtained from a person or business that are proprietary, privileged, or confidential, or where such disclosure would cause harm to the interest of a third party. However, this exemption is subject to a public interest consideration, where the public institution must evaluate and weigh the wider public interest benefits of disclosure against the harm that might be caused. At the same time, two types of information are not subject to the public interest consideration; they are to be considered completely exempt under all circumstances, and may have a bearing on certain specific PPP projects. These include the results or products of environmental testing carried out by or on behalf of a public institution, and information that contains course or research materials prepared by any research faculty.

The second major legislation that has a direct impact on PPP disclosure is the ICRC Act 2005. With transparency stated as one of ICRC's core values, it requires that the selection of PPP partners by government agencies should be through open competitive bidding. This imposes an obligation on implementing agencies to advertise calls for private participation and implement a competitive bidding system. Inherent in this obligation is the requirement for a simultaneous distribution of information on the scope of the project, expected deliverables, conditions for qualification, and criteria for selection. By virtue of its regulatory role, ICRC has clear disclosure obligations, as it creates PPP-related information

and records, makes recommendations for approvals, and provides guidance to public institutions in the process. Sections 34(1) and 34(2) of the ICRC Act also empower ICRC to issue regulations with the approval of the President, and to issue guidelines to give full effect to the provisions of the Act. In addition, the ICRC Charter, March 18, 2013, states the mission of ICRC as “issuing PPP regulations and guidelines that promote transparency, competition and value for money while ensuring compliance”.

In consonance with this mandate and its charter, ICRC has recently released guidelines for PPP contract disclosure.<sup>22</sup> The document includes clear and concise guidance for systematic disclosure of PPP project and contract information, formats for presentation of PPP contract information, guidelines to ensure clarity of information to be disclosed and timelines for disclosure, and validation of information prior to disclosure. The guidelines also identify which information must be disclosed, including performance indicators and abatements or penalties for events of failure, information on actual performance against agreed levels, and information on contract variations. However, these guidelines do not extend to disclosure in the pre-contract phase of the PPP process.

The Fiscal Responsibility Act 2007 requires the Federal Government of Nigeria to ensure that its fiscal and financial affairs are conducted in a transparent manner. It further provides for full and timely disclosure and wide publication of all transactions and decisions involving public revenues and expenditures, and their implications for government finances.<sup>23</sup>

The NEITI Act 2007 creates a framework for transparency and accountability in reporting and disclosure, by all extractive industry companies, of revenue due or paid to the Government of Nigeria. The Act focuses primarily on ensuring transparency in extractive industry payments and receipts by government, and in the utilization of receipts by the government.

The PPA 2007 establishes a new regulatory framework for public procurement, which includes provisions related to public access to information, including public advertising of national and international competitive bids. In addition, the Act’s requirement for the use of standard bidding documents has ensured improved disclosure of information, such as conditions for qualification; technical specifications of goods, works, and services to be procured; and the criteria for the selection of winning bids and bidders. This framework directly impacts and requires publication of PPP procurement-related information and documents.

For NSIA, Section 4(2)(d) of the NSIA Act 2011 states that NSIA must “implement best practices with respect to management independence and accountability, corporate governance, transparency and reporting on performance as provided in this act, including with due regard as appropriate for the Santiago Principles”, which obliges NSIA to disclose proactively several broad categories of information related to its governance and

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<sup>22</sup> Developed with the support of the World Bank Institute, the guidelines took into consideration the FOI Act 2011, Public Procurement Act 2007, and ICRC Act 2005, as well as PPP contract disclosure guidelines from 11 other jurisdictions. The document is available at: <http://www.icrc.gov.ng/services/contracts-disclosure-document/>

<sup>23</sup> Section 48 of the Fiscal Responsibility Act 2007.

investments. More specifically, Section 37 of the NSIA Act provides the reporting obligations of NSIA to the government as well as to the public, in the form of submission and publication of its annual reports.

A summary of the relevant clauses of existing laws and their potential implications for PPP disclosure is provided in table 6.

**TABLE 6: LEGAL FRAMEWORK FOR DISCLOSURE AND IMPLICATIONS FOR PPP DISCLOSURE**

SECTION	TEXT DESCRIPTION	IMPLICATIONS FOR PPP DISCLOSURE
<i>Freedom of Information Act 2011</i>		
SECTION 2(4)	MDA Public institutions to proactively publish information.	Places proactive disclosure obligations on all public institutions.
SECTION 2(4)	Public institutions to proactively publish “materials containing information relating to any grant or contract made by or between the institution and another public institution or private organization.”	This can be extended to all project documents related to PPP projects.
SECTION 2(7)	Public institutions are defined as “all authorities whether executive, legislative or judicial agencies, ministries, and extra ministerial departments of the government, together with all corporations established by law and all companies in which government has a controlling interest, and private companies utilizing public funds, providing public services or performing public functions.”	This definition clearly incorporates PPP SPVs and project proponents, as well as ICRC, NSIA, and line ministries and agencies, all of which hold project-related information on various PPPs.
SECTIONS 12(2), 14(3)	Public interest override.	Access to be granted where public interest in disclosing information outweighs whatever injury that disclosure would cause, which is likely to apply to PPP information requests.
SECTION 15(1)	Exemptions to disclosure of trade secrets, commercial information, or financial information obtained from a person or business that is proprietary, privileged, or confidential.	This clause could be used to exempt portions of bid documents, evaluation reports, and contracts from disclosure.
SECTION 15(2)	Unqualified exemption to any part of a record that contains the result or product of environmental testing carried out by or on behalf of a public institution, and to information that contains course or research materials prepared by faculty.	In cases where PPP projects involve environmental testing and/or other research, this blanket exemption could be invoked.
SECTION 29	Reporting obligations of public institutions	PPPs must also fulfill these obligations.

SECTION	TEXT DESCRIPTION	IMPLICATIONS FOR PPP DISCLOSURE
<i>Attorney General's Guidelines on FOI Implementation 2013</i>		
SECTION 1.4.2	Public institutions to publish information about their functions, responsibilities, and organogram.	Places obligation on MDAs and PPPs to disclose this information proactively.
SECTION 1.4.2	Public institutions to publish lists of records held; manuals, guidelines, and other documents used in performing their functions; lists of files containing applications for contracts, permits, licenses, and agreements with other public or private parties; and study reports and other publications of the institution, even if prepared by private contractors.	Places obligation on MDAs and PPPs to disclose this information proactively.
SECTION 1.4.2	Public institutions to publish substantive rules; information relating to the income and expenditure of the institution; final planning policies, recommendations, and decisions of the institution; factual reports, inspection reports, studies, and other publications undertaken by the institution directly or done on its behalf by others contracted by it; and statements and interpretations of policies that have been adopted by the institution.	Disclosure obligations can therefore be extended to information related to PPP projects held by MDAs, ICRC, and NSIA.
CHAPTER 2	Provides guidelines for refusing information.	Obliges public authorities to provide a specific rationale within the scope of the FOI Act when refusing information. In the context of PPPs, this could relate to exemption clauses listed in the FOI Act.
<i>Infrastructure Concession Regulatory Commission Act 2005</i>		
SECTION 2(4)	Requires ICRC to publish the list of projects qualified to be undertaken through the PPP model in the Gazette and three national newspapers.	As stated.
SECTION 4(1)	Requires that selection of PPP partners by government agencies should be through open competitive bidding.	Obliges MDAs to disclose basic project information, conditions for qualification, criteria for selection, and so forth.
<i>Fiscal Responsibility Act 2007</i>		
SECTION 48	Provides for full and timely disclosure and wide publication of all transactions and decisions involving public revenues and expenditures, and the implications for government finances.	Obligation extends to MDAs, ICRC, and NSIA, as these are public institutions, and covers PPPs, as these have implications for government finances and involve public revenues directly or indirectly in most instances.

SECTION	TEXT DESCRIPTION	IMPLICATIONS FOR PPP DISCLOSURE
<i>Nigeria Extractive Industries Transparency Initiative Act 2007</i>		
SECTION 2(A)	Requires disclosure of revenue due or paid to the Government of Nigeria by all extractive industry companies.	Extends to MDAs or PPPs in the extractive industries.
SECTIONS 3(A), 3(C) AND 3(H)	Requires NEITI to develop a framework for transparency and accountability in reporting and disclosure by all extractive industries for payments made by and due to the federal government, and to disseminate such information publicly.	The annual extractive industry audit framework applies to MDAs and PPP projects in the extractive sector.
<i>Public Procurement Act 2007</i>		
SECTION 5(F)	Obliges the procurement regulatory body to publish details of all major contracts in the procurement journal.	This would extend to PPPs, especially given that the PPA mentions or covers several types of PPP projects. In addition, since ICRC has not issued separate guidelines or processes, by default PPA would apply, as it does in similar situations in other countries. Currently, this is being used for hiring transaction advisors for PPP projects by MDAs.
SECTION 5(M)	Requires public institutions to use standard bidding documents issued by the Bureau of Public Procurement, which includes conditions for qualification; technical specifications of goods, works, and services to be procured; and criteria for selection of winning bids and bidders.	This would extend to PPPs, especially given that PPA mentions or covers several types of PPP projects. In addition, since ICRC has not issued separate guidelines or processes, by default PPA would apply, as it does in similar situations in other countries. Currently, this is being used for hiring transaction advisors for PPP projects by MDAs.
SECTIONS 18(14) AND 38	Requires unclassified public procurement records to be disclosed on request, and records of procurement processes to be disclosed after a winner is selected or if the process is terminated without a winner.	This would extend to PPPs, especially given that PPA mentions or covers several types of PPP projects. In addition, since ICRC has not issued separate guidelines or processes, by default PPA would apply, as it does in similar situations in other countries. Currently, this is being used for hiring transaction advisors for PPP projects by MDAs.

SECTION	TEXT DESCRIPTION	IMPLICATIONS FOR PPP DISCLOSURE
SECTIONS 24 AND 25	Requires open competitive bidding as the primary method of procurement, and mandates compulsory publication in national media for national competitive bidding and international media for international competitive bidding.	This would extend to PPPs, especially given that PPA mentions or covers several types of PPP projects. In addition, since ICRC has not issued separate guidelines or processes, by default PPA would apply, as it does in similar situations in other countries. Currently, this is being used for hiring transaction advisors for PPP projects by MDAs.

*Note:* FOI = Freedom of Information; ICRC = Infrastructure Concession Regulatory Commission; MDAs = ministries, departments, and agencies; NEITI = Nigeria Extractive Industries Transparency Initiative; NSIA = Nigeria Sovereign Investment Authority; PPA = Public Procurement Act; PPP = Public-Private Partnership; SPV = special-purpose vehicle.

## Emerging Jurisprudence

Jurisprudence specific to PPP disclosure is in its infancy in Nigeria. So far, there have not been any appeal court or apex court decisions specific to PPP disclosure. However, some High Court decisions that relate directly or tangentially to PPP disclosure have been made.

In an application for disclosure of PPP-related documents related to a “Park and Pay Scheme” granted by the Federal Capital Territory (FCT) Administration to private parties, the court held that the public authority, having failed to formally communicate a denial, notice for extension of time, or transfer of request to another department in accordance with Section 6 of the FOI Act, was liable to disclose the information requested. It also held that the public authority failed to discharge its duty to prove that the information sought contained any trade secrets, proprietary, and/or privileged or confidential information exempted under Section 15 of the Act, or that the disclosure of the requested information would cause harm to the interest of any third party.<sup>24</sup>

In another case, the Abuja Federal High Court ordered a private company that had been granted operational rights under a “Park and Pay Scheme” by the FCT Administration to release information on: (a) how much the company had realized from the inception of its engagement by FCT until date of judgement; (b) how much the company had remitted to the FCT Administration; and (c) certified accounts of the company showing the monies realized, as well as a certified copy of the PPP contract of the engagement.<sup>25</sup>

In a third case, the Federal High Court held that by executing a contract for reconstruction and maintenance of the Ibadan Highway, the private party involved (the respondent in the case) was performing a public function, and was therefore bound to disclose information under the FOI law as any public authority. However, the court also held that the information sought would prejudice the respondent and embarrass third parties, and was therefore

<sup>24</sup> Suit N0 FCT/HC/CV/M/3057/13; PPDC vs. Hon Minister of FCT.

<sup>25</sup> Motion N0; M/3059/13; Public and Private Development Centre vs. Integrated Parking Services Ltd.

exempt from disclosure under Sections 15 (a) and (b) of the FOI Act.<sup>26</sup> This decision was not appealed.

Only a few cases related to PPP disclosure have been brought to the courts so far. The body of jurisprudence remains too small to be able to ascertain the direction the courts appear to be taking on this issue. As this body of cases builds up over time, it is likely to have a critical impact on the trajectory that PPP disclosure will take in Nigeria, legally, as well in improving public awareness on this subject.

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<sup>26</sup> FCT/HC/M/3829/2014; Public and Private Development Centre (PPDC) vs. Julius Berger Nigeria Plc.



## 6. Disclosure in Practice and Key Challenges

### Overview

Public disclosure of information had been limited until the establishment of the Nigeria Extractive Industries Transparency Initiative Act 2007, which resulted in the publication of several audit reports related to the extractive industries. Gradually, more information on private investment in infrastructure and other development projects in Nigeria is beginning to appear in the public domain. However, progress on proactive PPP disclosure remains slow and faces major challenges.

ICRC is the main repository of information of Federal PPP projects in the country.<sup>27</sup> ICRC regularly publishes news and general information on its website, on PPP activities, workshops, events, and basic information on legacy, ongoing, and under-consideration PPPs. However, the information provided is limited to the project title and type, government agency responsible, name of the private concessionaire (where selected), and duration of the concession for the projects. There are no further documents or project details. Annual reports and statements of accounts, national PPP policy, and contract disclosure standards and guidelines are other documents that are available on the ICRC website. Most recently, ICRC has begun to place project summaries of the projects under its custody on its website.<sup>28</sup>

Another source of PPP information is through occasional press releases by MDAs in implementing their PPP programs.<sup>29</sup> In some instances, MDA websites may convey information related to PPPs being undertaken by them. However, this information or process of disclosure is neither detailed nor structured. For example, the Nigeria Ports Authority website provides the [names and lease terms of the terminal operators](#) that have been granted concessions, the names of its [joint venture programs](#), and a list of upcoming greenfield projects. Some of this information is also available on the ICRC website.

Cognizant of these limitations, ICRC has been making efforts to improve PPP disclosure in Nigeria. Several consultation meetings have been held, and a consensus has been developed around the need to establish PPP disclosure standards. Consequently, ICRC has developed a draft technical guidance note on project and contract information disclosure in PPPs.<sup>30</sup> The document provides templates that identify which elements of information

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<sup>27</sup> While it does not play a similar role in state PPPs, it has a close working relationship with state level PPP Units and keeps abreast of PPP activity in states.

<sup>28</sup> See <http://www.icrc.gov.ng/services/contracts-disclosure-document/>.

<sup>29</sup> For example, a press release from the National Inland Waterways Authority, which provides details of progress in awarding concessions for four river ports, is available at <http://niwa.gov.ng/niwa-moves-concession-four-river-ports/>.

<sup>30</sup> See <http://www.icrc.gov.ng/services/contracts-disclosure-document/>.

should be disclosed, at what point in the PPP life cycle, using which media, and the process to do so.

The current practices related to PPP disclosure are summarized in table 7.

**TABLE 7: CURRENT PPP DISCLOSURE PRACTICES**

DOCUMENT/INFORMATION	PUBLISHED ON ICRC WEBSITE	PUBLISHED ON RELEVANT MDA WEBSITE
Basic project information	Yes	In some cases
Project appraisal report	No	No
Outline Business Case	No	No
ICRC/FEC reports at Outline Business Case stage	No	No
Full business case	No	No
ICRC/FEC reports at Full Business Case stage	No	No
Name of successful bidder	Yes	In some cases
Contract documents	No	No
Performance reports	No	No

*Note:* FEC = Federal Executive Council; ICRC = Infrastructure Concession Regulatory Commission; PPP = Public-Private Partnership.

A comparison of the World Bank Framework for disclosure, current PPP disclosure practices in Nigeria, and the proposed disclosure framework for Nigeria is provided in annex E.

NSIA is a statutory government agency. It publishes its annual audited reports,<sup>31</sup> investment policies, and primary project development documents as scoping<sup>32</sup> and environmental impact reports of its PPP projects. Although NSIA is a relatively new institution, it has supported the initiation of a few PPP projects, which are at their early stages. NSIA is also already disclosing partial information arising from the PPPs in which it is engaged,<sup>33</sup> and aims to strengthen its transparency processes by introducing disclosures in a structured and consistent manner. NSIA subscribes to the Santiago Principles, which lay a great deal of emphasis on proactive disclosure of several categories of information.

<sup>31</sup> Annual reports include information such as the aggregated and consolidated information on its investment returns, including risk management; statement of financial position; statement of changes in equity; consolidated and separate financial statements; NIF's statement of comprehensive income; statement of financial position; list of approved hedge fund managers; highlights of NIF's investment activities across sectors; MOUs signed and names of parties signed; brief descriptions of projects; and project milestones and expected dates.

<sup>32</sup> Scoping reports typically include the project description, legislative requirements, purpose of the report, roles and responsibilities, detailed description of the project, project need and desirability, project components, construction activities, operational activities, process for conducting environment and social impact assessment, stakeholder engagement, stakeholder database, name and address of independent engineer, issues and impacts, methodologies for assessing impacts, mitigation measures, and timelines.

<sup>33</sup> See <http://nsia.com.ng/downloads/>

NSIA receives regular requests for information from the National Assembly and its committees, and has been summoned several times for questioning at the National Assembly. However, NSIA has yet to receive any citizen's request for information.

The NSIA website achieves a better level of disclosure on its PPP investments compared with other public agencies. Its website provides a wealth of information on its activities and investments. This information includes a summary on all its funds; all its annual reports; investment policy documents, where applicable; and regular news on investment agreements it has entered. More specifically, NSIA has disclosed the Scoping Report for the Second Niger Bridge PPP Project, in which NSIA is one of the consortium partners.

Although NSIA does not have a formal disclosure policy yet, its outlook for project and investment disclosure is ambitious. The history of PPPs in NSIA is very recent, and its first major direct PPP project engagement is the Second Niger Bridge project. NSIA has already provided detailed scoping reports as well as the environment and social impact reports of the Second Niger Bridge PPP project (in which it is an investor) on its website, despite the project not having achieved commercial close yet. With clear support from the management for disclosure and accountability, PPP disclosure at NSIA has a promising outlook when compared with other agencies and ministries.

At the same time, NSIA makes three types of investments, each of which poses different challenges in the context of disclosure. The first type of investment, public-to-public projects, potentially allows maximum levels of disclosure, as the parties involved as well as the project being developed are public in nature. The second type of investment, public-to-private, would need to be treated somewhat differently, as for the purpose of assessing business opportunities, or to monitor and evaluate existing investments, NSIA receives information from other parties that is not publicly available. In such cases, NSIA would need to respect the confidentiality of such information and public-private investment disclosure will depend on the level of disclosure permitted by NSIA's counterparties and the nature of the project. The third type of investment would involve regular PPP projects in which NSIA plays the role of an investor and/or is part of the SPV. In such cases, NSIA would need to consider the larger framework for PPP disclosure, which is being developed at the national level through ICRC. NSIA's current disclosure practices, by type of investment, are summarized in table 8.

**TABLE 8: NSIA’S CURRENT DISCLOSURE PRACTICES, BY TYPE OF INVESTMENT**

TYPE OF INVESTMENT	INFORMATION DISCLOSED	EXAMPLES (IF ANY)
NSIA-to-Public	Highlights of NIF’s investment activities across sectors; MOUs signed and names of parties signed; brief description of projects; project milestones and expected dates	NSIA, Federal Ministry of Agriculture and Rural Development, and KfW funded Agricultural Finance Fund Project; NSIA and Federal Ministry of Health: Diagnostic Centers and Specialist Healthcare Facilities Project
NSIA-to-Private	Statement of financial position; statement of changes in equity; consolidated and separate financial statements; NIF’s statement of comprehensive income; statement of financial position; and list of approved hedge fund managers	Consolidated across various partnerships and investments
Regular PPPs	Infrastructure reports, including: scoping report, name and address of independent engineer, project description, legislative requirements for project development, purpose of the report, roles, detailed description of the project, project need and desirability, project components, construction activities, operational activities, process for conducting environment and social impact assessment, stakeholder engagement, stakeholder database, issues and impacts, methodologies for assessing impacts, mitigation measures, and timelines	NSIA, Julius Berger and Federal Ministry of Works PPP for developing the Second Niger Bridge

*Note:* KfW = Kreditanstalt für Wiederaufbau; MOU = memorandum of understanding; NIF = Nigeria Infrastructure Fund; NSIA = Nigeria Sovereign Investment Authority; PPP = Public-Private Partnership.

A comparison of the World Bank Framework for Disclosure, current disclosure practices in NSIA, and the proposed disclosure framework for NSIA is provided in annex F.

## Key Challenges

### Lack of Implementation of and Compliance with the FOI Act

The FOI Act 2011 provides several avenues through which PPP disclosure can be realized. However, the implementation of the Act has been limited. Most government institutions have not developed internal policies, rules, and mechanisms to evaluate efficiently and grant or refuse requests for information, or ensure proactive disclosure, as required by the FOI Act. In addition, the government has yet to revise extant civil service rules and financial instructions to bring them in compliance with the provisions of the FOI law. This is a major gap, given that these are operational rules on which public servants rely on a daily basis. As a result, a culture of secrecy pervades the bureaucracy, and most MDAs have neither dedicated officers to handle requests nor adequate budget allocations targeting FOI issues. They also lack adequate record management systems that could support easy retrieval. Although the AGF's Office has issued comprehensive guidelines to implement the FOI Act, the law does not provide enforcement powers, which has resulted in very low levels of compliance with the Act or the guidelines. According to a recent report, only about 44 of more than 800 budget receiving agencies and departments submitted compliance reports to AGF in 2015, and an evaluation of the websites of 43 of these institutions shows a below average compliance level.<sup>34</sup>

### Regulations and Guidelines

A key challenge in improving disclosure practices for PPPs in Nigeria and NSIA remains that of developing and implementing detailed and comprehensive regulations and guidelines for each step in the PPP process. Although ICRC has developed broad guidelines for the PPP process, detailed guidelines, for example, of the actual procurement process are currently under development and need to be finalized and implemented as a matter of priority. Without standardized processes in place, it is difficult to implement a consistent system to disclose information at specific times, especially during the pre-contract phase. For NSIA as well, the lack of a formal disclosure policy that identifies which information is to be disclosed at what point in different types of investment scenarios makes systemic disclosure a challenge to implement.

### Institutional Constraints

Improvements in proactive disclosure of PPP information have been slow, partly because the MDAs that implement PPPs have no mechanisms to implement systemic disclosures. In addition, nongovernmental stakeholders' demand for improved PPP disclosure has not been organized, coordinated, or consistent.

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<sup>34</sup> See <http://www.dailytrust.com.ng/news/editorial/non-compliance-with-foi-act/165963.html>.

## Lack of Awareness about the PPP Process

Although Nigeria has a vibrant media and committed CSOs, it appears that their understanding of the PPP process remains limited. Often, regular procurement is confused with PPP procurement, with the result that all public contracting is painted with the same brush, especially in the context of transparency and accountability. Although questioning the government is a critical responsibility of these actors, it is imperative that the government educates the public and those acting in the public interest about the specificity of the PPP process and how it is fundamentally different from other procurement processes. This knowledge will likely result in recognition that the approach and tools used to improve the transparency of public authorities are not necessarily the most appropriate in the context of PPPs. It will also lead to less confrontation and improved public trust in PPPs in the longer term.

# 7. Gap Assessment

TABLE 9: GAP ASSESSMENT

COMPONENT	RAPID REVIEW	Y/N	GAP ASSESSMENT
POLITICAL ECONOMY	Clear support from the highest levels of government (national and subnational) to disclosure in general	Y	<p>There is internal support. There is agreement among external stakeholders as well on the need to disclose, but the pressure on government to disclose by external stakeholders is still developing. NSIA specifically has high-level support to improve and systematize disclosure.</p> <p>However, there is no approved plan within government or NSIA for implementing disclosure systematically.</p> <p>Therefore, the political economy gap is assessed to be moderate.</p>
	Agreement on PPP disclosure among internal stakeholders (ministries, agencies, and subnational governments)	Y	
	Sufficient agreement on the need to disclose and pressure to disclose among important external stakeholders (political parties, unions, private sector, users, media, political commentators, think tanks, civil society organizations, and others)	Y	
LAW	Are there laws, policies, and procedures in place that include the following?		<p>There is coverage of contracts or PPP as well as proactive disclosure in the FOI, ICRC, Fiscal Responsibility, and Public Procurement Acts. A high-level definition of confidential information is present in the FOI Act. However, the main limitation of the FOI Act is the absence of an independent appellate and/or oversight entity that is empowered to ensure its implementation (through sanctions for noncompliance, for example). As a result, there is no institutional structure with roles, responsibilities, and timelines to monitor compliance of public institutions with the disclosure requirements in the FOI Act. This situation has been compounded by the lack of clear regulations for the implementation of the FOI Act. Although the ICRC Act does not contain details on disclosure, the law enables ICRC to issue regulations and guidelines for effective contract execution.</p> <p>Therefore, the legislative gap is assessed to be moderate.</p>
	• Proactive disclosure by governments or agencies	Y	
	• Coverage of proactive disclosure relating to contracts or PPP	Y	
	• High-level definition of confidential information, and protection for sensitive contract information	Y	
	• Timelines for disclosure	N	
• Significant legislative or policy impediments or constraints to PPP disclosure	Y		

COMPONENT	RAPID REVIEW	Y/N	GAP ASSESSMENT
GUIDANCE	Clearly established roles and responsibilities on PPP disclosure	N	This gap is assessed to be wide, given the absence of guidance for all these features. The ICRC guidelines on disclosure of information in PPPs provide for post-procurement disclosure, but do not deal with disclosure prior to commercial close. Although NSIA has been proactively disclosing many categories of information, this has been done on an ad hoc basis, and it has not developed any guidelines related to disclosure so far.
	Processes and actions clearly established in guidance or internal orders	N	
	Timelines for disclosure clearly established	N	
	Clear guidance available for officials on the identification and treatment of confidential information, including the timeframe associated with confidentiality, and factors to be considered as a test of commercial sensitivity or public interest	N	
	Penalties associated with failure to disclose	N	
	Mechanisms that monitor implementation of disclosure policies, internal and external	N	
	Processes for checking the accuracy of information and validation, internal and external	N	
DATA, TEMPLATE, AND STANDARD CONTRACT PROVISIONS	Degree of consistent, structured, and exploitable information disclosed across projects	N	There is a template for post-procurement disclosure issued as a part of ICRC's PPP disclosure guidelines; however, the template does not extend to disclosure prior to commercial close. There are no standard contractual provisions or data standards. The situation is similar for NSIA. The gap is assessed to be moderate in this area.
	Defined common open data model or pattern	N	
	Guidance on improving data collection and data quality	N	
	Simple and extensible structure	N	
	Summary records for all available data at various stages and processes	N	
	Information on unit and staff managing data standards	N	
	Comprehensive and clear template for disclosure that covers key pieces of pre- and post-procurement information, including financial and performance information <ul style="list-style-type: none"> <li>• The template is flexible enough to cater to different kinds of PPPs and to PPPs in different sectors.</li> <li>• The template is dynamic, that is, suited to ongoing financial and performance disclosure.</li> </ul>	N	



COMPONENT	RAPID REVIEW	Y/N	GAP ASSESSMENT
DATA, TEMPLATE, AND STANDARD CONTRACT PROVISIONS	<ul style="list-style-type: none"> <li>• Instructions for filling the template included as required.</li> </ul> <p>There are standard contract provisions that provide the following:</p> <ul style="list-style-type: none"> <li>• Specific language for confidential information</li> <li>• Specified period for which the information will be confidential</li> <li>• Format for listing the specific confidentiality clauses of each contract</li> <li>• Clearly stated information that the private provider is expected to maintain along with timelines for submission</li> <li>• Specified audit mandate with the extent of disclosure to audit</li> </ul>	N	There is a template for post-procurement disclosure issued as a part of ICRC's PPP disclosure guidelines; however, the template does not extend to disclosure prior to commercial close. There are no standard contractual provisions or data standards. The situation is similar for NSIA. The gap is assessed to be moderate in this area.
RESOURCES	<p>Budget is available</p> <p>Skilled, trained labor is available</p> <p>Technology and web platform(s) compatible with easy upload and download of information</p> <p>Security systems to prevent data and information tampering</p>	<p>N</p> <p>Y</p> <p>N</p> <p>Y</p>	ICRC and NSIA have web-based platforms that could be used for disclosure, but they lack many desired features. Skilled labor is available, but the ICRC and NSIA staff appear to be stretched. The communications team at ICRC is currently maintaining the website and can continue to handle disclosure under a new policy, but further training of relevant staff for managing a more sophisticated web portal would be required in ICRC and NSIA. The gap here is assessed to be moderate.

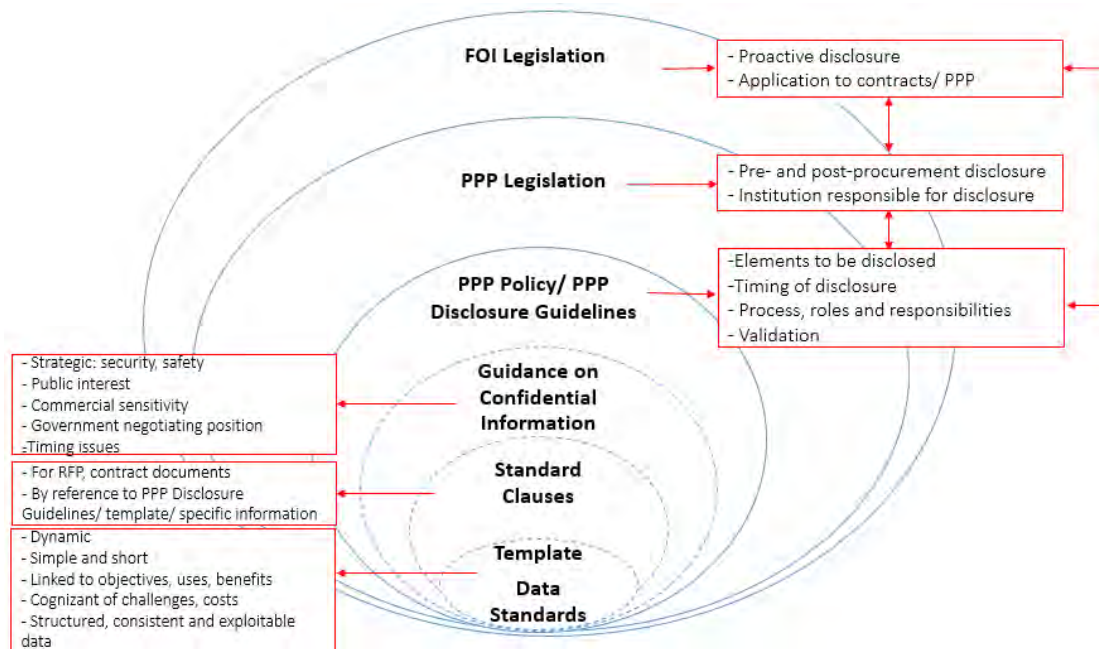
*Note:* FOI = Freedom of Information; ICRC = Infrastructure Concession Regulatory Commission; NSIA = Nigeria Sovereign Investment Authority; PPP = Public-Private Partnership.

## 8. Recommendations

The direct and urgent factors that appear to induce governments to disclose, that is, the wider government policy on transparency and whether there is supportive legislation, have been achieved to an extent in Nigeria with the enactment of the FOI, ICRC, Fiscal Responsibility Act, and public procurement legislation. Government policy promotes transparency; however, there is relatively little disclosure in practice. In addition, whatever disclosure happens is often unstructured and scattered on various websites, due to the lack of an institutional process and clearly delineated roles and responsibilities related to disclosure. Drafting specific clauses related to PPP disclosure in the FOI Act, strengthening the disclosure clauses of the ICRC Act, and creating an institutional framework for disclosure and embedding this into practice through standard contractual clauses and a dedicated web portal could go a long way in ensuring greater disclosure in practice.

The World Bank's Framework for Disclosure in PPPs recommends a six-layer design (figure 3).

FIGURE 3: ELEMENTS OF THE WORLD BANK RECOMMENDED DISCLOSURE FRAMEWORK FOR PPPs



Note: FOI = Freedom of Information; PPP = Public-Private Partnership; RFP = request for proposal.

The framework design is based on the key drivers of disclosure, major factors influencing the drivers, challenges and benefits associated with disclosure, and uses and various categories of users of information once it is disclosed. Linked directly to these aspects is the issue of customizing disclosure based on specific PPP contract clauses, levels of government support, and risk-sharing mechanisms within contracts. The Framework

recommends the incorporation of the following key items in a country's disclosure framework:

- Mandate to disclose, through FOI, PPP, or other legislation or policy
- More detailed guidance on what, when, and how to disclose
- Elements of disclosure in different phases, with a simple template
- Timelines for disclosure
- Guidance on confidential information
- Standard contractual clauses

Based on the findings of the Diagnostic and a gap assessment exercise benchmarked against the World Bank Framework, as detailed in earlier sections, this section makes a few focused recommendations on disclosure.

1. *Legislative mandate for disclosure.* In countries with strong institutional practices, legislation attempts to include in the following: (a) proactive disclosure; (b) specific coverage, preferably by direct mention of PPPs, or contracts and contract information, as well as performance and procurement information as part of the definition of information; (c) disclosure mechanisms, that is, how the information will be disclosed; and (d) redactions, that is, what information will not be disclosed. The degree of detail to be included in the legislation depends on each country's surrounding integrity risk environment, but it should provide enough detail to ensure sufficient accountability of public and private actors involved in a particular project. For example, although Section 2(4) of the FOI Act 2011 says that "materials containing information relating to any grant or contract made by or between the institution and another public institution or private organization" must be proactively disclosed by public institutions, and Section 2(3)d requires statements and interpretation of the policies adopted, final policy recommendations and decisions, factual reports, inspection reports, and studies undertaken for public institutions to be disclosed, this may not prove to be adequate information for citizens or potential investors to hold the relevant public authority to account meaningfully and at the appropriate time, especially pre-procurement.

Feasibility studies, consultations with stakeholders prior to procurement, risk assessments, evaluation criteria, renegotiations, and performance indicators are critical pieces of information, and their disclosure can improve citizen and investor trust in PPP procurement. This example effectively points to a major lacuna in the FOI Act—the lack of an independent authority that would be responsible for interpreting and implementing the law. The independent authority's mandate would include the following: (a) being the first port of call for interpretation of the law, and providing specific and binding regulations and guidelines related to disclosure (including for PPPs) to MDAs; (b) playing the role of an independent appellate authority, with clear processes in place for citizens to appeal refusal of information; (c) having a mandate to monitor the compliance of public authorities

with the law (especially with respect to proactive disclosure), as well as its orders; and (d) having power to sanction public authorities and officials that do not comply with the law and/or its orders. Ideally, setting up such an institution should be enshrined in the law itself, which considerably enhances the effectiveness of such legislation. For example, national FOI legislation in countries such as Mexico, South Africa, and India expressly includes setting up independent national and subnational authorities in the form of Information Commissions or Ombudsman's Offices. The subnational authorities not only serve as appellate authorities, but are also responsible for monitoring the implementation of the law. This arrangement has contributed substantially to the high level of implementation of FOI laws in these countries.

Based on the findings of this Diagnostic on the higher level of risk associated with the integrity environment, nascent and evolving investor confidence in projects, the government's ability to make payments and manage contracts, and general lack of institutionalization of disclosure, it is recommended that the Government of Nigeria should work on strengthening the disclosure clauses of the ICRC Act 2005. Currently, the ICRC Act provides for basic proactive disclosure of information. Specific advantages of more detailed coverage of disclosure in the ICRC Act through an amendment are that there will be a stronger mandate for disclosure and better clarity on what to disclose in PPP projects. Suggested legal drafting is included in annex A.

It is also recommended that the NSIA should work on strengthening the disclosure clauses of the NSIA Act 2011. Suggested legal drafting is included in annex C.

2. *Need for detailed regulations.* Given the need for a complete suite of standard documents which would guide the implementation of PPPs in Nigeria, it is recommended that ICRC builds on the efforts it has made in this direction and develops detailed regulations to clarify all aspects of the PPP process, including detailed procedure manuals for each stage of PPP procurement and implementation. Regulations and guidelines also need to be developed to identify the conditions under which there can be deviations from the standard procedures, for example, in the case of unsolicited proposals or projects related to national security. Improved clarity and guidance for actors in the PPP process will improve the regulatory environment and support improved disclosure.
3. *Framework for Disclosure.* A full suite of instruments, as envisaged in the design of the World Bank Disclosure Framework, could lead to sound and better disclosure practices in Nigeria. These practices could take the form of regulations specific to PPP disclosure under Sections 20 and 34(1) of the ICRC Act 2005. Suggested Frameworks for Disclosure for ICRC and NSIA, based on five of the six layers of the World Bank Framework, are included in annexes B and D, respectively. A summary of the suggested contents for ICRC and NSIA, respectively, is provided in tables 10 and 11.

**TABLE 10: SUGGESTED CONTENT FOR A PPP DISCLOSURE FRAMEWORK FOR ICRC**

CONTENT	DESCRIPTION
ELEMENTS TO BE DISCLOSED PROACTIVELY	<p>Specifics of disclosure at each stage of the PPP process, preferably an exhaustive list of items.</p> <p>Given the nascent status of PPPs in Nigeria and the demands of onerous PPP disclosure requirements, the elements to be disclosed should remain limited to basic project information, key milestones, procurement, key contract features, renegotiations, and performance.</p>
PLACE OF DISCLOSURE	<p>Common ICRC platform</p> <p>Responsibilities for populating and managing the platform shared between ICRC, contracting authorities and SPV</p> <p>Support is being provided for the design and creation of the web portal under World Bank technical assistance.</p>
TIMELINES	<p>Specifics of timelines for each element</p> <p>Flexible timelines that take into account the internal processes involved</p> <p>Key procurement documents, such as EOI, RFP, short-listed bidders, preferred bidder, and award disclosed upon approval</p> <p>Contract documents and performance information, with reasonable lag times from 15 to 30 days for internal processes, such as removal of confidential information and validation of information</p>
TREATMENT OF COMMERCIAL-IN-CONFIDENCE AND OTHER CONFIDENTIALITY PROVISIONS	<p>Guided by the FOI Act, ICRC Act, and discussions with ICRC, the following elements are considered as confidential information with the provision to revisit these in 2-3 years:</p> <ul style="list-style-type: none"> <li>- Proposals or bids submitted by bidders</li> <li>- Bid evaluations (summary of bid evaluations is not confidential)</li> <li>- Intellectual property</li> <li>- Trade secrets</li> <li>- The base case financial model submitted by the preferred bidder</li> </ul> <p>Suggestion for additional case-by-case analysis in each instance</p>
VALIDATION PRIOR TO DISCLOSURE	<p>Given that there could be high costs with external validation, it is suggested that ICRC takes the responsibility for validation of disclosed information.</p>
TEMPLATE AND DATA STANDARDS	<p>A format for ensuring ease and uniformity in disclosure</p> <p>Uniformity can help in data aggregation by sector, risk profile, value, type, and so forth. A template is suggested as part of the Draft Framework.</p>

*Note:* EOI = expression of interest; FOI = Freedom of Information; ICRC = Infrastructure Concession Regulatory Commission; PPP = Public-Private Partnership; RFP = request for proposal.

**TABLE 11: SUGGESTED CONTENT FOR A PPP DISCLOSURE FRAMEWORK FOR NSIA**

CONTENT	DESCRIPTION
ELEMENTS TO BE DISCLOSED PROACTIVELY	<p>Specifics of disclosure at each stage of the PPP process, preferably an exhaustive list of items.</p> <p>Given the different types of investments in which NSIA is involved, the elements to be disclosed should remain limited to basic project information, key milestones, procurement, key contract features, renegotiations, and performance.</p>
PLACE OF DISCLOSURE	<p>Common NSIA platform</p> <p>NSIA may delegate limited responsibilities for populating and managing the platform to contracting authorities and SPV (where relevant) at their sole prerogative</p> <p>Support is being provided for the design and creation of the web portal under World Bank technical assistance.</p>
TIMELINES	<p>Specifics of timelines for each element depending on the role of NSIA (investor, sponsor, developer) and type of investment</p> <p>Flexible timelines that take into account the internal processes involved</p> <p>Key procurement documents, such as EOI, RFP, short-listed bidders, preferred bidder, and award disclosed within the nearest quarter of approval</p> <p>Contract documents and performance information within the nearest quarter of contract signing in line with other internal processes, such as removal of confidential information and validation of information</p>
TREATMENT OF COMMERCIAL-IN-CONFIDENCE AND OTHER CONFIDENTIALITY PROVISIONS	<p>Guided by the FOI Act, ICRC Act, and discussions with NSIA (and its counterparties where relevant), the following elements are considered as confidential information, with the provision to revisit these in 2-3 years:</p> <ul style="list-style-type: none"> <li>- Bid evaluations (summary of bid evaluations is not confidential)</li> <li>- Bill of quantity</li> <li>- Trade secrets</li> <li>- Financial model</li> <li>- Technology / inventions</li> <li>- Intellectual property</li> <li>- Internal rate of return</li> </ul> <p>Suggestion for additional case-by-case analysis in each instance</p>
VALIDATION PRIOR TO DISCLOSURE	<p>Given that there could be high costs to external validation, it is suggested that NSIA takes the responsibility for validation of disclosed information.</p>
TEMPLATE AND DATA STANDARDS	<p>A format for ensuring ease and uniformity in disclosure</p> <p>Uniformity can help in data aggregation by sector, risk profile, value, type, and so forth. A template is suggested as part of the Draft Framework.</p>

*Note:* EOI = expression of interest; FOI = Freedom of Information; ICRC = Infrastructure Concession Regulatory Commission; NSIA = Nigeria Sovereign Investment Authority; PPP = Public-Private Partnership; RFP = request for proposal; SPV = special-purpose vehicle.

4. *Standard contractual clauses.* Clauses on information disclosure used in Nigerian contracts so far are limited to reinforcing the confidentiality of information. It is recommended that ICRC and NSIA create standard clauses on disclosure, to provide specific language that must be included in PPP contracts by public authorities. These clauses would help government teams to negotiate appropriate provisions related to the responsibility of private providers to provide information to the public authority, the rights and responsibilities of the public authority to disclose information, direct disclosure obligations on the SPV, and confidentiality provisions. The clauses would also enable the government entity and the private party to understand their respective roles in disclosure prior to contract signing. Inclusion of clear disclosure provisions in the standard contract is also a good way to disseminate and educate investors and potential bidders about the government's approach to information disclosure. Standard clauses would help greatly in institutionalizing disclosure. Annexes B.2 and D.4 suggest texts for standard contractual provisions for ICRC and NSIA, respectively.
5. *Template and data standards.* Supply-side issues are a key impediment to timely and high-quality disclosure. This impediment could be mitigated by applying procurement strategies that provide bidders with incentives to compete on mechanisms to disclose information without unreasonably increasing internal costs. In addition, Nigeria is in a position to support the transfer of technology, systems, and instruments that support building, processing, and disseminating the required information and, therefore, could incorporate this as a substantial aspect of improving its disclosure framework. ICRC and the contracting authorities would need to work on systems for collection and aggregation of information. It is recommended that, to the extent possible, reports should be machine readable or provided as inputs into a shared information system, and able to be turned into structured data that can be selectively converted into open data as required.

In addition, systems need to be built into the design of the disclosure framework that will enable continuous publishing of procurement and performance information and data, as and when key changes happen. Linking and cross-referencing with other existing similar information sets or databases could be useful. Defining or using harmonized information standards could not only reduce human and financial resource challenges, but also allow for comparative analysis of infrastructure projects. Templates for disclosure are provided in the suggested texts for the Framework for ICRC and NSIA in annexes B and D, respectively. A project portal is being created and will be provided to ICRC and NSIA over the next few months.

6. *Strategic communication.* Disclosure of information appears to be influenced by a host of challenges and benefits. The key challenges appear to be the reluctance of public bodies to share information in the absence of a clear mandate, dearth of practical internal guidance, non-availability and inaccuracy of data, time and cost of disclosure, and lack of oversight mechanisms. Sometimes disclosed information becomes inaccessible, especially when it consists of full contract documents in the

public domain. Challenges such as increased litigation and consequent delays during or after procurement may also arise for governments that disclose documents, feeding back into the general reluctance to share information.

Given the longer-term and distinct benefits of disclosing—such as greater accountability in expenditure, higher level of confidence in the fairness of the process, and better quality of bids, along with the potential for the formulation of improved long-term PPP policies and practice—it is essential that challenges are overcome. This can be done by building the right frameworks for disclosure, as well as by framing the discussion strategically, through well-planned communication with stakeholders.

Since the Framework recommends disclosure beginning with the entry of a project into the approved preliminary pipeline, it is important that strategic communication around projects and programs is formulated at an early stage. This communication requires making disclosure not a one-way process, but a two-way, interactive process, to ensure that the feedback loops are completed, and the disclosed information is understood, absorbed, and used optimally by all stakeholders. Strategic communication also entails placing the project in the right context; benchmarking it in terms of tariffs (and cost) and services, using available regional, national, and local benchmarks of existing projects; and discussing the pros and cons of different alternatives for providing services, highlighting the relative advantages of the selected alternative. It is also important to frame the discussion around other key issues, such as competition and confidentiality, which may be of concern to the private sector.



## 9. Key Materials Reviewed

### Laws, Regulations, and Policy Documents of the Government of Nigeria

Bureau of Public Enterprises (Privatization and Commercialization) Act 1999  
Code of Conduct Bureau and Tribunal Act 1990  
Constitution of Nigeria 1999  
Debt Management Office (Establishment, Etc.) Act 2003  
Draft Technical Guidance on Project and Contract Disclosure (with template) for Infrastructure Concessions Under the ICRC Act 2005, April 11, 2013  
Economic and Financial Crimes Commission Act 2004  
Electric Power Sector Reforms Act 2005  
Fiscal Responsibility Act 2010  
Freedom of Information Act 2011  
Guidelines on the Implementation of the FOI Act, Attorney General's Office, 2013  
Highways Act 1971  
Independent Corrupt Practices & Other Related Offences Act 2000  
Infrastructure Concession Regulatory Commission Act 2005  
Lagos State Public Private Partnership Law, enacted in 2011  
Money Laundering Prohibition Act 2011  
National Integrated Infrastructure Master Plan  
National Policy on Public-Private Partnerships, ICRC, 2009  
Nigeria Extractive Industry Transparency Initiative Act 2007  
Procurement Procedures Manual for Public Procurement in Nigeria (second edition), Bureau of Public Procurement, 2011  
Public Procurement Act 2007  
Public Procurement Regulations for Goods & Works 2007  
Solicited PPP Procurement Steps, ICRC  
Utilities Charges Commission Act 1992

### Other Documents

Corruption Perceptions Index Report, 2015, Transparency International, Berlin  
Global Competitiveness Report, 2015–16, World Economic Forum, Geneva  
A Framework for Disclosure in Public-Private Partnership Projects, 2015, World Bank  
Rule of Law Index, Global Justice Project, 2015  
Trends, Challenges and Future Outlook: Projects and Infrastructure in East, South, and West Africa, PricewaterhouseCoopers, 2014  
United Nations Convention Against Corruption, 2003

## Websites

Africa Freedom of Information Centre: <http://africafoicentre.org>

Budeshi: <http://www.budeshi.org>

Budget Office: <http://www.budgetoffice.gov.ng>

Centre for Law and Development: <http://www.rti-rating.org>

Infrastructure Concession Regulatory Commission, Nigeria: <http://www.icrc.gov.ng/>

National Bureau of Statistics: <http://www.nigerianstat.gov.ng/>

Nigeria Sovereign Investment Authority: <http://nsia.com.ng/>

Open Contracting Data Standard: <http://standard.open-contracting.org/latest/en/>

Open Government Partnership: <https://www.opengovpartnership.org/>

Private Participation in Infrastructure Database, World Bank: <https://ppi.worldbank.org/>

Public and Private Development Centre: <http://procurementmonitor.org/ppdc/>

Right to Know, Nigeria: <http://www.r2knigeria.org/>

Transparency International: <https://www.transparency.org/>

United Nations Office on Drugs and Crime: <https://www.unodc.org/>

World Economic Forum: <https://www.weforum.org/>

# Annex A: Suggested Amendments to the ICRC Act 2005

## PART 1 OF THE ICRC ACT (PRIVATE SECTOR PARTICIPATION IN FEDERAL INFRASTRUCTURE)

(1) Any Ministry, Agency, Corporation or body under section 1 of this Act shall publish project and contract information related to infrastructure concessions granted by it on a designated website or in any other form specified in the regulations issued by the Commission under Section 20 below.

## SECTION 20 (A) TOGETHER WITH 34 (1) (FUNCTIONS OF THE COMMISSION)

(1) The Commission shall, with the approval of the President, develop regulations regarding project and contract disclosure for infrastructure concessions, [in particular with regard to the elements for disclosure, responsibilities, timelines, and method for disclosure, confidential information and standard contractual clauses];

(2) These regulations will be reviewed and amended from time to time.

# Annex B: Suggested Text for Disclosure Framework (ICRC)

## 1. Introduction

The Infrastructure Concession Regulatory Commission (Establishment, Etc.) Act 2005 (“ICRC Act”) provides for the participation of the private sector in financing the construction and development of infrastructure through public-private partnerships (PPPs).<sup>35</sup> The Act establishes the Infrastructure Concession Regulatory Commission (ICRC) to regulate, monitor, and supervise the contracts on infrastructure or development projects. The Attorney General and Minister of Justice of Nigeria defined the mandate of ICRC to include the responsibility of ensuring compliance with the provisions of the ICRC Act. The Act directs ICRC to provide general policy guidelines relating to its functions.<sup>36</sup>

The Freedom of Information (FOI) Act 2011 provides for public access to public records and information. The FOI Act provides that a public institution shall cause to be published “materials containing information relating to any grant or contract made by or between the institution and another public institution or private organization”.<sup>37</sup> Section 4 of the FOI Act provides that a public institution shall ensure that information disclosed is widely disseminated and made available to the public through various means, including print, electronic, and online sources.<sup>38</sup>

ICRC recognizes that sharing PPP contract information strengthens public support for efforts made by the government to promote private financing of infrastructure. ICRC also recognizes that a sound, practical disclosure of information policy is fundamental to fulfilling its role in contract monitoring and supervision. Therefore, in 2013, ICRC developed technical guidance on project and contract disclosure for PPPs. After a review of the 2013 information disclosure guidance, ICRC seeks to expand significantly the information that it makes available to the public. This Framework sets out the revised disclosure template and timelines for disclosure at the pre- and post-procurement stages. It supersedes the Technical Guidance on Project and Contract Disclosure for Infrastructure Concessions, which was published in 2013. ICRC trusts that the expanded access to information will enhance Nigeria’s dialogue on PPPs and infrastructure development.

The objective of this Framework is to provide guidance to enable systematic and organized disclosure of information at different stages of the PPP process, and to bring existing

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<sup>35</sup> In this framework, “infrastructure” or development projects refer to federal government owned infrastructure as contextualized in the Infrastructure Concession Regulatory Commission (Establishment, etc.) Act 2005.

<sup>36</sup> See Sections 19 (a) and 34 of the Infrastructure Concession Regulatory Commission (Establishment, etc.) Act 2005.

<sup>37</sup> See Section 2, FOI Act.

<sup>38</sup> See Sections 2, 3, and 4, FOI Act 2011.

guidelines up to date with extant laws. The Framework and associated standardized template presented here hold out the promise of raising the standard of transparency and accountability around PPPs. Since disclosure is an evolving area, the Framework remains a work in progress. It will be revisited and revised every two years, if and as required.

## 2. Application

This framework will apply to all PPP projects initiated under the ICRC Act 2005, specifically federal government owned PPP projects. The framework will also apply to state-level PPP projects that require federal support (such as guarantees) and/or move into the federal jurisdiction at any point in their life cycle.

## 3. Specific Disclosures

Specific disclosures will consist of the elements included in the following subsections (a) to (h), and will follow the template provided in annex B.1. Confidential information, as provided under the next section, will be redacted before publication.

- a. *PPP project pipeline.* The approved project will be included in the published PPP project pipeline within 15 days from ICRC approval. The project pipeline will provide a brief description of the project, name of contracting authority, sector, and estimated project value.
- b. *Basic project information.* Basic project information along with estimated dates for key milestones would be provided within 15 days after issuance of the Certificate of Compliance for the Outline Business Case (OBC). Basic project information will include project name, location, sector, sponsoring agency, estimated value, project need, scope (description of asset and services to be provided), estimated demand to be served annually, and the rationale for selecting the project for development as a PPP.
- c. *Project milestone tracking.* Dates of achievement of key milestones will be provided as the project progresses in the form of a project milestones tracker.
- d. *Project preparation documents.* The OBC (including the value-for-money analysis report, feasibility study report, and environment and social impact assessment) will be published within 30 days after approval by the Federal Executive Council.<sup>39</sup>
- e. *Procurement information.* Summary procurement information and key documents will be provided during the procurement process. The expression of interest, list of short-listed bidders, and request for proposal (RFP), will be published within 15

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<sup>39</sup> Ongoing legal reforms are likely to create differentiated thresholds for approval so that each project does not necessarily have to be approved by the FEC.

days after approval for publication, and the list of preferred and reserved bidders will be published after the FBC Certificate of Compliance is issued by ICRC.

- f. *Project summary.* Summary information on the PPP contract will be provided within 30 days of signature of the contract. The project summary will include basic contract information, including parties to the contract, project risk matrix, amounts and types of government support provided to the project, information on tariffs and pricing, termination clauses, handback provisions, and key performance indicators with target levels. Information on the financial structure of the special-purpose vehicle (SPV) will be provided within 30 days of financial close.
- g. *Contract documents.* ICRC will place the signed PPP contract<sup>40</sup> in the public domain within 30 days of signing of contract, after the redaction of confidential information as provided in clause 4.
- h. *Renegotiations.* Summary information relating to each renegotiation will be published within 30 days of the signature of the renegotiated agreement. The approved renegotiated PPP contract will be placed in the public domain within 30 days of such variation, having been agreed to and signed into contract by the parties.
- i. *Performance information.* Information on the performance of the private party on five to 10 selected key performance indicators against agreed target levels will be published within one year of commissioning the project, with annual updates. Performance information will include details relating to performance failures, and will be updated annually. Links to performance assessments, such as audit reports, private party reports (SPV self-reporting), and independent engineer reports, will be provided and updated annually.

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<sup>40</sup>The term will also include concessions, leases, and any other form of PPP.

TABLE B.1 SUMMARY OF SPECIFIC DISCLOSURES

#	DOCUMENT	CONTENTS	CREATOR	APPROVER FOR PUBLIC DISCLOSURE	TIME OF DISCLOSURE
1	PPP projects pipeline	List of projects approved for development by ICRC, including brief project description, contracting authority, sector, and estimated project cost	ICRC	ICRC	Within 15 days of approval for inclusion in the PPP projects pipeline
2	Basic project information	Project name Location Sector Sponsoring agency Estimated project value Project need Description of asset and services to be provided Rationale for selecting the PPP mode Estimated dates of key milestones Estimated demand to be served annually Project additionality	CA	ICRC	Within 15 days of issuance of the OBC compliance certificate
3	Project milestones tracking	A section on the web-based platform that will reflect actual dates of achievement of key milestones such as: - Date of inclusion in the published projects pipeline - Date of appointment of transaction advisors - Date of issuance of OBC compliance certificate	CA	CA/ICRC	Within 15 days from the achievement of the milestones

#	DOCUMENT	CONTENTS	CREATOR	APPROVER FOR PUBLIC DISCLOSURE	TIME OF DISCLOSURE
3	Project milestones tracking	<ul style="list-style-type: none"> <li>- Date of OBC FEC approval</li> <li>-Date of procurement milestones, such as EOI, prequalification of bidders, RFP, selection of preferred and reserved bidder, date of issuance of FBC compliance certificate, date of FBC FEC approval, and so forth</li> <li>- Date of contract signing</li> <li>- Date of financial close</li> <li>- Beginning of construction</li> <li>- End of construction</li> <li>-Commencement of operation and maintenance</li> <li>- Expiry of contract</li> </ul>	CA	CA/ICRC	Within 15 days from the achievement of the milestones
4	Project preparation documents	OBC (OBCs pertaining to unsolicited proposals will be subject to redactions)	CA	ICRC	Within 30 days of OBC approval by FEC
5	EOI		CA	CA/ICRC	Within 15 days after approval
6	List of short-listed bidders		CA	ICRC	Within 15 days after approval
7	RFP		CA	ICRC	Within 15 days after approval
8	Disclosure of the preferred bidder and the reserved bidder		CA	CA/ICRC	Within 15 days after FBC Certificate of Compliance is issued by ICRC



#	DOCUMENT	CONTENTS	CREATOR	APPROVER FOR PUBLIC DISCLOSURE	TIME OF DISCLOSURE
9	Disclosure of FEC approval of the preferred bidder		CA	CA/ICRC	Within 30 days after FEC approval
10	Value-for-money analysis report (extracted from FBC)		CA	ICRC	Within 30 days of FEC approval of FBC
11	Project summary	Parties to the PPP contract Project risk matrix Government support Tariffs and pricing Termination clauses Handback provisions Key performance indicators with agreed target levels	CA	ICRC	Within 30 days of signing of contract
12	Financial structure of SPV	Equity-debt ratio Shareholders with proportion held and voting rights Caps on equity transfer (if any) Debt and equity providers Category of debt Amount and tenor of each, fixed or floating rate Security and step-in arrangements Forecast IRR	CA	ICRC	Within 30 days of financial close
13	Contract documents	PPP contract (with redactions)	CA	ICRC	Within 30 days of signing of contract

#	DOCUMENT	CONTENTS	CREATOR	APPROVER FOR PUBLIC DISCLOSURE	TIME OF DISCLOSURE
14	Renegotiations and renegotiated contracts	Summary information relating to each renegotiation Renegotiated contract documents	CA	ICRC	Within 30 days of signature of renegotiated contract
15	Performance information	Performance of the private party on 5 to 10 selected key performance indicators against agreed targets Audit report Private party (SPV) reports Independent engineer reports	Private Party/CA; Link to audit report provided by the ICRC; Private party reports uploaded by the SPV; IE reports uploaded by the ICRC	ICRC	Within one year of commissioning of project, with annual updates

*Note:* CA = contracting authority; EOI = expression of interest; ICRC = Infrastructure Concession Regulatory Commission; FBC = Full Business Case; FEC = Federal Executive Council; OBC = Outline Business Case; PPP = Public-Private Partnership; RFP = request for proposal; SPV = special-purpose vehicle.

## 4. Confidential Information

Section 15 of the FOI Act 2011, provides for the exemption of confidential information from public disclosure. It defines confidential information to include trade secrets and commercial or financial information obtained from a person or business, which are proprietary or privileged, the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, commercially sensitive intellectual property rights, and know-how of either of a third party.

- a. For the purposes of this Framework, the following elements will be considered as confidential. However, these elements will be reviewed every 2-3 years for any modifications:
  1. Proposals or bids submitted by bidders
  2. Intellectual property
  3. The base case financial model by bidders
  4. Bid evaluation
  5. Trade secrets

## 5. Method of Disclosure

All information and documents will be published on a web-based platform owned by the ICRC, and any other form of communication and dissemination.

## 6. Responsibilities for Disclosure

1. The onus for information generation and uploading on the web-based platform will be shared by ICRC, the contracting authority, and the private party to the contract.
2. Information will be uploaded by the contracting authority and ICRC after redacting confidential information.
3. The contracting authority will upload all information and documents in the web-based platform, so as to leave *at least 7 days* within the given timelines for ICRC to validate and approve the information for public disclosure. Performance information and any other information as required by ICRC and the contracting authority will be provided by the private party to the contract from time to time.

## 7. Validation of Information Prior to Disclosure

ICRC shall, in consultation with the parties, verify the accuracy of the information to be disclosed before such disclosures are made.

1. All information shall be validated by the Director of Contract Compliance and/or the Head of Policy and Regulation of ICRC and/or any officer of ICRC who has been delegated this responsibility before publication on the website.
2. All contracts shall be checked to ensure exclusion of confidential information prior to disclosure.

## 8. Sample Contractual Provisions

- 5.1 A section or chapter entitled “Transparency and Information Disclosure” shall be included in all draft contractual documentation included in the RFP and in all PPP contracts to be signed by the contracting authorities, including county governments.
  - a. The section or chapter mentioned in 8(1) will contain clauses pertaining to the proactive disclosures to be carried out by the public entity, including disclosure of summary project and contract information, contract documents, procurement information including procurement documents, and ongoing performance information disclosure.

- b. The section or chapter mentioned in 8(1) will also contain the obligation of the private entity to provide documents and information as and when required and in the format required by the public entity, as part of its service obligations triggering payment deductions, should there be a failure to provide information on the part of the private party.
- c. The section or chapter mentioned in 8(1) will include a subsection dealing with confidential information, and will list the items of confidential information in a schedule along with the date up to which the information will be considered confidential.
- d. The section or chapter mentioned in 8(1) will include a subsection dealing with confidential information, and will list the items of confidential information in a schedule along with the date up to which the information will be considered confidential.
- e. The contract will be structured in a way such that confidential information can be easily removed before publication of the contract.
- f. Sample disclosure clauses for use in all draft contract documentation included in the RFP and in all contracts are provided in annex B.2 and its schedules.

# Annex B.1: Draft Template for Proactive Disclosure of Projects in Nigeria

Disclosure During Project Identification, Development and Procurement Stages

- I. BASIC PROJECT INFORMATION (*Disclosed within 30 days of issuance of the OBC compliance certificate and updated after contract signing*)
  - Project name
  - Location
  - Sector
  - Sponsoring agency/department
  - Estimated project value
  - Project need
  - Description of asset
  - Description of services
  - Estimated demand to be served
  - Rationale for selection of PPP mode (*link to value-for-money report within 30 days of the signature of the contract*)

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- II. PROJECT MILESTONES (ESTIMATED AND ACTUAL) (*Disclosed within 15 days from the achievement of the milestones*)
  - Project proposal received
  - Project proposal screened
  - Project proposal enters list of projects
  - Project feasibility study under development
  - Project feasibility study approved
  - EOI
  - RFP
  - Award
  - FBC approved
  - Contract signing
  - Financial close
  - Commencement of construction or development
  - Completion of construction or development
  - Commissioning
  - Contract expiry

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- III. PROJECT PREPARATION AND PROCUREMENT DOCUMENTS
  - OBC report (*disclosed within 30 days of OBC approval by FEC*)

- Expression of Interest (*disclosed within 15 days after approval*)
- List of short-listed bidders (*disclosed within 15 days after approval*)
- Request for proposal (*disclosed within 15 days after approval*)
- Award (*disclosed within 15 days after issuance of FBC Certificate of Compliance*)

## Disclosure Following Signature of Contract

### IV. CONTRACT INFORMATION (*Disclosed within 30 days of the signature of the contract and updated in case of any change*)

- Contracting authority: name of authority, name of representative, address, telephone, fax, e-mail
- Private party: name of company or consortium, name of representative, address, telephone, fax, e-mail
- Financial structure: (figure showing debt/equity/proportion/providers, shareholders with proportion held and voting rights, Caps on equity transfer (if any), Debt and equity providers, Category of debt, amount and tenor of each, fixed and floating rate, security and step-in arrangements, forecast IRR) (provide link to company registry) (*Disclosed within 30 days of financial close*)
- PPP Contract

### V. RISK

	DESCRIPTION	ALLOCATION

### VI. GOVERNMENT SUPPORT

Guarantees

Grants

Availability/annuity payment schedule

Land leases, asset transfers

Other support

Revenue share, if any

### VII. TARIFFS

Tariffs and pricing

VIII. TERMINATION PROVISIONS

PARTY	BRIEF DESCRIPTION OF EVENT OF DEFAULT
Concessionaire	
Authority	
Handback terms and conditions	

IX. RENEGOTIATIONS

RENEGOTIATION 1	RENEGOTIATION 2	RENEGOTIATION 3	RENEGOTIATION 4

X. PERFORMANCE INFORMATION *(to be updated annually)*

KEY PERFORMANCE INDICATORS	Year 1		Year n	
	Target	Achievement	Target	Achievement

Performance failures	Year	
	Category of failure	
	Number of events	
	Penalty or abatement provided in contract	
	Penalty or abatement imposed	
	Penalty paid or abatement effected: Yes/No	

Performance assessments	Links to audit reports (if any), SPV reports, Independent Engineer reports
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# Annex B.2: Sample Contractual Provisions (ICRC)

Section [*insert number*]: Disclosure Requirements

## *Obligations Regarding Specific Disclosures*

### 1. Freedom of Information

#### 1.1 The [Contracting Authority] and the [Private Party] acknowledge that they

- (1) are both subject to the requirements of the Freedom of Information Act 2011 and other legislative instruments implementing the Freedom of Information Act [together Freedom of Information Legislation] and
- (2) shall co-operate to enable each other to comply with the obligations under the Freedom of Information Legislation, and
- (3) may be obligated to disclose information in accordance to the requirements of the Freedom of Information Legislation and the Technical Guidelines on Project and Contract Disclosure for Infrastructure Concessions under the Infrastructure Concession Regulatory Commission (ICRC) Act 2005 without obtaining consent of the other party.

### 2. Public Relations and Publicity

#### 2.1 The [Private Party] may not represent the views of the [Contracting Authority] on any matter, or use the name of the [Contracting Authority] in any written material provided to third parties, without the prior written consent of the [Contracting Authority].

### 3. Publication of Information Relating to PPP Contracts

#### 3.1 The parties agree that the [Contracting Authority], subject to Section 4 (Confidentiality) below, is entitled to disclose as detailed out in Schedule [ ] the following information:

- a. Procurement documents and information;
- b. All project documents including this [PPP Agreement]; and other project preparation documents (Environment and Social Impact Assessment/Scoping Report, OBC Report, and so forth);
- c. Summary project information as set out in Schedule [ ] of this [PPP Contract];
- d. SPV structure and financial information;
- e. Performance information related to this [PPP Agreement].

#### 3.1 The [Private Party] acknowledges that the [Contracting Authority] intends to publish the information mentioned in Subsection 3.1, subject to Section 4 (Confidentiality), on



a web-based platform owned by ICRC and in any other form of communication and dissemination.

#### 4. Confidentiality

##### **Confidential Information**

4.1 For the purpose of this [PPP Contract], Confidential Information means:

- (a) The subset of Confidential Information included in column 1 of Schedule [ ] of this [PPP Contract]; in each case for the period specified in column 2 of Schedule [ ].
- (b) Any other information (however it is conveyed or on whatever media it is stored), the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, commercially sensitive intellectual property rights and know-how of either Party, including all personal information;

4.2 Without prejudice to Sections 1 and 3, the parties shall keep confidential all Confidential Information received by one party from the other party relating to this [PPP Contract] and any other Project Agreements<sup>41</sup> or the Public-Private Partnership (PPP) project and shall use all reasonable endeavors to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.

##### **Permitted Disclosure**

4.3 Confidential Information may be disclosed if:

- a. disclosure of such Confidential Information is reasonably required by any person engaged in the performance of its obligations under the [PPP Contract] for the performance of those obligations;
- b. a party can demonstrate that such Confidential Information is already, or becomes, generally available in the public domain otherwise than as a result of a breach of this clause;
- c. such disclosure is necessary to enable a determination to be made under clause [insert reference to Dispute Resolution clause] or in connection with a dispute between the [Private Party] and any of its subcontractors;
- d. such disclosure is required pursuant to (i) any statutory or legal obligation; (ii) any order of a court of competent jurisdiction; (iii) a Parliamentary obligation placed upon the party making the disclosure; (iv) any order from a governmental or regulatory authority;
- e. the Confidential Information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- f. the Confidential Information is provided to:

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<sup>39</sup> To be defined on a project-by-project basis to refer to the material contracts entered into by the private party in connection with and relevant for the respective PPP project.

- i. each party's own professional advisers or insurance advisers; and/or
    - ii. the lenders or the lenders' professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation, or otherwise) to the [Private Party] to enable it to carry out its obligations under the [PPP Contract], or may wish to acquire shares in the [Private Party] in accordance with the provisions of this [PPP Contract] to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal; and/or
    - iii. international or bilateral financial institutions involved in the project as lenders, political risk insurers, or guarantors.
  - g. the disclosure of such Confidential Information by the [Contracting Authority] relates to the design, construction, operation and maintenance of any PPP project and any disclosure of other Confidential Information as may be reasonably required for the purpose of conducting a due diligence exercise, to any proposed new private partner, its advisers and lenders, should the [Contracting Authority] decide to retender a [PPP Contract] or undertake any market testing;
  - h. such disclosure is required for any registration, filing, or recording of the required permits and property registration in connection with the PPP project;
  - i. the disclosure of Confidential Information by the [Contracting Authority] to any other relevant authority or their respective advisers or to any person engaged in providing services to the [Contracting Authority] is necessary for any purpose related to or ancillary to the [PPP Contract]; or
  - j. such disclosure is necessary for the purpose of:
    - i. the examination and certification of the [Contracting Authority's] or the [Private Party's] accounts;
    - ii. any examination pursuant to [insert reference to any auditing obligations for public contracts] of the economy, efficiency, and effectiveness with which the [Contracting Authority] has used its resources;
    - iii. complying with a proper request from either party's insurance adviser, or insurer on placing or renewing any insurance policies; or
    - iv. [without prejudice to the generality of Clause 4.3 (d) compliance with [insert reference to any laws requiring disclosure (e.g. environmental laws)]]].
- 4.4 When disclosure is permitted under Clauses 4.3 (a), (c), (f), (g), and (i), the party providing the information shall ensure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this [PPP Contract]. The [Private Party] shall expressly inform any person to whom it discloses any information under this clause of the confidentiality restrictions set out in this clause and shall procure its compliance with the terms of this clause as if it were party to this [PPP Contract] and the [Private Party] shall be responsible for any breach by any such person of the provisions of this clause.
- 4.5 The provisions of Section 4.3 are not applicable to [insert relevant exceptions for specific project, e.g., national security].

## **Confidential Information Related to End Users**

- 4.6 Where the [Private Party], in carrying out its obligations under the [PPP Contract], is provided with personal information relating to [end users (e.g., road users, patients, and so forth)], the [Private Party] shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the [Private Party] has obtained the prior written consent of that [end user] and has obtained the prior written consent of the [Contracting Authority].
- 4.7 On or before the expiry date, the [Private Party] shall ensure that all documents or computer records in its possession, custody, or control, which contain personal information relating to [end users] including any documents in the possession, custody, or control of a subcontractor, are delivered up to the [Contracting Authority].

## 5. Reporting Obligations, Provision of Information and Documents

### **Obligation to Disclose Information, Documents, and Records upon Request**

- 5.1 (a) The [Private Party] shall provide to the [Contracting Authority] all information, documents, records, and the like in the possession of, or available to, the [Private Party] as may reasonably be requested by the [Contracting Authority] for the purpose of complying with any of its statutory reporting obligations including but not limited to its reporting obligations under the Infrastructure Concession Regulatory Commission Act 2005, the Nigeria Fiscal Responsibility Act 2007, and [insert other legislation as applicable, e.g., sector-specific legislation].
- (b) To this end, the [Private Party] shall ensure that all such information in the possession of any subcontractor or other counterparty to any Project Agreement shall be available to the [Contracting Authority] and the [Private Party] has included, or shall include, appropriate provisions to this effect in all Project Agreements.

### **Project Information**

- 5.2 (a) The [Private Party] shall provide to the [Contracting Authority] a project summary as set out in Schedule [ ] of this [PPP Contract] within [ ] business days after signature of this [PPP Contract] and an updated version within 15 business days after financial close [*insert definition for financial close*].
- (b) In the event of any relevant change of the project summary information, the [Private Party] shall provide to the [Contracting Authority] the updated information and the updated documents [ ] business days after the relevant change has occurred.

### **Performance Information**

- 5.3 (a) The parties agree that the [Private Party] shall provide to the [Contracting Authority] information on performance on Key Performance Indicator against agreed target levels and performance failure as set out in Schedule [ ] of this [PPP Contract] and SPV reports within one year after [Commercial Operation Date] of this [PPP Project] as well as each year hereafter during the term of this [PPP Contract] on [...].
- (b) The [Private Party] shall upload the performance information mentioned in Subsection 1 on a web-based platform owned by the ICRC and in any other form of communication and dissemination.

**Calculation of Equity Internal Rate of Return**

5.4 Where the contract is a result of an unsolicited proposal and/or where substantial government support is provided to the project, the [Private Party] shall provide to the [Contracting Authority] each year during the term of this [PPP Contract] on [ ] and on [ ] a calculation of the actual equity internal rate of return and any other financial information submitted to any other authority including any regulators.

**Audited Financial Statements**

5.5 The [Private Party] shall provide to the [Contracting Authority] audited financial statements annually and no later than [180] days after the end of the fiscal year of the [Private Party].

**Enforcement of Reporting and Information Obligations**

5.6 Without prejudice to other legal remedies available to the parties in this [PPP Contract], the parties agree that the scope of services under this [PPP Contract] includes obligations of the [Private Party] to provide information as set out in [Section/Subsection [ ]] to the [Contracting Authority] and that any breach of this obligation shall be a failure in performance of the service triggering deductions in accordance with the payment mechanism as set out in Schedule [ ] of this [PPP Contract].

Schedule [ ]

**Confidential Information**

Clauses/schedules	Period for which information will remain confidential

# Annex C: Suggested Amendments to the NSIA Act 2011

## SECTION 52 pertaining to Documentation

52 (1) All investments shall be documented (...).

(2) The Authority shall publish on a designated website [or in any other form specified in the [regulations OR guidelines] issued under Subsection (3)] contract and project information related to its investments in infrastructure projects, in particular but not limited to (a) basic project information, (b) information related to project progress, (c) procurement information, (d) project preparation documents, (e) contract summaries, (f) guarantee information, (g) financial information, (h) information regarding renegotiations, (i) information related to project progress as well as performance information.

(3) No confidential information as specified in the [regulations OR guidelines] issued under Subsection (4) shall be disclosed.

(4) The Authority shall develop [regulations or guidelines] regarding project and contract disclosure for its investments in infrastructure projects [that specify the elements of disclosure, responsibilities, timelines, method for disclosure, confidential information, and [include standard language for respective contractual provisions]];

(5) The Authority shall collaborate with the Infrastructure Concession Regulatory Commission (ICRC) when developing and implementing [regulations or guidelines] for project and contract disclosure related to Concessions as defined in the ICRC (Establishment) Act, 2005.

# Annex D: Suggested Text for Disclosure Framework (NSIA)

## 1. Introduction

The Nigeria Sovereign Investment Authority (Establishment) Act 2011 provides that the Nigeria Sovereign Investment Authority (“NSIA”) shall implement best practices with respect to management independence and accountability, corporate governance, transparency and reporting on performance as provided in the Act.<sup>42</sup> The Act enjoins NSIA to adopt appropriate Santiago Principles in addition to other similar principles or conventions to attain best practices. It further stipulates that NSIA shall develop policies and procedures for communicating its investment objectives in a manner generally consistent with the guiding objectives of the Santiago Principles.<sup>43</sup> Specifically, Section 51(2)1(a) of the Act imbues NSIA with the power to develop appropriate internal guidelines to conduct its business operations in a manner that fosters transparency, accountability, and good corporate governance. It also requires that NSIA operations be consistent with the highest ethical standards and reflect best practices. In furtherance of this mandate, NSIA subscribed to the International Working Group of Sovereign Wealth Funds and adopted the Santiago Principles for Sovereign Wealth Funds. The Principles urge member states to make disclosure a goal of their transparency and accountability strategy.

The Nigerian legal framework for transparency and accountability of public resources provides specific legislation governing the management of public finances, and prescribes full and timely disclosure of transactions and decisions involving public revenues and expenditures.<sup>44</sup> The 2011 Freedom of Information Act provides for public access to information by all public authorities, and defines public authorities to include all companies in which government has controlling interest, and private companies utilizing public funds. As an organization owned by the government of Nigeria, NSIA is accountable for the use and management of its resources in a manner consistent with its mandate and has the obligation to be responsive to questions relating to its investments.

The NSIA Infrastructure Fund (“The Fund”) aspires to attain best practices in its governance standards for its PPP and private investments. Upon this premise, The Fund seeks to enhance its investment disclosure framework through the establishment of systems of transparency and accountability, including processes conducive to disclosure and to embed disclosure in its routine investment practice. This overarching Framework is intended to make NSIA’s investment disclosures more structured and to enable systematic

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<sup>42</sup> See Section 4(2) (d) Nigeria Sovereign Investment Agency (Establishment) Act.

<sup>43</sup> See Section 49(1) Nigeria Sovereign Investment Agency (Establishment) Act.

<sup>44</sup> Section 48 of the Fiscal Responsibility Act 2007.

and organized disclosure of information at different stages of The Fund’s investment process. The Framework and associated standardized template presented here hold out the promise of raising the standard of transparency and accountability around investment. Since disclosure is an evolving area, the Framework remains a work in progress. It will be revisited and revised every two years, if and as required.

## 2. Application

This Framework will be used in various circumstances and at different levels. NSIA will apply this Framework as a project sponsor, developer, and investor. Where applicable, the Framework will be applied to disclosure of PPP projects, private investment projects, NSIA-to-public deals, NSIA-to-private deals, and other forms of infrastructure projects NSIA participates in. The Framework demonstrates the application of each template from the early disclosure of basic project information to performance information. Annex D.1 will apply to all NSIA-to-public investment types/modes. Annex D.2 will be applicable to all NSIA-to-private investment types/modes. NSIA in the discharge of its mandate receives from other parties’ information that is not publicly available for the purpose of enabling NSIA to assess business opportunities, or to monitor and evaluate existing investments. NSIA respects the confidentiality of any such information, hence, NSIA-to-private investment disclosure will depend upon the level of disclosure permitted by NSIA’s counterparties and the nature of the project. Annex D.3 will be applicable to all PPP projects. The annexes offer stand-alone templates that have been developed to facilitate the application at the various stages of the Framework. A summary of disclosure by type of investment is provided in table D.1.

## 3. Specific Disclosures for NSIA-to-Public Projects

- a. Specific disclosures will consist of the elements included in the following Subsections b to i, and will follow the template provided in annex D.1. Confidential information as provided under Section 6 will be redacted before publication.
- b. *Basic project information (pre-contract)*. Basic project information will be provided within the nearest quarter after the Executive Board’s (“Board”) budget approval for conducting due diligence of the proposed investment. Basic project information will include project name, location, industry/sector, sponsoring agency, estimated project value, market drivers, and project need. The basic project information page will include a disclaimer on the early information disclosed, stating that early project information is indicative and not final. The template for the disclaimer is provided in annex D.1.
- c. *Project progress tracking*. Actual dates of achievement of key milestones will be provided as the project progresses, in the form of a project progress tracker.

- d. *Procurement information.* When appropriate, key procurement documents will be provided within the nearest quarter after the procurement process. The list of project consultants, advisors, and contractors advising on the project will be published within the nearest quarter after engagement of advisors/consultants. Other project preparation documents such as the scoping report and feasibility study report will be disclosed within the nearest quarter after Board review.
- e. *Contract summary.* Names of parties, total project cost, investment type and mode, size and share of NSIA's financing, technical description of infrastructure to be developed, description of proposed services, project objectives, estimated demand to be served and tariffs, high level risk summary, allocation and mitigation will be disclosed within the nearest quarter of contract signing.
- f. *Guarantee information.* Basic information related to guarantees, details of the memoranda of understanding with other levels of government and foreign governments, and any asset transfers and grants received, and availability / annuity payments will be disclosed within the nearest quarter of financial close.
- g. *Financial information.* Summary of financial information will be disclosed within the nearest quarter of financial close.
- h. *Renegotiations.* Summary information relating to each renegotiation will be published within the nearest quarter of signature of the renegotiated project agreement.
- i. *Performance information.* High-level summary of performance against agreed target levels will be published within one year of commissioning of the project, with annual updates published within the nearest quarter of anniversary of first publication date. Performance information will include high-level details relating to performance failures and will be updated annually.

#### 4. Specific Disclosures for NSIA-to-Private Projects

- a. Specific disclosures will consist of the elements included in the following Subsections b to f, and will follow the template provided in annex D.2. Where disclosure under this section is deemed to be appropriate, all information will be disclosed within the nearest quarter following signature of the contract. Confidential information as provided under Section 6 will be redacted before publication.
- b. *Basic project information (post-contract).* Basic project information will include project name, location, industry/sector, project sponsor, estimated project value, brief description of the project, project need and market drivers, identity of the project company, and amount and nature of NSIA's investment in the project.



- c. *Project progress tracking.* Actual dates of achievement of key milestones will be provided as the project progresses in the form of a project progress tracker within the nearest quarter after contract signing.
- d. *Contract summary.* Names of parties, total project cost, investment type and mode, technical description of infrastructure to be developed, description of proposed services, size and share of NSIA's financing, nature of NSIA's investment, project objectives, estimated demand to be served, tariffs and project additionality.
- e. *Financial information.* Summary of financial information will be disclosed within the nearest quarter of financial close.
- f. *Renegotiations.* Summary information relating to each renegotiation will be published within the nearest quarter of signature of the renegotiated project agreement.

## 5. Specific Disclosures for PPP Projects

- a. Specific disclosures will consist of the elements included in the following Subsections b to k and will follow the template provided in annex D.3. Confidential information as provided under Section 6 will be redacted before publication.
- b. *Basic project information (pre-contract).* Basic project information will be provided within the nearest quarter after the Management Board's ("Board") budget approval for conducting due diligence of the proposed project. Basic project information will include project name, location, industry/sector, sponsoring agency/department, estimated project value, project need, technical description of asset, description of the services, estimated demand to be served annually, summary scoping report, environmental impact assessment report, summary outline business case report, and value-for-money analysis report. The basic project information page will include a disclaimer on the early information disclosed, stating that early project information is indicative and not final. The template for the disclaimer is provided in annex D.1.
- c. *Project progress tracking.* Actual dates of achievement of key milestones will be provided as the project progresses in the form of a project progress tracker.
- d. *Procurement information.* When appropriate, key procurement documents will be provided within the next quarter after the procurement process. The list of project consultants, advisors, and contractors advising on the project will be published within the nearest quarter after engagement of advisors/consultants.
- e. *Outline Business Case (OBC).* The non-confidential aspects of the OBC and Full Business Case, will be published within the nearest quarter after Infrastructure Concession Regulatory Commission recommendation for approval by FEC or other delegated authority.

- f. *Contract summary.* Names of parties, high-level risk summary, total project cost, investment type and mode, technical description of infrastructure to be developed, estimated demand to be served, and tariffs will be disclosed within the nearest quarter of contract signing.
- g. *Guarantee information.* Basic information related to guarantees, details of the memoranda of understanding with other levels of government and foreign governments, and any asset transfers and grants received will be disclosed within the nearest quarter of financial close.
- h. *Financial information.* Summary of financial information will be disclosed within the nearest quarter of financial close.
- i. *Renegotiations.* Summary information relating to each renegotiation will be published within the nearest quarter of signature of the renegotiated project agreement.
- j. *Termination provisions.* Brief description of event of default and handback term and conditions following default will be disclosed as provided in annex D.3.
- k. *Performance information.* High-level summary of performance against agreed target levels will be published within one year of commissioning of the project, with annual updates published within the nearest quarter of anniversary of first publication date. Performance information will include high-level details relating to performance failures and will be updated annually.

## 6. Confidential Information

For the purposes of this Framework, the following elements will be considered as confidential. However, these elements will be reviewed every two years for any modifications:

1. Technology/inventions
2. Intellectual property
3. Pricing methodology
4. Bid evaluations
5. Trade secrets
6. Financial model
7. Bill of quantity
8. Internal rate of return

## 7. Method of Disclosure

All information and documents will be published on a web-based platform owned by NSIA.

## 8. Responsibilities for Disclosure

1. All information will be uploaded by NSIA on the NSIA website as provided in Section 3, 4, and 5, after redacting confidential information.
2. NSIA will give 21 days' timeline within which the NSIA Chief Executive Officer ("CEO") or any officer designated by the CEO will validate and approve the information prior to public disclosure.
3. Performance information and any other information as required by NSIA will be provided by the Private Party and from time to time.

## 9. Validation of Information Prior to Disclosure

All information shall be validated by the NSIA CEO or any officer designated by the CEO before publication on the website.

## 10. Standard Contractual Provisions

- a. A section or chapter entitled "Transparency and Information Disclosure" shall be included in all draft contractual documentation included in the request for proposal and in all investment contracts to be signed by the contracting parties.
- b. The section or chapter mentioned in 10.a will contain clauses pertaining to the proactive disclosures to be carried out by NSIA, including disclosure of summary project contract information, procurement information including procurement documents, and yearly performance information disclosure.
- c. The section or chapter mentioned in 10.a will also contain the obligation of the private partners to provide documents and information as and when required and in the format required by NSIA as part of its contractual obligations.
- d. The section or chapter mentioned in 10.a will include a subsection dealing with confidential information and will list the items of confidential information in a schedule along with the date up to which the information will be considered confidential.

- e. Sample disclosure clauses for use in all draft project documentation to be included in all project agreement are provided in annex D.4 and its schedules.

**TABLE D.1: SUMMARY OF NSIA INFORMATION DISCLOSURE, BY TYPE OF INVESTMENT**

#	INFORMATION	NSIA-PUBLIC	NSIA-PRIVATE	REGULAR PPP
1	Project name	Within the nearest quarter after the Executive Board's budget approval for conducting due diligence of the proposed investment	Within the nearest quarter after contract signing	Within the nearest quarter after the Management Board's budget approval for conducting due diligence of the proposed project
2	Brief description of project	Same as above	Within the nearest quarter after contract signing	Not applicable
3	Location	Within the nearest quarter after the Executive Board's budget approval for conducting due diligence of the proposed investment	Within the nearest quarter after contract signing	Within the nearest quarter after the Management Board's budget approval for conducting due diligence of the proposed project
4	Industry/Sector	Same as above	Within the nearest quarter after contract signing	Same as above
5	Sponsoring agency	Same as above	Not applicable	Same as above
6	Estimated project value	Same as above	Within the nearest quarter after contract signing	Same as above
7	Project need	Same as above	Within the nearest quarter after contract signing	Same as above
8	Market drivers	Same as above	Within the nearest quarter after contract signing	Not applicable
9	Identity of the project company	Within the nearest quarter after contract signing	Within the nearest quarter after contract signing	Not applicable
10	Amount and nature of NSIA's investment in the project	Within the nearest quarter after contract signing	Within the nearest quarter after contract signing	Not applicable
11	Technical description of asset	Within the nearest quarter after contract signing	Within the nearest quarter after contract signing	Within the nearest quarter after the Management Board's budget approval for conducting due diligence of the proposed project

#	INFORMATION	NSIA-PUBLIC	NSIA-PRIVATE	REGULAR PPP
12	Description of the services	Same as above	Not applicable	Same as above
13	Estimated demand to be served annually	Same as above	Within the nearest quarter after contract signing	Same as above
14	Scoping report	Within the nearest quarter after Board review	Not applicable	Same as above
15	Environment and social impact assessment report	Same as above	Not applicable	Same as above
16	Outline Business Case report or feasibility study report	Same as above	Not applicable	Same as above
17	Value-for-money analysis report	Not applicable	Not applicable	Same as above
18	Project progress tracking	As milestones are achieved	Disclosed within the nearest quarter of contract signing	As milestones are achieved
19	Key procurement documents	Disclosed within the nearest quarter after procurement	Not applicable	Not applicable
20	List of project consultants, advisors, and contractors advising on the project	Within the nearest quarter after engagement of advisors/consultants	Not applicable	Within the nearest quarter after engagement of advisors/consultants
21	Names of parties/private co-investors/investment vehicle	Within the nearest quarter of contract signing	Within the nearest quarter of contract signing	Within the nearest quarter of contract signing
22	High-level risk summary	Same as above	Not applicable	Same as above
23	Total project cost	Not applicable	Within the nearest quarter of contract signing	Not applicable
24	Investment type and mode	Not applicable	Same as above	Same as above
25	Tariffs	Not applicable	Not applicable	Within the nearest quarter of financial close
26	Project objectives	Within the nearest quarter of contract signing	Not applicable	Not applicable
27	Government support	Within the nearest quarter of financial close	Not applicable	Within the nearest quarter of financial close
28	Termination provisions	Within the nearest quarter of signature of the contract	Same as above	Within the nearest quarter of contract signing
29	Project additionality	Within the nearest quarter of signature of the contract	Within the nearest quarter of signature of the contract	Not applicable

#	INFORMATION	NSIA-PUBLIC	NSIA-PRIVATE	REGULAR PPP
30	Renegotiations	Within the nearest quarter of signature of the renegotiated contract	Within the nearest quarter of signature of the renegotiated contract	Within the nearest quarter of signature of the renegotiated contract
31	Financial information	Within the nearest quarter of financial close	Within the nearest quarter of financial close	Within the nearest quarter of financial close
32	Performance information	Within one year of commissioning of project with annual updates	Not applicable	Within one year of commissioning of project with annual updates

*Note:* NSIA = Nigeria Sovereign Investment Authority.

# Annex D.1: Template for Proactive Disclosure of NSIA-to-Public Projects

Disclosure Following Project Identification. Early Review and Appraisal Stages

---

I. BASIC PROJECT INFORMATION (*Disclosed within the nearest quarter after Board Budget Approval*)

- Project name, location
  - Project description
  - Industry/sector
  - Estimated project value
  - Sponsoring agency
  - Project need: benefits provided, economic and social (including specific information on the public interest aspect)
  - Market drivers
- 

II. PROJECT MILESTONES (ACTUAL) (*Disclosed as they become available*)

- Project Board approval
  - Commencement of due diligence study
  - Procurement start date
  - Date of award
  - Commencement of construction or development
  - Completion of construction or development
  - Commissioning
  - Contract expiry
- 

III. PROCUREMENT DOCUMENTS (*Disclosed within the nearest quarter following procurement*)

- Short-listed bidders
  - Request for proposal
  - Award
  - List of project development consultants engaged in the project (*Disclosed within the nearest quarter after engagement*)
- 

IV. DISCLOSURE OF OTHER DOCUMENTS (*Disclosed within the nearest quarter after Board review*)

- Scoping report
  - Feasibility study report
- 

Disclosure Following Signature of Project Contract

V. CONTRACT SUMMARY *(Disclosed within the nearest quarter of contract signing and updated in case of any change)*

- Public authority party: name of authority, name of representative, address, telephone, fax, e-mail
- Private party co-developer: name of company or consortium, name of representative, address, telephone, fax, e-mail, total project cost, nature of NSIA's investment (equity, loan, guarantee)
- Size and share of NSIA's financing
- Project objectives
- Technical description of the infrastructure to be developed
- Status/dates of various approvals
- High-level description of the proposed services
- Estimated demand to be served annually
- Project additionality

VI. RISK *(High-level summary of risks including risk allocation and mitigation)*

	DESCRIPTION	ALLOCATION

VII. GOVERNMENT SUPPORT

Guarantees

Grants

Availability/annuity payment schedule

Land leases, asset transfers

Other support

Revenue share, if any

VIII. RENEGOTIATIONS

RENEGOTIATION 1	RENEGOTIATION 2	RENEGOTIATION 3	RENEGOTIATION 4



IX. FINANCIAL INFORMATION (*Disclosed within the nearest quarter of financial close*)

- Commercial lenders, bilateral or multilateral lenders, public issue of bonds, supplier credit, other
  - Equity-debt ratio
  - Shareholders of project vehicle
  - Share capital of project vehicle
  - Shareholders categories senior debt, mezzanine debt, other
  - Amount and tenor of each, fixed or floating rate
  - Governance rights
- 

X. PERFORMANCE INFORMATION (*to be updated annually*)

KEY PERFORMANCE INDICATORS	Year 1		Year n	
	Target	Achievement	Target	Achievement

XI. DISCLAIMERS

Unless stated otherwise, it is hereby acknowledged that information disclosed on this page is to provide early access to basic project information. Before final approval by the NSIA Executive Management Board and before contract signature, projects are under appraisal and negotiation, and should not be construed as NSIA's final investment decision. The data provided on this page are merely indicative and should not be construed to represent official NSIA policy.

NSIA makes no warranties or representations, express or implied as to whether information provided on or through this website is accurate, complete, or up-to-date. NSIA is not responsible nor liable for the content of pages made available via hyperlinks.

NSIA will not be liable for any lost profits or consequential, special, punitive, indirect, or incidental damages relating to, arising out of, or in any way in connection to the user's reliance on early project information.

# Annex D.2: Template for Proactive Disclosure of NSIA-to-Private Projects

## Disclosure Following Contract Signing

---

### I. BASIC PROJECT INFORMATION

- Project name, location
  - Project description
  - Industry/sector
  - Project sponsor
  - Estimated project value
  - Project need: objectives and benefits provided, economic and social (including specific information on the public interest aspect)
  - Market drivers
  - Amount and nature of NSIA's investment in the project
  - Description of project company
- 

### II. PROJECT MILESTONES *(Disclosed within the nearest quarter following contract signing)*

- Project approval date
  - Commitment date
  - Disbursement date
- 

### III. CONTRACT SUMMARY *(Disclosed within the nearest quarter following contract signing and updated in case of any change)*

- Private co-investors: name of company or investment vehicle, name of representative, address, telephone, fax, e-mail, total project cost, nature of NSIA's investment (equity, loan, guarantee), size and share of NSIA's financing, project objectives, technical description of the infrastructure to be developed, high-level description of the proposed services, estimated demand to be served annually, and project additionality.
- 

### IV. FINANCIAL INFORMATION *(Disclosed within the nearest quarter of financial close)*

- Percentage of share capital in the project vehicle
  - Category of debt provided: senior debt, mezzanine debt, other
  - Amount and tenor of each, fixed or floating rate
  - Governance rights.
- 

### V. RENEGOTIATIONS

RENEGOTIATION 1	RENEGOTIATION 2	RENEGOTIATION 3	RENEGOTIATION 4

# Annex D.3: Template for Proactive Disclosure of NSIA PPP Projects

Disclosure Following Project Identification, Early Review and Appraisal Stages

I. BASIC PROJECT INFORMATION (*Disclosed within the nearest quarter after Board budget approval for conducting due diligence*)

- Project name
  - Location
  - Industry / Sector
  - Sponsoring agency/department
  - Estimated project value
  - Project need
  - Technical description of asset
  - High-level description of the services
  - Estimated demand to be served annually
  - Summary scoping/Environmental Impact Assessment/stakeholder consultation report
  - Value-for-money analysis or cost-benefit analysis
  - Outline Business Case assessment report (*disclosed within the nearest quarter after ICRC approval*)
- 

II. PROCUREMENT INFORMATION

- List of NSIA consultants and advisors throughout project life cycle: legal, financial, engineering, and so forth (disclosed within the nearest quarter after engagement of advisors/consultants)
- 

III. PROJECT MILESTONES (*Disclosed as they become available*)

- Date of Board approval
- Commercial close
- Financial close
- Commencement of construction or development
- Completion of construction or development
- Commissioning
- Commencement of operations
- Contract expiry

## Disclosure Following Signature of Contract

### IV. CONTRACT INFORMATION *(Disclosed within the nearest quarter of contract signing)*

- Private party: name of company or consortium
- Public authority: name of authority *(Disclosed within the nearest quarter of signature of the contract and updated in case of any change)*

### V. RISK *(High-level summary of risks including risk allocation)*

	DESCRIPTION	ALLOCATION

## Disclosure Following Financial Close

### VI. FINANCIAL INFORMATION *(Disclosed within the nearest quarter of financial close)*

- Commercial lenders, institutional investors, bilateral or multilateral lenders, public issue of bonds, supplier credit, other
- Equity-debt ratio
- Share capital
- Shareholders categories senior debt, mezzanine debt, other
- Amount and tenor of each, fixed or floating rate

### VII. GUARANTEES/COMMITMENTS RECEIVED *(Disclosed within nearest quarter of financial close)*

Guarantees	Basic information related to guarantees Details of the memoranda of understanding with other levels of government and foreign governments
Grants	Subsidy as a proportion of project value Capital subsidies received during construction with periodicity or milestones Operating subsidies and their periodicity or milestones
Service payments	These are payments received from the public authority or purchaser for infrastructure services Total payments and periodicity
Land leases, physical or other asset transfers	Land transferred on lease or other basis by government. Equipment transfers: details of equipment with conditions of transfer Rights or licenses transferred
Other support	Non-compete clauses Provision for revenue shortfall loan
Revenue share, if any	Revenue share on base case Revenue share on upside Graphs: annual concessionaire payments to government

VIII. TARIFFS *(Disclosed within the nearest quarter of financial close)*

Tariffs and pricing	This information will be required only where the infrastructure is financed partly or fully through the levy of user charges Scope for reviews of tariff, pricing, regulatory mechanisms Graphs: tariff increases over time, consumer price index movement
---------------------	--

IX. TERMINATION PROVISIONS *(Disclosed within the nearest quarter after contract signing)*

PARTY	BRIEF DESCRIPTION OF EVENT OF DEFAULT
Concessionaire	
Authority	

Handback terms and conditions

X. RENEGOTIATIONS *(After contract signing)*

RENEGOTIATION 1	RENEGOTIATION 2	RENEGOTIATION 3	RENEGOTIATION 4

XI. PERFORMANCE INFORMATION *(to be updated annually)*

KEY PERFORMANCE INDICATORS	Year 1		Year n	
	Target	Achievement	Target	Achievement

Performance failures	Year	
	Category of failure	
	Number of events	
	Penalty or abatement provided in contract	
	Penalty or abatement imposed	
	Penalty paid or abatement effected: Yes/No	

Performance assessments	Annual reports
-------------------------	----------------

# Annex D.4: Suggested Standard Contractual Clauses (NSIA)

Section [*insert number*]: Disclosure Requirements

*Obligations Regarding Specific Disclosures*

## 1. Freedom of Information

- 1.2 The [Private Party] acknowledges that [NSIA] is subject to the requirements of the Nigeria Sovereign Investment Authority Establishment Act 2011, Freedom of Information Act 2011, and the Santiago Principles for Sovereign Wealth Funds and may be entitled to disclose information in accordance to the requirements under Section 52 of the NSIA Establishment Act, Sections 2(4) and (7) of the Freedom of Information Act 2011.
- 1.3 The [Private Party] agrees to facilitate [NSIA's] compliance with its disclosure requirements under the NSIA Establishment Act 2011 and the Freedom of Information Act 2011.
- 1.4 Where the [NSIA] receives a request for information under the Freedom of Information Act 2011 in relation to information that the [Private Party] is holding and which the [NSIA] does not hold itself the [NSIA] shall refer to the [Private Party] such request for information that it receives as soon as practicable and in any event within [five] business days of receiving the request and the [Private Party] shall
  - a. provide the [NSIA] with a copy of all such information in the form the [NSIA] requires as soon as practicable and in any event within [five] business days (or such other period as the [NSIA] acting reasonably may specify); and
  - b. provide all necessary assistance as reasonably requested by the [NSIA] in connection with any such information to enable the [NSIA] to respond to a request for information within the time for compliance set out in the Freedom of Information Act 2011.
- 1.5 The [Private Party] shall ensure that all project information generated is retained and maintained in accordance with the Freedom of Information Act 2011 during the term of this [ ] Agreement and for at least [ ] years after the [ ] Agreement has been terminated and shall permit the [NSIA] to inspect such information as requested from time to time.
- 1.6 Where the [NSIA] receives a request for information under the Freedom Information Act 2011 the [NSIA] shall be responsible for determining at its absolute discretion whether information is exempt from disclosure under the Freedom of Information Act 2011 and for determining what information will be disclosed in response to any information request in accordance with the Freedom of Information Act 2011.

## 2. Public Relations and Publicity

- 2.2 The [Private Party] shall not by itself, its employees or agents, communicate with representatives of the press, television, radio, or other communications media on any matter concerning this [ ] Agreement without the prior written approval of the [NSIA]
- 2.3 The [Private Party] shall procure that its subcontractors shall not communicate with representatives of the press, television, radio, or other communications media on any matter concerning this [ ] Agreement without the prior written approval of the [NSIA]
- 2.4 The [Private Party] may not represent the views of the [NSIA] on any matter, or use the name of the [NSIA] in any written material provided to third parties, without the prior written consent of the [NSIA].

## 3. Publication of Information Related to NSIA-Sponsored Projects

- 3.1 The parties agree that the [NSIA], subject to Section 4 (Confidentiality), is entitled to disclose as detailed out in Schedule [ ] the following information:
- a. Procurement documents and information;
  - b. All project documents including this [ ] Agreement and other associated documents (such as, the feasibility study report/Outline Business Case or the Scoping Report);
  - c. Summary project information as set out in Schedule [ ] of this [ ] Agreement;
  - d. Performance information related to this [ ] Agreement.
- 3.2 The [Private Party] acknowledges that the [NSIA] intends to publish the information mentioned in Subsection 3.1, subject to Section 4 (Confidentiality), on a web-based platform owned by NSIA.

## 4. Confidentiality

### Confidential Information

- 4.1 For the purpose of this [ ] Agreement, Confidential Information means:
- a. The subset of Confidential Information included in column 1 of Schedule [ ] of this [ ] Agreement in each case for the period specified in column 2 of Schedule [ ].
  - b. Any other information (however it is conveyed or on whatever media it is stored) the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, commercially sensitive

intellectual property rights, and know-how of either Party, including all personal information;

- 4.2 Without prejudice to Sections 1 and 3, the parties shall keep confidential all Confidential Information received by one party from the other party relating to this [ ] Agreement and any other Project Agreements or the [ ] project and shall use all reasonable endeavors to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.

#### Permitted Disclosure

- 4.3 Confidential Information may be disclosed if:

- a. disclosure of such Confidential Information is reasonably required by any person engaged in the performance of its obligations under the [ ] Agreement for the performance of those obligations;
- b. a party can demonstrate that such Confidential Information is already, or becomes, generally available in the public domain otherwise than as a result of a breach of this clause;
- c. such disclosure is necessary to enable a determination to be made under clause [insert reference to Dispute Resolution clause] or in connection with a dispute between the [Private Party] and any of its subcontractors;
- d. such disclosure is required pursuant to (i) any statutory or legal obligation; (ii) any order of a court of competent jurisdiction; (iii) a Parliamentary obligation placed upon the party making the disclosure; (iv) any order from a governmental or regulatory authority;
- e. the Confidential Information is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- f. the Confidential Information is provided to:
  - i. each party's own professional advisers or insurance advisers; and/or
  - ii. the lenders or the lenders' professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the [Private Party] to enable it to carry out its obligations under the [ ] Agreement, or may wish to acquire shares in the [Private Party] in accordance with the provisions of this [ ] Agreement to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal; and/or
  - iii. international or bilateral financial institutions involved in the project as lenders, political risk insurers or guarantors.
- g. the disclosure of such Confidential Information by the [NSIA] relates to the design, construction, operation and maintenance of any PPP project and any disclosure of other Confidential Information as may be reasonably required for the purpose of conducting a due diligence exercise, to any proposed new private partner, its advisers and lenders, should the [Private Party] decide to retender a PPP Agreement or undertake any market testing;



- h. such disclosure is required for any registration, filing or recording of the required permits and property registration in connection with the [ ] project;
- i. the disclosure of Confidential Information by the [NSIA] to any other relevant authority or their respective advisers or to any person engaged in providing services to the [NSIA] is necessary for any purpose related to or ancillary to the [ ] Agreement; or
- j. such disclosure is necessary for the purpose of:
  - i. the examination and certification of the [NSIA's] or the [Contracting Party's] accounts;
  - ii. any examination pursuant to [insert reference to any auditing obligations for public contracts] of the economy, efficiency and effectiveness with which the [NSIA] has used its resources;
  - iii. complying with a proper request from either party's insurance adviser, or insurer on placing or renewing any insurance policies; or
  - iv. [without prejudice to the generality of Clause 4.3 (d) compliance with [insert reference to any laws requiring disclosure (e.g., environmental laws)]]].

4.4 When disclosure is permitted under Clauses 4.3 (a), (c), (f), (g), and (i), the party providing the information shall ensure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this [ ] Agreement. The [Private Party] shall expressly inform any person to whom it discloses any information under this clause of the confidentiality restrictions set out in this clause and shall procure its compliance with the terms of this clause as if it were party to this [ ] Agreement and the [Private Party] shall be responsible for any breach by any such person of the provisions of this clause.

#### Confidential Information Related to End Users

4.5 Where the [Private Party], in carrying out its obligations under the [ ] Agreement, is provided with personal information relating to [end users (e.g., road users, patients, and so forth)], the [Private Party] shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the [Private Party] has obtained the prior written consent of that [end user] and has obtained the prior written consent of the [NSIA].

4.6 On or before the expiry date, the [Private Party] shall ensure that all documents or computer records in its possession, custody or control, which contain personal information relating to [end users] including any documents in the possession, custody or control of a subcontractor, are delivered up to the [NSIA].

## 5. Reporting Obligations, Provision of Information and Documents

### Obligation to Disclose Information, Documents and Records upon Request

5.1 (a) The [Private Party] shall provide to the [NSIA] all information, documents, records and the like in the possession of, or available to, the [Private Party] as may reasonably be requested by the [NSIA] for the purpose of complying with any of its statutory reporting obligations including its reporting obligations under the Nigeria Sovereign Investment Authority Act, 2011, the Freedom of Information Act 2011 and the Santiago Principles for Sovereign Wealth Funds.

(b) To this end, the [Private Party] shall ensure that all such information in the possession of any subcontractor or other counterparty to any Project Agreement shall be available to the [NSIA] and the [Private Party] has included, or shall include, appropriate provisions to this effect in all Project Agreements.

### Project Information

5.2 (a) The [Private Party] shall provide to the [NSIA] a project summary as set out in Schedule [ ] of this [ ] Agreement within [ ] business days after signature of this [ ] Agreement and an updated version within fifteen business days after [insert definition for financial close].

(b) In the event of any relevant change of this project information, the [Private Party] shall provide to the [NSIA] the updated information and links to the updated documents [ ] business days after the relevant change has occurred.

(c) In the event of renegotiation the [Private Party] shall provide to the [NSIA] information on the renegotiation as well as links to the renegotiated [ ] Agreement within fifteen business days after signature of the renegotiated [ ] Agreement.

### Performance Information

5.3 The parties agree that the [Private Party] shall provide to the [NSIA] information relating to performance as set out in Schedule [ ] of this [ ] Agreement each year during the term of the contract.

Schedule [ ]  
Confidential Information

Clauses/schedules	Period for which information will remain confidential

## Annex E: Comparison of World Bank and Agreed Framework with Current Practice (ICRC)

	WORLD BANK FRAMEWORK	CURRENT DISCLOSURE PRACTICE	AGREED FRAMEWORK
<b>1.</b>	<b><i>BASIC PROJECT INFORMATION</i></b>		
1.1.	Name	Y	Y
1.2.	Location	Y	Y
1.3.	Sector	Y	Y
1.4.	Sponsoring agency/department	Y	Y
1.5.	Estimated project value	Y	Y
1.6.	Project need: benefits provided, economic and social (including specific information on the public interest aspect)	N	Y
1.7.	Stakeholder consultations	N	Y
1.8.	Reason for selection of PPP mode and type in brief	N	Y
1.9.	Brief description of other modes analyzed and reasons for rejecting these	N	N
1.10.	Technical description of the physical infrastructure	N	Y
1.11.	Dates of various approvals	N	Y
1.12.	High-level description of the services	Y	Y
1.13.	Estimated demand to be served annually	N	Y
1.14.	Project additionality	N	Y
<b>2.</b>	<b><i>CONTRACT MILESTONES AND DOCUMENTS</i></b>		
2.1.	Date of contract signing	N	Y
2.2.	Date of financial close	N	Y
2.3.	Date of commencement of construction or development	N	Y
2.4.	Date of completion of construction or development	N	Y
2.5.	Date of commissioning	N	Y

2.6.	Date of contract expiry	N	Y
2.7.	All contract documents (with appropriate redactions)	N	Y
3.	<i>PARTIES TO THE CONTRACT WITH CONTACT DETAILS</i>		
3.1.	Public authority: name of authority, name of representative, address, telephone, fax, e-mail	N	Y
3.2.	Private party: name of company or consortium, name of representative, address, telephone, fax, e-mail	N	Y
3.3.	Financiers: name of lead financial institution (FI), other FIs, name of representative of lead FI, address, telephone, fax, e-mail	N	Y
4.	<i>PROCUREMENT INFORMATION</i>		
4.1.	Dates and summary details	Y	Y
4.2.	Final feasibility study (including cost-benefit analysis, if any)	N	Y
4.3.	Land acquisition, rehabilitation, social (including information on human rights impact assessment) and environmental assessment related information	N	Y
4.4.	Reports of independent procurement auditors and (if any)	N	Y
4.5.	<i>Procurement documents</i>		
4.5.1.	Expression of Interest	Y	Y
4.5.2.	Pre-qualification or short list	Y	Y
4.5.3.	Request for proposal	Y/N	Y
4.5.4.	Evaluation criteria: brief description with weights	N	Y
4.5.5.	Brief information on constitution of the evaluation committees	N	Y
4.5.6.	Negotiation parameters: brief description of the parameters for negotiation with preferred proponent	N	Y
4.5.7.	Minutes of pre-bid meetings	N	N
4.5.8.	Selection of preferred bidder	Y	Y
5.	<i>RISK</i>		
5.1.	Pre-construction risk: all risks up to financial close	N	Y
5.2.	Construction/completion	N	Y

5.3.	Cost risk: capital, operating	N	Y
5.4.	Refinancing risk	N	Y
5.5.	Risk related to change in law, taxes, scope, technical standards, regulatory framework	N	Y
5.6.	Exchange rate risk	N	Y
5.7.	Operating risk	N	Y
5.8.	Commercial risk, market risk, demand risk	N	Y
5.9.	Performance risk	N	Y
5.10.	Financial risk	N	Y
5.11.	Force majeure risk	N	Y
5.12.	Environmental risk	N	Y
5.13.	Social risk	N	Y
6.	<i>EVALUATION OF PPP OPTION (VALUE-FOR-MONEY OR OTHER APPROACH USED)</i>		
6.1.	Evaluation report (value for money or other)	N	Y
6.2.	Rationale for doing the project as a PPP, including any qualitative or quantitative value-for-money, final feasibility studies (including cost-benefit analysis, if any) or other analysis that might have been used, including nonfinancial benefits that have been quantified or considered	N	Y
6.3.	Discount rates used along with the risk premium used, if any, and an explanation for the rate of risk premium used, referring to guidance, if any, available in this regard or describing project-specific circumstances that justify the risk premium rate used	N	N
6.4.	Risk comparison of other financing mechanisms	N	N
7.	<i>FINANCIAL INFORMATION</i>		
7.1.	Equity-debt ratio	N	Y
7.2.	Share capital	N	Y
7.3.	Shareholders with proportion held and voting rights	N	Y
7.4.	Details of any provisions related to contracts providing for caps on equity transfer in different stages of the contract, especially during the construction stage and for a few years thereafter	N	Y

7.5.	Commercial lenders, institutional investors, bilateral or multilateral lenders, public issue of bonds, supplier credit, other	N	Y
7.6.	Categorize senior debt, mezzanine debt, other	N	N
7.7.	Amount and tenor of each, fixed or floating rate	N	Y
7.8.	Security and step in arrangements	N	Y
7.9.	Forecast internal rate of return	N	Y
8.	<i>GOVERNMENT SUPPORT</i>		
8.1.	<i>Guarantees (type and details of the guarantees provided—explicit and contingent guarantees)</i>	N	Y
8.1.1.	Minimum revenue guarantee	N	Y
8.1.2.	Exchange rate guarantee	N	Y
8.1.3.	Debt repayment guarantee	N	Y
8.1.4.	Other guarantees	N	Y
8.1.5.	Fiscal commitments and contingent liability disclosure reports	N	Y
8.2.	<i>Grants</i>	N	Y
8.2.1.	Subsidy as a proportion of project value	N	Y
8.2.2.	Capital subsidies paid during construction with periodicity or milestones	N	Y
8.2.3.	Operating subsidies and their periodicity or milestones	N	Y
8.3.	<i>Service payments (payments made by the public authority or purchaser to the private provider for infrastructure services (applicable in private finance initiative–type projects))</i>	N	Y
8.3.1.	Total payments and periodicity	N	Y
8.3.2.	Methodology for calculating payments	N	Y
8.3.3.	Indexation used	N	Y
8.4.	<i>Land leases, asset transfers</i>	N	Y
8.4.1.	Property numbers with the quantum of land transferred	N	N/Y
8.4.2.	Zoning information of land	N	N
8.4.3.	Conditions of transfer of land	N	N
8.4.4.	Equipment transfers: details of equipment with conditions of transfer	N	N

8.4.5.	Human resources / personnel transfers: details and conditions of transfer	N	Y
8.5.	<i>Other support</i>	N	Y
8.5.1.	Non-complete clauses	N	Y
8.5.2.	Provision for revenue shortfall loan	N	N
8.6.	<i>Revenue share, if any</i>	N	Y
8.6.1.	Revenue share on base case	N	Y
8.6.2.	Revenue share on upside	N	Y
8.6.3.	Graphs: annual concessionaire payments to government	N	Y
9.	<b>TARIFFS</b>		
9.1.	<i>Tariffs and pricing (where the infrastructure is financed partly or fully through the levy of user charges)</i>	N	Y
9.1.1.	Methodology for tariff setting/pricing	N	Y
9.1.2.	Scope for reviews of tariff, pricing, regulatory mechanisms	N	Y
9.1.3.	Graphs: tariff increases over time, consumer price index movement	N	Y
10.	<b>CONTRACT TERMINATION</b>		
10.1.	Concessionaire: events of default, termination payments made, methodology used for total payments	N	Y
10.2.	Authority: events of default, termination payments made, methodology used for total payments	N	Y
11.	<b>RENEGOTIATIONS</b>		
11.1.	Nature of variation	N	Y
11.2.	Rationale for variation	N	Y
11.3.	Change in roles and responsibilities of the parties due to the variation, if any	N	Y
11.4.	Change in original risk allocation due to the variation, if any	N	Y
11.5.	Change in original fiscal commitments or contingent liabilities of government due to the variation, if any	N	Y
11.6.	Change in capital or operational costs due to the variation, if any	N	Y
11.7.	Change in tariffs or service levels due to the variation, if any	N	Y

11.8.	Date of variation	N	Y
12.	<i>PERFORMANCE INFORMATION</i>		
12.1.	Annual demand levels	N	N
12.2.	Annual revenues (where revenue share clauses or other related clauses, such as minimum revenue guarantees, are present in the contract)	N	N
12.3.	Actual internal rate of return (where there is government equity investment or other form of government support that is substantial)	N	N
12.4.	Performance (actual year-wise performance against 10 to 12 identified key performance indicators)	N	Y
12.5.	<i>Performance failures</i>	N	Y
12.5.1.	Year	N	Y
12.5.2.	Category of failure	N	Y
12.5.3.	Number of events	N	Y
12.5.4.	Penalty or abatement provided in contract	N	Y
12.5.5.	Penalty or abatement imposed	N	Y
12.5.6.	Penalty paid or abatement effected	N	Y
12.6.	<i>Performance assessments</i>	N	Y
12.6.1.	Audit reports	N	Y
12.6.2.	Independent performance assessments of the independent engineer	N	Y
12.6.3.	Any other performance reports available for the project	N	Y



## Annex F: Comparison of World Bank and Agreed Framework with Current Practice (NSIA)

	WORLD BANK FRAMEWORK	CURRENT DISCLOSURE PRACTICE	AGREED FRAMEWORK
<b>1.</b>	<b><i>BASIC PROJECT INFORMATION</i></b>		
1.1.	Name	Y	Y
1.2.	Location	Y	Y
1.3.	Sector	Y	Y
1.4.	Sponsoring agency/department	Y	Y
1.5.	Estimated project value	Y	Y
1.6.	Project need: benefits provided, economic and social (including specific information on the public interest aspect)	Y/N	Y
1.7.	Stakeholder consultations	N	Y
1.8.	Reason for selection of PPP mode and type in brief	N	Y
1.9. s	Brief description of other modes analyzed and reasons for rejecting these	N	Y
1.10.	Technical description of the physical infrastructure	N	Y
1.11.	Dates of various approvals	N	Y
1.12.	High-level description of the services	Y	Y
1.13.	Estimated demand to be served annually	N	Y
1.14.	Project additionality	N	Y
<b>2.</b>	<b><i>CONTRACT MILESTONES AND DOCUMENTS</i></b>		
2.1.	Date of commercial close	N	Y
2.2.	Date of financial close	N	Y
2.3.	Date of commencement of construction or development	N	Y
2.4.	Date of completion of construction or development	N	Y
2.5.	Date of commissioning	N	Y

2.6.	Date of contract expiry	N	Y
2.7.	All contract documents (with appropriate redactions)	N	Y
3.	<i>PARTIES TO THE CONTRACT WITH CONTACT DETAILS</i>		
3.1.	Public authority: name of authority, name of representative, address, telephone, fax, e-mail	N	Y
3.2.	Private party: name of company or consortium, name of representative, address, telephone, fax, e-mail	N	Y
3.3.	Financiers: name of lead financial institution (FI), other FIs, name of representative of lead FI, address, telephone, fax, e-mail	N	Y
4.	<i>PROCUREMENT INFORMATION</i>		
4.1.	Dates and summary details	Y	Y
4.2.	Final feasibility study (including cost-benefit analysis, if any)	N	Y
4.3.	Land acquisition, rehabilitation, social (including information on human rights impact assessment) and environmental assessment related information	N	Y
4.4.	Reports of independent procurement auditors and (if any)	N	Y
4.5.	<i>Procurement documents</i>		
4.5.1.	Expression of Interest	Y	N
4.5.2.	Pre-qualification or short list	Y	Y
4.5.3.	Request for proposal	Y/N	Y
4.5.4.	Evaluation criteria: brief description with weightage	N	Y
4.5.5.	Brief information on constitution of the evaluation committees	N	N
4.5.6.	Negotiation parameters: brief description of the parameters for negotiation with preferred proponent	N	N
4.5.7.	Minutes of pre-bid meetings	N	N
4.5.8.	Selection of preferred bidder	Y	Y

5.	<i>RISK</i>		
5.1.	Pre-construction risk: all risks up to financial close	N	Y
5.2.	Construction/completion	N	Y
5.3.	Cost risk: capital, operating	N	Y
5.4.	Refinancing risk	N	Y
5.5.	Risk related to change in law, taxes, scope, technical standards, regulatory framework	N	Y
5.6.	Exchange rate risk	N	Y
5.7.	Operating risk	N	Y
5.8.	Commercial risk, market risk, demand risk	N	Y
5.9.	Performance risk	N	Y
5.10.	Financial risk	N	Y
5.11.	Force majeure risk	N	Y
5.12.	Environmental risk	N	Y
5.13.	Social risk	N	Y
6.	<i>EVALUATION OF PPP OPTION (VALUE-FOR-MONEY OR OTHER APPROACH USED)</i>		
6.1.	Evaluation report (value for money or other)	N	Y
6.2.	Rationale for doing the project as a PPP, including any qualitative or quantitative value-for-money, final feasibility studies (including cost-benefit analysis, if any) or other analysis that might have been used, including nonfinancial benefits that have been quantified or considered	N	Y
6.3.	Discount rates used along with the risk premium used, if any, and an explanation for the rate of risk premium used, referring to guidance, if any, available in this regard or describing project-specific circumstances that justify the risk premium rate used	N	Y
6.4.	Risk comparison of other financing mechanisms	N	Y
7.	<i>FINANCIAL INFORMATION</i>		
7.1.	Equity-debt ratio	N	Y
7.2.	Share capital	N	Y
7.3.	Shareholders with proportion held and voting rights	N	Y

7.4.	Details of any provisions related to contracts providing for caps on equity transfer in different stages of the contract, especially during the construction stage and for a few years thereafter	N	Y
7.5.	Commercial lenders, institutional investors, bilateral or multilateral lenders, public issue of bonds, supplier credit, other	N	Y
7.6.	Categorize senior debt, mezzanine debt, other	N	Y
7.7.	Amount and tenor of each, fixed or floating rate	N	Y
7.8.	Security and step in arrangements	N	Y
7.9.	Forecast internal rate of return	N	Y
8.	<i>GOVERNMENT SUPPORT</i>		
8.1.	<i>Guarantees (type and details of the guarantees provided—explicit and contingent guarantees)</i>	N	Y
8.1.1.	Minimum revenue guarantee	N	Y
8.1.2.	Exchange rate guarantee	N	Y
8.1.3.	Debt repayment guarantee	N	Y
8.1.4.	Other guarantees	N	Y
8.1.5.	Fiscal commitments and contingent liability disclosure reports	N	Y
8.2.	<i>Grants</i>	N	Y
8.2.1.	Subsidy as a proportion of project value	N	Y
8.2.2.	Capital subsidies paid during construction with periodicity or milestones	N	Y
8.2.3.	Operating subsidies and their periodicity or milestones	N	Y
8.3.	<i>Service payments (payments made by the public authority or purchaser to the private provider for infrastructure services (applicable in private finance initiative-type projects))</i>	N	Y
8.3.1.	Total payments and periodicity	N	Y
8.3.2.	Methodology for calculating payments	N	Y
8.3.3.	Indexation used	N	Y
8.4.	<i>Land leases, asset transfers</i>	N	Y
8.4.1.	Property numbers with the quantum of land transferred	N	N/Y

8.4.2.	Zoning information of land	N	N
8.4.3.	Conditions of transfer of land	N	Y
8.4.4.	Equipment transfers: details of equipment with conditions of transfer	N	Y
8.4.5.	Human resources / personnel transfers: details and conditions of transfer	N	Y
8.5.	<i>Other support</i>	N	Y
8.5.1.	Non-complete clauses	N	Y
8.5.2.	Provision for revenue shortfall loan	N	Y
8.6.	<i>Revenue share, if any</i>	N	Y
8.6.1.	Revenue share on base case	N	Y
8.6.2.	Revenue share on upside	N	Y
8.6.3.	Graphs: annual concessionaire payments to government	N	Y
9.	<b>TARIFFS</b>		
9.1.	<i>Tariffs and pricing (where the infrastructure is financed partly or fully through the levy of user charges)</i>	N	Y
9.1.1.	Methodology for tariff setting/pricing	N	Y
9.1.2.	Scope for reviews of tariff, pricing, regulatory mechanisms	N	Y
9.1.3.	Graphs: tariff increases over time, consumer price index movement	N	Y
10.	<b>CONTRACT TERMINATION</b>		
10.1.	Concessionaire: Events of default, termination payments made, methodology used for total payments	N	Y
10.2.	Authority: events of default, termination payments made, methodology used for total payments	N	Y
11.	<b>RENEGOTIATIONS</b>		
11.1.	Nature of variation	N	Y
11.2.	Rationale for variation	N	Y
11.3.	Change in roles and responsibilities of the parties due to the variation, if any	N	Y
11.4.	Change in original risk allocation due to the variation, if any	N	Y
11.5.	Change in original fiscal commitments or contingent liabilities of government due to the variation, if any	N	Y

11.6.	Change in capital or operational costs due to the variation, if any	N	Y
11.7.	Change in tariffs or service levels due to the variation, if any	N	Y
11.8.	Date of variation	N	Y
12.	<i>PERFORMANCE INFORMATION</i>		
12.1.	Annual demand levels	N	Y
12.2.	Annual revenues (where revenue share clauses or other related clauses, such as minimum revenue guarantees, are present in the contract)	N	Y
12.3.	Actual internal rate of return (where there is government equity investment or other form of government support that is substantial)	N	Y
12.4.	Performance (actual year-wise performance against 10 to 12 identified key performance indicators)	N	Y
12.5.	<i>Performance failures</i>	N	Y
12.5.1.	Year	N	Y
12.5.2.	Category of failure	N	Y
12.5.3.	Number of events	N	Y
12.5.4.	Penalty or abatement provided in contract	N	Y
12.5.5.	Penalty or abatement imposed	N	Y
12.5.6.	Penalty paid or abatement effected	N	Y
12.6.	<i>Performance assessments</i>	N	Y
12.6.1.	Audit reports	N	Y
12.6.2.	Independent performance assessments of the independent engineer	N	Y
12.6.3.	Any other performance reports available for the project	N	Y



The World Bank Group provides assistance to governments in developing countries to improve access to infrastructure and basic services through public-private partnerships (PPPs). When designed well and implemented in a balanced regulatory environment, PPPs can bring great efficiency and sustainability to the provision of such public services as water, sanitation, energy, transport, telecommunications, healthcare, and education.

The World Bank Group's unique value proposition rests with its capacity to provide support along the entire PPP cycle—upstream policy and regulatory guidance, transaction structuring advice, as well as financing and guarantees to facilitate implementation.



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