



# RE-ENGINEERING REGULATORY CAPACITY

*for*

SUSTAINED ECONOMIC DEVELOPMENT

*by*

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## ...presentation outline

- Infrastructure and Economic Development
- Nigeria Vs Other Countries
- Challenges of Infrastructure provision in Nigeria
- Importance of Regulation in Infrastructure Delivery
- Challenges for Nigeria
- ICRC and PPP
  - Private Sector Participation in Infrastructure Provision
  - Necessity for regulation in Private Participation/Investment in Infrastructure Provision Environment
  - Infrastructure Regulatory Framework in Nigeria
- Way forward

## ... infrastructure & economic health

Country	GDP per Capita (\$)	Life Expectancy (Yrs)	Adult Literacy (%)	Quality of Life (Rank)
Netherlands	52200	79.8	99.0	5
Brazil	8000	72.4	90.0	75
Turkey	9600	71.8	88.7	79
India	1100	64.7	61.0	134
Nigeria	1500	46.9	69.1	158
Ethiopia	780	53	36.0	171

## ... infrastructure & economic health

- The Health of a Nation's Economy is significantly dependent on the state of its infrastructure

### COUNTRY A (Ethiopia)

- GDP per capita – \$780
- Life Expectancy – 53yrs
- Adult Literacy – 36%
- Pop without water – 58%

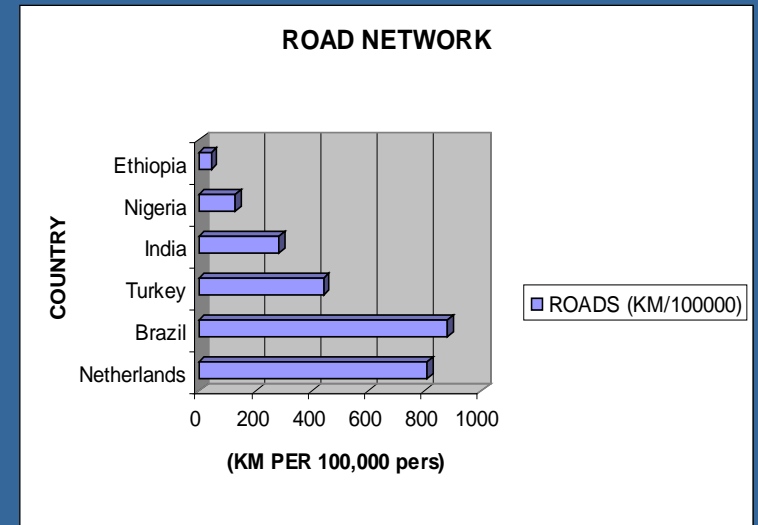
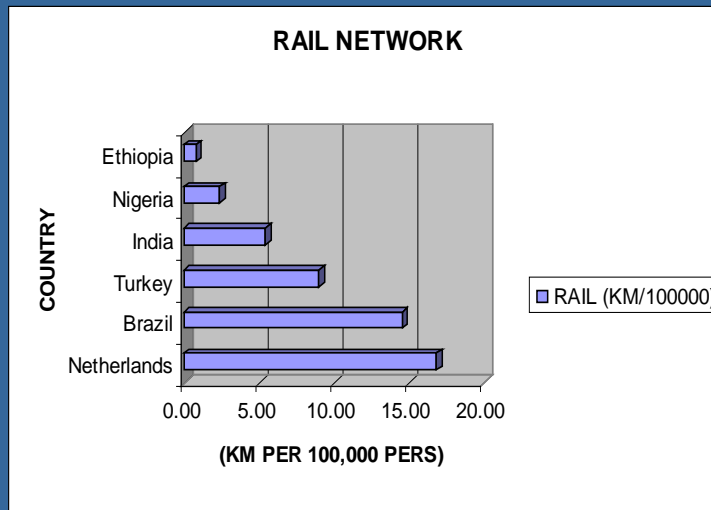
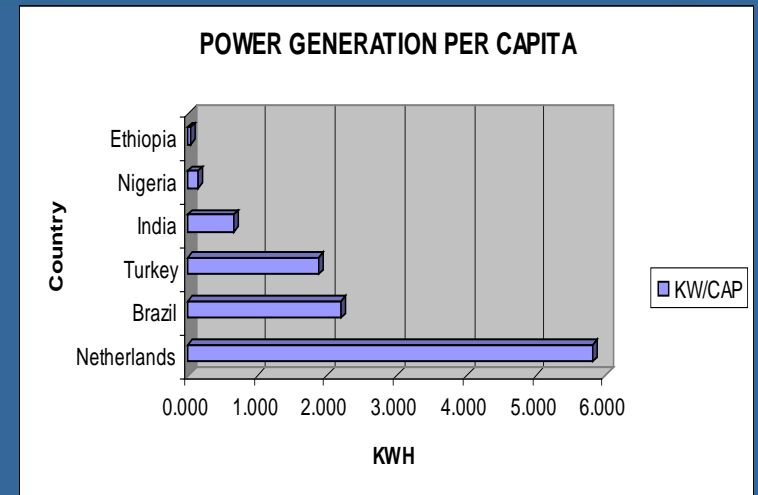
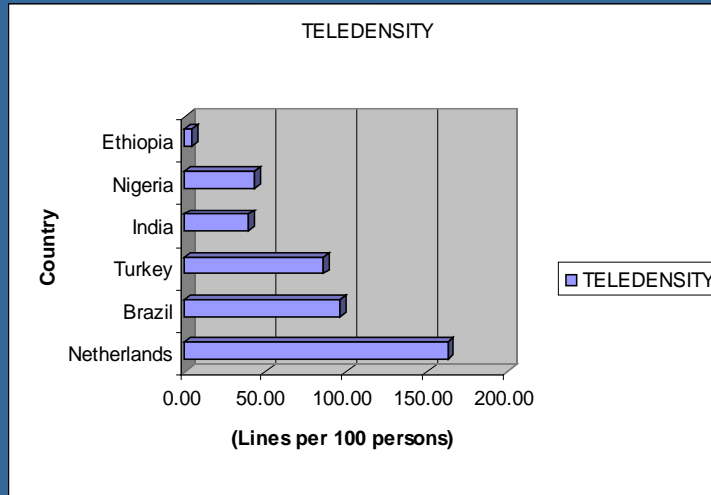
### COUNTRY B (Netherlands)

- GDP per capita – \$52,200
- Life Expectancy – 79.8 yrs
- Adult Literacy – 99%
- Pop without water – 0%

### REASONS

- **More Physical Capital** – better roads, bridges, dams, more machines, etc.
- **More Human Capital** – better education, better training, healthier
- **More Technology Capital** – more scientist, research facilities, more advanced technology, more intellectual property
- **More Successful Institutions** – where cheats can be found and punished, if only by a refusal to do business with them in the future

# ... Nigeria Vs other countries



## ... challenges of infrastructure provision

- The major challenges of infrastructure provision include:
  - Financing
  - Appropriate Institutional Capacity
  - Regulation
- Financing
  - Traditionally, government has been the sole financier of infrastructure projects, often taking responsibility for implementation, operations and maintenance as well.
  - However, rapidly declining financial resources make the option of capital infusion through the fiscal budget to rehabilitate, replace instead of maintaining infrastructure less feasible, thereby accelerating infrastructure deterioration.
  - Funding of infrastructure through budgetary allocation is volatile and rarely meets crucial infrastructure expenditure requirements in a timely and adequate manner.
  - In times of financial crises, capital budgets receive a larger brunt of fiscal retrenchment
  - The greater the potential for mismanagement for this type of government expenditure, the lower the quantity and quality of infrastructure.

## ... challenges of infrastructure provision

- Appropriate institutional capacity
  - Institutional capacity for project identification, development, implementation and management is yet to be developed or fully developed
  - Lack of capacity of public authorities:
    - to carry out economic appraisal of projects.
    - undertake development of a long-term investment strategy which will provide a planning tool for the development of infrastructure, whether financed from public funds or through PPP contracts;
    - to evaluate any contingent liabilities and risks that arise from PPP contracts, and associated agreements such as Power Purchase Agreements, and any sub-sovereign or other guarantees, partial risk insurance, subsidies, or exchange rate volatility;

## ... challenges of infrastructure provision

- Regulation

- Multiplicity of legislations and institutions with conflicting and overlapping functions, procedures and processes.
- Empowerment of public authorities to enter into agreements for the implementation of privately financed infrastructure projects and delegate their statutory functions to private companies through appropriate legislation;
- Absence of regulation and licensing regime for public service operators to ensure operation is transparent, timely, and effective;
- Multiplicity of procurement procedures;
- Existence of distortions created by existing tax, banking, company, or any other laws that would bias the investment decisions of public authorities and commercial decisions of private investors, contractors, or operators;
- Development and regulation of Nigeria's financial and capital markets to provide for transparency, stability and liquidity for investors.

## ... infrastructure and regulation

- **Regulation:** The process whereby a designated authority provides oversight and establishes rules for firms in an industry.
- Regulation places constraints on behavior, establishes a scheme of incentives and penalties, and addresses issues that are politically contentious.
- Decisions are implemented through a rule or order issued by an executive authority or *regulatory agency* of a government and having the force of law.
- **Regulatory agency:** An agency that oversees and sets rules for a specified type of activity or business in a sector.

## ... infrastructure and regulation

### Why regulate:

Utility regulation can occur for several reasons.

- control *market power*
  - facilitate *competition*
  - promote *investment* or system expansion
  - stabilize *markets*
  - as a source of cash flow for funding other government activities
- In general, though, *regulation* occurs when the government believes that the *operator*, left to his own devices, would behave in a way that is contrary to policy *objectives*.
  - Governments are primarily concerned with new investments, service expansion, and low prices.

## ... infrastructure and regulation

### Typical utility regulatory duties include:

- monitoring network and service availability
  - standard setting
  - regulating prices and service quality
  - supervising and enforcing operator commitments
  - handling complaints
  - providing policy advice
  - monitoring competition
  - settling disputes
  - monitoring the performance of the sector
  - In some instances, conduct auctions and grant concessions
  - Ensuring compliance with safety standards and regulatory procedures
- A clear determination of responsibilities and procedures is relevant to successfully perform these tasks.
  - Monitoring of access and competition is a key responsibility of regulatory agencies.

## ... regulatory challenges for Nigeria

Introduction of regulation has been part of the economic reform process for over 2 decades, and involves market reforms, the development of utility regulation, and establishment of market structures

SECTOR	KEY REFORM OBJECTIVES	CURRENT STATUS
Rail Transport	<ul style="list-style-type: none"> <li>▪ Draft Bill to deregulate and introduce private sector participation waiting accent.</li> <li>▪ Reduction of the role of Government to the development of policies;</li> <li>▪ Establishment of an independent regulator within the framework of the National Transport Commission (NTC);</li> <li>▪ Establishment of the National Railway Authority;</li> <li>▪ Development of a private sector competitive rail market;</li> <li>▪ Creation of the enabling environment for private sector participation in the provision of rail services; and</li> <li>▪ Separating the technical safety function by the operators from the supervisory and oversight safety regulatory function of the regulator.</li> </ul>	<p>Draft Bill is ready and awaiting accent.</p> <ul style="list-style-type: none"> <li>• National Transport Commission (NTC) yet to be established;</li> <li>• National Railway Authority Commission (NTC) yet to be established;</li> <li>• Private sector competitive rail market yet to be developed</li> <li>• Ongoing effort to introduce PPP</li> </ul>

## ... regulatory challenges for Nigeria

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<p>Road Transport</p>	<ul style="list-style-type: none"> <li>•Develop a national Transport Policy</li> <li>•Draft a Bill to deregulate, and introduce private sector participation, tariff for usage, fund for road maintenance, and Federal Roads Authority.</li> <li>•Setup an independent regulator</li> <li>•Establish the Federal Roads Authority, the landlord</li> <li>•Concessionaires to be introduced to maintain and operate sections of federal highways.</li> </ul>	<ul style="list-style-type: none"> <li>•Draft Roads Bill is awaiting accent.</li> <li>•Concessionaires yet to be introduced</li> </ul>
<p>Airports</p>	<ul style="list-style-type: none"> <li>•Reform strategy is to introduce private sector participation through PPP initiatives.</li> <li>•Draft a new Civil Aviation Act</li> <li>•Concessionaires to be introduced to develop, maintain and operate the airports</li> </ul>	<ul style="list-style-type: none"> <li>•The new Civil Aviation Act, which encourages private sector participation, is in place.</li> <li>•Concessionaires yet to be introduced</li> </ul>

## ... regulatory challenges for Nigeria

Seaports	<ul style="list-style-type: none"> <li>• Draft a new Port and Harbor Bill.</li> <li>• Draft a Bill to introduce an independent regulator ready.</li> <li>• Concessionaires to be introduced to provide superstructure and cargo handling equipment, undertake upgrade and modernization of quay apron and staking areas, and develop Container terminals and RoRo ports through BOT arrangement.</li> </ul>	<ul style="list-style-type: none"> <li>• Draft Port and Harbor Bill ready.</li> <li>• Draft Bill to for independent regulator ready.</li> <li>• 26 Port Terminals (8 ports) on concession and concessionaires had commence operation.</li> </ul>
Inland Waterways	<ul style="list-style-type: none"> <li>• Draft a new Inland Waterways Bill</li> <li>• Draft Bill for sectoral independent regulator</li> <li>• Dredging the lower Niger to make the waterway navigable in preparation for concession</li> <li>• Concessionaires to be introduced to maintain and operate inland waterways.</li> <li>• Private operators to provide own vessels and maintenance jetties.</li> </ul>	<ul style="list-style-type: none"> <li>• Draft Inland Waterways Bill is ready and waiting enactment.</li> <li>• Draft Bill for sectoral independent regulator is also ready and waiting enactment.</li> <li>• Dredging of the lower Niger underway</li> <li>• Concessionaires yet to be introduced</li> </ul>

## ... regulatory challenges for Nigeria

Oil and Gas	<ul style="list-style-type: none"> <li>• Draft a new Petroleum Industry bill to establish the legal and regulatory framework, institutions and regulatory authorities for the Nigerian petroleum industry, to establish guidelines for the operation of the upstream and downstream sectors, and for purposes connected with the same</li> <li>• Separate policy making from operation and introduce independent regulators for the industry;</li> <li>• Unbundle and commercialize the operations of NNPC</li> <li>• Introduce private sector participation in the operations of the various successor companies of NNPC.</li> </ul>	<ul style="list-style-type: none"> <li>• The draft Petroleum Industry bill is awaiting enactment</li> </ul>
Power	<ul style="list-style-type: none"> <li>• Develop a National Electricity Power Policy</li> <li>• Draft a Electric Power Sector Reform Bill</li> <li>• Vertical unbundling of erstwhile NEPA</li> <li>• Develop the Electric power market with new Grid, Metering &amp; Distribution Codes, Market Rules, and new Trading Arrangements</li> <li>• Introduce private sector participation in the 18 New Business Units</li> </ul>	<ul style="list-style-type: none"> <li>• Electric Power Sector Reform Act 2005 is in place</li> <li>• NEPA unbundled into 11 Distribution, one Transmission and 6 Generation Successor Companies</li> <li>• Electric power market with new Grid, Metering &amp; Distribution Codes, Market Rules, and new Trading Arrangements instituted</li> <li>• Possible private sector participation in the 18 New Business Units</li> </ul>

## ... regulatory challenges for Nigeria

### •Telecomm unication

- Develop a National Telecommunications Policy developed for market liberalization and competition;
- Draft a Bill to establish by the Nigerian Communications Commission, an independent regulator.
- Introduce private sector participation into the deregulated telecommunications industry.

- National Telecommunications Policy developed for market liberalization and competition;
- NCC established by the Nigerian Communications Act 2003
- Appropriate regulations and guidelines issued
- NCC has licensed various Digital Mobile Operators (DMOs), Fixed Wireless Access Operators (FWAs), Long Distance Operators (LDOs), Internet Service Providers (ISPs), a second National Carrier, launched the unified access service license (UASL), to promote competition in all segments of the market
- Tele-density rose from 0.4 lines per 100 persons to 42 lines per 100 persons

## Public Private Partnerships– Definitions

- “The design, build, finance and operation, by the private sector, of assets and services that the government has traditionally procured and provided to the community and which have previously been funded by taxpayers. In return, the private sector generates revenue either from the levying of tariffs on users or the receipt of periodic service payments from the government over the life of the PPP agreement” KPMG.

### Provides:

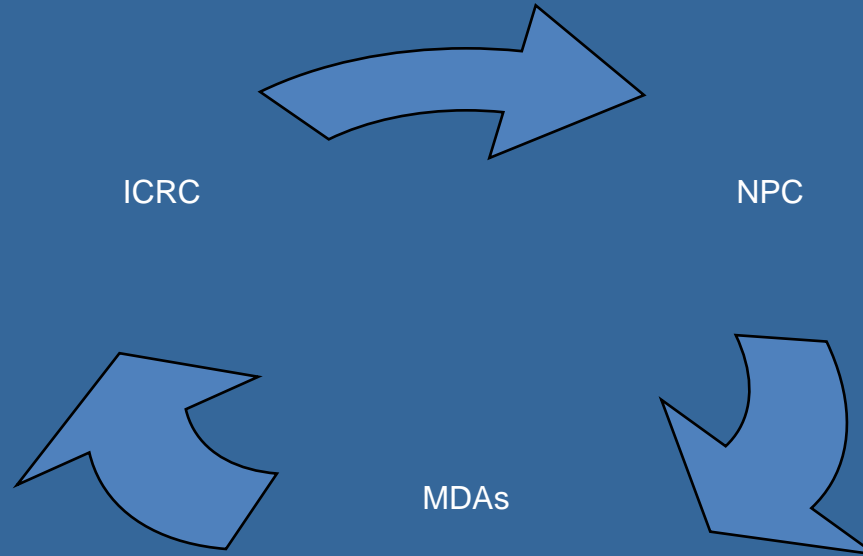
- Dependable and sustainable funding
- Potential for increased accountability
- Risk sharing
- Improved and sustained delivery of Public Services
- Reduced whole life of projects
- Government remains accountable for service delivery
- Better and sustainable incentive for service delivery
- Increased Private Sector Dynamism

## NEED FOR PPP REGULATION

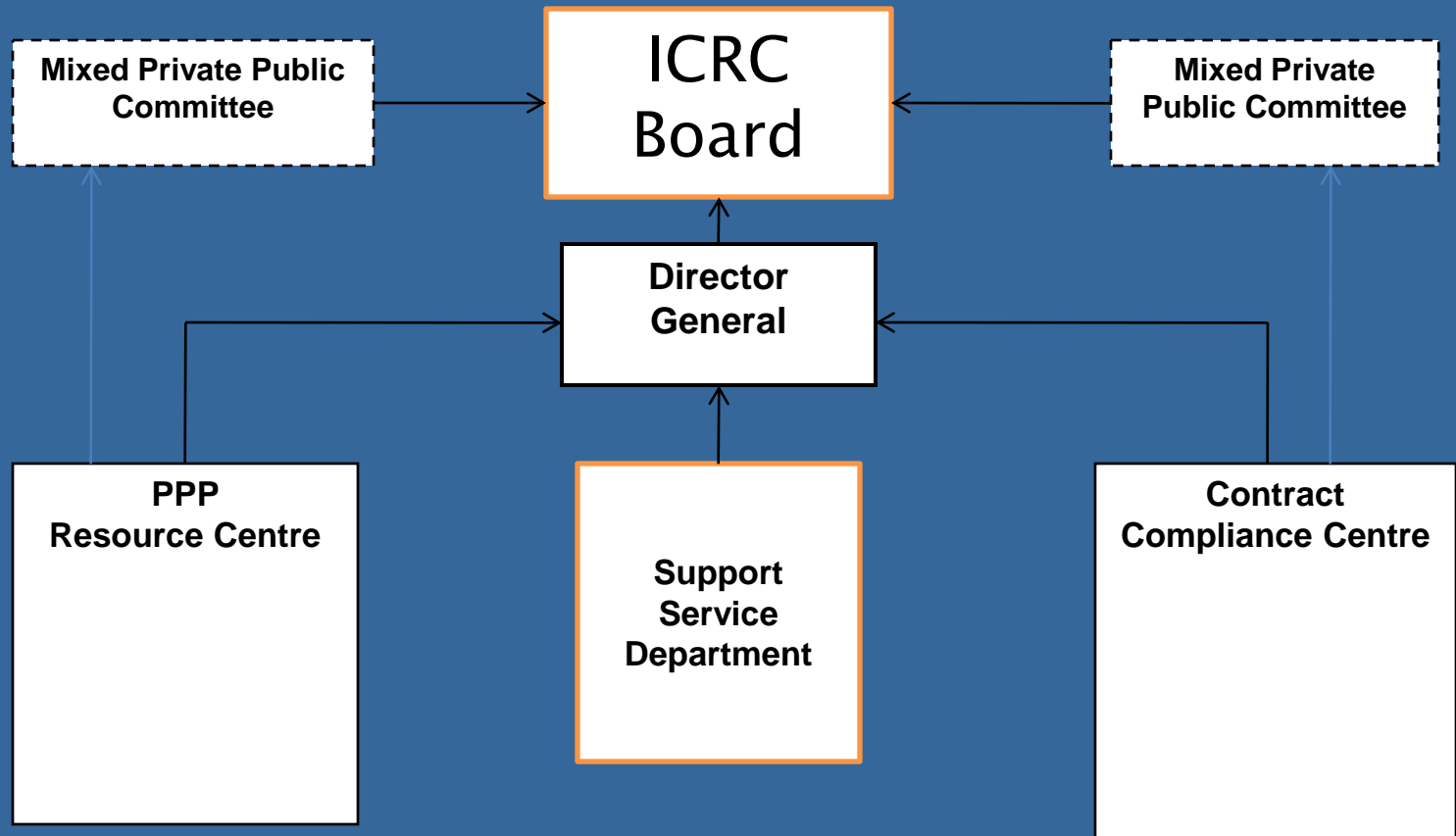
- Government's objectives are typically different from an operator's objectives.
- Governments are primarily concerned with new investments, service expansion, and affordable prices.
- The private sector, in contrast, is likely to want to maximize profit, an objective that, left unchecked, is generally understood to be inconsistent with widely available services and low prices across the board. Regulation brings this under check.
- To ensure compliance.
- Regulatory apparatus provides stability, protects consumers from the abuse of market power, protect operators and investors from politically-driven decisions that would sacrifice long run efficiency for short term political expediency
- Regulation provides incentives for service providers to operate efficiently and make the needed investments.

- In recognition of the necessity for regulation, the following framework is place in Nigeria
  - [The ICRC Act](#)
  - [The National Policy and Guidelines](#)
  - Financing Structures
    - Proposed Viability Gap Funding (VGF)
    - Financing Intermediary Loan Scheme (FIL)
    - International Financing Institutions
    - Private Sector Loans
  - Project Development
    - Project Pipelines
    - Project Development Fund
    - Nigerian PPP Project
    - Donor Technical Assistance

- Integrated Planning



- PPP Steering Committees
- The PPP Process



## ... way forward

- Pursue deregulation and liberalization with vigour;
- Strengthen regulatory institutions
- Enact all pending reform bills that would provide enabling environment for market development and competition
- Institute PPP as the method of choice to mitigate paucity of funds for infrastructure development
- Strengthen institutions and their capacity to deliver public service
- Develop our funding institution, particularly the capital market as the primary source of funding for PPPs

# THANK YOU

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