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INSTITUTIONAL DISCRETION AND POLICY IMPLEMENTATION FIDELITY IN NIGERIA'S PUBLIC-PRIVATE PARTNERSHIP FRAMEWORK: A DOCUMENTARY ANALYSIS OF THE INFRASTRUCTURE CONCESSION REGULATORY COMMISSION

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ABSTRACT: The effectiveness of Public-Private Partnership (PPP) policy is determined not just by the strength of formal regulations, but also by how public institutions interpret and apply them to specific transactions. This article examines how Nigeria's federal PPP framework authorises and structures discretion, and how it affects policy implementation integrity, with the Infrastructure Concession Regulatory Commission (ICRC) as the institutional focus. A qualitative documentary design is used, primarily focusing on documents issued between 2024 and September 2026, with an analytical framework derived from street-level bureaucracy and institutional theory. The study contends that fidelity entails adhering to the substantive objectives of policy rather than mechanical procedural compliance, and that differential approval levels, standardised standards, and the Model PPP Agreement organise discretion rather than restrict it. It argues that clearer regulations can minimise procedural ambiguity but not substantive uncertainty, and delegation without technical capacity shifts the implementation challenge. The 2026 transfer of Akanu Ibiam International Airport (Enugu) is used as illustrative rather than causal evidence. The article recommends, among others, that relevant government agencies in the infrastructure ecosystem should adopt standardised coordination protocols for multi-agency PPP transactions, and should assign a lead institution for each transaction, set response times for inter-agency clearances, and provide for the tracking and accounting of delays, without reducing regulatory requirements. This would reduce institutional ambiguity and improve information flow.

Keywords: Public-Private Partnership, Policy Implementation, Institutional Discretion, Implementation Fidelity, Street-Level Bureaucracy, Infrastructure Governance

INTRODUCTION

Public-private partnerships (PPPs) have emerged as an important tool in modern infrastructure governance, as governments grapple with infrastructure deficits, economic restrictions, increased service demands, and the need to mobilise private resources and expertise. Beyond financing, PPPs are institutional structures in which public and private players share risks, resources, decision-making authority, and performance duties throughout the project's life cycle. As a result, their

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effectiveness is heavily influenced by the institutional structure that governs project identification, assessment, procurement, contracting, and management (OECD, 2012; World Bank Group, 2017).

In Nigeria, the Infrastructure Concession Regulatory Commission (ICRC) was established by the ICRC (Establishment, Etc.) Act of 2005 to facilitate, regulate, monitor, and support federal PPP arrangements through Ministries, Departments, and Agencies (MDAs). The National Policy on PPP and subsequent regulations, manuals, guidelines, and project-development instruments established a structured lifecycle that included project identification, feasibility assessment, business case development, procurement, negotiation, approval, and contract management (ICRC, 2009, 2018).

However, formal rules do not guarantee consistent policy execution. PPP regulation necessitates officials interpreting broad policy objectives, evaluating technical evidence, reconciling competing perspectives, and responding to project-specific conditions. In this regard, Lipsky's (1980, 2010) street-level bureaucracy theory describes how administrative discretion occurs as officials translate broad policy prescriptions into operational decisions, whereas Tummers and Bekkers (2014) emphasise discretion as a crucial component of policy execution. This is especially important for PPPs because infrastructure projects have distinct demand characteristics, finance arrangements, risk profiles, regulatory requirements, and institutional contexts. Excessive rigidity may impede project-specific efficacy, whereas uncontrolled discretion may result in inconsistency, unequal treatment, regulatory capture, or divergence from policy objectives. The fundamental institutional concern is how discretion might be structured, limited, documented, and subject to appropriate oversight.

To address the issues raised above, the ICRC's 2025 regulatory notice/framework introduced differentiated approval thresholds via Project Approval Boards (PABs) established within MDAs, allowing qualifying PPP projects below prescribed thresholds to be approved at the MDA level, while larger or multi-agency projects require Federal Executive Council (FEC) approval (ICRC, 2025a). As observed by Elias & Co. (2025), the approval criteria are around ₦20 billion for ministries and ₦10 billion for parastatals and agencies. An ICRC Certificate of Compliance is still required. As a result, rather than eliminating administrative discretion, the reform redistributes it by allowing certain decisions to be made closer to project owners while maintaining central regulatory safeguards. This provides an important environment for investigating whether delegated discretion improves policy responsiveness while preserving consistency, accountability, and regulatory oversight.

This study investigates implementation fidelity, defined as the extent to which implementing institutions adhere to the core aims and requirements of PPP policy while correctly adjusting procedures to project-specific realities. Fidelity differs from mechanical procedural compliance in that rigid adherence to processes might, in some cases, undercut the substantive reasons they are supposed to serve. The study thus employs street-level bureaucracy and institutional theories to investigate how formal regulations, organisational structures, professional standards, and accountability mechanisms influence and constrain discretion (Lipsky, 1980; North, 1990; Ostrom, 2005). Methodologically, it employs a documentary analysis of the regulatory architecture governing discretion, focusing primarily on the period 2024–September 2026. The analysis does

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not include interviews or direct observation; thus, it does not pretend to demonstrate how officials exercise discretion; rather, it looks at how the regulatory framework authorises, frames, limits, and predicts its exercise. This period is viewed as an essential phase of institutional development, rather than evidence that the improvements resulted in future project outcomes.

Statement of the Problem

Nigeria's continuing infrastructure deficit has increased reliance on PPPs to raise private funding, technical experience, and long-term asset management capability. However, the effectiveness of PPPs is determined not only by the availability of private financing, but also by the quality of public sector preparation, which includes project identification, feasibility assessment, demand analysis, environmental and social assessment, financial modelling, value-for-money analysis, risk allocation, procurement, negotiation, and contract management (World Bank Group, 2017). There are numerous laws, regulations, guidelines, manuals, and institutional practices that regulate PPPs implementation, as they may not provide complete or consistent solutions to project-specific situations. For instance, Adebayo et al. (2025) identify significant gaps between Nigeria's formal PPP rules and the institutional steering strategies required for long-term PPP design, implying that the presence of extensive regulatory provisions does not guarantee institutional coherence or consistent implementation.

The resulting dilemma is one of limited institutional discretion. Excessively limited discretion may result in rigid, slow, and procedurally driven decision-making that fails to account for legitimate differences between projects, whereas excessive discretion may result in unpredictability, inconsistent rule application, poor accountability, and deviations from policy objectives. Although Nigerian PPP scholarship has focused on financing, sustainability, institutional design, risk allocation, and infrastructure development, little attention has been paid to the micro-level process by which regulatory officials interpret and apply PPP rules in project-specific contexts. Adebayo et al. (2023) emphasise the relevance of institutional rule sets for long-term PPPs, whereas Obasa and Oluyomi (2024) emphasise accountability, people-centeredness, risk-sharing, and revenue distribution in PPPs. Similarly, Ackrill et al. (2023) investigate regulatory discretion in Nigeria, although not in a PPP environment. This study fills this gap by investigating the institutional architecture between PPP regulations and implementation, including where discretion originates, how it is limited, and how it relates to implementation fidelity.

Objectives of the Study

The main aim of this study is to investigate the relationship between institutional discretion and policy implementation fidelity in Nigeria's federal PPP framework, using the ICRC as the institutional emphasis. Specific aims are to:

1. Examine the nature and sources of institutional discretion as permitted and organised by Nigeria's PPP regulatory framework.
2. Examine how ambiguity, institutional coordination, capability, and regulatory constraints influence the conditions under which PPP policy is implemented; and

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3. Evaluate how recent institutional and regulatory reforms have attempted to strike a balance between administrative flexibility, policy integrity, accountability, and transaction quality.

METHODOLOGY

The study uses a qualitative documentary research design, with framework-based theme analysis of government documents (Bowen, 2009; Braun & Clarke, 2006). The design is suitable for investigating institutional procedures, regulatory requirements, and formal authority allocation rather than calculating causal links. Street-level bureaucracy theory is thus used as the lens for identifying potential areas of discretion rather than testing officials' behaviour, because documents establish what officials are authorised and expected to do but cannot demonstrate how discretion is exercised in practice. The document selection included publicly available statutes, rules, regulations, guidelines, manuals, templates, thresholds, and other institutional instruments. It covers the period of 2024 to September 2026, with the ICRC (Establishment, Etc.) Act 2005, the 2009 National Policy on PPP, and the 2018 PPP Manual serving as baseline instruments. Eleven documents were included, three baseline instruments and eight released PPP guidelines, while unpublished drafts, internal memoranda, and project-level files were eliminated. Scholarly literature (textbooks and journals) and independent legal commentary were used solely for verification and not as primary proof of institutional design.

The analysis used a deductive-inductive framework (Fereday & Muir-Cochrane, 2006). Scott's (1990) criteria for document trustworthiness were used, which included authenticity, credibility, representativeness, and meaning. Because most documents were published by the organisation being studied, they are viewed primarily as evidence of formal institutional design and stated regulatory stances, rather than evidence of implementation performance. The paper acknowledges the limitations of single-analyst coding, which did not include inter-coder reliability calculations. Participant consent procedures were not necessary because the research is based solely on publicly available documents and does not include any human subjects.

CONCEPTUAL, THEORETICAL, AND EMPIRICAL LITERATURE REVIEW

This section combines the conceptual and theoretical reviews with a review of associated literature, ensuring that each body of study is given once and used throughout. It defines key ideas, establishes a theoretical framework, and examines the empirical and policy literature on Nigeria's PPP framework.

Conceptual Review

Public–Private Partnership

A public-private partnership is a long-term contractual agreement in which public and private actors collaborate to provide infrastructure or public services while sharing obligations, liabilities, resources, and performance expectations. Unlike traditional public procurement, a PPP is usually a long-term collaboration in which the private partner may participate in funding, construction,

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operation, maintenance, or service delivery. The World Bank Group (2017) emphasises that PPPs require a suitable institutional, legal, and policy framework because performance is determined throughout the project's life cycle, not just during the procurement stage. Reviews of worldwide experience warn that PPPs have many forms, and that evidence of their efficacy is variable, putting further emphasis on the quality of the surrounding institutions (Hodge & Greve, 2007).

According to the Commission, a PPP is a contractual agreement between a public institution (federal, state, or local) and a private-sector organisation to provide an infrastructure project or service in which the parties share risks, rewards, and losses (ICRC, 2026a). The scholarly literature has a similar definition, describing a PPP as a partnership between the public and private sectors, whether enterprises or non-governmental organisations, to deliver infrastructure, services, and public utilities. PPP governance thus entails not just enforcing set regulations, but also determining how those rules should be applied to various projects.

PPP Policy Implementation

Policy implementation is the process of translating policy decisions into administrative operations, programmes, decisions, and outcomes. The implementation literature has long demonstrated that policy design quality cannot explain results on its own. Pressman and Wildavsky (1984) argued that the more clearances and participants a programme requires, the lower the likelihood that it will be carried out as intended, and Matland (1995) demonstrated that implementation is shaped by two aspects of the policy itself: the ambiguity of its goals and means, and the degree of conflict among the actors. The point is especially relevant to PPP policy because the framework defines broad standards while specific transactions require detailed administrative interpretation.

In Nigeria, PPPs are implemented at several institutional levels. The ICRC provides regulatory oversight and technical guidance, MDAs originate and develop projects, transaction advisers provide specialist input, approval bodies examine projects at appropriate stages, and private-sector participants provide commercial and financial expertise. The process is basically interorganisational. Implementation fidelity is thus defined not only by individual officials' actions, but also by how well different organisations understand their respective tasks and share information.

Policy Implementation Fidelity

The idea of implementation fidelity originated in social-care research, where it refers to how well an intervention is provided as intended. Carroll et al. (2007) define fidelity as adherence to the intervention's essential content, moderated by factors such as the complexity of the intervention and the quality of its delivery. The notion is applied here to the regulatory implementation of public policy, which is an intellectual step rather than a declaration that PPP regulation is equal to therapeutic intervention. What remains consistent is the separation between an intervention's essential requirements and its adaptive processes.

In PPP regulation, implementation fidelity is described as substantive conformance to the framework's goals, principles, and regulatory standards, backed up by controlled and accountable

procedural flexibility. A regulatory officer may, for example, request further information from a project sponsor, amend a financial model, suggest modifications to risk allocation, explain a business case, or revise a procurement plan. These interventions may affect aspects of the original project design without resulting in implementation failure. This paper defines policy implementation fidelity as the extent to which the ICRC and other relevant institutions translate Nigeria's PPP policy and regulatory requirements into project-level decisions that preserve the framework's substantive objectives while allowing for evidence-based, documented, and reviewable adaptation to specific project circumstances.

Institutional Discretion

Institutions are the formal and informal rules, structures, norms, procedures, and capacities that organise public authority and influence how policy is interpreted and implemented (North, 1990; Ostrom, 2005). Institutional discretion refers to the power of public officials to make decisions when applying broad rules to specific situations. Davis (1969) defined discretion in terms of the effective constraints on an official's power: an official has discretion when such restrictions allow for a choice between alternative courses of action or inaction. He contended that the goal of policy is not to remove discretion, but rather to limit, structure, and check it. Lipsky (1980, 2010) further claims that discretion is inherent in public administration since officials frequently encounter situations in which regulations are incomplete, resources are limited, and cases vary. Maynard-Moody and Musheno (2000) demonstrate that officials use discretion considering professional norms, organisational expectations, and their perceptions of desirable results.

Discretion is neither inherently good nor essentially bad, and its results vary according to the institutional environment in which it is deployed. In regulatory organisations, it can help with problem solving, technical adaptation, and making prompt choices. When it is not well-defined, it can lead to inconsistent execution and a lack of responsibility. However, discretion can create considerable gaps between policy design and policy implementation (Ackrill et al., 2023).

Theoretical Framework

Given the emphasis on institutional discretion and implementation fidelity, the study employs two theoretical lenses: street-level bureaucratic theory and institutional theory.

Street-Level Bureaucracy Theory

Lipsky (1980, 2010) developed street-level bureaucracy theory, which investigates how public employees who interact directly with residents put policy into effect through the decisions they make in their daily work. Its core claim is that implementation does not imply the mechanical execution of decisions made elsewhere. Officials operate with limited resources, competing demands, imprecise instructions, and case-specific conditions, and their collective choices, together with the routines they establish to manage, shape the policy that citizens experience. Lipsky compared frontline public services to the coal mines of the welfare state, where the tough daily labour of government is carried out. Discretion is thus inherent in public administration, as laws

cannot predict every situation that officials face, and it is influenced by organisational restrictions, professional norms, workload, and available resources. Subsequent research has proven the need of discretion while acknowledging the contradiction between administrative uniformity and the practical need to modify basic principles to specific instances (Evans, 2020; Tummers & Bekkers, 2014). Chang and Brewer's (2023) systematic review demonstrates how widely the theory has been applied over time, while also pointing out that it is frequently employed as research setting rather than a major issue, and that academics from various disciplines interpret street-level behaviour differently.

The idea has two drawbacks that apply here. Its original formulation was closely related to citizen-facing service work, making direct application to specialised regulatory bodies more difficult, and an emphasis on individual discretion may underestimate the importance of organisational rules, hierarchical controls, professional standards, and accountability mechanisms. Hupe and Hill (2007) address the second point by situating street-level discretion within multiple accountability relations, including hierarchy, profession, and society, and the larger literature now extends the theory to officials whose roles include regulating social and economic behaviour (Hupe et al., 2015). Ackrill et al. (2023) apply it specifically to regulation, distinguishing between policies that provide services and rules that limit banned activity, and demonstrate that street-level officers enforcing motorcycle-taxi bans in Lagos used discretion, resulting in both under and over-enforcement. This finding is relevant to the current study because it demonstrates that discretion can yield results that deviate from formal policy requirements, making the link between discretion and fidelity a significant subject.

The theory is relevant to this study because regulatory officers in charge of project appraisal, Outline Business Case and Full Business Case evaluation, financial-model review, compliance, stakeholder engagement, and monitoring must transform broad PPP guidelines into project-specific judgements. When legislation or guidelines are unable to predict the specifics of a project, expert judgement may be required. However, ICRC workers follow statutes, regulations, standards, approval requirements, institutional procedures, and hierarchical review. The study thus reframes Lipsky's concept of discretion as institutionally constrained discretion: professional judgement employed within recognised regulatory constraints and subject to documentation, scrutiny, and accountability, rather than unrestricted administrative flexibility.

Institutional Theory

Institutional theory is most linked with North (1990), who defines institutions as the formal and informal rules that regulate human interaction, shape incentives, minimise uncertainty, and influence organisational behaviour and performance. Ostrom (2005) improved the perspective by introducing the Institutional Analysis and Development (IAD) framework, which examines how rules-in-use, actors, information, incentives, and decision-making structures influence interactions and outcomes. Organisations are also influenced by the expectations of those on whom they rely, such as funders and external authorities (DiMaggio & Powell, 1983). Adebayo et al. (2025), based directly on Ostrom's IAD paradigm, show that the link between formal PPP norms and real institutional practice is crucial for understanding governance deficiencies in Nigeria's PPP

environment. They discover that, whereas sustainability-related laws exist across many legislative frameworks, gaps remain between formal standards and the steering methods required for sustainable PPP implementation.

Bureaucracy is the organisational form through which public regulations are administered, hence institutional analysis must take this into account. According to Weber (1978), bureaucracy is defined by hierarchy, division of labour, formal norms and procedures, impersonality, and professional competence, all of which contribute to stability, predictability, and technical specialisation in complex administrative organisations. Bureaucracy is currently defined as the institutional framework and professional administrative capability that interprets, coordinates, and turns PPP law and guidelines into project-specific decisions. That reading maintains Weberian emphasis on rules and hierarchy while also including the technical expertise and knowledge required for the exercise of bounded discretion.

Institutional theory's core proposition is that the institutional environment in which players operate shapes individual and organisational behaviour. Institutions establish the rules, duties, incentives, limitations, and expectations that impact actions; therefore, administrative behaviour cannot be understood solely via individual preferences. Institutional theory has limitations: its concentration on structures and regulations may understate agency, professional judgement, and discretionary action, and its emphasis on formal arrangements may overlook the gap between written rules and norms in practice. These limits are why the theory works best when combined with street-level bureaucracy theory, which explains how officials exercise discretion within institutional constraints.

Institutional theory is relevant to the study because regulatory officers' actions are entrenched in an architecture that includes the ICRC Act, the National Policy on PPP, laws, guidelines, approval thresholds, organisational procedures, and interagency relationships. These agreements establish the formal boundaries within which authorities conduct business-case evaluations, financial model reviews, procurement assessments, compliance, and monitoring. The theory thus provides a foundation for investigating how institutional rules enable, regulate, and legitimise bureaucratic discretion, as well as how the quality of those arrangements influences faithfulness.

Review of Related Literature

The Development of Nigeria's PPP Regulatory Framework

Nigeria's federal PPP framework has evolved from the establishment of the ICRC under the 2005 Act to a more sophisticated institutional architecture. The National Policy on PPP established a broader policy framework, and subsequent regulations, manuals, and guidelines attempted to define the duties of MDAs and other project development and procurement actors (ICRC, 2005, 2009, 2018). This change reflects a larger shift away from perceiving PPPs as standalone infrastructure deals and towards viewing them as an institutionalised type of public infrastructure development.

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Its relevance goes beyond the volume of documents created. Institutional maturity is determined by how well the various regulations interact. Adebayo et al. (2025) demonstrate that Nigeria's framework contains numerous formal rules governing sustainable infrastructure development, but the linkages between them are missing in key areas, allowing legislation to coexist with institutional gaps, particularly where duties and requirements cross legal and administrative boundaries.

The period from 2024 to 2026 is important because new instruments made the framework more functional. These include the Commission's expedited certification announcement (ICRC, 2024a), the PPP project development guidelines (ICRC, 2024b), the approval threshold framework (ICRC, 2025a), the business-case and financial-model guides (ICRC, 2025b, 2025c, 2025d), and the 2026 Model PPP Agreement (ICRC, 2026a). The approval-threshold structure is particularly important for institutional discretion. Before it, all federal PPP projects, regardless of size, required FEC approval (Elias & Co., 2025). PABs in MDAs can approve projects up to certain financial restrictions, but initiatives that exceed the appropriate level or need several agencies must still apply to the FEC (ICRC, 2025a). The system thereby redistributes decision-making power while maintaining regulatory restriction. From a practical standpoint, it can be interpreted as an endeavour to move choices closer to institutions with the necessary knowledge and technical responsibilities, while retaining higher-level monitoring for complex transactions.

Institutional Capability and Governance Determinants

Institutional capability is required for efficient PPP implementation since PPP transactions need a wide range of skills. Public authorities must understand project economics, financial modelling, procurement, legal framework, engineering, risk allocation, environmental and social safeguards, and contract management. Where such expertise is lacking, official regulations may exist, but their effectiveness will be restricted. The OECD's (2012) principles for public governance of PPPs make the same point, requiring a clear, predictable, and lawful institutional framework supported by competent and well-funded authorities.

In literature on state capability, adopting institutional forms does not imply acquiring the functions for which they are intended. Andrews et al. (2017) describe capability traps, in which governments implement reforms that appear to be sound on paper but have a weak underlying ability to perform. They argue that capability is built through iterative, problem-driven learning rather than the transplanting of best-practice templates. Adebayo et al. (2023) emphasise the importance of institutional architecture and rule settings in project preparation, procurement, and contracting in PPPs, demonstrating that rules must do more than define formal procedures; they must create institutional conditions that guide actors towards desired outcomes. Adebayo et al. (2025) apply this rationale to Nigeria, revealing gaps between formal regulations and steering techniques required for long-term PPP planning.

The literature has direct consequences for discretion. Technically competent officials who exercise discretion within established institutional constraints might improve implementation by distinguishing substantive problems from procedural defects. Discretion exerted with limited expertise, poor documentation, or inadequate supervision is likely to increase uncertainty.

Discretion thus has a capacity threshold: the more complex the judgement, the greater the requirement for technical skill and reviewability.

Regulatory Appraisal, Business Cases, and Value for Money

Appraisal is one of the most important steps in translating policy goals into project decisions. An efficient procurement method cannot save a technically inadequate project. Business-case development is a systematic process for establishing whether a proposed venture is strategically justified, economically beneficial, financially viable, commercially practicable, and institutionally implementable. The Commission's current approach follows this rationale, with separate guides for outline business cases, full business cases, and financial models (ICRC, 2025b, 2025c, 2025d). Such tools can eliminate ambiguity by establishing universal expectations for the information required to evaluate a project, and they serve as an institutional benchmark against which discretionary decisions can be justified.

The analytical difficulty is to discern between substantive appraisal and procedural compliance. A project may pass a checklist while hiding flaws in demand estimations, income predictions, risk allocation, or affordability. In contrast, a project's original structure may require alteration before it meets value-for-money or bankability criteria. The literature on contract design explains why. Hart (2003) demonstrates that complicated long-term contracts are inherently incomplete, and Engel et al. (2014) expand on this to explain why PPP contracts are frequently renegotiated and why preparation quality is important. Guasch (2004) investigates the frequency of renegotiation in infrastructure concessions and attributes it to inadequate preparedness and regulatory agencies. To exercise effective regulatory discretion, appraisal tools should be used as decision frameworks rather than administrative checklists.

Discretionary and Regulatory Behaviour

Empirical studies show how discretion impacts implementation. Tummers and Bekkers (2014) demonstrate that officials' perceived discretion affects their desire to implement policy and their judgement of the relevance of their work. Maynard-Moody and Musheno (2000) distinguish two narratives in which officials regard themselves as agents of the state or citizens, and each influence how they handle specific instances. In regulatory agencies, the same conflict can arise between strict adherence to legal norms and problem-solving approaches aimed at facilitating legitimate activity. Neither approach is inherently correct; the institutional challenge is whether professional judgement remains anchored in lawful and transparent criteria, which is addressed by the accountability frameworks detailed by Hupe and Hill (2007).

Nigerian evidence adds weight to the concern. Ackrill et al. (2023) discovered that discretion in enforcement resulted in both under- and over-enforcement of motorcycle-taxi restrictions in Lagos, with over-enforcement being more common. The finding is significant for PPP regulation since both errors are costly: under-enforcement may allow poorly prepared projects to succeed, whereas over-enforcement may impede profitable endeavours. Regulatory scholarship provides a means of thinking about balance. Ayres and Braithwaite (1992) advocate for context-sensitive regulation that

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increases only when necessary, while Baldwin et al. (2012) examine risk-based and proportionate approaches to allocating regulatory effort. Bounded discretion is the institutional instrument that balances those methods with the need for uniformity.

Stakeholder Engagement and Inter-Agency Coordination

PPP transactions are distinguished by interdependence. The sponsoring MDA, the ICRC, legal and financial advisers, technical specialists, sector regulators, procurement institutions, finance agencies, and approval bodies may all be involved in a project. Even when each institution functions effectively, coordination issues can cause delays, as Pressman and Wildavsky's (1984) argument concerning clearance multiplication demonstrates. The World Bank Group (2017) identifies stakeholder participation as an important component of PPP development because infrastructure investments have far-reaching consequences, and Obasa and Oluyomi (2024) argue that PPP arrangements should include accountability, people-centeredness, and appropriate risk-sharing rather than focusing solely on resource mobilisation.

Inter-agency coordination can help to eliminate ambiguity and conflict. When institutional duties are well defined, and information is transmitted quickly, authorities have less motive to interpret the same obligation differently. The 2025 approval thresholds demonstrate this point: by stating which entity is accountable for approval at specific values and levels of institutional complexity, the framework aims to explain decision power (ICRC, 2025a).

Research Gap

The research reviewed demonstrates that discretion is unavoidable, that it can result in both over and under-enforcement, that institutional design and capability influence PPP outcomes, and that Nigeria's framework has gaps between regulations and practice. What it does not provide is an explanation of how the Commission's governance framework shapes the discretion of its own officials, or whether the Commission's recent design decisions are consistent with what the broader scholarship suggests. This study addresses the gap in institutional architecture.

ANALYSIS AND DISCUSSION

This section contains observations gathered from the documentary collection, followed by a discussion of the Commission's expedited-processing position and the Akanu Ibiam International Airport concession. Each proposition is given as an observation on the formal architecture and then examined against the literature, which determines whether the Commission's view is supported or qualified.

The first point is that, while discretion is an unavoidable part of PPP regulation, the emerging framework is progressively attempting to constrain and redirect it via formal instruments. Administrative decisions are guided by business requirements, approval levels, procurement guides, financial-model guidance, and contractual templates. This is analytically essential because policy integrity requires officials to guarantee that project-specific adaptation adheres to the

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framework's objectives and substantive criteria, rather than treating all projects the same. The 2026 Model PPP Agreement exemplifies the approach by establishing universal rules but demanding adaptation to project-specific risks and commercial structures (ICRC, 2026a). The proper institutional goal is not to remove discretion, but to transform it from informal individual judgement to professional, evidence-based, auditable discretion. A discretionary decision should be justified by referring to appropriate rules, project evidence, and public-interest objectives.

The Commission's view substantially resembles the standard prescription in the discretion literature. Davis (1969) argued that discretion should be limited, structured, and checked rather than abolished, and the framework accomplishes all three: thresholds and mandatory certification limit it, PPP guides and templates structure it, and every project must obtain an ICRC Certificate of Compliance before being approved by a PAB or the FEC (Elias & Co., 2025). It is also consistent with Lipsky's (2010) claim that management and institutional design can bring street-level performance in line with public goals, as well as Hupe and Hill's (2007) position that discretion is properly held accountable through many regimes at the same time. The appropriate allocation of inspection based on value and complexity is consistent with the risk-based reasoning described by Baldwin et al. (2012), and the OECD (2012) standards require the same clear, predictable, and legitimate framework that the instruments seek to deliver.

The second observation addresses ambiguity. PPP transactions are inherently uncertain, but institutional design can help reduce uncertainty about procedures, responsibilities, and approving authority. The approval-threshold structure is very important since it defines financial thresholds and approving institutions. According to Matland (1995), clarity of authority helps reduce ambiguity in execution but does not eliminate all doubt. A project can have a clear sanctioning authority while still raising important problems concerning demand, cost, risk allocation, and commercial feasibility. Regulatory reform should therefore distinguish between procedural ambiguity, which clearer regulations may typically reduce, and substantive uncertainty, which necessitates professional experience and evidence-based decision. The result is that standardisation should focus on processes and decision criteria rather than attempting to standardise all project outcomes. That distinction is compatible with the Model PPP Agreement, which establishes standard contractual principles while requiring project-specific customisation (ICRC, 2026a). Contract economics provides substantial support for this distinction.

Hart (2003) demonstrates that long-term contracts for complex assets cannot specify every contingency, and Engel et al. (2014) show that PPP contracts are similarly imperfect and prone to renegotiation. A paradigm that predetermines outcomes would be neither possible nor desirable, but one that standardises method and criteria while allowing for flexibility is consistent with incomplete-contract logic. According to Matland's (1995) model, standardised guides lead a transaction towards minimal ambiguity, but if conflict between participants persists, such as in disagreements over risk allocation or revenue, clarity of method alone will not ensure fidelity. Lipsky's (2010) observation that regulations cannot anticipate every possible scenario concludes the argument. The Commission's approach to standardise the process while delegating substantive judgement to trained officials is thus sound. The literature also implies, but the documents cannot

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demonstrate, whether the recommendations are specific enough to reduce ambiguity in the hands of the officials who utilise them.

Third, the article notes that the approval-threshold adjustments represent a trend towards distinct institutional authority. Delegating certain approvals to PABs allows choices to be made closer to the institutions responsible for project development, potentially alleviating administrative bottlenecks and shortening decision cycles. Delegation can improve implementation, but only if the receiving organisation has adequate technical capacity, clear decision-making procedures, and effective oversight. Delegation without capacity only shifts the implementation problem. The analytical implication is that decentralisation of authority must be followed by decentralisation of knowledge, information, and accountability.

The 2025 framework also requires FEC permission for projects that exceed the thresholds or include multiple agencies, recognising that transaction complexity is as important as financial value. This is a more refined form of delegation than that based just on monetary thresholds. According to independent legal analysis, the regulatory notice requires each MDA to develop a functioning PAB and PPP unit, which experts interpret as embedding PPP knowledge inside the civil service and minimising reliance on external transaction advisers (Elias & Co., 2025).

The Commission's decision to pair delegation with retained certification and capacity-building measures is consistent with the state-capability literature. Andrews et al. (2017) caution that reforms that transfer forms but not functions create capability traps, and that capability must be developed through context-based learning. The OECD (2012) guidelines also link the legitimacy of the institutional structure to competent and well-funded administrations. Adebayo et al. (2025) demonstrate that, for Nigeria, formal regulations and the tactics required to make them function are frequently separated, which is precisely the risk that delegated approval could duplicate at the MDA levels. Maintaining ICRC accreditation as a gatekeeper on all projects is thus a viable protection as PAB capacity grows. The materials do not reveal whether the PABs and PPP units have the needed capability in practice, which is the most critical empirical concern raised by the delegation.

The fourth point is that PPP implementation is essentially inter-organisational, which means that many implementation issues that appear regulatory may be coordination issues. Different institutions may have differing data, motives, and interpretations of the same project. Differences between actors can be explored through institutional theory in terms of the formal rules, arrangements, incentives, and organisational norms that frame decision-making. Tensions may occur over risk allocation, income structures, project scope, affordability, procurement procedures, or contractual responsibilities when participating institutions have differing missions, interests, or interpretations of the relevant rules (North, 1990; Ostrom, 2005). Such disparities are not always dysfunctional. When handled with clear norms, defined tasks, inter-agency collaboration, and responsible decision-making, they can support critical assessment of project proposals, identify flaws, and strengthen decisions prior to contractual obligations.

According to Pressman and Wildavsky's (1984) analysis of joint action, each additional clearance point reduces the likelihood of faithful implementation, which provides a strong rationale for the

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Commission's decision to reduce the number of transactions that must pass through the FEC while explicitly assigning multi-agency projects to it. Matland's (1995) model implies that conflict and ambiguity require distinct responses; therefore, coordinating devices designed to clarify authority, such as thresholds, address just a portion of the problem. North (1990) and Ostrom (2005) focus on the current regulations that govern how agencies communicate information and resolve conflicts. The Commission's approach is thus compatible with the literature on coordination; yet the documents provide a system for delegating authority rather than evidence that information flows or disagreements are handled effectively.

Akanu Ibiam International Airport Concession as an Illustrative Example

The concession of Akanu Ibiam International Airport in Enugu exemplifies the complications of PPP implementation. In June 2026, the Federal Government formally handed over the airport to Aero Alliance Limited under a PPP agreement that included funding, rehabilitation, expansion, operation, and management (ICRC, 2026b). The handover emphasises the significance of institutional sequencing and coordination in transforming a PPP concept into a viable contractual framework (Ibemere, 2026). Several players and contextual elements were present. The scenario is thus best understood as an illustrative implementation event in which the interaction between rules, discretion, coordination, and transaction progression can be investigated. It is not a test of the changes' efficacy, and no causal conclusion is made.

The study suggests that implementation fidelity in PPP regulation should be interpreted as principled flexibility: officials are required to adhere to the substantive goals of PPP policy while modifying processes and technical requirements to project-specific conditions. This interpretation is consistent with the Model PPP Agreement, which combines standardisation with explicit project-specific modification, as well as the Commission's 2024 position that expedited processing should not mean abandoning substantive considerations such as viability, bankability, and value for money (ICRC, 2024a, 2026a). The distinction between principled flexibility and arbitrary discretion is crucial. Principled flexibility is evidence-based, documented, auditable, and tied to a specified regulatory goal. Arbitrary discretion is personal, opaque, and difficult to explain in terms of institutional principles. The institutional task is to ensure that the former takes precedence over the latter.

It follows that discretion is only as effective as the institutional capability that supports it. Officials who lack the appropriate technical competence and analytical tools are unable to make sound decisions about financial feasibility, demand risk, contractual allocation, or value. This proposition is supported by the scholarly literature rather than any data collected in this study: Adebayo et al. (2025) identify gaps between formal PPP legislation and the institutional strategies required for long-term PPP planning, while Andrews et al. (2017) demonstrate why institutional form without functional capability fails. The study's primary claim is that fidelity is highest when discretion is structured and not suppressed, delegated, and not abandoned, and recorded rather than informal. Three institutional conditions are most important: clear rules that eliminate unnecessary uncertainty, technical capacity that allows officials to exercise professional judgement when rules

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do not anticipate project-specific conditions, and documentation and review processes that hold discretionary decisions accountable.

LIMITATIONS OF THE STUDY AND DIRECTIONS FOR FURTHER RESEARCH

Despite the contribution of this study, three limitations can be identified based on the findings. First, the documentary design enables the study to illustrate how discretion is officially constructed but not how it is used. Interviews were not conducted; thus, the study cannot say whether discretion is actually utilised in the restricted manner that the framework envisions. Second, most of the evidence is institutional self-report. The instruments are publications from the institution under examination, and while independent scholarly sources were sought for verification, they mostly corroborate content and reception rather than performance. Third, the observing window is brief. The primary instruments were implemented between 2024 and 2026, which is too recent to analyse their effects on decision quality, transaction durations, or outcomes, and the airport concession, as a single example with a longer history, cannot be considered causal.

These limitations indicate a defined intent. Interviews with officials involved in business case appraisal, certification, and approval, as well as observations of decision-making procedures, would demonstrate how discretion is employed. An analysis of anonymised case files could determine whether discretionary judgements are supported by documented reasons and whether similar instances are treated equally. A comparative assessment of PABs across MDAs could reveal if delegated permission matches capabilities. In addition, result data such as time to certification, renegotiation rates, and post-transaction performance could be used to determine whether expedited processing has maintained quality.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

The fundamental challenge in implementing PPP policies in Nigeria is more than just the presence or absence of regulations. It is an institution's ability to translate complex regulations into consistent, technically sound, and context-sensitive choices. The analysis demonstrates that PPP implementation occurs when formal regulations interact with professional judgement, institutional capabilities, inter-organisational relations, and project-specific circumstances.

Street-level bureaucracy theory is a useful lens for this process since it focuses on the officials and institutional mechanisms that translate policy into decisions, as well as explaining why discretion cannot be removed from complicated administrative systems. Institutional theory complements it by demonstrating how norms, roles, and incentives shape and constrain discretion.

The Nigerian PPP framework takes a more complex approach to the problem. Project-development standards, financial-modelling guidance, business-case instruments, differentiated approval levels, and a Model PPP Agreement represent a step towards greater procedural clarity and standardisation, while the 2026 Model PPP Agreement expressly acknowledges that PPP projects must be tailored

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to their specific risk, commercial, and financing structures. When compared to the literature on structured discretion, incomplete contracts, state capability, and implementation, the Commission's primary design decisions are sound. Fidelity in PPP governance is best defined as adhering to the framework's essential objectives but allowing for controlled and evidence-based adjustment, an approach that allows professional skill while maintaining accountability.

Finally, the effectiveness of Nigeria's PPP framework will become increasingly dependent on the quality of the institutions that implement it. More rules will not result in increased regulatory credibility. This will depend on whether the rules are consistent, individuals are technically competent, decisions are transparent and reviewable, and institutions can learn from previous transactions. The future of PPP governance is not about choosing between regulation and flexibility, but about establishing institutions that can combine regulatory discipline with informed discretion.

Recommendations

Based on the above, the following recommendations are hereby made:

i. **Institutionalise discretionary decision-making**: Nigeria's PPP framework should establish clearer bounds for institutional discretion by defining allowed areas of professional judgement, decision criteria, documentation requirements, and escalation processes. This would increase uniformity, accountability, and reviewability in PPP decision-making.
ii. **Improve inter-agency coordination**: The PPP governance structure should provide standardised coordination arrangements between the ICRC, MDAs, PABs, and other relevant institutions, including clearly defined responsibilities, decision interfaces, response timescales, and systems for tracking inter-agency delays. Such arrangements would eliminate institutional uncertainty while increasing implementation coherence.
iii. **Align assigned authority and institutional capacity:** Delegation of PPP decision-making should be connected to demonstrable institutional capability. Minimum competency criteria for financial modelling, legal and contractual analysis, procurement, risk allocation, and commercial structuring should drive the assignment and execution of delegated responsibilities, with periodic capacity evaluations to ensure implementation accuracy.
iv. **Enhance institutional learning and knowledge management:** PPP governance should include rigorous post-transaction evaluations and institutional knowledge-management procedures to collect project precedents, decision rationales, risk-allocation experiences, and implementation results. Such assessments should produce evidence that may be used to revise policy, regulate practice, and learn from institutions.

Declaration of Interest

The author is an employee of the Infrastructure Concession Regulatory Commission (ICRC), which is the subject of this study. The author's analysis and interpretations in this article do not necessarily reflect the ICRC's official position, policies, or opinions.

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