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HIGHLY COMMENDED

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List of Abbreviations/Acronyms

A P M	A P MOELLER
B O O	BUILD-OPERATE-OWN
B O T	BUILD-OPERATE-TRANSFER
B O O T	BUILD-OWN-OPERATE-TRANSFER
B P E	BUREAU OF PUBLIC ENTERPRISES
B T O	BUILD-TRANSFER-OPERATE
C R C S	CANADIAN PACIFIC CONSULTING SERVICES
D B O	DESIGN-BUILD-OPERATE
E O T	EQUIP-OPERATE-TRANSFER
F D B	FINANCE-DESIGN-BUILD
F G N	FEDERAL GOVERNMENT OF NIGERIA
G C A	GOVERNMENT CONTRACTING AGENCY
G R T	GROSS REGISTERED TONNAGE
N B A	NIGERIAN BAR ASSOCIATION
N C P	NATIONAL COUNCIL ON PRIVATIZATION
N I W A	NIGERIAN INLAND WATERWAYS
N P A	NIGERIAN PORTS AUTHORITYEHABILITATE-
N P V	NET PRESENT VALUE
N R C	NIGERIAN RAILWAY CORPORATION
N R T	NET REGISTERED TONNAGE
N S C	NIGERIAN SHIPPERS COUNCIL
O O O	OPERATE-OWN-OPERATE
P C S	PORT COMMUNITY SYSTEM
P E	PUBLIC ENTERPRISES
P E R	PORT ECONOMIC REGULATOR
P F I	PRIVATE FINANCE INITIATIVE
P P P	PRIVATE-PUBLIC PARTNERSHIP
P S P	PRIVATE SECTOR PARTICIPATION
R O T	REHABILITATE-OPERATE-TRANSFER
S O E	STATE OWNED ENTERPRISES
S P C	STATISTICAL PROCESS CONTROL
S T O A N	SEAPORTS TERMINAL OPERATORS OF NIGERIAN
T C P C	TECHNICAL COMMITTEE FOR PRIVATIZATION AND COMMERCIALIZATION
T E U	TWENTY-FOOT EQUIVALENT UNIT

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1. INTRODUCTION

This report is focused on the challenges affecting the operation of the Nigerian ports since the post-concession era/programme of 2006, and to strategically review how well concessions have improved the performance of the Ports system. Considering the 8 policy issues stated at Section 3.3, page 11, covering the concession agreements in comparison with international best practice. The efficiencies that occur in a port system depend on how it is integrated within the global maritime network and its relationship with the local and regional environment and with their specific economic, political and geographical characteristics. The findings of the study show that the concessions may have been able to earn more income for the Government of Nigeria notwithstanding both counter-parties having partially failed to keep their part of the contract agreements in some part, especially as concerns the provision of the enabling environment for port operations as identified in the following areas:

- New policies on latest Infrastructures are still inadequate, while the current ones have become obsolete. The management/investment model for existing public assets is as follows;
  - Private operators are managing publicly owned assets and make additional investments in them, in exchange for the rights to use the assets for a specified period of time.
  - Ownership of the public assets remains with public sector throughout this period; privately-funded fixed assets are usually taken into public ownership immediately after construction, while mobile assets usually remain in private ownership.
  - This is reflected in the 'transfer-back' arrangements at the end of the contract period.
  - Dwell time has not substantially reduced with delays and port congestion still high within the sector at large.
- The development rights model for new private assets (BOT)
  - Private investor buys the right to build new port assets and manage them (exclusively or on common-basis) for a fixed period of time before transferring them to public sector.
  - This is a model which has increased in popularity in the ports sector as the stock of public assets suitable for private management has dwindled.
  - There is minimal enhancement in Information Technology in relations to the global utilization of same.
- The Public-Private joint venture model
  - The public sector has an influential or controlling stake in special purpose vehicle (SPV) set up to hold either a management-investment contract or a development rights contract for new facilities.
  - These contracts otherwise operate broadly, although the existence of a large public sector stake in the SPV has a significant effect on the detailed provisions of the contract.
- Excessive bureaucracy supports corruption and sharp practices by Port officials and regulatory bodies.
  - Terminal operators also have failed in their financial obligations by giving various excuses contrary to the contract signed at inception and in view of Force majeure clause in the various Lease Agreements/contracts.

All the agreements related to Lagos ports have the title of *lease Agreements*, They all follow similar lease structure, e.g. no management contract or leasehold arrangements, Copy/paste arrangements with little differentiations as to different assets leased and types of operations, as they all appear to be regulated under procurement laws rather than Public Private Partnership (PPP) Laws, which consist of between 16 to 18 Articles each and signed on various dates within the period of 2005 – 2006. With effective dates ranging from 30 days, 90 days to 180 days following the execution dates provided that the conditions to effectiveness set forth in Article VI and VII have been fulfilled (as the "Effective Date").

Article XVII opines in Section 17.1 Governing Law, This Agreement shall be governed by, construed and enforced in accordance with the laws of Nigeria. And in Section 17.2 under Disputes, Any dispute, controversy or claim arising out of or in relation to or in connection with this Agreement and the activities Carried out hereunder, including without limitation any dispute as to the construction, validity, interpretation, enforceability or breach of this Agreement (each a "Dispute"), shall be exclusively and finally settled pursuant to the dispute resolution process described in this Article. 17.3 – 17.9 analizes Mutual Consultation, Assistance of Expert, Arbitration, Place of Arbitration, English Language, Performance During Arbitration and Waiver of Sovereign Immunity Respectively.

In the area where the terminal operators have failed to pay up their outstanding financial obligations, Article XIII outlines the Default clause under Lessee Event of default Section 13.1 as, Except if resulting from a Lessor Event of Default or Force Majeure, each of the following events shall be considered to constitute a "Lessee Event of Default" :

(A) The Lessee becomes insolvent, or, makes an arrangement for the benefits of its creditors, petitions or applies to any court or tribunal for the appointment of a receiver or a trustee for itself or any part of its property, or commences or has commenced against it any legal proceedings for its reorganization, readjustment of debt, dissolution or liquidation.

(B) The Lessee fails to Achieve a minimum average of fifty per cent (50%) of the Performance Requirements other than as a consequence of an Interruption.

(C) Other than as a consequence of an Interruption, the Lessee fails to perform the Operations for fourteen (14) consecutive days in an operating Year or sixty (60) non consecutive days in an operating year. Where the Lessee fails to perform the operations after fourteen (14) consecutive days the Lessor shall have the right to intervene and divert traffic to other terminals for a period of seven (7) days. In such an instance, the Lessor shall not be entitled to claim that there has been an Event of Default by the Lessee until the expiry of the further seven (7) day period where the traffic has been diverted to other terminals.

(D) Subject to Section 18.5, the Lessee fails to pay any amounts due in accordance with this Agreement.

(E) The Lessee commits a breach of a material provision of this Agreement.

1.1 BACKGROUND OF THE CONCESSION AGREEMENT

In the global port community, concessioning is seen as a means of reducing public infrastructural deficit, engendered by the disproportionate growth in population and the available resources for national development. Since government cannot do it alone, private investors have to become involved as public private partnerships, (PPP). Public and private infrastructural developments have become a preferred model for delivery of services in much of the West. Nigeria is slowly embracing the model to fill the gap of public works. However, the model is threatened by a lack of understanding, in some elements of the Public Sector, of PPP best practice in relation to Port operations.

The attempts by successive administrations to institutionalize PPP have been truncated by officials whose vision is not in alignment with the Government. Even those concessions that appeared to have been successfully executed have been controversial. In fact, in situations where the concessionaire and the concessioner successfully reach an agreement, workers often protest because of the fear of job cuts. The Infrastructure Concessioning Regulatory Commission (ICRC) has estimated that the Federal Government must spend about N2.25 trillion annually to reduce the infrastructure deficit facing the country. The current attitude of some government officials to concessioning may hinder the growth off PPP as a model for infrastructure development. By comparison, the Jamaican government published initial PPP Policy documents, popularly called PPP3, in 2012, which has led to the government divesting its large interest in Sangster International Airport, Highway 2000, and the Government-owned sugar factories and estates; in addition to the Kingston Container Terminal and the Norman Manley International Airport. Infrastructure services and development are critical to the operation and efficiency of a modern economy. They are critical inputs in the provision of goods and services which significantly affect productivity, cost and the competitiveness of the economy.

Consequently, policy decisions regarding their provision and sector development have ramifications throughout the macro-economy of Nigeria.

Infrastructures' enormous economic importance, a desire to protect the public interest in industries supplying essential services and concerns about private monopoly power have led many governments to conclude that control over these services could not be entrusted to the motivations and penalties of free markets. Governments also believe that, given the large investments involved, public resources were required to increase infrastructure coverage. Accordingly, a single public entity (NEPA, NITEL, NPA, NIWA, and NIPOST) usually controlled every aspect of a utility – facilities, operations and administration – and determined which services to provide to customers. This made the disengagement of government from business activities, provided by the private sector, inevitable.

Article XVIII Section 18.9 on Confidentiality opines, Each party agrees to hold in confidence during the term and for a period of five (5) years following the termination of this Agreement, any information supplied to such Party (the "Receiving Party") by the other Party (the "Disclosing Party") and related to the Lease Property, the Movable Assets, the Operations or this Agreement. The Receiving Party shall be entitled to disclose such information to its officers, directors, employees, external advisors and/or agents who have a need to know in order to assist the Receiving Party in the performance of its obligations hereunder; provided that the Receiving Party shall be responsible for ensuring that all such persons keep such information confidential.

Over the years, government ownership and operational management of public infrastructures has proved disappointing, leading to a paradigm shift in the ownership, organization and regulation of public infrastructure. Over and above all of these, in the face of competing demands, government lacked the resources to provide significant investment in these sectors. Consequently, most countries have transferred the provision of infrastructure services to the private sector. Such transfer has been accompanied by sector reform and re-structuring before privatization, or concession, and by the implementation of a regulatory framework.

PORTS	TERMINAL OPERATORS	TERMINAL CONCESSIONS
Dakar	Dubai ports world	2008 (25-year concession)
Conakry	Bollore	2011 (25-year concession)
Abidjan	Bollore/AP Moller (Maersk)	2004 (15-year concession)
Tema	Bollore/AP Moller (Maersk)	2007 (20-year concession)
Lome	MSC/GETMA	2009 (35-year concession)
Cotonou	Bollore	2009 (25-year concession)
Lagos (Tin Can)	Bollore	2005 (15-year concession)
Lagos (Apapa)	AP Moller (Maersk)	2005 (25-year concession)
Monrovia	AP Moller (Maersk)	2010 (25-year concession)

Table 1. The Spread Of Port Concessions. Source : Port Authorities. World Bank. 2011. Compiled By Consultant.

In Nigeria, privatization and reform are imminent. From 1987 up till now, the Government of Nigeria has been involved in migration to privatization in several areas. Since the promulgation of the Public

Enterprises and Commercialization) Act 3, Nigeria has been involved in the reform of infrastructure. (2004 Laws of the Federation). The National Council on Privatization (NCP) which was established under the Act set up eleven 11 sector steering committees to produce National Policies for these sectors as pre-cursors to their reform. The Bureau of Public Enterprises (BPE) is the government's economic reform agency and serves as the Secretariat of the National Council of Privatization. (NCP).

Article VII, Under Conditions Precedent, Section 7.3 of Conditions To Obligations of Lessee outlines, The obligations of the Lessee to consummate the transaction contemplated by this Agreement shall be subject to the fulfilment prior to the Effective Date, of the following additional conditions (unless waived in writing by the Lessee): Sub Section (E) PRESIDENTIAL APPROVAL. The President of the Federal Republic of Nigeria has approved this agreement for the term and the Lessor shall convey and BPE shall confirm the approval of the Lessee.

In this report, therefore, the focus will be on the drafting of the current concession agreements and those sections in the individual concession agreements which are not working as they should be. However, it is, firstly, helpful to examine the underlying legal and regulatory framework. The port infrastructure, and related activities, can be categorized into maritime access infrastructures, Port infrastructure and superstructure and landside access infrastructure - these are not well aligned and integrated with each other at present.

As a result of the high capital intensive nature of these structures, their costs (cost of maintenance) cannot otherwise be solely assigned to port users. In order to reduce the turnkey effect of this on users, it is imperative for the inclusion of private sector participation (PSP), of which its prominence has been taken place within the context of private-public partnerships (PPP) and concession arrangements.

And based on the Lease Agreement for virtually all the Lessee's who are all Private entities limited by shares incorporated and registered in Nigeria under the Companies and Allied Matters Act 1990 with various registration numbers assigned to each one of the organization, the parties have agreed to enter into the concession agreement to :

- Lease the premises and certain immovable property affixed to the premises as further described in Appendix B (the "fixed Assets," and together with the premises, the "Lease Property");
- Purchase certain movable property as further described in Appendix C (the "Movable Assets");
- Make certain improvements to the Lease property as further described in the development plan attached as Appendix D (the "Development Plan"); and
- Perform the operations as further described in Appendix E (the "Operations"), certain other operation, maintenance and other services with respect to the Lease Property and the Movable Assets, subject to and in accordance with the terms and conditions set out in this agreement.

2. METHODOLOGY

In this report, data was collected through secondary methods for analysis, such as dissertation, NPA manuals, textbooks, internet, annual reports, stakeholder reports and media reports. Based on this, the content analysis method was adopted. The report utilized descriptive statistics and trend analysis, whereby the trend is the general path which the data had followed over the period in study, making use of port performance indicators, such as indicators of output and indicators of service in determining the trend of port performance. This shows the progress made in Nigerian seaports development efforts since the port concession era. The team assessed the difference in port performance during the pre and post concession eras, appraised the measures adopted by the concessionaires to bring about the changes and made recommendations based on the findings. The scope of this work covers all the existing ports in Nigeria as at the time of this research with the emphasis on the Lagos Ports Complex. The evaluation parameters were based upon port performance indicators such as indicators of output (throughout) and indicators of service (ship turnaround time). This study is a continuation of the study carried out by PDF/Crown Agents in 2013 termed " Support to the Presidential Committee on Port Reform, Lagos Draft Final Report".

3 COMPARATIVE ANALYSIS OF NIGERIAN PORTS PERFORMANCE DURING THE PRE AND POST CONCESSION ERA

Cargo traffic volumes at the seaports increased sharply immediately after the concessioning (leasing) of the terminals with various private entities. Since then there has been a rapid rise in cargo throughout culminating in an unprecedented volume in years between 2006 and 2014 with a slight decline in 2015, up to the time of writing, as a result of the global recession (due to oil surplus) and the President's intention to change the nation's orientation from import dependence to an export led economy, which will enhance the nation's GDP. (See table 2, Page 5). The statistic of cargo throughout increase from 46,150,518 metric tonnes in 2006 (the concession period) to 86,603,903 metric tonnes in 2014 should be noted. This evidences a cargo throughout increase of 69% in this period, in the nation's seaports, following the adoption of the landlord model. The increased size of vessels, whilst significant, is possibly little more than a side show in comparison to globalisation and the consequential rapidly changing pattern of international trade. In a little over 20 years exports, as a percentage of GDP, have increased four-fold.

Year	Inward	Outward	Throughout
2003	27,839,293	11,926,652	39,765,945
2004	26,907,075	13,909,,872	40,816,947
2005	29,254,766	15,697,312	44,952,078
2006	29,089,268	17,061,250	46,150,158
2007	35,544,965	21,928,385	57,473,350
2008	41,195,616	23,177,133	64,372,749
2009	45,757,149	20,081,360	65,755,509
2010	46,928,848	29,815, 879	76,744,727
2011	52,022,105	31,439,592	83,461,697
2012	46,222,127	30,870,498,	77,092,625
2013	50,005,603	28,276,031	78,281,634
2014	53,771,183	31,180,744	86,603,903
2015	50,234,651	28,087,907	78,322,558
TOTAL	534,772,649	303,452,615	839,793,880

Table 2. Cargo Movement/Throughout At Nigerian Ports (Pre and Post Concession) Source: NPA Statistics. Data Compiled by Consultant.

There is significant progress in port developmental efforts since the port concession era. The pattern in Nigeria's port traffic during the pre-concession era was one of degeneration whilst the post-concession period has evidenced a sharp progressive rise. This concession led upturn has partially led to a consistent improvement in cargo throughout. It should be noted that the downward cargo volume trend of 2015 can be partly ascribed to the global recession and the import oriented shut down measures introduced by the Government with the view to improving the ailing economy. The downward trend had continued up to 2017 with a shortfall in cargo throughout in 2016 and rising again in 2017 as a result of the rising trend of the global Economy. Full exportation oriented and branded economy will boost and create a rapid rise in the cargo throughout, enhancing economy growth, thereby resulting in a rise in GDP, culminating in, potentially, unprecedented growth notwithstanding any political uncertainty that may occur.

Trend of Cargo Throughout (Mt) – Excl. Crude Oil Terminals

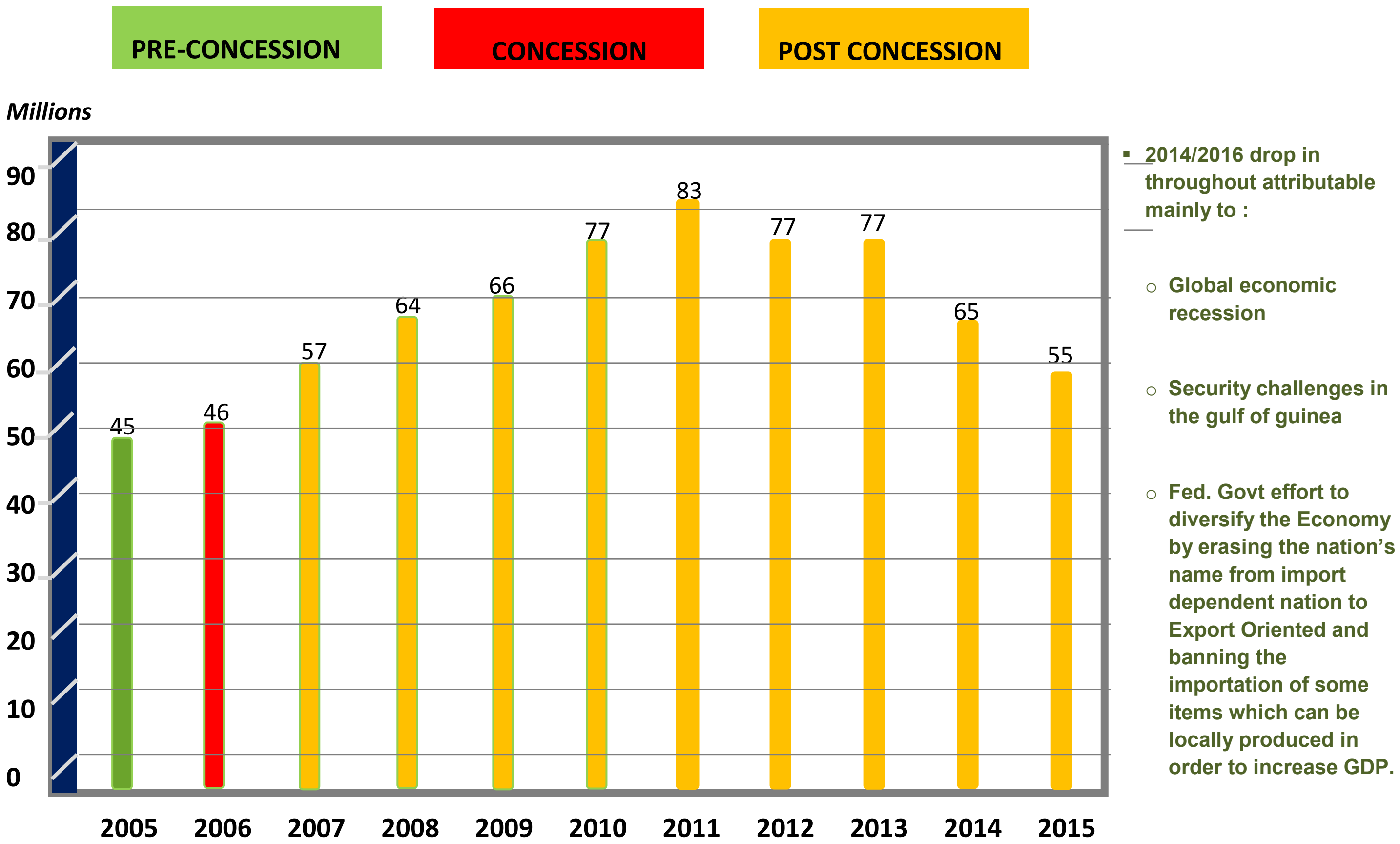


Figure 1. Trend of Cargo Throughout, pre/post concession. Source: Public Private partnership And port efficiency. Data Compiled by Consultant.

Article III of the Lease Agreement defines the Basic Lease Rights and Obligations where in section 3.2 commencing on the effective date and continuing throughout the Transition period in accordance with the Transition Plan, the lessor shall transfer to the Lessee the Lease Property free and clear of Security Interests for the Term. The Lessor shall remain the owner of the Leased Property except as expressly agreed to in writing by the Lessor. Subject to the provisions of Sections 4.3(b) and 4.4 throughout the term, the Lessee shall keep and maintain:

A. The Lease Property in the condition in which it is transferred to the Lessee to the Effective Date fair wear and tear excepted, and free and clear of all Security Interests arising from the performance of the operations or any other of its obligations hereunder, and

B. The fixed Assets in good condition and working order.

C. The Lessee shall indemnify, defend, and hold harmless the Lessor from and against and promptly remove and discharge any such Security Interests which may be placed on the Lease Property, except those attributable to the acts or the omissions of the Lessor.

The proposed GMT seemed to be the reason why the lease agreement was not reviewed every 2 years as stipulated. Based on our visitations, it was noted that only a few of the terminal operators were able to meet up with proposed GMT and virtually all terminals cannot pay in United States Dollars anymore due to forex shortages / extant exchange rates.. Many terminals are, consequently, indebted to NPA. Presently, virtually all are yet to pay the annual fees, terminal charges, ship dues, etc. At the time the concession agreement was signed, operators did not anticipate or envisage the present trend in terminal operations nor currency issues.

Finally in Section 3.6 of the same article, under the title BERTHS, Subject to the provisions of this article, the Lessee shall at all times have an exclusive right to use the Berths. Subject to applicable port regulations the Lessor shall have the right of primary use of the Berths in the case of an emergency provided that :

A. the Lessee has the Emergency response capability;

B. the Lessors use of the Berth is not on a discriminatory basis; and

C. the Lessor pays the Lessee the Operations Rates where TEU passes through the premises.

If such preferential use by the Lessor continues for more than five (5) consecutive days, or ten (10) cumulative dates in any calendar year, the Lessee shall have a right to require the Lessor to pay the Lessee for its lost revenue due to such preferential use by the Lessor.

A landlord port system for the most part does not involve the operator directly in port operations. Instead, private port operators and service providers conduct their business independently and compete in the market. Relations between landlord port authorities and private port operators have become increasingly complex, and the alignment of responsibilities have further shifted. One of the valued features of a landlord port is its clear division of responsibilities. Each party is distinctly aware of its rights, liabilities, and financial responsibilities.

For instance in Article IV under Lessee's Maintenance Obligations, of the use of Lease property, Section 4.3, underlines the Lessee's shall be responsible for the maintenance (but excluding maintenance resulting from Latent Defects which shall remain the responsibility of the Lessor) so that at all times during the Term and upon the Termination date, the Lease property (excluding the quay wall and navigational aids on the premises) shall be in the same condition as on the Effective date, Excluding normal wear and tear. The Lessee shall maintain the Lease Property (excluding the quay walls and navigational aids on the premises) in good condition and repair. All maintenance shall be equal or better in quality to the original material and workmanship standard. The maintenance performed by the Lessee shall comply with Applicable Law and Prudent Industry Standards. The Lessee shall inform the Lessor in writing of entry into any contract for maintenance. The Lessee shall obtain and maintain all licenses, certifications, or other documents required for such Maintenance in accordance with Applicable Law. The Lessor shall assign to the Lessee on the execution date all rights under any warranties it may receive or be entitled to for the Lease Property..

And section 4.4 of the same Article under the Quay wall and Navigational aids on the premises further opines, The Lessor shall be responsible for maintenance, repairs, renewals and replacements of the Quay Wall and navigational aids on the premises during the Term. In the event that any of the quay wall or the navigational aids on the premises are damaged, the party becoming aware of such damage shall notify the other party in writing of the same within three (3) days after becoming aware of such damage. The Lessor shall commence the process of repairing such damage within seven (7) days of the date of notification by one party to the other of damage and shall complete such repair to berth or navigational aids on the premises within a reasonable period to be mutually agreed by the parties. In the event that the Lessor fails to commence the process of repairing of repairing within such period, then the Lessee may give notice in writing to the Lessor requiring the Lessor to commence the process of repairing within seven (7) days. If the Lessor has failed to commence the process of repairing upon expiry of the notice by the Lessee, then the Lessee may offer the repair work for tender and the parties shall agree the appointment of a contractor to perform the repair work. In such instance, the Lessor shall be responsible for cost of the repair and if the Lessee is required to make any payment towards such repair work, the Lessor shall reimburse the Lessee its actual costs incurred together with interest equal to LIBOR plus five percent (5%) compounded monthly.

Many port premises and quay aprons have fallen to disuse and failed road sections inside the ports made movement of goods within port environs cumbersome, sometimes dangerous and very slow. Also several key terminal operators have complained about breaking sand extensions of quay aprons during earlier visitations. A series of irregularities were witnessed to this regard with operators. Following increased port congestion, complaints of untraceable or missing cargoes were also being regularly lodged against the NPA, all to no avail. Security inside Nigerian seaports was compromised by the activities of miscreants as theft and pilferage became widespread. It was discovered that despite the concessions not much improvement has taken place at the nation's ports. Complaints by operators of high port charges, not tied to specific services, still persist. Lack, or unserviceability, of equipment by the terminal operators i.e. scanning machine are still evident. For instance in the area of booking and positioning a container for NCS examination, the SOP of APM Terminals Section 6.0 outlines as follows :

The customer books for customs examination if the container is on red or yellow channel. Booking for examination of containers should be done within two (2) hours of customer's presentation of relevant documents to the Terminal Protocol desk. All requests for booking shall henceforth be in writing with a duplicate upon which APMT acknowledges receipt of the request. No storage charge shall accrue where a shipper/Agent has been refused booking confirmation. Should demurrage accrue as a result of APMT inability to confirm booking, APMT shall bear responsibility for accrued demurrage. After booking confirmation, APMT ensures positioning of container within 24 hours of booking confirmation. Where examination is not conducted due to non-positioning of the container, all costs arising, inclusive of third party costs e.g Shipping Companies demurrage on those dates of the default shall be borne by APMT.

But the reverse is the case as many agents/importers complained it takes days for operators to position their containers and an additional charges is levied on them for all delays accrued.

It was clearly outlined Security is part of the Lessee's covenant under Article VIII, Sub Section 8.2 Safety : Security (A) Safety Procedures thus, The Lessee shall prepare and implement work and operation safety procedures to ensure the health, safety and welfare of its workforce and users of its Operations and the Lease Property in accordance with Applicable Laws, International conventions, protocols, international agreements to which Nigeria is a party and Prudent Industry Standards And the Lessor's guidelines that are applicable to all operators at the Port.

(B) Security System. The Lessee shall be responsible for the preparation and implementation of a safety and security system in accordance with Applicable Laws, International Conventions, Protocols, International Agreements to which Nigeria is a party and Prudent Industry Standards for the Lease Property and the cargo and Containers therein (including without limitation fencing off the Lease Property) which system shall be subject to the Lessor's prior written approval, such approval not to be unreasonably withheld, provided that such approval must be given by the Lessor in writing within five (5) business days upon receipt of the request, failure of which, the Lessor shall be deemed to have given its approval.

Many governments today are seeking to decrease their financial involvement in ports and to use private resources to finance new port development, including construction of basic infrastructure such as quay walls. This implies not only an increased role for the private sector in port development, but also increased financial exposure. In such situations, a simple and straightforward lease contract may not be sufficient to cover all responsibilities and liabilities. As a result, a more complex contractual relationship, a concession agreement, has been developed. The primary objective of concession agreements is to transfer investment costs from the government to the private sector.

One of the reasons for the poor performance of Nigerian Ports and other public enterprises is likely to be the presence of conflicting and interwoven roles determined by politicians, the prevalence of uncompleted contracts and subsidies from government. These aid internal inefficiencies, issues of excessive bureaucratic controls, government interference and intervention, and other public service cultures of undermining and compromising efficiency and optimum productivity. Concessions were born out of the need for reform. Concession may be considered analogous to public private partnerships (PPPs) and Private Finance Initiatives (PFIs) and or seen as an arm of privatization (if defined broadly). Privatization of state-owned enterprises (SOEs) has become a key component of the structural reform process and globalization strategy in many economies. It gained popularity in recent times.

From observation, this dual objective seems to drive the concession agreements in the Nigerian Ports; On the one hand to prevent NPA's monopoly on port operations and promise competition, and on the other hand to attract private sector funding of port infrastructure and services which can be a significant expenditure for the government and then port public funding can be reallocated to other important areas. This report considers five concession Agreements:

- **LEASE AGREEMENT OF 11 MAY 2006 FOR TIN CAN ISLAND TERMINAL B BETWEEN NPA (Lessor), BPE (Confirming Party), AND TIN CAN ISLAND CONTAINER TERMINAL (Lessee).**
- **LEASE AGREEMENT OF 19 SEPTEMBER 2005 FOR APAPA CONTAINER TERMINAL BETWEEN NPA (Lessor). BPE (Confirming Party), AND APM TERMINALS APAPA LIMITED (Lessee).**
- **LEASE AGREEMENT OF 24 OCTOBER 2005 FOR APAPA PORT TERMINAL A BETWEEN NPA (Lessor). BPE (Confirming Party), AND APAPA BULK TERMINAL LIMITED (Lessee).**
- **LEASE AGREEMENT OF 24 OCTOBER 2005 FOR APAPA PORT TERMINAL B BETWEEN NPA (Lessor). BPE (Confirming Party), AND APAPA BULK TERMINAL LIMITED (Lessee).**
- **LEASE AGREEMENT OF 4 DECEMBER 2006 FOR MULTIPURPOSE TERMINAL C (CANAL BERTH) AT WARRI OLD PORT BETWEEN NPA (Lessor), BPE (Confirming Party), AND JULIUS BERGER SERVICES NIGERIA LIMITED (Lessee).**

With reference to the above listed concessionaire's agreements, it is necessary to examine performance within the sector, and to test whether current institutional arrangements are sufficiently robust to ensure the market incentives are strong enough to foster best practice in all parts of the Concessionaire's activities in cargo handling and terminal operations together with sound intermodal arrangements for rail, road and inland waterway transport. Emphasis will be made on APM TERMINALS APAPA LIMITED as a reference guide for this report. Virtually all concessionaire's lease agreements are similar in content.

Article V opines in Section 5.1, under the Sale and Purchase Subject to the terms and conditions of the Agreement, upon the effective Date, the Lessor shall sell to the Lessee, and the Lessee shall purchase from the Lessor, the Movable Assets for an aggregate purchase price of fifteen million four hundred thousand United States Dollars ($15,400,000) (the "Moveable Assets Purchase Price") which shall be payed to the Lessor by Wire Transfer to an account of the Lessor previously designated by the Lessor in writing as outlined in Section 5.2. And under conveyance in Section 5.3, the Lessor shall convey, transfer assign, and deliver to the Lessee, free and clear of all liens and encumbrances, the Lessor's right, title and interest in and to the Movable Assets, accompanied by any necessary bills of sale, assignment agreements, novation agreements and other instruments of transfer reasonably requested by the Lessee.

Finally, under the same Article in Section 5.4 under Transition Period, notwithstanding the provisions of this Section 5, in consideration of the payment of the Commencement Fee, the Lessor hereby grants to the Lessee the right to use the Moveable Assets during the Transition Period in accordance with the provisions of the Transition Plan. For the avoidance of doubt, title and risk in the Movable Assets shall remain with the Lessor during the Transition Period but shall transfer to the Lessee on the Effective Date. For the avoidance of doubt any damage to the Movable Assets caused by the Lessee pursuant to the right to use granted hereunder shall be the responsibility of the Lessee.

3.1 DIFFERENCES BETWEEN CONCESSION AND PRIVATIZATION

The word 'privatization' is very elastic and has varying interpretations. If defined broadly, it includes concession and all forms of private-public partnership (PPP) but if narrowly defined, it excludes concessions. However, though the two tend to achieve the same objectives – securing private sector management and operational expertise and investments – they differ in three key respects as follows:

- Concessions do not involve the sale or transfer of ownership of physical assets, only of the right to use the assets and to operate the enterprise.

Article VI under "Operations" opines Obligations of Lessee to perform operations in section 2.1 as follows : The Lessor hereby appoints the Lessee and the Lessee hereby accepts such appointment, to perform the operations and activities described in Part A of Appendix E (collectively, the "Operations") in accordance with the terms of this Agreement. The Lessor confirms that it hereby delegates to the Lessee all such power and Authority as are necessary for the Lessee to perform the operations..And Section 6.4 of the same Article further states,

(B) Specific requirements. Under Performance Requirements states, The Lessee shall perform the operations in such a manner as to achieve the performance requirements (Required GMT as in this case). in the applicable years of the term described in Appendix G (the "Performance Requirements").

- Concession agreements are for a limited period – usually 10-50 years, depending on the context and sector.

Still under (B), The Lessee shall only perform the operations within the premises and shall use the Lease property for the sole purpose of performing the operations in accordance with this Agreement. And under exclusivity, the Lessee shall have the exclusive right "during the Term" to perform the operations within the premises as stated in Section 6.5. Standards of performance is emphasized in Section 6.6 (b) with due care and skill with 6.8 (ii) outlining ensuring there is no declining in the standards of the operations for the "the whole period."

- The Government, as owner of the assets, retains much close involvement and oversight in concessions through regulatory bodies.

(D) Under the Tracking and Evaluation of Performance, The Lessor shall evaluate the Lessee's performance of the operations on an annual basis. The process of evaluation shall commence on the Effective Date. (1) The Lessee shall provide the Lessor a report in respect of that operating year/ And (11). The Lessor's evaluation, which shall have been ongoing during the operating year, shall be completed by the Lessor and the Lessor shall produce and deliver to the Lessee an evaluation report containing its own assessment of the Lessee's performance against the performance requirements taking into account any interruption, and stating whether, in its opinion, the Lessee has reached the performance requirements. (the "Lessor Report") within thirty (30) days of the earlier of either (A) Receipt of the Lessee Report or (B) In the event that the Lessee fails to provide the Lessee Report upon the expiry of the thirty (30) days referred to in Sub Section (1) above.

From the team's observations on the pending review of the concession agreements, no review has been carried out to date, contrary to the usual two years review of performance and evaluation of contract compliance. Only individual issues and differences between each operator and the Authority have been tabled and addressed on an ad hoc basis whilst some issues are still pending. There is an urgent need to commence a review of operations, performance and evaluation of all 24 Terminal Operators on contract. (See Table 4, Page 15 below).

The management and operation of the ports will be carried out by the concessionaires who will operate within a regulatory regime that will require monitoring and rendering periodic returns. At the moment, the Authority has entered into over 20 Rehabilitate, Operate and Transfer (ROT) lease Contracts with various concessionaires. With time, there could be BOT, BTO and BLT contracts. The first Nigerian legislation on concession is the ICRCA. Section 1 of the ICRCA provides that from 10th November, 2005 (its commencement date), any Federal Government Ministry, Agency, Corporation or body involved in the financing, construction, operation or maintenance of infrastructure, by whatever name called, may enter into a contract with or grant concession to any duly pre-qualified project proponent in the private sector for the financing, construction, operation or maintenance of any infrastructure that is financially viable or any development facility of the Federal Government in accordance with the provisions of the ICRCA.

In the Nigerian case study, the PPP model that characterizes its operations is the Management/ Investment model for existing public assets, A case where the private operator manages publicly owned assets and makes additional investments in them, in exchange for being given the right to use them for a specific period of time. Ownership of the public assets remains with the public sector throughout this period. This model falls within a landlord port structure, although the PPP model used differs from terminal to the next. There is always a 'transfer-back' arrangements at the end of the contract period. Closest in relation to this procurement laws mode of leasing is the Landlord model

Under Appendix O of the TERMINATION PLAN Section 3. CONDITION SURVEY, Sub Section 3.1. As soon as possible following the Termination period Start Date, the Parties shall appoint an Expert to conduct a condition survey, the Expert reports that the Premises or the Transferring Fixed Assets. If, as a result of such condition survey, the Expert reports that the premises or the Transferring Fixed Assets or any part thereof has not been operated and maintained in accordance with the requirements under this Agreement (normal wear and tear excepted) the Lessee shall, at its own cost, charge and expense, take all necessary steps to put the same to good working condition before the Termination Date.

Article XIV Section 14.1 under termination states This Agreement may be terminated in any of the following ways:

(a) The expiry of the term;
(b) Upon the occurrence of an event of default in accordance with Article 13.3(c);
(c) Upon the occurrence of an event of Force Majeure in accordance with Article 10.4 and Section 14.3 Under, Action to be taken further to Termination Notice further outlines The parties agree that during the Termination Period, they shall follow and comply with the provisions of the Termination plan set out in Appendix O of this Agreement. And finally in Article XIV Section 14.5 opines The parties shall pay to one another compensation due and payable in accordance with the provisions of Article 15.

3.2 FORMS OF PORTS PRIVATIZATION

The ownership and operation of ports usually fall into three categories, the first being a pure public port, the second is the landlord port model where the port authority concessions operations to the private sector and the third is the pure private port. There are however nuances (options) that can be added to these forms of port privatization:

Forms Of Ports Privatization

Type	Public Sector Role	Private Sector Roles
Pure public	Owns and operate port	None (some services)
Landlord / Regulator	Owns port and regulate private sector	Operations
Greenfield concession (Build-operate-transfer)	Negotiation with private companies, regulation	Operations
Brownfield concession (Long-term lease of existing facilities)	Negotiation with private companies, regulation	Operations
Pure private	None (regulation)	Operations
Publicization	Owns and operates port	Operation and maintenance

Table 3. Forms of Ports Privatization. Source : Geography of Transport Systems : (2015) "Impact of privatization on port efficiency and effectiveness. Compiled by Consultant.

In the case of the Nigerian Ports there are several, separate, lease agreements. This contrasts with the present global practice of the standard concessionaire agreement. it is imperative to look at the forms of Port privatization in their broader perspective below.

3.3 PRIVATE SECTOR PARTICIPATION (PSP)

While the lease agreement for Nigerian Ports generally falls in under the above framework of leasing, (which is a rental contract in which the port leases an asset, Infrastructure, Superstructure, or both or the right to use it for an agreed period of time in return for a bulk payment or a series of instalments. This could be lease contract or leasehold agreement.), there are deviations on several aspects. The main variant/characteristics of private sector partnership (PSP) in the ports sector in comparison to global best practice can be defined in relation to eight policy issues which are **:**

- **Activities**
  - Most port PPPs impose strict limits on what private operators are allowed to do, usually in terms of the types of cargo they are allowed to handle. Two other common limitations on PPP activities are the separation of cargo handling from marine services, and the design of PPPs on a terminal rather than a whole port basis. In Lagos ports, there are deviations on the above in that there is no clear indication on what basis port activities have been disaggregated for the purpose of lease contracts:
  - Submitted lease agreements were signed in the period of 2005-06 which suggests that they are generally associated with the port reform programme involving the institutional restructuring of NPA.
  - Separation of port activities appears not to follow cargo handling specialisation principle nor the objective of economies of scale, e.g. Apapa bulk terminals A and B and Tin Can Island terminals C and D.
  - The same applies to the segregation between marine and cargo handling services because it appears that the former is still under the management of NPA. There may be valid reasons to keep such services under the ownership and management of the landlord authority but those could still be safeguarded under an appropriate PPP and concession framework.

- **Investment**

  Private investment requirements under PPP contracts may be either:
  - Obligatory : clearly specified, with an agreed time schedule,
  - Event-triggered: requirement to increase capacity depending on utilisation level,
  - Indicative: broad programme agreed in advance but changes as the PPP progresses,
  - Discretionary: left to the private operator to decide when investment is necessary.

  Lagos ports seem to deviate from the norm as most investment requirements are either event-triggered or discretionary . This is not necessarily the best option. Obligatory investments are most common in competitively-tendered PPP projects in countries which have problems with corruption, as pre-specifying the investment schedule increases the transparency of the bid evaluation process. It also makes the investment programme legally enforceable. Sometimes, obligatory investments lasting over 10-15 years may be rapidly overtaken by technological and market changes, but most port leases in Lagos are not long-term.

- **Contract Duration**
  - In the case of Nigeria, Lease agreement can be categorised into those with short-term duration (5-10 years) and those for medium-term duration (up to 25 years). For the former, this may be due to the way the ports industry developed in Nigeria with a high reliance on expatriate management contractors or it may simply reflect the continued use of the asset leasing model. For the latter, the 25-year lease contract is surprisingly uniform across all other terminals regardless of their location, specialisation, technical life and asset depreciation. This is probably because the country at the time of signature seemed to have settled on preferred contract durations fundamentals (copy-cat concessioning) and then apply them to all port projects, irrespective of their economic situation.

- Short-term leases of public port assets of up to 10-15 years, tend to be concentrated amongst small, slow growing sub-sectors of ports which are experiencing limited technological change, e.g. general cargo berths or dedicated berths for the exclusive use of a single shipping line. Neither principle seem to apply for port leases in Lagos ports, thus leading us to believe that port ownership and financing models in Lagos (and Nigeria) is still unclear and fragmented. Our analysis of Lagos port lease agreements show that (i) the correlation between investment and contract duration is low ($r2 = 0.27$) when based on individual terminals rather than size bands and (ii) there is little economic correlation between size of investment and contract duration, and this maybe linked to the event-triggered and discretionary nature of Lagos ports' investment requirements.

Other issues to consider :

- Asymmetric risk Port authorities generally add a few extra years onto the concession period to reduce the risk from the private partner requesting a major restructuring of the agreement part way through or from no bidders turning up in case of a new concession.
- Recovery of "soft" investments in marketing, training, IT systems etc.
- Continuity of employment Short duration PPPs create uncertainty for the workforce, while longer PPPs provide incentives for operators to invest in the workforce and offer continuity of employment and a more experienced and better trained team.
- Transaction costs. Private operators' bidding costs can easily reach USD$1.0 million even for simple concessions, and the port authority's costs, which are less obvious, may be much higher.
- Government interference Short concessions increase the scope for government interference, e.g. changes of policy or changes in the terms and conditions of the PPP contracts in contract renewal.

- **Exclusivity**
- **performance requirements**
  - Port authorities generally support the view that PPP agreements should include legally enforceable performance targets, even though it is difficult to define meaningful targets which fully capture customers' requirements.
  - Some key customer requirements (flexibility, early notice, document processing) are difficult to quantify or affected by factors outside of the terminal operator's control.
  - Hence the inclusion of bland productivity targets in port PPPs, e.g. gross or net handling rates, but those are fairly easy to achieve and have been declining.
  - Some key performance requirements (KPR's) have been increasing in importance: minimum guaranteed throughputs, cargo dwell time, and environmental targets linked to greenhouse gas emissions.
  - In Lagos ports, performance requirements are possibly the most contentious issue in lease agreements design and implementation. Performance requirements are:
    - (i) minimum guaranteed throughout but our analysis suggests that this is not justified by a robust traffic forecasting and performance model and/or
    - (ii) minimum duration of free yard storage but such duration is not justified by a capacity threshold or congestion targets.
- **Labour**
- **Tariffs**
  - There is a fundamental distinction between PPPs which are free to set their own tariffs, and those whose tariffs are regulated, either by a formula within the PPP agreement or by the port authority (contract regulation) or an independent regulator (economic regulation).

- Tariff regulation in ports usually takes the form of tariff ceilings which are not to be exceeded for individual shipments or –rarely– in aggregate. This reflects the political hope that over time tariffs will draft downwards below the ceiling in response to competition from other ports.
- The main cause of any downward drift below the tariff ceiling is customer discrimination i.e. the offering of discounts to customers who have the option of going somewhere else.

  Looking at the Lagos ports lease agreements, they appear to have a mix or regulated and unregulated tariffs although there is suggestion of tariff ceilings in some lease agreements. Further clarification from the NPA and terminal operators is needed to understand the real level and structure of those tariffs. Furthermore , Nigeria has no independent port (or competition) regulator in charge of tariff regulation, among others, and as such one can only assume that tariffs are regulated by contract by or through NPA which may create a conflict of interest. For Tariffs strategy, (See figure 6, Page 29). Regional competition, particularly for transit business, should be fully considered when setting tariffs..

- **Concession fees.**

  In Lagos ports, lease agreements financial models are a mixture between lump sums, annual rent and revenue sharing, and NPV calculations. There are several issues on how and why such fees have been selected and designed, how their collection and revision is being implemented in practice, and the potential impact of any market failure and / or conflicts of interest. These issues were discussed in detail during our planned meetings with BPE, the procurement manager of NPA as well as other terminal operators and other stakeholders. What is clear is that the quantum of the concession fee offered is the most important single criterion for selecting the private sector partners in Lagos ports. This may not be the right answer to the congestion problems and inefficiency of the port system, and lessons must be learnt from other countries, most recently Brazil, where other operational and economic criteria are highly weighted compared to the financial contribution from the private partner.

  In today's globalised environment, seaports and maritime transport play an important role of being many nations' major gateway for international trade and are a good instrument for measuring the economic health of a nation. The ports have considerable influence on the volume and conditions of trade as well as the capacity for economic development of developing nations. In Nigeria, greater percentage of international trade is routed through the sea, and given its huge population, it is believed that the Nigerian economy may account for about 60% of all seaborne trade in the West African sub-region. (See Figure 2, page 14 and figure 4, Page 24). Hence, the country's ports are increasingly challenged to meet the pressure mounted from movement of ships and cargo in and out of the facilities. The Nigerian Ports Authority established as an autonomous public corporation with the enactment of the Ports Act of 1954, assumed responsibility as a regulator and an operator entirely owned by the Federal Government.

ties

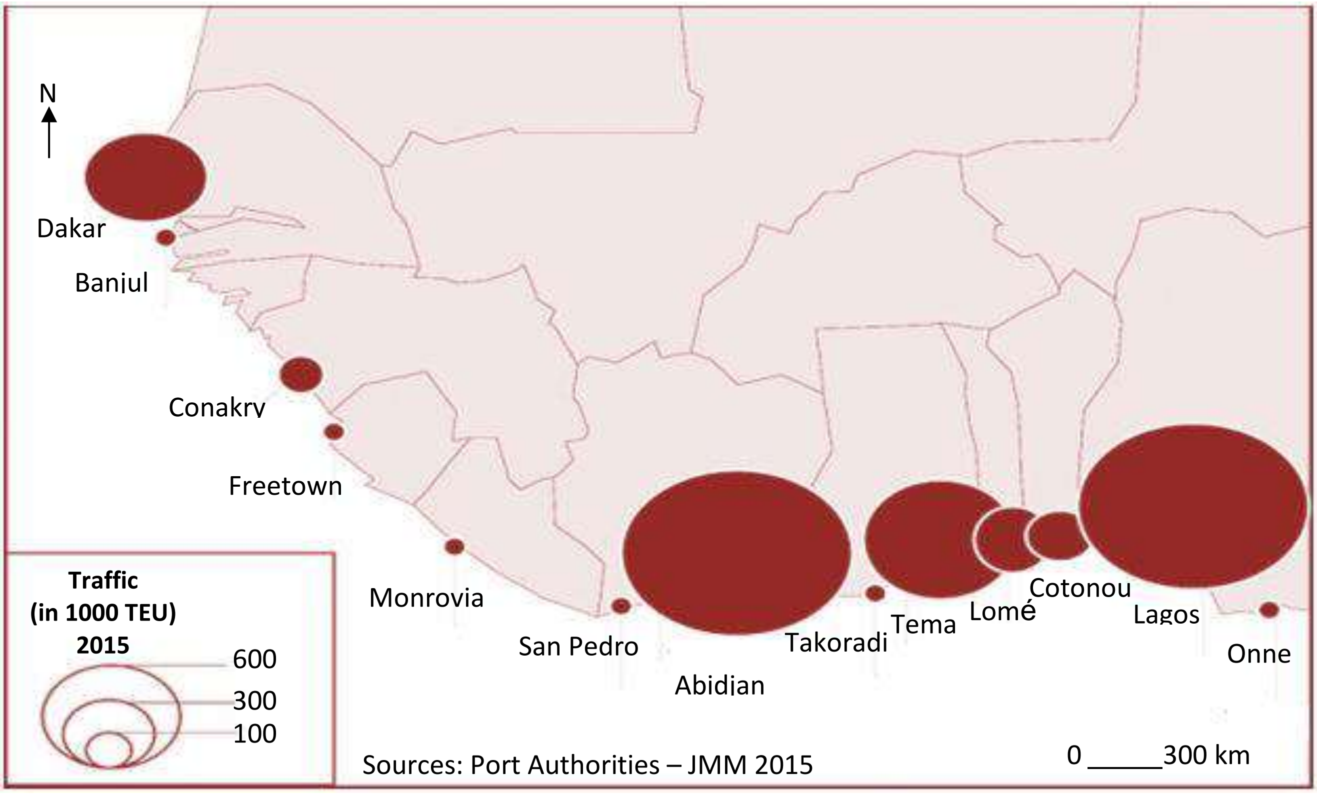


Figure 2. Traffic oF TEU's In the West African Region. Source : Port Authorities – JMM 2015. Compiled by Consultant.

Number of Concessions Agreement

PORTS	NO. OF CONCESSIONS
Lagos Ports Complex	6 + 1 (ICD)
Tin Can Island Port Complex	4 + 1 (BOT)
Rivers Port	2
Delta Ports Complex	5
Onne Ports (FOT & FLT)	4
Calabar Port	3
Total	**24 + 2**

ICD INLAND CONTAINER DEPOT

BOT BUILD OPERATE AND TRANSFER. *** So far, Two or more operator's tenure has lapsed.**

4 OBJECTIVES OF THE PORT's CONCESSION

The objective of the Port Concessions was to increase efficiency in port operation, decrease cost of port services to stakeholders, decrease cost to the Government for the support of port sector and attract private sector participation so as to free public resources for other priority public services. Given the recommendation of the project monitors (CPCS, World Bank & Royal Haskoning), the Landlord port model was chosen. The proposed concession took effect in 2006, Ports were divided and the following terminals were handed over to their successful bidders as follows (See Table 4, Page 15 below).

Terminal (Berth)	Company Name	Lease Terms (Yrs)	Hand Over Date
Apapa Terminal A (4 – 5)	Apapa Bulk Terminal Ltd.	25	3rd April, 2006
Apapa Terminal B (4 – 5)	Apapa Bulk Terminal Ltd.	25	3rd April, 2006
Apapa Terminal C (6– 12)	ENL Consortium	10	3rd April, 2006
Apapa Terminal D (13 Bullnose)	ENL Consortium	10	3rd April, 2006
Apapa Terminal E (19-20)	Greenview Dev. Nig. Ltd.	25	3rd April, 2006
Apapa Container (15-18a) Terminal	APM Terminals Ltd.	25	3rd April, 2006
Ijora Container Depot (Lilypond)	AP. Moller	10	3rd April, 2006
TCIP Terminal A	Josepdam Ports Services Ltd.	10	10th May, 2006
TCIP Terminal B	Tin Can Island Container Ltd.	15	10th May, 2006
TCIP Terminal C	Ports & Cargo Handling Serv. Ltd	10	10th May, 2006
TCIP Roro Terminal	Five Star Logistics Ltd.	15	10th May, 2006
Port Harcourt Terminal A (1 – 4)	Ports & Terminal Operators Nig. Ltd.	15	23rd June, 2006
Port Harcourt Terminal B (5 – 8)	BUA Ports & Terminals Ltd.	25	23rd June 2006
Onne FOT A (FOT A)	Intels Nigeria Ltd.	25	21st June, 2006
Onne FLT A	Brawal Oil Services Ltd.	25	21st June, 2006
Onne FLT B	Intels Nigeria Ltd.	25	21st June, 2006
Onne FOT Jetty	Atlas Cement Co. Ltd.	25	21st June, 2006

Calabar New Port Terminal A (1 – 2)	Intels Nigeria Ltd.	25	23rd June, 2006
Calabar New Port Terminal B (3 – 6)	Ecomarine Nig. Ltd.	10	1st August, 2007
Calabar New Terminal C (old port)	Addax Logistics Nig. Ltd.	25	26th May, 2007
Warri Old Port Terminal A	Intels Nigeria Ltd.	25	23rd June, 2006
Warri Old Port Terminal A	Associated Maritime Services Ltd.	10	12th June, 2007
Warri New Port Terminal B	Intels Nigeria Ltd.	25	23rd June, 2006
Warri New Port Terminal C	Julius Berger PLC	25	4th May, 2007
Warri New Terminal A	Global Infrastructure Nig. Ltd.	25	
Koko Terminal	Gulfinger Limited	10	12th June, 2007

Table 4. Shows the various Terminals and Terminal Operator's Names/Concessionaires After the concession. The Apapa port for instance after the concession culminated into six terminals owned by three concessionaires or terminal operators. Source: NPA. Data Compiled by Consultant.

The Nigerian Ports, as is the case in many other public corporations, were also believed to have complex institutional management structures with excess bureaucracy of process and procedures. In a bid to address some of the clear and immediate problems such as port congestion and delays, the NPA introduced concessioning to some of the ports in the country to engender expertise in the area of operations. Previous Studies on the circumstances necessitating the Nigerian Ports concession and the initial outcomes have been carried out. Others have looked at logistics and physical distribution at the ports. However, no known study has examined if some of the basic objectives of the concessioning were achieved five years or more after inception, hence the need for a large holistic study which the team were advised is now taking place. Against this background, the study examines current practices at the Nigerian Ports with a view to ascertaining whether:

- The cost of port services has decreased.
- The turnaround time has improved.
- The percentage of berth occupancy rate has improved.
- The infrastructural facilities have improved significantly.
- The security around the seaports, in line with the ISPS Code, has improved.

On Cost of port services Still looking at Article 6, under "Operations" and Section 6.9 outlining the Operations Rates describes (A) the General Parameters as The Lessee shall ensure that the Operations Rate shall be in accordance with Applicable Laws and competitive within the Port and with other competing ports of Nigeria having facilities similar to the Lease Property. With the "Specific Parameters" on (B). The Lessee shall charge cargo dues and delivery charges for the operations which are not greater than the rates set forth in Section A of Appendix 1 (the "Operations Rates") in accordance with the terms and conditions included therein. The Lessee shall not make any increases in the Operations Rates, unless agreed to in writing by the parties and any required consents of governmental Authorities have been obtained. Value added taxes and other taxes shall be added as required to the accounts rendered to the Lessee's customers. Income from the Operations Rates shall accrue directly to the Lessee without any collection, deduction or set off by the Lessor or the regulator. The Lessee shall also be allowed to charge for Additional Services, as defined in Appendix E and other services rendered but not specified in Appendix 1, including but not limited to: terminal handling, inland container depot transfers, storage and for penalties for violation of applicable rules and regulations set down by the Lessee. The level of terminal handling charges and inland container depot transfer charges shall not exceed the market rates charged by the shipping agents and the Lessor respectively prior to this agreement, and any future increases shall require the consent of the relevant Governmental Authorities.

The terminal operators have complained of lack of adequate infrastructures at the ports, which impedes their business operations and adds to cost of doing business hence imposing unnecessary fees on Shippers/Agents and, ultimately, consumers . For example, an account given by a key shipper, Dayo David Azeez of Mambilla Shipping Ltd who is also a senior official of the Association of Nigeria Licensed Customs Agents (ANLCA) mentioned: “The Shipping Lines Agency fee for husbandry is not supposed to be levied for public holidays in spite of vessels seizing operations at this time and instead, the importers are the ones being levied contrary to the normal practice”. Another stakeholder source mentioned : “Officials presently collects about seven illegal charges from port users, water front terminal operators collect about 11 charges on every container while their counterpart in the off dock operation (bonded terminals) collect about 20 different charges”. In this regard, above terms have not been fully adhered to. There is therefore an urgent need to consider all the fees levied on shippers/importers and agents.

The Port reforms also opened up investment opportunities which are reflected in the successful concession programs. The Build Operate and Transfer (BOT) initiative has resulted in the development and subsequent commissioning of an ultra modern RoRo berth (berth 11) at Tin Can Island Port in Lagos with a quay length of 270 metres, also the construction of berth 12 in the same terminal is near completion. The terminal which was constructed at a cost of about USD$64,000,000.00 is fully automated and equipped with facilities of international standard. Also opportunities have been taken up in Onne Port area where developments in Port infrastructure have been achieved through amortization.

5. FEES PAID IN THE NIGERIAN CONCESSION AGREEMENTS

The three types of fees payable in Nigeria under the various concession (lease) agreements are :

- The commencement fee payable immediately after the execution date. (An initial fee of $10,000,000 dollars).
- The fixed annual payment of a sum as specified in the agreement associated with the projected volume as stated below, AND
- The throughput fee payable on total volume of cargo handled calculated on the basis of ($16) per TEU, handled in the premises.

Under Appendix F of the Agreement titled Lease Fees, [Only a few or none of the Terminal Operators have met up with their annual GMT (Guaranteed Minimum Tonnage) so far therefore paying less or short of the proposed/projected volume payments each year]. And subject to the provisions of section 18.5 of the Agreement, the Lessee shall make payment to the Lessor by telegraphic transfer within thirty (30) days of the date of the relevant invoice. If any agreed sum is not paid within such period, the Lessee shall pay the Lessor interest at a rate equal to LIBOR PLUS five percent (5%) on the unpaid amount, until the date of actual payment. Same applies to section 3.4 where The Lessee shall pay the Lease Fees in consideration of this Agreement in accordance with the terms and conditions set out in Appendix F. Except as the parties may otherwise agree in writing, all payments must be made in Dollars. Any amounts due but not paid thereunder shall bear interest at LIBOR plus percent (5%) compounded monthly.

These fees are paid to the NPA in USD$ Dollars. It was also learnt that the NPA formed joint ventures with private partners for the provision of marine services. This reportedly resulted in the creation of the Lagos Channel Management, Bonny Channel Company and Calabar Channel Management Company to provide pilotage, towage and dredging services at the port. It also entered into lease agreements with various firms for terminal handling and stevedoring operations, while it retained the role of lessor and technical regulator. The concession lease agreements range from 10 years to 25 years, depending on the nature of the facility. The present low volume of import and export activities in the maritime sector, which has created a shortage of cash and resources in the industry, is threatening the port concession agreements valued at $6.5bn. This is especially so for port terminal operators who are required by the agreement to pay their fees to the Nigeria Ports Authority in United States Dollars (USD$), whereas their income is accrued in Naira.

Article III, Section 3.4 titled “Lease Fees” outlines The Lessee shall pay the Lease Fees in consideration of this Agreement in accordance with the terms and conditions set out in Appendix F. Except as the Parties may otherwise agree in writing, All payment must be made in Dollars. Any amounts due but not paid thereunder shall bear interest at LIBOR PLUS Five percent (5%) compounded monthly.

Article VIII, Section 8.8 titled Taxes outlines, The Lessee shall pay any taxes, levies, duties, withholdings, or other fees levied by Governmental Authorities and are required by Applicable Law to be paid by the Lessee as a result of the performance of its obligations hereunder. Under 8.10, Non Compliance, In the event that the Lessee fails to comply with any of its obligations set out in this Article, then the Lessor may notify the Lessee of such failure and give the Lessee thirty (30) days notice in writing to rectify its failure. If the Lessee fails to rectify its failure, the Lessor may fulfil such obligation for and on behalf of the Lessee at its own cost. The Lessor shall be entitled to recover such costs provided that computation of costs to be recovered shall be based on an acceptable quotation from one (1) out of three (3) bids submitted by reputable companies in such fields of operation and the scope, price and mode of payment shall be mutually agreed by both parties. If parties fail to agree the computation of costs and this has an adverse effect upon the Lessee’s ability to perform the operations under this Agreement, then the matter shall be settled in accordance with the provisions of Article 17 (Governing Law; Dispute Resolution).

Our meetings with the, sampled, terminal operators/concessionaires suggests that paying fees in United States Dollars (USD$) is currently difficult as some operations are more penalized than others. For instance, foreign exchange evolution since 2006 as automatic dollar/naira parity and automatic mechanisms is a significant challenge to operators. as there is no mechanism based on CPI (Consumer Price Index). The inflator factor was 10% this year and will be 17% to 20% to some operators in the next year and, partly consequently, there is 14.3% downturn in container throughout. 85% of concessionaires revenue is in Naira while they have to give returns to NPA in Dollars (USD$). In one particular agreement, for instance, there was to be a contract for the construction of a new berth and recovery of the fees back from NPA under BOT. The operator is still struggling to recover from NPA based on previous fair standing with the Authority. The berth was intended to be utilized for the exportation of cement. The terminal operator’s negotiation with NPA in their last meeting was reported as un- satisfactory. The team were advised that discussion continue.

6 PROBLEM STATEMENT/INITIAL CHALLENGES. (Present Situation.)

It is widely believed that the Nigerian Ports Authority, by the 1990s, demonstrated very low levels of efficiency which resulted in long turnaround times for vessels and increased container dwell time. Instead of the then extant forty-eight hours international standard to unload and reload a ship, it took weeks. The workforce was too large and lacked capacity, there were excessive port-related charges, and massive levels of cargo theft. The most unfortunate aspect was that the port infrastructure required considerable rebuilding and restoration. This entailed massive external financial support which the federal government was unwilling to provide due to the existing corruption and operating inefficiencies. Hence, port operators and users were left dissatisfied. The Nigerian Ports, as is the case in many other public corporations, were also believed to have complex institutional management structures with many bureaucratic bottlenecks and without a comprehensive succession plan.

Time and cost of Delay at the Port

Indicators/Measure	Time (hours)	Delay (hours)	Cost (US$/TEU)	Informal cost (US$/TEU)	Informal % of total	Extra cost (US$/TEU)	Extra % of total
Import: 20-ft							
Anchorage and berthing	21	13	148	---	---	14	9%
Unloading at berth	20	0					
Anchorage and berthing total	41	13	148	---	---	14	9%
Yard handling and storage	82	58	532	103	19%	411	77%
Border clearance	63	39	93	83	89%	83	89%
Forwarding			228	---	---	59	26%
Shipping line release and delivery	48	24	79	---	---	51	65%
Port yard operations total	193	121	932	186	20%	604	65%
Export: 20-ft							
Border clearance	48	42	222	69	31%	99	45%
Forwarding			441	---	---	272	62%
Yard handling			124	---	---	77	62%
Port yard operations total	48	42	787	69	9%	448	57%
Loading at berth	20	0	0	---	---	0	0%
Channel operations	6	6	4	---	---	4	0%
Anchorage and berthing total	26	6	4	---	---	4	0%

Source: NEXTT (2015) LAKAJI Corridor Report

Table 5. The present Time and Cost Delay at the Ports. Source NEXTT (2015) LAKAJI Corridor Report.

In a bid to address some of the clear and immediate problems such as congestion and delays, the NPA introduced port concessions to some of the ports in the country to bring in needed expertise in the area of operations. Most developing countries like Nigeria lack the expertise required for crafting an environment conducive to a good multi-modal logistics system. Strategy is an important element in any concession scheme, it refers to the plans, investments, and actions taken to achieve sustainable competitive advantage and superior logistics, economic and social performance. 'Strategy' presupposes that the most basic component of strategic management, planning, which could have clearly defined the port's mission, specifying achievable objectives, developing sub-strategies and setting policy guidelines would be available. However, it appears that this was absent in the concession scheme. An example is the fact that it wasn't clear if the ports should operate as a public enterprise, an infrastructural enterprise, a social service or a profit making business enterprise.

Recognising the vision statement of the Nigerian ports, it wishes to be the leading Port in Africa, to deliver efficient port service in a safe, secure and customer-friendly environment. Its' core values include Efficiency, Customer Satisfaction, Safety and Security, Innovation. However, so far, the reverse is the case. Business at the Nigerian seaports was struck with difficulties. Turnaround time for ships was too long and usually calculated in weeks, sometimes months, depending on the cargo being loaded or discharged.

Cargo-handling plants and equipment owned by the NPA were few and mostly unserviceable, leading to shipping companies hiring these machines from private sector sources after having paid NPA. Dwell time for goods in ports was prolonged due to poor port management and that led to port congestion. Corruption soared high among labor contractors and various service providers at the port. Nigerian seaports were rated as one of the costliest seaports in the world, as a result of the compounded problems. In the same vein, a report by the Nigerian Voice (2011) an online media, reports a stakeholder saying thus: *"Has anything changed at the ports? 'Four years ago, it was easier to access the ports in Lagos, but now it has become near impossible to carry out any business successfully at the port without getting stuck. The traffic congestion is hellish, the infrastructures at* *the ports have depreciated, congestion is the order of the day at the terminals and importers are skilfully ripped off in the name of demurrage*". This sums up the pronouncement of Dayo David Azeez's of Mambilla Shipping earlier account and those of other stakeholders. (See Table 5, page 19) for the present time and cost delay at the ports.

Despite significant investment in supporting infrastructure and cargo handling equipment in the past decade, the steady growth in cargo volumes and size of ships has placed a significant burden on landside operations causing serious congestion both at the gates and in the terminals. The arrival of larger ships making fewer port calls but discharging more cargo in a single call will likely exacerbate the problem and lead to even longer truck waiting times, increased air pollution and lower terminal efficiency if not managed in an optimal manner. The challenge therefore is to make the existing terminals more productive and cost-efficient.

One of the critical elements that contribute to container terminal congestion and poor productivity is the unpredictability of truck arrivals, which leads to situations where demand greatly exceeds supply or vice versa. Today, the timing of truck arrivals at the container terminals is completely random. Each morning there is a rush by carriers to get on line early in hope of making multiple moves a day or make an appointment at their customer's location. This creates extreme spikes and lows in traffic levels in terminals throughout the day, which can at times contribute to long turn times for the truckers, multiple container re-handling, a decrease in equipment utilization i.e. drayage, inefficiencies for all parties involved, and can even cause severe congestion within the local roadway network.

To compound the problem nobody monitors anybody and sheer manipulation has become the order of the day.' Alhaji Suleiman Hameen, the Chairman, port industry anti-corruption standing committee at the time, said: "there is no meaningful infrastructural development at the nation's port despite the huge revenue collected by the government after the concession. Corruption is a major factor responsible for the poor state of infrastructure at the ports".

The biggest challenge will be how the growth in road and rail traffic will be merged and handled in an intermodal environment, which is badly needed. Even large, well-established ports were rarely established with the vision of the volumes that will likely be handled in the next 10 to 15 years. Wholesale changes of road and rail infrastructure to feed these ports can rarely be added optimally after the fact, so compromise is usually required or construction of new ports. When one adds the development of free trade zones; terminal to terminal transfers and the increased urbanization of major cities, this will act as a growth limiter for many ports, especially where the democratic process of consultation with the people will take many years to reach the necessary compromises. One example of a major port starting to make this adjustment is Singapore. Transport Minister, Lui Tuck Yew, announced in October 2012 a SGD$3.6Bn investment in a radical shift of the five existing terminals into one terminal at Tuas in the West of the island state will nearly double the current 35m TEU capacity whilst freeing up the current sites which are closer to the main business district. The current operating leases expires in 2027. [Cargonews Asia]

Figure 3. **A view of one of the few road Link to the Lagos/Tincan Ports. 2016. Source : Shipping World.**

Port development is an ongoing process, but the situation in Nigeria is simply that the ports have generated substantial revenues from the port concessionaires but the federal statutory budgeting process has stalled the Ports development agenda, since they do not directly control the revenue going into the federated account as mandated by Nigeria's constitution. Also initially, the Authority was unable to deliver vacant possession to terminal operators in view of the occupation of the premises by lessee's who sought the intervention of the Court to restrain the Authority from ejecting them from the premises. The Authority has, however, been able to resolve a substantial number of such cases leaving only a few outstanding. The port industry needs the proper intervention of the Presidency, otherwise the nation will be losing cargoes to neighboring countries. The decisions made by Governments, Private companies and Public-Private partnerships can allow the life-blood of world trade to fuel a country's economy, and often that of its neighbours, or, conversely, leave it at a competitive disadvantage.

(We refer readers to the Appendix Column of Crown Agent's "Checkpoint Report" for Notes on meetings with the selected Terminal Operators and other stakeholders. These detail correct topical issues and the current status of those issues.)

There is also complaint on the part of government that terminal operators have reneged on their part of the agreement. A report once averred that the then Senate committee on Maritime Transport headed by Senator Gbemi Saraki condemned the process leading to the 2006 port concession programme as she alleged that there were irregularities in the amount paid by terminal operators and that the operators had reneged on their part of the agreement as they failed to in their prescribed investments.

Detail of the current situation has been forwarded to the Senate awaiting Bill passing and full resolution. NPA may have scored above average in increasing its revenue profile through the concession system, but operators complaints of high charges, high dwell time, poor infrastructure and an unfriendly business environment at the ports continue. Government is not ploughing back to the ports the revenue generated; the access roads to the ports are not in good condition. Some terminal operators may have been trying their best to improve services as is seen and earlier observed from our various visitations to several terminal operators at the Apapa and Tin Can Island container terminals but their efforts are continually frustrated by some other inadequacies.

An example is the APM Terminal which increased its capacity from 220,000 TEUs per year to 1.6 million TEUs after concession. Within months of the award, delays for berthing space dwindled significantly, and shipping lines reduced their congestion surcharge from $740 to $105 per TEU, saving the Nigerian economy $200 million a year. By early 2009, APM acquired new gantry cranes to triple their original capacity. The terminal was able to handle more than 500 containers per day for customs examinations, but the majority of the containers were stacked at the end of the day and the port was clogged by uncollected containers. By February of that year, the then head of NPA announced a temporary suspension of ship entry with immediate effect. This lasted until sometime in mid-April to enable terminals to clear what was termed “alarming” backlogs. The Comptroller of the Nigerian Customs Service for Apapa at the time blamed the slow removal rate on the need to physically examine every container because of the high incidence of concealment, non-compliance and false declaration by importers. When the containers were cleared, owners refused to collect them and demurrage charges were increased by $4 per TEU in a bid to force owners to move their containers out of the ports. The agents blamed lack of trucks to remove the containers among other complaints.

6.1 SUMMARY OF THE CONCESSION AGREEMENT CONTENT IN RELATION TO THE PROJECT TORs (Performance Assessment of operational processes in selected ports)

As previously indicated this study examines the current practices at the Nigerian Ports with a view to ascertaining if the objectives of the Ports Concessions have been met:

- The cost of port services has decreased.
- The turnaround time has improved.
- The percentage of berth occupancy rate has improved.
- The infrastructural facilities have improved significantly.
- The security around the seaports has improved.

Based on the objectives of the study on (No 4, Page 15), the following research questions are, consequently, addressed:

- Is there significant decrease in the cost of port services?
- Is there relative improvement in the turnaround time?
- Is there improvement in the percentage of berth occupancy rate?
- Is there significant improvement in infrastructural facilities?
- Has security around the seaports improved?

The present Government, Minister of Transport, the NPA MD. and several other stakeholders appeared not too comfortable with the progress made by concessionaires, so far recorded. At a recent oversight tour of port facilities, the Minister and the NPA MD. assured that a comprehensive audit of the concessionaires operations would soon be carried out to know whether to review their agreements with NPA, especially those whose tenure expired last year, (10 years Agreement Lapse) or whether to wait a little longer before doing so. Also, commenting on the planned audit, the Executive Secretary/Chief Executive of the NSC, the Port Economic Regulator (PER), said: “the planned review is aimed at carrying out a clinical analysis on the concession, improving on the milestones achieved and correcting its flawed aspects, especially in the area of charges, clearing processes, among other issues. To achieve that, we are involving all relevant stakeholders in the maritime sector because their inputs are necessary for this review”, he stated. Afterwards, to clear all doubts, this study was clearly driven by the NPA MD. so far with the intention of all stakeholders in the sector/industry being carried along till date.

The various Lease Agreements did not clearly make provision for a specific period for review of the agreements, but they allow for amendments to the agreement subject to the mutual consent of the parties. Meanwhile, several maritime experts and members of the Presidential Committee on Port Reforms, have also called for the audit of the terminal operators and a review of their agreements and from project observations, it was noted that the 2006 concession exercise was partially flawed. It was not supported by legislation. They developed lease agreements, which were mainly for land. A true port concession should adopt the landlord's model, which has various components like marine, port operation and regulation. Going forward, there are issues to address like traffic, tariff, infrastructure, ICT and labour, amongst others. These should be fed into the concession agreements but were lacking in the 2006 agreements. There was no regulator and no supporting legislation. This created private sector monopoly. Charges are compared with others in the sub-region and. currently, Nigeria's are the highest and the processes and procedures are not streamlined. Hence, if some concessionaires' tenures have expired, there should be a standard, full, review. There is a transfer process in concession or PPP. Their own is Build, Operate, Own and Transfer (BOOT). There is need to re-assess the agreement models..

Charges are still very high, a development that has continued to make neighbouring West African ports more attractive to shippers. Importers and agents insist that Benin Republic, Ghana and Togo would continue to siphon cargoes meant for Nigeria because of lower operational cost, faster clearing process and other incentives. According to a recent World Bank study that compared charges in Nigerian ports and other sea terminals in West Africa, the results showed that Nigerian ports are the costliest to operate in within the sub-region. For instance, the terminal delivery/labour charges in Nigeria stands at N62,682 while it is N9,655 in Ghana and N24,000 in Benin Republic. In Senegal, the charge is dependent on weight and volume of cargo. For cargo dwell time, Nigeria still records the highest in Sub-Saharan African with an average of 20-28 days. Togo is 18 days, Benin Republic-10-15 days, Ghana (Tema Port) 15-21 days, Kenya (Mombasa port) nine days, South Africa (Durban) four days and Zambia seven days.

Stakeholders state that the Government must address the aforementioned issues if the sector is to operate optimally. Abubakar Abdullahi of Genstar FZ-LLC/World Logistics and Chairman/CEO, Aida Agroallied Services Ltd's account alleged "we also have a synergy with other major agencies so that we can work together to attain set goals and objectives. For instance, if someone applies and regular payment is simple, easy and seamless, it will improve the status and rating of our ports. So, it is not just Nigeria Ports Authority. It has to be a synergy of relevant agencies in the ports to ensure that we provide these services". In other words if the terminal operators pay their dues on time after registration and at the same time carry out their stipulated responsibilities, there is likely to be a more seamless operation and all stakeholders/agencies operations will be carried out optimally thereby deriving efficiencies and cost reduction.

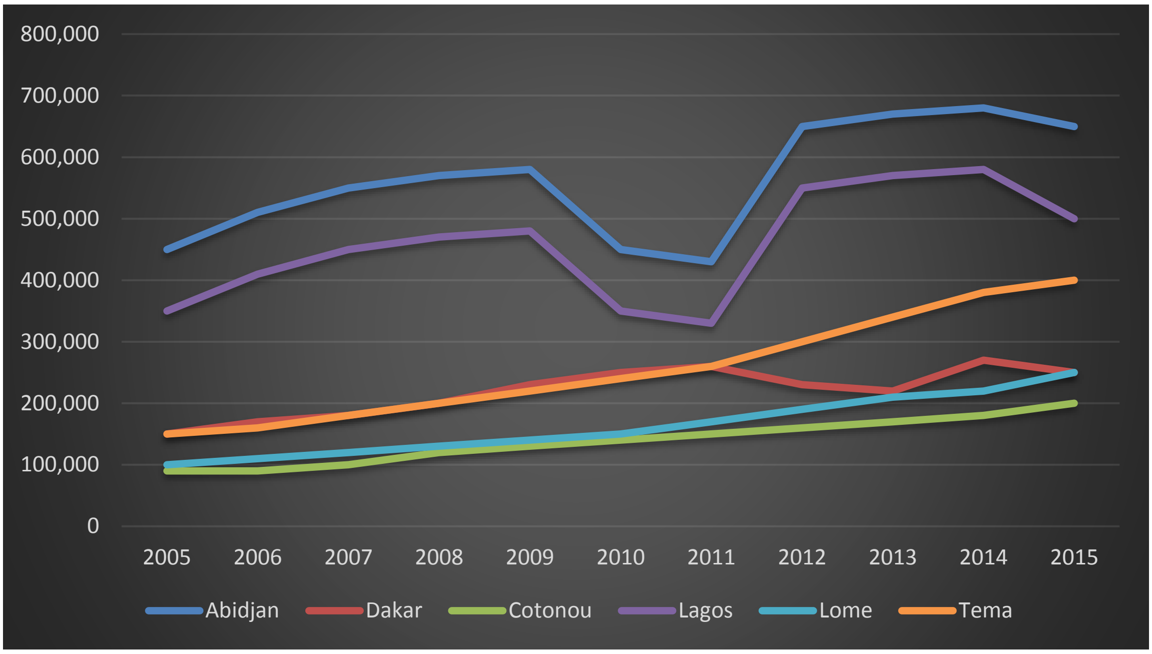


Figure 4. Graphical Traffic of TEU's In the West African Region. 2016. Source : New Bills Reform. Data Compiled by Consultant.

In the interface road sections of the ports, massive potholes were the norm, rather than the exception, and this did nothing to reduce waste of man hours brought about by slow movement of goods to and from the ports. The resulting congestion led to consignments becoming untraceable as if they disappeared and, in such cases, NPA often seemed helpless in effecting the return of such cargoes, to the chagrin of hardworking business people. As a result of porous entry points, dangerous miscreants swarmed into the ports to also "eke out their daily bread", leading to predictable tales of woe on the part of responsible business people.

Another example of a recent issue is an outcry from a concessionaire in relation to an alleged monopoly bid. Since April 27, 2015 when the NPA issued circular directing owners of private jetties that handle oil and gas cargoes to relocate their operations to designated ports in the South-South, the sector has been embroiled in crisis, leading to accusations and counter accusations. The directive was perceived as a death warrant handed down to some companies in the maritime sector. Recently, terminal operators and private investors in Nigerian ports called on the federal government not to grant monopoly for handling certain types of cargoes to a particular concessionaire so as not to destroy the gains of the concession policy and erode existing and potential investments in the sector. They asserted that the appreciable progress recorded in the sector in the last 11 years may be at risk if the NPA fails to address the post concession crisis that operators blamed on the concessionaire's monopoly bid.

6.2 COMMENTS ON CONCESSION AGREEMENT AND WAY FORWARD BY NPA

A seasoned Maritime Lawyer and former President of the NBA Nigerian Bar Association, asserted that the Nigerian maritime sector can generate N7 trillion annually if all players are committed to ensuring its growth. However, from 2006, when the Bureau for Public Enterprises (BPE) midwifed the port concession deal between the Nigerian Ports Authority (NPA) and various private sector players who took over terminal operations of NPA, it became clear that the government parastatal could no longer handle such duties efficiently.

That was because port congestion became the rule, rather than the exception and ships stayed over a month at berth before they could discharge their cargoes. Demurrage piled up, and government revenue dipped, as Nigerian ports were dreaded internationally. Notwithstanding the above challenges, economic experts and maritime observers who witnessed the 2006 concession described it as a 'sham', insisting the entire package was skewed in favour of the terminal operators and to the detriment of Nigeria. They added that there was a deliberate plan to avoid having a substantive port regulator in place who would have created a level playing field and ensured concessionaires played by the rules of engagement. They further alleged the absence of an umpire gave the terminal operators and shipping companies free hand to prey on importers and agents with high and duplicated charges. Such stakeholders also advocated an urgent audit of the operations of the concessionaires to verify their claims of investing millions of US dollars to modernise the ports amidst a flurry of petitions pointing to the contrary. In late 2014, the then President Goodluck Jonathan pronounced the Nigerian Shippers' Council (NSC) as the Port Economic Regulator, a move that was initially opposed by the terminal operators as they headed for the courts to challenge the Government.

Indeed, from calculations, industry records show that cargo throughout has improved tremendously since the ports were concessioned in 2006. The channels have also been dredged by the NPA to give room for large vessels to berth at the nation's terminals. This enhanced the influx of vessels within this period. Some stakeholders also say dwell time at the ports has reduced compared to the pre-concession era. The study considers the different schemes that could be of great potential benefit in Nigeria's case rather than the customary simple lease agreement scheme that is currently prevalent.

The ship traffic statistics at Nigerian ports has reflected that a total number of 19,833 vessels berthed at the various ports between 2013 and 2016. Similarly 543,842,425 tonnages were registered within the period under review. Year 2014 recorded the highest number of vessels berthed as well as tonnages registered while the least were recorded in 2016. Tin Can Island Port handled the most ships accounting for 33% of total number of ships that berthed in all ports and 32% of total tonnage registered in all ports. It is closely followed by Apapa port which accounted for 28% of ships that berthed and 25% of total tonnage registered and Onne port which accounted for 15% of ships that berthed and 30% of total tonnage registered.

YEAR	NO OF VESSELS	GROSS REGISTERED TONNAGE (GRT)
2007	4,894	84,806,792
2008	4,623	89,505,702
2009	4,721	90,603,601
2010	4,881	106,689,553
2011	5,232	122,614,716
2012	4,837	120,818,683
2013	5,369	130,628,057
2014	5,541	148,323,065
2015	5,090	144,207,122
GRAND TOTAL	**45,143**	**1,038,197,301**

Table 6. Number and Gross Registered tonnage (grt) of vessels that entered all Nigerian Ports: 2007-2015. Source : NPA Statistics/Data. Data compiled by Consultant.

Cargo traffic statistics revealed a total of 312,185,808, traffic was recorded at all Nigerian ports between 2013 and 2016. The sum of 196,851,236 or 63% of the cargo traffic was inwards while 115,334,572 or 37% was outward. Apapa port handled the most number of inward cargoes accounting for 39% of total inward cargoes and closely followed by Tin Can Island and Delta ports accounting for 31% and 11% respectively. Calabar port accounts for 4.29% to record the least. Similarly, Onne ports handled the most number of outward cargoes accounting for 80% of total outward cargoes and closely followed by Delta and Apapa ports accounting for 10.63% and 3.52% respectively. Also, Calabar port accounts for 0.05% to record the least. The number of passenger traffic within the period under was put at 52,262 while the highest number of passenger traffic was recorded in 2013.

7 REVIEW OF EXISTING CONCESSION ARRANGEMENTS INCLUDING ANALYSIS OF CONCESSION FRAMEWORK ADOPTED SINCE 2006

Considering BOT Scheme, for example, a carefully drafted concession contract is central to the implementation of this scheme. The concession contract gives the concessionaire the right to run the facility (with limited and clearly defined government oversight) and earn a commercial return on investment. The concession or BOT agreement, with the required business plan, will set out estimates of the likely revenues, costs, debt repayment, and profit for the SPC. This information is necessary to assess the projects financial viability and its debt repayment capacity. Many planned BOT projects fail because their terms are negotiated without taking into account whether or not the project is bankable. Governments often try to negotiate a BOT arrangement at an early stage in the project preparation cycle, before the full scope of the project is known and before a regulatory oversight regime has been decided. While this might generate significant revenues for the government in the short run, it may saddle the concessionaire with an impossible-to-complete project. Although none of these schemes is practiced in the Nigerian Concession Agreements (only the Lease Agreement applies), There are many variants of BOT-like schemes, including:

- ***Build-own-operate*** **(BOO)**: Full privatization of the terminal because the port land and the facilities built on it are not returned to the government or port authority. Examples of countries using this scheme are : Thailand, China, Turkey, Pakistan, Saudi Arabia, Israel, India, Malaysia, Egypt and some U.S. States.
- ***Equip-operate-transfer*** **(EOT)**: Port infrastructure already exists, but superstructure is supplied by the SPC. Some of the countries using this scheme are Iran, Croatia, Vietnam and Myanmar.
- ***Build-transfer-operate*** **(BTO)**: New port facilities are directly transferred to the competent authority (government or port authority) immediately after construction. Under BTO schemes, the ownership of the assets being financed has been an issue for lenders who require asset-based collateral to secure bank loans. With BTO schemes, the only collateral is the concession contract itself, which may be insufficient. BTO schemes are necessary in countries where legal strictures do not permit private ownership of main port infrastructure (for example Italy, Costa Rica, and the Republic of Korea).
- ***Build-own-operate-transfer*** **(BOOT)**: Ownership of land and facilities conveys to the concessionaire, but is transferred back at an agreed-on price at the end of the concession period. Examples of countries using this scheme are : Canada, Australia, New Zealand and Nepal. With the global influx in in various PPP arrangements, yet the global economy is still presently experiencing a slow growth in recovery since the recession in 2008 coupled with the recent oil glut few years back. (See figure 5, page 27 below) for the trend in global growth which seems to affect the present global concession agreements.

The fastest growing economies of China and India, from GDP growth changes in percentage, in the table below falls into the BOO scheme of full privatization of the terminals as detailed above. This process of involving greater private sector participation and expertise in the Nigerian seaports began in 2003 by the National Council on Privatization (NCP) as earlier mentioned in this report, the apex policy body on sector reforms in the country, in conjunction with the Bureau of Public Enterprises (BPE). Later, The Nigerian government initiated one of the most ambitious infrastructure concessioning programmes ever attempted in September 2004. The Haskoning study as it is referred to identified some of the bottlenecks to the port operations and recommended the “landlord” model approach.

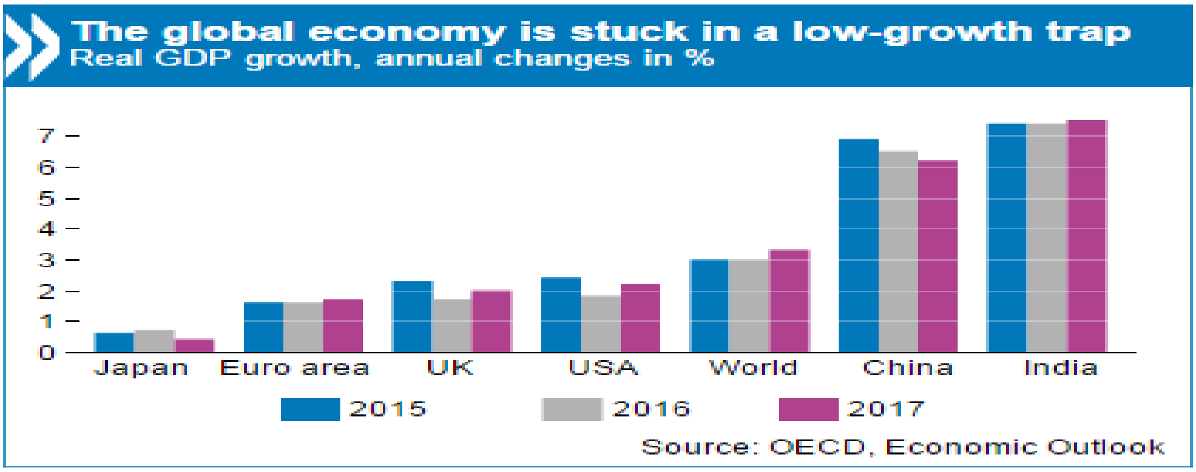


Figure 5. Trend in Global Economy Low Growth. Source : OECD Economic Outlook. 2017.

By July 2006, twenty long term port concessions were awarded with some more in progress. Has Nigeria fared well in the last few years when its seaports were concessioned to private terminal operators? That is the principle question on the lips of stakeholders after the expiration of the tenure of the first batch (10 years) of concessionaires in May, 2016. (See Table 4, Page 15 above) for Terminals and concessionaires/private companies they are concessioned to). Following KPI’s on (Table 10, Page 33.) is utilized for this report in relations to (Table 7, Page 27 below) detailing traffic statistics.

Cargo Traffic Statistics					Ship Traffic Statistics				Passenger Traffic Statistics		
Ports	Inward	Outward	% Inward	%Outward	Number of Vessels	Tonnage (2013-2015)	%No of Vessels	% Tonnage	Embarked	Disembarked	Total
Apapa	77,652,441	4,061,713	39.45%	3.52%	5,509	138,405,767	28%	25%	(2011) 3,251	(2011) 4,343	(2011) 7,594
Tin Can Island	61,491,918	3,730,190	31.24%	3.23%	6,495	176,438,868	33%	32%	(2012) 5,112	(2012) 7,241	(2012) 12,353
Delta	22,593,817	12,263,683	11.48%	10.63%	2,185	28,955,039	11%	5%	(2013) 5,788	(2013) 6,630	(2013) 12,418
Rivers	16,616,920	2,510,681	8.44%	2.18%	1,551	23,197,046	8%	4%	(2014) 2,115	(2014) 2,408	(2014) 4,563
Onne	10,051,753	92,714,183	5.11%	80.39%	3,031	162,111,662	15%	30%	(2015) 1,193	(2015) 1,280	(2015) 2,473
Calabar	8,444,387	54,122	4.29%	0.05%	1,062	14,734,043	5%	3%	(2016) 5952	(2016) 6,909	(2016) 12,861
Total	196,851,236	115,334,572	100%	100%	19,833	543,842,425	100%	100%	23,451	28,811	52,262

Table 7. 2016 Cargo, Ship and Passenger Traffic at the 6 Ports Complex of Nigerian Ports Authority. Source : Data Compiled by Consultant.

7.1 EVALUATION CRITERIA FOR INTERNATIONAL BEST PRACTICE (Comparison)

An analytical review has been conducted on each of the policy issues earlier mentioned on page 11. Eight key proposal components were identified and then each was scored and we derived the highest score going to the model that best achieved these efficiency components. The components were:

1) Operational efficiency;
2) Supply efficiency;
3) Cost efficiency;
4) Competition;
5) Governance accountability;
6) Fleet management;
7) Labor relations; and,
8) Ease of implementation. (This is detailed fully in the Recommendation Section).

It states the criteria for the evaluation and comparison of technical proposals looking at its relation to the above key proposal components which may include the following;

Technical soundness, Operational Feasibility, Quality of Services and measures to ensure their continuity, Environmental Protection, Socio and Economic Development potential offered by the proposals

Hence the policy issues stated earlier on (page 11 under PSP) in this report are used to check the criteria for the evaluation and comparison with International Best Practice and in answering the research questions on (No 6.1, Page 22) above as follows :

- **Activities** : Here, efficiency through specialization is anticipated and intended as port concessions impose strict limits in types of cargo they are allowed to handle. This protects the interest of the other private operators while in the Nigerian case, there are deviations on this policy. For instance, there is no clear indication on what basis port activities have been disaggregated for the purpose of lease contract. Present lease agreement in the Nigerian case has already taken place once in the 1980's making it an obsolete policy which is not good for comprehensive port reforms.
- **Investment**: The private investment requirements associated with PPP and concessions contracts may be obligatory, event-triggered, indicative and discretionary but the Nigerian Ports deviate from this norm as most investment requirements are either of an event-triggered or discretionary nature which is not necessarily the best option for the Nation's ports. Obligatory investments are best for competitively tendered PPP projects in countries that have problems with corruption.
- **Duration** : Nigeria does not follow the normal duration of terminal concessions which falls between 20 - 30 years and which, after allowing renewal options and negotiated extensions, may be extended to 50 years. In the Nigerian situation, there are short term durations of 5 – 15 years concentrated amongst small, slow growing sub-sectors of ports which are experiencing limited technological change and due to the way the Nigerian Ports industry developed with a high reliance on expatriate management contractors, and medium term duration of up to 25 years which is uniform across all terminals in Nigeria. This is due to the country's settlement, at the time of signature, on preferred contract durations fundamental (Copy-cat concessioning) irrespective of the economy/economic situation of the Nigerian community. This may be injurious to the parties involved and makes Nigeria's case unclear and fragmented to the concessionaire's detriment hence truncating efficient services.
- **Performance Requirement :** Global best Port practice suggests that legally enforceable performance targets must be included in concession agreements and these may include flexibility, early notice, fast document processing. These can be destabilized by other factors like customs working hours, delays in ship arrival etc. However, in the Nigerian case study, in contrary to global best practice, performance requirements are possibly the most contentious issue in its lease agreement's design and implementation. Even the minimum guaranteed throughputs/Guaranteed Minimum Tonnage (GMT) have been marred by incessant congestion at the ports.

- **Tariffs :** Nigeria does not have an independent port regulator in charge of tariff regulations structured within its lease agreements hence an assumption that tariffs are only regulated by contract, by or through NPA, which may create a conflict of interest in that any increase of tariff charges will only benefit NPA (Landlord) under NPV or revenue sharing arrangements. Whereas, in most global ports, there is a fundamental distinction between PPP's which are free to set their own tariffs, and those whose tariffs are regulated either by a formula within the PPP agreement or by the port authority or an independent regulator. The tariff strategy below for the South African Ports can be exemplified for a seamless operations.

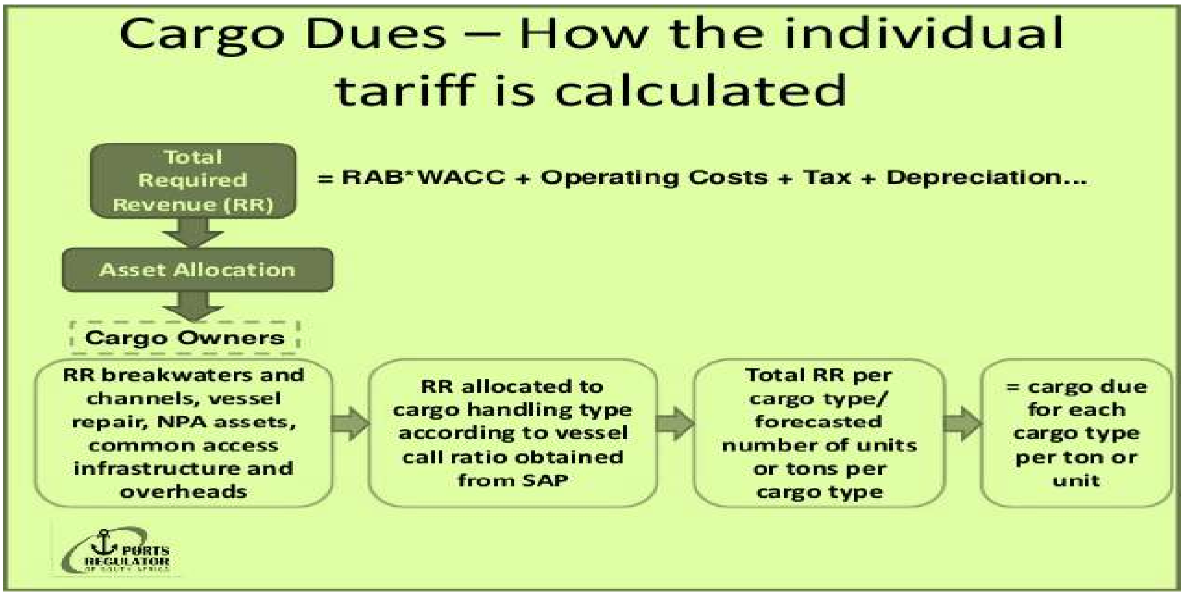


Figure 6. Tariffs Strategy for the South African Ports. Source : Port's Regulator of South Africa. 2015.

- **Concession Fees** : This may be a simple fee structure which may fall into one mechanism, or a complex fee structure which involves two or more mechanisms. In the Nigeria case, lease agreements are a mixture between lump sums , annual rent and revenue sharing, and NPV calculations merged together, which gives room for the potential of market failure and conflict of interest. (See No 5, page 18) for more information on fees. This provides little incentive for productive efficiency, since it allows firms (terminal operators) to pass increased production costs on to consumers in the form of higher prices. See (Table 8, Page 29) below for revenue generated for pre/post concession.

Pre-concession			Concession Year	Post Concession					
2003	2004	2005	2006	2007	2008	2010	2012	2014	2015
N56.4bn	N58.1bn	64.7bn	N75bn	N80.1bn	N87bn	101.3bn	N128bn.	N155bn	N108bn.

Table 8. Nigerian Ports Authority Revenue Generation. Source : Data compiled by Consultant.

However, The magnitude, scope and persistence of challenges of Nigeria's public enterprises (PEs). including the Ports, became alarming as these enterprises required continuous massive subsidies but delivered only intermittent and substandard services. The returns on these large investments were generally poor, and in some cases negative, with an especially low rate of return relative to the large amount of resources invested in them. Net outflows from the government to the public enterprise sector were estimated at USD$2 billion annually. All these pointed to the inefficiencies of the public enterprises of which the ports are part of. The reasons for the poor performance of Nigerian Ports and other public enterprises, historically, tend to have a uniform pattern, globally, and range from the presence of conflicting and interwoven roles determined by politicians and prevalence of uncompleted contracts and subsidies from governments. These aid internal inefficiencies, issues of excessive bureaucratic controls, government interference and intervention and other cultures of undermining and compromising efficiency and optimum productivity.

Periods	Export(Million Tons)	Import (Million Tons)	Total (Million Tons)
Pre-concession era	206.8	516.5	723.3
Post-concession era	173.9	296.7	470.6
Total	380.7	813.3	1194.0

Table 9. Pre/Post Concession Era of Port Performance Source : Nigeria Ports Authority Data Data Compiled by Consultant.

8 CONCLUSION OF CONCESSION FRAMEWORK

Notwithstanding all the present bottlenecks and encumbrances associated with the Ports, the revenue output that has been generated in the Nigerian Port, through the concessionaires, has been encouraging even though the same has not been ploughed back to the sector, and these private entities have not been given the ultimate incentive and conducive environment to work at optimum efficiency.

This fact is derived in (Table 8 and 9) which depicts the trend. Although they have been operating with challenges contrary to global practice of public private partnerships (PPPs) and Private Finance Initiatives (PFIs), and / or seen as an arm of privatization (if defined broadly), this is not encouraging. As indicated in the results presented, there are shortage of cargo handling equipment at various ports, there is a need to lay more emphasis on modern technology in maritime operations for effective cargo handling. The disparity between the available and unavailable cargo handling equipment at the ports should be addressed. (See Figure 7, Page 36) for cargo handling equipments.

However, the wharves, berths, cranes and stackers represent considerable capital investment, it makes sense to ensure they are optimally operational and utilized. Vessel scheduling, which requires effective collaboration with the vessel masters and marine port authorities, could improve throughput and thus revenue by a few percentage points. The impact of cargo handling equipment can be grossly felt in the Nigerian Maritime industry only when there is efficient freight movement and effective port management system. It is argued that privatization of terminals, through concession contracts, would be a valuable option if port competition is effective, but not necessarily in cases where competition needs to be created by regulation with inefficient port performance. The increased participation of the private sector has been a key ingredient in improving the fortunes of Nigerian Ports so far.

Several areas still exist in the ports that are open to further private sector participation e.g. greenfield deep sea port developments. The Nigerian environment and its port sector in particular are thus conducive for private sector participation. It can sometimes measure coordination with land modes e.g. cargo dwell time or how long it takes for unloaded cargo to leave the port. Factor productivity indicators focuses on maritime side of the port as it measures both labour and capital required to load or unload goods from a ship. In the same vein, economic and financial indicators are usually related to the sea access, for example, operating surplus or total income and expenditure related to gross registered tonnes (GRT) or net registered tonnes (NRT) or charge per twenty foot equivalent unit (TEUs). Port impacts on the economy are sometimes measured to assess the economic and social impacts of a seaport on its respective hinterland or foreland.

It is very clear that none of the current and certified global practice of PPP models currently apply. That is to say that a true PPP implementation in the Nigeria port sector does not exist at the moment. Virtually all the agreements related to the Nigerian Ports have only the title of lease agreements which appear to be regulated under procurement laws and not solely PPP laws. And as earlier stated on (page one) of this report. This explains why the Minister of Transport and the NPA MD previously mentioned on (No 6.1, Page 23) that all Concessions signed into agreement in the nations will be reviewed soon.

The objective is to determine the relationship operations of the concessionaires and the abiding policy surrounding present capacity utilization leading to turnaround time of vessel below. Looking closely at (Table 11, page 38, and Figure 8, Page 39), Turnaround time of vessel, we would note that this still stands at 5+ days contrary to the global ports practice and IMO's (International Maritime Organization) stipulation of 48 hours. The level of efficiency attained in vessel pilot age, anchorage and cargo handling maximizes cargo output in the berth and quickens the turnaround time of ships in the port and reduces cargo handling costs, reduces demurrage and enhances international distribution of goods. As indicated in the report earlier presented, considering the ratio of the cargo throughout to the turnaround time of vessel, and pilotage, Mooring and Towage operations are still presently cumbersome. It is obvious there are no enough cargo handling equipment at our various ports, there is need to lay more emphasis on modern technology in maritime operation for effective cargo handling.

The disparity between the available and unavailable cargo handling equipment at the various seaports must be addressed. However, the impact of cargo handling equipment can be felt in the Nigerian Maritime Industry only when there is efficient freight movement and effective port management. Still more value can come from the accurate maintenance of the wharves, handling equipment, cranes and other vehicles. By '*accurate*', we refer to the right amount of maintenance with links to the supply chain for big ticket items – such as rubber tyres for gantries (RTGs) – in order to improve availability at the lowest total cost. Over-maintenance, under-maintenance and late ordering of key spare parts can prove costly, especially in 24/7 ports running close to capacity at peak season. Bringing members of this diverse port community together to work on areas of common concern will be a valuable function of the "Task Force" (Later to be integrated in operations). (For more information on Task Force, See page 39). The future holds great promise for the Nigerian Ports Authority when each stakeholder takes personal responsibility for future changes and continues to communicate and collaborate. Port performance and productivity will be improved through enhanced communication, planning, and implementation of these recommendations only. The Task Force, in addition to the companies and individuals represented, shall be required to help shape the port's future and contribute to continued business success for the entire port community, as well as the ultimate consumers and the region.

For the next few months/years, Task Force members (to be appointed) will partner with the port community to implement recommendations that will lead to a successful future when formed. As part of the group's commitment to continuing this collaborative approach, this new Council on Port Performance will work with the port community to ensure their input is received on implementing the recommendations. Ultimately, the Task Force's efforts will ensure that goods moving through the port get onto department store's shelves and into showrooms more efficiently, while maintaining quality and sustaining direct and indirect employment. Regular communications and periodic stakeholders meetings will keep the entire port community informed and engaged in working collaboratively to improve efficiency and service reliability in the Nigerian Ports Authority.

8.1 DISCUSSION AND IMPLICATION OF THE STUDY

The findings of the study are indicative of the fact that either the government or the concessionaires or both may not be working in consonance with the terms of the concession agreements so as to bring about the necessary changes and improvements in ports operation. From the findings, the cost of Port services to users is increasing; vessel turn-around time has not improved relatively; berth occupancy rate has not improved; no significant improvement on infrastructural facilities is evident and security around the seaports has been compromised. See (Table 10, Page 33 below) for the tabular records. The Ports concession programme may not have solved the existing problems at the ports even though it has enabled more revenue for government which was not ploughed back into the sector. The increased earnings are yet to be reflected in the infrastructural development of the ports as revealed in the findings. Most of the issues which led to the concession arrangements are still prevalent:

- high charges, as a result, vessels and cargoes were lost to neighbouring countries,
- corrupt practices ,
- bad link roads,
- unimproved average berth occupancy rate,
- lack of infrastructure, (No meaningful Port Infrastructural development),
- no full monitoring of compliance of terminal operators obligations by NPA,
- traffic congestion,
- collection and duplication of charges for same services,

The concession agreements were full of irregularities while some terminal operators have reneged on some parts of the agreements as they failed to bring in their investments and allow the various benefits of competition to manifest themselves. Thus, the imperatives of improved information, communication and technological facilities within the ports should not be ignored, as they will help to reduce handling costs, corruption and possibly crime within the seaports whilst engendering efficiencies.

Indicators of Service and Utilization for Pre and Post Concession Eras				
Year	Awaiting Berth (Days)	At Berth	Turnaround Time (Days)	Berth Occupancy (%)
1995	0.47	5.7	6.17	27.76
1996	0.46	5.88	6.34	36.68
1997	0.47	6.24	6.71	36.73
1998	0.39	6.92	7.31	41.39
1999	0.36	5.95	6.31	47.09
2000	0.34	6.67	7.01	44.76
2001	1.27	6.64	7.91	51.78
2002	3.99	7.35	11.34	56.58
2003	2.17	5.72	7.89	52.75
2004	1.44	5.00	6.44	50.93
2005	2.60	4.80	7.40	49.70
2006	1.05	4.26	5.31	48.49
2007	0.36	3.39	3.75	44.95
2008	1.01	3.58	4.59	36.72
2009	1.95	4.6	6.55	47.46
2010	1.11	4.27	5.38	51.21
2011	1.21	4.27	5.38	51.45
2012	1.17	4.04	5.75	45.92
2013	1.10	4.38	5.21	42.18
2014	1.30	4.80	4.45	52.84
2015	0.89	4.40	5.18	34.21

Table 10. Indicators of Service and Utilization for Pre and Post Concession Eras. Source: Data Compiled by Consultant.

Article XI under Documentation and Audits, 11.1(a) titled Records and Reports, The Lessee shall prepare and maintain registers, books, records and other means of recording information in the quality and quantity required for facilitating efficient management and supervision of the Lease Property, for providing information to the Lessor, and for informing the public and its customers of the quality and performance of its operations. Further documentation, Audit reports, Annual reports, planning and investment report, Quarterly traffic report and current records of the Lease Agreement are stated in this Article's Sub Sections 11.1 to 11.5.

The findings have some important implications for both Government and the concessionaires. It identifies the need for Government and the concessionaires to imbibe the culture of modern customs practice, and procedures to reduce the delays bottlenecks, and corruption within the ports. It provides awareness that Government need to respect contract agreement with the concessionaires by providing the needed infrastructures within the ports to improve the business environment. The study can also help agencies and management executives to better understand the relevance of 'concessioning' as a strategic tool for ports efficiency. However, further, in depth, studies are required to thoroughly assess and compare the activities and performances of "all" the concessioned terminals to bring about precise findings and the operational factors necessary for achieving optimum efficiency. Notwithstanding the outlook for 2015, cargo volume growth is moderating. No longer do we consider growth to follow the old rule of escalation at twice that of GDP. Other African ports are making significant investments in port infrastructure and competition for discretionary cargo which is heating up as it did in the 1990's. The Authority has a comparative advantage for export bound local and value-added cargo over the regional players, either through Onne, Delta and Calabar Ports but cargo destined for exportation, which will make up approximately 30% to 50% of total throughout, is the real battleground.

Larger vessels may mean fewer ship calls, but each vessel will discharge more cargo in a single call. This will bring about more challenges for terminal operators. Productivity should now become the new focus. Like aircraft, commercial vessels only make money when they are moving. That means that terminal operators will have to find ways to load and off-load vessels more efficiently. It also means that improvements must be made in transferring cargo to and from road or rail wagons. 90% of containerized cargo is moved by truck in/out of this Lagos/Tin Can Island Ports Complex thereby mounting more pressure on available roads. Improvements throughout the local marine transportation system are required to reduce both congestion and delay. Despite some of the issues raised above, there is a strong belief that the future holds great promise for the port and the economic benefits it brings to the region/country thereby increasing GDP of the Nation.

9 RECOMMENDATIONS

These recommendations, based on input from the port community, and other stakeholders, indicate a need for increased operational efficiency, transparency and cost efficiency / control in overall port operations. Considering the components mentioned earlier at (No 7.1, Page 28) which are : (1) Operational efficiency; (2) Supply efficiency; (3) Cost efficiency; (4) Competition; (5) Governance accountability; (6) Fleet management; (7) Labour relations; and, (8) Ease of implementation. By design, there is an overlap and connection among several recommendations. None of the recommendations in this report should be viewed independently of the others. The connections between all recommendations must be examined holistically and a logical sequence for implementation must be developed. The recommendations are not in priority order within the evaluation criteria. Recommendations are both long and short term and will incrementally contribute to the overall health of the port at both the administrative and operational level. Some could be pursued immediately, whilst the (soon to be integrated) "Taskforce" will pursue other recommendations opportunistically unless they are "quick fixes." The Task Force will examine the connectivity between some recommendations and develop a logical sequence for implementation. The cost and time frame for implementation as well as identification of the responsible parties should be developed. The CPP will continue to monitor progress toward implementation.

- **SHORT TERM**
  - **Review (if possible) concession performance requirements:**

(1) Introduce more meaningful congestion reduction targets, e.g. container dwell time.

(2) Reduce free yard storage targets. (The NPA environment must not be a storage point).

(3) Establish /reduce gate cut-off times.

(4) Introduce penalties, on both operators and consignees, if container over-stays in terminal.

(5) Establish terminal capacity and utilisation and link it to performance targets.

- One of the main issues in port operations is the determination of port capacity. Port capacity is dynamic (rather than static) and changes according to the equipment and technology used but also according to the types of ships serviced and cargo handled. Establishing performance targets in concession agreements, e.g. minimum throughout guarantees and/or congestion and dwell time indicators, depend very much on the approximate estimation of port capacity because otherwise such targets may be too easy or too difficult to achieve. In Lagos ports, we did not come across any sophisticated estimation of terminal capacity and utilization that is linked to performance targets, and it seems that the calculation of port capacity was rather simplistic and did not take into consideration technological changes both in port demand and supply. We recommend that such calculations be part of any mid-term review or auditing of Lagos port concessions. However, based on the cargo throughout records on (Table 2, page 5 and Figure 1, Page 6) of this report, the percentage of Capacity Utilization of cargo throughout since concession year and after concessioning period in relation to the highest throughout of 2014 standing at 86,603,903 metric tonnes, are : 2006 stands at 53.29%, 2013 stands at 90.39% and 2015 stands at 90.43%. With Capacity Utilization formula (expressed as a percentage) calculation as follows:

$$\frac{\text{Actual level of Output}}{\text{Maximum possible output}} \quad \mathbf{X} \quad \frac{100}{1}$$

(6) Move away from discretionary or event-triggered investment requirements to obligatory or indicative investment types.

- This recommendation is closely related to the previous one in that it indicates that NPA and BPE have almost left it up to the terminal operators to decide on the timing and type of investment requirements according to their own estimation of port capacity and utilisation ratios. Such an approach implies indifference from the part of the public authority and may send the wrong signals to private investors.

(7) Link concession fees with performance targets.

- In Lagos ports' concessions, there is little or no correlation between concession fees and performance targets and clauses towards such arrangements should be included in any mid-term review and/or future port concession. In a similar vein, NPA which enjoys a monopoly over marine services should also operate according to a system of performance targets.

(8) Mid-term audit (short-term study) of PPP concessions.

- In view of the above shortcomings and anomalies, we recommend a mid-term review of port concessions in the form of a targeted short-term study on port concessions (past, existing, and future) to underline in detail areas of abnormalities and recommendations for improvement. Such a study should be undertaken with the full involvement and partnership of all the parties involved most notably, NPA, BPE, and concessionaires (terminal operators).

(9) Establish PPP management teams at NPA.

- This recommendation is also related to the above in that, the way Lagos port concessions have been structured and are implemented imply that NPA may lack the skills base for planning, designing, and managing port concessions (and PPPs in the larger context). There is indeed no PPP management team at NPA, and most of the existing structures focus around procurement rather than PPP frameworks. Our previous recommendation (2013 Study) has indeed been well received by NPA management during the stakeholders' workshop as well as during our meetings with NPA managers. But none of the recommendations have been fully implemented till date.

(10) Clarify the relationships between NPA, BPE, and Infrastructure Bureau.

Further Recommendation will be based on the evaluation criteria for international best practice and comparison of technical proposal earlier mentioned at (No 7.1, page 28) of the report, considering the earlier mentioned components with current status, recommendations, impact, and the timescale which are as follows :

N0	Recommendation	Timescale	Impact
1	Review the concession agreement in all its entirety especially in the area of cost efficiency with Mid-term audit (Short-term study) of PPP concessions	**SHORT TERM**	**MEDIUM**
2	Transfer back the facilities built on the site and any title that passed to the operator as part of a B(O)OT arrangement or ordinary lease agreement to the ports authority upon contract expiration of the present concession period	**MEDIUM TERM**	**HIGH**
3	Review concession performance requirements and test the present capacity utilization of the ports infrastructure based on its present state and neglect for future technical soundness and operational efficiency.	**SHORT TERM**	**HIGH**
4	Expedite Intermodal/Rail Connectivity in all the available terminals	**LONG TERM**	**HIGH**
5	Move away from discretionary or event-triggered investment requirements to obligatory or indicative investment types.	**MEDIUM TERM**	**MEDIUM**
6	Establish terminal capacity, utilization, Concession Fees and link it to performance targets. Freight stations must be moved outside the terminals and disaggregating of terminal congestion from port congestion	**ACTION AT CONCESSION RENEWAL STAGE**	
7	Develop operation of remote ICDs. There should be a study into the Use/Misuse/Non-use of ICD's	**SHORT TERM**	**HIGH**
8	Establish appropriate PPP framework in alignment with port structure PPP reform with the establishment of PPP management teams at NPA	**SHORT TERM**	**MEDIUM**
9	Ameliorate scanning issues (possible outsourcing options to terminal operators)		
10	Develop ICT connectivity with the terminal operators under a Single Window environment and utilizing it wherever appropriate	**MEDIUM TERM**	**HIGH**
11	Structure PPP Port projects which also include intermodal investments. Move away from short-term leases to long-term BOT and SPA types of structures	**LONG TERM**	**HIGH**
12	Establish a port's (and Logistics) regulator who may be required to act as an arbitrator (to handle disputes) and the resolution of individual problems i.e. A terminal operator and NPA.	**MEDIUM TERM**	**MEDIUM**
13	Establish Port performance taskforce to identify challenges to port efficiency to maintain quality of service and devise measures to ensure its continuity and also provide a Public / Private Sector forum/Port Stakeholder Group	**SHORT TERM**	**HIGH**
14	Monitor thoroughly the infrastructure maintenance (life cycle maintenance, routine maintenance, and reactive maintenance), and, if applicable, the superstructure throughout the concession period.	**SHORT TERM**	**HIGH**
15	Introduce penalties, on both operators and consignees, if container over-	**SHORT TERM**	**MEDIUM**

	stays in terminal through the taskforce		
16	Specify the condition of the basic and operational infrastructure at the time of transfer of the new concession agreement		
17	Enhance regulatory functions and boost environmental protection, security and enforcement of legislations, regulations and nautical management by the Harbor Master	**MEDIUM TERM**	**HIGH**
18	Take advantage of the effect of the WTO Trade Facilitation Agreement in terminal operations which requires the regulatory authorities to reduce bureaucratic requirements	**LONG TERM**	**HIGH**

9.1 Technical Soundness

There is the need to structure PPP port projects which also include intermodal investment. Based on the state of the nation's ports infrastructures and neglect of same, the present capacity utilization of the ports infrastructure should be tested to check its technical soundness, and (Derrics, cranes, and winches together with their associated fittings) should regularly be overhauled and inspected under a planned maintenance schedule appropriate to the ship as a measure of early containment. Thorough inspection will detect corrosion, damage, hairline cracks and excessive wear and tear. Once defects are found, corrective action would be taken to ensure that the plant is retained at 100% efficiency. These inspections would normally be carried out systematically under the ship's planned maintenance schedule.

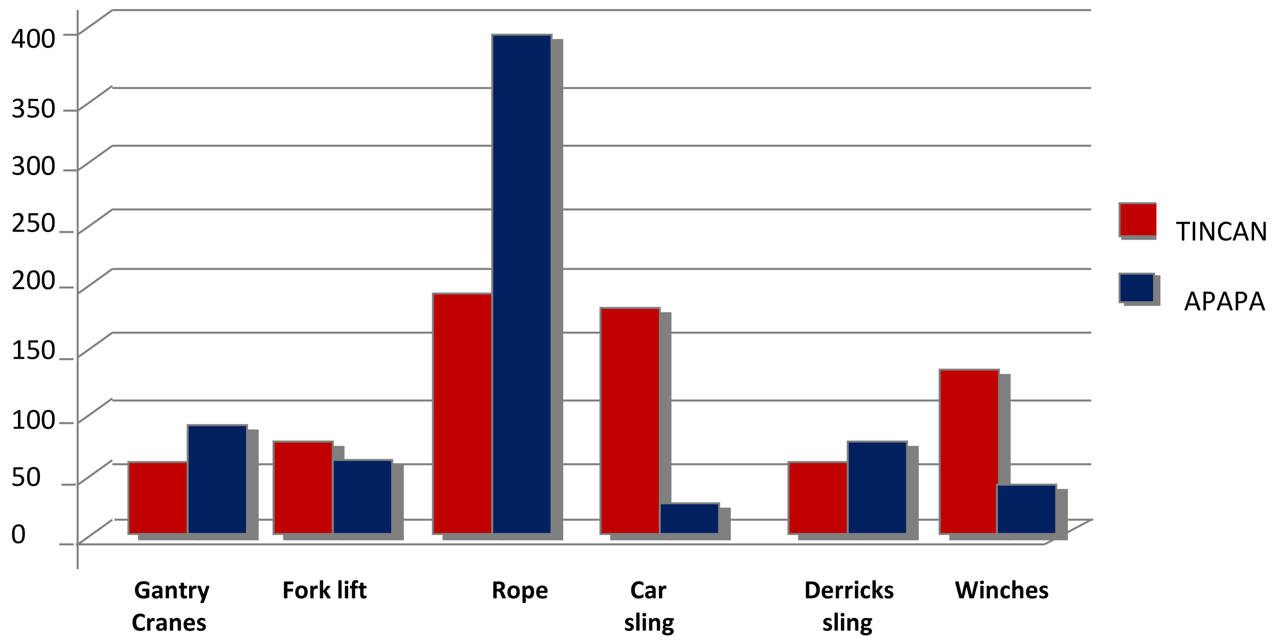


Figure 7. Comparative Analysis of Cargo Handling Equipment at the selected ports. Source: Output results based on field survey. (2016). Data Compiled By consultant.

(A) The key focus for ports is crane operations. Ports have shifted to one operator for multiple cranes and latterly for full automation. RTGs and rail guided stackers still have room for further automation. The entry timing and documentation, exit and queuing of vehicles for pick up and drop off offers further room for automation at most ports in Asia, for example. Systems have been around for quite a while to ensure the most efficient planning, storage, sequencing of loads and discharges in order to increase throughput efficiency and reduce errors.

Section 6.11 titled Lease Equipment outlines, The Lessee may use additional equipment on the premises other than the Movable Assets and the Fixed Assets and not included in the Development Plan ("Lessee Equipment") to satisfy its obligations hereunder, including without limitation its performance of the operations and to meet the performance requirement provided that, in the case of special equipment the Lessee shall obtain the Lessor's prior written approval, such approval not to be unreasonably withheld. If the Lessor has not responded to the Lessee within five (5) days of receipt of the request for such from the Llessee, the Lessor shall be deemed to have given its approval. Lessee Equipment shall be and shall remain the Lessee's property notwithstanding the termination of this Agreement for any reason unless the parties otherwise agree that the Lessor shall become owner of such Lessee Equipment on the Termination Date. The Lessee shall, at its own expense, remove Lessee Equipment from the premises on the Termination Date in the event that the Lessor requires such removal or the Lessee does not agree to transfer the same to the Lessor. The Lessee shall provide the Lessor with a full list of Lessee Equipment during the Termination period and whether it is prepared to sell such Lessee Equipment to the Lessor. The purchase price for any Lessee Equipment shall be mutually agreed between the parties.

Most ports in the global community comply with this practice. Some of the important features of soundness, such as operational efficiency, expected of any competent system are the attributes of reliability and validity of its components. A major challenge affecting the port concession is slow progress in the implementation of the institutional reform component of the Port Reform Programme. The non-passage and non-approval of the proposed Nigerian Ports and Harbours Authority Bill has to a large extent constrained the ability of the Authority to ensure technical and economic regulation of the port industry in line with global standards.

(B) There is a need to move away from short-term leases to long-term BOT and SPA types of structures. The Authority has however ensured full cooperation with the Bureau of Public Enterprises (BPE) to ensure speedy passage of pending bills affecting the port industry. The NPA is also involved in the development of deep seaports in Badagry and Lekki in Lagos. At an event held in the past, the former Minister of Transport, represented by the Permanent Secretary of the Federal Ministry of Transport (FMOT), said that government was concerned about the absence of a commercial regulator at the port. The Minister said that work has been concluded on the National Transport Commission (NTC) Bill and other relevant bills which, according to him, will soon be/has been forwarded to the Federal Executive Council for consideration and subsequent transmission to the regulating house, the National Assembly. The NTC when created, will serve as commercial regulator of the ports, while the NPA will retain its role as the technical regulator, highlighting the contributions of the nation's seaports, in the country, to national development enhancing quick realisation of government core economic objectives and aspirations through enhancement of maritime trade and employment generation and reduction of distribution cost.

9.2 Operational Efficiency/Feasibility

Establish appropriate PPP framework in alignment with port structure PPP reform. It was noted that several operators have development plans they have not adhered to during the concession period, and also we observed that the authority itself has not committed to some of the obligations that were stipulated in the concession agreements, thereby leading to the severe obsolete of several infrastructure elements. Hence both parties (Government and Concessionaires) need to confirm and commit to their parts of the agreements. Thus, to avoid this anomaly, sanctions and penalties for non compliance across the board should be stipulated for both the authorities and the operators, to create a level playing field for all.

During our various interviews, within the concession agreements, there is confirmation by some of the operators that there is a need for review every two years. However, since inception to date (about a decade later) no action has been taken for an over-arching review of the agreements to conform with laid down agreements, where stated. Also of note is the review of tenor elongations and commensurate review of the financing model, which are tied to each other. Whatever timelines exists for the revision period is tied to the financing model and a tariff regime which is contained within the concession agreement. This should be corrected.

Article VII Titled CONDITIONS PRECEDENT under the Conditions to obligations of each party clearly outlines clearly, the obligations of the Lessor and the Lessee to consummate the transactions contemplated by this Agreement shall be subject to the fulfilment prior to the Effective Date of the following conditions :

(a) Execution and delivery of this Agreement. Each party shall have duly executed and delivered to the other Party this Agreement.

(b) Corporate Proceedings. Each party shall have provided to the other corporate proceedings in connection with the transactions contemplated by this Agreement. The Lessee shall have delivered to the Lessor a secretary's certificate certifying to:

i, resolutions adopted by the Lessee evidencing the authorisation described in this Section;

ii, the constitutional documents of the Lessee; and

iii,authority of the officers of the Lessee executing this Agreement and documents required hereunder.

The Lessor shall have delivered to the Lessee a secretary's certificate certifying to:

D, Power Supply. The parties shall be satisfied that the Lessee has access to sufficient power supply (including, but not limited to the Utilities) in order that the Lessee is able to fulfil its other obligations as set out in this Agreement

Also, during our meetings with terminal operators, they complained of irregular and epileptic power supply at the ports premises. One of the major operator reiterated, ninety percent of their power utilization is generated by themselves. The lack of regular electricity at the Ports is a huge overhead cost for operators, and as such, a decline in operational profit. Another terminal operator clarified they generate their own power, water and environmental services. A 35 megawatts turbine has already been put in place to power the Terminal in order to carry out their operations efficiently and unperturbed.

All the transport modes must be properly developed and fully integrated so as to facilitate intermodal through transport and more efficient distribution of cargo on a door to door basis. Cargo handling equipment such as the Rubber – Tyre Gantry Crane (RTG), Rail Mounted Gantry Crane (RMG), Automated Guided Vehicle (AVG), Combi Road for Automated Guided Vehicle and the like should be installed in all the ports. The various interfaces linking into the Nation's seaports are negatively influencing their present state. The completion and provision of adequate road network and rail lines connecting the ports with major cities remains a major panacea to the perennial problems of gridlock in the Apapa/Tin Can Port area of Lagos State. For instance, the inability of the previous government to pay a contractor for the 400 capacity truck park opposite Tincan Island 2nd Gate and, due to an improper foundation based stabilized construction plan, has been the cause of delay in the completion of the project, which would ease congestion considerably.

A key element of operational efficiency is the appropriate use of ICT and migration from paper based systems. The coming into force of the WTO Trade Facilitation Agreement requires the regulatory authorities, amongst other things, to:

- Utilise ICT wherever appropriate
- Reduce bureaucratic requirements
- Accept electronic documentation in place of hard copy

- Allow electronic payments
- Make trade information and requirements easily accessible on the internet
- Separate release of cargoes from payment of duties
- Openly publish all fees and charges
- Establish a Single Window environment

The latter is an essential tool in trade facilitation and thus in port operations, including terminal functions and operations. The Nigeria Single Window Trade Portal has been established but does not yet meet the requirements of UNCEFACT Recommendation 33 which requires 'all trade related information' to be presented just once into the system. It will be essential for all port terminals, and other port stakeholders, to be connected into the system. The team consider it would be a mistake to establish a separate Port Community System unless this could definitely be connected to the National Single Window at an early stage. The danger is of duplication and NSW benefits being lost due to existence of, effectively, a 'Double' rather than 'Single' window.

The team learned that NPA has a seat on the NSW committee and recommend that NPA pushes for all terminals, and other port users, to be connected into the system at an early stage. The team further recommends that this intention be tabled at Nigeria Trade Facilitation Committee (established to implement the WTO TFA).

9.3 Quality Of Services And Measures to Ensure Its Continuity:

By establishing a proper framework for port development and capacity improvement, and in meeting up with global best practices, service delivery especially with cargo turn around, which evidenced time of vessels reduced to 5.10 days on average in the terminals. This is a good achievement and is a result of the ingenuity and quality approach of the terminal operators over the years. The implication of this is that, as traffic increases, the need for port improvement and port expansion grows. Also, this analysis showed that the ship turnaround time in our ports is still high at the average of 5.10 days as against the International Maritime Organization's 48 hours guideline which is already being practised by the leading ports in the forefront of the shipping industry, for example Shanghai Port, Rotterdam Port and the Port of Singapore. (See Table 11, page 38 and Figure 8, Page 39 below for Turnaround time of vessels).

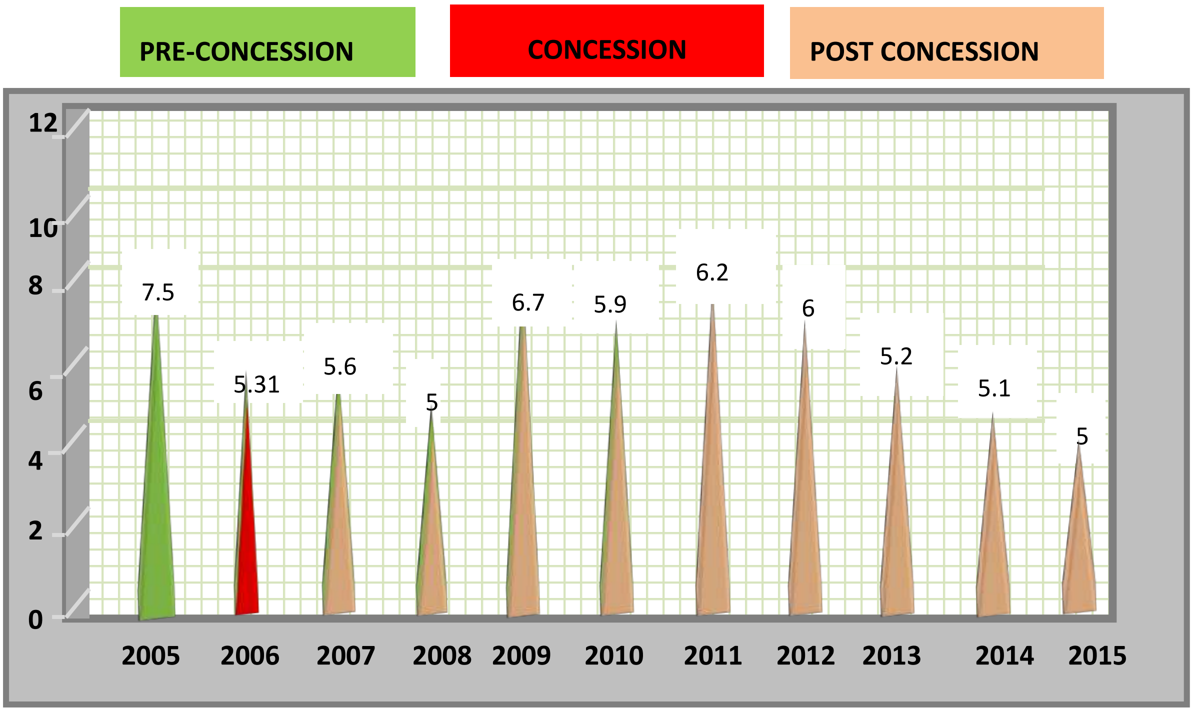
Average Turn Around Time Of vessels (Days)

PORT	2009	2010	2011	2012	2013	2014	2015
Lagos Port Complex	9.6	6.7	7.9	8.1	7.5	5.8	6.4
Tin Can Island Port	3.7	4.7	5.0	5.0	4.8	4.5	5.1
Rivers Port	10.4	9.7	10.2	8.9	8.2	7.5	6.5
Onne Port Complex	5.6	2.7	2.7	2.5	3.5	3.0	2.8
Calabar Port	4.0	4.6	5.3	5.6	5.1	4.2	4.4
Delta Ports	7.3	7.0	6.2	5.7	5.2	4.0	4.5
Average	6.7	5.9	6.2	5.9	5.7	5.7	5.1

Table 11. Average Turnaround time of vessels in the Nigerian Ports Authority. Source : Data Compiled by Consultant.

Table 11. Average Turnaround time of vessels in the Nigerian Ports Authority. Source : Data Compiled by Consultant.

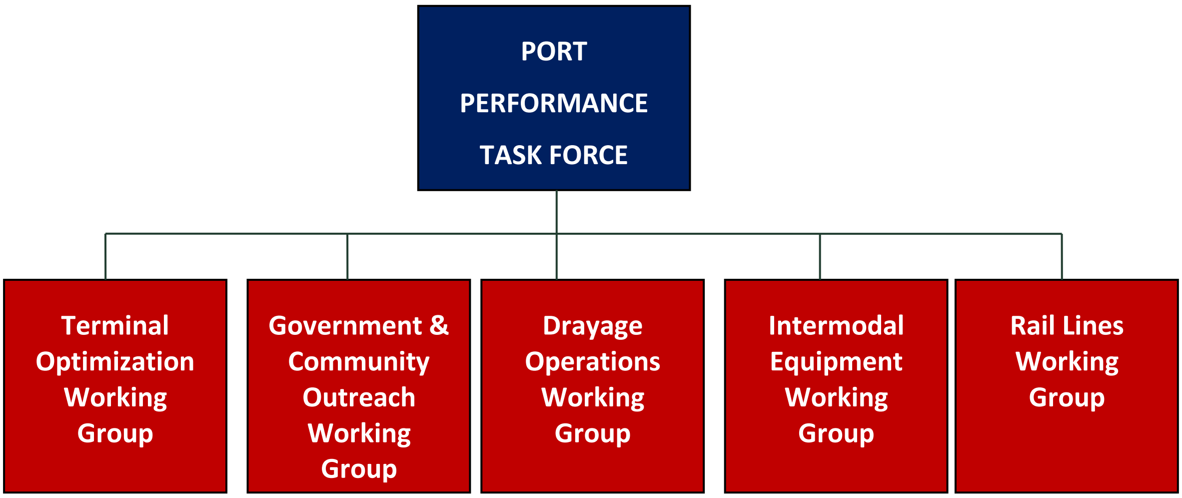
Turn Around Time of Vessels (Days)



- On-going Automated Systems, automation of processes like e-payment solution will guarantee quicker delivery
- Quest to increase private participation in provision of towage services, etc is bound to further impact turn around time.

Figure 8. Turn around time of vessels, pre/post concession. Source : Public Private partnership And port efficiency. Source : Data Compiled by Consultant.

It should be noted that these aforementioned ports started similarly to those in Nigeria.. This tempo must be sustained. The only way this can be sustained, in the foreseeable future, is to create a conducive environment of operations for the present terminal operators/concessionaires in order to enable them to perform their operations optimally. Also to sustain this tempo, the terminal operators should be mandated to give staff ample opportunities in their employment policy to incorporate globally practised quality services. There must be adequate training and capacity building such that, after the expiration of the operator's contract, the staff would have gained adequate managerial, vocational and technological acumen that will make them become effective terminal operators. In this way, Nigeria Ports could become the transhipment hub for the entire West Africa sub region. It is also worthy of note that many facilities have been built in Nigerian ports in the recent past and Government must ensure that these facilities are properly maintained as this will lead to greater productivity, adequate infrastructural foundations and sustained development. By doing so, quality service of best global practice will be continually maintained in the country's seaports.



9.4 Ease of Implementation :

The team proposes a Port Performance Task Force together with the establishment of PPP management teams within NPA.

The goal of the Task Force is to identify challenges to port efficiency and provide a forum wherein all parties can discuss their common interests in relation to service reliability and recommend potential solutions. Key Performance Indicators (KPIs) should be established and regularly assessed, aimed at establishing the ports position as a logistics hub in the region. This new group, the 'Council?' on Port Performance (CPP) will build upon the efforts of the fragmented working groups. In addition, there will be regular trainings, communications and periodic meetings to inform the entire port community about the progress toward implementation and to continue soliciting feedback. Where opportunities exist to immediately implement solutions to current congestion and productivity issues those initiatives will proceed expeditiously. Similarly, where additional research is needed to further refine recommendations or select a specific model to implement, those efforts should also proceed expeditiously. The development of a logical order of implementation, or sequencing of recommendations, will ensure that both simple and complex recommendations can be pursued in parallel with resolution provided in the timeliest manner. The port community should be committed to continuing the Task Force's highly collaborative and inclusive process to collectively improving efficiency and reliability at the Nigerian Ports. By working together to identify specific solutions to maximize the port's efficiency, the BPE, the port community and stakeholders should pave the way for the continued economic success for the port as well as the region it serves.

In the area of Establishing a port's (and Logistics) regulator in Nigerian ports, the current approach is to use contract law to enforce the terms of concession agreements, with responsibility for enforcement vested in the landlord port authority (NPA), other governmental agencies such as BPE and the infrastructure council, and/or affiliated entities such as the Nigeria Shippers Council and the Ports Consultative Committee. The greatest danger from such an approach probably lies in the lack of impartiality, increased levels of political influences and possible conflicts between regulatory and policy issues. There is also a danger in assigning too strong a regulatory role to the landlord port authority and other governmental agencies resulting in them micro managing privatised businesses. Further risks are conflicts of interest and regulatory capture (development of common interests by the regulator and the organisation being regulated). Furthermore, it is rare to find the necessary skills and experience within a landlord port authority or particular sector agency. Because operators tend to adopt a very pragmatic approach to the resolution of individual problems, it may also be difficult to develop a standardized and intellectually consistent approach. i.e. aforementioned terminal operator who generate their own power and water instead of the Authority's provisions as stated in Agreement.

An independent regulator is therefore essential to control entry (entry regulation), to determine tariff (rate regulation), to set the performance standards (performance regulation and yardstick benchmarking), and (sometimes) to set technical standards (health and safety, security, environmental, and labour regulation). Additionally, the regulator may be required to act as an arbitrator (to handle disputes), as well as to manage any universal or social service obligations imposed by the authorities. At the same time, it might be beneficial to put in place a multi-sectoral regulator for the ports and transport logistics sector as a whole to cover the dry ports and freight logistics sectors as well. There are four main arguments in favour of a multi-sectoral regulator:

- It makes more cost effective use of resources, which is important in a country where regulatory skills and experience are still poorly developed.
- It ensures that the same principles are applied to all transport infrastructures, eliminating unfair competition at the margin where different modes compete.
- It supports the development of specialist knowledge and expertise, including the transfer of best practice between modes.
- It encourages the development of a single set of policy guidelines, which recognise the inter-relationships between different modes and their common policy and service objectives.

Also in the area of Public/Private sector Port Stakeholder Group, Presently Nigerian Shippers Council delivers excellent advocacy services and stakeholder activities. We would suggest the establishment of changes to a 'Port Stakeholder Group' consisting of public and private sector stakeholders. Such groups can have significant benefit if:

1. Meetings are regular
2. Actions are followed up / responded to adequately
3. Membership of the group is appropriate
4. There is clear 'ownership' of proposed actions and duties
5. Participants are at 'decision maker' level
6. Funding kis secured

The customer base of Lagos Ports is very wide, from multinationals, such as Cadbury / Nestle / Dangote with high volumes of containerized and bulk cargoes to very small entrepreneurs importing or exporting occasional LCL shipments. Such extremes of magnitude need to be incorporated into the group membership to give credibility and a true reflection of the issues faced. Similarly with forwarders, representation would be required from very large organisations, such as Bollore, to the small licensed operators. Such groups only maintain credibility if they are seen to act appropriately and a useful model is to invite to each meeting a group of importers / exporters who have registered issues concerning the Ports in the preceding weeks (a different group at each meeting). The group should each be allowed a few minutes to detail the problem they have faced, the management should then be required to investigate the problem and respond to the respective traders, describing the action that will be taken, before the next meeting. Meetings should be at least every 4 weeks and records maintained and published of remedial actions taken.

9.5 Environmental Protection

The previous passive role of ports in relation to the environment and pollutants - against whatever was coming from sea towards the mainland and from mainland towards the sea - has changed, but their strategic location between sea and land makes them the best witnesses of pollution coming from land, ships and from the ports themselves.

Article VIII, Sub Section 8.3(A), Environment, Obligation to Comply with Environmental Laws. The Lessee shall comply with all Applicable Laws concerning the protection of the environment, and shall take adequate steps to prevent and control the pollution of the air, land, water and sea by oil, chemicals, emissions, hazardous waste, effluent solid and other wastes in the premises as required by such Applicable Laws. The Lessee shall consult with the Applicable Governmental Authorities in taking such steps. The Lessee shall cooperate with the Lessor in achieving Compliance with International Environmental Conventions to which Nigeria is a Party.

(C) Environmental Impact Assessments. In carrying out the Development plan, THE Lessee shall comply with all Applicable Laws relating to the environment, including Laws and regulations requiring the preparation and approval of environmental impact assessments to the extent applicable. Upon submission of such environmental impact assessments to a Governmental Authority, the Lessee shall submit to the Lessor a copy of the same, as well as a copy of any response from such Governmental Authority regarding the same.

The port environment is threatened by: port's hinterland, ships activity, port activity and port operations. Ports pollution may result from ship accidents, accidents in ports, land activities, ship bunkering, noises, garbage, dust, dredging, port maintenance, ship air pollution, traffic congestion (in the case of Lagos ports), sewage and others. The attention of international community has been concentrated mainly to port's visitors, (i.e. the ships), because of the well-known marine accidents. Despite of this, the issue of material dredging from ports has been addressed as early as in 1975 (London Dumping Convention) and pollution of the sea from oil and the facilities for waste reception in ports, as early as in 1973 (MARPOL 73/78, The International Convention for the Prevention of Pollution from ships).

Force Majeure under Article 10, opines, In the even that a party can not perform its obligations hereunder due to an event of Force Majeure, Such party shall be excused from the performance of such obligations, and shall not be considered to have committed an event of default, from the date on which such event of Force Majeure has commenced and until a reasonable period of time after termination thereof. The Parties shall consult with each other in the event of force Majeure and shall take all reasonable steps to minimize any losses resulting therefrom. The affected Party shall resume the performance of its obligation hereunder as soon as practicable after such event of Force Majeure has ceased.

The issue of oil pollution in emergency situations in ports has been addressed since 1990 (Convention of Oil Pollution Preparedness, Response and Cooperation). On the basis of an IAPH (International Association of Ports & Harbors) survey, filled in by 183 ports, the crucial areas were three: (1) dangerous materials, (2) water pollution, and (3) dredging and dumping of dredged waste. The third factor is connected to port expansion or conservation. If the port environment is not contained, there will be minimal efficiencies in operation.

Section 8.3(e) opines the Obligations of the Lessee to Notify. In the event that pollution occurs that may affect the premises, the Lessee shall:

(i) Inform the Lessor immediately of the same

(ii) Take all reasonable measures required for detecting, cleaning and containing such pollution; and

(iii) Providing the Lessor with frequent written updates on such measures being taken or remaining to be taken by the Lessee.

The environmental laws of Nigeria should be fully complied with, in addition to stringent policies to ensure environmental sanity. A good example is the interfaces that lead to the various seaports which are in deplorable condition. Knowing that the growth in port operations will portend future port congestions problems, the present data earlier derived by Messrs Crown Agents in 2013 (i.e. Draft report on Support to the presidential committee on Port Reform, Lagos) must be utilized to plan for the future development of the seaports. Many port users pay little or nothing for conducting their business in the port. Such parties include: agents, brokers and customs. New users such as restaurants, shops, mobile telephone towers, cruise terminals and the like offer opportunities for charging for real estate on various bases such as land area, revenue % and so on. Maintaining contracts and reconfiguring the real estate assets over time needs smart software to reduce the administrative burden, reduce errors and ensure that billing is affected. The back office activities related to operations offer another area for smarter working. Those ports that offer and insist upon, or incentivize, the electronic payments, document completion, receipt issuance and self-service have enjoyed better customer service, lower costs as well as reducing opportunities for fraud.

Legislative and policy measures must be taken by the government to develop the port systems. Nigeria waterways need to be properly dredged so as to encourage vessels of more TEU's to navigate the waterways and in the activity of dredging, sea pollution must be meticulously contained.

Under Article IX, Section 9.6 outlines Dredging, The Lessor shall be responsible for the dredging of the channel to the port (including without limitation the face of the berths at the premises), either directly or through the licensing of competitive suppliers of such services. The Lessor shall, at all times, be solely responsible for the acts and/or omissions of those competitive suppliers licensed pursuant to this section. The Lessor shall undertake dredging in accordance with the dredging plan with the intention of achieving a depth of water at the berths of the premises of 13.5 meters below low water and the approach channel of at least 13.5meters below Low water in accordance with the dredging plan to be provided during the Transition Period, provided that interference with the performance of the operations by the Lessee shall be kept to a minimum.

Among all the impending deep sea port around the nation, The Lekki and Badagry deep sea ports only should be considered to act as a cushioning effect to reduce the environmental pollution of Lagos / Tin Can Island Ports Complex, relieving congestion, and also aiding the partial relocation of activities from ports to the hinterland of the country (dryports and inland clearance depots) thereby reducing congestion to the minimum with the aim of fostering growth and encouraging transshipment cargoes.. Furthermore, Government should improve security measures to enhance safety of goods in ports and transit. The issue of insecurity of cargo in transit is one of the reasons landlocked countries like Niger and Chad do not patronize Nigeria's ports for transshipment purposes and utilise Cote de ivoire instead. The piracy issues in the Gulf of Guinea (GOG) region, especially around Nigerian waters, must be eradicated, failure in this regard will continue to result in diversions by ship owners/charterers to safer waters in the region.

9.6 Competition/Socio and Economic Development potential offered by the proposals

Linkage of Port PPP investments with economic and social development. The main rationale for concessions is that they can facilitate the regulation of natural monopolies – services that can be provided more cheaply by a single firm than by two or more – so power (transmission and distribution), gas (transmission and distribution), water distribution, transport are candidates for concession. Before adopting concession as a reform strategy, Government should, therefore, first determine whether competition can be workable in the relevant sector, possibly through reforming the market structure – vertically or horizontally. Concessions should be used in areas where they are most likely to aid development. The policy makers/regulators of the maritime system are expected to do more to ensure that they are realising their vision of establishing the leading ports in Africa – both regionally and in the wider Continental context. Port of Durban in South Africa, Port Said in Egypt and Morocco Ports are at the forefront of the lead in Africa Ports in relation to their container capacity today.

During meetings to several terminal operators, we frequently heard reports of slow berthing/unberthing of vessels. Non-availability of Pilots, Improvement from end of lashing to last line. Most ports will not take more than 1 or 2 hours operations turnaround time. There is presently a Night Navigation Restriction. This should be addressed to allow longer operational hours. The necessary pilotage should be assigned for night navigation. The Tin can/Apapa turning basins restrictions should also be addressed. Part of the current quay wall at Apapa is obsolete. Although there was a palliative measure carried out in 2010. These are some of NPA challenges the team of which the team was appraised. Draft will have to increase in Lagos Ports at some stage. In the area of security, the terminal operators have experienced security challenges. Virtually all mentioned there is no water tight security in the facilities although most meet ISPS standards. Quay walls, piling's and the quay surface are in a bad state. Virtually all the various interfaces/major access roads are not in a good operational state including drainage. This has led to imbalance on traffic flows and gridlocks. Vessels engaged in incessant waiting for Pilots after being booked. Delays of Vessels having to wait overnight after full discharge of cargo due to embargo on night sailings, thereby wasting active turnaround time of vessels. On this note, a 24 hour full operations should be incorporated.

Section 8.2, under Safety; Security (d) traffic outlines Traffic operations, vehicular traffic and all transport activities related to the premises shall be conducted in Accordance with Applicable Laws.

9.7 Governance Accountability

Government should be more active in its role in the regulatory functions; including safety, security, environment, enacting port regulations and byelaws, monitoring, control and enforcement of legislations, regulations and nautical management by the Harbour Master.

Article IX under Lessor's convenant Section 9.5 under Port Services; Vessel Management opines

(a) The Lessor shall :

- (i) Provide and maintain maritime approaches, canals, turning circles, breakwaters and navigation aids;
- (ii) In Accordance with Applicable Law, Issue Regulations and rules governing waterside safety within the port;
- (iii) Provide pilotage, towage, berthing, unberthing and shifting of vessel services required by all vessels intending to call at the premises:

Failure to provide pilotage, towage, berthing, unberthing and shifting of vessel services in accordance with the provisions of Subsection 9.5(a) so as to have a material adverse effect upon the performance of the operations of the Lessee shall require the parties to meet and discuss the reduction in the Throughout fee to compensate the Lessee for any financial loss that the Lessee has incurred as a consequence of the Lessor's acts of omissions.

The Authority should support more public ownership and private sector operations of the port system ensuring that port tariffs are moderate to make the ports more competitive. This will thereby bring to an end the issue of diversification of Nigerian bound cargo to our neighbouring ports as they strive to reduce customs clearance and release times for containers in the port to 24 hours. Ports, and their host governments, are concerned about safety. Safety of the people working in the port, safety in the port environs and the environmental impact of the vessels, cargo and other materials. Incident management software combined with analytics can help growing ports drill down into the root causes of such incidents and tackle them effectively. This is a proven way of improving safety in the freight logistics industry.

The Authority must continually maintain better quality and advanced decision making and know how to decide on strategic and tactical planning (operational staff especially), pricing, which areas of cost reduction to focus upon, modelling expansion opportunities, offer substantial opportunities for smarter working and margin improvement.

9.8 Cost Efficiency

As earlier mentioned, In the Nigerian case, lease agreements are a mixture between lump sum money, annual rent and revenue sharing, and NPV calculations merged together which gives room for the potential of market failure and conflict of interest especially when operators have no other option than to pay in Dollars and at a time when the terminal operators have complained of lack of adequate infrastructures at the ports which impedes their business operations and adds to cost of doing business (see on No 5, page 18) for more discussion on fees. This provides little incentive for productive efficiency, since it allows firms (terminal operators) to pass increased production costs on to consumers in the form of higher prices.

While Still looking at Article 6, under "Operations" and Section 6.9 outlining the Operations Rates describes (A) the General Parameters as The Lessee shall ensure that the Operations Rate shall be in accordance with Applicable Laws and competitive within the Port and with other competing ports of Nigeria having facilities similar to the Lease Property. With the "Specific Parameters" on (B). The Lessee shall charge cargo dues and delivery charges for the operations which are not greater than the rates set forth in Section A of Appendix 1 (the "Operations Rates") in accordance with the terms and conditions included therein. The Lessee shall not make any increases in the Operations Rates, unless agreed to in writing by the parties and any required consents of governmental Authorities have been obtained. Value added taxes and other taxes shall be added as required to the accounts rendered to the Lessee's customers. Income from the Operations Rates shall accrue directly to the Lessee without any collection, deduction or set off by the Lessor or the regulator. The Lessee shall also be allowed to charge for Additional Services, as defined in Appendix E and other services rendered but not specified in Appendix 1, including but not limited to: terminal handling, inland container depot transfers, storage and for penalties for violation of applicable rules and regulations set down by the Lessee. The level of terminal handling charges and inland container depot transfer charges shall not exceed the market rates charged by the shipping agents and the Lessor respectively prior to this agreement, and any future increases shall require the consent of the relevant Governmental Authorities.

However, The magnitude, scope and persistence of failure of Nigeria's public enterprises (PEs) including the Ports became alarming as these enterprises required continuous massive subsidies but delivered only intermittent and substandard services. There is the need therefore for the Authority to review the agreements in the area of cost efficiency that will suit both parties on the long run without imposing unnecessary and illegal charges/fees on port users which indirectly affects the end user/consumer.

Section 6.12 under the Spare Parts Consumables, (A) On the commencement of the term, Thirty (30) days prior to the Effective Date, the Lessor shall provide the Lessee with a list of its inventory of spare parts and consumable items related to the Lease property. The Lessee shall have the option to purchase from the Lessor any or all such spare parts and consumable items at a price mutually agreeable to the parties. And further on at Section 6.13 under Financing of operations, The Agreement outlined The Lessee shall be responsible for the planning of the financing of its performance of the operations. The Lessee may use this Agreement as security for obtaining finance in respect of the operations. For the avoidance of doubt, no lease property shall be used as security by the Lessee.

The returns on these large investments were generally poor, and in some cases negative, with an especially low rate of return relative to the large amount of resources invested in them. For instance, Net outflows from the government to the public enterprise sector were estimated at US$2 billion annually.

9.9 Further Notes on Development of a Crisis Implementation and Communications Plan

Implementation Plan

- The broad objectives of the reform have been hampered by several fundamental issues from conception, communications, implementation processes, and operations of the Concessioning Regime. The imperative factors which are the prerequisite of installing the Concession were sidelined for expediency. Port Reform is all encompassing and must include the reform of all the key institutions in the Port Community System. PCS. The challenges which were faced previously and terminal operations were part of the problems that brought the disinvestment of the Port Authority from Cargo Handling operations. Port cost is a critical factor in the cost of doing business at the ports and not only port charges which relates to Tariffs, Levies and Taxes. Computed Costs of delays, documentation processes, corruption, bureaucracy and lack of political will are some of issues that created the problems and will continue to affect the achievement of the objectives.
- Laws are made to promote productivity fair trade and competition and not to create monopolies hence the Landlord model must be fully administered within a technical, ethical and objective structure. Concessionaires obligations are not to replace the responsibilities of the Port Authority. A modern productive Infrastructure is just an element in the landlord model. Regarding 'Political Will', all agreed processes and Terms must be implemented without delay. Transparency must be entrenched in the Concession and Port Reform process and the port reform must be total and all inclusive of the key players who provide and consume port services including Nigerian Customs Services, Statutory Agencies, Freight and Logistics operators, and Law enforcement Agencies. The Port Authority must monitor performance and compliance of their own obligations as well as those of the concessionaires and other service providers in the enforcement of the Concession Agreements.
- Both the Technical and Economic Regulation enforcement guidelines that protect and ensure the realization and sustenance of the objectives of the Reforms must be established and major restructuring of the Port industry must commence with the review of the applicable Laws and building of Capacity for the Management and staff of the Nigerian Ports Authority, Nigerian Maritime Administration and Safety Agency, The Nigerian Custom Service and the Nigerian Shippers Council, including succession planning. The terminal operators must consent to annual operational planning that can be measured. The Economic Regulators must issue guidelines that are open, transparent and enforceable. Its operations must exhibit very professional ethical behavior that must not be compromised. Thereby curbing corruption which is clearly endemic in the port and which must be eradicated. All documentation processes must be IT Compliant.
- The main element in Technical and Economic Regulation should be performed by the Designated Regulator. The principal ones are the following :

  (1) Issuance of operating permits, licensing and approvals.

  (2) Establishment of benchmarks, limits and appropriateness of levies, charges, fees that may be imposed for performance of services within the Maritime sector.

  (3) Issuance of Guidelines and control operators in the Maritime Environment.

  (4) Sanctions for breaches by operators in the Maritime environment.

  (5) Procedures and processes of Harbors and Port Environment Guidelines.

Communications Plan.

The plan would provide policies and procedures for the coordination of internal and external communications generally and in the event of a crisis. In addition, plans should be developed for regular communication with stakeholders. The modern logistics system is complex and dynamic so the availability of real time information to support effective decision-making is critical. Available technology that is currently utilized to monitor conditions should be leveraged to provide information in near real time to decision makers. The posting of web cam images and Intelligent Transportation System travel time reader information in a consolidated location would allow dispatchers and truck drivers to make informed decisions and optimize their routing and scheduling. This information should be available on the Internet and a Smart Phone Application. We have looked at how the emerging world of stabilized ports may appear through the three lenses of infrastructure, port trends and port management systems. It can be seen that port owners and managers need to consider their investments in infrastructure and supporting systems carefully if they are to compete as the 21st century unfolds. This matter is rarely one just for port profitability and development but often has a significant impact on the health of the country's economy which the port serves.

It is clear however, that everyone, from the longshoreman and the trucker to the operations staff and executive management, must take on a new level of responsibility and commitment to collective change. The Port Authority should work with all stakeholders to create a governance structure, considerate of regulatory requirements and commercial practices to monitor implementation of the Crown Agents/PDF and the Task Force recommendations and to ensure accountability and ownership of the process and recommendations. The new governance structure would also continue to monitor and report on the port's vital statistics, as well as assess, adjust, and mitigate future potential risks and issues.

Finally in this report, If the port industry truly deserves to be productive, competitive and earn a Hub status in the Region, it must be reformed and genuinely embrace a paradigm shift in its operational strategies. This will see the Nigerian Ports performing optimally, and above average in the region. A professionally managed Port System will see increased traffic, employment and empowerment; while maintaining its West African sub region competitive advantage.

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