

USE OF ACCOUNTABILITY MECHANISMS



Centre for Social Justice (CSJ)

(Mainstreaming Social Justice in Public Life)

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ACRONYMS

CELS	Centro de Estudios Legales Sociales
CSJ	Centre for Social Justice
CSOs	Civil Society Organisations
CWP	Citizens Wealth Platform
FEC	Federal Executive Council
FoIA	Freedom of Information Act
FRA	Fiscal Responsibility Act
MDAs	Ministries, Departments and Agencies of Government
MTEF	Medium Term Expenditure Framework
MTSS	Medium Term Sector Strategies
NASS	National Assembly
NGO	Non Governmental Organisation
PACs	Public Accounts Committees
PIL	Public Impact Litigation
PPA	Public Procurement Act
SWV	Service Wide Votes
USD	United States Dollar

INTRODUCTION

This Handbook is designed for the purpose of highlighting and contextualising the challenge of accountability in fiscal governance and to provide ideas and strategies to be adopted by persons and organisations interested in holding government accountable for the expenditure of the enormous resources entrusted in its care. It discusses eleven critical points and issues.

Accountability for results focuses on the re-direction of the energy of accountability advocates who should be more inclined in finding out the results produced from expenditure of public resources. The media can be used creatively to achieve distinct results and to increase voice and accountability. Litigation offers the opportunity to use the legal system to validate rights and duties. A new form of networking and coalition building through leveraging the competencies and capacities of clusters of multiple stakeholders to improve fiscal governance is advocated. CSOs should no longer be preaching to the converted but should engage new constituencies who are committed to the same ideals as they are. Thus, the cluster idea creates a hub and spoke effect that will achieve increased accountability when more voices are on board.

The Fiscal Responsibility Act, Public Procurement Act and Freedom of Information Act are laws that need to be fully activated to entrench accountability and transparency in fiscal governance. They provide a new array of tools and opportunities for demands which were hitherto not available. Frivolities and waste in the system were identified as a major challenge to budgeting whilst statutory transfers that are stated in lump sums without disaggregation contributes to the opacity of the budgeting process.

The cost of governance in Nigeria is very high as it leaves very little resources for development. Engaging the levers of power and accountability for the reduction of the cost of governance has become imperative. The Handbook discusses the need for follow-up on audit recommendations to ensure that it is possible to take corrective action in individual cases; to make those accountable to accept responsibility, to obtain compensation, or to take steps to prevent - or at least render more difficult such breaches.

The Handbook is recommended for stakeholders in civil society including the media, NGOs, organised labour, community based groups; women, youths and faith based organisations. It is also for use by private sector groups that seek to improve their capacity for profits through enhanced governmental service delivery which will create the enabling environment for businesses to thrive and blossom.

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1. ACCOUNTABILITY FOR RESULTS

Our monitoring of the budget and fiscal policy should focus on results rather than mere expenditure of resources. What has the government achieved through expending public resources?

Fiscal governance and expenditure of public resources should be tied to high level national and international standards that stipulate improvements in the human condition. Thus, it is not enough for government to list the number of contracts and projects awarded or the number of personnel drawing salaries from the budget. Rather, budget implementation reports should state in a categorical manner how public expenditure has improved development indicators and statistics in the specific areas of human endeavour.

For instance, how has spending in education over the years reduced the number of children that are out of school? How has education spending improved the quality of learning outcomes? How has spending bridged the gender enrolment gap? In health care spending, questions will arise as to whether spending has reduced maternal, infant and child mortality and morbidity? Are we spending on palliatives rather than attacking fundamental challenges? For instance, focused spending on mosquito nets without a medium term plan to use environmental health education and practices to attack the mosquito life cycle may not be the optimum malaria intervention approach.

This approach to accountability raises the challenge of value for money with its three cardinal parameters of economy, efficiency and effectiveness. It allows the public to ask critical questions about the choices of projects and programmes to be financed by the treasury. Do

we need to build entirely new universities and polytechnics or just increase the carrying capacity of existing ones if we are faced with the need to increase students' intake in tertiary institutions?

Economy: *The practice by management of the virtues of thrift and good housekeeping. An economical operation acquires resources of appropriate quantity and quality at the lowest cost. A lack of economy could occur where there is overstaffing, or the acquisition and use of overpriced facilities; getting things done cheaply.*

Efficiency: *This is making sure that the maximum useful output is gained from the resources devoted to each activity, or alternatively that only the minimum level of resources are deployed to achieving a given level of output. An operation could be said to have increased in efficiency if either lower costs were used to produce a given amount of output. Inefficiency will be revealed by identifying the performance of work with no useful purpose, or the accumulation of surplus material that are not needed to support operations; getting things done well.*

Effectiveness: *This ensures that the output from any given activity (or the impact that services have on the community) is achieving the desired results. To evaluate effectiveness, we need to ensure that the desired goals are being achieved. A goal as an operating objective should be defined as a concrete expression of a policy objective; doing the right things¹.*

¹ *The Pursuit of Value for Money*, Samuel Afemikhe, Spectrum Books, 2003, Pages 6-9.

Thus, civil society and private sector demands for accountability should focus on results rather than projects that may lead to nowhere. An example from the components of the right to education tells the story of the recommended focus and what stakeholders should demand from the managers of public finances.

In accordance with General Comment No. 13 of the United Nations Committee on Economic, Social and Cultural Rights: “While the precise and appropriate application of the terms will depend upon the conditions prevailing in a particular State party, education in all its forms and at all levels shall exhibit the following interrelated and essential features:

- (a) **Availability** - functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as library, computer facilities and information technology.

- (b) **Accessibility**- education institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions;

Non-discrimination - education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds;

Physical accessibility - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighborhood school) or via modern technology (e.g. access to a distance learning programme)

Economic accessibility – education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13 (2) in relation to primary, secondary and higher education: whereas primary education shall be available “free to all”, States parties are required to progressively introduce free secondary and higher education;

- (c) **Acceptability**- the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13 (1) and such minimum educational standards as may be approved by the state;
- (d) **Adaptability**- education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.

The above example can be replicated in other sectors of national life and expected results from the expenditure of public resources can be distilled.

2. USE OF THE MEDIA

The media should be used to hold government to account for its duties to citizens; to raise awareness and to educate citizens on their rights and duties.

The traditional media (encompassing newspapers, radio and television) in modern society seeks to inform, educate and entertain. In the process of doing this, the media sets agenda as the court of public opinion, the watchdog of society and conscience of the nation. In section 22 of the Constitution, the media's role is stated as follows:

The press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this Chapter² and uphold the responsibility and accountability of the Government to the people.

Beyond the traditional media, there has evolved over the years the digital and social media which have become new platforms to reach out to wide audiences. These new platforms include websites, blogs, twitter, facebook, instagram, youtube, soundcloud, etc. They are not as regulated as the traditional media and as such, do not need licensing before individuals can operate accounts.

The right to use the media to disseminate information is an offshoot of the constitutional freedom of expression, including freedom to hold opinion and to receive and impart ideas and information without

² This Chapter refers to the Fundamental Objectives and Directive Principles of State Policy found in Chapter 2 of the 1999 Constitution.

interference³. In the traditional print media, there are opportunities for professional groups, NGOs, organised labour and the private sector to intervene for accountability and transparency. This can come in the form of opinion articles, letters to the editor and other feedback mechanisms, granting informed interviews, press releases on subjects of public interest. The media can also be invited to cover events organised to promote accountability and news and feature stories can emanate from such events. In the traditional electronic media of radio and television, there are opportunities for appearing in discussion programmes, participating in phone in programmes, organising events that can be subject of news coverage, etc.

The digital media offers opportunities for websites and blogs which carry large volumes of data and information. Books and materials containing thousands of pages can be stored in these platforms. However, the design of a website, its user friendliness and constant updating will play a role in attracting traffic to the site. Digital media also provides the opportunity to store video materials and moving pictures and can be used for live-streaming of activities and events this is a form of mini television coverage. Results of investigative reports, action researches and opinion articles can also be disseminated through websites and blogs.

The social media offers a very wide array of services and the opportunity to reach a great number of persons at a minimal or no cost. If very well planned and coordinated, tweet sessions on tweeter can be used to reach millions of persons. Facebook offers the opportunity for constant dialogue and reach out to a large number of persons. Tweeter and

³ Section 39 of the 1999 Constitution.

facebook can be used to cover events and occasions where accountability is the main focus. Press statements can also be released on facebook and twitter and they can be used to display links to websites and blogs containing detailed information on particular subjects of interest. Prior scheduling of tweet sessions, advertising the hash tag and time will be useful in promoting public awareness and extensive reach of the issues tweeted. Social media also provides an opportunity of a blow by blow account of events, some form of monitoring as it unfolds which gives instant information about ongoing activities.

In using the traditional and non-traditional media for disseminating information and reports that investigated issues of accountability, answering the basic questions of the 5Ws and 1H should not be forgotten. They are who? What? When? Where? Why? How?⁴ In engaging government policies, we ought to explore the wisdom in the policies; seek ways of fine-tuning them and question their internal consistency; seek ways of improving implementation and how policies can deliver improvements in livelihoods⁵.

3. CLUSTER BUILDING FOR IMPROVED FISCAL GOVERNANCE

Leveraging the capacities, abilities and competence of a range of stakeholders will galvanise action for positive change and likely guarantee that we meet our set goals. If the old ideas are not working, why not innovate and try something new?

Leveraging on the competencies and capacities of various active clusters, individuals and networks is the new thinking for improved fiscal

⁴ *The Media and Economic Reform - A Toolkit*; Budget Transparency Network 2005.

⁵ *Supra*, *The Media and Economic Reform – A Toolkit*

governance results. Instead of the old civil society concept of coalitions and networks that contain only organisations with similar competencies and who are mainly on the demand side of the equation, there is need for a holistic approach to networking which goes beyond the silo approach and shows consistency with a focus on the overall goals of fiscal governance interventions. The clusters in fiscal governance will include demand and supply side actors, private sector enterprises, the academia, media, professional associations, the entertainment industry, organised labour, faith, women and youth groups, etc. The diversity of the competencies helps to ensure that overall goals are kept in view and become more achievable.

This approach needs a mapping of the ecosystem of fiscal governance which recognises that organisations are embedded in a thick web of social relations and interactions and harnessing the social capital of different organisations towards achieving a set of goals will yield greater trust, reciprocity, information exchange and cooperation⁶. Questions to be answered include who is doing what? Whether we have covered the field or utilising all the available competencies? Who is best suited and has the greatest legitimacy to accomplish a task? The cluster approach allows a lot of innovative and out of the box thinking to solve practical fiscal governance and accountability challenges. Working in a hub and spoke fashion, there is a key anchor organisation coordinating the clustering process. The System for Transformation and Results (STAR) drivers has been stated as follows⁷.

⁶ Adapted from the System for Transformation and Results (STAR) Tool Suite for Cluster Anchors of Roots Change International.

⁷ STAR, supra

(a) Adaptive Voice and Accountability Strategies and Tactics: How an anchor works with cluster members to ensure all participants have a shared vision, a common understanding of the advocacy issue, and a joint approach for adapting strategy and tactics to achieve the cluster's advocacy goals.

(b) Knowledge and Exchange: How an anchor develops mechanisms for identifying, capturing, cataloguing, validating and disseminating knowledge and expertise from cluster members and outside actors to support the action agenda of the cluster.

(c) Monitoring and Evaluation: How an anchor works with cluster members to build agreement on how success will be measured and reported, and how common indicators of success are used for both learning and improvement by the anchor and cluster members.

(d) Member Engagement: How an anchor engages with a diverse set of current and new cluster members through regular and open communication, trust building, recognizing members' achievements, and motivating members to develop clear and complimentary roles and responsibilities.

(e) Member Development: How an anchor ensures that members are developing the necessary skills to lead and or effectively participate in cluster activities by finding appropriate training opportunities and connecting members with capacity development coaches and technical consultants.

(f) Alliance Building: How an anchor effectively brokers and strengthens ties between many different types of actors, both current and new that can expand voice and accountability activities.

(g) Innovation and Experimentation: How an anchor seeks out new ways of accomplishing voice and accountability initiatives and how they rally cluster members to test and share results of these new approaches.

Essentially, the cluster approach to fiscal governance is like driving with all the available cylinders of an automobile for maximum efficiency and ability to reach goals.

4. LITIGATING FOR ACCOUNTABILITY

It is legitimate to seek the enforcement of rights and the law through the judicial process.

Litigation can be used to advance accountability and voice in a multiplicity of ways. It can be used to remedy individual violation of rights in the fiscal governance system; to get duty bearer to perform their constitutional and statutory duties for instance, getting scheduled corporations to remit operating surplus or seeking mandamus to compel the setting of the debt limit. It can also be used to seek declarations affirming the legality or illegality of executive or legislative action. Further, litigation can be in the form of Public Impact Litigation (PIL) which is viewed as collaboration between the petitioner, the state and the court to secure observance of constitutional and legal rights and to reach social justice⁸.

The Fiscal Responsibility Act in section 51 provides as follows:

⁸ Per Justice Bhagwati in *Peoples Union for Democratic Rights v The Union of India* (1992) ALSC 1477-78.

A person shall have legal capacity to enforce the provisions of this Act by obtaining prerogative orders or other remedies at the Federal High Court without having to show any special or particular interest.

This provision creates a new opportunity for using the judicial system to hold public officers accountable especially in the performance of duties under the Fiscal Responsibility Act as it removes the challenge of *locus standi* which is usually raised as a preliminary objection against public interest suits. When the above provision is combined with section 48 of the same FRA, a new set of possibilities unfold.

The Federal Government shall ensure that its fiscal and financial affairs are conducted in a transparent manner and accordingly ensure full and timely disclosure and wide publication of all transactions and decisions involving public revenues and expenditures and their implications for its finances

Sometimes, cases are filed in court, not from the point of view that the lawyer is sure he will get the relief asked for in his originating process but because, he needs to make a statement and get the hidden facts to public attention. The central idea is to energise the law to serve its social engineering role⁹ that seeks to resolve the conflicts arising from societal interactions in a Nigeria which is dangerously approaching the *hobbesian* society where man is wolf to man¹⁰. However, litigation must not be used

⁹ The sociological school of jurisprudence of Dean Roscoe Pound in “*The Philosophy of Law*” 1954 at p.47; Rudolf von Jhering “*Law As A Means To An End*” (Trans by I. Husik) 1924.

¹⁰ Thomas Hobbes concept of a primitive, virtually lawless society where life is nasty, short and brutish. Laws were needed to impose some order under some form of social

as a stand - alone strategy; it is usually combined with a lot of strategies especially media advocacy and exposure which ensures that while the court is adjudicating a matter, the court of public opinion is providing some level of scrutiny and oversight.

Examples of litigations for accountability include:

(a) The Ghost Workers Case: When information filtered out from the Ministry of Finance in 2013 that ghost workers have been removed from the federal payroll, CSJ demanded the details of the MDAs where ghost workers were found and the numbers per MDA, the name of permanent secretaries and head of accounts and personnel in charge of the MDAs at the time the ghosts were discovered. This request for information was turned down and CSJ filed freedom of information proceedings¹¹ in court and this exposed the agency by agency details of the ghosts. However, the names of the permanent secretaries and other officials of the MDAs have not been disclosed and still awaits judicial pronouncement. The natural follow-up after the disclosure is to ensure the prosecution of the officers who presided over the scam.

(b) Annual Implementation of FoIA Report Case: To ensure availability of fiscal information, CSJ sought and obtained a declaration that a purported report on the implementation of the Freedom of Information Act in 2013 prepared and submitted to the Attorney General of the Federation by the Ministry of Finance did not satisfy the requirements of Section 29 (1) of the FoIA and an order of mandamus compelling the Respondent to prepare and submit to the Attorney of the

contract were the people gave away certain rights to a sovereign who in turn enforced law and order.

¹¹ FHC/ABJ/CS/281/2013 in *Centre for Social Justice versus Minister of Finance*

Federation, a 2013 Annual Implementation Report that is in line with Section 29 (1) of the Freedom of Information Act¹².

(c) Eldridge v Attorney General of British Columbia (1997): Considering that the state is under a legal obligation to take steps to the maximum of available resources for the progressive realization of rights (particularly economic, social and cultural)¹³, the court decided that the state should ensure fulfillment of this obligation or in the alternative “*demonstrate convincingly that the costs implications of giving full effect to social and economic rights will impose undue hardship on its fiscal resources and will prejudice the other legitimate ends it is expected to meet in a democratic society*”¹⁴.

(d) Serrano vs Priest: California was home to a historic court case in the 1970s in *Serrano vs Priest* in which education advocates successfully challenged the inequality of the state’s schools financing scheme and forced a major redistribution of funds to low income school districts¹⁵.

(e) Nutrition Programme Suit: When the Argentine Government cut funding for its “garden” nutrition programme, human rights lawyers with the NGO, Centro de Estudios Legales Sociales (CELS), identified that the cuts violated an agreement between the Argentine Government and the World Bank, CELS filed a petition at the World Bank with the Bank’s Inspection Panel. That engineered a direct threat to the Government’s

¹² Suit No FHC/ABJ/CS/327/2014 in *Centre for Social Justice v the Minister of Finance*

¹³ Article 2 (1) of the Covenant on Economic, Social and Cultural Rights.

¹⁴ Cited with approval in Chapter 15-17 of “Rights Based Approach to Budget Analysis” (supra).

¹⁵ See page 19 of *Promises to Keep: Using Public Budgets as a Tool to Advance Economic, Social and Cultural Rights*, supra.

line of World Bank credit-a powerful enough tool to force Government to restore much of the earlier taken away funds.

5. ENGAGING THE FISCAL RESPONSIBILITY ACT

The Fiscal Responsibility Act will produce results to improve livelihoods, transparency and accountability if there is concerted effort to make it work

The Fiscal Responsibility Act (FRA) provides a rule based approach to fiscal governance and opportunities for citizens' participation in the budgeting and fiscal process. It also creates duties for members of the executive and legislature and provides the opportunity for Nigerian citizens to hold these officials accountable for the duties. Some of the rules include the preparation and approval of the MTEF, the benchmark price for crude oil, remitting of operating surplus to treasury and creation of a general reserve fund, preparation of annual cash plan, budget disbursement schedule and budget implementation reports, rules for virement and savings and asset management, terms and conditions for incurring debt and debt limitation; transparency and accountability provisions.

Stakeholders including the media, non-governmental and faith based organisations, academia, professional groups, organised private sector and labour can intervene in any of the above listed issues and processes. Some of the critical entry points are for stakeholders to insist on due process in the preparation of Medium Term Sector Strategies (MTSS) by MDAs which will feed into the Medium Term Expenditure Framework (MTEF) and ensuring that all approved stakeholders are on board. The stakeholders in the sectors for the preparation of the MTSS

will include the core staff of the MDA, organised private sector and labour working in the sector, professional groups and civil society organisations with professional expertise, legislative committees exercising oversight over the sector, etc. In the preparation of the Medium Term Expenditure Framework, we need to engage the Minister of Finance in the preparation of the strategic economic and social priorities of the government and review the MTEF tabled for legislative consideration. There is the need to follow-up on the provisions of the FRA through letters, submission of memorandum, media interventions, advocacy visits, litigations, etc:

- On the remittance of operating surpluses by scheduled corporations because many of them are resisting efforts by the Fiscal Responsibility Commission to ensure their compliance with the law.
- Ensuring that the Budget Office of the Federation prepares and publishes on time the Budget Implementation Reports.
- That the debt limitation for the three tiers of government has been set in accordance with law
- The tiers of government respect the conditions for borrowing
- Audited accounts are prepared and published on time

The proper implementation of the FRA will lead to a more socially responsible government that attends to the needs of all classes of citizens. Social indicators in education, health, housing and access to water will improve and the economy will grow, generate jobs and taxation for government.

6. ENGAGING THE PUBLIC PROCUREMENT ACT

The Public Procurement Act is one the best laws ever made in Nigeria but we must organize and mobilize to make it work. It is not yet delivering results.

The Public Procurement Act (PPA) 2007 is a law to establish the National Council on Public Procurement and the Bureau of Public Procurement (BPP) as the regulatory authorities responsible for the monitoring and oversight of public procurement, harmonizing the existing government policies and practices by regulating, setting standards and developing the legal framework and professional capacity for public procurement in Nigeria and for related matters.

Like the FRA, the PPA provides a rule based approach to public procurement setting out clear procedures and processes; establishing the rights of participants in the procurement process; setting out a recourse mechanism for redress of violations and providing opportunities for the oversight of non state actors in the process. The Act provides for a National Council on Public Procurement, which is the policy arm while the Bureau of Public Procurement is the technical and enforcement arm. The Council is composed of: (a) the Finance Minister as Chairman (b) the Attorney-General and the Minister of Justice of the Federation (c) the Secretary to the Government of the Federation (d) the Head of Service of the Federation (e) the Economic Adviser to the President; (e) Six part-time members to represent; (i) Nigeria Institute of Purchasing and Supply Management; (ii) Nigeria Bar Association; (iii) Nigeria Association of Chambers of Commerce, Industry, Mines and Agriculture; (iv) Nigeria Society of Engineers (v) Civil Society; and (vi) the Media. Part of the

challenge plaguing the effectiveness of the PPA is the non-constitution of the Council.

However, the policy making functions of the Council have been usurped by a number of entities including the Federal Executive Council (FEC), the Secretary to the Government of the Federation and the Bureau. Further, in clear breach of the provisions of the Act, FEC illegally constituted itself as a contract approval and awarding entity. The Bureau has been operating without the regulation of the Council and as such, it performs its own functions and sometimes that of the Council. This has created a missing link, a vacuum for professional oversight in the activities of the Bureau. The PPA gave the Bureau the power to enforce the monetary and prior review thresholds set by the Council and to issue certificate of “No Objection for Contract Award”.

The PPA provides for open competitive bidding as the basic method of public procurement. It demands openness, transparency, timeliness, competition, value for money, fitness of purpose and professionalism in the discharge of the procurement function. There are special and restricted methods of tendering which can only be used as exceptions to the general rule of open competitive bidding. Provisions are made in the PPA for the fundamental principles of procurement, qualification of bidders, approving authority, procurement planning, role of accounting officers, tender boards, pre-qualification of bidders, invitation to bid, bid security, submission of bids and bid opening and the oversight of professionals and civil society organisations. Other issues provided in the PPA include rejection of bids, validity period, examination and evaluation of bids, acceptance of bids and domestic preferences, etc.

Some of the key challenges of implementing the PPA include the non establishment of the Council, the restriction of professionals and civil society participation to only observing the bid opening session, preponderance of the special and restricted methods of tendering over open competitive bidding, over-priced projects despite the adherence of the no objection to award of contract procedure, manipulation of the process to record adherence to the form as against the substance and spirit of the law. It has been reported that some agencies of government such as the National Assembly do not consider themselves bound by the PPA and as such operate outside its framework. Also, the sanctions mechanism of the PPA has hardly been activated. Further, budgets are overloaded with projects without adequate financial support leading to abandoned projects and missing deadlines in projects delivery and perpetual demands for upward cost variation. There is therefore the need to follow up the provisions of the PPA through letters, submission of memorandum, media interventions, advocacy visits, litigation, continued capacity building, etc, in a number of areas including:

- The constitution of the National Council on Public Procurement and stopping the weekly Federal Executive Council bazaar of contract awards.
- Implementation and use of the PPA in the procurement of all agencies of government.
- Award of procurement contracts without budgetary and financial backing and outlay.
- Access to procurement information.
- Over invoicing of procurements.
- Bid rigging and infringements of open competitive bidding.
- Use of the wrong tendering process.

- Dilatory conduct which seeks to tie the hand of government to the special and restricted tendering methods.

7. ENGAGING THE FREEDOM OF INFORMATION ACT

Access to information is the bedrock of transparency and accountability and a pillar for democratic consolidation. This is a new window that must be made to work for all

All citizens and citizens group should intensify the use of the Freedom of Information Act to open up governance in Nigeria. This is premised on the fact that transparency and access to information is the bedrock of accountability. The Freedom of Information Act seeks to make public records and information more freely available, provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy. It also seeks to protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorization and establish procedures for the achievement of these purposes.

It establishes a right of access to public records in the custody or possession of any public official, institution or agency. It also establishes a procedure for requesting for the information, using the judicial system in the event the request is unjustly denied. The exemptions to disclosure are matters related to international affairs and defence, law enforcement and investigation, personal information, third party information and proprietary secrets, professional and other privileges conferred by law and research materials.

The provisions of the FoIA can be used to make the fiscal system more accountable and transparent by putting in the public domain information that would have otherwise been shielded. Access to information is the foundation for demands for improvements in governance, livelihoods and growing the economy. The right of access to information is available to every citizen.

However, the level of compliance with the Freedom of Information Act among MDAs is low. Instead of granting the requested documents to an applicant, many MDAs in clear violation of the law fail, refuse and neglect to do so. They would rather spend large sums of money hiring senior lawyers including Senior Advocates of Nigeria who charge very high fees at the public expense to defend the indefensible. At the end of the day, the public treasury loses money while society fails to get the benefits accruing from the proper implementation of the law. Courts are also reluctant to apply section 7 (5) of the FoIA which states that where a case of wrongful denial of access is established, the defaulting officer or institution commits an offence and is liable on conviction to a fine of N500,000.

8. FRIVOLITIES AND WASTE IN THE BUDGETING SYSTEM

Spending public resources on frivolous and wasteful items will not engender development. Rather, it will increase poverty.

Every year, the federal budget contains a number of wasteful, frivolous and inappropriate expenditure. It is the duty of the organised private sector and civil society including non-governmental organisations, the media, professional associations, the academia and organised labour to intervene before the legislature finishes the consideration of the budget to weed out these frivolities and waste. The Citizens Wealth Platform

(CWP) has been intervening in this scenario for over five years. The approach adopted includes the documentation and publication of the expenditure estimates in a booklet, calling for their removal and sending same to all members of the National Assembly. The media has been engaged to raise awareness about these frivolities and how they unjustly affect the poor and entrench poor fiscal governance. Specific committees in the legislature, especially appropriation and sectoral committees have also been engaged.

Some of the identified frivolities and wastages were in the area of welfare packages for MDAs that already had personnel votes; security votes for all manner of agencies; votes for refreshment and meals that will make restaurant chains green with envy; bloated travel and transport votes. Offices like the Secretary to the Government of the Federation at a point got N2bn for the nebulous welfare packages. We had situations where an agency will demand for more than N300,000 a day for stationery including Saturdays and Sundays and a vote of over N30,000 a day for newspapers and magazines. The country continues to fund Christian and Muslim pilgrimages when the 1999 Constitution forbade the adoption of state religion. In the Presidency, there was a perpetual demand for resources to repair, rehabilitate and upgrade facilities. Nigeria had to pay hundreds of millions to purchase cutlery and crested plates for use in the presidential villa. In a country where over 70% of the population lives below the poverty line, a presidential fleet of over 12 aircrafts is maintained at tax payers' expense. And it got so ridiculous that in a particular year, the Ministry of Information had N100m approval to build social media platforms!

In the Ministry of Agriculture, it was a perpetual play on words in a manner suggestive of fraudulent intentions; it repeats expenditure heads

like “seed”, “seeds”, “seedling”, “seedlings”, “improved seeds”, “agrochemicals”, “fertilisers”, “fungicides”, “herbicides”. This is simply an unfair way and manner to get money out of the treasury as no one except the Ministry is in a position to monitor and track the votes. For the avoidance of doubt, good and best practices demand that a budget be clearly written in such a way that the public can understand its provisions and be able to track its expenditure. If anyone wants to be charitable to the Ministry of Agriculture, it will be accused of creating deliberate mischief and confusion.

The legislature got votes for constituency projects which ended up being used for procurement of boreholes, pepper grinding machines, tricycles, community halls, etc all in the name of poverty reduction and legislators interventions in their constituencies. But these projects were not aligned to national or sectoral development plans and policies. They stood alone and made no meaningful contribution to the society. In most instances, boreholes have been dug by different government agencies and all that was required was the reticulation of the water system to cover entire communities and where the reticulation had been done, to ensure adequate power supply to guarantee access to all nooks and crannies of the community. Pray, what is the business of the federal government in building boreholes and community halls in one remote location when state and local governments exist?

Service Wide Votes creates the opportunity for omnibus votes domiciled between the Presidency and Ministry of Finance with little or no supervision and subject to perennial abuse and mismanagement. After allocating funds to various agencies, SWV creates another set of funds for the same purpose which is not managed by the agency charged with delivering the particular service to the people.

However, most of the interventions on frivolous and wasteful expenditure have been at the federal level, it is now time for state and local government level interventions to ensure that all budgeted resources are subject to civil society and stakeholder oversight.

9. THE CHALLENGE OF STATUTORY TRANSFERS

No agency of government, under any guise is allowed to spend public resources in a way and manner and for purposes not known to citizens.

Nigerians should be keen on unbundling the lumps sums in statutory transfers. We should demand for the details because a culture of lack of transparency and opaque budgeting has evolved over the years in statutory transfers. Unlike the budgets of other Ministries, Departments and Agencies of Government including the Presidency and the Ministry of Finance, the estimates of agencies on statutory transfers are stated as lump sums and there are no details showing the components of these lump sums. After the approval of the budget, their votes are still stated as lump sums. By this process, Nigerians are denied the opportunity of making contributions to the approval process of these votes. To insist on the continuation of this practice is not acceptable in a constitutional democracy founded on the rule of law and sovereignty of the people. Indeed, no agency of government, under any guise is allowed to spend public resources in a way and manner and for purposes not known to citizens.

According to the Finance (Control and Management) Act, the Minister of Finance shall cause to be prepared in each financial year, estimates of

the revenues and expenditures of the Federation for the next following financial year, which shall be presented to the President for approval and thereafter laid before each House of the National Assembly in accordance with the Constitution. The Constitution, the Finance (Control and Management) Act or any other law did not authorise the statement of estimates and approved votes in lump sum.

The Federal High Court in *“The Matter of Centre for Social Justice and Honourable Minister of Finance”*¹⁶ has declared as follows:

A. That a declaration is hereby granted that denying the Applicant access to the details of the statutory transfers in the 2013 Appropriation Act by the Respondent without explanation constitutes an infringement of the Appellants right guaranteed and protected by section 1(1) of the Freedom of Information Act 2011.

B. That a declaration is hereby granted that the continued refusal of the Respondent to grant to the Applicant access to the details of statutory transfer in the 2013 Appropriation Act despite Applicant’s demand violates Section 4 of the Freedom of Information Act 2011

C. That a declaration is hereby granted that the continued refusal of the Respondent to grant access to Applicant of the details of the statutory transfer in the 2013 Appropriation Act without explanation constitutes an infringement of the Applicant’s right guaranteed and protected by Section 48 of the Fiscal Responsibility Act 2007

¹⁶ Suit No FHC/ABJ/CS/301/2013 presided over Justice Kafarati of the Federal High Court in Abuja.

D. That an Order of Mandamus is granted compelling the Respondent to grant to the Applicant access to the details of the statutory transfer in the 2013 Appropriation Act specifically the details of the transfer to the National Judicial Council, Niger-Delta Development Commission, Universal Basic Education, National Assembly, Independent National Electoral Commission and National Human Rights Commission

Thus, the continued practice of stating statutory transfers as lump sums is not only illegal, it is unconstitutional and in disobedience to a court order.

10. COST OF GOVERNANCE

Running government with 80% of public resources without investing in capital projects will not generate economic growth and development. It will deepen poverty.

The cost of governance in Nigeria is one of the highest in the world especially when benchmarked against the services delivered by successive federal and state level administration. In the last 10 years, actual recurrent expenditure at the federal level has averaged 80% of overall expenditure. Thus, the high cost of governance diverts funds that should have been channeled to the development of critical infrastructure and human development into consumption. There are issues of overstuffed MDAs; agencies duplicating the functions and duties of other MDAs and incredibly high recurrent expenditure. It is therefore the duty of non stake actors stakeholders to accentuate the campaigns on the reduction of the cost of governance.

The Revenue Mobilisation Allocation and Fiscal Commission recommended very high salaries and allowances for political office holders. The remuneration and allowances of Ministers is as stipulated by Certain Political, Public and Judicial Office Holders (Salaries and Allowances, Etc) (Amendment Act) of 2008. It includes (using the annual basic salary of N2,026,400 as the basic) accommodation 200%; utilities 30%; domestic staff 75%; entertainment 45%; medical facilities and security are provided by the state and will cover treatment in foreign hospitals; furniture 300%; personal assistant 25%; motor vehicle loan 400%; motor maintenance and fuel allowance 75%; severance gratuity 300%; leave allowance 10%; newspaper allowance 15%; duty tour allowance N35,000; estacode USD900; monitoring allowance 20%.

The above is virtually the same remuneration for lawmakers. Personnel votes are usually not more 25% of the budget of NASS and NASS embarks on minimal capital expenditure. The rest of their budget is dedicated to overheads. Essentially over 60% of the NASS budget is spent on overheads and this is incredibly high and it is not sustainable in the short, medium or long terms.

Despite the provisions of the Monetisation Policy and the Certain Political, Public and Judicial Office Holders (Salaries and Allowances, Etc) (Amendment Act) of 2008, some persons whose entitlements have been monetised still have the same facilities provided for them again at the public expense.

High ranking government officials under the Certain Political, Public and Judicial office Holders (Salaries and Allowances, Etc) (Amendment Act) of 2008 enjoy full medical services provided by the state including treatment in foreign hospitals. While their other allowances have been

monetised, the Act states that medical services are to be provided by the state. The officials include the President, Vice President, Secretary to the Government of the Federation, Ministers, Head of Service, Special advisers, Auditor-General for the Federation, Permanent Secretaries and equivalent officials¹⁷, Judicial Officers from the High Court and its equivalent up to the Supreme Court, Chairmen and members of constitutional Commissions or any other Commission established by the National Assembly.

These are the officials in a position to formulate and implement policies that will improve our health system. Having been licensed to look for their health services outside Nigeria, the incentive to fix the health system is no longer there. As such, Nigeria incurs tremendous expenses in catering for the health of these officials outside our shores. The Nigeria Medical Association reported that Nigeria loses over \$500m annually to health tourism and about \$260m of this sum is spent in India. Nigeria's Sovereign Wealth Fund Authority puts the sum lost annually to medical tourism at over USD \$1b. A good part of these sums comes from the public treasury.

Other non political office holders - the core civil servants are also entitled to monetised benefits and FGN is not supposed to pay twice for the same expenditure head. The savings made from monetisation will enable government to prosecute more capital projects. Despite the monetisation exercise, various sums are allocated annually for the

¹⁷ Others include Directors-General, Executive Secretaries, INEC Resident Electoral Commissioners and Chief Executive of Parastatals, Agencies and Government companies.

provision of the monetised benefits i.e. including provisions for vehicles, sporting activities and housing in some cases.

All stakeholders that are committed to Nigeria's development must therefore join the campaign for the reduction of the cost of governance.

11. AUDITING FOR ACCOUNTABILITY

Auditing should make it possible to take corrective action in individual cases; to make those accountable to accept responsibility, to obtain compensation, or to take steps to prevent - or at least render more difficult such breaches.

Civil society audit work should focus on using several mechanisms to guarantee follow-up of audit recommendations. This will include engaging the legislature, the anti-corruption agencies, the media and possible use of the judicial system to compel corrective action.

Auditing is part of the cycle and chain of public expenditure management which in Nigeria has been undergoing policy and legislative reforms since the return to civil rule. The missing link in all these reforms is the auditing and evaluation function which is virtually the last part of the budgeting process. It is impossible for these public expenditure management reforms to succeed if a critical component of the chain (auditing) is very weak.

Audit reports are usually late and in arrears by two to three years. Although, the Constitution requires the Auditor General to send his reports to the Public Accounts Committee (PAC) within ninety days of receiving the Accountant General's financial statements, the law is silent on the timing for the submission of the Accountant General's statements.

The current audit function appears to be a frustrating exercise in report writing. The Auditor General produces a report which is sent to the PACs of the legislature. The PACs conduct their hearings, conduct investigations if necessary, conclude their deliberations and produce yet another report. What happens to the recommendations in the first and second reports? Available evidence shows that audit recommendations are treated with levity by MDAs. Despite the provisions of the Financial Regulations, there is hardly a follow up on the recommendations. This sets the stage for the year after year re-occurrence of the same set of “financial felonies and misdemeanours” by MDAs.

Audit reports are hardly in the public domain. The press, non-governmental organisations and other components of civil society working on anti corruption issues hardly engage the Auditor General’s office or the work of the PACs because of lack of information. There is no statutory mandate for the publicity of audit reports but publicity is one of the best practices in modern day auditing.

Empirical evidence demonstrates no link between the work of the anti corruption agencies and the office of the Auditor General. What is the purpose of indicting a public officer as having misappropriated or mismanaged millions of naira if nothing is done to recover such money? As punishment follows the offence, the lack of a clear follow up system encourages impunity and deprecates the work of the Auditor General. Audit is not an end in itself but an indispensable part of a regulatory system whose aim is to reveal deviations from accepted standards and violations of the principles of legality, efficiency, effectiveness and economy of financial management early enough to make it possible to take corrective action in individual cases; to make those accountable to

accept responsibility, to obtain compensation, or to take steps to prevent - or at least render more difficult such breaches.

The last set of requirements on the purpose of audit is generally lacking in the Nigerian audit regime; corrective action appears not to follow individual cases of mismanagement, the treasury is hardly compensated and those responsible for the violations hardly accept responsibility. This has led to situations of impunity for violations of the law. Thus, the Nigerian society neither gets guarantees of non repetition, compensation nor have the offenders punished.