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In This Issue

The challenge of managing the national debt has become topical. Despite the provisions of the Fiscal Responsibility Act and other extant laws, the Federal Government finds every conceivable excuse to borrow without complying with the laws. The President and the National Assembly have failed to set debt limits for the three tiers of government and have continued to borrow to fund recurrent expenditure. There are no Cost Benefit Analysis for projects to be funded by borrowing and Nigeria continues to delude itself about international best practices and thresholds for debt when its economy is literally built on the quicksand of volatile oil revenue. A debt profile in excess of N40billion with nothing to show for it in terms of new power plants, rail lines, deep sea ports, new hospitals and world class universities or other infrastructure is a sure recipe for future economic disaster. Investments undertaken with borrowed funds are expected to build human and infrastructural capacity and regenerate the economy enabling the country to pay back the borrowed funds when due. But this is not the situation in Nigeria. A new approach to debt management is needed. This will ensure that borrowing is resorted to only when necessary and in accordance with the stipulations of the law. Excessive borrowing should be avoided so that we do not repeat the mistakes of the past.

It is projected that fiscal issues should occupy a central place in the ongoing Constitution amendment exercise. Issues identified include the amendment of section 81 (1) of the Constitution which enables the President to present the budget to the legislature at any time in each financial year to a provision that mandates the presentation of the budget estimates not later than four months to the end of the financial year. The review also calls for the abolition of the State Joint Local Government Account and direct allocation to local governments. The audit function is also presented for constitutional review that will empower the Auditor-General of the Federation and the Public Accounts Committee to sanction offenders and recover monies due to the Treasury. It also seeks timelines for the submission of reports to the Accountant-General, Auditor-General and the conclusion of the audit function. The review calls for the amendment of section 162 of the Constitution to reflect 50% revenue derivation and to affirm that the continental shelf of a state is deemed to be part of the state for the purpose of derivation. This was the position in the 1960 and 1963 Constitutions.

The Fiscal Responsibility Commission’s report for the year 2010 identifies a number of challenges in the budgeting and fiscal process. These include late presentation of budgets,

the wide variances between the figures approved in the MTEF and the annual budget and the silence of the MTEF and the annual budget on employment creation despite the loud provisions of the section 16 of the Constitution. Through the efforts of the Commission, N21.6billion and N36.7billion were paid over to the treasury as operating surplus of scheduled corporations in 2009 and 2010 respectively.

The Petroleum Industry Bill (PIB) is an ambitious piece of proposed legislation that seeks to cover virtually the whole ground of petroleum industry activities from exploration to production and full upstream and downstream activities. It is over 200 pages in length and is made up of ten parts. Very few Nigerian laws are as extensive as its proposals and it is even more detailed than the Constitution of the Federal Republic of Nigeria, 1999. It isolates the mischief in the existing law and policy and brings forward remedies to plug the loopholes. PIB seeks to create new agencies to replace existing ones or even new ones to cover perceived gaps in the law, change the process for calculating fiscal returns to the Treasury and create more opportunities for Nigerians to participate in their oil industry. It is estimated by experts that the implementation of the PIB will guarantee a minimum of additional N3trillion in annual revenue to Governments of the Federation. The article calls for the executive and the legislature to speed up the process leading to the bill becoming law.

Other matters reviewed in this edition include the MTEF 2012-2015 and a preliminary analysis of key issues in the 2012 Appropriation Bill. Some of the concerns were that the budget was not backed by an approved MTEF, it came late and there was no plan for improvements in capital budget implementation in view of the perennial challenge of poor capital budget implementation. The capital budget as a percentage of the overall budget was still low at less than 28%. The major strides were the prioritisation of certain sectors to create jobs; trade and tax reforms. A review of the macroeconomic framework showed that the benchmark price and oil production estimates were realistic.

Eze Onyekpere Esq
Lead Director

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Limiting the National Debt

In this article, CSJ argues that procurement of national debt has been in breach of the Fiscal Responsibility Act and other laws. Our debts going by the size and composition of our economy will soon become unsustainable.

The official statistics from the Debt Management Office indicates that Nigeria owes over $40 billion to local and foreign creditors. Our domestic debt currently stands at N5.210 trillion while the foreign debt is $5.398 billion. Combined, this is in excess of N6 trillion or $40 billion. The domestic debt is made up of Federal Government bonds - 62.88%, Nigerian Treasury Bills - 29.97% and Treasury Bills - 7.16%. This overall debt is estimated to be about 17.5% of our Gross Domestic Product. How did we arrive at this bloated debt portfolio shortly after exiting the Paris Club debts? Did the new borrowing comply with the provisions of the law? Will our debts be sustainable if we continue at this rate in the next couple of years? These posers demand answers and this discourse will seek to unravel the challenges that accompany our renewed borrowing.

It is imperative to state that a number of laws and policies regulate the framework for debt management in Nigeria. The laws include the Constitution of the Federal Republic of Nigeria 1999 (Constitution), Debt Management Office Act and the Fiscal Responsibility Act (FRA), etc. The Second Schedule Part 1 in the Exclusive Legislative List of the Constitution is reserved solely for the legislative competence of the National Assembly to the exclusion of states. Item 7 on the List is on borrowing of moneys within or outside Nigeria for the purposes of the Federation or of any State. Item 50 deals with public debt of the Federation.

Abraham Nwankwo, Director-General of the Debt Management Office

The FRA, a federal legislation states that the framework for debt management during the financial year shall be based on the following rules: Government at all tiers shall only borrow for capital expenditure and human development, provided that such borrowing shall be on concessional terms with low interest rate and with a reasonably long amortization period subject to the approval of the appropriate legislative body. The FRA places an obligation on government to ensure that the level of public debt as a proportion of national income is held at a sustainable level as prescribed by the National Assembly from time to time on the advice of the Minister of Finance. The FRA also states that any Government in the Federation or its agencies and corporations desirous of borrowing shall, specify the purpose for which the borrowing is intended and present a cost-

benefit analysis, detailing the economic and social benefits of the purpose to which the intended borrowing is to be applied.

A review of current borrowing practices against the background of the provisions of the FRA will reveal a number of infractions of the law. It is instructive to note that borrowing is defined in the FRA to mean any financial obligation arising from any loan including principal, interest, fees of such loan; the deferred payment for property, goods or services; bonds, debentures, notes or similar instruments; letters of credit and reimbursement obligations in respect thereto; trade or banker's acceptances; capitalized amount of obligations under leases entered into primarily as a method of raising financing or of financing the acquisition of the asset leased; agreements providing for swaps, ceiling rates, ceiling and floor rates, contingent participation or other hedging mechanisms with respect to the payment of interest or the convertibility of currency and a conditional sale agreement, capital lease or other title retention agreement.

By the time we calculate and include the sums due from government to contractors which is the deferred payment for property, goods or services, it will be clear that our current borrowing will be in excess of the advertised $40 billion. Outstanding judgement debts are also to be factored into the calculation of the overall indebtedness of government. The federal government has been borrowing to fund recurrent expenditure contrary to the rule limiting borrowing for capital expenditure. Human development is not defined in the FRA and appears to be a leeway for the government to subvert the law through the backdoor because virtually every government activity can be justified under such a nebulous term.

Even when requests for borrowing were to fund capital expenditure, none of such requests that have come before the National Assembly have been accompanied by a Cost Benefits Analysis (CBA). A CBA is defined as an analysis that compares the cost of undertaking a service, project or programme with the benefits that citizens are likely to derive from it. Stating in an Appropriation Bill, which is subsequently passed by the legislature, that part of the budget revenue would be sourced from borrowing without specifying which activities and projects the borrowing would be applied to would not satisfy the provisions of the FRA. This is because it is a general statement of intent to borrow which does not specify the purpose of borrowing.

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Have we been borrowing on concessional terms as anticipated by the FRA? The answer is in the negative because the FRA defines concessional terms to mean that the terms of the loan must be at an interest rate not exceeding 3 percent. From available information, with the exception of facilities from international development agencies like the World Bank which do not *stricto sensu* have interest rates but service charges, no Nigerian bank loan, bond or any other facility can come at 3 percent interest rate. Essentially, this provision bars governments from borrowing from Nigerian banks. However, it is acknowledged that the FRA permits the Federal Government, subject to the approval of the National Assembly to borrow from the capital market.

Heavy domestic borrowing at a time of very low deposit rates and poor returns from the capital market has obvious negative implications. Banks, investors and the public would prefer to invest their money in government securities. The implication of the foregoing according to the Medium Term Expenditure Framework 2011-2013 is that credit to the private sector has been on the decline while credit to Government continues to grow at a fast rate.

Communique No.73 of the Meeting of the Monetary Policy Committee of the Central Bank of Nigeria held November 22-23 2010 states inter alia under the heading “Monetary Credit and Financial Market Development” that: *Available data showed that in October 2010, aggregate domestic credit (net) grew by 19.69% over the December 2009 level, and by 23.63% when annualized. Credit to government (net) which grew substantially by 53.35 percent over end December 2009 (or 64.02 percent on annualized basis) was the major source of expansion in aggregate credit. Credit to the private sector grew marginally by 3.22 percent (or 3.68 percent on an annualized basis).* This cannot be the hallmark of an economy that desires to grow at a double digit rate. Vision 20: 2020 was right when it stated that public sector borrowing crowds out the private sector and constitutes a hindrance to the financing of the private sector. Furthermore, it furthers adverse selection and encourages banks to become more risk averse.

It is a matter of common knowledge that each year, the Debt Management Office in collaboration with agencies such as the National Planning Commission, Federal Ministry of Finance, National Bureau of Statistics and the Budget Office of the Federation undertake a Debt Sustainability Analysis (DSA). However, such analysis which should inform fiscal planning is neglected by the executive and legislature. For instance, the DSA 2010 recommended borrowing in the sum of $7.1 billion for the year 2011 to be sourced from domestic and foreign sources in the ratio of 60:40. However, the MTEF projected $12.1 billion in new borrowing which is $5 billion in excess of the DSA position. On the other hand, the Appropriation Bill 2011 listed domestic borrowing of N865.24 billion in its Revenue and Expenditure Framework while the approved budget pegged it to N852 billion. Both the projection and the approval are more than the N639 billion recommended by the DSA. Pray, if fiscal policy is failing to respond to the recommendations of these high profile fiscal agencies, who then is in charge of Nigeria’s fiscal planning? Further, the Budget Office of the Federation and the Ministry of Finance regularly introduce confusion to the debt challenge by preparing the Medium Term Expenditure Framework (MTEF) with fundamental macroeconomic assumptions different from the ones used in the DSA. Thus, the DSA and MTEF move in different directions.

The challenge of debt sustainability is also a major area of concern. The 2011 budget projects debt repayment in the sum of N495 billion out of a budget of N4.485 trillion. Thus, debt repayment takes up over 9% of the 2011 budget. When this debt repayment figure is translated into kilometres of new roads, vials of vaccine, new schools and hospitals, litres of clean water and improvements in living standards, it will be clear that this money has been wasted. Borrowing per se is not a bad idea but it depends on the projects

you want to embark on with the borrowed sum. It would therefore be a misnormer to compare Nigeria's debt figures and ratios with that of advanced democracies or developed countries where checks and balances exist and corruption is abhorred and punished. Investments undertaken with borrowed funds are expected to build human and infrastructural capacity and regenerate the economy thereby enabling it to pay back the borrowed funds when due. Nigeria does not have much to show in terms of new capacity and infrastructure resulting from the investment of the proceeds of borrowing. Rather, the borrowed sums have been mismanaged. Essentially stating that Nigeria's current indebtedness is 17.5% of her GDP which is less than the indebtedness ratio of countries at similar levels of development makes no sense. Thus, sooner than later, our debts would become unsustainable, particularly if the price of crude oil falls.

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An analysis of the holders of the nation's domestic debt at the end of 2010 reveals that the Central Bank of Nigeria holds 7.54%, banks and discount houses 57.23%, non bank public 32.06% while sinking funds hold 3.17%. The implication of the foregoing is that if government for any reason is unable to honour its repayment obligations, it will drag the entire banking system down, and indeed the entire Nigerian economy. And the money the banks are channeling towards local debts could otherwise have been used to jump start the real sector of the economy.

Enhanced borrowing at a time of high oil prices, when crude oil sales is exceeding the benchmark price; when production is exceeding the projected millions of barrels per day by over 200,000 barrels and when virtually every accrual to the Excess Crude Account is shared by the three tiers of government calls to question the prudence of the administration. Considering the perennial poor capital budget implementation which averages 50% of the approved capital budget, it is clear that the government has been illegally spending a good part of this heavy borrowing on recurrent expenditure.

When you juxtapose the provisions of the FRA with the reported borrowing by the House of Representatives during the Dimeji Bankole regime, it will be apparent that all known rules were broken. The case is further compounded when it is known that banks are under an obligation under the FRA to request and obtain proof of compliance with the provisions of the FRA before lending to government or any of its agencies. Lending by banks and financial institutions in contravention of the FRA is unlawful. The implication of this is that when a bank or a financial institution contracts with a government agency to subvert the clear provisions of the FRA, the courts may not be able to enforce the illegality in an action by a bank to recover the debt.

Transparency and accountability are high on the agenda of modern debt

management practices. The FRA mandates the Debt Management Office to maintain a comprehensive, reliable and current electronic database of internal and external public debts and guaranteeing public access to the information. However, what you find on the website of the DMO is the details of federal government borrowing and the external borrowing of sub-national governments. The details of the domestic borrowing of sub-national governments are not available on the site.

The FRA mandates the President within 90 days from the commencement of the Act and with advice from Minister of Finance subject to approval of National Assembly, to set overall limits for the amounts of consolidated debt of the Federal, State and Local Governments pursuant to the provisions of items 7 and 50 of Part I of the Second Schedule to the Constitution. However, four years after the enactment of the FRA, the President and the National Assembly have failed, refused and neglected to set this overall limit.

The failure to provide debt limitations for the three tiers of government has led to a situation where the Fiscal Responsibility Commission cannot commence the monitoring and verification of compliance by governments to their limitations. This is not the way of fiscal responsibility. It rather appears like fiscal irresponsibility on the part of government. But this failure is not that of government alone. Civil society has been derelict in seeking the enforcement of the provisions of the FRA. This is one law that in its section 51 guarantees legal capacity to any person to enforce its provisions by obtaining prerogative orders or other remedies at the Federal High Court without having to show any special or particular interest. Thus, the usual preliminary objection raised by the Attorney General's office in such proceedings questioning the *locus standi* of the applicant will not avail the government.

In conclusion, a new approach to debt management is needed. This will ensure that borrowing is resorted to only when necessary and in accordance with the stipulations of the law. Excessive borrowing should be avoided so that we do not repeat the mistakes of the past. The legislature should wake up to its duty to set the expenditure limits in collaboration with the executive. It should also insist that all requests for new borrowing are accompanied with a cost benefit analysis; conduct public hearings on requests for borrowing and ensure that borrowed funds are judiciously invested in the purposes for which approval was sought. Civil society should also shake off its docility and begin the critical demand for fiscal responsibility through responsible public borrowing and investment practices.

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Fiscal Issues in Constitutional Amendment

In this article, Eze Onyekpere focuses on the need for fiscal issues to be mainstreamed in the constitution amendment process. He identifies issues that will improve fiscal governance and the need for the National Assembly to reflect these changes in the constitution review exercise

The National Assembly has declared its intention to embark on further amendments to the 1999 Constitution. Most of the agitations for amendment are focused on political and electoral issues, ignoring other equally important issues that demand the attention of the legislature. In the fiscal arena, there are a number of pressing challenges that have bedeviled the fiscal and budget process. These challenges have held back the realisation of the lofty goals and aspirations of Nigerians to life in larger freedom, being freedom from want, hunger, poverty, disease and destitution.

Timeliness: Budgets are instruments of implementing government policy, particularly economic and social policies. These policies impact on the lives of individuals and the growth and performance of public and private sector organisations. Budgets therefore provide a roadmap directing economic planning by subgroups and individuals in the economy. For a budget to effectively perform this function, it needs inter alia to be timely.

Aminu Tambuwal: Speaker House of Representatives

The Constitution grants the President unbridled freedom and latitude in section 81 (1) to cause to be prepared and laid before each House of the National Assembly *at any time* in each financial year estimates of the revenues and expenditure of the Federation for the next following financial year. This latitude has been severally abused and has led to late presentation of budgets by succeeding Presidents. The legislature needs not less than four months for a reasoned consideration and approval of the budget. If the budget is presented late, then the approval must necessarily come late unless the legislature refuses to carry out its constitutional duty. The facts speak for themselves; the 2006 budget was presented to the National Assembly on December 6 2005 and signed into law on February 22 2006; 2007 budget was presented on October 11 2006 and signed

into law on December 22 2006; 2008 budget was presented on November 8 2007 and signed into law on April 11 2008; 2009 budget was presented on December 2 2008 and signed into law on March 8 2009, while the 2010 budget was presented on November 23 2009 and signed on April 2010. The 2011 budget was presented on December 15 2010 and was signed into law after the end of the first quarter, while the 2012 budget was presented on December 13 2011 and is yet to become law. This practice is also replicated in many states of the Federation and therefore also calls for the amendment of section 121 (1) of the Constitution for the benefit of the states.

In other jurisdictions, time limits are provided by law. The Constitution of Poland mandates the executive to submit the budget to the legislature not later than three months before the beginning of the fiscal year. Canada approves and signs its budget between January and March for implementation to commence in April. South Africa's legislature has between three to four months before the beginning of the fiscal year to consider the budget while the United States mandates its President to present the budget on or after the first Monday in January but not later than the first Monday in February of each year - and their financial year starts October 1. It is proposed that the Constitution be amended to change the words "at any time" and mandate the President and Governors to present the budget before the end of August in each financial year. The same amendment should provide the legislature with a timeline for the approval of the budget. In this direction, the legislature should be under obligation to complete the approval process before the end of the fiscal year.

The advantages of this amendment are obvious. The current practice of carrying over capital budgets to the first quarter of a new year will stop and the sanctity of the financial year will be maintained. This will lead to improved capital budget implementation, greater value for money and enhanced standard of living for Nigerians. If this amendment sails through, there must be scrupulous and meticulous implementation of other budget supporting legislation especially the Fiscal Responsibility Act of 2007. The Medium Term Expenditure Framework (MTEF) which undergirds the budget must be prepared and approved before the budget presentation date since the budget flows from the MTEF.

State Joint Local Government Account: Another troubling provision which needs amendment is section 162 (5) and (6). Section 162 (5) states that the amount standing to the credit of local government councils in the Federation Account shall be allocated directly to the States for the benefit of their local government councils on such terms and in such manner as may be prescribed by the National Assembly. By subsection (6), each State shall maintain a special account to be called "State Joint Local Government Account" into which shall be paid all allocations to the local government councils of the State from the Federation Account and from the Government of the State.

It is imperative to note that the Constitution in Schedule Four stated clear duties for local governments. And by section 7 of the Constitution, the system of local government by democratically elected local government councils is guaranteed and states have the duty to ensure their existence under a law which provides for their establishment, structure, composition, finance and functions. States have been misinterpreting the Constitution by the trend of thought that they should take over the resources, functions and powers of local governments through the subterfuge of local government laws and policies.

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It is a notorious fact upon which you can call urge a court of law to take judicial notice that the State Joint Local Government Account offers no visible advantages but only impedes development at the local government level. States have repeatedly mismanaged and stolen local government funds. It has therefore become necessary for direct funding and allocation of local government funds instead of the joint account approach. However, it may be argued that local governments have no business receiving funding from the Federation Account since they are not federating units. It is submitted that once the Constitution decides to allocate funds to local governments from the Federation Account, then the meddlesomeness of the State is unnecessary. In this day and age, federalism cannot be a justification for outright looting and stealing of local government resources. It is either that the local governments do not receive allocations from the Federation Account and their names are not listed in the Constitution or the opportunity for mismanagement by states is constitutionally removed.

It is therefore recommended that the Constitution should abolish the State Joint Local Government Account and provide that the amount standing to the credit of local government councils in the Federation Account shall be directly allocated to the local government councils on such terms and in such manner as may be prescribed by the National Assembly. The justification is that no state in the federation is in a position to account for monies allocated to local governments in the last 12 years of democracy. Billions have accrued to local governments and little or no development projects in terms of social and physical infrastructure is ongoing. This trend must be reversed.

Auditing: The current constitutional auditing function appears to be a frustrating exercise in report writing. The Auditor General produces a report which is sent to the Public Accounts Committee

(PAC) of the legislature. The PAC conducts hearings and 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 Ministries, Departments and Agencies (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 reoccurrence of the same set of "financial felonies and misdemanours" by MDAs.

The Lima Declaration of Guidelines on Auditing Precepts (adopted at the IX Congress of the International Organisation of Supreme Audit Institutions-INTOSAI) states that the concept and establishment of audit is inherent in public financial administration as the management of public funds represents a trust. 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 laws. Thus, the Nigerian society neither gets guarantees of non repetition, compensation nor have the offenders punished.

It is the recommendation of this discourse that a new constitutional audit regime should clearly provide for sanctions for breaches of the law. Some of the powers to sanction can be vested in the Auditor General of the Federation or the PACs. This power to sanction will not take away the prosecutorial powers of the Attorney-General where severe violations of the criminal and financial laws have been disclosed by audit. The example from the Republic of Ghana is instructive. In s.187 (7) of the Constitution of Ghana, it is stated that the Auditor-General may disallow any item of expenditure which is contrary to law and surcharge the amount of any expenditure disallowed upon the person responsible for incurring or authorizing the expenditure. He may also follow the same procedure in dealing with any sum which has not been duly brought into account, upon the person by whom the sum ought to have been brought into account or the amount of any loss or deficiency, upon any person by whose negligence or misconduct the loss or deficiency has been incurred. By subsection (9) of the same section, persons aggrieved by the Auditor-General's decision to surcharge may appeal to the High Court.

The Constitution of the Republic of Uganda in s. 164 (1) and (2) also offers a guide for auditing and public

accountability. It states that the Permanent Secretary or the accounting officer shall be accountable to the legislature for the funds in that ministry or department. Any person holding a political or public office that directs or concurs in the use of public funds contrary to existing regulations shall be accountable for any loss arising from that use and shall be required to make good the loss even if he or she has ceased to hold that office.

The purpose of establishing the office of the Auditor-General and the respective PACs will be defeated if their reports are left to gather dust on the shelves. Their expenditure of tax payers' moneys would amount to a waste and would not pass the value for money test if there are no sanctions and implementation mechanisms following audit reports and breaches of the financial regulations and laws continue repetitively.

The Constitution in s.85 (5) mandates the Auditor-General of the Federation within ninety days of receiving the Accountant-General's financial statements to submit his audit report to the legislature. However, the Constitution did not set a time limit within which the Accountant-General is to submit the financial statement to the Auditor-General. Also, the Finance (Control and Management) Act in s.24 merely mandates the Accountant-General to sign and present to the Auditor-General accounts showing fully the financial position of the government on the last day of each financial year. The Act failed to assign a time line for the performance of this act.

Literature and practice evidence point in the direction of delays from the Accountant-General in the submission of financial statements to the Auditor-General. The Accountant-General's delays in turning in the financial statements stem from the fact that MDAs fail, neglect or refuse to timely submit their statements to his office. Apparently, there is no effective sanction mechanism to compel MDAs to submit timely statements to the Accountant-General.

Any person holding a political or public office that directs or concurs in the use of public funds contrary to existing regulations shall be accountable for any loss arising from that use and shall be required to make good the loss even if he or she has ceased to hold that office.

The above scenario has led to a situation where the auditing of public accounts has fallen into arrears by several years. In many instances, a good number of public officers who were involved in the transactions of that period have either retired, left service and in some instances have died. Since the commencement of the work of the Auditor-General is contingent on the submission of the Accountant-General's financial statements, a time limit for the Accountant-General to submit the statement has become imperative. And a three months time limit after the end of the financial year is recommended. For MDAs to turn in their reports to the Accountant-

General, a deadline of eight weeks after the end of the financial year is recommended. Stiff sanctions should be provided in other laws for accounting officers who fail to timeously submit their financial statements. A strict revival of the practice of MDAs providing monthly financial statements to the Accountant-General's office will facilitate the preparation of the annual statement at the close of the year.

Considering the provisions of s. 49 (1) of the Fiscal Responsibility Act 2007 which mandates the Federal Government to publish its audited accounts not later than six months following the end of the financial year, the three months recommendation makes eminent sense. The implementation of other sections of the Fiscal Responsibility Act will facilitate timeliness in preparing financial statements. These include the Annual Cash Plan by the Accountant General (s.25) and the Disbursement Schedule by the Minister of Finance (s.26), quarterly budget monitoring and reporting by the Budget Office of the Federation (s.30).

Timeliness in correcting flaws, detection of corruption and waste, and letting the law take its due course where a crime has been committed is very important considering the legal maxim that justice delayed is justice denied. The legislature and its PAC have no constitutional or statutory timeframe to conclude deliberations on the Auditor-General's report. The same arguments in support of a time frame for the Accountant-General and Auditor- General are also applicable to the legislature and it's PAC. The legislature should finish its work and make its findings public within two months of receiving the report.

Revenue Derivation Principles: The 1999 Constitution in section 162 (2) requires the President upon receipt of advice from the Revenue Mobilisation Allocation and Fiscal Commission to table before the National Assembly proposals for revenue allocation from the Federation Account. In determining the formula, the National Assembly is to take into account allocation principles especially those of population, equality of states, internal revenue generation, land mass, terrain as well as population density. This section comes with a proviso requiring the reflection of the principle of derivation as being not less than 13% of the revenue accruing to the Federation Account directly from any natural resources.

This proviso is the source of controversy that has engulfed the nation for a very long time. Some Nigerians, especially of the Northern extraction view this proviso as giving undue resources to the oil bearing states of the Niger Delta. They point to the quantum of resources allocated to the states over the 12 year period of return to civil rule and what appears to be the meagre allocation to other states. The allegation is that a lopsided allocation discourages even development and is inequitable. Indeed, the Central Bank Governor, Lamido Sanusi tried tenuously to establish a link between the poverty and violence in the North and the 13% derivation principle. Echoes coming from the Northern Governors and leadership point in the direction of an agitation for more revenue from the Federation Account.

The oil bearing states and fiscal federalists on the other hand opine that 13% derivation is not enough and constitutionally, it is the minimum and not the maximum. Thus, derivation could be increased to a higher percentage of all revenue accruing from natural resources. In fact, at some point, the agitation in oil bearing communities was for resource control and ownership as against the miserly constitutional disposition to derivation. Under the 1960 and 1963 Constitutions, derivation was as high as 50% of the accruing revenue. Those were the days when leaders properly managed resources available to them and achieved a lot of development with the meagre resources accruing from cocoa, palm produce, groundnut, hides and skin, etc. You will recall that the regions were managed and dominated by the ethnic majorities and as such, there was no opposition to 50% derivation. Up till date, Nigerians still admire the achievements of the leaders of these regions. Pray, why did the rules of the game change and the derivation percentage reduced to 13% as against the previous 50%?

Beyond the reduction in the derivation percentage, Nigeria has a history and constitutional provisions are not made in vacuum. Unlike the 1960 and 1963 Constitutions, the 1999 Constitution did not expressly define the status of the continental shelf in the determination and calculation of revenue accruable as derivation to a state. Sections 134 and 140 (6) of the 1960 and 1963 Constitution had stated that for the purposes of calculating derivation revenue, the continental shelf of a Region shall be deemed to be part of that Region. This was the position of the law until the infamous Decree No.9 of 1971 which repealed section 140 (6) of the 1963 Constitution and declared that the ownership of and the title to the territorial waters and the continental shelf shall vest in the Federal Military Government. Accordingly, all rents, royalties and other revenue deriving from or relating to the exploration, prospecting or searching for petroleum in the territorial waters and continental shelf shall accrue to the Federal Military Government.

The equivocation of the 1999 Constitution led to the famous resource control case where the Supreme Court affirmed that the continental shelf belongs to the Federal Government. Although the decision of the Supreme Court is the law until it overrules itself, that decision did not take cognisance of relevant international and national law principles to the effect that the continental shelf constitutes a natural prolongation of the land into and under the sea. What confers a state's title to the continental shelf is the fact that the submarine areas concerned are deemed to be actually part of the territory over which a coastal state already has dominion in the sense that although they are covered by water, they are a continuation of the territory, an extension of it under water.

From the foregoing, it is clear that what the oil bearing states are going through is subjection, oppression and domination expressed as the tyranny of the majority. The 1960 and 1963 Constitutions were products of negotiation and had inputs from stakeholders. The 50% derivation was a product of negotiation and

consensus. The 1999 Constitution has been shown to be a fraud when it indicated that it was made by “we the people of the Federal Republic of Nigeria” when there was no opportunity for inputs, negotiations and agreements on the contents of the Constitution. It is a military document that had the force of law through a Decree of the military. At no time did the people of Nigeria agree to change the derivation formula from 50% to 13%. The infamous Decree No. 9 of 1971 was a military decree which vested the continental shelf and its contents in the Federal government. It was also not the product of any negotiation and consensus.

The above scenario raises a lot of posers. Nigeria is reputed to have a lot of other mineral resources including gold, bitumen, etc. Why are we not tapping them so that states where these resources are located can begin to enjoy derivation funds? Why are our leaders so intellectually lazy that they cannot think outside the box of oil money? Is it not insulting to the oil bearing communities who suffer massive pollution of air, land and water for any person to be canvassing the reduction of the 13% derivation revenue instead of increasing it back to the 50% that was mutually agreed in the past? Can we not deploy the large land mass to arable agriculture?

There is no part of Nigeria that nature did not endow with gifts either in terms of natural or human resources. The land mass of the North can facilitate an agricultural revolution. With value addition and processing of the products instead of exporting them as raw materials, a lot of revenue will accrue and employment will be created. The clusters around the South West and South East, with the right enabling environment, can start local production of machineries, electronics, etc. There is no part of Nigerian where idle young men and women cannot be trained to start the production of apparels and shoes to feed a global demand worth over $400billion. It is unfortunate that we are saddled with a resource sharing mentality instead of a wealth creating mentality. We are not even adding any value to the raw hydrocarbons. We cannot refine and process them into other products to earn more revenue.

In conclusion, the proviso in section 162 (2) should be amended to read: “Provided that the continental shelf of a State shall be deemed to be part of the State and the principle of derivation shall be constantly reflected in any approved formula as being not less than fifty percent of the revenue accruing to the Federation Account directly from any natural resources”.

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 FRC Report, 2010

This article reviews the report of the Fiscal Responsibility Commission for the year 2010.

The Fiscal Responsibility Commission (Commission) set up under the Fiscal Responsibility Act of 2007 (FRA) recently released its report for the year 2010. The report is in compliance with section 10 of the FRA which mandates the Commission to submit to the National Assembly, not later than 30th June in each financial year, a report of its activities including all cases of contravention investigated during the preceding financial year and a copy of its audited accounts. The report covered the mandate of the Commission including monitoring activities, the Medium Term Expenditure Framework (MTEF) and annual budgets, debt, indebtedness and borrowing, budgetary planning of corporations, transparency and accountability, research and dissemination of standards and challenges for the future, etc. However the report contains uncontroverted evidence which shows why Nigeria's budgeting system is still in the woods. And it will be very difficult for Nigeria to develop without cleaning up its budgeting system.

Part of the foundation for budget failure was reported to be the timing of presentation and approval of the budget. In the years 2005, 2006, 2007, 2008, 2009 and 2010 respectively, the budgets were presented to the legislature on October 12, December 6, October 11, November 8, December 2 and November 23 of the preceding year. The presidential signing of the Appropriation Bill to become law for the years 2005, 2006, 2008, 2009 and 2010 respectively took place on April 12, February 22, April 11, March 3 and April of the budget years. There was only one exception, the 2007 budget which was signed into law on December 22 2006. Averagely, this shows that Appropriation Bills never become law until after the end of the first quarter.

Yelwa: Chairman Fiscal Responsibility Commission

The second leg of the failure was the gulf between figures approved in the annual budget and the MTEF which is supposed to guide the budget. In the 2010 budget for instance, the following variance were recorded; 134.6% on projected GDP growth rate; 10.9% on the inflation rate; 14% on the benchmark price of crude oil per barrel; 66.3% on total oil revenue; 18.6% on non oil revenue; 30.5% on federally collectible revenue; 22.4% on

Federal Government's estimated revenue; 30.7% on FGN expenditure and 47.8% on the extent of the deficit. The report also noted the wide variance between revenue projections and targets for Ministries, Departments and Agencies of Government and what they eventually remit to treasury and the shortfall came up to an incredible 98.11%.

The third leg of the failure documented in the report is that contrary to the spirit of section 16 of the Constitution, both the MTEF and annual budget have been silent on employment creation. The report was right on target when it stated that *the mantra, that is 7-Point Agenda was so loud that the MTEF and Budget could not hear the melancholic cries of the unemployed. It seems that if non-governmental organizations were consulted in the course of preparing the MTEF, some measures would have been recommended or taken against unemployment*. Again, the report rightly states that 2010 witnessed virements not known to the law when monies were withdrawn from health and education subheads of account to supplement the budget of the Federal Capital Territory. Virements can only be made from one subhead under the same head of account to another subhead under the same account. Quarterly budget reporting by the Budget Office of the Federation came 5 months, 2 and 1/2 months, 4 months and 5 months behind schedule in the first, second, third and fourth quarters respectively. Total capital expenditure for the year came up to 50.60% of the approved capital budget.

A very interesting and fourth aspect of the report is the elucidation of the debt issue. It noted that Nigeria's domestic debt increased by 21% in six months between June and December 2010 and total national debt increased 17.87% in the same six months period. Essentially, debt was growing faster than revenue; debt to recurrent revenue of 269.86% was higher than the prescribed threshold of 250% and the projected ratio of 129.4% prescribed by the Debt Management Office. Thus, while recurrent revenue grew by 3.13% in 2010, the debt grew over 17% in the last six months of 2010. The ratio of debt service to revenue in 2010 was 21.40%, which is substantially higher than 11.7% projected by the DMO. However, this is lower than the 30% threshold prescribed by international standards. It also noted that debt was growing faster than the GDP in 2010 which caused a lot of stress in the economy manifesting as high interest rates, inflation, crowding out of the private sector and mounting deficits. The Commission states *that reliance on debt-to-GDP ratio of 40% as threshold for determining debt sustainability should be used with caution because Nigeria went bankrupt in 2005 when its debt to GDP ratio was about 28%.*

Through the efforts of the Commission, over N21.6 billion and N36.7 billion were paid over to the treasury as operating surplus of scheduled corporations in the years 2009 and 2010. However, there is still reluctance on the part of majority of the scheduled corporations to cooperate with the FRC and pay over their surplus to the treasury. Notable defaulters include the Nigerian National Petroleum

Corporation, Nigeria Customs Service, Bureau of Public Enterprises and Nigerian Maritime and Safety Agency.

What are the lessons from this report and how can it help to improve the budgetary and fiscal system? The first is that things need to be done properly and contextualized for the growth of the economy and the benefit of the people. Budgets must be submitted on time by the executive to the legislature. The current attempt to amend the 1999 Constitution to fix a definite time frame is a step in the right direction and should be pursued to its logical conclusion. Budgets should be submitted before the end of August every year.

DMO should reconsider the methodologies and frameworks it employs in the yearly Debt Sustainability Analysis. Nigerians are not interested in creative ways to justify borrowing monies that do not impact on their lives. We need to rein in the debts.

The MTEF undergirding the budget must be the product of genuine and popular consultation. The current MTEF before the legislature did not benefit from any such consultation and appeared to be an afterthought by the Ministry of Finance to satisfy all righteousness going by its scanty nature. Employment creation should be mainstreamed in the budget and economic policy formulation and implementation. It should not be the type that deposits N50 billion in the presidency for an imaginary job creation scheme and part implementation activities are launched in October for a budget which expires in December! Employment generation is a practical thing that runs through trade, investment, education, procurement and other policies of government.

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The Budget Office of the Federation has shown enough contempt for the provisions requiring it to report on budget implementation on a quarterly basis. For the year 2011, there is no single budget implementation report by the end of June. It is time for the legislature to take concrete steps to call the Budget Office to order. It makes no sense for the legislature to consider the 2012 Appropriation Bill when there is no report on what has been done with the 2011 budget. The legislature should scrutinize the MTEF and budget placing reliance on empirical evidence and sound forecasts to reduce the gulf between forecasts and actuals. Finally the Commission can no longer continue this idea of lighting lamps and hiding them under bushels. Now is the time for it to give necessary publicity to its activities and reports which would inform Nigerians of the great strides being made to clean the fiscal space and expose derelict conduct of those entrusted with managing national finances.

Pass the Petroleum Industry Bill Now!

This article makes a strong case for the expeditious passage of the Petroleum Industry Bill into law.

The Petroleum Industry Bill (PIB) is an ambitious piece of proposed legislation that seeks to cover virtually the whole ground of petroleum industry activities from exploration to production and full upstream and downstream activities. It is over 200 pages in length and is made up of ten parts. Very few Nigerian laws are as extensive as its proposals and it is even more detailed than the Constitution of the Federal Republic of Nigeria, 1999 as amended - being composed of 405 sections as against the Constitutions' 320 sections. It isolates the mischief in the existing law and policy and brings forward remedies to plug the loopholes. PIB seeks to create new agencies to replace existing ones or even new ones to cover perceived gaps in the law, change the process for calculating fiscal returns to the Treasury and create more opportunities for Nigerians to participate in their oil industry. It is estimated by experts that the implementation of the PIB will guarantee a minimum of additional N3trillion in annual revenue to Governments of the Federation.

The objectives of the PIB are to: enhance exploration and exploitation of petroleum resources in Nigeria and to promote petroleum production for the benefit of all Nigerians; significantly increase domestic gas supplies for power generation and industrial development; create a peaceful business environment for petroleum operations; establish a progressive fiscal framework that encourages further investment in the petroleum industry whilst increasing accruable revenues to the Government of Nigeria; create a commercially viable National Oil Company; deregulate petroleum product prices; create efficient regulatory entities; create transparency, good governance and sustainable economic development; promote Nigerian Content; and protect health, safety and the environment.

Diezani Alison- Madueke: Minister of Petroleum Resources

The PIB creates the following agencies; the National Petroleum Directorate, Nigerian Petroleum Inspectorate, Petroleum Products Regulatory Authority, National Petroleum Assets Management Agency, Nigerian National Petroleum Company Ltd, Nigerian Petroleum Research Centre, and the National Frontier Exploration Service. Nigerian National Petroleum Company Ltd shall be

incorporated as a private company limited by shares under the Companies and Allied Matters Act as the successor company to the assets and liabilities of the extant NNPC. It will have sound corporate governance and disclosure practices. The new company will no longer serve as a regulatory, quasi commercial and policy making organ of government in the industry. Existing joint ventures are to be incorporated for the promotion of accountability, transparency and financial self-sufficiency. Parties to the joint ventures will be shareholders of the incorporated entity.

The PIB sets new rules for petroleum prospecting licences and petroleum mining leases, marginal fields and revocation of licences. It has a strong environmental management and remediation regime through the provision of processes that comply with international standards and the establishment of the Remediation Fund. The National Transport Logistics Company will take over the ownership of gas pipelines from the Nigerian Gas Company and Facility Management Companies shall be granted licences to manage and operate segments of product pipelines and depots. The fiscal provisions will ensure that the Treasury maximizes revenue accruing from oil and gas operations.

With these obvious benefits, what is delaying the PIB from becoming law? The answer to this poser is traceable to a network of interests. PIB is a technical proposal for a law drafted by experts and to a reasonable extent only fully understood by experts but with very wide and far ranging implications for the generality of the populace who can lay no claim to any esoteric knowledge of petroleum production and its administration. There are so many stakeholders and interest groups that are seeking to influence the final outcome of the PIB. From the government that presented the bill, to industry operators massed under the multinational oil companies, the indigenous operators, NNPC, professional groups and workers in the industry to **WE**, the good people of the Federal Republic of Nigeria who the Constitution declares to be the sovereigns and from us, government derives all its powers, legitimacy and authority. Of course, we cannot discountenance the interest of the legislature which is responsible for breathing life into the Bill to make it become an Act of Parliament after the assent of the President.

It has a strong environmental management and remediation regime through the provision of processes that comply with international standards and the establishment of the Remediation Fund.

Since the Bill was first presented for legislative consideration, the disputations as to what should emerge at the end of the day as the law should surprise no one if we are students of jurisprudence, the science of law, considering the various definitions or perspectives of what law is. As an instrument of social engineering, resolving societal conflicts and geared towards satisfying as much as possible, with the least sacrifices, the interest of the

majority, we can understand that the interests of all stakeholders are not the same. However, Nigerians are surprised at the apparent abdication of duty by the legislature. The Sixth Session of the National Assembly (NASS) surprised Nigerians by not recognising the importance of the PIB and giving it urgent and accelerated attention. Rather, Nigerians were hearing stories about lobbying by various interest groups, various versions of the bill being in circulation and virtually, majority of the legislators having an agenda different from the patriotic national agenda. This eventually led the Sixth Session of NASS to abandon the passage of the bill.

The Seventh Session of the National Assembly has stated its desire to serve the common good through laws made for the peace, order and good government of the Federation. The House of Representatives went a step further by identifying the PIB as priority legislation. It is therefore time to walk the talk. NASS should immediately, after the passage of the 2012 budget, focus on priority bills such as the PIB so that by the end of the first quarter of 2012, it should be on the President's table for his assent. If the complaint of the circulation of various versions of the bill still subsists, the leadership of NASS should revert to the communication sent by the President to NASS, which is the original, more patriotic and Nigerian focused bill. If that communication has been overtaken by events, the President should send a fresh one to NASS.

It is also imperative for the President to take a leadership position on this Bill as President Obama does on his pet bills. The President, the Ministers of Petroleum and Finance, and indeed the whole executive should be seen to be talking about and advocating for the passage of the Bill emphasizing its benefits to the economy and the common person. If fiscal policy is geared towards increasing revenues available to government for the implementation of the Transformation Agenda, then the passage of the PIB into law is a sure target for enhanced revenue accrual.

This is one bill where the interests of all patriotic Nigerian should coalesce and it is clear that the interest of the executive arm of government and civil society are the same – the immediate passage of the bill. Thus, all voices of reason should come together and put subtle pressure on NASS to expeditiously do the job for which they are handsomely paid. We all need to add our voice to the campaign and raise the demand for the passage of the bill to the highest decibels.

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The 2012-2015 Medium Term Expenditure Framework

This article reviews the 2012-2015 MTEF as submitted by the Executive to the Legislature

By law, the Federal Government through the Minister of Finance is obliged to prepare, not later than four months before the commencement of a financial year, a Medium Term Expenditure Framework (MTEF) which will be endorsed by the Executive Council of the Federation and thereafter laid before the National Assembly (NASS) for approval. NASS is to approve the MTEF with such modifications as it deems necessary by a resolution of each House. The MTEF is a three year fiscal framework which forms the basis for the preparation of the annual budget. The sectoral and compositional distribution of estimates in the budget must be consistent with the developmental priorities set out in the MTEF. The law sets out specific activities, consultations and engagements preceding its formulation and approval.

The MTEF is made up of five major components namely a macroeconomic framework, a fiscal strategy paper, and an expenditure and revenue framework. It also contains a consolidated debt statement setting out and describing the fiscal significance of the debt liability of the Federal Government and measures to reduce any such liability; and a statement describing the nature and fiscal significance of contingent liabilities and quasi fiscal activities and measures to offset the crystallization of such liabilities.

Going through the MTEF raises several questions. Did the extant MTEF comply with the enabling provisions of the Fiscal Responsibility Act or did it seek to explore new grounds? Are the policy prescriptions and directions intended to improve the business environment and the standard of living of the majority of the populace?

President Goodluck Jonathan

The Minister of Finance is under obligation to hold consultations with stakeholder groups before the preparation of the MTEF. No such consultation was held; and there is no record of Ministries, Departments and Agencies of Government being engaged in the preparation of Medium Term Sector Strategies (MTSS) which precedes the MTEF. If this was done, it must have been done secretly and noiselessly because previous MTSS sessions had other stakeholders on board. The endorsement of the Executive Council of the Federation did not come by the end of

the second quarter as stipulated by law. The law anticipates that the MTEF should get to the NASS latest by September but it was not submitted until October 2011. This has laid the foundation for the late submission of the budget estimates by the President and its eventual late passage by the legislature, likely by the end of the first quarter of 2012. Previous MTEFs complied with the three year time frame, but the extant one is novel in extending the period to four years without legal authority.

The macroeconomic framework is to set out the macroeconomic projections for the next three financial years, the underlying assumptions for those projections and an evaluation and analysis of the projections for the preceding three financial years. Unlike previous MTEFs, there were no targets on growth, inflation, interest and exchange rates and accretion to external reserves. Rather, there was an omnibus statement to the effect *that the goal of low inflation, interest rates consistent with strong and sustained economic growth, a stable exchange rate reflective of real market conditions and a build-up in external reserves in the presence of high oil prices* will be pursued. There was no attempt in this part to link up this statement with the targets in Vision 2020. The above statement is vague and can be subject to as many interpretations as there are Nigerians. If there are no targets and promises made by government in the macroeconomic framework, how will performance be monitored? The review of previous performance started with the 2010 budget and ended with the performance so far in 2011. This is in sharp contrast with the requirement of an evaluation and analysis of the projections for the preceding three financial years. This leaves a lot of questions unanswered.

The assumptions in the oil benchmark price and production in millions of barrels per day are realistic. There were no projections on accruals to the Sovereign Wealth fund or Excess Crude Account. The sectoral composition of GDP simply replicated those adverse figures that Vision 2020 sought to change. Will a country that seeks to be in the top twenty bracket in about eight years' time still project manufacturing to contribute 4.6% of the GDP in 2015? Will an infrastructure deficient country still expect building and construction to contribute 1.8% of GDP in 2015? If the targets in Vision 2020 and its First National Implementation Plan 2010-2013 do not inform the MTEF, why did government waste money to prepare the Plan?

The Fiscal Strategy Paper inter alia talks about rebalancing the distribution of government spending and merely proposed a reduction of the recurrent expenditure from 74.4% in 2011 to 72.5% in 2012. From the fiscal tables, it targets 29.07%, 30.6% and 31.1% capital expenditure in the outer years of 2013, 2014 and 2015 respectively. This is a far cry from the target of NEEDS 1 that was almost met – 60% recurrent and 40% capital. Under fiscal consolidation, the removal of the proverbial fuel subsidy to free up about N1.2 trillion every year is proposed. With this tokenistic approach to the reduction of recurrent spending and increasing the capital vote, the implication is that apart from proposed savings in the

Sovereign Wealth Fund, the administration plans to free up resources for frivolous recurrent expenses! This is just not the way to develop a country.

Further, plans to increase available revenue in the MTEF ignored the increased income that would accrue to the nation if the Petroleum Industry Bill is passed into law and the fact that the burden of joint venture cash calls may be removed from the Treasury. Experts project that Nigeria will realise over N3 trillion additional revenue annually if the Bill is passed into law. So the larger picture of what gets more resources into the Treasury should supersede the immediate gratification of removing fuel subsidy.

Nigeria is still planning new borrowing of N794.44 billion in 2012, N751.41 in 2013, N660.72 in 2014 and N514.03 in 2015, in addition to existing debts which is in the neighbourhood of $40 billion. The MTEF is stuck in calculating the ratio of Net Present Value of Debt to GDP without due consideration for the ratio of debt to gross revenue and ratio of debt to recurrent revenue. Our debt is growing faster than our revenue and this should be a reason to rein in the debts through a moratorium.

The MTEF was almost silent on contingent liabilities but generally offered a definition of the term. It acknowledged that with increased involvement of government in public private partnerships, the possibility that these liabilities are realized is quite real. However, the expectation is that the MTEF should contain information on the nature and quantum of existing contingent liabilities and the measures to be taken to ensure that they do not crystallize or how to deal with them when they crystallize.

In conclusion, future MTEFs should be prepared on time with adequate consultation of stakeholders. It should contain the necessary details stated in the law for the macroeconomic framework, fiscal strategy paper, consolidated debt statement and contingent liabilities. It should recognise the need to curtail recurrent expenditure in favour of increased capital spending. The legislature should prioritise the passage of the Petroleum Industry Bill and Nigeria should reconsider her inclination for continued borrowing.

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Review of the Key Issues in the 2012 Appropriation Bill

This is a Preliminary Review of the Appropriation Bill 2012 by Centre for Social Justice based on the President's Address to the National Assembly and the Medium Term Expenditure Framework as presented by the Executive. The Detailed Review will be done later based on the full Expenditure and Revenue Profile.

1. Introduction

The 2012 Appropriation Bill is tagged a budget of *fiscal consolidation, inclusive growth and job creation* and anchored on four major pillars namely: macroeconomic stability, structural reforms; governance and institutions and investing in priority sectors. It is based on the following macroeconomic indicators: oil production of 2.48million barrels per day; a benchmark price of $70 per barrel; exchange rate of N155/US$; projected growth rate of 7.2% and inflation rate of 9.5%. The aggregate expenditure is N4.749trillion which is a 6% increase over the N4.484trillion appropriated in 2011. It is broken down as follows; N398billion for statutory transfers, N560billion for debt service; N2.472trillion for recurrent (non debt) expenditure and N1.32trillion for capital expenditure. The capital budget represents 28% of the overall proposal as against the 26% for the year 2011 while the recurrent expenditure came down from 74.4% to 72 % of the overall proposal. The fiscal deficit is projected at 2.77% of the GDP as against 2.96% in 2011. The budget is coming at a time Nigeria's economic outlook has been upgraded by Fitch Ratings from negative to stable, based on the country's "strong growth, low public debt and strong external balance sheet."

Minister of Finance: Ngozi-Okonjo Iweala

2. Preliminary concerns

(i) No Approved MTEF

The Medium Term Expenditure Framework (MTEF) is by section 18 of the Fiscal Responsibility Act the basis for the preparation of the estimates of revenue and expenditure required to be prepared and laid before the National Assembly under section 81 (1) of the Constitution. The sectoral and compositional distribution of the estimates of expenditure shall be consistent with the medium term developmental priorities in the MTEF. The MTEF is to be approved by a resolution of the National Assembly (NASS). While the House of Representatives have concluded deliberations on the MTEF 2012-2015, the Senate is yet to conclude its consideration. As such, there is no MTEF

approved by the legislature that serves as a background to the budget. The only available MTEF is the proposal of the executive arm of government.

(ii) Late Presentation of Budget

The Nigerian financial year is supposed to run from January 1 to December 31 of each year. The implication is that the budget should be ready and signed into law before the 1st of January each year. By presenting the budget on the 13th of December to the legislature, a few days away from the legislative Christmas and New Year break, the budget will not be ready by January 2012. The earliest the budget will be out of the legislative mill, going by previous experience will be the end of the first quarter of 2012. This is definitely not a step in the right direction as it continues the tradition of late budget implementation in Nigeria.

(iii) 2011 Capital Budget Implementation

According to the President, as at mid November, about 67% of released funds had been utilized and the expectation is for the utilization of 70% by the end of the year. There is no indication however about how much of the capital budget had been released. As at October 2011, the report from the Ministry of Finance indicates that 66% of the capital budget has been approved for release while MDAs have utilized 57% of the sum. The Minister of State Finance, Yerima Ngama, stated that some MDAs failed to meet the conditions and financial regulations required for cash backing and as such could not secure the full amount of money approved to be released[1]. In essence 66% of the sum of N1,148 billion being the capital vote of 2011 amounts to N757.68 billion while the utilized 57% of this sum comes up to N431.88 billion. Essentially what has been utilized is 37.62% of the overall capital budget of N1,148 billion. This is too poor and cannot facilitate the realization of Nigeria's developmental goals. The updated capital budget implementation information should have been available in the Third Quarter Budget Implementation Report which the Budget Office of the Federation has failed to prepare and disseminate.

(iv)The 2012 Capital Budget

With the perennial poor implementation of capital budget, one expects some reforms and plan by the administration to improve on existing performance. But no such plan was detailed in the budget speech. The initial plan stated in the 2011 budget speech to introduce project managers to facilitate capital budget implementation apparently has been jettisoned. Poor capital budget implementation has been influenced by poor procurement policies and the absence of the National Council on Public Procurement. The need for the President to inaugurate this Council cannot be over-emphasised.

(v) The Oil Subsidy Debate

It is not clear whether the budget has quietly removed the proverbial fuel subsidy. If it has done so, this is not the way to go for a country with over 70% of its population surviving on less than $2 a day. The government's mantra of improving services and investments in

[1] News Agency of Nigeria, October 27 2011.

infrastructure and social services after the removal of fuel subsidy was not reflected in the budget. The subsidy of the current year will be in the neighbourhood of N1.5trillion. With its removal and the resources ploughed back to the Federation Account for sharing among the three tiers of government in 2012, the Federal Government is expected to get at least N700billion additional revenue from this source. One expected this new revenue to be targeted and tied to specific capital projects which can be easily monitored by the populace. Rather, it appears to have entered the bottomless pit where recurrent expenditure is gulping 72% of overall expenditure! Government must realize that the poor who will be most affected by the sky-rocketing prices following this removal do not have any fall- back position or any benefits to cushion their hardship.

(vi) The Petroleum Industry Bill

The President's speech indicated the commitment of the administration to ensure the enactment of the Petroleum Industry Bill. However, the bill is yet to be represented by the President to the NASS after work on it stalled in the Sixth Session of NASS. It is imperative for the President to match words with action considering that new resources in excess of N3trillion annually will accrue to the Federation Account upon the passage and implementation of the Act.

3. Major Strides

(i) Priority Sectors - Creating Jobs

Government's transformation plan in the agricultural sector backed by fiscal policies is a step in the right direction. The removal of duty on machinery and certain specified equipments and the supportive policies for local production of wheat and rice needs to be encouraged. Government plans to grant 12% corporate tax rebate for bakeries that attain 40% blending of cassava and wheat flour and will ban the importation of cassava flour from the end of March 2012. All equipment for the processing of high quality cassava flour and composite flour blending will enjoy a duty free regime. Wheat flour will attract a levy of 65% to bring the effective levy to 100% and wheat grain will have an effective levy of 20%. Similarly the review of the levies on brown rice and polished rice to encourage local production are steps in the right direction.

However, we note that any job creation scheme should deviate from the current tardy approach which has marred the N50billion National Job Creation Scheme being implemented under the 2011 budget. It should commence as soon as the budget is passed and address the critical needs of those in search of jobs. Job creation is not the product of a stand-alone policy. It is the result of a mixture and combination of policies. In this direction, deliberate and conscious public procurement policies that encourage the use of local goods and services as against imported ones will also improve the fortunes of local industries and they will be positioned to hire more hands, pay more corporate tax and thereby grow the economy.

Other areas that will create jobs in the economy which should be seriously considered are the revitalization of the automobile industry. It is reported that the

industry is operating at less than 10% of its installed capacity while new vehicle imports have been surging in the last eleven months[2]. Enhanced tariff on built up cars and reduction of tariffs on completely knocked down parts used by vehicle assembly plants will facilitate the revival.

(ii) Trade Reforms

Trade reforms will be undertaken to correct identified anomalies and introduce policies to promote industrialization. It is a good development that concessions and waivers will only be granted on a sectoral basis to expand domestic production for local consumption and for export, development of value chains and boosting production. This review also welcomes the move to use economic diplomacy to ensure that the ECOWAS Trade Liberalisation Scheme achieves the objective of promoting intra ECOWAS trade rather than being used as a vehicle for dumping goods in the sub-region. The review of the Export Expansion Grant scheme to make it more effective as an instrument for the promotion of non-oil exports is also a step in the right direction. We however await the details and logistics of all these trade reforms.

(iii) Tax Reforms

The reforms that have come into force with the Personal Income Tax Amendment Act of 2011 are steps in the right direction. The reduction in taxes paid by low income earners and the provision of an equitable tax structure, tax waiver on corporate and government bonds, tax rebates as incentives for job creation and regulations for tax incentives for donating to charitable causes are worthy of full implementation.

4. Macroeconomic Framework

(i) Oil Production in MBPD

The target production for the year is 2.48mbpd. Table 1 shows oil production from 2007 to the medium term projections. 2007 to 2010 are actual figures while the others are projections.

Table 1: Crude Oil Production 2007 - 2015

Year	Output in mbpd
2007	2.15
2008	2.10
2009	2.13
2010	2.462
2011	2.30
2012	2.480
2013	2.550
2014	2.575
2015	2.600

Source: BOF/FMF: First and Second Quarter Budget Implementation Report and MTEF 2012-2015

This projection appears realistic as current data shows increased output compared to previous years. Indeed, the Combined Budget Implementation Report for the First and Second Quarters of 2011 reported production figures of 2.43mbpd and 2.36 mbpd for the first and second quarters of 2011 respectively. This brings the average for the half year to 2.40mbpd. These figures are above the 2011 budget figure of 2.30mbpd. Going by the success of the Amnesty Programme in the Niger Delta and the peace pervading the region, the projections are realistic and

[2] 47,267 units of news cars were imported in the first eleven month of 2011.

achievable. The projection is also in line with the MTEF.

(ii) Benchmark Price of Oil

The benchmark price of $70 per barrel was used in the MTEF. This is the baseline scenario based on a combination of a 5 year to 10 year moving average. The less optimistic scenario of $70 per barrel was prepared in recognition of the volatilities in the oil market. International oil prices averaged $81 per barrel in 2010. It has been above $100 per barrel since February 2011; indeed in the second quarter of 2011, it averaged $117.36 in the international market. Considering the need to delink the budget from the volatilities of the oil market, the projections are realistic. The excess will be saved in the Sovereign Wealth Fund.

(iii) GDP Growth Rate

There was no attempt in the budget to link up the projected growth with the targets in Vision 2020. For instance, the Vision 2020 First National Implementation Plan 2010-2013 (Implementation Plan) targets an average growth rate of 11% over the four year period 2010-2013. Specifically, the Implementation Plan targets 8.2%, 10.9%, 11.8% and 13.1% real GDP growth for the years 2010, 2011, 2012 and 2013 respectively[3]. However, going by previous growth achievements recorded in recent years, the target of GDP growth rate of 7.2% is realistic and achievable.

(iv) Projected Exchange Rate

The dollar currently exchanges at about N155 at the official exchange rate while the black market rate is over N160 to the dollar. With our depleting foreign reserves, a depleted ECA, import led economy and the unmitigated demand for the dollar, there is the likelihood of depreciation in the value of the naira which the CBN has even acknowledged[4] when it reset the band within which the naira is to exchange to the dollar. The projection of N155/US$ is not realistic and is far from the extant position.

(v) Projected Inflation Rate

With the current double digit inflation rate and the planned removal of fuel subsidy, the projection for single digit, 9.5% inflation for the year 2012 seems unrealistic.

5. Sectoral Provisions

Table 2 shows the breakdown of the major expenditure heads.

The Percentage of Major Budget Heads in the 2012 Budget

Major Budget Heads	Amount	Percentage
Statutory Transfer	398 billion	8.38
Debt Service	560 billion	11.79
Recurrent (Non-Debt) Expenditure	2.472 trillion	52.05
Capital Expenditure	1.32 trillion	27.80
Total	4.749trillion	100

[3] These targets are up against the 7% growth rate of 7% recorded in 2009.

[4] THISDAY Newspaper, November 1 2011 at page 1; this position was reinforced by Renaissance Capital in its release on September 2 2011.

It is imperative to note that capital expenditure at 28% of the budget and projected to rise to 33% by 2015 is not the way to go for a country with a huge infrastructure deficit. The expectation is for increased allocation to capital expenditure, rising to a minimum of 40% of the overall budget in the medium term. Further, debt payment is apparently on the increase compared to last years' figures of N495billion. The increasing allocation to debt repayment shows the need to call for a moratorium on new debts.

Recurrent non debt expenditure is taking up an unnecessary chunk of the budget and needs to be kept in check. The President had commissioned a number of expenditure reviews and technical committees to review the mandate of MDAs. It is imperative that the reports of the committees be implemented to the letter to prune recurrent expenditure and free up resources for critical infrastructure necessary to promote economic growth and human development. The NASS should consider pruning the non salary components of recurrent expenditure across the board by at least 35%. NASS should lead by example by cutting down its statutory transfers of N150billion to no more than N100billion. NASS also got an allocation of N150billion in 2011.

Table 3 shows the sectoral distribution of appropriation to critical sectors of the economy.

The Percentage of Critical Sector Allocations in the 2012 budget

Budget Head	Amount in Billions	Percentage
Security	921.91	19.42
Power	161.42	3.40
Works	180.8	3.81
Education	400.15	8.43
Health	282.77	6.00
Agriculture & Rural Development	78.98	1.66
Water Resources	39	0.82
Petroleum Resources	59.66	1.26
Aviation	49.23	1.04
Transport	54.83	1.15
Land & Housing	26.49	0.56
Science & Technology	3.84	0.65
Niger Delta	59.72	1.26
FCTA	45.47	0.96
Communication Technology	18.31	0.38

Unfortunately, there were no sectoral envelopes in the MTEF to enable a comparison between the above allocations and the provisions of the MTEF. The allocation to education (even though it excludes allocations for Universal Basic Education Commission, Education Trust Fund and Petroleum Technology Development Trust Fund) is very low at 8.43% of the budget. It has not met the international standard of 26% of the budget. Coming at a time of union strikes in the tertiary education sector, it needs to be upwardly reviewed. However, there is the need to demand increased transparency, accountability and value for

money from the managers of educational institutions despite the need for increased funding.

The allocation to the power sector is paltry considering the need for resources to meet the targets set in the road map for power sector reform. The power sector needs a minimum of N600 billion from the government to match the funds expected from the private sector if Nigeria is to meet the minimum demands of the sector.

The allocation to security appears like throwing money at national problems. Despite appropriating about 25% of the budget to security in 2011, the situation has degenerated. Thus, what is needed to contain the security threats may not necessarily be increased funding but greater value for money management of available resources.

To release funds for the increases we propose, it is pertinent inter alia that 80% of the operating surplus of all government agencies be duly returned to the treasury as dictated by section 22 of the FRA. In this regard, the Fiscal Responsibility Commission which is charged with ensuring that these funds are returned should be strengthened with adequate funds to carry out its functions.

The statement that government is working with development partners to create an effective mortgage finance system in the country and to develop value chains in the building materials segment does not inspire enough confidence that action will be taken to arrest the challenges of the sector. What is required includes an overhaul of housing finance system to ensure that it delivers on the promises of the enabling law. The National Housing Fund which started in 1992, over ten years before pension reforms and the National Health Insurance Scheme lags behind in contributions by eligible stakeholders. While pension and health insurance funds are in their trillions, the housing fund is still counting a few billions. A review of other laws such as the Land Use Act will also improve the housing delivery system.

6. Conclusions

The following recommendations flow from the above analysis.

- NASS should review the estimates, cut down areas of waste and increase the capital budget especially for critical infrastructure in electricity, roads and for human development in health and education, etc.

- NASS should demand across the board pruning of recurrent expenditure particularly the overheads. It should lead by example by reducing its N150billion allocation to N100billion.

- The President should expeditiously present the Petroleum Industry Bill to the NASS to ensure that the reforms will be in place during the preparation of the 2013 budget.

- The benchmarks for oil production and the price of crude are realistic and should be retained.

- Beyond the specific vote for job creation, creating employment should be mainstreamed in all budget implementation activities including public procurement.

- NASS should demand for a comprehensive report on the implementation of the 2011 capital budget and thereafter craft provisions in the Appropriation Act 2012 which they will combine with the oversight mechanism to ensure the full implementation of the 2012 capital budget.

- The President should immediately inaugurate the National Council on Public Procurement.

Insights into Fiscal Issues in the Half Year

NIGERIA'S TOTAL DEBT STOCK HITS N6.24TRILLION

The Debt Management Office announced that Nigeria's total debt stock, which comprises of external and domestic debts, has risen to N6.24 trillion ($40bn) as at the end of September, 2011. Information in the website of the Office reveals that total debt stock rose by 3.65% from the N6.02 trillion recorded in June 2011. This increase was a result of fresh disbursements on the existing loans and exchange rate variations. A breakdown of the figures shows that 14% of the total debt was for external debt while the rest 86% was for domestic debt. However, the Director General of the DMO pointed that the debt profile of the country remains sustainable since it is still below the threshold of 25% of GDP set by the country and the 40% of GDP set as international benchmark. The DMO also pointed out that twenty five (25) states of the Federation have completed their domestic debt restructuring exercise with the support of the DMO.

THE UNSUSTAINABLE WAGE BILL

The Budget Office of the Federation (BOF) raised alarm about the Federal Government's growing wage bill in 2011. The Director General of the BOF, Dr. Bright Okogwu, lamented that the biggest challenge facing the Federal Government is the growing recurrent expenditure, which he pointed out, had risen from N870 billion in 2009 to the present N1.5 trillion. Although the governed has pointed to the recent across-the-board increases in the emoluments of public workers as well as the N18,000 monthly minimum wage as reason for the bloated figure, there are other extant causes of the rising wage. These include the issue of "ghost workers" in federal pay roll, which has remained a recurring decimal in the recent past. The Police Pension Board revelations are a very important point in this scenario. It is also a known fact that the issue of ghost workers in the service is a creation of top civil servants in the system. However, aside from the ghost worker syndrome, other reasons for the rising federal wage bill include the secrecy surrounding the emoluments of the National Assembly members whose earnings are in violation of the Revenue

Mobilization Allocation and Fiscal Commission's stipulations.

NNPC LIFTS N133 BILLION OIL "ILLEGALLY"

The Nigerian National Petroleum Corporation lifted crude oil beyond the levels allocated to it for domestic consumption, thereby short changing the Federation Account by about N133 billion in the six months ending December 2011. Documents from the Federation Account Allocation Committee show this. The report showed that NNPC lifted an extra 7,239,039 barrels of crude oil on top of the 80,545,000 barrels it was supposed to lift for refining and sale to the domestic market between January and June. The excess amounted to about $885.7 million (equivalent to N133 billion) based on the average prices of crude oil during each of the six months. The report also revealed that the NNPC and the PPPRA paid themselves well above the monthly subsidy rates approved for them by the Appropriation Act. Based on the law, the NNPC is entitled to N9.08 billion per month for subsidies, while the PPPRA is entitled to N11.417 billion per month.

CENTRAL BANK OF NIGERIA DEVALUES THE NAIRA

After the meeting of the Monetary Policy Committee of the CBN, it announced the devaluation of the naira, setting the new official exchange rate at N155.00 to the dollar from its previous rate of N150. However, the decision was within the +/- 3 percent band. The new exchange rate represents 3.2 per cent devaluation in the face of heightened demand for foreign exchange and the depletion of the country's foreign reserves in an attempt to defend the value of the naira. Additionally, the apex bank resolved to retain the Monetary Policy Rate (MPR) at 12 per cent as well as the symmetric band at +/- 200 basis points. The decision to retain the interest rate at 12 percent was borne out of the fact that lending rates were already high and having a negative impact on the real sector of the economy, coupled with the realization that global headwinds might make further tightening counter-productive and pro-cyclical, should oil price fall significantly. The CBN also decided to retain the Cash Reserve Ratio (CRR) at 8 percent.

FEDERAL GOVERNMENT GETS APPROVAL TO VIRE N98 BILLION

The House of Representatives on 30 November 2011 passed the controversial N98.4 billion virement requested by the President Goodluck Jonathan. It will be recalled that the House had stood the virement down on October 30 on the premise that it was fraudulent, coming just a few months to the end of the fiscal year. Some of the aggrieved lawmakers during the previous presentation of the virement request had kicked against the debate on the 27-page proposal, which showed the virement of contentious money appropriated in the 201 Appropriation Act in the document generated by the Federal Ministry of Finance. The items for virement include N25,676,910 for maintenance of horses; N29,068,200 for maintenance of dogs; N10,658,340 for maintenance of the Police Band; N 995,524,472 for the fuelling of motor vehicles, with additional N1.8 billion for vehicle/transport among other

expenditures. It will be recalled that the budget was only passed in June of the same year after the series of elections.

AMCON TO RECOVER 70% OF N3.14 TRILLION NON-PERFORMING LOAN

The Chief Executive Officer of the Assets Management Company of Nigeria (AMCON), Mr. Mustafa Chike-Obi announced on Monday 28 of November 2011 that the about 70% of the N3.4 trillion in non-performing loans taken off the books of the banks rescued in 2009 by the AMCON will be recovered. This disclosure came hours after the Minister of Finance and Coordinating Minister of the Economy, Dr. Okonjo-Iweala said that the Federal Government was finalizing arrangements for for-bearance to brokers who incurred losses through margin loans. The Chief Executive Officer of the Corporation pointed that 9,000 non-performing loans have been acquired, and has so far recovered a total of 15% of the total value. He added that they had planned to recover 70% but only 15% had been recovered and that they in talks with borrowers and are looking at a plan for restructuring the loans. He also added that some of the affected banks had about 60% non-performing loans, and the cheapest way of recovering the money was through the AMCON.

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DEBT MANAGEMENT OFFICE TO COMPLETE STATE'S NEW DEBT DATA BASE BY 2012

The DG of the Debt Management Office, Dr. Abraham Nwankwo announced in November 2011 that the reconstruction of the domestic debt data base for the 36 states of the federation will be completed before the end of 2012. He added the restructuring has been completed for 24 states of the federation. He also said that the nation cannot have a sustainable debt position if the debt of the states is not incorporated into that of the federal government. The DMO has been building the capacity of the state debt management offices around the country to manage their debt borrowing decisions. He added that the 2011 Debt Sustainability Analysis will include debt data from the states in order to have comprehensive debt position for the country. The states that were listed for the first batch of training were Sokoto, Yobe, Borno, Kogi, Ondo, Jigawa, Niger, Gombe, Anambra, Akwa Ibom and Bayelsa states.

FISCAL RESPONSIBILITY FOR SOCIAL AND ECONOMIC ACCOUNTABILITY

RC: 737676

- What is fiscal responsibility and its role in social and economic accountability?
- How can civil society contribute to the formulation of fiscal policies, the Medium Term Expenditure Framework (MTEF) and annual budgets, etc?
- Why do we need to ensure the implementation of the Fiscal Responsibility Act (FRA) and other relevant fiscal laws?
- When is the appropriate timing for civil society interventions in fiscal policy formulation, implementation, review and reporting?

Enter the Fiscal Responsibility for Social and Economic Accountability Project of Centre for Social Justice (CSJ). The specific objectives are:

- To provide a platform for support and learning between Civil Society organizations (CSOs) federal legislative committees and the Fiscal Responsibility Commission in the oversight of FRA issues;
- To engage Ministries, Departments and Agencies in the preparation and review of their Medium Term Expenditure Framework;
- To build the capacity of civil society on the detailed provisions of the FRA and to support CSOs to improve on needed skills for monitoring, reporting and evaluation of the implementation of the FRA;
- To monitor, report and engage in action advocacy for the implementation of the FRA and to raise public awareness and sensitization on the FRA through the media.

Any CSO, company, group or individual interested in the realization of the above objectives should sign up and return the coupon below to *Ikechukwu Okoli* at CSJ, 17 Yaounde Street, Wuse Zone 6, P.O.Box 11418 Garki, Abuja; or return electronically to censoj@gmail.com. Also join our Listserv at csj@pfm-ngr.com for regular updates and discussions on the FRA and public expenditure management issues.

Name: …………………………………………………………………………………………..

Address: ………………………………………………………………………………………..

Tel, Fax and Email: …………………………………………………………………………...

CSJ is a Nigeria non-governmental organization with a **vision** of a Nigeria where social justice informs public decision making. Its **mission** is to mainstream social justice and fairness in all facets of public life. This project is supported by the Ford Foundation.

ABOUT CENTRE FOR SOCIAL JUSTICE (CSJ: RC: 737676)

Centre for Social Justice Limited by Guarantee (CSJ) is a Nigerian non-governmental Organization with a vision of a Nigeria where social justice informs public decision making. Its mission is to mainstream social justice and fairness in all facets of public life.

The main objectives are to:

- Contribute to the development and implementation of national laws and policies on social rights and justice in accordance with international best practices;
- Promote accountability, transparency and popular participation in public expenditure management;
- Promote poverty reduction strategies as a tool for social justice;
- Promote popular participation and gender mainstreaming in public decision making;
- Broaden the constituency of professionals interested in development and poverty reduction by creating and maintaining a multidisciplinary network of professionals committed to work for the realization of these objects.

PROGRAMMES

The programmes of CSJ focus on a rights based approach to public expenditure management, power sector reforms, political finance reforms and constitutional reforms.

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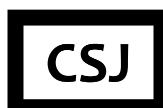

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