

# **PUBLIC PROCUREMENT REPORT 2010**



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**Centre for Social Justice Ltd by Guarantee**  
***(Mainstreaming Social Justice In Public Life)***

# **Public Procurement Report 2010**

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*(Mainstreaming Social Justice In Public Life)*

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## LIST OF ACRONYMS

Act	Public Procurement Act
AIS	Aeronautic Information Service
ANAMCO	Anambra Motor Manufacturing Company
B	Billion
BIR	Budget Implementation Report
BOF	Budget Office of the Federation
BMPIU	Budget Monitoring and Price Intelligence Unit
BPE	Bureau of Public Enterprises
BPP	Bureau of Public Procurement
Bureau	Bureau of Public Procurement
CAC	Corporate Affairs Commission
CBN	Central Bank of Nigeria
CISLAC	Civil Society Legislative Advocacy Centre
CISPM	Chartered Institute of Purchasing and Supply Management of Nigeria
CIT	Company Income Tax
CSO	Civil Society Organisation
CSJ	Centre for Social Justice
DG	Director General
ECA	Excess Crude Account
EFCC	Economic and Financial Crimes Commission
EXCoF	Executive Council of the Federation
FAAN	Federal Airport Authority of Nigeria
FCPA	Foreign Corrupt Practices Act of the United States of America
FCT	Federal Capital Territory
FCTA	Federal Capital Territory Administration
FEC	Federal Executive Council
FGN	Federal Government of Nigeria
FRA	Fiscal Responsibility Act
ICPC	Independent Corrupt Practices Commission
ICRC	Infrastructure Concession Regulatory Commission
IGP	Inspector General of Police
INEC	Independent National Electoral Commission
KPI	Key Performance Indicators
LNG	Liquefied Natural Gas
M	Million
MDA	Ministries, Departments and Agencies of Government
M&E	Monitoring and Evaluation
MTEF	Medium Term Expenditure Framework



NAMA	Nigeria Airport Management Authority
NAPEP	National Poverty Eradication Programme
NASS	National Assembly
NDDC	Niger Delta Development Commission
NESG	Nigeria Economic Summit Group
NFF	Nigeria Football Federation
NIMASA	Nigeria Maritime Administration and Safety Agency
NNPC	Nigeria National Petroleum Corporation
NPC	National Planning Commission
OAGF	Office of the Accountant General for the Federation
PHCN	Power Holding Company of Nigeria
PPA	Public Procurement Act
PPAC	Presidential Projects Assessment Committee
PPDC	Public and Private Development Centre
RCP	Reference Commodity Price
TAM	Turn Around Maintenance
UNCIN	Unique Contractor Identification Number
UNDEF	United Nations Democracy Fund
UNGC	United Nations Global Compact
VAT	Value Added Tax

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# Chapter One

## INTRODUCTION

### 1.1 THE NEED FOR THE REPORT

**P**ublic procurement can be simply defined as the use of public funds for the acquisition of goods, works and services usually through a contract. This is achieved through a process whereby government engages contractors, suppliers, consultants to obtain goods, services and other related items required to fulfill its objectives in the most timely and cost effective manner. It is also defined as the acquisition of goods and services at the best possible total cost of ownership, in the right quantity and quality at the right time, in the right place for the direct benefit or use by government, generally via a contract.

Public procurement is therefore a means of fulfilling government policy objectives and to improve the standard of living of the people. Monitoring and Evaluation (M&E) is an integral part of the processes of every successful public or private organization. Effective M&E helps MDAs and the procurement regulators to track, monitor and evaluate their performance in the implementation of the PPA. It facilitates an assessment of implemented activities; whether objectives have been met and learning from successes and failures. M&E results in MDAs, Accounting Officers, programme managers and implementers being held accountable for procurement failure or receive due recognition for the success of their procurements. Thus, best practices worthy of replication are documented while important lessons from failures are learnt. Public procurement provides the main conduit for corruption in Nigeria. This informs the need for constant monitoring and reporting on the process and content of procurements.

### 1.2 OVERVIEW OF PUBLIC PROCUREMENT ACT 2007

The Public Procurement Act (PPA) 2007 is a 13-part legislation that seeks to enthrone a corruption-free procurement system which readily delivers value for money while giving all participants equal opportunities in a transparent and accountable manner. The Act which is one of the sunshine laws enacted to sanitize Nigeria's public expenditure management is also aimed at introducing timeliness, sustainability of process, fitness for purpose, better risk management, oversight and benchmarking into the public procurement process. It is equally targeted at providing a framework for improved governmental service delivery and to use the benchmark of the Act to measure performance over time as well as to enhance the budget implementation process, checkmate abuse of power and other aberrations in procurement system.

Part I of the Act establishes the National Council on Public Procurement, determines its membership and its functions. Part II establishes the BPP, identifies its legal personality and sets out its functions and powers. It also provides for the appointment of the Director General, principal officers and staff of the Bureau. The BPP is conferred with broad powers to oversee procurement implementation by MDAs subject to the rules and regulations made by the Council. This includes certification of federal procurements, maintenance of database on the registration and classification of contractors and service providers, procurement audit and activating the administrative recourse mechanism.

Part III contains the scope of application of the Act. The Act applies to all federal procurements or where the Federal Government is contributing at least 35% of the funds for procurement implementation. Part IV is on the fundamental principles for procurement. Its section 16 is the lengthiest section of the Act containing 28 sub-sections. It prescribes open competition bidding (unless the Act prescribes otherwise), equity, timeliness, value for money, fitness for purpose, etc, as irreducible minimums for procurement. It addresses issues of the technical and financial capacity of bidders, ethical issues and conditions that will lead to disqualification of bidders, etc.

Part V is on the organisation of procurement and includes issues of procurement planning, its implementation and the role and duties of the Accounting Officer, procurement planning committee, as well as tenders board and prequalification of bidders. Part VI deals with procurement methods for goods and services, invitation to bid, bid security, submission and rejection of bids, modification and withdrawals of tenders, bid opening, examination and evaluation of bids. For evaluation, no other method or criteria shall be used except those stipulated in the solicitation documents. The part further deals with acceptance of bids, domestic preferences, mobilization fees, contract performance guarantee, interest on delayed payment, and records of procurement proceedings.

In Part VII, the special and restricted methods of procurement are discussed. These include two-stage tendering, restricted tendering, request for quotations, direct and emergency procurement. These are exceptions to the general rule and should not be used except open competitive bidding cannot produce the desired results. Part VIII addresses procurement of consultant (services) which lays down the framework for expression of interest to provide ascertained needs, request for proposal for unascertained needs, contents of requests for proposals, clarifications and modifications of request for proposals. It also provides for submission of proposals and criteria for evaluation of proposals. It further provides for the general selection procedure, procedure for selection of proposal where price is a factor and the procedure for selection where price is not a factor.

Part IX is on procurement surveillance and review. The Bureau is given further powers to ensure the functionality of procurement proceedings in accordance with best practices. It can liaise with relevant agencies including the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and other Related Offences Commission (ICPC) to conduct investigations where a criminal investigation becomes necessary. Administrative review is also provided, whereby the complainant is to submit a complaint to the Accounting Officer of the procuring entity within 15 days of actual or constructive awareness of the circumstances giving rise to the complaint. The Accounting Officer is to give a decision within working 15 days and if the complainant is dissatisfied, he can appeal to the Bureau and thereafter to the Federal High Court.

While Part X is on disposal of public property. The Code of Conduct forms the subject of Part XI and the principles of honesty, accountability, transparency, fairness and equity are stated to be the guiding light for MDAs, Bureau staff and bidders. Conflict of interest issues are defined while reaffirming the need for procurement to contribute to good governance. Part X11 deals with offences which include bid rigging, collusion, altering or forging, tender splitting, etc. The penalties are prescribed ranging from 5 calendar years but not exceeding 10 calendar years imprisonment for natural persons who are not public officers while public officers are liable to a minimum of 5 years imprisonment without an option of fine and summary dismissal from government service.

In addition, legal persons are on conviction to be debarred from public procurement for a period of not less than 5 calendar years, a fine equivalent to 25% of the value of the procurement in question. Also, the directors whose names appear in the books of the Corporate Affairs Commission (CAC) are to be liable to imprisonment for 3 years but not exceeding 5 years without option of fine. Finally, Part XIII is on Miscellaneous Provisions with section 60 as the interpretation of terms used in the Act. Section 61 is the short title which ends the Act.

### **1.3 OBJECTIVE**

This Report seeks to review the implementation of the PPA with a view to measure performance in the 2010 fiscal year. It is an attempt to analytically assess the deliverables of the PPA and ascertain its impact on service delivery of the government through the MDAs during the period under review. The Report also interrogated other salient issues bordering on successes and failures recorded in the implementation process as well as monitoring, evaluation and compliance with provisions of the Act by all participants and stakeholders in the process. The recommendations of the Report are meant to be used for improvements to the procurement system.

## **1.4 METHODOLOGY**

In compiling this Report, CSJ employed literature review of existing reports on PPA implementation, review of the monitoring reports of CSOs and media reports and articles on the implementation of the PPA. Other relevant sources used as references for statistical accuracy include; Financial Regulations of the Federal Government, Treasury Circulars, In-house journals and other documents published by the BPP, surveys, databases, personal observations as well as interviews with stakeholders.

## **1.5 EXECUTIVE SUMMARY**

Chapter One is the preliminary chapter. Chapter Two is on Public Procurement Policy and Regulatory Agencies. It starts with the mandate of the National Council on Public Procurement and the fact that the Council has not been established three years after the commencement of the implementation of the Act. The response of various stakeholders to the non constitution of the Council is recorded while other gaps created by the absence of the Council are documented. The Chapter reviews the activities of the BPP during the year and these include procurement planning review and the introduction of a procurement planning software, series of broad based capacity building programmes, performance of procurement audit, information dissemination and the development and maintenance of a national database of contractors and service providers. BPP also activated the recourse mechanism during the period under review, saved funds from the strict implementation of the PPA. But public perceptions of the role of the BPP and implementation of the Act showed that more work needs to be done. Civil Society Organisations engaged in information dissemination, awareness raising and sensitization, capacity building and monitoring and observation of the implementation of the Act.

Chapter Three is focused on the 2010 Federal Budget and related activities. Over the four quarters of the year, capital budget implementation was weak. Going by the record of the total amount utilized by MDAs, only 36.41% of the overall capital budget was actually utilised. The Ministry of Finance delayed and tarried in the release of capital budget funds leading to a resolution by the House of Representatives on October 20 2010 condemning the action of the Ministry and calling for the release of more funds. The Chapter also reviews the procedure of INEC's acquisition of Direct Data Capture machines for the 2011 voters registration exercise. There were challenges of fitness of purpose after the machines have been procured.

A study by the House of Representatives Committee on Public Procurement showed the weak link between Nigeria's Development Agenda and the capital budget and their ensuing procurements. It reported the absence of a comprehensive database of capital

projects and a weak link between the key performance indicators in the Fiscal Strategy Paper and the actual appropriation.

Chapter Four reviews procurement controversies and scams within the fiscal year. Not only did the high-profile contract scandals that started in previous years regain prominence and visibility during the period under review, fresh scams and controversies broke out from the various MDAs almost on a daily basis. The reported controversies and scams include ICPC and 2009 capital projects probe, Abuja-Kano Modern Railway scam, NAPEP Tricycles imbroglio, inflation of the price of roads in Abuja and the Abuja Airport Runway scam. There were also scandals in the hire of a football coach for Nigeria, Daimler Benz bribery scandal and the Aso Rock connection, etc.

Chapter Five examines the challenges confronting public procurement in Nigeria. These challenges include abandonment of projects after collecting mobilization fees, political intervention, the lack of specialization among Accounting Officers, ineffective oversight by NASS, institutional resistance, repeated violations of the PPA and the failure to sanction offenders, etc.

Chapter Six is on Conclusions and Recommendations. To achieve the goal of enhanced implementation of the PPA, the following recommendations are proffered.

### **1.5.1 The President**

The President should demonstrate his commitment towards the successful implementation of the PPA by taking the following steps:

- ✓ Constitute and inaugurate the National Council on Public Procurement.
- ✓ Stop the weekly charade of contracts approval by EXCoF.
- ✓ Use the immense powers of the Presidency to address the systemic challenges undermining the implementation of the PPA.
- ✓ Adopt measures towards preventing late presentation and approval of the budget and its effect on implementation of capital budget. This can be achieved by prevailing on the agencies working on the preparation of the Medium Term Expenditure Framework (MTEF) and the annual budget to expeditiously complete their work to fast-track the process.
- ✓ Ensure through the Minister of Finance the timely release of appropriated funds.

### **1.5.2 National Assembly**

The National Assembly should consider the following recommendations.

- ✓ Ensure early passage of the national budget in order to enhance implementation of the capital budget.
- ✓ Use legislative instruments to compel the President to constitute and inaugurate the National Council on Public Procurement.
- ✓ Intensify oversight over capital budget implementation across the country.
- ✓ Set minimum capital budget implementation targets for the executive.
- ✓ Lead by example by ensuring that it strictly adheres to the PPA in the implementation of its procurement activities.

### **1.5.3 The Bureau**

The Bureau as the regulator should consider the following steps:

- ✓ Take punitive measures against abuses in the public procurement processes by Accounting Officers and staff of MDAs with a view to enhancing compliance with the provisions of the PPA and facilitate capital budget implementation.
- ✓ Judiciously invoke its powers to debar suppliers, contractors and service providers that defiantly contravene the PPA.
- ✓ To continue and sustain the on-going series of capacity building and training for stakeholders in the implementation process as well as public sensitization campaigns on the Act.
- ✓ Specifically organize capacity building on the provisions of the PPA for the Ministry of Justice and the Judiciary.
- ✓ Design a challenge fund in collaboration with development partners to encourage states to adopt and implement model procurement laws similar to the PPA.
- ✓ Design a challenge fund in collaboration with development partners to encourage federal MDAs through a benchmarking exercise to fully implement the Act.
- ✓ Constantly upgrade and update public procurement records posted on its website as stipulated by the Act.
- ✓ Fast-track the completion of the on-going procurement audit of MDAs.
- ✓ Prevail on the MDAs to give a reasonable notice of not less than a week to CSOs invited to monitor bid opening sessions; grant access to procurement plans, bid solicitation documents; bid opening documentation and information on contract awards to CSOs to enable them properly monitor procurement proceedings.



#### **1.5.4 Ministries, Departments and Agencies**

MDAs should consider the following recommendations.

- ✓ Utilise procurement monitoring and evaluation reports to draw lessons, imbibe best practices and benchmark experiences with the “best in class”.
- ✓ Ensure that a proper and detailed procurement plan is put in place as a guide for all their procurement activities.
- ✓ Ensure timely payment of contractors who have worked and delivered according to contract terms.
- ✓ Prevent unnecessary delays in getting contract agreements prepared and signed.
- ✓ Ensure proper screening of the technical and financial capabilities of contractors during the pre-qualification stage.
- ✓ Completion of all feasibility studies, appropriate costing, engineering designs and acquisition of sites before award of procurement contract.
- ✓ Ensure that beneficiaries and communities are consulted and carried along in the location of projects in their communities in order to garner adequate buy-in and support that will guarantee a sense of ownership by the beneficiaries.
- ✓ Ensure proper project monitoring and interface with contractors and service providers.

#### **1.5.5 Civil Society Organisations**

Civil Society Organisations should consider the following recommendations.

- ✓ Monitoring and evaluation should be intensified in order to influence compliance with the provisions of the Act.
- ✓ Promote media campaigns and advocacy for increased citizens’ participation in the monitoring of capital budget implementation.
- ✓ Raise the bar in the implementation of the PPA by engaging in detailed studies and action research on procurement processes.
- ✓ Engage in capacity building of the populace for a better understanding of procurement reforms.
- ✓ The Media should engage in follow-ups on reported procurement frauds and other related matters to ensure that violations are redressed.

## Chapter Two

### **PUBLIC PROCUREMENT POLICY AND REGULATORY AGENCIES**

#### **2.1 MANDATE OF THE NATIONAL COUNCIL ON PUBLIC PROCUREMENT AND FAILURE OF THE PRESIDENT TO CONSTITUTE THE COUNCIL**

**T**he 2010 fiscal year marked the third year of the implementation of the PPA. The implementation of the PPA has been half-hearted, especially at the policy making level as the Federal Government has not displayed full commitment towards the Act. The provisions of section 1 of the Act which mandated the establishment of the National Council on Public Procurement which should serve as the policy making body on federal procurement has been ignored by the President who is vested with the authority to constitute and inaugurate the Council.

This crippling breach of the Act has precariously introduced illegality into the entire procurement process. The non constitution of the Council has left the public procurement process bereft of its critical functions as contained in section 2 of the Act. The functions of the Council in section 2 of the PPA are to:

- ✓ *consider, approve and amend the monetary and prior review threshold for the application of the provisions of this Act by procuring entities;*
- ✓ *consider and approve policies on public procurement;*
- ✓ *approve the appointment of the Directors of the Bureau;*
- ✓ *receive and consider, for approval, the audited accounts of the Bureau of Public Procurement;*
- ✓ *approve changes in the procurement process to adapt to improvements in modern technology; and*
- ✓ *give such other directives and perform such other functions as may be necessary to achieve the objectives of this Act.*

The Council is further charged with the responsibility of providing general policy directions for the BPP, recommending a person to be appointed the Director General of the Bureau by the President after competitive selections,<sup>1</sup> appointment of the principal officers and other staff of the Bureau<sup>2</sup>, receiving and approving the accounts of the BPP

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<sup>1</sup> Section 7 of the Act.

<sup>2</sup> Section 8 and 9 of the Act

at the end of the year<sup>3</sup>. The Council also sets the monetary and prior review thresholds to be enforced by the Bureau<sup>4</sup>.

The lacuna created by the neglect and refusal of the President to constitute and inaugurate the Council has impacted negatively on the implementation of the PPA and the development has continued to agitate the minds of financial and procurement experts, members of civil society organization including the media and other stakeholders. Consequently, there have been calls on the President from different quarters and at every forum to set up the Council to discharge its mandate in accordance with the provisions of the Act. CSJ raised an alarm and fired the first salvo for the correction of this anomaly. By its letter dated September 8, 2009, it drew the attention of the late President Umaru Yar'Adua and the former Attorney General and Minister of Justice, Mike Aondoakaa to this aberration but the letters regrettably received no response beyond the acknowledgement of receipt. Piqued by this brazen apathy, CSJ went ahead to institute a legal action against the President of Nigeria, (1<sup>st</sup> Defendant) and the Attorney-General of the Federation of Nigeria (2<sup>nd</sup> Defendant) at the Federal High Court over the failure, refusal and neglect of the President to fully implement the PPA.

CSJ in its originating summons prayed the Honourable Court for a declaration that the continued refusal of the President to appoint the non ex-officio members of the National Council on Public Procurement, his failure to constitute the Council and the subsequent invasion of the powers and duties of the Council by the EXCoF and the President, especially in the formulation of procurement policies and appointment of principal staff of the Bureau, has rubbished the intents, purposes and objects of the PPA and the Fiscal Responsibility Act (FRA) 2007 in securing a sound, functional and transparent public procurement system in Nigeria. In addition, the issues which CSJ seeks the Court's pronouncement includes:

- ✓ Whether the 1<sup>st</sup> Defendant can take over the powers and functions of the Council by virtue of Section 5 (1) (a) of the Constitution of the Federal Republic of Nigeria, 1999;
- ✓ Whether Section 5 (1) (b) of the Constitution of the Federal Republic of Nigeria, 1999 imposes a constitutional duty on the 1<sup>st</sup> Defendant to execute and ensure the implementation of all laws made by the National Assembly including the FRA 2007 and PPA 2007;
- ✓ Whether Section 1 (4) of the PPA imposes a duty on the first Defendant to appoint the non ex-officio members and formally constitute and inaugurate the Council;

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<sup>3</sup> Section 13 of the Act.

<sup>4</sup> Sections 6 (1) (a) and Section 17 of the Act

- ✓ Whether the continued refusal of the 1<sup>st</sup> Defendant to appoint the non ex-officio members and formally inaugurate the Council constitutes a violation of Section 38 of the FRA.

The case was pending in court at the end of the year. In addition, several national, regional and state newspapers and magazines have repeatedly written on the issue in their editorial pages condemning the violation of the Act and calling on the President to redress the situation. News items and articles have been published, almost on a daily basis, reiterating the need for the constitution of the Council, all to no avail<sup>5</sup>.

While reacting to this development, the former governor of Kaduna State and former chairman of the Senate Committee on Finance, Ahmed Markarfi, noted that the failure of government to constitute the Council has adversely affected the process of awarding contracts which according to him, has necessitated the illegal weekly award of contracts by the EXCoF<sup>6</sup>.

He said the Council to be headed by the Finance Minister, with other members which include; Minister of Justice, Secretary to the Government of the Federation, Head of Service of the Federation, Economic Adviser to the President, six part-time members to represent the Nigeria Institute of Purchasing and Supply Management, Nigeria Bar Association, Nigerian Association of Chambers of Commerce, Industry, Mines and Agriculture, Civil Society and the Media, is the only policy making authority for all federal procurements. Specifically, he noted that:

*The contract awards by FEC is not only a constant breach of the Act, I believe it is an introduction of inefficiency because a lot of executive time is wasted in Council meetings that ordinarily should focus on allowing Ministries and Heads of MDAs to be on their feet or inspecting on-going projects and programmes thereby enhancing efficiency and the level of performance of government.*

Markarfi however expressed optimism that the National Assembly would soon draw the attention of President Goodluck Jonathan to the matter. He stressed that:

*There is no way President Jonathan's attention will be drawn by the relevant principal officers of government to this that he will not comply with provisions of the law. I am absolutely sure that his attention has not been drawn to it.*

Paradoxically, long after the distinguished senator-cum-ex-governor gave his assurance, the situation has largely remained as it were from the beginning and there seems to be no silver lining that it will be redressed as soon as he envisaged.

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<sup>5</sup> Nigeria Daily News, Sunday June 13 2010.

<sup>6</sup> In a news item published on the front page of the Daily Trust edition of Monday June 14, 2010.

By failing to constitute the Council and reducing the EXCoF to a contract approving body, a conflict of interest manifests in the conduct of the President and his ministers. The President who is under obligation to constitute the Council which will lay down procurement policies is now the main beneficiary from the fact that the Council is not in place. The contract approving process by EXCoF cannot stand the test of legal scrutiny because it is unfounded in law.

While the long wait to get the President to constitute this all-important apex policy formulation body for public procurement, the implementation of the PPA continues to run on one leg of its statutory regulatory wheel - the BPP. This trend therefore leaves the Act partially implemented as the Bureau continues to issue certificates of no objection to contract award and also implements procurement policies but the Council that should actually lay down procurement policies is yet to come on board. The poser then is - who is the usurper that has illegally taken over the powers of the Council?

## **2.2 OTHER GAPS CREATED IN THE IMPLEMENTATION THE ACT WITHOUT THE COUNCIL**

Apart from the anomaly highlighted above, the non constitution of the Council also violates the letter and the spirit of the PPA in the under-listed critical areas:

### **2.2.1 Appointment of the Director General, Principal Officers and Hiring of Staff**

Section 7(1) of the Act, clearly states that:

*There shall be for the Bureau, a Director General who shall be appointed by the President, on the recommendation of the Council after competitive selections.*

The appointment of the incumbent Director General of the BPP by the President without a Council in place did not only breach the provisions of Section 7 of the Act but the illegality also rubbed off on section 8 (1) of the PPA which equally mandates the Council to appoint principal officers for the Bureau after a competitive selection process. Further, the violations extend to section 9 of the Act which requires the Council to appoint such officers and other employees as may be from time to time be deemed necessary for the purpose of the Bureau.

Aside from these illegalities, the present arrangement negates the legal principles and virtues of due process, transparency and accountability which the PPA seeks to enthrone in our procurement system. Specifically, the due process of law involves the rigorous and meticulous obedience to the law in all its ramifications. An incomplete reform process where the implementers of a law pick and choose which provisions suit their whims and caprices cannot be a true reflection of the due process of law. Due process implies that the implementation of a law shall be fair and devoid of arbitrariness and capriciousness. Legal transparency and accountability relates to situations where

those who implement the law are clearly seen to implement the letter and spirit of the law. The principles do not admit of underhand and subversive meddling with the law. Transparent implementation of the PPA should be manifest, unequivocal, clear, candid, apparent, evident, explicit, frank, honest, perceivable and unambiguous<sup>7</sup>. For legal accountability, the responsibility, commitment, duty and obligation detailed for the President in the PPA has not been carried out<sup>8</sup>.

### **2.2.2 The Exclusion of Professional Groups**

The current scenario excludes professional groups which could have been alternative voices to give the implementation of the Act the desired direction. Part 1, section 1(2) of the PPA stipulates that the Council shall consist of:

- a) The Minister of Finance as Chairman
- b) The Attorney-General and Minister of Justice of the Federation
- c) The Secretary to the Government of the Federation
- d) The Head of Service of the Federation
- e) The Economic Adviser to the President
- f) Six Part-time members to represent:
  - (i) Nigeria Institute of Purchasing and Supply Management
  - (ii) Nigeria Bar Association
  - (iii) Nigeria Association of Chambers of Commerce, Industry, Mines and Agriculture
  - (iv) Nigeria Society of Engineers
  - (v) Civil Society and the Media
- g) The Director-General of the Bureau who shall be the Secretary of the Council.

Since representatives of these professional groups that should have been members of the Council do not attend the weekly EXCoF meetings which have been literally converted to a contract awarding platform, it means that they have been shut out of the process. The involvement and participation of the media, CSOs and the other professional bodies would have brought openness to government commerce and

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<sup>7</sup> See Wikipedia, the Free Encyclopedic Dictionary

<sup>8</sup> Ibid

increased the faith of the ordinary Nigerian in the accountability of government contract award transactions. Unfortunately, the government failed to understand this fact.

## **2.3 BPP IN ACTION**

In order to properly situate and appraise the role of the BPP in the implementation of the PPA in the year under review, this report shall be guided mainly by the functions and powers of the Bureau set out in sections 5 and 6 of the PPA. As the institution saddled with the responsibility of regulating all procurement activities in the MDAs, the Bureau recorded some remarkable achievements in the implementation of the PPA in 2010. The BPP said the provisions of the PPA were applied in the award of the 202 contracts by 27 MDAs as approved by EXCoF during the period under review. In a bid to objectively harmonize government policies and practices while interfacing with all stakeholders in the transformation of the public procurement system, the BPP has so far, made some remarkable impact in the following areas.

### **2.3.1 Procurement Planning Review and the Introduction of a Procurement Planning Software**

The BPP undertook procurement planning review workshops for MDAs. The objective of the workshops is to review the 2010 procurement plan of every MDA with a view to accelerating the implementation of the 2010 budget<sup>9</sup>.

The BPP also successfully developed a Procurement Planning Software, a web application that will enable online preparation of Procurement Plans by MDAs at the beginning of each budget year, in line with its mandate in Section 5 (i) of the PPA. The new package which is made up of six modules was developed to also ensure a unified format in the submission of Procurement Plans by MDAs<sup>10</sup>. Accordingly:

*It requires a log-in (Login ID and password) for access by procurement officers to input data related to their respective MDA's Procurement Plan. The advantages of*

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<sup>9</sup> See Thisday Newspaper, Thursday, February 11, 2010. The announced schedule of some of the review workshops were as follows: Federal Ministry of Works, Housing and Urban Development 11 to 12, February, 2010; Federal Ministry of Power 15 to 16 February, 2010; Federal Ministry of Agriculture and Water Resources 17 to 18 February, 2010; Federal Ministry of Transport 22 to 23 February, 2010, Federal Ministry of Health 24 to 25 February, 2010; Federal Ministry of Aviation 1 to 2, March, 2010; Federal Ministry of Education 3 to 4 March, 2010; Federal Ministry of Niger Delta Affairs 8 to 9 March, 2010; Ministry of Federal Capital Territory (FCT) 10 to 11, March, 2010; Federal Ministry of Environment 15 to 16, March, 2010.

<sup>10</sup> *The Use of the New Procurement Planning Web-based Software in Achieving Successful Budget Implementation* by Mokuolu Adesina in Public Procurement Journal October to December 2010 published by BPP.

*this new Procurement Planning Software over the existing Template in MS Excel format are as follows:-*

- ✓ *It eliminates the difficulties encountered by officers in using the MS Excel Sheet.*
- ✓ *It is a Web-based Planning Software hence users who have internet connection can access it from anywhere at any time. It minimizes data entry error – 90% of the operations on the new software are about clicking buttons and selecting items.*
- ✓ *The Software guides the officers through the procurement planning process.*
- ✓ *It guides officers in the selection of appropriate procurement method and approving authority based on estimated contract amount and the approval threshold issued by appropriate authority.*
- ✓ *It also helps the officers in determining whether the procurement process requires Post or Pre-qualification and whether it will undergo Prior or Post Review by the Bureau.*
- ✓ *At the click of a button, it generates report which contains the entire Procurement Plan for a procuring entity in the acceptable format and the required information.*
- ✓ *It eliminates selection of over-lapping dates and non-working days in the planning process, hence leading to planning with realistic time lines.*
- ✓ *It eliminates the submission of Procurement Plan in different formats which makes evaluation and analysis difficult.*
- ✓ *It enables the Procuring Entity to submit their Procurement Plan on-line, hence reduce the submission time to the Bureau.*
- ✓ *It will help the Federal Ministries in preparing a consolidated Procurement Plan and creating their procurement profile.*
- ✓ *It also enables the Bureau and the Federal Ministries to access the procurement plans of all the procuring entities on-line irrespective of their geographical location within or outside the country.*
- ✓ *The availability and accessibility of the procurement plans on the Bureau's website ([www.bpp.gov.ng](http://www.bpp.gov.ng)) also assists in the monitoring of the procurement process by both the Bureau and other stakeholders, hence enhancing full budget implementation which will impact positively on the socio-economic wellbeing of all Nigerians as well as further promote wide participation of contractors and service providers in the procurement process, thereby leading to good competition that will give value for money<sup>11</sup>.*

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<sup>11</sup> Ibid



### 2.3.2 Series of Broad-based Capacity building Programmes

Within the period under review, series of capacity building workshops, seminars, meetings and training sessions were organized by the Bureau for all stakeholders, including procurement officers in MDAs, consultants, contractors and the media<sup>12</sup>. In addition, the BPP conducted procurement training for 1,500 civil servants who intend to become Procurement Officers and those that pass the test of the training will be posted by the Head of Service of the Federation to various MDAs. The knowledge gained by the trainees will improve the procurement processes and increase the level of compliance to the Act by MDAs. In collaboration with the BPP, the Head of the Civil Service of the Federation set up a Committee on the conversion of officers from other cadres to the newly created Procurement Officers cadre. In a correspondence addressed to the heads of MDAs, the Committee was mandated to screen, update the records, and authenticate the certificates or additional qualification of officers who have applied for conversion to the Procurement Officers cadre. The affected officers were required to come along to the screening with their letter or gazette of first employment, confirmation of appointment, original copies of credentials, evidence of approval to proceed on course, a copy of competency certificate issued by BPP and evidence of deployment as Provisional Procurement Officer in present MDA<sup>13</sup>.

### 2.3.3 Performance of Procurement Audit

In line with the provisions of the Section 5 (p) of the Act, the Bureau has intensified efforts towards conducting procurement audit in MDAs and the report is to be submitted to the National Assembly bi-annually. The Director General of the Bureau, Emeka Ezeh, disclosed that the BPP has concluded procurement audit in the Ministries of Education and Health. The audit has been conducted to review procurement practices in the

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<sup>12</sup> Some of the capacity building programmes include Stakeholders Capacity Building Workshop on Pre-qualification of Bidders; one day interactive session between BPP and the Nigerian Maritime Administration and Safety Agency; NDDC Procurement Workshop; Workshop on the Review of Standard Bidding Documents; Third National Procurement Forum for MDAs with the theme *best procurement practices, economic and infrastructural development; the journey so far*, etc. Others include the One Day Stakeholders Sectoral Capacity Building workshops on Evaluation of Bids as follows: September 13<sup>th</sup>, 2010 – Federal Capital Territory Administration FCTA; September 14<sup>th</sup>, 2010 – Federal Ministry of Environment, Federal Ministry of Information & Communication, Federal Ministry of Power; September 16<sup>th</sup>, 2010 – The Presidency Commissions, Departments and Agencies, Federal Ministry of Petroleum; September 20<sup>th</sup>, 2010 – Federal Ministry of Education Federal Ministry of Agriculture, Federal Ministry Water Resources; September 21<sup>st</sup>, 2010 - Federal Ministry of Works, Federal Ministry of Lands, Housing and Urban Development, Federal Ministry of Health; September 23<sup>rd</sup>, 2010 – Federal Ministry of Aviation, Federal Ministry of Police Affairs, Federal Ministry of Internal Affairs, Ministry of Niger Delta Affairs, ICPC, NDLEA & EFCC. See the Leadership newspaper of Thursday, September 9 2010.

<sup>13</sup> Daily Trust of Tuesday, December 14, 2010.

MDAs and to provide them with administrative recommendations and sanctions depending on the outcome of the audits. The D-G stated further that<sup>14</sup>:

*Our administrative sanctions include the ability to restart processes, remove people from office, and if a criminal link is established, we recommend people to the Economic and Financial Crimes Commission (EFCC) for further criminal prosecution.*

This disclosure is an assurance that procurement audits have been, and will be conducted and the impact and results would soon be felt by Nigerians. In a request for expression of interest for consultants to undertake procurement audit, the objectives and scope of the audit were stated to be<sup>15</sup>:

*To review for compliance with the core objectives and provisions of the Public Procurement Act 2007, the adequacy and effectiveness of established processes for the procurement of Works, Goods and Services within the Federal Ministries, Departments, Parastatals and Agencies.*

*The review will be conducted under the general framework of the Public Procurement Act 2007 and Civil Service Circulars relating to the practice of procurement within the MDAs and covering the detailed review of the following key procurement processes among others: needs assessment; design, scoping and specifications; procurement planning; budget appropriation; procurement methods; advertisement/invitation to tender; bid opening; prequalification of bidders; technical and financial bids evaluation; award recommendations; tender board approvals; project execution; disposal of assets; preparation of interim report; preparation and submission of detailed procurement audit report with findings and recommendations and identification of infractions and officers involved<sup>16</sup>.*

### **2.3.4 Information Dissemination**

The dissemination of public procurement information as stipulated in Section 5 (b) of the Act received commensurate attention from the Bureau during the 2010 fiscal year. Interactive and public enlightenment programmes were organized and held in the six geo-political zones of the country<sup>17</sup> in addition to the series of awareness creating media appearances by the BPP. The BPP continued the publication of procurement information through its quarterly journal - the Public Procurement Journal. The Journal contains information on all contracts approved by EXCoF; contracts that have received BPP's Certificates of "No Objection" to Contract Award; recent circulars and directives

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<sup>14</sup> See the Guardian Newspaper of Wednesday April 14 2010.

<sup>15</sup> Thisday Newspaper February 5, 2010

<sup>16</sup> Ibid

<sup>17</sup> One day interactive session for contractors and consultants was held in the six geopolitical zones.

on public procurement, informed opinion articles, ongoing petitions in the recourse mechanism, etc. The BPP website also contains the above information and serves as a point of access to information within the entire system.

### **2.3.5 Development and Maintenance of National Database of Contractors and Service Providers**

During the period under review, the Bureau called for expression of interest from firms to develop, maintain and implement a national database of the particulars, classification and categorisation of federal contractors and service providers. The objectives and scope were detailed as follows<sup>18</sup>.

The stated objective is to establish a single internet portal that will serve as a primary and definite source of information that will contain and display all public sectors procurement information at all times. To design, host and maintain a Registration and Categorization application portal that will serve as a national database and also provide necessary support to Federal Government Contractors and other Service Providers.

Scope: - The successful firm must have substantial experience in web application design, development and management. In addition, the firm shall have the following responsibilities:

- ✓ The development and provision of an end-to-end contractor registration system required to identify all Federal Government Contractors and issue unique identification numbers. The system will support the following functions:
- ✓ Customer Web Interface Management.
- ✓ General Services and workflow – reporting, document management etc.
- ✓ Contractors' service and education.
- ✓ Data management
- ✓ Contractors' information management (registered, categories, debarred, etc)
- ✓ Necessary support and maintenance with software licenses.
- ✓ Hosting of web Portal support for a 24x7 service.
- ✓ Creation of knowledgebase for query management. The software will provide Web Interfaces for information dissemination to Contractors, Ministries, Departments and Agencies on status reporting and provide online verification of information to authorized users.

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<sup>18</sup> The Guardian, Wednesday, December 1, 2010 at page 69

- ✓ Application design should be modular to allow integration with other systems.
- ✓ Application will offer operator log to record all database access to user login and logout, secure and privilege/profile based user administration, as well as soft level system security.
- ✓ Development and provisioning of appropriate System Administration as well as MIS/Reporting application software required for management and monitoring of registration and categorization application software, as well as for providing Tracking/CRM capability at all stages of the Unique Contractor Identification Number (UCIN) issuance process. Formulation and production of customized ad-hoc as well as periodic reports will be done.
- ✓ Provision of support and maintenance services including preventive maintenance, fault diagnosis and repair, software revisions and bug fixes, for a period specified by the client.
- ✓ The scope includes system specific and detailed training of all relevant client personnel (management personnel, technical and system administration staff, and end users/operators) who will be involved in operating and maintaining the UCIN system.
- ✓ Provisioning of technical and user documentation, including user and operations manuals, system manuals and training, materials<sup>19</sup>.

### **2.3.6 The Recourse Mechanism**

The Bureau has also activated the recourse mechanism for aggrieved persons under the Act. Such persons are mandated by Part 9, section 54 of the Act to submit their grievance in writing to the accounting officer who shall within 15 working days of receipt of complaint, make a decision in writing indicating the corrective measures to be taken if any, including the suspension of the proceedings where he deems it necessary and giving reasons for his decision. In a situation where the accounting officer does not make a decision within 15 days or the complainant is not satisfied with the decision of the accounting officer, the bidder may make a complaint to the BPP within 10 working days from the date of communication of the decision of the accounting officer. The Bureau on its part is expected to make its decision on the matter within 21 working days after receiving the complaint stating the reasons for its decisions and remedies granted if any. The Act states that where the BPP fails to render its decision within the stipulated time or the bidder is not satisfied with the decision of the Bureau, the bidder may then appeal to the Federal High Court within 30 days after the receipt of the decision of the Bureau or expiration of the time stipulated for the Bureau to deliver a decision.

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<sup>19</sup> Ibid

A number of complaints that were raised during the period under review were largely redressed with the application of the administrative review mechanism. The issues addressed in the petitions include illegal inclusion of bidders in the process, selection of lowest evaluated responsive bidder, fraud in the procurement exercise, lack of advertisement for tenders, short date for financial tender submission, refusal to award contract to the winning bidder, bid disqualification, etc<sup>20</sup>.

### **2.3.7 Funds Saved by Strict Implementation of the PPA**

The Bureau repeatedly assured Nigerians of its intention to drastically reduce abuses and save funds in the nation's public procurement process. The Bureau reported an impressive record of saving over N68 billion for the country in the 2010. The Bureau further reported savings of \$590m from July 2007, to the end of the 2009 financial year<sup>21</sup>. This was achieved by the strict implementation of the Act in a manner that guaranteed that contracts were fairly priced and executed. The achievement of this landmark implies that a lot more can be saved if the leakages in the systems are plugged.

## **2.4 PUBLIC PERCEPTION AND ASSESSMENT OF BPP's PERFORMANCE**

In compiling this report, the project team interviewed a number of Nigerians on the effectiveness of the procurement process and the performance of the BPP. Most of the respondents agreed that the enactment of the Act and the establishment of the BPP have no doubt brought some sanity in operations of MDAs in public procurement and award of contracts. Operators of the system now know that there is an agency that will review their procurement work. However, most of the respondents also pointed out that not much has changed except a marginal shift from what used to be before the advent of the PPA. The respondents explained that those who are involved in procurement and contract awards have also found ways to cover up their misdeeds. It was the opinion of majority of respondents that there is a lot of 'insider dealing' in the MDAs when it comes to the choice of the contractor or in factoring in 'their cut' by way of padding or inflating the cost of contracts.

The issue of identification of the real owners of companies bidding for contracts was raised by some respondents. They observed that there is presently no firm process of finding out the full identity of most of the contractors handling the project. The fact that the names of directors and shareholders appear in incorporation documents of a company at the Corporate Affairs Commission may simply be the best way to present a front while the real owners and beneficiaries lie behind the corporate veil.

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<sup>20</sup> See the Procurement Journal, October – December 2010 at pages 63-74.

<sup>21</sup> Thisday Newspaper, Thursday July 27 2010 at page 8

Another grey area that respondents pin-pointed was that of poor project record keeping and project history, particularly when it comes to issue of re-awarding abandoned projects. It was observed that there should be a link between the current budget of a re-awarded contract and funds expended on such a project before it was abandoned. This is because a crime may have been committed if for instance, a company collected mobilization fees and other payments and thereafter abandoned the project without adding any value or giving value for the payments made. It was therefore recommended that when an abandoned project is being re-awarded, the concern should not be all about costs, but to ensure a critical assessment of what happened before such a contract was abandoned.

Some respondents (especially legal practitioners) also noted that the Bureau's persuasive approach in the exercise of its regulatory functions left the sanctions aspect of its mandate in the lurch. If law is still the command of a sovereign backed by sanctions, then a mere command without sanctions will not discourage any person intent on violating the law. It was argued that the present "don't-rock-the-boat" style of dealing with those it should be regulating is not fully in line with the spirit and letters of the Act and this may largely not achieve the desired result. Some violators of the law need to be used as examples in terms of being fully punished so that the fear of sanctions may deter others in future.

## **2.5 THE ROLE OF CIVIL SOCIETY ORGANIZATIONS IN THE PPA**

Civil Society Organization (CSOs) within the period under review continued their engagement of state and non state actors in the field of public procurement. The engagements include sensitization and awareness raising, capacity building, observation and monitoring. The details are provided hereunder.

### **2.5.1 Information Dissemination, Awareness Raising and Sensitization**

In the period under review, CSOs intensified campaigns and raised awareness on the provisions of the PPA. There were series of discussions in the print and electronic media, dissemination of information through websites, newsletters and pamphlets as well as the use of other veritable promo-tools to increase public awareness. CSJ produced a number of articles in the print media<sup>22</sup> and also featured in many discussion sessions on radio and television. CSJ established a Nigerian Public Procurement

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<sup>22</sup> Some of the publications include: *MDAs and Good Governance in Nigeria* of Champion Monday, February 15, 2010; *Call for Action on Procurement Act in the Nation*, April 26, 2010; *State House of Assemblies Urged to Pass Public Procurement Bills* in Pioneer, Monday March 15 2010; *Insisting on Due Process of Pioneer* in Monday March 22, 2010; *NAPEP: Poverty Reduction or Fiscal Irresponsibility* in Daily Trust of March 16 2010. Others include *Power Sector Challenges as a Product of Fiscal Irresponsibility* of November 3 2010 in Nigerian Tribune; *National Assembly Urged to Expedite Action on FOI Bill* in Pioneer of October 25 2010, etc.

Observatory which enlisted over 200 NGOs into its listserv [pem\\_ngr@yahoo.com](mailto:pem_ngr@yahoo.com). Information on public procurement was also available on its website – [www.csj-ng.org](http://www.csj-ng.org). CSJ also continued the publication of its bi-annual procurement newsletter – *Observatory News*.

On January 27, 2010, a civil society team including PPDC, Zero Corruption Coalition, Crime Free and Peace Initiative and National Procurement Watch Platform visited the House of Representatives Committee on Public Procurement. It was an advocacy visit to highlight what CSOs had done so far under the PPA; what informs their interest in public procurement work and the need to collaborate with the House of Representatives Committee in order to advance the work. PPDC also established a procurement portal – [www.procurementmonitor.org](http://www.procurementmonitor.org), which contains up to date information on procurements and provides an interactive online opportunity for reporting developments in public procurement.

CISLAC, an NGO known for assisting to develop the capacity of CSOs to constructively engage the legislature for effective policy intervention and advocacy on issues around budget and related matters, equally organized a number of sensitisation sessions for CSOs on the PPA.

The print media also made its mark in furthering the awareness creation drive with several editorial and columns written on procurement reforms including issues bordering on the non constitution of the Council, poor budget implementation, over –invoicing of contracts, late payment of contractors etc<sup>23</sup>.

### **2.5.2 Capacity Building**

In a bid to deepen the understanding and hone the skills of CSOs participating in the implementation of the PPA in terms of facilitating the monitoring process, CSJ conducted capacity building training. PPDC also conducted capacity building training sessions with the support of UNDEF; CISLAC organised some training workshops in collaboration with BPP.

### **2.5.3 Observation and Monitoring**

CSJ and other CSOs continued procurement observation and monitoring during the year. For instance, CSJ monitored bid opening sessions in Fiscal Responsibility Commission, Teachers Registration Council, Federal Character Commission, Securities and Investment Tribunal, Federal Ministry of Women Affairs, etc. CSJ published half yearly reports on the implementation of the PPA and made the results available to policy makers, implementing agencies and the legislature.

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<sup>23</sup> Daily Independent Newspaper Editorial of Tuesday October 12, 2010 titled *Again the Underperforming MDAs* based on CSJ's report.

## Chapter Three

### THE 2010 BUDGET

#### 3.1 HIGHLIGHTS OF 2010 BUDGET

The 2010 Appropriation Bill was presented by the President to the National Assembly on November 23, 2009. It was subsequently passed by the National Assembly and assented to by the President in April 2010. The budget, which came on stream shortly after the end of first quarter of the 2010 fiscal year had aggregate expenditure of N4,608 billion, out of which N1,854 billion was allocated to capital spending, N497.07 billion to debt service, N180.28 billion for statutory transfers and N2,077 billion for recurrent non debt expenditure. The capital budget of 2009 was rolled over to the end of the first quarter of 2010 in order to create enough time for the implementation of the capital projects in the 2009 Appropriation Act. According to the Budget Office of the Federation, the carry-over of the remainder of the 2009 capital budget to the first quarter of 2010 made it difficult to carry out a complete assessment of the budget performance over the first half of the year<sup>24</sup>.

#### 3.2 DRAMATIC AMENDMENTS AND SUPPLEMENTS TO THE BUDGET

In spite of the late passage of the budget, the President had to request the National Assembly to amend the 2010 Appropriation Act barely a month after it was passed. The National Assembly eventually amended the budget to reduce the expenditure to N4,427 billion. The drama did not end there as another request for a supplement to the original budget emanated from the Presidency, this time, to cater for what the administration referred to as unanticipated expenses in wage increases to civil servants, university lecturers, medical personnel and the arrears of monetization for the staff of Power Holding Company of Nigeria (PHCN).

Excerpts from the letter read:

*Finally, as I had earlier indicated when I assented to the 2010 Appropriation Act, there were certain critical items such as statutory transfers, debt service, the service-wide votes and other critical expenditure heads that were either inadvertently omitted or under-provisioned for. It has also become necessary to cater for certain unanticipated items of expenditure such as Negotiated Civil Service Wage Increases, Power Holding Company of Nigeria Arrears of Monetisation and 50<sup>th</sup>*

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<sup>24</sup> See page 26 of the MTEF 2011-2013



*Anniversary of Nigeria's Independence. It is proposed to provide for all these expenditure through a supplementary budget.*

The National Assembly further complied and passed a Supplementary Budget of N644.75 billion. In addition, the National Assembly approved another Supplementary Budget of N87.72 billion for the Independent National Electoral Commission (INEC) for activities related to the 2011 elections.

Subsequently, the amendment of the 2010 budget passed by the National Assembly in August reviewed the benchmark for crude oil production from 2.35 to 2.25mbpd. The RCP was therefore lowered from \$67pb to \$60pb. The implication of these fleeting changes was that it made the entire budgeting process look more like a puzzle, especially for budget reporting purposes. The first and second quarter budget implementation reports were based on the original budget while that of the third quarter which came after the amendment was based on the later amendment. The Third Quarter Budget Implementation Report aptly put it this:

*Consequently, as at the end of the third quarter, we had three budgets running: the 2010 Amended Budget-N4,427.19 billion, Supplementary Budget 1- N644.75 billion and Supplementary 11 – N87.72 billion all aggregating to N5,159.66 billion.*

### **3.3 WEAK CAPITAL BUDGET IMPLEMENTATION**

#### **3.3.1 First Quarter Budget Implementation**

Due to late passage of 2010 budget, the first quarter capital releases were based on the 2009 Appropriation Act. However, the report from the DG of BOF stated that capital budget implementation was lower than expected in the first quarter. This was due to weak MDAs' capacity in capital projects implementation. By March 31, 2010, a total of 198.18 billion was released and N196.38 billion was cash-backed. At the end of the first quarter, only N36.46 billion representing 18.57 % was utilized by MDAs. Further reviews of the MDAs' performances reveal varied utilization rates among them. Seven (or 16.28%) of the MDAs had their respective utilization rates over the overall average utilization. Among these, three (or 6.68%) of the MDAs including Defence (81.53%), Agric. & Water Resources (78.83%) and Information & Communications (55.07%) had utilization rates of over 50% of their respective releases. It is noteworthy that fifteen (or 34.88%) of the MDAs including Transport, Niger Delta, Police Formations, and INEC did not utilize any portion of the Capital Vote releases to them in the quarter.<sup>25</sup> Following the field visit of the Monitoring teams in collaboration with representatives of selected Civil Society Organizations and the Media, a number of issues emerged. Some of these issues include:

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<sup>25</sup> BOF: First Quarter 2010 Budget Implementation Report on pages 6 & 28

- ✓ Inadequate project planning considerations by MDAs leading to poor project funding, site approval issues (with respect to compensation payments) and delays in meeting completion targets and a recurrence of stalled projects awaiting approval for revision of their terms and conditions of completion.
- ✓ Some MDAs continued with the practice of spreading available resources thinly among projects that they cannot fund the completion of some of their on-going projects. This often-times led to the extension of projects completion dates and cost variation. These, aside from denying the citizens of the benefits of the projects, cause enormous stress on public financial resources.
- ✓ Some unresolved issues like compensation payments for project sites tend to drag their execution, and frequently led to the extension of the project completion date.
- ✓ Some MDAs' written submissions on the status of their projects were found to be different from the actual on-site situations. And failure of some MDAs' project Managers or Engineers to avail themselves of the responsibility to guide the Monitoring teams or answer relevant enquiries on their projects. This hampers the prompt completion of the field monitoring exercise.

It is worthy to note that most of the above findings have always been the same over the years but nothing has been done by the government to check mate the reoccurrences of this evil that has been a log in the chain of capital budget implementation

**Table 1: A Sample of MDAs' Capital Budget Utilization (As at 31st March, 2010)**

MDA	1 <sup>ST</sup> QUARTER WARRANT	AMOUNT CASH BACKED	Utilization		
	=N=	=N=	Amount (=N=)	As % of Cash-backed Funds	As % Total Budgetary Releases
Power	12,221,434,882	12,221,434,882	739,100,844	6.05	6.05
Transport	9,645,022,871	9,645,022,871	0	0.00	0.00
Health	8,351,220,826	8,351,220,826	1,914,536,813	22.84	22.84
Agric & Water Resources	17,970,225,588	17,970,225,588	14,165,926,232	78.83	78.83
Education	8,969,480,317	8,969,480,317	324,115,836	3.61	3.61
Works	50,453,447,436	50,453,447,436	5,842,672,318	11.58	11.58
Niger Delta	12,000,000,000	12,000,000,000	0	0.00	0.00
FCTA	16,662,500,000	16,662,500,000	3,805,033,067	22.84	22.84
Police Formation & Commands	5,331,157,500	5,331,157,500	0	0.00	0.00
<b>Overall Average Utilization</b>				<b>18.57</b>	<b>18.4</b>

Source: OAGF and BOF

### 3.3.2 Second Quarter Budget Implementation

As revealed by the Second Quarter Budget Implementation Report, capital budget implementation did not fare better in the second quarter. The low utilization rate might not be unconnected to previously reported impediments to MDAs' capital budget implementation like improper planning and procurements, and the late cash-backing of the capital releases due to liquidity challenges. However, some of the projects were reported to have been executed at a very high cost<sup>26</sup>.

The Second Quarter Budget Implementation Report states: <sup>27</sup>

*A sum of N423.88 billion was released for MDAs' capital budget implementation in the second quarter of 2010 and Capital Supplementation of N9.8 billion. However, due to shortfalls in revenue receipts in the period, N404.82 billion (or 94%) was cash-backed by the OAGF while only N124.79 billion (or 30.83%) was utilized by MDAs as at 30 June 2010.*

*Based on data from the Office of the Accountant General of the Federation (OAGF), an appraisal of forty-six MDAs reported upon shows a low level of utilization of capital releases in the first half of the year. The data indicates an overall average capital utilization rate of 30.83% based on the total amount cash-backed to the MDAs as at 30 June 2010. Matched against the total releases of N423.88 billion for the period, the position worsens to 29.44%.*

*A review of the MDAs' performances indicates varied level of utilization among the MDAs. On the whole, sixteen (or 34.78%) of the MDAs including: Defence, Federal Capital Territory Administration, Agriculture, Works, Environment, Power, Foreign Affairs, Tourism & Culture and Commerce & Industry each utilized over the overall average utilization rate of 30.83%. Six out of these (or 13.04% of the MDAs) including Agriculture, Presidency, Foreign Affairs, Environment, National Planning and Office of National Security Adviser had utilization rates of over 50% of their respective released amounts. It is noteworthy that nine (or 19.57%) of the MDAs were yet to utilize any portion of the capital budget funds released to them. Key among these MDAs are: Women Affairs, Federal Civil Service Commission and Police Service Commission.*

During the project site visit, several facts including the following emerged from the exercise:

- ✓ *Stalled Projects:* A recurrence of stalled projects, with huge capital funds already expended, awaiting approval for revision of their terms and conditions of completion. This has the potential of absolute loss in capital fund investments by the Government particularly where such approvals are delayed outside the contract terms or where they are not approved at all.

<sup>26</sup> Page 15 of the Second Quarter 2010 Budget Implementation Report

<sup>27</sup> BOF: Pages 24-26 of Second Quarter 2010 Budget Implementation Report

- ✓ *Poor resource allocations:* Some MDAs continued with the practice of spreading available resources thinly among projects in a manner that poses fundamental challenges to financing the completion of some of their on-going projects. This often-time led to the extension of projects' completion dates and cost variation.
- ✓ *Poor representations:* Failure of some MDAs' project Managers or Engineers to avail themselves of the responsibility to guide the Monitoring teams or answer relevant enquiries on their projects. This hampers the prompt completion of the field monitoring exercise.

**Table 2: A Sample of MDAs' Capital Budget Utilization (As at 30th June, 2010)**

MDA	1 <sup>ST</sup> QUARTER WARRANT	2 <sup>ND</sup> QUARTER WARRANT	AMOUNT RELEASED	AMOUNT CASH BACKED	UTILIZATION		
	=N=	=N=	=N=	=N=	+N=	As % of cashed backed Funds	As % Total Budgetary Releases
Power	12,221,434,882	23,653,197,490	47,374,632,372	45,891,504,947	16,052,930,734	34.98	33.89
Transport	9,645,022,871	15,806,863,660	25,516,886,531	25,516,886,531	4,282,411,849	16.78	16.78
Health	7,996,824,800	7,263,332,610	16,200,157,410	16,182,354,044	2,998,914,569	18.53	18.51
Agriculture	16,036,657,458	3,358,989,753	19,395,647,211	19,342,020,545	15,197,461,811	78.57	78.36
Water Resources	1,850,528,527	14,316,192,933	16,166,721,460	16,166,721,460	1,017,326,944	6.29	6.29
Education	7,403,020,883	10,244,778,975	17,647,799,858	17,647,799,858	4,887,143,240	27.69	27.69
Works	50,453,447,436	21,483,959,994	71,937,407,430	71,937,407,430	28,750,947,858	39.97	39.97
Niger Delta	12,000,000,000	10,579,059,441	22,579,059,441	22,579,059,441	2,849,799,806	12.62	12.62
FCTA	16,662,500,000	16,315,578,167	32,978,078,167	32,978,078,167	15,553,946,348	47.16	47.16
Police Formation & Commands	5,331,157,500	6,655,374,294	12,031,389,685	12,031,389,685	432,732,731	3.60	3.60
<b>Overall Average Utilization</b>						<b>30.83</b>	<b>29.44</b>

Source: BOF and OAGF

Considering the amount of utilization reported in the first and second quarters, a combination of the amount in the both quarters gives the sum of N161.25 billion which is less than 10% of overall capital budget of 1,764.69 billion. This clearly shows the poor rate at which capital votes are utilized by various MDAs.

### 3.3.3 Third Quarter Budget Implementation

The report of the Third Quarter Budget Implementation states<sup>28</sup>

*As at end of the quarter, an aggregate of N541.33 billion had been released for MDA's capital budget implementation and capital supplementation releases of N57.73 billion and N52.62 billion. Of the total released amount, N530.46 billion (or 97.99%) was cash backed by OAGF following revenue constraints while only N278.88 billion (or 53.47%) was utilized by MDAs to-date. Furthermore, when compared against the total releases for the period rather than the cash-backed amount, the percentage utilization rate declines to 52.38%.*

*An appraisal of fifty MDAs reported upon by the Office of the Accountant General of the Federation (OAGF) showed a varied level of utilization. Twenty six (or 52%) of the MDAs including: Interior, Niger-Delta, Agriculture, Water Resources, Defence, Federal Capital Territory Administration, Works, Commerce & Industry, Mines & Steel, Health, and Police Affairs each utilized above the overall average utilization rate of 53.47%. Eleven out of these (or 22% of the MDAs) including Defence, Federal Capital Territory Administration, and Agriculture had utilization rates of over 70% of their respective cash backed releases. Going by the OAGF report, it is noteworthy that six (or 12%) of the MDAs were yet to utilize any portion of the capital budget funds released to them. Key among these MDAs are: Police Service Commission and INEC.*

**Table 3: A Sample of MDAs' Capital Budget Utilization (As at 30th September, 2010)**

MDA	TOTAL AMOUNT	TOTAL AMOUNT	UTILIZATION		
	=N=	=N=	Amount (=N=)	As % of Cash-backed Funds	As % Total Budgetary Releases
Power	46,258,772,213	46,258,772,213	30,993,881,251	67.08	67.00
Transport	25,516,886,531	25,516,886,531	9,962,875,299	39.04	39.04
Health	16,241,618,749	16,241,618,749	7,753,933,449	47.79	47.74
Agriculture	19,471,927,853	19,471,927,853	16,881,789,040	86.70	86.70
Water Resources	16,166,721,460	16,166,721,460	9,213,838,677	56.99	56.99
Education	20,041,501,796	20,041,501,796	11,551,050,287	57.64	57.64
Works	71,954,836,097	71,954,836,097	45,941,790,227	63.91	63.85
Niger Delta	22,579,059,441	22,579,059,441	21,984,055,246	97.36	97.36
FCTA	32,978,078,167	32,978,078,167	31,894,837,379	96.72	96.72
Police Formation & Commands	11,811,354,350	11,811,354,350	4,546,161,630	38.49	38.49
<b>Overall Average Utilization</b>				<b>53.47</b>	<b>52.38</b>

Source: BOF and OAGF

<sup>28</sup> Pages 31 & 32 of Third Quarter 2010 Budget Implementation Report

By the third quarter, only N541.33billion has been released signifying 30.7% of the overall capital vote. The actual utilization rate of N278.88billion amounts to 15.8% of the overall capital vote.

### 3.3.4 Fourth Quarter Budget Implementation

As at 31st December 2010, an aggregate of N947 billion had been released. Of this amount, a total of N912.3 billion (or 96.32%) of the total releases was cash backed by the Office of the Accountant-General of the Federation. However, only N642.47 billion (or 70.42%) of the cash-backed amount was utilized by MDAs as at 31st December, 2010.

The Fourth Quarter Budget Implementation Report states:<sup>29</sup>

*An evaluation of the fifty-three (53) MDAs reported upon by the Office of the Accountant-General of the Federation (OAGF) showed a varied level of utilization rates. Twenty nine (or 54.72%) of the MDAs including: Water Resources, Women Affairs, Police Affairs, Defence, Federal Capital Territory Administration (FCTA), Works, Niger-Delta, Information & Communication, Interior, Youth Development and Foreign & Inter-Governmental Affairs each had their utilization rate over the overall average utilization rate of 70.42%. Fifteen out of these (or 28.3% of the MDAs) including Youth Development, FCTA, Interior, and Works had utilization rates of over 85% of their respective cash-backed releases. Going by the OAGF report, it is important to note that nine (or 16.98%) of the MDAs had their utilization rate below 50%. Among these MDAs are: Commerce & Industry, Housing, Environment and Petroleum Resources*

**Table 4: A Sample of MDAs' Capital Budget Utilization (As at 31st December, 2010)**

MDA	TOTAL AMOUNT		UTILIZATION		
	Released	Cash-Backed	Total (=N=)	As % of Cash-Backed Funds	As % Total Budgetary Releases
Power	70,125,900,227	70,072,273,560	47,509,059,026	67.80	67.75
Transport	44,311,855,533	44,311,855,533	22,379,818,751	50.51	50.51
Health	33,570,452,816	33,562,153,452	17,745,264,501	52.87	52.86
Agriculture	26,730,652,327	26,725,719,041	17,885,989,373	66.92	66.91
Water Resources	51,164,315,628	51,164,315,628	40,658,359,978	79.47	79.47
Education	33,363,404,106	32,988,285,456	22,171,892,034	67.21	66.46
Works	107,469,616,597	107,350,330,989	92,621,140,701	86.28	86.18
Niger Delta	42,855,307,378	42,855,307,376	34,966,120,465	81.59	81.59
FCTA	68,221,823,649	64,411,894,742	54,836,779,610	85.13	80.38
Police Formation & Commands	27,115,224,515	27,115,224,515	17,285,000,319	63.75	63.75
<b>Overall Average Utilization</b>				<b>70.42%</b>	<b>66.4%</b>

Source: BOF and OAGF

<sup>29</sup> Page 31 of Fourth Quarter 2010 Budget Implementation Report by BOF

Going by the record of the total amount utilized by MDAs, we can deduce that only 36.41% of the overall capital budget of N1, 764.69 billion was actually utilized in the year.

During the project field monitoring, some of the challenges that hampered capital budget implementation were identified:

- ✓ Poor project conceptualization, design or planning practices by MDAs. This practice has largely limited the beneficial impact of the capital votes releases as exhibited through:
- ✓ The introduction of *projects without feasibility studies, engineering designs or appropriate costing* in MDAs' annual budgets.
- ✓ Series of poorly implemented projects now being *redesigned having their scope amended, having their implementation stalled and/or requiring cost variation approvals.*
- ✓ Stalled Projects arising from *project site compensation issues.*
- ✓ Furthermore, some projects were proposed for and sited on *difficult terrain* often requiring additional work outside the contract scope. This frequently results to requests for cost variations, stalling of projects implementation or the extension of completion periods where cost variations are approved.
- ✓ Poor project monitoring by MDAs.
- ✓ MDAs' project status data inconsistencies.
- ✓ Poor MDAs' representations at project sites.
- ✓ Poor projects ownership by local communities which often leads to the neglect of completed projects and a hostile attitude towards contractors.

### **3.4 NON – RELEASE OF CAPITAL BUDGET**

The Federal Budget's performance target for the 2010 Fiscal year faced the dour prospect of being unrealised owing to the non release of capital allocations to MDAs two months to the end of the year. Major capital projects earmarked for execution in different parts of the country were reportedly abandoned by contractors due to nonpayment of due moneys. In a motion entitled: "Non – Release of Capital Budget by Federal Ministry of Finance," adopted by the House of Representative on October 20 2010, the lawmakers condemned the Ministry of Finance for releasing allocations for recurrent expenditure while withholding sums duly appropriated for capital projects that would impact on the lives of citizens<sup>30</sup>.

Government in the past 10 years has been experiencing persistent failure in budget implementation. This has imposed on the nation the folklore of declaring "unspent

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<sup>30</sup> Editorial of the Punch Newspaper of Wednesday October 27, 2010.

funds” which are returned to the treasury at the end of every fiscal year. This is evident in the 2009 budget when only 54% of the allocation received by MDAs for capital projects were utilised. In 2007 and 2008 fiscal year, unutilised funds amounted to N400 billion and N350 billion respectively<sup>31</sup>.

The Punch newspaper in its editorial noted that the integrity of the Federal Government – its sense of mission and commitment to constitutional imperatives came under scrutiny at the House of Representatives as members debated the motion<sup>32</sup>. The lawmakers established a yawning gap between governments, on the one hand and the populace and industry, on the other, as needs critical to the well-being of the people have been commanding little attention from the authorities. Federal highways and other critical infrastructure as well as social services remain in a deplorable condition nationwide. It is difficult to understand why the Federal Executive Council announces on a weekly basis, award of contracts for new projects approved as well as their costs, when it is common knowledge that the Finance Ministry hardly ever releases the funds for their execution. The non – implementation of the capital budgets is a breach of the Constitution because an Appropriation Act has the force of law like every other Act of the National Assembly.

### **3.5 INEC AND THE DIRECT DATA CAPTURE MACHINES**

The 2011 voters’ registration exercise was the first of its kind in Nigeria to the extent that it used Electronic Data Capture machines for the capture of data, unlike previous exercises that were done manually. About 132,000 Direct Data Capture machines were used in the registration of voters nationwide. The Independent National Electoral Commission in 2010 gave the contract to supply the 132,000 DDC machines to three firms, namely Zinox Technologies Limited - 80,000 units at \$1,771.73 per unit. While Messrs Haier Electrical Appliances Corp Ltd was awarded 30,000 units at \$1,699.60 per unit and Avante International Technology Incorporated got 22,000 units at \$1,699.60 per unit; which brings the total figure to about N34.5 billion<sup>33</sup>.

There was a hiccup at the initial phase of the procurement process when Messrs Haier Electrical Appliances Corp Ltd was reported to have under-quoted the price for the supply of DDC machines. INEC had requested Heir to reconfirm their price which they did, but later came back to ask for an upward review<sup>34</sup>. The other initial hiccup was an order of injunction procured by Bedding Holdings Ltd seeking to restrain INEC from

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<sup>31</sup> Ibid

<sup>32</sup> Ibid

<sup>33</sup> The Nation Newspaper of Monday, November 8 2010; Daily Trust Newspaper of November 8 2010

<sup>34</sup> Punch Newspaper of Saturday September 10, 2010.



awarding the DDC machine contract to any other company. The injunction which was given *ex-parte* was later vacated by the presiding judge<sup>35</sup>.

After the procurement of the machines, there were challenges about the fitness for purpose and suitability of the machines for the task of voters' registration. Reports from the field pointed out that the DDC machines were slow in capturing voters' data. The slow operations resulted in delay in registering voters as it could take 30 to 40 minutes to register a single voter. Computer experts, however, attributed the slowness of the machines to the kind of operating system that was installed in them. The DDC machines made use of Linux operating system. INEC had adopted a Linux software technology, which experts say is slower than Oracle and many others and calibrated it to achieve high quality finger prints. But that led to slowing down of scanning and entire registration process in many centres at the beginning of the process. The finger prints of most voters with hard and coarse palms were not easily captured by the scanner.

### **3.6 2010 CAPITAL BUDGET REVIEW: A COMPARATIVE ANALYSIS**

A total of 202 contracts were approved by EXCoF and awarded by 27 MDAs for the 2010 financial year. The Ministry of Power had the highest number of awarded contracts (50) which constitutes 24.8% of the total contracts, followed by the Federal Capital Territory FCT (26) constituting 13.4%, Niger Delta Development Commission NDDC (18) constituting 8.9%, Federal Ministry of Water Resources (13) constituting 6.4%, Federal Ministry of Works (12) constituting 5.9% and Ministry of Petroleum Resources (11) constituting 5.4%. Federal Ministry of Commerce and Industry, (now Trade & Investment), Information and Communication and Police Affairs each had only one contract awarded. The total awarded contract sum according to the BPP is N1,007,356,864,966.97; USD 1,327,502,580.35; Euros 187,947,921.15; Pound Sterling 3,388,633.53 while the total contract sum for the awarded contracts in Naira, is N1,253,108,677,465.97.

The BPP in most of its publications during the period under review maintained that the provisions of PPA were strictly complied with in the award of contracts. However, there are findings to the contrary in some of the contracts. A study undertaken by the House of Representatives Committee on Public Procurement to evaluate provisions of the 2010 capital budget; undertake a comparative assessment of the provisions of the capital budgets of the 2009 and 2010 financial years; identify gaps and limitations and assess specified development objectives against provisions of capital budget; and report potential bottlenecks, made some incisive analysis and findings that are very salient and germane to this report. The study also highlighted potential sources of

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<sup>35</sup> Thisday Saturday December 4 2010 at page 3; and Guardian Monday December 6 2010 at page 1.

conflict with provisions of the PPA and other related matters. Excerpts from the study are reproduced below.

*2010 Capital Budget represents 33.6% of the total government budget compared to 33% in 2009 Appropriation Act. The Medium Term Expenditure Framework & Fiscal Strategy Paper (FSP) expects capital expenditure to decline from N1, 022 billion in 2009 to N860 billion in 2010. However, in the same breath, it states that:*

*“Capital Expenditure will be targeted at achieving this Administration’s 7-Point Agenda. Spending in these areas should reduce poverty and also improve education and the quality of infrastructure. Improved education and infrastructure should increase economic growth in the long term.” The budget proposal of N1, 370 billion is a significant improvement on the N860 billion previously forecast in the FSP. However, it does not come close to achieving the lofty goals set out above.*

**Table 5: 2010 Capital Budget Priorities**

	<b>CAPTION</b>	<b>N</b>	<b>%</b>
1	Works, Housing and Urban Development	221,305,748,561	16.1%
2	Power	153,207,074,322	11.2%
3	Transport	141,277,712,698	10%
4	Federal Capital Territory Administration	124,110,000,000	9.1%
5	Agriculture & Water Resources	117,131,713,104	8.5%
6	Niger-Delta	61,288,868,900	4.5%
7	Condition Grants and Social Safety Nets (MDGs)	55,000,000,000	4.0%
8	Education	53,667,933,553	3.9%
9	Health	49,990,000,000	3.6%
10	Aviation	49,000,000,000	3.6%
11	Defence/Mod/Army/Airforce/Navy	39,450,000,000	2.9%
12	Office of the National Security Adviser	35,089,504,781	2.6%
13	Petroleum Resources	31,926,379,950	2.3%
14	Police Formations and Commands	29,972,772,520	2.2%
15	Quick Wins (2010)	23,000,000,000	1.7%
16	Outstanding Liabilities for Fiscal years 2007 and 2008	20,000,000,000	1.5%
17	Office of the Secretary to the Government of the Federation	13,602,175,200	1.0%
18	Interior	13,137,050,471	1.0%
	<b>Total captions representing 1% or more</b>	<b>1,232,158,934,060</b>	<b>89%</b>
	<b>Grand Total Capital Expenditures</b>	<b>1,370,819,366,986</b>	<b>100%</b>

*Together, the above account for approximately 90% of budgeted capital expenditure. It is important to ask the following questions:*

- ✓ *If these items are planned for poverty reduction and improvements in infrastructure and education, what arrangements are in place to ensure that project approval and implementation are carried out on schedule and to budget?*
- ✓ *Have the projects that make up the detailed MDA spending proposals for these sums been passed through BPP and approved for presentation to FEC or direct award by MDAs if within the MDA approval limits?*
- ✓ *Based on 1 & 2 above, will projects be implemented in 2010 or are we to wait for another budget cycle?*

The study revealed that the BPP did not have a comprehensive database of projects that is integrated with the budget. This, according to the Study, precipitated the following problems in tracking and performance management:

- ✓ Missing timelines;
- ✓ Non comprehensive database;
- ✓ Does not allow the impact of BPP initiative to be properly measured;
- ✓ Does not give appropriate feedback for the next budget cycle.

The study further stated that:

*The lack of a comprehensive data of projects at MDAs does not allow for full assessment of the extent of compliance with BPP requirements – only reported projects are tracked rather than all projects. There is no independent assessment of all projects. The budget cycle does not allow for long lead time that is a characteristic of most major capital projects. BPP therefore becomes the undeserved culprit, taking the blame for delays in the project preparation and approval process. The link between Medium Term Fiscal Strategy, high level development plans of government (7-Point Agenda) and actual capital spending priorities as spelt out in the annual budget is academic.*

*The measurable Key Performance Indicators (KPIs) to track budget implementation and project execution are referred to in the Fiscal Strategy Paper (pp42-43) and 'missing in action'. Subsequently, these should be a critical input in the work of BPP and in assisting the National Assembly in its responsibility to provide effective oversight.*

*In reviewing BPP's report on compared to capital allocations, whilst the focus on cost reduction is good, cost reduction alone cannot be the only parameter for measuring effectiveness. BPP must look at:*

- ✓ *The extent to which its efforts facilitates rapid and cost effective project implementation;*
- ✓ *Post implementation life-cycle cost of ownership and maintenance of capital projects – whether cost savings in procurement translate into cost savings over life of capital projects.*

The study also noted that standards of data provision and reporting are not uniform across MDAs, again lending credence to the fact that the Bureau does not have a comprehensive project database. "Project data is not well integrated with budget and appropriation data, making tracking and performance appraisal difficult", the study further explained.

### **3.7 BI-COURTNEY AND THE LAGOS - IBADAN EXPRESSWAY**

Although this project is not among the projects found in the 2010 Appropriation Act, the good news that came towards the end of the year was that the concessionaire, Bi-Courtney was set to begin work on the rehabilitation of the road pending the approval of the road design by the Ministry of Works. Bi-Courtney had won a concession under a Design, Build, Operate and Transfer Scheme with a tenure of 25 years to expand the highway complete with trailer parks, travelers plaza and conveniences, restaurants, etc. The concessionaire was to recoup its funds through tolls and other charges on the road<sup>36</sup>. The above arrangement, as a model of public private partnership is a welcome departure from insisting on the availability of scarce public funds before capital projects are delivered to the people. It is a step in the right direction which should be explored in other bankable projects.

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<sup>36</sup> The Editorial of the Guardian Newspaper of Tuesday December 14, 2010.

## Chapter Four

### **PROCUREMENT CONTROVERSIES AND SCAMS IN 2010**

#### **4.1 THE FACTS AS THEY ARE**

It is indeed common knowledge that the implementation of the capital budget for the 2010 fiscal year was replete with a barrage of procurement related scams and controversies which competed for news headlines in both the print and electronic media. Not only did the high-profile contract scandals that started in previous years regain prominence and visibility during the period under review, fresh scams and controversies broke out from the various MDAs almost on a daily basis. Some of them are detailed below.

#### **4.2 PRESIDENTIAL PROJECTS ASSESSMENT COMMITTEE**

President Goodluck Jonathan in March 2010 set up a Committee to review public procurement and contract awards especially the backlog of uncompleted projects littered across the nation. The specific terms of reference of the Committee are as follows:

- ✓ To take inventory of all on-going Projects awarded by the Federal Government.
- ✓ To assess the level of funding of each project.
- ✓ To undertake a physical inspection of each project to determine work done and to ascertain whether it is commensurate to the amount paid to the contractors.
- ✓ To evaluate the professional competence of the contractors handling the various projects.
- ✓ To determine whether the level of execution of the projects is in accordance with the terms of the contract agreement between the Federal Government and the contractor.
- ✓ To examine a plan of action that is realistic, practical and achievable including implementation phases for the execution of the projects.

- ✓ To examine the reason given if applicable why the projects were not executed in accordance with the terms of contract agreement at the time of the award; and
- ✓ To make appropriate recommendations to Government on how to fast-track the completion of the projects.

While speaking on the rationale for setting up the Committee, the President said the idea was not to victimize any contractor but to checkmate contractors that are unrepentant in inflating contracts, warning that contractors that are not good enough or contractors that perpetually inflate contracts should not be retained<sup>37</sup>.

The Committee commenced a nationwide audit of over 700 government projects and the primary aim of the audit was to determine the level of work done to ascertain whether it is commensurate with the amount paid to the contractors. The chairman of the Committee, Ibrahim Nuhu, stated that the audit was a fact-finding exercise aimed at improving the quality of life for Nigerians through speedy completion of projects. The Committee had requested the 26 Ministries to submit details of all ongoing and abandoned projects being handled by them and their parastatals<sup>38</sup>.

#### **4.3 ICPC AND CAPITAL PROJECTS PROBE**

The Chairman of Independent Corrupt Practices and Other Related Offences Commission (ICPC) Justice Emmanuel Ayoola launched an inquiry to determine how N796.7billion earmarked for capital projects in the year 2009 was spent. The Chairman remarked that in the current procurement practice in the country, corruption is at its peak. In MDAs, capital votes mostly end up in private pockets. In pursuance of the objective, the Commission had written to all MDAs requesting for details in respect of 2009 capital projects through its memo of 22<sup>nd</sup> April, 2010<sup>39</sup>.

However, one wonders whether the ICPC will be serious in the prosecution of public office holders who are found to be corrupt. This is because the records do not say much about government functionaries who have been successfully prosecuted and jailed on corruption charges since the ICPC was established a decade ago. What government functionaries did with the 2009 allocations is as important as any inquiry into the expenditure of preceding years. However, the Commission's actions to investigate the expenditure of allocations of capital votes raised questions of legitimacy

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<sup>37</sup> See the Nation Newspaper, Tuesday June 15 201; the President stated inter alia: *We must collectively build our country and one of the ways is to ensure that money that is spent, the value will reflect. The Due Process Office is meant to do it but I believe that one of the areas we need to talk about is quality control, there must be a way that when we spend money, we will be able to check to ensure that the project was properly executed.*

<sup>38</sup> Guardian, April 14, 2010.

<sup>39</sup> Taken from the editorial of Daily Trust newspaper of Thursday April 22, 2010.

on the government's due process mantra. It is taken for granted that every contract for a capital project must have passed the crucibles provided in the PPA, which on the face of it, is sufficient to guarantee value for money. It would be useful in resolving this issue to inquire whether ICPC's stance was informed by complaints from the Office of the Secretary to the Government of the Federation, BPP or an initiative based on its observation of facts<sup>40</sup>.

It was noted by the Commission that only 74 out of the 321 MDAs complied with its memo requesting information about capital budget execution. The Commission set up an ad-hoc Committee to verify the reports submitted by MDAs and indicated that those who failed to respond at the expiration of the deadline will be sanctioned.

#### **4.4 ABUJA-KANO MODERN RAIL \$500MILLION CONTRACT SCAM**

In December, 2010, the House of Representatives of the National Assembly commenced the probe on the alleged illegal diversion of \$500million meant for the construction of the modern Abuja-Kano rail. Part of the project was to provide facilities that would enhance the speed of the railway system from Abuja-Kano at 120-150 kilometres per hour. The project was awarded to a Chinese firm, but was abandoned. The money was said to have been diverted for the provision of security equipment for the Nigeria Police<sup>41</sup>.

#### **4.5 MASSIVE PAY FRAUD IN THE NIGERIA POLICE FORCE**

The Inspector General of Police (IGP) through the Ministry of Police Affairs engaged the services of a consultant to determine the appropriateness of staff/ personnel payments. It was discovered by the Consultant that the Police had been paying over 22,000 non-existent officers monthly. In pursuit of the Consultant's job, over N6billion was recovered in the three months period in which the firm was engaged. The actual staff roll as revealed by the firm was 275,000, but payments were made on the basis of 297,000, creating room for ghost workers. Other revelations were that several officers were continuously paid through a single bank account; multiple payments were occasionally made in a particular account, etc. However, no one was reported to have been prosecuted<sup>42</sup>.

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<sup>40</sup> Ibid

<sup>41</sup> Daily Trust Newspaper of Wednesday December 1, 2010.

<sup>42</sup> Daily Trust Editorial of Wednesday December 22 2010. In the same editorial, it was stated that: *Only recently, a big fraud was uncovered by a forensic audit report of the Nigeria Maritime Administration and Safety Agency (NIMASA). The consulting audit firm engaged by the Federal Ministry of Transport revealed that NIMASA Director-General who has now been replaced, colluded with two other directors of the agency to circumvent due process by splitting, over pricing and awarding contract worth billions of naira beyond their approval threshold.*

#### **4.6 RURAL ELECTRIFICATION PROJECT: CONTRACTORS SEEK N19.4BN PAYMENT AS OUTSTANDING ARREARS**

The Association of Rural Electrification Contractors of Nigeria sent a letter to the Federal Ministry of Power, the Rural Electrification Agency and the EFCC, seeking the payment of N19.4billion in old debts owed their members. Out of this amount, N10billion has been outstanding since 5years ago. In response and in admission of the debt owed, the Federal Ministry of Power on October 8, 2010, replied the association and pleaded for time to settle the indebtedness. This is a violation of section 37 PPA, which bothers on diligent and prompt payment for the procurement of goods, works and services and also made provisions for interest on delayed payments<sup>43</sup>.

#### **4.7 DUE PROCESS FAILURE IN THE AWARD OF CONTRACT FOR THE AUTOMATION OF AERONAUTIC INFORMATION SERVICES**

The House of Representatives Committee on Public Procurements summoned the Aviation Minister, Mrs. Fidelia Njeze and the Director General of the Nigeria Airport Management Authority (NAMA) over the award of a contract worth Euros 9.5million to a contractor at a price of Euros 12.2million. The contract was for the automation of Aeronautic Information Services (AIS) complete with FM-TDMA SATCOM/VSAT Network for 26 airports across the country and the National Emergency Management Authority Search and Rescue Centre, Abuja.

The Committee had ordered the stoppage of the work for failure of due process. The contract was awarded to MOCOM communications for Euros 12.2 million instead of AVSATEL which quoted Euros 9.5 million. The queries stemmed from a petition brought before it by the Managing Director of AVSATEL, Mr. George Elder, who alleged a breach of due process in the award of the contract to MOCOM Communications<sup>44</sup>.

In another development, during the trial of the former Minister for Aviation, Professor Babalola Borishade, a witness Reuben Omosigho testified that a fake or phantom Committee approved the contracts involved in the N5.6b aviation scam on the instruction of the Minister.<sup>45</sup> He confessed that he was the secretary of the phantom committee. It was also stated in court that there was no bidding for the contracts, all the people that signed as members of the committee were clerks in the Minister's office<sup>46</sup>.

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<sup>43</sup> The Punch Newspaper, Monday April 5 2010

<sup>44</sup> The Nation Newspaper, Wednesday, June 30 2012.

<sup>45</sup> Leadership Newspaper of Thursday, June 10 2010 at page 33.

<sup>46</sup> The Nation Newspaper of September 23 2010 at page 4.



#### **4.8 SENATE COMMITTEE ORDERS DR. MAGNUS KPAKOL'S ARREST OVER N2.4bn KEKE NAPEP CONTRACT**

The Senate Committee on Public Accounts issued a warrant of arrest for the National Coordinator of the National Poverty Eradication Programme (NAPEP), Dr. Magnus Kpakol over his failure to explain the utilization of N2.4bn on the purchase of 5,000 units of tricycles on behalf of government. This was sequel to investigations by the Committee following an audit query issued by the office of the Auditor-General for the Federation on procedural failures in the execution of the contract for the purchase of the tricycles.

Dr. Magnus Kpakol was unable to produce contract documents worth N2.4bn. The AGF's report suggested shoddy contract execution, breach of contract arising from the undue delay of project execution, non compliance with due process, and paying 100% of the cost of goods up-front before delivery. It also involved short-changing the treasury through the non collection of 5% VAT and 5% WHT estimated at N240million. From all indications, it appears as if there was a hidden, sharp and corrupt approach to the contract<sup>47</sup>.

#### **4.9 MULTI-BILLION ABUJA ROADS INFLATED CONTRACT SAGA**

The House of Representatives Adhoc Committee on the expansion of roads in Abuja also uncovered how road projects were allegedly inflated to the sum of N257 billion cumulatively. The revelation was made during a public hearing organized by the committee to review the contracts. The contracts, according to the committee, were split into four lots but had their rates increased above the financial bid submitted by all the contractors. In a remark during the interrogation of the contractors, Hon. Abdulrahman Kawu, said that in Lot One of the Abuja Airport Road Contract, the contractor quoted N58.6 billion but the contract was later awarded to him at N59.2 billion. In Lot Two of the same airport road, Kawu added that the contractor quoted N48 billion and the contractor later got it for N49 billion. "The same thing was applicable to the Abuja Outer Northern Expressway contract where the contractor quoted N64.9 billion and got N66.8 billion", he further disclosed. However, some of the contractors who spoke at the public hearing explained that some of the figures could not be confirmed because there might have been some calculation errors. Subsequently, they were asked to submit their responses in writing to the committee to reflect the claims of calculation errors<sup>48</sup>. However, at the end of the day, it turned out that the contracts were inflated.

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<sup>47</sup> See Vanguard Newspaper of February 24, 2010.

<sup>48</sup> ThisDay Newspaper of July 7 2010.

#### **4.10 N64BN RUNWAY: PRESIDENCY SLASHES COST AND LATER CANCELS PROJECT**

The Presidential Projects Assessment Committee (PPAC) made a bold statement when it reviewed the contract for the construction of the second runway at Nnamdi Azikiwe International Airport in Abuja and slashed off N13.5 billion from the original contract sum of N64 billion. While briefing newsmen, Ibrahim Bunu chairman of the Committee, noted that the reduction in the project cost would neither affect its quality nor the supporting facilities to be provided for the new runway, adding that PPAC reviewed the entire project design and contract scope before arriving at the cost reduction. The project which generated a lot of controversies and condemnations from a broad spectrum of the Nigerian society will now cost N49.6 billion and will still be executed by the same contractor, Julius Berger. The procurement of the runway was done by selective tender, instead of open competitive bidding required by law. Available information indicated that similar projects in Nigeria and outside Nigeria cost much less. In Djibouti, the runway cost N6.99b; in India and Helsinki N2.14b and N7.5b in Gombe state<sup>49</sup>. The House of Representative Committee on Aviation had earlier recommended that the contract be revoked after officials of the Federal Airport Authority of Nigeria (FAAN) and the BPP failed to justify the initial cost of the project before the Committee during a public hearing at the National Assembly. This decision by the Presidency however did not go down well with the House Committee, since it has passed a resolution that the project be suspended. The Senate also maintained the same position and both chambers of the National Assembly recommended to the Federal Government to cancel the contract on the ground that it did not follow due process. The lawmakers also advised that there should be open tendering for the project. The project was eventually cancelled by the President<sup>50</sup>.

#### **4.11 NFF'S FOREIGN COACH CONTRACT: FEE INFLATION SCANDAL**

Nigeria's bid to hire a foreign coach for the national team during the period under review also left in its trail bitter recriminations over alleged contract inflation by members of the Nigerian Football Federation (NFF). The scandal came to the fore shortly after the Swede, Mr. Lagarback, was announced as the new national team coach. One of the candidates hitherto favoured to clinch the job, Mr. Glenn Hoddle, and his agent Mr. John Shittu, reportedly alleged that the Englishman was denied the job because of his refusal to strike a deal with the panelists who handled the interview. The allegation is that Hoddle was asked to raise his asking price from \$900,000 to \$1.5 million so that he will keep \$1m and give \$500,000 as kick-back to the interviewers. While the veracity of the

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<sup>49</sup> The Nation Newspaper of March 22, 2010 at page 8. It was reported in Thisday of Friday June 11 2010 at page 33 that the Bucharest airport runway was recently installed for N17.5b; and a similar construction in Thailand for N18b.

<sup>50</sup> See the Guardian of Tuesday, May 25, 2010.

allegation was still being debated, Dr. Bukola Saraki, Kwara State Governor and chairman of Governors' Forum confirmed that Hoddle and Shittu actually complained to him that they failed to clinch the job of leading the Super Eagles to the South Africa 2010 World Cup finals in June because they did not part with \$500,000. Those who demanded the bribe, according to an editorial published on the scandal by the Punch Newspaper, had reportedly said that it is the only way to do business in Nigeria. Nonetheless, the NFF has not come out to accept or debunk the allegation<sup>51</sup>.

#### **4.12 MINISTER, NNPC SHUN HOUSE OF REPRESENTATIVES PROBE ON \$75M CONTRACT SCAM**

The Minister of Petroleum, Dr. Rilwan Lukman, alongside Minister of State for Petroleum, Odein Ajumogobia and Mohammed Barkindo, the Group Managing Director (GMD) of the Nigerian National Petroleum Corporation repeatedly shunned the summons of the House of Representatives over alleged contract scam of \$75 million for the Turn-Around Maintenance (TAM) of the Kaduna Refinery. This was done to the shock of the House of Representative Committee chairman on Petroleum (Downstream), Clever Ikisikpo and other members of the Committee. The chairman of the Committee observed that the Ministers and the GMD snubbed the invitation of the Committee on four occasions<sup>52</sup>. The contract agreement for Kaduna Refinery's TAM was stated to be in the sum of \$23 million, but the TAM had gulped over \$75 million without appropriation and due process. The chairman of the Committee pointed out that the NNPC unilaterally awarded the contract. The Committee members vowed to raise a motion in plenary compelling the Ministers to appear before the House on the matter or face the necessary sanctions<sup>53</sup>.

#### **4.13 SOUTH AFRICAN FIRM FINED N36BN FOR LNG BRIBERY SCAM**

Just like many unresolved bribery scams, the Liquefied Natural Gas bribery scam has remained unresolved in Nigeria. However, a South Africa firm based in Paris has been fined \$240 million (N36 billion) as a criminal penalty for its participation in the scheme to bribe Nigerian Government officials. The Company, Technip South Africa, is a global engineering, construction and services company which was trying to secure the \$6bn Engineering Procurement and Construction (EPC) Contract to build the LNG facilities on Bonny Island<sup>54</sup>.

At crucial junctures preceding the award of the contracts, a senior executive of Technip, KBR's former Chief Executive Officer, Albert Jack Stanley, and others met with

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<sup>51</sup> The Punch Newspaper Editorial of Thursday March 25, 2010.

<sup>52</sup> Vanguard Newspaper March 2, 2010

<sup>53</sup> Ibid

<sup>54</sup> Page 15, The Guardian Friday, July 2, 2010

successive holders of top-level offices in the executive branch of the Nigerian Government to ask the office holders to designate a representative with whom the joint venture should negotiate bribes for Nigerian Government officials. The joint venture paid approximately \$132 million to a Gibraltar Corporation controlled by Tesler and more than \$50 million to a Japanese trading company during the course of the bribery scheme. The South African firm was investigated and found guilty by the Department of Justice under the Foreign Corrupt Practices Act (FCPA) of the United States of America and was slammed with a fine of N36bn<sup>55</sup>.

#### **4.14 WILBROS INTERNATIONAL BOSS SEEKS REFUGE IN NIGERIA AFTER COMMITTING BRIBERY OFFENCE OF \$6MILLION**

The Chief Executive Officer of Wilbros International Incorporated, Mr. James Kenneth Tillery was declared wanted by INTERPOL for allegedly conspiring with one Paul Novak, a former Consultant to Wilbros to make more than \$6million corrupt payments to Nigerian and Equatorial Guinea Governments officials in order to obtain and retain gas pipeline construction and rehabilitation contracts from state owned oil companies. Mr. James was said to have fled to Nigeria after discovering that he was indicted and wanted for conspiracy, money laundering and foreign corrupt practices in the United States. The Federal Bureau of Investigation (FBI) on August 3, 2010 alerted the Inspector General of Police to arrest and bring him back to the United States<sup>56</sup>.

When Mr Tillery was apprehended in Lagos, he engaged lawyers who contended on his behalf that having naturalized as a Nigerian citizen in 2009, it would be unconstitutional for the Federal Government to grant the extradition request against its own citizen. In an originating summons filed by his lawyers, Tayo Oyetibo (SAN) and Chuks Nwachukwu, Tillery sought reliefs from the High Court, inter alia; "a declaration that the applicant, being a citizen of Nigeria by naturalization is entitled to his rights to personal liberty and freedom of movement as guaranteed by sections 35(1) and 41(1) of the 1999 constitution and therefore, cannot be deported or expelled from Nigeria". Also he sought an injunction restraining the Attorney-General of the Federation from taking any step towards surrendering him to the Government of the United States of America in pursuance of any request made by the Government of the United States of America for extradition of the applicant. But the Attorney General countered by stating that the offences for which the accused person is wanted in United States are serious offences punishable with 20 years imprisonment and for which his counterpart and fellow collaborator Paul Novak was already serving a prison term. Further, since no Nigerian

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<sup>55</sup> Ibid

<sup>56</sup> Page 3, People's Daily Newspaper, Tuesday, December 7, 2010

court has jurisdiction over the alleged offence, it was proper for the American jurisdiction to be given the opportunity of pronouncing on his guilt or innocence<sup>57</sup>.

#### **4.15 DAIMLER BRIBERY SCANDAL AND THE ASO ROCK CONNECTION**

A United States automobile production company Daimler, producers of Mercedes Benz cars was implicated in a multi-million dollar bribery payment scandal to top Nigerian government officials. This payment was made through a senior executive of the Anambra Motor Company (ANAMCO), a joint venture between Daimler and the Federal Government. The investigation carried out revealed that Daimler had, in violation of the US bribery laws engaged in systematic acts of corruption in 16 countries in the world, spanning about a decade, from 1998 to 2008. Such acts include showering foreign officials with millions of dollars and gifts of luxury cars to win business deals. According to the United States findings, it was discovered that in Nigeria, Daimler maintained a file labeled “Grellberschreitende Bestechungen” which translates to “cross border bribes”. The papers contained a memorandum dated January 21, 1999, from the then head of Finance which stated that Daimler charged the State House approximately 21 per cent over the wholesale price for the vehicles, parts and services supplied in Nigeria<sup>58</sup>.

Also contained in the US Court filings is the report that “in 1998, Daimler entered into a contract to sell vehicles to the Nigerian State House, and on October 5, 1998, the ANAMCO executive, on behalf of Daimler agreed to sell 23 new Mercedes Benz passenger vehicles to the State House for DM15, 882, 302. Additionally, a used MB600 Pullman limousine was armored and sold to the Nigerian State House for \$365,000. In connection with these sales, Daimler made E1, 427, 242, 65 on improper commission payments funded from third party accounts associated with ANAMCO. The understanding reached was that these funds would be passed on, in whole or in part, to Nigerian officials to secure the State House Contract. This procurement was aided by a “chief buyer” in the Villa. Also in May 1990, at the request of the ANAMCO executive, Daimler wired 800,000 deutsche marks from its accounts in Germany to a numbered Swiss bank account. The payment request, according to the court papers came from ANAMCO executive and the “referenced initials matched those of a then high-level executive branch official of Nigeria. The funds were debited from an ANAMCO TPA account upon the approval.” However, Daimler appeared unwilling to contest the charges and planned a plea bargain with American prosecutors, which will make the company pay fines of about \$185m to settle the case, which was filed at the Washington DC District Court<sup>59</sup>.

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<sup>57</sup> Ibid

<sup>58</sup> Page 15 of the Punch Newspaper, Thursday March 25, 2010

<sup>59</sup> Ibid

#### **4.16 WITHDRAWING CHARGES AGAINST JULIUS BERGER: THE ATTORNEY-GENERAL OF THE FEDERATION SPOKE IN TONGUES BUT RECOVERS \$170.8M**

Still on the Haliburton case, the Federal Government of Nigeria continued to show its irresponsibility and lack of accountability to the Nigerian people by its decision to withdraw the charges it filed against construction giant, Julius Berger. Julius Berger had admitted guilt and confessed to being the conduit for the distribution of bribes to suspects and accepted to pay a fine of \$29.5million in fines to the Federal Government. The Attorney-General stated that ‘after a further review of the investigation reports, as well as the totality of evidence available, I have approved the request of the prosecution team that charges against Julius Berger be withdrawn’<sup>60</sup>. In one breath, the Attorney-General negotiates fines to be paid by Julius Berger to the Federal Government and newspaper publications by Julius Berger to affirm its commitment to good corporate practices. One may ask; fines for what? In another breath, he proclaims Julius Berger innocent of the charges. There can be no better way to speak in tongues<sup>61</sup>.

In another development, at a media briefing, the Attorney-General disclosed that companies and individuals who engaged in high level bribe for contract scams have so far paid \$170.8m to the Federal Government as settlement for their crimes. The companies include Siemens, Haliburton, Julius Berger, Saipem and Technip<sup>62</sup>.

#### **4.17 SIEMENS STARTS A PURPORTED INTEGRITY INITIATIVE**

Following its involvement in a number of “bribe for contract” scams worldwide including Nigeria, Siemens agreed with the World Bank to invest \$100m over 15 years to promote clean markets. In Nigeria, it stated that it will be supporting the United Nations Global Compact and the Nigeria Economic Summit Group to implement a project called “building public trust through public-private dialogue on anti-corruption”. It was stated in a paid advertisement that<sup>63</sup>:

*The project aims to provide a wide variety of stakeholders in Nigeria with an opportunity to explore how specific collective action initiatives can create incentives for ethical business performance, and to discuss areas for further improvement. In so doing, the project aims to scale up existing anti-corruption efforts in Nigeria and provide participants with knowledge, skills, strategies and resources to promote ethical practices and transparency in business operations within Nigeria and in international cross sectoral relations. The project will emphasise the role of local actors in Nigeria, engaging and building capacity of local stakeholders who are faced with corruption in their routine transactions and business relationships.*

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<sup>60</sup> See the Editorial of Thisday Newspaper of Friday October 8 2010.

<sup>61</sup> Ibid

<sup>62</sup> Thisday, December 23, 2010 at page 8

<sup>63</sup> The Guardian, Friday December 10, 2010 at page 25

This appears to be a clear case of a company immersed in corrupt practices, and having been found to be so immersed by courts, paying for a project to teach others how to avoid corruption. Wonders shall never end!

#### **4.18 MARK FAULTS NNPC'S \$35B CHINESE CONTRACT**

Senate President, Senator David Mark faulted the decision of the NNPC to award \$35 billion contract to a Chinese company. Mark made the observation while commenting of the award of contract for the construction of three additional refineries in the country to a Chinese firm. He hinged his stand on the premise that the Chinese do not possess the best technology in refinery construction. He noted that it is only in Nigeria that a foreigner can come in with a briefcase, with no idea but having access to the corridors of power and be sure of getting a juicy contract, despite due process. The Senate President lamented that almost \$600 billion have left the shores of Nigeria in the last 50 years. He asked, "When will we bring the money back either by incentives or by guaranteeing security of investments of Nigeria? Mark stated that Nigerian engineers should have been encouraged to do the job<sup>64</sup>.

#### **4.19 IMPORTING PLASTIC DUST BINS FROM BRITAIN**

It was reported that the Executive Council of the Federation approved the award of a contract for the production of 60,000 dustbins to a British plastic company at the cost of N927.6million. As announced by the former Minister of Information, Professor Dora Akunyili, this was purportedly done to maintain a healthy and clean Abuja, the Federal Capital Territory. The award raised a lot of dust considering that Nigerian plastic manufacturing companies were not contacted and were not aware of the request for the manufacture of the dustbins as at the time the contract was approved by EXCoF. This contradicted government's policy of encouraging industrialization and job creation if such rudimentary products were surreptitiously awarded to foreign suppliers<sup>65</sup>. According to a director of one of the plastic manufacturing companies, the British dustbins are a geek gift and a shame to Nigeria on the occasion of its 50<sup>th</sup> independence anniversary<sup>66</sup>.

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<sup>64</sup> The Nation Newspaper of June 15, 2010 at page 60

<sup>65</sup> Daily Trust Newspaper, November 2, 2010 and the Nation Newspaper, Wednesday, October 13 2010

<sup>66</sup> Ibid, Daily Trust - the remark by Ewusanmi Jacob

## Chapter Five

### CHALLENGES CONFRONTING PUBLIC PROCUREMENT IN NIGERIA

#### 5.1 IDENTIFICATION OF ISSUES

In spite of the modest level of successes recorded so far in the implementation of the PPA, there have been a number of challenges bedeviling the procurement process in Nigeria. Some of them are identified and analysed in this chapter.

#### 5.2 ABANDONMENT OF PROJECTS AFTER COLLECTING MOBILISATION FEE

There are many instances of projects abandonment by contractors after collecting mobilization fees thereby leading to losses for the treasury. During a visit to the Speaker of the House of Representatives, Dimeji Bankole, the Auditor-General for the Federation, Samuel Ukura disclosed that contractors abandoned many federal projects shortly after collecting mobilization fees. He advised the Federal Government to expunge the provision for mobilization fees from the PPA. He wants contractors to source their funds after winning bids. This will be a demonstration of their capacity and capability to undertake the contractual assignment. This would result to a high level of commitment, dedication and effectiveness in the execution of contracts for goods works and services at the federal level<sup>67</sup>. But this challenge can be resolved without stopping the payment of mobilisation fees by MDAs. By section 35 of the PPA, the payment of mobilization fees is supported:

*(a) in the case of National Competitive Bidding – an unconditional bank guarantee or insurance bond issued by an institution acceptable to the procuring entity; and*

*(b) in the case of International Competitive Bidding – an unconditional bank guarantee issued by a banking institution acceptable to the procuring entity.*

Further, section 36 of the PPA states that:

*The provision of a Performance Guarantee shall be a precondition for the award of any procurement contract upon which any mobilisation fee is to be paid, provided however it shall not be less than 10% of the contract value in any case or an amount equivalent to the mobilisation fee requested by the supplier or contractor-whichever is higher.*

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<sup>67</sup> The Guardian, Thursday, December 9, 2010.



Performance is the fulfillment or accomplishment of a contract according to its terms thereby relieving the duty holder of all further obligations and liabilities under the contract. A Guarantee on the other hand is an undertaking by a guarantor assuming responsibilities for the performance of a particular contract<sup>68</sup>. It is like a performance bond which guarantees that the contractor will fully perform the contract and guarantees against breach of contract in the sum mobilised. The Performance Guarantee which will be valid until the project is completed will be called in by the government in the event the contractor fails to perform. Thus, in any project started after the entry into force of the PPA, if the contractor absconds after collecting mobilization fees, the government would suffer no loss unless the procuring entity did not obtain the necessary performance guarantees.

### **5.3 POLITICAL INTERVENTION**

The involvement of political heads in the procurement process was the order of the day before the advent of the PPA, when award of government contracts at all levels, was largely characterized by discretionary decision, influence peddling, sycophancy and abuse of public office. There are still allegations that the old order is yet to completely give way to the new order proposed in the PPA. This sad development has been of great concern to the Bureau and all stakeholders including Nigeria's international partners and development agencies because of its disruptive backlash on the implementation of the Act. Against this backdrop, the need for the Federal Government to depoliticize the procurement process and provide the necessary platform that will professionalise procurement operations cannot be over emphasized. It is imperative to recall that Nigeria's Country Procurement Assessment Report June 2000 had warned against this. The Report had recommended inter alia as follows:

*“Once a law on public procurement has been enacted and regulations, manuals and standard bidding documents issued, carrying out public procurement including contract awards will clearly be an administrative function, the mechanics of which should be disengaged from the executive. Currently, high level politicians such as Governors, Ministers and Commissioners are operationally involved in the procurement process. However, under the reformed procurement system, high level politicians should maintain their overall managerial oversight responsibilities while leaving administrative and operational matters (including procurement) to the civil servants.”*

The Financial Regulations designates the Permanent Secretary or his equivalent in Parastatals as the Accounting Officer charged inter alia with ensuring prudence in the expenditure of public funds; is responsible for safeguarding public funds and ensures the regularity and propriety of expenditure under his control; observe and comply fully

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<sup>68</sup> See Black's Law Dictionary, Centennial Edition at pages 705, 1137 and 1138.

with the checks and balances spelt out in the existing financial regulations which govern receipts and disbursements of public funds and other assets entrusted to his care and shall be liable for any breach thereof. Accountability does not cease by virtue of his leaving office and he may be called upon at any time to account for his tenure as Accounting Officer<sup>69</sup>. Yet the same Financial Regulations designates the Minister as the Political Head of a Ministry while a Parastatal or extra ministerial office shall be led by the chairman or other positions as defined in the extant law<sup>70</sup>. In Regulation 111, it is stated that should any directive from a Political Head result in unauthorized expenditure or contravene the extant rules and regulations, the Accounting Officer shall be responsible for such un-authorized expenditure unless the report had been made by the Accounting officer to the Head of Service in the case of Ministries/Extra Ministerial offices or to the Minister in the case of Parastatals.

The Financial Regulations gives the responsibility to the Political Head to supervise and control the activities of the Ministry, Agency or Parastatal<sup>71</sup>. The position of the Minister as the one who ensures the implementation of the political programmes of government as they relate to the Ministry/Extra Ministerial Office and other arms of government and ensuring compliance with extant rules and regulations and policies of the executive further contradicts the position of the Accounting Officer as the person really in charge<sup>72</sup>. Thus, there is an inbuilt tension between the position of the Minister as the Political Head and the Accounting Officer as one who will be liable in the event of a breach or non compliance with the Financial Regulations and the laws and this tension is carried over to the procurement arena which is a major conduit for corruption.

#### **5.4 ACCOUNTING OFFICERS AND SPECIALISATION**

Accounting Officers who should have overall coordination of the Ministry are appointed for Ministries and Extra Ministerial Departments without taking cognizance of their fields of specialization and competence. Thus, a civil servant who is a lawyer may be asked to go and head the Ministry of Works which requires in-depth engineering knowledge to be on top of the job and to effectively make inputs and supervise the Ministry. Yes, he may know all the rules of the service by the beat of his heart but something is simply missing in the context. The result is that the person who is charged with personal liability in the event of government not realising policy objectives is not in a position to know when the job is properly done or when value for money has been thrown overboard. Although, he may have qualified engineers to advise him, he is not in position to know when he has been led astray by the advice of the experts who may have an interest to serve.

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<sup>69</sup> Chapter 1, Part 2, Regulations 106 and 107

<sup>70</sup> Regulation 110

<sup>71</sup> Regulation 112 (i)

<sup>72</sup> Regulation 112 (ii) (a) and (b)

## **5.5 LACK OF SUPPORT FROM THE STATES**

Procurement reforms are bogged down by the seeming absence of support from the states, particularly in the replication of the Act at the state and local government levels. Although there are 36 States, one Federal Capital Territory and 774 local government areas in the Federation, it is still one economy. What happens at the various tiers of government affects the overall national procurement outcome. The PPA can be effectively implemented if it is replicated at the state and local government levels, where a very huge chunk of the nation's resources are expended. As at the close of 2010 fiscal year, only about six out of the 36 states in the country have passed their versions of procurement reforms into law.

## **5.6 INEFFECTIVE EXERCISE OF OVERSIGHT POWERS BY THE NATIONAL ASSEMBLY**

The Constitution of the Federal Republic of Nigerian 1999 grants oversight powers over the management of public funds and the execution and administration of laws to the National Assembly in sections 88 and 89. This is to be done for the purpose of making laws with respect to any matter within its legislative competence and to correct any defects in existing law. The power is also granted to NASS to expose corruption, inefficiencies and waste in the execution of laws within its legislative competence and in the disbursement or administration of funds appropriated by it<sup>73</sup>. The two chambers of the National Assembly have constituted sectoral committees which should oversight the various MDAs of government and hold them accountable over the management of resources entrusted to them. These resources are not just about monies but also the powers to release moneys, take and influence actions, regulate other agencies, investigate and prosecute offenders and generally perform the duties of the executive as envisaged in section 5 of the Constitution. However, this power has not been effectively exercised and has not been effectively channeled to improve the procurement process. Further, the executive views legislative interventions as an attempt to usurp their constitutional powers and holds legislative resolutions in contempt, reminding the legislature at every turn that their resolutions are not binding.

On the other hand, there are allegations of underhand and corrupt practices against members of the legislature in the exercise of their oversight functions. It is generally believed that oversight functions provide members of the legislature with an opportunity to extort money from MDAs who generally are derelict in the performance of their duties. Thus, an unholy romance and relationship develops between the MDAs and the committees of the National Assembly that are supposed to provide oversight over them.

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<sup>73</sup> Section 88 (2) (a) and (b) of the Constitution.

The result is that the public is shortchanged and the high priests of due process become compromised and can no longer call violators of the law to order.

## **5.7 TENSION BETWEEN CHARTERED INSTITUTE OF PURCHASING AND SUPPLY MANAGEMENT OF NIGERIA (CISPM) AND THE BUREAU**

There is unnecessary tension between the BPP which is the regulatory arm of federal public procurement and the Chartered Institute of Purchasing and Supply Management of Nigeria<sup>74</sup> (CIPSMN). Section 1 of the CISPM enabling law provides as follows:

*“Establishment of the Chartered Institute of Purchasing and Supply Management and its functions:*

- (1) There is established a body to be known as the Chartered Institute of Purchasing and Supply Management of Nigeria (in the Act referred to as “the Institute”) which shall be a body corporate under that name and be charged with the general duty of –*
  - (a) determining and reviewing, from time to time, the academic standards, knowledge and skills that shall be attained by persons seeking to qualify as registered members of the Chartered Institute of Purchasing and Supply Management (in this Act referred to as “the Professional”);*
  - (b) ensuring that its members maintain a reputable and high standard of behaviour expected of any professional in purchasing, procurement, stores, materials, warehouse, logistics management or supply chain management in Nigeria and other parts of the world;*
  - (c) providing for the training, education and examination of persons desiring to become professional procurers according to the provisions of this Act whether in Nigeria or abroad;*
  - (d) regulating the discipline and professional conduct of its members;*
  - (e) promoting and projecting the welfare of its members both in Nigeria and abroad;*
  - (f) arranging conferences, seminars, symposia and meeting for discussion of supplies and related matters, reading of papers and delivery of lectures, publishing copies of abridgment of papers, books, lectures, records and other memoranda instilling high standard of professional ability and knowledge by means of periodic issue of journals of the Institute and to organise post qualification course for its members; and*
  - (g) performing such functions as are incidental to the objects or as the Council may deem necessary for the attainment of all or any of these objects.*

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<sup>74</sup> Cap.C53, Laws of the Federation of Nigeria, 2004.

When these provisions are read against the background of the functions and powers of the BPP, the logical interpretation is that there should be collaboration between the BPP and the Institute. However, what is clear to every dispassionate observer is an undeclared war between the BPP and the Institute. The end result is that the benefits of the collaboration are lost and the Nigerian people are the poorer for it.

## **5.8 INSTITUTIONAL RESISTANCE**

As it is common with change anywhere in the world, procurement reforms in Nigeria have continuously grappled with the challenge of convincing and co-opting those who would want to continue with the old order of doing things primarily because of their selfish gains. This group have been resisting the desired change that should accrue from the implementation of the PPA. They are still involved in awarding contracts to their friends and relatives as well as exerting misplaced discretion on the way public funds are expended. The Bureau alleged that such persons who are still within or outside the system have resorted to blackmailing, intimidating and doing everything to discredit the BPP in order to undermine its role. At the initial stage, the complaint by MDAs was that the BPP was delaying contract awards leading to poor capital budget implementation but that was later discovered not to be true.

Instances of deliberate delay by MDAs and tardiness in the processing of procurements are part of the culture of resisting the procurement reform agenda. For instance, the Federal Ministry of Works advertised for submission of tenders for technical and financial proposals for the development and installation of road performance monitoring and management system on Monday December 20, 2010<sup>75</sup>. On the same date, the Federal Roads Maintenance Agency advertised for invitation to tender for the procurement and installation of VSAT, software for road surface monitoring and other related equipment<sup>76</sup>. So many questions arise from these late advertisements. First, these are projects in the 2010 budget; why wait until virtually the end of the year to call for tenders? If the financial year ends on December 31, when will these tenders be processed, the winner chosen and the contract implemented?

## **5.9 REPEATED VIOLATIONS OF THE ACT AND RELUCTANCE TO SANCTION OFFENDERS**

The quarterly and yearly Budget Implementation Reports prepared by the Budget Office of the Federation in compliance with section 30 of the Fiscal Responsibility Act records the same kind of violations since the year 2008. These violations include:

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<sup>75</sup> Page 56 of Thisday Newspaper of that date

<sup>76</sup> Page 60 of Thisday Newspaper of that date

- ✓ Poor project conceptualization, design or planning practices by MDAs. This practice has largely limited the beneficial impact of the capital votes releases as exhibited through:
- ✓ The introduction of *projects without feasibility studies, engineering designs or appropriate costing* in MDAs' annual budgets.
- ✓ Series of poorly implemented projects now being *redesigned having their scope amended, having their implementation stalled and/or requiring cost variation approvals.*
- ✓ Stalled Projects arising from *project site compensation issues.*
- ✓ Furthermore, some projects were proposed for and sited on *difficult terrain* often requiring additional work outside the contract scope. This frequently results to requests for cost variations, stalling of projects implementation or the extension of completion periods where cost variations are approved
- ✓ Poor project monitoring by MDAs.
- ✓ MDAs' project status data inconsistencies.
- ✓ Poor MDAs' representations at project sites.
- ✓ Poor project ownership by local communities which often lead to the neglect of completed projects and a hostile attitude towards contractors.

Most of the above issues and challenges arise because the PPA and the rules made by the Bureau were ignored by the procuring entities or the rules were very poorly implemented. If the steps in procurement planning are diligently followed, some of the challenges will be overcome. Government has issued a circular against awarding procurements without feasibility studies and using preliminary designs. Yet, the practice continues repeatedly. That these challenges come up quarter after quarter, and year after year, implies that monitoring and evaluation which should facilitate improvements and the system correcting itself through learning from mistakes is not effective.

The reluctance to implement sanctions by the Bureau encourages violations since the deterrent effect of sanctions is missing from the law. The law is now treated like ropes of sand which binds nothing. It appears that the BPP is more inclined to use persuasion and capacity building to stem the tide rather than applying sanctions. Capacity building cannot imbue anyone suffering from integrity deficit with a new found integrity. What the person requires is the full weight of the law.

## 5.10 DEARTH OF LITIGATION AND PRECEDENTS UNDER THE PPA

Despite the implementation of the Act, it appears that lawyers in the Ministry of Justice and even members of the Judiciary hardly advert their minds to its provisions in the drafting of charges and consideration of cases of public servants and private stakeholders who violate contract award procedures. Lawyers still fall back on the old Criminal and Penal Code provisions which were deemed inadequate to protect the mischief in the system leading to the enactment of the PPA. As such, the PPA has hardly been tested before the courts of first instance and appeal. It would appear that the legal community needs more sensitisation on the provisions of the PPA.

## 5.11 POOR PROJECT EXECUTION AND SUPERVISION

The lack of capacity or deliberate refusal on the part of MDAs to effectively monitor and supervise the execution of capital projects accounts for poorly executed federal projects still scattered all over the country. This development is however not in tandem with the objectives of the Act. It therefore reinforces the need to continue professional training of procurement officers in order to close competence gaps and strengthen institutional capacity in this regard. It further calls for sanctions for integrity deficits.

## 5.12 LATE PASSAGE OF ANNUAL BUDGET

The late passage of the annual national budget which has regrettably become a recurring decimal in the nation's fiscal governance remains a major challenge to the implementation of the PPA. The BPP has continued to reiterate the need for early passage of the budget to fast-track the award and execution of capital projects.

## 5.13 AREAS OF ABUSE IN PROCUREMENT PROCESS

The BPP in the Procurement Journal identified the following areas of the abuse of the PPA<sup>77</sup>.

**Table 6: Areas of Abuse in Procurement Process**

S/N	MDAs	AREAS OF ABUSE	PERCENTAGE (100%)
1	EDUCATION	1. ADVERT 2. LOWEST BIDDER/ EVALUATION	10% 60%
2	HEALTH	1. PRE-QUALIFICATION	60%
3	PETROLEUM	1. DELAYED PAYMENT	10%
4	POWER	1. PRE-QUALIFICATION 2. LOWEST BIDDER/ EVALUATION 3. DELAYED PAYMENT	10% 40% 20%
5	WORKS, HOUSING & URBAN	1. ADVERT	10%

<sup>77</sup> *Public Procurement Journal*, October –December 2010 published by BPP at page 74.

	DEVELOPMENT	2. LOWEST BIDDER/ EVALUATION	10%
6	TRANSPORTATION	1. POST-QUALIFICATION	10%
7	AVIATION	1. ADVERT 2. PRE-QUALIFICATION 3. LOWEST BIDDER/EVALUATION	10% 10% 10%
8	NIGER DELTA AFFAIRS	1. ADVERT	10%
9	FCTA	2. ADVERT 3. LOWEST BIDDER	10% 60%
10	INTERIOR	-	-
11	OFFICE OF HEAD OF SERVICE	1. ADVERT	10%
12	INFORMATION	-	-
13	TOURISM & CULTURE	-	-
14	ENVIRONMENT	1. PRE-QUALIFICATION 2. LOWEST BIDDER/ EVALUATION	20% 10%
15	POLICE AFFAIRS	-	-
16	PRESIDENCY	1. PRE-QUALIFICATION 2. LOWEST BIDDER/ EVALUATION	20% 40%
17	AGRICULTURE	-	-
18	FINANCE	1. PRE-QUALIFICATION	10%
19	DEFENCE	-	-
20	MDG	-	-
21	JUSTICE	-	-
22	WATER RESOURCES	1. ADVERT 2. LOWEST BIDDER/EVALUATION 3. DELAYED PAYMENT	20% 30% 10%
23	WOMEN AFFAIRS & DEVELOPMENT	1. LOWEST BIDDER/ EVALUATION	10%



## Chapter Six

### **CONCLUSIONS AND RECOMMENDATIONS**

#### **6.1 CONCLUSIONS**

The refusal of the President to constitute the National Council on Public Procurement is a clear demonstration of impunity and disregard for the Constitution and other relevant laws empowering the President to so constitute the Council. A President that is sworn to uphold all the laws of the land decides to pick and choose which laws to enforce and obey. The National Assembly on its part has refused to take deliberate and targeted steps to compel the President to constitute and inaugurate the Council. There is a clear conspiracy on the part of Nigeria's leaders in the executive and legislature to compromise the provisions of the law and thereby deprive the Nigerian people of the full benefits of the law in terms of improved service delivery and improvements in their welfare and conditions of living. Nigeria cannot develop if its procurement law and policy are observed in the breach.

The BPP continued with activities to implement the PPA including the introduction of a procurement planning software, series of broad based capacity building programmes, procurement audits and information dissemination. It also engaged in the development and maintenance of a national database of contractors and service providers and activated the recourse mechanism to ensure that complaints are resolved to the satisfaction of all parties. However, the public perception of stakeholders based on reported procurement frauds is that more needs to be done to block violations of the law. Also, during the period under review, CSOs engaged in awareness raising, capacity building, observation and monitoring of the PPA.

The 2010 budget came on stream shortly after the end of first quarter of the 2010 fiscal year and had aggregate expenditure of N4,608 billion, out of which N1,854 billion was allocated to capital spending, N497.07 billion to debt service, N180.28 for statutory transfers and N2,077 billion for recurrent non debt expenditure. Meanwhile, the capital budget of 2009 was rolled over to the end of the first quarter of 2010 in order to create enough time for the implementation of the capital projects in the 2009 Appropriation Act. Implementation of the capital budget that will lead to procurement of goods and services was poor, only 36.41% of the budget was utilized at the end of the financial year on December 31 2010. The recurring challenges for capital budget implementation were ever present including poor project conceptualization, projects without feasibility studies, stalled projects arising from land and compensation issues, poor resource allocation,

non release of capital budget fund and tardiness on the part of the leadership of MDAs. A study undertaken by the House of Representatives Committee on Public Procurement showed the weak link between the components of the Development Agenda notably the 7-Point Agenda and the MDGs and the implementation of the budget. It identified a plethora of project implementation challenges.

There were a lot of contract scams and controversies during the year. The main issues include the decision of the ICPC to probe contract awards and implementation for the 2009 financial year, the Abuja-Kano Modern Rail funds controversy, NAPEP contract scam under Magnus Kpakol, the Abuja Airport Runway scam and the inflation of Abuja Road contracts. Others include the scam on the contract for Aeronautic Information Service and massive pay fraud in the Nigeria Police. In procuring the services of a foreign coach, there were allegations of underhand dealings which were not denied by the sports authorities; echoes of the LNG bribe reverberated; Daimler Benz bribery scandal and the controversial withdrawal of charges by the Attorney-General of the Federation against companies that participated in massive bribe scams. The contract for the importation of plastic dust bins from Britain raised a lot of dust considering that the local capacity to manufacture the dust bins was available in the country. And this is coming from a government that claims to be committed to job creation and improvements in capacity utilization of industry. One thing was missing in these scams - the law as the command of the sovereign backed by sanctions was on the retreat. There were violations of the law not followed by sanctions.

The challenges confronting the procurement system and process continued unabated during the period under review. Contracts were abandoned after collection of mobilisation fees. There were echoes of political interventions and the tension between the position of the Minister as the Political Head and the Permanent Secretary as the Accounting Officer still continued under the Financial Regulations. The exercise of constitutional oversight powers by the National Assembly over public procurements appeared weak and did not achieve the desired results of enhancing value for money in the procurement process. The tension between the Chartered Institute of Purchasing and Supply Management of Nigeria and the BPP continued during the period under review. One had expected collaboration between the Institute and the BPP considering the Institute's mandate the regulatory powers of the BPP. Institutional resistance led to repeated violations of the PPA, while there was reluctance to sanction offenders. Prosecutors appeared reluctant to draft charges under the PPA and as such there were little or no judicial precedents to fall back on. The BPP identified areas of procurement abuse to include advertisements, pre-qualification, lowest bidder evaluation, post qualification, delayed payment, etc.

## **6.2 RECOMMENDATIONS**

To achieve the goal of enhanced implementation of the PPA, the following recommendations are apposite.

### **6.2.1 The President**

The President should demonstrate his commitment towards the successful implementation of the PPA by taking the following steps:

- ✓ Constitute and inaugurate the National Council on Public Procurement.
- ✓ Stop the weekly charade of contracts approval by EXCoF.
- ✓ Use the immense powers of the Presidency to address the systemic challenges undermining the implementation of the PPA.
- ✓ Adopt measures towards preventing late presentation and approval of the budget and its effect on implementation of capital budget. This can be achieved by prevailing on the agencies working on the preparation of the Medium Term Expenditure Framework (MTEF) and the annual budget to expeditiously complete their work to fast-track the process.
- ✓ Ensure through the Minister of Finance the timely release of appropriated funds.

### **6.2.2 National Assembly**

The National Assembly should consider the following recommendations.

- ✓ Ensure early passage of the national budget in order to enhance implementation of the capital budget.
- ✓ Use legislative instruments to compel the President to constitute and inaugurate the National Council on Public Procurement.
- ✓ Intensify oversight over capital budget implementation across the country.
- ✓ Set minimum capital budget implementation targets for the executive.
- ✓ Lead by example by ensuring that it strictly adheres to the PPA in the implementation of its procurement activities.

### **6.2.3 The Bureau**

The Bureau as the regulator should consider the following steps:

- ✓ Take punitive measures against abuses in the public procurement processes by Accounting Officers and staff of MDAs with a view to enhancing compliance with the provisions of the PPA and facilitate capital budget implementation.
- ✓ Judiciously invoke its powers to debar suppliers, contractors and service providers that defiantly contravene the PPA.
- ✓ To continue and sustain the on-going series of capacity building and training for stakeholders in the implementation process as well as public sensitization campaigns on the Act.
- ✓ Specifically organize capacity building on the provisions of the PPA for the Ministry of Justice and the Judiciary.
- ✓ Design a challenge fund in collaboration with development partners to encourage states to adopt and implement model procurement laws similar to the PPA.
- ✓ Design a challenge fund in collaboration with development partners to encourage federal MDAs through a benchmarking exercise to fully implement the Act.
- ✓ Constantly upgrade and update public procurement records posted on its website as stipulated by the Act.
- ✓ Fast-track the completion of the on-going procurement audit of MDAs.
- ✓ Prevail on the MDAs to give a reasonable notice of not less than a week to CSOs invited to monitor bid opening sessions; grant access to procurement plans, bid solicitation documents; bid opening documentation and information on contract awards to CSOs to enable them properly monitor procurement proceedings.

#### **6.2.4 Ministries, Departments and Agencies**

MDAs should consider the following recommendations.

- ✓ Utilise procurement monitoring and evaluation reports to draw lessons, imbibe best practices and benchmark experiences with the “best in class”.
- ✓ Ensure that a proper and detailed procurement plan is put in place as a guide for all their procurement activities.
- ✓ Ensure timely payment of contractors who have worked and delivered according to contract terms.
- ✓ Prevent unnecessary delays in getting contract agreements prepared and signed.

- ✓ Ensure proper screening of the technical and financial capabilities of contractors during the pre-qualification stage.
- ✓ Completion of all feasibility studies, appropriate costing, engineering designs and acquisition of sites before award of procurement contract.
- ✓ Ensure that beneficiaries and communities are consulted and carried along in the location of projects in their communities in order to garner adequate buy-in and support that will guarantee a sense of ownership by the beneficiaries.
- ✓ Ensure proper project monitoring and interface with contractors and service providers.

### **6.2.5 Civil Society Organisations**

Civil Society Organisations should consider the following recommendations.

- ✓ Monitoring and evaluation should be intensified in order to influence compliance with the provisions of the Act.
- ✓ Promote media campaigns and advocacy for increased citizens' participation in the monitoring of capital budget implementation.
- ✓ Raise the bar in the implementation of the PPA by engaging in detailed studies and action research on procurement processes.
- ✓ Engage in capacity building of the populace for a better understanding of procurement reforms.
- ✓ The Media should engage in follow-ups on reported procurement frauds and other related matters to ensure that violations are redressed.