

PUBLIC PROCUREMENT REPORT 2011



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(Mainstreaming Social Justice In Public Life)

Public Procurement Report 2011

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Table Of Contents

| | |
|---|-----------|
| 1. Chapter One: Introduction | 1 |
| 1.1 Introduction | 1 |
| 1.2. Goal | 3 |
| 1.3. Implementation Strategies | 3 |
| 1.4. Executive Summary | 3 |
| | |
| 2. Chapter Two: Public Procurement Policy Regulatory Agencies And Developments In Procurement Policy | 8 |
| | |
| 2.1. The National Council On Public Procurement | 8 |
| 2.2. The Wednesday Charade- The Executive Council of the Federation as a Contract Approving Authority | 11 |
| 2.3. Report Of The Presidential Project Assessment Committee | 12 |
| 2.4. The Template Team – Reducing The Cost Of Procurement | 14 |
| 2.5. Bid To Combat Abandoned Projects Through The Contract Continuity Bill | 15 |
| 2.6. The Bureau Of Public Procurement | 15 |
| 2.6.1. Celebrating a Decade of Public Procurement Reform | 16 |
| 2.6.2. Savings from Ministries, Departments and Agencies | 18 |
| 2.6.3. And the World Bank Adopts BPP's Revised National Standard Bidding Documents and Request for Proposals | 18 |
| 2.6.4. National Database Of Contractors | 19 |
| 2.6.5. Capacity Building for MDA Staff | 19 |
| 2.6.6. Public Sensitisation and Information Dissemination | 20 |
| 2.6.7. Settlement of Procurement Disputes | 21 |
| 2.6.8. Capital Budget Monitoring | 21 |
| 2.7. NESG Advocates Full Implementation Of The PPA | 21 |
| 2.8. Using Procurement To Create Jobs | 22 |
| 2.9. Official Patronage For Made In Nigeria Products | 23 |
| | |
| 3. Chapter Three: The Implementation of 2011 Capital Budget | 24 |
| 3.1. The 2011 Budget | 24 |
| 3.2. First and Second Quarter Budget Implementation | 24 |
| 3.3. Third Quarter Budget Implementation | 26 |
| 3.4. Fourth Quarter Budget Implementation | 28 |
| 3.5. Release Of Funds For Capital Budget Implementation | 29 |
| 3.6. Sample Capital Projects In Focus | 30 |
| 3.6.1. Abuja Lokoja Road | 30 |
| 3.6.2. The Warri-Kajama Section Of The East West Road | 31 |

| | |
|---|-----------|
| 3.6.3. Extension/Expansion Resurfacing Of Enugu Airport | 31 |
| 3.6.4. Rehabilitation Of Rail Tracks | 31 |
| 3.6.5. The Biu Water Scheme | 32 |
| 3.6.6. Katsina Wind Farm | 32 |
| 3.6.7. Afam Power Plant Repairs | 32 |
| 3.6.8. The Effect of 2011 Election on Budget Implementation | 33 |
| | |
| 4. Chapter Four: Scams And Controversies In The Contract And Procurement Process | 34 |
| 4.1. Unverifiable Documentation | 34 |
| 4.2. The True State Of The Second Niger Bridge | 34 |
| 4.3. The Planned Return Of Toll Gates | 35 |
| 4.4. Echoes Of Haliburton | 36 |
| 4.5. The N9bn Procurement Case Against Dimeji Bankole | 37 |
| 4.6. ICPC To Prosecute Lake Chad Institute Boss Over Contract Fraud | 37 |
| 4.7. Controversies Over Calabar Port Dredging | 38 |
| 4.8. The Customs Single Window Contract | 39 |
| 4.9. Public Procurement And Federal Character | 39 |
| 4.10. Face-Off Between The University of Jos and Its Governing Council | 39 |
| 4.11. Abandoning Projects After Collecting Public Money | 40 |
| 4.12. EFCC Probes Njeze, FAAN Over Alleged N25bn Scam | 40 |
| 4.13. EFCC To Probe NDDC Over Alleged N31.9bn Fraud | 41 |
| 4.14. The Senate Privatization Committee Report | 42 |
| | |
| 5. Chapter Five: The Role Of Civil Society Organisations | 45 |
| 5.1. Civil Society Organisations | 45 |
| 5.1.1. Monitoring, Research and Reporting | 45 |
| 5.1.2. Ensure Compliance | 46 |
| 5.1.3. Increased Capacity Building and Sensitization | 47 |
| 5.1.4. Networking | 47 |
| | |
| 6. Chapter Six: Challenges In Public Procurement | 48 |
| 6.1. Identification of Challenges | 48 |
| 6.2. Capital Budget Monitoring | 48 |
| 6.2.1. National Economic Intelligence Committee | 49 |
| 6.2.2. National Planning Commission | 49 |
| 6.2.3. Budget Office of the Federation | 50 |
| 6.2.4. Strengths of the Capital Budget Monitoring Exercises | 50 |
| 6.2.5. Challenges of the Budget Monitoring Exercises- BOF Mainly in Focus | 51 |
| 6.3. Corruption In Vogue And Lack Of Integrity | 54 |
| 6.4. Capacity Challenges | 54 |

| | | |
|-----------|--|-----------|
| 6.5. | Political Interference | 55 |
| 6.6. | The Perverted Legal System | 55 |
| 6.7. | Late Passage Of Annual Budget | 55 |
| 6.8. | 12 Months Budget Cycle Versus 3-5 Year Project Life Span | 56 |
| 6.9. | Too Many Projects Versus Limited Resources | 56 |
| 6.10. | Poor Project Execution And Supervision | 56 |
| 6.11. | Micro Managing Of Parastatals By Ministries | 57 |
| 6.12. | Tardiness And Late Payments To Contractors | 57 |
| 6.13. | Lack Of Grassroot Awareness On Procurement Education | 57 |
| 7. | Chapter Seven: Conclusions And Recommendations | 59 |
| 7.1. | Conclusions | 59 |
| 7.2. | Recommendations | 61 |
| 7.2.1. | For The President | 61 |
| 7.2.2. | The BPP | 62 |
| 7.2.3. | MDAs | 62 |
| 7.2.4. | The Budget Office of the Federation | 62 |
| 7.2.5. | Fiscal Responsibility Commission | 63 |
| 7.2.6. | The National Assembly | 63 |
| 7.2.7. | The CSOs, NGOs, The Professional Bodies And The Media | 64 |

List of Tables

Table 1: A Sample of MDAs' Capital Budget Utilization (As at 30th June, 2011)

Table 2: A Sample of MDAs' Capital Budget Utilization (As at 30th September, 2011)

Table 3: A Sample of MDAs' Capital Budget utilization (As at 31 Dec. 2011 & 31 Mar. 2012)

LIST OF ACRONYMS

| | |
|-------|---|
| Act | Public Procurement Act |
| 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 |
| CBN | Central Bank of Nigeria |
| CIT | Company Income Tax |
| CPAR | Country Procurement Assessment Report |
| 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 |
| FGN | Federal Government of Nigeria |
| FRA | Fiscal Responsibility Act |
| IBRD | International Bank for Reconstruction and Development |
| ICPC | Independent Corrupt Practices Commission |
| ICRC | Infrastructure Concession Regulatory Commission |
| IDA | International Development Association |
| KPI | Key Performance Indicators |
| LCM | Lagos Channel Management |
| MDA | Ministry, Department and Agency of Government |
| MPR | Monetary Policy Rate |
| NASS | National Assembly |
| NDDC | Niger Delta Development Commission |
| NEIC | National Economic Intelligence Committee |
| NESG | Nigeria Economic Summit Group |
| NPC | National Planning Commission |
| OAGF | Office of the Accountant General for the Federation |
| PICA | Project Implementation Continuity Act |
| PPA | Public Procurement Act |
| PPDC | Public and Private Development Centre |
| UNGC | United Nations Global Compact |
| VAT | Value Added Tax |

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Chapter One

INTRODUCTION

1.1 INTRODUCTION

Public procurement monitoring and evaluation is an integral part of the budgeting process. Procurement monitoring involves the continuous or periodic review of procurement programmes, projects and processes of implementation to assess compliance with stated rules, assess service delivery, identify difficulties and challenges and provide the framework for remedial action¹. Procurement monitoring examines the planned work, which is the budget against the background of actual implementation, discovering positive and negative deviations while identifying best practices that result from implementation. It is based on the collection, collation and analysis of data on implementation activities. Monitoring reviews inputs which is the resources used to produce goods, works and services; outputs which is the goods, works and services that have been produced or delivered using a minimum package of interventions to a specific proportion of the population and to an extent, delves into outcomes which is the extent to which spending agencies have contributed to achieving government's or sector objectives, for example, reduction of infant mortality targets. Monitoring also reviews the purpose achieved by providing the goods, works or services. Monitoring can also focus on the cardinal parameters of value for money which is economy, efficiency and effectiveness. Further, monitoring can focus on the use of financial resources released to MDAs and whether they are expended in accordance with appropriation.

There are a number of reasons for monitoring procurement performance. A few will suffice².

- Government functions, programmes, and activities should be periodically reviewed to determine whether they are accomplishing intended programme goals and making efficient use of resources. Unlike private enterprise, there are often no simple measures such as profit to evaluate “bottom line” performance. A performance evaluation provides both accountability and information on which to base improvements.

¹ Adapted from Arikawe (2009) cited with approval in *Theory and Practice of Government Accounting in Nigeria* by Eddy Omolehinwa and J.J Naiyeju, 2011.

² Taken and adapted from *Recommended Budget Practices: A Framework for Improved State and Local Government Budgeting*, 1999, by the National Advisory Council on State and Local Budgeting.

- The main contact with a government for many stakeholders is through the programmes and services it provides. It is important for a government to be aware of and respond to stakeholders' perceptions of these programs and services. Stakeholders' perception of the quality of public services is an important factor in their overall perception of the government and their level of confidence in governmental decision making.
- Regular monitoring of procurement performance provides an early warning of potential problems and gives decision makers time to consider actions that may be needed if major deviations in budget-to-actual results become evident. It is also an essential input in demonstrating accountability.
- The financial health of a government is critical to its ability to meet the needs of stakeholders. Financial conditions should be evaluated to identify potential problems and any changes that may be needed to improve performance over both the short and long terms.
- Factors outside the government's control, such as the national or regional economy, demographic changes, statutory changes, legislation, mandates, and weather, may affect achievement of stated goals. Monitoring these factors helps governments to evaluate and respond to the effect of these external influences on goals, programmes, and financial plans.
- Monitoring the status of capital projects helps to ensure that projects progress as planned, problems (such as delays in key milestones and cost overruns) are identified early enough to take corrective action, funds are available when needed, and legal requirements are met.

Before the introduction of procurement reforms, Nigeria was reported to be losing 60% of every sum spent in public procurement. This in essence meant that corruption was in vogue, value for money was lacking and needed infrastructure essential for development was unavailable. With the advent of procurement reforms, especially the enactment of the PPA in 2007, it has become imperative to continue to monitor, review and evaluate the implementation of the reform agenda to identify successes, best practices and challenges along the line.

This is the third Procurement Report produced by the Centre for Social Justice, following previous reports in 2009 and 2010. This Report continues in the tradition of identifying challenges in the system and trying to hold government to account. It highlights both the positive and negative developments within the year and makes recommendations for action. It seeks to deepen Nigeria's nascent democracy

considering that freedom and openness is best demonstrated through improved governmental service delivery to citizens and enhanced value derived from the expenditure of public funds. This will also facilitate the realisation of the constitutional aphorism that the security and welfare of the people is the primary purpose of government.

1.2 GOAL

The Report as usual has the central goal of monitoring public procurement implementation at the federal level in the year 2011 and holding the government to account for the implementation of the Act. The objective is to identify successes, challenges and bottlenecks in the implementation of the PPA with recommendations on how the successes can be replicated and the challenges surmounted.

1.3 IMPLEMENTATION STRATEGIES

The Report involved literature review of the PPA and its implementation within the year including new developments in procurement policy. It focused on the work of key actors in the procurement process and how their performance or refusal to perform their duties impacted on the procurement process. It reviewed existing reports on PPA implementation, monitoring reports of CSOs, current public procurement documentation of international financial institutions on Nigeria and media reports on the implementation of the PPA. The Report also reviewed the work of the BPP; Financial Regulations of the Federal Government, Treasury Circulars and other extant rules and laws to determine their compatibility with the PPA. It further reviewed legislative work in public procurement and its compliance with the demands of the PPA. The Report interviewed practitioners in the public and private sectors on their experiences in the implementation of the PPA and ended with recommendations for government institutions and civil society.

1.4 EXECUTIVE SUMMARY

Chapter One is the introduction; it defines procurement monitoring and delineates its contours while stating the reasons for monitoring public procurement. It delineates the goal and implementation strategies of the Report.

Chapter Two focuses on public procurement policy regulatory agencies and developments in procurement policy. The highlights include the fact that the National Council on Public Procurement is yet to be constituted four years after the commencement of the Act; the interventions of the House of Representatives and Civil Society to ensure the constitution of the Council. It reviews the report of the Presidential Project Assessment Committee; the Template Team to produce strategies for the

reduction of the cost of public procurement; the plan to enact a Project Implementation Continuity Act and the attempt to use public procurement to create jobs. The activities of the BPP within the year are reviewed in the Chapter.

Chapter Three is on the implementation of the 2011 capital budget. It reviews the implementation over the four quarters in the year and notes that the capital budget only attained 62.16% implementation. Issues of late release of capital funds, the poor absorptive capacity of MDAs and the impact of the 2011 elections on capital budget implementation came up in the Chapter. Sample capital projects were reviewed and they include the Abuja-Lokoja Road, East-West Road, Enugu Airport Extension/Resurfacing, Biu Water Scheme, etc.

Chapter Four is on scams and controversies in the procurement process. The controversies include the true state of the second Niger Bridge, the planned return of toll gates, Calabar Port Dredging procurement process and the Customs Single Window contract. The scams include echoes of Haliburton, the face-off between the University of Jos and its Governing Board, abandoning contracts after collecting mobilization fees and the report of the Senate Committee on Privatisation.

Chapter Five is on the role of civil society organisations. The identified roles include monitoring, research and reporting, ensuring compliance with the PPA, capacity building, sensitization and networking.

Chapter Six identifies and analyses the challenges of public procurement. These include capacity and integrity deficits, political interference, institutional resistance, late budget approval, the annual budget versus 3-5 year project life span. The present capital budget monitoring by various agencies; its strengths and challenges (especially the monitoring done by the Budget office of the Federation) were discussed.

Chapter Seven is the final chapter and it focuses on the conclusions and recommendations of the Report. The recommendations are as follows:

For the President

- ❖ Immediate constitution of the National Council on Public Procurement.
- ❖ De-commissioning the EXCOF as an approving authority for procurements above a certain threshold.
- ❖ Ensure the implementation of the recommendations of Presidential Project Assessment Committee.

- ❖ Constitute a legal team to fine-tune the modalities of the Project Implementation Continuity Bill and thereafter present same to NASS for enactment into law.
- ❖ Ensure that the Ministry of Finance and the Budget Office of the Federation release all appropriated funds timely.
- ❖ Ensure that the Minister of Finance and the Director General of the Budget Office of the Federation start the preparation of the Medium Term Expenditure Framework and the annual budget on time to ensure that the budget gets to the legislature before the end of August every year. Late presentation of budgets and their concomitant late approval facilitates poor capital budget implementation.
- ❖ Develop a framework in collaboration with the National Assembly to prioritise ongoing capital projects to ensure that resources are not so thinly spread over numerous projects.
- ❖ Full implementation of the recommendations of the Senate Privatisation Committee Probe Report.

The BPP

- ❖ Carry out procurement audits and take follow up action on the reports.
- ❖ Begin to exercise its powers to debar suppliers, contractors and service providers that manifestly contravene the PPA.
- ❖ Exercise disciplinary sanctions against erring accounting officers and other staff of MDAs. This will facilitate greater capital budget implementation and reduction of procurement misdemeanours.
- ❖ Continued public sensitisation on the provisions of the PPA.
- ❖ Continued capacity building in the MDAs.
- ❖ Develop standard contract management templates and legal agreements which should guide various types of contract execution.

MDAs

- ❖ Align their capital budget request with the economic agenda of the government to ensure prioritisation and possible rationalisation of capital projects to match available resources.

- ❖ Timely release of available funds to contractors and service providers
- ❖ Make procurement documents available to the public as demanded by the PPA and the Freedom of Information Act.
- ❖ Ensure the conclusion of procurement processes before the end of the first quarter of the year to enable project execution commence on time.
- ❖ Decentralize their procurement process and allow parastatals under them to undertake procurements related to their agencies.

The Budget Office of the Federation

- ❖ Capital budget monitoring should be comprehensive and if this is not possible, it should cover the major trends and samples of expenditure. Monitoring should not be restricted to the capital vote but should also include recurrent expenditure.
- ❖ Monitoring results including percentages should be stated in comparison to the approved budget and not as a percentage of released or cash backed sums. Monitoring reports should not mislead or create confusion about actual results.
- ❖ Monitoring should be part of a system from where lessons are drawn and corrective and remedial measures should follow identified lapses and challenges.
- ❖ Budgets should be clear and crafted with KPIs and votes should be stated in such a way that they can be monitored. The bane of monitoring is when the monitor and public cannot identify what a vote is meant for.
- ❖ Just like other allocations, the budget should contain details of statutory transfers
- ❖ Monitoring should lead to benchmarking with the best in class and improvements in performance.
- ❖ BOF, NPC, etc in collaboration with development partners may consider a yearly benchmarking exercise for federal MDAs which may focus on utilization of budget resources. Prizes may be awarded and results publicly announced so that MDAs and their leadership know where they rank.

Fiscal Responsibility Commission

- ❖ Draw up detailed contents of BIRs to be followed by BOF in budget reporting, which should go beyond mere expenditure to some level to results, impact, service delivery and implementation of governmental policy objectives.

The National Assembly

- ❖ Use the power of oversight to ensure the constitution of the National Council on Public Procurement.
- ❖ Use the power of appropriation to ensure that the annual budget is not overloaded with too many projects that available resources cannot support.
- ❖ Use the power of oversight to ensure full implementation of the capital budget.
- ❖ Insist on timely BIR from the BOF. NASS should consider an amendment of the FRA to provide sanctions for the range of actors that lead to the delay of BIRs
- ❖ Devise a budget calendar and in collaboration with the executive ensure early passage of the budget.
- ❖ Ensure that it adheres to the provisions of the PPA in the execution of its procurement.
- ❖ Liaise with the executive to prepare and enact the Project Implementation Continuity Bill.

The CSOs, NGOs, the Professional bodies and the Media

- ❖ Engage in monitoring, reporting and advocacy for good public procurement practices.
- ❖ Publish findings of reports and give timely recommendations to the appropriate authorities.
- ❖ Continued capacity building and public sensitisation.
- ❖ Engage in research on effective inputs to procurement laws and practice.
- ❖ The media should engage in investigative journalism on procurement performance and report accordingly.

Chapter Two

PUBLIC PROCUREMENT POLICY REGULATORY AGENCIES AND DEVELOPMENTS IN PROCUREMENT POLICY

2.1 THE NATIONAL COUNCIL ON PUBLIC PROCUREMENT

The Public Procurement Act 2007 provides for a bicameral approach to procurement regulation through the establishment of the National Council on Public Procurement (Council) and the Bureau of Public Procurement (Bureau or BPP). From inception, BPP has been functional. However, four years after the commencement of the Act, the President has refused to inaugurate the Council. The Council is charged with considering, approving and amending the monetary and prior review thresholds for the application of the provisions of the Act by procuring entities; considering and approving policies on public procurement; approving the appointment of the Directors of the Bureau; receiving and considering for approval, the audited accounts of the BPP. It is further charged with approving changes in the procurement process to adapt to improvements in modern technology and to give such other directives and perform such other functions as may be necessary to achieve the objectives of the Act.

But the riddle is that the discharge of the procurement function has continued at full speed without the Council. The intriguing part of this riddle is that the functions of the Council have been usurped by so many agencies including the Secretary to the Government of the Federation and the Executive Council of the Federation (EXCoF)³. There is a vacuum in the policy making and other roles of the Council. By section 5 (1) of the Constitution of the Federal Republic of Nigeria 1999:

(1) Subject to the provisions of this Constitution, the executive powers of the Federation-

(a) shall be vested in the President and may, subject as aforesaid and to the provisions of any law made by the National Assembly, be exercised by him either directly or through the Vice-President and Ministers of the Government of the Federation or officers in the public service of the Federation; and

(b) shall extend to the execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters with respect to which the

³ The procurement thresholds were detailed in circular with reference no SGF/OP/1/S.3/VIII/57 dated March 11 2009 and signed by Mahmud Yayale Ahmed, the Secretary to the Government of the Federation. The Executive Council of the Federation has also been involved in approving contracts and giving directives meant to govern public procurement.

National Assembly has, for the time being, power to make laws. (underlining supplied for emphasis)

Thus, the President has no discretion to pick and choose the laws validly enacted by the National Assembly to implement. The refusal to constitute the Council has adversely affected the implementation of many provisions of the Act as shall be demonstrated in this Report.

The text of the House of Representatives resolution passed on November 29 2011 presents the facts and the effect of the non constitution of the Council in its proper context⁴.

The House:

Noted that under the provisions of the Public Procurement Act 2007, the monitoring and oversight of Public Procurement, harmonizing the existing Government Policies and practices by regulating, setting standards and developing the legal framework and professional capacity for public procurement in Nigeria is the responsibility of the National Council on Public Procurement with the Bureau of Public Procurement as its secretariat and executing arm;

Aware that since the coming into force of the Public Procurement Act, only the Bureau of Public Procurement has been established while the National Council on Public Procurement, the apex body, has not been constituted;

Further aware that the approval for the thresholds for the application of the Public Procurement Act; the approval of the appointment of Directors of the Bureau; the receipt, consideration for approval of the audited accounts of the Bureau; and the giving of general directives for the achievement of the objectives of the Act come under the exclusive powers and functions of the National Council on Public Procurement;

Disturbed that in the absence of the Council, the Bureau has illegally usurped these powers and functions in breach of the objectives of the Act;

Further disturbed that even though under the Act, the Director-General of the Bureau is to be appointed by the President on the recommendation of the Council, a person has been illegally performing the functions of the Office when it is an undisputed fact that the Council which mandatorily ought to make the recommendation for appointment to that office has never been constituted;

⁴ The motion for the resolution was titled "Illegal Operation of the Bureau of Public Procurement without the National Council on Public Procurement in Breach of the Public Procurement Act, 2007".

Convinced that since the Bureau is to serve as the Secretariat to the Council, the absence of the Council renders the Bureau's existence superfluous, illegal and a waste of public funds;

Worried that in disregard of the statutory provisions in Sections 5 (P) of the Act, to the effect that the Bureau shall perform procurement audits and submit such report to the National Assembly bi-annually, the Bureau has never complied since it commenced operation over four years ago

Worried that since the entire operation of the Bureau without the Council is completely illegal, the entire procurement regime is in great jeopardy of litigations

Resolved:

Mandate the Committees on Public Procurement, and Legislative Compliance to investigate particulars of breaches of the Public Procurement Act, and make recommendations to the House within two weeks

It has been over two weeks since the House of Representatives passed this resolution but the President also failed to set up the Council. Apparently, there has been no follow-up resolution from the House. Even if there is a follow-up resolution, considering that legislative resolutions are generally not binding on the executive, it is imperative for the House and indeed the whole National Assembly to explore other legislative instruments that will compel the President to establish the Council.

A number of civil society organisations including the Centre for Social Justice, National Procurement Watch Platform, Civil Society Legislative Action Centre, and the Public and Private Development Centre (PPDC) have joined the demand for the establishment of the Council. CSJ further instituted a suit seeking to compel the President to establish the Council. The specific issues submitted by CSJ for adjudication in a suit pending before the Federal High Court are as follows:

- ❖ *Whether the 1st Defendant (the President) can take over the powers and functions of the National Council on Public Procurement 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 1st Defendant to execute and ensure the implementation of all laws made by the National Assembly including the Fiscal Responsibility Act 2007 and the Public Procurement Act, 2007.*
- ❖ *Whether Section 1 (4) of the Public Procurement Act 2007 imposes a duty on the 1st Defendant to appoint the non ex- officio members and formally constitute and inaugurate the National Council on Public Procurement.*

- ❖ *Whether the continued refusal of the 1st Defendant to appoint the non ex- officio members and formally inaugurate the National Council on Public Procurement constitutes a violation of Section 38 of the Fiscal Responsibility Act 2007.*

The suit sought the following reliefs:

- ❖ *A Declaration that the 1st Defendant's continued refusal to appoint the non ex-officio members and his failure to properly constitute and inaugurate the National Council on Public Procurement have precipitated infringements of section 38 of the Fiscal Responsibility Act, 2007.*
- ❖ *A Declaration that the 1st Defendant's refusal to appoint the non ex-officio members and formally inaugurate the National Council on Public Procurement constitutes continued flagrant violation of Section 5 (1) (b) of the Constitution of the Federal Republic of Nigeria.*
- ❖ *A Declaration that the 1st Defendant's refusal to appoint the non ex-officio members and formally inaugurate the National Council on Public Procurement constitutes continued flagrant violation of Section 1(4) of the Public Procurement Act 2007.*
- ❖ *An Order directing the 1st Defendant to appoint forthwith the non ex-officio members and formally inaugurate the National Council on Public Procurement pursuant to Section 1 (4) of the Public Procurement Act 2007.*
- ❖ *Such further or other consequential order(s) as the Honourable Court may deem fit to make in the circumstances of this action.*

The suit has been subjected to multiple adjournments and as at the time of writing this Report, the court is yet to make a decision on it.

It should be recalled that there was a failed attempt in 2009 to amend the Act to remove civil society and professional groups as members of the Council and to grant the President the power to appoint a person other than the Minister of Finance as the chair of the Council. From the clear provisions of the Act, the fears of the President on the functions of the Council are unfounded considering that the Council is focused on policy making and will have no role in the day to day award of contracts.

2.2 THE WEDNESDAY CHARADE - THE EXECUTIVE COUNCIL OF THE FEDERATION AS A CONTRACT APPROVING AUTHORITY

The EXCoF has assumed powers not supported by any of the provisions of the PPA or any other law. The weekly meeting of the EXCoF every Wednesday and sometimes bi-weekly is dominated by a contract bazaar; contracts are awarded and announced with

fanfare and it seems to be the dominant agenda item of every such meeting. In 2011, EXCoF approved 241 contracts to 24 MDAs. It was reported that the Ministry of Power and NDDC had the highest number of contracts (45) each, followed by the Ministries of Transport and Education (20) each, Ministry of Works (16), FCT (13), Ministry of Health (10) while Ministries of Niger Delta Affairs and Trade and Investments had 9 contracts each. The total awarded contract sum is N958.004b plus USD891.645m and Euro 8,714,991.49⁵.

May be, EXCoF erroneously believes that the inauguration of Council will deprive it of this very “treasured” function. The Wednesday approvals are fraught with a lot of dangers for the President and his Ministers. Considering that the President presides over the EXCoF, if any anomalies are later discovered in the award process, this opens up the possibility for his eventual prosecution under the Act for violating the provisions of the law. It is clearly not in the interest of the President and the Ministers to continue this charade.

The President and his executive council were reported to have engaged in another illegality. The first leg of the illegality was the granting of anticipatory approval by the President for Intels Nigeria Limited to start Phase Four of the Onne Ports Complex at a cost of over \$370.4m. The second leg of the illegality was the later approval granted by EXCoF to the presidential anticipatory approval⁶. Further, some projects exemplified by the National Identity Card Project had their awards announced unilaterally. The announcement of the N30b contract took everyone by surprise including members of the NASS who have the constitutional power of appropriation. The project was neither debated nor considered in NASS nor was there any request for appropriation by the executive before the contract was announced.

2.3 REPORT OF THE PRESIDENTIAL PROJECT ASSESSMENT COMMITTEE

Following public complaints about the cost of projects and the quantum of abandoned projects in the country, President Goodluck Jonathan in March 2010 set up a 20 man presidential project assessment committee led by Architect Ibrahim Bunu, a former Minister of the Federal Capital Territory. The terms of reference of the Committee were:

- ❖ 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.

⁵ Federal Executive Council Approved Contracts for Financial Year 2011 published by BPP.

⁶ The Guardian Newspaper, October 27, 2011.

- ❖ 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.

Submitting their report in June 2011, the Committee reported that there were 11,886 capital projects which will require N7.78 trillion to complete. According to media reports at the presentation of the report to the President⁷:

Bunu had advised that the government should prioritise the projects it intends to handle so that it can attend to the most important and needed ones and also how to budget to complete the capital projects especially to assist towards completing projects within the Vision 20-2020. He noted that with the prevalent N1 trillion budget for capital projects, it might take about eight years to complete them taking into consideration the inflationary effects, pointing out that the over 200 sites they visited revealed the enormity of the jobs yet to be completed.

The Committee blamed the dire situation on poor project management, mediocrity and inadequate budgetary allocation coupled with high cost of financing. There are about 11,886 on-going federal government projects amounting to N7,775,974,402,995.63, calculated on the basis of the sums at which the contracts were originally awarded. Following the committee's in-depth assessment of many of the projects, we take no joy in confirming that there is indeed evidence of large scale, widespread institutional mediocrity, deficiency of vision and lack of direction in project management, he lamented.

Apart from streamlining projects, he made a case for proper funding of projects which should be released for contractors to continue staying on site till completion of their jobs while the government should, if it lacks funds, seek for alternative sources of funding the projects. On the way forward, the Committee enjoined Jonathan to ensure that all the funds appropriated for capital projects are fully released as at

⁷ THISDAY, June 3, 2011.

when due so as to make it possible for contractors to continue to execute projects in the most effective and efficient manner.

There is the need to streamline and down size the on-going projects to a manageable proportion through a well thought out realisation process. And then, explore alternative sources of funding including issuance of federal government bonds and Public Private Partnership arrangements”.

It was further reported that⁸:

The rub was the discovery by the panel that most of the contracts were rife with corruption, with public officials at the highest levels colluding with the contractors to plunder the treasury. The report detailed lack of proper planning, deliberate abandonment, and arbitrary insertion of projects into the national budget by the National Assembly, adding that, for many public officials, political and personal considerations outweighed national interest in the award of contracts.

For instance, N3.7 billion has been paid to Van Ord Nigeria Limited for the N12.5 billion Lower Niger dredging project without the supporting road and rail networks, rendering the entire project a waste. The panel also found that while its existing 201 dams and reservoirs were grossly under-utilised, between 2008 and 2010, the Federal Government went ahead to award N211 billion worth of contracts for additional dams, for which it has since paid N86 billion to the contractors. Besides condemning most of the contracts, for being procurement-driven rather than development-driven, the report said they were awarded in violation of due process rules and procedures.

However, after the submission of the report until the end of the year 2011, there was no visible efforts and action taken by the government to implement the recommendations of the report.

2.4 THE TEMPLATE TEAM – REDUCING THE COST OF PROCUREMENT

In November 2011, the Minister of Information reported that President Jonathan had set up a team to work on a template that would seek to reduce the cost of contracts in Nigeria⁹. Earlier, an inter-ministerial committee set up by the President in June to look into the high cost of government contracts had estimated that the cost of contracts in Nigeria was 20% higher than what obtained in other West African countries. But that was the last that was heard of the Template Team considering that the public were not briefed if the template was ever developed and how its implementation proceeded. If we

⁸ The Punch Newspaper Editorial of Monday, September 26 2011.

⁹ Guardian Newspaper of November 22, 2011.

recall the procurement process that starts from procurement planning, the implication is that the provisions of the Act are more honoured in breach and no one takes the provisions seriously. At the procurement planning stage, an MDA prepares the needs assessment, identifies goods, services or works required, carries out appropriate market and statistical survey and on that basis prepared cost estimates of the proposed procurement. If the foregoing procedure had been adopted in most of the procurements reviewed by the presidential project assessment committee, their costing and implementation would have produced a different and positive result.

2.5 BID TO COMBAT ABANDONED PROJECTS THROUGH THE PROJECT IMPLEMENTATION CONTINUITY BILL

The Minister of National Planning and Deputy Chairman of the National Planning Commission Dr. Shamsudeen Usman met with the House of Representatives Committee on National Planning and sought for their support for the Project Implementation Continuity Bill. He announced that the Bill which, seeks to combat the bane of abandoned projects in Nigeria is under consideration by the executive. Under the proposed legal framework, it will become mandatory for a new government to finish the projects initiated by the previous administration before commencing new ones. The Bill is also meant to provide legislation that would protect the recommendations of Vision 20:2020 for sustainable planning. The Bill will save the country from current wastages occasioned by discontinuing existing projects in favour of new ones. According to Vision 20:2020:

The Project Implementation Continuity Act (PICA) is intended to curtail the disruption of projects and programme implementation by new governments at all levels. The PICA proposes to halt such conducts and abuse by criminalizing the violation of the provisions of the Act. Sanctions and penalties shall include prohibition from access to the Federation Account for non-compliance and freezing of credit lines either in the financial sector or from donor agencies¹⁰.

But at the end of the year 2011, there were no indications that the Bill has been submitted by the executive to the National Assembly. And if it was submitted, there are no reports of the action taken on it by NASS. Further, any provisions in any law seeking to tie the hands of an incoming or future legislature in the exercise of its powers of appropriation will be of doubtful legal validity.

2.6 THE BUREAU OF PUBLIC PROCUREMENT

BPP is established as the engine room for the regulation of public procurement in compliance with the policy directives of the Council. It has wide ranging functions and

¹⁰ Page 114 of Vision 20:2020

powers including formulation of policies and guidelines for approval of Council, supervising the implementation of procurement policies, certification of procurements, sensitization and publicizing the Act, procurement research, surveys and audit, training and capacity building. It also has powers to enforce the monetary and prior review thresholds set by Council for the application of the provisions of the Act, stipulate the procedure for documentation pre-requisite for the issuance of certificate of no objection to contract award, maintain a national database of federal contractors, etc.

BPP engaged in so many activities within the year in furtherance of this mandate and some of the activities are reviewed below.

2.6.1 Celebrating a Decade of Public Procurement Reform

The Bureau recently celebrated a decade of public procurement reform in Nigeria (2001-2011). The event hosted a forum of national and international stakeholders in public procurement. The celebration was organised around the theme of the journey so far, any lesson(s) learned and new directions for improvement. These issues and questions were examined at a workshop and various publications made by the Bureau.

The Director-General of the BPP recalled the journey so far as follows¹¹:

Where we are:

- ❖ CPAR conducted in 1999-2000 revealed 60 kobo was lost to underhand practices out of every N1 spent by Government.
- ❖ BMPIU was set up in 2001 to address shortcomings.
- ❖ BMPIU operations were guided by Treasury Circulars based on 1958 Act authorizing Accountant General of the Federation to issue guidelines on Public Expenditure.
- ❖ To institutionalize the operations of BMPIU, the Public Procurement Bill was sent to the National Assembly in 2003/2004.
- ❖ May 31st, 2007 Procurement Bill was passed into Law.
- ❖ June 4th, 2007 Bill was signed into Law by President Yar'adua.

¹¹ *A Decade of Procurement Reform in Nigeria (2001-2011): The Drivers* published by the BPP at pages 8-9.

- ❖ The Public Procurement Act put Nigeria in the league of countries with legislation on how public funds should be expended.

Prior to 2007, Nigeria was among the few African countries without any legislation on Public Procurement.

Journey so far:

- ❖ Establishment of the Bureau of Public Procurement.
- ❖ Introduction of Standard Bidding Documents and Regulations.
- ❖ Introduction of a Procurement Planning Software.
- ❖ Establishment of Recourse Mechanism.
- ❖ Establishment of a National Database of the Particulars, Classification and Categorization of Federal Contractors and Service Providers.
- ❖ Establishment of the Procurement Cadre.
- ❖ Revised thresholds.
- ❖ Training and Conversion of Procurement Officers.
- ❖ Training of Procurement Officers in key areas of Public Procurement.
- ❖ Publication of all Contracts awarded by the Federal Government via electronic and print media.
- ❖ Enlightenment of the public on the PPA 2007 through Workshops, Seminars and Trainings.
- ❖ Publication of the Certificate of 'No Objection'.

Challenges:

- ❖ Political interference and corruption
- ❖ Political authorization
- ❖ Legislative support
- ❖ Institutional resistance
- ❖ Skills and Competence gaps

- ❖ Capacity building for Procurement Officers and CSOs
- ❖ Compliance monitoring by other stakeholders e.g. Civil Societies, NGOs and Professional Bodies.
- ❖ Late budget approval versus slow start of procurement processes.
- ❖ 12 month budget cycle versus 3-5 year project life span
- ❖ Poor project execution and supervision
- ❖ Lack of integrity

2.6.2 Savings from Ministries, Departments and Agencies

The Bureau through its Director-General, Engineer Emeka Eze reported that a total of N216billion was saved through its processes for the issuance of certificate of no objection to contract award between January 2010 and March 2011. Further the BPP stated that it saved about N100billion from reviews between March and September 2011¹². The Bureau in reviewing many projects from MDAs has sought to guarantee prudence and value for money in procurement transactions.

2.6.3 And the World Bank Adopts BPP's Revised National Standard Bidding Documents and Request for Proposals

In September 2011, the World Bank through a letter to the Minister of Finance gave a stamp of approval to some of the procurement practices and processes initiated by the BPP. In a letter titled *Use of National Standard Bidding Documents on World Bank Financed Projects*, the Bank stated inter alia¹³:

I refer to the ERGP Supervision Mission of July 4-28, 2011 Aide Memoire (attached) and wish to convey the Bank's agreement that the revised National Standard Bidding Documents and Request for Proposals can be used by projects financed in whole or in part by a loan from the International Bank for Reconstruction and Development (IBRD), a credit or grant from the International Development Association (IDA), a project preparation advance (PPA), a grant or a trust fund administered by the Bank and executed by the recipient, for: (a) National Competitive Bidding procurement method for goods, works and non consulting services; and (b) consultancy services.

¹² The Punch Newspaper of Monday October 17 2011 at page 20.

¹³ At page 71 of the Procurement Journal, published by the BPP, October - December 2011.

.....
I wish to use this opportunity to congratulate the Bureau of Public Procurement for this milestone achievement.....

The implication of the foregoing approval by the World Bank is that the procurement practices and standards devised by BPP meet international best practices. However, the form is different from the substance as shall be shown later in the procurement results from MDAs and how these results impact on the security and welfare of the Nigerian people.

2.6.3 National Database of Contractors

In its efforts to guarantee efficient and effective public procurement practice, the BPP called for memoranda for the development of a national database of contractors, consultants and service providers pursuant to its mandate in section 5(h) of the PPA¹⁴. BPP stated that the objective of the database is to register, classify and categorise contractors, consultants and service providers as a platform of verification by MDAs, other entities and interested organisations and to ensure that equal competencies and capabilities bid for specific jobs. The classification will also capture the biometric data of individuals behind corporate entities that will bid for government commerce. This will be done in collaboration with the Corporate Affairs Commission¹⁵. BPP followed up the call for memoranda with stakeholders' workshops designed to get inputs on the best way to classify and categorise the contractors and service providers. Participants at the workshops include consultants, service providers, industry regulators, and professional bodies working or intending to work on federal projects.

2.6.4 Capacity Building for MDA Staff

The Bureau, during the period under review kept up capacity building for public sector staff. In late September, it advertised for consultants to carry out hands on training in selected federal MDAs. The main objective of the training exercise was to build capacity and raise the competence levels of sitting procurement officers in selected MDAs where procurement capacity and the quality of procurement proceedings are adjudged low¹⁶.

BPP also provided an opportunity for MDA staff to apply to be converted to the procurement cadre and a third batch of training for the officers who applied to be so

¹⁴ See THISDAY Newspaper of October 4 2011.

¹⁵ THISDAY, October 31 2011 at page 30.

¹⁶ In-house training for National Emergency Management Agency, Date: 5th October, 2011, Venue: NAMA, Abuja. Third Conversion training for Procurement Officers of MDA's, Date: 17-22nd October, 2011, Venue: Merit House.

converted was held from 17th to 22nd of October 2011. The officers were trained preparatory to a qualifying examination pursuant to section 5 (k) of the PPA which empowers the Bureau to organise training and development programmes for procurement professionals. The Bureau also organised sector specific procurement training for MDAs. Further, the Bureau organized procurement planning workshops for MDAs before they commenced their bid solicitation exercise. This was done unarguably, to guarantee that their planning is good enough to drive procurement processes. And before the commencement of the procurement year, MDAs are required by BPP to submit their procurement plans to show their readiness to implement capital projects in the budget¹⁷.

BPP has provided a procurement planning software for MDAs. This is a technology that timeously and efficiently assists MDAs to perfect critical procurement undertakings. With this software, MDAs are able to submit their procurement plans online and update their records when necessary. This would enable CSOs and other relevant stakeholders get easy access to information on MDAs procurement plan and ensure that monitoring commences on time¹⁸.

2.6.5 Public Sensitisation and Information Dissemination

The Bureau organized sensitization workshops in the six geo-political zones of the country wherein contractors, the media, non-governmental organizations, public servants etc, were invited to participate¹⁹. It also embarked on a weekly television programme, Public Procurement Today which sensitizes the public on core issues of public procurement and responds to frequent issues and questions raised by the public. Various publications of the Bureau are also available at no cost for distribution to the public.

¹⁷ See www.bpp.gov.ng. See also Challenges and Prospects of Public Procurement Practice in Nigeria: An Analysis by Mazi Emmanuel Onyema.

¹⁸ Challenges and Prospects of Public Procurement Practice in Nigeria: An Analysis, supra.

¹⁹ Third Phase (2011) Sensitization on Public Procurement Act to Stakeholders in the South-South Zone. Date: 25th of October, 2011, Venue: Nnebisi Hall, Grand Hotel, Asaba, Delta State. Third Phase (2011) Sensitization on Public Procurement Act to Stakeholders in the North-Central zone. Date: 25th of October, 2011. Venue: Royal Choice Inn, Old GRA, Lobi Quarters close to Government house, Markurdi, Benue State. Third Phase (2011) Sensitization on Public Procurement Act to Stakeholders in the North-East zone. Date: 27th of October, 2011, Venue: GAAT House Ltd. Plot 57, Balewa Rd, behind Govt. GRA Damaturu, Yobe State. Third Phase (2011) Sensitization on Public Procurement Act to Stakeholders in the North-West zone. Date: 1st November, 2011, Venue: Tahir Guest Palace, No 4 Ibrahim Natsugunne Rd. Off Ahmadu Bello Way, Nassarawa, Kano, Kano State. Third Phase (2011) Sensitization on Public Procurement Act to Stakeholders in the South-East Zone. Date: 1st November, 2011. Venue: Conference Hall of Grace Court Hotel and Suites Ltd. 14 Nna Street Abakiliki, Ebonyi State.

The Bureau through its website www.bpp.gov.ng continued to disseminate procurement information. The website is rich with vital information needed for the successful implementation of the procurement function. The approved thresholds, budget implementation handbook, step by step procurement approaches, procurement circulars, complaints procedure, code of conduct for observers, etc are all available on the site.

2.6.6 Settlement of Procurement Disputes

During the year, the BPP was active in settlement of procurement disputes using the provisions of the PPA. The issues that came up in the petitions to BPP include fraudulent award of contracts, manipulated bidding, non compliance with procurement procedures, illegal award of contract after tender has been publicly opened, non payment of fees, application for certified true copies of procurement proceedings, etc. The remedies provided by the Bureau include the cancellation of the procurement process, upholding the decision of the procuring entity, directing that the petitioner being the lowest evaluated responsive bidder be awarded the contract, forwarding allegations of corruption to the anti-graft agencies, and advising petitioners to approach the Federal High Court as the next level of dispute resolution²⁰.

2.6.7 Capital Budget Monitoring

The BPP invited consultants to bid to carry out field inspection and monitoring of ongoing federal government projects at various sites across the six geo-political zones. The objective is to monitor and determine the level of implementation of Financial Year 2010 federal government projects by contractors and submit reports and recommendations²¹.

2.7 NESG ADVOCATES FULL IMPLEMENTATION OF THE PPA

At a policy dialogue held by the Nigerian Economic Summit Group (NESG) in collaboration with the United Nations Global Compact Office (UNGC), NESG advocated for the use of the PPA to fight corruption in the public sector. It advised the Ministries, Departments and Parastatals to adhere to the Procurement Act 2007. The dialogue emphasized the need to de-politicize procurement and ensure that professionals get involved in the process. It stated that continuous professional training of procurement officers would close competency gaps and strengthen institutional capacity. The one day policy dialogue which was held on the theme “*Eliminating Corruption in Business Processes of Government*” witnessed the attendance of the BPP, Manufacturers

²⁰ See the Procurement Journals published in 2011 by the BPP.

²¹ See the THISDAY November 10, 2011; and Punch Newspaper of September 26, 2011 at page 86.

Association of Nigeria and the Federation of Construction Industry in Nigeria. Part of the recommendations of the dialogue were for strict observance of the nine essential steps of the PPA; strengthening the BPP to guard against contract inflation and other corrupt practices that frustrate the execution of projects. The participants also agreed that a programme based budgeting system with proper cost and benefit analyses of capital projects should be adopted in the country. Further, the National Assembly should accelerate yearly budget approval processes and ensure that priority is given to ongoing and long term projects in the budget.

2.8 USING PROCUREMENT TO CREATE JOBS

A new circular Ref. No. SGF/OP/1/S.3/VIII/271, from the Office of the Secretary to the Government of the Federation, and dated October 5 2011 raised the hope of creating jobs through the procurement process. It is titled “*Additional Requirements for Due Process Certification for Procurement Requiring Federal Executive Council Approval*”.

It reads as follows:

(1) As part of the present Administration’s determination to address the acute problem of youth unemployment in this country, the Federal Government has decided to generate employment opportunities through the procurement of works, goods and services. Pursuant to this, it has been directed that all Ministries, Departments and Agencies (MDAs) are henceforth required to indicate in their respective Procurement Plans clear and implementable employment generation strategies/plans as an integral part of their proposed procurement of works, goods and services which require Federal Executive Council approval.

(2) This decision is not only in compliance with Section 5 (a) & (i) of the Public Procurement Act 2007 but also in consonance with internationally acceptable practice of addressing employment through procurement of works, goods and services. Accordingly, it is hereby directed as follows:

(a) that henceforth every procurement contract being carried out by any Agency should include a chart (within the programme of work), indicating the number of Nigerians that would be possibly employed in respect of a particular project as part of the contract conditions; and

(b) that any procurement requiring a “Certificate of No Objection” from the Bureau of Public Procurement should include a section on employment generation opportunity and specify how to track it in the course of execution of the project. This will form part of the requirements for the

issuance of the Certificate by the Bureau which shall also be treated as a responsive criterion in the tender/bid evaluation process.

(3) All Ministries, Departments and Agencies are to ensure compliance with the provisions of this Circular which takes immediate effect.

2.9 OFFICIAL PATRONAGE FOR MADE IN NIGERIA PRODUCTS

The Minister of State for Trade and Investment, Dr Samuel Orton restated the commitment of FGN to patronize made in Nigeria products as a way of using the procurement process to create jobs, develop and grow the economy. It was noted that for industrialization to proceed to add value and create wealth, government must articulate and implement a deliberate policy of ensuring adequate patronage for goods and services produced locally. Section 34 of the PPA made provisions for domestic preferences in public procurement and recognized that a procuring entity may grant a margin of preference when comparing bids from domestic bidders with those from foreign bidders or when comparing tenders from domestic suppliers offering goods manufactured locally with those offering goods manufacture abroad.

Chapter Three

THE IMPLEMENTATION OF 2011 CAPITAL BUDGET

3.1 THE 2011 BUDGET

The 2011 Budget, like the previous budgets was said to have been prepared based on full consideration of the development priorities of the Nigerian people as encapsulated in the Vision 20:2020 and the Millennium Development Goals. Also, the 2011 Budget focused mainly on improving the efficiency and quality of government spending while pursuing fiscal consolidation, coming after recent budgets marked by fiscal expansionary policies. In the 2011 budget, 80% of the total capital expenditure was mainly for the completion of ongoing projects in various governmental priority sectors which include Critical Infrastructure Development; Human Capital Development, Land Reform and Food Security, Physical Security, Law & Order and the Niger Delta.

3.2 FIRST AND SECOND QUARTER BUDGET IMPLEMENTATION

During the first and second quarter of 2011, the review of MDAs' capital projects' implementation revealed lapses. This was ascribed to the fact that 2011 is a transition year; the inauguration of a new cabinet; and delays in the amendment of the 2011 budget which was concluded only at end of May 2011 and also poor budget management practices by MDAs.

The First and Second Quarter 2011 Budget Implementation Report states:²²

As at 30th June, 2011 an aggregate of N227.81 billion had been releasedfor the implementation of MDAs' capital projects/programmes as contained in the 2011 Appropriation Act. Of this amount, a total of N196.69 billion (or 86.34%) of the total releases had been cash-backed. It should be noted that only N128.72 billion (or 65.44%) of the total amount cash-backed had been utilized by MDAs as at 30th June, 2011.....

A review of the fifty-four (54) MDAs reported upon by the Office of the Accountant-General of the Federation (OAGF) shows a varied level of utilization rates. Twenty-one (or 38.89%) of the MDAs including: Works, Housing, Foreign Affairs, Commerce and Industry, Defence, Federal Capital Territory Administration (FCTA), Niger-Delta and Interior, each had their utilization rate above the overall average utilization rate of 65.44%. Fifteen out of these (or 27.78% of the MDAs) including ICPC, Office of

²² The first and second quarter 2011 budget implementation report page 24 & 25

the Auditor General, Defence, FCTA, Interior, Works, Housing, Niger-Delta and FCSC had utilization rates of over 80% of their respective cash-backed releases.

The utilization report also shows that 28 MDAs (or 51.85%) which includes OSGF, Youth Development, Agriculture, Education, Finance, Health, Information & Communication, Science & Technology, Transport and Environment had their utilization rate below 50%. On the other hand, 11 MDAs (or 20.37%) were yet to utilise any of their funds. Among them are: Women Affairs, Justice, Petroleum, Revenue Mobilization ICRC and Special Duties.

Table 1: A Sample of MDAs' Capital Budget Utilization (As at 30th June, 2011)

| MDA | TOTAL AMOUNT RELEASED | TOTAL AMOUNT CASH BACKED | UTILIZATION | | |
|--|-----------------------|--------------------------|----------------|------------------------------|----------------------------------|
| | N | N | Amount (N) | As %age of Cash backed Funds | As %age Total Budgetary Releases |
| Power | 18,134,267,275 | 18,134,267,275 | 9,346,543,040 | 51.54 | 51.54 |
| Transport | 10,945,768,176 | 10,919,741,656 | 3,667,094,656 | 33.58 | 33.50 |
| Health | 8,230,338,637 | 8,230,338,637 | 3,784,254,567 | 45.98 | 45.98 |
| Agriculture | 8,065,797,534 | 8,011,586,653 | 2,416,730,892 | 30.17 | 29.96 |
| Water Resources | 7,461,319,043 | 7,461,319,043 | 4,895,427,288 | 65.61 | 65.61 |
| Education | 6,015,954,256 | 6,015,954,256 | 2,048,241,226 | 34.05 | 34.05 |
| Works | 31,775,680,646 | 31,775,680,646 | 7,090,421,201 | 85.26 | 85.26 |
| Niger Delta | 16,899,179,340 | 16,899,179,340 | 15,937,470,257 | 94.31 | 94.31 |
| FCTA | 10,518,067,101 | 10,518,067,101 | 10,511,893,493 | 99.94 | 99.94 |
| Police Formation & Commands | 2,779,297,659 | 2,779,297,659 | 1,473,560,706 | 53.02 | 53.02 |
| Total Average Utilization (by all MDAs) | | | | 65.44 | 56.5 |

Source: OAGF and Budget Office of the Federation²³

Beyond the percentage of implementation stated in the First and Second Quarter Budget Implementation Report, if N227.81 billion was released and N196.69 billion cash-backed out of which only N128.72 billion was utilized, that means that only 11.25% of the overall capital budget of N1.147 trillion was implemented in the first and second quarter of the year. This is indeed discouraging as many of the projects were carried over from the 2010 budget as stated in the First and Second Quarter Budget Implementation Report²⁴

²³ Page 25 of first and second quarter budget 2011 implementation report.

²⁴ Page 22, paragraph 42 of first and second quarter budget 2011 implementation report.

Some of the problems which hinder capital budget implementation as identified during the field visit and the Budget Implementation Report are:

- ❖ A large number of ongoing capital projects resulting in insufficient funding for individual projects were observed.
- ❖ There were indications that a number of capital projects are being implemented without final project designs.
- ❖ There were several outstanding requests for the variation of contract terms and conditions suggesting a need for better conceptualization, design and implementation of MDAs' capital projects.
- ❖ The monitoring exercise, in some cases, was hampered by lack of cooperation from project staff of some MDAs. Where the projects are located in obscure and very distant locations, it became impossible to locate the projects for monitoring.

3.3 THIRD QUARTER BUDGET IMPLEMENTATION

As at 30th September 2011, an aggregate of ₦705.16 billion was released for the implementation of various MDAs' capital projects; of this amount, ₦594.15 billion (or 84.26%) was cash-backed. Out of this, only N333.07 billion (or 56.06%) was utilized by MDAs as at the end of the third quarter of 2011. This represents 56.06% implementation in terms of cash-backed amount but a mere 29.03% implementation in terms of the overall capital budget of N1.146 trillion. However, within this quarter as reported by the Third Quarter 2011 Budget Implementation Report, 81% of recurrent expenditures have been implemented by MDAs²⁵ while handling capital projects that affect the lives of the populace with levity.

The Third Quarter 2011 Budget Implementation Report states: ²⁶

A review of the fifty-four (54) MDAs reported upon by the Office of the Accountant-General of the Federation (OAGF) indicates varied levels of utilization. Twenty-one (or 38.89%) of the MDAs including Defence, Health, Education, Works, Federal Capital Territory Administration (FCTA), Niger-Delta and Science each utilized more than the overall average utilization rate of 56.06%. Eight out of these (or 14.81% of the MDAs) including Defence and FCTA had utilization rates of over 70% of their respective cash-backed releases. The report also shows that 28 MDAs (or 51.85%) which include Agriculture, Transport, Aviation, Housing, Power, Mines & Steel,

²⁵ Page 75, paragraph 62 of the third quarter budget 2011 implementation report

²⁶ Page 21 of third quarter budget 2011 implementation report

Petroleum, Water Resources, Justice and Foreign Affairs had utilized less than 50% of their funds as at end of the period.

Table 2: A Sample of MDAs' Capital Budget utilization (as at 30th September, 2011)

| MDA | Total Amount Released | Total Amount Cash Backed | Utilization | | |
|--|-----------------------|--------------------------|-------------------|----------------------------|---------------------------|
| | | | Amount | As % of Budgetary Releases | As % of Cash backed Funds |
| | N' bn | N' bn | N' bn | % | % |
| Power | 54,053,873,526.00 | 54,053,873,526.00 | 19,000,712,321.00 | 35.15% | 35.15% |
| Transport | 31,995,455,188.00 | 31,995,455,188.00 | 15,209,133,771.00 | 47.54% | 47.54% |
| Health | 31,409,546,206.00 | 31,351,347,988.00 | 19,663,142,836.00 | 62.60% | 62.72% |
| Agriculture | 18,525,473,478.00 | 18,525,473,478.00 | 6,220,811,289.00 | 33.58% | 33.58% |
| Water Resources | 35,308,909,559.00 | 35,308,909,559.00 | 14,097,216,390.00 | 39.93% | 39.93% |
| Education | 25,448,546,608.00 | 25,448,546,608.00 | 14,882,439,560.00 | 58.48% | 58.48% |
| Works | 90,972,792,935.00 | 90,972,792,935.00 | 56,591,492,984.00 | 62.21% | 62.21% |
| Niger Delta | 31,238,240,231.00 | 31,238,240,231.00 | 21,765,512,505.00 | 69.68% | 69.68% |
| FCTA | 26,022,112,404.00 | 26,022,112,404.00 | 25,327,654,620.00 | 97.33% | 97.33% |
| Police Formation & Commands | 6,000,000,000.00 | 6,000,000,000.00 | 3,489,350,192.00 | 58.16% | 58.16% |
| Total Average Utilization (by all MDAs) | | | | 47.23% | 56.06% |

Source: OAGF and BOF²⁷

Some of the challenges discovered during the field monitoring exercise that impede the implementation of capital budget by the MDAs are:

- ❖ Poor implementation of projects as a result of MDAs picking too many projects and spreading the available scarce resources too thinly. This is compounded by poor prioritisation of projects by MDAs; and underscores, as frequently emphasized in the annual *budget call circulars*, the need for MDAs to concentrate on the completion and exit from a few, viable ongoing projects rather than spreading resources thinly among several projects.
- ❖ The implementation of several projects was observed to suffer from poor conceptualisation in many cases, or was seemingly commenced based on preliminary designs. These ultimately resulted in project design, scope and cost variations. The implication of these on such projects are the huge cost overruns and the abandonment of several projects

²⁷ Page 21 of third quarter budget 2011 implementation report

3.4 FOURTH QUARTER BUDGET IMPLEMENTATION

Implementation of the capital budget had to be extended to 31 March 2012 in order to allow MDAs more time to implement the budget. However, the Fourth Quarter Budget Implementation report highlighted the poor implementation of MDA's capital projects which was attributed to poor project management practices by some MDAs.

The Fourth Quarter 2011 Budget Implementation Report states:²⁸

On the spending side, an aggregate of N864.32 billion was released for the implementation of MDA's capital projects/programmes while N812 billion (or 93.95%) was cash-backed. Out of this, only N570.71 billion (or 70.28%) was utilized by MDA's as at the end of the fourth quarter of 2011. However, following the extension of the period for the capital budget's implementation to 31 March 2012, the level of utilization improved to N713 billion (or 87.9%) representing 62% of the budgeted capital vote.

Also, page 29 of the Fourth Quarter Report states that:

An analysis of the fifty MDAs reported upon by the Office of the Accountant-General of the Federation (OAGF) indicates varied levels of capital votes utilization. Forty-three (or 86%) of the MDAs including: Agriculture, Education Water Resources, Works, Transport, Niger Delta, Defence, Federal Capital Territory Administration, Presidency, Trade & Investment and Information & Communication, each utilized more than the overall average utilization rate of 87.9% while thirty-eight out of these including Agriculture, Works, Power and Water Resources utilized more than 95% of their respective cash-backed releases. The utilization report further indicated that seven MDAs including Women Affairs and Petroleum Resources utilized less than 87.9%

Some of the challenges reported in the BIR include:

- ❖ **Distortions to project implementation plans:** Aside from instances like community disturbances or other uncontrollable circumstances, the implementation of some projects were distorted as a result of significant reductions in capital flows for their implementation. This has, in several instances, impacted negatively on the completion of some projects.
- ❖ **Project Conceptualization:** The implementations of several projects were observed to have suffered from poor conceptualisation in many cases, or were seemingly commenced without final designs. These ultimately resulted in scope and cost variations. This leads to huge cost overruns and the abandonment of several projects.
- ❖ **Poor Prioritization:** MDAs were observed to spread available scarce resources too thinly among several projects rather than focusing on the completion and exit

²⁸ Page vi of fourth quarter 2011 budget implementation report

from a few. This is in spite of emphasis on this in our annual budget call circulars and is further compounded by poor prioritisation of projects by MDAs.

Table 3 shows the overall implementation at the end of the extended capital budget year.

Table 3: A Sample of MDAs' Capital Budget utilization (as at 31 Dec. 2011 & 31 Mar. 2012)

| MDA | Amount Released | Amount Cash Backed | Utilization (as at 31 Dec. 2011) | | | Utilization (as at 31 Mar. 2012) | | |
|--|-----------------|--------------------|----------------------------------|-----------------------|----------------------|----------------------------------|-----------------------|----------------------|
| | | | N' bn | % of Amt. Cash-backed | % of Amount Released | N' bn | % of Amt. Cash-backed | % of Amount Released |
| Power | 61,147 | 61,147 | 44,554 | 72.86 | 72.86 | 58,531 | 95.72 | 95.72 |
| Transport | 36,770 | 36,770 | 26,626 | 72.41 | 72.41 | 33,017 | 89.79 | 89.79 |
| Health | 38,785 | 38,716 | 26,695 | 68.95 | 68.83 | 32,165 | 83.08 | 82.93 |
| Agriculture | 21,501 | 21,501 | 12,567 | 58.45 | 58.45 | 21,427 | 99.66 | 99.66 |
| Water Resources | 41,044 | 41,044 | 38,240 | 93.17 | 93.17 | 40,891 | 99.63 | 99.63 |
| Education | 29,763 | 29,763 | 21,369 | 71.80 | 71.80 | 28,515 | 95.81 | 95.81 |
| Works | 114,034 | 114,034 | 106,721 | 93.59 | 93.59 | 13,511 | 99.54 | 99.54 |
| Niger Delta | 35,670 | 35,670 | 34,702 | 97.29 | 97.29 | 35,668 | 99.99 | 99.99 |
| FCTA | 29,999 | 29,999 | 25,831 | 86.11 | 86.11 | 29,998 | 100.00 | 100.00 |
| Police Commands | 6,453 | 6,453 | 5,997 | 92.93 | 92.93 | 6,453 | 99.99 | 99.99 |
| Total Average Utilization (by all MDAs) | | | | 70.28 | 66.49 | - | 87.90 | 82.51 |

Source: OAGF and BOF

It is unfortunate that despite the extension of capital budget implementation to 31 March, 2012, only N713 billion of the overall capital budget of N1.146 trillion was implemented. This represents just 62.16% of the budgeted capital vote.

3.5 RELEASE OF FUNDS FOR CAPITAL BUDGET IMPLEMENTATION

In recent times, the Nigerian Appropriation Act has defined standard clauses which include the command for appropriated funds to be released as and when due. The 2011 Appropriation Act was no exception. It states as follows in section 8:

The Minister of Finance shall ensure that funds appropriated under this Act are released to the appropriate agencies and or organs of government as and when due, provided that no funds for any quarter of the fiscal year shall be deferred without prior waiver from the National Assembly.

However, the practice during the year did not indicate the release of appropriated funds in a timely manner. Funds supposed to be released in the First Quarter were delayed to the Second and Third Quarters. There are no reasonable excuses for this practice

because the excuse of lack of resources to fund the budget is no longer tenable. Consistently, the budget has been pegged on a lower income than the actual market price of crude oil and excess resources have been saved in the Excess Crude Account (ECA). Indeed, consistently, the three tiers of government have shared resources in the ECA to augment any fall in budgetary revenue and this has been spent most of the time without recourse to the appropriation powers of the National Assembly. Thus, the Budget Office of the Federation and the Ministry of Finance have continuously violated the Appropriation Act without any reason(s) known to law.

3.6 SAMPLE CAPITAL PROJECTS IN FOCUS

3.6.1 Abuja Lokoja Road

Contract No.5862 being Section 1 (International Airport Link Road Junction to Sheda Village Junction) commenced in July 2006 and was scheduled for completion in February 2009 with an initial budget of N11.22billion. Due to inadequate budgetary provisions and releases over the years, the project was rescheduled to be completed in April 2014 with a revised budget of N28.66billion suggesting time and cost overruns of about 62months and N17.44billion respectively. The impact of such overruns on the economy is enormous as the new costs would have been used for other developmental projects. Government's practice associated with project funding is demonstrated with recent funding issues on this project. It received an appropriation in 2011 of N1.8billion and as at the last quarter of the year, N1.7billion has been released and fully utilized which is commended but out of the reviewed project cost, only N6.5billion has been committed to the project since inception. Further, the contractors claim that N4.448billion was still outstanding for certified work done. To a large extent, the project demonstrates inconsistency in that the actual cost of project differs from original cost of the project. The time and cost overruns as well as level of completion of only 56.61% as at March 2012 suggest that implementation is less than complete and timely²⁹.

For Contract No. 5884 for Section 3 of the Abuja –Lokoja Road (Abaji-Kotonkarfi), the contract was awarded to Bulletine Construction Company Ltd in 2006. However, there was no budgetary provision in 2006 and 2008. The budgetary provisions over the years are N1.35b, N2b, N3.5b and N1.125b in 2007, 2009, 2010 and 2011 respectively. The initial contract sum was N9,697,186,699.20. This was later upwardly reviewed to N25,827,333,686.52. The original commencement date was 12th October, 2006 with an original completion date of 11th April, 2009 (30 Months). Project completion was extended to 10th September, 2010 and later to 23/11/13. As at end of the first quarter of 2012, only 19.5% of the road has been completed with 40km and 38.95km site

²⁹ Capital projects in the 2011 Appropriation Act were extended to the end of the First quarter for 2012.

clearance and earth works respectively. This stage of project completion in 6 years is not encouraging.

It is imperative to note that project review resulted in increases in the contract sum in the two projects. Section 1 increased by 154% while Section 3 increased by 178%. Although, it was indicated that the review and augmentation was for revised scope of works, additional works and variation, the upward review should have been consistent with the rate of inflation and the additional work. There is nothing in the ongoing work at the sites indicating a radical change from the original plan.

3.6.2 The Warri-Kajama Section of the East West Road

The Warri-Kajama section of the East West Road seems very important as it was listed in the SURE-P 2012 and 2011 budget. It was initially awarded in August 2006, re-awarded in June 2009 with the expectation that it would be completed in about 36 months at a cost of N112.16billion. The reasons for project completion level of only 50.99% as at September 2011 include unfavourable weather, inadequate budgetary provision by the Ministry of Niger Delta, and delayed payments. The immediate consequence of this situation is the time overrun of 18 months and given inflation, cost overrun is also likely.

3. 6.3 Extension/Expansion Resurfacing of Enugu Airport

This project in the Ministry of Aviation was designed to improve the runway with modern facilities that would enhance safe take-off and landing of aircrafts. The contract was awarded to Messrs PW Nig. Ltd in 2009 and billed to last till December 2011. The total cost for the contract is N10.3bn; in the 2011 budget, N1.6bn was appropriated for the project and only N448m had being committed to the project as at the second quarter of the year. The contractor for the project complained that part of what is responsible for the slow pace of the work is delay in payment. He stated that over N4bn worth of work has been completed and certified but payments are yet to be made.

3.6.4 Rehabilitation of Rail Tracks

The rehabilitation of the rail track from Lagos to Jebba commenced in October 2009 and was expected to end in October 2010 at a cost of N12.29billion. There was a time overrun but despite the new completion time of July 2011, as at September 2011, only 90% of the rehabilitation had been completed. N1.09billion was allocated to the project in 2011budget, N626.69million was released and only N195.47million was utilized as at the end of the 3rd Quarter of 2011. That it was listed in 2012 budget suggests that it will not be completed in 2011. The impact of inadequate releases and poor utilization in this project, as in others, informs poor implementation leading to time and likely cost overruns which unduly inflates the cost of projects.

The track rehabilitation from Jebba-Kano, commenced in December 2009 and expected to end in February 2012; the initial cost was not mentioned in the quarterly reports that were available to this review. N7.6 billion has been committed to the project since inception and had N2billion allocation in 2011 budget with N1.6billion released as at end of the 3rd Quarter of 2011 achieving only 67% level of completion. A time overrun is noticed for this project which was supposed to have ended in February 2012 but still receiving budgetary allocation in 2012.

3.6.5 The Biu Water Scheme

The Biu Water Scheme was divided into Lots 1 & 2. Both were awarded in August 2001 at N3.06billion for Lot 1 and N1.24billion for Lot 2 and were expected to be completed by August 2003. According to the 3rd Quarter Budget Implementation Report for 2011, the project suffered inadequate funding after it commenced in 2002 leading to time and cost overruns. For example, cost of Lot 1 was revised to N8.08billion while that of Lot 2 became N3.76billion. Thus, Lots 1 and 2 recorded 124% and 203% increases as a result of variation and upward review. In terms of time, 120 months overrun has been recorded. A total of N205.1million was appropriated for the project lots in 2011 bringing the total commitment since 2001 to N1.62billion. This project reflects poor implementation which is informed by very low appropriation and funding releases.

3.6.5 Katsina Wind Farm

Construction of the 10MW Katsina Wind Farm commenced in June 2010 and was expected to be completed in March 2012 (22months) with both offshore and onshore funds of about Euros 18.5million and N494.02 million respectively. It had an allocation of N1.14billion in 2011 budget, out of which N427.76million was released and N235.55million utilised as at September 2011. Since inception, a total of 16.039million Euros and N255.83million had been committed to the project. According to the 2011 3rd Quarter Budget Implementation Report, only 69.24% level of completion has been attained as at that time. The initial project completion time will not be met due to the poor funding release and utilization.

3.6.6 Afam Power Plant Repairs

The cost for the repairs and rehabilitation of GT 20 Generators at Afam was put at N2.45billion and was scheduled for 13 months. Though the sum of N378.87million was appropriated in 2011 budget for the rehabilitation, as at end of the third quarter, funds had not been released for the project. However, the contractor went on to rehabilitate 2 out of the 6 gas turbines amounting to 33.3% level of completion. For a project that is supposed to be completed in 13 months, it stands to reason that it should have got its funds appropriated in one year and releases made as at when due.

3.6.7 The Effect of 2011 Election on Budget Implementation

The BOF reported that the 2011 capital budget implementation recorded lapses which it ascribed to the fact that 2011 was a transition year³⁰. Also, President Goodluck Jonathan while presenting the budget for 2012 to NASS gave a review of the 2011 budget implementation and he pointed that the election of 2011 affected the implementation of the budget. The poser thrown up by this admission is; why should the government allow the election to affect the implementation of budget. There are three possible scenarios:

- ❖ Concentration was mainly on election; it is possible that the leadership of the MDAs did not carry out core functions as prescribed in the budget. MDAs rather concentrated on canvassing support for their preferred candidates. Even though, government tried to restrict the number of public officials that attended campaigns, this would not have been enough to stop public officials from embarking on other political engagements.
- ❖ Funds for capital projects may have been widely used for elections. The just concluded election was one of the most expensive elections.

It was also observed that the 2011 election had effects on the economy as a whole. The Governor of the CBN Malam Sanusi Lamido Sanusi raised the alarm that politically related spending was overheating the economy, raising excess liquidity, making the economy prone to inflation and undermining the value of the Naira. Between February 2011 and shortly after the elections, the Monetary Policy Rate (MPR) was raised by the Monetary Policy Committee of the CBN from 6.25 per cent to 8 percent and the Cash Reserve Requirement from 1 percent to 4 percent, all within a period of four months. The MPR is the rate at which the CBN lends to banks.

Election related and campaign expenditure contributed to the current quagmire³¹ where the real sector and investors can only access credit at interest rates above 20 per cent per annum. As such, it contributed to halt economic growth, job creation and the overall development of society. By May 2011, the Naira which opened the year at N150 to 1 United States Dollar traded at N160 to the Dollar.

³⁰ The Director General of the BOF was reported to have stated that in an election year, with a new government coming into office, you will experience a little bit of delay which is inevitable. And it happens in many jurisdictions. See the Guardian Monday, January 24, 2011.

³¹ The fact that Nigeria's economy is import dependent, AMCON's expenditure on toxic debts of banks and food related inflation also contributed to the present position.

Chapter Four

SCAMS AND CONTROVERSIES IN THE CONTRACT AND PROCUREMENT PROCESS

4.1 UNVERIFIABLE DOCUMENTATION

The EXCoF in their usual weekly contract considerations discovered that the documents submitted by the contractor handling the 1.6 kilometres Oshodi - Apapa Road could not be verified and therefore invited the EFCC to investigate the matter for alleged bidding with false documents. According to the Minister of Information, Labaran Maku³²:

Today, the Federal Executive Council took a major decision to begin to take measures to check sharp practices in the process of contract award, especially at the federal level,. Last week, there was a contract that was probationarily (sic) given to a company to rehabilitate a 1.6km road in Apapa...On the result of our findings, Council got the information clearly that there were still some problems with the information that was offered by the said contractor that tendered for the job. Under the Procurement Act, it is an offence for any contractor to give false information or forge documents in order to win a contract. So today, the President in Council directed that the matter be referred to the Economic and Financial Crimes Commission for further investigation.

But the fact that it was the President in Council calling for investigations raises a number of posers. How did the unverifiable documents skip the attention of the MDA concerned? Did it also skip the eagle eyes of the BPP before reaching Council? There are more questions than answers.

4.2 THE TRUE STATE OF THE SECOND NIGER BRIDGE

The proposed Second Niger Bridge project is a 6 lane dual carriage- way, approximately 1.76km in length, with 2.5m shoulders on each side and 4.0m median width. The project also includes a 14km long approach road with 3 river bridges and other ancillary works.

The plan to construct the second Niger Bridge was announced in 2007 by former President Olusegun Obasanjo and he claimed to have awarded the contract for the commencement of work. The timeline for the project was three and the half years and it was to be built under the public private partnership with the Gitto Group providing 60

³² Reported in the Guardian of Thursday, November 17, 2011.

percent of the fund, federal Government 20 percent while Anambra and Delta state Government would contribute 10 percent each towards the project. Nevertheless, nothing was done on that project throughout the Obasanjo years.

In 2010, President Goodluck Jonathan claimed to have re-awarded the contract and the then Minister of Information, Dora Akunyili claimed that N7.5 billion naira was appropriated for it in the 2010 budget. However, the true state of the project is that it is a subject of immense politicking notwithstanding its great importance to the economic life of the people living in the South East and South South geopolitical zones. The existing bridge was built in 1963 and has been reported to be in state of near collapse and technically speaking, its use should have been discontinued. The collapse of the bridge would hamper the socio-economic activities between the East, West and Northern parts of the country as it would cut off the major source of transit from the East to other parts of the country.

It is a mark of irresponsibility for FGN to be politicising the award of contracts on this bridge. The general statement(s) making the rounds posit that no contract has been awarded for the construction of the second Niger Bridge. The Minister of Works during the Yar-adua regime, Dr. Hassan Lawal denied that any contract had been awarded. The current Minister of Works also maintains that there was no existing contract for the construction of a second bridge over the River Niger at Onitsha.

4.3 THE PLANNED RETURN OF TOLL GATES

FGN seems to be lacking a sustainable framework and consistency on its policies in the road sector. In 2004, the Federal Government spent over N360 million for the demolition of toll gates which were constructed in the 1970s. But within the year, at an interactive session with the Senate Committee on Works, the Minister of Works, Mike Onolememe condemned the decision of the Obasanjo's regime to demolish the toll gates. Accordingly, he stated that the abrogation of toll gates has robbed the road sector of the critical income used to maintain and rehabilitate the roads. The Minister disclosed that his Ministry is working on a draft policy to once again re-invent toll gates across the country. But no country develops in a situation where existing infrastructure is demolished without cogent reason(s), to be rebuilt later at more than four times the original cost. The reason advanced by the Minister for the re-construction of toll gates is also faulted on the premise that funds generated from tolls were neither used for road maintenance nor accounted for. It is however suggested that if tolls are to be re-constructed, FGN must prevent the embezzlement of the collected tolls, make the fare affordable, repair the

roads and also create alternative routes for those who are not willing to use the toll gates³³.

4.4 ECHOES OF HALIBURTON

During the year, the Attorney General of the Federation and Minister for Justice, Mohammed Adoke told the Senate Committee on Judiciary, Human Rights and Legal Matters that out of the \$180m bribe scandal, only \$21m was remitted to Nigerian government officials including aides to former President Olusegun Obasanjo and General Abdulsalam Abubakar³⁴. This was disclosed during the 2011 budget defence session of the Ministry at the National Assembly.

Following the widespread corruption that has characterized oil and gas business in the country, the United States Department of Justice (DOJ) kept watch on some oil companies operating in Nigeria. Oil companies often pay bribes to the tune of hundreds of millions of dollars before they obtain permits to do business in Nigeria. The DOJ resolved to try the erring companies involved in the Haliburton case in accordance with the US Foreign Corrupt Practices Act (FCPA). Amongst those that were tried is the Houston-based engineering firm, KBR a former Halliburton unit, which pleaded guilty in 2009 to US charges. KBR paid \$180million dollar bribe between 1994 and 2004 to Nigerian officials, to secure \$6billion contract for Bonny LNG projects. Both KBR and Halliburton reached a \$579 million settlement in the US³⁵. The FCPA also established a bribery case against oil giant Shell, who reportedly paid \$60 million to ward off the threat of legal action for corruption in Nigeria. Royal Dutch Company and Panalpina, a Swiss logistics company, in 2010 also offered the sum of \$115 million and \$85 million respectively in fines to settle charges that violate the US FCPA³⁶.

On the other hand, the anti-graft agencies in Nigeria dropped charges against Cheney, who was the United States Vice President under the George Bush administration and Halliburton after they have agreed to pay a \$250 million fine to the Federal Government. Nigerians quizzed by the presidential inter-agency panel are ex-Minister of Petroleum Chief Dan Etiebet, Mr Funsho Kupolokun a former Group Managing Director of NNPC and one time Director-General of the defunct National Security Organization, Alhaji Umaru Shinkafi³⁷.

³³ The Guardian Newspaper editorial of November 22, 2011.

³⁴ THISDAY, February 15 2011 at page 8.

³⁵ THISDAY, December 12 2011 at pages 1 to 2

³⁶ Ibid

³⁷ Ibid

4.5 THE N9BN PROCUREMENT CASE AGAINST DIMEJI BANKOLE

The Former Speaker of the House of Representatives, Dimeji Bankole was alleged to have misappropriated over N9bn on contracts. This allegation was taken up by some members of the House named the Progressives and led by Dino Melaye³⁸. The members accused Bankole of defrauding the House in the purchase of items ranging from computers, vehicles and other stationeries. The EFCC investigated this allegation and filed a case before the Federal High Court against Bankole.

The EFCC, through its Lawyer Festus Keyamo filed a 16 count charge against Bankole bordering on contract inflation and fraudulent embezzlement of public funds totaling N9b. However, Dimeji Bankole's counsel Adegboyega Awomolo prayed the court sitting in Abuja to quash the charges against Bankole and to disqualify Keyamo from prosecuting the case. He accused Festus Keyamo of partiality. While making his submission, he posited that under section 58 (4) (a) of the PPA, offences can only be committed by specified persons, such as suppliers and procurement officers and that his client is none of the aforementioned. Festus Keyamo argued that the law does not question in explicit language the impartiality of a prosecutor but that of the court or tribunal. He stated that his petition to the National Assembly which the defence cited as proof of his "bias" was clear on its intentions that the former Speaker was not being accused of financial impropriety but was being asked to explain to Nigerians his role in the contract. Festus Keyamo pointed out sections 57 and 58 of the PPA which clearly emphasized that contractors and public officers can be prosecuted for violating the provisions.

Bankole and others were charged in count one of the 9 count charge for conspiring to inflate the cost of 400 units of 40-inch Samsung (LNS.341) television sets. By approving the purchase of the said items at the rate of N525, 000 per unit, instead of the prevailing market price of N295, 000; they were alleged to have committed an offence contrary to section 58 (4) (a) of the PPA and punishable under section 58 (5) of the same Act.

4.6 ICPC TO PROSECUTE LAKE CHAD INSTITUTE BOSS OVER CONTRACT FRAUD

Early in the year, the Independent Corrupt Practices and Other Offences Commission indicated its intention to prosecute Prof. Bukar Babbabe, the Executive Director of Lake Chad Research Institute (LCRI), and the senior accounts officer of LCRI, Mrs. Janada Mshelia before a Maiduguri High Court in Borno State. They are to face 8 count charges of corruption, over the diversion of N25m through the account of Hammadeen Nigeria Ltd by using Maiduguri Central Bank cheque for payment of capital projects that was not executed. Another sum of N22.5m was diverted to the account of Rofako International Ltd

³⁸ The case was adjourned till December 19 2011. Source: Pointblanknews published on 10/17/11

for a project which was not executed. The professor was also accused of awarding three contracts to his son's Cyber Technologies Company without due process³⁹.

4.7 CONTROVERSIES OVER CALABAR PORT DREDGING

The dredging of the Calabar Port to accommodate large vessels is one of the FGN initiatives to reactivate the dormant gate way for trade and investments. There were previous failed attempts at dredging the Port. The first was under the Abacha administration in 1996 when over N3b was invested without results. The Obasanjo government committed another sum of N8b with two firms to deepen the 84 kilometre channel. The contractors were expected to remove 25m cubic metres of stilts from the channel which was expected to have a gradient of 13 while the width area should not have been less than 150 metres post dredging⁴⁰. But the second contract was also abandoned.

After the conclusion of the current procurement proceeding, Lagos Channel Management (LCM) emerged winner of the bid, but Jan De Nul Limited, one of the bidders, protested the issuance of a certificate of No Objection to Contract Award to LCM on a number of grounds. The first was that LCM was a subsidiary of NPA, a parastatal in the Ministry of Transport and as such should not have been part of the bid process. That the Ministry and NPA failed to declare their interest and relationship with LCM thereby rendering the whole bidding process unethical and against the rules of BPP and the provisions of the Act. Essentially a conflict of interest is alleged contrary to section 57 (12) of the PPA. Also that LCM offered the highest bid price among the four companies that scaled the hurdle for commercial evaluation while due process demands that the contract should be given to the responsive company that offered the lowest bid price and if it is disqualified, it goes to the second and thereafter, the third if the second is in any way disqualified⁴¹.

However, the Ministry and NPA maintained that Jan De Nul's bid was not responsive because it deliberately under-quoted the price of materials for the contract, for instance, it stated the price of diesel at N105 at a time it was N160 in the open market. It also demanded 25% mobilisation fee against the provisions of the PPA which restricts mobilization to not more than 15% of the contract sum. It was also alleged to have refused to comply with the Cabotage Act in its bid and planned to drop the stilts at its own choice location not exceeding 2 kilometres while the bid documents specified that the stilt

³⁹ Daily Trust, January 27 2011.

⁴⁰ Another vote for Due Process by Banji Adisa, Guardian September 21, 2011

⁴¹ *Ripples over Calabar Port Dredging* in the Nation Newspaper, Tuesday, September 20 2011 and *NPA's Sham Interest in Indigenous Firms* of the Guardian Monday October 10 2011.

will be discharged at a location approved by the employer. Finally, it refused to accept liability for death or injuries arising out of the dredging assignment⁴².

The allegations on both sides have sufficient weight that could lead to the disqualification of the bidders. However, the controversies were yet to be resolved at the end of the year.

4.8 THE CUSTOMS SINGLE WINDOW CONTRACT

The House of Representatives summoned the former Minister of Finance, Dr. Olusegun Aganga in its investigation of allegations of irregularities in the Customs Single Window Concession agreement entered by the Minister during his tenure as Finance Minister. Hon. Dogara who raised the motion insisted that the Minister did not follow due process as required by law. Dogara faulted the former Finance Minister for not advertising the contract and also, for not fully involving the Customs authorities in the negotiations leading to the agreement and thereby breached the PPA. Olusegun Aganga denied the allegations and accused Dogara of seeking cheap media attention. He insisted that due process was followed before signing the agreement and that he got due approvals from appropriate authorities. The contract was later terminated following widespread stakeholder criticisms of its terms⁴³.

4.9 PUBLIC PROCUREMENT AND FEDERAL CHARACTER

The House of Representative on Tuesday October 18 2011 mandated its Committee on Federal Character to investigate the alleged lopsidedness in the award of contracts by the EXCoF for projects in the South-South Geopolitical zone. The lawmakers hinged their investigation on the violation of the principle of fairness and federal character as enshrined in the Federal Character Commission Act No 34 of 1996 and also, the provisions of section 14 (3) of the 1999 Constitution of the Federal Republic of Nigeria. Hon Sunday Karimi of Yagba Federal Constituency described the action of FGN as a gross violation of extant laws, which required the government to exhibit fairness in all its actions. He stated that such action and favour to a region is a reflection of injustice to the rest parts of the country⁴⁴.

4.10 FACE-OFF BETWEEN THE UNIVERSITY OF JOS AND ITS GOVERNING COUNCIL

The University of Jos Governing Council and the University administrative body were at loggerheads over who heads the Tender Board in the procurement process of the

⁴² Ibid, *Ripples over Calabar Port Dredging*.

⁴³ The Guardian Newspaper, Wednesday, September 21, 2011.

⁴⁴ THISDAY, Wednesday October 19, 2011 at page 10.

Institution. The University insisted on applying the PPA which allows the pre-qualification committee to be headed by the University Registrar and the final committee to be led by the Vice-Chancellor instead of the old order where the Council Chairman heads the Tenders Board. The face-off came up when the institution was preparing to award contracts for the implementation of its N2.7bn Education Trust Fund grant. It was reported that the Governing Council members insisted on taking 10 percent of the total N2.7bn education grants for their welfare. They were also said to have imposed some incompetent contractors on the institution. The University Council sought to descend into the arena by leaving their policy making function to become a procurement implementing arm of the University⁴⁵.

4.11 ABANDONING PROJECTS AFTER COLLECTING PUBLIC MONEY

At a sitting of the House of Representatives Committee on Public Accounts, it was revealed by the Auditor-General for the Federation, Samuel Ukura, that a number of contractors abandon budgetary projects after collecting mobilization fees and other monies from the Federal Government. According to the Auditor-General:

This is public money. These people collected the money and simply walked away. Nothing happened to them.

To complicate matters, so many agencies of government spending public monies in contract awards refuse to open their books for the audit of the Auditor-General for the Federation and available records indicate that only 27 certified accounts have been submitted to the National Assembly from 1999 to date. Surprisingly, the Economic and Financial Crimes Commission is among the defaulting agencies. Other defaulting MDAs include the Abuja Environmental Protection Board, Abuja Investment Company Limited, Federal Capital Territory Agriculture Development Project.

The implication of the foregoing is grave for Nigeria's financial and procurement administration. Among the key implications is that the violators of the financial laws can never be known or brought to justice and no lessons can be drawn from past irregularities to guide future conduct. Thus, public procurement and the intended benefits for the welfare of the people are imperiled. There is an inextricable link between the audit process and sound procurement practices.

4.12 EFCC PROBES NJEZE, FAAN OVER ALLEGED N25BN SCAM

The EFCC started investigations of the alleged disappearance of N25 billion from the account of Federal Airport Authority of Nigeria (FAAN), which was generated by Maevis, a

⁴⁵ The Guardian, Tuesday, September 13 2011.

revenue concessionaire. According to the investigation, the EFCC Spokesman, Femi Babafemi confirmed that the said sum actually hit FAAN's account and the Minister of Aviation, Fidelia Njeze and top management of FAAN are still under investigation. EFCC acted on the petition forwarded by Transparency Centre Network (TCN) over missing sums of money in the Ministry of Aviation. Njeze was said to have set up a panel to review the deal between FAAN and Maevis but the report submitted was not acted upon. The group further alleged that the Minister of Aviation is in the picture of the abnormality because she set up a review panel and received the report with reference number *REF FMA/FAAN/7090/173, February 2010* and thereafter failed to act on the report of the panel.

The petition also revealed that “over 50% of the FAAN concessionaires in food and beverages and oil and gas are not documented as many of them are owned by fronts of the top managers” and every attempt to computerize the sources of revenue was frustrated by FAAN management as this will not allow them to collect money manually. And manual collection of money facilitates its mismanagement⁴⁶.

4.13 EFCC TO PROBE NDDC OVER ALLEGED N31.9BN FRAUD

The EFCC received a petition over fraud in the NDDC dated January 25, 2011. The petition alleged that the Managing Director of the NDDC, Mr Chibuzor Ugwouha, recently awarded N27billion consultancy contract to a Port Harcourt based firm for the provision of consultancy services for studies and design of the East-West coastal road. The petitioners alleged that the contract was awarded in October last year with an advance payment of N4, 451,452,375.00, without recourse to due process. It was contained in the petition that the contract was awarded without the involvement of the BPP, after a new generation bank was said to have offered to guarantee the contractor in a letter to the NDDC CEO dated October 13, 2010.

Ironically, the petitioners alleged that the same East-West coastal road contract was on the tender list advertised last year by the Ministry of Niger Delta Affairs, based on a directive from the Federal Government that NDDC hand over the project to the Ministry. It also alleged that NDDC awarded N4.9 billion contracts for the completion of the defunct Oil Minerals Producing Areas Development Commission, OMPADEC, head office complex in Port Harcourt which is to serve as the headquarters of the NDDC, and released 15 percent mobilization fee since early last year, without achieving any remarkable progress⁴⁷.

⁴⁶ THISDAY, September 22, 2011 at page 13.

⁴⁷ Vanguard, February 10, 2011

The petitioners urged the EFCC to probe the alleged illegal transfer of \$20million by the NDDC from the Commission's offshore account with Union Bank (UK) to First Bank (UK), as well as reports of a forged resolution of the Commission's Governing Board in which conflicting dates with respect to the dissolution and the constitution of the 2nd and 3rd Boards were given in the process of effecting the account transfer.

Copies of the petition were sent to President Goodluck Jonathan, Secretary to the Government of the Federation, National Security Adviser, Inspector General of Police, Attorney General of the Federation, Chairman, ICPC, DG, State Security Services, and the DG, Bureau of Public Procurement. The SGF issued a query to Ugwuouha based on the allegations.

4.14 THE SENATE PRIVATIZATION COMMITTEE REPORT

The recent report of the Senate Committee that probed the privatization of state owned enterprises since 1999 revealed a can of worms. Disposal of public property under the PPA is subject to the Privatization and Commercialization Act of 1999. The revelations from the Senate Committee range from the abuse of due process, deliberate failure and refusal to follow laid down rules, undervaluing of enterprises before their privatisation, criminal collusion and gang up against the public interest, asset stripping and outright looting of the national patrimony. It is simply a litany of woes. Former President Obasanjo was reported to have usurped the role and powers of the National Council on Privatization contrary to the Public Enterprises (Privatisation and Commercialisation) Act of 1999. Under the Act, the Vice President presides over the Council. Thus, Obasanjo caused the Director-Generals of the Bureau of Public Enterprises to be reporting to him instead of the Council in violation of the law. Former Director-Generals Mallam El-Rufai, Dr Julius Bala and Mrs Irene Chigbue were recommended to be reprimanded for seeking approvals directly from the President instead of the Council.

The report recommended the sack of the current Director-General of the BPE, Bolanle Onaguruwa for gross misconduct and incompetence, illegal and fraudulent sale of five percent stake of the Federal Government in Eleme Petrochemical Company Ltd in violation of the provisions of the Public Enterprises (Privatisation and Commercialisation) Act. The report further recommends the cancellation of the sale of Daily Times to Folio Communications based on the fact that the company did not qualify as a core investor with requisite financial capacity to turn around the fortunes of Daily Times. It used the property of Daily Times as collateral to raise a loan with which it paid for Daily Times. The implication of this transaction is that Daily Times must have been grossly undervalued. To obtain a loan from a financial institution, the collateral must be worth at least two to three

times the value of the loan. The recommendation of the Committee on Daily Times also confirms an earlier judgement of a court.

The sale of Nicon Luxury Hotel is recommended for revocation based on the failure of the core investor, Jimoh Ibrahim, to inject funds and furnish the hotel to attain a five star status. The sale of Nigeria Re-Insurance Company to Global Fleet was also marred by controversy. A company worth N50billion was sold for only N1.05billion. After the sale, Jimoh Ibrahim is reported to have used only two of the company's assets to secure a loan of N41billion from Union Bank Plc. The implication of the foregoing is that the supposed core investor did not have the financial muscle which would have qualified him as a core investor. The sale of Transcorp Hilton and Sheraton Hotels and Towers were also recommended for cancellation.

Delta Steel Company was found to be grossly undervalued before privatization. A company worth \$1.5billion was sold for \$30million and the investor failed to deliver on post acquisition agreements. The Aluminium Smelter Company was also sold for peanuts and the purported core investor has failed to live up to the post privatization plan of investing resources and expanding the company. The Smelter valued at \$3.2billion was sold for \$130million! The sale of Ajaokuta and Delta Steel companies to Global Infrastructure Holdings were also recommended for revocation. The Committee's findings that Global Infrastructure Holdings has been involved in assets stripping at the Steel Mills and exporting the equipment to India points to the fact that the company has been sabotaging Nigeria's development aspirations. This is economic sabotage and should be so treated by the authorities.

What came out clearly from the Committee's report are the abuse of public trust, criminal breach of trust and the gross violation of extant laws. Even if Nigerians have lost their capacity to be outraged by scandals, this is the hour to re-ignite the passion of Nigerians for what is right, just and fair. At a time the government is calling on Nigerians for sacrifice and belt tightening, such revelations have confirmed the long held public suspicion that our leaders in collaboration with their cronies have contributed in no small measure to the economic deprivation of the majority. Nigerians may continue to rebuff the calls for sacrifice if nothing is done to retrieve public assets illegally converted to private property.

Those indicted by the report have so far responded with grandstanding and have refused to own up to their shortcomings. Nigerians are not interested in unnecessary grandstanding and diversion of attention away from what has happened. Nigerians need public apologies and compensation from the actors who perpetrated this rape. They should be prosecuted if we still have a public officer designated and earning fat salaries as the Attorney-General and Minister of Justice. If the Attorney-General refuses to prosecute, there is nothing in our body of laws stopping the Senate from briefing a private

legal practitioner and financing the private prosecution of those who have been found to have breached the law. The Economic and Financial Crimes Commission should also be interested in this report and that part of its mandate which requires it to identify, trace, freeze, confiscate or seize proceeds derived from economic crimes or the properties the value of which correspond to such proceeds, should be activated.

For the Bureau of Public Enterprises, Nigerians need transparent guarantees of non repetition which would be tested in the ongoing privatization in the power sector. The processes and systems of the BPE have been shrouded in secrecy for too long. It is no longer acceptable that Nigerians get to hear of these frauds after the fact. BPE should give Nigerians a blow by blow account of the proceedings of any privatisation exercise, the criteria for selection of core investors and how a particular investor is emerging as the preferred bidder. This should be available through a continuous update of information on its website which would also be disseminated thorough other media. BPE should open up and make its activities more accountable to the needs and aspirations of Nigerians considering that it was set up with tax payer's money. The recommendations of the Committee after approval by the Senate should be implemented to the letter. It should not be allowed to gather dust and go the way of previous recommendations by legislative committees.

Chapter Five

THE ROLE OF CIVIL SOCIETY ORGANISATIONS

5.1 CIVIL SOCIETY ORGANISATIONS

Civil Society Organisations (CSOs) have demonstrated tremendous interest in ensuring the success of procurement reforms in Nigeria. They were there in beginning, in solidarity with government in the demand for procurement reforms. They participated in generating ideas about a new procurement law and contributed memorandum through the Budget Transparency Network to the Budget Monitoring and Price Intelligence Unit of the Presidency. They actively participated in the review of the draft legislation and the legislative lobby that led to the eventual passage of the Public Procurement Bill and the assent to the Bill by the President. From the standpoint of being concerned with the progress, development, and stability of the country, they monitor the policies and programmes of government to ensure that they meet the interest of the poor and vulnerable. They build capacity, report on implementation, engage in sensitization and create and maintain networks and as the watchdog of the society, they have sought to hold government accountable for the promises made in the PPA.

This Chapter will now review the contributions of CSOs during the year under review.

5.1.1 Monitoring, Research and Reporting

MDA procurement practices need to be effectively monitored to ensure that they comply with the provisions of the PPA. It is common knowledge that the major challenge to effective procurement is corruption. Therefore, adequate steps need to be taken to ensure that the procurement process is not manipulated by procuring entities. The Act provided for monitoring of procurement from the stage of bid opening to the selection of the qualified bidder. CSOs engage in monitoring of procurements in MDAs. They usually receive invitations from MDAs at the stage of bid opening. CSJ within the year, for instance monitored bid opening at the Federal Character Commission, Nigerian Building and Road Research Institute, Bureau of Public Procurement, etc.

CSJ and the PPDC have designed and published procurement monitoring manuals which prescribe detailed steps to be taken to ensure that procurements are effectively monitored⁴⁸. During the year under review, CSJ produced three monitoring reports on the implementation of the PPA specifically: *Faltering Steps in Procurement*, *Slow Haste*

⁴⁸ *Insisting on Due Process* by CSJ 2009 and *User Guide to Public Procurement Observation Checklist* by PPDC 2010.

and Taking Count. The current report also documents monitoring findings within the 2011 year. PPDC did a survey of procuring entities, civil society observers, bidders, contractors, legislators and the BPP in the year under review and the findings are documented in a report⁴⁹. The terms of reference of and indicators for the survey were:

- ❖ Levels of government compliance in establishing structures and institutions for implementation of the Act.
- ❖ Knowledge and understanding of the provisions of the Public Procurement Act 2007.
- ❖ The level of conformity of the structure and organization of the procurement department with provisions of the Act and Guidelines.
- ❖ Levels of implementation of BPP's functions and mandate.
- ❖ Levels of compliance with the procurement planning process set out by the Act.
- ❖ Levels of compliance with non state actors monitoring provisions.
- ❖ Procurement methods.
- ❖ Other procurement practices.
- ❖ Levels of access to information and compliance with citizens monitoring provisions.
- ❖ Levels of accountability and value for money.
- ❖ Efficiency and effectiveness in the entire process.
- ❖ Issues/factors hindering effective implementation of the Act; etc.

PPDC also did another research on the level of the National Assembly's compliance with the PPA⁵⁰.

5.1.2 Ensure Compliance

CSOs use different methodologies to ensure compliance with the provisions of the PPA and where breaches of the law occur, to provide remedies. In this respect, the suit filed

⁴⁹ *Compliance with the Public Procurement Act 2007, A Survey of Procuring Entities, Civil Society Observers, Bidders and Contractors, Legislators and the BPP*, PPDC 2011.

⁵⁰ The issues in the research include level of awareness and understanding of the Act: Organizing for procurement: Procurement planning: Qualification for participation in procurement: Use of Procurement methods: Advertisement of procurement opportunities: Receiving of bids; Opening of bids; Bid examination and evaluation; Award of contract; Handling of procurement complaints/disputes; Record keeping and accessibility; Contract administration; and Disposal of properties.

by CSJ for the establishment of the National Council on Public Procurement exemplifies the move to use the judicial process to remedy continuous violation of the law by the executive.

Within the year, the National Procurement Watch Platform organized a series of media briefings of various violations of the PPA to draw public attention to these violations and also urged remedial action by the authorities.

5.1.3 Increased Capacity Building and Sensitization

Within the year, CSOs organized workshops and training for capacity building for the media, students, professionals and the general public on the provisions of the PPA. Groups that organized such capacity building and sensitization within the year include CSJ, PPDC, Civil Society Legislative Advocacy Centre, Media Rights Agenda, the International Press Centre and the Association for Public Policy Analysis. The Media Rights Agenda developed a guide for monitoring public procurement by the media⁵¹. Most of the training focused on ensuring that participants understand the key provisions of the PPA, interventions points and strategies by civil society and professional groups, redress mechanism, etc. Some CSOs also embarked on sensitization sessions in collaboration with the BPP.

5.1.4 Networking

CSOs have formed networks for information sharing and exchanges leading to improved and informed interventions in the procurement process. Groups such as CSJ and the PPDC have networks of CSOs collaborating with them in their work. The National Procurement Watch Platform brings together civil society and professional groups for the defence of common interests in deepening accountability and transparency in the procurement process. Indeed the Platform advertised and reached out to CSOs to become accredited with the BPP for the task of procurement monitoring⁵².

⁵¹ Public Procurement: A Reporting Guide for Journalists by Media Rights Agenda, 2011.

⁵² THISDAY of Monday October 10, 2012 at page37.

Chapter Six

CHALLENGES IN PUBLIC PROCUREMENT

6.1 IDENTIFICATION OF CHALLENGES

The Director-General of the BPP identified procurement challenges in Nigeria to include the following:

- ❖ Political interference and corruption
- ❖ Political authorization
- ❖ Legislative support
- ❖ Institutional resistance
- ❖ Skills and Competence gaps
- ❖ Capacity building for Procurement Officers and CSOs
- ❖ Compliance monitoring by other stakeholders e.g. Civil Societies, NGOs and Professional Bodies.
- ❖ Late budget approval versus slow start of procurement processes
- ❖ 12 months budget cycle versus 3-5 year project life span
- ❖ Poor project execution and supervision
- ❖ Lack of integrity

This Chapter will review some of these and other issues that have bedeviled the procurement process in the year 2011.

6.2 CAPITAL BUDGET MONITORING

Beyond the BPP, the following agencies are currently involved in budget monitoring vis, the Planning, Research and Statistics Departments of MDAs⁵³, National Planning Commission (NPC), Bureau of Public Procurement, Budget Office of the Federation (BOF), National Assembly (NASS) under their oversight powers, Office of the Auditor-General of the Federation, National Economic Intelligence Committee (NEIC) in the

⁵³ The following MDAs have provisions in the 2012 Budget for Monitoring and Evaluation: Aviation has N100m; Police Affairs has N191m; DPR has N100m; Agriculture has N300m, etc.

Presidency, Foreign Donors and Civil Society. Apparently, the legislature is in a position to demand for the reports of these monitoring agencies stated above. The presumption is that these monitoring reports will facilitate the oversight work of NASS in the management and allocation of public expenditure. The list of agencies involved in monitoring is long. A brief review of the work of a few agencies is imperative for this Report. This will include the BOF that is specifically charged with budget monitoring under the Fiscal Responsibility Act (FRA).

6.2.1 National Economic Intelligence Committee

NEIC under its enabling law is established with responsibilities to analyse the annual budget, the monetary and fiscal measures and to monitor, assess, and enforce all fiscal measures, revenue targets and growth indices of the Federal Government; and for matters connected therewith⁵⁴. The functions of NEIC relevant to budget monitoring are as follows:

Notwithstanding the provisions of subsection (2) of section 1 of this Act, the Committee shall –

- ❖ Analyse the annual budget and extract all economic measures requiring enforcement;*
- ❖ Work out details on the method of enforcing implementation of the annual budget;*
- ❖ Assess the report on any project being carried out by the Federal Government and confirm that funds released for Federal Government projects are judiciously utilized;*
- ❖ Give a situation report of all its activities on quarterly basis to the Federal Government.*

NEIC prepares quarterly reports on budget implementation and performance. But from their website, the last report was for the second quarter of 2011. Unlike the BOF, their reports are however not available at their website. It is only a list of available reports that is on the site.

6.2.2 National Planning Commission

The yearly performance monitoring and evaluation report of MDAs by NPC is not just about budgetary performance alone. For instance, its 2010 Report focuses on *the “two main avenues through which value has been created for Nigeria for the year 2010 vis: progress against the broad sectors: a detailed, descriptive overview of Nigeria’s performance in relation to each sector underpinning the NV20:2020 aspirations are*

⁵⁴ Cap N.31, Laws of the Federation 2004.

provided and secondly progress against the key strategic outcomes: performance information focuses on strategic thrusts and outcomes and the extent to which the specific Key Performance Indicators (KPIs) at the outcome level have changed from those specified against the performance scorecard for each of the Ministries, Departments & Agencies (MDAs) at the Federal level". However, the result of monitoring budget performance is a considerable input into the Report.

The current reports review the background vision and development agenda in Vision 2020 and its First National Implementation Plan, the macroeconomic framework and sectoral reviews, strategic thrusts, issues and challenges and ends with conclusions and recommendations. The second part of the Report is the MDA scorecard.

6.2.3 Budget Office of the Federation

By section 30 of the Fiscal Responsibility Act (FRA), it is stated that:

(1) The Minister of Finance, through the Budget Office of the Federation, shall monitor and evaluate the implementation of the Annual Budget, assess the attainment of fiscal targets and report thereon on a quarterly basis to the Fiscal Responsibility Commission and the Joint Finance Committee of the National Assembly.

(2) The Minister shall cause the report prepared pursuant to section (1) of this section to be published in the mass and electronic media and on the Ministry of Finance website, not later than 30 days after the end of each quarter.

Further by section 50 of the FRA:

The Federal Government, through its Budget Office shall within 30 days after the end of each quarter, publish a summarized report on budget execution in such form as may be prescribed by the Fiscal Responsibility Commission and not later than 6 months after the end of the financial year, a consolidated budget execution report showing implementation against physical and financial performance targets shall be published by the Minister of Finance for submission to the National Assembly and dissemination to the public.

6.2.4 Strengths of the Capital Budget Monitoring Exercises

Pursuant to the above mandate and duty, the BOF has been monitoring and reporting on budget implementation. They have been producing quarterly and yearly reports since 2009. The BOF claims that its monitoring teams include civil society organisations and the media⁵⁵. The operative parts of the report include financial analysis of budget implementation, macroeconomic developments and analysis and capital budget implementation. The financial analysis further reviews: key assumptions and projections

⁵⁵ See Full Year Budget Implementation Reports for 2009 and 2010 published by the BOF.

including projected oil production and actual production and the associated expenses, analysis of oil and non-oil revenue (VAT, CIT and Customs and Excise) performance; revenue and expenditure, FGN budget revenue sources, Excess Crude Account and expenditure developments including non-debt recurrent expenditure, debt service, statutory transfers and capital expenditure performance. Macroeconomic development reviews issues such as the economic growth and inflation rate, Monetary Policy Rate, money supply, exchange rate, external reserves, etc. Data for these developments is usually sources from the National Bureau of Statistics and the Central Bank of Nigeria. The report on capital expenditure performance which flows from the monitoring usually focuses on some key MDAs and not all the MDAs.

The broad economy wide analysis of issues relating to the budget and its link to the larger National Vision of being one of the twenty biggest economies in the year 2020 undertaken by NPC situates budgetary performance within the context of national goals. The multiplicity of agencies involved in monitoring could be viewed as a source of strength in view of the fact that they bring multi agency and multi dimensional perspectives to budget monitoring.

6.2.5 Challenges of the Budget Monitoring Exercises- BOF Mainly in Focus

There are a number of challenges to the budget monitoring exercise, especially capital budget monitoring and the results it produces. The first is that the Budget Implementation Report (BIR) is always late. A look at the website of the BOF shows that only the first, second and third quarter implementation reports of 2011 were on the site by the late April 2012. None of the reports came within 30 days after the end of the quarter as envisaged by the FRA. Some BIRs have been combined. However, there is no provision in the FRA for the combination of quarterly reports. In the 2009 Financial Year, the first quarter budget implementation report came on May 28, second quarter on October 13 and third quarter on 16th December⁵⁶. At the end of the first quarter of 2012, the full year BIR for the year 2011 is not available to Nigerians in clear violation of section 50 of FRA.

A second challenge was identified by the Fiscal Responsibility Commission in their statement that the Ministry of Finance measures performance by the quantum of funds spent by MDAs instead of other more tangible considerations or indices⁵⁷. Going through all published BIRS, there was nothing on the achievement of policy objectives or the impact of projects and activities completed within the year. It was just a fixation on whether appropriated sums have been spent. There was no statement on the quality of the work done through the procurement process and whether government derived

⁵⁶ See page 28 of the Maiden Annual Report of the Fiscal Responsibility Commission.

⁵⁷ Maiden Annual Report of the Fiscal Responsibility Commission 2009.

value for money. The third is that the Ministry of Finance relied almost solely on the figures and information made available to it by MDAs covered without an independent verification⁵⁸. However, this challenge appears to be contradicted by the claim of the BOF of actually going to the field.

The fourth challenge is that the monitoring is not comprehensive. It does not cover all appropriated capital projects. The samples usually monitored and reported do not appear representative enough of the large number of appropriated projects. This is borne out by all BIRs so far published. It would make eminent sense if the monitored and reported projects represent the general thrust or constitute a good sample of capital projects in the budget.

The fifth challenge is that monitoring reports of capital budget implementation tend to be deliberately misleading. The year after year reports of percentages of implementation focus only on the percentages of the cash backed sums and or releases utilized by MDAs as against the percentage of utilization compared to the appropriated capital expenditure. This gives a false picture of good performance against a dismal picture of very poor performance which emerges when the actual performance is pitted against the appropriated sum. The quarterly reports released to the public do not compare actual year-to-date expenditure with either the original estimate for that period (based on the enacted budget) or the same period in the previous year.

The sixth challenge is that there is no Mid-Year Review of the budget that discusses the changes in economic outlook since the budget was enacted. The Mid-Year Review includes an extensive discussion of the economy, updated revenue and expenditure estimates and a revised forecast for the full fiscal year and its effects on the budget, especially the capital component.

The seventh challenge is that the monitoring system is apparently perfunctory and is meant to satisfy all righteousness rather than being a process from which lessons can be learnt and changes affected thereafter. A few CSOs who took part in the monitoring exercise indicated that they were not allowed to write alternative reports in terms of what they saw in the field. They were just taken to make up the numbers. In the Year 2009, the full year BIR identified lack of ownership of projects by local communities which leads to neglect of completed projects and a hostile attitude towards contractors, poor MDA project monitoring and representation at sites and issues related to lack of feasibility studies and using preliminary designs to award projects which will eventually manifest in cost over-runs. In 2010 full year BIR, the same problems were also identified. The poser is; what corrective measures came out of the earlier monitoring to inform the latter appropriation and budget implementation? Indeed, the repetitive

⁵⁸ Ibid.

challenge of very little resources spread out over so many capital projects has been documented by virtually every official and unofficial agency and yet nothing seems to change.

The eighth challenge is that some, (if not all appropriations) have no Key Performance Indicators (KPIs) – being measures or indices for monitoring the performance or implementation of a specified programme, project or strategy; i.e. indicators of whether or not the strategy is implemented and of how well it has been implemented. KPIs must be “SMART”. That is, they must be: S – Specific; M – Measurable; A – Achievable; R – Relevant; and T – Time-bound. In some cases, it is difficult to decipher what the government is paying for. Some items in the 2011 federal budget provide a guide:

- ❖ Poverty Reduction Grants Scheme in Zamfara West Senatorial District in the sum of N200,000,000
- ❖ Poverty Reduction Grants Scheme in Zamfara Central Senatorial District in the sum of N200,000,000
- ❖ Poverty Reduction Grants Scheme in Zamfara South Senatorial District in the sum of N200,000,000

What exactly is the FGN paying for in these votes drawn from NAPEP? How can you monitor what has no definition? This vote breaches the rule of specificity which is that the description of every budget item should result in a clear overview of the government’s expenditure plans. The descriptions provided for budget items should not be so highly aggregated (presented as grand totals) that they do not give a clear picture of the government’s intentions.

The ninth challenge is the idea that details of some allocations (under the guise of statutory transfers) are not made known to the public beyond a lump statement. This is contradictory to the right of citizens to access budgetary information. It is not only the official agencies that monitor budgets. Citizens in a democracy should be in a position to monitor budgets which such lump sum statement stultifies. Even the BIRs from the BOF state little or nothing on expenditure of statutory transfers.

Finally and the tenth is that benchmarking arising from budget monitoring results is lacking in FGN capital budget implementation. Benchmarking is the practice of learning from the work, practice, and experience of others, internally or externally, who are leaders in the field and with whom legitimate comparisons can be made. Benchmarking can be done against the “best in class” within and outside the organization. This will eventually lead to finding the performance gap, identification of critical success factors,

cost reduction, elimination of waste, and improvement of service delivery processes and ultimately the satisfaction of the consumers of public services.

6.3 CORRUPTION IN VOGUE AND LACK OF INTERGRITY

In reviewing the public procurement process, stakeholders have identified the greatest concern as corruption. In the 2011 Corruption Perceptions Index from Transparency International, Nigeria is ranked 143 out of 183 countries (1 being the least corrupt). In the Global Competiveness Report, Nigeria was ranked 94th, out of 134 countries in the 2008-2009 assessment; 99th, out of 133 countries, in the 2009-2010 assessment; and 127th, out of 139 countries, in the 2010-2011 assessment. Nigeria scored 3.4 over a total average of 7 points. Essentially Nigeria is on the decline: 99th position in 2008 and 127th in 2010. Disaggregating the ranking, Nigeria is ranked 125th in terms of reliability of police services; 126th in diversion of public funds, 125th in public trust of politicians; 135th in wasteful spending; 130th in strength of auditing and reporting standards; 126th in transparency of government spending, etc.

From all ramifications, it is clear that the challenge of corruption is enormous and daunting. It is obvious that some stakeholders, especially, some MDA officials, consultants, contractors and service providers, politicians and indigenes where some projects are sited have refused to accept the change in the new public procurement reform paradigm. To them, the new practice, which is frustrating the “business as usual” syndrome, is a hindrance to easy money making from the public sector of the Nigerian economy and should be resisted accordingly. As a result, they still employ all sorts of tactics to frustrate the practice during bid solicitation, evaluation and contract execution stages. Individuals and institutions therefore provide resistance to the reforms.

On issues of integrity, it is a fact of life that while capacities can be built to gain new knowledge and new ways of doing things, integrity is inherent and is about the personality and character of the individual, capacity building cannot build integrity unless the lack of integrity is based on ignorance and unavailability of information. Thus, integrity deficits have compounded the procurement challenges of the country.

6.4 CAPACITY CHALLENGES

Considering that procurement reforms are relatively new in Nigeria, capacity deficits are understandable. However, lack of capacity negatively affects the procurement function as it may lead to the selection of procurement methods that produce suboptimal results for the procuring agency, delays in procurement, etc. But the good news is that capacity

deficits are remediable and as the implementation of the PPA continues over the years, it will soon become history.

6.5 POLITICAL INTERFERENCE

Another challenge being faced presently is political interference. Despite the clear distinction made by the Act and in the Financial Instructions, in terms of responsibilities of the Minister as the political head and the Permanent Secretary as the Accounting Officer, evidence has shown that Ministers dictate the procurement processes and override the powers and functions of the Accounting Officers. In many instances, contracts are alleged to have been shared by politicians, with the assistance and supervision of the Minister manning the Ministry even before they are advertised. Perhaps, in order to obey their superiors, Accounting Officers, are also alleged often times to direct procurement officers to work towards ensuring that preferred bidders are pre-qualified and emerged as winners of the bid/tender process.

6.6 THE PERVERTED LEGAL SYSTEM

Allied to political interference is the constitutional powers of the Attorney-General to initiate and conclude prosecutions and the power to stop proceedings at his discretion in the purported public interest. The prosecution of high profile procurement fraud has not always proceeded in accordance with the public interest in speedy prosecution. This situation frustrates the eagerness of the anti-corruption agencies to prosecute such offences and highly placed people will normally get their prosecution dropped or unduly delayed. The posture of the courts and lawyers in prosecuting procurement related offences is another hindrance in ensuring good public procurement practice in the country. Accordingly, the law courts and their rules of practice connive with most accused persons in resorting to unnecessary and ridiculous delays to frustrate trials. It is worth mentioning here that some cases, mostly the cases involving past governors and other politicians, that were charged to courts for corruption since 2007 are still pending at courts of first instance.

6.7 LATE PASSAGE OF ANNUAL BUDGET

Another challenge being encountered is the late passage of the annual budget. Experience has shown that the federal budget becomes law after the end of the first quarter of the Appropriation year. Even when passed, it takes quite a long period of time before financial releases are made to MDAs. The implication is that the MDAs are usually put under undue pressure to start and conclude their yearly procurements within a short period so as to avoid their monies being mopped up.

6.8 12 MONTHS BUDGET CYCLE VERSUS 3-5 YEAR PROJECT LIFE SPAN

The annual budget runs for the period of the Nigerian financial year which is the period between 1st January to the 31st of December, every year. Monies appropriated for projects lapse and revert back to the treasury if they are unspent within this period. However, most capital projects will take 3-5 years to complete. Recently, the legislature upon the request of the executive, have been extending capital budget implementation to the end of the first quarter of the succeeding year. But this practice does not offer much leeway for project implementation. The implication is that for projects to continue getting resources, they will be tabled for appropriation every year. In the maze of the politicization of the budget, some projects will be abandoned; some will get zero allocation in a particular year or get allocations that will prolong the implementation period over an indefinite period of time. In the process, time and cost overruns become the order of the day and the benefits that are supposed to accrue to the populace from the completion and use of the projects will not materialize. Perhaps, this development informs Vision 20:2020's proposal for a Project Implementation Continuity Bill.

6.9 TOO MANY PROJECTS VERSUS LIMITED RESOURCES

The available budgetary resources cannot adequately pay for the number of projects in the budget. There are so many projects in the budget leading to resources being so thinly spread. This eventually leads to time and cost overruns. Most of the projects that were reviewed suggest that the greatest challenge being faced by MDAs is inadequate funding and delayed or partial release of project funds. Contractors in turn abandon projects or work at a slow pace when funds are not available.

The implication of this challenge is that when projects in the budget outpace the available resources, the legislature donates the constitutional power of appropriation to the executive to pick and choose the projects that can reasonably be funded. The federal government should prioritise projects in its budget. The allocation of stipends to virtually all the on-going nationwide projects in the budget would leave no visible progress. The challenge in spreading funds to pools of projects gives rise to abandoned projects, and more cost. Other available options is that, the FG should consider those projects that could easily be completed within a short period of time and also yield investible returns and concentrate on funding those projects..

6.10 POOR PROJECT EXECUTION AND SUPERVISION

Many contracts are poorly executed and MDAs exercise minimum supervision over procurement implementation. There are no clear rules guiding contract execution. Unlike the procurement process which concerns itself with the award of contracts and has been

codified in the PPA, there appears to be no standard codified set of rules and guidelines guiding contract execution and the relationship between MDAs and contractors, as the rules seem to be in the contract agreements for the respective projects. This has negatively affected contract implementation.

6.11 MICRO MANAGING OF PARASTATALS BY MINISTRIES

The frosty working relationship between ministries and the parastatals under them has been variously reported as a challenge in guaranteeing good public procurement. Ministries still insist on micro-managing the procurement process of parastatals and even starving them of essential information that will enable them independently conduct their procurement activities. In many instances, the ministries still insist of approving payments for contracts in the parastatals under them contrary to section 17 (a) (i) of the PPA which states categorically that a Parastatal Tenders Board is the approving authority in the case of a government agency, parastatal or commission. It is also the position of the Public Service Rules that parastatals just like their supervising ministries, articulate their respective plans and programmes annually and defend them before the ministries and other government organs with oversight responsibilities especially the National Assembly.

6.12 TARDINESS AND LATE PAYMENTS TO CONTRACTORS

There have been complaints by contractors of long delays in getting agreements prepared and signed by legal departments of MDAs resulting to late mobilisation to site. They have equally complained of the difficulties of getting Advanced Payment Guarantees and Bid Bonds from the MDAs' nominated or preferred banks. In most cases, these will warrant opening of new bank accounts with the nominated banks. Some of the MDAs still demand registration of bidders with them before bidding contrary to the present guidelines from the public procurement regulator. Many contractors are still being owed after completion of their jobs. Curiously, they have refused to sue and collect the approved interests on the fund owed as stipulated by the Act; perhaps, for fear of being discreetly blacklisted in such MDAs

6.13 LACK OF GRASSROOT AWARENESS ON PROCUREMENT EDUCATION

Despite the efforts of the BPP and CSOs in enlightening citizens and building the capacity of public procurement officers, much still needs to be done in ensuring that about 70% of the Nigerian population know and appreciate the provisions of the PPA and the resultant Guidelines and Regulations. In order to achieve this, there is the obvious need for sustained public procurement education and enlightenment in all the

states and local government areas of the Federation. At least, this will make the assignment of observation and monitoring procurements in the rural areas easier.

Chapter Seven

CONCLUSIONS AND RECOMMENDATIONS

7.1 CONCLUSIONS

Procurement monitoring is imperative if the government is to be held accountable for the constitutional promise of the security and welfare of the people as the primary purpose of government. Monitoring is important not only to stakeholders who hope to derive benefits from the procurement activities of government but also to the government itself to be able to assess its performance and what needs to be done to ensure economic growth and development.

The National Council on Public Procurement is yet to be constituted over four years after the commencement of the PPA. However, this is a demonstration of impunity by the President against constitutionalism, the rule of law and public finance management reforms. The legislature has intervened to demand the constitution of the Council. Civil society organisations have also demanded the constitution of the Council. However, all interventions have been rebuffed by the President. From the clear provisions of the Act, the fears of the President and those advising him not to constitute the Council are unfounded considering that the Council is focused on policy making and will have no role in the day to day award of contracts.

The Wednesday charade of contract approval continued within the period under review leading to contract bazaars at every meeting of the EXCoF. The Wednesday approvals are fraught with a lot of dangers for the President and his ministers. Considering that the President presides over the EXCoF, if any anomalies are later discovered in the award process which he presided over, this opens the possibility for his eventual prosecution under the Act for violating the provisions of the law. It is clearly not in the interest of the President and the ministers to continue this charade.

The report of the Presidential Project Assessment Committee was submitted to the FGN during the period under review. The summary of the assessment is that most of the contracts were procurement driven rather than being development driven. It was the record of a plethora of procurement abuses. Attempts were made to ensure project continuity through ideas on a Project Implementation Continuity Bill which is yet to see the light of the day. However, it will be of doubtful legal validity for the current NASS to use an Act of the NASS to circumscribe future constitutional appropriation powers of the legislature.

The BPP continued its public sensitization and enlightenment activities, capacity building for MDAs, settling procurement disputes and celebrated a decade of procurement reforms in Nigeria. It also reported savings from the due process mechanism in excess of N316b, the establishment of a national database of contractors, etc. FGN sought to use public procurement to create jobs and to patronise made in Nigeria products, goods and services.

The implementation of the 2011 capital budget was poor. Identified challenges include poor project conceptualization, too many projects that spread available resources too thinly, non release or untimely release of appropriated funds and the fact that 2011 was an election year. Despite the extension of capital budget implementation to 31 March, 2012, only N713 billion of the overall capital budget of N1.146 trillion was utilised. This represents just 62.16% utilization and implementation in an infrastructure starved economy.

The procurement process was bedeviled by a lot of scams and controversies within the year. Some of the controversies were unverifiable documentation from bidders, playing politics with the state of contract award on the second Niger Bridge, the Calabar Port dredging procurement process, the Customs Single Window Contract, federal character issues in procurement and the planned return of toll gates on federal highways after they were demolished by the Obasanjo government. The scams include the echoes of the Haliburton scam, the procurement case against Dimeji Bankole, the fraud at Lake Chad Institute, the University of Jos face-off, abandoning contracts after collecting public monies and the can of worms revealed in the Senate Privatisation Committee report. The documentation shows that violations of the Act have gone unabated within the year.

CSOs have demonstrated tremendous interest in ensuring the success of procurement reforms in Nigeria. They were there in beginning, in solidarity with government in the demand for procurement reforms. They participated in generating ideas about a new procurement law and contributed a memorandum through the Budget Transparency Network to the Budget Monitoring and Price Intelligence Unit of the Presidency. They actively participated in the review of the draft legislation and the legislative lobby that led to the eventual passage of the Public Procurement Bill and the assent to the Bill by the President. During the year, they were actively engaged in monitoring, research and reporting, ensuring compliance, capacity building and sensitization and networking and information exchange.

The procurement process witnessed a plethora of challenges and they include political interference and corruption, political authorization, legislative support, institutional resistance, skills and competence gaps, capacity building for procurement

officers and CSOs. The challenges also include compliance monitoring by other stakeholders e.g. Civil Societies, NGOs and Professional Bodies, late budget approval versus slow start of procurement processes, 12 month budget cycle versus 3-5 year project life span, poor project execution and supervision and lack of integrity.

7.2 RECOMMENDATIONS

The following recommendations flow from the details of this Report:

For the President

- ❖ Immediate constitution of the National Council on Public Procurement.
- ❖ De-commissioning the EXCOF as an approving authority for procurements above a certain threshold.
- ❖ Ensure the implementation of the recommendations of Presidential Project Assessment Committee.
- ❖ Constitute a legal team to fine-tune the modalities of the Project Implementation Continuity Bill and thereafter present same to NASS for enactment into law.
- ❖ Ensure that the Ministry of Finance and the Budget Office of the Federation release all appropriated funds timely.
- ❖ Ensure that the Minister of Finance and the Director General of the Budget Office of the Federation start the preparation of the Medium Term Expenditure Framework and the annual budget on time to ensure that the budget gets to the legislature before the end of August every year. Late presentation of budgets and their concomitant late approval facilitates poor capital budget implementation.
- ❖ Develop a framework in collaboration with the National Assembly to prioritise ongoing capital projects to ensure that resources are not so thinly spread over numerous projects.
- ❖ Full implementation of the recommendations of the Senate Privatisation Committee Probe Report.

The BPP

- ❖ Carry out procurement audits and take follow up action on the reports.
- ❖ Begin to exercise its powers to debar suppliers, contractors and service providers that manifestly contravene the PPA.
- ❖ Exercise disciplinary sanctions against erring accounting officers and other staff of MDAs. This will facilitate greater capital budget implementation and reduction of procurement misdemeanours.
- ❖ Continued public sensitisation on the provisions of the PPA.
- ❖ Continued capacity building in the MDAs.
- ❖ Develop standard contract management templates and legal agreements which should guide various types of contract execution.

MDAs

- ❖ Align their capital budget request with the economic agenda of the government to ensure prioritisation and possible rationalisation of capital projects to match available resources.
- ❖ Timely release of available funds to contractors and service providers
- ❖ Make procurement documents available to the public as demanded by the PPA and the Freedom of Information Act.
- ❖ Ensure the conclusion of procurement processes before the end of the first quarter of the year to enable project execution commence on time.
- ❖ Decentralize their procurement process and allow parastatals under them to undertake procurements related to their agencies.

The Budget Office of the Federation

- ❖ Capital budget monitoring should be comprehensive and if this is not possible, it should cover the major trends and samples of expenditure. Monitoring should not be restricted to the capital vote but should also include recurrent expenditure.
- ❖ Monitoring results including percentages should be stated in comparison to the approved budget and not as a percentage of released or cash backed sums. Monitoring reports should not mislead or create confusion about actual results.

- ❖ Monitoring should be part of a system from where lessons are drawn and corrective and remedial measures should follow identified lapses and challenges.
- ❖ Budgets should be clear and crafted with KPIs and votes should be stated in such a way that they can be monitored. The bane of monitoring is when the monitor and public cannot identify what a vote is meant for.
- ❖ Just like other allocations, the budget should contain details of statutory transfers
- ❖ Monitoring should lead to benchmarking with the best in class and improvements in performance.
- ❖ BOF, NPC, etc in collaboration with development partners may consider a yearly benchmarking exercise for federal MDAs which may focus on utilization of budget resources. Prizes may be awarded and results publicly announced so that MDAs and their leadership know where they rank.

Fiscal Responsibility Commission

- ❖ Draw up detailed contents of BIRs to be followed by BOF in budget reporting, which should go beyond mere expenditure to some level to results, impact, service delivery and implementation of governmental policy objectives.

The National Assembly

- ❖ Use the power of oversight to ensure the constitution of the National Council on Public Procurement.
- ❖ Use the power of appropriation to ensure that the annual budget is not overloaded with too many projects that available resources cannot support.
- ❖ Use the power of oversight to ensure full implementation of the capital budget.
- ❖ Insist on timely BIR from the BOF. NASS should consider an amendment of the FRA to provide sanctions for the range of actors that lead to the delay of BIRs
- ❖ Devise a budget calendar and in collaboration with the executive ensure early passage of the budget.
- ❖ Ensure that it adheres to the provisions of the PPA in the execution of its procurement.
- ❖ Liaise with the executive to prepare and enact the Project Implementation Continuity Bill.

The CSOs, NGOs, the Professional bodies and the Media

- ❖ Engage in monitoring, reporting and advocacy for good public procurement practices.
- ❖ Publish findings of reports and give timely recommendations to the appropriate authorities.
- ❖ Continued capacity building and public sensitisation.
- ❖ Engage in research on effective inputs to procurement laws and practice.
- ❖ The media should engage in investigative journalism on procurement performance and report accordingly.