

**MAPPING AND SCOPING OF ANTI-CORRUPTION
MEASURES IN PUBLIC FINANCE MANAGEMENT [PFM]:
A SURVEY OF THE FEDERAL GOVERNMENT AND SIX
NIGERIAN STATES**

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Abbreviations and Acronyms

AUCPCC	African Union Convention on Preventing and Combating Corruption
DFID	(UK) Department for International Development
ECOWAS	Economic Community of West African States
EXCOF	Executive Council of the Federation
FG(N)	Federal Government (of Nigeria)
IMF	International Monetary Fund
NCPP	National Council on Public Procurement
NEITI	Nigeria Extractive Industries Transparency Initiative
PEFA	Public Expenditure and Financial Accountability
PFM	Public Finance Management
SECO	Swiss Agency for Economic Cooperation
SPA	Strategic Partnership with Africa
TUGAR	Technical Unit on Governance & Anticorruption Reforms
UNCAC	United Nations Convention Against Corruption (UNCAC)

CHAPTER 1:

Introduction

1.1 This report is the second output of a broader project, which involves a scoping study of major anti-corruption initiatives in Nigeria; a gap and compliance analysis of the Nigerian anti-corruption regime with major international anti-corruption conventions to which Nigeria is a signatory, and a mapping of anti-corruption measures in Public Finance Management (PFM) at the federal level and six pilot states conducted by TUGAR. The aim of the exercise is to construct a baseline and data base of initiatives, structures and key actors which would in turn enable and support further analytical work on anti-corruption issues. The entire study includes a multi-layer compliance analysis to determine the levels of compliance of Nigeria to international anti-corruption conventions to which Nigeria is signatory. The conventions include UNCAC, AUCPCC and ECOWAS Protocol.

1.2 The current report documents anti-corruption laws, initiatives and practices in the management of public finances at the federal government level (FG) and six Nigeria States, one selected from each of the six geopolitical zones of the country. The states and their respective zones are Bauchi (North-East), Kano (North-West), Plateau (North-Central), Lagos (South-West), Rivers (South-South), and Enugu (South-East). The study covers budget management, fiscal and revenue management, public procurement, taxation, accounting and recording, and auditing. The main benchmark for the analysis is the *United Nations Convention Against Corruption (UNCAC)*. In addition to the UNCAC, the analysis examined and incorporated relevant provisions of the *African Union Convention on Preventing and Combating Corruption (AUCPCC)* and *ECOWAS Protocol on the Fight against Corruption (2001)*. The purpose of the study is to find out to what extent public finance laws, regulations, practices, and other measures of the federal and selected state governments aimed at safeguarding public resources from corruption comply with relevant provisions of UNCAC, AUCPCC and ECOWAS Protocol.

1.3 The methodology for data collection for the exercise involved sending questionnaires with cover letters two to four weeks in advance to offices of the relevant government agencies and state governments (SGs) involved in the study.¹ The questionnaires, modeled along the lines of the PEFA PFM Measurement Framework, solicited specific information on the areas of coverage and requested for documentary evidence to support claims made. In a number of cases, TUGAR officials made follow-up phone calls to key government officials to request cooperation with the consultants appointed by TUGAR to carry out the study. Consultants followed up later with visits to the Government offices to collect the questionnaires and ask follow up questions. Each state visit lasted about two to three work days.

1.4 The response to data collection was generally poor. Generally characterizing filed responses were apathy, disinterest, and in some cases, positive lack of cooperation by government officials. Many did not complete the survey instruments; several did not release data.²

¹ Copies of the questionnaires available.

² For example, Enugu, Rivers, Lagos State officials did not cooperate at all with the consultants. However, following a report validation exercise on November 22, 2011, the Rivers State Government responded by providing data and information.

1.5 Some state governments declined to cooperate in order to assert their constitutional fiscal autonomy and to protest what they referred to as the “failure of the federal government to properly consult and dialogue with them *a priori*”. Some state government officials expressed serious reservation on the federal government's agenda in carrying out the exercise and the use to which it would eventually put the information collected. They therefore either refused to provide all or at least, some information. The argument that the information sought ordinarily belongs in the public domain was not sufficiently persuasive.

1.6 While acknowledging the value of the project, an official of the Rivers state government (the Director General of the Rivers State Bureau on Public Procurement) expressed reservations with respect to the approach adopted in conducting the exercise, namely the lack of prior consultations with the states in designing it. The state government also complained that the timing of the consultant's visit to the state was not conducive, as it coincided with the preparation of the Rivers state government budget. Consequently, it was not possible for the consultants to receive sufficient attention of the Commissioner for Budget and Economic Planning and senior officials of the Ministry.

1.7 To overcome the difficulty associated with limited responses of states and their officials, this study has also relied on secondary data as a source of information in several cases. The most important source of secondary data was the PEFA PFM assessment carried out by most of the state governments. Between 2008 and 2010, all the governments, except the federal and Bauchi, had carried out a PEFA assessment. (The federal and Bauchi state governments participated in an early PEFA assessment in 2006.) PEFA (Public Expenditure Management & Financial Accountability) is a partnership of major international donors active in public financial management work. The membership include the World Bank (which hosts the headquarters in its Washington offices), the International Monetary Fund (IMF), the UK Department for International Development (DFID), the European Union, the Foreign Affairs Ministry, the Norwegian Foreign Affairs Ministry, the Swiss Agency for Economic Cooperation (SECO), and the Strategic Partnership with Africa (SPA).

1.8 PEFA PFM Performance Measurement Framework assesses the public financial management system in six critical or core dimensions. These are (i) credibility of the budget, (ii) transparency and accountability, (iii) policy-based budgeting, (iv) predictability and control in budget execution, (v) accounting, recording, and reporting, and (vi) external audit and scrutiny. The Framework further breaks these down into 28³ indicators covering smaller details of the PFM system. Although the Framework does not specifically assess anticorruption measures, it assesses flaws, without the existence of which there can be no corruption. Indeed, a rating of less than “A” on any indicator suggests suboptimal performance which can include at least potentially, corruption. These PEFA assessment reports therefore provided the most viable alternatives to primary data, where it is lacking. For proper context, the report cites the dates of the PEFA assessments and the periods they cover.

1.9 The methodology for this work included a validation meeting organized by TUGAR on 26th November 2010, where the initial findings were presented and feedback received from state representatives, to whom the draft report had previously been forwarded by TUGAR. Such

³31, counting the three indicators on donor practices

feedback included, written and oral comments, submission of relevant draft bills, laws, state regulations and instruments that were in place on or before the cutoff date of 30th October 2010.

1.10 TUGAR has drawn some useful lessons from this experience and in future will hold consultative meetings with the relevant state governments to seek their cooperation and address any concern they might raise. Such a meeting will discuss methodology and also afford TUGAR the opportunity to explain how it intends to use the information gathered. The methodology meeting will also include a component on capacity building for State Government officials.

CHAPTER 2:

Public Procurement

2.1 Recognizing the vulnerability of public procurement to corruption, UNCAC makes provisions that enjoin state parties to adopt measures aimed at promoting best practices, especially in the areas of transparency and competition. *Article 9 (1) provides that “Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:*

- a) *The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;*
- b) *The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication*
- c) *The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures*
- d) *An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed*
- e) *Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements”*

2.2 The following paragraphs indicate the extent to which practices in the federal and the selected state governments conform to these provisions.

Existence of a Modern Procurement Law

2.3 In addition to UNCAC requirements for states to establish appropriate systems of procurement, based on transparency, competition, and objective criteria in decision making stated above, *Article 5 (4) of AUCPCC* enjoins state parties to “*Adopt legislative and other measures to create, maintain, and strengthen internal accounting, auditing and follow up systems, in particular, in public income, custom and tax receipts, expenditures and procedures for hiring, procurement and management of public goods and services*”. Without specifically requiring legislation of procurement, the ECOWAS Protocol provides that “*each State Party shall take measures to establish and consolidate ... transparency and efficiency in the procurement and disposal of goods, works, and services ...*” (Article 5(b)).

2.4 How did Nigerian Governments (Federal and six States) fare in domesticating and implementing these provisions? The Federal, Rivers and Bauchi state governments have passed procurement legislations. The FG passed the Public Procurement Act in July 2007 while Bauchi and Rivers states passed their respective procurement laws in March and May 2008. Provisions of the various laws are similar in many respects, with the state laws modelled largely after the federal.⁴ Each establishes a procurement regulatory agency to oversee public procurement in all mainline government ministries, departments and agencies (MDAs). The regulatory bodies are responsible

⁴The Bauchi State Law is not as strong as the other two; several loopholes are evident in the Law

for setting procurement guidelines and thresholds, specifying procurement methods, conducting procurement reviews, audit, and research, carrying out training and capacity building of procurement personnel, publicizing procurement procedures, and providing public access to relevant procurement information. Essentially the procurement laws provide for open tendering as the default procurement method and make selective tendering and other non-competitive procurement methods exceptions setting strict pre-existing condition for their use. These laws require the establishment in advance of conditions for participation, including selection and award criteria and tendering rules, as well as the use of objective and pre-determined criteria for public procurement decision making. They also include procurement complaints and appeal resolution processes.⁵

2.5 In addition to the Procurement Act, some other laws and regulations apply to public procurement processes at the federal level. These include

The Infrastructure Concession Regulatory Commission (Establishment, etc.) Act, 2005 (“the Concession Act”)

The Finance (Control and Management) Act of 1958⁶

The Federal Government of Nigeria Financial Regulations, 2009 (“the Financial Regulations”).

2.6 However, the Act has precedence over the aforementioned law/regulations on issues of public procurement.

Box 1: Extant Anti Corruption Laws and Regulations Affecting Public Procurement

The Constitution of the Federal Republic of Nigeria (1999), s. 15 (5); ss. 172, 209; Schedule 5 (Code of Conduct)

The Public Procurement Act, 2007

The Infrastructure Concession Regulatory Commission (Establishment, etc.) Act, 2005 (“the Concession Act”)

The Finance (Control and Management) Act of 1958

The Economic and Financial Crimes Commission Establishment Act, 2004

The Independent Corrupt Practices and Other Related Offences Act, 2000

The Nigeria Extractive Industries Transparency Initiative (NEITI) Act, 2007

The Federal Government of Nigeria Financial Regulations, 2009 (“the Financial Regulations”)

The Public Service Rules, 2008

Guidelines for Appointments, Promotion, and Discipline, 2008

Code of Conduct for Public Officers of the Federal Republic of Nigeria, published by the Code of conduct Bureau

2.7 Although these federal documents do not ordinarily apply to state governments, it would appear that the Rivers State Government uses the Federal Government Financial Regulations

⁴ The Bauchi State Law is not as strong as the other two; several loopholes are evident in the Law

⁵ As already indicated, the Bauchi State Law is weak in several aspects. For instance, the regulatory agency consists of directors nominated from ministries, departments, and agencies. It is not hard to imagine that such calibre of staff will easily be subject to the control of more senior persons in government. Besides, the state executive council must clear and approve decisions of the body, including regulations, policies, and guidelines.

⁶ This Act has been undergoing review for some time; for instance, a new Public Finance Bill has been pending before the National Assembly since 2009

(2006).⁷ During the PEFA PFM assessment exercise conducted in 2008, the State Government provided a copy as evidence of the regulations they use. At that time, efforts to obtain proper authorization for adoption of this federal law or subsidiary document failed. Following the validation meeting of November 26, 2010, the state government subsequently provided as evidence of such adoption, copy of a circular issued by the Rivers state Tenders Board⁸ subjecting all procurement in the state to the “*Rivers State Public Procurement Law 2008 and the Federal Republic of Nigeria Financial Regulations (FR) 2006*”. However, it does not appear that the Tenders Board is the appropriate body to authorize such adoption⁹. With the enactment of the Rivers State Finance (Control and Management) Law No. 7 on July 17 2010, the state government submits that it will draft new financial instructions for the state.¹⁰

2.8 Bauchi State Government has its own financial rules, the *Bauchi state Financial Regulations, Revised Edition, July 2001*, and *Bauchi State Stores Regulations, Revised Edition, July 2001*. These also have relevant provisions that bother on the procurement process and procedures. However, the *Bauchi State Budget Monitoring, Price Intelligence and Public Procurement Unit Law* of March 2008 (the Procurement Law) takes precedence over these two regulations. Thus a legislative system does exist at the Federal level and in Rivers and Bauchi States that fulfil the requirements of UNCAC, AUCPCC and ECOWAS Protocol in this respect, but whether or not these systems are effectively implemented is another question.

2.9 Three of the states in the sample are yet to enact public procurement laws as required by AUCPCC. These are Lagos, Enugu, and Kano. During the validation exercise of November 26, 2010, the Enugu State delegation asserted that the state draft procurement law bill was pending before the legislature. However, they failed to provide a copy subsequently for review as agreed.¹¹ It is therefore not possible to comment on the provisions of the proposed law. It was not clear whether Enugu created a procurement due process office to run public procurement, as other State Governments did prior to passage of a formal procurement law and establishment of the regulatory Public Procurement Bureau.

2.10 Plateau State has not passed a Fiscal Responsibility or Procurement Law. We could not ascertain whether the old Finance Act of Northern Nigeria 1958 is still applicable to Plateau State or whether Plateau State has enacted its own Public Finance Management law. Though Plateau state officials claim to have draft procurement and fiscal responsibility bills, no copies were made available to the consultants at the time of this study or during the validation meeting or the two weeks extension period for collation of data following that meeting.

2.11 Information gathered during the PEFA assessment of Lagos State in 2009¹² indicates that the State is in the process of enacting a new Public Procurement Law. The report is that the State

⁷ Although the Rivers state government did not initially cooperate with this study, they attended the validation session of November 26, 2010, and volunteered information, including confirming that the Rivers state government uses the Federal Financial Regulations.

⁸ Circular No. A.163/Vol. III/305 of 24th November 2008, issued by the Rivers State Tenders Board

⁹ While there is nothing wrong with this, it is necessary for authority for such adoption to flow from the appropriate source, e.g., the state executive council or, in the least, the Commissioner for Finance, whose duty it is to prepare financial instructions for the state.

¹⁰ See “Comments by Rivers State on the Draft Report, Mapping of Anti-Corruption Measures in PFM – a survey of the Federal government and Six Nigerian States”

¹¹ At the fieldwork stage, anecdotal evidence suggested that cabinet was still reviewing the draft procurement law.

¹² Further confirmed during the validation session on November 26, 2010 by the Lagos State government representative

House of Assembly was currently debating the draft law presented by the Executive. A key feature of that law (when passed) will be the creation of a professional procurement regulatory authority to set procurement guidelines, regulate the procurement process, set and enforce compliance with procurement thresholds and methods, and oversee capacity building for MDAs in public procurement.¹³ The Lagos State Tenders Board recently established a website¹⁴ on which it posts a variety of procurement related information (see discussion below). The Lagos State Government Finance Regulations, published by the Ministry of Finance has some relevant provisions relating to the public procurement process.

2.12 The Enugu state government has similar regulations, although it was not possible despite repeated efforts to obtain a copy for perusal and comment. For instance, the old Finance (Miscellaneous Provisions) Law of Eastern Nigeria, 1957 applies to Enugu State. There also used to be a set of Financial Instructions drawn therefrom, which includes procedures for award of contracts and maintenance of stores.

2.13 The Kano state government similarly asserted that it has a Public Procurement Bill pending before the legislature. In 1996, Kano state government enacted the Public Finances (Control and Management Act) Law, which establishes “procedures for the control or management of public finances of the state”. By this, the old Finance Act of Northern Nigeria, 1958 no longer applies to the state, although the 1996 law appears to have merely reenacted many of its provisions. Differences between the two enactments are not substantive; for instance, they reflect currency change from pounds to naira. Consequently, the 1996 Law requires further modernization. The state also issued revised Financial Instructions 2004 and Stores Regulations, 2004 in separate volumes. But unlike the Situation at the Federal level, Bauchi and Rivers States, these other states lack a similar system as required by UNCAC, AUCPCC and the ECOWAS Protocol.

Advance Establishment of Selection and Award Criteria

(The Tendering Process)

2.14 UNCAC provisions cited above require the “*establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication*”. The AUCPCC provision also cited above in relation to procurement is relevant here as well. The provision requires state parties to “*Adopt legislative and other measures to create, maintain, and strengthen ... procurement and management of public goods and services*” (Article 5(4)). AUCPCC further provides as follows, “*In order to combat corruption and related offences in the public service, State Parties commit themselves to ...ensure transparency, equity, and efficiency in the management of tendering and hiring procedures in the public service*” (Article 7(4)). Finally, ECOWAS Protocol provides that “*each State Party shall take measures to establish and consolidate ... transparency and efficiency in the procurement and disposal of goods, works, and services ...*” (Article 5(b)). What arrangements are in place at the Federal Government level and in the selected states with regard to tendering procedures?

2.15 At the federal level, since the creation of the Budget Monitoring and Price Intelligence Unit (BMPIU) in 2001, and particularly since the passage of the Public Procurement Act in 2007, the government has used a structured tendering process, with open tendering as the primary

¹³ See the Lagos PEFA Report, May 2009

¹⁴ <http://www.stb.lagosstate.gov.ng>

procurement method. The Bureau of Public Procurement¹⁵ issues procurement guidelines and thresholds for all MDAs and the oil sector.¹⁶ The guidelines are comprehensive, covering all procurement types: works, goods, and consultants and other services (complex time based, lump sum, and simple consultancy services). In addition, the Bureau prepares and issues standard bidding documents and sample contracts for the different types of contracts. These instruments require mandatorily that conditions for participation, including selection and award criteria be established in advance as required by the UNCAC. The Bureau also has a code of conduct for its staff, suppliers, and Ministry officials. Besides, it has established an appeals process, and a complaints mechanism for aggrieved persons and others who observe corruption and other untoward activities or who otherwise have a complaint to make on any aspect of the tendering or procurement process. The Bureau maintains a vibrant and updated website,¹⁷ which includes all these details and more. It also publishes and distributes, free of charge to all interested parties, information on all aspects of the tendering and procurement process, and publishes a Tenders Journal in hard and soft copies (on its website), as well as a quarterly Procurement Review.

2.16 It was not possible to establish the extent of compliance of agencies with federal tendering procedures. Although mandated to conduct procurement reviews, audits, and research, the Bureau has not yet published results of any. Judging from a recent advertorial and bid invitation, it would appear the Bureau is about engaging consultants to carry out compliance reviews. Published audit reports of federal government accounts from 2001 to 2008 fiscal years refer to numerous and widespread instances of violations of good public financial management practices and the Public Procurement Act, 2007 by all arms of government: the executive, the legislature, and the judiciary. In addition, all procurements of the National Assembly, which refuses to subject itself to regulation by the Bureau of Public Procurement, are potentially in violation of the Act. A further example of non-compliance by the government relates to the failure of the federal government to inaugurate the independent National Council on Public Procurement (NCPP), and the involvement of the Executive Council of the Federation (EXCOF) in the approval and award of contracts contrary to the express provisions of the Act.¹⁸

2.17 The Bauchi State Government uses a tendering process. The State has a four stage threshold, and guidelines on advertisement media and the duration of notices for each threshold. Two years after enactment of its procurement law, the state is still in the process of preparing its procurement guidelines. Excerpts of the draft guidelines provided include details on the tendering procedures, bid opening and evaluation, contract award, and code of conduct for staff, suppliers and Ministries. However, as already stated, the powers granted the Governor and the Executive Council under the Law can politicize the procurement process by undermining its transparency, accountability, and efficiency. Besides, the state does not yet maintain a procurement website or publish and widely distribute its processes to the public as the FG does.

¹⁵ So called under the federal Public Procurement Act of 2007; before the, it was the Budget Monitoring and Price Intelligence Unit (BMPIU)

¹⁶ Different thresholds apply to the oil sector.

¹⁷ www.bpp.gov.ng

¹⁸ See for instance, PPDC (2010): Compliance with the Public Procurement Act, 2007 – a Survey of Procuring entities, civil society Observers, Bidders and contractors, Legislators, and the Bureau of Public Procurement, Onyekpere, Eze (2010): Diagnostics on the Implementation of the Public Procurement Act', Abuja, LASEC Consulting Ltd. ISBN: 978-798-909-504-9; Centre for Social Justice: Half Hearted Implementation of the Public Procurement Act: an assessment for the period, January –June, 2009

2.18 Information from the recent PEFA PFM assessment as well as information provided at the validation exercise, provide some insight into the tendering processes of Rivers, Kano, Enugu and Lagos States¹⁹. Kano state Stores Regulations, 2004 provided at the Validation Exercise in November 2010, contain procedures for public tenders. However, the procedures do not meet the modern standards of openness and transparency. At the time of the PEFA assessments, it was not clear what the tendering processes for Enugu and Rivers State were like. However, as stated above, the Rivers State Government has since then moved to implement its Public Procurement Law by setting up a Bureau for Public Procurement.

2.19. Following the validation exercise on the draft report, the Rivers state Government provided documentation showing the extent of its compliance with this requirement. They include the following memos and circulars (i) Mandatory Steps in the Procurement of goods, Services, and Works (12 November, 2008), (ii) Constitution of the Ministerial Tenders Board (24 November, 2008), (iii) Submission of Tender Documents (20 January 2010); and Monetary and Prior Review Thresholds and Procurement Methods Regulations (28 June, 2010²⁰). These documents establish a two-stage tendering process: the Tenders Board of the Procuring Entity for contracts up to the monetary threshold,²¹ and the State Tenders for contracts above that. The Rivers State Public Procurement Law, 2008 makes open competitive bidding the default procurement method involving national and international competitive bidding. Selective, shopping, direct procurement and other non-competitive processes are exceptions applicable only under strict conditions.

2.20. However, it is not clear whether the state has a dedicated procurement website on which it releases information on its process.²² Further, it was not possible to establish whether the state government publishes and distributes information on its tendering in hard copies. However, the State Government has set up a Bureau for Public Procurement and assigned it a standard office. At the time of collection of data for this report, the Bureau had engaged a number of professional staff (with a differentiated pay structure). However, it was still in the process of equipping the Bureau and engaging the full complement of required staff, about two years after passage of the law.

2.21 The Lagos State Tenders Board issued a circular in November 26, 2007²³ for public procurement pending enactment of the Public Procurement Law. The circular made open/competitive bidding the default procurement method “except as may be otherwise approved”. The circular established two thresholds as follows

The State Tenders Board for contracts worth 10 million Naira and above and the Ministerial Tenders Board (MTB) and Tenders Board for Parastatals - for contracts below 10 million

It also stipulated advertisement channels/media and applicable thresholds as follows

Notice board of procuring agencies (N500,000 – N5 million)

Notice board of procuring agencies, Alausa Alert, one national newspaper (N5million –

¹⁹ Enugu State, March 2009, Lagos, May 2009, and Rivers State, November 2008

²⁰ This regulation became effective on August 1, 2010

²¹ Currently set at 50 million naira

²² Although, the navigation map on the Rivers State Government website contains a tab for Tenders Board, the site was not populated.

²³ Review of Tender Procedures and Regulations in Lagos State, Ref. No. CD/STB/S.177/133, dd 26 November 2007

N10 million)

Notice board of procuring agencies, Alausa Alert, one national newspaper, LASG website (N10 – N50 million)

Notice board of procuring agencies, Alausa Alert, two national newspaper, LASG website (N50 million and above)

It provided for selective tendering only in cases of extreme urgency or specialization, and with express permission of the approving authority for the threshold. There are also provisions on tender opening and evaluation procedures.

2.22 These regulations notwithstanding, evidence of failure to use open competitive bidding in contravention of the guidelines was not difficult to find. During the period assessed by the PEFA PFM Report,²⁴ evidence pointed to selective bidding as the predominant procurement method.²⁵ The State Treasury Board (STB) circular referred to above made this possible by providing very weak justifications for its use. The justifications are those of “extreme urgency or specialization”. However, this circular did not define the factors that constitute “extreme emergency or specialization”. Further, the requirement for the “express consent of the approving authority for the threshold” (for selective bidding) rather than a higher supervising authority created another significant loophole. The lack of a procurement regulatory authority to conduct prior or post review of major procurement is another lacuna that contributed to the preference for selective tendering. The circular did not contain provisions on procurement appeals process and as a result, Lagos State Government has no visible procurement appeals process.

2.23 The audit reports for the period of the PEFA assessment contain numerous instances of violations of the procurement process. These include the following cases:

Award of contract to improperly registered contractors and without payments of tendering fees

Award of contract to improperly registered contractors and without payments of tendering fees

Payment of 100 percent of advance payment to contractor on award of contract but performance not completed 18 months later

Failure to maintain a project file in respect of contracts for which large sums were paid

Payment of large sums of money in respect of contracts in cash rather than by cheque

Payment of 60 percent fee in advance (contract value, N34.5 million) since 2006 but contractor yet to move to site in mid 2008

Procurement of 100 KVA generator instead of the 140 KVA requested and for which authority to incur expenditure was received.

Over invoicing.

2.24 The Lagos State Tenders Board recently opened a website²⁶ on which it posts some information of public interest. However, the site appears to still be under construction and development. The site has not yet populated several of the headings including tendering process, news, hotline, complaints, etc. The most important and comprehensive information on the site currently is information on awarded contracts dating back to 2008. The list numbers more than 1,600. However, the information posted does not include the contract costs or details.

²⁴ 2006 - 2008

²⁵ See Lagos State PEFA PFM assessment Report, May 2009

²⁶ <http://www.stb.lagosstate.gov.ng>

Objectivity of Public Procurement Decisions

2.25 International conventions and protocols require that the procurement decision process be sufficiently objective to allow for subsequent verification. For instance, UNCAC provides as follows, “*The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures*” (Article 9(1c)). AUCPCC provision on transparency and equity of the procurement process is relevant here. *Article 7(4)* of AUCPCC requires state parties to “*Ensure transparency, equity, and efficiency in the management of tendering and hiring procedures in the public service*”. *Article 5(4)* further requires the adoption of “*legislative and other measures to create, maintain, and strengthen ... procurement and management of public goods and services*”. The ECOWAS Protocol also requires each state party to “*take measures to establish and consolidate ... transparency and efficiency in the procurement and disposal of goods, works, and services*” and “*policies to ensure that public officials do not take official decisions related to private business in which they have an interest*” (*Article 5 (b and j)*).

2.26 The federal Procurement Act makes provisions on all aspects of procurement decision making, including prequalification of bidders, the tender and bid process (examination and evaluation of bids, rejection and acceptance of bids), choosing a procurement method, etc. In addition, the Bureau for Public Procurement has published guidelines further elaborating on, amplifying, and detailing out every aspect of the provisions of the Act. Both the Act and the Guidelines significantly narrow areas of discretion and personal interpretation in the procurement process. Of particular note is the clear definition of circumstance in which to use other procurement methods (apart from open tendering). Thus, the Act defines circumstances under which to use requests for quotations (*s. 42*), direct procurement (*s. 43*) and emergency procurement (*s. 44*).

2.27 To ensure easier understanding of the procurement process, the Bureau has published and is distributing freely, booklets on key aspects of the process. Among these are, (i) the Act itself, (ii) Procedures and Documentation Pre-requisite for the Issuance of Certificate of “No Objection to MDAs, (iii) Complainants Procedure under the Procurement Act, and (iv) separate Codes of Conduct for Public Officers, Suppliers and Contractors, as well as Observers. As indicated earlier in this report, it was not possible to ascertain the extent of compliance with these provisions because there is not yet any published completed study on the issue.

2.28 All these notwithstanding, issues are beginning to emerge in a few instances on how transparently the Bureau for Public Procurement and the MDAs are implementing the provisions of the Act. A currently burning issue relates to a contract to construct a second runway at the Nnamdi Azikiwe International airport in Abuja. Revelations at the ongoing public hearing on the issue at the National Assembly raise some concerns. First, the Ministry of Aviation obtained a certificate of no objection from the BPP to use selective tendering in clear violation of the provisions of the Act. The reason adduced was on grounds of urgency, i.e., the length of time it would take to complete engineering designs and do open tendering. This does not qualify for real emergency under the provisions of the Act.

2.29 The public hearing also appears to show that there was ministerial (political) interference or involvement in the procurement decision-making, something the Act and Guidelines do not envisage. The accounting officer of an MDA (permanent Secretary in the case of a Ministry, and CEO in the case of parastatals) is responsible for procurement decisions. The Minister has no role in this technical process. The enquiry further shows that only two firms tendered for the contract, Julius Berger and PW. The Ministry awarded the contract to Julius Berger for about N63.5 billion Naira. The company had bid N72 billion Naira whereas PW presented a bid of N30 billion Naira. The Ministry's own valuation of the contract was only N37 billion.

2.30 The enquiry further revealed that the Minister authorized the use of funds unappropriated by the National Assembly to pay for the construction. The fund intended for use was the proceeds of the Bilateral Air Services Agreement (BASA) fund. This is contrary to the provisions of the Act, which requires the accounting officer to ensure that procurements are in line with funds appropriated through the budget. It is instructive that the BPP has acknowledged there were errors in the process and stated its readiness to withdraw the certificate already issued.

2.31 The Rivers and Bauchi states procurement laws have similar provisions to those of the federal government. As already indicated, Bauchi state was still in the process of actualizing the provisions of its law at the time of data collection, and Rivers state did not provide information on its procurement process. However, the Rivers state PEFA report of 2008 could not identify clear and uniform procurement processes across government departments.²⁷ For example, the Ministry of Health provided evidence to show that it used only selective bidding/tendering, while the Ministry of Works tried to establish that it was using open tendering, although it could not provide conclusive evidence to this effect.

2.32 However, following the Validation of the Draft Report, the Rivers state government provided several documents to illustrate the objectivity of its procurement system. These documents are the Public Procurement Law, 2008 and the following circulars, Mandatory Steps in the Procurement of Goods, Services, and Works (issued on 12 November, 2008), Constitution of the Ministerial Tenders Board (November 24, 2008), Submission of Tender Documents (20 January, 2010), and Monetary and Prior Review Thresholds and Procurement Methods Regulation (28 June, 2010). These documents show the steps the state government has taken thus far to implement its procurement law. Given that some of the documents are recent (issued only 2010), it might take some time to observe the objectivity of their application. However, the Bureau has also commenced a process of procurement audit to establish benchmarks to track future performances and intends to repeat the process biannually. This should help in the future to establish the level of objectivity in the procurement process.

2.33 Lagos state also did not provide information on its procurement process for this exercise. However, its PEFA report contains detailed information on its procurement process as it existed then (May 2009). As already explained above,²⁸ it would not be possible to describe the Lagos state procurement process (then) as objective. The wide discretion enjoyed by MDAs in the use of selective tendering and its justification based on emergency undermined the objectivity and integrity of the process. The website of the Lagos state Tenders Board (created since the completion of the PEFA assessment) does not provide sufficient information on which to base judgment on the current level of objectivity of the procurement process.

²⁷ The PEFA review took place prior to implementation of the Procurement Law

²⁸ See preceding section

2.34 Similarly, Enugu and Plateau states did not provide specific information with which to assess the objectivity of their procurement processes, or in the case of Bauchi the levels of implementation of its law. Information from the respective Enugu and Plateau states PEFA assessment (2009) indicate the lack of objectivity in their procurement processes. During the PEFA assessment, Plateau state government officials could not describe their procurement process, whereas Enugu state officials indicated that open tendering was not the preferred method of procurement. During the validation exercise in November 2010, Kano state provided evidence of its tendering procedure contained in its revised Financial Instructions and Stores Regulations. However, there was no evidence to adjudge the objectivity of the application of the process and as indicated above, provisions of the documents fall short of modern requirements of transparency and openness required by UNCAC, AUCPCC and ECOWAS Protocol.

Procurement Reviews and Appeals Process

2.35 UNCAC articles provides for state parties to have *“An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed”*. Although AUCPCC has no similar (explicit) provision the general provisions cited above cover procurement reviews and appeals. In particular, the transparency provision in *Article 7(4)* to *“Ensure transparency, equity, and efficiency in the management of tendering and hiring procedures in the public service”* covers anything that requires openness, including a review and appeals process. The ECOWAS Protocol makes similar provisions when it requires each state party to *“take measures to establish and consolidate ... transparency and efficiency in the procurement and disposal of goods, works, and services”* and *“policies to ensure that public officials do not take official decisions related to private business in which they have an interest” (Article 5 (b and j))*.

2.36 The Federal Government procurement review and appeals process is the most advanced of all the governments in the sample. MDAs recognize and adhere to the prior review thresholds, currently set at 100 million naira for goods and services. “No Objection” certification issued by the Bureau for Public Procurement must precede award of and payment for such contracts. There is a procurement complaints system in place for aggrieved persons. Complaints to the Bureau can be in writing or through an email. The law however requires all communication to be in writing. There is also a link on the Bureau's website through which to lodge complaints automatically. There are instances where the Bureau, after reviewing complaints, has declared mis-procurement or requested a procuring unit to correct the fault in the process.

2.37 The Bureau has published a small brochure on “Complaints Procedure under the Procurement Act 2007”. The booklet highlights nine steps in the procurement complaints process as follows:

- a) Formal written complaint to the accounting officer of the procuring entity within 15 working days of becoming aware of breach or omission
- b) Review of complaint by accounting officer and communication of decision, giving reasons, to the complainant within 15 working days
- c) Further complaints in writing to the Bureau within another 10 working days
- d) Bureau notifies procuring entity of complaints and suspends further action by

- procuring entity until matter is settled.
- e) If the Bureau does not dismiss the complaint, it shall further
 - i. Prohibit the procuring/disposing agency from taking further action
 - ii. Nullify part or all of the unlawful act or decision of the procuring/disposing entity
 - iii. Declare or make known the rules and principles governing the subject matter of the complaint.
 - iv. Reverse improper decision by procuring\disposing entity or substitute its own decision for the improper one.
 - f) Bureau shall notify all interested bidders of the complaint before taking any decision on the matter and may take representations on the matter from bidders and the respective procuring or disposing entity
 - g) Bureau shall announce decision within 21 days of receipt of complaints, giving reasons for its decision.
 - h) If not satisfied with decision or if decision not reached within 21 days, complaint may proceed to the High Court within 30 days
 - i) Decision of the High Court shall be final and binding on all the parties and no further appeals shall lie.

2.38 Both Rivers and Bauchi states procurement laws have provisions on prior reviews and grievance process. However, there is little information on how the Rivers' process works in practice. Although following the Validation Exercise of November 2010 the state government provided information on its procurement process and its implementation, it did not provide information on procurement appeal process or evidence of application of the provisions of the law to a particular procurement. Given the legal maxim that 'the express mention of one is exclusion of the other', it is perhaps safe to suggest that, the state government is yet to commence implementation of the appeals provisions of its procurement law. Bauchi state was still in the process of establishing or activating several of the provisions of its Law, including the grievance resolution process, at the time of gathering data for this analysis, more than two years after the law was passed. Although the state government attended the Validation Exercise, it did not provide additional comments or evidence on the subject.

2.39 Although Kano state supplied documents on its financial and stores regulations, the documents do not establish a process of procurement appeals for resolving grievances. The other three states in the sample - Enugu, Plateau, and Lagos – did not provide information on their processes. However, judging by available information, they do not have prior or post review processes or grievance resolution systems. As already stated, the states have not enacted modern procurement laws, and existing procurement regulations do not have provisions for such. Thus the system in these states cannot be said to be compliant to UNCAC, AUCPCC and ECOWAS Protocol requirements in this respect.

Code of Conduct for Procurement Personnel

2.40 To help protect the integrity of the procurement process, UNCAC requires the legal system to establish, “*Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements*” (Article 9(1)e. Article 5(4) of AUCPCC requires state parties to “*Adopt and strengthen mechanisms for ... the promotion of an enabling environment for respect of ethics*”. In addition, AUCPCC (Article 7 (4)) and the ECOWAS Protocol (Article 5(a, g)) contain provisions on declaration of assets and conflict of interest. All the international treaties and conventions require provisions that prohibit acts of bribery and solicitation.

2.41 The Constitution of the Federal Republic of Nigeria, which applies nationwide, lays the basic foundation for proper code of conduct for public officers. Sections 172 and 209 provide that “*A person in the public service of the Federation (or state) shall observe and conform to the Code of Conduct*” prescribed in Schedule 5 of the Constitution. The Schedule stipulates acceptable standards of behavior in diverse situations and prohibits unwholesome conduct, including conflict of interest situations, bribery, maintenance of foreign bank accounts, membership of secret societies, etc. It also provides for compulsory declaration of assets by public officials, and sets up the Code of Conduct Tribunal to try offenders.

2.42 In relation to procurement specifically, in addition to the rules contained in section 57, the federal Public Procurement Act, 2007 empowers the Bureau to make additional rules, regulations, and code of conduct for all personnel involved in the procurement process, including public officers, suppliers, contractors, and service providers. The section contains very clear and elaborate rules. For instance, it requires all public officials and others involved in the procurement process and asset disposal process, to declare in writing, any situations of conflict of interest that may affect them. To avoid ambiguity, it defines what may constitute a conflict of interest. The Act also lists the principles that would govern public procurement and disposal of public assets as judiciousness, honesty, accountability, transparency, fairness, and equity.

2.43 In the exercise of its powers under section 57 of the Act, the Bureau has prepared separate codes of conduct for public officers and observers of the procurement process. The public officers' code highlights and expands the provisions in the Act to 12 different codes of behavior. It also prescribes an “oath of allegiance for public officers involved with procurement”. The code for procurement observers includes five “qualifications of public procurement observes” and 16 codes of behavior. It also includes the “oath of allegiance for procurement monitors”. In addition to publishing these rules on its website, the Bureau has produced them as separate booklets for wide and free distribution.

2.44 In addition to these, the federal Public Service Rules, 2008 includes a section on acts that constitute “serious misconduct” and the disciplinary measures that apply to them. Serious misconduct includes several offences that affect public procurement such as falsification of records, suppression of records, withholding of files, bribery, corruption, embezzlement, misappropriation, etc. States ought to have their separate public service rules. Evidence provided at the Office of the Head of Service suggests that Enugu State officially uses the federal rules.

However, except for Bauchi state, the other states did not make available copies of their rules. Bauchi State rules contain provisions similar to those at the federal level.

2.45 Both Rivers and Bauchi states' procurement laws contain similar provision on code of conduct for procurement personnel. Although the other states do not have procurement laws, their financial regulations contain principles and rules for the handling of public funds and fiduciary transactions. These principles emphasize judiciousness, integrity, and accountability. However, it was not possible to obtain copies of extant financial regulations in Plateau, Enugu, and Lagos States. At the Validation exercise, the Kano state government provided copies of its "Public Finance (Control Management) Law 1990,"²⁹ and the state Financial Instructions. Both documents are old and need substantial revision to make them conform to good practices. As already indicated, Rivers state uses the Federal Financial Regulations 2006.

²⁹ Enacted in 1969

Table 1: Summary of Compliance with Provisions of UNCAC, AUCCPC and ECOWAS Protocol Management of Public Finance								
	Provisions	FGN	Lagos	Rivers	Enugu	Bauchi	Plateau	Kano
Procurement Legislation\ Policies	UNCAC: Article 9(1) AUCPCC: Article 5(4) ECOWAS Protocol: Article 5(b)	Public Procurement Act, 2007; established the National Council on Procurement (NCP) and Bureau of Public Procurement (BPP); NCP not inaugurated but BPP functioning; Executive Council of the Federation appears to be performing function of NCP.	None	Rivers State Public Procurement Law, 2008 establishes a Board of Directors for the Rivers State Bureau on Public Procurement; Bureau already functioning	None	Bauchi State Budget Monitoring, Price Intelligence & Public Procurement Law 2008; establishes Council on Procurement and Budget Monitoring, Price Intelligence and Public Procurement Unit; but Unit is staffed with directors in civil service and subject to the State Executive Council	None	None
Selection and Award Criteria	UNCAC: Article 9(1)(a)(b) AUCPCC : Article 5(4); 7(4) ECOWA Protocol: Article 5(b)	Clear and provided for in Procurement Act and Guidelines produced by Bureau for Public Procurement; BPP sets clear procurement thresholds, methods; issues "No Objection" certificates, etc.	No information	Law empowers Rivers BPP to issue guidelines, establish thresholds, determine procurement method, etc. however, no information on level of compliance	No information	Budget Monitoring, Price Intelligence and Public Procurement Unit established; draft Guidelines produced but not approved, although procurement threshold set. Level of compliance not certain.	No information	No information
Objectivity of Procurement Process	UNCAC: Article 9(1)(c) AUCPCC : Article	The Procurement Act makes provisions on all aspects of procurement decision making; the Bureau also made clear and objective rules in the	No current information on Lagos procurement process. Information on PEFA report (2009) showed	Parts V and VI (ss. 21 – 49) of the Procurement Law deal with tendering process, bid evaluation, selection, and contract award. There are also circulars and	No current information on Enugu procurement process. Information on PEFA report (2009) showed process was not sufficiently objective	Bauchi procurement law has clear and objective rules on procurement process; however, lack of independence of Unit (under the current Law) can	No current information on Plateau procurement process. Information on PEFA report (2009) showed process was not sufficiently objective	No information

Table 2: Summary of Compliance with Provisions of UNCAC, AUCCPC and ECOWAS Protocol Management of Public Finance							
Provisions	FGN	Lagos	Rivers	Enugu	Bauchi	Plateau	Kano
5(4); 7(4) ECOWA Protocol: Article 5(b, j)	Guidelines further elaborating on, amplifying, and detailing out every aspect of the provisions of the Act. However, extent of adherence by MDAs not yet assessed.	process was not sufficiently objective	regulations on procurement methods, thresholds, and processes. However, some of the circulars are recent (issued in 2010) and it might take some time to determine the level of their objective application. The Bureau has also commenced a process of procurement audit to establish benchmarks to track future performances.		potentially undermine objectivity and full implementation		
Procurement Reviews and Appeals Process	The Public Procurement Act contains provisions for procurement appeals and reviews. The Bureau has superintendence over procurement audits and reviews. The Bureau has published a small brochure on "Complaints Procedure under the Procurement Act 2007". The brochure lists nine steps in procurement appeals process.	No current information from PEFA (2009) report suggests Lagos state had no procurement appeals and review process.	No current information; Information from PEFA (2008) report suggests Rivers state had no procurement appeals and review process.	No current information; Information from PEFA (2009) report suggests Enugu state had no procurement appeals and review process.	Bauchi state procurement law contains provisions for administrative surveillance, and complaints, and reviews, but process has not yet taken effect.	No current information from PEFA (2009) report suggests Plateau state had no procurement appeals and review process.	No information

Table 1: Summary of Compliance with Provisions of UNCAC, AUCCPC and ECOWAS Protocol Management of Public Finance								
	Provisions	FGN	Lagos	Rivers	Enugu	Bauchi	Plateau	Kano
Code of Conduct for Procurement Personnel	UNCAC: Article 9(1)(e) AUCPAC :Article 5(4); 7(4) ECOWA Protocol: Article 5(a)(g)	Section 57 of the Public Procurement Act 2007 provides for minimum code of conduct for public officers. involved in procurement. The Bureau for Public Procurement developed 12 codes of conduct and oath of allegiance for public officers involved in procurement; also produced 16 codes and outlined five qualifications for procurement observers. Codes are published on line on BPP's website and is freely distributed as hard copies	No information	No information	No information	Code of conduct still under development	No information	No information

CHAPTER 3

Management of Public Finances

3.1 Article 9 (2) of UNCAC states as follows, *Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia*

- a) *Procedures for the adoption of the national (state) budget*
- b) *Timely reporting on revenue and expenditure*
- c) *A system of accounting and auditing standards and related oversight*
- d) *Effective and efficient systems of risk management and internal control*
- e) *Appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph*

3.2 This section examines how the public financial management systems of the federal and sample state governments meet these provisions and those of the United Nations Convention Against Corruption [UNCAC] , African Union Convention on Preventing and combating Corruption (AUCPCC) and the ECOWAS Protocol on the Fight against Corruption.

Box 2: Extant Anti Corruption Laws and Regulations Affecting Public Finance and the Budget Process

The Constitution of the Federal Republic of Nigeria (1999), Ss. 80 – 89 (federal government); Ss. 120–129 (state governments); Ss 172, 209, Schedule 5 (Code of conduct)

The Finance (Control and Management) Act, No. 33 of 1958, Cap. F26 LFN 2004 (There is current a Bill (submitted in 2009) before the National Assembly to repeal this Act and Enact the Public Finance (Management and Control) Act

Central Bank of Nigeria Act, 2007

The Federal Government of Nigeria Financial Regulations, 2009 (“the Financial Regulations”)

The Public Procurement Act, 2007

The Fiscal Responsibility Act, 2007

The Pension Reform Act, 2004

Personal Income Tax Act 1993, Act Cap. P8 L.F.N. 2004

Companies Income Tax Act Cap. 60 L.F.N. 1990 Act Cap. C21 L.F.N. 2004

Code of Conduct for Public Officers of the Federal Republic of Nigeria, published by the Code of conduct Bureau

The Public Service Rules, 2008

Procedures for the Adoption of the Budget

3.3 The UNCAC requires the adoption of “*appropriate measures to promote transparency and accountability in the management of public finances*” including “*procedures for the adoption of the national (state) budget*”. Similarly, AUCPCC requires state parties to “*undertake to ... Adopt legislative and other measures to create, maintain and strengthen internal accounting, auditing and follow up systems, in particular, in the public income, custom and tax receipts, expenditures and procedures for hiring, procurement, and management of public*

goods” (Article 5(4)). The ECOWAS Protocol also provides for each state party to “*take measures to establish and consolidate ... revenue collection systems that eliminate opportunities for corruption and tax evasion and provide for regulations, which require companies and organizations to maintain adequate financial books and records and adhere to internationally accepted standards of accounting*” (Article 5(g)).

3.4 The 1999 Constitution establishes the basis for public budgeting in Nigeria. It sets clear procedures for adoption of the annual budget at both the Federal and state government levels. The President (in the case of a state government, the Governor) presents the annual fiscal budget proposal (Appropriation Bill) before the Legislature for consideration and approval. The Executive cannot spend money not appropriated by the Legislature, except as otherwise provided by the constitution. The exception involves certain protected expenditures that accrue as first line charges on the Consolidated Revenue Fund. Examples include the salaries of the President, the Vice President, Supreme Court Justices, the Attorney General of the Federation etc. Similar constitutional provisions apply at state government levels.

3.5 Following experimentation with the medium term expenditure framework approach to public budgeting in 2004, the government enacted the Fiscal Responsibility Act 2007(FRA). This law requires that all federal budgets be in accordance to prior approved Medium Term Expenditure Framework (MTEF). Also the MTEF is to be prepared through a consultative process involving other tiers of government as well as the public.³⁰ Following the FRA, Federal Ministry of Finance (FMF) organizes formal MTEF consultations with the organized private sector³¹ (OPS), professional associations,³² trade union groups,³³ banks, international development partners, non-governmental organizations, and civil society organizations. A major outcome of these consultations is the identification of priorities for the coming fiscal year. After this, the FMF formulates a fiscal strategy paper (FSP) or framework outlining fiscal policy goals; the revenue and expenditure framework for the medium term (next three years) for cabinet approval. Following this approval, the Ministry issues a call circular to MDAs to prepare and submit their budget proposals. After budget defense by MDAs, the Ministry compiles a draft budget for consideration and approval of the National Assembly. The Fiscal Responsibility Act of 2007 now requires the President to first submit the MTEF for discussion and approval by the National Assembly. After this, it may submit the full Appropriation Bill. These provisions of the FRA are in compliance with UNCAC, AUCPCC and ECOWAS Protocol requirements.

3.6 However since return to civil rule in 1999, the federal government has hardly passed the budget before the commencement of the fiscal year to which it relates. The National Assembly has usually approved the budget about three to five months into the fiscal year.³⁴ The notable exception was the 2008 budget, approved in January. However, disagreements between the executive and the National Assembly made it impossible for the President to assent to the Bill until May 2008. The 2010 budget was still undergoing revision as at September 2010. One direct effect of these late budget approvals has been attempts by MDAs to find creative ways to circumnavigate procurement rules and procedures in order to be able to achieve a reasonable percentage of budget execution.

³⁰ S 11-13 of the Fiscal Responsibility Act 2007

³¹ Such as the Nigerian Association of Chambers of Commerce, Industries, Mines, and Agriculture (NACCIMA), Manufacturers Association of Nigeria (MAN) etc.

³² For example, Institute of Chartered Accountant of Nigeria (ICAN), Association of National Accountants of Nigeria (ANAN), Nigeria society of Engineers, etc.

³³ Including the Nigeria Labour congress (NLC), Trade Union Congress (TUC) of Nigeria, Road Transport Workers Union

³⁴ The fiscal year runs from January to December.

3.7 Aside from the Constitution, other important pieces of legislations and regulations that govern the federal budget and its processes include the *Finance (Control and Management) Act, 1958*, Cap F26, Laws of the Federation, 2004, the *Financial Regulations, 2009*, and the *Central Bank of Nigeria Act*. The first is the organic finance law of the federal government. It contains detailed framework legislation for the management of the budget and public finances. It defines the roles of the Ministry of Finance and the Office of the Accountant General of the Federation, OAGF in public financial management. However, the Act is old and several of its provisions are either archaic or do not apply to the presidential system of government, which Nigeria currently operates. Consequently, since 2001, the Federal Ministry of Finance and the Office of the Accountant General of the Federation have been spearheading efforts to enact new legislation to repeal and replace it. A new draft law, the Public Finance (Control and Management) Bill was submitted to the National Assembly in 2009, but is yet to become law.

3.8 The Financial Regulations (FR) is subsidiary legislation made by the Minister of Finance pursuant to powers granted under the Finance (Control and Management) Act. They contain detailed rules, instructions, and procedures for the management of all aspects of the budget and public finances. The rules cover recording, book keeping, internal and external audit, reporting, procurement, stores, custody and handling of assets, etc. To try to ameliorate some of the difficulties created by the age of the parent legislation, the Finance (Control and Management) Act, the federal government has revised the FR three times since 1999, the latest being in January 2009.

3.9 The Central Bank of Nigeria Act empowers the CBN to act as banker to the federal, state, and local governments, and for their institutions and corporations. In some circumstances, the CBN may also act as agent of the government. In this regard, the CBN maintains the Federation Account, created under *s. 162 of the 1999 Constitution*, which pools all revenues jointly accruing to the federal, state, and local governments. This role helps to track the funds and prevent loss of public funds that could arise from the creation of multiple holding funds. Besides, the CBN keeps the Consolidated Revenue Fund of the Federation, into which is paid all funds accruing to the federal government (as distinct from joint revenues accruing to all tiers) from all sources. It also keeps the central capital development fund, which funds MDAs' projects. MDAs can only assess this fund after they and to the extent to which they have met the due process certification of the Bureau for Public Procurement. By the FRA, the CBN shall in consultation with other tiers of government invest for each tier of government its savings, arising from rise of commodity prizes beyond predetermined levels.

3.10 In the early years of return to civil rule, spending outside legislative budget approval featured prominently. The major cause was disparity between the budget prepared by the executive and that approved by the National Assembly (NA). The NA, believing that it has the constitutional powers, would usually significantly increase executive proposals (sometimes without identifying additional revenue sources) and alter the balance of sectoral allocations. The executive usually refused to implement the budget as approved, citing potential destabilization of the macro economy inherent in the approved budget. This disparity, with the perennial late approval of the budget, resulted in only partial implementation of the budget. This annual occurrence became a big threat to stability of the polity. However, in the last year or so, the executive and the legislature seem to have found a way of agreeing on budget totals.

3.11 Of the six state governments under the study, only Bauchi State had enacted a Fiscal Responsibility Law at the time of fieldwork/data collection for this report while the others had their laws at various stages of preparation.³⁵ The Bauchi State Fiscal Responsibility Law took effect on September 15, 2009. Like the federal equivalent, it provides for the preparation of a medium term expenditure framework approved by the Legislature, and for the framework to be the basis for the annual budget. However, the State Government has not yet established the structures and institutional mechanisms for its implementation. Lagos, Enugu, Plateau, and Kano states do not yet have their own fiscal responsibility laws in place. During the Validation Exercise, the Kano state delegation provided information that the state was in the process of enacting its Fiscal Responsibility Law. However, it did not provide a copy of the draft for review. In 2010, the Rivers state government enacted its Fiscal Responsibility Law.

3.12 This notwithstanding, a number of the state governments are at various stages of implementation of medium term expenditure framework reforms. Bauchi State, which received a credit from the World Bank under the *State Governance and Capacity Building Project (SGCBP)*, has applied some of the proceeds to engage consultants to design and implement MTEF reforms, including preparation of medium term sector strategies. Similarly, Lagos State, under the World Bank financed *Lagos Metropolitan Development and Governance Project (LMDGP)* has been working on accounts and budget, including, MTEF reforms. The state has designed a new budget and accounts classification system, which conforms to the United Nations-supported Classification of Government Functions (COFOG). Thus, the 2010 Lagos State Budget has nine main budget and accounting functions.³⁶ The state, with initial assistance from a now defunct DFID project³⁷ and current support from the WB financed LMDGP, is preparing and using sector strategies for its MTEF and budget process.

3.13 The Rivers State Government is also working to introduce the medium term expenditure framework approach to budgeting into its public finance system. However, the exercise is still at a rudimentary stage. Enugu, Bauchi, and Kano state governments do not appear to have visible medium term reform agendas, or else, they did not provide information to that effect. During the validation exercise, the Kano state delegation suggested that the state government had a viable medium term reform anchored on assistance from active European Union and DFID projects in the state. Through these projects, the state government has drawn up, and is currently implementing, medium to long-term public financial management reforms agenda. However, it did not provide information to assess the viability of programmes.

3.14 Recent PEFA assessments of Lagos (2009), Enugu (2009), Rivers (2008), and Plateau (2009) show that fiscal discipline, particularly ability to spend within approved aggregate and sectoral budget limits, was an issue in the states. An analysis of the Kano State spending for 2003 to 2006³⁸ also showed issues with fiscal discipline. There is no information on Bauchi State. The state government did not provide information on its accounts despite repeated requests.

3.15 Current budgeting processes in the six states follow familiar routine and procedures.³⁹ These routines are similar to that used by the federal government prior to the commencement of

³⁵ Delta and Bayelsa states, not part of the sample, have recently enacted their fiscal responsibility laws.

³⁶ COFOG has 10 main classifications, however, as a subnational government; Lagos State does not have a defence function.

³⁷ State and Local Government Project (SLGP)

³⁸ Those were the years for which the SG provided its accounts

³⁹ This should not be surprising given the common ancestry and history of the country, pre-independence. A colony and protectorate of Great Britain, the defunct four regions that mothered current 36 state governments inherited the same fiscal and financial procedures from their colonial masters. These procedures are still in use today.

fiscal reforms in 2003. The Ministries of Finance (MoFs)/Budget Office/State Planning Commission or Ministry of Planning send out budget call circulars. Ministries, departments, and agencies, respond to these circulars by submitting their estimates for the coming year. They submit capital and current estimates separately, as directed in the call circulars. In practice, these estimates are often mere mark ups of the preceding year's budget. There is usually a budget defence session during which MDAs try to justify their budget requests. Following this, the coordinating ministry/agency assembles a draft budget for cabinet approval and forwarding to the state Legislature for consideration and passage into law as the Appropriation Law.

3.16 As in the Federal government, most state governments, budgets are not ready at the commencement of the new fiscal year. One notable exception here is the Lagos State government, which in 2008 and 2009, approved its budget at the beginning of the fiscal year.

Timely reporting on revenue and expenditure

3.17 UNCAC requires state parties to adopt measures that will promote “*timely reporting on revenue and expenditure*”. Both AUCPCC and ECOWAS Protocol have corresponding provisions. AUCPCC provides in *Article 5(4)* for the adoption of “*legislative and other measures to create, maintain, and strengthen internal accounting ... in particular, in the public income, custom and tax receipts, expenditures ...*”. Obviously, measures aimed at achieving these objectives must include timely reporting. The ECOWAS Protocol requires measures “*to establish and consolidate ... revenue collection systems that eliminate opportunities for corruption and tax evasion and provide for regulations which require companies and organizations to maintain adequate financial books and records and adhere to internationally accepted standards of accounting*” (*Article 5(f)*). The reference to international standards of accounting makes timeliness of reporting an issue because it is covered by both IPSAS (International Public Sector Accounting Standards) and IAS (International Accounting Standards) issued by IFAC (International Federation of Accountants).

3.18 Legal provisions and enactments on accounts reporting in Nigeria include the 1999 Constitution, the Finance (control and Management) Act, the Financial Regulations, 2009 issued therefrom and the FRA. Beginning with the Constitution, *s. 85* requires the Auditor General for the Federation to audit the public accounts of the Federation and of all offices and courts. The Auditor General must submit reports of the audit to the National Assembly within 90 days of receipt of the financial statements from the Accountant General of the Federation. The Constitution also provides that in the performance of his/her duties, the Auditor General will act independently and not receive directives from anyone. Finally, the constitution equips him/her with powers to access all books, records, returns, and other documents relating to those accounts. Similar provisions apply to state governments in *section 125*.

3.19 To help secure the independence of the external audit function, the Constitution makes several other provisions, including the following:

Appointment into the office by joint executive and legislative action: the president nominates, and the Senate confirms. The essence is to promote independence of the Office [*section 86 of the 1999 Constitution; section 126 for state governments.*]
Guarantee of the tenure of the auditor general to retirement age; the auditor general can

only be removed for infirmity of mind or body, or inability to discharge the functions of his office. Even then, the removal first requires an address to the Senate followed by a two-thirds majority vote (*section 87 of the 1999 Constitution; section 127 for state governments*).

The emoluments of the Auditor General flow directly from the Consolidated Revenue Fund (CRF); this guarantees his/her pay notwithstanding who may or may not be happy with his work. However, the emoluments of his staff and the expenses and cost of running the office are subject to appropriation. This dampens the ability of the Office to vigorously assert itself.

The FRA requires publication of arrears of federal government audited accounts not later than two years from the commencement of the Act, and thereafter publish annual audited reports not later than 7 months following the end of each financial year.⁴⁰

3.20 The Accountant General runs the federal treasury, keeps the relevant accounting books (including revenues and expenditures), and prepares financial statements and fiscal accounts summary for audit. The Finance (*Control and Management*) Act defines the functions of the Office in this regard. The Financial Regulations make detailed provisions on rules and procedures on all financial processes, transactions and procedures. Extant regulations require the accountant general to prepare the final accounts and submit same for audit within six months of the end of the year. Thus, the financial accounts of the federal government should be ready for audit by the end of June each year. Combined with the constitutional provision for completion of audit within 90 days, the audited accounts should be ready by the end of September each year.

3.21 In practice however, the accounts of the federal government have not always been prepared and audited in a timely fashion. However, recent concerted efforts by the Office of the Accountant General of the Federation (OAGF) have helped to clear arrears of accounts. Federal government accounts have now been audited up to fiscal 2008. Fiscal 2009 accounts are due in June 2010 (preparation) and September 2010 (audit).

3.22 The federal government does not have the tradition of granting the public access to audit reports. The Auditor General does not release his reports to the public in hard or soft copies through its website.⁴¹ It does not make available copies of audit reports to the public. Indeed, until recently, audit reports were not open documents. The Office used to claim that the Constitution merely requires it to report to the National Assembly, not the public. Consequently, the public did not have access to audit reports of public accounts. This was an important flaw in the public accountability process and a draw back in the fight against corruption. If the public does not have access to audit reports, it cannot comment on revenue receipts and the use of expenditures. This lapse seems to have been cured by the requirement of the FRA for publication of audited account of the Federation within a given period as already referred to above.

3.23 The failure by the Office of the Auditor General for the Federation to release the audited accounts has become a contravention of existing law since the enactment of the FRA. As described below, the Accountant General releases both hard and soft copies of the final accounts, yet, the Office is not a constitutional creation. Although the constitution mentions the Office in section 85 (125 for states), it is only in relation to when to begin to count the 90 days required for

⁴⁰ This appears to be what was intended by S 49 of the FRA 2007, it is yet to be seen whether the inelegant language observed in this section will be interpreted in this manner by courts.

⁴¹ The Office of the Auditor General for the Federation does not appear to have an official website

completion of audit. The Office of the Accountant General is a creation of the Finance (Control and Management) Act of 1958.

3.24 Recently however, the Office of the Auditor General has begun to give copies of the report to the public. However, this appears to be only on request. This is not sufficient and does not amount to free public access, nor satisfy the requirement of S 48 of the FRA that government ensures full and timely disclosure and wide publication of all transactions and decisions involving public revenues and expenditures and their implications for its finances. In addition, the National Assembly produces the audit reports for the Office. This may leave unanswered issues since the Auditor General is not subject to anybody in the performance of his/her functions. The Office ought to have sufficient budget to produce its report and to release it to the public in both hard and soft copies (through its website) at the same time it is submitting it to the Legislature, or shortly afterwards.

3.25 Prior to the FRA, there is no law that requires the Accountant General to publish the accounts. The Finance and Management Control Act merely provides for him/her to prepare the accounts and submit same for audit. This was the position until the FRA which now requires full, timely and wide publication of all fiscal and financial affairs of the Federal government. The Office in compliance with the FRA publishes the final accounts after effecting amendments recommended by the Auditor General. However, the report of the Auditor General submitted to the Legislature is in a final state. It is not subject to amendment. The Legislature cannot require changes in it because, in the performance of his/her functions under the constitution, the Auditor General is not subject to the direction or control of anybody (*section 85 (6); section 125 (6) for states*). There is therefore no reason for not releasing a final report to the public, and in the light of provisions of S 48 and 49 of the FRA.

3.26 The Constitution provides for the Public Accounts Committees of both Houses of the National Assembly to examine the audit report (*s.85 (5)*).⁴² The National Assembly is also empowered to investigate any issues raised in the report with a view to “expose corruption, inefficiency or waste” (*s. 88*). Until recently, the Public Accounts Committees (PACs) of both Houses were not discharging these functions. They were not examining the audit reports, neither have they been holding public investigations into the accounts of the FG as required. However, with funding and technical assistance provided under the World Bank funded *Economic Reform and Governance Project (ERGP)*, the PACs of both Houses have begun to develop the required capacity. They are currently holding investigations into the audited accounts. Nevertheless, they have many years' arrears of audit reports to study, investigate and hold public enquiries on.

3.27 Since 2004, the federal government has been publishing details of revenues accruing jointly to the federation from all sources and the monthly shares of the federal and each state and local government. It posts these details on the website of the Federal Ministry of Finance (FMF) and publishes it in a number of major national newspapers and magazines. Periodically too, it compiles them into a booklet for free distribution to members of the public. The most recent compilation shows the details of joint revenues collected and the respective shares of each government from June 1999 (when civilians began to handle the distribution of revenues) to December 2008. The public can therefore determine what accrued to the federal and each of the 36 state and 774 local governments.

⁴² Section 125 (5) for state governments

3.28 This notwithstanding, the federal government does not publish information on its total revenue collections, except through the final accounts of the Accountant General. Until recently, the public did not have routine access to these accounts. However, the Office of the Accountant General of the Federation has begun to publish the accounts on its website. Audited accounts of the federal government up to 2008 are on this website. In addition, the Office recently compiled them into books, which it recently launched and distributed free to invited guests.

3.29 With regard to State Governments, similar constitutional provisions relating to audit apply (*ss. 125 - 128 of the 1999 Constitution*). Thus, each of the six states in the sample has an Auditor General, appointed in a manner similar to that of the federal government. Auditors General so appointed have guaranteed tenures and the Constitution guarantees their emoluments. However, as with the Federal Government, the emoluments of staff of the auditors' general offices do not have guaranteed salaries. Besides, expenses of the offices are subject to appropriation by the respective state Houses of Assembly. Similar to what obtains at the federal level, the constitution requires states' auditors' general to submit audit reports to their State Houses of Assembly within 90 days of receipt of financial statements from the state's Accountant General. The Kano state government enacted an audit law in 1986, - the *Kano State Audit Law (1990)*.⁴³ This law applies together with provisions of the Constitution of Nigeria, but the later has superiority over its provisions in case of any conflict.

3.30 As it is at the federal government level, respective state governments' legal provisions provide for preparation of accounts and their audit at state government levels. States' financial regulations (instructions), deriving from their organic finance laws require preparation of financial statements within six months from the end of the fiscal year. Thus, as with the federal government, state government accounts ought to be ready and audited by the end of September each year. Constitutional provisions also require Public Accounts Committees of state Houses of Assembly to examine the accounts, hold public hearings on them, and investigate and expose corruption and wastage of public funds (*s.128*).

3.31 Lagos state has audited its accounts up to 2008. Indeed, the state completed audit of its 2008 accounts in May 2009. The last audit report for Enugu State was for fiscal year 2007. Rivers state government's last audited accounts were for 2006. For about two and half years, Rivers State had no substantive auditor general. The state appointed a new Auditor General towards the end of 2009. Hopefully, the audit of the state accounts will continue from where it stopped. As at the time of data collection for this report Kano State had prepared and audited its accounts up to 2006. There is no information on the state of Bauchi state government accounts. The SG did not provide the information despite repeated requests.

3.32 The Plateau state government situation is unique. The last audited accounts for which it provided evidence is 2004. The state government did not prepare accounts for 2005 and 2006. The official explanation is that the Economic and Financial Crimes Commission (EFCC) carted away its books and records in the process of investigating allegations of fraud proffered against some senior government officials. The state did prepare accounts for 2007, which reports⁴⁴ suggested were already audited as at December 2007, and had been submitted to the State House of Assembly. However, the state government's official position was that the audit report was not ready.

⁴³ See for instance, Report of the Auditor General for Kano State for the Year Ended 2006

⁴⁴ Information from the Office of the Auditor General

3.33 None of the state governments in the sample makes available copies of its audit report to the public. Besides, none of the states provided any documentation to show that the Public Accounts Committee examined the audited accounts or held public hearings on them as provided for in the Constitution.

System of Accounting and Auditing Standards and Related Oversight

3.34 UNCAC requires an effective “*system of accounting and auditing standards and related oversight*”. AUCPCC does not make any direct reference to accounting standards. However, as seen above it requires the adoption of “*legislative and other measures to create, maintain, and strengthen internal accounting, auditing and follow up systems ...*” (Article 5(4)). Accounting and auditing standards constitute an internationally recognized measure for strengthening “internal accounting, auditing and follow-up systems”. Also as seen above, ECOWAS Protocol requires adherence to “internationally accepted standards of accounting.” It provides for the adoption of measures “*to ... adhere to internationally accepted standards of accounting*” (Article 5(f)).

3.35 Nigeria does not have public accounting and auditing standards, whether at the federal or sub-national government levels. The Nigerian Accounting Standards Board (NASB), a government regulatory body, has been issuing commercial accounting standards for the country for over two decades. For upwards of five years, the Government has been working to expand the role of the Board to include issuing standards for both private and public sector accounting. To this end, the Government introduced the Financial Reporting Council Bill to the Legislature. When enacted, the new law will replace the Accounting Standards Board with the Reporting Council, with expanded powers and mandate.

3.36 Current reporting systems do not conform to international reporting standards, especially the *International Public Sector Accounting Standards (IPSAS)*. Nigeria uses the cash basis of accounting, which limits the ability of the accounts to correctly report assets and liabilities. Nigeria has not adopted the modified cash basis of accounting.

3.37 In 2004, the Conference of Accountants General of the Federation and States finalized work on a common reporting format for government accounts. The format standardizes minimum information that government accounts should disclose and the format of presentation. Not being a reporting standard and the Conference document not having the force of law, federal and state government “were encouraged” to adopt them at their own pace. Compliance has not been uniform. However, the federal, Lagos, and Rivers, accounts largely comply with the reporting format. Enugu, Plateau, and Kano State accounts have not achieved the same level of compliance. It is not certain to what extent Bauchi State accounts meets the reporting format; the state did not provide copies of its accounts despite repeated requests.

3.38 Nigeria does not have a formal public auditing standards body. However, in November 1997, the Conference of Auditors General for the Federation and states issued a document titled, “*Public Auditing Standards*”. The document covers a wide scope including general standard of care and independence, field work standards, and reporting standards, etc. While the document may have represented a milestone at the time of its issuing (which was during the era of military rule),

there is no doubt that it falls far short of current international requirements. For instance, it does not meet the requirements of *International Organization of Supreme Audit Institutions (INTOSAI)* nor does it include standards for any form of specialized audit, such as investments, intangibles, etc. Of particular note is that it does not adopt a code of ethics for public sector auditors. Being only 33 pages, the document covers only general auditing.

3.39 Public Accounts Committees (PACs) have constitutional functions for the oversight of public accounts and audits (already discussed above). With the exception of the National Assembly, aided by World Bank credit funding and technical assistance, no other government in the sample has been complying with the provisions. This may be partly attributable to knowledge and skill gap, and capacity shortages.

Effective and Efficient Systems of Risk Management and Internal Controls

3.40 UNCAC provisions further require “*Effective and efficient systems of risk management and internal control*”.⁴⁵ Both AUCPAC and the ECOWAS Protocol make implied or indirect references to internal controls in the provisions already reproduced several times in this report. AUCPCC requires state parties to “*Adopt legislative and other measures to create, maintain, and strengthen internal accounting*”. ECOWAS Protocol also provides for adoption of “*necessary legislative and other measures to*” criminalize “*Creating or using an invoice or any other accounting document or record containing false information*” and “*unlawfully omitting to make a record of payment*” (Article 6 (4)(a&b)). These are obvious references to internal controls.

3.41 The federal *Financial Regulations, 2009* is the main regulatory document on internal controls at the federal government level. The entire document is a compendium of internal controls procedures applicable in the federal government. Its detailed provisions cover revenue and expenditure, including payments, controls and procedure, book keeping and accounts, handling of accounts and documents, audit and reporting, etc. In addition, *Chapter 17* of the Regulations is devoted entirely to internal audit. It defines internal audit as “*a managerial control, which functions by measuring and evaluating the effectiveness of (the) Internal Control system*”.

3.42 The Regulations require the Accountant General to post “suitably competent accountants” to head the internal control units of ministries, departments, and agencies. The internal auditor will report to the accounting officer of that agency, and in addition to submitting an audit programme, will carry out detailed review of accounts, and records, and examination of the systems and procedures in force. The internal auditor will prepare monthly (and special, when necessary) reports, copies of which s/he will submit to the Head of the agency and the Accountant General. In the light of the FRA these reports ought now to be publicly disclosed. This however is not yet the case.

3.43 State Governments have (or ought to have) similar provisions in their respective financial regulations or instructions. However, as pointed out, some state governments did not make available theirs for review. Bauchi state Financial Regulations, 2001 provides for internal audit function. However, there are significant differences between the Federal and Bauchi state governments' treatment of the internal audit function. In Bauchi State, the responsibility to

⁴⁵ Article 9[2][d] UNCAC

establish internal audit departments belongs to MDAs, who are required to do so “subject to the availability of staff”. Further, the accounting officer of the MDA and the Accountant General “in consultation” decide on a competent accountant or auditor to head the unit. The practical effect of these provisions is to water down effectiveness of the internal audit function in MDAs. An MDA accounting officer decides whether or not to establish internal audit function, and after that, decides who audits him/her.

3.44 Organization of the internal audit function is a little different in Lagos State. The function belongs to the Ministry of Finance rather than the MDA or Office of the Accountant General (Treasury). A substantive director heads the *Central Internal Audit* department, reporting to the Permanent Secretary. All MDAs have internal audit units, headed by accountants posted there by the Permanent Secretary of the Ministry of Finance. Operationally, MDA internal auditors report directly to the accounting officers of their MDAs, but must send copies of their reports to the Director of Internal Audit. Professionally, they are accountants and report to the Director of Internal Audit. MDA internal auditors prepare monthly reports. From these reports, the Director prepares a summary and consolidated report for the Permanent Secretary, with copies to the Commissioner for Finance, the Accountant General, the Auditor General, and the Permanent Secretary at the Public Service Office in the Office of the Head of Service.

3.45 It would appear from information available⁴⁶ that the Rivers State Government uses the Federal Financial Regulations (2006). The state government confirmed this observation following the Validation Exercise of the draft report and commented as follows, “*A state in the Federation can elect to adopt federal regulations and they would apply mutatis mutandis. However, with the enactment of the Finance (Control and Management) Law, 2010, Rivers state will prepare a new set of regulations*”. While it is correct that a state can adopt federal legislation, there must be a clear and recognizable formal and legal process leading to it. This appears lacking in this case. The evidence supplied by the state to support such adoption is a circular issued by the State Tenders Board requiring procuring entities to comply with the Procurement Law and the federal Financial Regulations, 2006 in making submissions on procurement.⁴⁷ Nevertheless, the State Tenders Board is not the appropriate legal authority to confer or approve such formal adoption. Indeed, its circular in reference did not seek to do so. The circular did generically refer to the financial system and all financial process, but specific to procurement processes. Besides, the circular appears to be restating an already established position rather than creating it.

3.46 Enugu and Plateau states did not produce copies of their financial regulations. However, the recent PEFA PFM performance assessments of several of these states provide an insight into how well their internal audit systems function. Following the validation exercise in November 2010, the Kano state government provided copies of its Financial Instructions and Stores Regulations. Revised in 2004, both documents require further revision to bring them to international levels of financial accountability. The starting point will however be the review and modernization of the organic Public Finance (Control and Management) Law, first enacted in 1969.

3.47 The effectiveness of internal audit varies among the states in the sample. Performance of the function is generally below average in all the states. Lagos state is the only possible exception.

⁴⁶ See *Rivers State PEFA report, 2008*

⁴⁷ See Circular No. A 163/Vol. 111/305 of 24 November 2008

Lagos State PEFA PFM assessment concluded in May 2009 rated performance of the function C+. The assessment found as follows:

“The Central Internal Audit (CIA) covers all government central departments (excluding parastatals, which have separate internal audit units. However, systems audit is weak and the standards of audit do not conform to ISPPLA⁴⁸ or ILA⁴⁹ standards. The CIA issues monthly reports to the Accountant General and copies the Auditor General, Commissioner for Finance, the Permanent Secretary for Finance, the Public Service Office, etc.; however, some units experience delays. The evidence is that response of heads of units to internal audit reports is not as quick and effective as their response to external audit queries.”⁵⁰

3.48 PEFA PFM assessments conducted in Enugu (Feb/Mar 2009), Plateau (Mar/Apr 2009), and Rivers (Oct 2008) showed that the internal audit function in each of those states were not performing well. The internal audit function had become so neglected in Plateau State that its staff regard it as punishment to be posted to that unit. It generally meant that the person was being deliberately made redundant and eased out of the Service.⁵¹ The situation was not much better in Enugu and Rivers states. Generally, low level staff were posted to the function, such that they could not challenge the excesses of their accounting officers without jeopardizing their respective careers. The monthly internal audit reports had long ceased to feature in those states. Internal audit became a mere process of prepayment audit with automatic and mechanical approval of payment vouchers and requests. In the absence of effective internal audit, the external audit reports for each of these states assumed greater internal controls importance.⁵² The respective Auditors General were very critical of the internal audit functions, sometimes describing them as “no longer existing”. For example, the Rivers State PEFA report quotes the Auditor General as writing in his report as follows, “As has repeatedly been stated in my previous reports, the Ministries, etc., do not have functional Internal Audit Units”.⁵³ It is not clear whether the situation has improved since. It is not possible to comment on this given the refusal of the state governments (SGs) to provide information for this report.

3.49 However, the Enugu state Auditor General's Report for 2007 points out important issues with internal controls. Below is a sample of the internal controls issue complained of:

- a) Failure of the accounts to disclose all government bank accounts
- b) Poor record keeping, which hindered effective and timely review of the accounts
- c) Discrepancies in accounts figures and balances
- d) Failure to prepare bank reconciliation statements, etc.⁵⁴

3.50 A reading of Kano state government audit reports provided for this analysis also reveals some weaknesses in internal controls. These include:

- a) Inability to confirm cash balances, due to failure to submit survey of cash balances⁵⁵

⁴⁸ International Standards for Public Practice in Internal Audit

⁴⁹ Institute of Internal Auditors

⁵⁰ Lagos State PEFA Assessment Report, May 2009, page 61

⁵¹ Posting to Internal Audit function in Plateau State is termed “posting to “Siberia”.

⁵² External audit, being a post mortem exercise, can only have very limited value because, it occurs after the fact.

⁵³ See Rivers State PEFA Report, 2008, page 61.

⁵⁴ See Report of the Auditor General of Enugu State for Fiscal 2007, pages 3 – 15.

⁵⁵ Kano state 2005 Audit Report, page 44

- b) Inability to confirm loans and advances due to inability of the Accountant General to prepare necessary statement and grant access to the subsidiary ledgers⁵⁶
- c) Incomplete board of survey to ascertain cash balances on last day of the business for the fiscal year⁵⁷
- d) Poor record keeping: failure to properly maintain relevant subsidiary ledgers⁵⁸
- e) Failure to prepare and submit “the Accounts and Statement of Treasury clearance funds” for audit as required⁵⁹

3.51 The Bauchi state government did not complete the portion of the questionnaire relating to this area. It also did not provide copies of its final accounts and audit reports to assist in this analysis, despite repeated requests. The researchers are not aware of any recent study from which to extract relevant information on the subject. Although, there are two World Bank studies completed in 2005/2006 on PEFA PFM assessment and public expenditure review of the state, these are too far behind to provide current information for a 2009/2010 study/report.

3.52 Oversight of parastatals and government owned companies has been a particularly difficult area for governments. The Constitution does not provide for direct audit of parastatals by the Auditor General, rather it provides in *s. 85* (for the federal government) and *s. 125* (for state governments) for parastatals to use other external auditors. The constitutional roles of the Auditor General in the process (the same for the federal and state governments) are as follows:

- a) To prepare a list of qualified auditors from which the parastatals may choose from
- b) To advise on the scale of fees to pay to those auditors
- c) To carry out periodic checks on the parastatals
- d) To receive the report of parastatals' auditors and comment on the same for the Legislature

In addition to these constitutional provisions, the statute establishing a parastatal usually makes provision for the management of its accounts, finances, records, and for regular audit.

3.53 Available evidence suggests that, with the possible exception of Lagos state, the culture of parastatals audit may not have taken proper root in the public services of state governments. Information from the 2009 Lagos PEFA PFM Assessment Report provides an insight into how the state handles risks posed by parastatals. *PEFA Performance Indicator (PI) 9* measure aggregate fiscal risks posed by autonomous government agencies (parastatals), while *PI 26* deals with external audit. Below is a summary of Lagos State performance under these indicators. In relation to parastatals' oversight,

‘No consolidated overview of AGAs' fiscal risk - The Lagos State Government monitors and oversees activities of its parastatals in several ways. The State Auditor General carries out periodic checks on the organizations as required by the constitution. Besides, the Ministry of Economic Planning requires them AGAs to produce and submit their annual accounts, although the extent of compliance is not clear. In

⁵⁶ Kano state 2005 Report, page 45

⁵⁷ Kano state 2005 Audit Report, page 45; 2003 Audit Report, page 49)

⁵⁸ Kano state 2003 Audit Report, page 47

⁵⁹ Kano state 2003 Audit Report, page 48

addition, there is a Parastatals Monitoring Office that monitors performance of parastatals. However, there is no evidence that the SG consolidates the accounts and financial statements of AGAs to get a complete overview of fiscal risks posed by AGAs.”⁶⁰

With regard to external audit proper, the assessment found that the audit report devotes a section to comprehensive comment on parastatals audit report.

“Scope and nature of audit performed – the annual audit covers all government central MDAs, excluding those parastatals that have a different audit arrangement. In line with constitutional provisions, the Auditor General should not only comment on the audit report of these parastatals, but should carry out regular periodic checks on them. The annual audit reports include separate sections on audit findings of MDAs and parastatals.”⁶¹

3.54 PEFA reports of Enugu, Rivers, and Plateau states provide a very different picture from that of Lagos.⁶² Enugu State report states as follows:

“Enugu State does not require and does not receive quarterly or any in-year financial statements from its parastatals. The usual provision in the legal instrument creating parastatals requires them to maintain independent accounts but prepare and submit annual final accounts to the Office of the Accountant General. With regard to their audit, although the 1999 Constitution does not empower the Auditor General of the State to carry out this audit, it requires it to nominate a list of qualified auditors from which the parastatals may select, and to suggest a fee scale for them.⁶³ The Constitution also requires that the Auditor General comment on completed audit of parastatals and report to House of Assembly. Further, the Constitution empowers the Auditor General to carry out periodic checks on the accounts of parastatals. “The final accounts of the State for the years 2003 to 2005 did not incorporate accounts of parastatals;”⁶⁴ neither did the audit reports incorporate comment on the audit of parastatals during the period. Evidence from the office of the Auditor General showed receipt of audited accounts of several parastatals for various periods (see Table 3.9a). However, the State’s audits did not comment on them as required by the Constitution and as done in some other States,⁶⁵ where the annual Auditor General’s report comments fully on the situation with parastatals and includes a full list of parastatals that prepare and submit (or fail to prepare and submit) audited reports for which period. Besides, there is no evidence that the auditor general carried out periodic checks on the parastatals as required by the Constitution during the period. Thus, the government does not consolidate information from parastatals, and is therefore unaware of the potential financial risks they pose.”⁶⁶

3.55 An examination of the Enugu state audit reports for 2006 and 2007 provided for this study does not show a change in the situation. The 2007 report, for instance, still does not contain a section on parastatals’ audit; neither did it indicate compliance with conducting the periodic checks required by the Constitution.

⁶⁰ Lagos State PEFA PFM assessment Report, 2009, page 40

⁶¹ Lagos State PEFA PFM assessment Report, 2009, page 69

⁶² The PEFA report of Anambra State (2008) shows similar comprehensive comments on the audit of parastatals by the state auditor general. However, the report also shows that only a small fraction of the state’s parastatals audited their accounts; even then, none was up to date in the performance of that function. Anambra state is not in the sample for this study.

⁶³ Section 125 of the 1999 Constitution.

⁶⁴ The Office of the Accountant General confirmed recent receipt of the final account of one parastatal out of a about 20

⁶⁵ Anambra and Rivers, for example

⁶⁶ Enugu State PEFA Report, 2009, page 37

3.56 Plateau state presents an equally non-compliant picture. The PEFA assessment found as follows,

“It is difficult to estimate correctly, the level of unreported operations of Plateau State Government. First, although the State Government gives subvention to parastatals,⁶⁷ some still collect revenues, which do not feature in the final accounts. The revenues they generate are for that portion of their overhead or running costs not covered by the SG. However, there is no evidence that parastatals report their revenue performance to the Accountant General's Office. They also do not audit and publish their annual accounts promptly to enable the Government obtain this information. They only provide non-authenticated information in this regard to the Budget Office as part of the budget exercise to determine the level of additional funding that the Government should provide. At the least, the SG could require parastatals to file regular (monthly) returns on their revenue and expenditure performance for purposes of transparency and completeness of the books. This would be a more reliable way of determining their funding needs than the current approach, tailored to budgeting purposes.

However, the audit reports shows that actual subvention to parastatals during the period amounted to 22 percent, 12 percent and 17 percent of aggregate spending in 2002, 2003, and 2004 respectively Even this incomplete information highlights the size of parastatals operations and the risk they pose, which the Government does not monitor.⁶⁸

3.57 The situation with Rivers state in November 2008 when the PEFA assessment was completed as follows

It is difficult to estimate the level of unreported operations of the Rivers State Government. First, as the audit reports repeatedly noted, although the Rivers State Government gives subvention to parastatals and wholly pays their staff salaries, they collect revenues, which do not feature in the final accounts.⁶⁹ This has “the effect of distorting the Consolidated Revenue Fund of the State”, which requires that all funds accruing to the State be paid into it.⁷⁰ This practice, which stems from a military-era directive to parastatals to retain their IGR for recurrent expenditure purposes, arose when the Government then did not provide them with current spending subventions. The situation has since changed with the SG directly in charge of their staff salaries and investment projects, as well as partly offsetting their overheads. The revenues they generate are for that portion of their overhead or running costs not covered by the SG. The Auditor General's report for each of the three years refers to “abuse of the (military-era) directive”. At the least, the SG should require parastatals to report their revenue collections for purposes of transparency and completeness of the books. This will help determine their revenue shortfalls or surpluses. However, the Auditor General's repeated call for a reversal of the status quo, which, in any case has no legal backing, has not led to a change of practice.⁷¹

“Further, other than lamenting the inability of many parastatals to provide their audited accounts, the reports do not include comments on their accounts. However, the Constitution empowers the Auditor General “to conduct periodic checks of all government statutory corporations, commissions, authorities,

⁶⁷ As part of the budget process, the Budget Office discusses and agrees with parastatals on their expected revenue collections. The amount of funding provided to them is to cover that portion of their overhead expenditures that their expected collections would not cover.

⁶⁸ See Plateau State PEMFAR Report, 2009 (World Bank), page 108; as already indicated, Plateau state declined to submit reports for 2007 for this study. It did not prepare accounts for 2005 and 2006.

⁶⁹ See Auditor General's report for 2006 (pages 5-6), 2005 (pages 6-7), and 2004 (page 5, 7)

⁷⁰ Section 120(1) of the 1999 Constitution

⁷¹ Rivers State PEFA Report, 2008, page 23

*agencies, including all persons and bodies established by a law of the House of Assembly”.*⁷² *There is no evidence that the Auditor General carries out this function. The audit reports do not reflect any findings on this.*⁷³

3.58 As explained above, Rivers state government did not appoint an Auditor General until the end of 2009. Consequently, the 2007 and 2008 accounts of the state have not been audited. Since the state did not respond to requests to provide information for this study, it is possible to ascertain whether the situation has changed since the PEFA assessment.

Corrective Action for Non-compliance with Legal Provisions on Accounts and Audit

3.59 UNCAC requires measures to take “*Appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph (on public finance)*”. AUCPCC provisions require corrective measures when it provides for audit follow-up action: “*... State Parties undertake to ... Adopt legislative and other measures to create, maintain, and strengthen ... auditing and follow up systems ...*” (Article 5(4)). AUCPCC further provides as follows, *In order to combat corruption and related offences in the public service, State parties commit themselves to : ... Develop disciplinary measures and investigation procedures in corruption and related offences with a view to keeping up with technology and increase in efficiency of those responsible in this regard*” (Article 7(3)). The ECOWAS Protocol provides that “*Each State Party shall adopt necessary legislative and other measures to establish as offences liable to criminal or other sanctions the following acts or omissions ...*” (Article 6(4)). Criminal and administrative sanctions can indeed have a deterrent and corrective effect.

3.60 There are two aspects to this requirement of corrective action. The first relates to administrative measures taken to correct observed anomalies. The second relates to sanctions, administrative, criminal, and otherwise imposed under the law for infringement of the legal provisions. As regards the first, the audit processes, internal and external, have mechanism for “audit queries” both in the federal and state governments. Through this process, the auditor requests explanations from accounting officers with regard to perceived infractions of financial rules and procedures, and for their correction, where necessary. Further, the Procurement Act, 2007 empowers the procurement regulatory agency, the Bureau of Public Procurement, to, where there is reason to do so, cancel part of or the entire procurement process of a procuring entity regarding a particular procurement exercise, and to direct its repetition or by itself, institute an alternative decision.

3.61 As already variously explained in this report, the federal government audit reports are generally, not open to the public. It is therefore not possible to report on the extent of current response to external audit queries. The last (and only) published federal government audit report since return to civil rule in 1999 relates to fiscal 2001. The Auditor General had rightly published the report immediately after sending it to the National Assembly, an act which was not well received by the government. The report is full of complaints of unanswered audit queries by virtually all MDAs. It is likely that the situation has changed since then and that MDAs now respond to audit queries and in a timely manner. However, without access to audit reports, this analysis cannot positively assert that. Since the passage of the FRA, Federal agencies have acquired new responsibilities to ensure transparency and accountability in its fiscal and financial affairs and

⁷² Section 125(4) of the 1999

⁷³ Rivers State PEFA Report, 2008, page 72

ensure full and timely disclosure and wide publication of all transactions and decisions involving public revenues and expenditures and their implications for its finances.⁷⁴

3.62 There have been instances where the Bureau for Public Procurement exercising its powers under the Public Procurement Act as cited above, cancelled aspects of MDA procurements and directed their repetition. There are also instances of when the Bureau, following complaints and after reviewing the procurement process, directed award of the contract to a different party from that to which it was originally awarded.

3.63 Audit reports of several of the states in the study sample also were full of complaints of MDAs not attending to audit reports, at least, not in a timely manner. Plateau, Enugu, and Rivers states have several examples of MDAs failing to attend to audit queries. However, the situation is different in Lagos state, where, as the excerpts below from the PEFA assessment shows, MDAs promptly respond to audit queries raised by the Auditor General.

Evidence of follow up on audit recommendations – the audit reports include details of findings in particular entities, issues raised, responses by auditees, and any follow up audit comment. The indication therefore is that there is timely response to audit findings. However, similar findings year to year indicate issues with systemic follow up. Examples of repeated audit findings include issues around payroll/nominal roll, reconciliation of Treasury revenue accounts, etc.⁷⁵

3.64 Kano state audit reports submitted for this analysis did not comment on the treatment of audit reports. As already variously stated in this report, the Bauchi state government did not respond favourably to repeated requests to provide information relating to their accounts and audit.

3.65 With regard to administrative reviews of the procurement process and the corrective measures taken as a result, state governments did not provide any information. Only Rivers and Bauchi states, out of states in the sample, have passed modern procurement laws and are taking steps to set up the apparatus for their implementation. However, Bauchi state provided information explaining that they were still setting up the necessary administrative mechanism to enable proper oversight. Kano, Plateau, Lagos, and Enugu, not having procurement laws or independent regulatory agencies, did not indicate any instance of taking administrative measures to correct anomalies in particular relating to procurement procedures. Kano state indicated during the validation exercise that it was preparing a procurement law. However, it did not provide a copy of the draft for perusal.

3.66 In respect of criminal and other formal corrective and deterrent sanctions and punishments, depending on the nature of the non compliance, Nigeria has several legal provisions. As already indicated, the 1999 Constitution in *sections 88* (for the federal government) and *128* (for state governments) empower the Legislature to investigate “*the conduct of affairs of any person, authority, ministry, or government department charged with duty or responsibility for ... disbursing or administering moneys appropriated by the National Assembly*”. The purpose is to “*expose corruption, inefficiency, or waste in the ... administration of funds appropriated by it*”. In the exercise of this duty, the Legislature can make

⁷⁴ S 48 of the Fiscal Responsibility Act 2007

⁷⁵ Lagos State PEFA Assessment, 2009, page 69

recommendations for any action it deems necessary to correct observed anomalies in the management of public finances.

3.67 In addition, specific provisions of various pieces of legislation provide for administrative sanctions and prosecution of offenders or violators of laws on public finances. These include:

- a) The Public Procurement Act, 2007, which stipulate jail terms of up to 10 years for violation of its provisions. In addition, the National Council on Procurement (NCP), acting on the recommendation of Bureau for Public Procurement, can debar contractors, sanction accounting officers, relocate the procurement function of an entity in a consultant or another entity, etc. However, the federal government is yet to inaugurate the NCP nearly three years after the Procurement Act came into effect.
- b) The Economic and Financial Crimes Commission Establishment Act, 2004, which with regard to the public sector, empowers the organization to investigate all financial crimes, including contract scams, determine the extent of financial and other loss by, among others, government and organizations.
- c) The Corrupt Practices and Other Related Offences Act, 2000, which deals with corrupt practices relating to the public sector, including, gratification, corrupt offers and demands, bribery, influence peddling.
- d) The Nigeria Extractive Industries Transparency Initiative Act, 2007, which makes violations of the provisions of the Act punishable offences.
- e) The Criminal Code, which has provision relating, among others, to fraud, false accounting, stealing, bribery, conversion, etc.
- f) The Money Laundering (Prohibition) Act, 2004
- g) The Public Service Rules, 2008, which provides for administrative proceedings and discipline and sanctions, including dismissal from office, for various offences
- h) The Code of Conduct Bureau and Tribunal Act, which empowers trial and punishment of public officers that contravene the Code of Conduct contained in the Constitution (*Fifth Schedule*).

3.68 A unique provision of the FRA provides the best opportunity for public enforcement of government obligations on fiscal and financial matters ever granted under Nigerian law. It defeats the age long rules from superior court decisions requiring special interest/personal injury to sustain a right to sue and enforce similar provisions of Nigerian laws relating to public obligations. It confers on every citizen the legal capacity to seek prerogative orders to enforce provisions of the Act before the Federal High Court without showing any special or particular interest. The possible impact of this yet unexplored provision of the FRA could be fundamental for improved transparency at the federal level in Nigeria.

3.69 Most of the laws above apply in states as well. However, the Public Procurement Act, 2007, the Fiscal Responsibility Act 2007 and the public service rules do not ordinarily apply to

them. As already stated, states have (or ought to have) their own public service rules or otherwise adopt the federal rules where they so desire. The Bauchi state Public Services Rules, 2000 have provisions for administrative disciplinary procedures and sanctions for infractions of extant rules, including the state's Financial Regulations, 2001. The other states did not provide their public service rules.

Table 2: Summary of Compliance with Provisions of UNCAC, AUCCPC and ECOWAS Protocol Management of Public Finance

	Provisions	FGN	Lagos	Rivers	Enugu	Plateau	Bauchi	Kano
Procedures for the Adoption of the Budget	<p>The 1999 Constitution provides basis for adoption of budget. President presents spending proposal, National Assembly approves; all spending must first be approved in this way except for a few constitutionally mandated first line charges on the Consolidated Revenue Fund of the Federation; the Fiscal Responsibility Act 2007 now requires a medium term fiscal framework outlining revenue projections to precede the budget; overspending the budget and spending outside the budget without prior legislative approval, which featured in the early years of return to civil rule have tapered out in recent times. Legislative budget approval happens annually at the average of three to four months into the fiscal year.</p> <p>UNCAC: Article 9(2)a AUCPCC :Article 5(4) ECOWA Protocol: Article 5(g)</p>	<p>Similar constitutional provisions apply to Lagos state budget process. In addition, Lagos state has a finance manual that includes budget procedures. The state did not supply information, but PEFA report (2009) reveal issues with fiscal discipline</p>	<p>Similar constitutional provisions apply to Rivers state budget process. State did not supply information, but PEFA report (2008) reveal issues with fiscal discipline</p>	<p>Similar constitutional provisions apply to Enugu state budget process. State did not supply information, but PEFA report (2009) reveal issues with fiscal discipline</p>	<p>Similar constitutional provisions apply to the Plateau state budget process. The state did not supply information, but its PEFA report (2009) reveals issues with fiscal discipline</p>	<p>Similar constitutional provisions apply to Bauchi state budget process. The state did not supply information on which to assess the level of fiscal discipline</p>	<p>Similar constitutional provisions apply to Kano state budget process. Analysis of 2003 to 2006 accounts reveal issues with fiscal discipline</p>	

Table 2: Summary of Compliance with Provisions of UNCAC, AUCCPC and ECOWAS Protocol Management of Public Finance								
Timely reporting on revenues & expenditures	Provisions	FGN	Lagos	Rivers	Enugu	Plateau	Bauchi	Kano
	UNCAC: Article 9(2)b AUCPC: Article 5(4); ECOWAS Protocol: Article 5(f)	Constitutional provisions require audited accounts to be ready 90 days from receipt from Accountant General (s. 85). The Finance (Control and Management) Act, 1958 and the Financial Regulations (2009) require accounts to be submitted for audit within six months of fiscal year's end. Audit of FG accounts now nearly up to date. 2008 audit report was before the National Assembly at the time of gathering data. S 48 & 49 of FRA requires timely and full disclosure and wide publication of all fiscal and financial matters and also in s 51 gives capacity for ordinary citizens to enforce the law.	Constitutional provisions require audited accounts to be ready 90 days from receipt from Accountant General (s. 125). Lagos State accounts up to date. 2008 accounts audited in May 2009	Constitutional provisions require audited accounts to be ready 90 days from receipt from Accountant General (s. 125). Rivers state accounts not up to date. A last audited account was 2006 fiscal year. State had no substantive Auditor General for about three years. One now appointed towards end of 2009.	Constitutional provisions require audited accounts to be ready 90 days from receipt from Accountant General (s. 125). Enugu state accounts not up to date. Last audited account was for fiscal 2007.	Constitutional provisions require S audited accounts to be ready 90 days from receipt from Accountant General (s. 125). Plateau state accounts not up to date. Last audited account is for fiscal 2004. SG did not produce accounts for 2005 and 2006. 2007 accounts produced and possibly audited but state declined to provide report.	Constitutional provisions require accounts to be ready 90 days from receipt from Accountant General (s. 125). No information on accounts. SG failed to supply information.	Constitutional provisions require accounts to be ready 90 days from receipt from Accountant General (s. 125). State accounts in arrears. Last audited accounts were for fiscal year 2006.
Accounting and Auditing Standards, etc.	UNCAC: Article 9(2)c AUCPC: Article 5(4) ECOWAS Protocol: Article 5(f)	No public accounts or auditing standards setting body in Nigeria. Bill before the National Assembly to set up the Financial Reporting Council to replace the Nigerian Accounting Standards Board. The Council will set standards for both public and private sectors.	No audit or accounting standards, but published state accounts conform to agreed reporting format	No audit or accounting standards, published state accounts partially conform to agreed reporting format	No audit or accounting standards; published state accounts partially conform to agreed reporting format	No audit or accounting standards; published state accounts partially conform to agreed reporting format	No audit or accounting standards; no information on extent of conformance of published reports to reporting format.	No audit or accounting standards; published state accounts partially conform to agreed reporting format

Table 2: Summary of Compliance with Provisions of UNCAC, AUCCPC and ECOWAS Protocol Management of Public Finance

	Provisions	FGN	Lagos	Rivers	Enugu	Plateau	Bauchi	Kano
		Common reporting format for federal, state, and local governments agreed to in 2004 with optional implementation by federation and state accountants general. FG commenced compliance in 2005. Similarly, Body of Auditors' General agreed common audit rules and procedures. Rules do not meet international standards.						
Risk Management and Internal Control	UNCAC: Article 9(2)d AUCPC: Article 5(4) ECOWAS Protocol: Article 6 (4)(a),(b)	The Financial Regulations (2009) contain detailed internal control rules for the public service. The Internal Audit enforces internal control rules. The Treasury Internal Audit Department in the Office of the Accountant General superintends internal audit.	Lagos State Public Finance Rules contains detailed internal controls. The Central Internal Audit Department in the Ministry of Finance enforces internal controls across government offices.	No information on current practices. PEFA report (2008) suggests state uses the Federal Financial Regulations (2006). Report also suggests internal audit underperforming then.	No information on current practices. No information on financial rules in use. PEFA report (2009) suggests internal audit underperforming then	No information on current practices. No information on financial rules in use. PEFA report (2009) suggests internal audit underperforming then	Bauchi State Financial Regulations (2001) in use. Detailed internal controls. However, internal audit optional for MDAs.	No information on current practices. But audit reports refer to Kano State Financial Instructions. Copy not provided for review.
Corrective Action for Non-compliance	UNCAC: Article 9(2)(e) AUCPC: Article 5(4) ECOWAS Protocol: Article	Administrative and legal actions apply. Audit queries and responses and legal and sometimes criminal sanctions, e.g., administrative and legal sanctions in the Public	No information for current assessment. PEFA report (2009) suggests good record of attention to audit queries.	No information for current assessment. PEFA report (2009) suggests poor record of attention to audit queries.	No information for current assessment. PEFA report (2009) suggests poor record of attention to audit queries.	No information for current assessment. PEFA report (2009) suggests poor record of attention to audit queries.	No information	No information

Table 2: Summary of Compliance with Provisions of UNCAC, AUCCPC and ECOWAS Protocol Management of Public Finance							
Provisions	FGN	Lagos	Rivers	Enugu	Plateau	Bauchi	Kano
6(4)	<p>Procurement Act 2007. No information on attention paid to audit queries. FG does not release audit reports. Last audit report released was for fiscal 2001.</p> <p>Bureau for Public Procurement applies administrative processes to correct procurement issues. S 51 of the FRA now grants locus for citizens to enforce its provisions.</p>						

CHAPTER 4

Civil and Administrative Measures to Protect the Integrity of Public Finance and Accounting Records

4.1 Article 9 (3) of UNCAC provides as follows, “*Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements, or other documents related to public expenditure and revenue and to prevent the falsification of such documents*”. AUCPCC further provides as follows, *In order to combat corruption and related offences in the public service, State parties commit themselves to : ... Develop disciplinary measures and investigation procedures in corruption and related offences with a view to keeping up with technology and increase in efficiency of those responsible in this regard*” (Article 7(3)). On this issues, ECOWAS Protocol enjoins each state party to “*adopt necessary legislative and other measures to establish as offences liable to criminal or other sanctions the following acts or omissions, in order to commit, or conceal the offences referred to in this Protocol: a) Creating or using an invoice or any other accounting document or record containing false or incomplete information, (b) Unlawful omitting to make a record of payment*” (Article 6 (4)).

4.2 The Federal Financial Regulations (revised in 2009) contain the details of the civil and administrative measures aimed at securing the integrity of accounting records and financial statements. In the Preface to the Regulations, the Minister of Finance explained the rationale for the Regulations as follows:

“to ensure that requisite rules and regulations that would guarantee probity and transparency in the management of public funds and resources are put in place”.

Referring to Ministers, the Preface states,

“it is mandatory that they ensure that any decision taken by them, is correct, unexceptionable, and in the public interest. In this regard, they should insist that any recommendations put before them is supported by the relevant provision of an extant Act or Regulation”.

4.3 The Financial Regulations 2009 marks the third time the document has been revised since return to civil rule in 1999, the other times being 2000 and 2006. The purpose of the revisions is to ensure that the financial rules keeps pace with the changes undergone in the conduct of government business, especially the fiscal and budget reforms and the demands they make on transparency and accountability.

4.4 As already stated, the Regulations cover rules and procedures on all aspects of conduct and management of public finance. These include records keeping, preparation of financial statements, stores control, internal audit, external audit, and reporting. They also include proformas for receipts, vouchers, cashbook, registers, monthly and other returns, charts, etc. The rules also cover custody of government assets and property, including the handling of title deeds and documents.

4.5 In addition to the Financial Regulations, the Accountant General issues treasury circulars on specific matters arising from time to time. The circulars, addressed to the heads of all government ministries and extra ministerial departments, provide additional instructions and directives, especially on new government policies, and emphasize or draw attention to existing policies as the need arises. Affected government offices and individuals must abide by such

establishment circulars issued by competent authorities.⁷⁶ As subsidiary legislation, these circulars derive from exercise of legitimate powers vested by law. Consequently, they also have the force of law. To illustrate, in 2009, the Courts jailed a former chairman of the Nigerian Ports Authority (NPA) essentially, for failing to comply with a federal procurement circular that prohibited contract splitting. Recently, the Office of the Accountant General compiled and published extant treasury circulars issued from 1999 – 2008 in one single volume for ease of reference.

4.6 The federal Public Procurement Act also includes measures to protect procurement documents. Procuring entities must preserve detailed records of all procurement processes for at least 10 years. Further, they must keep electronic and hard copies of all post review procurement processes, and within three months of the end of the fiscal year, forward copies to the Bureau for Public Procurement for review. Significantly however, in the exercise of powers conferred under the Act, the Bureau for Public Procurement has issued detailed Procurement guidelines and procedures for the use and guidance of all procuring entities covered by the Act. The guidelines contain detailed administrative rules for implementing the Act, including the organization of the procurement unit of a procuring entity.

4.7 Arising mainly from the common ancestry of the public services, as already explained above, Nigerian state governments, including the six in the sample, follow essentially similar procedures as the federal government. As already explained, state governments have or ought to have their respective financial regulations/instructions. However, also as already stated, it appears that the Rivers State government uses a version of the federal Regulations.⁷⁷ During the validation exercise, the Kano state government provided copies of its Financial Instructions and Stores Regulation. Lagos and Bauchi state governments have their separate versions of the Regulations. The Bauchi state version follows essentially the same structure and has similar provisions as that of the federal government. Although the Lagos state version follows a different format, it covers the same basic elements. They cover rules and procedures on all aspects of conduct and management of public finances, including records keeping, preparation of financial statements, stores control, internal audit, external audit, and reporting. They also have samples of relevant official documents. The Enugu state government did not give any indication of what Regulations it uses. It also did not provide a copy for this analysis, despite demands and visits.

4.8 As is the practice with the federal government, Nigerian state governments, including the six sample states, also have a tradition of extensively using treasury (and other establishment) circulars. State governments' circulars have the same force of law for the same reasons as federal circulars do. However, it does not appear that any of the states has compiled its extant treasury circulars into a handy consolidated volume for ease of reference as the FG has done.

4.9 The Bauchi and Rivers states' Procurement Laws include clauses on the preparation of procurement regulations and guidelines. Bauchi state government responded and provided evidence that it is in the process of preparing its procurement regulations. Following the Validation Exercise, the state government provided evidence of regulations and circulars it has issued to date.

⁷⁶ Such as the Accountant General, Head of Service, Secretary to the Government, Director General of the Bureau for Public Procurement (formerly Due Process Office or the Budget Monitoring and Price Intelligence Unit), Chairman, Federal Inland Revenue Service, Comptroller, Board of Customs and Excise, Comptroller of Immigrations Services, etc.

⁷⁷ See above. Following the Validation Exercise of the draft report in November 2010, the state government confirmed that it uses the federal Regulations, as it has the powers and right to do. However, it was not possible to obtain the formal legal instrument authorising such adoption.

Table 3: Summary of Compliance with Provisions of UNCAC, AUCCPC and ECOWAS Protocol Management of Public Finance

	Provisions	FGN	Lagos	Rivers	Enugu	Bauchi	Plateau	Kano
Administrative Measures to Protect the Integrity of Public Finance and Accounts Records	UNCAC Art. 9(3) AUCPAC Art. 7(3) ECOWAS Protocol Art. 6(4); and the Money Laundering [Prohibition] Act 2004	Civil and administrative measures include those in the Financial Regulations (2009), Treasury circulars, Public Service Rules, the Procurement Act 2007	No current information; however, Lagos state uses public finance and public service rules, and establishment circulars	No current information; however, Rivers state uses public finance and public service rules, and establishment circulars. The procurement law also contains administrative measures, although there is no information on implementation	No current information	Bauchi state government uses the Bauchi State Financial Regulations (2001), Bauchi State Public Service rules (2001) (it also uses establishment circulars. The procurement law also contains administrative measures, although full implementation of the law had not commenced.	No current information	No current information; however, Kano state uses Kano State Financial Regulations

Table 4: Summary of Compliance with Provisions of UNCAC, AUCCPC and ECOWAS Protocol Management of Public Finance									
	Provisions	FGN	Lagos	Rivers	Enugu	Bauchi	Plateau	Kano	
Public Access to Information	UNCAC Art. (10)a AUCPAC Art 9 ECOWAS Protocol Art 5 (j)	Noticeable increase in openness and public access to fiscal information including revenues. However, the Access to Information Law has just been and awaiting assent. Besides, the public has no access to the report of the Auditor General of the Federation	No current information provided for this report. However, PEFA report (2009) suggests poor public accessibility of vital fiscal information ; no access to information law.	No current information provided for this report. However, PEFA report (2008) suggests poor public accessibility of vital fiscal information ; no access to information law	No current information provided for this report. However, PEFA report (2009) suggests poor public accessibility of vital fiscal information ; no access to information law	No information	No current information provided for this report. However, PEFA report (2009) suggests poor public accessibility of vital fiscal information ; no access to information law	No information	
Public Access to Decision-Making Authorities	UNCAC Art. (10)b AUCPCC Art 9 ECOWAS Protocol Art 5 (j)	Selective progress. Information on budget processes more readily available than information on audit processes.	No information	No information	No information	No information	No information	No information	
Periodic Reports on Risks of Corruption in Public Administration	UNCAC Art. (10)c	Only one such report in the past , the USAID supported Afro Barometer Nigerian governance and anti-corruption survey report. However, the establishment of TUGAR with the specific mandate of conducting studies and analysis [such as this study] and issuing such reports has ensured improvement.	No information	No information	No information	No information	No information	No information	

CHAPTER 5

Public Reporting

5.1 Article 10 of UNCAC states as follows, “Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration including with regard to its organization, functioning and decision making processes, where appropriate. Such measures may include, inter alia:

- (a) *Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public.*
- (b) *Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and*
- (c) *Publishing information, which may include periodic reports on the risks of corruption in its public administration”.*

Public Access to Information

5.2 As already seen, UNCAC demands rules that ease public access to information when it requires adoption of “procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public”. AUCPCC provides that, “Each State Party shall adopt such legislative and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption and related offences” (Article 9). ECOWAS Protocol requires that “Each State Party shall take measures to establish and consolidate ... freedom of the press and right to information” (Article 5(j)).

5.3 Since return to civil rule in 1999, there have been noticeable improvements on public access to how the federal government functions, including in public administration and decision making. Below are a few instances

In 2003, the federal government began to publish allocations of the Federation Account to the federal, state, and local governments in major national newspapers and on the website of the Federal Ministry of Finance.⁷⁸ However, it does not similarly publish independent revenue sources of the federal government, i.e., revenue accruing directly to the FG.

In 2004, the FG established the Nigeria Extractive Industries Transparency Initiative (NEITI) to promote transparency in the extractive industry i.e. oil and gas industry and the solid minerals sector in general. In pursuance of its mandate, NEITI has carried out several audits of activities in the oil and gas industries, the results of which it posted on its website.⁷⁹

⁷⁸ www.fmf.gov.ng

⁷⁹ www.neiti.org

Several key government decision making agencies, such as the Federal Ministry of Finance (FMF), the Budget Office of the Federation (BOF), the National Planning Commission (NPC), the National Bureau of Statistics (NBS), etc., maintain viable websites on which they post key fiscal and other data, including the fiscal frameworks and strategy papers, budgets, fiscal performance data, national statistics, etc.

The Office of the Accountant General of the Federation maintains a website on which it publishes much information of public interest including treasury circulars, annual Accountant General's report, financial statements (2003–2008)

The Bureau for Public Enterprises (BPE) and the Code of Conduct Bureau/Tribunal also maintain websites in which they publish their rules and processes.

The National Assembly posts a steady flow of information on Bills received and pending, notices of public hearing, its rules of procedures, and other information on its website.⁸⁰

The Bureau for Public Procurement has a rich reservoir of information on all aspects of the procurement process and decision making, including the Act, Guidelines, bidding and other documents, draft contracts, advertisements, price database, reviews, etc. on its website.⁸¹ The Bureau also regularly publishes a procurement journal and a tender's journal for public information. It also reduces key aspects of the procurement process into booklets, which it distributes freely to the public.

5.4 However the above does not appear to satisfy the requirement of the FRA for full and timely disclosure of and wide publication of all transactions and decisions involving public revenues and expenditures and their implications for its finances by the federal government.⁸² Agencies such as the Fiscal Responsibility Commission Auditor General's Office and all MDA's have fallen far short of the requirements of this provision for proactive public reporting on fiscal and financial issues, despite increased and improving efforts, some of which are detailed in paragraph 131 above.

5.5 Notwithstanding these developments, there are several issues of concern on access to information. Principal among these had been the hitherto lack of an Access to Information Law. The Bill for this Act has been pending at the National Assembly for almost 12 years.⁸³ The National Assembly did, in fact, pass the Bill into law in the twilight of the last administration in 2007. However, the outgoing President did not assent to it. It lapsed and was returned to the National to begin de novo. The Bill has recently been passed by both houses of the National Assembly and is currently undergoing harmonization before presentation to the President for assent. It is hoped that the proactive implementation of this law will improve public reporting. In addition, the failure of the federal government to publish the annual Auditor General's report on the accounts of government effectively, despite provisions of the FRA, hinders public access to vital fiscal performance information. Even of greater concern are the various reasons given for this denial of public access. The arguments range from who has responsibility for releasing the information to the public (the Auditor General or the National Assembly), to Auditor General's argument of lack

⁸⁰ www.nass.gov.ng

⁸¹ www.bpp.gov.ng

⁸² Section 48 Fiscal Responsibility Act 2007

⁸³ The Bill was first presented to the National Assembly in 1999

of constitutional duty to publish. There is also the argument that sending the report to the National Assembly constitutes publication to the public because legislators are representatives of the public.⁸⁴ However, the basic fact remains that the public lacks access to this very vital fiscal transparency document.

5.6 Finally, there is the argument over what constitutes “public access”, in particular, whether publication on the notice board or website is sufficient to guarantee access to the public and whether the often outdated information on various agency websites is sufficient. A further problem lies with the level of computer literacy and access to the Internet in the country, which is currently below 10 percent.⁸⁵ Much of Nigeria's population is illiterate. A sizeable percentage of the literate population is not computer literate. Further, a good proportion of the computer literate population does not have routine access to the Internet. Thus, even with the strides made by the government in publishing some information on its websites, it requires a lot more to secure real public access to vital information, and fulfill the requirement for “full and timely public disclosure and wide publication” in Nigeria. The model adopted by some government agencies such as the Bureau of Public Procurement and NEITI of reducing vital information to booklets and freely distributing them to the public is commendable. MDAs do not yet see the need to budget for mass dissemination of vital information to the public.

5.7 The summary of all these is that there are issues with the quantity and quality of information released to the public. There are also issues with the choice of media for releasing the information, and though failure to release information is now an infraction of the law at the federal level, MDA's continue to refuse to release publicly held financial and fiscal information.

5.8 Although several state governments have websites, they do not post a comparable level of fiscal and public interest information on them. For example, Lagos state government official website⁸⁶ posts some fiscal information. These are the state's budgets for fiscal 2008 and 2009 and 2011 – 2013 medium term sector strategies for six sectors.⁸⁷ The state Tenders' Board is also currently developing a procurement website.⁸⁸ The site has several sections, including projects awarded, status report on projects, procurement notices, contractors log in, registered contractors, and registration process for contractors. Being still under development, there is currently very scanty information on them. The most important information there is on contracts awarded since 2008, which number above 1,600. However, the information does not include their respective costs and details. Lagos state does not include any fiscal performance or review data or information on its site. In particular, there is no information of revenues (internally generated and federation allocation), annual accounts, audited reports, etc.

5.9 Apart from the developments reported in the foregoing paragraph, it is not clear whether public access to fiscal information has improved significantly in Lagos since the last PEFA PFM assessment in 2009. That assessment found that the public did not have routine access to budgets, budget reports, audited accounts, contract award information, and many others. Lagos state government did not provide information on this area for this current report, despite repeated requests.

⁸⁴ See discussion above on the flaws in this argument.

⁸⁵ According to a recent BBC report

⁸⁶ www.lagosstate.gov.ng

⁸⁷ Housing, Justice, Transport, Women Affairs & Poverty Alleviation, Youths & Sports, and Physical & Urban Development

⁸⁸ www.stb.lagosstate.gov.ng

5.10 The Rivers state government website⁸⁹ does not post any fiscal information or data of any sort. Although there is a section on Tenders Board, the site only lists ministries, departments, and agencies. A click on any of the links for tendering information brings up the information, “coming back soon”. This has been the standard response for several months now. It is also not certain whether public access to key fiscal information has improved since the last PEFA assessment in October 2008. That assessment found that the public had no routine access to most fiscal information.

5.11 The situation is not different in the case of Enugu state. The state government has an official website.⁹⁰ The site, which appears to be currently under reconstruction, provides information on the government's vision, programmes and activities, arms of government, and such others. However, it does not provide any information of fiscal operations of the government: budgets and budget performance, annual reports, audit reports, procurement and contracting procedures, etc. Besides, according to the state PEFA assessment report of 2009, the public has very limited access to key fiscal information on government operations. Since the state government did not provide information on this for this current analysis, it is not clear what changes there has been on this since the PEFA assessment.

5.12 Similarly, the Plateau state government website⁹¹ does not include information on fiscal operations of the government. The site contains the usual routine information on the arms of government, their operations, business opportunities in the state, and other similar information. However, there are no details on government budgets and their performance, financial statements, audit reports, procurement and tendering, etc. Further, the recent PEFA assessment of 2009 found that the public did not have access to key fiscal information on government operations. The impression created then and also during data collection for this exercise, is that the Plateau state government and its officials have not yet come to appreciate the value of routinely providing certain basic information to the public and their obligation to do so.

5.13 The Bauchi state government website⁹² does not include fiscal information. As is the case with other states in the sample, the site contains promotional information of a general nature, including the history of the state, investment opportunities, organization of government, etc. However, it does not provide information on the outcome of fiscal operations of the government. Consequently, the government does not post its budget and budget performance data, accountant general's financial statements, auditor general's report, and other fiscal reports of public interest. The government did not respond to repeated requests to provide information on this aspect during the field work phase of this report.

5.14 The Kano state government website⁹³ also contains information of a general nature. These include historical origins of the government, composition of government, tourist attractions and places of historical interest, culture and people of the state, etc. However, it does not include information on the fiscal operations of the state government and their outcomes. The site thus does not have information on budgets and their fiscal outcomes, financial statements, audit reports, procurement processes, etc.

⁸⁹ www.riversstate.gov.ng

⁹⁰ www.enugustate.gov.ng

⁹¹ www.plateaustate.gov.ng

⁹² www.bauchistate.gov.ng

⁹³ www.kanostate.net

5.15 The website lists one of the government departments in the Government House reporting to the Governor as that of the *Directorate of Public Complain and Anti-Corruption*. However, unlike what it did with respect to other listed offices, it did not state the functions and activities of this office. Although Kano state government provided information for this analysis, it did not include information on public routine access to information. During the validation exercise, the state delegation referred to regular public enlightenment programmes such as “meet the people” and “question time” of government as evidence of public access to information. However, such activities, while useful, do not equate to routine and regular public access to published fiscal data and information at minimal costs. It is not also clear what level of information is made available to the limited number of people that attend such events.

Simplifying Administrative Procedures to Facilitate Public Access to Competent Decision-Making Authorities

5.16 To enhance public reporting, UNCAC requires of state parties, the “*Simplifying (of) administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities*”. Both AUCPCC and the ECOWAS Protocol have similar provisions. AUCPCC provides that, “*Each State Party shall adopt such legislative and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption and related offences*” (Article 9). ECOWAS Protocol requires that “*Each State Party shall take measures to establish and consolidate ... freedom of the press and right to information*” (Article 5(j)).

5.17 Beginning in 2004 at the commencement of its fiscal reforms, the federal government has made selective progress in simplifying process and procedures for accessing information of public interest. Notable among these is the demystification of the budgeting process, with the conscious involvement of a wide spectrum of stakeholders in government, civil society, and the organized private sector. Organized stakeholder-consultations and regular publication of the fiscal strategy paper help the interested and informed public understand rationale and reasoning behind some fiscal decisions. In 2005 and 2006, the federal government introduced further innovations around the budget including publication of simplified editions of the approved budget in English and Pidgin English. It is not exactly clear if the innovation continued after the initial experimentation.

5.18 Further, the federal government established SERVICOM, a service contract with the Nigeria populace. The major objectives of SERVICOM, as advertised on its website include the following:

- To coordinate the formulation and operation of SERVICOM charters
- To monitor and report to the President on the progress made by Ministries and Agencies in performing their obligations under SERVICOM.
- To carry out independent surveys of the services provided to citizens by the Ministries and Government Departments, their adequacy, their timeliness and customer satisfaction.
- To conduct SERVICOM Compliance Evaluation of services provided by Government Departments⁹⁴

⁹⁴ With technical and funding support from donors (especially DFID), SERVICOM produced evaluation reports on major

5.19 SERVICOM aims to give Nigerians the right to demand good service (devoid of corruption) from government agencies and departments. SERVICOM charters, which all government agencies providing services to the public have prepared, contain details of these rights. The charters tell the public what to expect and what to do if the service fails or falls short of their expectation. There are also separate codes of conduct for ministers and staff alike.⁹⁵ At inception, SERVICOM, funded by development partners (especially UK DFID) encouraged Nigerians to report cases of underperformance to certain dedicated hotlines. SERVICOM investigated these complaints and obtained necessary redress.

5.20 Nigeria also has an official Ombudsman. The Public Complaints Commission (Nigerian Ombudsman) is an independent organization established by the Federal Government of Nigeria in 1975 through Decree No. 31 of 1975, amended by Decree 21 of 1979, now Cap 377 Laws of the Federation of Nigeria 1990 and revalidated in Section 315(5) of 1999 Constitution. The Commission has powers to investigate citizens' complaints against any governmental or private body. It was established to provide viable options for Nigerians or anyone resident in Nigeria, seeking redress against administrative injustice arising from bureaucratic errors, omissions or abuse by officials of governments or limited liability companies in Nigeria. It also seeks to improve public administration in general by pointing out weaknesses observed in the laws, procedures, practices, rules, regulations and standards of behaviors of officials.

5.21 The Public Complaints Commission's Act regulates the Commission. The National Assembly appoints and removes the chief commissioner on the recommendation of the President. Funded directly from the Consolidated Revenue Fund, the commission refers cases to the National Assembly or state governors for further action. Its reports, records of meetings, investigations or proceedings are privileged, and the Courts may not compel their production. Although the commission publishes an annual report, this is not widely available. Judging from a 2004 UN report, the 27th edition of the Annual Report released in 2004, covers calendar year 2002. It is noteworthy that of the 11,143 complaints before the commission in 2002, 5,604 were still pending.⁹⁶ General public perception of the commission is not very favorable. An academic research paper had this to say about the commission: “*The Public Complaints Commission has a long history of close, intimate association with the civil service. This has transformed the Commission, more or less, into an arm of the civil service and virtually eliminated its unique ombudsman features*”.⁹⁷

5.22 There are still several major areas where administrative bottlenecks hinder public access to decision making process and information. As has been repeatedly pointed out in this report, release of financial information including audit report and information to the public is one classic area.⁹⁸ The Auditor General, whose natural and traditional duty it is, denies responsibility for releasing audit reports to the public. The result is that the public has no access to audit information and reports.

⁹⁵ The code for ministers is on SERVICOM's website, www.servenigeria.com but the service for general staff is not.

⁹⁶ FEDERAL REPUBLIC OF NIGERIA: Public Administration Country Profile, Division for Public Administration and Development Management (DPADM), Department of Economic and Social Affairs (DESA) United Nations, May 2004

⁹⁷ Victor Ayeni, Nigeria's bureaucratized ombudsman system: An insight into the problem of bureaucratization in a developing country, **Public Administration and Development, Volume 7 Issue 3, Pages 309- 324, Published Online:** 18 Sep 2006, John Wiley & Sons, Ltd.

⁹⁸ By contrast, audit reports of the South African government are readily available on the website

Publishing Periodic Reports on Risks of Corruption in Public Administration

5.23 UNCAC also requires the ‘*Publishing (of) information, which may include periodic reports on the risks of corruption in its public administration.*’ In the past, the Nigerian government had not carried out a formal assessment or published any formal reports on corruption and its risks. This survey is the second such analysis on corruption. The first is the USAID support Nigeria Governance and Anti corruption survey. The Independent Corrupt Practices and Other Related Offences Commission (ICPC) publishes *The Anti Corruption Digest*, as well as periodic progress reports. Both publications focus on the activities of the Commission. They are not an in depth analysis of corruption and the risks they pose. In addition, the Economic and Financial Crimes Commission (EFCC) publishes the *EFCC Alert* and the *Zero Tolerance* magazines. As with the ICPC journals, the EFCC magazines are not analytical reports on the risks of corruption. They are briefs on the activities of the Commission. The Commission's annual reports to the legislature if they are submitted are not made public.

5.24 Since after the Nigerian Governance and Anti-Corruption Survey report in 2001, the nearest there is to an analysis of the impact of corruption is the evaluation report on the performance of 53 federal government agencies assessed by SERVICOM in 2006/7. The evaluation reports⁹⁹ has four headings: major weaknesses, major strengths, overall rating (on a scale of 0-5), and recommendations. Among the items considered as constituting major weakness is the absence of a public complaints and redress mechanism in gaining access to agencies.¹⁰⁰ However, there is no conscious analysis of corruption, the risks it poses and its impact on the services of the agency or on the public.

⁹⁹ www.servenigeria.com

¹⁰⁰ This may not really be a negative commentary on the Public Complaints Commission. Public access to MDAs is not within its mandate.

Table 5: Summary of Compliance with Provisions of UNCAC, AUCPCC and ECOWAS Protocol Management of Public Finance								
	Provisions	FGN	Lagos	Rivers	Enugu	Bauchi	Plateau	Kano
Administrative Measures to Protect the Integrity of Public Finance and Accounts and Records	UNCAC Art. 9(3) AUCPAC Art. 7(3) ECOWAS Protocol Art. 6(4); and the Money Laundering [Prohibition] Act 2004	Civil and administrative measures include those in the Financial Regulations (2009), Treasury circulars, Public Service Rules, the Procurement Act 2007	No current information; however, Lagos state uses public finance and public service rules, and establishment circulars	No current information; however, Rivers state uses public finance and public service rules, and establishment circulars. The procurement law also contains administrative measures, although there is no information on implementation	No current information	Bauchi state government uses the Bauchi State Financial Regulations (2001), Bauchi State Public Service rules (2001)It also uses establishment circulars. The procurement law also contains administrative measures, although full implementation of the law had not commenced.	No current information	No current information; however, Kano state uses Kano State Financial Regulations

Table 6: Summary of Compliance with Provisions of UNCAC, AUCPCC and ECOWAS on Public Reporting								
	Provisions	FGN	Lagos	Rivers	Enugu	Bauchi	Plateau	Kano
Public Access to Information	UNCAC Art. (10)a AUCPAC Art 9 ECOWAS Protocol Art 5 (j)	Noticeable increase in openness and public access to fiscal information including revenues. However, the Access to Information Law has just been passed and awaiting assent. Besides, the public has no access to the report of the Auditor General of the Federation	No current information provided for this report. However, PEFA report (2009) suggests poor public accessibility of vital fiscal information; no access to information law.	No current information provided for this report. However, PEFA report (2008) suggests poor public accessibility of vital fiscal information; no access to information law	No current information provided for this report. However, PEFA report (2009) suggests poor public accessibility of vital fiscal information; no access to information law	No information	No current information provided for this report. However, PEFA report (2009) suggests poor public accessibility of vital fiscal information; no access to information law	No information
	Public Access to Decision Making Authorities	UNCAC Art. (10)b AUCPCC Art 9 ECOWAS Protocol Art 5 (j)	Selective progress. Information on budget processes more readily available than information on audit processes.	No information	No information	No information	No information	No information

Table 6: Summary of Compliance with Provisions of UNCAC, AUCPCC and ECOWAS Protocol Management of Public Finance								
	Provisions	FGN	Lagos	Rivers	Enugu	Bauchi	Plateau	Kano
Periodic Reports on Risks of Corruption in Public Administration	UNCAC Art. (10) (c)	Only one such report in the past, the USAID supported Afro Barometer Nigerian governance and anti-corruption survey report. However, the establishment of TUGAR with the specific mandate of conducting studies and analysis [such as this study] and issuing such reports has ensured improvement	No information					

LEVELS OF COMPLIANCE TO INTERNATIONAL ANTI-CORRUPTION CONVENTIONS

CHART I: FEDERAL AND STATE GOVERNMENTS

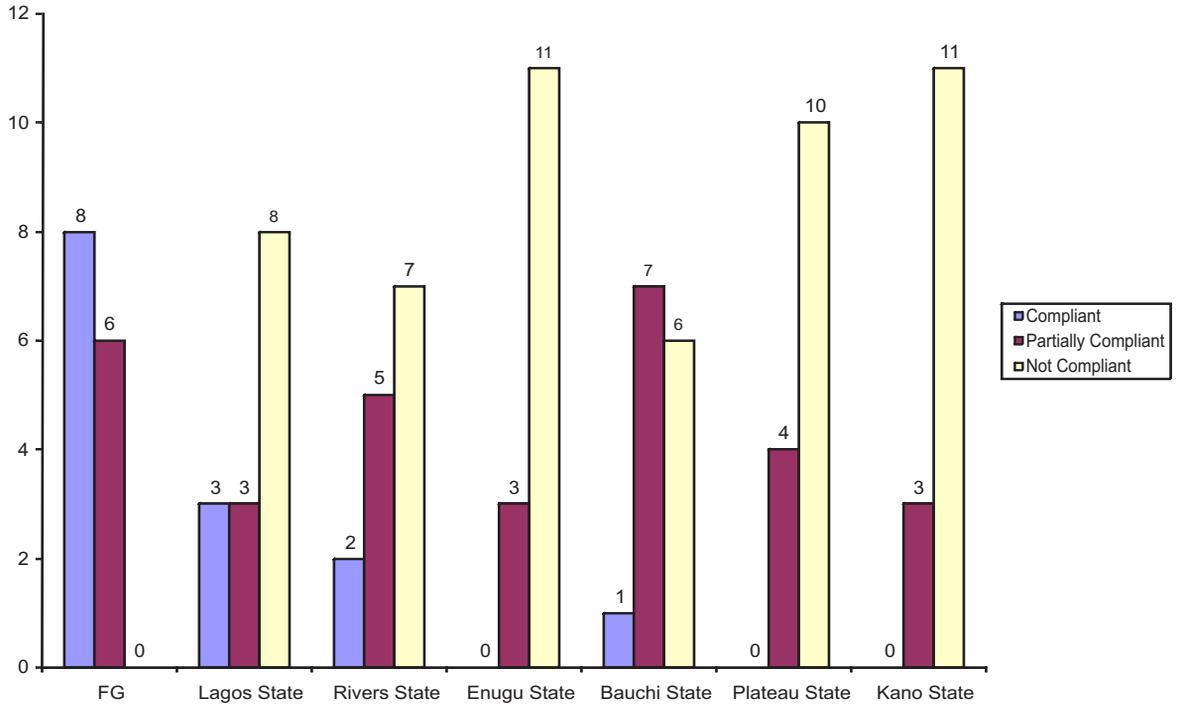


CHART II: FEDERAL GOVERNMENT

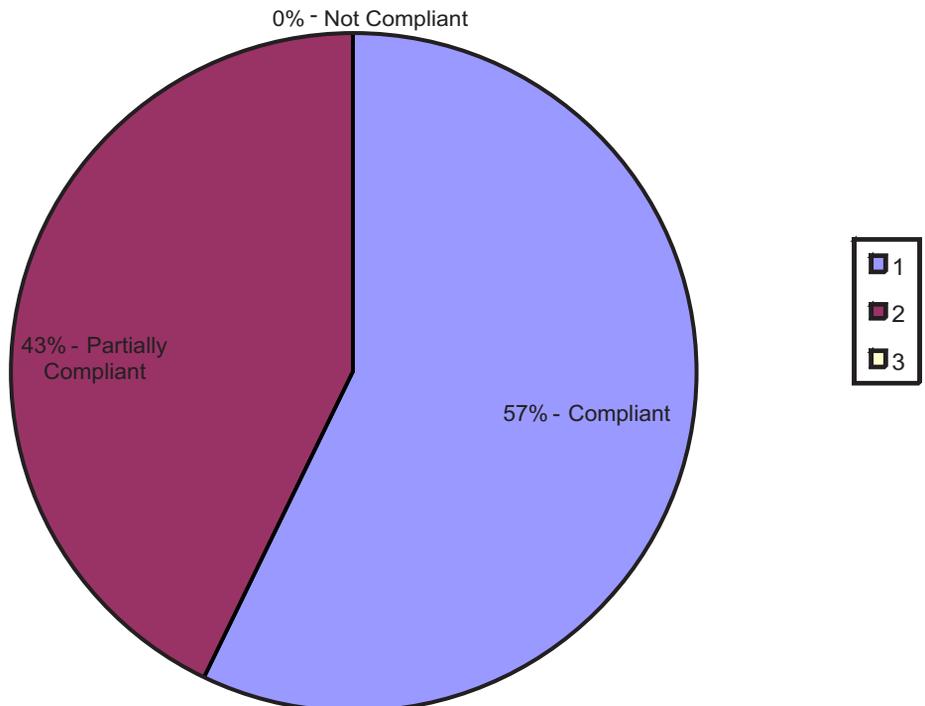


CHART III: LAGOS STATE

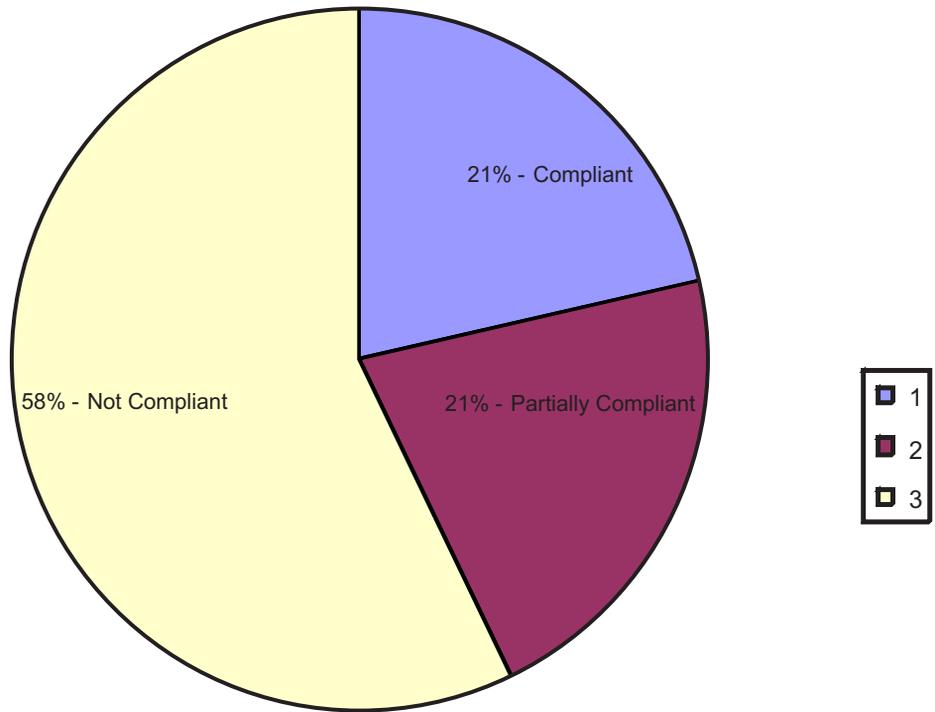


CHART IV: RIVERS STATE

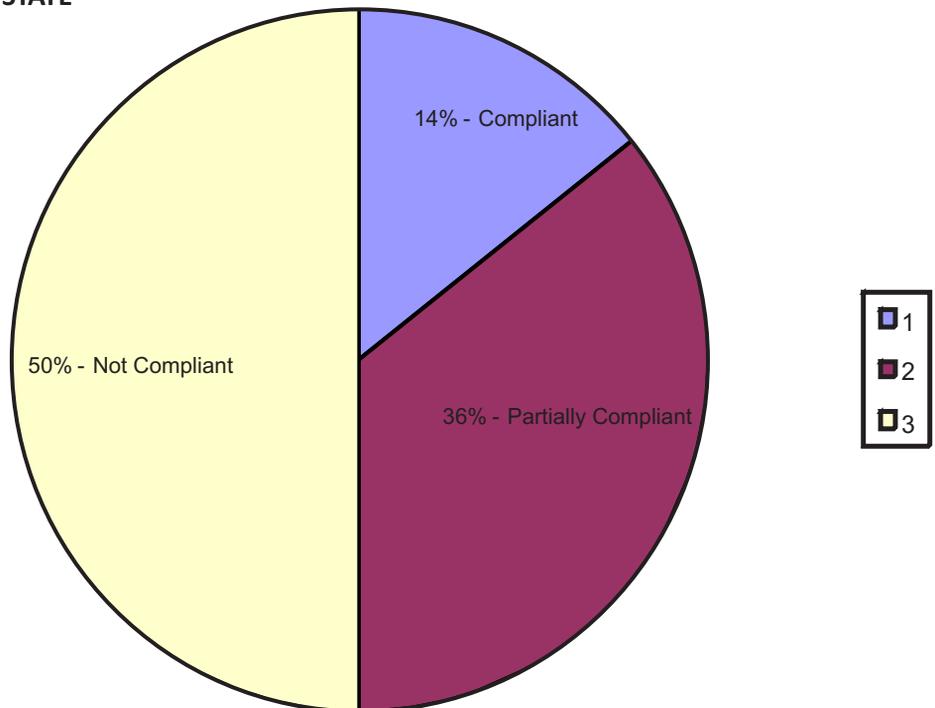


CHART V: ENUGE STATE

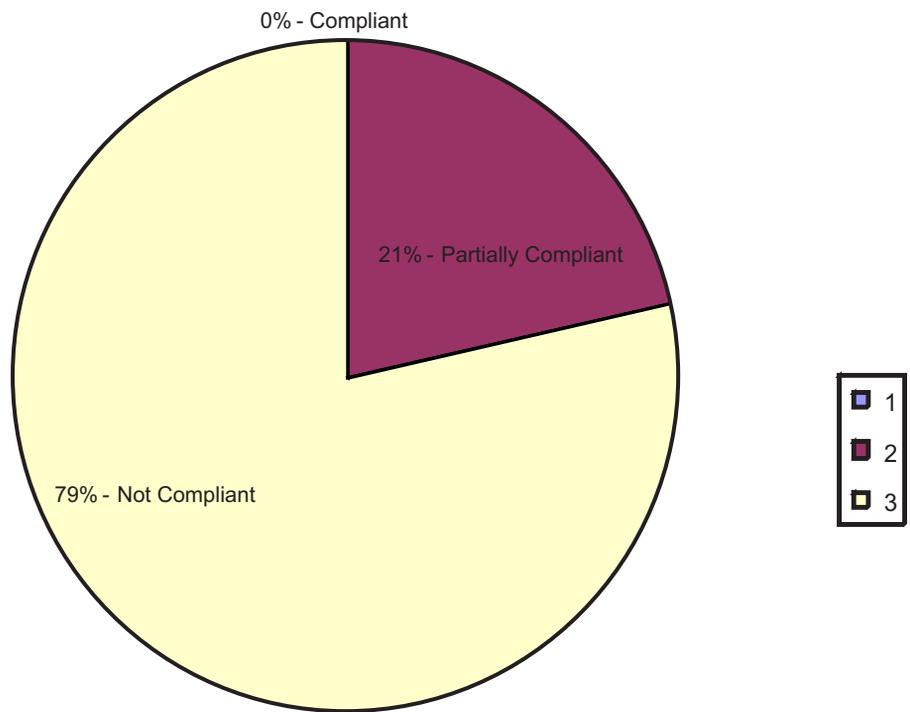


CHART VI: BAUCHI STATE

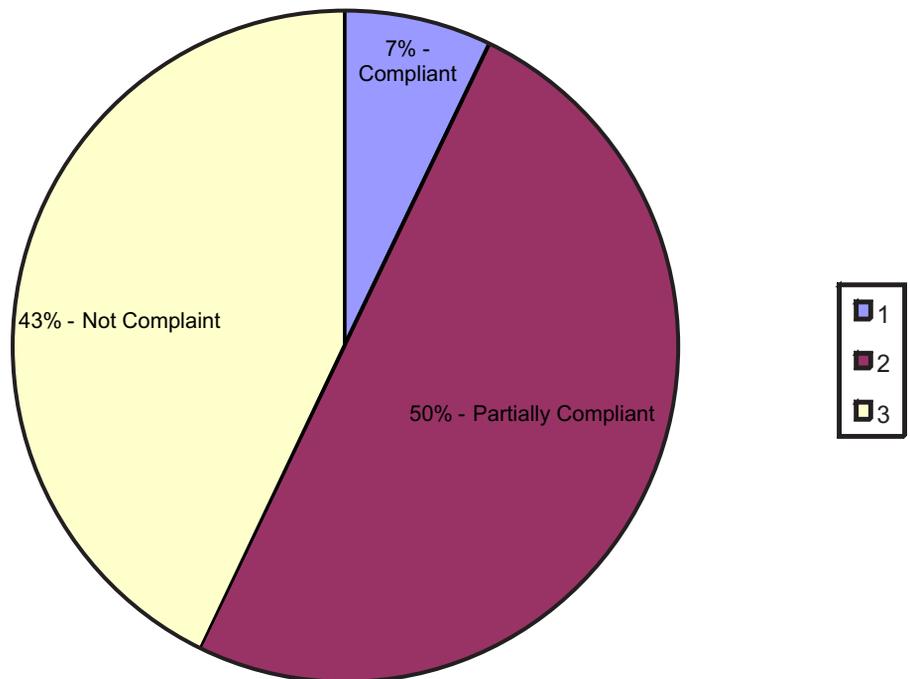


CHART VII: PLATEAU STATE

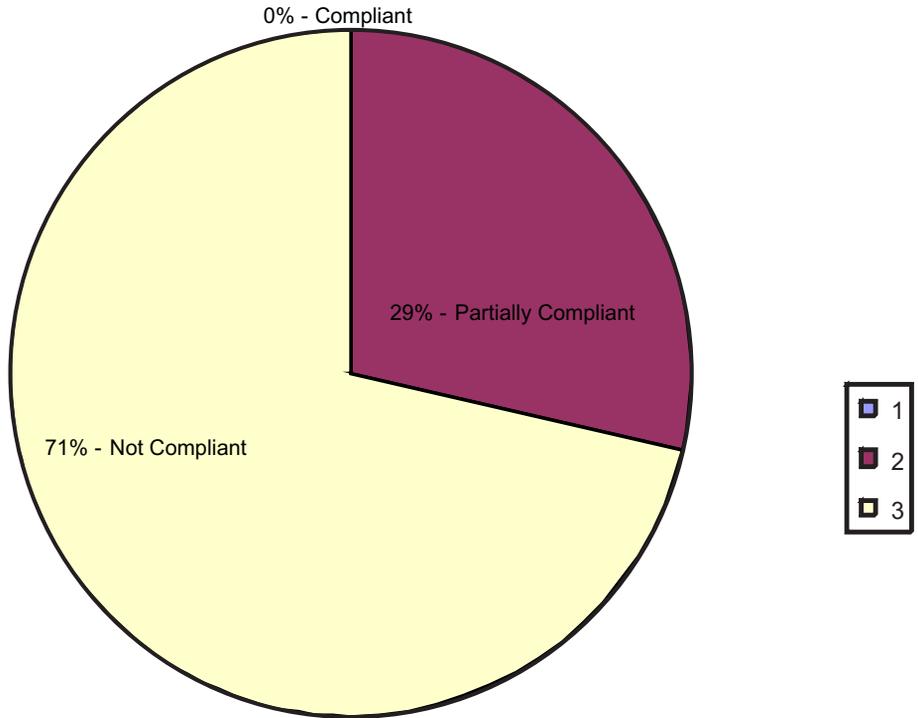


CHART VIII: KANO STATE

