



Mapping & Scoping Survey of Anti-Corruption and Governance Measures in Public Finance Management (PFM)

A study of Ten States of the Federation.

(Cross-River, Ebonyi, Ekiti, Jigawa, Katsina, Kogi, Nasarawa, Ogun, Taraba & Yobe)



TUGAR TECHNICAL
UNIT ON
GOVERNANCE &
ANTI-CORRUPTION
REFORMS

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2013

TECHNICAL UNIT ON GOVERNANCE AND ANTI-
CORRUPTION REFORMS (TUGAR)

TABLE OF CONTENTS

Contents

TABLE OF CONTENTS	3
LIST OF ABBREVIATIONS AND ACRONYMS	5
ACKNOWLEDGEMENTS	ERROR! BOOKMARK NOT DEFINED.
CHAPTER 1: INTRODUCTION	9
SUMMARY OF FINDINGS	10
CHAPTER 2: METHODOLOGY	13
RESEARCH DESIGN	13
<i>Research/Survey Instruments</i>	13
STAKEHOLDERS' WORKSHOP.....	11
REPORT REVIEW AND VALIDATION	15
POPULATION AND SAMPLE	12
DESCRIPTION OF DATA USED	12
METHOD OF DATA COLLECTION	16
CHAPTER 3: CORRUPTION AND PUBLIC FINANCIAL MANAGEMENT	17
CONCEPT AND SCOPE OF THE PFM SYSTEM.....	17
OBJECTIVES AND RELEVANCE OF THE PFM SYSTEM.....	17
DEFINITION AND UNDERSTANDING OF CORRUPTION.....	18
IMPACT OF CORRUPTION ON PFM PROCESSES	19
CHAPTER 4: ANTI-CORRUPTION INITIATIVES IN PUBLIC PROCUREMENT	24
EXISTENCE OF A MODERN PUBLIC PROCUREMENT LAW AND REGULATORY FRAMEWORK AND INSTITUTIONS ERROR! BOOKMARK NOT DEFINED.	
ADVANCE ESTABLISHMENT OF SELECTION AND AWARD CRITERIA.....	31
OBJECTIVITY OF PUBLIC PROCUREMENT DECISIONS.....	37
PROCUREMENT REVIEWS AND APPEALS PROCESS	40
CODE OF CONDUCT FOR PROCUREMENT PERSONNEL.....	41
CITIZENS MONITORING OF PROCUREMENT PROCESS AND IMPLEMENTATION	42
SUMMARY PERFORMANCE: ANTI-CORRUPTION INITIATIVES IN PUBLIC PROCUREMENT	44
CHAPTER 5: ANTI-CORRUPTION INITIATIVES IN MANAGEMENT OF PUBLIC FINANCES	50
PROCEDURES FOR THE ADOPTION OF THE BUDGET	52
<i>Revenue Sources of State Governments</i>	53
<i>Measures for Fiscal Discipline</i>	53
<i>Arrangements for Public Budgeting</i>	55
TIMELY REPORTING ON REVENUE AND EXPENDITURE	71
SYSTEM OF ACCOUNTING AND AUDITING STANDARDS AND RELATED OVERSIGHT.....	75
<i>System of Accounting</i>	75
<i>System of Public Auditing</i>	87

EFFECTIVE AND EFFICIENT SYSTEMS OF RISK MANAGEMENT AND INTERNAL CONTROLS	96
CORRECTIVE ACTION FOR NON-COMPLIANCE WITH LEGAL PROVISIONS ON ACCOUNTS AND AUDIT.....	100
SUMMARY PERFORMANCE: ANTICORRUPTION INITIATIVES IN MANAGEMENT OF PUBLIC FINANCES.....	103
CHAPTER 6: CIVIL AND ADMINISTRATIVE MEASURES TO PROTECT THE INTEGRITY OF PUBLIC FINANCE AND ACCOUNTS RECORDS	108
EXISTENCE OF CIVIL AND ADMINISTRATIVE PROTECTION MEASURES	109
APPLICATION OF THE MEASURES	114
SUMMARY OF COMPLIANCE WITH PROVISIONS OF UNCAC, AUCPCC AND ECOWAS PROTOCOL ON MANAGEMENT OF PUBLIC FINANCE.....	115
CHAPTER 7: PUBLIC REPORTING AND PUBLIC PARTICIPATION	117
PUBLIC ACCESS TO INFORMATION.....	117
SIMPLIFYING ADMINISTRATIVE PROCEDURES TO FACILITATE PUBLIC ACCESS TO COMPETENT DECISION-MAKING AUTHORITIES.....	119
PUBLISHING PERIODIC REPORTS ON RISKS OF CORRUPTION IN PUBLIC ADMINISTRATION.....	122
SUMMARY OF COMPLIANCE WITH PROVISIONS OF UNCAC, AUCPCC AND ECOWAS ON PUBLIC REPORTING..	126
CHARTER 8: SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS.....	129
APPENDIX 1: QUESTIONNAIRES.....	133
PUBLIC PROCUREMENT MEASURES	
MANAGEMENT OF PUBLIC FINANCES	
TAX ADMINISTRATION	
RECRUITMENT AND PROMOTIONS	
CITIZENS PARTICIPATION AND CIVIL SOCIETY	
APPENDIX 2: LIST OF DOCUMENTS REQUESTED FROM STATE GOVERNMENTS.....	ERROR!
BOOKMARK NOT DEFINED.	
PLANNING AND BUDGETING	
FINANCE AND ACCOUNTS	
INTERNAL AUDIT	
PUBLIC PROCUREMENT	
SUPREME AUDIT INSTITUTION (OFFICE OF AUDITOR GENERAL)	
INTERNAL REVENUE LAW/PROCEDURES	
HRM – SALARY ADMINISTRATION/MANAGEMENT	
LEGISLATIVE OVERSIGHT OVER BUDGET AND ACCOUNTS	
ADDITIONAL REQUIREMENTS	

LIST OF ABBREVIATIONS AND ACRONYMS

AfDB – African Development Bank
AUCPCC – African Union Convention on Preventing and Combating Corruption
BOJ-Best of Judgment
BTAN—Budget Transparency and Accountability Network
CBN- Central Bank of Nigeria
CBO(s) – Community Based Organization(s)
CDF – Comprehensive Development Framework
CSH – Civil Service Handbook
CSO(s) – Civil Society Organization(s)
CSR – Civil Service Rules
DAC – Development Action Committee
DG – Director General
DPR –Department of Petroleum Resources
DPPID- Due Process and Prize Intelligence Department
DPPIB- Due Process and Prize Intelligence Bureau
DVB – Departmental Vote Books
ECOWAS – Economic Community of West African States
ECOWAS Protocol- ECOWAS Protocol on the Fight against Corruption (2001)
EFCC – Economic and Financial Crimes Commission
FBO(s) – Faith Based Organizations
FDI – Foreign Direct Investment
FGN – Federal Government of Nigeria
FI(s) – Financial Instruction(s)
FR(s) – Financial Regulation(s)
FRC – Financial Reporting Council
FRL – Fiscal Responsibility Law
FS – Financial statements
FY – Fiscal/Financial year
IC –Internal Controls
IA- Internal Audit
ICPC – Independent Corrupt Practices and Other related offences Commission
ICT – Information Communication Technology
IFAC – International Federation of Accountants
IGR – Internally Generated Revenue
INTOSAI – International Organization of Supreme Audit Institutions
IPSAS - International Public Sector Accounting Standards
IPSASB – International Public Sector Accounting Standards Board
ISSAI – International Standards of Supreme Audit Institutions

MDA(s) – Ministries, Departments, and Agency (ies)
MTB – Ministerial Tenders Board
MTEF - Medium Term Expenditure Framework
NASS- National Assembly
NCE – National Council on Establishment

NGO(s) – Non-Governmental Organization(s)
NEITI – Nigeria Extractive Industries Transparency Initiative
NNPC –Nigerian National Petroleum Corporation
OECD – Organization for Economic Cooperation & Development
PAC – Public Accounts Committee
PEFA – Public Expenditure & Financial Accountability
PEP(s) – Politically Exposed Person(s)
PER(s) – Public Expenditure Review(s)
PFM – Public Financial Management
PEML-Public Finance Management Law
PP – Public Procurement
PPL – Public Procurement Law
PPMC- Pipeline and Product Marketing Company
PSR – Public Service Rules
PTB – Parastatals Tenders Board
SBD – Standard Bidding Documents
SCPP – State Council on Public Procurement
SEC – State Executive council
SG(s) – State Government(s)
SSG – Secretary to the State Government
STB -State Tenders Board
SUBEB - State Universal Basic Education Board
SR – Stores Requisition
TUGAR – Technical Unit on Governance and Anti-corruption Reforms
TUGAR Study report 2012 -Mapping & Scoping Survey of Anti-corruption and governance measures in public Finance management (PFM)
TUGAR 2012 a study of Ten States of the federation, Adamawa, Anambra , Bayelsa, Benue, Delta, Kaduna, Imo , Niger, Ondo and Sokoto
UNCAC – United Nations Convention Against Corruption
UNCITRAL – United Nations Commission on International Trade Law
UNDP – United Nations Development Programme

Chapter 1: Introduction

1.1 *Mapping & Scoping Survey of Anti-Corruption and Governance Initiatives in Nigeria is a documentation of anticorruption measures in the PFM system of additional ten Nigerian States against benchmarks of three international conventions and treaties to which Nigeria is signatory.* Phase I¹ covered the Federal Government and six Nigerian states, one from each geopolitical zone: Bauchi (Northeast), Kano (Northwest), Plateau (North central), Lagos (Southwest), Rivers (South south), and Enugu (Southeast). Phase II covered an additional 10 states namely, Adamawa, Anambra, Bayelsa, Benue, Delta, Kaduna, Imo, Niger, Ondo, and Sokoto. This current Phase covers the ten States of Cross River, Ebonyi, Ekiti, Jigawa, Katsina, Nasarawa, Ogun, Taraba, Kogi and Yobe.

1.2 As in the previous Phases, the exercise records, analyzes, and benchmarks “Public Finance Management [PFM] and related anti-corruption and governance initiatives” in the ten named states with provisions of the *United Nations Convention Against Corruption (UNCAC)*, the *African Union Convention on Preventing and Combating Corruption (AUCPCC)*, and *ECOWAS Protocol on the Fight against Corruption (2001) (ECOWAS Protocol)*.

1.3 *The study attempts to cover all areas of Public Financial Management system including budget management, fiscal and revenue management, public procurement, accounting and recording, and auditing, as well as citizen access to publicly held information and participation in governance and corruption prevention.* The analysis covers six areas of relevant anti-corruption programming namely, (i) the Policy Framework, (ii) Legal Framework, (iii) Institutional mandates and deliverables, (iv) Structure and Organization, (v) Work Processes, and (vi) Cross cutting and related issues. The design of the exercise is to cover initiatives within the government structure as well as interfacing engagement by non-state actors such as the Private Sector (including organized business, professional bodies, organized labour, informal labour) and civil Society (NGOs, CBOs, FBOs, charities, and socio-cultural organizations).

1.4 *The study in each phase has four main purposes.* First, it seeks to find out to what extent each State Public Finance Management System including its Public Finance Laws, regulations, practices/processes, and other measures of the State Governments aimed at safeguarding public resources from corruption comply with relevant provisions of UNCAC, AUCPCC and ECOWAS Protocol. Second, it enquires into the extent of compliance with the provisions of the existing laws and regulations. Third, it documents existing initiatives, challenges, gaps in the policy and legal frameworks and between the frameworks and practice, and attempts to discover the causes. Finally, it suggests possible steps to improve the system based on analysis of available information.

1.5 The structure of this report is as follows: Following this introduction is a summary of findings, followed by a description of the methodology and approach for the work including information gathering challenges. There is then a short explanation of the meaning and scope of the term “Public Financial Management”, its objectives, as well as a definition and understanding of corruption and how it impacts on public finance processes. This is important to enable readers not familiar with the field appreciate the linkages and follow the discussion. The remaining parts of the report deal with presentation of the findings of the exercise, with the arrangement of the analysis following the UNCAC provisions. The analysis is thus in this order: Public Procurement, Management of Public Finances and Public Reporting, Access to Information and Public Participation. A short synthesis summarizes and draws general lessons

¹ In 2009

and proffers some suggestions on each issue. Finally there is a brief chapter presenting a summary of the major conclusions and recommendations.

Summary of Findings

1.6 *The main finding of this study is that the regulation and practice of public finance management in the States subject of this study in most cases has not witnessed **substantial** improvements. Even in the five States where relevant laws have been passed, improvements in the form of institutionalization of reforms and implementation of the laws has been measured and determinably slow in some and yet to commence in many respects in others. In the states without these laws, efforts at reform are even weaker. The five States of Cross River (2011), Ebonyi (2009), Ekiti(2010), Jigawa (2009), and Taraba (2012) amongst the ten states in this study have enacted Public Procurement and Fiscal Responsibility laws. The other five states have their PFM system regulated by outdated PFM laws of their former regions and their Financial, Stores or other Regulations laws and practices are in dire need of revision to meet current needs and challenges.*

1.7 Furthermore, none of the sample States has an Audit Law. Though the Constitution secures the tenure of office and remuneration of the Auditor General, all staff of the Auditor General's Offices in all the States in this study are not covered by this provision. Their funding and disciplinary issues remain subject to control of the other administrative and political officers whose compliance to financial laws, rules and practices and propriety of whose financial decisions is the subject matter of audits. It cannot be said therefore that the independence of the office of the Auditor General has been secured in practice in these States.

1.8 Amongst States with Procurement Laws, Cross River State has established a Due Process Office predating its law, which has been carrying out the functions and powers of the Bureau established in its law but is yet to establish a Fiscal Responsibility Council as required by its FRL. It has a recent Public Finance Management law with improved provisions which addresses a few but not all related audit issues. Ebonyi State has a Procurement Council (SCPP) but no Bureau for Public Procurement yet as required by its Procurement Law. Ekiti State has a Bureau for Public Procurement but no Council (SCPP) as required in its law. Ekiti State has also passed a Freedom of Information law, a Fiscal Responsibility Law and established a Fiscal Responsibility Council. Jigawa State has both a Bureau of Public Procurement and a Fiscal Responsibility Council as required by its laws. Taraba State has established a Bureau for Public Procurement but no Procurement Council (SCPP) as required by its PPL. It has also appointed members into a Fiscal Responsibility Council, but is yet to allocate an office to the Council though the council meets in other places.

1.9 In five of the ten States in this study namely Katsina, Nasarawa, Ogun, Kogi and Yobe, no Public Procurement or Fiscal Responsibility Laws exist. However there appears to be incomplete efforts to change the existing incremental budgeting practices in all the states except Katsina. These have been in the form of attempts to adopt the Medium Term Expenditure Framework without necessary laws and institutional frameworks. At best these can be seen as partial adoption of the MTEF processes. Indeed none of the states without a FRL presented evidence of a full MTEF process or document that can meet a reasonable test of completeness in content and compliance to laws and laid down procedure or acceptable best practices for adopting them.

1.10 Among the five states with Public Procurement laws, some limitations have been observed in their laws, e.g. the Jigawa State Public Procurement law excludes application of some fundamental due process rules that encourage and sustain competitiveness to procurement processes below One Hundred Million Naira (₦100,000,000) value. Incidentally procurement within this threshold constitutes the largest

group of procurement activities in the state. In Ebonyi, the definition of open competitive bidding² as “the offer of prizes by individuals or firms competing for a contract, privilege or right to supply specified goods, works, construction or services” restricts the meaning of the term and robs its processes of prior and simultaneous distribution of information on procurement activity. This makes advance determination and disclosure of conditions and criteria for selection discretionary with respect to open competitive bidding despite all other provisions of the law which suggest otherwise.

1.11 Requirements of political approval for procurement expenditure are notable in Ebonyi, Ekiti, and Jigawa State Laws. In the Ebonyi State law for example, the Ministerial Tenders Board though given a threshold for projects between ten and twenty million naira (₦10,000,000 - ₦20,000,000) requires approval of the Commissioner, a political office holder for each such projects. Also Commissioners can, independent of the Ministerial Tenders Boards award contracts of Five Million Naira (₦5,000,000) value threshold. The procurement laws exclude application of their provisions to special goods, works and services involving security unless with prior approval from the Governor³. This appears intended to statutorily protect from public scrutiny the notorious State Security Votes. In Ekiti State for example, the law also constitutes the State Executive Council (dominated by PEPs) and the State Tenders Board (also with PEPs) as approval authorities for all procurement above Two Million Naira (₦2,000,000). The Ministerial Tenders Board constituted by administrative staff and having no PEPs (which ought to be the appropriate approval authority for most if not all procurements) is left with approval threshold not exceeding Two Million Naira (₦2,000,000) only.

1.12 In the States with Fiscal Responsibility laws which require consultative adoption of MTEF, implementation has not been spirited in all cases. The Fiscal Responsibility Commissions or Councils where they exists have not all been effective in monitoring MTEF or performing their other functions. However there are good examples of improved citizens participation in Public Finance Policy and project selection and location decisions from Cross River, Ekiti and Jigawa States. Otherwise, citizen’s participation in Public Finance Policy and project selection and location decisions remains very low in most States in this study. It is instructive that Cross River State has the best capital to recurrent expenditure ratio over the years amongst sample States. It is not clear however that this has resulted directly from improved citizen’s participation in fiscal policy, project selection and allocation decisions. But it is indicative that when there is increased citizen’s participation and scrutiny, public finance policy, project selection and location decisions are more carefully considered.

1.13 There is limited political will to embark on reforms and even where the policy and laws have been adopted, there is limited political will to implement them. It is not certain why this is the case however it appears that reluctance to give up complete and direct political control over public expenditure may be a major contributor to the reluctance to embark on reforms in the five States without reform laws and to implement them fully in the five States where the policy and laws exist. As already indicated, in some of the States where reform laws have been enacted, they contain provisions granting Governors and political appointees (PEPs) control over administrative decision making processes that should ordinarily devolve on administrative officers. Such provisions clearly indicate the reluctance of political leaders to give up direct control of public expenditure processes.

1.14 Across the States, the Ministerial Tenders Boards remain in practice with limited authority and in some cases, with thresholds in the region of Two million Naira (₦2,000,000.00) only. In reality in most of the States, no expenditure above One or Two Million Naira can be undertaken without prior approval of the Governor while actual contract awards depending on thresholds also require approval of the

² Section 3 of the Ebonyi State Public Procurement and related matters law 2009

³ S 15 Ekiti State Public Procurement Law No 2 of 2010

Executive Council constituted by the Governor and his Commissioners, and the State Tenders Board made up of mostly same Commissioners. These PEPs also determine fiscal policies and project selection and location, in most instances with little or no citizens input except in the States mentioned above (Cross River, Ekiti and to some extent Jigawa)

1.15 The challenge therefore is that the old Regional laws and Financial Instructions as well as most of the new laws and the practice across board still allow the PEPs (Governors, Executive Councils and Members of the State Tenders Boards) to take Public Finance policy decisions, project selection decisions, with limited citizens input, as well as direct contract award decisions. The result is that political leaders who ought to take policy and project selection decisions after consultation with citizens and whose oversight of administrative spending and contract award decisions by civil servants ought to provide checks and balances over expenditure decisions and ensure administrative officers are held accountable, are themselves now taking all the decisions. The system has thus lost the important internal check and balance mechanism that should result from better role sharing. This study has found that other internal and external checks and balances remain weak and in some instances are not in place. Such systems include internal and external audit and reporting, oversight by the various State Houses of Assembly and citizens' demand for accountability.

Chapter 2: Methodology

2.0 *This chapter describes the goal of the study, the research design, the population of study, explains the methods of collecting and analyzing data, and the challenges encountered during the study.* The overall objective of the study is to document and benchmark anti-corruption initiatives in Public Finance Management of the ten named Nigerian States against related International Treaties to which Nigeria is signatory. The States are Cross River, Ebonyi, Ekiti, Jigawa, Katsina, Kogi, Nasarawa, Ogun, Taraba, and Yobe. The Treaties are the *United Nations Convention Against Corruption (UNCAC)*, the *African Union Convention on Preventing and Combating Corruption (AUCPCC)*, and *ECOWAS Protocol on the Fight against Corruption (2001)*.

Research Design

2.1 The design of this Phase III drew lessons from Phases I&II of the exercise concluded in 2009 & 2012. The lessons include the benefits of early consultations with stakeholders; their involvement in finalizing the methodology and data collection instruments; appointment of resident research assistants from subject States and the value of obtaining buy-in of high level officials in the subject States, including by sharing and having them critique the interim report and validate the final report findings. This research methodology involves seven main aspects, (i) desk research, (ii) inception report and design of survey instrument, (iii) appointment and training of research assistants (iv) securing stakeholder inputs in finalizing research design/instrument through a stakeholder sensitization workshop, (v) fieldwork for data collection, (vi) analysis and report writing, and (vii) report review and validation.

Research/Survey Tools and Methods

2.2 The research design and methodology involves:

- Survey questionnaire for actors to scope their initiatives, interventions and perspectives on the anti-corruption work
- Stakeholder workshops
- Collection of official government documents (policies, legal framework instruments, statutory reports and publications such as budgets, audited accounts, etc.)
- Follow up interviews with state actors to elicit further (verbal descriptive) information on policies, structure and organization, mandate and deliverables, challenges, etc.; (experience shows that questionnaires do not work very well with government officials due to several factors including time to fill out responses)
- Focus Group Discussions and interviews with select non-state actors.
- Analyses, report writing and validation (including consultation meeting on mid-term/interim report & validation of final report and findings)

2.3 In this third phase, the firm of consultants in addition to its partners and staff, appointed and trained resident research assistants. However unlike the previous phases, the research assistants in this phase were appointed each from the states subject of the study. The research assistants were introduced to relevant state offices through a letter from TUGAR, and they participated in the initial methodology meeting with State officials. They collated official documents and administered questionnaires on Public Officials and citizens groups, as well as participated in interviews and Focused Group Discussions with

Public Officials and Citizen's Groups. This has ensured that capacity in research and data collection is left for updating reported information in the future in each subject State.

2.4 Cooperation of relevant state and non-state actors has been necessary for success. First, the stakeholders completed the revised focused questionnaires as necessary. Secondly, State actors provided official documentation that gave insight into the existing systems including ongoing and planned anti-corruption work in the State. Specific documents required included but were not limited to;

- Public Finance Law, Fiscal Responsibility Law, Financial Instructions, Stores Regulations,
- MTEF Planning Documents, Documents relating to budget preparation and process: Budget procedures Manual, Budget implementation Manual, Budget Call Circulars (for the last three years),
- Public Procurement Law, Procurement Guidelines/Procedures Manual, Due Process Law/Manual, Standard Bidding Documents, Sample Advertisements, Conditions for Qualification, Annual Procurement Reports and other implementing documents,
- Audit Law, Regulations, Manual & Guides, Sample Internal Audit Reports, Audit Reports and evidence of submission of Accounts and Audit Reports, evidence of publication,
- Internal Revenue Law/Procedures, Treasury Circulars,
- Public/Civil service rules,
- Anti-corruption Law, Ombudsman Law, Freedom of Information Law,
- Description of the structure/organogram of the Ministries of Budget, Planning & Finance
- Evidence of CSO and Private sector participation in PFM.

Stakeholders' Workshop

2.5 One of the lessons of the Phase I & II Study as already indicated is the need to engage all stakeholders early in the project. Prior to finalization of the questionnaire instruments and list of required documents TUGAR and the UNDP organized a Stakeholder sensitization workshop involving State officials from the participating States and the research assistants to be deployed to the field. This was as a result of lessons from initial studies showing the advantages of early consultation with relevant government officials. Government participants included officials whose roles involve overseeing financial management policies and implementation as well as appointed research assistants from subject States. The State officials included relevant officials of the Ministry of Finance, Budget Office, Office of the Auditor General, Tax Office, Office of the Accountant General, the Procurement or Due Process Unit, and Offices of the Secretary to State Government.

2.6 The workshop accomplished the following: (i) sensitized participants on the study, (ii) familiarized them with the objectives and benefits, (iii) exposed them to the research methodology including design and instruments, and most importantly (iv) secured their inputs to enable finalization of the instruments. The meeting also helped to secure their cooperation and buy-in to subsequent field visits for data collection by the researchers. The research instrument was sufficiently flexible to accommodate and incorporate useful inputs made by participants and the revised copies incorporating inputs were made available to them via email and physically by state research assistants. The instruments formed part of the basis for subsequent interviews. It was consequent upon this workshop and its outcomes that trained research assistants from each state approached government officials to administer questionnaires and collect documents. In most States, the representatives who attended the methodology workshops were helpful in aiding data collection by research assistants and in arranging interviews during lead researcher's visits.

Analysis, Report Writing, Review and Validation

2.7 This is also a multi-stage process. Stage 1 involves Consultant's detailed reading, comparison and analysis of information collected through different sources against benchmarks distilled from UNCAC, AUCPCC and ECOWAS Protocol. In drafting the report and analyzing preliminary findings, the Consultant followed the sequence of the provisions of UNCAC, AUCPCC and ECOWAS Protocol, and benchmarks distilled from each of these provisions. Stage 2 was a mid-term stakeholder's review meeting that held on 19th June 2013, where an interim report indicating interim findings was reported. State representatives had an opportunity to challenge findings on all identified benchmarks. States then agreed to provide further evidence in the form of documents in each case where they disagreed with any finding to buttress their position. Stage 3 included further analysis of additional evidence provided and revision of the interim report and findings to reflect these additional evidence. Stage 4 included submission of a final draft report for comments from TUGAR, UNDP, State actors, and relevant non-state actors. Stage 5 is revision where necessary based on comments, and includes submission of final report and a stakeholders' validation workshop enabling stakeholders to verify that their additional evidence and comments have been reflected, and to own the report.

Population and Sample

2.8 The population of the study comprises the Ten Nigerian states of Ebonyi, Cross River, Ekiti, Jigawa, Katsina, Kogi, Nasarawa, Ogun, Taraba, and Yobe. The focus of the study is the Public Financial Management (PFM) systems particularly the initiatives that contribute towards combating corruption. Information gathering exercise and analysis involved direct engagement with Public Officials and non-state actors in all named ten states by researchers.

Description of Data Used

2.9 This study relied on both primary and secondary sources of data. The primary sources are firsthand information and documents obtained directly from the State Governments and their stakeholders. Primary data also came from responses to questionnaires administered on state actors (government officials) and non-state actors (civil society stakeholders), and interviews. Questionnaires on state actors were of four types, each focusing on a different aspect of the Public Finance Management System. These are (i) Public Procurement, (ii) Management of Public Finances, (iii) Recruitment and Promotion, and (iv) Public Reporting including Access to Information and simplification of procedures to facilitate public access to competent decision making authorities. There were also similar questionnaires for non-state actors.

2.10 *Documents submitted by state officials on request have been of primary importance.* The researchers submitted a prepared list of documents to each State. The documents covered about eight different areas of the PFM system namely (i) Planning and Budgeting, (ii) Finance and Accounts, (iii) Internal Audit, (iv) Public Procurement, (v) Supreme Audit Institutions– Auditor General, (vi) Internal Revenue, (vii) Legislative Oversight of Budget and Accounts, and (viii) Evidence of Citizen's access to

information and participation. This report does not contain analysis of the tax systems as very limited and general information was gathered in this area.⁴

2.11 Secondary data comprised all other data used in this analysis but not obtained directly or sourced directly from the State and its stakeholders. Three prominent sources of secondary information used in this research are the official websites of the State Governments,⁵ other websites with relevant information on the subject matter of study, reports of formal reviews appraisals. One of such reviews are reports of assessment of the PFM systems using the PEFA Framework⁶ and of the procurement systems using the OECD/DAC⁷ *Methodology for Assessment of National Procurement Systems* (MAPS), where they exist. Among States in the population that provided PEFA and Procurement Assessment reports are Jigawa (2011),⁸ and Katsina 2013⁹. The desk research also included a review of the published report of Phase I & II; this proved useful particularly in designing the research methodology and reporting format.

Method of Data Collection

2.12 *Collection of primary and secondary data involved different approaches.* Collection of primary data entailed field visits by trained personnel, one in each of the ten states to relevant government departments and non-state actors. TUGAR and the UNDP had earlier organized a sensitization and consultative meeting with relevant officers from all the ten states to review the questionnaires and required documents. The trained researchers attended this meeting and were introduced to the State representatives from their various States. This was to break the ice between the officials and research assistants who relied on them to ease the process of data gathering. This enabled improved collaboration between research assistants and relevant trained officials in collation of documents from different Ministries and Departments and Agencies (MDAs). The State officials were given advance copies of the questionnaires and documents to facilitate their efforts at anchoring/coordinating data collection. The copies of the questionnaires incorporating their inputs were first sent by email, and State research assistants followed up with hard copies. This enabled improved collaboration between research assistants and relevant trained officials in collation of documents from different Ministries and Extra Ministerial Departments (MDAs). Collection of secondary data also involved the use of trained personnel to scan internet web address of participating State Governments and other relevant sites, and source for official documents and reports or to capture extent of proactive disclosure of related information and documents.

2.13 None of the participating states provided all the requested documents, and most states did not complete all of the questionnaires. In many instances the questionnaires were returned with many questions unanswered.

⁴ Mapping & Scoping Survey of Anti-corruption and governance measures in public Finance management (PFM) TUGAR 2012 a study of Ten States of the federation, Adamawa, Anambra , Bayelsa, Benue, Delta, Kaduna, Imo , Niger, Ondo and Sokoto

⁵ Where they exist

⁶ PEFA stands for Public Expenditure and Financial Accountability. PEFA is a partnership of major international donors in the PFM arena. "The goals of the Public Expenditure and Financial Accountability (PEFA) program are to strengthen the ability of partner countries and donor agencies to: (i) assess the condition of country public expenditure, procurement and financial accountability systems, and (ii) develop a practical sequence of reform and capacity-building actions" (www.pefa.org).

⁷ Organization for Economic Cooperation and Development/Development Action Committee of The World Bank

⁸ Only draft available, work still in process

⁹ Katsina State of Nigeria PFM Performance Measurement 2013 Self Assessment by Katsina State Government

Chapter 3: Corruption and Public Financial Management

3.1 This chapter explains the concept of Public Finance Management system, defines its scope, objectives and relevance, and presents an understanding of corruption and its impact on processes in different aspects of Public Finance Management system.

Concept and Scope of the PFM System

3.2 Internationally Public Finance Management systems straddle three major approaches. The first is a detailed codification of all related processes into written rules on budgetary procedures and practices as you will find in Continental Europe and France, and the second is the enactment in the form of law of general principles for managing public funds with the details left to be set by executive rules as in the (UK)¹⁰. A third scenario is what obtains in many African Countries like Nigeria, where generally, the Constitution defines the roles and responsibilities of each state power (tiers of government and institutions) in the budgetary process and more specific aspects of the budget process are spelled out in Budget Laws, Public Finance Acts, Financial Regulations, Circulars and Codes of Ethics, in each case with operative institutions. *Thus the Public Finance Management (PFM) system comprises the **legal and organizational** framework for supervising all phases of the **budget cycle**.*¹¹ The budget cycle refers to all activities involved in planning, preparing, executing (including procurement), and reporting the budget¹². The legal framework will include the existing Constitutional framework, Statutes/ laws, and regulations in some other jurisdictions.

3.3 The organizational framework for PFM refers to the institutions, administrative structure, processes, workflows, initiatives and other arrangements in place to facilitate the budget process. Administrative arrangements in Nigeria include offices for facilitation, rules and regulation of budget preparation, implementation, reporting, and audit, such as the Ministries of Finance and Planning, Revenue Administration, the Treasury, Procurement (due process) regulation, Finance and Supply departments of MDAs, the Auditors' General, and the Public Accounts Committee of the Houses of Assembly. Workflows and processes include required documentation, proformas, standard guides, business processes and routing, authorization and approval procedures, disclosure requirements, accounting & auditing standards and policies.¹³ . Organizational framework is seen as inclusive of both the structures, rules and other arrangements in place for planning and implementing the budget over a multi-year period. In some jurisdictions and contexts rules may be seen as part of the legal framework.

Objectives and Relevance of the PFM System

3.4 The main role of the PFM system is to facilitate attainment of the three budgetary goals of, overall *fiscal discipline*, *effective allocation of resources to strategic priorities*, and *efficient delivery of public services*.¹⁴ *Fiscal discipline* requires formulation of realistic and attainable budgets and their implementation as made without overrun. A realistic budget is a credible one, formulated with due

¹⁰ Lubin Dow PFM and Corruption role of Legislators Presentation at the joint African Institute seminar on the role of parliamentarians in promoting good public financial management and accountability in Africa, Tunis November 19-23 2007.

¹¹ See OECD/DAC Guidelines, [Harmonizing Donor Practices for Effective Aid Delivery](#) (2003)

¹² Mapping & Scoping Survey of Anti-corruption and governance measures in public Finance management (PFM) TUGAR 2012 a study of Ten States of the federation, Adamawa, Anambra , Bayelsa, Benue, Delta, Kaduna, Imo , Niger, Ondo and Sokoto

¹³ Ibid

¹⁴ See OECD/DAC Guidelines, [Harmonizing Donor Practices for Effective Aid Delivery](#) (2003)

consideration to realizable revenue, and reasonably costed. The PFM system supports all the above aspects: fiscal and revenue projections, project costing, and avoidance of budget overruns unless undermined/overridden by the political system¹⁵.

3.5 *The PFM system also supports allocation of resources to strategic priorities. Strategic allocation of resource entails identification and distinction of development priorities from parochial and political expediency or priorities. Development priorities flow from well-articulated strategic policies, identifying medium to long-term development needs. The budget should ensure that available resources address prioritized needs. The PFM system helps the process by supporting preparation of matching fiscal forecasts and linking annual budgetary allocations to medium term fiscal projections and strategies. For example, a well-functioning PFM system will mount an effective gate-keeping regime that discourages (mis)allocation to non-development priority needs at the expense of priority development areas as identified in policy documents¹⁶.*

3.6 *The PFM system similarly promotes efficient service delivery. Efficiency refers to **quality and timely** delivery of services at optimum costs. This is the main purpose of the procurement system. Also the entire accounting process of the PFM system, including recording, internal controls, internal and external audit, and disclosure and transparency requirements all aim at ensuring value for money in delivery of public services¹⁷.*

Definition and Understanding of Corruption.

3.7 Globally two definitions of Corruption are commonly used, that by the World Bank which defines corruption as “misuse of **public office** for private gain” and its modification by Transparency International to “the misuse of **entrusted power** for private gain”. The World Bank definition has some merit, but also creates the impression that corruption is a malady that primarily or even solely afflicts those in the public service, especially State Authority, whereas those in the Private Sector and Civil Society may be equally culpable. Besides, those who demand for illegal service or preferential treatment that violates stated law, policy and specified procedure are as guilty as those who unjustifiably agree to render the service¹⁸. The Transparency International definition though improving on the World Bank definition, by taking account of abuses of entrusted power, which may not necessarily occur in the public domain is also not very helpful for policy and action because, rather than expose the underlying essence of corruption, it merely like the World Bank and many other contemporary definitions, describes who is corrupt or in other words what the corrupt does¹⁹. However whilst corruption may often relate to misuse of entrusted authority or power, misuse may not always be for a private or personal gain, it may result in the unjustified gain of a community and not necessarily any one particular person.

3.8 The Nigerian Constitution despite requiring governments at all levels to abolish corruption and abuse of power²⁰, does not define corruption. Also the Independent Corrupt Practices and other related offences Commission (ICPC) Act 2000 – though it criminalizes corruption, does not define it in its definition section, but rather defines gratification.

¹⁵ Mapping & Scoping Survey of Anti-corruption and governance measures in public Finance management (PFM) TUGAR 2012 a study of Ten States of the federation, Adamawa, Anambra , Bayelsa, Benue, Delta, Kaduna, Imo , Niger, Ondo and Sokoto

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Prof Prof Assisi Asobie, Concepts and Context of Corruption in Nigeria Lecture papers at the TUGAR/ICPC and UN Virtual School organized Corruption Risk Assessors Training Obudu Cattle Ranch Cross river State Nigeria 2012

¹⁹ Ibid

²⁰ S 15 of the Constitution of the federal Republic of Nigeria 1999 as amended

3.9 Prof Assisi Asobie has more broadly defined corruption as the breach or perversion of **legal rules, established procedure, code of conduct, system of ethics, or set of moral norms**, in the service of **unethical or illegitimate ends, private, parochial or public**. Prof Asobie argues that this definition seems to clarify the essence of corruption and avoids the temptation to describe the corrupt and what he does. In addition to capturing the illegitimate nature of its gains which is universal, it captures various manifestations of corruption more prevalent in Africa and the developing World. This definition is more relevant to the integral challenges of nepotism and parochialism which manifests more actively in broader cases of corruption found in such economies including Nigeria. The essence of corruption is therefore the deviation from law, regulations or rules, standard practices or code of conduct or moral norms. The litmus test of corrupt practice is not whether or not some private or individual gain occurred. It is first whether a law, rule or code of conduct, standard practice or norm was violated and secondly whether such violation leads to an unethical and or illegitimate end, which may be private, parochial (communal) or public²¹. Thus it is corruption to employ an unqualified person (in breach of rules) based only on parochial interest or to relocate a project from an appropriate and economically viable location (against established policy) to another location for parochial interests or benefits. Prof Asobie's definition brings critically needed clarity to the unique nature and manifestations of corruption in PFM system in the African context.

Impact of Corruption on PFM Processes.

3.10 If therefore corruption is the breach or perversion of established rules, procedure, code of conduct, standard practice, ethics, policy or set of established moral norms for illegitimate or unethical ends, then it follows that infractions of PFM laws, rules, codes of conduct, practice, ethics for personal or community gain amounts to corruption. It also means that all acts and omissions amounting to corruption may not yet have been criminalized under our laws. Based on this understanding, we can immediately see as revealed in this study report that the impact of corruption is deep and substantial in Public Finance Management. However it is not clear how well this definition fits with situations where powerful interests influence the law, rules, standards and practice to make what will otherwise be corruption legitimate. An example is the practice of influencing legislations to give PEPs enormous powers that could be abused for illegitimate purposes. At the point of passage of the law, no illegitimate purpose may be apparent, but subsequently, the powers given may be used to secure illegitimate or unethical advantage for an individual or a group. The challenge is that the very action or specific exercise of power that will later bring the illegitimate advantage though morally wrong, may now be in accordance with existing law or policy at the time of its occurrence. This is typical of some of the recent State PFM laws that give enormous powers to political office holders and by so doing break down traditional practices of checks and balances as we will see later in this report. This is the realm of State Capture and grand corruption and indicates how much of a serious and complex governance challenge corruption has become to many economies.

3.11 In this section, we will look at how corruption affects the **PFM** as it relates to different aspects of the process drawing from different jurisdictions and also the States in this study. It is not our intention to document impact, output and outcomes of the PFM system as that will be beyond the scope of the current study.

3.12 Transformation of society's aspirations into feasible policies with well-recognized financial implications is at the heart of financial management²². This is only possible with adherence to rules, laws,

²¹ Prof Assisi Asobie, Concepts and Context of Corruption in Nigeria Lecture papers at the TUGAR/ICPC and UN Virtual School organized Corruption Risk Assessors Training Obudu Cattle Ranch Cross river State Nigeria 2012

²². Public Financial Management: Getting the Basics Right", in Schviavo-Campo, S. (ed), "Governance, Corruption and Public Financial Management". Asian Development Bank, Manila, Philippines. www.adb.org Premchand, A. (1999)

established principles, norms and standards. Corruption affects policy formulation and can lead to policies being skewed to favor a few. This can have fundamentally negative impact on public finance and governance processes generally, since most of government action is directed at formulating and implementing public policy. By skewing policies to favor only a few, government and governance can work for only a few, leaving out the greater majority of citizens. This happens everywhere, but is perhaps more common in developing nations like Nigeria, where awareness and literacy is low and governance systems are weak. This has a debilitating effect on citizens driven voice and accountability mechanisms, and on quality and efficiency of public service delivery, as well as on standards of living of majority of citizens.

3.13 Corruption distorts public finance work processes, and in order to consummate corruption schemes, perpetrators often distort observance of PFM laws, rules, processes and sometimes standards and norms. It's either that process abuses occur to affect the scheme or to cover it up. Related process abuses observed include, failures to comply with objective criteria and requirements for project selection, project location, and expenditure authorization. Also abuses include infraction of rules and standards of public disclosure and reporting requirements. Corruption leads to limited engagement and consultation of citizens in decision making relating to policy formulation, economic projections, policy implementation, monitoring and evaluation, or where consultation occurs, in manipulation of results of the consultation to justify narrow interests and pre-conceived decisions. In this way it undermines process transparency and accountability and reduces citizen's participation in public decision making.

3.14 *The Impact of Corruption on Tax Systems:* Tax revenue sources often do not perform very well in most Nigerian States due largely to poor administrative abilities of State Governments, their reliance on unconditional flows from the centre²³, and also corruption. Most State Governments in this study are not able to generate more than 10-20 percent of their revenue needs from these internal sources. In most cases their tax revenues are far short of the cost of personnel i.e. salaries alone, and this is without considering other State administrative overhead costs. As we will see subsequently in this report, many if not all States in this sample will be insolvent without the natural resources revenues that comes monthly in the form of statutory transfers from the consolidated revenue fund. Most State Governments have weak and non-transparent tax administration systems characterized by lack of comprehensive taxpayer database, poor assessments techniques, loopholes in internal controls around revenue collection and accounting, and discretionary tax policies. Best of Judgement (BOJ) assessments are sometimes abused and exploited for illicit gain despite recent attempts at reforms. The 2012 TUGAR Study has provided a full discussion on revenue sharing and tax administration in Nigeria²⁴.

3.15 Arbitrary waivers, selective rebates to labour and other interest groups, and lack of professional capacity contribute to reducing the effectiveness of the tax system²⁵ and increase vulnerability to corruption. Corruption affects different stages of the taxation process in different jurisdictions albeit to varying degrees in the following areas: identification and registration of taxpayers, the assessment and collection of taxes due, the monitoring of incoming payments, the assessment of surcharges or refunds, and investigation by the tax authorities (possibly for suspected tax offences). Research has also shown that in countries with high corruption, the GDP share of tax revenue collected tends to be lower because some of the tax revenue is diverted to the pockets of tax administrators²⁶.

²³ Mapping & Scoping Survey of Anti-corruption and governance measures in Public finance management (PFM) A study of ten states of Adamawa, Anambra, Benue, Delta, kaduna, Imo, Niger, Ondo and Sokoto TUGAR 2012

²⁴ Ibid

²⁵ Ibid

²⁶ *Why Worry About Corruption?* Washington, D.C.: International Monetary Fund. Mauro, Paolo. 1997. and "Corruption Around the World." *IMF StaffPapers*. Washington, D.C.: International Monetary Fund Tanzi, Vito. 1998

3.16 The impact of corruption on natural resources revenue and exploitation processes and systems in Nigeria is rampant and continuous; Corruption seen as breach or perversion of law, rules, standard practices, **established procedure, code of conduct, system of ethics, or set of moral norms**, in the service of **unethical or illegitimate ends, private, parochial or public** has had a dominant effect on operational processes in the oil and gas industry as documented by NEITI financial, technical and process audit reports²⁷. The result of these infractions or perversion of the system has included but not been limited to huge losses in revenue, poor environmental management, conflict and the increased vulnerability of the sector to corruption.

3.17 The impact of corruption on FDI flows can be significant. Research has shown that while a one-percentage-point increase in the marginal tax rate on foreign investment reduces FDI by about 3.3 percent, an increase in the corruption index by a single point reduces the inflow of FDI by about 11 percent²⁸. Also a related study indicates that the unpredictability of corruption (as measured by the dispersion of individual ratings of corruption) has a further negative impact on FDI. A higher level of dispersion makes corruption behave like an unpredictable and random tax. This study concluded that “the effect of uncertainty on FDI is negative, statistically significant and large.

3.18 The Impact of corruption on public procurement processes in Nigeria can be seen at project **identification and selection, procurement and implementation stages**. Sometimes project selection processes are skewed with the effect that otherwise viable projects are located in less beneficial environment or communities as a result of nepotism or illicit interests of decision makers or groups. This trend also generally results in projects that would otherwise not be justified on the basis of objective investment selection criteria or cost benefit analysis. The result is often abandonment of projects, drastic reductions in efficiency, and value for money. This does not support the effective and efficient service delivery objectives of PFM.

3.19 It has been said that about 80% of corruption cases in Nigeria arise from the procurement process²⁹. The failures in the procurement process are damaging to the economy. These have a lot of ramifications for example, this could lead to government awarding projects it has no money to complete, or contracts being awarded to contractors who are not qualified, or inflation of contracts etc which in turn result in waste of limited resources. This provides support to a culture of corruption and impunity and above all, poor service delivery and weak institutions. At the federal level in Nigeria, the Presidential Projects Assessment Committee had reported that over the years, there are 11,886 abandoned capital projects which will require N7.78 trillion to complete (the period covered includes many years prior to current procurement reforms). This was the finding as of June 2011. Recent reports also indicate that abandoned projects of the Niger Delta Development Commission (NDDC) will require at least N1.4trn to complete³⁰.

3.20 These figures do not include the value of abandoned projects at the State and Local Government levels across the country, which may be of the same magnitude with the figures at the Federal level. If we apply the definitions of corruption by the World Bank and Transparency International singularly denominated by private gain resulting from abuse of public office or entrusted power, many of the unjustifiable and illegitimate actions and decisions driven by parochialism, which may have resulted in

²⁷ Nigerian Extractive Industries Transparency Initiative Audit Reports 2006-2008.

²⁸ *Why is Corruption So Much More Taxing than Tax? Arbitrariness Kills*. Cambridge, Massachusetts: National Bureau of Economic Research. Wei, Shang-Jin. 1997.

²⁹ Ojeme Hastings “ Public Procurement Act as an indispensable fiscal policy to move Nigeria forward” Public Procurement Journal February – March 2009, page 17

³⁰ Continuity of Project Implementation by Eze Onyekpere Punch Newspapers of 4th March 2013

the situation reported by the presidential committee, will be perfectly legal conduct, if they have not led to private gain. This is why Prof. Asobie's definition provides improved clarity in the consideration of what corruption truly is in our context. However the conclusion here should not be that these huge failures result exclusively from corruption. That will be an over simplification of a complex problem because there may be other compounding factors. However it is evident that corruption as more broadly defined by Prof Asobie more than any other factor makes the system in States and at the Federal level more susceptible to the kind of failures found by the Presidential Projects Assessment Committee.

3.21 Corruption also affects the payment systems. This is the operational system for receiving and making payment of monies due and owed by government to its personnel and to third parties and citizens. Payments in Nigeria at the federal level is becoming increasingly made by electronic means, however many sub-national governments (states) including states subject of this study still depend solely on cash and cheque payment systems. Poor payment systems can and do facilitate the illegitimate and unethical gains from corruption activities, and corruption often perverts payment systems whether or not technology driven to achieve its ends. It is arguable though, that the impact on efficient technology driven systems is often less. It is evident for example that a cash payment system favors poor traceability of money flows and helps those wishing to hide illicit funds, whilst in the alternative, a cashless system with good compliance to Know Your Customer (KYC) systems in banks supports traceability and makes it more difficult to hide illicit funds.

3.22 Corruption affects the accounting, financial reporting and auditing systems at national and sub-national levels, as well as within private and non-government concerns. It manifests in the form of improper recording, communication, interpretation and analysis of financial statements and information in aggregate and in details, and in deliberate failures to comply with accounting and auditing rules, timelines and standards. Also it often results in non-disclosure or poor disclosure of material financial information, as well as outputs and outcomes of public expenditure activities. For example as common as the breach of the requirement for remittance of local government share of statutory and internal revenues to the Local governments by State Joint allocation committees may be, evidence-backed information relating to the incomplete remittances of these revenues are rare and difficult to come across. As rampant as the abuses are said to be, only one or two audited reports of State Auditors' General in the sample States comment on it.

3.23 Corruption also leads to a change in the structure of expenditure, a decline in the productivity of public investments and deterioration in the quality of infrastructure. These impact negatively on growth and development³¹. At the federal level in Nigeria, access to public finance related information though increasing, remains difficult, selective and unpredictable in many quarters. Access is evidently more restricted in States as this report discloses. Changes are occurring in the PFM systems at the Federal level and in some States, but not at the rate that can make quick and substantial impact on livelihoods. The result is that the system makes it difficult in many instances for citizens to hold public officials accountable. Above all the PFM system is a system for generation, and administration of funds used to acquire public goods and deliver public services. Thus poor compliance to its laws, rules and procedures, and inefficiencies in the system reflects not only in leakages and waste of resources generated, but also in the quality and standards of public goods and services which the generated resources are used to acquire. It is a two-fold impact. It impacts on processes, but also, it has a catastrophic impact on quality of lives.

³¹ *Preventing Corruption in Public Finance Management; A practical Guide EschBom 2005.*

Chapter 4: Anticorruption Initiatives in Public Procurement

4.1 Public Procurement is said to be “the **process of the acquisition**, usually by means of a contractual arrangement after public competition, of goods, services and works and other supplies by the public service”³². Also it has been defined as the overall **process of acquiring** goods, works and services, from the identification of need to contract administration and through the end of a services’ contract or the useful life of an asset³³. It is process led intended to produce pre-designed results. There are established minimum national and international standards that public procurement systems and rules need to meet. However it is not enough to have rules that meet acceptable standards; such rules as of necessity also need to be enforced and obeyed. As Public Procurement is prone to corruption, *in addition therefore to an effective and transparent system, special tools and mechanisms need to be established to fight corrupt behavior in Public Procurement.*³⁴

4.2 The UNCAC, AUCPCC and the ECOWAS protocol require state parties to adopt measures aimed at promoting best practices, especially in the areas of transparency and competition. *Article 9 (1) of UNCAC 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”*

The question to be explored in this section is: “to what extent have the ten subject states fared in meeting these standards in their procurement systems, ie their laws, rules and practices?” To answer this questions we will examine the state systems against a number of benchmarks as follows: **Existence of procurement legislation and regulatory framework and institutions; Prior establishment of conditions for qualification/selection and award criteria; Distribution of information relating to**

³² Northern Ireland Public Procurement Policy handbook 27th January 2010, http://www.cpdni.gov.uk/pdf-public_procurement_policy.pdf

³³ *Procurement Manual, Bureau of Management, Office of Legal and Procurement Support, Jan 2005*

³⁴ Susanne Szymanski (2007), **How to Fight Corruption Effectively in Public Procurement in SEE Countries**, OECD, Paris, France

Public Procurement procedure and contracts; Objectivity of Procurement processes and decisions; Existence and effectiveness of Reviews and Appeal Processes; Existence and effectiveness of Code of Conduct for procurement personnel and Existence of a framework and a practice of citizens monitoring of public procurement.

Existence of Procurement Legislation and Regulatory Framework and Institutions

4.3 While UNCAC provisions do not specifically require legislation of procurement practices, it does not preclude it. *Article 5 (4) of AUCPCC* requires procurement legislations. It 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*”. 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)). However the common practice in Africa adopted by the Nigerian federal government is to enact a legislation followed by appropriate regulations setting forward a framework for compliance to these standards. This appears also to be the preferred approach by the States in Nigeria.

4.4 *In recognition of the need for guidance for State parties in meeting the requirements of a sound Public Procurement System*, the United Nations Commission on International Trade Law (UNCITRAL) published the UNCITRAL Model Law on Procurement of Goods, Construction and Services with Guide to Enactment in June 1994. This however, has been revised. The model law contains model provisions that a State may adopt wholly or in part, subject to its unique local circumstances and the requirements of its legal system. How have these ten subject States in this study adopted such systems and laws?

4.5 *The findings show that five out of the ten states have enacted Public Procurement laws, with structure and provisions similar but not in tandem in all respects to each other and to the federal Public Procurement Act, 2007.* These are Cross River, Ebonyi, Ekiti, Jigawa, and Taraba States³⁵. The laws typically provide for distinct structures for procurement regulation and implementation. They provide for two procurement regulatory structures, the State Council on Public Procurement (SCPP) of an adhoc nature to superintend policy approval; and the Procurement Bureau or Board (called by other names in some instances) to oversight public procurement in all mainline government ministries, departments and agencies (MDAs), while consigning actual procurement implementation to procuring entities (MDAs) ie mainline ministries, departments and agencies. The regulatory bodies are the State Council on Public Procurement (SCPP) and the Public Procurement Board (or Bureau, PPB) or equivalent. The Council comprises a mixture of State and non-state actors, with the former in the majority. The Council usually superintends over policy approvals including approval of guidelines, thresholds and regulations made by the PPB, Board or BMPIU and the conditions of service of staff of the Board. Under these State laws, the PPB, Board or Bureau regulates procurement in the procuring entities using policies and guidelines approved by the Council.

4.6 *The Jigawa State law though similar in some respects with these other state laws varies in some other respects.* The Jigawa State Law establishes only one body, the Jigawa State Due Process and Project Monitoring Bureau, but vests functions similar to the policy approval functions of the SCPP in the other State laws referred to, on the Governing Council (ie a Board) of the Bureau.

³⁵ Jigawa State Due Process and Project Monitoring Bureau law 2009 here referred to as the Jigawa State law, Ebonyi State Public Procurement and Related Matters Law N0 012 of 2009 (Ebonyi State Law) Ekiti State Public Procurement Law N0 2 of 2010(Ekiti State Law)

4.7 Each of the laws prescribes functions and powers for the bodies created and make several other administrative provisions. The laws have general provisions on public procurement, including on principles of public procurement, scope of application, and definition of responsibilities of the parties. They provide for procurement methods and in varying degrees for other stages in the procurement process. The Cross River, Ebonyi³⁶, Ekiti³⁷, and Taraba³⁸ State laws make open competitive bidding the default method and provide for and establish conditions for use of restricted methods. But the Jigawa State law makes both **Open Competitive bidding, Selective** or what it calls **Nominative Tendering** default methods³⁹ of procurement without stating how they will apply. The regulations however indicate thresholds within which each of the three methods will apply as default methods.

4.8 The Ebonyi and Cross River State Laws apply only to the State governments⁴⁰. The Ekiti, Jigawa and Taraba State laws apply to both State and Local government levels in the State. The Jigawa State law provides for a department in the Bureau which shall oversee application of the law to Local Governments⁴¹.

4.9 The laws provide for structures for organizing procurement. The Cross River, Ebonyi, Ekiti, and Taraba State laws provide for an Accounting Officer, a Tenders Board, Procurement Planning Committee and Procurement Officers. The Jigawa State law provides for all the structures listed above but does not provide for a Tenders Board in the text of its law. However it provides for it in its implementing guidelines⁴².

4.10 Each of the State laws requires the regulatory body established to issue implementing regulations. Cross River, Jigawa, and Ekiti State Bureaus⁴³ have issued the implementing regulations. Ebonyi and Taraba States have not issued implementing regulations. The rules currently applicable in Cross River State is the Due Process Guidelines on Government procurement Policy 2007 which pre-dates its law, and is currently undergoing review to bring it in compliance with the law. It was issued by the Cross River State Due Process and Prize Intelligence Department (DPPID), which on passage of its law became the Due Process and Prize Intelligence Bureau (DPPIB). Neither Cross River, Ebonyi, Ekiti nor Taraba States whose laws like the federal law provide for a State Council on Public Procurement (SCPP) have established one. The Laws and regulations of these states have provisions on tendering proceedings, including bid submission, opening, evaluation, default and restricted methods for procurement, as well as conditions for use of alternative methods of procurement. The laws in Cross River, Ebonyi, Ekiti, Jigawa and Taraba States have provisions requiring that bidders possess professional and technical qualification, financial capacity and the equipment and right personnel to be qualified to bid. In the case of Jigawa State however, the general conditions for qualification of contractors relating to professional and technical qualifications, financial capability, equipment and relevant infrastructure, qualified personnel and legal capacity only apply to contracts valued at One Hundred Million Naira (₦100,000,000) and above⁴⁴. Thus in Jigawa State, you need not possess any of these qualifications to bid for, win and implement any contract below One Hundred Million Naira (₦100,000,000).

³⁶ S 19 of the Ebonyi State Public Procurement and Related Matters Law No 012 of 2009.

³⁷ S 16 of the Ekiti State Public Procurement Law NO 2 of 2010

³⁸ S 18 & 26 of the Taraba State Public Procurement Law NO 1 of 2012

³⁹ S 19 of the Jigawa State Due Process and Project Monitoring Bureau Law 2009

⁴⁰ S 2, and 18 of the Ebonyi State Public Procurement and Related matters Law NO 012 2009

⁴¹ S 17 of the Jigawa State Due Process and Project Monitoring Bureau Law 2009

⁴² Due Process Guidelines for the Operations of the Jigawa State Due Process and Project Monitoring Bureau (DPPMB) established under Law No 03 of 2009.

⁴³ Procurement Procedure Manual for Public Procurement in Ekiti State issued by the Ekiti State Bureau of Public Procurement

⁴⁴ Schedule 1 to the Jigawa State Due Process and Project Monitoring Bureau Law 2009

4.11 In addition, the laws in Cross River⁴⁵, Ebonyi⁴⁶, Ekiti⁴⁷, Jigawa⁴⁸ and Taraba⁴⁹ States provide for a complaints and administrative review process. All the State laws also provide for a Code of Conduct for the different parties in the procurement process except Cross river State law. They also provide for offences and penalties. However several issues remain especially with a number of worrying provisions capable of undermining efficacy of the laws, common implementation challenges, and huge capacity gaps.

4.12 *Among the worrying provisions are those skewing composition of SCPPs in favour of State Officials; limiting applicability of some provisions of the laws; granting power to waive application of the law; subjecting technical procurement processing decisions to political authority and influence; and setting low thresholds for involvement of politicians.* In Cross River, Ebonyi, Jigawa and Taraba States, the SCPP and Bureau has a majority of State actors, comprising mostly State Executive Council (cabinet) members. This affects perception of the transparency and appropriateness of decisions. In Taraba State, there are seven designated State actors, six designated non- state actors and three other appointees of the Governor from the three senatorial districts one of whom must be a woman. The law does not stipulate whether these appointees from the Senatorial Zones will be State or non-state actors. In Cross River State the law provides for six State actors and one non state actor. However in the case of Ekiti State there are six State actors and seven non-state actors also appointed exclusively by the Governor.

4.13 The Ebonyi State law does not require appointment of non-members of the State Executive Council into the SCPP. Its membership comprises of the Commissioners of Works, Finance, The Attorney General and **any one or two other persons the Governor may appoint**. It does not specify whether this one or two other people will be non-state actors, leaving it open for the Governor to appoint any one or two persons of his choice from within or outside the State Executive Council to fill these positions.

4.14 The Cross River, Ebonyi and Taraba State laws follow the example at the federal level by making the Ministries and Parastatals Tenders Board (called resident Due Process Committee in the case of Cross River State) the Approval Authorities for procurement. Under the Taraba State law, the Local Government Tenders Board is the approval authority at that level. The Ekiti State law constitutes the State Executive Council as an approval authority for contracts above ₦50 ,000,000 (Fifty Million Naira), and a State Tenders Board (STB) dominated by State Executive Council (SEC) members as approval authority for procurement contracts above ₦2,000,000 (Two million Naira) and below ₦50,000,000 (Fifty Million Naira). In Jigawa State, though the law did not specify approval authorities at the State level, the State Due Process Guidelines issued pursuant to the law and revised in 2012 specifies approving authorities for contracts to include Boards of Parastatals and government corporations, Commissioners, the Governor and the State Executive Council and Local Government Chairpersons. The second schedule to the Jigawa State Law also requires State Executive Council and the Governors approval for certain categories of Local Government contracts, substantially subjecting procurement process decision making to political authority and influence.

4.15 The above provisions requiring the involvement of politically exposed persons (PEPs) and institutions (the Governor and the cabinet, Chairmen of Local Governments) as authorizing officers for public procurement contracts have politicized public procurement, making it less open and transparent.

⁴⁵ S 50 of the Cross River State Public Procurement Law 2011 (Law No 1 of 2012)

⁴⁶ S 57 of the Ebonyi State Public Procurement and Related matters Law NO 012 2009

⁴⁷ S 54 of the the Ekiti State Public Procurement Law NO 2 of 2010

⁴⁸ S 27 of the Jigawa State Due Process and Project Monitoring Bureau Law No 5 of 2009

⁴⁹ S 56 of the Taraba State Public Procurement Law No 1 of 2012

This becomes more critical with the PEPs at the top of the approval hierarchy, as well as in charge of minor and major procurement decisions of lower and higher values in their various capacities either as political heads of procuring entities or members of the State Tenders Board, members of the State Executive Council or Local Government Chairpersons.

4.16 Ebonyi, Ekiti, and Taraba States limit the application of their laws by exempting procurements relating to “Security” or “National Security” except the Governors prior approval is obtained, similar to the provision in the federal law. However the challenge is that National Security is in the Exclusive Legislative List, and it is doubtful whether States can validly legislate on it as these laws tend to do. Further, this appears intended to finally and statutorily prevent scrutiny of the already notorious Security Votes, which have become a common feature of state budgets.⁵⁰ The Taraba State law even goes further by giving the Governor and State Executive Council power to exclude any public procurement from the application of this law without limitation. The import is that nothing is really covered by the Taraba State law except the political authority chooses not to exercise their statutory authority in this regard⁵¹. The Cross River State Law does not impose these kinds of restriction to its application, though it is not made applicable to Local Governments.

4.17 Ekiti and Taraba State governments like the Federal government have each established a Bureau for Public Procurement but have both failed to constitute the SCPP as required by their laws. In Ekiti State, the Bureau has published a Yoruba version of the Procurement Law. It has also issued a Procurement Procedure Regulation and Manual for Public Procurement. This document fairly sets out the procedure to be followed in carrying out procurement under the Ekiti State law. The Bureau has also published a basic guideline for bid evaluation, and a guide to the complaint mechanism called Recourse Mechanism Steps, under the Ekiti State Public Procurement Law. However evidence was not produced to show to what extent these rules and guidelines are applied in practice, except documents found at the Ekiti website indicating that the Bureau regularly vets government contracts⁵². In Taraba State, though the gazette copy of the law is dated 2012 it was said that the law was recently passed and operationalization will gain momentum after the training of the BMPIU staff, who have been inherited by the new Bureau for Public Procurement.

4.18 In Cross River State the DPPID appears to have transmuted into the Cross River State Due Process and Price Intelligence Bureau (DPPIB) created by the law, but no SCPP has been established and like other States in this situation, it is not clear who approves procurement policy decisions of the Bureau. Procurement in Cross River is guided by the 2007 Due Process Guidelines, which though it has some fundamental provisions, lacks completeness and does not align sufficiently with provisions of the new Cross River State Public Procurement Law 2011 gazetted as Law No. 1 of 2012. Cross River State BMPIU or Bureau has issued a basic guide for vendor complaints and recently it issued a full set of Standard Bidding Documents and conducted at least two training activities for procuring entity staff on its use. The State Bureau also certifies contracts above a given threshold.

4.19 There is evidence that Jigawa State has established its Bureau and issued a procurement regulation that is in force and is said to be available to the public⁵³. There is also evidence that Jigawa State Government deploys Standard Bidding Documents for works and projects. The state procurement

⁵⁰ Mapping & Scoping Survey of Anti-corruption and governance measures in Public finance management (PFM) A study of ten states of Adamawa, Anambra, Benue, Delta, Kaduna, Imo, Niger, Ondo and Sokoto TUGAR 2012

⁵¹ S 17(2) b of the Taraba State Public Procurement Law N0 1 of 2012

⁵² www.ekitistate.gov.ng

⁵³ Due Process Guidelines for the Operation of the Jigawa State Due Process and Project monitoring Bureau (DPPMB) established under law No 05 of 2009.

assessment report indicates that it has issued Standard Bidding Documents though with minimal provisions. However this study only found evidence of use of relatively standardized documents for works and projects above the ₦100,000,000 (One Hundred Million Naira threshold). This study has not found a set of Standard Bidding Documents (SBDs) covering all types of procurement in the State as is the case with Cross River State.

4.20 Ebonyi State has established a State Council on Public Procurement, but not a Bureau for Public Procurement. It also has not issued a regulation and or Standard Bidding Documents. No evidence was presented to show that Ebonyi State has in anyway begun operationalization of its Public Procurement Law in carrying out daily procurement functions.

4.21 *The provisions of the* Jigawa State law are also not comprehensive and neither the Jigawa State law nor its regulations provide for procedures for selection of consulting and professional services, when technical capacity, quality and prices are the considerations⁵⁴. It is not clear what procedure applies for selection of consultant's currently in Jigawa State and no evidence is provided in this regard by the State.

4.22 However the application of the law as "is" in Jigawa State is improving steadily, and its Due Process Office issues quarterly and end of year reports of activities. It is not however evident to what extent these reports are disseminated beyond being given to a few CSOs. No State in this study sample with a Procurement Law has achieved full implementation. There is for example, no evidence that the Code of Conduct in the laws are in force, or that further Code of Ethics has been issued as provided for or that the dispute resolution systems in the laws are being applied except for a single example from Cross River State. There is also no evidence that the provisions for criminal sanctions have been applied in any instance. This is the state of affairs in Cross River, Jigawa, Ekiti and Taraba states which have started implementation of their law, and even more so with Ebonyi State which is yet to start to operationalize its law.

4.23 Taraba State has the most recent law in this sample of States and operationalization of the law is yet at an early stage. It has created a Bureau for Public Procurement and allocated it a new office block which was already occupied by Bureau personnel during this study. Prior to the new law, Taraba State had a Prize Intelligence Unit in the Governor's Office whose functions were largely to vet procurement request memos from MDAs. It is not clear to what extent statutory provisions are enforced.

4.24 Prior to passage of the Cross Rivers State Procurement law, the State had a Due Process Office (DPPID), which had issued implementing regulations. This regulation which lacks completeness was adopted by the DPPIB established by the law and is still in force. Cross River State has undergone a procurement system capacity assessment, conducted a training needs analysis and developed a training strategy plan with support of the World Bank. However, no evidence was presented on the extent to which it has implemented these plans, except the fact that it has recently issued full Standard Bidding Documents, and conducted two training programs for public servants on their use. It has also conducted other occasional training programs for staff.

4.25 Katsina, Nasarawa, Ogun, Kogi and Yobe States have no modern Procurement Laws and regulations. In these States, procurement is regulated by Financial Instructions and Stores Regulations issued pursuant to the old and outdated regional Public Finance Laws. Kogi State which recently established a Due Process Unit headed by a Special Adviser to the Governor in the Governor's Office claims to have a recent Procurement Regulation issued by its cabinet office pre-dating the Due Process Office. However the State did not provide a copy during this study despite demands to the office of the

⁵⁴ Jigawa State of Nigeria. Draft Report on Assessment of State Procurement Systems

Special Adviser on Due Process, and the Permanent Secretary Cabinet Office in the SSGs Office, which issued the said document. No evidence was also produced to indicate the mandate, powers, or functions of its Due Process Office and State Tenders Board or how they function in practice.

4.26 The relevant office in Ogun State is the Department of Due Process & Budget Monitoring in the Ministry of Budget & Planning. There is also a Bureau of Project Monitoring and Concessioning as part of the Ministry of Special Duties in the Governor's Office. This department appears to directly participate in implementing big ticket (high value) projects. In Ogun State, the Bureau of Statistics produces quarterly market prizes on standardized goods, which is submitted to the budget office and is applied as a basis to approve requests for procurement of goods.

4.27 The States without modern procurement laws in this sample all claimed to have procurement bills pending in their legislature, but only Ogun, Nassarawa and Yobe State bills were available to researchers during this study. These bills have been pending in the State houses of Assembly for three years and more in some cases. They mirror the federal law in both the regulatory, institutional and process frameworks proposed.

4.28 In these States without procurement laws, and States with procurement laws which are yet to operationalize it, and others like Ekiti where the law provides for a State Tenders Board (STB), the STBs play a prominent role in Public procurement. In Ogun State like many other such states for example the STB handles all procurement above the Twenty Million Naira (₦20,000,000) threshold. In Ekiti State the STB threshold is Two Million Naira (₦2,000,000) and above. The typical membership of STBs in these states without procurement laws, or like Ekiti whose law establishes an STB, include but are not always limited to the Secretaries to the State Governments, The State Attorneys' General, Commissioners' for Works, Commissioners' for Finance and Economic Planning, and a Permanent Secretary who is usually the Secretary. In the case of Katsina State, the Governor is a member and the Chairman of the State Tenders Board as indicated in a memo for re-constitution of States Tenders Board dated 17th September 2007 submitted to researchers by Katsina State. He approves constitution of the Board, chairs it and also chairs the State Executive Council which approves contracts processed by the State Tenders Board. Other members of the State Tenders Board except the Secretary also sit in the Executive Council with the Governor to consider and approve contracts submitted by the State Tenders Board to the State Executive Council in all States referred to here. The only difference in these States, with the exception of Katsina, is that their Governors are not members of the State Tenders Board.

4.29 As already indicated, in the five States without procurement laws, the provisions of the Financial Instructions and Stores Regulations apply. The most recent financial instructions in respect of the States in this study is the Ogun State of Nigeria Financial Regulations revised and published in June 2003. Most others predate this period. This Financial Instruction provides that **“a contract be awarded as a result of competition by tender unless there are specific reasons to the contrary. This decision is the sole responsibility of the Accounting Officer”** It neither provides guidance on how this wide discretionary power given to the Accounting Officer will be exercised nor does it provide any grievance mechanism if the power is abused. Additionally under this regulation the Tenders Boards can negotiate major contracts directly with contractors in circumstances where competition by tender is not practicable, subject only to the Accounting Officer consulting with Ministry of Finance in such circumstances. Again it provides no guide for determining when competition by Tender is said not to be possible, leaving this discretionary power to officials, with no limitations.

4.30 The Financial Instructions in Ogun State also constitutes Department, Ministerial, State Tenders Board and State Executive Councils as approval authorities and prescribes thresholds that are revised from time to time by circular as is the case in all other such States in this sample. Katsina State submitted

its Stores Regulation and an unsigned, undated two-page document mentioning: Open Tendering, Selective Tendering and what it called Negotiation Methods as setting out the procedure for Public Procurement in Katsina State. While the Stores Regulation is a published document in circulation in Katsina State, the two-page document titled “Methods/Ways of Tendering” does not anywhere on its face mention Katsina State or have any imprimatur of the State.

Advance Establishment of Qualification/Selection and Award Criteria

The Tendering Process

4.31 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 also enjoins State Parties to “*Adopt legislative and other measures to create, maintain, and strengthen ... procurement and management of public goods and services*” (Article 5(4)). It further provides that, “*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 requires 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)). Two other measures in addition to a law through which States may ensure advance establishment of selection and award criteria is the deployment and use of regulations and Standard documents in all procurement activities. These instruments in addition to being a guide to establishing these criteria can also provide benchmarks for measurement of compliance.

What arrangements are in place in the 10 selected states with regard to Tendering Procedures?

4.32 *The arrangement in States with operational Public Procurement Laws is for the PPB or equivalent to issue Procurement Guidelines and Standard Tendering Documents approved by the Council or equivalent.* The guidelines are required by law to cover all procurement types: works, goods, and services. They should establish approval thresholds, solicitation and tendering procedures, general conditions for qualification, pre-qualification, an elaboration of conditions of qualification, bidding process and process of obtaining due process (no objection) certification. Other requirements include the WHAT, the WHO, the HOW and the WHEN of implementing the law. The Standard documents indicate Standard Tender Formats for all classifications of tender, and set out the rules as they apply to these different categories of contracts. It provides typical format for presentation of advance qualification/selection conditions and award criteria amongst other aspects of tendering. The actual conditions for participation and criteria for selection of a winning bidder in each procurement activity is issued by the procuring entity for each procurement through the advertisement and bidding document for that particular procurement, in accordance with the rules and formats contained in the Standard Procurement documents. Thus whilst the law, rules and Standard Documents show what advance conditions and award criteria are required and their scope, in practice the actual advance conditions and criteria for selection for each procurement activity will be found in the advertisement and bidding documents issued for that particular procurement activity.

4.33 *Among the state in this sample with PPLs, Cross River, Ekiti and Jigawa States provided evidence of Procurement Guidelines or Regulations and only Cross River in addition, provided evidence of Standard Tender Documents for all categories of procurement activity. Jigawa provided evidence that Standard documents with limited but uniform provisions are used in major works projects above One Hundred Million Naira (₦100,000,000) value threshold. Of the two, Cross River State has a more*

comprehensive volume of Standard Bidding Documents. Jigawa State provided sample newspaper advertisements for projects above One Hundred Million (₦100,000,000), two contract evaluation reports, and procurement implementation and monitoring reports indicating that it has begun operationalization of its law.

4.34 *Cross River State publishes a Procurement Journal regularly with procurement notices from all its procuring entities and has done so consistently in the last four years.* The subscription base of this journal is consistently increasing over the years. The existing Guideline in Cross River state provides a guide on contents of advertisements and requires advance conditions and criteria for selection to be contained in both advertisements and bidding documents. Though Cross River State has evidence of deployment of advance conditions as seen from its consistent advertisements from all its MDAs across board in its tender journals and issuance of Standard Bidding Documents, it was difficult to determine the extent to which its newly issued Standard Bidding Documents are in use in practice in implementing procurement activities. Following the report validation meeting, Cross River State representatives presented copy of a completed bidding document from bids for drilling of 3000 gallons solar powered boreholes with overhead tanks at Obubra LGA, which is part of the federal conditional grant scheme projects implemented under an MOU with the Federal Government. However this is not a typical Cross River State Government project, and the extent to which use of Standard Bidding Documents demonstrated in this one project is a practice in implementation of core Cross River State Government projects is uncertain.

4.35 *There are limitations to application of open competitive bidding under the Jigawa State Procurement law.* The Jigawa State Procurement Guideline indicates approval threshold for various approving authorities.⁵⁵ The same implementation guideline puts forward general pre-qualification conditions, but they are required by the law and rules to be applied in only procurement activities above the One Hundred Million Naira threshold. Thus, below the One Hundred Million Naira threshold, there are no mandatory professional, financial, technical and equipment related conditions for qualification which should form the basis for advance conditions for participation in open competitive bidding. Qualification conditions in Jigawa are in two groups; one group of conditions is applied on a pass or fail basis e.g. evidence of tax payment, (its either you have it and your bid goes forward or you don't have it and your bid fails on that account), and the others which are scored e.g. previous experience. Absence of pass or fail conditions means disqualification, whilst scores earned from the other set of conditions which are scored add up to qualify a contractor.

4.36 The prequalification conditions in Jigwa State include scored criteria for Jigawa citizenship with scores of 20% out of 100% available in every procurement activity. During the week of the project interim report presentation meeting with Stakeholders in Abuja, Jigawa state submitted a revised Due Process Guideline dated in 2012, which indicated that the 20% score for Jigawa citizenship may have been removed. However no procurement implementation evidence was presented in this regard. As already indicated in this report Jigawa State appears to use a Standard Bidding Document for works projects above the One Hundred Million Naira threshold. There is no evidence however that the standard documents for works identified apply to contracts below the threshold value of One hundred Million Naira, or that there are similar SBDs for other categories of contracts other than works. Jigawa State regularly applies advance conditions and selection criteria (including the citizenship criteria) for works projects above the One Hundred Million Naira threshold. There is however evidence indicating that sometimes Jigawa State selectively applies advance conditions for qualification and award to some procurement activities below the N100 million threshold, even though this is not required by its law.

⁵⁵ Board of Parastatals 1million naira and below, Commissioners 1- 5million naira, The governor N5-10million Naira, and the Executive Council 20million and above

4.37 *The Ekiti State laws, rules and guidelines provide for prior determination of conditions for participation and selection, and award criteria, for procurement activities.* These rules and guidelines are said to be in operation, but little or no evidence has been presented to show the extent of their application. No sample advertisements predating lead researcher's State visits were presented. At the consultative meeting for presentation of the interim project report, the Ekiti State representative in response to a finding that Ekiti State does not in the ordinary course of business publish advertisement for its procurement in the national dailies drew researchers' attention to an advertisement for invitation to tender for office equipment and furniture and a request for Expression of Interest for a firm to restructure Ekiti State Internal Revenue Service. The advertisement was placed by the Ekiti State Internal Revenue Service and Ekiti State Cabinet and Special Services Department, Governor's Office in The Nation Newspaper of Tuesday 18th June 2013. Also researchers found a subsequent advertisement in the Guardian Newspaper of Monday 24th June 2013, after the State visit. No advertisements were presented by the State Government or found through other sources for the period of two years predating June 2013.

4.38 *Following data gathering activities of this study, Ekiti State has begun publishing advertisements for procurement activities in national newspapers as required by its law.* It does not however appear that this has become a practice across Ekiti MDAs. Also Ekiti State provided no evidence of Standard Bidding Documents, or sample of a prepared bidding document for a given procurement activity which supports prior determination of participation conditions, selection and award criteria. It is to be borne in mind that even where Standard Documents have been issued, they provide only a guide to the procuring entities on how best to prescribe applicable procurement process and advance selection and award criteria. Though often indicated by provisions of regulations, the best evidence of advance conditions and award criteria is the advertisement and bidding documents issued for particular procurement activities for goods, works and services. These were not provided in by States in this sample, except Jigawa State which provided examples relating to works projects above its One Hundred Million Naira threshold only, and Cross River State which provided advertisements in its Tenders Journal for all categories of projects requiring advertisement.

4.39 *Ebonyi State provided no evidence that it has issued rules or deployed Standard Bidding Documents or of any advertisement or specific bidding documents disclosing advance conditions for participation or selection and award criteria.* Also definition of Open Competitive bidding under its law does not require mandatory prior determined conditions for selection and award, which will enable effective application of prior determined selection and award criteria. This is a huge challenge not withstanding that elsewhere in the law it appears to require advance conditions for participation and selection criteria.

4.40 Nassarawa, Katsina, Kogi, Ogun and Yobe States have provided no evidence that they have put forward new regulations or deployed Standard Bidding Documents in their procurement framework, which will enable effective application of prior determined conditions for participation, selection and award criteria. There was also no evidence of sample advertisements or bidding documents for any particular procurement. Kogi State claims to have issued new Procurement Guidelines by Circular, which pre-dates its new Due Process Office, through its cabinet office. Also the personnel of the Due Process Office when interviewed claimed that they issue No Objection certificates for contracts pursuant to the said Circular/Regulation. However, the Due Process Office and the office of the Permanent Secretary Cabinet Office who acknowledged that this Guideline exists, both declined to provide it to researchers, prior to and after presentation of the interim report and the further opportunity granted for submission of any other available evidence.

Distribution of Procurement Process and Contracts Information

4.41 This benchmark examines not only the distribution of information on opportunities for public contracts, but also the extent to which State systems proactively disseminate information relating to the Procurement Rules, Process and Standard Documents and other elements of the process where they exist.

4.42 Often the methods of procurement applied contribute to and may determine the extent of distribution of information on opportunities for contracts in a particular procurement activity. Both the Cross River, Ekiti, Taraba and Ebonyi State laws require Open Competitive Bidding as the only default method of procurement. The Cross River, Ekiti and Taraba State laws define Open Competitive Bidding progressively as “the process by which a procuring entity based on previously defined criteria effects public procurement by offering to every interested bidder, equal simultaneous information and opportunity to offer the goods and works needed”⁵⁶. The Ebonyi State law defines it restrictively as “the offer of prizes by individuals or firms competing for a contract, privilege or right to supply specified goods, works, construction or services”⁵⁷. In doing so the Ebonyi State law limits the application of other provisions relating to advance conditions and selection criteria and above all, prior advertisement.

4.43 *Thus while Cross River, Ekiti, and Taraba State laws require equal and simultaneous wide distribution of information on procedure and opportunities for contracts and that such information include prior defined selection and award criteria as components of Open Competitive Bidding, Open competitive bidding will be complete in Ebonyi State according to section 3 of its law, if a few individuals or firms are offering prices in competition for a contract for goods, works and services. Indeed if we go by this provision, there will be no need for wide distribution of information on procedure and opportunity for the contract or prior specified conditions for selection and award criteria in an open competitive bid in Ebonyi State. This definition of Open Competitive Bidding in the Ebonyi State law does not bear out the many other provisions relating to fundamental principles; competition, qualification of contractors and conditions for bidding and is not compliant with the requirement of UNCAC, AUCPCC or ECOWAS Protocol on distribution of procurement information.*

4.44 The Guidelines in Ekiti and Cross River States are published and widely circulated and they also require publication of notices of opportunity for contracts. Both States produced published Guidelines and evidence that they have disseminated their laws and Guidelines through several sensitization workshops for political appointees, legislators, MDA officials, local government staff, contractors and Civil Society Organizations. The Cross River State Procurement Guidelines⁵⁸ requires publication of advertisement for contracts below Twenty Million Naira (₦20,000,000), in the State Procurement Journal and Notice Board and provided evidence that this happens as a matter of course. Also it requires that advertisement for procurement above Twenty Million Naira (₦20,000,000) threshold be placed in the Procurement Journal and one local newspaper. Whilst it provided sufficient evidence that such publications are regular and as a matter of course placed in the Procurement Journal, it presented only evidence that indicates that sometimes and in some cases Cross River State MDAs publish contract advertorials for projects above the Twenty Million Naira (₦20,000,000) threshold in local and national newspapers. If we assume as seems the case, that local newspaper under the existing regulations in Cross River State means newspaper published in Cross River State, then this current regulation does not appear to contemplate International Competitive Bidding, and the requirement for publication in National and /International publications for international and national competitive bidding now required under the new Cross River State Procurement law⁵⁹. There is evidence that MDAs in Cross River State sometimes publish contract advertorials in local and national media as evidenced in a specific advertorial provided. (Page 8 of the Vanguard Newspaper of 23rd March 2011, and page 13 and 8 respectively of the Nation and Cross River

⁵⁶ S 24 of the Ekiti State Public Procurement Law NO 2 of 2010

⁵⁷ S 2 of the Ebonyi State Public Procurement and Related Matters law NO 012 of 2009

⁵⁸ Page 4 of the Due Process Guidelines on government procurement policy in Cross River State 2007

⁵⁹ S 28 of the Cross River State Public Procurement Law No 1 of 2012

State Chronicle Newspapers of the same date, as well as page 43 of the Nation Newspaper of 27th February 2012)

4.45 The Jigawa State law makes selective or nominative tendering in addition to open competitive bidding, default methods. Indeed for a procurement below One Hundred Million Naira (₦100,000,000) the State Guideline prescribes selective and nominative tendering, and provides that invitation i.e. advertisement for selective tendering be sent to two or three selected pre-qualified contractors⁶⁰. However it provides in paragraph 3.1 (i) and (ii) that advertisement for pre-qualification of contracts between the Five Million Naira (₦5,000,000) and One Hundred Million Naira (₦100,000,000) threshold should be placed on the Notice Board, and further indicates that newspaper advertisement for pre-qualification will relate only to contracts above One Hundred Million Naira (₦100,000,000). It would appear that the reference to pre-qualification relating to individuals or firms invited to tender under selective tendering in the Jigawa State Guideline, may have been intended as a reference to contractors registered in the list of registered contractors in the State, rather than ones emerging from a pre-qualification process. Thus there is no mandatory requirement for wide distribution of information on procurement opportunities below One Hundred Million Naira (₦100,000,000) and Twenty Million Naira (₦20,000,000) at the State and Local government levels respectively in Jigawa State.

4.46 *Jigawa State provided evidence of advertisement of projects in the newspaper* e.g. an invitation for pre-qualification to tender for the construction of listed township roads by the Ministry of Lands and Housing and an announcement of pre-qualified contractors for this project. (The Nations newspaper of 3rd May 2011, and The Nations newspaper of 28th June 2011.) Another example presented was also invitation for pre-qualification for construction of road network in new layout and renovation of Deputy Governor's and SSG's offices and construction of a new office for the Deputy Governor from Dutse Capital Development Authority. (The Daily Trust and Vanguard Newspapers of Monday 8th June.) There was also an advert announcing short listed companies (Daily Trust Newspaper of Thursday 28th June 2011). It also presented advertisements regarding tender for new secretariat complex, and proposed new State Assembly offices. However, these are all major projects falling above One Hundred Million Naira (₦100,000,000) threshold only.

4.47 There is evidence that Jigawa State selectively advertises contracts below the One Hundred Million Naira (₦100,000,000) threshold in newspapers. However the study did not find evidence of how Jigawa State disseminates its rules and Standard Documents as required by UNCAC provisions. The State submitted spiral bound photocopies of the rules, and independent efforts by researchers also found only spiral bound photocopies in limited circulation within government circles. There was no evidence that the procurement rules in Jigawa State have been published. At best, Jigawa is partially compliant to this benchmark.

4.48 Ekiti State provided evidence that it has published and widely circulated its procurement regulations and other tools, but provided at the report validation forum only one advertisement in The Nations Newspaper (Monday 23rd May 2011) as evidence of wide distribution of information on procurement opportunities prior to this study. It does not appear that Ekiti State publishes procurement advertisement in the national newspapers as required by its law as a matter of course. Some of its MDAs appear only just beginning to do so following this study as indicated by two recent newspaper advertisements published in June 2013 referred to in Paragraph 4.31 above.

⁶⁰ Page 14 of the Due Process Guidelines for the Operation of the Jigawa State Due Process and Project Monitoring Bureau (DPPMB)

4.49 Taraba State provided only one advertisement appearing in Daily Trust Newspaper (11th April 2013) relating to invitation to tender for motor vehicles from the Ministry of Finance. Publication of opportunities for contracts does not appear to be a common practice in Taraba State.

4.50 In States without modern procurement laws and regulations, the requirement for distribution of procurement information is regulated by the Financial Instructions and Stores Regulations or Government Circulars issued from time to time. An example of a typical requirement for distribution of procurement information in States in this sample is the Ogun State where the Financial Regulation; requires publication in the State gazette and or local press, and exhibition at MDA offices⁶¹. It is however not clear what is meant by local press. In some States' Financial Regulations that are not so recent, the requirement is for publication in the Gazette and Notice Boards alone. In the Katsina State Stores Regulations submitted for this study, in addition to publication in the Gazette "for major contracts which may interest contractors over a wide area" the regulation requires that "in appropriate cases it may be published in the media"⁶². It however fails to provide any indications of what cases might be appropriate, or what media should be used, or how to determine major contracts.

4.51 The common feature of all the Financial Regulations of States in this sample is that they provide very wide discretion to public officials on issues of distribution of procurement procedure and opportunity information like the Ogun State FI, and cannot be said to provide for wide and simultaneous distribution of procurement information. Additionally in these states, devolution of knowledge of provisions of Financial Regulations on procurement among all stakeholders is in doubt. No evidence was produced of conscious effort to disseminate rules relating to procurement to all stakeholders, except that civil servants who are only one group of stakeholders, have to study the FIs for promotion examinations every two years.

4.52 Ogun State, following the interim report of this project presented an updated guideline for approval of projects by the State Tenders Board issued in June 2012. This document which is said to be applicable requires open competitive bidding as the preferred method of award of contracts. It however states that where procedure used is not open competitive method, the MDAs must make reference to the type of tender procedure used which is to be approved by His Excellency, the Executive Governor based on two criteria: if time is short for Open Tender to be used, and if procurement is of a specialized nature. It is not clear that this makes any real difference in practice, first, because it leaves an MDA free to delay till the last minute and seek approval for other restrictive methods on grounds that there is no longer sufficient time to carry out Open Tender and secondly because it is not enough that a project is of a specialized nature for competition to be waived, particularly if there are enough suppliers to compete for it. Further, approval by the Governor of procurement process to be used, simply reinforces political influence in the procurement process.

4.53 *The Financial Regulations of the other four states without PPLs like Ogun State, also generally provide for selective tendering to be used, where there is need to accelerate project implementation without providing any guidance as to acceptable criteria for acceleration of project implementation. This leaves wide discretion to the approval authority to determine when a project is one requiring acceleration and therefore qualified for application of selective tendering. This, and perhaps poor operationalization of the Procurement laws where they exist is why selective tendering is dominant in almost all States in the sample except for Cross River State generally, and Jigawa State with respect to procurement above the One Hundred Million Naira (₦100,000,000) threshold. It is important to note that the effect of use of selective tendering in most cases is that information relating to opportunity for public contracts will in such cases be made available to only a few selected contractors.*

⁶¹ Chapter 32 paragraph 3306 Ogun State Of Nigeria Financial Regulations revised in June 2003

⁶² Chapter 10 Paragraph 1026 of the Government of Katsina State Stores Regulation 1968

4.54 The Bureau for Public Procurement (BPP) at the federal level has a web portal, and proactively discloses reasonable information on its website. It maintains a vibrant and updated website⁶³ with important information, including but not limited to MDA procurement plans, advertisements, Grant of No Objections, Executive Council approval of Contracts, Complaints etc. It also publishes and distributes, free of charge to all interested parties, information on all aspects of the tendering and procurement process, and procurement plans. It publishes a Tenders Journal in hard and soft copies (on its website), as well as a quarterly Procurement Review. It also has an online system for categorization of contractors.

4.55 None of the state PPBs has a functional website of its own as the BPP does. However the Cross River and Ekiti State government websites carry news of launch of major procurement activity and award of major contracts, as well as commissioning of major projects in the State⁶⁴.

4.56 The States of Ebonyi, Nassarawa, Katsina, Kogi, **Ogun**, Taraba and Yobe did not provide evidence of regulations requiring wide dissemination of information on procedure and procurement opportunities nor of actual advertisements in this regard. Ogun State however later provided two advertisements both by the Ministry of Works (Thisday Newspaper of 3rd November 2011 and The Nation Newspaper of 1st November 2011). At best this is evidence that sometimes the Ministry of Works publishes information on opportunities for contracts and it is hardly sufficient to assume this is a practice across MDAs in Ogun State. None of these States can be said to be fully compliant to this benchmark. Of the States in this sample Cross River State provided the best evidence of dissemination of Procurement Rules/Standards, regular publication of procurement advertisements and the existence and regular publication of a Procurement Journal. However, the absence of evidence of regular publication in widely circulating national Newspapers (and International Newspapers for International Competitive bids) as well as the extent of deployment of and use of its Standard Bidding Documents, denies it full compliance with this benchmark.

Objectivity of Public Procurement Decisions

4.57 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 pre-determined 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)).

4.58 As already stated, the PPLs of the Cross River, Ekiti, and Ebonyi states have provisions on all aspects of procurement decision making. Also Jigawa has in some respects. These include prequalification of bidders, tendering and bidding process (examination and evaluation of bids, rejection and acceptance of bids), categories of qualifications a bidder needs to have and choosing a procurement

⁶³ www.bpp.gov.ng

⁶⁴ www.crosriverstate.gov.ng

method, prior criteria for selection and award. The States provided no evidence of how these provisions are applied in practice. Also given the definition of Open Competitive bidding by the Ebonyi State law, it is unlikely that in practice objective decisions will arise by the strict application of its law in this particular respect. Evidence of objective procurement decisions can be found in bidding documents deployed for procurement activities and the bid evaluation reports.

4.59 Jigawa State provided two bid evaluation reports; one relating to IDA Credit 3654 –UNI which obviously would have been conducted under the World Bank rules and a second regarding the Jigawa new Secretariat Complex which appears to have been funded from the State budget. While the report with respect to the IDA credit showed indications of objective criteria (based on recommendations of the project consultant) for reaching the award decision, and recommending contractors for award, the substance of the report on the State- funded project which is more relevant to this study appeared to be extracts from report of Tender Opening and not a bid evaluation report, though the cover page says it is a bid evaluation report. Jigawa State, during lead consultants visit, further presented a compilation of derived unit rates for building projects dated in October 2012 as applicable to evaluation of contract bids. It is not however clear how this applies in practice. Cross River State following the validation meeting presented the documents referred to in paragraph 4.28 above relating to a federal conditional Grant Scheme. As already indicated, this is not a typical Cross River State Budget implementation project. It is a project implemented in accordance with an MOU signed with the Federal Government.

4.60 The other States of Cross River, Kogi, Nassarawa, Ondo, Taraba, Yobe did not present any evidence of objectivity of procurement decision making. Katsina State provided an unsigned and undated typed document titled Memorandum to the State Tenders Board on the Review of Contract for the Supply of Laboratory Equipment for Umaru Yar’Adua University, two signed letters of notification of award of contract and a letter conveying Executive Council approval of a contract, all of which did not indicate the basis of the procurement decisions. It also provided three other documents purporting to be memos to the State Tenders Board in respect of contracts for supply of free medicare drugs, construction of one number bungalow, conference hall and dormitory at the new Dustin-Ma Police Station and Consultancy Services for construction of ICT institute and Business School. The common character of these three documents which make them difficult to be relied upon is that they are unsigned, undated and have no imprimatur of the State. Also they are not evaluation reports and do not indicate basis (objective) for award of the said contracts.

4.61 *Generally, the Cross River, Ebonyi, Ekiti and Taraba State PPLs narrow down areas of discretion and personal interpretation in the use of restricted procurement methods.* The Laws define circumstances under which to use two stage procurements, requests for quotations, direct procurement, and emergency procurement. Most of the methods require prior (or, where this is not possible, post) approval of the PPBs. The general conditions in the Laws for using request for quotation (aka, shopping) include the following:

- The value of the goods must be small (i.e., within threshold previously set by the PPB)
- Procuring entities must obtain quotations from at least three **unrelated** sources
- The request must make clear what charges, taxes, costs (e.g., for transportation) to include in quotation
- Bidders must submit only one invariable quotation, with no allowance of subsequent variation
- There is no negotiation on quotation between procuring entity and supplier
- The procuring entity awards the procurement to qualified bidder with lowest priced responsive quotation

4.62 Usually shopping is not subject to prior approval of PPBs where the value of the procurement is less than a lower value established in the law or which the PPBs are empowered to establish by the rules for shopping.

4.63 Direct (single source) procurement involves obtaining proposal or price quotation from a single supplier. Conditions for the use of this method include that procurement records must include a statement showing justification for decision to use the technique. Among acceptable grounds distilled from the PPLs of the Cross River, Ebonyi, Ekiti and Taraba States are;

- The need for standardization in obtaining additional supplies from an earlier supplier
- The need for compatibility with existing goods, equipment or technology; here, the procuring entity must consider effectiveness of the original procurement in meeting the need
- In relation to criteria's above, that it is of limited size relative to the original contract.
- Reasonableness of prices and suitability of goods in question.
- Contract for research, experiment, or study not for commercialization
- The item is available from only one particular supplier
- Supplier has exclusive rights in respect of the goods and no reasonable substitutes exist
- Continuation of performance under an old contract, e.g., procurement of additional spare parts from supplier
- Procurement with national security implications where single source is most appropriate method

4.64 Emergency or force procurement (aka rapid response procurement) involves obtaining proposal or price quotation from single supplier, under real emergency. The Laws in Cross River, Ebonyi, Ekiti and Taraba define emergencies to exist in the following situations; serious threat to the country; actual confrontation with disaster; where condition or quality of existing equipment or building may seriously deteriorate otherwise; or where there is delay of a public project for want of an item of relatively minor value. The procuring entity may then use the direct contracting approach. However, the procuring entity must file a detailed report with the PPB and obtain a certificate of "no objection" immediately on cessation of conditions warranting emergency.

4.65 There is however, no evidence presented by any of the named States to determine to what extent they use or comply with conditions for use of these alternative methods of procurement in practice. As already indicated in this report, in the case of Jigawa state some of these restricted methods are recognized as default methods and applied as such.

4.66 The Jigawa State Law makes Open competitive Bidding, Selective Tendering and Nominative Tendering default methods of procurement. Section 2.5 of the Guidelines provide monetary thresholds as the only condition for application of each of these methods; above One Hundred Million Naira (₦100,000,000) open competitive bidding will apply, under One Hundred Million (₦100,000,000) and above Five Million Naira (₦5,000,000) selective tendering will apply, and below Five Million Naira (₦5,000,000) nominative tendering will apply. Since projects above One Hundred Million Naira (₦100,000,000) are few, selective and nominative tendering dominates procurement activities in Jigawa State. Paragraph 2.5 of the Jigawa State Procurement Guidelines regarding nominative tendering requires "appropriate awarding MDA to nominate a single contractor judging from reliability, experience and competence of the contractor to bid for the Contract". It is entirely discretionary, without any limitations except for the threshold. It is difficult to see the difference between direct procurement and nominative tendering as put forward in the Jigawa State Law and Rules. This situation of the law, rules and practice hampers objectivity of procurement decision making.

Procurement Reviews and Appeals Process

4.67 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 below 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 supports 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)).

4.68 The PPLs in Cross River, Ebonyi, Ekiti, Jigawa and Taraba States contain procurement complaints and appeals mechanisms, but there is no evidence that any of the States has operationalized them except limited evidence from Cross River State. The laws in Cross River, Ebonyi⁶⁵, Ekiti⁶⁶, Jigawa⁶⁷ and Taraba⁶⁸ allows complaints from aggrieved persons and sets out procedure and powers for review and determination of complaints and appeals. The Cross River and Ekiti State Bureaus have published a Guide to its complaint mechanism titled Recourse Mechanism Steps. However, only Cross River State provided a single evidence of a dispute that has been dealt with by this system. (Evidence provided is dated 26th February 2013 regarding a bidder complaining about its disqualification from participating in a bid by the State SUBEB, and also . evidence of communication of its decision on the complaint to the complainant by a letter dated 17th April 2013.) Cross River is also the only State that provided evidence that it has conducted a procurement audit of its MDAs in the form of a Procurement audit report titled *REPORT OF PROCURMEENT AUDIT CARRIED OUT BY THE DUE PROCESS AND PRIZE INTELLIGENCE BUREAU OFFICE OF THE GOVERNOR CALABAR IN THE SOUTHERN SENATORIAL DISTRICT BETWEEN MONDAY 15TH OCTOBER 2012 AND FRIDAY 19TH OCTOBER 2012*.

4.69 In the States of Katsina, Kogi, Nassarawa, Ondo, Taraba, and Yobe no evidence was presented that there is in existence an appeals and review system.

4.70 The provisions of the Ekiti State law mirror the federal government’s procurement review process, as contained in a small brochure published by the federal Bureau of Public Procurement “Complaints Procedure under the Procurement Act 2007”. The booklet highlights 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.

⁶⁵ S 57 of the Ebonyi State Public Procurement and related Matters Law NO 012 2009

⁶⁶ S 54 of the Ekiti State Public Procurement Law NO 2 of 2010

⁶⁷ S 27 of the Jigawa State Due Process and Project Monitoring Bureau Law NO 05 2009

⁶⁸ S 56 of the Taraba State Public Procurement Law 2012

- e) 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
- f) If the Bureau does not dismiss the complaint, it shall prohibit the procuring/disposing agency from taking further action. Upon full consideration of the complaint
 - a. It may nullify part or all of the unlawful act or decision of the procuring/disposing entity
 - b. Declare or make known the rules and principles governing the subject matter of the complaint
 - c. Reverse improper decision by the procuring/ disposing entity or substitute its own decision for the improper one
- g) Bureau shall announce decision within 21 days of receipt of complaints, giving reasons
- h) If not satisfied with decision or if decision not reached within 21 days, complaint may proceed to the High Court within 30 days

Decision of the High Court shall be final and binding on all the parties and no further appeals shall lie

4.71 The Cross River, Ekiti, Ebonyi and Jigawa State laws are similar on this account. However it is to be noted that in the case of Jigawa State the law allows the Accounting Officer 30 days instead of 15 days to reach a decision. Unlike the Federal, Cross River, Taraba and Ekiti State laws the Jigawa State law does not indicate extent of the powers of its Due Process and Project Monitoring Bureau or specific orders that these agencies or departments can make in determining the appeal. This is also the case with the Ebonyi State law, which additionally does not give the Accounting Officer a specific time within which to decide a complaint or communicate his decision to a complainant, but requires the bidder to make its appeal to the Bureau within ten (10) days of communication of Accounting Officers decision to him i.e. in effect whenever if ever it is communicated. Only Cross River State is partially compliant with this indicator.

Code of Conduct for Procurement Personnel

4.72 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.

4.73 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 and membership of secret societies. It also provides for compulsory Declaration of Assets by public officials, and sets up the Code of Conduct Tribunal to try offenders.

4.74 Although the PPLs of Ebonyi, Ekiti, Taraba and Jigawa states enjoin the regulatory agencies to prescribe Codes of Conduct for public officials involved in the procurement process, there is no evidence

that any of them has done this. These PPLs provide some Codes of Conduct and require that personal integrity⁶⁹ be the guiding principle of any such Code. They define and provide rules for Conflict of Interest. They also provide that the public officers be subject to an oath of office to be approved by their SCPP or equivalent body⁷⁰. The additional requirement that the regulatory agencies prescribe Codes of Conduct is to empower them to elaborate on the existing provisions and continuously revise them to meet emerging needs. The Cross River State law is silent on the issue of a Code of Conduct.

4.75 *Avoidance and disclosure of existence of Conflict of Interest situations are important aspects of the personal integrity concept of the Codes of Conduct enshrined in the PPLs.* As already indicated, these Laws define Conflict of Interest situations to exist in the following situations:

- Outside interests materially encroaching on time or attention given to job
- Unethical relationships (direct or indirect) with bidder, that confer real (or perceived as such due to person's ability to influence dealings) personal gain; and
- Unethical relationships capable of impairing business judgment and comprising impartiality.
- Placing Government in an equivocal, embarrassing, or ethically questionable position by acts or omissions.
- Relationships compromising reputation or integrity of Government
- Receiving benefits by taking personal advantage of opportunity properly belonging to Government
- Using public property obtained in course of work or otherwise to create a source of personal revenue or advantage.
- Disclosure of confidential information belonging to the Government, supplier, to unauthorized persons.

4.76 Thus, procurement and assets disposal officials must declare existing or planned financial or other outside business relationship with real or potential conflicts. It is important to note that these rules though expansive fail to cover the unique features of corruption emphasized by Professor Asobie's definition of corruption and again seem to emphasize personal benefit without similar attention to parochial and illegitimate group interests which can also be a motivation for infractions.

4.77 *State governments could follow the example of the federal BPP in operationalizing equivalent provisions in the federal Public Procurement Act, 2007 by further defining codes of behaviors for not only public officials, but all parties involved in the procurement process, including bidders and Civil Society Observers.* It is hoped that if and when that is done the opportunity will be better utilized than is currently the case with the Codes of Conduct.

4.78 The various PPLs of the subject States with procurement laws also define specific procurement offences and prescribe penalties.

Citizens Monitoring of Procurement Process and implementation

4.79 The Taraba State Public Procurement law is the only procurement law in this sample of States that requires invitation of a representative of a citizen's organization and a professional body with expertise in the area of the goods, works or service being procured to monitor the contractor selection process. This however does not seem to have been operationalized yet as the law is new. In Jigawa State,

⁶⁹ honesty, accountability, transparency, fairness, equity; see for instance, s. 60 (2) , 57(2) and 29 (2) of the Ebonyi Ekiti and Jigawa State PPL law

⁷⁰ S 60(3), S 57(3) and S 29(3) of the Ebonyi, Ekiti and Jigawa State PPLs

there is evidence that CSOs under the umbrella of Civil Society Coalition for Development Monitoring sometimes go round to verify claims in the quarterly reports of the Due Process and Project Monitoring Bureau. This is the only evidence of citizen participation in the procurement process provided in Jigawa though the Jigawa, Ekiti and Ebonyi State laws have no provisions for civil society monitoring. No evidence has been provided of citizen's participation in the procurement processes (ie contractor selection process) of Ebonyi, Jigawa, Yobe, Nassarawa, Kogi, Ogun, Ekiti, Katsina and Taraba States.

4.80 Cross River and Ogun States have a history of Civil Society participation in project monitoring as is recently becoming the case in Jigawa. However there isn't much evidence of procurement process such as contractor selection process monitoring except for observation of bid opening sessions in Cross River State. Though not provided for in the Cross River State procurement law, civil society organizations under the umbrella of BETAN (Budget Transparency and Accountability Network) are regularly invited to bid opening sessions by the Due Process Office and procuring entities. However their monitoring engagement in the contractor selection process ends at observing the bid opening sessions. Cross River State provided evidence that it invites NGOs and community groups to monitor implementation of ongoing projects (execution of contracts). Indeed the State has created an office of the Special Adviser on Civil Society and provided NGOs with a budget of Four Million Naira (₦4,000,000) in 2013 to support CSOs to monitor Government budget and project implementation.

4.81 The practice of regular quarterly budget implementation reports issued by the Special Adviser on Budget /Monitoring and Evaluation in Cross River State, providing budget project milestones, disbursement and implementation levels provide good information for CSO project implementation monitoring activities in Cross River State. Jigawa State also sends its budget implementation reports to CSOs to enable them verify findings.

4.82 *In summary the legal, regulation and practice of Public Procurement in the participating States in this study in most cases has not witnessed substantial improvements. Even in the five States where Public Procurement laws have been passed, progress is measured and determinably slow in most. Ebonyi State has not started implementation in any determinable form except establishment of a SCPP. Cross River State is yet to establish the SCPP required by its law but its implementation levels are consistently improving. A similar situation exists in Ekiti State. The other State that appears to be making improved efforts at implementation is Jigawa State, but the State law excludes majority of its procurement procedures from complying with three fundamental international and national benchmarks for assessment of the objectivity of decisions of the procurement systems such as objective conditions for participation, criteria for award and wide and simultaneous distribution of information on opportunities for procurement contracts. The Taraba State procurement law is new and implementation is yet in its commencement stages.*

4.83 *Even more worrisome is that as already indicated some of the State laws in this sample enable PEPs retain complete political control of the procurement system. Even in States where the laws do not directly vest powers to take procurement decision in political authority, there remains a lot of political influence over procurement decision making. This is despite the historical fact that political control of the procurement process was found as a major reasons for failure of Nigerian procurement systems prior to current reforms, and changing this situation was a major objective of procurement reforms as recommended by the Country Procurement Assessment Report 2000. Where there have been improvements in policy and legal framework, most States have been slow to develop needed institutional framework and capacity or to fully implement the laws and policies. However improvements in implementation are more observable in Cross River, and in Jigawa with respect to procurement activities above One Hundred Million Naira (₦100,000,000) threshold. There have also been improvements to some limited degree in Ekiti State.*

4.84 In addition to poor and outdated laws, rules, and policies still in operation in seven of the ten states in this study, (Ebonyi, Katsina, Kogi, Nassarawa, Ogun, Taraba & Yobe) there are no evidence of effective measures or serious attempts to develop capacity for critical policy formulation, implementation and monitoring in the subject States except for limited evidence in Cross River state. The systems in most States do not sufficiently support prior determination of selection and award criteria, nor adequate and simultaneous distribution of information of the procurement process and opportunities for contracts. The systems in practice also do not sufficiently support objective decision making and in most of the States no specific Codes of Conduct are in place for those involved with Public Procurement. Though the laws referred to provide for complaints mechanisms, the study has found no evidence that they are functional except in Cross River State where they are implemented to a limited degree.

4.85 Evidence of citizens monitoring of project implementation is available in Cross River State and to a lesser degree in Ogun and Jigawa States though this process is not backed by legislation. Among the five States in this sample with procurement laws, only the Taraba State law provides for citizens monitoring of the contractor selection process. However it is only in Cross River State that there is evidence that government invites CSOs to observe bid opening sessions. In effect while nothing has changed in the states without modern procurement laws, there has been limited improvements in four out of the five states with modern procurement laws (Cross River, Ekiti, Jigawa and Taraba) with Cross River State clearly leading. Among the States with no modern procurement laws Ogun State holds the most promise for improvements.

Summary Performance: Anti-corruption Initiatives in Public Procurement

4.86 Table 4.1 below summarizes the foregoing discussion.

Table 4.1: Summary of Compliance with Procurement Provisions of UNCAC, AUCPAC and ECOWAS Pr

		Cross River	Ebonyi	Ekiti	Jigawa	Katsina	Nassarawa	Ogun	Ta
Procurement Legislation and regulatory framework and institutions	UNCAC: Article 9(1) AUCPAC: Article 5(4) ECOWAS Protocol: Article 5(b)	Modern UNCITRAL compliant PPL enacted in 2011, guidelines predating law exists, law and rules disseminated amongst stakeholders, new standard documents just issued, weak institutional capacity, but capacity improvement plan exists, lack of political will to completely hands off procurement appears present;	Modern UNCITRAL compliant PPL enacted in 2011, but loopholes allowing for political control of procurement process weaken the law: SCPP in place but no Bureau yet established. No rules or STBs have been issued, weak institutional capacity lack of political will to implement reforms prevent operationalization of the law;	Modern UNCITRAL compliant PPL enacted in 2010, but loopholes allowing for political control of procurement process weaken efficacy of law: The Bureau has been established, rules have been issued and disseminated to some stakeholders, but weak institutional capacity slow improvement in political will help to slowdown implementation	A recent law is in place, but excludes application of provisions and conditions relating to qualification, and advertisement to all procurement below N100m, Law and rules allows for political control. Bureau established and functioning rules issued, STB for works appears to be in place and in use with limited provisions .	No modern PPL enacted, no modern regulation in place. Complete political control of procurement process weakens efficacy of existing rules, which are themselves grossly inadequate : weak institutional capacity and lack of political will to reform is evident	No PPL or modern procurement rules are in place, political control is firmly in place and weak institutional capacity and absence of political will to reform is evident, procurement bill has been in the house for about three years.	Procurement bill in the House, FI supported by adhoc rules which are inadequate to regulate procurement, political approval and control is in place, weak capacity and low political will is affecting zeal for reforms,	Modern law r put in Bure establish and a an of SCPP opera tion o law s infan instit and l politi had u recen affect for re politi has p unde to sus law a as it n any p procu of the choic

Table 4.1: Summary of Compliance with Procurement Provisions of UNCAC, AUCPAC and ECOWAS Pr

		Cross River	Ebonyi	Ekiti	Jigawa	Katsina	Nassarawa	Ogun	Ta
<p>Prior establishment of selection and award Criteria</p>	<p>UNCAC: Article 9(1)a,b AUCPAC: Article 5(4); 7(4) ECOWAS Protocol: Article 5(b)</p>	<p>Law and pre-procurement law rules in force requires advance establishment of conditions for selection and award criteria . STB recently issued, but no evidence of extent of use. Advertisements contain advance conditions for selection. No bidding documents showing award criteria presented.</p>	<p>SCPP constituted , Bureau ie regulatory Body not established. Guidelines and SBDs not yet issued under the PPL; provisions of the law do not strengthen advance selection and award criteria as conditions and no evidence of advance selection and award criteria produced.</p>	<p>Law and guidelines issued require advance establishment of selection and award criteria, but little evidence was produced to show how they work in practice. No evidence was produced to indicate that standard documents have been issued, or that advance conditions, selection and award criteria are enforced .</p>	<p>Law and guidelines issued require advance selection and award criteria only in respect of contracts above N100million threshold, evidence exists of conditions for selection in such contracts, but not with respect to contracts below N100million which are more in number, weak institutional capacity and political will to hands of procurement continues to erode reform effectiveness</p>	<p>No law, rules or standard documents sufficiently requiring advance selection and award criteria and no evidence of requirement or deployment of these was produced</p>	<p>No law, rules or standard documents sufficiently requiring advance selection and award criteria in place and no evidence of advance selection and award criteria in practice produced</p>	<p>No law, rules or standard documents sufficiently requiring advance selection and award criteria in place and no evidence of advance selection and award criteria in practice produced</p>	<p>The l requi advan selec awar criter rules STB oper ng it, only adver produ which more excep than</p>

Table 4.1: Summary of Compliance with Procurement Provisions of UNCAC, AUCPAC and ECOWAS Pr

		Cross River	Ebonyi	Ekiti	Jigawa	Katsina	Nassarawa	Ogun	Ta
Distribution of information relating to PP procedures and contracts		State laws require advertisement in two national newspapers and procurement journal, but current guidelines do not appear to anticipate publication in national and international media, State presented abundant evidence of consistent publication in the State journal, but sporadic publication in national media and none in international media, as required by its law. Its procurement , law and rules have been disseminated.	State laws require Open Competitive Bidding, but it is restrictively defined to exclude advance establishment of selection and award criteria & advertisement , no evidence of advertisement of projects was produced, and no rules or STBs have been made that can be disseminated	State laws require advertisement in two national newspapers and procurement journal, but the state produced no evidence of advertisement occurring prior to this study. The State has begun during this study to advertise in national newspapers as available evidence suggests. It has disseminated its law and rules to state officials, contractors and a few citizens groups.	Advertisement in newspapers is only required for procurement above N100million Naira value at state level and N20million Naira at LGAs, Evidence exists of such publication only at State level, for all others either there is no advertisement or it is placed on the notice board, No single advertisement regarding LGA procurement was produced.	There is no state law requiring mandatory distribution of procurement information and the Financial regulations provides exceedingly wide discretion for implementing officers to choose not to advertise, no evidence of advertisement of a project was presented	No law requiring mandatory distribution of procurement information exists, we could not obtain the Financial Instructions nor did the state present any single evidence of distribution/publication of procurement process rule, and or opportunity for a contract from state budget	No Procurement law requiring distribution of procurement information exists. The Financial regulations grants implementing officers wide discretion to choose to or not to advertise. Advertisement is said to occur on contracts within and above State Tender Board threshold of N20million but only three published advertisements were provided, one in 2011 and two others during this study indicating that sporadically MDAs in the state publish.	State require advertisement in national newspapers and procurement journal. State produced evidence of advertisement which more than The s regul force wide discr imple offic choo what not to adver mode procu regul exist disse

Table 4.1: Summary of Compliance with Procurement Provisions of UNCAC, AUCPAC and ECOWAS Pr

		Cross River	Ebonyi	Ekiti	Jigawa	Katsina	Nassarawa	Ogun	Ta
Objectivity of Procurement Process and decisions	UNCAC: Article 9(1)c AUCPAC: Article 5(4); 7(4) ECOWAS Protocol: Article 5(b, j)	Procurement law and rules require objectivity of procurement decisions, no evidence of objectivity of procurement decisions relating to typical Cross River State budget project implementation was produced	No evidence of objectivity of procurement decision was produced. No bid evaluation reports were presented to demonstrate objectivity of procurement decisions.	Procurement rules issued require objectivity of procurement decisions, but no evidence was produced to show that procurement decisions are made objectively eg No bid evaluation reports were presented to demonstrate objectivity of procurement decisions.	There is evidence and indications that conditions for objectivity of procurement decisions with respect to procurement above N100million may exist and apply, but similar conditions do not exist for all procurement below N100million naira which may constitute the bulk of procurement carried out in the state.	No law, regulation or standard documents requiring and supporting objectivity of procurement decisions exists. No evidence e.g. of evaluation records were presented to demonstrate objectivity of procurement decisions	No law, regulation or standard documents requiring and supporting objectivity of procurement decisions exists. No evidence e.g. of evaluation records were presented to demonstrate objectivity of procurement decisions.	No law, regulation or standard documents requiring and supporting objectivity of procurement decisions exists. No evidence e.g. of evaluation records were presented to demonstrate objectivity of procurement decisions	The S Law objec procu decis regul stand docu supp this h issue evid of ev report demo objec procu decis produ
Procurement Reviews and Appeals Process	UNCAC: Article 9(1)d AUCPAC: Article 5(4), 7(4) ECOWAS Protocol: Article 5(b,j)	Only Cross River State is partially compliant with this benchmark, in addition to its law which provides for reviews, it is not compliant and its resolution. No evidence of procurement reviews and appeal was presented by							
Special Code of Conduct for Procurement Personnel	UNCAC: Article 9(1)e AUCPAC: Article 5(4); 7(4) ECOWAS Protocol: Article 5(a,g)	PPL is silent on issuing a code, though it singles out and provides for elimination of conflict of interest, no code of conduct has been issued in practice	Code of ethics exists in PPL, but no evidence of its operationalization	Code of ethics exists in PPL, but no evidence of its operationalization	Code of Conduct exists in PPL but No evidence of operationalization	No law, and no special code for procurement professionals exists	No law, and no special code for procurement professionals exists	No law, and no special code for procurement professionals exists	Speci of co exists law, evid its oper ation.

Table 4.1: Summary of Compliance with Procurement Provisions of UNCAC, AUCPAC and ECOWAS Pr

		Cross River	Ebonyi	Ekiti	Jigawa	Katsina	Nassarawa	Ogun	Ta
Citizens monitoring of procurement processes and implementation		There is evidence that CSO's are invited to and do observe bid opening exercises, but no further evidence of monitoring contractor selection process. There is evidence that government supports and CSOs monitor project implementation annually	No evidence of CSO monitoring presented	No evidence of CSO monitoring presented	There is evidence that occasionally CSOs go to verify budget project implementation reports, and Due process Office reports.	No evidence of CSO monitoring presented.	No evidence of CSO monitoring presented.	There is evidence that CSOs occasionally monitor project implementation but not process of contractor selection	No evidence of CSO monitoring presented. though state procurement law requires it.

Chart 4.0: The Chart below summarizes the foregoing discussion on procurement legislation and Regulatory Framework and Institution as well as Prior Establishment of Selection and Award Criteria graphically

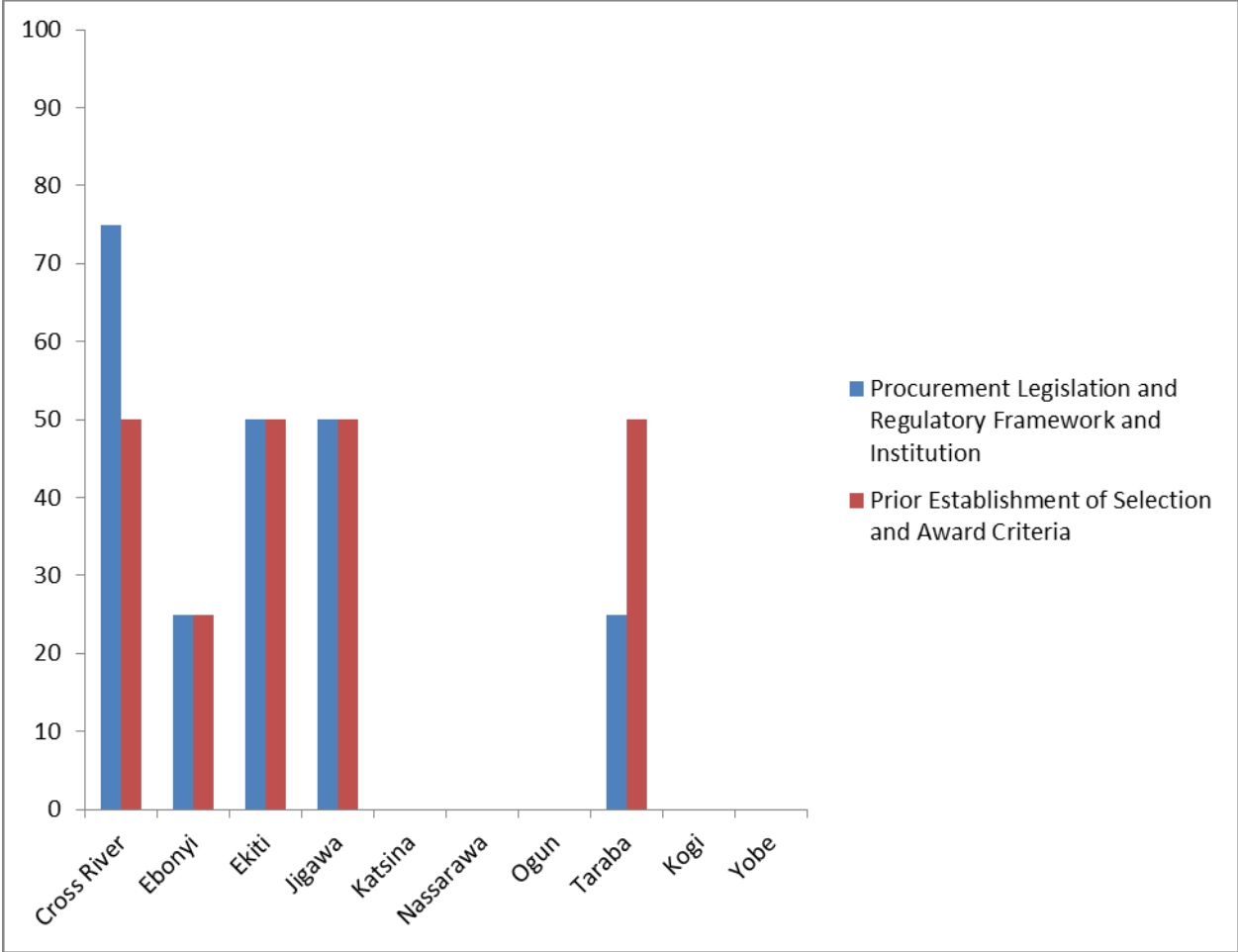
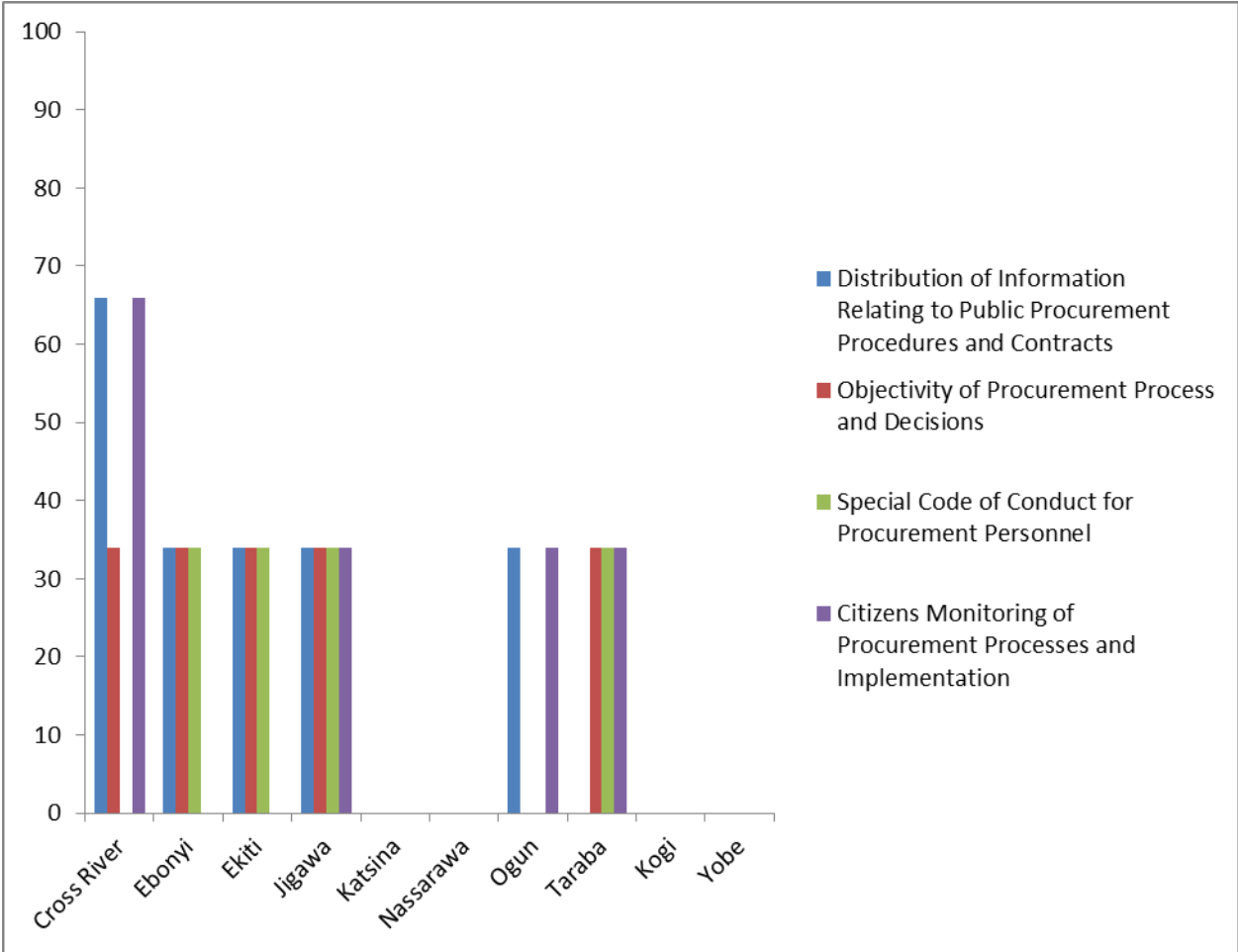


Chart 4.1: Also summarizes the situation graphically in the 10 states regarding the indicators in Table 4.1 above



Chapter 5: Anti-corruption Initiatives in Management of Public Finances

5.1 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*

This section examines how the Public Finance Management systems of the ten participating States meet these provisions and those of the African Union Convention on Preventing and Combating Corruption (AUCPCC) and the ECOWAS Protocol on the Fight against Corruption.

Procedures for the Adoption of the Budget

5.2 UNCAC provides for “*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)).

5.3 *The 1999 Constitution of the Federal Republic of Nigeria*⁷¹ establishes the basis for managing public finances and budgeting in Nigeria. Section 162 of the Constitution contains rules on the management of public revenues in States. Two types of revenues accrue to State Governments: states’ share of joint revenues accruing to the Federation and State’s domestic Internally Generated Revenue (IGR). The discussion below briefly describes arrangements governing the two.

⁷¹ As amended to date; the constitution is applicable to both the federal and state governments. Although Nigeria is a federation with highly autonomous constituent states, Nigeria operates only a single constitution. Current provisions do not permit states to make their own constitution even if they wanted. However, states can make their own laws on areas of their legislative competence as provided for in the constitution.

Revenue Sources of State Governments

5.4 *Although Nigerian State governments have great fiscal and budgetary autonomy, this autonomy of action does not translate into independent sourcing of revenues for economic development.* Nigeria's fiscal federalism centralizes the more important revenue sources and distributes the proceeds among the constituent governments⁷² with a formulaic arrangement. The Federal Government (FG) is the administration and collection agent for jointly accruing revenues. Thus, the FG controls revenues from crude oil sales, petroleum profit taxes, royalties and other oil charges, company income taxes, customs duties, excise duties, stamp duties, value added tax, education tax, etc. The FG accumulates these central revenues into two funds, the VAT Pool Account for value added tax proceeds, and the Federation Account (FA) for others. The constituent governments apply statutory revenue sharing formulas in monthly distribution of accruing revenues. The Federation Account Allocation Committee (FAAC) consisting of representatives of the three levels of government superintend the monthly distribution.

5.5 These revenues flow as constitutionally guaranteed and transfers are made from the centre to States and Local Governments. Another term commonly describing these revenues in Nigeria is *Statutory Revenues, hence the term National Cake*. On average, they contribute about 85 percent of revenues of State Governments', with the exception of Lagos and Rivers States. For a detailed discussion of the types of revenues, the elements and structure of the sharing formulae, independent revenues for states, effectiveness of provision on revenue administration, complaints about current vertical and horizontal sharing formulae, other issues in tax administration, and factors that explain weaknesses in tax administration refer to the TUGAR Study Report 2012⁷³ at www.tugar.org.ng

Existing Legislative Measures for Budget Planning and Articulation

5.6 *Like the Federal Government, some of the State Governments have enacted Fiscal Responsibility Laws (FRLs).*⁷⁴ Ebonyi (2009), Ekiti (2010), Cross River State (2011), Jigawa (2009) Taraba (2011) are the five states in the study sample that have enacted FRLs; Ogun, and Yobe States have produced copies of draft bills pending and not yet enacted by the Legislature. Kogi, and Nassarawa, States have no Fiscal Responsibility laws and have produced no evidence of draft bills. Yobe State has produced a draft of a recent Fiscal Responsibility bill submitted in May 2013 to its Legislature for consideration. The State laws and bills more or less follow the same general pattern set out in the federal equivalent. Generally, the laws establish the Council or similar body as an oversight body and adopt the Medium Term Expenditure Framework (MTEF) approach for fiscal planning, including the Medium Term Fiscal Framework (MTFF) to project revenues in the medium term. The MTEF also requires setting both aggregate expenditure ceilings and using this as a basis for sectoral allocation of budget and actual expenditure. In the case of Cross River State, the law did not give details of contents of an MTEF. An important assumption of the MTEF approach is the willingness of Government to both contain actual aggregate expenditures within budget ceilings, and respect sectoral allocations in the spending process, without which the system may turn out not so much better than the incremental budget system.

5.7 *However Cross River State has adopted a dual approach in budget planning and management.* The State in 2011 passed two Public Finance Management Laws, the first called the State Public Finance

⁷² Federal, state and local

⁷³ Mapping & Scoping survey of anti-corruption and governance measures in public finance management (PFM). A study of ten states of the federation(Adamawa, Anambra, Bayelsa, Benue, Delta, Kaduna, Imo , Niger, Ondo and Sokoto) 2012

⁷⁴ The Federal Government enacted a Fiscal Responsibility Act in 2007 to help instill discipline into the budgetary process. The Act sets aggregate expenditure and borrowing limits, casts the budget in a medium term expenditure framework, establish public debt targets, and outline measures to strengthen fiscal accountability.

Law and the second the Fiscal Responsibility Law⁷⁵. The Public Finance Law gave statutory backing to the Public Finance Management Committee which was already functional in the State prior to the enactment of the Law.

5.8 The Cross River State Public Finance Management Committee established by its 2011 PFM law is headed by *the Commissioner of Finance, with membership which includes the Accountant General, Chairman Internal Revenue Service, Chief Executive Budget Monitoring and Evaluation Department, Department of International Donor Support, State Planning Commission, Debt Management Department and any other MDA responsible for financial matters as the Governor may from time to time determine.*

5.9 This law which is its organic PFM law prescribes the functions of the member MDAs of the Public Finance Management Committee, and regulates cash management. It also seeks to ensure documentation and synchronization of accounts opened by all MDAs under the Ministry of Finance. It further provides for the Accountant General to prepare and submit the annual consolidated financial statements of the State for each year to the Auditor General within three months of the end of the year⁷⁶. It provides for the consolidated revenue fund of the state, and requires the Governor to present the State budget to the House not later than end of October in each year as against December 31st stipulated in The Constitution. The law also requires publication of the Auditor General's report once submitted to The Legislature and establishes a Budget Committee for purpose of reviewing budget proposals, and budget performance reports for presentation to the Executive Council. The Law creates offences and prescribes punishment for infractions among other provisions.

5.10 The Cross River State Fiscal Responsibility law established the FRC. Its membership includes a chairperson appointed by the Governor, representatives of Organized Private Sector, Civil Society, and Organized Labour appointed by the Governor from a list of three persons presented by each group represented, in addition to one member to represent each Senatorial District. Other members are the Ministry of Finance, Debt Management Office and Local Government Council Chairmen in the State. The law requires implementation of MTEF but does not give as much details of content of MTEF as the other State laws or the Federal law.

5.11 *The process of mainstreaming and institutionalizing the FRL into the budget process has remained weak and largely ineffective in most States that have enacted the FRL.* Cross River State has not set up a FRC. Though Ebonyi, Jigawa, Ekiti and Taraba States have set up FRCs, they do not appear to have achieved reasonable effectiveness with exception to some degree of the Ekiti State FRC. In Taraba for example the Commission does not yet have an office, even though it has held a sensitization activity for MDAs. In Ebonyi some people in the State Service did not appear to know that the Commission exists, even though it does. In Ebonyi, Jigawa, and Taraba States, where the FRC has been set up, limited evidence has been provided to indicate operationalization of the provisions of the law. However Ekiti State FRC established in 2011 meets regularly, has begun engaging MDAs, and has approved and established internal operational structures in the Commission. It has also conducted a sensitization tour of LGAs in the State. It has started monitoring MTEF, and issues annual report of its activities, but is yet to issue policies and guidelines as required by its enabling law. It also monitors project implementation. It is not certain that this is also part of its statutory mandate; however Ekiti State seems to be the only State in this study, whose MTEF document contains a Fiscal Strategy Paper.

5.12 *All the States surveyed with the exception of Katsina claim to have adopted the MTEF multi-year framework.* However none presented a full MTEF published document that is approved by its

⁷⁵ Cross River State Public Finance Management Law No 12 of 2011 and the Cross River State Fiscal Responsibility Law No 13 of 2011

⁷⁶ S 13 of the Cross River state Public Finance Management Law No 12 of 2011

Legislature. It would appear that most State MTEF processes, consultations and documents do not always deal in any reasonable degree with macro-economic projections. In States like Cross River, Ebonyi, Jigawa, Ogun, Kogi, that provided sample MTEF documents, it was seen that sector goals are established and projects required to achieve these goals over the multi-year period are also identified and costed. However, only Ekiti State presented a copy of an MTEF document (2012-2015) that includes a Fiscal Strategy Paper and sets out macro-economic projections, the underlining assumptions, and a limited evaluation and analysis of the projections. Though the Year 2012 annual report of its FRC confirms that it has been approved by the Legislature, there was no evidence that this MTEF document has been published. There was no hard copy available when the research team visited, but they were obliged a soft copy. However the Ekiti 2013 budget seems to be the first Ekiti State budget to be based on an MTEF, as well as its first budget not based on incremental but on zero sum budgeting. Ekiti State FRC appears to be the most active of all others in this sample.

5.13 The evidence presented by Taraba State of an MTEF is an unsigned and undated memo purportedly presented to the Taraba State House of Assembly by the Governor on an undisclosed date. It is not clear whether an MTEF document has been presented to the Assembly. No other State in the sample except the ones mentioned above (Ekiti and Taraba) provided evidence of their MTEF.

Constitutional Arrangements for Public Budgeting

5.14 *The Constitution contains general provisions on public budgeting, but legislative rules prescribe procedures for their adoption by the Legislature.*⁷⁷ As is the case with the President and Executive Council at the Federal level, Constitutional provisions require the State Governor to present the annual fiscal budget proposal (Appropriation Bill) before the State House of Assembly (legislature) for consideration and approval. The Executive may only spend money as the legislature authorizes in an appropriated law⁷⁸ or as otherwise authorized by The Constitution. The Constitutional exceptions are the remuneration, salaries and allowances of the following eight bodies, namely, (i) the Governor, (ii) Deputy Governor, (iii) Auditor-General, (v) Chairman and members of the Civil Service Commission, (vi) Electoral Commission, (vii) Judicial Service Commissions, and Pensions and Gratuities.⁷⁹ These are direct First- Line charges on respective Constitutional Revenue Funds (CRFs) of States. State Houses of Assembly often make laws making their remunerations, salaries and allowances First- Line charges on the CRF, as well, even though The Constitution does not provide for this. At the Federal level the Legislature has also made such a law.

Preparation of the Budget and Citizens Participation

5.15 *The system for preparation of budgets for presentation to the State Assemblies in States under this survey do not all appear to have adequate measures to promote transparency and accountability, nor do they always admit of full participation by citizens. However this is one area in which three states in this sample Cross River Ekiti and Jigawa States appear to have made good improvements. In Cross River State there is evidence not only that MDAs send their preparatory documents to CSOs, but also that CSOs under the umbrella of Budget Transparency and Accountability Network (BTAN) send representatives (NGOs and citizens groups working in different thematic areas) to participate in consultations with MDAs where they have competence, in preparing their multi-year project forecasts and also their annual estimates.*

⁷⁷ There are similar provisions on the federal budget

⁷⁸ Including supplementary appropriation law, see s. 120(2))

⁷⁹ See s. 124 (2)

5.16 All States under this sample issue Budget Call Circulars to Government Ministries Departments and Agencies. However in Cross River State, Budget Call Circulars are as a matter of course sent to citizens groups (NGOs) to enable them engage the budget preparation process. In addition to participation in the various MDA and Budget Office budget preparatory consultation meetings, the budget proposals are also made available to citizens groups, at the time of presentation to House of Assembly in Cross River State. The State budget office provided letters of invitation, and reports of meetings in support of this claim. Civil Society Organizations interviewed not only confirmed these claims, but produced copies of these documents sent to them in the last four years, as well as written reports of their participation in these activities.

5.17 The Ogun State government presented written submissions of civil society groups like the Justice and Peace Development Commission of the Catholic Church in previous years as evidence of civil society participation in the budget process, but none of the submissions was in the 2012 & 2013 budget years.

5.18 In Ekiti State the State Executive Council led by the Governor holds Community and Local Government consultative meetings to ascertain community needs as well as establish a needs ranking, which form the basis for articulating the state budget. This process started in 2012. This also feeds into the Local Government project identification process to avoid project duplication. It is interesting to note that Ekiti State government officials interviewed indicate they are seeing examples, where the needs identified by the people themselves are more economical to provide than what was otherwise proposed for same communities by officials.

5.19 Jigawa also provided evidence of CSO participation in its budget preparation process. The State presented evidence of CSO engagements in budget preparation. Specifically there were submissions by Project Monitoring Partnership dated 17th October 2012, another by the Jigawa Civil Society Coalition for Development Monitoring which was undated and unsigned, and yet another by Jigawa Forum. The contents of these submissions indicate a critical need for capacity improvements for Civil Society groups to enable them play their critical role in PFM system and in corruption prevention. There is no doubt that interaction between the Government of Jigawa State and the emerging CSO groups in Jigawa State relating to the budget preparation process is improving , but it appears this may be hampered by capacity issues.

5.20 Also Jigawa State has a Comprehensive Development Framework (CDF), prepared by SEEDS 11 Technical Committee with support from DFID financed SPARK programme as a follow up to its SEEDS 1 strategy. This document is described as a comprehensive socio-economic reform agenda, and was published in 2010. The process of its preparation was said to have been very consultative and citizens driven. Jigawa State officials derive their annual sectoral goals for annual sector MTSS processes from its CDF as indicated by the Circulars on commencement of annual MTSS eg (circular of 7th June 2010 issued by the Ministry of Finance and signed by the Permanent Secretary). Unlike some other States in the sample Jigawa State provided evidence that in addition to the CDF, they also prepare annual sector MTSS for major sectors including education and health, and are incrementally expanding to other sectors. It has established Sector Co-ordination and Planning Teams (SCPT) and trained them. As a result it has the CDF, and sector MTSS documents linked and implemented through the annual budgets. The educational sector MTSS presented indicates sector goals, objectives, summary steps for developing the sector strategy, source of funding, measurement indicators etc. Also there is evidence that CSOs participate in budget preparation and analysis process in Jigawa State. The State presented a number of CSO requests for information and invitation of State officials to CSO forums preparing contributions to the budget process particularly in the education and health sectors.

5.21 The Jigawa State emerging practice of consultatively articulating a robust development strategy, that is linked to the budget, in comparison with Cross River and Ekiti State approaches, may be seen as

yet a third possible approach for other States to follow. This approach was common whilst the SEEDS benchmarking exercises of the Federal Government was being implemented, and is a commendable approach. It does help for the State budgeting system to be situated within an overarching Development Plan.

5.22 Other States in this sample did not provide evidence of participation of citizens groups in articulating budget proposals by the Executive branch.

5.23 The Cross River State budget office prepares and disseminates an annual budget calendar. In the 2013 fiscal year this calendar is disseminated as part of the State governments published date calendar found in all Government offices and also in the offices of civil society organizations visited. It shows periods within which specific activities ought to occur in the budget cycle, from conceptualization up till presentation of the budget to the House of Assembly in October each year as required by its PFM law. The calendar also includes reporting periods and in the current year indicates that the House of Assembly is expected to consider and approve the 2014 budget in November 2013. This is rational, but given current provisions of the 1999 Constitution, it is to be seen how this and the Governor's October budget presentation deadlines will work over time in practice, if challenged. The budget calendar also indicates deadlines for in year budget performance reports based on regular monthly expenditure and revenue returns by MDAs.

5.24 Ogun State Ministry of Budget and Planning presented two unsigned documents indicating scheduling of various activities in the 2013 budget year. None of these documents had any imprimatur of Ogun State on them, nor do they appear published or available to other MDAs in the State. At best these two documents are internal documents of the Ministry which are not circulated or disseminated to other MDAs. No other State in this study presented a budget calendar of activities.

Legislative Adoption of the Budget

5.25 *Of the ten States in this study, only four States made available rules made by their state legislatures for approving their budget. These are Cross River, Ogun, Katsina and Taraba States.* The rules provided are similar in many respects. Generally, the rules provide for the following seven steps within the house, and an eight step which is assent by the Governor or House Override where the Governor fails to assent to the bill.

- (i) Presentation of the budget proposal by the Governor, which constitutes the first reading
- (ii) A second reading that discusses the general financial principles and policy of the Government,⁸⁰
- (iii) Committing the budget to the Finance/Appropriation (F/A) committee of the House of Assembly.
- (iv) Detailed examination of the budget by sector committees,⁸¹ including discussions with respective MDAs.
- (v) Clause by clause discussion of the F/A report and recommendations by the Committee of the Whole House, which for this purpose is known as "Committee of Supply in the Katsina and Taraba State rules
- (vi) Item by item approval of expenditure lines and.
- (vii) Third reading and passage. The last step is assent to the Appropriation Bill by the Governor.

5.26 It is likely that the other States have House Rules that mirror the above steps. These processes are also representative of the procedure at the Federal level. All the States in this study sample claim that their State Assemblies grant opportunity for civil society engagement in the consideration of State budgets. However not all the States produced evidence to this effect. The citizens groups in Cross River

⁸⁰ The rules do not allow discussion of the detailed budget during the second reading

⁸¹ Which for this purpose are also subcommittee of the F/A committee

State presented invitation letters to committee budget hearings and reports of CSO budget hearings with House of Assembly committee on budget appropriation for 2009 - 2012 with pictures, showing instances where legislative committees adopted positions canvassed by Civil Society. Similar reports were obtained from the Legislature.

5.27 In Ogun State both officials of the Legislature and other State officers indicated that the Legislature invites CSOs to budget hearings, but no evidence was provided in this regard. Following presentation of the interim report on 19th June 2013 Ogun State presented several invitation letters from its House of Assembly as evidence of citizen's participation in budget hearings. These however were letters inviting many CSO groups to legislative hearings on several bills including the Ogun State Debt Management Office and Bond Notes and other securities issuance bills. CSOs invited include JDPC Ijebu Ode, Justice Development and Peace Movement Abeokuta, Manufacturers Association of Nigeria, and Abeokuta Chambers of Commerce. None of these letters related to hearing on a budget bill.

5.28 All States in this study claim that they disseminate their budgets, but most provided no more evidence of dissemination, other than publication of the budget documents. The budget document is in some cases given out to officials, in others also to members of the public on demand. In some cases numerous volumes are found stacked in Government budget offices. Cross River State Budget Office provided evidence that in addition to publishing and distributing the budget document to stakeholders, it works with Civil Society annually to produce a simplified version of the budget, which is published, and circulated by CSOs. The CSOs particularly BTAN provided evidence of a TV program "the Budget and You", which CSOs had run in previous years. This program was deployed to disseminate and explain budget provisions once passed, but it was not on air at the time of this research. Also Cross River State holds budget accountability meetings led by State Assembly members and political appointees from each constituency, in each State constituency. At these forums they explain to members of each of those Constituencies' budget provisions for the Constituency in the year and receive their feedback.

5.29 Jigawa State Ministry of Information occasionally publishes a Jigawa State newsletter which disseminates selected budget related information. One edition of this publication was presented by the State. Also Jigawa State CSOs presented the transcript of a radio program on PMP Radio phone in program on 11th October 2012 discussing important provisions of the budget and answering questions from members of the public. This appears to happen occasionally.

5.30 Ekiti State has its budget document and sectoral presentation of the budget on its websites as free downloads and the website also presents continuous news and information about budget implementation.

5.31 All States in this study claimed to issue quarterly budget performance reports. Only the following States produced some copies of such reports (Cross River, Jigawa, Ekiti, Kogi, and Ogun.) Out of the above Cross River and Jigawa State quarterly budget performance reports appear to be more regular. Also Yobe State provided soft copy of quarterly budget implementation reports for 2011 & 2012, but there was no evidence that Yobe State publishes these reports or makes it available to citizens. Cross River State Budget Office presented its quarterly budget performance reports for the entire period the current Government has been in office. As at 30th May 2013 when researchers visited the State, the State budget office was making a public presentation of its 1st quarter 2013 budget performance report to citizens groups, and requesting them to go out and monitor named projects. Perhaps the fact that its 2011 Public Finance Management law requires these reports accounts for this level of reporting and consultation. As already indicated, Cross River State also has a budget provision of Four Million Naira (₦4,000,000) in the 2013 budget year to support citizens groups going out to monitor execution of State projects. Jigawa State provided evidence that sometimes it hands midyear budget performance reports to CSOs to enable them monitor and verify project performance reports contained therein.

Budget Discipline

5.32 The study examined State accounts and audit reports, and the emerging picture from close examination of State Audit Reports is that of continuing budget indiscipline across many States surveyed, though this indiscipline is decreasing in a few States. Also the findings show that State Governments and in particular the Legislature rarely act on the findings and comments of the Auditors' General. Exceptions were found in the case of Cross River, Ogun and Ekiti States, where the State Assemblies have consistently investigated and issued resolutions and directives on some of the State Auditor Generals findings. To address this issue, the Cross River State Public Finance Management Law has set up a Ministerial Audit Committee in every MDA⁸² to resolve all audit observations and queries and ensure the implementation of the report of the Auditor General and House of Assembly's resolutions on the Auditor General's report. Despite the efforts in the three States, un-resolved Audit Queries still remain in those States. The Auditor General's report for Cross River State has a good practice of not only listing outstanding queries, but also recommendations of the House on its previous reports. Also it presents Auditor General's recommendation on which the House of Assembly is yet to pass a resolution and steps taken regarding Auditor General's recommendations and House resolutions.

5.33 It would appear that even in States mentioned above where the State Assemblies are holding Audit Investigation Hearings, they sparingly pay attention to findings of the Auditor General on system effectiveness or lapses in the system. Recommendations and remedial measures for system lapses are not always an outcome of such House Audit Report Investigations by the State Assemblies, which very often focus more on findings on specific infractions by individuals or MDAs.

5.34 Opportunistic revenue projections are common in most States budgets, with one of the few good exceptions being the 2007 Katsina and 2009 Jigawa State budget year, and also Cross River State 2011 and 2012 budget year. In some instances gains made in one year are reversed in the next, robbing the system of consistency. An examination of the Audit Reports and Financial Statements produced by the State Governments reveal the same types of Fiscal Indiscipline such as: optimistic revenue projections⁸³, under projections, volatile revenue profiles, expansive re-current as against capital expenditure ratios, expenditure above budgeted figures, virement without required Legislative approvals,⁸⁴ under spending of allocations on some other heads, and failure to spend at all on yet some others. Examples are found in the following Table:

No	REVENUE RECURRENT RECEIPT	ESTIMATE	ACTUAL	VARIANCES
				%
1	State Allocation	25,000,000,000.00	20,896,614,606.25	(16.41)
2	Internally, Gen Revenue	10,846,500,000.00	2,454,450,646.20	(77.37)
3	Sundry Receipts	4,703,995,705.10	467,279,042.76	(90.07)
4	Sub-Total	40,550,495,705.10	23,818,344,295.21	(41.26)
6	Capital Receipts	29,380,000,000.00	20,515,896,838.05	(30.17)
	TOTAL	69,930,495,705.10	44,334,241,133.26	(36.6)

⁸² S 14 of the Cross River State Public Finance Management Law No. 12 of 2011

⁸³ See Table 5.1 to 5.9 below showing examples of differences between projected and actual revenue

⁸⁴ Especially those in which there is political interest; the expenditure approval process in all the states makes excess expenditure impossible without the governor's approval. The governor must expressly approve capital expenditures (both commitment and payment) and release of overheads to MDAs. The governor also approves personal expenditure, although this is usually protected or committed expenditure, over which the governor choose not to exercise much of his/her discretionary powers of disapproval. In some States above a threshold of ₦1-5million naira cannot be expended without Governors express approval.

No	REVENUE	BUDGETED FIGURE	ACTUAL	VARIANCES
			RECEIPTS	%
1	Fines & Fees	5,161,790,000.00	13,812,161.04	(99.73)
2	Licenses	156,660,000.00	34,244,666.71	(78.14)
3	Rent on Govt Pty	280,000,000.00	240,000.00	(99.91)
4	Dividends & Bank Int	109,600,000.00	12,811,284.92	(88.31)
5	Sundry Receipts	4,703,995,705.10	465,279,042.76	(90.07)
6	Internal Loans	12,980,000,000.00	3,600,000,000.00	(72.27)

5.35 As in table 5.1 above the variance between actual revenue received and the estimates in the 2010 budget for Ekiti State on different items are between 16% - 90.07% of estimates. Also ₦69,930,395,645.10 was proposed expenditure for 2010, only ₦42,251,060,916.26 being 60.4 % was actually spent. A total of ₦31,910,855,675.00 being 45% of total proposed expenditure was proposed as recurrent expenditure. The total amount spent was ₦ 31,482,752,716.85 i.e. 98.7% of the amount proposed as recurrent expenditure. However with respect to capital expenditure ₦ 38,019,639.970.10 being 45.6 % of total expenditure was budgeted, and only ₦ 10,768,308,199.41 being 28% of the capital expenditure budget and 25.4% of the total revenue receipt was spent as Capital Vote.

5.36 Also in the Ekiti State 2010 Audit Report we can see that five agencies received capital vote above budgeted sums. This includes the House of Assembly and Cabinet Department. Also thirty eight (38) MDAs received abysmally low capital releases ranging from 0.9% -22% of the sum budgeted for them in 2010. Forth Five (45) MDAs with Capital Votes did not receive any releases at all. Six MDAs incurred excessive recurrent expenditure above sums budgeted for them. Eight MDAs which had recurrent budget provisions, did not receive any release at all in the year⁸⁵. In continuation of the practice of opportunistic revenue projections in 2011, Ekiti State Internally Generated Revenue (IGR) budget provision was Ten Billion Six Hundred and Fifteen Million, Three Hundred and Fifty Thousand Naira (₦ 10,615,350,000.00) while the actual IGR received was Three Billion Four Hundred and Forty Two Million, Nine Hundred and Sixty Nine Thousand Eight Hundred and Thirty Naira, Two Kobo (₦3,442,969,832.02) 32 % of the provision⁸⁶.

5.37 In 2011 the revenue profile for Ekiti State recorded improvements despite continuation of unrealistic projections. There was a 31.3 % increase in Statutory Allocations from the 2010 levels. The Value Added Tax also recorded a 10.07 % increase. In the same vein improved crude prizes led to a 43% increase from the Excess Crude Account. There was a 75% increase in IGR from the 2010 level of receipts though this did not bring it near the projected figures, since there was still a variance of over 50% between projected figures and the actual. As in 2010 some other revenue sources performed very poorly (taxes, fines and levies, earnings and sales, rent from government property, dividends and sundry receipts) where the gap between projected and actual revenue was over 99%. In 2011, the total Ekiti State budget estimate was Eighty Billion Seven Hundred and Forty Two Million, Four Hundred and Fourteen Thousand, Seven Hundred and Fifteen Naira, Forty Five Kobo (₦80,742,414,715.45). Out of

⁸⁵ Report of the Ekiti State Auditor General for the year ended 31st December 2010 pages 6-8

⁸⁶ Report of the Auditor General on the Accounts of the Government of Ekiti State for the year ended 31st December 2011.

this, Sixty Eight Billion, Seven Hundred and Twenty Two Million, Three Hundred and Twenty One Thousand Seven Hundred and Forty Three Naira, Seventy Three Kobo (₦ 68,722,321,743.73) was received from all sources (recurrent and capital) giving a performance of 85.11% and a variance of 14.89% as against 39.6% in 2010. Thus a significant improvement has been recorded.

5.38 As indicated by the Auditor General in his comments, the wide gap between projections and actual revenues make budget implementation difficult. He further notes that the incremental budget system adopted should be discouraged as it was built on previous unrealized budget that was unattainable⁸⁷. Ekiti has now adopted a zero sum budget from the 2013 budget year.

No	BUDGET TITLE	BUDGETED ESTIMATE	ACTUAL	VARIANCE %
			RECEIPTS	
1	Bal as at 1 st Jan		207,418,862	
2	Taxes	3,012,000,000.00	2,993,712,125	(0.61)
3	Fines & Fees	5,206,601,400	872,318,838	(83.25)
4	Licenses	277,894,400	248,123,180	(10.71)
5	Earnings and Sales	987,645,000	57,934,020	(94.13)
6	Rent on Govt Pty	137,200,000	34,001,759	(75.22)
7	Interest and Dividends	3,500,000	24,616,037	603.32
8	Re-imbursements		698,336,000	100
9	Miscellaneous Income	42,500,000	19,998,857	(52.94)
10	Statutory Revenue Allocation	36,300,000,000	27,027,962,142	(25.54)
11	Revenue from Parastatals	2,597,903,736	1,460,151,433	(43.8)
12	Total Revenue	48,565,244,536	33,439,237,579.62	(31.15)

5.39 In the 2010 report of the State Auditor General on the Accounts of the Government of Nassarawa State of Nigeria, the above table is cited as both revenue projections and collections for 2009 and 2010 in pages 6 & 8. In 2010, Nassarawa State recorded an extra recurrent expenditure of Seven Billion, Two Hundred and Twenty Eight Million, Two Hundred and Thirty Six Thousand, Five Hundred and Fifty Five Naira (₦7,228,236,555) being 18% of total approved expenditure. In the same period, revenue shortfalls as can be seen in the table above was ⁸⁸. In that year alone the State spent ₦6,719,434,636 about 14% of its total revenue on charges on public debt well above the ₦3,000,000,000 budgeted. This is significant given the size of the State economy.

No	BUDGET TITLE	BUDGETED ESTIMATE	ACTUAL	VARIANCE %
			RECEIPTS	
1	Bal as at 1 st Jan	5,500,000.00	497,960,355.56	(90.95)
	ADD RECURRENT REVENUE			
2	Taxes	1,671,100,000.00	1,729,032,775.04	3.47
3	Fines & Fees	39,075,000.00	390,000,993.55	898.08

⁸⁷ Ibid

⁸⁸ 2010 report of the State Auditor General on the Accounts of the Government of Nassarawa State of Nigeria, also cited as 2009 report at page 6 of the same report

4	Licenses	729,321,000.00	949,960,327.42	30.25
5	Earnings and Sales	1,420,390,000.00	1,830,862,260.97	28.9
6	Rent on Govt Pty	3,100,000.00	43,000,000.00	1287.10
7	Interest and Dividends	80,513,267.00	17,398,416.79	(78.39)
8	Re-imbursements by paras, FGN & others	15,000,000.00	512,658.42	(96.58)
9	Boards and Parastatals	130,750,000.00	230,491,000.00	76.28
10	Recovery of Funds		200,000,000.00	0
11	Miscellaneous Income	200,000.00	569,243,907.26	284521.95
	Repayment of Advances		98,116,188.16	0
12	Statutory Revenue Allocation	29,086,000,000.00	24,492,098,242.11	(15.79)
	TOTAL RECURRENT REVENUE	38,675,449,267.00	31,048,677,125.28	(19.72)
	Opening Balance		973,792,634.23	0
	ADD CAPITAL RECEIPTS			
13	Value Added Tax	6,226,000,000.00	5,300,387,657.59	(14.87)
14	Internal Loans	1,736,979,119.00	-	(100)
15	External Loans	6,670,659,000.00	-	(100)
16	Grants and Subventions	1,876,122,000.00	1,738,858,470.37	(7.32)
17	Miscellaneous	9,962,000,000.00	8,109,647,669.43	(18.59)
	Total Capital Receipts	26,461,760,119.00	16,122,686,431.62	(42.75)
	GRAND TOTAL	65,137,209,386.00	47 171 363 556.90	(27.58)

5.40 In 2010 out of the expected revenue of ₦65,137,209,386.00 in Yobe State only ₦47,171,363,556.90 was realized leaving a variance of ₦17,965,845,892.10 or 27%. Yobe State recorded cases of excess recurrent expenditure over approved estimates amounting to ₦982,622,272.61 in 2010. Also excess capital expenditure over approved estimates in the same period was ₦538,616,109.71. This was however only 2.40% of the actual capital expenditure in 2010, compared to excess capital expenditure of 8.76% of the total capital expenditure (₦2,258,331,582.02) recorded in 2009. In 2009 total projected revenue was ₦43,925,000,000.00, and the sum of ₦38,062,426,282.27 was realized leaving a deficit of ₦5,862,573,717.73. The State internally generated revenue amounted to only 5.57% of total revenue. Indeed without the statutory transfers accounted for mainly by oil proceeds and to a limited extent Value Added Tax, the State will be unable to pay its personnel cost (salaries), let alone other administrative costs.

5.41 One of the comments of the Auditor General of Yobe State in his 2009 report related to declining IGR which he attributed to "poor or bad planning, corruption in revenue collection process, and "I don't know and I don't Care attitude"⁸⁹. In another comment in the 2009 audit report the Auditor General of Yobe State said "Even though the underlying records in respect of revenue accounts for the MDAs have not yet been made available to my office for scrutiny, reports of Auditors (Public and Private) in respect of routine assignments on MDAs, particularly Boards and Parastatals revealed serious cases of underperformance as contained in this report", also pointing to poor revenue projections or performance in revenue collection and expenditure.

5.42 Yobe State submitted its 2011 & 2012 published Auditor General's reports just before this report. This report shows that total revenue projections in Yobe appear to have improved marginally with a 78% performance as against about 73% in 2010. But total budget expenditure was 70.4% of budgeted sum.

⁸⁹ Report of the Auditor General Yobe State for the year ended 31st December 2009 at page 25

Total recurrent expenditure increased by 11.9% from 2011 levels at ₦29,758,824,150.44. Indeed recurrent expenditure had a 98% performance against budgeted sum, whilst total Capital expenditure at ₦25,646,443,832.37 had a 53.34 performance as against the budgeted sum. There appears to be no reasonable improvements in IGR situation and or in budget discipline.

5.43 In **Ebonyi State** the total projected revenue for the year ending 31st December 2009 was **₦33,065,204,216** and the actual receipts was **₦17,137,205,356.67 (48.2%)**. As noted by the Auditor General, the variances observed in personnel costs which at times were up to 90%, point to a deficient budgetary system. The implication of such wide variances, the audit report pointed out, “ is that funds which would have been usefully spent for other Government activities lie idle until the strenuous process of virement can be applied”⁹⁰.

Table 5.5: prepared from narrative reports on revenue projections and actual collections found on pages 10-15 of the Report of the Auditor General on the Accounts of the Government of Ebonyi State for the Year Ending December 2009						
No	BUDGET TITLE	BUDGETED ESTIMATE	ACTUAL	POSITIVE VARIANCE	NEGATIVE VARIANCE	% VARIANCE
			RECEIPTS			
1						
2	Taxes	1,904,938,890	1,372,105,839.72		-532,833,050.28	27.97
3	Fines & Fees	2,827,754,400	272,752,263.11		-2,555,002,136.89	90.35
4	Fines & Fees from 13 Parastatals	1,140,818,056	1,854,170,582.91	713,352,526.91		62.53
5	Licenses	16,647,500	26,229,465.00	9,581,965		57.56
6	Earnings and Sales	299,342,600	339,047,372.25	39,704,772.25		13.26
8	Rent on Govt Pty	29,792,000	46,121,832.34	16,329,832.34		54.81
8	Interest Repayment and Dividends	354,127,770	148,741,526.44		-205,386,243.56	58
9	Statutory Allocation	26,491,783,000	15,317,376,262.40		11,174,406,737.00	42.18

⁹⁰ Report of the Auditor General on the Accounts of Government of Ebonyi State of /Nigeria for the year ended 31st Decemcar 2009 at page 70.

	Total	33,065,204,216	19,376,545,144.17		13,688,659,071.83	41.4
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5.44 In 2010 in Ebonyi State, though many internally generated revenue subheads did not perform well, there was remarkable improvement in the total internal generated revenue of Ebonyi State from N6, 086, 100,170.00 budgeted to ₦12,998,269,207.69. This resulted from a ₦10,908,544,840.56 contribution to internally generated revenue by Parastatals⁹¹.

5.45 Also in 2010 only 65.75% of the budgeted capital receipts in the Ebonyi State budget was received and estimates in many capital receipt heads were not met. In particular there were no receipts for the heads: “Proceeds from Debt Relief” and “Dollar Exchange Rate Gains” with huge budgets of 10 billion and ₦1.2billion respectively. However the heads of “Value Added Tax” and “Excess Crude” exceeded their respective budget projections by 7.45% and 71.28% respectively. Despite this, actual capital expenditure was only 36.29% (₦17,175,389,000.00) of the ₦47,322,701,400.00 amount budgeted⁹².

5.46 In 2009 and 2010 for example the Auditor General’s reports found discrepancies between IGR as shown in the books of Revenue Monitoring Unit of the Ministry of Finance and Economic Development and the 2009 & 2010 annual accounts from MDAs. Also in the 2010 report the Auditor General remarked on failure of MDAs to render returns on arrears on revenue, which were not collected as at December 31st 2010, drawing the attention of the relevant Ministry to this anomaly. In 2010 the Auditor General’s comments included the fact that some Establishments continue to exceed budgetary provisions in either their personnel or overhead or both, and the fact that no action is being taken on most of his previous audit report findings.

Table 5.6: Recurrent Revenue projection and actual collections from page 9 of the Report of the Jigawa State Auditor General for the Year Ending December 2009

Code	BUDGET TITLE	BUDGETED ESTIMATE	ACTUAL	VARIANCE %
			RECEIPTS	
1	State Taxes	1,002,000,000	1,394,197,767.75	39.14
2	Licenses General	164,290,000	196,436,766.76	19.57
3	Fines & Fees	551,500,000	680,603,855.54	23.41
4	Earnings and Sales	558,950,000	790,495,724.00	41.43
6	Rent on Corp Prop	186,060,000	227,082,072.09	22.05
7	Interest and Loan Repayment	950,200,000	1,352,571,014.14	42.35
8	Grant & Re-imbursements	372,000,000	490,752,131.04	31.92
9	Miscellaneous	490,000,000	792,140,026.72	61.66
10	Statutory Allocation	27,000,000,000	20,142,482,338.34	(25.4)
11	Excess Crude	7,000,000,000	11,829,003,884.22	68.99
12	VAT	5,000,000,000	5,437,062,060.61	8.74
13	Special Release(P.E.F)	7,000,000,000	7,042,951,797.53	0.61

⁹¹ Report of the Auditor General on the Accounts of Government of Ebonyi State of /Nigeria for the year ended 31st December 2009 at page 2

⁹² Ibid

14				
	Total	50,275,000,000	50,375,779,438.74	0.2

5.47 The total recurrent expenditure in **Jigawa State** for the year ending 31st December 2009 was ₦27,136,492,462.58, (40.41% of total expenditure) compared to the budgeted sum of ₦27,322,000,000.00 leaving unspent the sum of ₦185,507,537.42. The Capital expenditure budget projection was ₦49,378,000,000.00, and the actual expenditure stood at ₦40,014,033,874.21, which was 81% of the estimated capital budget and 59.58% of total expenditure. There is no doubt as echoed by the State Auditor General's comments that the performance of the Jigawa State budget revenue projections for 2009 was commendable, when compared with previous years. Also capital expenditure at 59.58% of total expenditure as against recurrent at 40.41% of total expenditure is remarkable when compared to other States in this study.

Code	BUDGET TITLE	BUDGETED ESTIMATE	ACTUAL	VARIANCE %
			RECEIPTS	
1	State Taxes	1,355,000,000	1,215,572,556.98	(10.29)
2	Licenses General	39,120,000	152,638,532.14	290.18
3	Fines & Fees	590,795,000	766,169,507.26	29.68
4	Earnings and Sales	705,235,000	316,466,909.57	(55.13)
6	Rent on Corp Prop	6,150,000	208,271.19	(96.61)
7	Interest and Loan Repayment	550,200,000	93,777,898.42	(82.96)
8	Grant & Re-imburements	400,500,000	467,076,141.25	16.62
9	Miscellaneous	112,000,000	264,865,129.50	136.49
10	Statutory Allocation	24,570,000,000	27,647,515,147.98	12.53
11	Excess Crude	7,960,000,000	5,189,122,171.49	(34.81)
12	VAT	6,465,000,000	6,524,506,140.86	0.92
13	Primary Education Board	7,822,000,000	8,204,214,298.55	4.89
14	Gunduma 60% staff	845,000,000	854,323,433.65	1.10
	Total	51,421,000,000	51,696,456,138.84	0.54

5.48 The recurrent budget estimate for Jigawa State in 2010 was ₦30,890,247,805.00 and total recurrent expenditure was ₦31,852,657,119.74, (which is 49.04% of total expenditure) with an excess expenditure of ₦962,409,314.74. The budgeted amount for capital expenditure was ₦37,725,711,518.00 and the actual amount spent was ₦33,095,583,350.52 (50.95% of total expenditure) with a variance of ₦4,630,128,167.48. This is an 87.73% performance of capital budget, as against over 100% performance by recurrent expenditure.

Table 5.8: prepared from information on page 3 of the Report of the Auditor General on the Accounts of the Government of Ogun State for the Year Ending December 2011

No	BUDGET TITLE	BUDGETED ESTIMATE	ACTUAL		% VARIANCE
			RECEIPTS	POSITIVE VARIANCE	
1	Taxes	11,015,000,000.00	10,541,750,245.85		4.3
2	Fines, Fees & Rates	17,472,569,000.00	9,649,068,950.40		44.78
3	Licenses	78,100,000.00	27,458,725.50		64.84
6	Earnings and Sales	3,750,908,000.00	1,746,535,496.54		53.44
8	Rent on Govt Pty	15,000,000.00	11,440,511.47		23.73
8	Interest Repayment and Dividends	-	64,157,398.85	64,157,398.85	100
9	Reimbursements	6,800,000.00	10,211,234.96	3,411,234.96	50.17
10	Miscellaneous	60,000,000.00	190,354,993.38	130,354,993.38	217.26
	Sub Total	32,398,377,000.00	22,240,977,556.95		31.35
Federation Account					
11	Monthly Allocation	35,430,773,000.00	43,710,851,812.52	8,280,078,812.52	23.37
12	VAT	8,560,000,000.00	7,133,567,207.28		16.66
13	Grants	8,000,000,000.00	1,446,983,549.62		81.91
	Sub Total	51,990,773,000.00	52,291,402,569.42	300,629,569.42	0.58
Loans					
14	Internal Loans	33,421,915,028.70	25,232,857,520.36		24.5

15	External Loan	6,800,000,000.00	N1,430,764,254.90		5,369,235,745.01	78.9 6
	Sub Total	40,221,915,028.07	26,663,621,775,26		13,582,932,528.1	33.7 1

5.49 The total approved estimates for **Ogun State** was One Hundred and Twenty Four Billion, Six Hundred and Eleven Million, Sixty Five Thousand, Twenty Eight Naira, Seventy Kobo (₦124,611,065,028.70) in the year ending December 2011 including approved internal loan estimate of Thirty Three Billion, Four Hundred and Twenty One Million, Nine Hundred and Fifteen Thousand, Twenty Eight Naira, Seventy Kobo (₦33,421,915,028.70) and external loan estimate of ₦6,800,000,000.00. Out of these a total of ₦24,295,858,188.28 was received as internal loan, and ₦1,430,764,254.90 was received as external loan. Total actual income was ₦104,245,148,879.36 and total expenditure was ₦84,751,472,922.06. Thus 83% of budgeted income was realized, an increase of over ₦37 billion Naira over the 2010 realized income of ₦66,621,559,973.34. From the realized income only ₦84,751,472,922.06 was spent, showing budget performance of 68.01%. This left an account balance which when added to the initial opening balance of about N1.8 billion gives a total bank balance of ₦21,384,402,900.44. Only 68.65% of budgeted IGR of ₦32,398,377,000.00 was collected indicating opportunistic projections in this respect. It is possible that with better revenue projections, the State may not have needed to borrow as much as ₦25,232,857,520.36 in internal loans in this year given its account balance above. An explanation was offered orally to the effect that internal loans were proceeds of bond flotations which came in very late in the year, and could not be expended in the 2011 budget year, but no effort was made to present evidence to buttress this explanation.

5.50 There was an increase of ₦19,235,021,094.39 (45.26%) in recurrent expenditure from 2010 levels. It is worthy of note that the total IGR collection of ₦22,240,973,556.95 could not meet the personnel cost of ₦34,122,373,188.29 without Federal allocations or loans. Capital expenditure performance was also not impressive. Out of ₦44,406,327,750.00 budgeted as capital vote only ₦23,015,691,056.59 was expended in a budget exceeding N124billion Naira, with receipts exceeding ₦104 billion, and loans of over ₦25 billion. The figures indicate that the actual capital expenditure for the year was less than the amount borrowed.⁹³ The percentage of capital to recurrent expenditure is obviously poor. Thus capital expenditure in Ogun State for the year ending 31st December 2011 was only 27.15% of total expenditure as against 56% in Cross River State in the same year or approximately 59 & 51% respectively in Jigawa in 2009 & 2010. The Ogun State IGR amounted to only 65.18% of the wage bill and 26.2% of total expenditure in the subject year.

Code	DETAILS OF REVENUE (N)	APPROVED ESTIMATES (N)	ACTUAL	EXCESS(N)	SHORTFALL(N)	VARIANCE (%)
			COLLECTIONS(N)			
403000	Licenses	60,283,371,60	71,357,150.67	11,073,779.07		18.37

⁹³ Page 4 of the Ogun State of Nigeria Report of the Auditor General on Accounts of the government of Ogun State for year ended 31st December 2011

406000	Interest and dividends	59,664,121.96	177,295,897.01	117,631,775.05		197.16
401000	Taxes(Direct & indirect)	9,290,787,935.44	5,899,516,128.10		3,391,271,807.34	36.5
402000	Fines & Fees	2,766,399,874.39	864,385,644.05		1,902,014,230.34	68.75
405000	Rent on govt Pty	16,960,000.00	16,275,620.00		684,380	4.04
404000	Earnings and Sales	317,536,150.51	309,303,225.60		8,232,924.91	2.59
407000	Miscellaneous	2,553,356,954.11	1,821,518,284.79		731,838,671.32	28.66
408000	Revenue Allocation	33,356,101,545.36	49,574,586,254.55	16,218,484,709.19		48.62
		48,421,089,953.37	58,734,238,202.77	16,347,190,263.31	6,034,042,013.91	1118.28

5.51 In 2011 accounting year, total revenue collected in **Cross River State** outstripped projected revenue with ₦10,313,148,249.40. Three subheads recorded excesses, while five heads recorded shortfalls. However, IGR was ₦9,159,651,948.22. This was ₦5,905,336,459.79 (39%) short of approved estimates of ₦15,064,988,408.01. The State obtained no external loan in 2011 and no provision was made in the budget for external loans. The State recorded a total sum of ₦7,457,812,284.72 as internal loans from an approved estimate of ₦21,900,000,000.00. There were net savings of ₦485,501,244.14 on revised estimates for recurrent expenditure of ₦40,566,388,760.07. Actual capital expenditure was ₦51,089,301,845.88 (46% of total revenue and 56% of total expenditure) as against approved estimates of ₦78,388,169,932.04. Total recurrent expenditure at ₦40,080,887,515.93 is 36.7% of total revenue and 44 % of total expenditure. Cross River State has a better capital to recurrent expenditure ratio than the Federal Government and most other States in this sample, comparable only to Jigawa in this regard. The Auditor General's report unlike other such reports reviewed, indicates measures taken already to seek explanations from MDAs with shortfalls in revenue collection.

5.52 The total approved recurrent revenue estimate for **Kogi State** in 2011 was ₦53,169,578,081.00 and out of this sum only ₦5,569,578,081.00 (10.5 %) constituted estimated IGR. Thus 89.5% of these approved estimates were to come from statutory allocations. Also at this level Kogi State IGR was 17% of its wage bill which was ₦19,802,989,286.00. Kogi State total personnel costs moved up from ₦14,147,764,426.00 in year 2010 to ₦19,802,989,286.00 partially as a result of commencement of payment of new minimum wage to workers. At year end a total revenue of ₦62,006,682,019.00 was received, and IGR contributed only ₦3,527,609,035.00 5.7% of actual revenue collected and less than 17.8% of the State's wage bill. IGR estimates in Kogi State remained opportunistic (only 63% of estimates was collected) though impact of statutory revenues pushed its total revenue receipts to a positive position.

5.53 *No evidence of measures for fiscal discipline or actual levels of fiscal discipline was initially provided by Katsina, and Taraba States.* Following the presentation of the project interim report on 19th June 2013 Katsina state presented its Auditor General's report for the year ending 31st December 2007. Also Taraba State following this event provided its audited reports for 2008-2010 but not 2011.

5.54 The Katsina 2007 report of the Auditor General submitted for this study has adopted a slightly different format which presents, the four statements in accordance with the Nigerian accounting model. However the report indicated only analysis of some **selected** sectors ie Education, Health , infrastructure and a few selected agencies and projects like the State Assembly, Central market project, construction of boundary wall fencing at Army Barracks Katsina. It fails to present a summary of Auditor General’s own global assessment of State revenue and expenditure or similar sectoral analysis of other important sectors like Agriculture, Rural Development etc. It does not present an analysis of budget estimates and actual capital and recurrent budget expenditure figures or ratios. However the Statement of Consolidated Revenue fund for 2007 found on page 21 of the Audit Report gives an indication of some of the projections and receipts.

Table 5.10 Extracts from Statement N0 3. Statement of Consolidated Revenue Fund 2007 found at page 21 of the Katsina State Auditor Generals report 2007

	Notes	Budget	Actual	Variance	Percentage
Opening Balance (A)		7,031,356,125.44			
Add Rev (Income) (B)					
Fines and Fees		1 230 811 420,00	208 615 174,58	-1 022 196 245,42	-83,05%
Earnings and Sales		32 672 765,00	267 769 525,76	235 096 760,76	719,55%
Rent on Govt Properties			4 589 703,10	4 589 703,10	100,00%
Interest and dividend			114 618 531,45	114 618 531,45	100,00%
Statutory Allocation	1	27 000 000 000,00	24 388 151 036,42	-2 611 848 963,58	-9,67%
VAT Allocation	2	3 000 000 000,00	3 966 968 435,80	966 968 435,80	32,23%
Special grant	3	5 000 000 000,00	7 737 632 641,34	2 737 632 641,34	54,75%
Other Grants (IDA World Bank)	3a		445 018 867,11	445 018 867,11	100,00%
Licenses & Taxes		19 170 000,00	782 076 700,07	762 906 700,07	3979,69%
Miscellaneous		788 091 225,00	1 033 101 877,47	245 010 652,47	31,09%
Total Revenue (B)		37, 070 745 410,00	38, 948 542 493,10	1 877 797 083,10	5,07%
Total Funds Available A+B			45 979 898 618,54	45 979 898 618,54	100,00%

5.55 Going by Table 5.10 above, there is no doubt that variance between total projected revenue and actual was within reasonable limits in Katsina State in 2007. Also variances between individual revenue heads are not as wide as found in some other states in this study sample. It would appear that Katsina State had positive opening balances both in 2006 and 2007.

5.56 The Katsina State IGR is low in comparison with the total revenue. It amounts to only ₦2,410,771,512.44), (6%) out of a total revenue of ₦38,948,542,493.11. The Auditor General’s report indicates that a large amount of this IGR was generated from Pay As You Earn and Withholding Tax System, indicating that other income tax brackets and other forms of taxes are generally not performing. This IGR is about 27% of the ₦8,920,089,060.83 required to meet personnel costs (emoluments) alone without pension, gratuity and other overhead costs by the State, which when added bring total recurrent expenditure to (₦14,424,273,656.17). Thus the State will be unable to bear more than 27% of its personnel costs without statutory transfers from the Federal Government. The Katsina Audit report 2007 did not make sufficient disclosures on other important issues.

5.57 The 2011 Katsina State Auditor General’s report indicates that actual total expenditure both recurrent and capital was 52.54% of total 2011 budgetary provisions. Actual recurrent expenditure was 49.20% of total expenditure, and actual expenditure on capital projects amounted to 50.81% of total expenditure. The revenue deficit (variance between projected and actual revenue collected) stood at 23.79%. The Auditor General’s report indicates that receipts from Federation Account constituted 92.48% of total revenue yield of the State, and the IGR was only 7.39% of total actual revenue yield of the State. The State internal revenue generation is grossly inadequate to finance salaries alone without other overheads, and fell by 54.88% from year 2010 levels. The 2010 and 2011 reports of the Auditor General of Katsina State witnessed improvements from the 2007 report in terms of format, manner of presentation and level of disclosures.

Table 5.11 Extracts from page 27 of Report of the State Auditor General on the Accounts of the government of Taraba State for the Year Ended 31st December 2009

N0	Budget (N)	Actual (N)	Variance	Performance
Recurrent Revenue	28 836 483 425.00	34 606 036 230.65	5 769 552 805.65	20%
Capital Receipts	27 438 207 025.00	10 235 214 813.84	-17 202 992 211.16	-63%
Recurrent Expenditure	28 836 483 425.00	21 644 430 462.72	-7 192 052 962.28	-25%
Capital Expenditure	27 438 207 025.00	7 655 683 217.07	-19 782 523 807.93	-72%

5.58 Though **Taraba State** Audit report does not give us the opportunity of comparing budget figures on each revenue subhead with actual receipts on the same subhead, it gives a picture of the aggregate recurrent and capital budget and actual expenditure. As in Table 5.11 above, capital expenditure achieved only 28% performance, recurrent expenditure achieved 75% performance, whilst recurrent revenue and capital receipts realized 120% and 37% performance each. The expected statutory revenue for the year was N18.6 Billion, but ₦32.1Billion or 173% far outstripping estimates, was realized. On the other hand VAT budget estimates was 4 Billion Naira but only ₦381,351,731.45 or 10% was realized. The 173% performance of statutory allocations is a measure of the volatility of revenue. IGR stood at ₦1,326,393,723.15, which is about 4% of statutory allocations indicating how dependent the State is on statutory allocations. The IGR is less than half of State personnel costs and less than 10% of aggregated personnel emoluments and overhead costs. The report cites many cases of expenditure above appropriated

figures, e.g. The Governor's office had a budget provision of ₦350,000,000.00 but spent ₦3,188,614,697.31, which is over 89% of appropriated sum, on overhead costs⁹⁴. There were also a few agencies that recorded under expenditure of appropriated sum. It is the same emerging picture of underestimation and over estimation of revenue, and excess expenditure in many cases as in other States surveyed.

5.59 Taraba State Auditor General's Report for the year ending 31st December 2010 did not provide an organized comparison of estimated and actual revenue. In 2010 Taraba State IGR rose to ₦3,090,104,965.14, but given the increases in overhead expenditure, the ratios of IGR to personnel and overhead costs remained in the same region. Statutory allocation estimate was ₦22,237,654,156.00 while receipts was almost double at ₦42,172,587,260.72 repeating the pattern in the previous year. However this time VAT receipt estimated at ₦5,547,992,640.00 was exceeded at ₦797,824,602.43. Like in 2009 excess expenditure over budgeted sums was common amongst many MDAS. Excess personnel expenditure over budget estimates for 16 MDAs including the Governor's Office was ₦481,969,913.81 with Ministry of Finance leading in excess personnel expenditure. Also excess overhead expenditure⁹⁵ for the same agencies amounted to ₦10,958,477,215.98 which is over 25% of total appropriation in 2010 budget indicating the levels of budget indiscipline.

5.60 The Audit Report noted several infractions of existing rules by Government-owned Commissions, Boards and Parastatals. These infractions include but is not limited to failure to maintain store records, unretired and unreceipted payment vouchers, payment vouchers without back up documents, payments without supporting documents, and payments for jobs not contracted⁹⁶. The report did not however indicate any actions taken regarding previous or current findings of infractions.

Timely Reporting on Revenue and Expenditure

5.61 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 IPSAS (International Public Sector Accounting Standards) issued by the International Public Sector Accounting Standards Board (IPSASB) of the International Federation of Accountants (IFAC).

5.62 The mode of public reporting on Government revenues and expenditures is the annual report and financial statements of the Accountant General. Extant rules and practice (but not The Constitution or any Statute) except in the case of Cross River State, requires the Financial Statements of the Accountant General to be ready within six months of the end of the financial year for audit, and The Constitution

⁹⁴ Page 20 of the Report of the Auditor General on the Accounts of the government of Taraba State of Nigeria for the YR ended 31st December 2009.

⁹⁵ Page 30 of the Report of the Auditor General of Taraba State on Financial Accounts for Yr Ending 31st December 2010

⁹⁶ Pages 38 -78 of the Report of the Auditor General on the Accounts of the Government of Taraba State for the YR ended 31st December 2010.

requires the Audit to be ready within 90 days of completion of the Financial Statements. The Cross River State PFML requires its Accountant General to submit the Financial Statements for Audit within three months of end of the year⁹⁷. However, State Governments generally do not publish the Financial Statements beyond submitting the audited Financial Statements and Audit Report to the Legislature and in some cases publication of selected extracts. Among the States in this study sample however, Cross River, Ekiti, Ondo, Taraba, Katsina and Yobe submitted published Auditor General's reports⁹⁸. Nassarawa State submitted published audited Financial Statements not Auditor General's report. The Federal Government is also a relative good exception. It publishes the audited Financial Statements,⁹⁹ but not necessarily Audit Reports on the website.¹⁰⁰ Both Cross River and Ekiti States claim to have followed the example of the Federal Government by publishing on their websites.

How did the ten (10) State Governments under study perform with regard to timeliness of completion of their Financial Statements and Audit Reports?

5.63 Table 5.1 tabulates the dates of submission of Financial Statements for audit and submission of Audit Reports to the Houses of Assembly, wherever the information is available. Among States surveyed, Cross River, Ebonyi, Ekiti, Jigawa, Nassarawa Ogun, Kogi and Yobe States provided Auditor General's reports indicating State accounts were submitted and audited up till 2010. Also all States provided some evidence though inconclusive in some cases, of date of submission of State Accounts to their Auditors' General. Of the ten States, Cross River, Kogi, Ekiti, Ogun and Yobe States have provided evidence that 2011 Accounts has been submitted and Cross River, Ekiti, Kogi, Ogun provided evidence that 2011 Audit Report have been completed and submitted to the House of Assembly. The latest Audit Report provided by Katsina State is its 2011 Auditor General's report, while Taraba State provided its Audit Report up till 2010. Only Cross River, Ekiti and Ogun States provided evidence that their Houses of Assembly annually conduct Committee Hearings on the Auditor General's Report and issue recommendations and directives by way of Resolutions in line with their Constitutional responsibility. Though a letter from the Katsina State Auditor General indicated its report is submitted to the relevant House Committee, there was no evidence that the House Committee conducts any hearings as required by extant rules and laws.

5.64 However only Cross River State has a mechanism backed by law to ensure follow up on findings of the Auditor General and the House of Assembly on Auditor General's reports¹⁰¹. Cross River State Audit Report provided a listing of follow up actions taken on these findings of the Auditor General and House of Assembly. In Cross River State, the Audit Report indicates findings of the Auditor General in respect of which the House of Assembly is yet to pass a Resolution one way or the other. This suggests that the House of Assembly appears to choose and pick which of the Auditor General's findings to investigate immediately and which is to be attended to later, or not at all. Sometimes investigations on such findings are also delayed by non-attendance of witnesses and in an instance cited by the Clerk of the Cross River State House of Assembly, the House had to issue a warrant to arrest a Commissioner who, consequent upon the arrest warrant, then appeared and answered to the queries. The challenge however is that some of such issues from previous years remain pending beyond the following year. There was however no reports of examples of follow up action after House of Assembly Resolutions in the case of Ekiti and Ogun States as found in Cross River State.

⁹⁷ S 13 of the Cross River State Public Finance Management Law No 12 of 2011

⁹⁸ Published here does not mean published in any news media, but means printed in book form like a published book.

⁹⁹ See www.oagf.gov.ng for federal financial statements and www.kwarastate.gov.ng for financial statements of the Kwara state government.

¹⁰⁰ The 2007 report of the Auditor General for the Federation is on the website of the Office of the Auditor General for the Federation, www.oaugf.gov.ng

¹⁰¹ S 14 of the Cross River State Public Finance Management Law N0 12 of 2011

5.65 The table below indicates dates and evidence of submission of latest State Accounts found during the study. While Cross River State dates of submission of Financial Statements and Audited reports accords with the six months provision of its Audit Law (Cap A 20 laws of Cross River State), it fails to meet the more aggressive timeline of three months from the end of the year set by its 2011 Public Finance Management Law. In the case of Ogun State, the accounts submission for 2011 was done within time in April 2012, but submission of Auditor General's report to the Assembly was done two months late in September 2012. Indeed Ogun State produced evidence of submission of 2012 Financial Statements at the time of the field study. In some other instances it is either that evidence available indicates submission of accounts and Audit Report without indicating the exact dates of submission or dates indicated show that submission has failed to meet relevant deadlines. Yobe State was the only State to submit 2012 Auditor General's Report in addition to 2011.

State	Accounts/Financial Statements		Audit Report	
	Date of Latest Submission	Source/Comment	Date of Latest Submission	Source/Comment
Cross River	FY 2011 31 st May-21 st June 2012	Auditor General's Report	FY 2011 15 th August 2012	Letter of Auditor General to the HA dated 15 th August 2012
Ebonyi	FY 2010 accounts concluded and audited	FY 2010 Audit report which does not provide date of submission; state did not provide other evidence	File copy of a letter purporting to submit 2009 & 2010 audited annual reports to the state House of Assembly, without a receipt stamp or acknowledgement	Letter dated 11 th July 2012
Ekiti	FY 2011 accounts concluded and audited	FY 2011 Audit Report, which does not provide date of submission, State did not provide other evidence	2011 Audit Report submitted to the House and received on 30 th Nov 2012	By letter dated 30 th Nov 2012 with the received Stamp on its face giving date of receipt
Jigawa	FY 2010 submitted and audited	FY 2010 Audit Report, which does not indicate date of submission	Information not provided	
Katsina	Submission of FY 2011 draft Accounts	Letter dated 30 th January 2013 by the Accountant General with received stamp dated 11 th Feb 2013. 2011 Auditor General's report at page 1 indicates receipt of Yr 2011 accounts by the AG on 1 st February 2013.	Oral Claims of submission	A letter dated 16 th May 2013 to this project consultant implied that the Katsina State Auditor Generals Reports for 2009-2011 has been submitted to the State legislature, but no independent evidence of submission was produced
Nassarawa	FY 2010 accounts submitted and	FY 2010 Audit report, which does not indicate date of submission	Information not provided	

Table 5.10: Timeliness in Submission of Accounts/Financial Statements and Audit Reports

State	Accounts/Financial Statements		Audit Report	
	Date of Latest Submission	Source/Comment	Date of Latest Submission	Source/Comment
	audited			
Ogun	FY 2011 accounts submitted two months early on 25 th April 2012	Accountant Generals letter dated 24 th April 2012, acknowledged on 25 th April 2012	FY 2011 submitted in time on 14 th Sept 2012	Letter of the State Auditor General dated 14 th Sept 2012 and acknowledged on the face of it.
Taraba	FY 2009 and 2010 submitted	Letter dated 1 st August 2011 from the Acct General to the Auditor General but with no acknowledgement of receipt	2010 Audit report submitted to State house	Duplicate copy of forwarding letter dated 3 rd August 2012 acknowledged same day
Kogi	FY 2011 submitted 20 th Nov -6 th March 2013	Page 1 of Auditor General's report	Submitted	Copy of a letter signed by State Auditor General dated 13 th March 2013 without acknowledgement of receipt
Yobe	FY 2010 accounts submitted and audited. Also 2011 & 2012 draft accounts submitted	Duplicate copy of a letter dated 22-10-2012 received same day as shown by Auditor Generals received stamp indicates submission of 2011 accounts to the Auditor General's office on 22-10-12. Yr 2012 published Auditor General's report received indicates that the Auditor General received financial Accounts for Yr 2012 on 10 th April 2013.	FY 2010 Audited report submitted to the House on 19th Dec 21st 2012 No indication as to if this 2012 Auditor General's report was submitted to the House	Speech of the Auditor General to the House during presentation of the audit report on 19 th Dec 2012

System of Accounting and Auditing Standards and Related Oversight

5.66 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)).

System of Accounting

5.67 Legal provisions and enactments on accounting Standards in Nigeria include the 1999 Constitution, the Finance (Control and Management) Act, 1957,¹⁰² and the Financial Regulations, 2009.¹⁰³ These provisions establish the office of the Accountant General. The Accountant General runs the Treasury,¹⁰⁴ 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 (or Instructions) make detailed provisions on rules and procedures on all financial processes, transactions and procedures. Extant regulations and practice in many instances (but not law) require the Accountant General to prepare the final accounts and submit same for audit within six months of the end of the year. Thus by practice the financial accounts of the Federal/State 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,¹⁰⁵ the audited accounts should be ready by the end of September each year.

5.68 In Cross River State however, its recent Public Finance law requires the Accountant General to submit the financial statement of the State for audit within three months of end of each year. In addition this law also requires publication of the audited reports once submitted to the State house of Assembly, and a written explanation by the Auditor General, should he fail to submit the audit report to the House within 90 days of receipt of the Financial Statements from the Accountant General. The Law prescribes a fine of One Hundred Thousand Naira (₦100,000) or imprisonment for a prison term not exceeding five years for any accounting officer who willfully or negligently fails to comply with its provisions.

5.69 Among the States surveyed, the Cross River State law is the only recent organic Public Finance Law.¹⁰⁶ While this research did not find evidence that the sanctions provided in this law has been enforced, it found evidence that Cross River State PFM system largely complies to the provisions of its new PFM law. There indeed appears to exist more political will in Cross River State to improve the PFM system, than most of the other States surveyed.

¹⁰² State governments should have their own independent organic finance laws, but some States adopt this federal legislation. For example, Cross River state has passed its its own public finance law. Some states have are in the process of enacting their own laws, while some regard their Fiscal Responsibility Laws as their organic finance laws, but this may be erroneous as shown below.

¹⁰³ State governments should also have their own versions referred to as, *Financial Instructions*. However, some states submitted earlier editions of the federal Financial Regulations as evidence of what they use (see discussion on ‘effective and efficient systems of risk management and internal controls’ below for details).

¹⁰⁴ Referred to as the Office of the Accountant General, following the 1970s and 80s reforms that changed the name from the Treasury Department of the Ministry of Finance. However, this documents (FIs) uses ‘Office of the Accountant General’ and ‘Treasury’ interchangeably as is also the case in practice.

¹⁰⁵ See discussion on auditing below

¹⁰⁶ Cross River State Public Finance Management Law No 12 of 2011

Public Accounting Standards

5.70 *The International Public Sector Accounting Standards (IPSAS)*¹⁰⁷ are internationally recognized public accounting standards, developed by the International Public Sector Accounting Standards Board (IPSASB). The IPSASB “develops high-quality International Public Sector Accounting Standards (IPSASs), guidance, and resources for use by public sector entities around the world for preparation of general purpose financial statements.”¹⁰⁸ Countries may adopt these standards in preparing their Financial Statements or produce their own public sector standards complying with the minimum standards of IPSAS.

5.71 *The Nigerian Conference of Accountants’ General of the Federation and States has been taking steps towards formal adoption of IPSAS for public sector accounting and reporting in the country.* Indeed, the Office of the Accountant General of the Federation (OAGF) had been making official pronouncements in this regard prior to the enactment of the Financial Reporting Council of Nigeria Act in 2011.¹⁰⁹ For example, the OAGF¹¹⁰ conducted an IPSAS gap analysis in January 2010, identified disparities between current public sector accounting practices and IPSAS, and produced a roadmap towards full adoption of IPSAS.¹¹¹ The OAGF has conducted nationwide sensitization workshops and activities (including study tours to countries that have migrated to IPSAS) as part of activities in the roadmap towards adoption of IPSAS.

5.72 *The new Financial Reporting Council (FRC) has sole responsibility for making accounting, auditing, and reporting standards for the private and public sectors (see Box 5.2).* The Council may either make its own standards or adopt any existing international standards, with which all entities must comply.¹¹² The Council adopted all the statements of commercial accounting practice issued by the Nigerian Accounting Standards Board, which it replaced. However, the Council has issued only one statement on public sector practice thus far – *Statement of Recommended Practice on Retirement Benefits in the Public Sector*, but it has not yet pronounced on adoption of IPSAS or any other standard. The TUGAR 2012 study report¹¹³ provides a succinct brief on the IPSAS and the scope of standard setting and regulatory powers of the new Financial Reporting Council of Nigeria. See www.tugar.org.ng.

5.73 In a meeting on 28th July 2010 the Federal Executive Council approved the adoption of International Public Sector Accounting Standards (IPSAS) in Nigeria. Subsequently, the Federal Account Allocation Committee (FAAC) at its meeting of 13th June 2011 set up a technical committee to provide a road map for adoption, implementation and application of IPSAS in the three tiers of government in Nigeria. The Sub-committee has developed a unified a National Chart of Accounts (COA), the format for General Purpose Financial Statements (GPFS) for IPSAS Cash and Accrual as well as the Accounting Policies. It has been agreed that the IPSAS cash basis of accounting will be implemented with effect from 1st January 2014, whilst IPSAS accrual basis of accounting will be implemented from 1st January 2016. State and Federal Government representatives claim that preparation of 2014 budgets are largely based on the new chart of accounts. This has been confirmed by a Circular issuing from the Office of the Accountant General (FAAC Sub-Committee on Road Map for Adoption of IPSAS) dated 13th May 2013.

¹⁰⁷ Issued by the International Public Sector Accounting Standards Board (IPSASB) - formerly the Public Sector Committee - of the International Federation of Accountants, see <http://www.ifac.org/public-sector>

¹⁰⁸ <http://www.ifac.org/public-sector>

¹⁰⁹ The Act equips the Financial Reporting Council with powers to produce or adopt accounting, auditing, and reporting standards for both public and private sector Nigeria.

¹¹⁰ In conjunction with the Office of the Accountant General of the Federation and the defunct Nigerian Accounting Standards Board (NASB)

¹¹¹ See Federal Republic of Nigeria (2010): **Nigeria Public Sector Accounting - Comparison with International Public Sector Accounting and Auditing Standards (Country Report)**, January 2010

¹¹² The Council has powers of enforcement, as well, s. 7(2)a of the Act; see Box. 5.2.

¹¹³ Mapping Scoping Survey of Anti-corruption and governance measures in public finance management(PFM) A study of Ten States of (Adamawa, Anambra, Bayelsa, Benue, Delta, Kaduna, Imo, Niger, Ondo, and Sokoto) states

The Accountant General of the Federation has also in June 2013 communicated these developments to all State Commissioners for Finance by a Circular dated 18th June 2013 requiring them to set up State and LGA IPSAS Accounting Standards (IPSAS) implementation committees.

- 5.74 Accordingly the Federal Government has published the following documents;
- a) Format of General Purpose Financial Statements (GPFS) IPSAS Cash Accrual for the Federal Government and 36 States and the Federal Capital Territory 2012
 - b) National Chart of Accounts (COA) IPSAS Cash and Accrual 2012
 - c) Template for IPSAS compliant budget (IPASAS cash budgets) in 2013
 - d) Adoption of International Public Sector Accounting Standards (IPSAS) in Nigeria; What you need to Know 2013.
 - e) National Chart of Accounts (NCOA) Users Manual 2013

5.75 The challenge however is that up until now, the Financial Reporting Council empowered by the Financial Reporting Council Act 2011 to issue Accounting and Auditing Standards for the public and private sector in Nigeria is yet to make a documented statement on adoption of IPSAS. Even though stakeholders claim that representatives of the Council are involved in the developments referred to above as members of the FAAC committee, it is doubtful that this fulfills the requirements of the law. It is advised that the Council should quickly consider and adopt the steps so far taken in public and gazette such an adoption to legitimize the steps. This is important since the Accountant General, the FAAC committee at the Federal, State and LGA committees lack power to issue Accounting Standards in Nigeria. The import of neglecting to do so may be that these steps already taken may not be binding in certain respects.

What standards or rules guided the preparation of public Financial Statements up until 2013 , given the lack of formal Accounting Standards ? How do these rules compare with internationally accepted standards, such as IPSAS? Specifically, do these rules include sufficient accountability and disclosure measures? To what extent have the ten State governments in this study complied with these rules in preparing their Financial Statements? The next few paragraphs will provide some answers.

5.76 The Conference of Accountants' General for the Federation and States issued a “*Financial Reporting Model*” for the Federal, States, and Local Governments in 2002.¹¹⁴ The model standardized government/public reporting to make them comparable. This reporting model is not a statement of accounting standard, accounting policy, or reporting standard. They do not purport to be so, neither do they suggest compliance with international public sector accounting standards (IPSAS) issued by the International Federation of Accountants (IFAC). Indeed, the reporting model enjoins State Governments to adopt any accounting policies and standards they wish to use, be consistent with them, and disclose them in the books.

5.77 Specifically, the model requires that the “Notes to the Financial Statements should present information about the basis of preparation of the Financial Statements and the use of specific accounting policies selected and applied for significant transactions and other events. For purposes of users’ understandability and comparability, notes to the accounts are normally presented in the following order:

- Statement of compliance with any known accounting standards
- Statement of accounting policies applied
- Supporting information for items presented on the face of the Financial Statements

¹¹⁴ Report on Standardization of Federal, State and Local Governments Accounts in Nigeria, volume 2: Executive Summary and Reporting Model, pages ix - x

- Supporting Statements
- Additional disclosures

5.78 The ‘model’ requires a ‘minimum’ of four statements as follows, (i) Statement No. 1: Cashflow Statement, (ii) Statement No. 2: Statement of Assets and Liabilities, (iii) Statement No. 3: Statement of Consolidated Revenue Fund, and (iv) Statement No. 4: Statement of Capital Development Fund.

5.79 *This Study found evidence that the ten State Governments generally comply with the ‘model reporting’, but practices differ widely on “additional disclosures” until recently. Katsina trailed behind in the level of disclosures as observed from its 2007 Auditor General’s report which was until recently its most recent Audited report available. However with updating and submission of its accounts up to 2010 & 2011, improvements were recorded and the accounts present detailed breakdown of revenues and expenditure, compositional analysis, investments and holdings, but yet fails to disclose separately specific salaries of top political leadership and charges to the consolidated fund. It also did not present details of audit queries.*

5.80 In the case of **Nassarawa State**, its schedule of recurrent expenditure attached to the Auditor General’s report shows a breakdown of each MDA’s overhead expenditure by their types.

5.81 Also the spirally bound **Ebonyi State** Audit report presented provides a very detailed breakdown of revenues and expenditures by each MDA according to types as seen from portions of the financial statement annexure to the Auditor General’s report. It also provides details of internal and external loan repayments, showing interests in each case, but does not disclose Audit Queries or similar findings of infractions. Given the practice in some other States, it is possible there may be a domestic report dealing with such information not provided for in the Audit Report submitted for this study. We are unable to determine whether or not the Ebonyi State accounts contain a Statement of Accounting Policies since the State has not provided the complete copy of the State Financial Statement.

5.82 The published **Ogun State** Auditor General’s report is certified subject to comments and observations contained in Auditor General’s inspection reports issued for attention of the Accountant General. It would appear that the complete volume of observations and comments are not all disclosed to any other person other than the State Accountant General, however some extracts of these comments regarding selected MDAs are contained in the Auditors Report. There is no evidence that the rest of these comments have been made public and they were not presented for this study by either the Accountant General or the Auditor General.

5.83 **Yobe State** however provided its published Financial Statements which contains a Statement of Accounting Policies and compliance to standards.

5.84 In the case of **Ekiti and Kogi States**, the Auditor General’s report for the year ended 2011 has a fuller copy of the Financial Statements as annexure. This annexure (financial Statement) contains both the Statement of Accounting Policies and Compliance with Applicable Standards. However while Ekiti State provided a published copy, Kogi provided a spirally bound copy. Neither of the surveyed States has provided details of salaries of all political office holders. Ebonyi State provides separated annual salaries of the Governor, Deputy Governor and Auditor General, but presents others including that of the State House of Assembly in lump sum, agency by agency. None of the States discloses information on the utilization of ‘Security Votes’ attached to the Governor’s Office. Financial Statements lump together interest and amortization in many instances. They also embed Security Votes within the expenditure of the office of the Governor without delineation.

5.85 The ‘reporting model’ in the sample States does not generally follow the manner of presentation in the State budgets, further complicating expenditure tracking. For example, Financial Statements do not report all the costs relating to an administrative unit together. Instead, they report personnel, overheads, and capital costs in different places in the books, requiring additional calculations to determine the total cost for the entity. However, budget books usually show the total cost of an entity and its components in one place, easing comparison. *Table 5.2* summarizes the situation in the ten States. Most States surveyed indicate they are preparing to adopt the IPSAS reporting model.

Table 5.11: Extent of Compliance of Financial Statements with Local Reporting Formats

State	Responsibility for Financial Statements/compliance to standards	Disclosure of Accounting Standards & Policies	*Statement No. 1: Cashflow Statement	Statement No. 2: Statement of Assets and Liabilities	Statement No. 3: Statement of Consolidated Revenue Fund	Statement No. 4: Statement of Capital Development Fund	Additional Disclosures: notes t the Accounts
Cross River	Included in the financial statements	Included	Included	Included	Included	Included	FY 2010 accounts Disclosures – detailed breakdown of revenues and expenditures, and contractual liabilities. Un resolved audit queries 1999-date, audit queries not attended to by house of Assembly Nondisclosures; security votes; etc.; details of annual salary political office holders, first line deductions, internal and external loans repayments and interests, etc. reporting format different from budget format, making expenditure tracking difficult.
Ebonyi	Included in Financial Statements Annexure to Auditor Generals Report	No Statement of accounting policies found on portion of FS annexure to Audit report; This may be found in the full FS. It however has a statement of compliance to standards	Included	Included	Included	Included	FY 2010 accounts Disclosures – detailed breakdown of revenues and expenditures, including overheads according to MDAs , details of annual salary of Governor, Dpt Governor, Auditor General, but present other political office holders in lump sum agency by agency; etc., internal and external loans repayments and

Table 5.11: Extent of Compliance of Financial Statements with Local Reporting Formats

State	Responsibility for Financial Statements/compliance to standards	Disclosure of Accounting Standards & Policies	*Statement No. 1: Cashflow Statement	Statement No. 2: Statement of Assets and Liabilities	Statement No. 3: Statement of Consolidated Revenue Fund	Statement No. 4: Statement of Capital Development Fund	Additional Disclosures: notes t the Accounts
							interests, details of first line deductions from federal account, interest payment,; Nondisclosures ; security votes; etc.; reporting format different from budget format, making expenditure tracking difficult, audit queries and infractions
Ekiti State	Included in Financial Statements of the Accountant General of Ekiti State submitted and also Annexure to 2011 Audit report of the Auditor General	Included	Included	Included	Included	Included	FY 2011 accounts as in annexure to audit report; Disclosures – lump sum revenues,/ expenditures only, Excess expenditure above appropriation by MDAs, financial assets, foreign/ external loans in lump sums, etc. Nondisclosures - interest payment, No detailed breakdown of political office holders' salaries; No detailed breakdown of revenue/ expenditure by type, No disclosure of security votes; etc.; reporting format different from budget format, making expenditure tracking difficult

Table 5.11: Extent of Compliance of Financial Statements with Local Reporting Formats

State	Responsibility for Financial Statements/compliance to standards	Disclosure of Accounting Standards & Policies	*Statement No. 1: Cashflow Statement	Statement No. 2: Statement of Assets and Liabilities	Statement No. 3: Statement of Consolidated Revenue Fund	Statement No. 4: Statement of Capital Development Fund	Additional Disclosures: notes t the Accounts
Jigawa	Only portions of Financial Statement are extracted as annexure to 2010 Audit report, and this does not include relevant statements. This may be contained in the financial statements which were not produced	Not included	Included	Included	Included	Included	FY: 2010 accounts as in Annexures to audit report. Disclosures – investments, allocations of recurrent and capital expenditures to MDAs, but not expenditure details Non disclosures: details of IGR; Details of exp/rev by types, interest payment , political office holders salaries; ,security votes; etc.; reporting format different from budget format, making expenditure tracking difficult
Katsina	Included in the Financial Statement annexure to published auditor general's report	Included	Included	Included	Included	Included	Disclosures; Incomes from placements and investments, Sectoral expenditure figures not broken down, grants to state agencies listed but not broken down. Discloses some infractions, External Debt profile Non Disclosures ; , recurrent costs not broken down and no details provided. No schedule of internal debts or of repayments whether principal

Table 5.11: Extent of Compliance of Financial Statements with Local Reporting Formats

State	Responsibility for Financial Statements/compliance to standards	Disclosure of Accounting Standards & Policies	*Statement No. 1: Cashflow Statement	Statement No. 2: Statement of Assets and Liabilities	Statement No. 3: Statement of Consolidated Revenue Fund	Statement No. 4: Statement of Capital Development Fund	Additional Disclosures: notes t the Accounts
							or interest; details of exp/rev, first line charges and political office holders salaries; security votes; etc.; No breakdown of overhead exp by subject, reporting format different from budget format, making expenditure tracking difficult
Kogi	2011 Audit Report contains extracts from financial statement which includes statement on responsibility for financial Statements compliance	Included	Included	Included	Included	Included	Disclosures ; Schedule of internally generated revenue MDA by MDA, recurrent expenses broken down by types and MDAs, capital expenditure by MDAs Non disclosures: No schedule of internal and foreign debts or of repayments whether principal or interest, details of exp/rev, first line charges and political office holders salaries; security votes; etc.; reporting format different from budget format, making expenditure tracking difficult
Nassarawa	Included in financial statements submitted	Included in the financial statements submitted	Included	Included	Included	Included	YR 2010 & 2011 Audited Financial statements submitted. Discloses details schedule of recurrent/capita expenditure MDA

Table 5.11: Extent of Compliance of Financial Statements with Local Reporting Formats

State	Responsibility for Financial Statements/compliance to standards	Disclosure of Accounting Standards & Policies	*Statement No. 1: Cashflow Statement	Statement No. 2: Statement of Assets and Liabilities	Statement No. 3: Statement of Consolidated Revenue Fund	Statement No. 4: Statement of Capital Development Fund	Additional Disclosures: notes t the Accounts
							by MDA, Details of grants, subventions and contributions . Non disclosures: ; first line deductions from federal allocations, interest payment (lumped together with repayment of principal), details of exp/rev, political office holders salaries; security votes; etc.; reporting format different from budget format, making expenditure tracking difficult
Ogun	Published 2011 Audit report provided with limited extracts from financial statement which does not contain a statement of compliance with accounting standards, Audit certificate contained is issued subject to Auditor Generals comments and observation with respect to which only limited extracts for some MDAs are disclosed	Not included, may be found in the FS which was not presented.	Included	Included	Included	Included	Disclosures ; Extracts of audit inspection reports of some MDAs. Non disclosures – Interest on loan repayment and repayments of principal not separated, details of first line deductions from federal transfers, political office holders salaries; security votes; break down of expenditures and revenue by types and MDAs etc.;
Taraba	Included in 2010 Audit Report	Included	Included	Included	Included	Included	Disclosures ; Extracts of audit inspection reports of some MDAs. Statements of personnel costs MDA by MDA, statement sof overhead costs

Table 5.11: Extent of Compliance of Financial Statements with Local Reporting Formats

State	Responsibility for Financial Statements/compliance to standards	Disclosure of Accounting Standards & Policies	*Statement No. 1: Cashflow Statement	Statement No. 2: Statement of Assets and Liabilities	Statement No. 3: Statement of Consolidated Revenue Fund	Statement No. 4: Statement of Capital Development Fund	Additional Disclosures: notes t the Accounts
							but not broken down by sub heads, bank overdrafts Non disclosures – Interest on loan repayment and repayments of principal not separated, details of first line deductions from federal transfers, political office holders salaries; security votes; break down of expenditures and revenue by types etc.
Yobe	Provided published copies of both Audit reports and Financial Statements for year ending 2010 containing statement on compliance to standards	Included	Included	Included	Included	Included	FY 2012 Schedule of quoted and unquoted investments financial assets, schedule of Miscellaneous exps, Schedule of MDA exps MDA by MDA, reporting format mirrors budget format, making expenditure tracking easier, deductions at source of statutory revenue, comments on accounts of parastatals Non disclosures – Interest on loan repayment and repayments of principal not separated, details of first line deductions from

Table 5.11: Extent of Compliance of Financial Statements with Local Reporting Formats

State	Responsibility for Financial Statements/compliance to standards	Disclosure of Accounting Standards & Policies	*Statement No. 1: Cashflow Statement	Statement No. 2: Statement of Assets and Liabilities	Statement No. 3: Statement of Consolidated Revenue Fund	Statement No. 4: Statement of Capital Development Fund	Additional Disclosures: notes t the Accounts
							federal transfers, political office holders salaries; security votes; etc.;
*The numbering of the statements differs across states, but the headings are the same or at least similar.							

System of Public Auditing

5.86 The 1999 Constitution of the Federal Republic of Nigeria as amended provides for audit of the accounts and financial statements of States in *ss. 125 – 128*. Each State must and does have an Auditor General nominated by the Governor and confirmed by the State House of Assembly. 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 Governor nominates, and the House of Assembly confirms. The essence is to promote independence of the Office¹¹⁵.
- Guarantee of the tenure of the Auditor General to retirement age; removal of the Auditor General can only be for infirmity of mind or body, or inability to discharge the functions of the office, and shall be by an address to the House of Assembly followed by a two-thirds majority vote (*section 127 for state governments*).
- The emoluments of the Auditor General flow directly from the Consolidated Revenue Fund (CRF); this guarantees the Auditor General's pay regardless of who picks offence with the work. However, the emoluments of personnel of the Office of the Auditor General 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 Auditor General is not subject to the direction or control of any person or body in the performance of the functions of the office (*s. 125(6) of the Constitution*).
- The Auditor General must submit Audit Reports to the State House of Assembly within 90 days of receiving the accounts and Financial Statements from the state's Accountant General.

5.87 State Governments have the freedom to strengthen these Constitutional provisions through enactment of modern independent Audit Laws, but none of the States surveyed with the exception of Cross River, presented evidence of enactment of such a law. The current systems in the States retains audit in the regular Civil Service, notwithstanding suggestions to the contrary. Even more worrisome is that no evidence of pending Audit Bills were found. The exception amongst sample states is the Cross River State Audit Law Cap A20 Laws of Cross River State 2004. It expounds the powers of the State Auditor General or his representatives in carrying out audits to include powers to conduct searches, have access to all documents, and obtain evidence on oath. It allows for appointment of an Auditor General of Local Governments with similar powers. It stipulates minimum contents of accounts and empowers the Auditor General to expand the required content as he deems necessary. It provides for the Governor to establish Audit Alarm committees headed by the Auditor General of the State at the State level, and Auditor General of the Local Governments at the LGA level. This committee will consider all cases where internal audit queries have been overruled by a Chief Executive, and investigate any alarm raised by internal audit or any persons signed or unsigned. It makes it an offence to process any payment which is the subject of an alarm.

5.88 *As a result of failure to enact modern Audit laws in most other States, the old Regional Audit laws would apply to these States. For example, the old Audit law Chapter 13 of the revised Laws of the Eastern Nigeria 1961 was submitted as applicable to Ebonyi State mutatis mutandis.*¹¹⁶ The law requires the Director of Audit to submit its report to the Minister by whom he is appointed, and only the Minister can submit the report to the House. Also the Minister has authority to determine what statements can be included in the annual accounts. However, several provisions of the Law are no longer applicable. For example, the law refers to the position of a Minister which does not exist in Ebonyi State; secondly the

¹¹⁵ *section 126 of the 1999 Constitution.*

¹¹⁶ Ebony is one of the states carved out of Old Eastern Region of Nigeria

law referred to the Director of Audit, as was the case under the old Audit Ordinance (Act) of 1956, which created the Federal Department of Audit. Ogun State provided the Audit Ordinance of 1956 as the applicable law. The 1999 Constitution created the position of Auditor General of the State as an independent office. Indeed, the 1999 constitution overrides many of the provisions of this and similar regional Laws. The old regional laws do not create an Audit Commission. They also do not cloak the Auditor General with additional independence as Constitutional provisions, and do not broaden the powers and protection of the office. By Nigerian jurisprudence the Constitution is superior and in addition, later in time than these regional laws.

5.89 Thus the provision of the old Audit Ordinance and regional Audit laws of the old regions of Nigeria violate the modern Constitutional provisions and requirements of UNCAC and ECOWAS Protocol on the independence of the Auditor General, which requires the Auditor General to be subject to no one in the performance of the duties of the office. The Auditor General's Office must be independent of both the Executive and the Legislature. The 1999 Constitution of the Federal Republic of Nigeria as amended provides for this when it enacts that, "*in the performance of his functions under this Constitution, the Auditor General for the State shall not be subject to the direction or control of any other authority or person*".¹¹⁷ The provision for the Auditor General to perform the functions of the office "on behalf of the House of Assembly" or "at the instance of a minister" found in these old regional laws clearly violates this principle. Moreover, the Constitution nullifies this "contrary" provision in law by both the principles of being later in time and being the Grundnorm, but it appears this interpretation is not well understood, and always followed in practice.

5.90 *Subjecting the Auditor General to the control of the Legislature further violates provisions of the International Standards of Supreme Audit Institutions (ISSAI) 10 - Mexico Declaration on SAI Independence.* Principle 6 of ISSAI 10 is on "The freedom to decide the content and timing of audit reports and **to publish and disseminate them**". The Cross River State Audit law stipulates minimum content of the Financial Statement to be submitted and gives the Auditor General powers to require more information, but does not directly provide for contents of the Auditor General's report. It however does not subject decision on contents of the Audit Report to any other person. However making the Auditor General merely an agent of the "legislature" as in the regional laws of the other States already referred to for the purpose of auditing, makes the audit function that of the Legislature, and not the Auditor. The PFML in the case of Cross River and FRB laws of Ekiti and Taraba States require the Auditor General to publish Audit Reports submitted to the legislature, but in some other States surveyed, the Auditor General audits and reports to the House, which decides what to do with the report, including not publishing it, despite the direct Constitutional independence granted the Auditor General. This general deference to the House of Assembly by Auditors General appears a legacy of the old regional Audit laws when audit was carried out literally on behalf of the Legislature. Some Auditor's General are yet to internalize the independence provided by the Constitution partly because the State instrument to actualize the independence of the Auditor General's Office are largely not in place. In **Katsina** State, except the Legislature has vetted or approved, the Auditor General of the State may not publish and or submit its Audit Report for purposes of a Government study like this one.

5.91 *None of the States surveyed provided any evidence of an Audit Law except Cross River State. but Ekiti State provided copy of an Audit Bill pending in the House of Assembly.* The essence of an Audit Law is to have the statutory authority that will compel audited entities to submit to the authority of the Auditor General at risk of sanctions, compel the Accountant General to submit Financial Statements for audit within a given period, empower the Auditor General to compel any one to provide evidence under oath and conduct searches of audited entities offices at any time. It will also give the Auditor General freedom to decide on audit standards to use, subject to standards stipulated by national regulatory

¹¹⁷ Section 125(6)

authority (The Financial Reporting Council) including INTOSAI. This statutory framework should also provide timelines for response to audit queries, compel payment of any surcharge or other amount specified by the Auditor General within a given number of days, and provide for a right of appeal to the Public Accounts Committee or State High Court. The Audit Law should provide for an Audit Commission and guarantee the remuneration of the Auditor General's staff and funding of the Office independent of the Executive Branch. In Cross River State, its new Public Finance Management Law and its Audit law does not contain most of the provisions referred to above regarding the Auditor General's office, its officers and functions, except for the provisions requiring submission of Financial Statement, timelines for responding to audit queries, and the requirement for publication of Audit Report once submitted to the Legislature.

Public Auditing Standards

5.92 *Nigeria did not have a formal Public Auditing Standards regulatory body until the setting up of the Financial Reporting Council with responsibility for setting accounting and auditing standards as well, but the council has not issued any auditing standard yet.* 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. The document falls short of the high standards of transparency and accountability required for audits in a modern and open democracy. This document is not sufficiently deep despite inclusion of a section on "performance auditing and value for money auditing". In addition, the document does not include guidelines on audit of investments, intangibles, and such other highly technical and specialized areas. Of particular note is that it does not adopt a Code of Ethics for public sector auditors. The 33 page document covers only general auditing. This is however the document in use in most of the surveyed States. However none of the States claiming to apply this document produced a State instrument adopting it.

5.93 Moreover, as the Conference of Auditors' General is not a statutory or chartered body, its authority to issue such guidelines is questionable. The Government has not issued any formal instrument urging the adoption of the document. It is difficult therefore to determine the extent of its use especially since return to civil rule in 1999.

5.94 There is also an *Audit Guide for Federal and State Government Auditors* also issued by the Auditors General in the Federation in 1989, which State government also use. The document appears to have Government approval.¹¹⁸ The document contains detailed procedures on different aspects of audit of public accounts, including investigations. It also includes guidance on audit programme and tools, as well as documentation and reporting. It is however rudimentary in many respects including computer audits. Ebonyi, Ekiti, Jigawa, Ogun and Yobe States presented this document as applicable in their States. All the mentioned States claim to use it, but at varying degrees of compliance. Ogun State additionally presented an Audit programme laying out steps for a typical audit in accordance with Chapter 20 section 2005 of its Financial Instructions. Also the Ogun State Financial regulations in Chapter 20, provides the mandate for frequency, regularity and distribution of internal audit report. Additionally Yobe State presented an Audit Manual which presents the general principles, processes, steps and practice as a guide for public auditing. It is not clear which of the two documents does take precedence in case of conflicts in Yobe State.

¹¹⁸ Printed Copy supplied by Ekiti State government states that it is produced by the Auditors General in the federation. The photocopied version supplied by Jigawa and Ogun State Governments stated that it is issued by Auditors General in the Federation 1989, but they have same contents .

5.95 *The process and contents of the formal Public Auditing Standards – the Audit guide for Federal and State Governments Auditors as well as the related provisions of the State Financial Regulations, manuals or guides, the sample States do not comply fully with the ISSAI processes.* The differences are both evident in the contents and the procedure for arriving at both standards, and their review. The ISSAI standards are of four types, styled Levels 1 – 4, corresponding respectively to Founding Principles; Prerequisites for the Functioning of Supreme Audit Institutions; Fundamental Auditing Principles, and Auditing Guidelines. Levels 3 and 4 standards and guidelines alone number 64. For more details on INTOSAI and ISSAIs processes, contents and comparison with processes for arriving at current Nigerian standards have been presented in the TUGAR Study Report 2012¹¹⁹

¹¹⁹ Mapping Scoping Survey of Anti-corruption and governance measures in public finance management(PFM) A study of Ten States of (Adamawa, Anambra, Bayelsa, Benue, Delta, Kaduna, Imo, Niger, Ondo, and Sokoto) states www.tugar.org.ng.

5.96 Obviously therefore, local auditing standards and guides do not compare favourably with their international counterparts in volume, coverage, content, and quality. Even if Federal and State Governments carefully observe local standards, audit practice will not meet international standards. For example, local regulations do not match *INTOSAI Guidelines and Good Practices Related to SAI Independence (ISSAI 10 and 11)* in several key areas, some of which are highlighted below.

5.97 **Principle 2** – *“The independence of SAI heads and members (of collegial institutions), including security of tenure and legal immunity in the normal discharge of their duties. The applicable legislation should specify the conditions for appointments, re-appointments, employment, removal and retirement of the head of SAI and members of collegial institutions.”* While the Constitution guarantees tenure for the Auditor General in the 10 states, it does not do so for the other staff of his office. As already indicated, nine out of the ten surveyed States have not enacted an Audit law. Only Cross River State has an Audit law, which however fails to remove audit personnel from the regular Civil Service and place them under an independent Audit Commission. Ekiti State has an Audit Bill pending in the State House of Assembly. No evidence of a draft bill or concrete steps towards development of a draft bill has been produced by the other eight States. The State Auditors General are therefore in practice not independent.

5.98 **Principle 6** – *“The freedom to decide the content and timing of Audit Reports and to publish and disseminate them”.* *Some key compliance indicators are as follows: Legislation specifies minimum audit reporting requirements of SAIs and, where appropriate, specific matters that should be subject to a formal audit opinion or certificate-* There are no local legislative requirements on minimum content of Audit Report or issues requiring specific comment by the Auditor General. The only possible exception is the Constitutional provision that the Auditor General comment on Audit Report of parastatals for the benefit of the legislature, but there is no guidance on the specific matters on which to comment in the Constitution. Such a guide ought to exist in each of the State Audit Laws, which with the exception of Cross River State are yet to be enacted. Kaduna State though not part of this sample has an example of an Audit Law that gives indication of the kind of audits and by inference the kinds of findings or comments the Audit Reports should contain. It requires financial, appropriation, financial control and performance audits, and requires the Auditor General to ensure the following: that adequate precautions have been taken to safeguard public funds and all direction and instructions given thereto; that all appropriated money has been expended and applied for purposes for which they are appropriated; that adequate regulations exists for guidance of store keeper and store accounts and have been duly observed; that all records and books of account are adequately maintained; that adequate internal controls, internal checks and audit are in place, and that any limitations, restrictions, or mandatory conditions or directions imposed by the Legislature, the Governor or Commissioner have been duly observed¹²⁰. In this respect the Kaduna State law is a good example for all the States in this study.

- *SAIs are free to publish and disseminate their reports once they have been formally tabled or delivered to the appropriate authority as required by law.* Generally, many Auditors’ General do not publish their reports for fear of offending the Governors and the Legislature. Those who publish it sometimes prepare two reports: an Auditor General’s report which is published, and a domestic report which is not always published. Ekiti and Jigawa States are a good example of States where the domestic reports have also been published. Often the domestic report is richer in detail and disclosures and provides audit opinions about compliance with rules. In the case of Ogun State 2011 Audit Report, the Auditor General made detailed comments and observation sent to the Accountant General, published only selected extracts, and issued his Audit

¹²⁰ Section 6 of the Kaduna State of Nigeria Audit Law No 5 of 2010

Certification subject to those comments and observation which are not fully in the public domain. The best Auditors' General do when they have published a full report is to restrictively circulate copies for specific purposes, such as this study. Cross River, Ekiti, Ogun and Yobe State are examples where Audit Reports have been published.

- Cross River, Ekiti, Ogun, Jigawa and Yobe States have provided full published copies and volumes of their Audit Reports, and in the case of Ekiti State a domestic report in a separate volume. These reports are said to be available at government printers in these States. The Auditor General of Ekiti State claims that pursuant to its Freedom of Information law, it has been giving out copies of the Audit Report to citizens. Jigawa, Nassarawa and Ebonyi States provided photocopies of their spirally bound Audit Reports. There is no evidence that these reports have been published for public access though they have been willingly provided for this study. In the case of Nassarawa State, the State provided published Financial Statements with the one page Auditor Generals Audit Certificate. Following the presentation of interim report on this project to stakeholders, Katsina subsequently provided its Auditor General's Report for the years ending 31st December 2010 & 2011, and Taraba provided Audit Reports for years 2008-2010.
- The practice of publishing in the newspapers a one page document by the Accountant General showing on its face an Audit Certificate signed by the State Auditor General which was previously common among States does not appear to have continued among the States in this study, except for Ekiti State. These publications, do not purport to be the audit report, and where they have been made contain only a Cash Flow Statement, Statements of Assets and Liabilities, Statement of Consolidated Revenue Fund and Statement of Capital Development Fund without the fundamentals constituting the basis for the accounts.

5.99 Principle 7 - The Existence of Effective follow-up Mechanisms on SAI Recommendations. Some key compliance indicators are as follows

- *SAIs have their own internal follow-up system to ensure that the audited entities properly address their observations and recommendations as well as those made by the Legislature, one of its commissions, or the audited agencies governing boards, as appropriate.* Offices of Auditors General in the States surveyed had no follow up mechanism or powers; they depend on the legislatures which do not perform the follow up function effectively. An exception is Cross River State where the Public Finance Management law provides for a Ministerial Audit Committee to ensure follow up of the findings of the Auditor General's report and the House of Assembly. Kogi State in May 2013, as part of the State's Public Sector Governance and Reform Development Project established Ministerial Audit Committees in all MDAs as evidenced by the Auditor Generals letter dated 21st May 2013 to all MDAs in the State. The specific mandate of this Committee and whether it has been inaugurated as proposed is not clear from this letter. It is hoped that its function will include follow up activities on audit findings and recommendations of the Auditor General.
- *SAIs also submit their follow-up reports to the Legislature, one of its commissions, or the audited agency's governing boards, as appropriate, for consideration and action, even when SAIs have their own statutory power for follow-up and sanctions.* Auditors General in Nigeria do not have the freedom to do this as stated above, nor do they have any powers to sanction infractions, except in the example of Cross River State where the Audit Law requires them to recommend sanctions to appropriate authority in cases of infraction. In all other cases, all they do is make

findings on what has gone wrong and recommendations on how to correct it. This is very limiting, and should be revised by State Audit Laws.

5.100 Principle 8 - Financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources

- *SAIs should have available necessary and reasonable human, material, and monetary resources—the Executive should not control or direct the access to these resources. SAIs manage their own budget and allocate it appropriately.*
- *The Legislature or one of its commissions is responsible for ensuring that SAIs have the proper resources to fulfill their mandate.*
- *SAIs have the right of direct appeal to the Legislature if the resources provided are insufficient to allow them to fulfill their mandate*

None of the ten State Auditors' General Offices has such financial independence stipulated in this principle. Offices of the Auditor General in the ten states are subject to budgetary controls and allocations as other Executive agencies in all States surveyed. This and also the control of employment, disciplinary and enhancement processes of personnel of the Auditor General's offices by the Civil Service ensures that Auditors General's offices in States do not have the independence they need to perform their functions courageously and effectively.. Internal audit systems in most States surveyed are weak, and in some States like Katsina, do not exist in all MDAs.

5.101 *Public Accounts Committees (PACs) have Constitutional functions for the oversight of public accounts and audits.* The Constitution provides as follow, “the Auditor General of a State shall, within ninety days of receipt of the Accountant General’s Financial Statement and annual accounts, submit his report to the House of Assembly of the State and the House shall cause the report to be considered by a committee of the House responsible for public accounts”.¹²¹ However, only Cross River, Ekiti and Ogun States out of the ten States in the sample provided evidence that the Public Accounts Committee of its House of Assembly considers Audit Reports and holds committee hearing on them. Even in these States challenges persist.

5.102 The PAC of Ekiti State presented evidence that it regularly requests the Auditor General to submit his report in good time; that when submitted, the report is reviewed by the committee; and unanswered Audit Queries and related issues raised by the Auditor Generals reports are investigated. Evidence presented includes advance written reminders to the Auditor General of deadline for submission of reports, requests for information concerning its investigations of findings of the Auditor General contained in the reports from key officers of Government, and order of appearance of Local Governments and State Officials before the Committee for investigations on audit reports.

5.103 The Ekiti State PAC further produced evidence that it actually takes steps to implement some findings of the Auditor General. In one instance, it hired an independent firm to verify and recover excess bank charges to Local Governments. In another instance based on the Auditor General’s report, it investigated the purchase of property in Efon Alaye for Efon Local Government, and award of contracts for that Local Government’s legislative building. Also the State PAC provided an unsigned copy of its report on activities of its committee between the months of June 2011 and March 2012 containing concrete findings and recommended actions. However it would appear that the Ekiti state PAC audit reviews and follow up action are more aggressively focused on Local Governments, than on the State government accounts. The vigor spent on investigations and follow up actions for the Local Government level is not spent on State audit report and accounts. Also it appears the House does not always provide

¹²¹ 2. 125(5) of the 1999 Constitution

formal feedback of its decisions to the Auditor General's office, and that the follow-up actions does not cover all Auditor Generals comments and findings.

5.104 The Ogun State PAC also submitted similar evidence as well as full reports of the House of Assembly on Auditor General's Report on Accounts of Local Government and also accounts of the State. In the case of Ogun State, letters of invitation of relevant officers to committee sittings with specific area of enquiry or queries they were coming to answer to, were made available. Also the House report made serious findings against staff and personnel of Local Governments including directing refund of sums of money which in some cases were refunded. However in other examples like Ijebu East Local Government, where the Committee found a wrongful expenditure for attending the World Cup matches by Local Government officials, it failed to direct a refund or take any follow-up action. There were also findings in the House committee report on State accounts, supporting findings in the Auditor General's report, including directives for further investigation for example of the State Director for Conditional grant Scheme.

5.105 The reports do not indicate full cooperation of the Accountants General and some other public officials with the PAC committee work, often leading to frustration of the committee activities. An example is the condition grant scheme case reported in the Ogun state PAC report submitted for this study, where officials neglected to attend and provide information and documents required by the legislative committee. However it is evident that of all the States in this sample, Cross River, Ogun and Ekiti States have the most effective PAC follow-up activities on Auditor General's report. This is so even where there were findings against the Legislatures own accounts, such as a case in Ekiti State, and also the case of the internal audit report issued on the accounts of the Ogun State House of Assembly for the period 1st January 2012 - 30th June 2012 which showed significant infractions by the house.

5.106 Ebonyi, Jigawa, Katsina, Kogi, Nassarawa, Taraba and Yobe States did not present any evidence that their State legislatures hold committee investigations or in any other way act on the report of the State Auditor General.

5.107 *The factors contributing to this failure by the Legislature to scrutinize audit findings and the Executive to comply with recommendations are not easily ascertainable.* However, lack of political will, absence of sanctions, limited or no public pressure and capacity shortages are strong contenders. Lack of political will and public pressure may rank high in the ladder in some if not all the States. Sample of some of the audit infractions reported are found in the table 5.11 below. In many of the States, both the Legislature and Executive are reported to be as much of culprits as other MDAs. This may be one of the reasons for low political will by the Legislature to scrutinize audit findings or by the Executive to comply with recommendations of Auditor's General.

5.108 It is important to note that not all aspects of the presentation of the Auditor General's reports of States is standardized. In many instances State Auditors' General fail to disclose their detailed comments. Also the practice of producing separate Audit Reports and Domestic Reports have been used to keep the more unsavory information away from the report and therefore from the public. Also limited citizens demand for accountability in the States studied leave much room for abuses. In most instances except a few already identified, there are no organized and informed citizens groups holding Legislators and other public officials accountable.

Table 5.11(2): Sample of Infractions of Financial Instructions by MDAs including the Legislature and Government House in some States as Reported in Latest Reports of the Auditor General Made Available

State	Kinds of Infractions reported	Source/Comment
Cross River State	School fees not lodged by schools, over-vouching, revenue not accounted for, non retirement of disbursements, non execution of projects, over estimated cost of personnel, PAYE tax deducted not remitted,	Pages 11-12 of 2011 audit report
Ebonyi	No audit queries disclosed in 2010 report	2010 audit report Report however highlights excess expenditure above budget provisions in some cases, under expenditure in others and makes terse remarks about a few breaches reported in previous audit reports, however no audit queries were expressly mentioned leading to a belief that a domestic report may exist which has not been presented.
Ekiti	<ul style="list-style-type: none"> 10,380 liters of fuel paid for in government house was not delivered Supply of Diesel to Presidential Lodge and Osuntokun hall issued and received by the same person. Total queries amount to N102,873,295.54 Audit Queries amounting to N1,172,638,310.00 were raised with respect to discoveries requiring explanation, rectification or recovery as the case may be. 	2010 & 2011 published Auditor General's report, does not disclose audit queries and similar infractions regarding any MDA except for excess expenditure above budget provisions. However 2010 printed domestic Audit report reveals the disclosed queries and other similar infractions in Government house, State Legislature and several other MDAs.
Jigawa	A list of un replied audit queries for different MDAs is shown including payments without voucher, several examples of unsupported expenditure, unutilized funds not returned to treasury, revenue unaccounted for	Pages 12, 13 & 14 2010 audit report. Domestic report is included in the audit report presented.
Katsina	<ul style="list-style-type: none"> No infractions were reported, this however does not mean there were non, as indicated some states prepare a domestic report in this regard. The standard of disclosure of the Katsina State audit report submitted was indeed very low. Absence of internal audit, in some MDAs 	Examination of 2007 audit report of auditor general of katsina state 2011 Audit report
Nassarawa	Copy of 2008 and 2010 audit report submitted both refer to 189 & 86 queries respectively, and though the 2010 audit at page 8 indicates these queries are treated somewhere else in the report, we are unable to identify where and therefore cannot identify the MDAs involved.	Auditors reports for 2008 & 2010
Kogi	<ul style="list-style-type: none"> 2011 audit report submitted indicates excess recurrent expenditure over revised budgeted sums was N1,121,909,201.29 page 39 of audit report. Funds were released to MDAs based on memos approved by the Governor and vouchers directly raised by MDAs without attaching necessary documents page 62 of audit report Excess expenditure over revised budget figures N294,976,833.12 page 46 of audit report Excess expenditure consolidated fund charges page 49 of audit report N176,471,671.00 over revised estimates 	2011 audit report Poor disclosures eg; payments were identified to have been made without vouchers running into millions of Naira but the report does not identify responsible MDAs
Ogun	<ul style="list-style-type: none"> 2011 audit report presented showed extracts of audit reports on the accounts of some government ministries, departments and agencies for the year ended 2011, showing in some cases lapses, audit queries, misapplication of funds etc but failed to show that for the Government House, State 	2011 audit report. Nondisclosure of audit findings violates ISSA1 10 and 11 on auditor independence

Table 5.11(2): Sample of Infractions of Financial Instructions by MDAs including the Legislature and Government House in some States as Reported in Latest Reports of the Auditor General Made Available

State	Kinds of Infractions reported	Source/Comment
	<p>legislature and Judiciary or to present explanation why some should be shown and others not shown.</p> <ul style="list-style-type: none"> • However the 2009 audit report presented audit inspection report on accounts of the Ogun State governors Office which showed that out of cars valued 740,698,050.00 purchased during the year, details of cars valued N270,039,050.00 were not provided, • Also 161 vehicles were sold to political office holders at the end of their tenure 	
Taraba	<p>Excess expenditure above budgetary provisions were incurred regarding personnel and over head costs, whilst total excess expenditure on personnel costs amounted to N481,969,913.81, the excess expenditure on overheads amounted to N10,958,477,215.98 about ---% of total revenue for the year.</p> <p>Also infractions like failure to maintain store records, unretired and un receipted payment vouchers, payment vouchers without back up documents, payments without supporting documents, payments for jobs not contracted were noted with parastatals and agencies.</p>	<p>Pages 28, and 30 of 2010 audit report</p> <p>Pages 38 -78 of the 2010 Report of the Auditor General</p>
Yobe	<ul style="list-style-type: none"> • Summaries of the observations recorded during audit of accounts of some MDAs for the year 2010 , shows in some cases, audit queries, like payments without vouchers etc. • • • • • Statistics of all audit queries not answered 	<p>2010 Audit report Nondisclosure of audit findings violates ISSA1 10 and 11 on auditor independence.</p> <p>2012 Audit report</p>

Effective and Efficient Systems of Risk Management and Internal Controls

5.109 UNCAC provisions further require “*Effective and efficient systems of risk management and internal control*”. Both AUCPCC 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.

5.110 *State Governments have provisions for internal controls as a rule.* Either State Governments have their own set of *Financial Instructions (FI)* and *Stores Regulations (SR)* or they adopt some version of the federal *Financial Regulations (FR)*. The regulations provide detailed internal rules and follow the same general structure. The rules cover approval, recording, custody, and accounting procedures for collecting revenues, incurring expenditures, acquiring tangible and intangible assets, and creating liabilities. They also contain rules for bank reconciliation, deposits, advances, handling of stores (requisition, purchase, receipt, and issue), and internal and external audit. However, none of all the ten

State Governments in the study provided evidence of how the internal controls contained in their FIs work in practice. However Ogun State submitted one Internal Audit report issued by an internal auditor in the State legislature. It is not clear if this is also the practice in all other MDAs.

5.111 Table 5.12 below is a summary of the evidence of systems of internal control presented by state governments.

Table 5.12: Existence of Financial Instructions and Similar Documents			
State	Financial Instructions	Stores Instructions	Comment
Cross River	Financial Instructions, revised 1 October, 1984	Stores Regulations, revised 1 October, 1984	Documents are too old and require revision
Ebonyi	Claims to be applying federal financial regulations		Did not provide any document evidencing its adoption of any particular edition of the federal financial regulations
Ekiti	Ekiti State Financial Administration rules revised edition 2001	Incorporates Stores regulations	The difficulty in finding a copy of this document over the period of the study casts doubt on availability to staff that use it and devolution of knowledge of its contents amongst staff.
Jigawa	Jigawa State Financial Instructions (1 st April 1996) made pursuant to Section 2 of the Public Finances (Control & Management) edict 1970	Stores regulation 1996 issued pursuant to S 3(2) of the same law	Both are in force but there isn't sufficient evidence to determine level of compliance
Kogi	Submitted a copy of the federal financial regulations revised in January 2009 as applicable		Did not provide any document evidencing its adoption of this or any particular other edition of the federal financial regulations
Katsina	Presented Federal Financial Regulations 2000 as applicable at the report validation meeting	Stores Regulations 1968 submitted	Though said to be stores regulations 1968, its introductory pages indicate that it contains stores regulations as at October 1984 and that it was undergoing review at the time of the publication. It appears that this was just a reprint done in 1984 of the 1968 regulations of Northern Region of Nigeria. This however was presented as being in force currently.
Nassarawa	Non Presented	Non Presented	Officials claimed orally that they apply the federal F1 but neither presented the copy they use nor any instrument adopting the federal F1
Ogun	Submitted Financial Regulations revised in 2003	Contains provisions on procurement rules	Regulations are in force, but insufficient evidence to determine the level of compliance
Taraba	Taraba submitted its Financial Instructions revised on 1 st October 1984	No Information	Regulations are in force, but insufficient evidence to determine levels of compliance
Yobe	Yobe State Financial regulations revised 2004	Incorporates provisions on stores	Regulations are in force, but insufficient evidence to determine levels of compliance

5.112 The difficulty in obtaining such public work tools as FIs and Stores regulations for this study in all States surveyed and the limited number of Civil Servants interacted with, who had copies of these work tools, is instructive and indicative that few people within and outside the service have the opportunity to be knowledgeable in the provisions of these all important public sector work tools. Though these documents ought to be available in government printers for purchase by members of the public, none of the surveyed State Government printers had it available for sale to the public.

5.113 *How do the State Governments enforce these internal control rules? What is the degree of observance of these rules in practice?* One source of evidence of the extent of adherence to internal control rules is the Auditor General’s report. Audit reports often comment directly on the state of internal controls in the State. Even when they do not do so directly, they do so indirectly through reporting on infractions. Many infractions suggest weak internal controls, as would repetition of the same infractions each year. The challenge however is that there is evidence that Auditors’ General do not always include all their comments on infractions in the Audit Reports. Sometimes they are contained in Domestic Reports which are not always available to all, or as was the case with Ogun State in a separate report sent to the Accountant General. Sometimes it is not reported at all as is the case with Katsina State.

5.114 *Table 5.10 above already establishes that the level of infractions is very high in the States, suggesting weak internal controls.* Besides, many of the infractions are observable in the same or some variant versions in earlier Audit Reports.¹²² *Table 5.11 provides an additional indicative sample of comments on the State of Internal Controls in the audit reports.*

Table 5.13: Additional Evidence from Audit Reports on Enforcement of Internal Controls	
State	Evidence
Cross River	“unremitted imprest –N273,458,286.55. This figure represents total un-retired imprest by 10(Ten) ministries, departments and agencies amounting to N273, 458,286.55. This figure was reconciled with the ledger balances maintained at the treasury headquarters. Seven (7) out of the eleven (11) ministries, departments and agencies affected were notified and only six(6) responses have been received” FY 2011
Ebonyi	“ In most of the establishments , the figures of the internally generated revenues (IGR) as shown in the books and records of the Revenue Monitoring Unit of the Ministry of Finance and Economic Development differ with figures of the 2010 annual accounts” page 4 FY 2010 Auditor Generals Report “Over the years, I have continued to observe with dismay that some establishments exceed their budgetary provisions in either personnel or overhead or both” page 6 FY 2010 Auditor Generals Report
Ekiti	Eleven MDAs were found to have exceeded their budget provisions for recurrent expenditure by about 36.69% of the provisions see table at page 7 FY 2011 Auditor General’s Report . Seven MDAs received capital votes that were 1028.77 % above the budget provisions see table on page 9 FY 2011 audit report . “ During the period under review the internal control system would appear to be highly inadequate” see page 12 of the FY 2011 Auditor General’s report
Jigawa	“The government audit section in the discharge of this noble responsibility communicated to ministries and departments 57 Number of audit reports and queries of which 20 valued at N271,616,116.65 were not responded to for the period under review see details below” see p 12 FY 2010 audit report.” “ The reported assets and liabilities as contained in the Accountant Generals report (cash and Bank balances) were verified to be based on cash balances , contrary to the ideal reconciled balances as advised in the auditor Generals report for the year 2009. This trend should be reverted to meet with the standard financial reporting” see page 10 FY 2010 auditor Generals report “ Government parastatals should be made to comply with statutory annual rendition of audited accounts to State Auditor General for test check, comments and forwarding to the State House of Assembly.” See p 21 FY 2010 Auditor General’s Report
Kogi	“ Contrary to the provisions of the 2011 appropriation law the following votes were overspent, as per the financial statements and there were no evidences of virements , augmentations” , N1,121,909,201.29 Government house,

¹²² State governments submitted three to five years’ reports for examination.

Table 5.13: Additional Evidence from Audit Reports on Enforcement of Internal Controls

State	Evidence
	<p>N2,532,600.00 Deputy Governors office, SSSG N18,854,542.08. N294,976,833.12 House of Assembly. page 39 FY 2011 Auditor General's report</p> <p>" The figure of N1,715,227,789.00 has appeared in the accounts for some years as debits in Continental Trust Bank without details. As we recommended in our previous reports the amount is so huge that it cannot be ignored"</p> <p>" the figures for the surveys and the reconciliations prepared by the Accountants at year end for all accounts are supposed to agree in all aspects. However this is not the case....." see page 14 FY 2011 Auditor General's Report</p>
Katsina	<p>The State Auditor Generals report for the Yr 2009 provided was very poor in meeting required disclosure standards and no disclosure of infractions were recorded. The 2011 Audit report noted there were no internal audit units in many agencies, but noted that responses to queries had improved in addition to pointing out a few aberrations including " Miscalculation of loans granted by the State government to organizations and associations to expense subheads therefore blocking possibility of repayment or recoveries as per terms agreed, plus non recording of such debts appropriately as debts in government books"</p>
Nassarawa	<p>" the Standard of book-keeping in ministries and Extra Ministerial departments was generally poor. Necessary care was not taken to record receipts and payments..... It was observed in the course of the audit that the stated records and books were either not opened at all or were opened , but never maintained properly or not kept on regular basis. This parts accounted for the non rendition of the annual appropriation accounts"</p> <p>" Losses of cash and stores arising from theft, fraud, negligence , death of government debtors, inadequate security and non observance of existing regulations that have come to the notice of this office since the creation of Nassarawa state are hereby tabulated below". P 3-5 of the FY 2010 audit report.</p> <p>"No report in respect of Baord of survey carried out during the year was received in the office of the Accountant General on this issue yet no reply has been received on the issues. We are still awaiting comments " p 6 FY 2010 Audit report</p>
Ogun	<p>" It was observed that fromalmost all the Ministries, Departments and Agencies were not maintaining stored and proper store accounting records as required by the financial regulations to account for items purchased. There is need for a procurement office to be opened that will be independent from the ministries of finance, budget and planning and the Accountant Generals Office. This Office will now have Departments in each of the Government Ministries , departments and Agencies to be manned by qualified purchasing store officers" p 10 FY 2011 audit report</p> <p>"At the time of writing this report only seven of the corporations have submitted their audited accounts for the year ended December 31 2011. Twenty of them are yet to submit, while eight refused to pick from Accountants and Auditors from the list forwarded to them to audit their accounts " p 10 2011 audit report</p> <p>"The gateway Holdings limited has not remitted any returns on the Ogun State Governments Investments since year 2009to the Accountant General Ogun State. The details of investment being managed by the Holdings cannot be ascertained and were also not included in the Ogun State Financial statements prepared by the Office of the Accountant General Ogun State. It is hereby recommended that the Gateway Holdings limited be investigated" p 9 FY 2011 State Auditor Generals Audit Report</p>
Taraba	<p>Pages 38-78 indicates may infractions like failure to maintain store records, unretired and un receipted payment vouchers, payment vouchers without back up documents, payments without supporting documents, payments for jobs not contracted were noted with parastatals and agencies .</p> <p>Page 29 of the 2009 Audit report implies that some organizations first overdraw their accounts (ie obtain overdrafts) prior to seeking and obtaining approval contrary to the financial regulations.</p>
Yobe	<p>"It became necessary to remind public officials that following the laid down procedures as provided in the financial</p>

Table 5.13: Additional Evidence from Audit Reports on Enforcement of Internal Controls

State	Evidence
	<p>regulations will make the work of visiting Auditors simple and straight forward. It is worrisome for the auditors to observe that public officials engaged in accounting duties , consciously and deliberately resort to side tracking the existing rules and regulations. This is unacceptable and must be avoided” p 5 FY 2010 State Auditor General's Report</p> <p>“It is not lack of accounting principles, regulations, standards or procedures, but what is lacking on the part of officers doing accounting job is seriousness, will power, hard-work , commitment , dedication to duty and desire to do what is right and legitimate, Laziness and need to get rich quick syndrome is the bane of our accountants of nowadays” p 6 of the FY 2010 State Auditor General's Report.</p> <p>“The nonchalant /negligent attitude by almost all the MDAs in promptly reporting cases of deceased officers, retirements, dismissals, abscondment and transfers of staff and other causes /variances in salaries to the Ministry of Finance , continue to frustrate the good intention of the government in introducing the biometric system(of staff control/payroll) and e-payment of salaries direct to beneficiaries accounts”P 9 of the FY 2010 Auditor General's Report.</p> <p>Yobe 2012 Audit report provided a table of MDAs and statistics of number of audit queries some since 2009 and the value of sums involved but no detail about the kind of infractions the queries raise.</p>

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

5.115 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 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.

5.116 This requirement of corrective action has two aspects: administrative measures taken to correct observed anomalies and provisions for criminal sanctions imposed under the law for infringement of the legal provisions. International Statements of Supreme Audit Institutions *ISSAI 10 (Mexico Declaration on SAI Independence)* requires effective follow up mechanisms, including ability of the auditor to take administrative measures to secure compliance. *ISSAI 11 (INTOSAI Guidelines and Good Practices Related to SAI Independence)* provide good examples on how to achieve this.

5.117 **Principle 7 - The existence of effective follow-up mechanisms on SAI recommendations** – of ISSAI 10 provides as follows

- SAIs submit their reports to the Legislature, one of its commissions, or an audit agency’s governing board, as appropriate, for review and follow-up on specific recommendations for corrective action.

- SAIs have their own internal follow-up system to ensure that the audited entities properly address their observations and recommendations as well as those made by the Legislature, one of its commissions, or the auditee’s governing board as appropriate. In all States surveyed Auditors General do not have sufficient statutory authority to directly carry out corrective actions.
- SAIs submit their follow-up reports to the Legislature, one of its commissions, or the auditee’s governing board, as appropriate, for consideration and action, even when SAIs have their own statutory power for follow-up and sanctions.
- Except for the good example of Cross River State Public Finance Law and the recent effort to establish Audit Committees in all MDAs in Kogi State by the State Auditor General, the only follow up mechanism on SAIs reports and findings in States is to submit the Audit Reports to the Legislature and await their action. In all the States in this sample except three as earlier indicated the State Legislatures do not act on the reports.

5.118 Minimum good practice measures suggested in ISSAI 11 include the following:

- *Requiring auditees to explain reasons behind infractions and requiring written confirmation to that effect.* As seen in the various Audit Reports, the Auditor General issues queries. There are also Internal Auditors who oversight day to day expenditure processes in MDAs and, they also ought to issue queries. Through this process, the auditor requests explanations from accounting officers on observed infractions of financial rules and procedures, and for their correction, where necessary. However no State made available any evidence regarding operation of Internal Auditors except the one internal audit report presented by Ogun State. Also the Audit Reports indicate that failures or neglect to respond to audit queries are common. The absence of sanctions for failure to reply to or sufficiently satisfy Audit Queries and the otherwise limited statutory authority of the Auditors General in States, limits the effectiveness of Audit Queries and inquiries.
- *Holding a post-audit meeting with audited agencies* – this is a key feature of audit work in Nigeria. Auditors hold “exit meetings” with auditees to discuss responses to audit queries and “close” settled cases. However when Auditees prove non-cooperative or difficult, the auditors only recourse is to record findings in his report which in most instances is not acted upon.
- *The SAI posts audit reports, responses of the Government agency, and recommendations on its website and updates the page regularly.* None of the ten State Governments had its Audit Report or any updates posted in its website at the time of writing this report ¹²³. Though Ekiti and Cross River States claimed their Audit Reports were formerly on the State official websites, they were not found on these sites in the month of June 2013.
- *Subsequent Audit Reports include statements on the extent to which audited departments have attended to previous observations and corrective actions taken.*¹²⁴ The purpose is to put pressure by creating public awareness of the state of affairs. While most Audit Reports of participating States in the sample comply with this measure as already indicated above to some degree, they do not create the required public pressure because the Auditors do not always publish their reports and when they publish, the circulation is not wide. Also the various State Legislatures hardly take notice of the reports or carry out follow up activities, except in Cross River, Ekiti and Ogun States among the ten states in this study. The Cross River State Auditor General’s reports often

¹²³ The Auditor General for the Federation posts the 2007 audit report on its website.

¹²⁴ Here is how ISSAI 11 words it, “In a follow-up audit report, the SAI will report on the status of matters raised in the previous audit”

contain elaborate detailing of previous findings and actions taken if any. Most State Audit Reports have very poor disclosure practices as we see more prominently in the cases of Ebonyi, and Katsina States.

- *Supreme Audit Institutions publish the reports once sent to the legislature, where the law does not expressly prohibit this.* Auditors General do not do this, even though there is no law prohibiting it. Some Auditors General of States claim to require a law specifically authorizing them to do so because the current Constitutional provisions merely require them to submit the report to the Legislature. The Katsina State Auditor general is an example. The wording of the Constitution is, “*the Auditor General for a State shall, within ninety days of receipt of the Accountant General’s Financial Statements and annual report, submit his report to the House of Assembly of the State and the House shall cause the report to be considered by a committee of the House responsible for public accounts*”.¹²⁵ The Cross River State Public Finance Law which requires publication of the Audit Report upon submission to the Legislature is a good example of what States need to do. However, Audit Reports are public documents and are part of the classification of documents which the Freedom of information Act 2011 requires governments to proactively disclose to the public.
- It is not clear among the ten states surveyed whether the failure to excise discretion on this matter is as a result of fear of the ‘powerful’ State Executive Councils (SEC) and departments whose infractions are often reported, or of The Legislatures, or timidity on the part of the Auditors General. However some of the ten States have had their Auditors General publish their reports though distribution of published reports remains limited. They are not always available at Government printers for purchase by the public, or on State websites. Ogun, Yobe and Ekiti State in addition to their regular reports published its Domestic Report in 2010. Jigawa State Audit Reports also contain the domestic reports in one volume. Ekiti and Ogun have also published their 2011 Audit Reports, without any reprisals from the SEC or Legislature against whom (or whose departments) findings have been made. Perhaps the fear by some Auditors General may not be real, as many of the Audit Reports published contain findings against the SECs and also the Legislature.

5.119 *The Auditors General should encourage the setting up of an audit review committee of permanent secretaries, and have the Minister or Commissioner of Finance and the Auditor General meet with them to discuss anomalies observed in audit reports and how to address them. The Ondo State Government though not part of this study¹²⁶ uses an approach that enables the Auditor General withhold approval of retirement benefits of staff accounting officers with outstanding audit queries.¹²⁷ Where the audit query remains unresolved, the State may deduct outstanding amount in the queries and approve the remaining amount if any from retirement benefits. There is need for State Audit Laws when passed to stipulate time lines for responding to audit queries, provide sanctions for failure and enhance auditor’s powers for follow up action.*

5.120 Other possible administrative approaches that the Auditor General may use include qualifying reports, as seen in the Ogun State FY 2011 Auditor General’s Report and withholding of audit opinion. However in the Ogun case, the Auditor General did not publish all the detailed comments and observations based on which his report was qualified, except for some extracts regarding some of the MDAs, which were disclosed in his published report. Nigerian government Auditors¹²⁸ sparingly use

¹²⁵ See (s. 125(s) of the 1999 Constitution of the Federal Republic of Nigeria as amended to date

¹²⁶ And some state governments in the southwest geopolitical zone, for example, Ekiti state

¹²⁷ See 2010 Ondo State Audit Report, p. 4

¹²⁸ Including most of the 10 governments in this study sample

these approaches, even with the numerous infractions they report. The Cross River State PFM law has set up specific committees in each MDA for the purpose of resolving audit queries and ensuring follow up action. This is an example other States may wish to follow.

5.121 Laws that currently criminalize serious infringements including some that Audit Reports may raise include but are not limited to the Criminal Code, the Economic and Financial Crimes Commission (Establishment) Act, 2004, and Independent Corrupt Practices and Other Related Offences Act, 2000. In addition, the Procurement Act, 2007 empowers the procurement regulatory agency, the Bureau of Public Procurement, to cancel part of or the entire procurement process of a procuring entity regarding a particular procurement exercise, and to direct its repeat, where there is reason to do so. Also the Code of Conduct for Public Officers will apply to some of the circumstances disclosed. It is advisable that these anti-corruption agencies regularly take up cases of reported infractions in Auditor Generals Reports which though not always available to the public can always be obtained by them.

Summary Performance: Anti-corruption Initiatives in Management of Public Finances

5.122 *Table 5.14* below concludes this discussion on anti-corruption initiatives in the management of public finances by presenting a synopsis of the performance of the 10 states.

Table 5.14: Summary of Compliance with Provisions of UNCAC, AUCPCC and ECOWAS Protocol Management of Public Finance

	Provisions	Cross River	Ebonyi	Ekiti	Jigawa	Kogi	Katsina	Nassarawa	Ogun	Taraba	Yobe	
Procedures for the Adoption of the Budget	UNCAC: Article 9(2)a AUCPCC: Article 5(4) ECOWAS Protocol: Article 5(g)	The 1999 Constitution provides basis for adoption of budget. The Governor presents spending proposals, the State House of Assembly (SHA) approves; the SHA must first approve all spending in this way except for a few constitutionally mandated first line charges on the CRF of the State. Only four States of Cross River, Ogun, Taraba, and Katsina presented their House of Assembly rules for adoption of budgets. The common infraction in this regard is that some States and or State agencies expend funds beyond the budget provisions or vire appropriated votes without the Governments or agencies respectively seeking prior and necessary supplementary budgets and approvals.										
		PFML and FRL enacted in 2011, there is multi-year project forecasting and planning, institutionalization is however slow as no FRC has been established.	FRL enacted in 2010 adopting MTEF and indexing the annual budget to the MTEF, but institutionalization is slow and current MTEF lacks completeness in process and content. No modern PFML	FRL has been enacted in Ekiti State , FRC is established and working. 2012-2015 MTEFS seems fairly comprehensive and linked to 2013 budget. No Modern PFML	Photocopy of EPPFRL enacted in 2009 adopting MTEF and indexing annual budget to the MTEF submitted, but no evidence of establishment of the Commission was submitted. Implementation of MTEF has begun though not all MDAs undertake MTSS. MTEF lacks completeness in content. No modern PFML	No FRL and no modern PFML. It has partially adopted MTEF, and tries to use its Budget call circulars to improve budget linkage with MTEF. MTEF lacks completeness in process and content.	No Modern PFML. No FRL, No MTEF in place.	No Modern PFML and or FRL. Claims to have an MTEF in place but did not provide evidence except mention of MTEF in budget call circulars.	No Modern PFML, Draft FRL bill 2009 submitted without evidence of enactment. Call circulars examined particularly one for 2011 budget proposals dated 19 th August indicate MTEF is in place and linked to the budget but no MTEF document was presented.	No PFML. Has a FRL in place, the FRC has been appointed and inaugurated, there is partial implementation of MTEF and efforts to link the budget to the MTEF in some MDAs.	No PFML or FRL passed. However budget call circulate for FY 2012 presented indicates that information required from MDAs will be used to prepare both budget and MTEF, MTEF ought to be prepared before and form basis for the budget, so budget link appears poor if really an MTEF is prepared	

Table 5.14: Summary of Compliance with Provisions of UNCAC, AUCPCC and ECOWAS Protocol Management of Public Finance

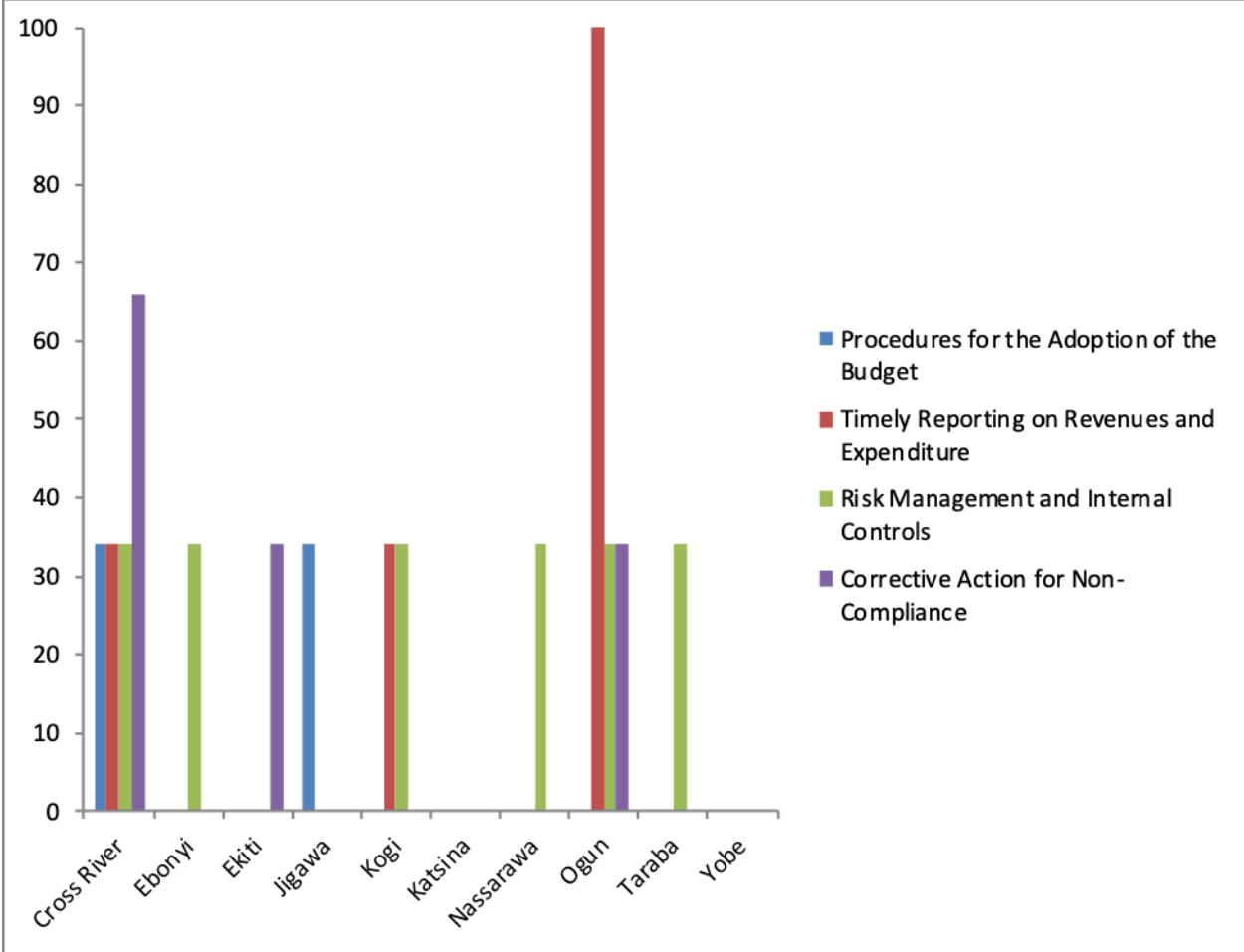
	Provisions	Cross River	Ebonyi	Ekiti	Jigawa	Kogi	Katsina	Nassarawa	Ogun	Taraba	Yobe
		Improving Fiscal Discipline, Excess Revenue receipts over estimates despite, opportunistic internal revenue projections remain, but has better ratio of capital to recurrent expenditure	Fiscal indiscipline: excess spending on some votes, under spending / failure to spend at all on some others, poor revenue projections, with improved IGR performance in 2011, but also opportunistic projections exist	Fiscal indiscipline: poor projections, excess recurrent spending, low capital budget performance, on some votes, under spending / failure to spend at all on some others, heavy internal borrowing, and inability to realize up to 30% of budgeted IGR	Fiscal Discipline; A net surplus of actual revenue over budgeted revenue, however there was over expenditure on recurrent vote, its 87% performance of capital budget though below acceptable international standards, look better compared against the national average.	Fiscal indiscipline: Poor Revenue and expenditure projections, excess spending on some votes, under spending / failure to spend at all on some others, and inability to realize budgeted IGR	The disclosure practice in the audit report is very low and makes it difficult to distil related information. No concrete evidence of infractions have been disclosed. Except that 2007 audit report presented in page 6 indicates failure to collect and remit taxes by LGAs	Fiscal Indiscipline; Inability to raise projected revenue, poor budget forecast, excess expenditure, inability to project debt service requirements correctly, poor ratio of capital to recurrent expenditure	Fiscal indiscipline: Poor revenue and expenditure projections, Heavy internal borrowing, total IGR could not meet personal costs, actual capital expenditure is only slightly more than one third of actual recurrent expenditure in YR 2011, poor ratio of capital to recurrent expenditure	Excess expenditure above appropriation on both personnel and overhead costs are common, poor projections, excess expenditure etc	Fiscal indiscipline: excess spending on some votes, under spending / failure to spend at all on some others, poor revenue projections and inability to realize budgeted IGR.

Table 5.14: Summary of Compliance with Provisions of UNCAC, AUCPCC and ECOWAS Protocol Management of Public Finance

	Provisions	Cross River	Ebonyi	Ekiti	Jigawa	Kogi	Katsina	Nassarawa	Ogun	Taraba	Yobe
Timely reporting on revenues & expenditures	UNCAC: Article 9(2)b AUCPAC: Article 5(4); ECOWAS Protocol: Article 5(f)	FY 2011 submitted 31 st May-21 st June 2012, still in time by extant rules but not complaint to its PFML requirement of submission within 3months	FY 2009 FS submitted in time 24 th June 2010. No information on date of submission of FY 2010 FS. Audit of FS for 2009 and 2010 submitted 11 th July 2009 audit about 22 months late.	FY 2011 Auditor General's Report submitted 30 th Nov 2012 to the house. FY 2010 Auditor General's Report submitted to the house by a letter dated 30 Sept 2011 with out received stamp and date of receipt. No information on dates of submission of state FS to the AG.	Draft FY 2009 & 2010 Audit Reports provided, showing FS were submitted and audited, but no information on dates for submission of FS to AG, or Audit Report to House of Assembly . NC	FY 2010 FS was submitted to the Auditor General on 2 nd December 5 months late. FY 2010 Audited report of AG was submitted to the house by letter dated 26 th March 2011. FY 2011 initial FS submitted four months late on 20 th Nov 2012 to AG , following discrepancies extensively revised FS re-submitted on 19 th February 2013 seven months late. Submission to House of Assembly of FY 2011 Audit was in time on 13 th March 2013.	FY 2011 accounts submitted by Accountant Generals letter dated 30 th January 2013 received on 11 th February 2013. A letter to this project consultants dated in May 2013 suggests the audited reports for 2009-2011 may be with the State Assembly but no independent evidence of submission.	FY 2010 audit completed , but no information on timing. Except time for submission to Accountant General not HA, shown as 9 th December 2011	FY 2011 accounts submitted two months early on 25 th April 2012. It was two months early. Auditor General's Report on FY 2011 FS was submitted to the House on 14 th September 2012 two weeks early	FS for YRs 2009 and 2010 submitted by letter of Accountant General to the Auditor General dated 1 st August 2011. 2010 Audit Report submitted to House by letter dated 3 rd August 2012 acknowledged same day	Audited FY 2009-2010 FS provided, but no information on timing of completion of FS and its. Submission to auditor general, but FY 2010 Audited report submitted to the House on 19 th Dec 21 st 2012

Accounting and Auditing Standards,	<p>UNCA C: Article 9(2)c AUCP AC: Article 5(4) ECOW AS Protocol: Article 5(f)</p> <p>Up till 2013 Nigeria had no public sector accounting standards ; reports prepared in accordance with local reporting formats, which falls short of international standards; The Guide to Audit of Federal and State Governments published by conference of Nigerian auditors General is not backed by law and does not meet international standards. Even where States keep to current accounting models and the auditing guidelines issued, they will fall short of acceptable international standards . A Financial Reporting Council has been established with powers to issue accounting and auditing standards. Accounts and Audit Reports have issues of non disclosure of material information in public interest.Often they are not published, and when published they have limited circulation and are not found on State websites etc</p> <p>The Federal and State Governments have now adopted IPSAS.Implementation is to start with 2014 budget, but this is yet to be formally confirmed by the Financial Reporting Council of Nigeria the standard issuing body. The Council is also yet to issue any auditing standards ALL THE STATES ARE NON-COMPLIANT</p>											
Risk Management and Internal Controls	<table border="1"> <tr> <td data-bbox="313 640 418 1102">UNCA C: Article 9(2)d AUCP AC: Article 5(4) ECOW AS Protocol: Article 6(4)(a,b)</td> <td data-bbox="418 640 532 1102">FI, and SR last revised in Oct, 1984; too old - require revision; audit reports reveal important Internal Control issues</td> <td data-bbox="532 640 646 1102">Adopts Federal FR as its FI, but not the current edition, no evidence of adoption</td> <td data-bbox="646 640 760 1102">No information on FI; audit reports reveal important Internal Control issues</td> <td data-bbox="760 640 873 1102">No information on FI and on state of Internal Control; Audit reports reveal IC issues</td> <td data-bbox="873 640 987 1102">Submitted a copy of Federal FI as applicable but no evidence of adoption. Audit reports reveal important Internal Control issues.</td> <td data-bbox="987 640 1101 1102">No Information on FI, but submitted stores regulations</td> <td data-bbox="1101 640 1214 1102">Adopts Federal FR, but not the current edition; no evidence of adoption and audit report indicates Internal Control issues;</td> <td data-bbox="1214 640 1328 1102">FI provided; contains detailed provisions on Internal Control including internal audit. Audit report shows Internal Control issues</td> <td data-bbox="1328 640 1443 1102">FI provided, contains provisions on Internal Control , Audit reports indicates Internal Control issues</td> <td data-bbox="1443 640 1559 1102">No Information on FI but audit report indicates Internal Control issues</td> </tr> </table>	UNCA C: Article 9(2)d AUCP AC: Article 5(4) ECOW AS Protocol: Article 6(4)(a,b)	FI, and SR last revised in Oct, 1984; too old - require revision; audit reports reveal important Internal Control issues	Adopts Federal FR as its FI, but not the current edition, no evidence of adoption	No information on FI; audit reports reveal important Internal Control issues	No information on FI and on state of Internal Control; Audit reports reveal IC issues	Submitted a copy of Federal FI as applicable but no evidence of adoption. Audit reports reveal important Internal Control issues.	No Information on FI, but submitted stores regulations	Adopts Federal FR, but not the current edition; no evidence of adoption and audit report indicates Internal Control issues;	FI provided; contains detailed provisions on Internal Control including internal audit. Audit report shows Internal Control issues	FI provided, contains provisions on Internal Control , Audit reports indicates Internal Control issues	No Information on FI but audit report indicates Internal Control issues
UNCA C: Article 9(2)d AUCP AC: Article 5(4) ECOW AS Protocol: Article 6(4)(a,b)	FI, and SR last revised in Oct, 1984; too old - require revision; audit reports reveal important Internal Control issues	Adopts Federal FR as its FI, but not the current edition, no evidence of adoption	No information on FI; audit reports reveal important Internal Control issues	No information on FI and on state of Internal Control; Audit reports reveal IC issues	Submitted a copy of Federal FI as applicable but no evidence of adoption. Audit reports reveal important Internal Control issues.	No Information on FI, but submitted stores regulations	Adopts Federal FR, but not the current edition; no evidence of adoption and audit report indicates Internal Control issues;	FI provided; contains detailed provisions on Internal Control including internal audit. Audit report shows Internal Control issues	FI provided, contains provisions on Internal Control , Audit reports indicates Internal Control issues	No Information on FI but audit report indicates Internal Control issues		
Corrective Action for Non-	<p>UNCA C: Article 9(2)e AUCP AC: Article 5(4) ECOW AS Protocol: Article 6(4)</p> <p>Limited follow up action for Non-compliance with Legal Provisions on Accounts and Audit exists both in the Constitution and other legislations and manuals. There are several issues requiring legislative interventions; but required legislative action is very lax and in some cases non-existent. There have been House of Assembly follow up committee investigations in Cross River, Ekiti and Ogun States. There are no statutory powers for direct coercive corrective action by the Auditors Generals and States have failed to make necessary laws to create mechanisms for effective corrective action and to remedy such other issues as independence of Auditor General's office.</p> <p>Cross River state is an exception, to the extent that it has laws that create structures for follow up action on Audit Reports, expound and increase Auditor General's powers to include recommending sanctions, provide timelines for answering Audit Queries. However the law fails to secure full independence of the office of the Auditor General, particularly as to financing, remuneration, discipline and advancement of its staff.</p> <p>CROSS RIVER STATE (SC), EKITI AND OGUN STATES (PC), THE REST OF THE STATES (NC)</p>											

Chart 5.0: Gives further illustration on the foregoing discussion



Chapter 6: Civil and Administrative Measures to Protect the Integrity of Public Finance and Accounts Records

6.1 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 technology and increase in efficiency of those responsible in this regard*” (Article 7(3)). On this issue, 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)).

6.2 There are two aspects to this discussion: The existence of civil and administrative measures there are in State Governments to protect the integrity of public finance and accounts records; and how effectively respective State Governments enforce them. Applicable measures and procedures for securing document integrity are provided for by certain generic documents which are similar among States and at the Federal level. Some States in fact claim to apply the Federal Financial Instructions (FIs) and Civil Service Rules (CSRs). These documents include the Financial Instructions, Treasury Circulars, the Public Service Rules and the Civil Service Handbook. The other documents relate to statutory provisions from subject specific- legislation such as the Freedom of Information, Fiscal Responsibility and Public Procurement Laws and related guidelines where they exist.

Existence of Civil and Administrative Protection Measures

6.3 *The Financial Instructions (FI) constitutes the most important source documents on civil and administrative measures for protecting public finance and accounting records.* The Financial Instructions are binding on all concerned, and although the books do not contain sanctions for their violations, the Public (civil) Service Rules do. The FI contains detailed and elaborate provisions on the procurement, security, control, custody, storage, and use of all receipting, licensing, recording, and evidence account documents. For example, the federal Financial Regulations (FR)¹²⁹ adopted wholesale by some subject States and mirrored by the FIs of others contains provisions on rules, procedures, and proformas for:

¹²⁹ 2009/e; cited as example to avoid using any of the participating 10 states documents as model; in any case, state FIs are all similar to themselves and the federal FR; besides, as shown elsewhere in this report, some states adopt and use older versions of the federal FR.

- Revenue collection and recording, including documentation and issuing of receipts.
- Authorizing and incurring expenditure, making payments, including evidencing documentation, such as payment vouchers and Departmental Vote Books (DVBs)
- Issuing of cheques, custody of cheques, signing, storage of cheque books and used cheque stubs, maintenance of cheque register, etc. Maintaining the cashbook and preparation of monthly cash accounts.
- Making adjustment to accounts records through the use of journals.
- Operation and recording of imprests.
- Custody of public moneys, stamps, security books, and documents.
- Handling of receipts and license books.

6.4 The FR goes to great length to make provisions on each of these. For example, the provisions with regard to handling of receipts and license books cover the following, among many others:

- Format for printing security documents
- Serial and consecutive numbering of receipts/documents
- Same numbering for each set of documents: original, duplicate, triplicate, quadruplicate, as the case may be
- Prohibition of printing of Treasury books from any other source than the Nigerian Security Printing and Minting Company (NSPMC)
- Non-delegable authority of the Accountant General for placing indents with the NSPMC for supply of treasury books
- Taking of treasury documents, including receipts and licenses on store charge, and maintenance of disbursement register in prescribed format
- Use of the normal stock procedure for treasury documents, requisitioning, issuing, and updating of stock cards.

6.5 One challenge however is that in States claiming to adopt the Federal FI, no State instruments have been presented indicating this adoption. It just appears as if it has become a practice in these States to apply the federal FI, but the danger however is that without formal adoption, it may only be applied when convenient. Further, application of its provisions may not be binding without a formal adoption evidenced in an instrument of the State Government. Given the Constitutional fiscal autonomy of State administrations, the implication for legal enforcement of this kind of instrument is at best uncertain, particularly where it has not been re-issued by the State for its own use. There should in the least be a Treasury Circular adopting the federal FI in these States.

6.6 *Treasury Circulars issued by the Accountant General on specific matters arising from time to time supplement, elaborate, clarify, and emphasize provisions of the FIs.* The Accountant General addresses these circulars to the heads of Government, Ministries and Extra Ministerial Departments and uses them to provide additional instructions and directives, especially on new government policies. Treasury Circulars are binding on all affected Government offices and individuals with equal force as the FIs, and their violation are also punishable in accordance with the rules of the Public service as contained in the CSR.¹³⁰ As subsidiary legislation, these Circulars derive from exercise of legitimate powers vested by law and in most instances in States, the old regional laws. Consequently, they also have the force of law.¹³¹ The Office of the Accountant General of the Federation has compiled and published extant Treasury Circulars issued from 1999 – 2008 in one single volume for ease of reference. A second edition from 2009 to date is in print. The Circulars are also available on the treasury website, www.oagf.gov.ng.

¹³⁰ This applies to circulars issued by all competent authorities 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.

¹³¹ To illustrate, in 2009, the Courts jailed a former chairman of the Nigerian Ports Authority (NPA) for two years for failing to comply with a federal procurement circular that prohibited contract splitting.

In all States surveyed, we did not find one with a published and publicly available volume of Treasury Circulars. Though Ogun State had a spirally bound volume containing all applicable Treasury Circulars at the Accountant General's office, its circulation appeared very limited even within the Public Service. No other States other than Ogun State in this study presented a single volume of FIs.

6.7 *Section 2 of the Freedom of Information Act 2011 requires every public institution whether State or Federal to “ensure that it records and keeps information about all its activities, operations, and businesses ... and ... proper organization and maintenance of all information in its custody in a manner that facilitates public access to such information. A public institution shall also maintain “a description of the organization and responsibilities of the institution, including details of the programmes and functions of each division, branch and department of the institution.” A public institution shall also widely disseminate and make readily available this description to members of the public through various means, including print, electronic and online sources, and at the offices of such public institutions. It shall also ensure to update and review the information periodically, and immediately whenever changes occur. This is to facilitate request for information by members of the public.*

6.8 This law applies to State governments. However, two States have “domesticated” this law i.e. Ekiti and Kogi States. While the Ekiti State law was passed and assented to, the Kogi State law passed recently is yet to be assented to. The Ekiti State law is said to fall short of the standard of the Federal Law in certain respects, consequent upon which the State has revised its text and submitted a bill for a law to repeal and re-enact the law. As a result it would appear from interview of responsible State officials that the State has taken the applicable law out of circulation until the proposed revisions are effected.

6.9 The better approach may not always be to legislate on this subject matter at the State level considering that the federal law is applicable to States. It may be more functional to develop, adopt and implement measures for ensuring compliance with the federal law at the State level. Such measures may include but not be limited to revision of applicable Civil Service Rules (CSR), Financial Instructions (FIs) and other administrative measures for improved creation and maintenance of public records in a manner that ensures easy retrieval and access. Other useful measures include setting up of internal mechanism for consideration and expeditious grant of requests, as well as issuing State approved guidelines for implementation.

6.10 *The **Public Procurement Laws (PPLs)** of States like Cross River, Ebonyi, Ekiti, Jigawa and Taraba also include measures to protect procurement documents.* Procuring entities must preserve detailed records of all procurement processes for at least ten years. They must also keep electronic and hard copies of all post review procurement processes, and within a given period from the end of the fiscal year, forward copies to the procurement regulatory authority – the State Boards, Bureau (or other agencies) of Public Procurement for review. The PPLs authorize the procurement regulatory authorities to issue detailed procurement guidelines and procedures for the use and guidance of all procuring entities covered by the law. The guidelines will contain detailed administrative rules for implementing the PPL, including documentation processes. Most PPLs also provide that all public procurement related communication must be in writing.

6.11 *The Federal Government of Nigeria has published several other documents with direct and indirect implications for protecting the integrity of public records. These include, the*

- Public Service Rules
- Schemes of Service
- Federal Establishments Circulars from 1974 - 1999
- Guidelines for Appointment, Promotion and Discipline in the Civil Service

- Civil Service Hand Book
- Guidelines to Administrative Procedure in the Federal Public Service
- Administrative Guidelines Regulating the Relationship between Parastatals/Government Owned Companies and the Government.

6.12 As indicated in the TUGAR study report 2012, (www.tugar.org.ng), usually, the Federal Government consults widely before finalizing these documents. For example, the National Council on Establishment (NCE)¹³² plays a vital role in the process that led to the production of the documents,¹³³ including discussions and negotiations with the Joint National Public Service Negotiating Council.¹³⁴ Consequently, States generally own and adopt these documents, although some may reissue all or some of them in their own name and imprimatur. Regrettably, where States in this study have claimed to have adopted the PSR or CSR, no formal instruments of adoption have been presented. The challenges are similar in gravity as is the case with the FIs discussed above. In addition to Public Service Rules (PSR), the Ogun State Government has presented as applicable Public Service Commission Regulations (1976) made pursuant to the Constitution of Western Nigeria 1963. This was presented as applicable to the operations of the Public Service Commission. The legal status of these rules is in doubt first in the light of the fact that the Constitution of western Nigeria 1963 is no longer applicable. Secondly that the Ogun State Public Service Rules revised in 2003 now subsists, thirdly, in the light of the provisions of the 1999 constitution relating to the Civil Service Commission.

6.13 The Civil Service Handbook (CSH) is a compendium on government business consisting of 18 chapters of 169 pages. It is an instructional guide material covering every aspect of government activity, the purpose of the activity, and the proper mode for carrying out that activity. The CSH includes a chapter in record keeping, treatment of circulars, the sacrosanct nature of vital documents (including the FR), and several sections relevant to government accounting procedures. The sections relevant to government accounting include those dealing with:

- Government Revenue and Expenditure
- Revenue allocation
- Types of accounts
- The Budgeting Process at the Federal Level
- Government Expenditure, including procedure for control of expenditure, and the e-payment system
- Due Process and Bureau of Public Procurement

6.14 The latest version of the federal Public Service Rules is the 2008 edition,¹³⁵ published in 2009. The Preamble section of the Rules is instructive. It enjoins *“Public Servants ... to study and imbibe these Rules and their associated and complementary Instructions and Notices, and to become familiar with all Laws and Procedures guiding the conduct of public administration and financial management in order to ensure due process and probity in the conduct of Government business”*. Many States claim to adopt this version of the Federal Civil Service Rules, but none provides any State instruments evidencing the adoption. In some instances they simply just provide a copy of the rules as applicable.

¹³² See Box 6.1 below

¹³³ The NCE comprises the Heads of Service of the federal and state governments, with the Head of the Civil Service of the Federation as chair.

¹³⁴ Comprising the eight trade unions in the federal and states' public service

¹³⁵ Government Notice No. 278, Federal Republic of Nigeria Official Gazette, No. 57, Vol. 96 of 25 August 2009, available on the website of the Head of the Civil Service of the Federation, www.ohcsf.gov.ng

6.15 Chapter 8 of the Civil Service Handbook contains the “Code of Ethics and Conduct in the Civil Service.” The Codes are elaborate and comprehensive and apply to all civil servants, including those handling public finance and accounting records. The codes include these 23 issues:

- a) Political neutrality
- b) Integrity and moral rectitude
- c) Avoidance of Conflict of Interest
- d) Professionalism
- e) Discipline
- f) Loyalty
- g) Honesty
- h) Courage
- i) Courtesy
- j) Cooperation
- k) Trust
- l) Industry
- m) Avoidance of delay
- n) Tidiness
- o) Helpfulness
- p) Kindness
- q) Attitude to public funds
- r) National consciousness
- s) Projecting a good image of the service
- t) Efficiency
- u) Consciousness of social problems and social justice
- v) Mode of exercising authority
- w) Flexibility in decision making¹³⁶

6.16 Chapter 3 of the PSR on “Discipline” includes a section on misconduct. Among the possible acts of misconduct listed are these five relevant to protection of integrity of records: (i) deliberate delay in treating official document, (ii) failure to keep records, (iii) unauthorized removal of public records, (iv) dishonesty and (v) negligence. There are also provisions on ‘serious misconduct’, which include these three relevant to integrity of accounts: falsification of records, suppression of records, withholding of files. Queries, warnings, and surcharges for fines suffered by government are some the punishments for ‘misconduct’, whereas the punishment for ‘serious misconduct’ include interdiction, suspension, and dismissal from office. The PSR specifies the disciplinary procedure for applying the sanctions and punishments¹³⁷.

6.17 Ogun State as indicated has its Public Service Rules revised last in 2003. The document covers essentially the same topics covered by the Federal Civil Service Rules and handbook. It declares that it applies to all officers of Government except where they conflict with specific terms approved by the State Government and written into the contract of employment or letters of appointment, or as regarding offices created by the 1999 constitution to the extent that they do not conflict with the Constitution. Yobe State provided the Yobe State of Nigeria Public Service Rules revised in August 2004, and Schemes of Service for use in Public Service of Yobe State revised in 2004. Many of the subject States claim to have adopted the Federal Public Service Rules, (Ebonyi and Kogi States submitted the federal Public Service Rules 2009 as evidence of is Public Service Rules), without any instrument of adoption. Katsina State submitted Federal Public Service Rules (Corrected copy 2008), and a Katsina State Civil Service Commission Circular dated 27th October 2008 to Permanent Secretary Government House, SSG, Head of Service, All

¹³⁶ Mapping & Scoping survey of anti-corruption and governance measures in public finance management (PFM). A study of ten states of the federation(Adamawa, Anambra, Bayelsa, Benue, Delta, Kaduna, Imo , Niger, Ondo and Sokoto) 2012

¹³⁷ Ibid

Commissioners and Chief Executives of Parastatals as evidence of adoption of federal PSRs. However, the Circular referred to, forwarding of copies of guidelines for appointments, promotion and discipline, does not indicate that the guidelines referred to are federal guidelines. There is no doubt that the State Public Service rules where they exist are very similar to the Federal Public Service rules. The collaborative manner in which the Federal Government through the National Council on Establishments with membership from States arrived at these rules, accounts for the similarities, but this does not remove the need for formal adoption by States.

Application of the Measures

6.18 How do State Governments apply these rules or their own version of it? Evidence of enforcement of these rules was difficult to collect, and in most cases, not possible. However, as already shown in various sections above, Audit Reports suggest that enforcement of infractions of Financial Instructions is generally poor, with the Auditors General having no follow- up powers other than submission of their reports to the State Assemblies and their Public Accounts Committees. Most Houses of Assembly in the States surveyed have not been holding Audit Hearings.

6.19 None of the subject States in this sample provided any evidence of disciplinary process and activity relevant to protecting the integrity of finance and accounting records.

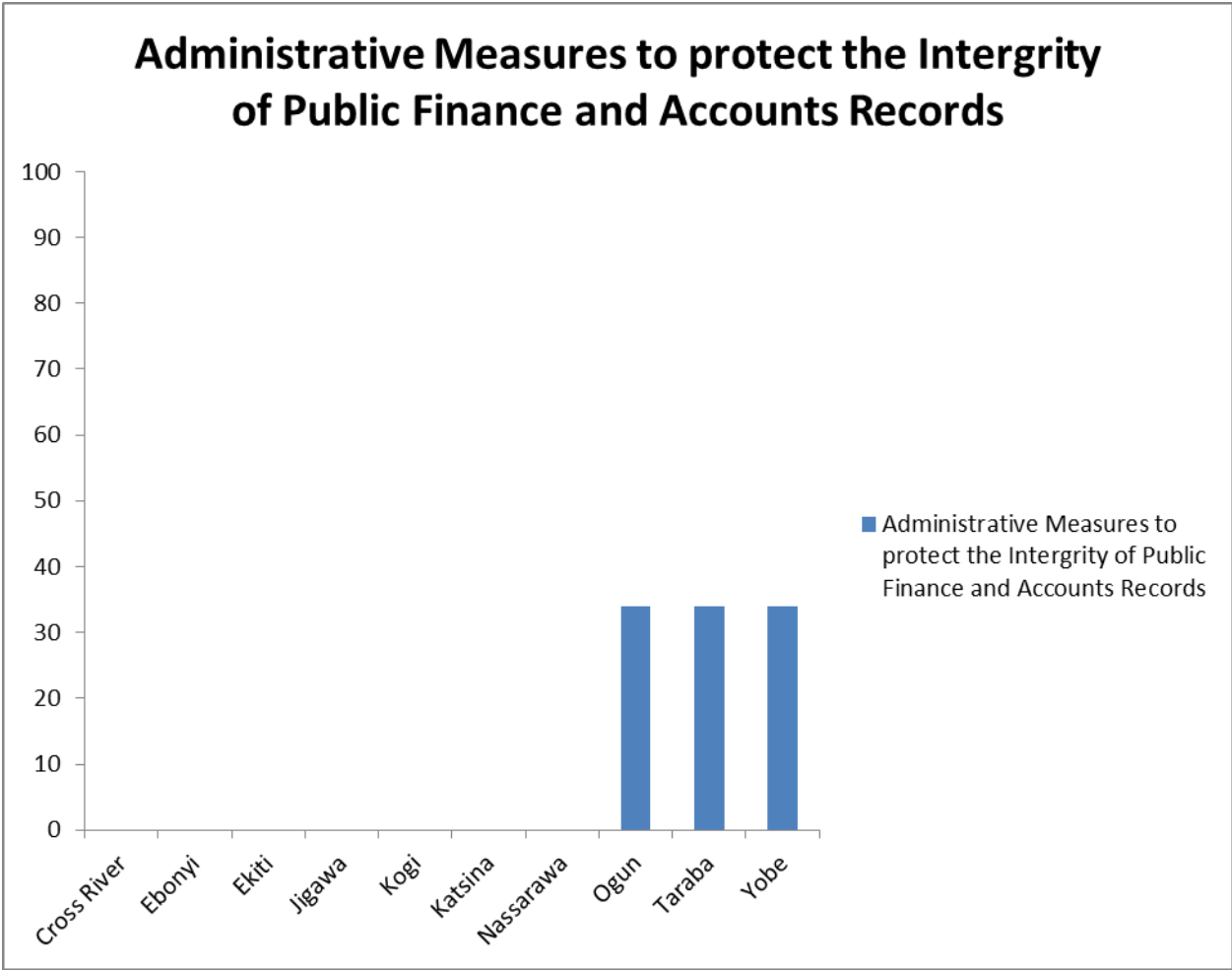
6.20 It is fair to surmise that while the books contain good measures ‘to protect the integrity of public finance and account records’, enforcement of the rules is not as effective as it should be. Otherwise, Audit Reports will not be so replete with cases of violation, including lapses in bookkeeping and failure to evidence expenditures with payment vouchers, as reported above. Further, if enforced regularly, evidence of disciplinary processes in this regard will be available.

Summary of Compliance with Provisions of UNCAC, AUCPCC and ECOWAS Protocol On Management of Public Finance

6.21 Table 6.1 below summarises the foregoing discussions.

	Provisions	Cross River	Ebonyi	Ekiti	Jigawa	Kogi	Katsina	Nassarawa	Ogun
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	No information on PSR and CSH, but State Government is part of the National council on establishment that negotiated and agreed on the documents	Claims adoption of Federal PSR, CSH, and Scheme of Service, but no evidence of implementation NC	No evidence of separate PSR and CSH, but State Government is part of the National council on establishment that negotiated and agreed documents, no evidence of implementation	No information on PSR and CSH, but State Government is part of the National council on establishment that negotiated and agreed documents. No evidence on implementation.	State claims to have adopted Federal PSR without evidence of adoption; State government is part of the National council on establishment that negotiated and agreed documents. No evidence on implementation.	No evidence of separate PSR and CSH, no evidence of adoption of Federal rules, but State Government is part of the National council on establishment that negotiated and agreed documents. No evidence on implementation.	State Claims to have adopted federal CSR without evidence of adoption; state government is part of the National council on establishment that negotiates and agrees documents, no evidence of implementation	Has a published PSR revised in 2003 similar to Federal CSR. State government is part of the National council on establishment that negotiated and agreed document., No evidence of implementation.

Chart 6.0: The chart below also concludes this discussion on administrative measures to protect the integrity of public finance and accounts records in the 10 states graphically



Chapter 7: Public Reporting and Public Participation

7.1 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”.*

7.2 Article 13 of UNCAC requires each State Party to “ take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption”. Required measures may include;

- (a) *Enhancing the transparency of and promoting the contribution of the public to decision making processes;*
- (b) *Ensuring that the public has effective access to information;*
- (c) *Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;*
- (d) *Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption.*

Public Access to Information

7.3 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)).

7.4 One recent important development in this area in Nigeria is the enactment by the Federal Government of the Freedom of Information Act in 2011. The Act introduces itself with these words, *“This Act makes public records and information more freely available, provides for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorization, and establish procedures for the achievement of those purposes”*.

7.5 The Act establishes the right of any person to access or request information in the custody or possession of any public official, agency or institution, whether or not the information is in a written form and whatever the description of the information. This right applies notwithstanding anything contained in any other Act, law, or regulation, to the contrary. It is not necessary for an applicant for information under the Act to demonstrate any specific interest in the information requested. The applicant may institute proceedings in the Court to compel any public institution to comply with the provisions of this Act. A Public Institution may not charge any fee for such information, except “standard charges for document duplication and fees transcription where necessary”. The scope and intendments of the Act are already captured in paragraph 6.7 above.

7.6 *In addition, the law requires that a Public Institution shall maintain “a description of the organization and responsibilities of the institution, including details of the programmes and functions of each division, branch and department of the institution.”* A public institution shall also widely disseminate and make readily and proactively available this description to members of the public through various means, including print, electronic and online sources, and at the offices of such public institutions. It shall also update and review the information periodically, and immediately whenever changes occur. The Attorney General of the Federation has issued guidelines for implementation of this law.

7.7 There have been noticeable but sporadic improvements on public access to how the Federal Government functions, including in public administration and decision making, since return to civil rule in 1999 that State Governments can emulate. These developments have been captured in the TUGAR study report 2012 ¹³⁸ www.tugar.org.ng.

7.8 The Federal Freedom of information Act 2011 applies to States in Nigeria including the ten subject States. However Ekiti State House of Assembly passed and the Governor assented to a similar law in 2011. Kogi State House of Assembly has passed a Freedom of information law in 2012, but it is yet to receive assent. However no concrete mechanism or measures were found in place in any of the Subject States for access to information.

7.9 There is no evidence that any State in this sample has taken any concrete steps to improve access to publicly held information. None of the States has issued guideline for application of the new Access to Information regime, including Ekiti State which has domesticated the law. Only Cross River and Ekiti States claim to publish their Audit Reports in the State website. But these documents were not found in the designated State websites from May to the second week of June 2013.

7.10 During this study, States were requested to present evidence of requests for information publicly held and processes for dealing with such requests. Of the ten States, only Jigawa State produced written requests for copies of the State’s three year annual Audit Reports by a CSO called Jigawa Forum dated 13th December 2012. There was another request for budget documents for analysis dated 14th July 2011

¹³⁸ Mapping & Scoping survey of anti-corruption and governance measures in public finance management (PFM). A study of ten States of the federation(Adamawa, Anambra, Bayelsa, Benue, Delta, Kaduna, Imo , Niger, Ondo and Sokoto

from Project Monitoring Partners, and also a similar request by Maternal and Newborn Child Health Partners with a received stamp and a minute approving release of the requested documents. There was however, no acknowledgement of receipt of information requested by the requesters. In Ekiti State both the Auditor General's office and indeed many other MDAs claim to regularly grant access to information in accordance with the State law. Also the Honorable Attorney General's Office claims to regularly provide advice to Ministries dealing with requests for information. However there appears to be no system in place to capture a record of requests and actions taken on them. The Honorable Attorney General of Ekiti State has issued a Circular asking for records of grant of access to information by MDAs for compilation, and expects in the near future to have these records compiled.

7.11 The difficulty in obtaining such public work tools as FIs, Stores Regulations, Civil Service Rules and Treasury Instructions in most States surveyed, and the limited number of civil servants interacted with who had copies of these work tools in their offices, combined with the difficulty of obtaining copies of such documents for this study is instructive and indicative that few people within and outside the service are provided regular opportunities to be knowledgeable in the provisions of these public documents and attendant processes for public finance management. Despite all efforts, this study could not obtain copies of FIs in the following States: Ebonyi, Ekiti, Katsina, Nassarawa, Taraba and Yobe. State Governments have obligation to proactively disclose these documents publicly under the provisions of the FOI Act.

7.12 Access to publicly held information remains difficult in subject States and is a major constraint on citizen's participation in governance. None of the States submitted evidence of strong administrative measures to improve creation and maintenance of public records in a manner that lends itself to easy retrieval and grant of access to information as required by law. One good and effective option for States will be to use their various websites to proactively disclose information to the public. Once information is available and known to be available online, it will reduce requests for the same information. Also it appears that in the few instances where access to documents may have been granted in Ekiti State, they may have just been handed out without any acknowledgement of receipt. It is important to maintain records on requests received, access granted, and access refused and why.

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

7.13 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)).

7.14 Beginning in 2004 at the commencement of its fiscal reforms, the Federal Government has made 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. Recently in July 2012, the Coordinating Minister of the Economy and the Budget Office of the Federation held consultative meetings with citizen stakeholders, including private sector groups on the Medium Term Expenditure Framework (MTEF) and 2013 budget proposals in line with the Fiscal Responsibility Act 2007. The Act mandates annual compulsory public consultation between the Minister of Finance and Stakeholders on the MTEF. That way it provides access to decision makers, by citizens groups seeking to influence government planning and budget priorities.

7.15 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, Departments 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 Departments¹³⁹

7.16 The Attorney General for the Federation and Minister of Justice has issued a revised guideline for implementation of the Freedom of Information Act 2011 signifying commitment of government to implementing the Act. Following the directives of the Secretary to the Government of the Federation, many public institutions are establishing in-house Committees to plan for and prepare agencies to more efficiently manage information and respond to public requests for information in accordance with the Act.

7.17 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.¹⁴⁰

7.18 Only Ekiti State amongst States in this study presented evidence that it has recently established its own version of SERVICOM called “EKS Serve”.

7.19 Nigeria also has an official Ombudsman which has State offices. The Public Complaints Commission (Nigerian Ombudsman) is an independent organization established by the Federal Government of Nigeria in 1975 through the Public Complaints Act 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 official 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. 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

¹³⁹ With technical and funding support from donors (especially DFID), SERVICOM produced evaluation reports on major Nigerian government agencies (see next section below).

¹⁴⁰ The code for ministers is on SERVICOM's website, www.servenigeria.com but that for general staff is not.

from the Consolidated Revenue Fund, the Commission refers cases to the National Assembly or State Governors for further action. Although the commission publishes an annual report, this is not widely available.

7.20 As already indicated in this report, the budget processes in Cross River and Ekiti States have been simplified to create improved access to decision makers by the people. In Cross River State, CSO consultation in the budget process has been deepened increasingly. Budget Call Circulars are sent to CSOs as a matter of course and at the same time as they are sent to MDAs. CSOs participate in arriving at sectoral projections of MDAs and also make contributions to their budget formulation. Further, the budget office grants them access to State budget proposals when assembled and an opportunity to critic it; and the legislature holds annual consultations with CSOs on State budgets. There is evidence that positions canvassed by CSOs have sometimes been accepted by both the Legislature and the Executive. The budget when passed is simplified and disseminated and teams of officials led by representatives of constituencies in the House of Assembly, hold budget sensitization sessions where they present the budget provisions relating to every constituency and answer queries by communities.

7.21 The approach in Ekiti State has been slightly different. The Governor holds local government/community budget meetings. These are attended by representatives of all MDAs, where with advance information, communities prepare and present their wish list and are encouraged to prioritize them, into an A, B & C lists. These wish lists become the basis for formulation of State and Local Government budgets in a way that avoids duplication and creates synergy. However it is not clear how this is integrated into their current MTEF or whether the wish lists themselves are focused on the current year or can span over a multi-year period.

7.22 In Jigawa State yet, a third approach has been followed. Jigawa claims to have produced its Comprehensive Development Framework (CDF) in a broadly consultative manner. The State annually develops different sector plans through an MTSS process, with CSO participation. These sector plans form the basis of the annual budget and the sector goals are derived from the State CDF. The practice in these three states in this regard are examples the other seven States in this sample may wish to emulate.

7.23 Citizens participation in the PFM processes is evident in Cross River and Ekiti States. The same applies in Jigawa State where several letters of request for audience for budget related documents and reports, and participation in MTSS processes indicate that there is growing participation of CSOs in the budget process. This is particularly reflected in written contributions to major sector MTSS like in education and health sector budget preparation and analysis with support of development partners.

7.24 There are still several major areas where administrative bottlenecks hinder public access to decision making process and information in the States. Release of audit report and information to the public is one classic area.¹⁴¹ However one major shift occurring is that in subject States, Auditors' General do not appear anymore to be denying responsibility to publish Audit Reports as was the case with majority of States in the previous TUGAR Report 2012. However in many cases they are not publishing their reports, and when they do, the levels of disclosure and circulation are low. The result is that the public do not always have access to audit information and reports.

7.25 A second and more serious bottleneck is the retention of Official Secrets Act in the law books despite the fact that technically many if not all its provisions have been rendered ineffective and inapplicable by the Freedom of Information Act 2011. All State Civil Service rules as well as the Federal Civil Service Rules still retain provisions on maintaining official secrets in accordance with the Official

¹⁴¹ By contrast, audit reports of the South African government are readily available on the website

Secrets Act. Theoretically these provisions are void to the extent that they are in conflict with the Freedom of information Act 2011 but in practice, the reality is different. While instances of Public Servants in subject States brandishing these tools as grounds for refusal of access to information appear to be on the decline as a result of increasing awareness about the Freedom of Information Act, there is limited evidence of substantial improvements in access to publicly held information in many of the States in this study. This is despite the measured improvements in awareness of the right to such information, and proactive disclosure of budget preparatory and implementation information to CSOs in States such as Cross River.

7.26 However two State websites stand out as being on the average more informative and therefore more helpful than others in other States with regard to proactive disclosure. These are the Cross River¹⁴² and Ekiti¹⁴³ State websites. The Cross River State website contains information on many aspects of Government activity. It presents the mandate of every Ministry and parastatal in Cross River State. It also provides news and information on State administration including award of major contracts.

7.10 7.27 The Ekiti State website provides basic information on most of its MDAs, regularly publishes limited information of contracts vetted by its Bureau for Public Procurement every month, and in a sense, providing information on approved contracts above a certain threshold. It has the State budget speech and budget as free downloads. It also has sectoral presentation of the budget. It contains tender publications and allows for automatic email access to updates. However though State officials in these two States claim that the Audit Reports are on the websites, these could not be found on the sites during the period of this study.

7.28 Another finding of this study is that there is a low level of demand for information even among informed Civil Society Groups. Most Civil Society Groups at the State level could not also produce evidence of requests for information made to MDAs in the last two years, though a few of them claim to regularly make requests. Indeed the number that admits they have not made any requests is instructive. When asked why they do not make regular requests for information or public documents they need, the most common answer revealed that they do not believe access will be granted. In some instances indications were that persistent requests may be interpreted to mean they were fishing for leaks to tarnish Government image.

Publishing Periodic Reports on Risks of Corruption in Public Administration

2.29 UNCAC also requires the “*Publishing (of) information, which may include periodic reports on the risks of corruption in its public administration.*”

7.30 In 2009, the Technical Unit on Governance and Anti-corruption Reforms (TUGAR) published three reports titled; a) Mapping of Anti-Corruption Measures in PFM in the Federal Government of Nigeria and Six Nigerian State Governments;¹⁴⁴ b) Report of Scoping Survey of Anti-Corruption Initiatives in Nigeria; and c) Report of Compliance and Gap Analysis of Anti-Corruption Initiatives in Nigeria with regional and global anti-corruption instruments. These were the first reports of its kind in Nigeria.

¹⁴² www.

¹⁴³ www.

¹⁴⁴ The states are Bauchi, Enugu, Rivers, Kano, Lagos, and Plateau

7.31 Again in 2012, TUGAR published another study report titled Mapping & Scoping survey of anti-corruption and governance measures in Public Finance Management (PFM) - A study of ten States of the federation (Adamawa, Anambra, Bayelsa, Benue, Delta, Kaduna, Imo, Niger, Ondo and Sokoto). The current study report if published will further contribute to government's efforts to comply with these requirements. This study found no independent efforts by States in this sample in this respect.

7.32 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.

7.33 The other report that provides 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 reports¹⁴⁵ has four headings: major weaknesses, major strengths, overall rating (on a scale of 50), 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.¹⁴⁶ 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, and there is no recent evaluation report from SERVICOM.

7.34 The Federal Government established Nigeria Extractive Industries Transparency Initiative (NEITI) in 2004. One of the Key functions of NEITI is to carry out regular financial, fiscal and process audits of the Nigerian extractive sector. These audits reconcile the amounts that extractive companies pay to government with what government says it receives. Since inception in 2004, NEITI has conducted four cycles of audits, all of them in the oil and gas sector and the recent audit covering the solid minerals sector. The first oil and gas audit covers the period 1999 to 2004, the second 2005, the third 2006-2008 and the fourth and last one up to 2011. In the past, information on revenue and physical flows of the oil and gas in Nigeria was treated as confidential. NEITI audit exercises and the publication of all its reports is effectively changing this outlook. The NEITI Secretariat, its audit exercises and the publication of the audit reports promote a culture and consensus framework for making the extractive sector in Nigeria more transparent and accountable¹⁴⁷.

7.35 Also at the federal level, the ICPC has conducted systems review of some MDAs. One well publicized one is the study of corruption and review of land administration in FCT. The report is a free download on the ICPC website¹⁴⁸.

7.36 The ICPC in collaboration with TUGAR and the BPP has developed a Corruption Risk Assessment Methodology applicable to the federal and State departments and agencies. They have completed training and certification of sixty nine (69) Corruption Risk Assessors selected from ICPC, TUGAR, Federal & State agencies and Civil Society. These assessors, on behalf of The Bureau of Public Procurement, ICPC and TUGAR conducted a Corruption Risk Assessment of the Port Sector in Nigeria. The recently published report captures Corruption Risks in six Ports (Calabar, Lagos- Apapa, Lagos Tin Can, Port Harcourt, Onne and Warri).

¹⁴⁵ www.servenigeria.com

¹⁴⁶ This may not really be a negative commentary on the Public Complaints Commission. Public access to MDAs does not appear to within its mandate.

¹⁴⁷ www.neiti.org.ng

¹⁴⁸ <http://icpc.gov.ng/downloads/?did=3>

7.37 No State in the study is known to review and publish reports of risk of corruption in its administration. Ekiti State claims to have subjected itself to the peer review of the Governors forum, but did not produce a copy of the report. It is not clear however that the exercise assessed and reported the risk of corruption in public administration in Ekiti and Anambra States where they are said to have occurred.

Participation of Society in Prevention of and fight against corruption

7.38 Governments are representative institutions, and Government officials act for and on behalf of citizens, but this should not preclude citizens participation in decision making and indeed in prevention and fight of corruption. This perhaps is why UNCAC requires State Parties” *to promote the active participation of individuals and groups outside the public sector, such as civil society , non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption”*

7.39 Also the AUCPCC requires state parties to do the following among other things; a) popularize this convention with the full participation of Media and Civil society; b) create enabling environment to enable Civil Society and media to hold Governments to the highest levels of transparency and accountability in management of public affairs; c) grant media access to information in cases related to corruption and related offences on condition that dissemination does not adversely affect investigation; d) Ensure and provide for participation of Civil Society in the monitoring process and consult Civil Society in the implementation of this convention.

7.40 Article 5 of the ECOWAS Protocol compliments this by providing that each State Party *to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention shall take measures to establish and consolidate laws that ensure the participation of civil society and Non-Governmental Organizations (NGOs) in efforts to prevent and detect acts of corruption.* Sections 13 and 14(c) of the Constitution of the Federal Republic of Nigeria requires every one exercising Legislative, Executive or Judicial authority in Nigeria in doing so to ensure the participation by the people in their Government in accordance with the provisions of this Constitution. This provision though part of the fundamental objective principles of State policy which are said not to be directly justiciable, has been the basis for citizens’ agitation for improved environment for popular participation in governance decision making, which in part has led to improved legal environment for citizens’ participation in Nigeria.

7.41 At the Federal level, the FRA in S48 requires the Federal Government to ensure full and timely disclosure and wide publication of all transactions and decisions involving public revenues and expenditures and their implications. It also requires the Minister of Finance to consult the public on the Medium Term Expenditure Framework¹⁴⁹. In the case of the Public Procurement Act 2007, S 19 requires mandatory citizen’s observation/monitoring of all procurement activity, and Ss 16, 23, 24, 25, 38 provide for public access to procurement information.

7.42 Also by the Nigeria Extractive Industries Initiative Act 2007 the Federal Government set up the NEITI, as a multi- stakeholder framework and Nigerian subset of a global EITI initiative aimed at achieving due process and achieving transparency in payments by Extractive Industry (EI) companies to

¹⁴⁹ S 13(2) of the Fiscal Responsibility Act 2007

governments and government linked entities and in the case of Nigeria, in the utilization of such receipts by Government entities. The NEITI National Stakeholders Working Group (NSWG) the Board of NEITI, has both private sector and Civil Society representatives. The NSWG is made up of fifteen (15) members drawn from the extractive industry, civil society, labour unions in the extractive sector, and representatives of the six geo-political zones of Nigeria, and provides good opportunity for increased citizen's participation in the natural resources governance in Nigeria.

7.43 Both the ICPC and EFCC support networks of civil society organizations working to prevent corruption. While the EFCC supports the Anti-Corruption Revolution (ANCOR), the ICPC has established and supports the National Anti-Corruption Coalition (NACC).

7.44 Some States have passed Fiscal Responsibility and Public Procurement laws with similar provisions to the Federal laws though with variations in certain cases. In some cases, however the important provisions have been either watered down in these laws or have been completely removed. A case in point is the Cross River, Ebonyi, Ekiti and Jigawa, States Public Procurement laws which omit the provision for mandatory monitoring of State procurement processes by representatives of citizens groups and professional bodies. However the Cross River, Ebonyi and Ekiti State procurement laws unlike the Jigawa example adopts the access to procurement information provisions of the Federal law.

7.45 The Ebonyi, Ekiti and Taraba State Fiscal Responsibility laws adopt the transparency provisions of the Federal law and also grant citizens unfettered access to courts to enforce the law without the limitations of the principle of *Locus Standi*. In addition, the Ekiti and Taraba State Fiscal Responsibility Laws both require publication of Auditor- General's reports within six and seven months respectively of the end of a year. The Jigawa State Economic Planning and Fiscal Responsibility Council law 2009 adopts the transparency provisions of the Federal law, but does not adopt the unfettered right of access for citizens to courts to enforce the provisions, or the requirement for publication of audited accounts, but rather creates an offence and prescribes punishment for infractions of the law.

7.46 The extent of implementation of these provisions of the law is yet to be ascertained as the States presented no evidence and did not respond to questionnaire questions on these issues. Implementation is low in most States and yet to start in others as already indicated. The Federal Government of Nigeria however, has since return to civil rule recorded improvements in the environment for participation of citizens in public decision making. The improvements include certain level of simplification of public decision making processes to facilitate public access to competent decision making authorities at the Federal level. The Medium Term Strategy Sessions and the involvement of civil society, as well as the Minister of Finance's consultations on it are also other examples of such efforts. However Civil Society Organizations complain that implementation is not deep and consistent. Also key Civil Society Organizations have taken advantage of the improving access to develop notable initiatives and programs. Some of these initiatives at the Federal level consistent engagement of the budget process. The efforts include providing detailed analysis of sectoral proposed budgets of the Federal Government, and identifying risks of wasteful and unjustifiable budget proposals for consideration of the Executive and Legislature¹⁵⁰.

7.47 A further example is the public procurement monitoring program of the Public & Private Development Centre. This program embarks on training and deploying citizens procurement monitors, who report online based on a standardized tools. This program has developed an online portal with an analysis engine to collate, analyze and disseminate results of monitoring of the public contract awarding

¹⁵⁰ CWF publications include "In the name of Appropriation all things are possible (Bieng a review of the approved 2012 budget) 2012. Federal capital budget of states in the Northwest, North East, North Central, South East , South South, South West, geo-political zones of Nigeria.

process which had hitherto been shrouded in secrecy, and is working to extend its monitoring to the project implementation aspect of budget implementation.¹⁵¹

7.48 Many other such programs exist at the Federal level. The Open Society Justice Initiative, Media Rights Agenda and Right to Know (R2K) all have robust access to information programs, improving awareness, supporting improvements in systems for information creation, and management in the public sector in a way that supports increasing access to publicly held information¹⁵². However stakeholders maintain that there is still room for improvement of citizens' participation in Governance issues in compliance with the UNCAC, AUCPCC and the ECOWAS Protocol and local laws and regulations¹⁵³.

7.49 Currently the Federal Government through the Office of the Honorable Attorney General of the Federation, TUGAR, the Zero Corruption Coalition is facilitating the participation of civil society organizations in assessing Nigeria's anti-corruption compliance in preparation for the country's UNCAC review.

7.50 States in this study have not followed the positive examples of the Federal Government except for citizens participation in the budget process in Cross River, Ekiti States and to a limited extent Jigawa States. The States do not have any specific initiatives aimed at complying with UNCAC, AUCPCC and ECOWAS protocol regarding citizen's participation in corruption prevention.

7.51 Table 7.1 below captures evidence of efforts of States in this sample to comply with citizens' participation requirements, as well as challenges of citizens groups in this direction. There are two sides of the coin, one is the efforts of Government, legal and administrative measures, and changing or unchanging attitudes in the public sector, and the other side of the coin is the presence or absence of effective demand from Civil Society broadly speaking, and changing or unchanging attitudes of citizens to voice and accountability.

7.52 The second is equally as important as the first because no matter the level of access and improvements in laws and practices Government undertakes, it may not produce effective results without effective citizen's demand for accountability.

7.53 None of the ten states can be said to comply with measures set out requiring State Parties to involve non state actors and citizens groups in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. Cross River, Ekiti States and to some extent Jigawa States stand out however with noticeable improvements specifically in the process for articulating their budget. They also have the best potential to improve access to publicly held information. However they do not as yet have specific initiatives that seek to comply with this benchmark.

Summary of Compliance with Provisions of UNCAC, AUCPCC and ECOWAS on Public Reporting

7.11 *Table 7.1* below summarises the foregoing discussions.

¹⁵¹ <http://pro-act.org/profiles/blogs/procurement-innovation-challenge-award-winners-announced>

¹⁵² www.r2knigeria.org, and www.mediarightsagenda.net

¹⁵³ See www.procurementmonitor.org

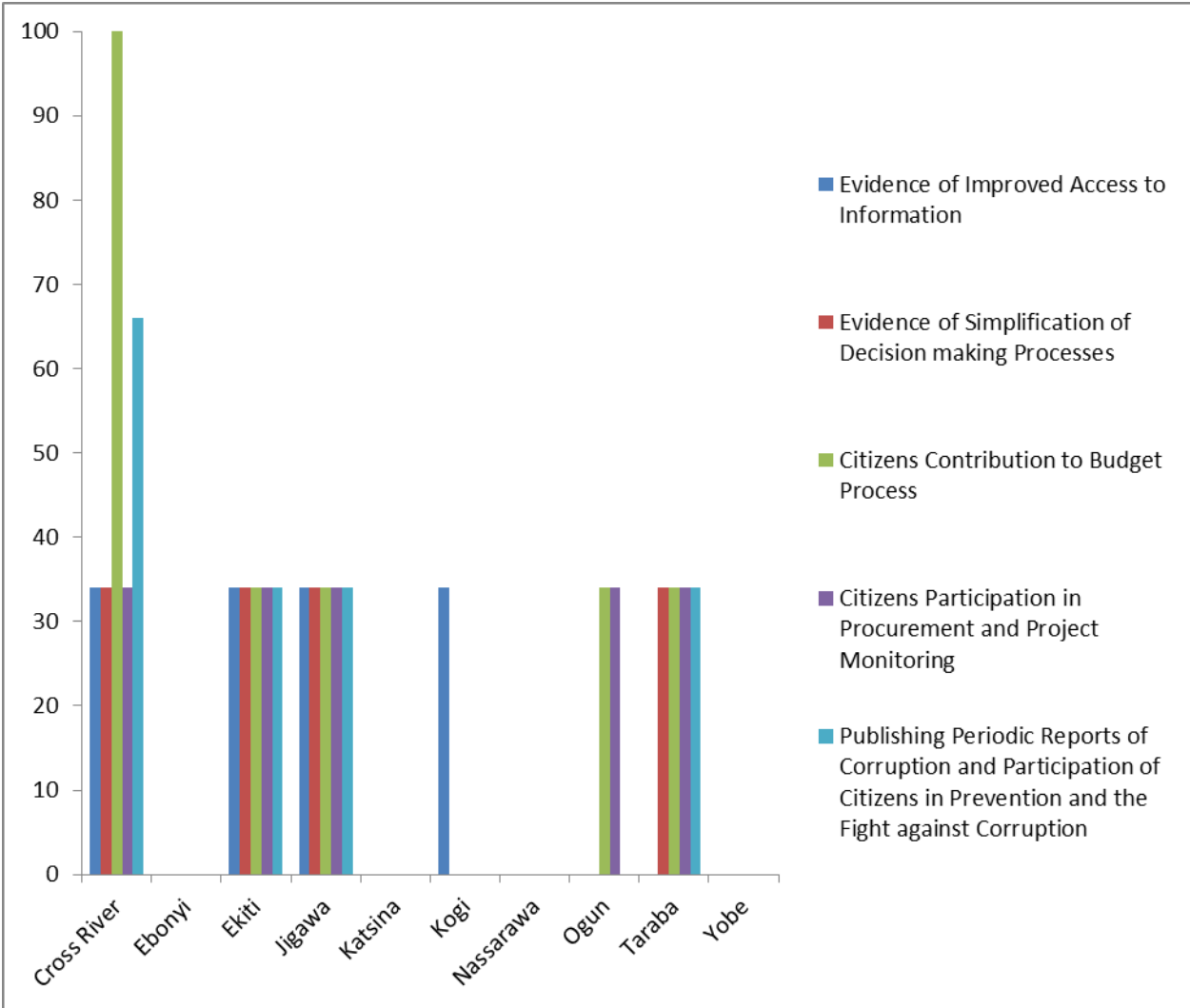
Table 7.1: Summary of Compliance with Provisions of UNCAC, AUCPCC and ECOWAS on Public Reporting, and participation in the subject States						
States	Evidence of improved Access to information	Evidence of simplification of decision making processes	Citizens contribution to Budget process	Citizen Participation in Procurement and Project Monitoring	Challenges to Citizen Participation	Publishing Periodic Reports of Corruption, and participation of citizens in prevention and the fight against corruption
Cross River	There is evidence of improved proactive disclosure of governance information to CSOs and through published reports but little or no evidence of system for collation, and management of publicly held information in a manner to improve access on demand and no evidence of grant of access on demand	CSO Access to MDA MTSS processes, distribution of budget call circulars, budget documents, implementation reports etc and institutionalized consultations with civil society by executive and legislature, simplification and dissemination of budget	A very inclusive MTSS and budget process exists that allows CSO inputs and access to decision makers. Constituency budget consultation meetings/accountability forums allows for public demand for accountability	Limited contractor selection monitoring, but better project implementation monitoring by CSOs supported by government	Current attempts by the new SA on civil society to exclude some CSOs from government processes may role back gains already achieved. The second challenge is dwindling funding from donors.	No evidence was found
Ebonyi	No evidence of improved access to information was presented or found	No evidence of simplification of decision making processes was presented or found	No evidence of citizens contribution to the budget process was presented or found	No evidence of citizens project monitoring presented or found	Low political will to encourage citizen's participation. Lack of access to information and cooperation of government agencies and political authority.	No evidence was found
Ekiti	Passage of an FOI law, and ongoing revision to improve it, increased consciousness of right of access to publicly held	Governors community and local government budget consultative meetings has created access	Budget is citizens driven since prioritized needs presented by communities at budget consultation meetings form the fulcrum of budget proposals since 2012	No evidence of citizens or CSO or citizens participation in contractor selection monitoring	We could not ascertain challenges because we could not interact with the community structures	No evidence was found

Table 7.1: Summary of Compliance with Provisions of UNCAC, AUCPCC and ECOWAS on Public Reporting, and participation in the subject States						
States	Evidence of improved Access to information	Evidence of simplification of decision making processes	Citizens contribution to Budget process	Citizen Participation in Procurement and Project Monitoring	Challenges to Citizen Participation	Publishing Periodic Reports of Corruption, and participation of citizens in prevention and the fight against corruption
	information, but no evidence of a system to consider , grant or systematically refuse access on demand, existing policy in favour of proactive disclosure with little or no evidence of implementation	for every community to the highest level of government authority in the state		process or but community oversight over implementation of project needs admitted into the budget is occurring informally.	through which government interaction with citizens currently occurs. However NGOs pointed to lack of funding as a major constraint	
Jigawa	No mechanism in place to systematically organize publicly held information, consider and grant access but there is evidence that CSOs apply and receive budget preparation information and documents	Claimed participation of citizens in developing the CDF and available evidence of CSO participation in the the MTSS system	The MTEF process and sectoral MTSS sessions allow for CSO participation and contributions driven by donor agencies	No evidence of CSO or citizen participation in monitoring the contractor selection process but evidence exists that budget implementation reports are made available to CSOs to verify	Capacity and skill gaps are a big challenge that may be reducing impact of CSO engagement in PFM. Funding is another Few citizens groups are focused on engaging government on corruption prevention and PFM.	No evidence was found
Katsina	No mechanism in place to systematically organize publicly held information, consider and grant access, and no evidence that access is sought or granted	None appears to exist	None appears to exist	None appears to exist	Low Political will No major citizens groups focus on engaging government on PFM and corruption prevention	No evidence was found
Kogi	Passage of an FOI law by the State assembly has increased awareness, failure to assent to the bill has created	None appears to exist	No evidence was presented	None appears to exist	Low political will Declining donor funding	No evidence was found

Table 7.1: Summary of Compliance with Provisions of UNCAC, AUCPCC and ECOWAS on Public Reporting, and participation in the subject States						
States	Evidence of improved Access to information	Evidence of simplification of decision making processes	Citizens contribution to Budget process	Citizen Participation in Procurement and Project Monitoring	Challenges to Citizen Participation	Publishing Periodic Reports of Corruption, and participation of citizens in prevention and the fight against corruption
	frustration and no mechanism is in place to systematically organize publicly held information, consider and grant access, and no evidence that access is sought or granted					
Nassarawa	No mechanism is in place to systematically organize publicly held information, consider and grant access, and no evidence that access is sought or granted	None Appears to exist	No evidence was presented	None appears to exist	Low Political will Limited number of Citizens groups focusing on engagement with government relating to PFM or corruption prevention	No evidence was found
Ogun	No mechanism is in place to systematically organize publicly held information, consider and grant access, and no evidence that access is sought or granted	None appears to exist	Evidence of contributions of CSOs in previous years was provided, this however does not seem to have continued to the current year	There was evidence of project monitoring by CSOs in the past, but no evidence of CSOs or citizens monitoring contractor selection process	Declining political will Declining donor funding	No evidence was found
Taraba	Procurement law allows for access, FRL has transparency provisions but No mechanism is in place to systematically organize publicly held information, consider and	FRL provides for an MTEF process that should improve citizens contribution but no evidence that it is being so implemented was presented	FRL provides for it but no evidence of citizens participation was presented	None appears to exist yet despite that the PPL requires CSO monitoring	Limited number of citizens groups focused on engaging government regarding PFM processes and corruption prevention Low Political will	No evidence was found

Table 7.1: Summary of Compliance with Provisions of UNCAC, AUCPCC and ECOWAS on Public Reporting, and participation in the subject States						
States	Evidence of improved Access to information	Evidence of simplification of decision making processes	Citizens contribution to Budget process	Citizen Participation in Procurement and Project Monitoring	Challenges to Citizen Participation	Publishing Periodic Reports of Corruption, and participation of citizens in prevention and the fight against corruption
	grant access, and no evidence that access is sought or granted					
Yobe	No mechanism is in place to systematically organize publicly held information, consider and grant access, and no evidence that access is sought or regularly granted	Emergency rule did not allow effective interaction to determine this factor	Emergency rule did not allow effective interaction to determine this factor	Emergency rule did not allow effective interaction to determine this factor	Emergency rule did not allow effective interaction to determine this factor	No evidence was found

Chart 7.0: The chart below also summarizes the foregoing discussion graphically



Charter 8: Summary of Findings and Recommendations.

*8.1 The main finding of this study is that the legal regulation, practice, and implementation of anti-corruption measures in Public Finance Management of States subject of this study in most cases has not witnessed **substantial** improvements. Even in the States where new reform laws have been passed, improvements in the form of institutionalization and implementation of the laws has been measured and determinably slow. Critical gaps exist between, laws, policies and actual implementation and enforcement. In the States without these laws, efforts at reform are even weaker.*

8.2 Five out of the ten States i.e. Cross River (2011), Ebonyi(2009), Ekiti (2010), Jigawa (2009), and Taraba (2012) have enacted Public Procurement and Fiscal Responsibility laws. Cross River State established a Due Process and Prize Intelligence Department pre-dating its law, which has inherited the functions and powers of the Bureau provided in the law, but is yet to establish a Fiscal Responsibility Council. It has also enacted a Public Finance Law with improved provisions.

8.3 Ebonyi State has a SCPP but is yet to establish a Public Procurement Bureau as required by its Procurement Law.

8.4 Ekiti State has a Bureau for Public Procurement but no (SCPP) as required in its law. It has also passed a Freedom of Information law and has established a Fiscal Responsibility Council.

8.5 Jigawa State has both a Bureau as required by its Procurement Law and a Fiscal Responsibility Council but its Procurement law effectively excludes application of important principles and rules that support transparency, accountability and competitiveness in over half of its procurement activities.

8.6 Taraba State has established a Bureau for Public Procurement, but no State Procurement Council (SCPP) as required by its Law. It has also appointed members into a Fiscal Responsibility Council, which is yet to be allocated an office.

8.7 None of the States in this study has a modern Audit Law.

8.8 In five of the ten States (Katsina, Kogi, Nassarawa, Ogun, and Yobe) no modern Public Procurement or Fiscal Responsibility law has been enacted. However there appears to be efforts to change the existing incremental budgeting practices in four of the States (Kogi, Nassarawa, Ogun, and Yobe). Also there have been attempts to adopt the Medium Term Expenditure Framework without necessary laws and institutional frameworks. At best these can be seen as partial adoption of the MTEF processes, since no evidence of a comprehensive MTEF process and document was produced to show full adoption and implementation of the system in any of these States. Indeed none of these States presented evidence of an MTEF process or document that meets the test of completeness.

8.9 Among the States with Procurement Laws, some limitations have been observed in the content of the laws, for example in the **Jigawa** State law, some clauses exclude application of due process rules to procurement processes below One Hundred Million Naira (₦100,000,000) which constitute the largest group of procurement activities in the State. In **Ebonyi** State, the definition of Open Competitive Bidding (OCB) robs its processes of prior and simultaneous distribution of information on procurement activity. It also removes advance determination and disclosure of conditions and criteria for selection from being an integral component of open competitive bidding. Also requirements of political approval for procurement expenditure are notable in **Ekiti**, and **Jigawa State** Laws. The Procurement laws exclude application of

its provisions to special goods, works and services involving security unless with prior approval from the Governor¹⁵⁴. This appears intended to statutorily protect from public scrutiny the controversial State Security Votes.

8.10 In Ekiti State, the law constitutes the State Executive Council (PEPs only), and the State Tenders Board (also with PEPs) as approval authority for all procurement above Two Million Naira (₦2,000,000). This structure leaves the Ministerial Tenders Board constituted by administrative staff and having no PEPs (which ought to be the appropriate approval authority for most if not all procurement) with approval threshold not exceeding Two Million Naira). In practice, this is common among all States in the study except that thresholds vary. The **Taraba State** procurement law gives the State Executive Council the power to suspend application of the law to any particular procurement activity if it deems fit.

8.11 Most of the Procurement Laws mirror the federal Public procurement Act in excluding application of due process principles to expenditure relating to “security” or “national security” except with prior consent of the Governor. It is doubtful if States can legitimately make this exception given the fact that national security issues are in the Exclusive Legislative List and therefore outside the legislative competence of State legislatures. .

8.12 Also in the States with Fiscal Responsibility Laws requiring consultative adoption of MTEF, implementation has not been spirited. The Fiscal Responsibility Commissions or Council where they exist, are not effective in monitoring MTEF or performing their other functions. However but for the good examples of improved citizens participation in Public Finance policy and project selection and allocation decisions from Cross River State and recently Ekiti State, citizens participation in public finance policy and project selection and location decisions remains very low in most States in this study. It is instructive that Cross River State with evidence of consistent engagement of CSOs in the budget process appears to have better capital to recurrent expenditure ratio among the sample States. While it cannot be firmly asserted that this has resulted directly from improved citizen’s participation in fiscal policy, project selection, and allocation decisions alone, it is indicative that when there is increased citizen’s participation and scrutiny, public finance policy, project selection and location decisions are more carefully considered.

8.13 The findings indicate that fiscal indiscipline is prevalent in States in this study. The Financial Statements and Audit Reports of States reveal the same types of fiscal indiscipline: optimistic revenue projections and under collection, budgeting based on the unrealistic revenue projections, excess expenditure on some budget heads, under spending allocations on some other heads, and failure to spend at all on yet some others. Virement is common without compliance to appropriate procedure. Most State Governments in Nigeria regularly use the supplementary budgeting process to adjust the original budget to accommodate extra expenditure already incurred for emergency and non-emergency issues.

8.14 A further indicator of fiscal indiscipline is the recurrent to capital expenditure ratio both in budgetary estimates and actual implementation. The ratio is increasingly leaning towards larger recurrent expenditure to the detriment of capital expenditure. In addition most of the States recorded abysmal IGR figures making them totally dependent on Federal Allocation to meet basic expenditures.

8.15 Findings from this study show that the States benefited from huge increases in statutory (oil) revenues in the period under study. Available evidence indicates that States spend these unexpected resources as they are received, including in some cases spending above initial budget figures. Also in some cases these extra revenues are funneled into excess overhead expenditures over budget estimates.

¹⁵⁴ S 15 Ekiti State Public Procurement Law No 2 of 2010

8.16 Though States in this study have FIs or claim to have adopted federal FIs which provide rules for internal control and protection of the integrity of accounting records, evidence abound that these rules are often honored more in breach without any consequence. In many instances also, timeliness of action in terms of preparation and submission of Financial Statements and Auditor's Reports and the level of disclosure practices in these reports are poor. The absence of statutory responsibility on Accountant's General to submit their Financial Statements to the Auditor General within a given time is also a challenge in many States. The current extant practice of submission within six months of the end of year neither has statutory support nor any administrative sanctions for failure to comply.

8.17 The failure of nine out of the ten States in this study to enact and implement Audit Laws has impacted on the constitutionally guaranteed independence of the Auditor General's office. Even in the State that has passed an Audit law, the operational independence of the office of the Auditor –General is not properly defined within the law. Some indicators of independence include: removing their employment, advancement and discipline from control of the same officers that they regularly audit; and according staff of the office similar security of income as accorded the Auditor General. Other indicators include granting the office direct powers to ensure full access to financial records; determine content of reports; carry out follow up actions; provide sanctions for audit infringements; and exert administrative sanctions regarding observed breaches of financial rules. Merely submitting the audited report to the Legislature has not been productive, especially as evidence of follow-up actions by the latter has been low. With the exception of the limited efforts in three States - Cross River, Ekiti and Ogun there are no other evidence of follow-up actions resulting from the Auditor-General's reports.

8.18 There is limited political will to embark on reforms, and even where the policy and laws have been adopted, limited will to implement them. There appears to be reluctance to give up complete and direct political control over public expenditure. In some of the States where reform laws have been enacted they contain provisions granting Governors and (PEPs) control over key decision-making processes, including administrative decision making processes that should ordinarily devolve on administrative officers.

8.19 In the States where the new laws do not explicitly provide for direct political control over expenditure, the reality is that political control exists in practice over the entire spectrum of public expenditure management system. The Ministerial Tenders Boards for example, remain with limited authority. In practice in most of the States, no expenditure above One or Two Million Naira can be undertaken without prior approval of the Governor, or other PEPs. Actual contract awards depending on thresholds also require approval of the State Tenders Board made up of mostly Commissioners, the Governor and the Executive Council, constituted largely by the Governor and the same Commissioners, both of whom also determine fiscal policies and project selection and allocation.

8.20 As a result, the system loses the checks and balances that would result if citizen's participation in policy and project allocation decisions substantially increase and if civil servants (Ministerial Tenders Boards) were allowed to independently take direct contract award decisions with increased citizens monitoring. The political leaders who ought to take policy and project selection decisions after consultation with citizens and whose supervision of administrative spending and contract award decisions by civil servants ought to provide checks and balances for expenditure decisions, and ensure administrative officers are held accountable, are themselves now taking all the decisions. The system loses this important internal check and balance mechanism. Civil servants, thus see their role as only taking and obeying instructions.

8.21 This Study has found that other internal and external checks and balances remain very weak. Such systems include internal and external audit and reporting, oversight by the various State Houses of Assembly and citizens' demand for accountability.

Recommendations

8.22 State governments need to improve and institutionalize citizen's participation in governance and the fight against corruption. It is in bridging this gap that a sustainable solution to public finance governance can be found. Good practice examples in this regard have been identified in the models currently being implemented in Cross River, Ekiti and Jigawa States.

8.23 There are four important elements of accountability in a civil rule or democratic governance system; access to information; political will, collective action and sanctions. Political will is critical, and can support access to information and application of sanctions. But access to information is even more critical to developing improved political will, collective action and consistent demand for application of sanctions.

8.24 However, fundamentally lacking even in the effort of the States of Cross River, Jigawa and Ekiti is an effective mechanism for creation, management and access to government records, including a robust mechanism for proactive disclosure of governance information. The Federal Freedom of Information Law which applies to States, provides a building block on which to construct such a mechanism.. States should take measures to implement the Freedom of Information legislations by adopting measures which necessarily should include issuance of implementation guidelines, review and revision of State Civil Service rules, Financial Instructions and all other similar instruments to bring them in line with the Freedom of Information Act. Such measures should improve information creation, management and citizen's access to publicly held information.

8.25 To further enhance public access to information, States need to design and implement administrative mechanism that ensures that Government records are captured, analyzed, and proactively communicated in accordance with the provisions of the Freedom of Information Law.

8.26 States need to pass Fiscal Responsibility, Public Procurement, Audit and Generic Public Finance Laws to improve accountability and fiscal discipline.

8.27 States need increased measures and efforts to reverse current trends in IGR including measures to reform of State tax systems, and improve the capacity of State Governments to administer their tax systems. There is also a critical need to build the capacity of the States to establish statutory mechanisms to warehouse and invest excess revenues.

8.28 There is need to instill *fiscal discipline*, ensuring *effective allocation of resources to strategic priorities*, and *efficient delivery of public services*. States also need a system and process that saves for the rainy day. A budget preparation, implementation and performance monitoring system based by law on an MTEF and open and broad citizen driven consultative MTSS process is able, if effectively implemented to support these objectives. The MTEF should require setting up of aggregate expenditure ceilings and using this as a basis for sectoral allocation of budget and actual expenditure, as well as setting up of debt and deficit limits. Many of the States need to comprehensively implement this reform.

8.29 There is an urgent need to institute and implement standards of account reporting and auditing that meet modern trends and are comparable to international standards. The new Financial Reporting Council needs to quickly issue accounting and auditing standards that are comparable to the IPSAS and ISSAI. Such accounting and auditing standards need to take account of the need for improved disclosure required to meet the substantial corruption risks that exists in systems for public finance administration in Nigeria. It must be critically aligned to progressive provisions of such laws as the Fiscal Responsibility, Public Procurement, and Freedom of Information Acts and closely mirror international standards.

8.30 States need to revise their Financial Instructions, Civil Service Rules, Treasury Circulars and other similar instruments to meet with standards of access to information, citizen's engagement and objective decision making required by the internationally acceptable accounting and auditing standards. Also States require anti-corruption policy standards which will be integrated into the revised State Civil Service Rules and Financial Instructions.

8.31 Each State requires an Audit law to ensure independence of income and tenure for staff of the Auditor General's office and among other things give sufficient power for follow up action on Audit Reports and infractions, create offences, and impose sanctions for infractions. As an interim measure, it is advisable for States to amend their Financial Regulations to give improved administrative authority to Auditors- Generals by providing timelines for responding to audit queries and inquiries. The amendment should also be aimed at giving Auditors- General powers to search, seize records, and recommend sanctions including administrative sanctions.

8.32 Also the anti- corruption agencies need to pay serious heed to disclosures made in Audit Reports of Auditors General of the Federation and States regarding affairs of the different tiers of Government. The fact that infringements reported by these reports remain un –investigated even where they are criminalized under the anti-corruption laws , continues to erode public confidence in these institutions and the fight against corruption..

8.33 States in this study require comprehensive capacity improvement strategies to ensure that they can develop much needed skills to implement the required frameworks and deploy needed governance mechanisms. Capacity improvements must be a central part of each state PFM reforms to cure existing human capital deficits and also create in house systems for training and skill improvements.

8.34 Finally it is recommended that ICPC in exercise of its powers under S6 of the Corrupt Practices and Other related Offences Act 2000 should develop and implement anti–corruption policy and compliance standards for all public departments, agencies and corporations at State and federal levels in Nigeria. In doing this the ICPC should consider a sectoral approach which can enable it deal with unique sectoral differences and needs.