

TUGAR

TECHNICAL
UNIT ON
GOVERNANCE &
ANTI-CORRUPTION
REFORMS



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)

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List of Abbreviations and Acronyms

AFDB	–	African Development Bank
AUCPCC	–	African Union Convention on Preventing and Combating Corruption
CBO(s)	–	Community Based Organization(s)
CSH	–	Civil Service Handbook
CSO(s)	–	Civil Society Organization(s)
DAC	–	Development Action Committee
DG	–	Director General
DVB	–	Departmental Vote Books
ECOWAS	–	Economic Community of West African States
EFCC	–	Economic and Financial Crimes Commission
FBO(s)	–	Faith Based Organizations
FGN	–	Federal Government of Nigeria
FI(s)	–	Financial Instruction(s)
FR(s)	–	Financial Regulation(s)
FRL	–	Fiscal Responsibility Law
FS	–	Financial statements
FY	–	fiscal/financial year
IC	–	internal controls
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
NCE	–	National Council on Establishment
NGO(s)	–	Non-Governmental organization(s)
NSPMC	–	Nigeria Security Printing and Minting Company
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
PP	–	Public procurement
PPL	–	Public Procurement Law
PSR	–	Public Service Rules
PTB	–	Parastatals Tenders Board
SCPP	–	State Council on Public Procurement
SEC	–	State executive council
SG(s)	–	State Government(s)
SR	–	Stores Requisition
TUGAR	–	Technical Unit on Governance and Anticorruption Reforms
UNCAC	–	United Nations Convention Against -Corruption
UNCITRAL	–	United Nations Commission on International Trade Law
UNDP	–	United Nations Development Programme

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UNDP partners with people at all levels of society to help build nations that can withstand crisis, and drive and sustain the kind of growth that improves the quality of life for everyone. On the ground in 177 countries and territories, we offer global perspective and local insight to help empower lives and build resilient nations.

Chapter 1: Introduction

1.1 *Phase II of the Mapping & Scoping Survey of Anti-Corruption and Governance Initiatives in Nigeria continues the documentation of anticorruption measures of Nigerian governments against benchmarks of international conventions and treaties to which Nigeria is signatory.* Phase 1¹ 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). This current study involves an additional 10 states namely, Adamawa, Anambra, Bayelsa, Benue, Delta, Kaduna, Imo, Niger, Ondo, and Sokoto. As in Phase 1, the exercise records, analyzes, and compares “public finance management [PFM] and related anti-corruption and governance initiatives” in the 10 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)*.

1.2 *The study affects all areas of public financial management system, including budget management, -fiscal and revenue management, public procurement, taxation, accounting and recording, and auditing.* It also examines related human resource management issues. The analysis covers six areas of relevant anticorruption programming namely, (i) the policy framework, (ii) legal framework, (iii) institutional mandates and deliverables, (iv) structure and organization, (v) capacity issues, 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, (including organized private sector, professional bodies, organized labour, informal labour) and civil Society (NGOs, CBOs, FBOs, charities, and socio-cultural organizations).

1.3 *The study has four main purposes.* First, it seeks to find out to what extent public finance laws, regulations, practices, 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 will enquire into the extent of compliance with the provisions of the laws and regulations. Third, it will document gaps in the policy and legal frameworks and between the frameworks and practice, and attempt to discover responsible factors. Finally, it will proffer suggestions on how to improve performance, based on analysis of factors responsible.

1.4 *The main message of the exercise is that gaps between policies and laws on the one hand, and their enforcement and implementation on the other, undermine anticorruption programming more than loopholes in policies and laws.* The policy and legal/regulatory environment for anticorruption is improving faster than the other complementary environments. For instance, States are increasingly evolving policies and enacting laws to improve public financial management, including on transparency and accountability and formulation of budget policies, but they are not investing commensurate resources and effort in developing institutions and structures for their implementation and monitoring. Thus, policy and legal innovations do not often include measures to develop capacity for their implementation and monitoring. Reluctance to give up political control over fiscal and public finances is the main impediment to implementing the laws. For example, many of the public finance laws passed contain provisions granting Governors control over key decision-making processes. Such provisions clearly indicate that while state political leaders 'rush' to enact these laws, they are apprehensive of loss of political control, and thus include provisions that seek to maintain their current direct control of state resources.

¹In 2009

This also accounts for their apprehension to fully implement the laws, where they exist, and the reluctance of some States to pass similar laws.

Another noticeable trend is that the laws exclude application of due process principles to expenditure relating to “security” or “national security”, except with prior consent of the Governor. This mirrors the federal law, however the challenge is that security and national security are in the “exclusive legislative list”. Therefore, the competence of the state legislatures to make these provisions on security or national security is questionable.

1.5 The structure of this report is as follows: An introduction followed by a short description of the methodology and approach for the work, including data gathering challenges. There is then a short explanation of the meaning and scope of the term “public financial management”. This is important to enable readers not familiar with the field appreciate the discussion. The remaining part of the report deals with presentation of the findings of the exercise, arranged in the manner of UNCAC provisions². The analysis is thus in this order: Public Procurement, Management of Public Finances, and Public Reporting. A short synthesis summarizes and draws general lessons and proffers some suggestions on each issue, and finally there is a brief chapter presenting a summary of the major conclusions and recommendations.

²UNCAC is the main benchmark used for this report, but the report analysis refers to equivalent provisions in AUCPAC and the ECOWAS Protocol.

Chapter 2: Methodology

2.1 The purpose of the study is to map and document anti-corruption initiatives in public financial management of ten (10) Nigerian state governments against benchmarks of international treaties to which Nigeria is signatory. The states are Adamawa, Anambra, Bayelsa, Benue, Delta, Kaduna, Imo, Niger, Ondo, and Sokoto. The benchmark 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

2.2 The design of this Phase II drew lessons from Phase 1 of the exercise published in 2011, especially the early consultations with stakeholders and their involvement in finalizing the methodology and data collection instruments. This research involves six main aspects, (i) desk research, (ii) design of survey instrument, (iii) sensitization of stakeholders and exposure of research design/instrument to them, (iv) fieldwork and data collection, (v) analysis and report writing, and (vi) report review and validation.

Research/Survey Instruments

2.3 The research design involves

- Collection of official government documents (policies, legal framework instruments, statutory reports and publications such as budgets, audited accounts, etc.)
- Follow up interview with state actors to elicit further (verbal descriptive) information on policies, structure and organization, mandate, deliverables and challenges, etc. Survey questionnaire for non-state actors to scope their initiatives, interventions, and perspectives on the anticorruption work.
- Follow up interviews with select non-state actors.

2.4 Research assistants first visited each state to collect official documents. Further field visits then followed in accordance with pre-agreed schedules.

2.5 Cooperation of relevant state and non-state actors was considered necessary for the success of this stage. First, the state actors needed to complete the revised focused questionnaires. Further, the state actors were required to provide official documentation that can give insight into ongoing and planned anti-corruption work in the state. Specific documents required from State Actors in this regard include:

- Documents relating to budget preparation and process: budget procedures manual, budget implementation manual, budget call circulars (for the last three years), etc.
- Public Finance Law, Fiscal Responsibility Law, Financial Instructions, Stores Regulations, etc.
- Public Procurement Law, procurement guidelines/procedures manual, Due Process Law/Manual, etc.
- Audit Law, regulations, manual
- Internal Revenue Law/procedures
- Public/civil service rules
- Anticorruption Law, Ombudsman Law
- Description of the structure/organogram of the Ministries of Budget, Planning, & Finance.

Stakeholders' Workshop

2.6 One of the lessons of the Phase 1 study is the need to engage all stakeholders early.. To this end, TUGAR and the UNDP organized two workshops in October 2011 and January 2012 involving stakeholders – state actors and non-state actors. Necessary government participants include officials

whose roles involve anchoring financial management policies and implementation. These include 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, etc. It was recommended that the participants' list for non-state actors will include, at least one key/prominent development partner active in the state. It also required representatives of active civil society organizations.

2.7 The workshops (i) sensitized participants on the study (ii) familiarized them with the objectives and benefits, (i) exposed them to the research methodology including design and instrument, and most importantly (iv) secured their buy-in to field visits for data collection by the researchers. The research instrument was sufficiently robust and flexible to accommodate and incorporate useful inputs made by participants.

Report Review and Validation

2.8 This was also a multi-stage process. *Stage 1* involved comments on the draft report from TUGAR, UNDP, state actors, and relevant non-state actors. *Stage 2* was a stakeholders' validation workshop enabling stakeholders to verify findings and own the report. *Stage 3* involved a revision of the draft by consultants incorporating comments received from all parties and submitting a final report.

Population and Sample

2.9 The scope of the study comprises the 10 Nigerian states of Adamawa, Anambra, Bayelsa, Benue, Delta, Kaduna, Imo, Niger, Ondo, and Sokoto while the population consists of selected MDAs. There was no need to select a sample from this population because the population is both finite and manageable. The focus of the study is their public financial management (PFM) systems, particularly their initiatives that contribute towards combatting corruption. Data gathering exercise and analysis involved direct engagement with all 10 states by researchers.

Description of Data Used

2.10 This study relied on both primary and secondary sources of data, like most studies of this type. The primary sources are firsthand information obtained directly from the state governments and their stakeholders. Primary data used here came from responses to questionnaires administered on state actors (government officials) and non-state actors (their civil society stakeholders), and interviews with development partners (donors). Questionnaires on state actors were of four types, each focusing on a different aspect of the public financial management system. These are (i) Public Procurement, (ii) Management of Public Finances, (iii) Tax Administration, and (iv) Public Reporting including access to information and simplification of procedures to facilitate public access to competent decision making authorities.

2.11 *Further primary data came from documents submitted by state actors on request.* The research 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 – Auditor General, (vi) Internal Revenue, and (vii) Legislative Oversight of Budget and Accounts. The detailed list of requested document is in Appendix 2.

2.12 Secondary data comprised all other data used in this analysis but not obtained directly or sourced from the state and its stakeholders. Three prominent sources of secondary information used in this research are the official websites of the state governments³, other websites with relevant information on the subject matter of study, and reports of formal reviews, appraisals, etc. The most

³ Where they exist

important of these reviews are reports of assessment of the PFM systems using the PEFA Framework and of the procurement systems using the OECD/DAC⁵ *Methodology for Assessment National Procurement Systems* (MAPS), where they exist. Among states in the population with recent PEFA and/or MAPS reports are Adamawa (2012)⁶, Anambra (2008, 2011), Bayelsa (2009), Delta (2010) Imo (2012)⁷, Ondo (2008), Niger (2009), Kaduna (2007), Others are reports of public expenditure reviews (PERs), etc. The desk research also included a review of the published report of Phase 1; this proved useful particularly in designing the research.

Method of Data Collection

2.13 *Collection of primary and secondary data involved different approaches.* Collection of primary data entailed field visits by trained personnel to each of the 10 states. TUGAR in collaboration with the UNDP had earlier organized an interactive session with focal officers from all the 10 states to review the survey tools. The focal officers took away advance copies of the survey tools to facilitate their efforts at anchoring and coordinating data collection. The trained researchers also visited and relied on them to ease the process of data gathering. Collection of secondary data also involved use of trained personnel to scan Internet web addresses of target state governments and other relevant sites, and source for official reports of completed assessments and other relevant documents.

2.14 Many states provided some of the published documents especially, budgets, accounts, and audit reports. However, difficulties remain especially in Bayelsa State (which did not provide many of the documents)⁸, and Ondo State. Besides, none of the states surveyed provided all the requested documents, and most states did not complete all or some of the questionnaires.

⁴ 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).

⁵ Organization for Economic Cooperation and Development/Development Action Committee of The World Bank

⁶ Only draft available, work still in process

⁷ Only draft available, work still in process

⁸ Difficulties in Bayelsa are attributable to the election and transition to a new administration. The new administration was not fully in place at the time of data collection. This affected authorization for the documents.

Chapter 3: Concept, Scope and Relevance of Public Financial Management

3.1 This chapter briefly explains the concept of public financial management system defines its scope and explains its purpose and objectives.

Concept and Scope of the PFM System

3.2 The public financial management (PFM) system comprises the legal and organizational framework for supervising all phases of the *budget cycle*⁹. The budget cycle refers to all activities involved in preparing, executing, and reporting the budget. These include

- Planning
 - Preparation of plans and strategies
 - Fiscal projections and costing
- Budget preparation - conception and formulation
- Budget execution and implementation, including procurement
- Budget monitoring and reporting, including recording and reporting
- Internal controls, including internal audit
- External scrutiny and oversight, including external audit
- Legislative follow up on audit findings
- Post implementation project evaluation

3.3. The PFM legal framework consists of binding and enforceable legislations and quasi/subsidiary legislations on all aspects of the foregoing. Legislations are enactments by the legislature accented to by the chief executive. Examples include the Fiscal Responsibility Law, the Public Procurement Law, Freedom of Information Law, etc. Quasi legislation refers to regulations, policies and circulars deriving their power from and binding with equal force of the law. Examples include the Financial Instructions (FI), the procurement manual, public/civil service rules, and treasury circulars.

3.4 The organizational framework for PFM refers to the administrative structure, processes, workflows, and other arrangements in place to facilitate the budget process. Administrative arrangements include offices for facilitation and regulation of budget preparation, implementation, reporting, and audit, for examples the Ministries of Finance and Planning, Revenue Administration, The Treasury, Procurement (due process) Regulation, Finance and supply departments of MDAs, the Auditor General, and the Public Accounts Committee of the Houses of Assembly. Workflows and processes include required documentation, proformas, business processes and routing, authorization and approval procedures, disclosure requirements, (accounting) standards and policies, etc.

Objectives and Relevance of the PFM System

3.5 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*.¹⁰ *Fiscal discipline* requires formulation of realistic and attainable budgets and their implementation as made, i.e., without overrun. A realistic budget is a credible one, formulated with due consideration to realizable revenue, and reasonably costed.

⁹See OECD/DAC Guidelines, *Harmonizing Donor Practices for Effective Aid Delivery* (2003)

¹⁰See OECD/DAC Guidelines, *Harmonizing Donor Practices for Effective Aid Delivery* (2003)

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 system.

3.6 *The PFM system also supports allocation of resources to strategic priorities. Strategic allocation of resource entails identification and distinction of development priorities from political expediency or priorities. Development priorities flow from well-articulated strategic policies, identifying medium to long-term development 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 documents.*

3.7 *The PFM system similarly promotes efficient service delivery. Efficiency refers to delivery of services at optimum costs. This is the main purpose of the procurement system. 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 services.*

Chapter 4: Anti-Corruption Initiatives in Public Procurement

4.1 *Public procurement is vulnerable to corruption. There is extensive research on the link between public procurement and corruption*¹¹. Susanne Szymanski aptly summarizes the importance of controls in public procurement when she wrote that a “transparent and effective public procurement system is important to combat bribery and corruption. Malpractices and fraud in public procurement deter both domestic and foreign investors. Clear rules and practices need to be established and communicated to all stakeholders. These rules then need to be enforced. However, public procurement systems are not designed per se to fight corruption. In addition, bribery in public procurement may be hard to detect due to the size, number and complexity of transactions. Therefore, in addition to an effective and transparent system, special tools and mechanisms need to be established to fight corrupt behaviour in public procurement.”¹²

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

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

The following paragraphs document the extent to which public procurement regulations and practices in the 10 target states conform to these provisions.

¹¹See OECD publications on **Fighting Corruption and Promoting Integrity in Public Procurement (2006)**, http://www.oecd.org/document/35/0,3746,en_2649_34855_38447139_1_1_1_1,00.html; **Integrity in Public Procurement, Good Practice from A to Z (2007)**, <http://www.oecd.org/dataoecd/43/36/38588964.pdf>; **Transparency and Accountability as Tools for Promoting Integrity and Preventing Corruption in Procurement: Possibilities and Limitations**, https://bvc.cgu.gov.br/bitstream/123456789/3500/1/transparency_and_accountability_tools.pdf; and **Good Governance for Public Procurement: Linking Islands of Integrity**; see also Transparency International's (TI) **Handbook on Curbing Corruption**, http://wiki.bezkorupce.cz/media/wiki/procurem_handbook_complete.pdf

¹² Susanne Szymanski (2007), **How to Fight Corruption Effectively in Public Procurement in SEE Countries**, OECD, Paris, France

Existence of a Modern Public Procurement Law

4.3 Although UNCAC provisions do not specifically require legislation of procurement practices, international best practice aimed at effecting UNCAC provisions on public procurement is often by way of *enactment* of comprehensive legislation on public procurement (PP). Besides, *Article 5 (4) of AUCPCC* provides for procurement legislation. It enjoins 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 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)).

4.4 *In furtherance of this, another UN agency has published a model law on public procurement to guide state parties.* The United Nations Commission on International Trade Law (UNCITRAL) first published the UNCITRAL Model Law on Procurement of Goods, Construction and Services with Guide to Enactment in June 1994 but occasionally revises it. The model law consists of 57 articles divided into six chapters. The chapters are (i) General Provision, (ii) Methods of Procurement and their Conditions for Use, (iii) Tendering Proceedings, (iv) Principal Method for Procurement of Services, (v) Procedures for Alternative Methods of Procurement, and (vi) Review.¹³..How did the 10 state governments fare in domesticating and implementing these provisions?

4.5 *Five of the 10 states have enacted public procurement laws, with provisions similar to each other and to the federal Public Procurement Act, 2007.* These are Bayelsa (2009), Delta (2009), Imo (2010), Niger (2010), and Anambra (2011). The laws typically separate procurement regulation from implementation. Each law also establishes two procurement regulatory agencies¹⁴ to oversee public procurement in all mainline government ministries, departments and agencies (MDAs), while consigning implementation to procuring entities (MDAs). The regulatory bodies are the State Council on Public Procurement (SCPP) and the Public Procurement Board (or Bureau, PPB) or equivalent¹⁵. The Council comprises a mixture of state and non-state actors, with the former in the majority¹⁶. The Council (will) superintend over the Board, approving policies, guidelines, thresholds, regulations, etc., made by the Board and the conditions of service of staff of the Board. Under these state laws, the Board (or Bureau) regulates procurement in the procuring entities using policies and guidelines approved by the Council.

4.6 *The State laws mimic the UNCITRAL Model Law to a good extent, but important issues remain.* The laws usually begin with some 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, making open competitive bidding the default method and establishing conditions for their use. There are provisions on tendering proceedings, including bid evaluation, principal methods for procurement of consultancy services, and procedures for alternative methods of procurement. In addition, the laws include a complaints and administrative review process, code of conduct for the different parties in the procurement process, offences and penalties are also provided for. However, several issues remain, especially with subtle provisions capable of undermining efficacy of the laws, implementation challenges, and capacity.

¹³The model law is downloadable available at www.uncitral.org/pdf/.../procurem/ml-procurement/ml-procure.pdf

¹⁴A State Council on Public Procurement (SCPP) and a Public Procurement Board or equivalent body

¹⁵Duc Process Bureau, in the case of Bayelsa State, s. 3

¹⁶This is a deviation from the federal and Rivers State legislations, in which state and non-state actors have equal representation on the Board. Whereas the Federal Government has not inaugurated the National council on Public Procurement, Rivers State has inaugurated its, even though its legislation came one year later than the federal government's.

4.7 Among the worrying provisions are those skewing composition of Council in favour of state actors, limiting applicability of the laws, subjecting technical procurement processing to political decisions, and setting low thresholds for involvement of politicians. Usually, the SCPPs include seven¹⁷ or more¹⁸ state actors²⁰. A majority of state actors, comprising mostly state executive council (cabinet) members, affects perception of the transparency and appropriateness of decisions. The Delta state PPL makes the Governor the chairman of the SCPP, leading a powerful team of top government officials on the state actors list. The other state actors are the Commissioner for Finance, Secretary to the Government, Head of Service, Attorney General and Commissioner for Justice, and the Economic Adviser to the Governor. This overbearing delegation of the eight most powerful state actors²¹ can easily intimidate the seven non-state actor members of the SCPP.

4.8 The PPL of the other states give the Governors power to appoint the non-state actor members as well, thus, potentially making them vulnerable to state control. The Bayelsa State Public Procurement Law, 2009 is an exception in some respects. The Law creates the State Council on Public Procurement (SCPP) with only five state actors, including the Commissioner for Finance and Budget who chairs it and the Permanent Secretary (general Services), who is the secretary. There are eight part-time (non-state actor) members appointed by the Governor on the nomination of the professional bodies they represent. There is no provision empowering the Governor to remove any one.

4.9 Other provisions also limit the efficacy of the PPLs. For instance, the Anambra State PPL exposes public procurement to political interference. Section 19 of the Law provides for four levels of procurement approvals²²: (i) the Ministerial or Parastatals Tenders Board (MTB/PTB), (ii) the State Tenders Board (STB) constituted by Commissioners and members of the cabinet appointed by the Governor and serving at his pleasure²³, (iii) the Governor, and (iv) the State Executive Council (SEC, cabinet). This arrangement, especially the involvement of politically exposed persons (PEPs) and institutions (the Governor and the cabinet) as authorizing officers for public procurement can politicize public procurement, making it less open and transparent. This becomes more critical with the PEPs at the top of the approval hierarchy, i.e., in charge of major procurement decisions of higher values. The Niger State PPL excludes constituency and ward projects from the PPL. Constituency projects are those earmarked by legislators for their respective constituencies. These projects do not pass through normal appraisal process, since The Executive did not propose them. Often, legislators insert them into the budget at the last minute before passing the budget. Respective legislators directly supervise the projects they insert²⁴. All the laws limit application to procurement relating to "security or "National Security" except the Governors prior approval is obtained. There is a similar 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 legislate on it as these laws tend to do. , Secondly this appears intended to statutorily prevent scrutiny of the already notorious security votes, which have become a common feature of state budgets.

¹⁷For example, the Anambra State Public Procurement Law, 2011

¹⁸With the exception of the Bayelsa State Law (see below)

¹⁹For example, the Niger State Public Procurement Law, 2010, which includes eight state actors in the SCPP

²⁰Including the state appointed general manager/director general of the bureau/board

²¹i.e., including the director general (DG) of the of the State Procurement Commission

²²depending on the threshold made by the Council

²³The STB approves contracts above N5 and up to N30 million, while the governor approves contracts above N30 million and up to N100 million. The state executive council approves contracts above N100 million. It is important to note that the governor appoints all members of the SEC.

²⁴Including awarding the contract or selecting the contractor

4.10 *The perception is that the zeal with which the five subject states enacted their procurement laws does not extend to their implementation, with the exception to some extent of Niger State. The Niger State government has set up the regulatory organs for implementing its public procurement law. The state has conducted a procurement capacity assessment, identifying institutional and human capacity issues affecting implementation of the law. In addition, the state has set up both the SCPP and the PPB, recruited some additional staff for the Board and is currently engaged in training them. The Board is also developing new procurement manuals in line with the state PPL. There are no observable commensurate actions in Imo and Anambra states to develop institutional and human capacity to implement their PPLs. Although Baylesa state has had a Bureau for Public Procurement and e-Governance since 2008, the State has provided no current information on its operations and the extent to which it is implementing the state PPL.*

4.11 *The Kaduna State Public Procurement Law only establishes the Bureau of Budget Implementation, Monitoring and Price Intelligence (BBIM & P) Due Process in the Office of the Governor. The Law is not a modern PPL and does not contain any of the landmark provisions on public procurement. It does not provide for principles of public procurement; distribution of information relating to procurement process or opportunity for contracts; tendering rules; methods of procurement; advance establishment of conditions for qualification and criteria for award, and an administrative review mechanism. Moreover, the Law subjects public procurement to political control by locating the regulatory function in the Office of the Governor. Currently, the BBIM&P (Bureau) regulates public procurement in the state. In this regard, it published guidelines on public procurement in 2007²⁵. However, provisions in the guidelines and manual fall far short of modern public procurement standards in several respects. For example, the provisions on procurement procedures are not comprehensive. Recognizing the shortcomings of the Law and the Guidelines, Kaduna State prepared a new draft Public Procurement Law to repeal the current one, but it has remained in draft (Bill) form since 2008.*

4.12 *Sokoto state has a draft bill on public procurement and an established public procurement process. The Bureau for Public Procurement and Price Intelligence in the Office of the Governor supervises public procurement. The Bureau issued Due Process Guidelines, with sponsorship of the UNDP to guide procurement practices in the state²⁶. As with the Kaduna State document, the Guidelines make provisions on several areas, but they fall short of modern good practices. Besides, they are administrative rules which fall short of the binding force of law. They also do not establish autonomous regulatory agencies. Besides, they admit a high level of political involvement in public procurement decisions by subjecting "rejection of all tenders, proposals, offers, or quotations" to the Governor's approval²⁷. It is not clear when the state will pass the draft law on public procurement, which has been in draft form since 2009. However, the draft is substandard in many respects and requires substantial redrafting to meet standards.*

4.13 *Benue State is preparing a modern Public Procurement Law to respond to the findings of a recent procurement capacity assessment. The current draft of the Law exposes public procurement to political interference at the highest level, e.g. by making two provisions. It makes the Governor the chair of the State Council on Public Procurement (SCPP) and it gives the Governor power to remove any member of the Council or Commission²⁸ if "satisfied that it is not in the interest of the Commission or of the public for the member to continue in office".*

²⁵See *Due Process Guidelines – A Manual on Government Procurement Policy in Kaduna State*, issued by the Bureau of Budget Implementation, Monitoring and Price Intelligence (BBIM&P) Due Process Office in July 2007

²⁶See *Due Process Guidelines – A Manual on Government Procurement Policy*, issued by the Bureau for Public Procurement and Price Intelligence in the Executive Governor's Office (undated)

²⁷See pages 19 and 20 of the Sokoto State Due Process Guidelines.

²⁸i.e., Benue State Public Procurement Commission (BNSPPC)

”. There are seven other state actors on the council²⁹ and seven non-state actor members. All the other state actors are direct appointees of the Governor by virtue of the offices they hold in government.

4.15 The UNDP sponsored procurement capacity assessment in 2009 made elaborate findings on the low level of procurement capacity in the state. The summary of the findings are as follows³⁰,

“In Benue State, the practice of public procurement apparently seems to be at its infancy. Fundamentally, the MDAs, Local Governments, Civil Society Organizations (CSOs) and the Organized Private Sector (OPS) in Benue are not well grounded in procurement matters. Few trained personnel in this field are available. There is as such the need to launch a robust procurement training programme at least in the medium term.

“Several challenges and issues have been identified that require priority attention. These include:

- Lack of a comprehensive Benue State Procurement Policy
- Absence of firmly established and functional Public Procurement Units in almost all MDAs (except perhaps in the Planning Department of Ministry of Health), Local Governments, CSOs and the Organised Private Sector (OPS).
- Staff not fully aware and conversant with public procurement procedures. There is lack of knowledge about public procurement as some respondents take purchase and supply of items as synonymous with public procurement
- The public procurement capacity in MDAs, LGs and CSOs in Benue State is low. From available information only Ministry of Health has three certified procurement officers trained by the World Bank (WB) and Africa Development Bank (AfDB). A few selected staff of other MDAs, Local Governments and Civil Society benefitted from a three-day workshop organized in Abuja and Makurdi on Fiscal Responsibility in which Public Procurement was just one of the components
- Lack of understanding of the procurement procedures by contractors
- Due to frequent changes in the Local Administration, many new members are not very versatile in public procurement procedures and would need capacity building to enhance their skills and knowledge.
- Insufficient funds made available to the Local Government from the Federation Account coupled with low level of internally generated revenue (IGR) makes for the disconnect in the public procurement cycle.
- Low level of Information and Communication Technology (ICT) has created an unfavorable environment for effective public procurement performance in the Local Governments.

“These challenges may have negative impact on the implementation of the State and Local Governments annual budgets as well as effective service delivery.

The capacity gaps identified during the assessment led to the development of strategies. These strategies have consequently been transformed into a consolidated Public Procurement Action Plan for Capacity Building in MDAs, LGs, CSOs and the Organised Private Sector with each strategy described and assigned a time frame, responsible organisation and stakeholders' for implementation.”

4.15 The UNDP has been assisting the state to implement the recommendations of the assessment by holding “advocacy meetings on public procurement”. The first round of such meetings involving all permanent secretaries and special advisers held between March 11 and 14, 2012.

²⁹i.e., a total of eight state actors, including the director general of the Benue State Public Procurement Commission (BNSPPC)

³⁰Andrew Gbakon (2009), *Assessment of Public Procurement Capacity in Ministries, Departments & Agencies (MDAs) in Benue State*, Consultant's Report (Final), November 2009 (Revised), UNDP

4.16 Ondo state did not produce evidence of a modern PPL, but it submitted a draft document, *Draft Ondo State Procurement Guidelines and Tenders Policy Manual, 2009 – 2010*. The draft document contains some regulations, but it is not clear that the state government has adopted the document, as it is only a draft. It is also not backed by any law. Furthermore, there is no evidence that the State is implementing its contents. The Ondo State Public Procurement Law passed by the immediate past administration expired without being assented to by the present Governor. Senior Government personnel claim the bill has been revised and improved. In practice Ondo State has three Senior Special Advisers on Due Process with each in charge of procurement for: General Goods and Services;, Building and Electricity and Civil Works; and Water respectively. There appears to be no clear separation between regulation and implementation functions as regards the role of the Senior Special Assistants in supervising MDAs.

4.17 Adamawa state has not passed a modern public procurement Law and it did not submit any procurement manual or guidelines or provide any evidence that one exists.

4.18 States' Financial Instructions and similar documents usually contain provisions that border on the procurement process and procedures. For instance, Chapter 10 and 11 of the Sokoto State Stores Regulations Instructions, 2010 are on *Tenders Boards and Contracts*, and *Purchase of Stores* respectively. The chapters cover registration of contractors, powers to award contracts, tenders and contract procedures, local purchases, occasional local purchase, overseas purchases, and government contracts. Similarly, Delta State Financial Instructions, 2000 make provisions on local purchase of stores (chapter 39), procedure for the award of government contracts as well as limit on authority to incur expenditure (Chapter 40). However, these provisions do not reach standards expected in modern public procurement, and allow wide individual discretion.

Advance Establishment of Selection and Award Criteria

The Tendering Process

4.19 The 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)). What arrangements are in place in the 10 selected states with regard to tendering procedures? Status of Tendering and Other procedures in States with PPLs

4.20 *The arrangement in states with operational public procurement laws is for the PPB or equivalent to issue procurement guidelines and thresholds for procuring entities 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, conditions for pre-qualification, and process of obtaining due process (i.e., no objection)*

certification, membership of Tenders Board, and indeed the WHAT, the WHO, the HOW and the WHEN of implementing the law. Among the five states in this sample with PPLs³¹, only Niger and Kaduna provided evidence of published guidelines that meet only some required parameters. The Niger State PPB uses a Due Process Manual that predates its PPL (which is currently under revision), to ensure completeness.

4.21 *Evidence supplied by Anambra State does not show that it has commenced operationalizing its PPL, 2011.* Evidence of guidelines submitted is that of a memo by the Ministry of Economic Planning and Development, dated July 2007³². The Ministry houses the Due Process (procurement regulatory) function. However, the memo does not comprehensively cover the routines above. For example, it allows undue discretion in application of methods of procurement and its provisions for simultaneous distribution of information on procurement activity are inadequate. Anambra state also has a formal checklist for granting due process certification to procuring entities. However evidence indicates Anambra State has a second operating circular - Tender Procedure and Award of Contracts Circular- issued by the Office of the Secretary to the Government on 15th May 2006 with largely similar provisions. Also the Anambra State Financial regulations contain limited tender rules. However none of these rules alone or together meet the required standard of rules for a modern procurement system, and jointly they also lack completeness. In some respects for example the thresholds set forth by these three instruments conflict and no evidence of a formal resolution of these conflicts was presented.

4.22 *Evidence supplied by Imo State on tendering procedures does not flow from operationalization of its PPL, 2010.* The Evidence is Chapter 29 of Imo State Financial Instructions on *Tendering and Award of Contracts*³³. The document establishes various tenders' boards and defines their powers, establishes procedures on selective and limited tendering, and provides for submission and opening of tenders, and process of obtaining waivers from the tendering procedures. It is unclear whether these rules are still in use or even relevant. For example, the approval thresholds are archaic and inoperable today³⁴. In addition, approvals by the various tenders' boards are only recommendations to the Governor through the Secretary to the State Government³⁵. Further, applications for waivers from tendering procedures are to the Secretary to the State Government³⁶. If this were to operate today, it will be at variance with the State PPL.

4.23 *Bayelsa State did not submit any evidence on the extent to which it is operationalizing its PPL, but its state's PPL contains provisions on the subject.* There are provisions on procurement methods and the bidding process, solicitation of tenders, evaluation of bids, etc. The Law makes open competitive bidding the default method of procurement, but it allows the procuring entity to use alternative methods "*if the procuring entity has reason to believe that open competitive bidding (i) will not be efficient or practical for the procurement in question, or (ii) will be too costly to apply given the value of the procurement*"³⁷. This decision of the procuring entity is not subject to prior approval by the Due Process Bureau.

³¹Anambra, Bayelsa, Delta, Imo, and Niger

³²See memo ref MEPD/PS/129/3 *Restoration of Monitoring, surveillance, and Evaluation of the Budget and Adherence to Due Process Schedules and Procedures*, d 31 July 2007 and signed by G. N. Okeke, Permanent Secretary, Ministry of Economic Planning and Development. See also, *Adherence to Due Process Guidelines on Contract Awards in Anambra State* (undated and unreferenced), signed by A. B. C. Nwosu, for Permanent Secretary, ministry of Economic Planning and Development

³³There is a conflict here requiring clarification. While Imo state provided extracts of "*Imo State Financial Instructions*" to establish the tendering process, it submitted a photocopy of the federal Financial Regulations, 2000 as evidence the accounting and internal control process that it uses.

³⁴Approval limits for N50,000 for Ministerial Tenders Board (MTBs), N250,000 for Inter-ministerial Tenders' Board, and above N250,000 for the State Tenders.

³⁵Para. 2902 of Imo State Financial Instructions

³⁶See Para 2913 of Imo State Financial Instructions

³⁷Section 23(2d)

However, the entity “shall note in the record of the procurement proceedings the ground for the choice of the procurement method.”³⁸ This provision leaves too much unregulated room to procuring entities. This provision is a carryover of regulations that predate the PPL and which the 2009 PEFA report noted contained loopholes for potential abuse of the procurement process. Below is an extract of the PEFA assessment

“Use of open competition... Current procurement rules do not establish any threshold for open competition. The regulations though provide that all “procurement shall, in the case of goods, other services, or works, be made by means of open advertised bidding, to which equal access shall be provided to all eligible and qualified bidders without discrimination”. However, another provision of the regulations significantly weakens the efficacy of the provision. The regulations also provide that, “where an MDA has reason to believe that the goods, other services, or works are only available from a limited number of bidders or the time and cost of considering a large number of bids is disproportionate to the value of the procurement, restricted bidding may be used. However, bids must be solicited from a minimum of 5 bidders”. This opens the door for the award of huge contracts through selective tendering. For example, the State awarded contract for the construction of the Yenegoa-Oporoma road for an amount of 38 billion naira through a selective tendering process.

“Table 3.19a summarizes information on award of contracts provided, by the State Tenders Board. In terms of numbers, the SG awarded the vast majority of contracts (65 percent) through a non-competitive bidding process. Individual amounts of contract awarded through this selective bidding process range from above 95 million naira (US \$640,000) to 38 billion naira (US \$255 million). However, by value, contracts awarded through open bidding amounts to about 53 percent.

³⁸Section 23(2e)

Table 4.1: Prominence of Selective Bidding in Procurement Process

Table 3.19a: Bayelsa State Procurement - Open vs Selective Bidding, Dec 07 - Apr 09 (Naira Millions, %)						
(Minimum amount of individual contracts included in analysis is 95 million naira (US \$640,000.00))						
Agency	Open Tendering		Selective Bidding		Total	
	Amount	Percent (%)	Amount	Percent (%)	Amount	Percent (%)
Ministry of Works	85976.41	61.25	54383.73	38.75	140360.14	100.00
Min of Housing & Urban Dev	0.00	0.00	1004.09	100.00	1004.09	100.00
Ministry of Health	0.00	0.00	18163.55	100.00	18163.55	100.00
Capital City Devt Authority	1600.00	74.95	534.83	25.05	2134.83	100.00
Ministry of Energy	0.00	0.00	757.91	100.00	757.91	100.00
Ministry of Education	0.00	0.00	6012.01	100.00	6012.01	100.00
Ministry of Local Govt & Rur Devt	0.00	0.00	3388.03	100.00	3388.03	100.00
Due Process & e-Governance Bureau	2878.37	100.00	0.00	0.00	2878.37	100.00
Min of Youth, etc	3700.00	88.60	476.04	11.40	4176.04	100.00
Min of Water Resources	0.00	0.00	250.23	100.00	250.23	100.00
Total in naira millions, %	94154.78	52.56	84970.41	47.44	179125.19	100.00
	Open Tendering		Selective Bidding		Total	
	Number	Percent (%)	Number	Percent (%)	Number	Percent (%)
Ministry of Works	44	52.38	40	47.62	84	100.00
Min of Housing & Urban Dev	0	0.00	4	100.00	4	100.00
Ministry of Health	0	0.00	4	100.00	4	100.00
Capital City Devt Authority	1	50.00	1	50.00	2	100.00
Ministry of Energy	0	0.00	2	100.00	2	100.00
Ministry of Education	0	0.00	4	100.00	4	100.00
Ministry of Local Govt & Rur Devt	0	0.00	35	100.00	35	100.00
Due Process & e-Governance Bureau	3	100.00	0	0.00	3	100.00
Min of Youth, etc	1	50.00	1	50.00	2	100.00
Min of Water Resources	0	0.00	1	100.00	1	100.00
Total in number, %	49	34.75	92	65.25	141	100.00
Source of Data: Bayelsa State Central Procurement Bureau						
Note: State Central Procurement Board; document undated and unsigned and does not cover all MDAs						

Source: Bayelsa State PEFA Report, 2009

“Several vital caveats make it difficult to place absolute confidence in Table 3.19a. First, the minimum amount of contract included in the information, which the SG provided for this analysis is N95, 379,978.38. It is not clear what informed this cut off or whether the figure is of any particular significance. Second, the information did not cover every contracting MDA. For example, an important Ministry such as agriculture is missing from the analysis. Third, the Central Procurement Board is not in a position to see all contracts awarded in the State. As the State Tenders Board, it can only provide information on those contracts that by extant regulations pass through it. By current rules, Ministerial Tenders Boards have the competence to handle contracts up to 50 million naira (US \$335,750) without reference to the Central Procurement Board. Obviously, many contracts will fall within this category on which the Procurement Board does not see.

It is therefore safe to score this dimension “D” because of insufficient data.

See S 23(d) of the BSPPL and “Justification for use of less competitive procurement methods – extant procurement regulations already cited above justify restricted tendering in situations where “an MDA has reason to believe that the goods, other services or works are only available from a limited number of bidders or the time and cost of considering a large number of bids is disproportionate to the value of the procurement”. This justification appears too broad and therefore weak. Not providing MDAs with standards or limits on which to base their judgment, it gives room for wide and subjective interpretations and justification. For example, a March 2, 2009 Executive Council memo from the Central Procurement Board requesting approval for the award of contracts totaling more than six billion naira did not provide any justification for the use of selective tendering. It only stated thus,

“Selective tendering was conducted by the Ministry” Another memo justifies it thus, “The Ministerial Procurement Board recommended WIZTON ENGINEERING & CONSTRUCTION CO. LTD for the job in view of its track record in performance ...”.

“Besides, during the assessment retreat, the SG argued that the three-month no-rain window that the State has to carry out construction work creates a real emergency that justifies selective tendering. It however would seem that the regularity of this weather situation robs it of any “emergency content”. Indeed, the long, nine-month period provides the SG ample scope to plan and conclude all procurement processes so that construction work would immediately commence during the dry season.

“In addition, justification of selective bidding based on specialization does not appear proper. It would appear that specialization and dearth of observable competition ought to be reasons for a deliberate effort to widen the search for alternatives and therefore for open competition.

“Further, there appears to be something missing in not subjecting the reasoning and justification of Ministerial Procurement Boards for selective tendering to higher-level scrutiny and approval. This has created a significant and unhealthy loophole. The lack of a procurement regulatory authority to conduct prior or post review of major procurements is another lacuna that could have contributed to the popularity of selective bidding. Finally, the Government's visible “haste” to develop the State by implementing as much of the capital budget may have created a situation wrongly interpreted as “extreme emergency” warranting selective tendering.”³⁹

4.24 Although Sokoto, state has not enacted a PPL, its Due Process Guidelines contain rules on tendering. The guidelines establish thresholds, define different tendering procedures, and make rules on advertisement, pre-qualification, invitation to tender/bid, and due process certification. However, there is no evidence on the extent of their use.

4.25 Ondo, Adamawa, and Benue states did not submit evidence on their tendering processes. There are a few tendering posts on Ondo state government's website.⁴⁰ The posts briefly describe the activity, state qualifications of bidders, and announce closing date, time and venue for submission of bids. However, the posts do not include bid evaluation criteria established in advance and provide little guidance on the details of the procurement for prospective bidders. Besides, there does not appear to be any recent posts.

4.26 *The 10 states⁴¹ do not show evidence of use of standard bidding documents to standardize requirements and submissions and enhance transparency. However, Niger State is currently preparing theirs.*⁴² The Bureau of Public Procurement at the Federal level, (BPP) recently revised its standard bidding documents and sample contracts for the different types of contracts to meet international standards. The World Bank recently approved use of these documents in World Bank financed projects, on account of their high standards. State governments now use them in contracts financed by WB credits. It is only logical that they extend their use to their own financed projects.

4.27 Similarly, none of the state PPBs appears to have a functional website as the federal Bureau does. The federal BPP maintains a vibrant and updated website⁴³ with important information, covering much of the above. It also publishes and distributes, free of charge to all interested parties, information

³⁹See Bayelsa State Fiscal Performance Analysis, 2001 – 2008 including PFM (PEFA) & PIM Systems' Assessments, a commissioned assessment by the World Bank completed in 2009

⁴⁰www.ondostate.gov.ng, accessed on May 11, 2012 at 8.50 am

⁴¹Including those that have enacted their PPLs

⁴²Actually, Niger State plans to adapt the federal documents.

⁴³www.bpp.gov.ng

on all aspects of the tendering and procurement process, and publishes a Tenders Journal in hard and soft copies (on its website), as well as a quarterly Procurement Review.

4.28 Niger State at the validation meeting of the draft report on 13th September 2012 presented some evidence of implementation of its law and tendering procedure. These include a Final Report on Due Diligence Checks on Tenders for Plants/Equipment and Offices, the Final Report on the Tender Analysis for the Nine Billion Naira Bond Road Projects, Minutes of Meeting of the Resident Due Process Team (RDPT) held on Monday 8th June 2012 at the PS Livestock and Fisheries Development and Minutes of Meeting of Niger State Water Board RDPT held on 9th Feb 2012. In addition, they provided three No Objection certificates, and Stores Regulations. These documents indicate that identified procuring entities in Niger State advertised the six major road projects awarded in Dec 2011-2012 in two national newspapers, pre-qualified interested bidders and sold them bid documents. Their bids were received, evaluated and winning bids selected, though pre-qualification scoring and evaluation conditions are not always established in advance. They also reveal application of "Rapid Response Tendering Method" which is Direct Procurement on a number of projects ranging from supply of water purification chemicals, supply of diesel, servicing of generating set and extension of pipeline for water supply by direct labour. The evidence provided indicates that beyond establishment of regulatory institutions.

Niger has also put in place its Resident Due Process Teams in the MDAs, and is implementing the law to the extent possible without regulations and standard bidding documents, which it is currently preparing. It would appear that Niger State still applies some provisions of its Stores Regulations, guided by provisions of its procurement law e.g. Invitation to tender is now by advertisement in two National Dailies, but contractor's registration is still pursuant to the Stores Regulation, though bidders who bid without registration may not now be disqualified, but allowed to register. Applying the two instruments will be problematic in practice. In its written comments regarding nonexistence of standard documents, Niger State agrees that it is yet to issue uniform standard documents, but notes that pending the delay by the consultant in delivery of their drafted regulations and standard documents, they have allowed MDAs to develop their own Standard documents, and they present Niger State UBE and Conditional Grant Scheme Standard Documents as examples. However the documents presented indicate gaps and capacity challenges, some of which detailed procurement rules, standard documents and sustained training can resolve. Niger is therefore the only one of the ten subject States that has provided some evidence of implementing its law and tender proceedings to any observable degree.

Status of Tendering and other procedures in States without PPLs

4.29 *Of the states that did not submit evidence of modern PPLs, Kaduna and Sokoto showed they have orderly established tendering procedures.* The two States' manuals⁴⁴ contain ordered procurement procedures including establishment of approval thresholds, prior review and due process certification, checklist of documents required for due process certification, and procurement procedure, i.e., advertisement, prequalification, invitation to tender, opening of bid, bid evaluation process, etc. However, there is no evidence of the extent of compliance with the provisions. There is also no evidence of use of standard bidding documents and contracts, code of conduct, public access to procurement documents, including through an official website. During the validation meeting on 13th September 2012 the Sokoto State contingent submitted one advertisement by the State Ministry of Works and Transport in the daily Trust of 30th August 2012 as evidence of implementation of its current rules.

⁴⁴Already cited above

Compliance with Tendering Procedures and Laws where they exist.

4.30 It was not possible to establish the extent of compliance of procuring entities with tendering provisions in the procurement frameworks of the target states.⁴⁵ However, it is safe to suggest that institutions and capacity for their implementation are not fully in place in four of the five states with modern procurement laws with Niger as the exception.⁴⁶ Bayelsa State has a Due Process and e - Governance Bureau, which became inactive in the last few years. The new government has appointed a new head of that agency, however no evidence of its current operations has been provided. Amongst five of the subject states without modern procurement laws, evidence presented indicates that only Sokoto and Kaduna States appear to have orderly procedures, which lack completeness. However neither these two States nor the other three States without procurement laws presented any evidence of implementation of current procedures, even as inadequate as they may be, except for the one advertorial presented by Sokoto State at the validation meeting. Procurement capacity is also weak in all the 10 states.

Objectivity of Public Procurement Decisions

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

4.32 *As already stated, the PPLs of the four states that have enacted them,⁴⁷ have provisions on all aspects of procurement decision making.* These include prequalification of bidders, tendering and bidding process (examination and evaluation of bids, rejection and acceptance of bids), choosing a procurement method, etc. Generally, the Laws make open competitive bidding the default method for procuring goods and services. The method requires procuring entities to base procurement on previously defined criteria, offer every interested bidder equal simultaneous information and opportunity to offer the goods and works, and select the lowest evaluated responsive bid (responsive to the bid with regard to work specification and standard) as the winning bid. The PPLs also provide specifically for procurement of consultancy services with either *“expression of interest”* in simple cases or *“request for proposal”* in more complex circumstances.

4.33 *Generally, the PPLs narrow down areas of discretion and personal interpretation in the use of alternative procurement methods (i.e., other than open tendering).*⁴⁸ The Laws define circumstances under which to use two stage procurement, requests for quotations, direct procurement, and

⁴⁵ Although Anambra State has completed a standard procurement assessment using the OECD MAPS methodology that includes a compliance assessment, it is not possible to cite publicly the report without the permission of the state or of the sponsors of the report, the EU-UNICEF Partnership for PEMFAR in the 6 EU states.

⁴⁶ Bayelsa State had a Due Process prior to enactment of the PPL

⁴⁷ Anambra, Bayelsa, Imo, and Niger

⁴⁸ With the exception of the Bayelsa State PPL, 2010, which, as shown above, allows procuring entities too much unsupervised discretion in choice of procurement method

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 that

- 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

4.34 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.

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 five states with procurement laws 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
- Limited size of proposed procurement relative to the original
- 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 and single source is most appropriate method

4.35 Emergency or force procurement (aka rapid response procurement) involves obtaining proposal or price quotation from single supplier, under real emergency. The Laws define recognized emergencies as follows:

- Serious threat to the country
- Actual confrontation with disaster
- Condition or quality of existing equipment or building may seriously deteriorate otherwise, and
- Delay of a public project for want of an item of relatively minor value.

The procuring entity may then use the direct contracting. 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.

However, with the exception of limited evidence from Niger State on use of Rapid Procurement Method or Direct Procurement as in paragraph 4.28 above, evidence is short on how the 10 states use alternative procurement methods across board.

As already stated, the 2009 PEFA report comments on the position in Bayelsa state as at 2009;⁴⁹ but there is no information on current practice. In Anambra it appears that ministerial Tender Boards participate to recommend winners in award of contracts above five hundred thousand Naira, however contract award approvals depending on other higher applicable thresholds lie with the State Tenders Boards, the Governor and the Executive Council. The dominant use of selective tendering based on loose provisions of its operating circulars restricts competition, and there are no procurement management units in the MDAs. There are capacity issues as in other states and no evidence of a defined capacity building program. The operating circular centralizes procurement by requiring approval of the Governor prior to commencing procurement and for every payment. .

Procurement Reviews and Appeals Process

4.36 UNCAC articles provides for state parties to have *“An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed”*. Although AUCPCC has no similar (explicit) provision the general provisions cited above cover procurement reviews and appeals. In particular, the transparency provision in *Article 7(4)* to *“Ensure transparency, equity, and efficiency in the management of tendering and hiring procedures in the public service”* covers anything that deals with 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))*.

4.37 *The PPLs contain procurement complaints and appeals mechanisms, but there is no evidence that any of the five states has operationalized them.* The process allows complaints from aggrieved persons and others who observe corruption and other untoward activities or who otherwise have a complaint to make on any aspect of the tendering or procurement process.

4.38 *The federal BPP has set up a procurement review process that state governments can emulate.* The Bureau has published a small brochure on *“Complaints Procedure under the Procurement Act 2007”*. The booklet highlights nine steps in the procurement complaints process as follows

- a) Formal written complaint to the accounting officer of the procuring entity within 15 working days of becoming aware of breach or omission
- b) Review of complaint by accounting officer and communication of decision, giving reasons, to the complainant within 15 working days
- c) Further complaints in writing to the Bureau within another 10 working days
- d) Bureau notifies procuring entity of complaints and suspends further action by procuring entity until matter is settled
- e) If the Bureau does not dismiss the complaint, it shall further
 - i. Prohibit the procuring/disposing agency from taking further action
 - ii. Nullify part or all of the unlawful act or decision of the procuring/disposing entity
 - iii. Declare or make known the rules and principles governing the subject matter of the complaint
 - iv. Reverse improper decision by the procuring/ disposing entity or substitute its own decision for the improper one

⁴⁹Reported elsewhere in this work

- f) Bureau shall notify all interested bidders of the complaint before taking any decision on the matter and may take representations on the matter from bidders and the respective procuring or disposing entity
- g) Bureau shall announce decision within 21 days of receipt of complaints, giving reasons
- h) If not satisfied with decision or if decision not reached within 21 days, complaint may proceed to the High Court within 30 days
- i) Decision of the High Court shall be final and binding on all the parties and no further appeals shall lie.

Code of Conduct for Procurement Personnel

4.39 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.

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

4.41 Although the PPLs of the five states⁵⁰ that have enacted them 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. The PPLs require that personal integrity⁵¹ be the guiding principle of any such code. The public offices will also be subject to an oath of office to ensure the following:

- (i) judicious utilization of public funds,
- (ii) adequate time for preparing offers
- (iii) comply with the PPL and all derivative regulations
- (iv) strict confidentiality until completion of a contract
- (v) observance of highest standards of ethics - transparency, honesty, and professionalism in relationships with bidders, suppliers, contractors, and service providers
- (vi) divesting from relationships actually or potentially inimical or detrimental to the best interest of government
- (vii) avoidance of conflict of interest and unfair advantage (pecuniary or otherwise) situations in dealings with state government and its organs⁵²

⁵⁰Anambra, Bayelsa, Delta, Imo, and Niger

⁵¹honesty, accountability, transparency, fairness, equity; see for instance, s. 59 (2) of the Niger State PPL, 2010

⁵²See for instance, s. 59 of Niger and Anambra, and ss. 60, 61 of Bayelsa states' PPLs

4.42 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. The 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, etc., 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 compromising impartiality..
- Placing government in an equivocal, embarrassing, or ethically questionable position by acts of 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, etc., to unauthorized persons

Thus, procurement and assets disposal officials must declare existing or planned financial or other outside business relationship with real or potential conflicts.

4.43 State governments could follow the example of the federal BPP in operationalizing equivalent provisions in the federal Public Procurement Act, 2007 by defining codes of behaviors for not only public officials, but all parties involved in the procurement process, including bidders and civil society observers.

4.44 The various PPLs of the five subject states also define specific procurement offences and penalties.

Summary Performance: Anti-corruption Initiatives in Public Procurement

4.45 Table 4.2 below summarizes the foregoing discussion.

Table 4.2: Summary of Compliance with Procurement Provisions of UNCAC, AUCPCC and ECOWAS Protocols										
Provisions	Adamawa	Anambra	Bayelsa	Benue	Delta,	Kaduna	Imo,	Niger	Ondo	Sokoto
<p>Procurement Legislation</p> <p>UNCAC: Article 9(1) AUCPCC: Article 5(4) ECOWAS Protocol: Article 5(b) Procurement Legislation</p>	<p>No modern PPL; no information on legal and regulatory framework for PP</p>	<p>Modern UNCITRAL complaint PPL enacted in 2011, but loopholes allowing for political control of procurement process weaken efficacy of law: weak institutional capacity and lack of political will further slow implementation;</p>	<p>Modern UNCITRAL complaint PPL enacted in 2009, but loopholes allowing for political control of procurement process weaken efficacy of law: weak institutional capacity and lack of political will further slowdown implementation on</p>	<p>No modern PPL; no information on legal and regulatory framework for PP. Draft bill requiring revision exists</p>	<p>Modern UNCITRAL complaint PPL enacted in 2009, but overbearing provisions for political control of procurement process weaken efficacy of law: weak institutional capacity and lack of political will further slowdown implementation on</p>	<p>Has a procurement law that creates the BMPIU in the Governor's Office and provides for no more. Thus No modern PPL. Due Process Manual contain some orderly but incomplete PP regulations; however, political control weakens their efficacy; draft UNCITRAL complaint PPL not passed since 2008</p>	<p>Modern UNCITRAL complaint PPL enacted in 2010, but loopholes allowing for political control of procurement process weaken efficacy of law: procurement process weaken efficacy of law: weak institutional capacity and lack of political will further slow implementation on</p>	<p>Modern UNCITRAL complaint PPL enacted in 2010, but loopholes allowing for political control of procurement process weaken efficacy of law: implementation on is underway, regulatory institutions and RDPT in MDAs established, with institutional capacity building and efforts to develop standard tools on going</p>	<p>No modern PPL, but the <i>Draft Ondo State Procurement Guidelines and Tenders Policy Manual, 2009 - 2010</i> contains some PP regulations; however, no evidence was presented that the guideline is enforced or implemented on.</p>	<p>No modern PPL; Due Process Manual contain some incomplete but orderly PP regulations; however, political control weakens their efficacy; draft UNCITRAL complaint PPL not passed</p>

Table 4.2: Summary of Compliance with Procurement Provisions of UNCAC, AUCPCC and ECOWAS Protocols

Provisions	Adamawa	Anambra	Bayelsa	Benue	Delta,	Kauna	Imo,	Niger	Ondo	Sokoto
<p>UNCAC: Article 9(1), a,b AUCPCC: Article 5(4); 7(4) ECOWAS Protocol: Article 5(b)</p>	<p>No information and or evidence provided despite repeated demands and visits</p>	<p>Regulatory Body not established. Guidelines not yet issued under the PPL; existing Due Process cover works, goods, and services, establish approval hierarchy and thresholds, , weak solicitation and tendering procedures, not compliant to modern standards; no evidence of existence and use of standard bidding documents</p>	<p>No evidence of implementati on provided; evidence of 2009 PEFA assessment shows predominance of selective tendering process; no evidence of use of standard bidding documents</p>	<p>No evidence of implementati on provided</p>	<p>No evidence of implementati on provided</p>	<p>Due Process Guidelines issued cover works, goods, and services, establish approval hierarchy and thresholds, , solicitation and tendering procedures, though lacking in completeness no evidence of use of standard bidding documents</p>	<p>The Evidence is Chapter 29 of Imo State Financial Instructions on Tendering and Award of Contracts, but provisions are stale and archaic; no evidence of use of standard bidding documents</p>	<p>Evidence of Implementati on provided during validation. Shows deployment of Open Competitive bidding in Six road projects, with advertisement , pre-qualification,, bidding documents issue and submission, evaluation and award and also direct Procurement in a number of projects in situations that may not entirely meet stated requirements. Advertisemen t of projects, existence of RDPT in MDAs. Only state implementing its law.</p>	<p>No information or evidence regarding implementati on presented</p>	<p>Due Process Guidelines issued cover works, goods, and services, establish approval hierarchy and thresholds, , solicitation and tendering procedures, how be it lacking in completeness; no evidence of use of standard bidding documents</p>

Selection and Award Criteria

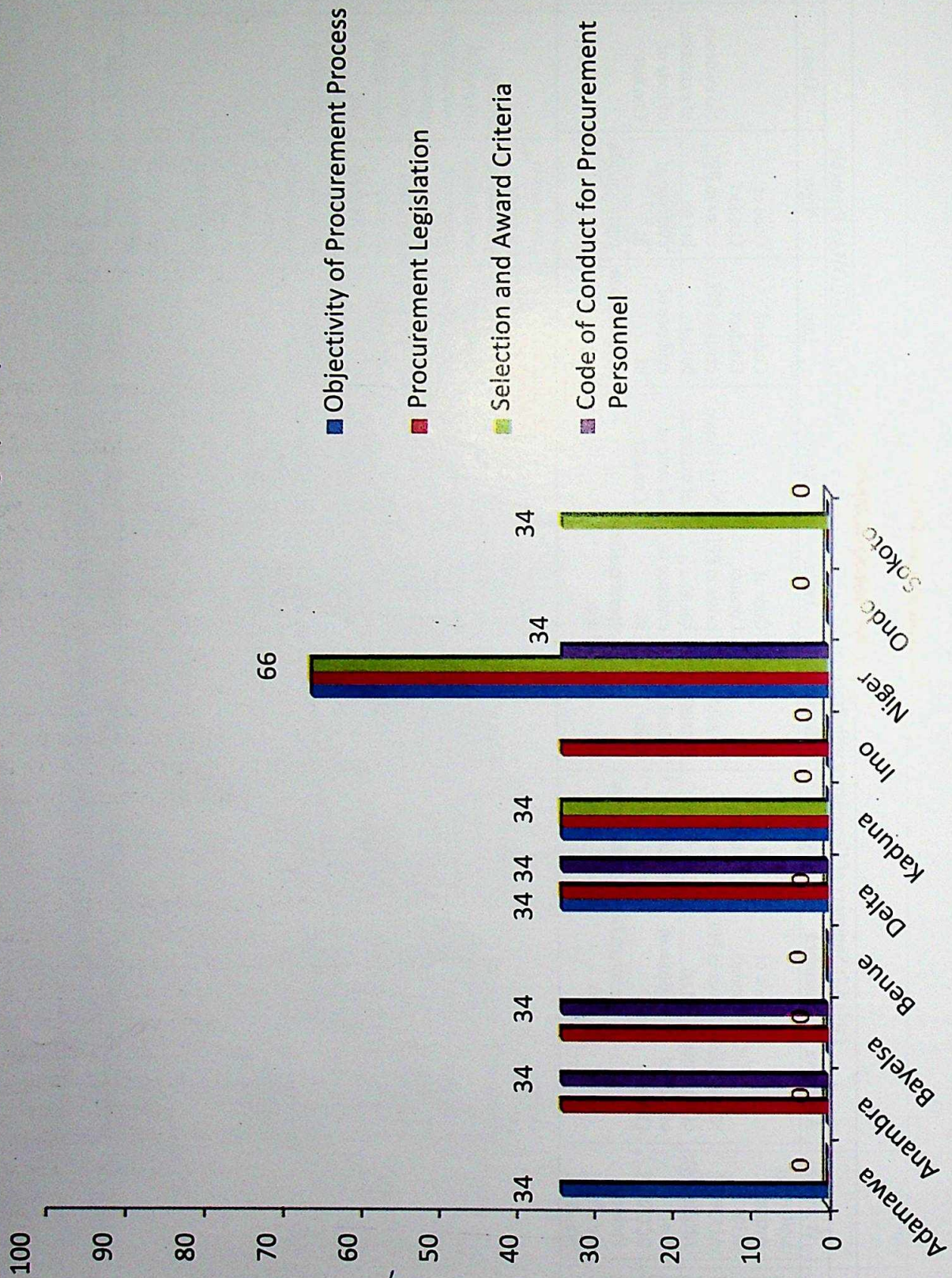
Table 4.2: Summary of Compliance with Procurement Provisions of UNCAC, AUCPCC and ECOWAS Protocols

	Provisions	Adamawa	Anambra	Bayelsa	Benue	Delta,	Kaduna	Imo,	Niger	Ondo	Sokoto
Objectivity of Procurement Process	UNCAC: Article 9(1)c AUCPCC: Article 5(4); 7(4) ECOWAS Protocol: Article 5(b, j)	Evidence of newspaper advertisement, but no information on fairness of open competition and use of alternative (non-competitive) bidding methods	No information on fairness of open competition and use of alternative (noncompetitive) bidding methods	No information on fairness of open competition; 2009 PEFA report established preeminence of selective tendering	No information on fairness of open competition and use of alternative (noncompetitive) bidding methods	Evidence of newspaper advertisement, but no information on fairness of open competition and use of alternative (noncompetitive) bidding methods	Evidence of newspaper advertisement, but no information on fairness of open competition and use of alternative (noncompetitive) bidding methods	No information on fairness of open competition and use of alternative (noncompetitive) bidding methods	Evidence of Advertisement, pre-qualification, bidding, evaluation and award in a fair manner in six road projects, though with observed limitations. Provided evidence of use of Direct Procurement Or Rapid Procurement Method with regard to use of alternative (noncompetitive) bidding methods	No information on fairness of open competition and use of alternative (noncompetitive) bidding methods	No information on fairness of open competition and use of alternative (noncompetitive) bidding methods
Procurement Reviews and Appeals Process	UNCAC: Article 9(1)d AUCPCC: Article 5(4), 7(4) ECOWAS Protocol: Article 5(b,j)										

No evidence of procurement reviews and appeal

Table 4.2: Summary of Compliance with Procurement Provisions of UNCAC, AUCPCC and ECOWAS Protocols											
	Provisions	Adamawa	Anambra	Bayelsa	Benue	Delta,	Kaduna	Imo,	Niger	Ondo	Sokoto
Code of Conduct for Procurement Personnel	UNCAC: Article 9(1)e AUCPCC: Article 5(4); 7(4) ECOWAS Protocol: Article 5(a,g)	No evidence of existence of code of Conduct	Code of Conduct exists in PPL, but no evidence of its operationalization	Code of Conduct exists in PPL, but no evidence of its operationalization	No evidence of existence of code of ethics	Code of Conduct exists in PPL, but no evidence of its operationalization	No evidence of existence of code of Conduct	Code of Conduct exists in PPL, but no evidence of its operationalization	Code of Conduct exists in PPL, but no evidence of its operationalization	No evidence of existence of code of Conduct	No evidence of existence of code of Conduct

Chart 4.2: The chart below also summarizes the foregoing discussion graphically.



Chapter 5: Anticorruption 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 financial management systems of the 10 sample state governments 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*³³ *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 describes arrangements governing the two.*

5.4 Revenue Sources of State Governments

*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 governments*³⁴ *with a formulaic arrangement. The Federal Government 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 handles the monthly distribution.*

³³As 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.

³⁴However, states can make their own laws on areas of their legislative competence as provided for in the constitution. Federal, state and local

5.5 *There are two types of revenue sharing formulas, vertical and horizontal.* The vertical formula applies to first line distribution of revenues among the three tiers of government: federal state, and local. The horizontal formulas are for subsequent redistribution of the shares accruing to a particular tier of government (state or local) among the members of that government. The VAT Pool Account and the Federation Account do not use the same vertical or horizontal revenue sharing formulas, i.e., the vertical formula for sharing VAT revenues differs from the vertical formula for sharing FA revenues. Similarly, the horizontals for the two are different.

5.6 *VAT Pool Account sharing formulas are as follows.* The vertical formula is 15:50:35 for federal, states, and local governments respectively. The horizontal sharing formula for the 50 percent of VAT revenue accruing to states is as follows: population, 10 percent, derivation, 50 percent, and equality of states, 40 percent. The two highest VAT states are Lagos and Ogun.

5.7 *Vertical and horizontal sharing formulas applicable to the FA are more complicated, involving a two stage process.* First, there is a prior charge⁵⁵ of 13 percent on revenues from oil sources payable to the states that contributed the oil resources⁵⁶. The horizontal formula for sharing this amount reflects the proportion of the states' contributions. Second, a statutory vertical sharing formula applies to the balance of revenue in the Federation Account thus: 54.68 percent to the Federal Government, 24.70 to states, and 20.72 for local governments. The horizontal sharing formula applied to the 24.70 percent accruing to SGs is a bit too complex to narrate here (*see Box 5.1 below*).

5.8 These revenues flow as constitutionally guaranteed and unconditional transfers from the centre to states and local governments. Another term commonly describing these revenues in Nigeria is *statutory revenues*. On average, they contribute more than 85 percent to state governments' revenues, with the exception of Lagos and Rivers States. The latest indication is that federation sources contribute only about 35 percent of Lagos State's finances.

⁵⁵Off the top of the Federation Account

⁵⁶Indeed, the constitutional provision applies to all natural resources producing states (s. 162); the section will also apply to any state that contributes natural resources to national coffers. i.e., among the oil producing states

Box 5.1: Vertical and Horizontal Revenue Sharing Formulas - FA and VAT

<i>Vertical Sharing</i>	<i>% Share - Federation Account (FA) Revenues</i>	<i>% Share - Value Added Tax Revenues</i>
13% Derivation - Oil Producing States	13.00% off the top (mineral revenues only)	Nil
Federal Government	54.68	15.00
State Governments	24.70	50.00
Local Governments	20.62	35.00
Total	100.00	100.0
States' Horizontal Revenue Sharing Formulas		
<i>Principle</i>	<i>Federation Account (FA) Revenues (%)</i>	<i>VAT Revenue (%)</i>
Equality	45.23	40.00
Population	25.60	10.00
Population density	1.45	
IGR effort	8.31	
Landmass	5.35	
Terrain	5.35	
Rural roads/inland waterways	1.21	
Potable water	1.50	
Education	3.00	
Health	3.00	
Derivation	0.00	50.00

5.9 *In addition to Federation revenues described above, the constitution defines some independent sources of revenues for state governments. These revenue sources constitute states' domestic or internally generated revenues (IGR). Thus, state governments administer collect, and retain revenues from these internal sources, although they do not necessarily enact legislation on the more important of them. The most important of states' IGR sources⁵⁸ is personal income tax. The National Assembly⁵⁹ makes personal income tax laws empowering state governments to collect and use proceeds of personal tax from individuals ordinarily resident in their states. The National Assembly also determines the tax rates, reliefs and allowances. Similar arrangement applies to capital gains tax for individuals.*

5.10 *States' also collect IGR from a variety of other tax and non-tax sources. These include stamp duties (taxes on registration of legal instruments) on individuals, registration of business premises, licenses, fees, fines, and investment earnings. These revenue sources often do not perform very well in most states due largely, to poor administrative abilities of state governments and their reliance on unconditional flows from the centre. Most state governments are not able to generate more than 10 percent of their revenue needs from these internal sources. As already stated, Lagos state is an outstanding exception here, generating up to 60 percent of its revenues from internal sources. Rivers state also generates a significant proportion of its revenues (about 25 percent) from within.*

5.11 *How effective are these provisions on revenue administration? How transparent are the processes for sharing joint revenues, i.e., VAT and FA revenues? What factors affect tax administration in state governments? There are no general answers since different issues apply to joint and internally generated revenues of state governments. The following paragraphs provide some insight.*

⁵⁸By a wide margin

⁵⁹i.e., the Federal Government

Issues in Distribution of Joint Revenues

5.12 Issues in the distribution of revenues accruing jointly to the federation include dissatisfaction with the revenue sharing formulas and complaints about lack of transparency in the handling of accruing revenues.

5.13 Complaints about current vertical and horizontal revenue sharing formulas suggest general lack of satisfaction with them. The complaints have various facets.

- Complaints that the process of fixing the current vertical formula was not transparent - the President unilaterally adjusted the vertical formula left by the defunct military government in 2003 following a Supreme Court (SC) decision. The adjustment became necessary when the SC nullified part of the military-bequeathed formula⁶⁰. The President allocated the bulk of the nullified portion to the federal government, pending agreement of a new revenue sharing formula. The process of devising new formula is for the Revenue Mobilization, Allocation, and Fiscal Commission (RMARC) to recommend a revision to the President, who will pass it on to the National Assembly for enactment. The process has been ongoing for many years now.
- Complaints that the federal government controls the bulk of collective revenues (52.68 percent), leading to wastage of resources at the centre. The argument is that the state governments, charged with actual service delivery should have the lion share of revenues.
- Complaints about 'alleged' skewed horizontal revenue sharing formula – there are two facets to these complaints. First, there is the long standing agitation for resource control⁶¹ that appear to recently be toning down due to increased prominence for derivation in the revenue formula.⁶² *Second*, there have recently emerged agitations that application of the 13 percent mineral derivation is unfair to northern states. Third, some states contend that the derivation formula should apply only to onshore oil and not offshore oil as well. They argue that applying the formula in this manner has led to disproportionate⁶³ allocation of resources to littoral states, which in turn is responsible for their alleged misuse and corruption.⁶⁴ *Fourth*, there is controversy on the place of local government in Nigeria's federalism, and in particular their distorting impact on the vertical revenue sharing formula. The most potent illustration of this is the case of Lagos state. Lagos state has approximately the same population with Kano state,⁶⁵ but while the later has 44 local governments, the former has only 20. Kano LGs therefore command greater share of the 40 percent equality component of local governments' share of federation revenues. Even Oyo state LGs have greater share on this index than Lagos State LGs. Oyo state has 33 LGs, even though its population is barely a little more than half that of Lagos. *Fifth*, there are continuing issues on the role of population in the horizontal revenue sharing formula. Sixth, Lagos⁶⁶ wants a review of VAT revenue sharing formula or a scrapping of VAT altogether. Lagos claims to produce the bulk of VAT and wants to keep the entire VAT proceeds accruing from the state. It is not satisfied with the 50 percent derivation applying to VAT.
- Lately there has also been calls for increase in quantum of oil revenues allocated on basis of derivation

⁶⁰The formula left by the military was 7.5, 48.5, 24.0, and 20.0 percent for special funds, the federal government, state governments, and local governments respectively. The SC declared that the allocation to special funds was unconstitutional since s. 162 recognised distribution of revenues only among the three tiers of government.

⁶¹By the oil producing Niger Delta states

⁶²Perhaps like VAT, which has a derivation arrangement of 50 percent

⁶³And indeed too much

⁶⁴See comments widely credited the chairman of the Northern Governors Forum, Governor Babangida Aliyu of Niger State on February 24, 2012, at <http://www.punchng.com/news/northern-govs-demand-allocation-formula-review/>; see also <http://africanheraldexpress.com/blog/2012/02/24/revenue-sharing-formula-unfair-to-north-babangida/>

⁶⁵According to official 2006 population census figures released by the National Population Commission

⁶⁶At to some extent, Ogun and Rivers states

5.14 *Allegations of lack of transparency in the management of federation revenues are of two types: failure of revenue collection to remit accurate amounts of revenues to the Federation Account, and unauthorized withdrawals, especially from the excess crude account. Claims of failure to transmit revenues affect both VAT and FA.*

Issues in States' Tax Administration

5.15 *State governments often blame their poor IGR performance on their lack of independence to enact tax laws, fix tax rates in states and generally control tax legislation in their states, but the facts do not bear this out. Although the federal government enacts laws on major taxes and fixes tax rates, state governments make vital inputs into the process through the Joint Tax Board (JTB). The JTB is a statutory body⁶⁷ of top tax officials of the federal and state governments⁶⁸ with the following functions⁶⁹*

- i. Advising all tiers of government on tax matters in order to evolve an efficient tax administration system in the country
- ii. Resolving areas of conflict on tax jurisdiction among member states
- iii. Promoting uniformity in both the application of tax laws and in the incidence of tax on individual throughout the country
- iv. Imposing its decision on matters of procedure and interpretation on income tax matters on member states

In this capacity, the JTB is important in setting tax rates. Indeed, the body suggested the amendments that the Federal Government made recently to the Personal Income Tax Act. The amendment lowered tax rates, increased personal allowances and reliefs, and redefined the concept of residence.⁷⁰ The JTB has also finalized work on a new national tax policy, which is currently awaiting enactment into law by the National Assembly.

5.16 *What factors then explain the weakness of the tax administration of the SG? The remote answer is a series of events, culminating in overdependence by states on unconditional oil revenue transfers. Dependence of SGs on central revenues resulted from gradual fiscal reforms introduced by the federal government between the mid-1970s and late 1980s. The reforms effectively centralized the major revenue sources (including oil revenues) and introduced vertical and horizontal revenue sharing formulae for their sharing. Gradual balkanization of the first tier SG from three fiscally strong and autonomous regions at independence to the current 36 states also created a dearth of experienced administrative capacity through splitting of available pool of experienced administrators among newly created states. Further, given the 'big brother' role assumed by the FG during the reforms, the new states found no incentive to move quickly to replenish the stock of administrators depleting in this manner and through normal attrition. Consequently, IGR generation, as other administrative responsibilities of states, suffered. With oil now doing so well in the international market and unprecedented levels of revenue flowing to SGs from the centre, it has perhaps, become even more difficult for SGs to find the motivation to boost internal revenue generation.*

⁶⁷See s. 86(1) of the Personal Income Tax Act Cap P8 LFN 2004

⁶⁸The body has coopted membership of the following bodies: the Federal Road Safety Commission (FRSC), Revenue Mobilization Allocation and Fiscal Commission (RMAFC), Federal Capital Territory Administration, and Federal Ministry of Finance

⁶⁹<http://www.jtb.gov.ng/node/1>

⁷⁰See Personal Income Tax Amendment Act, 2011

5.17 Most state governments have weak and non-transparent tax administration systems, characterized by lack of comprehensive taxpayer database, poor assessments techniques, and loopholes in internal controls around revenue collection and accounting, and discretionary tax policies. Tax provisions restrict discretionary powers to best of judgment (BOJ) assessment applied when the taxpayer is not forthright with information on his/her income. However, arbitrary waivers, selective rebates to labour and other interest groups, and lack of professionalism capacity contribute to reducing the effectiveness of the tax system.

Arrangements for Public Budgeting

5.18 *The Constitution contains general provisions on public budgeting, but legislative rules prescribe procedures for their adoption by the Legislature*⁷¹. 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 law⁷² 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 Gratuities⁷³. These are direct first on 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. .

5.19 *As stated above, state legislatures make rules on their legislative procedures, including for approving the budget; however, only five states provided copies of these rules for review*⁷⁴. The rules provided are similar in many respects⁷⁵. Generally, the rules provide for the following seven steps

- (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,⁷⁶
- (iii) committing the budget to the finance/appropriation (F/A) committee
- (iv) detailed examination of the budget by sector committees⁷⁷, including discussions with respective MDAs
- (v) clause by clause discussion of the F/A report and recommendations by the Committee of the Whole House, and
- (vi) item by item approval of expenditure lines,
- (vii) third reading and passage. The last step is assent to the Appropriation Bill by the governor.

Measures for Fiscal Discipline

5.20 *Several state governments have followed the example of the federal government to enact Fiscal Responsibility Laws (FRLs)*⁷⁸. Delta (2008), Bayelsa (2009), Anambra (2010), and Niger (2010) are the four states in the study sample that have enacted FRLs; Kaduna (2008), Sokoto and

⁷¹There are similar provisions on the federal budget

⁷²Including supplementary appropriation law, see s. 120(2))

⁷³See s. 124 (2)

⁷⁴The states are Anambra (Standing Orders of the Anambra State House of Assembly, 2008), Adamawa (Standing Orders of Adamawa State House of Assembly, 2007), Benue (Standing Rules of the Benue House of Assembly, 1981); Sokoto (Sokoto State House of Assembly Standing Rules, 2010 Amended), and Bayelsa (Standing Orders the Bayelsa State House of Assembly, 2011).

⁷⁵The only observed difference relates to Anambra State, where the House Standing Orders 2008 requires committing the budget proposal to the Committee of the Whole House immediately after the second reading for detailed examination. The three other Houses will use the finance and/or appropriation committees, and specialized sector committees for the detailed examination. The Committee of the Whole House then convenes to receive the report of the detailed examination, followed by a clause-by-clause debate before passage.

⁷⁶The rules do not allow discussion of the detailed budget during the second reading

⁷⁷Which for this purpose are also subcommittee of the F/A committee

⁷⁸The 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.

Imo (2011) have produced evidence of drafts, not yet enacted by the Legislature. The Laws follow the same general pattern set out in the federal equivalent, more or less. Generally, they 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 sectorial allocation of budget and actual expenditure. An important assumption of the MTEF approach is the willingness of government to both contain actual aggregate expenditures within to budget ceilings and respect sectorial allocations in the spending process.

5.21 *However, the process of mainstreaming and institutionalizing the FRL into the budget process has remained weak and largely ineffective in the four states that have enacted the FRL.* The Niger state government has set up a Fiscal Responsibility Commission as required under the FRL to oversee implementation of the Law. Although capacity is still weak in the Commission, there are ongoing efforts to strengthen it.. No other state government produced evidence of what it is doing to implement the Law. There does not appear to be an eagerness or “rush” to develop capacity to institutionalize implementation.

5.22 *Fiscal indiscipline has continued in both states that have enacted the FRL and those that have not.* There is no political will to discipline first, realistically budget according to realizable revenues, and second, to respect budgetary allocations during spending. Thus, an examination of the published financial statements produced by the state governments reveal the same types of fiscal indiscipline: optimistic revenue projections and under collection,⁷⁹ budgeting based on the unrealistic revenue projections, excess expenditure on some budget heads,⁸⁰ under spending allocations on some other heads, and failure to spend at all on yet some others. The excess budgetary spending and vehement that are of concern, are those that are undertaken without prior legislative approval, as required by the Constitution, and reported as such in the reports of the Auditor General. Most state governments in Nigeria⁸¹ regularly use the supplementary budgeting process in a manner that violates international good practices i.e., to adjust the original budget to accommodate extra expenditure already incurred for non-emergency issues. The excess expenditure discussed here are ones above the approved spending.

Timely reporting on revenue and expenditure

5.23 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

⁷⁹Some state government's (e.g., Kaduna), adopt the process of revising revenue targets midstream to bridge the gap between the original budgeted revenue and actual collection.

⁸⁰Especially 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.

⁸¹Including those the sample

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

5.24 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) require this report to be ready within six months of the end of the financial year for audit and for the audit to be ready within 90 days of completion of the financial statements. However, governments generally do not publish the financial statements beyond submitting the audited financial statements and audit report to the Legislature. The Federal government is a relative good exception. It publishes the audited financial statements,⁸² but not necessarily audit reports on the website.⁸³

5.25 How did the 10 state governments under study perform with regard to the timeliness of completion of their financial statements and audit reports? Table 5.1 tabulates the dates of submission of financial statements for audit and audit reports to the Houses of Assembly, wherever the information is available. Only two states - Ondo and Niger - were timely in the preparation of their annual accounts and financial statements, i.e., the two states concluded the statements within the six months required practice period. Ondo state concluded its statements five weeks early. Two other states - Anambra and Kaduna - were six and eight weeks late. Bayelsa State was seven weeks late with its last financial statements and six months late with submission of its audited report. The remaining five states did not provide information on dates of conclusion of their accounts. The new Kaduna State audit law requires the submission of its financial statements for audit within five months of end of the financial year. Only Anambra, Bayelsa and Ondo states submitted information on the date of completion of audit reports and submission to the House. Anambra state completed its FY 2009 audit within five weeks of receipt of the financial statements, while Ondo completed its FY 2010 audit within one month. However, Anambra state's FY 2010 accounts and audit became due by end September 2011, by law, but there is no evidence of its completion. Though Imo State at the draft report validation meeting submitted a copy of Accountant General's Financial Statements for YR 2007, it was undated and without an indication whether or not it was submitted to the Auditor -General for auditing and when.

State	Accounts/Financial Statements		Audit Report	
	Date of Latest Submission	Source/Comment	Date of Latest Submission	Source/Comment
Adamawa	FY 2010 accounts concluded and audited	Audit report does not provide date of submission; state did not provide other evidence	Information not provided	
Anambra	FY 2009 - 19 August 2010	FY 2009 audit report, p.1; 6 weeks late	FY 2009 - 24 September, 2010	Letter AS/S.154/11/193; timely/early ; 6 weeks after receipt of financial statements
Bayelsa	FY 2010 accounts concluded and audited	Received stamp of the Auditor General's Office shows it was received on 23rd August 2011	Submitted to the House and received on 3 rd April 2012	By letter dated 22 nd March 2012 with the received Stamp on its face giving date of receipt
Berue	Draft FY 2010 accounts (computer prints) provided	No information whether final statements ready and timing	Information not provided	

⁸²See www.oagf.gov.ng for federal financial statements and www.kwarastate.gov.ng for financial statements of the Kwara state government.

⁸³The 2007 report of the Auditor General for the Federation is on the website of the Office of the Auditor General for the Federation, www.oagf.gov.ng

Table 5.2: 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
Delta	FY 2010 accounts provided (photocopies)	No information on whether it has been audited	FY 2009 audit report provided; copy signed 12 April 2011, but not indicating submission date	Submitted a letter from AG to SSG dated 17 th September 2012 four days after the draft report validation meeting informing the SSG that audited Accounts of the State for 2009 & 2010 were submitted to the House on 2 nd June 2010 and 12th September 2011 respectively
Imo	FY 2007 Financial Statement completed and audited,	Did not provide date of submission or financial statements for 2005-6 or 2008-2010	FY 2010- Audit Report provided but does not indicate date of submission to Legislature	Provided letter evidence of submission of Auditors General Report to Accountant General not HA dated 9 th Dec 2011
Kaduna	FY 2010 – 29 August 2011	FY 2010 audit report, p.1; 8 weeks late	Information not provided	
Niger	FY 2010 – 4 July 2011	FY 2010 audit report, p.1; timely (four days late)	Information not provided	
Ondo	FY 2010 - 21 April 2011	FY 2010 audit report, p.1; timely; 5 weeks early	FY 2010 – 20 May 2011	See letter GMD/AG/2/Vol. II/195 of May 20, 2011; one month after receipt of financial statements
Sokoto	Audited FY 2009 account provided	No information on completion date	Information not provided	

System of Accounting and Auditing Standards and Related Oversight

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

5.27 Legal provisions and enactments on accounts reporting in Nigeria include the 1999 Constitution, the Finance (Control and Management) Act, 1957,⁸⁴ and the Financial Regulations, 2009.⁸⁵ These provisions establish the office of the Accountant-General. The Accountant-General runs the Treasury,⁸⁶ 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 (but not law) require the Account-General to prepare the final accounts and submit same for audit within six months of the end of the year. Thus, the financial accounts of the federal/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,⁸⁷ the audited accounts should be ready by the end of September each year.

Public Accounting Standards

5.28 *The International Public Sector Accounting Standards (IPSAS)*⁸⁸ 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.”⁸⁹ Countries may adopt these standards in preparing their financial statements or produce their own public sector standards complying with the minimum standards in IPSAS.

5.29 *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 (OAGF) had been making official pronouncements in this regard prior to the enactment of the Financial Reporting Council of Nigeria Act in 2011.⁹⁰ For example, the OAGF⁹¹ 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.⁹² The Conference is currently engaging in 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 in 2013. However, the new Conference of Accountants' General must now await formal pronouncement by the Financial Reporting Council of Nigeria on this subject before proceeding to adopt IPSAS and implement.

⁸⁴State governments should have their own independent organic finance laws, but some states adopt this federal legislation. For example, Delta state government provided a copy of this federal law in evidence. 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.

⁸⁵State 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).

⁸⁶Referred 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. The Lagos state government refers to the Office as the State Treasury Office, headed by the Accountant General of the State. However, this documents uses 'Office of the Accountant General' and 'Treasury' interchangeably as is also the case in practice.

⁸⁷See discussion on auditing below

⁸⁸Issued 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>

⁸⁹<http://www.ifac.org/public-sector>

⁹⁰The Act equips the Financial Reporting Council with powers to produce or adopt accounting, auditing, and reporting standards for both public and private sector Nigeria.

⁹¹In conjunction with the Office of the Accountant General of the Federation and the defunct Nigerian Accounting Standards Board (NASB)

⁹²See Federal Republic of Nigeria (2010): *Nigeria Public Sector Accounting - Comparison with International Public Sector Accounting and Auditing Standards (Country Report)*, January 2010

Box 5.2: The International Public Sector Accounting Standards Board (IPSASB)

The IPSASB is an independent standard-setting board that develops high-quality International Public Sector Accounting Standards (IPSASs), guidance, and resources for use by public sector entities around the world for general purpose financial reporting. The IPSASB is one of four independent standard-setting boards supported by the International Federation of Accountants (IFAC). IFAC (www.ifac.org) is the global organization for the accountancy profession, dedicated to serving the public interest by strengthening the profession and contributing to the development of strong international economies. It comprises 167 members and associates in over 127 countries (including Nigeria) and jurisdictions, representing approximately 2.5 million accountants in public practice, education, government service, industry, and commerce.

The IPSASB seeks to enhance the quality and transparency of public sector financial reporting by (i) establishing high-quality accounting standards for use by public sector entities, (ii) promoting the adoption, and international convergence to, IPSASs, (iii) providing comprehensive information for public sector financial management and decision making, and (iv) providing guidance on issues and experiences in financial reporting in the public sector.

The financial and sovereign debt crises underscores of IPSASs. The continuing crises highlight more than ever before, the need for better financial reporting by governments worldwide, and the need for improvements in the management of public sector resources. The government's financial management decisions affect citizens. Strong and transparent financial reporting can improve public sector decision making and make governments more accountable to their constituents. Past failure of governments to manage their finances has had dramatic consequences such as loss of democratic control, social unrest, and the failure of governments to meet their commitments today and in the future. This can still happen again.

Since 1997, the IPSASB has developed and issued a suite of 31 accrual standards, and a cash basis standard for countries moving toward full accrual accounting. Governments that report on a cash-basis do not account for significant liabilities, such as pensions and infrastructure development; as a result, the IPSASB encourages public sector entities to adopt the accrual basis of accounting which will improve financial management and increase transparency resulting in a more comprehensive and accurate view of a government's financial position.

Many governments, jurisdictions, and international institutions have already adopted IPSASs and many more are on the road to implementing the standards. These include Austria, Brazil, Cambodia, Costa Rica, Kenya, Peru, South Africa, Spain, Switzerland, Vietnam, the European Commission, the North Atlantic Treaty Organization (NATO), the Organization for Economic Cooperation, and Development (OECD), the United Nations system, and Nominating Committee Members

Source: http://www.ifac.org/sites/default/files/callouts/Fact_Sheet_IPSASB_April_2012_0.pdf, sourced on August 16, 2012

5.30 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.⁹³ The 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 made a pronouncement on the adoption of IPSAS or any other standard.

⁹³The Council has powers of enforcement, as well, s. 7(2) (a) of the Act; see Box. 5.2.

Box 5.3: The Financial Reporting Council of Nigeria

The Financial Reporting Council of Nigeria Act, 2011 repealed and replaced the Nigerian Accounting Standards Board Act No. 22, 2003 and set up the Financial Reporting Council (FRC) of Nigeria in its place. However, the FRC has wider functions and powers of enforcement than the Nigerian Accounting Standards Board (NASB), which made accounting (not auditing) standards and regulations for commercial accounting only. The jurisdiction of the FRC includes public sector and commercial accounting, auditing, and financial reporting. The broad outline of the standards setting and regulatory powers of the Council is as below

- enforcement of compliance with accounting, auditing, corporate governance and financial reporting standards in Nigeria, s. 7(2)a
- develop and publish accounting and financial reporting standards to be observed in the preparation of financial statement of public interest entities, s. 8(1)a
- review, promote and enforce compliance with the accounting and financial reporting standards adopted by the Council, s. 8(1)b
- receive notices of non-compliance with approved standards from preparers, users, other third parties or auditors of financial statements, s. 8(1)c
- receive copies of annual reports and financial statements of public interest entities from preparers within 60 days of the approval of the Board, s. 8(1)d
- advise the Federal Government on matters relating to accounting and financial reporting standards, s. 8(1)e
- maintain a register of professional accountants and other professionals engaged in the financial reporting process, s. 8(1)f
- monitor compliance with the reporting requirements specified in the adopted code of corporate governance, s. 8(1)g
- promote compliance with the adopted standards issued by the International Federation of Accountants and International Accounting Standards Board, s. 8(1)h
- monitor and promote education, research and training in the fields of accounting, auditing, financial reporting and corporate governance, s. 8(1)i
- conduct practice reviews of registered professionals, s. 8(1)j
- review financial statements and reports of public interest entities, s. 8(1)k
- enforce compliance with the Act and the rules of the Council on registered professionals and the affected public interest entities, s. 8(1)l
- establish such systems, schemes or engage in any relevant activity, either alone or in conjunction with any other organization or agency, whether local or international, for the discharge of its functions, s. 8(1)m
- receive copies of all qualified reports together with detailed explanations for such qualifications from auditors of the financial statements within a period of 30 days from the date of such qualification and such reports shall not be announced to the public until all accounting issues relating to the reports are resolved by the Council, s. 8(1)n
- adopt and keep up-to-date accounting and financial reporting standards, and ensure consistency between standards issued and the International Financial Reporting Standards, s. 8(1)o
- specify, in the accounting and financial reporting standards, the minimum requirements for recognition, measurement, presentation and disclosure in annual financial statements, group annual financial statements or other financial reports which every public interest entity shall comply with, in the preparation of financial statements and reports, s. 8(1)p
- develop or adopt and keep up-to-date auditing standards issued by relevant professional bodies and ensure consistency between the standards issued and the auditing standards and pronouncements of the International Auditing and Assurance Standards Board, s. 8(1)q; and
- perform such other functions which in the opinion of the Board are necessary or expedient to ensure the efficient performance of the functions of the Council, s. 8(1)r
- (2) The Council may issue rules and guidelines for the purpose of implementing auditing and accounting standards, s. 8(2)

5.31 *What standards or rules guide the preparation of public financial statements, 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 do the 10 state governments in this study comply with these rules in preparing their financial statements?* The next few paragraphs will provide some answer.

5.32 The Conference of Accountants' General for the Federation and states issued a "*Financial Reporting Model*" for the federal, states, and local governments in 2002.⁹⁴ 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.

5.33 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
- Supporting Statements
- Additional disclosures"

5.4 The 'model' requires a 'minimum' of four statements as follows, (i) Statement No. 1: Cash flow 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.

The 10 state governments in this study generally comply with the 'model reporting', but practices differ on 'additional disclosures'. These are Adamawa, Anambra, Bayelsa, Benue, Delta, Kaduna, Ondo, Niger, and Sokoto. However with respect to Imo state, the 2007 Report of the Accountant General with Financial Statements presented did not contain any statement as to compliance with any accounting standard, but had statements on accounting policies applied and the four statements. The tendency in these financial statements across the States is to disclose as minimal information as possible. For instance, while eight of the states disclose overheads expenditures according to MDAs, only Adamawa and Anambra states breakdown MDA overhead spending according to their types: transport & travels, utility services, telephone & telegraph services, stationery, maintenance of office furniture, maintenance of motor vehicle & capital assets, training & staff development, entertainment & hospitality, miscellaneous expenses, common services, hospitality gifts, and bank charges. The Imo State 2007 accounts present overhead expenditure in monthly lump sums, without breaking down to MDAs, or types of expenditure. Only three of the States; Anambra, Bayesla and Adamawa provide details of the salaries and emoluments of political office holders, including the Governor and Deputy Governor.⁹⁵

The 'reporting model' does not follow the manner of presentation in the budget, 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 5.4* summarizes the situation in the 10 states.

⁹⁴Report on Standardization of Federal, State and Local Governments Accounts in Nigeria, volume 2: Executive Summary and Reporting Model, pages ix - x

⁹⁵ See for instance, p. 37 and 65 of Report of the Accountant General with Financial Statements for the Year ended 31 December, 2010 for Adamawa State and Anambra State, respectively

Table 5.4: Extent of Compliance of Financial Statements with Local Reporting Formats

State/Compliance with Local Reporting Formats	Responsibility for Financial Statements	Disclosure of Accounting Standards & Policies	*Statement No. 1: Cash flow 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 the Accounts
Adamawa	Included	Statement of accounting policies; no statement of standards	Included	Included	Included	Included	<p>FY 2010 accounts Disclosures – detailed breakdown of revenues and expenditures, including details of overheads according to budget classification, internal and external loans, political office holders’ salaries; etc.</p> <p>Nondisclosures - interest payment (lumped together with repayment of principal), security votes; etc.; reporting format different from budget format, making expenditure tracking difficult</p>
Anambra	Included	Statement of accounting policies; no statement of standards	Included	Included	Included	Included	<p>FY 2010 accounts Disclosures – detailed breakdown of revenues and expenditures, including details of overheads according to budget classification, internal and external loans, political office holders’ salaries; etc., internal and external loans,</p>

Table 5.4: Extent of Compliance of Financial Statements with Local Reporting Formats

State/Compliance with Local Reporting Formats	Responsibility for Financial Statements	Disclosure of Accounting Standards & Policies	*Statement No. 1: Cash flow 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 the Accounts
							etc. Nondisclosures - details of first line deductions from federal account, , interest payment; security votes; etc.; reporting format different from budget format, making expenditure tracking difficult
Bayelsa			Included	Included	Included	Included	FY 2010 accounts Disclosures – revenues, expenditures, details of first line deductions from federal account, financial assets, internal and external loans, etc. Nondisclosures - interest payment (lumped together with repayment of principal), political office holders' salaries; security votes; etc.; reporting format different from budget format, making expenditure tracking difficult
Benue	Included	Statement of accounting policies; no statement of standards	Included	Included	Included	Included	FY: 2010 accounts Disclosures – investments, allocations of

Table 5.4: Extent of Compliance of Financial Statements with Local Reporting Formats

State/Compliance with Local Reporting Formats	Responsibility for Financial Statements	Disclosure of Accounting Standards & Policies	*Statement No. 1: Cash flow 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 the Accounts
							<p>recurrent and capital expenditures to MDAs, but not expenditure details</p> <p>Non disclosures: details of IGR; first line deductions from federal allocations, interest payment (lumped together with repayment of principal as public debt charges), political office holders salaries; security votes; etc.; reporting format different from budget format, making expenditure tracking difficult</p>
Delta	Included	Statement of accounting policies; no statement of standards	Included	Included	Included	Included	<p>FY: 2010 accounts Disclosures – external financial assets, and domestic loans,</p> <p>Non disclosures: details of IGR; first line deductions from federal allocations, interest payment (lumped together with repayment of principal), political office holders salaries; security votes; etc.; reporting format different from budget format, making expenditure tracking difficult</p>

Table 5.4: Extent of Compliance of Financial Statements with Local Reporting Formats

State/Compliance with Local Reporting Formats	Responsibility for Financial Statements	Disclosure of Accounting Standards & Policies	*Statement No. 1: Cash flow 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 the Accounts
Imo	Included	Statement of accounting policies; no statement of standards, audit report submitted appears incomplete in pages, and those Table of contents show pages, the pages do not show in the body	Included	Included	Included included		<p>YR 2007 accounts Discloses details of IGR, schedule of investments in quoted & unquoted companies and external investments loans, loan draw downs and repayments, as well as summary of overdrafts internal loans, interest on internal loans and overdrafts, cash and bank balances.</p> <p>Non disclosures:; first line deductions from federal allocations, interest payment (lumped together with repayment of principal), political office holders salaries; security votes; etc.; reporting format different from budget format, making expenditure tracking difficult</p>
Kaduna	Included	Statement of accounting policies; no statement of standards	Included	Included	Included	Included	<p>FY: 2010 accounts Disclosures – details of IGR; details of expenditures, internal and external loans, grants</p> <p>Nondisclosures – first line</p>

Table 5.4: Extent of Compliance of Financial Statements with Local Reporting Formats

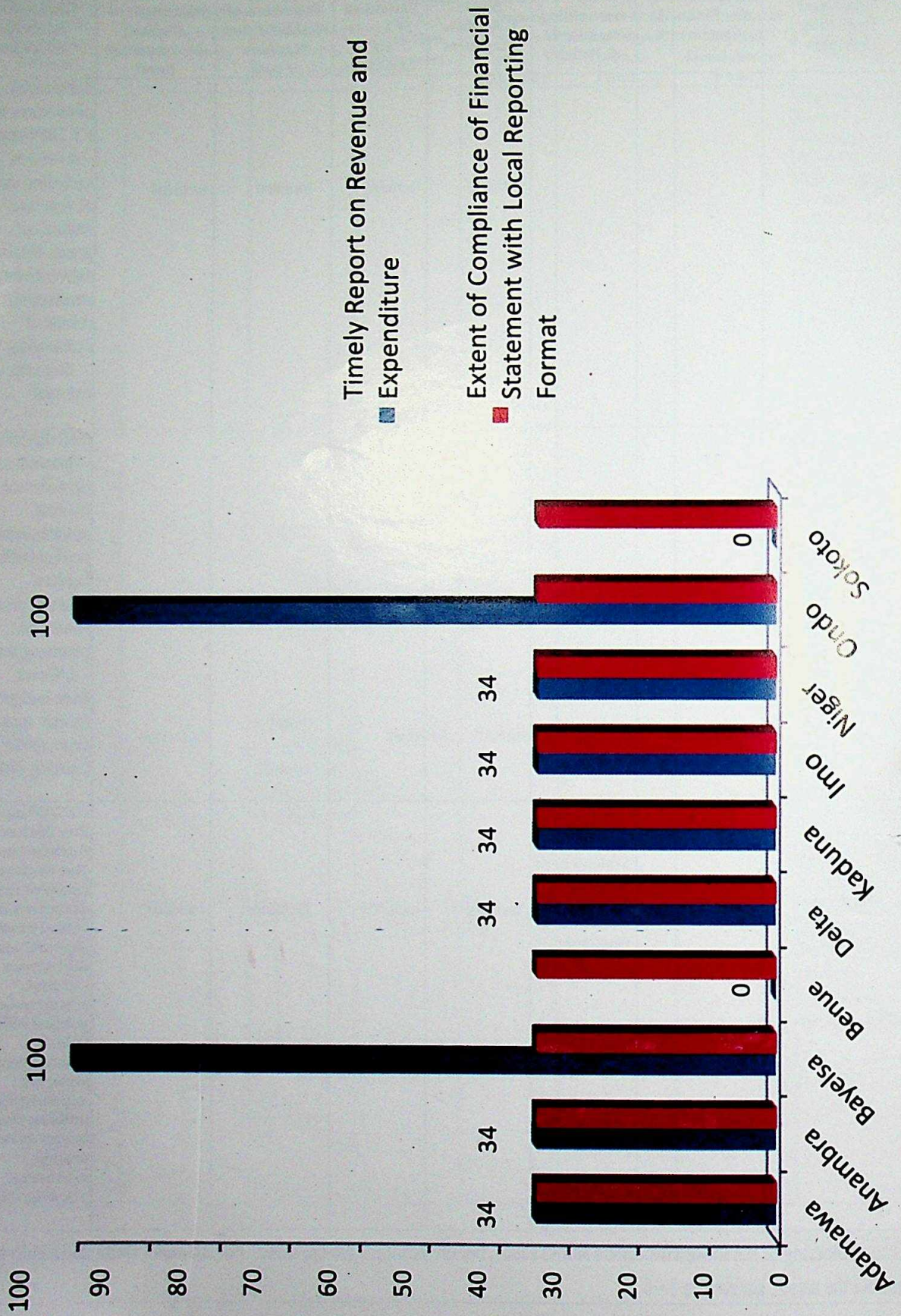
State/Compliance with Local Reporting Formats	Responsibility for Financial Statements	Disclosure of Accounting Standards & Policies	*Statement No. 1: Cash flow Statement	Statement No. 2: Statement of Assets and Liabilities	Statement No. 3: Statement of Consolidated Revenue Fund	Statement No. 4: Statement of Capital Development Fund	Additional Disclosures: notes the Accounts
							deductions from federal allocations, financial assets, debt service – interest, amortization, political office holders salaries; security votes; etc.; reporting format different from budget format, making expenditure tracking difficult
Ondo	Included	Policies disclosed, but claim of use of standards not evidenced	Included	Included	Included	Included	Disclosures in FY 2010 accounts – revenues, expenditures, grants from donors, etc., but gaps remain. first line deductions from federal allocations, financial assets, debt service interest, amortization, political office holders salaries; security votes; etc.; reporting format different from budget format, making expenditure tracking difficult

Table 5.4: Extent of Compliance of Financial Statements with Local Reporting Formats

State/Compliance with Local Reporting Formats	Responsibility for Financial Statements	Disclosure of Accounting Standards & Policies	*Statement No. 1: Cash flow 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 the Accounts
Niger			Included	Included	Included	Included	<p>Substantial disclosures in FY 2009 accounts – revenues, including details of first line deductions, grants received, subventions to parastatals, details of outstanding loans – domestic and external</p> <p>Non disclosures – financial assets, debt service interest, amortization, political office holders salaries; security votes; etc.; reporting format – different from budget format, making expenditure tracking difficult</p>
Sokoto	Included	Statement of accounting policies; no statement of standards	Included	Included	Included	Included	<p>FY 2009 accounts – Few disclosures – financial assets, Non disclosures – details of first line deductions from federal transfers, financial assets, debt service – interest, amortization, political office holders salaries; security votes; etc.; reporting format different from budget format, making expenditure tracking difficult</p>

*The numbering of the statements differs across states, but the headings are the same. For example, Delta and Ondo states number the series, statements 1–6

Chart 5.3: Also summarizes the situation in the 10 states graphically



System of Public Auditing

5.36 The 1999 Constitution of the Federal Republic of Nigeria⁹⁶ 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 Senate confirms. The essence is to promote independence of the Office.⁹⁷
- 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.
- 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.

5.37 State governments have the freedom to strengthen these constitutional provisions through enactment of modern independent audit laws, but none except Kaduna State presented evidence of enactment of an audit law.⁹⁸

5.38 *The Delta state government submitted as proof of an independent Audit Law, the old Audit Law of the Old Bendel State (now default) 1982, which applies to Delta state mutatis mutandis.*⁹⁹ The Imo State Government also submitted Audit Law of Eastern Nigeria with similar challenges, in the case of the Audit law of Eastern Nigeria. 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 not adequate e.g. both regional Laws 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. The 1999 Constitution created the position of Auditor General of the State with an independent office. Indeed, the 1999 constitution overrides many of the provisions of these regional Laws. Both regional laws do not create an audit commission, or clothe the Auditor General with additional independence or powers beyond constitutional provisions, which are later in time.

5.39 The Benue state government similarly provided the Audit Law of Benue, 1981, as evidence of existence of an independent audit law, but the Law is archaic in several respects. The Law provides “for the functions of the Director of Audit and for his retiring age and audit of public accounts and for

⁹⁶As amended to date

⁹⁷Section 126 of the 1999 Constitution.

⁹⁸Kaduna State of Nigeria Audit Law No 5 of 2010 presented after the validation meeting of 13th September 2012.

⁹⁹Delta is one the two states carved out of Bendel state on 27 August 1991

purposes connected therewith”¹⁰⁰. The major flaw of this Law is the complete lack of auditors independence, and subjecting the auditor to the control of the Legislature. *Section 5* of the Law states that, “*the Director of Audit shall on behalf of the House of Assembly*

- (a) *inquire into and audit the accounts of all persons and bodies established by Law of Benue State, and entrusted with the collection, receipt, custody, issue or payment of public moneys, and assets or with the receipt, custody, issues, sale, transfer or delivery of any stamps, securities, stores, or other property of the government;*
- (b) *submit his reports to the house of Assembly for consideration by the committee of the House responsible for public accounts”*

5.40 This provision violates modern provisions on the independence of the auditor that require the auditor 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 Nigeria¹⁰¹ 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*”¹⁰². The provision for the auditor to perform the functions of the office “on behalf of the House of Assembly” 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 ground norm, but it appears that this is not so in practice and in the minds of officials, as shown below.

5.41 *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*”. Making the Auditor -General merely an agent of the “legislature” for the purpose of auditing, make the audit function that of the Legislature, not that of the auditor. The auditor audits and reports to the House, which decides what to do with the report, including not publishing it, as is currently the case.

5.42 *Adamawa state government has had a draft Audit Law (Bill) since 2007, awaiting enactment.* Provisions of the Bill comply substantially with international good practice standards, especially INTOSAI standards. The Bill seeks to compel audited entities to submit to the authority of the Auditor General, who may compel any one to provide evidence under oath and conduct searches of Office at any time, etc. The Auditor General has freedom to decide on audit standards to use, including INTOSAI. Audited agencies must respond to audit queries within 30 days, pay any surcharge or other amount specified by the auditor within 60 days or appeal to the Public Accounts Committee and thereafter, to the High Court, within 60 days. The State Executive Council (SEC) may request special audit. The proposed law will exculpate the Auditor General from personal liability. The Bill guarantees the remuneration of the Auditor General and proposes an Audit Commission to regulate staffing and funding of the Office.

5.43 *The Kaduna State audit law referred to does not also create an audit commission, but reaffirms constitutional provisions on the office of the Auditor General, but it in no way extends the security of income and tenure granted the Auditor General to his staff as would have been expected nor does it remove them from the civil service control as expected.*

¹⁰⁰ See citation to the Audit Law of Benue State, 1981.

¹⁰¹ As amended to date

¹⁰² Section 125(6)

Public Auditing Standards

5.44 Nigeria did not have a formal public auditing standards setting or regulatory body, until the setting up of the Financial Reporting Council with responsibility for setting 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 represented a milestone at the time of its issuing (which was during the era of military rule), but it now falls short of the high standards of transparency and accountability required 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 thirty-three page document covers only general auditing.

5.45 Moreover, the Conference of Auditors' General is not a statutory or chartered body and 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.

5.46 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 comprises 16 chapters and appears to have government approval with "Official Document No. 2 of 1991" clearly printed on it.¹⁰³ The document contains detailed procedures on different aspects of audit of public accounts, including investigations (Chapter 15)¹⁰⁴ and computerized audits (chapter 54). It also includes guidance on audit programme and tools (Chapter 1) and documentation and reporting (chapter 16).

5.47 Kaduna State in addition to having an Audit Law is the only one of the ten States with evidence of an Audit Manual. The recently published Kaduna State Audit Manual seeks in one volume to present a summary of Ministries, Departments and Agencies, but does not cover parastatals since they are not directly audited by the Auditor General's Office. The Manual seeks to delineate the policies, standards, and procedures that govern the audit function in Kaduna State¹⁰⁵. It is a detailed guide for performing the audit function. It indicates that there is a second volume which presents what is described as a simplified developed computer assisted audit techniques (CAAT) manual designed to equip staff with information technology audit techniques that will enable them audit within the computer. However this second volume was not presented by Kaduna State.

5.48 How do these local standards and guidelines compare with the *International Standards of Supreme Audit Institutions (ISSAI)* issued by the International Organization of Supreme Audit Institutions (INTOSAI)? The answer to this question lies in examining the contents of and process of making the audit standard and audit guide prepared by Nigerian Auditors' General vis-à-vis ISSAI standards. The preceding paragraph already highlights the contents of the Nigerian

¹⁰³Printed Copy supplied by Imo State government; it is not clear whether this "official document" stamp refers to the Federal or (Imo) state government. The Imo State Government Printer Owerri printed the document. The photocopied version supplied by the Anambra state government does not have this stamp.

¹⁰⁴However, this contains only minimal and general type information on computer audit, with no specifics. For example, the chapter is just two and half pages long and makes only scant reference to Computer Assisted Audit Techniques (CAAT)

¹⁰⁵Federal Government of Nigeria Kaduna State Governance & Capacity Building Project(External Audit Component) Audit Manual Chapter 1 paragraph 1.1 (POC) Peter Oliver & Co Financial Management Consultants

Audit Standard. The process of preparing it involved use of knowledgeable local consultants and institutions to produce editions of exposure drafts released for public comments over a period. The final version integrated accepted comments on the exposure drafts. The consultants and parties that played key roles in developing the document include these six: (i) the Association of National Accountants of Nigeria (ANAN), (ii) the Institute of Chartered Accountants of Nigeria (ICAN), (iii) the (now defunct) National Centre for Economic Management and Administration (NCEMA), (iv) the Nigerian Institute for Social and Economic Research (NISER), and two academics/consultants.¹⁰⁶

5.49 *The Kaduna State manual is a sub-component activity of the Core reform Programme (CRP) External Audit Sub-component conceptualized by the Office of the State Auditor General (OSAG). It would appear it was produced through a consultant and no evidence of consultation with Stakeholders prior to its adoption has been presented by Kaduna State.*

5.50 *These process and contents do not compare favourably with the ISSAI processes and procedure. Box 5.4 contains a brief on the rigorous process of making the ISSAIs, which involves public exposure of drafts, consensus adoption of each standard by the 190 members of INTOSAI, and review of each standard in pre-stated periods of five to nine years. In other words, each ISSAI contains information on its lifespan and the date of its review. The 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 are 64 in number, as shown below.*

¹⁰⁶Dr. Daniel P. S. Asechemie (university of Port Harcourt and Dr. Simeon O. Okpéchi, ESUT Business School, Lagos and MD/CE, Fame Consultants Ltd. Lagos; see Public Sector Auditing Standards issued by the Auditor General for the Federation and All States' Auditors General in Nigeria, November 1997, pp ii - iii

Box 5.4: Brief on INTOSAI and ISSAIs

The International Organization of Supreme Audit Institutions (INTOSAI) is an autonomous, independent, non-political, and non-governmental organization with special consultative status with the Economic and Social Council (ECOSOC) of the United Nations. INTOSAI began in 1953 when 34 SAIs met for the first INTOSAI Congress in Cuba, at the initiative of Emilio Fernandez Camus, then President of the SAI of Cuba. Currently, INTOSAI has 190 full members (including Nigeria) and four associated members. "... INTOSAI operates as an umbrella organization for the external government audit community". Currently, INTOSAI has 190 full members and four associated members. INTOSAI provides an institutionalized framework for supreme audit institutions to promote development and transfer of knowledge, improve government auditing worldwide and enhance professional capacities, standing and influence of member SAIs in their respective countries. INTOSAI's motto is 'Experientia mutua omnibus prodest' and the organization pursues this motto through the exchange of experience among members. The findings and insights that result help to "guarantee that government auditing continuously progresses with new developments".

International Standards of Supreme Audit Institutions (ISSAI)

The International Standards of Supreme Audit Institutions (ISSAI) are the "professional standards and best practice guidelines for public sector auditors, officially authorized and endorsed by the International Organization of Supreme Audit Institutions (INTOSAI)." The standards state the basic prerequisites for the proper functioning and professional conduct of Supreme Audit Institutions and the fundamental principles in auditing of public entities." The ISSAI Website contains the complete and updated collection of professional standards and best practice guidelines for public sector auditors, officially authorized and endorsed by INTOSAI. INTOSAI also publishes the INTOSAI Guidance for Good Governance that provides guidance to public authorities on the proper administration of public funds. The link to this site (INTOSAI GOV) is on the INTOSAI website.

The ISSAIs comprise of four levels of standards and guidelines, numbered Levels 1 to 4, corresponding respectively to founding principles, prerequisites for the functioning of supreme audit Institutions, fundamental auditing principles, and auditing guidelines. The auditing guidelines comprise are of two types general auditing guidelines and guidelines on specific subjects. The standards setting process involves the usual publication of exposure drafts for comments and endorsement of the final drafts by members at INTOSAI conferences. INTOSAI regularly reviews and reissues each ISSAI in periods ranging from five to nine years (the due date for reissuing each ISSAI is on the official website). INTOSAI has issued four Level 3 (Fundamental Principles of auditing) standards and 60 Level 4 (auditing guidelines) guidelines to date.

Sources: researched from <http://www.intosai.org/about-us.html> and <http://www.intosai.org/about-us/issai.html>

5.51 Obviously therefore, auditing local 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 as highlighted in this report.

5.22 **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 specifies the conditions for appointments, re-appointments, employment, removal and retirement of the head of SAI and members of collegial institutions.” While the Constitution guarantees security of tenure for the Auditor General in the 10 states, it does not do so for the other staff of his office. As already indicated, of the 10 States, only Kaduna State has enacted an Audit Law. This law does not set up an independent Audit Commission, and fails to change the situation of audit personnel other than the Auditor General. Thus none of the 10 state governments has implemented the recommendation to enact a law that will remove audit personnel from the regular civil service and place them under an independent audit commission. Adamawa and Niger states have produced draft laws or bills to this effect which are however are yet to be enacted.

5.53 **Principle 6 – “The freedom to decide the content and timing of audit reports and to publish and disseminate them”,** particularly to the requirements that:

- 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 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. The Kaduna State Audit Law gives an indication of the kind of audits and by inference the kinds of findings or comments the audits reports should contain. It requires financial, appropriation, financial control and performance audits, and requires the AG 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 observed.¹⁰⁷
- 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, Auditors General do not publish their reports for fear of offending the Governors and the legislature. The best Auditors' General do is to circulate restrictively copies for specific purposes, such as this study. Even then, Benue, and Sokoto states did not provide any audit reports. Also none of the Subject States has published its full audit report. The Kaduna law does not reinforce the need for publication of the Auditor Generals full report including all findings. There appears however to be a practice of publication of a one page summary of audited accounts without disclosure of basis for the accounts or audit findings. Delta State submitted two of such publications regarding its FY 2008 in Financial Standard of 18th January 2010, and FY 2010 in another photocopy of a publication which is not dated.

¹⁰⁷Section 6 of the Kaduna State of Nigeria Audit Law No 5 of 2010

- There is also evidence that Kaduna state published a one page document titled Kaduna State Government of Nigeria, Report of the Accountant General for the Year ended 31st December 2011 in the Daily Trust Newspapers of Tuesday 29th May 2011. This one page document by the Accountant General of the State also had on its face an audit certificate signed by the state Auditor General, though it does **not purport to be the audit report**. It contains a Cash Flow Statement, Statements of Assets and Liabilities, Statement of Consolidated Revenue Fund and Statement of Capital Development Fund.

5.54 Principle 7 -The existence of effective follow-up mechanisms on SAI recommendations, especially in the following areas

- *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 Auditor General do not have any follow up mechanism; they depend on the legislatures, which do not perform the follow up function effectively.*
- *SAIs submit their follow-up reports to the Legislature, one of its commissions, or the audited agencies' governing boards, as appropriate, for consideration and action, even when SAIs have their own statutory power for follow-up and sanctions. – Auditors do not have the freedom to do this, as stated above.*
- *The Kaduna law does not provide for a new follow up mechanism or any direct powers for the Auditor General to carry out other follow up activities that it could not otherwise carry out before the law. The primary follow up activity is left to the State House of Assembly. It however reinforces the Auditor General's powers of access to records¹⁰⁸ and powers to request explanations of any officers in the performance of its duties. It also requires that the Auditor General submit its reports to The Speaker of the State House of Assembly within Ninety days of receipt of the accounts or such longer period as the Legislature may direct. It is doubtful that the State Legislature can give itself the power to extend the ninety days timeline provided for in the 1999 constitution as the Kaduna law appears to do.*

5.55 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 has the proper resources to fulfill their mandate.*
- *SAIs has the right of direct appeal to the Legislature if the resources provided are insufficient to allow them to fulfill their mandate.*

¹⁰⁸ Ibid S 8

The Kaduna law does not address these issues and these do not apply either in Kaduna or any of the 10 Subject States. Offices of the Auditor General are subject to budgetary controls and allocations as other executive agencies in all States studied.

5.56 *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”¹⁰⁹. However, only Kaduna state out of the ten (10) states in the sample provided evidence that the Public Accounts Committee of its House of Assembly considers audit reports or implements its findings¹¹⁰. The PAC of Kaduna State House of Assembly has “finalized” audit findings for the years 1999 to 2006 which indicted some Accounting Officers, but findings for 2007 to 2009 are outstanding.¹¹¹ The PAC of the Ondo State House of Assembly has helped reduce the volume of outstanding audit queries by making “response to audit reports and queries part of the prerequisite for passing the 2011 proposed budget of ministries and departments”. Despite this effort, some FY 2009 audit queries remained outstanding.¹¹² It is vital to note that insistence on response to audit queries does not constitute a substitute to hearings on audit findings and issuing and enforcement of recommendations.

5.57 *What factors contribute to this failure by The Legislature to scrutinize audit findings and The Executive to comply with recommendations?* There is no definitive evidence, but lack of political will, knowledge and skills gaps, and capacity shortages must be strong contenders. For example, analysis of audit findings in the states show that both the Government House and the House of Assembly are among the highest violators of financial rules (see Table 5.4).

State	Infractions by the Legislature	Infractions by the Executive	Source/Comment
Adamawa	State did not submit 2010 domestic audit report. Audit report prepared for public consumption did not include audit observation, unlike in previous years.		This practice of censoring information for release to the public detracts from public accountability and is not in line with ISSAI 10 and 11 on auditor independence.
Anambra	Infractions By Government House. <ul style="list-style-type: none"> • Retired Staff wrongfully pay rolled to value N300,702,19 • Unretired advances of N7,761,190.00 • Non deduction of taxes amounting to N146,920.00 Tax deductions amounting to N351, 251.15 not accounted for by cashier Non reported for the legislature		Many serious infractions by other executive and judicial agencies and (MDAs) reported.

¹⁰⁹2. 125(5) of the 1999 Constitution

¹¹⁰ Most other governments in the country do not do so as well, Kano, Lagos, and Cross River states constituting possible exceptions, although none of them has an effective follow up and enforcement mechanism. Kano state probably has the most mature process for legislative scrutiny over audit reports. The PAC of the House has budgetary allocations, which includes resources for an annual training and capacity-building programme for legislative members and secretariat staff of the committee.

The different PAC in handling audit reports may have their secretariat personnel first review audit reports and generate a questionnaire of issues to answer for each indicted agency, including a list of documents to provide in support in response. Next, the committee compiles a list of agencies that need to appear before the committee, following a review of responses to the questionnaire. Committee hearings are public events, relayed live on radio and local television. The committee conclude hearings on time and the secretariat prepares comprehensive verbatim and summary reports for consideration of the entire House. The House sends its resolutions and recommendations to the secretary to the state government for implementation. The Executive does not implement these resolutions and recommendations systematically, and neither the House nor the Auditor General follows up to ensure implementation. The House can by resolution require specific steps of the executive to remedy findings, it can recommend disciplinary action against personnel and can exercise its oversight powers under S 88 and 128 of the Constitution

¹¹¹See 2010 Kaduna State audit report, p. 1

¹¹²See 2010 Ondo State Audit report, p. 4.

Table 5.5: Sample of Infractions of Financial Instructions by the Legislature and Government House as Reported in Latest Reports of the Auditor General Made Available

State	Infractions by the Legislature	Infractions by the Executive	Source/Comment
Bayelsa	<ul style="list-style-type: none"> Un-appropriated overhead expenditure ₦20.37B Excess CRF charges – ₦22.95 B 	<ul style="list-style-type: none"> Un-appropriated overhead expenditure million ₦14.21 m Un-appropriated personnel expenditure ₦5.86B. 	2010 Auditor General's report, pp. 15 -16; many other infractions by House of Assembly, Government House, and other executive agencies (MDAs)
Benue	No audit report submitted		Nondisclosure of audit findings violates ISSA1 10 and 11 on auditor independence
Delta	<ul style="list-style-type: none"> 32 unresolved audit queries to House of Assembly amount to ₦645.6 m 5 unresolved audit queries to House of Assembly Service Commission amounting to ₦5.92 m 	<ul style="list-style-type: none"> 8 unresolved audit queries to Government House Protocol amounting to ₦4.77 m 4 unresolved audit queries to Deputy Governor's Office amounting to ₦0.59 m 10 unresolved audit queries to office of Secretary to the State Government amounting to ₦1.27 m 	2009 Auditor General's report, pp. 39; 174 unresolved queries amounting to 1,913.75 billion, of which 137 queries amounting to ₦1,262.24 are to executive agencies
Imo	Copy of 2008 -2010 audit report submitted does not report any infractions or show findings. There is a trend of absence of findings of infractions in the Imo State audit reports submitted. It is doubtful that this means there are no infractions and more likely a case of non-disclosure		Nondisclosure of audit findings violates ISSA1 10 and 11 on auditor independence
Kaduna	2010 audit does not report infractions by either the Government House or House of Assembly;		Many serious infractions by other executive and judicial agencies (MDAs) reported
Niger	<ul style="list-style-type: none"> Legislators' constituency projects (directly executed by legislators) not monitored due to lack of logistics support for auditor general 	<ul style="list-style-type: none"> (FY 2010) Head of Service - payment of ₦1.99 million to media Houses w/o receipt (FY 2009) Government House - claim of payment of ₦50 m for mosque maintenance denied by Mosque; non documentary evidence for ₦28.51 m air tickets; no documentary evidence for payment of ₦41.24 m to media houses and 114.67 m for sundry (59) expenditures 	FY 2010 Auditor General's report, pp. 10 FY 2009 Auditor General's report, pp. 4 – 7, 14; many other infractions by House of Assembly, Government House, and other executive agencies (MDAs)
Ondo	<ul style="list-style-type: none"> Un-appropriated overhead expenditure ₦0.55 m Purchase motor vehicle (Toyota Hilux) not taken on ledger charge – ₦9.17 m 	<ul style="list-style-type: none"> Failure of Cabinet Office to produce sundry contracts' documents (8 contracts) for audit scrutiny and verification (total amount: ₦326 million) Failure of Government House Protocol Department to produce sundry contracts' documents (3 contracts) for audit scrutiny and verification (total 	2010 Auditor General's report, pp. 14, 15, 18, 19; many other infractions by House of Assembly, Government House, and other executive agencies (MDAs)
Sokoto	No audit report submitted		Nondisclosure of audit findings violates ISSA1 10 and 11 on auditor independence

Effective and Efficient Systems of Risk Management and Internal Controls

5.58 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 their provisions already cited 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.

5.59 *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, not all the 10 state governments in the study sample provided evidence of the internal controls rules they have in place. Table 5.3 below is a summary of the sort of evidence provided by state governments.

State	Financial Instructions	Stores Instructions	Comment
Adamawa	Financial Instructions, revised 1 October, 1984	Stores Regulations, revised 1 October, 1984	Documents are too old and require revision
Anambra	Adopts federal Financial Regulations, 2000 edition, which includes Stores Regulations in Chapters 23 to 37		The state government does not use the latest edition of Financial Regulations which is the 2009 edition.
Bayelsa	No information	No information	
Benue	No information	No information	
Delta	Financial Regulations issued 4 September 2000 (3 rd Impression, 25 May, 2009)	Financial Regulations include Stores Regulations from p 148 top. 206	
Imo ¹¹³	Initially claimed it adopts federal Financial Regulations, 2000 edition, which includes Stores Regulations in Chapters 23 to 37. Submitted a copy of Imo State Financial Regulations at the draft report validation meeting. However Imo State regularly issues State Treasury Circulars that mirror its FI & that of the Federal Government e.g. State Treasury Circular Re; Stamp Duties Act 120 dated 27 th February 2008. Guidelines for Closing of Accounts for the Year Ending 31 st Dec 2009 dated 14 th December 2009. Guidelines on Payment of Local Contractors Debts dated 18 th January 2010. Accountant Generals Treasury Circular N 1 2011 on the Re-Establishment of the Standard payment procedure in government accounting with a view to improving on the present accounting records and production of government accounts dated 12 th July 2011		The state government does not use the latest edition of Financial Regulations which is the 2009 edition, nor does it use fully its Financial Instructions, but it appears to apply provisions from both selectively, sometimes extracted and presented in treasury circulars.

¹¹³There is a conflict here requiring clarification. While Imo state provided extracts of “*Imo State Financial Instructions*” to establish the tendering process, it submitted a photocopy of the federal Financial Regulations, 2000 as evidence the accounting and internal control process that it uses.

Table 5.6: Existence of Financial Instructions and Similar Documents

State	Financial Instructions	Stores Instructions	Comment
Kaduna		Stores Regulations 2005	
Niger	No information	Provided at the validation meeting photocopy of extracts from a Stores Regulations without a cover page, referring to Provincial Secretary and other provincial officers. This looks like an extract from the stores regulations of the old Northern region of Nigeria	This is outdated and requires urgent revisions
Ondo	Financial Regulations, revised edition, 1999	Financial Regulations include Stores Regulations in pp 130 – 171	
Sokoto	Financial Instructions 2010	Stores Regulations 2010	

5.60 *How do the state governments enforce these internal control rules? What is the degree of observance of these rules in practice?* The best 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 indirectly through reporting on infractions. Many infractions suggest weak internal controls, as would repetition of the same infractions each year. What is the level of infractions in the audit reports, and how do they repeat?

5.61 *Table 5.3 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.*¹¹⁴ *Table 5.4 provides an additional indicative sample of comments on the State of Internal Controls in the audit reports.*

Table 5.7: Additional Evidence from Audit Reports on Enforcement of Internal Controls

State	Evidence
Adamawa	<p>"... 366 ... queries involving the ... sum of ₦2,214,266,005.22 ... were issued to various ministries and department under the various forms of misapplication and un-receipted expenditures and these were not satisfactorily answered up to the time of this report" See 2009 Adamawa State Auditor General's Report, p. 8</p> <p>"Outstanding matters from past years, which have not yet been settled up to the time of writing this report are as follows. A cumulative of 454 queries involving ... ₦5, 611,440,782.96, were deliberately not answered for the year ended 31 December 2008, despite submission of the reports to the House of Assembly" See 2008 Adamawa State Auditor General's Report, p. 7</p>
Anambra	<p>"In spite of the State Accountant General's circular referenced AG/AN.S.1/VOL.111/62 of November 28, 2008 drawing attention to the imperative of the internal audit units of ... respective ministries, departments, and agencies to be alive to their responsibilities, my office is yet to receive any audit report on the activities of the MDAs from the internal audit units ...</p> <p>"Many ...MDAs are still in default in the regular submission of expenditure returns to my office on contravention of laid down rules and regulations" See 2009 Anambra State Auditor General's Report, pp. 3 – 4</p>
Bayelsa	<p>"We still observe that the state of bookkeeping of some ministries and extra ministerial departments is BELOW AVERAGE [capitalization as in original text]. Ministries and extra ministerial departments, and now parastatals, are expected to maintain essential books and records of their recurrent and capital (where applicable) accounts. It was observed during the audit that such essential books were either not maintained at all or not kept properly and regular basis by some ministries, departments and agencies as show in the appropriate section" See 2010 Bayelsa State Auditor General's report, p 3 – 4</p>

¹¹⁴ State governments submitted three to five years' reports for examination.

Table 5.7: Additional Evidence from Audit Reports on Enforcement of Internal Controls	
State	Evidence
	“The sum of ₦ 2.49 billion ... is EXCESS CAPITAL EXPENDITURE (overspent), and for which LEGISLATIVE AUTHORITY is still required [capitalization as in original text]. Excess capital expenditure in the previous year was ₦1.42 billion. See 2010 Bayelsa State Auditor General’s report, p 11. Total Excess Recurrent Expenditure = N49.18 billion
Benue	
Delta	“The observations I made in respect of my report on the accounts of the state government for the financial year ended 31 December 2008 remains prevalent in ministries, departments, and agencies (MDAs). Proper bookkeeping and maintenance of adequate records of accounts remained a big challenge across ... MDAs. Experience has shown over the year that in no particular year has more than 60 percent of ... MDAs been able to render the appropriated accounts of the funds they controlled during the year.” See 2009 Delta State Auditor General’s Report, p. 26
Imo	The 2010 audit report does not contain any findings of infractions or Audit inspection reports as can be found in 2005-2007 reports. It is not clear whether this means there were no infractions or that this is the continuing trend of non-disclosure and poor reporting.
Kaduna	“Internal control could not be adjudged adequate, particularly in the area of internal audit. The expectation that internal audit will reduce the scope of external audit work is far from being a reality. “The practice whereby internal auditors and accountants are drawn from the same pool has created problem of preference for treasury duties as opposed to internal auditing ... as such ... internal auditors are relatively of junior status and inexperienced, thereby jeopardizing the objectivity of internal control systems. For this objective to be achieved there is ... need for each to constitute a separate line of profession.” See 2010 Kaduna State Auditor General’s Report, p. 12
Niger	“During the year under review, It was observed that in spite of my previous reports on payment vouchers not being subjected to internal audit checks, the trend continued unabated. The noncompliance is evidenced by the payment vouchers being raised and paid but were not endorsed by the internal audit unit. In order to show transparency, the affected accounting officers are advised to comply and ensure that all payment vouchers are passed through the office of the internal auditor for certification before payments are effected sanctioned.” See 2010 Niger State Auditor General’s Report, p. 94; see also See 2009 Report, p. 4; and the 2006 Report, p. 2

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

5.62 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.

5.63 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.

5.64 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 agencies 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.
- 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.

5.65 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.* Nigerian governments' internal and external auditors issue "audit queries" both in the federal and state governments. Through this process, the auditor requests explanations from accounting officers on observed infractions of financial rules and procedures, and for their correction, where necessary.
- *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.
- *The SAI posts audit reports, responses of the government agency, and recommendations on its website and updates the page regularly.* None of the 10 state governments posts its audit report in its website.¹¹⁵
- *Subsequent audit reports include statements on the extent to which auditees have attended to previous observations and corrective actions take.*¹¹⁶ 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, they do not create the required public pressure because the auditors do not publish their reports and the legislatures hardly take notice of the reports or enforce them.
- *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. They 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 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".¹¹⁷ The refusal to exercise discretion on this matter is fear of the 'powerful' legislature. This fear is obviously a manifestation of the auditors' lack of independence.

5.66 *The auditor encourages the setting up of an audit review committee of permanent secretaries, and has the Minister of Finance and the Auditor General meet with them to discuss anomalies observed in audit reports and how to address them.* None of the states in the sample adopts this measure. *The Ondo state government*¹¹⁸ *uses an approach that enables the Auditor General withhold approval of retirement benefits of staff accounting officers with outstanding audit queries.*¹¹⁹ *Where the audit query remains unresolved, the state may approve the deduction of the outstanding amount from retirement benefits before approval.*

5.67 Other possible administrative approaches that the Auditor General may use include qualifying reports and withholding audit opinion. Nigerian government auditors¹²⁰ hardly use these approaches, even with the

¹¹⁵The Auditor General for the Federation posts the 2007 audit report on its website.

¹¹⁶Here 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"

¹¹⁷See (s. 125(s) of the 1999 Constitution of the Federal Republic of Nigeria as amended to date

¹¹⁸And some state governments in the southwest geopolitical zone, for example, Ekiti state

¹¹⁹See 2010 Ondo State Audit Report, p. 4

¹²⁰Including the 10 governments in this study sample

numerous infractions they report. The only modern examples are the 2003 – 2005 financial statements of the Plateau State government.

5.68 Laws that criminalize serious infringements, including some that audit reports may raise include 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 repetition or by itself, institute an alternative decision, where there is reason to do so.

Summary Performance: Anticorruption Initiatives in Management of Public Finances

5.69 Table 5.6 below concludes this discussion on anticorruption initiatives in the management of public finances by presenting a synopsis of the performance of the 10 states.

Table 5.8: Summary of Compliance with Provisions of UNCAC, AUCFCC and ECOWAS Protocol Management of Public Finance											
Provisions	Adama wa	Anambra	Bayelsa	Benue	Delta,	Kaduna	Imo,	Niger	Ondo	Sokoto	
Procedures for the Adoption of the Budget	The 1999 Constitution provides basis for adoption of budget. The Governor presents spending proposals and 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.										
	UNCAC: Article 9(2)a AUC PAC: Article 5(4) ECO WAS Protocol: Article 5(g)	No FRL or equivalent; no multiyear forecasting and fiscal planning was produced and even if it exists, available evidence does not suggest that it is being implemented	FRL enacted in 2010 adopting MTEF and indexing the annual budget to the MTEF, but institutionalization is slow and MTEF is not effective	FRL enacted in 2009, providing for measures to instill fiscal discipline: ceilings for aggregate expenditure, MTEF and indexing annual budget to the MTEF; However, these are not happening; budgeting and planning process remain weak	No FRL or equivalent; no multiyear forecasting and fiscal planning was produced and even if it exists, available evidence does not suggest that it is being implemented	FRL enacted in 2008 adopting measures to improve fiscal discipline: aggregate expenditure ceiling, MTEF; indexing annual budget to the MTEF; but approved and revised budgets bear no semblance to the MTEF	No FRL or equivalent; no multi year forecasting and fiscal planning or it is ineffective	No FRL or equivalent; no multiyear forecasting and even if it exists, available evidence does not suggest that it is being implemented	FRL enacted in 2010 adopting MTEF and indexing the annual budget to the MTEF, institutionalization process on going with Fiscal Resp. Comm. set up, but MTEF is not yet effective	No FRL or equivalent; no multiyear forecasting and fiscal planning or it is ineffective	No FRL or equivalent; no multiyear forecasting and fiscal planning or it is ineffective

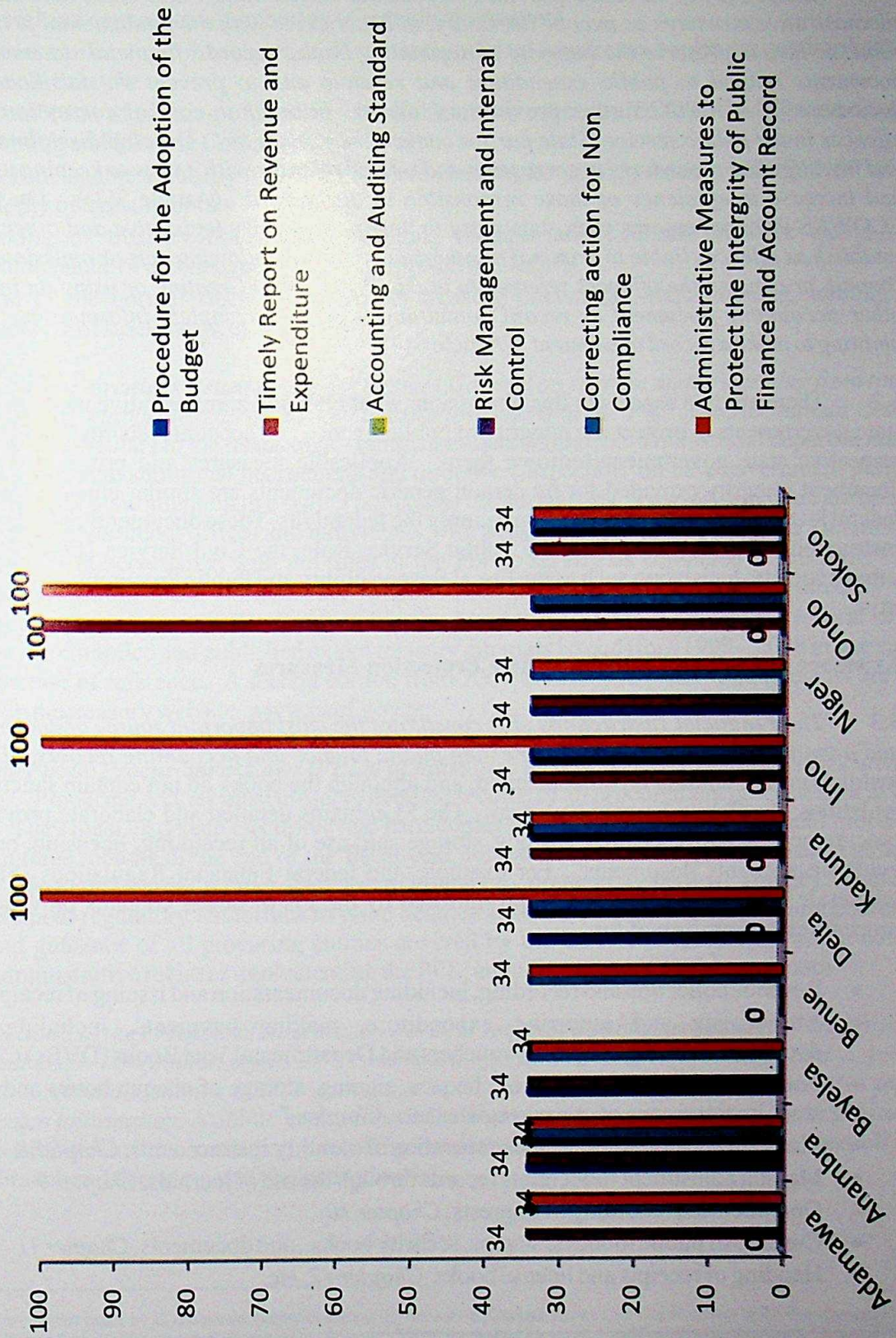
Table 5.1: Summary of Compliance with Provisions of UNCAC, AUCRCC and ECOWAS Protocol Management of Public Finance

	Provi sions	Adama wa	Anamb ra	Bayelsa	Benue	Delta,	Kaduna	Imo,	Niger	Ondo	Sokoto
		Fiscal indiscipli ne, excess spending on some heads; under spending on some; no spending on others; inability to realize budgeted IGR; expenditu re without prior legislative approval	Fiscal indiscipli ne: excess spending on some votes, under spending / failure to spend at all on some others, and inability to realize budgeted IGR	Fiscal indiscipli ne: excess spending on some votes, under spending / failure to spend at all on some others, and inability to realize budgeted IGR	Fiscal indiscipli ne: excess spending on some votes, under spending / failure to spend at all on some others, and inability to realize budgeted IGR	Fiscal indiscipli ne: excess spending on some votes, under spending / failure to spend at all on some others, and inability to realize budgeted IGR	Fiscal indiscipli ne: excess spending on some votes, under spending / failure to spend at all on some others, and inability to realize budgeted IGR	Fiscal Indiscipli ne; Heavy internal borrowin g, inability to realize budgeted IGR.	Fiscal indiscipli ne: excess (over the budget) spending on some recurrent votes, under spending / failure to spend at all on some others capital and recurrent) and inability to realize budgeted IGR and projected bond issue	Fiscal indiscipli ne: excess spending on some votes, under spending / failure to spend at all on some others, and inability to realize budgeted IGR	*Fiscal indiscipli ne: excess spending on some votes, under spending / failure to spend at all on some others, and inability to realize budgeted IGR
Timely reporting on revenues & expenditures	UNC AC: Article 9(2)b AUC PAC: Article 5(4); ECO WAS Proto col: Article 5(f)	FY 2010 financial statemen ts (FS) conclud ed and audited, but no informat ion on timing	FY 2009 FS 6 weeks late; but audit of FS early (6 weeks from date of receipt of FS); however , non FY 2010 reports due Sept 2011	FY 2010 FS and audit conclud ed, no conclusi on evidence on timing	Draft FY 2010 FS provided , but no informat ion on audit and timing	Photoco pies of FY 2010 FS provided , but no informat ion on timing; inconclu sive evidence on timing of FY 2009 audit	FY 2010 FS- 8 weeks late; audit complet ed, but no informat ion on timing	FY 2010 audit complet ed, but no informat ion on timing. Except time for submissi on to Account ant General not HA, shown as 9 th Decemb er 2011	FY 2010 on time; audit complet ed, but no informat ion on timing	FY 2010 FS - weeks early; audit report complet ed one month after receipt of FS	Audited FY 2009 FS provided , but no informat ion on timing of completi on of both FS and audit.
Accounting and Auditing Standards, etc.	UNC AC: Article 9(2)c AUC PCC: Article 5(4) ECO WAS Proto col: Article 5(f)	Nigeria has no public sector accounting standards; reports prepared in accordance with local reporting formats, which falls short of international standards; accounts have issues of non-disclosure of material information of public interest									

Table 5.1: Summary of Compliance with Provisions of UNCAC, AUCFCC and ECOWAS Protocol Management of Public Finance

	Provisions	Adama wa	Anambra	Bayelsa	Benue	Delta,	Kaduna	Imo,	Niger	Ondo	Sokoto
Risk Management and Internal Controls	UNCAC: Article 9(2)d AUC PAC: Article 5(4) ECO WAS Protocol: Article 6 (4)(a, b)	FI, and SR last revised 1 Oct, 1984; too old - require revision; audit reports reveal important IC issues	Adopts federal FR as its FI, but not the current edition	No information on FI; audit reports reveal important IC issues	No information on FI and on state of IC; no audit reports submitted for analysis	Latest state FR issued 4 Sep 2000 includes SR; audit reports reveal important IC issues	audit reports reveal important IC issues	Adopts federal FR, but not the current edition; later submitted Imo FI & several treasury circulars, but non information on state of IC; FS not provided	Non information on FI; audit reports reveal important IC issues	Latest state FR issued, 1999 includes SR; audit reports reveal important IC issues	Separate FI and SR issued 2010; audit reports reveal important IC issues
Corrective Action for Non-compliance	UNCAC: Article 9(2)e AUC PAC: Article 5(4) ECO WAS Protocol: Article 6(4)	Corrective Action for Non-compliance with Legal Provisions on Accounts and Audit exists both in the Constitution and other legislations and manuals; but enforcement is very lax; almost non-existent									

Chart 5.7: The chart below also concludes this discussion on anticorruption initiatives in the management of public finances by presenting a synopsis of the performance of the 10 states graphically.



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 these issues, ECOWAS Protocol enjoins each state party to “adopt necessary legislative and other measures to establish as offences liable to criminal or other sanctions the following acts or omissions, in order to commit, or conceal the offences referred to in this Protocol: a) Creating or using an invoice or any other accounting document or record containing false or incomplete information, (b) Unlawful omitting to make a record of payment” (Article 6 (4)).

6.2 There are two aspects to this discussion: what 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 provided for by certain generic documents are similar among states and at the federal level. Some States in fact claim to apply the federal FIs. These documents include the Financial Instructions, Treasury Circulars, the Public Service Rule, the Civil Service Handbook, and some subject specific legislation such as the Fiscal Responsibility and Public Procurement Laws where they exist.

Existence of Civil and Administrative Protection Measures

6.3 *The Financial Instructions (FI) constitutes the most important source of 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 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 accounts documents. For example, the federal Financial Regulations (FR)¹²¹ adopted wholesale by some subject States and mirrored by the FIs of others contains provisions on rules, procedures, and proformas for

- Revenue collection and recording, including documentation and issuing of receipts, *Chapter 2*
- Authorizing and incurring expenditure, making payments, including evidencing documentation, e.g., payment vouchers and Departmental Vote Books (DVBs) *Chapters 2, 6*
- Issuing of cheques, custody of cheques, signing, storage of cheque books and used cheque stubs, maintenance of cheque register, etc., *Chapter 7*
- Maintaining the cashbook and preparation of monthly cash accounts, *Chapter 8*
- Making adjustment to accounts records through the use of journals, *Chapter 9*
- Operation and recording of imprests, *Chapter 10*
- Custody of public moneys, stamps, security books, and documents, *Chapter 11*
- Handing of receipts and license books, *Chapter 12, etc.*

¹²¹2009/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 in Chapter 5 above, some states adopt and use older versions of the federal FR.

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, etc.

6.5 *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, and emphasize or draw attention to existing policies as the need arises. 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 PSR.¹²² As subsidiary legislation, these circulars derive from exercise of legitimate powers vested by law. Consequently, they also have the force of law.¹²³ 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.

6.6 *The Public Procurement Laws (PPLs) of states also include measures to protect procurement documents.* Procuring entities must preserve detailed records of all procurement processes for at least 10 years. They must also keep electronic and hard copies of all post review procurement processes, and within three months of the end of the fiscal year, forward copies to the procurement regulatory authority – the State Boards (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 would contain detailed administrative rules for implementing the PPL, including documentation processes.

6.7 *Section 2 of the Freedom of Information Act 2011 requires a public institution 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.”

¹²²This 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.

¹²³To 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.

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. While it has been argued that this law applies to State Governments, some state governments are also beginning to domesticate it (for example, Ekiti State).

6.2 *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

6.8 *Usually, the federal government consults widely before finalizing these documents.* For example, the National Council on Establishment (NCE)¹²⁴ plays a vital role in the process that lead to the production of the documents,¹²⁵ discussions and negotiation with the Joint National Public Service Negotiating Council.¹²⁶ Consequently, states generally own and adopt these documents, although some may reissue all or some of them with their own logo. For example, the Anambra state government adopts and applies the federal Public Services Rules and the Scheme of Service. The next few paragraphs review two of these documents: the **Civil Service Handbook (CSH)** and the **Public Service Rules (PSR)**.

6.9 **The Civil Service Handbook** is a compendium on government business in 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

6.10 **The latest version of the federal Public Service Rules is the 2008 edition,**¹²⁷ published in 2009. The Preamble section of the Rules is instructive. It implores "*Public Servants ... to study and imbibe*

¹²⁴ See Box 6.1 below

¹²⁵ 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.

¹²⁶ Comprising the eight trade unions in the federal and states' public service

¹²⁷ 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.obcsf.gov.ng

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”.

6.12 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

- 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 finds
- 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 making

6.13 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 punishments.

6.14 Benue state government has produced a draft document titled, 'Guide to Administrative Procedures in the Benue State Civil Service'.¹²⁸ The purpose of the Guide is “to cover those administrative procedures established by practice and precedent in the Government of Benue State of Nigeria, which are not necessarily laid down by Law, Civil Service Rules, or Financial Regulations”.¹²⁹ The document covers essentially the same topics covered by the federal Civil Service Handbook, but not in the same depth. No other state presented a different version.

¹²⁸ The state submitted it in draft and it is not clear whether the state has commenced its use.

¹²⁹ See the “Introduction” section of the document

6.15 Imo State has a document on the subject: the **Imo State of Nigeria Civil Service Commission Regulations, 1994**.¹³⁰ The document covers similar grounds as the federal government's, but in less detail.

6.16 Ondo state also has a document on the subject: the **Ondo State of Nigeria Civil Service Rules**.¹³¹ The document similarly domesticates the federal provisions.

6.17 As a result of the work of the National Council on Establishment the civil service rules in the subject States mirror the federal civil service rules and no State has presented a version differing much in scope and content.

6.18 However, evidence is short on implementation. None of the 10 states in the study provided evidence to illustrate the extent of implementation of the rules relating to protection of finance and accounting records.

Box 6.1: Conditions of Service- the Role of the National Council on Establishment

The National Council on Establishments dates back to 1957, when the Governments of the Federation set up the body to facilitate inter-governmental consultations on establishment matters and to avoid unnecessary disparities in general conditions of service in all the Civil Services of the Federation. The Council comprises the Heads of Service of states with the Head of the Civil Service of the Federation as the Chairman.

The Council meets at least once a year to deliberate on establishment matters. It acts as a consultative body for the Governments of the Federation on matters pertaining to staff establishments, salary structures, grading, and conditions of service with a view to achieving a degree of uniformity in the Nigerian Civil Services.

The Council also serves as a pool of information on all establishment and service matters for the Governments of the Federation. Each government forwards relevant documents, circulars and statistical information to the Council Secretariat in the Office of the Head of the Civil Service of the Federation for experience sharing with the other governments.

In the recent past, the Council has reviewed and updated the Schemes of Service to accommodate emerging cadres and has approved the inclusion of emerging certificates. It has approved the elongation of existing cadres, created new ones and made changes in nomenclatures in line with on-going reforms and current realities.

Source: the Federal Civil Service Handbook, www.ohcsf.gov.ng

Application of the Measures

6.19 How do state governments apply these rules or their own version of it? The audit reports suggest that enforcement of infractions of Financial Instructions is generally lax, with the Auditors General having no powers and the Public Accounts Committees of the Houses of Assembly being lax.

¹³⁰Published in the Supplement to the Imo State of Nigeria Gazette No 4, Vol 20 of July 1995

¹³¹Revised edition, 1999, prepared under the authority of the Executive Governor in July 1999

6.20 Two state governments – Anambra and Benue – provided some evidence of some disciplinary process, but these are not relevant to protecting the integrity of finance and accounting records. The evidence provided by Anambra state is dismissal of staff from office for absconding from duty post, while Benue state provided evidence of the Public Accounts Committee over-sighting issues that happened in *local* governments, *not* the State Government.

6.21 It is probably 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 could 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 in Chapter 5 above.

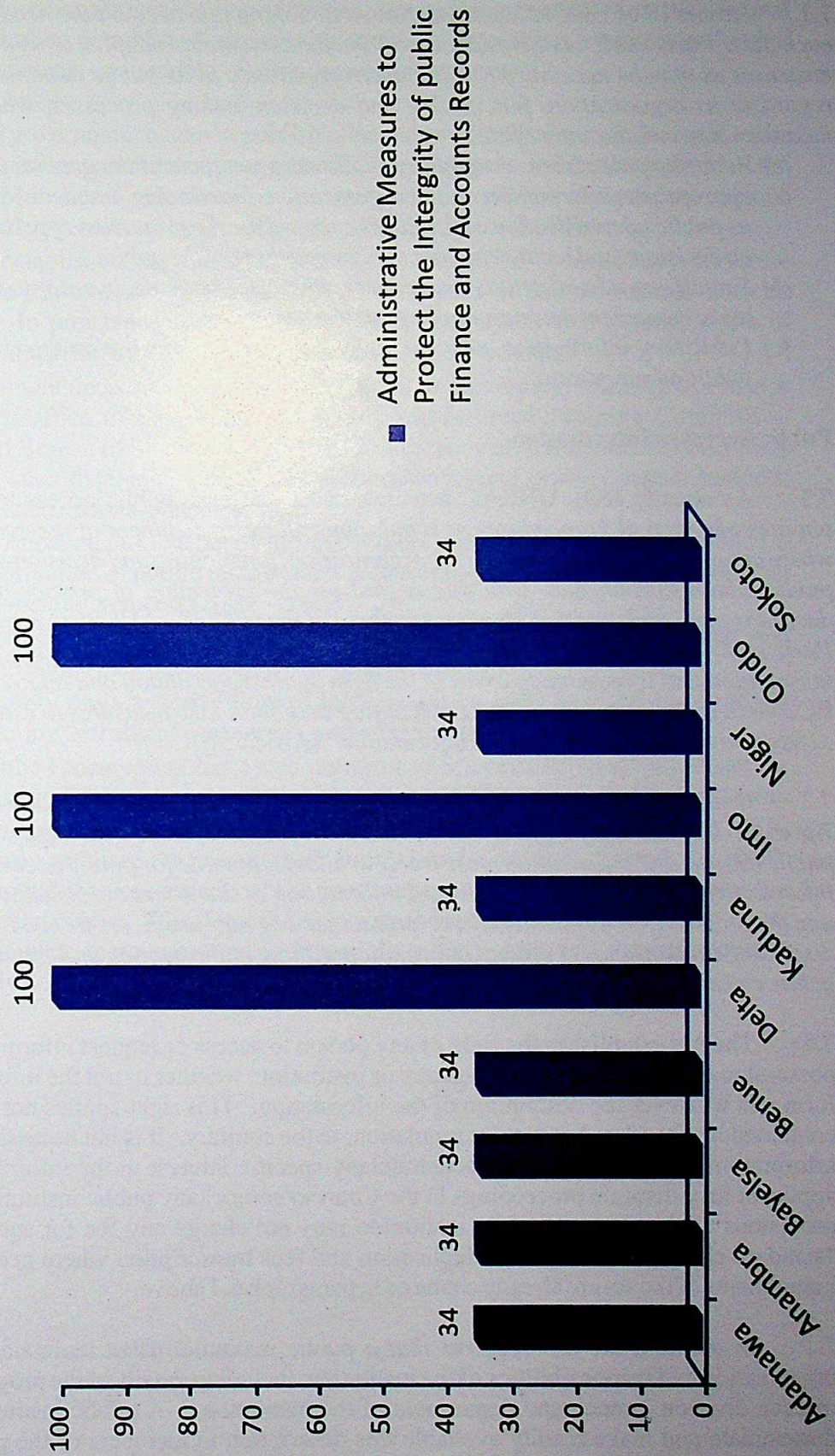
Summary of Compliance with Provisions of UNCAC, AUCPCC and ECOWAS Protocol on Management of Public Finance

6.22 Table 6.1 below summarises the foregoing discussions.

Table 6.1: Summary of Compliance with Provisions of UNCAC, AUCPAC and ECOWAS Protocol on Management of Public Finance		Imo,	Niger	Ondo	Sokoto						
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	Adamawa	Anambra	Bayelsa	Benue	Delta	Kaduna	Imo,	Niger	Ondo	Sokoto
		No evidence of separate PSR and CSH, but state government is part of the National council on establishment nt that negotiates and agrees documents.	Adopts federal PSR, CSH, and Scheme of Service	No evidence of separate PSR and CSH, but state government is part of the National council on establishment nt that negotiates and agrees documents	Working on an administrative manual, but state government is part of the National Council on Establishment nt that negotiates and agrees documents	Published state manual similar to the federal's; state government is part of the National council on establishment nt that negotiates and agrees documents	Published state manual similar to the federal's; state government is part of the National council on establishment nt that negotiates and agrees documents	No evidence of separate PSR and CSH, but state government is part of the National council on establishment nt that negotiates and agrees documents	Published state manual similar to the federal's; state government is part of the National council on establishment nt that negotiates and agrees documents	No evidence of separate PSR and CSH, but state government is part of the National council on establishment nt that negotiates and agrees documents	Published state manual similar to the federal's; state government is part of the National council on establishment nt that negotiates and agrees documents

Chart 6.1: The chart below also summarizes the foregoing discussion graphically.

Administrative Measures to Protect the Integrity of public Finance and Accounts Records



Chapter 7: Public Reporting

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”.

Public Access to Information

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

7.3 One recent important development in this area is the enactment of the Freedom of Information Act in 2011 by the federal government. The Act introduces itself with these words, “This Act makes public records and information more freely available, provide 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”.

7.4 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.

7.5 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 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. .

7.6 Besides, there have been noticeable 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. Below are a few instances

- In 2003, the federal government began to publish allocations of the Federation Account to the federal, state, and local governments in major national newspapers and on the website of the Federal Ministry of Finance.¹³² However, it does not similarly publish independent revenue sources of the federal government, i.e., revenue accruing directly to the FG.
- In 2004, the FG established the Nigerian Extractive Industries Transparency Initiative (NEITI) to promote transparency in the oil industry in particular and the natural minerals sector in general. In pursuance of its mandate, NEITI has sanctioned several audits of activities in the oil industries, the results of which it posted on its website.¹³³
- Several key government decision making agencies, such as the Federal Ministry of Finance (FMF), the Budget Office of the Federation (BOF), the National Planning Commission (NPC), the National Bureau of Statistics (NBS), etc., maintain viable websites on which they post key fiscal and other data, including the fiscal frameworks and strategy papers, budgets, fiscal performance data, national statistics, etc.
- The Office of the Accountant General of the Federation maintains a website on which it publishes much information of public interest including treasury circulars, annual accountant general's report, financial statements (2003 – 2008)
- The Bureau for Public Enterprises (BPE) and the Code of Conduct Bureau/Tribunal also maintain a website in which they publish their rules and processes.
- The National Assembly posts a steady flow of information on Bills received and pending, notices of public hearing, its rules of procedures, and other information on its website.¹³⁴
- The Bureau for Public Procurement has a rich reservoir of information on all aspects of the procurement process and decision making, including the Act, Guidelines, bidding and other documents, draft contracts, advertisements, price database, reviews, etc. on its website.¹³⁵ The Bureau also regularly publishes a procurement journal and a tender's journal for public information. It also reduces key aspects of the procurement process into booklets, which it distributes freely to the public. This is not the case with the subject states, and subject States are encourage to emulate these steps and to indeed do more to improve citizens access to information publicly held.

¹³² www.fmf.gov.ng

¹³³ www.neiti.org

¹³⁴ www.nass.gov.ng

¹³⁵ www.bpp.gov.ng

There is little evidence of concrete steps the 10 state governments in the study are taking to ease public access to information. None has established required environment for implementation of the Freedom of Information (FOI) Act 2011 or domesticated it. None publishes its full accounts, i.e. detailed financial statement, audit reports, full procurement documentations and details on its website. Although Ondo state publishes information on its budget on its website, it does not publish its accounts data. Access to publicly held information is difficult in subject States and none of the States submitted a single evidence of steps to improve access to information or a single situation where access to publicly held information has been granted a citizen in any of the subject states. This is a major challenge.

Simplifying Administrative Procedures to Facilitate

Public Access to Competent Decision-Making Authorities

7.7 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)).

7.8 Beginning in 2004 at the commencement of its fiscal reforms, the Federal Government has made selective progress in simplifying process and procedures for accessing information of public interest. Notable among these is the demystification of the budgeting process, with the conscious involvement of a wide spectrum of stakeholders in government, civil society, and the organized private sector. Organized stakeholder-consultations and regular publication of the fiscal strategy paper help the interested and informed public understand rationale and reasoning behind some fiscal decisions. In 2005 and 2006, the federal government introduced further innovations around the budget including publication of simplified editions of the approved budget in English and Pidgin English. In July 2012, the co-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. This provides access to decision makers for citizens and citizens groups seeking to influence government planning and budget priorities.

7.9 Further, the Federal Government established SERVICOM, a service contract with the Nigeria populace. The major objectives of SERVICOM, as advertised on its website include the following

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

- To conduct **SERVICOM Compliance Evaluation of services provided by Government Departments**¹³⁶

7.10 The Attorney General of the Federation and Minister of Justice has issued a 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 and report on public requests for information in accordance with the Act.

7.11 **SERVICOM** aims to give Nigerians the right to demand good service (devoid of corruption) from government agencies and departments. **SERVICOM** charters, which all government agencies providing services to the public have prepared, contain details of these rights. The charters tell the public what to expect and what to do if the service fails or falls short of their expectation. There are also separate codes of conduct for ministers and staff alike.¹³⁷ At inception, **SERVICOM**, funded by development partners (especially UK DFID) encouraged Nigerians to report cases of underperformance to certain dedicated hotlines. **SERVICOM** investigated these complaints and obtained necessary redress.

7.12 Nigeria also has an official Ombudsman. The Public Complaints Commission (Nigerian Ombudsman) is an independent organization established by the Federal Government of Nigeria in 1975 through Decree No. 31 of 1975, amended by Decree 21 of 1979, now Cap 377 Laws of the Federation of Nigeria 1990 and revalidated in Section 315(5) of 1999 Constitution. The Commission has powers to investigate citizens' complaints against any governmental or private body. It was established to provide viable options for Nigerians or anyone resident in Nigeria, seeking redress against administrative injustice arising from bureaucratic errors, omissions or abuse by 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 behaviour of officials.

7.13 The Public Complaints Commission's Act regulates the Commission. The National Assembly appoints and removes the chief commissioner on the recommendation of the President. Funded directly from the Consolidated Revenue Fund, The Commission refers cases to the National Assembly or State Governors for further action. Its reports, records of meetings, investigations or proceedings are privileged, and the Courts may not compel their production. Although The Commission publishes an annual report, this is not widely available. .

7.14 There are still several major areas where administrative bottlenecks hinder public access to decision making process and information. As has been repeatedly pointed put in this report, release of audit report and information to the public is one classic area.¹³⁸ The Auditor General, whose natural and traditional duty it is, does not release audit reports to the public. The result is that the public has no access to audit information and reports.

7.15 There is no information or evidence of improvement in this area by subject States.

¹³⁶With technical and funding support from donors (especially DFID), **SERVICOM** produced evaluation reports on major Nigerian government agencies (see next section below).

¹³⁷The code for ministers is on **SERVICOM**'s website, www.servnigeria.com but the service for general staff is not.

¹³⁸By contrast, audit reports of the South African government are readily available on the website

Publishing Periodic Reports on Risks of Corruption in Public Administration

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

7.17 In 2011, the Technical Unit on Governance and Anticorruption Reform (TUGAR) published three reports titled,

1. Report of Scoping Survey of Anti-Corruption Initiatives in Nigeria
2. Report of Gap and Compliance Analysis of Anti-Corruption Initiatives in Nigeria with Regional and Global Anti-Corruption Instruments
3. **Mapping of Anti-Corruption Measures in PFM in the Federal Government of Nigeria and Six Nigerian State Governments.**¹³⁹ This was the first, report of its kind in Nigeria. However, the Independent Corrupt Practices 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.

7.18 Prior to the TUGAR report, the nearest there is to an analysis of the impact of corruption is the evaluation report on the performance of 53 federal government agencies assessed by SERVICOM in 2006/7. The evaluation reports¹⁴¹ 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.¹⁴² 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.

7.19 Also at the Federal level the ICPC, TUGAR and the BPP have developed a Corruption Risk Assessment Methodology applicable to the federal and State departments and agencies. They are currently training selected persons from State, Federal agencies and non-state actors, who are expected as part of their training to develop action plans to conduct corruption risk assessment in their various MDAs. Reports of such assessment if published will satisfy the UNCAC requirement regarding the specific institutions and agencies.

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

7.5 Table 7.1 below summarises the foregoing discussions.

¹³⁹The states are Bauchi, Enugu, Rivers, Kano, Lagos, and Plateau

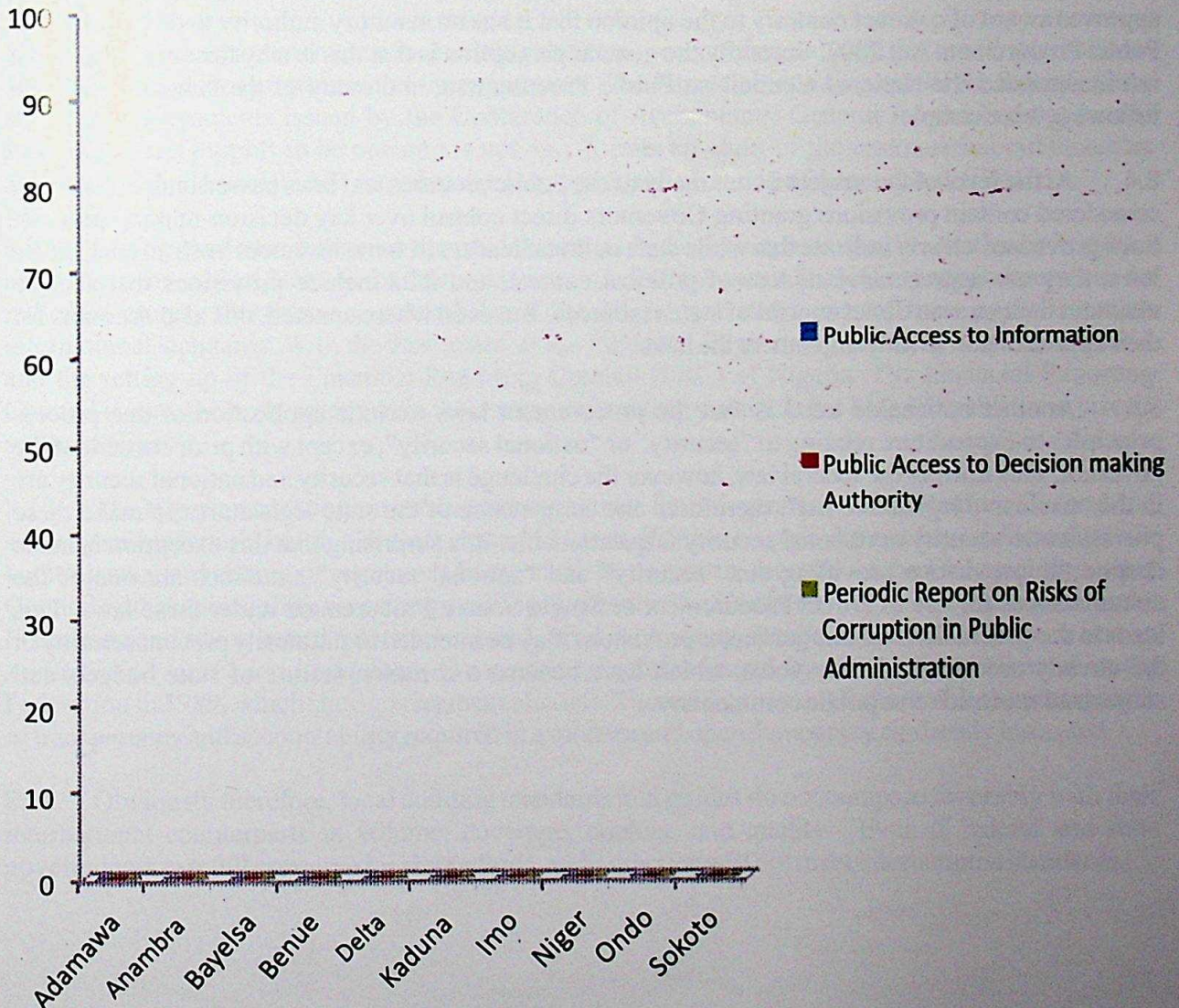
¹⁴⁰www.servicenigeria.com

¹⁴¹This may not really be a negative commentary on the Public Complaints Commission. Public access to MDAs is not within its mandate.

Table 7.1: Summary of Compliance with Provisions of UNCAC, AUCPCC and ECOWAS on Public Reporting

Provisions	Adama wa	Anamb ra	Bayelsa	Benue	Delta	Kaduna	Imo,	Niger	Ondo	Sokoto
Public Access to Information	No informat ion	No informat ion	No informat ion	No informat ion	No informat ion	No informat ion	No informat ion	No informat ion	No informat ion	No informat ion
Public Access to Decision-Making Authorities	No informat ion	No informat ion	No informat ion	No informat ion	No informat ion	No informat ion	No informat ion	No informat ion	No informat ion	No informat ion
Periodic Reports on Risks of Corruption in Public Administration	No informat ion	No informat ion	No informat ion	No informat ion	No informat ion.	No informat ion	No informat ion	No informat ion	No informat ion	No informat ion

Chart 7.1: The chart below also summarizes the foregoing discussion.



Charter 8: Summary of Conclusions and Recommendations.

8.1 *The main message of the exercise is that gaps between policies and laws on the one hand, and their enforcement and implementation on the other; undermine anticorruption programming more than loopholes in policies and laws.* The policy and legal/regulatory environment for reforms is improving faster than the other complementary environments. For instance, states are increasingly evolving policies and enacting laws to improve public financial management, including on transparency and accountability and formulation of budget policies, but they are not investing commensurate resources and effort in developing institutions and structures for their implementation and monitoring. Thus, policy and legal innovations do not often include measures to develop capacity for their implementation and monitoring, or where it does include it, such measures are rarely implemented.

8.2 *This does not mean that developing improved policies, mechanisms, tools and legislations that provide improved processes for public finance management is a wrong approach.* It only means that such policies, laws and procedures remain a first step and except they are followed in practice, expected gains of reform may never materialize.

8.3 Both at the federal and State levels, reluctance to give up political control over fiscal and public finances is the main impediment to implementing the laws. For example, despite adverse commentaries from a wide section of the Nigerian population the Federal Executive Council still approves award of contract contrary to the opinion that it has no statutory authority to do so under the Public Procurement Act 2007. Secondly the general perception is that this is why the authorities have not inaugurated the National Council on Public Procurement, and many of the subject States are following this example.

8.4 At the level of the subject States many of the public procurement laws passed and drafts being considered contain provisions granting Governors direct control over key decision-making process. Such provisions clearly indicate that while state political leaders in some instances 'rush' to enact these laws, they are apprehensive of loss of political control, and thus include provisions that seek to maintain their current direct control of state resources. But even where enacted, this also accounts for their apprehension to fully implement the laws

8.5 Another noticeable trend is that the procurement laws exclude application of due process principles to expenditure relating to "security" or "national security", except with prior consent of the governor. This mirrors the federal law, however the challenge is that security and national security are in the "exclusive legislative list", therefore, the competence of the state legislatures to make these provisions on security or national security is questionable. It is surprising that this exception is made despite the provisions providing that "security" and "national security" situations are one of the circumstances for use of Direct Procurement or Single Source Procurement under these laws. This leads to the conclusion that this particular provisions may be intended to statutorily prevent scrutiny of the already notorious security votes, which have become a common feature of state budgets and subjects of much adverse public commentary.

8.6 Among the subject States that have passed fiscal responsibility laws like the federal government, only Niger has begun implementation by setting up the regulatory authority. However implementation in Niger remains low. States without Fiscal Responsibility laws have existing public finance laws, though old and outdated in some respects. There are financial instructions, Treasury circulars and Stores Regulations that have some useful provisions though not comprehensive. However, evidence of substantial adherence and implementation to these rules are also scarce, and evidence abounds of infractions that result in no disciplinary measures, as this study found from the available audit reports. This leads to the conclusion that the gap between existing financial management laws and regulations and their implementation constitute a far greater challenge in the PFM system, than gaps in the policies and laws themselves.

8.7 *Fiscal indiscipline has continued in both states that have enacted the FRL and those that have not.* There is no political will to discipline first by realistically budgeting according to realizable revenues, and second, to respect budgetary allocations during spending. Thus, as already discussed in this report, an examination of the financial statements produced by the state governments 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.

8.8 Nigeria has no statement of accounting standard, or reporting standard that meets international standards and guides preparation of these accounts. The Financial reporting model for federal, states and local governments issued by the Conference of Accountants' General for the Federation and states, does not purport to be one and is not one. It falls far short of the international public sector accounting standards (IPSAS) issued by the International Federation of Accountants (IFAC).

8.9 Giving the loose nature of the model, and its lack of completeness, the tendency in public accounts in the subject States is for these statements to disclose as minimal information as possible. As indicated above, the financial statements of the 10 subject states are far from compliant with international standards. With the enactment of the Financial Reporting Council of Nigeria Act, 2011 and the setting up of the Financial Reporting Council (FRC) of Nigeria. The Financial Reporting Council is now the body responsible for issuing accounting standards for both the public and private sector in Nigeria.

8.10 The Nigerian constitution establishes a structure for independence of the Auditor General and security of his tenure, but this did not extend to his staff. Also Nigeria did not have a formal public auditing standard setting or regulatory body, until the setting up recently of the Financial Reporting Council with responsibility for setting auditing standards. The Conference of Auditors General for the Federation and states issued a document titled, "*Public Auditing Standards*" in 1997. There is also an *Audit Guide for Federal and State Government Auditors* issued by the Auditors General in the Federation in 1989, which state government also use. These documents fall short of the high standards of transparency and accountability required in a modern and open democracy as already indicated.

8.11 Obviously therefore, local auditing standards and guides do not compare favorably 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.

8.12 The issues of standards for financial reporting and auditing is now statutorily in the hands of the Nigeria Financial Reporting Council. The way to go for the Council will be to issue and enforce standards that fill gaps already identified between current standards and practices and identified international standards represented by the international public sector accounting standards (IPSAS) issued by the International Federation of Accountants (IFAC) and the *INTOSAI Guidelines and Good Practices Related to SAI Independence (ISSAI 10 and 11)*. This alone however without other complementary efforts will not resolve all the issues.

8.13 State Governments have provisions for internal controls in the *Financial Regulations and treasury circulars*. 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 challenge however remains that of consistent enforcement and in some cases low capacity.

8.14 The Nigerian Presidential system of government establishes three arms of government, the Executive, The Judiciary and the Legislature under the concept of separation of powers and checks and balances. It operates under the presumption that the legislature being more representative in nature will keep abreast with the needs of the people, and hold the Executive accountable in meeting those needs. It gives it powers to investigate any matter with respect to which it has powers to make laws, and into the conduct and affairs of any person or authority charged with executing laws made by it or disbursing and administering funds appropriated by it. These powers are granted to make laws and to expose corruption, inefficiency and waste.¹⁴³ However all evidence in the subject States point to the fact that The Legislature is the weakest of the three arms of government at the subject State levels. So much power is arrogated to the Governor both in the constitution, laws made by the State Legislatures and through practices acquired during many years of military rule.,.

8.14 Reforms implemented at the federal level in Nigeria often cascade down to the States and Local Governments. A recent example is the introduction of a Medium Term Expenditure Framework, a Fiscal Responsibility framework and the new Public Procurement regime, though they are all witnessing poor implementation. In the same breath failings in the federal system influence failures at the state level and negative trends at the federal level easily become magnified at the State and local Government levels. The reluctance to relinquish direct political control of the procurement process at the federal level epitomized in the federal Executive Councils continued approval of award of contracts and approval of procurement policy documents and thresholds has contributed to the centralized control of public expenditure at the State levels by the Executive Councils and Governors Offices, and diminished Federal governments moral authority to advice the States on this issue. This however points to the fact that the Federal Government has a leadership role to play in restructuring governance processes and is best placed to influence developments in the States by example.

8.15 The State legislatures across subject States and the Public Accounts Committees have been unable to exercise sufficient oversight over public expenditure and to address issues of infractions from due process, failures to implement laws, rules and procedures, despite their constitutional powers to do so. The Auditors Generals in many instances have identified audit infractions, but are powerless to enforce sanctions.

¹⁴³ S 129 of the 1999 Constitution of the Federal republic of Nigeria

8.16 This failing is fundamental to the challenges identified in this report with the Subject States. It is the Legislature that should hold State officials accountable for failing to implement laws passed by it or that should effectively compel State Executives to introduce and implement steps and procedures intended to improve fiscal discipline, public procurement implementation, financial reporting and auditing, measures to improve integrity of financial records, or to increase citizens access to records or improve simplification of governance processes and access of citizens to decision makers or decision making processes. 8.20. When asked what the solution to this situation and scenario might be, all State representatives agreed that improving and strengthening citizens groups, civil society broadly speaking i.e. (NGOS, Professional bodies and associations, religious groups, ethnic and development associations etc.) to hold political leaders accountable, whether they be in the Executive or Legislature in the Subject States is the additional step that should accompany development of these new legislative and administrative tools, systems and processes. This will require supporting citizens groups broadly described to organize, acquire needed skills, secure increased access to publicly held information and records and be able to apply knowledge based approaches in engaging public processes and institutions, both with respect to formulation of needed policy, revisions of laws, rules, and their implementation, monitoring and evaluation etc.

8.17. Also it will require support to increase the ability of organized non State actors to mobilize massively and strategically around critical issues, to support government in implementing needed reforms and provide alternative views, in a way that can no longer be ignored. Citizens groups need to implement voice and accountability mechanism that strategically ensure reform laws and policies are implemented, but also that such laws are not skewed towards protecting the status quo.

8.18 It is also suggested that an annual or two yearly ranking of performance of States based on selected indicators, conducted and publicly presented by non-state actors, perhaps led by an international agency may help to apply pressure for reform and implementation of reform laws and rules. Such indicators must however take account of challenges that States face, evaluate performances of arms of government, as well as State governments as a unit. The indicators need to be measurable and representative of best practices required to improve processes in a way that delivers concrete and measurable outcomes. It should try to cover not only gaps in laws and policies, but also gaps between existing laws, and policies and practice.

8.18 Participants at the draft report validation workshop¹⁴⁴ suggested that these report findings be disseminated to the leadership of their States individually and that civil society groups in their States be encouraged and supported to engage governments of their subject States in dialogue on findings in this reports.

¹⁴⁴ Held at Reiz Continental Hotel Central Area Abuja on 13th September 2012

Appendix 1:

International Standards of Supreme Audit Institutions (ISSAI)¹⁴⁵

Level 3: Fundamental Auditing Principles

1. ISSAI 100 INTOSAI Auditing Standards - Basic Principles
2. ISSAI 200 INTOSAI Auditing Standards - General Standards
3. ISSAI 300 INTOSAI Auditing Standards - Field Standards
4. ISSAI 400 INTOSAI Auditing Standards - Reporting Standards

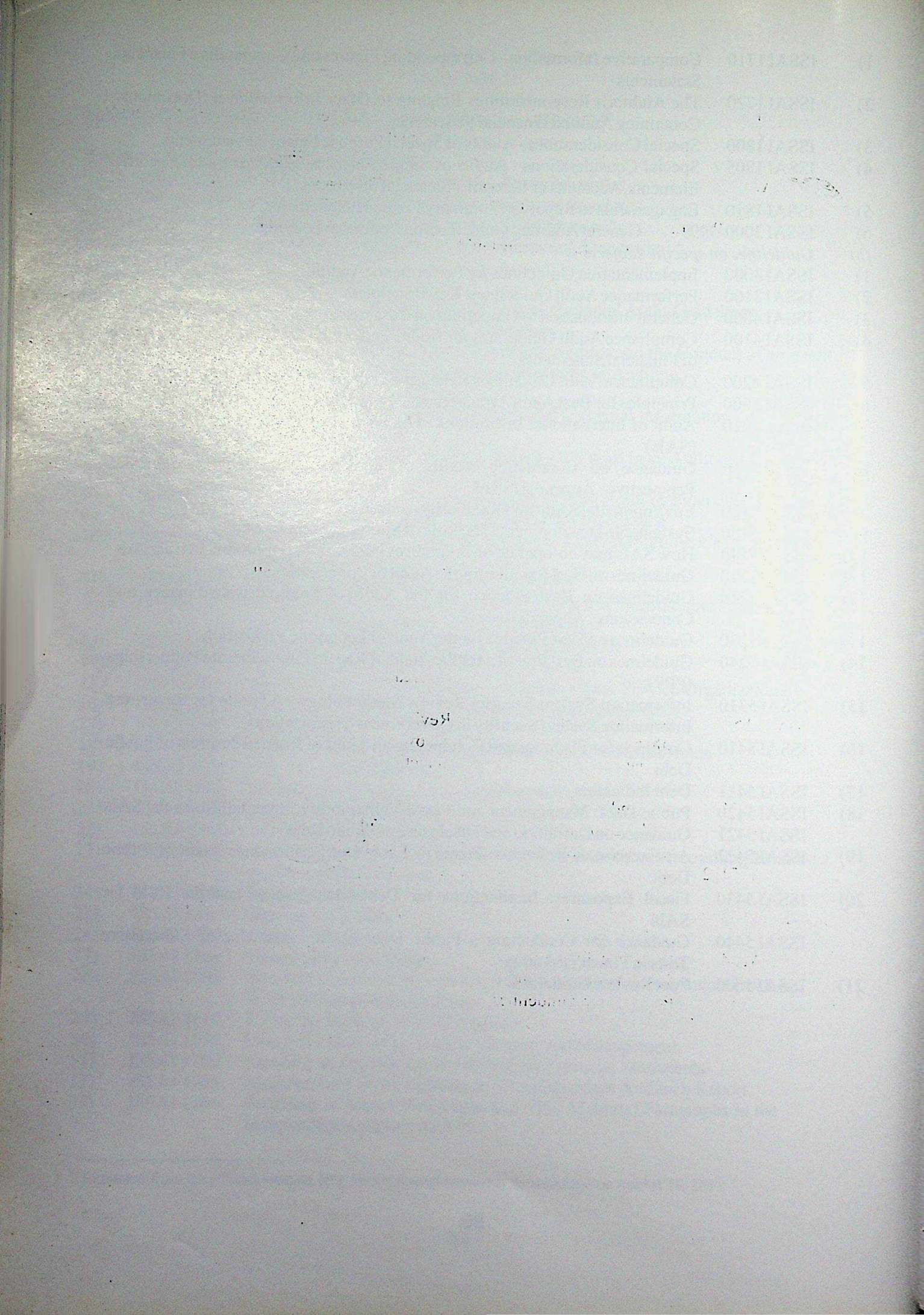
Level 4: Auditing Guidelines

(a) General Auditing Guidelines

- 1) ISSAI 1000 General Introduction to the INTOSAI Financial Audit Guidelines
- 2) ISSAI 1003 Glossary to Financial Audit Guidelines
- 3) ISSAI 1200 Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with International Standards of Auditing
- 4) ISSAI 1210 Terms of an Engagement
- 5) ISSAI 1220 Quality Control for Audits of Historical Financial Information
- 6) ISSAI 1230 Audit Documentation
- 7) ISSAI 1240 The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements
- 8) ISSAI 1250 Consideration of Laws and Regulations in an Audit of Financial Statements
- 9) ISSAI 1260 Communication with those Charged with Governance
- 10) ISSAI 1265 Communicating Deficiencies in Internal Control to Those Charged with Governance
- 11) ISSAI 1300 Planning an Audit of Financial Statements
- 12) ISSAI 1315 Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and its Environment
- 13) ISSAI 1320 Materiality in Planning and Performing an Audit
- 14) ISSAI 1330 The Auditor's Responses to Assessed Risks
- 15) ISSAI 1402 Audit Considerations Relating to Entities Using Service Organizations
- 16) ISSAI 1450 Evaluation of Misstatements Identified during the Audit
- 17) ISSAI 1500 Audit Evidence
- 18) ISSAI 1501 Audit Evidence - Specific Considerations for Selected Items
- 19) ISSAI 1505 External Confirmations
- 20) ISSAI 1510 Initial Audit Engagements - Opening Balances
- 21) ISSAI 1520 Analytical Procedures
- 22) ISSAI 1530 Audit Sampling
- 23) ISSAI 1540 Auditing Accounting Estimates, including Fair Value Accounting Estimates and Related Disclosures
- 24) ISSAI 1550 Related Parties
- 25) ISSAI 1560 Subsequent Events
- 26) ISSAI 1570 Going Concern
- 27) ISSAI 1580 Written Representations
- 28) ISSAI 1600 Special Considerations - Audits of Group Financial Statements (incl. the Work of Component Auditors)
- 29) ISSAI 1610 Using the Work of Internal Auditors
- 30) ISSAI 1620 Using the Work of an Auditor's Expert and Management
- 31) ISSAI 1700 Forming an Opinion and Reporting on Financial Statements
- 32) ISSAI 1705 Modifications to the Opinion in the Independent Auditor's Report
- 33) ISSAI 1706 Emphasis of Matter Paragraphs and other Matter(s) Paragraphs in the Independent Auditor's Report

¹⁴⁵Extracted from the official website, <http://www.intosai.org/about-us/issai.html> on August 18, 2012

- 1) ISSAI 1710 Comparative Information - Corresponding Figures and Comparative Financial Statements
- 2) ISSAI 1720 The Auditor's Responsibilities Relating to Other Information in Documents Containing Audited Financial Statements
- 3) ISSAI 1800 Special Considerations - Audits of Special Purpose Financial Statements
- 4) ISSAI 1805 Special Considerations - Audits of Single Financial Statements and Specific Elements, Accounts or Items of a Financial Statement
- 5) ISSAI 1810 Engagements to Report on Summary Financial Statements
- 6) ISSAI 3000-3999 General Auditing Guidelines on Performance Audit
- (b) *Guidelines on specific subjects*
- 1) ISSAI 3000 Implementation Guidelines for Performance Auditing
- 2) ISSAI 3100 Performance Audit Guidelines: Key Principles
- 3) ISSAI 4000 General Introduction to Guidelines on Compliance Audit
- 4) ISSAI 4100 Compliance Audit Guidelines for Audits Performed Separately from the Audit of Financial Statements
- 5) ISSAI 4200 Compliance Audit Guidelines Related to Audit of Financial Statements
- 6) ISSAI 5000 Principles for Best Audit Arrangements for International Institutions
- 7) ISSAI 5010 Audit of International Institutions - Guidance for Supreme Audit Institutions (SAIs)
- 8) ISSAI 5110 Guidance on Conducting Audits of Activities with an Environmental Perspective Appendix ISSAI
- ISSAI 5120 Environmental Audit and Regularity Auditing
- 9) ISSAI 5130 Sustainable Development: The Role of Supreme Audit Institutions
- 10) ISSAI 5140 How SAIs may co-operate on the audit of international environmental accords
- 11) ISSAI 5210 Guidelines on Best Practice for the Audit of Privatisations
- 12) ISSAI 5220 Guidelines on Best Practice for the Audit of Public/Private Finance and Concessions Appendix
- 13) ISSAI 5230 Guidelines on Best Practice for the Audit of Economic Regulation
- 14) ISSAI 5240 Guidelines on Best Practice for the Audit of Risk in Public/Private Partnerships (PPP)
- 15) ISSAI 5310 Information System Security Review Methodology - A Guide for Reviewing Information System Security in Government Organizations
- 16) ISSAI 5410 Guidance for Planning and Conducting an Audit of Internal controls of Public Debt
- 17) ISSAI 5411 Debt Indicators
- 18) ISSAI 5420 Public Debt: Management and Fiscal Vulnerability: Potential Roles for SAIs
- ISSAI 5421 Guidance on Definition and Disclosure of Public Debt
- 19) ISSAI 5422 An Exercise of Reference Terms to Carry Out Performance Audit of Public Debt
- 20) ISSAI 5430 Fiscal Exposures: Implications for Debt Management and the Role for SAIs
- ISSAI 5440 Guidance for Conducting a Public Debt Audit - The Use of Substantive Tests in Financial Audits
- 21) ISSAI 5600 Peer Review Guidelines





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