

# Chapter One

## INTRODUCTION

### 1. BACKGROUND

Governments all over the world use public procurement policy and implementation mechanisms to address a number of issues including budget implementation, service delivery, social, economic, environmental, human rights and developmental concerns. It can be stated as a basic aphorism that the level of economic growth and development in any society is directly related and proportional to the maturity of its procurement policy and how the policy responds to the challenges facing the society. Thus, if Nigeria's procurement policies had responded positively to the challenges of underdevelopment, the country would have been able to develop its human capital, address infrastructure deficits and generate economic growth at the level required under its Vision 20-20-20<sup>1</sup>. Essentially, it would have been on target to meet the Millennium Development Goals, the promises of chapter 2 of the Constitution of the Federal Republic of Nigeria 1999<sup>2</sup> ("the Constitution") and life in larger freedom – freedom from want, hunger and diseases, promised under a plethora of international human rights standards including the Universal Declaration of Human Rights<sup>3</sup>, the International Covenant on Economic, Social and Cultural Rights<sup>4</sup> and the regional African Charter on Human and Peoples Rights<sup>5</sup>. These standards contain provisions on rights such as adequate housing, education, food, health and the right to the continuous improvement of the living condition.

Procurement has been simply defined in the Public Procurement Act 2007 ("PPA") as acquisition<sup>6</sup>. This is a very wide and general definition that offers no insight into the technical details, functions and imperatives of public procurement. The PPA's definition seems to tally with its concern with procurement proceedings which is limited to the initiation of the process of effecting a procurement up to the award of a procurement contract. The procurement process is more encompassing commencing from the beginning of the proceedings up to contract execution and the materialization of the benefits promised by the procurement transaction. The Blacks Law Dictionary defines "process" as a mode, method or operation whereby a result is produced; a series of actions, motions or occurrences; progressive act or

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<sup>1</sup> Nigeria targets to be among the 20 most developed nations by the year 2020 and the projection is a minimum of 13% annual growth rate.

<sup>2</sup> Any reference in this Manual to the Constitution is a reference to the Constitution of the Federal Republic of Nigeria 1999 unless the context otherwise indicates.

<sup>3</sup> Adopted and proclaimed by United Nations General Assembly resolution 217 A (III) of 10 December 1948.

<sup>4</sup> Adopted and opened for signature, ratification and accession by UNGA resolution 2200 A (XXI) of 16 December 1966 and entered into force on 3 January 1976 in accordance with article 27.

<sup>5</sup> Nigeria is also a signatory to the Convention on the Rights of the Child, Convention for the Elimination of All Forms of Discrimination Against Women, etc.

<sup>6</sup> See the interpretative section 60 of the PPA. The Blacks Law Dictionary, Centennial Edition at page 1208 defines procurement as obtaining, attainment, acquisition, bringing about, effecting.

transactions<sup>7</sup>, etc. By this definition, the entire proceedings plus execution, indeed everything about public procurement is included in the procurement process. The implication of the foregoing is that the PPA governs transactions up to the point of award of contract while the general law of contract and commercial law take over from that point up to the full execution of the procurement. Wikipedia, the free encyclopedia defines procurement as the acquisition of goods and/or services at the best possible total cost of ownership, in the right quality and quantity, at the right time, in the right place and from the right source for the direct benefit or use of corporations, individuals, or even governments, generally via a contract.

Public procurement can be viewed as a process through which a government contracts with contractors, suppliers, consultants, etc to obtain goods, services and construction required to fulfill its objectives in the most timely and cost effective manner<sup>8</sup>. It imports the supply chain management concept as a process whereby the government meets its needs for goods, construction and services in a way that achieves value for money on a whole-life cycle basis in terms of generating benefits not only to the government department involved but also to the society and economy as a whole whilst minimizing damage to the environment<sup>9</sup>.

Value for money is an important attribute of a good procurement policy. With its cardinal objectives of economy, efficiency and effectiveness, a value for money public procurement process will to a great extent address the challenges faced by any given society. It is elaborated further as follows.

**Economy:** The practice by MDAs of thrift and good housekeeping, acquiring resources in appropriate quantity and quality at the lowest cost. A lack of economy would occur where there is overstaffing, or the acquisition and use of overpriced facilities. Essentially, it is about getting things done cheaply.

**Efficiency:** This ensures that maximum useful output is gained from the resources devoted to each activity of MDAs, or alternatively that only the minimum level of resources are devoted to achieving a given level of output. An operation could be said to have increased in efficiency if either lower costs were used to produce a given amount of output, or a given level of cost resulted in increased output. Money should not be spent simply because it has been budgeted and prudence should be the watchword in public procurement. Inefficiency will be revealed by identifying the procurement of work with no useful purpose, or the accumulation of surplus materials that are not needed to support operations. It is about getting things done well.

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<sup>7</sup> Blacks Law Dictionary, Centennial Edition at page,1205.

<sup>8</sup> Adapted from the definition of procurement by P. Steele cited with approval by Frank Ojadi in *Procurement Management in the Private Sector* published in the Nigeria Public Procurement Journal of February-March 2009.

<sup>9</sup> Definition offered by Professor Bola Afolabi in the *Impact of Sustainable Procurement on Good Governance*, paper presented at the Second International Conference of the Bureau of Public Procurement, 2009. Professor Afolabi further stated that sustainable procurement considers the environmental, social and economic consequences of design; non renewable material use, manufacture and production methods, logistics, service delivery, use, operation, maintenance, reuse, recycling options, disposal and suppliers capabilities and addresses these consequences throughout the supply chain.

**Effectiveness:** This ensures that the output from any given activity (or the impact that services have on the community) is achieving the desired results. To evaluate effectiveness, we need to establish that the desired goals (for instance, if the MDGs and the right to an adequate standard of living) are being achieved. A goal for an operating objective should be defined as a concrete expression of a policy objective. It is about doing the right things<sup>10</sup>.

One of the major problems of the procurement of goods and public service delivery in Nigeria is the disconnection between resources invested, and the output and outcomes achieved. Despite Nigeria's oil income, its social indicators such as maternal and child mortality and morbidity, access to basic education, sanitation and water are at the same level with other Sub Saharan African countries and in some instances, falls below the average. Thus, value for money has been lacking and the focus of most spending agencies is on maximising budgetary inputs as against delivering effective and cost efficient services. Before the advent of the current procurement reforms, the cost of public works in Nigeria was one of the highest in the world.

## **2. BEST PRACTICES - CURING THE MISCHIEF IN THE SYSTEM**

New laws such as the PPA are made to cure mischief in existing law or where there is a lacuna in the legal framework. The posers are; what was the mischief in the existing framework that the PPA was enacted to remedy? What was the mischief and defect for which existing law did not provide? What remedy did the legislature provide to cure the defect? What are the true reasons for the remedy contained in the PPA?<sup>11</sup> Although the mischief rule is used as a canon of statutory interpretation, it is however useful as a basis of understanding the need for a new law, especially within the Nigerian procurement context where poor procurement outcomes fuel underdevelopment.

The best practices in procurement are discussed hereunder and they include the other attributes of good procurement policy and its implementation. These include transparency and accountability, timeliness, fitness for purpose, promotion of competition, etc<sup>12</sup>. These attributes were lacking in Nigeria's procurement policy before the enactment of the PPA. Although positive changes have been effected since the PPA came into force, a lot of challenges remain to be addressed. Since the mischief in the existing law and practice led to the enactment of the PPA, it is therefore the duty of civil society in interventions under the Act to move in suppression of the mischief while advancing the remedy proposed in the PPA and to decisively call in public opinion and the courts to suppress subtle inventions and evasions for the continuance of the mischief and to add life and force to the remedy according to the intention of the legislature<sup>13</sup>. Apparently, some of the mischief continued till date despite the enactment of the Act. The intervention of civil society through monitoring and reporting is premised on the need to ensure that the promises of public procurement legislation are not mere pipe dreams. The best practices include the following.

<sup>10</sup> Adapted from *The Pursuit of Value for Money*, Samuel Afemike, Spectrum Books, 2003, pages 6-9.

<sup>11</sup> . *Heydon's Case* (1584) 3 Co. Rep 7a; *International Bank for West Africa Ltd v Imanu (Nig) Ltd & Anor* (1988) 3 N.W.L.R. (Pt.85) 633 at 668.

<sup>12</sup> See section 16 (1) of the PPA.

<sup>13</sup> Adapted from the rule in *Heydon's case*, and specifically per Aniagolu JSC in *Ifezue v Mbadugha* (1984) N.S.C.C. 314 at 325.

**A. Transparency:** The principle of transparency is crucial to the public procurement process mandating that information affecting public procurement decisions should be accurate, address the needs of society and should be available and accessible to the public, open to public scrutiny and readily understood by the public<sup>14</sup>. Procurement transparency requires the provision of reliable information of government's procurement intentions, detailed data and reports of procurements and capital budget implementation. The establishment of a single internet portal as required by section 5 (r) of the PPA, to serve as the primary and definitive source of all government procurement information will facilitate transparency. Procurement transparency also encompasses definition of conflict of interest rules and sanctions for elected and appointed officials<sup>15</sup>; meeting of freedom of information requirements<sup>16</sup>; functional legislative oversight over procurements, existence of non-opaque regulations and recourse mechanism and published procurement audits<sup>17</sup>. The transparency of the procurement process can facilitate the following<sup>18</sup>:

- Procurement transparency is at the heart of good fiscal governance. It helps prevent public officials and institutions from doing things that cannot stand the test of scrutiny from outside. It provides the feedback for informed debate on procurement and indeed, is a pre-requisite for public debates which can lead to better procurements and more efficient resource use. Transparency facilitates the identification of weakness which will lead to reforms. It also facilitates the identification of best practices which can be replicated.
- Transparent procurements can be held accountable; legislatures and civil society will be better able to hold governments accountable if they have information on public procurements. Elected and appointed officials will be more likely to make procurement decision in accordance with their mandate if those decisions are open to public scrutiny. Transparency will facilitate the checkmating of procurement frauds and corruption; for instance, where contracts have been cash backed in accordance with section 16 (1) (b) of the PPA and public officials are refusing to pay a contractor who has satisfied all requirements, the contractor will clearly know that he need not bribe any person to get paid.
- Adherence to procurement transparency increases faith in public procurements and the government's ability to address economic and social needs of the people. Support can come from the public who better understand the underlying philosophy and reasons for particular contract awards, the cost, implementation schedule and life span of the goods, works or services. Project beneficiaries will be placed in a position to hold contractors and service providers accountable to project design and implementation frame.

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<sup>14</sup> Adapted from *A Rights Based Approach Towards Budget Analysis*, International Human Rights Internship Programme, 1999.

<sup>15</sup> See sections 57 and 58 of the PPA.

<sup>16</sup> Section 16 (14) and 38 (1) and (2) of the PPA.

<sup>17</sup> See *Civil Society and the Budget- A Reader*, (at page 16) by Eze Onyekpere, Socio Economic Rights Initiative, 2004.

<sup>18</sup> Adapted from *Civil Society and the Budget – A Reader* (supra) citing with approval Mike Obadan in *Achieving Value for Money and Sustainable Impact*, Budget Office of the Federation, 2002.

- Procurement transparency contributes to macroeconomic and fiscal stability as it prevents the build-up of a procurement crisis in secret, bringing about adjustments sooner. The link between the medium term sector strategies and procurement options and choices will have implications for the implementation of the MTEF and the realization of its goals. Procurement transparency will provide an early warning mechanism to show when capital budget matters are on a proper alignment with other government policies.

**B. Accountability:** The principle of accountability involves among others to ensure that procurement supports state duties to respect, protect and fulfill human rights obligations. Issues of accountability for procurements will raise questions on what is procured and the means of procuring them; and of performance and results - whether procurement objectives were met and people had value for money. If for example, the Ministry of Health is targeting the reduction in immunization preventable diseases for children under 5, then the success of the procurements can be measured by the level of change or reduction in the immunization preventable disease for under 5 children based on the declared objectives in the Ministry's sector strategies. If informed questions are asked the cost of public procurements, they could lead to considerable reductions in over-invoicing so that citizens can begin to get value for money<sup>19</sup>.

**C. Timeliness:** Procurement of goods, works and services should be timely and meet the demands and needs of the implementing agency and the beneficiaries. A good example is the procurement of fertilizers and seeds for the agricultural sector. It should be programmed in such a way as to be available when needed in the planting season. Procurement of construction such as roads should make resources available for works during the dry season since most road contracts are suspended during the rains. The regulations made by the Bureau of Public Procurements have indicated a total timeframe of five months for procurement planning and award of contracts. Sticking to this timeline by MDAs will lead to enhanced capital budget implementation. Timeliness implies that the service provider should stick to time schedules agreed in the contract documentation and should apply professionalism and reasonable care to meet the schedules. Timeliness also includes payments by government agencies to contractors when due. Section 37 of the PPA provides a clue:

*(1) Payment for the procurement of goods, works, and services shall be settled promptly and diligently.*

*(2) Any payment due for more than sixty days from the date of the submission of the invoice, valuation certificate or confirmation or authentication by the Ministry, Extra-Ministerial Office, government agency, parastatal or corporation shall be deemed a delayed payment.*

*(3) All delayed payments shall attract interest at the rate specified in the contract document.*

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<sup>19</sup> See *Civil Society and the Budget – A Reader*, supra.

*(4) All contracts shall include terms, specifying the interest for late payment of more than sixty days.*

Timeliness will facilitate the prevention of demands for review and variation of the contract price, budget overruns and underperformance. However, it must be noted that procurement is part of a chain - the larger chain being public expenditure management which provides the framework under which procurements are performed. If for instance, the budget that should authorise procurements is passed late in the year, the probability of timely procurements will be reduced. Since budgeted sums fall back to the treasury at the end of the year, the procurement function may become ineffective for implementing the budget. Poor resource allocation, bad policy decisions and late or non release of appropriated sums will negatively impact on public procurements.

**D. Fitness for Purpose:** A procurement transaction ought to provide goods, works or services that meet the demands of the procuring entity and the beneficiaries of its services. The fitness of purpose is both quantitative and qualitative. The product or goods should fit the service environment, be durable and respond to the challenges stated in the procurement plan. Fitness for purpose implies that a needs assessment was undertaken which led to the identification of a need, a gap or a challenge which the procurement seeks to address and the goods, services or works procurement is the least costly option to address the challenge. Least cost here includes taking cognizance of environmental, social and economic costs. On this basis, many projects that find their way into the capital budget would not qualify to be there. In many communities, boreholes have been sunk by local and state governments, UNICEF, DFRR<sup>20</sup>, etc and what may be needed is maintenance of existing facilities, reticulation, distribution and the chemicals needed to treat the water (if applicable) and other recurrent costs. Yet, contracts for the sinking of boreholes are still the order of the day. Where for instance, a vehicle is needed for rough roads and terrains, a four wheel drive may be the best option instead of a sleek and flashy saloon car. The product or works should also meet the cost savings anticipated in the overhead budget and general efficiency demands.

**E. Sustainability:** The procurement must address the requirement of sustainability which involves the total life cycle. The issues to be addressed include economic impact which focuses on issues such as ethical trading, corporate governance, timely payment and payment of realistic living wage. A cost benefit analysis may be needed at the procurement planning stage. Environmental issues include the challenge of biodiversity, climate change, carbon footprints, recycling and disposal options and renewability. Environmental sustainability may require an environmental impact analysis at the procurement planning stage. The social issues include human rights, workforce, impact of the procurement on existing livelihoods and whether alternative livelihoods will be available to communities if the existing livelihood options are destroyed. Diversity of beneficiaries from the procurement or those to suffer reverses in terms of sex, disability and race should also be considered. Essentially, a social impact analysis may be necessary at the stage of procurement planning<sup>21</sup>.

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<sup>20</sup> Directorate of Foods, Roads and Rural Infrastructure.

<sup>21</sup> See Professor Bola Afolabi in the *Impact of Sustainable Procurement on Good Governance*, paper presented at the Second International Conference of the Bureau of Public Procurement, 2009.



**F. Gender Issues:** It is fundamentally flawed to assert that procurement contains no gender dimensions. A gender blind procurement policy discriminates against the non dominant societal gender. Therefore, it is imperative in formulating procurement policy and taking procurement decisions to consider its likely impact on men, women, children, boys and girls. It is also imperative in procurement audits, research and studies to find out how particular procurements affect different segments of society. The experience of previous procurements can be used to project and forecast how new and proposed procurements will affect the different social segments. Further, public procurements should address the specific and special needs of all segments of society. Unfortunately the extant PPA appears gender blind.

**G. Competition:** Introducing competition in government commerce should be one of the hallmarks of a reformed procurement policy. Section 24 of the PPA is relevant for any discourse on competition.

*(1) Except as provided by this Act, all procurements of goods and works by all procuring entities shall be conducted by open competitive bidding.*

*(2) Any reference to open competitive bidding in this Act means the process by which a procuring entity based on previously defined criteria, effects public procurements by offering to every interested bidder, equal simultaneous information and opportunity to offer the goods and works needed.*

The concept of open competitive bidding is based on the peremptory norm of non discrimination<sup>22</sup> and the principle of equality before the law, equal protection of the law and equality of opportunities, rights and obligations of natural and artificial persons<sup>23</sup>. Essentially, open competitive bidding is the procurement method preferred by the Act. Other methods are to be employed as an exception to the general rule, in which case, there must be adequate reasons and grounds for deviating from the general rule of open competitive bidding. Competition ensures that government gets the best technical and financial bids and proposals to meet its needs. The devious practice of collusions and schemes that shut out qualified participants and bidders from the procurement process will not provide equality of opportunities for all and as such will frustrate competition.

**H. Risk Management:** Risk management should be embedded in the efficiency and effectiveness indicators of procurement planning because risks need to be identified, documented, analysed and mitigations found for them. Sometimes, risks may involve liabilities and as a general rule, the government should not accept risks and liabilities which a supplier or contractor is in a better position to manage. Organizations must take risks to create or add value to services and risk management impacts on the cost, quality and performance of a public service. Contingency planning as part of the procurement plan is therefore a necessity<sup>24</sup>. Procurement reforms should encompass guidelines for managing risks and liabilities.

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<sup>22</sup> See section 42 of the Constitution on the right to freedom from discrimination and article 2 of the African Charter on Human and Peoples' Rights, Cap A9, Laws of the Federation, 2004, etc.

<sup>23</sup> Article 3 of the African Charter on Human and Peoples' Rights, supra.

<sup>24</sup> Lee Tribe in a presentation at the Second National Procurement Summit, organized by BPP in Abuja.

**I. Anti-Corruption:** The level of corruption in Nigeria is phenomenal. Public procurements provide opportunities for over-invoicing, demanding kickbacks and gratification as basis for award of contracts or payment of fees to contractors, contract abandonment after collecting mobilization fees, executing jobs with cheaper and inferior materials, etc. A reformed procurement regime should grossly diminish the opportunities for the corruption malfeasance. It should also criminalise and punish perpetrators as a deterrence to others who may wish to engage in corrupt practices. Considering the high level of procurement frauds that have been revealed after the coming into operation of the PPA<sup>25</sup>, it appears that Nigeria still has along way to go in curbing procurement corruption.

**J. Professionalism:** The Nigerian Country Procurement Assessment Report (CPAR) 2000 laid the foundation for some of the reforms contained in the PPA. It states inter alia:

*The procurement function is not generally performed by professionally qualified staff. Although, there is a shortage of such staff in the public service, even the few available are not properly utilised. There is a tendency to believe that the procurement function can be performed by anybody and hence the procurement function is held in low esteem. Training in public procurement procedures for civil servants is generally insufficient due to low regard for the profession and due to lack of funding. In addition, procurement training is offered by few institutions in Nigeria. The Institute of Purchasing and Supply Management [now Chartered Institute of Purchasing and Supply Management of Nigeria] is the only organisation which has, for many years, provided training in public procurement and promoting professional standing of procurement staff, and their skills. It has recently introduced a system of certifying procurement specialists.*

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*There is the need to restore and strengthen the professional procurement cadre and allow them to practice their profession. The procurement function should be carried out by these professionals.*

Thus a reformed procurement system should be managed by qualified professional personnel who will continue to undergo training to enrich their experience and capacity.

**K. Fairness:** According to the Bureau Manual, good procurement is impartial, consistent and therefore reliable. It offers all interested contractors, suppliers and consultants a level playing field on which to compete and thereby, directly expands the government's options and opportunities<sup>26</sup>.

**L. Oversight and Benchmarking:** A good procurement system should create adequate opportunities for oversight by a number of agencies. From the internal audit function to the Auditor General for the Federation, the Bureau and finally the legislature, there is a plethora of agencies whose work should impact on the system. The pre and post review powers of the Bureau clearly fits into this role. Its detailed function in performing procurement audits to be submitted bi-annually to the National Assembly is also an oversight function. The National Assembly on it own has the power to look into any matter pertaining the

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<sup>25</sup> The UBE, NERC, REA, etc, procurement frauds.

<sup>26</sup> Page 3 of the *Procurement Procedures Manual* published by BPP.



implementation of laws or the expenditure of public resources. The results of these oversight activities should feed into the system for its improvement.

In benchmarking, the Bureau is expected to ensure that MDAs learn from the experience of the best in class, leaders in the field with whom legitimate comparisons can be made<sup>27</sup>. This can be achieved through the collection and analysis of data determining the performance gap and identification of critical success factors<sup>28</sup>.

### **3. OVERVIEW OF THE PPA**

Part I establishes the National Council on Public Procurement, determines its membership and its functions. Part II establishes the Bureau, clothes it with legal personality, perpetual succession and sets out its functions and powers; provides for appointment of the Director General, principal officers and staff of the Bureau. The Bureau is conferred with broad powers to oversee procurement implementation by MDAs subject to the rules and regulations made by the Council. This includes certification of federal procurements, maintenance of database on the registration and classification of contractors and service providers, procurement audit and administrative sanction mechanism. Part III details the scope of application of the Act. The Act applies to all federal procurements or where the Federal Government is contributing at least 35% of the funds for procurement implementation.

Part IV is on the fundamental principles for procurement. Its section 16 is the lengthiest section of the Act containing 28 subsections. It prescribes open competitive bidding (unless the Act prescribes otherwise), equity, timeliness, value for money, fitness for purpose, etc as irreducible minimums for procurement. It addresses issues of the technical and financial capacity of bidders, ethical issues and conditions that will lead to disqualification of bidders, etc. Part V continues with procurement planning, its implementation and the role and duties of the accounting officer, procurement planning committee; tenders board and prequalification of bidders.

Part VI deals with procurement methods for goods and services, advertising, bid security, submission and rejection of bids, validity period, modification and withdrawals of tenders, bid opening, examination and evaluation of bids. For evaluation, no other method or criteria shall be used except those stipulated in the solicitation documents. The Part further deals with acceptance of bids, domestic preferences, mobilization fees, contract performance guarantee, interest on delayed payment, and records of procurement proceedings.

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

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<sup>27</sup> Eze Onyekpere in *Civil Society and the Budget- a Reader*, at page 135; Socio Economic Rights Initiative, 2004.

<sup>28</sup> Eze Onyekpere, *supra*

proposals, criteria for evaluation of proposals. It further provides for the general selection procedure, procedure for selection of proposal where price is a factor and the procedure for selection where price is not a factor.

Part IX is on procurement surveillance and review. The Bureau is given further powers to ensure the functionality of procurement proceedings in accordance with best practices. It can liaise with relevant agencies including the Economic and Financial Crimes Commission and the Independent Corrupt Practices Commission to conduct investigations where a criminal investigation becomes necessary. Administrative review is provided - the complainant to submit a complaint to the accounting officer of the procuring entity within 15 days of actual or constructively awareness of the circumstances giving rise to the complaint. The accounting office to give a decision within 15 working days and if the complainant is dissatisfied, he can appeal to the Bureau and thereafter to the Federal High Court. Part X is on disposal of public property.

The Code of conduct forms the subject of Part XI and the principles of honesty, accountability, transparency, fairness and equity are stated to be the guiding lights for MDA and Bureau staff and bidders. Conflict of interest issues are defined while reaffirming the need for procurement to contribute to good governance.

Part XII is on offences and they include bid rigging, collusion, altering, uttering or forging, tender splitting etc. The penalties are prescribed ranging from 5 calendar years but not exceeding 10 calendar years for natural persons who are not public officers while public officers are liable to a minimum of 5 years imprisonment without an option of fine and summary dismissal from government service. Legal persons are on conviction to be debarred from public procurement for a period of not less than 5 calendar years, a fine equivalent to 25% of the value of the procurement in question. Further, the directors whose names appear in the books of the Corporate Affairs Commission are to be liable to imprisonment for 3 years but not exceeding 5 years without option of fine. Part XIII is on miscellaneous provisions with section 60 as the interpretation of terms used in the Act. Section 61 is the short title which ends the Act.

#### **4. THE ROLE OF CIVIL SOCIETY**

Civil society includes the traditional NGOs, the media, professional groups, the academia and other non governmental stakeholders but excludes the private sector. Depending on the competencies and capacity of different segments of civil society, they can contribute to the work of promoting the rights and duties enshrined in the Act while ensuring that obligations are respected by duty holders. The expectations from civil society fall under a number of headings including observation, research, advocacy, sensitization and awareness raising, etc. The central objective of CSO interventions is to improve the system, enhance value for money and governmental service delivery.

**A. Awareness Raising and Sensitisation:** Civil society should compliment the ongoing efforts of BPP in sensitization and creating massive awareness of the provisions of the Act. This can be done through seminars, publications and discussions in the print and electronic media, dissemination of information through websites, newsletters and pamphlets. The media should consider setting up dedicated columns in the print media and special discussions focused on the procurement function in the electronic media. Stickers and

posters can be used by NGOs to reach out to communities. Professional groups can include courses in public procurement in their professional training package or in their compulsory refresher and continuous training courses. The general thrust is to raise consciousness in society of the inextricable link between public procurement, service delivery and the well-being of society particularly the poor and the vulnerable. Important websites where public procurement information are currently disseminated include the Bureau's website [www.bpp.gov.ng](http://www.bpp.gov.ng), the website of the Procurement Committee of the House of Representatives [www.nasspubproc.org](http://www.nasspubproc.org) and the website of the Centre for Social Justice [www.censoj.com](http://www.censoj.com).

**B. Capacity Building:** For CSOs to effectively engage the process, they must have a level of capacity sufficient to understand the issues and challenges of the system. Thus, the first challenge is to raise the capacity through training, development of manuals, checklists and other requisite tools. These would facilitate the monitoring process and ensure that CSO reports are relevant to the procurement issues at stake. Simplified versions of the Act can also be published in ordinary English devoid of the technical legalese. It can also be published in street/pidgin English and the local languages.

**C. Observation and Monitoring:** Civil society groups can focus on specific aspects of the procurement function or the procurement of an MDA or sector, observe and monitor the process over a period of time and issue reports of their findings. It may not be possible to focus on all agencies because of limited human and financial capacities. Thus, strategic thinking makes some form of structured intervention for results necessary. The idea is to monitor from *cradle to grave* - from the procurement plan to implementation and achievement of results. Observation will proceed from the angle of ensuring that the PPA and due process of procurement reforms are followed by MDAs in letter and spirit. It will include both violations and result based approaches. Red flags should be raised for violations particularly those violations that seek to distort the fundamentals of procurement. Engagement of the accounting officer of the procuring entity, the Bureau, anti corruption agencies and legislative oversight committees may follow such violations. But where these engagements fail to produce results, CSO may consider resort to the altar of public opinion and the courts.

**D. Action Research:** The concept of action research is to design research methodology and implementation in such a way that it will produce results to improve the system. Thus, the research should not be a pure academic exercise, but a functional research linked to the improvement of the system and ultimately the improvement of service delivery. It may be form of diagnostics study leading to the identification of strengths, weaknesses, challenges, threats and replicable best practices. The participation and buy in of the practitioners in the field – MDAs, contractors, service providers and civil society, etc, would be imperative and this would lead to a shared vision of reform among all the stakeholders. Essentially, the findings will lead to recommendations and the recommendations will lead to action for positive change. There may therefore be the need for collaboration between civil society and state actors to achieve the desired results.