

Overall Score:

75 - Moderate

Legal Framework Score:

89 - Strong

Actual Implementation Score:

63 - Weak

Category I. Civil Society, Public Information and Media

I-1. ⁵⁷Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

Comments:

Every citizen is constitutionally entitled to freely associate with others.

References:

Nigerian Constitution, 1999, Section 40, guarantees freedom of peaceful assembly and association.

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

There are no laws barring CSOs from accepting domestic or foreign funds.

References:

No reference, since there is no such law.

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

There are no laws requiring CSOs to disclose sources of funds.

References:

No reference, since there is no such law requiring disclosure of source of funding.

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

75

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

Nigerians have always been determined to exercise their civil rights as protected by the Constitution.

References:

Nigerian Constitution, 1999, Section 40, guarantees freedom of association.

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | **50** | 25 | 0

Comments:

Civil Liberties Organization is one of the many COSs in Nigeria. They have in recent times waded into many contentious issues troubling the public, however their influence is more on public opinion than on policy.

References:

Nigerian Constitution, 1999, Section 40, guarantees freedom of association;
See also Nigerian Bar Association calls for Ribadu, el-Rufais removal, p. 6,
Vanguard, Wednesday, August 30, 2006

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

Comments:

There has been no report of government ban on any existing CSO for non-violent advocacy activities.

References:

No reference, because no case was reported.

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

Comments:

No CSO activists were reported imprisoned in connection with covering corruption.

References:

No reference, because no case was reported.

YES: A YES score is earned if there were no CSO activists imprisoned related to work covering corruption.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the p

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

Comments:

No CSO activists were reported physically harmed in connection with covering corruption.

References:

No reference, because no case was reported.

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

Comments:

No CSO activists were reported killed in connection with covering corruption.

References:

No reference, because no case was reported.

YES: A YES score is earned if there were no documented cases of CSO activists being killed related to a corruption case in the specific study period.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

100

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

Trade unions are specifically mentioned in the Constitution as one of those associations to which a citizen has a right to belong.

References:

Nigerian Constitution, 1999, Section 40;
Trade Unions Act, Section 12

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

There are 29 workers' unions and 45 senior staff and employers' associations in Nigeria.

References:

Trade Unions Act, 1990, Chapter. 437 Laws of Nigeria, Schedule 3, Parts A & C

100: Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

5a. In law, freedom of the media is guaranteed.

YES | NO

Comments:

The constitutional provision on freedom of expression goes beyond individual freedom by further stating specifically that every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions”.

References:

Nigerian Constitution, 1999, Section 39 (2)

YES: A YES score is earned if freedom of the press is guaranteed in law, including all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

Comments:

Freedom of expression is a constitutionally guaranteed right of every Nigerian citizen.

References:

Nigerian Constitution, 1999, Section 39 (1)

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form media entities?

69

6a. In practice, the government does not create barriers to form a media entity.

100 | 75 | 50 | 25 | 0

Comments:

Government creates no barriers to form media entities, beyond restricting the wave length of broadcasting houses. However, government specifically does not grant media licences to religious bodies and political parties.

References:

There are currently no religious or political party proprietors of media houses in Nigeria.

100: Media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system.

75:

50: Formation of media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. Division of broadcast bandwidth is widely viewed to be used as a political tool.

6b. In law, where a media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

An aggrieved applicant for media license can always appeal the decision.

References:

When the National Broadcasting Commission denied Channels Television the right to re-transmit TV Africa's signals to Nigeria, the owner of TV Africa, Africa Media Group Ltd., obtained a Federal High Court injunction against the Commission. The Commission later challenged this injunction.

The Guardian, "Twist in broadcast commission, TV Africa's Tango", p. 62, Monday, August 7, 2000.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied media license. A YES score is also earned if no license is necessary.

NO: A NO score is earned if there is no appeal process for media licenses.

6c. In practice, where necessary, citizens can obtain a media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Administrative bottlenecks compounded by human factor often delay the processing of licenses. This is further compounded by the frequent transfer of schedule officers.

References:

Interview with a veteran journalist.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Each class of media license has a fixed price, but these prices continuously increase. Consequently only the rich have enough capital to obtain media licenses.

References:

For example, to register a new newspaper with the Newspaper Registration Board in 2000, an applicant had to pay:

(a) a registration deposit of 250,000 naira (US\$1,950), which is put into a Special Fund to service fines or libel suit the newspaper may fall liable during its operation,

(b) a non-refundable deposit of 100,000 naira (US\$780).

If a libel suit consumes the 250,000 naira deposit, the newspaper must make it up within seven days.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are the media able to report on corruption?

67

7a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

Comments:

It is one of the duties of the press to truthfully expose wrongdoing. The laws of defamation do not cover cases of TRUTHFUL report, even if the reputation of the plaintiff is injured.

References:

Ademola Yakubu
Press Law in Nigeria, pps. 60-63,
Lagos, Malthouse Press Ltd, 1999
-contains information on important court decisions on defamation –

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

7b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

The national government has privatised its newspapers but owns the very influential Nigerian Television Authority (NTA) network. Under the present Director-General of NTA, one has the impression that there is self-restraint in publicizing official corruption. However the privately owned print and electronic media have gained popularity by publishing corruption-related stories.

References:

EFCC Probe How Nnamani Looted N40 Billion”,
The Week , Vol. 23, No 8, February 27, 2006
– explosive magazine front page article devoted to alleged corruption of a State Governor-

“Bribery Scandal Shakes Senate:

The Week, Vol. 18, No 26, October 6, 2003
-story on alleged bribery scandal in Senate-

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

7c. In practice, there is no prior government restraint on publishing corruption-related stories.

100 | 75 | **50** | 25 | 0

Comments:

Although there is no prior government restraint on publishing corruption related stories, the fact that very important party leaders who are widely believed to be corrupt have not been exposed, suggests some kind of prior restraint. However, the Economic & Financial Crimes Commission (EFCC) has openly declared that there are no sacred cows in its anti-corruption investigation drive.

References:

The Ribadu Revolution-Nobody is Untouchable”
Tell, No.3, January 16, 2006;

“EFCC Swoops on Lawmakers; Over Bribery Allegation, Probes Their Bank Accounts”,
Nigerian Tribune, No. 13,896, Monday, May 15, 2006

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. In countries where illiteracy is higher, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material.

8. Are the media credible sources of information?

69

8a. In law, media companies are required to disclose their ownership.

YES | NO

Comments:

Media houses like all corporate bodies must disclose their ownership while registering their company with the Corporate Affairs Commission.

References:

Corporate Affairs Commission enabling law;
The Newspaper Act (1993);
The News Media Council Act (1990);
The National Broadcasting Commission enabling laws- Decree 32 of 1992.

YES: A YES score is earned if media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

8b. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

Journalists are not all equally well-trained and so do not equally adhere to professional rules of practice. Some journalists are known to receive 'brown envelopes' to induce favourable reporting, although the Nigerian Union of Journalists (NUJ) continuously decries this practice by those it calls 'bad eggs' in the profession.

References:

Interview with veteran journalist.

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

8c. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

Both private and government media houses were required to give equal access to the many political parties in terms of news, and there were no discriminatory fees charged for advertisements. However the parties with more money naturally benefited from more PAID advertisements.

References:

Rules of the National Broadcasting Commission regarding fair coverage of all political parties;
The Newspaper Act (1993);
The News Media Council Act (1990);
The National Broadcasting Commission enabling laws- Decree 32 of 1992 and Sec 1(5) of Decree 55 of 1999

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

8d. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

State-owned media are specifically required by law to give equal access on a daily basis to all registered political parties or candidates of such parties". In practice they are equitable and non-discriminatory in their charges, but in a privatised economy, the parties and candidates with more money are better able to PAY for ADVERTISEMENTS, including prominent bill boards and posters.

References:

Electoral Act, 2006, Section 102 – on legal requirement of equal access to STATE-OWNED media;
National Broadcasting Commission Decree 32 of 1992;
Newspaper Act of 1993 on laws enjoining equitable access

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

9. Are journalists safe when investigating corruption?

100

9a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

Comments:

There have been no reports of imprisonment of journalists investigating corruption.

References:

No reference, because no cases have been reported.

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

9b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

No journalist investigating corruption has been reported harmed.

References:

No reference, because no case has been reported.

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

9c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

Comments:

No journalist investigating corruption has been reported harmed.

References:

No reference, because no cases were reported.

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81
I-3. Public Access to Information

10. Do citizens have a legal right of access to information?

0

10a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

The right of access to public documents is not firmly granted by the Constitution. It is even severely restricted by the Official Secrets Act

References:

Official Secrets Act

YES: A YES score is earned if there is a formal right to access any government documents. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request. There should be a formal process for requesting this information.

NO: A NO score is earned if there is no such right.

10b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | **NO**

Comments:

Citizens do not have automatic constitutional right to access official informatio because documents are often classified as secret.

References:

Official Secrets Act

YES: A YES score is earned if there is a formal process of appeal for rejected information requests.

NO: A NO score is earned if there is no such formal process.

10c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | **NO**

Comments:

There is no institutional mechanism for citizens to request government documents, except maybe to go to the Ministry of Information to see if such documents are available there.

References:

No such mechanism exists, so no reference.

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

11. Is the right of access to information effective?

11a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Since access to information is not a right, the time required depends on the officer in every particular situation.

References:

Official Secrets Act

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

11b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The cost of access can be as low for photocopying, but this is only if access is granted.

References:

Official Secrets Act

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

11c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Appeal for access is not expected, since no such right exists.

References:

Official Secrets Act

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

11d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

It will be unnecessary to appeal, because no right to access exists.

References:

Official Secrets Act

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

11e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

The government is not obligated to give reasons, beyond citing official secret”.

References:

Official Secrets Act

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁷³Voting & Citizen Participation

12. Is there a legal framework guaranteeing the right to vote?

100

12a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

Comments:

There is legal right for all citizens who have attained the age of 18 years to vote.

References:

Nigerian Constitution, 1999, Section 77 (2)

Electoral Act, 2006, Section 13, which spell out legal qualification for citizens to register to vote.

YES: A YES score is earned if the right to vote is guaranteed to all citizens of that country. A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

12b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

All elective offices have their constitutionally specified terms of office at the expiration of which elections must held.

References:

Electoral Act, 2006, Section 26;

For establishment of 4-year terms of office see Nigerian Constitution, 1999, .Sections 64,105,135

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

13. Can all citizens exercise their right to vote?

92

13a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

All Nigerian citizens ordinarily resident in a Local Government Area, who have attained the age of 18, are entitled to register and vote.

References:

Electoral Act, 2006, Sections Sections 13 and 109, spell out qualifications necessary to be registered as a voter.

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

13b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

All recent elections have provided for open-secret balloting, an ingenious combination of secret marking of the ballot paper after which the voter puts the well-enveloped ballot into a transparent ballot box which is displayed in the open view of everyone to see that only one vote was cast. In law also, a voter cannot be forced, even in a legal proceeding, to say for whom he voted.

References:

Electoral Act, 2006, Section 53 and Section 120 (for voting procedure);
Electoral Act, 2006, Section 156 (for legal protection of the secrecy of a citizen's vote)

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

13c. In practice, elections are held according to a regular schedule.

Comments:

During the last 2003 elections, both the elections of the President and State Governors, and the elections into the Federal and State legislatures were held on schedule. There are indications that the forthcoming 2007 National elections will be held on time, before May 2007.

References:

2007: INEC Will Surprise Cynics-Prof. Iwu”

INEC Network, The Monthly Newsletter of the Independent National Electoral Commission, April 2006

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

14. Are citizens able to participate equally in the political process?

80

14a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

The right to form and join political parties is protected by the Constitution. This is however subject to the powers of the Independent National Electoral Commission (INEC) to register political parties. In effect, Nigerians can form as many political associations as they desire, but only INEC can recognize and register political parties that can nominate candidates for election.

References:

Nigerian Constitution, 1999, Sections 40, 222-229;

Electoral Ac, 200 Section 78,

-for powers of INEC to register political parties-

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

14b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

All citizens who meet the Constitutional requirements for the particular post, and who are not indicted of any crime can be candidates. However, their candidacy can be presented only through the nomination of a registered political party. There is currently no room for independent candidates.

References:

Electoral Act 2006, Section 35 (1) and (2);
Nigerian Constitution, 1999, Sections 65, 66
-for qualifications to be a member of the National Assembly;

Nigerian Constitution, 1999, Section 133
-for qualifications to contest to be President.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

14c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

In practice, not all citizens who have the right are able to form political parties by virtue of financial inability to operate a political party. It is therefore financially easier to join an existing party than to participate in FORMING one. The fact that there are over 32 recognized national political parties indicates the high propensity and ability of Nigerians to form political parties.

References:

The Constitution outlaws ethnic or religious political parties in view of their highly divisive potentials in a plural society like Nigeria.

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

14d. In practice, all citizens can run for political office.

100 | 75 | **50** | 25 | 0

Comments:

Although there are no legal barriers against joining the registered parties, it requires substantial financial sacrifice to run for public office in Nigeria.

References:

Cost of Elections Too High, Says Obasanjo”
Vanguard, Vol. 22: No. 6096,p.1
Tuesday, June 20, 2006,

Electoral Act, 2006, Section 93 subsections 2-17,
E.g. The limit for presidential candidate is 500 million Naira (US\$3,9 million)
-for the very high limit of expenditure allowed by law for candidates running for different offices see:

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

14e. In practice, an opposition party is represented in the legislature.

100 | **75** | 50 | 25 | 0

Comments:

Although there is a big majority of the ruling Peoples Democratic Party (PDP) in the National Assembly, there is an appreciable number of non-PDP members. However, the recent practice of some non-PDP legislators 'decamping' to join the ruling party clearly raises the issue of a viable opposition.

References:

The website of INEC for the election status of political parties in the National Assembly:
www.inecnigeria.org

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

15. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

15. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

The Independent National Electoral Commission is established by law to regulate elections.

References:

Nigerian Constitution 1999, Section 40 and Sections 221 to 228;
Electoral Act 2006

YES: A YES score is earned if there is an agency or set of agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no agency or set of agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police.

16. Is the election monitoring agency effective?

75

16a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:

Members of INEC are protected from political influence only in law. In practice, influential members of the ruling national party nominate members of the Electoral Commission for Presidential appointment.

References:

ANPP Challenges Appointment of New INEC Commissioners”,
Thisday ,Vol. 9, No. 3040, p.2.
Tuesday August 19, 2003

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies being contested in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no election monitoring agency.

16b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | **50** | 25 | 0

Comments:

Members of the Independent National Electoral Commission (INEC) and the Resident Electoral Commissioners at the States are all appointed by the President of the Federal Republic of Nigeria in exercise of his many powers of appointment in the 1999 Nigerian Constitution. By law, members of the Commission cannot be open card-carrying members of any political party. However it is common knowledge that the nomination of each member is usually at the instance of a notable stalwart of the President’s party.

References:

Electoral Act, 2006, Section 152
-on the nonpartisan requirement of membership of INEC;

ANPP Challenges Appointment of New INEC Commissioners”
Thisday,Vol. 9, No. 3040, p.2,
Tuesday August 19, 2003
-as evidence of popular perception of independence of members

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

16c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

The bureaucracy of the Independent National Electoral Commission (INEC) is manned by professionals. However, due to the enormous amount of manpower required for the conduct of elections, predominantly members of the public are TEMPORARILY appointed by INEC to conduct the elections under the supervision of the permanent staff of the Commission.

References:

The Chairman of INEC during a recent question-and-answer session after his public lecture in my University, indicated that of the 500,000 officials needed in the field to conduct the 2007 elections, less than 7 percent will be permanent INEC staff. Section 30 (1) and (2) Electoral Act 2006 spells out the power of INEC to appoint and deploy such other officers for the conduct of registration of voters and elections”.

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

16d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | **75** | 50 | 25 | 0

Comments:

Since the Independent National Electoral Commission (INEC) is a statutory body and is financed by the Federal Government, it is also expected to give a report of its activities to the government after each election. The report of the April 2003 Federal and State elections however was not ready six months after the elections. This delay is attributable to long legal challenges of elections results, many months after the elections.

References:

INEC: Report of 2003 Elections”;

“Buhari Asks Court to Void Obasanjo’s Re-election”,
Vanguard, front page,
Friday, October 17, 2003;

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

16e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Independent National Electoral Commission (INEC) is fully empowered to indict electoral offender in the courts of law.

References:

See Electoral Act 2006 for extensive powers of INEC in relation to the conduct of elections.

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

17. Are elections systems transparent and effective?

92

17a. In practice, there is a clear and transparent system of voter registration.

Comments:

The Independent National Electoral Commission (INEC) conducts regular and transparent voter registration exercises.

References:

See "Registration" on INEC website www.inecnigeria.org on current preparations for oncoming voter registrations for the 2007 elections.

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and "ghost" voting by non-existent voters is common.

17b. In law, election results can be contested through the judicial system.

YES | NO

Comments:

All election results can be legally contested, first at the Special Election Tribunals and subsequently in the regular law courts.

References:

Electoral Act 2006,
Part IX: Determination of Election Petitions Arising from Elections, Sections 140 – 151

"Buhari Asks Court to Void Obasanjo's Re-election",
Vanguard, front page,
Friday, October 17, 2003

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

17c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Nigerian courts are ever so busy after elections, and election cases have been appealed even up to the Supreme Court.

References:

Supreme Court Rules on Non-Rejoinder of PDP on November 14",
Vanguard, Friday, October 17, 2003

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

17d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

The Army and Security Forces are basically used to ensure peaceful conduct of elections.

References:

In recent weeks, the Chairman of INEC in his visits to the states, has been briefing State Commissioners of Police on their expected duties in forthcoming elections;
NTA Network Broadcasts

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

17e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

Comments:

The law allows for accredited observers” to be present at the polling stations.

References:

Electoral Act, 2006, Section Section 62 (1)

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

17f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

Both domestic and international observers were freely admitted to monitor the 2003 elections.

References:

See Report of Commonwealth Observers on 2003 Nigerian Elections.

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers’ activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers’ movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

89
II-3. Political Financing

18. Are there regulations governing political financing?

100

18a. In law, there are regulations governing private contributions to political parties.

YES | NO

Comments:

Independent National Electoral Commission (INEC) has powers not only to limit individual or corporate contribution to political party finances. It also has powers to limit the amount which candidates can spend on a given constituency election. INEC is also empowered to impose fines, if such stipulated limits of expenses are exceeded.

References:

Electoral Act 2006:

Section 92 (1)

Section 93, subsections 1 to 12 for specified limits of candidates' expenditures as well as the fines that can be imposed.. Section 93 (9) specifically limits individual or corporate donation to a candidate to one million naira.

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

18b. In law, there are limits on individual donations to candidates and political parties.

YES | NO

Comments:

The Electoral Act has set limits of individual contribution to candidates and political parties.

References:

Electoral Act, 2006, Section 93

YES: A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

18c. In law, there are limits on corporate donations to candidates and political parties.

YES | NO

Comments:

There are legally-set limits of corporate contributions to political parties.

References:

Electoral Act, 2006, Section 93

YES: A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

18d. In law, there are limits on total political party expenditures.

YES | NO

Comments:

There are legal limits to party electoral expenses.

References:

Electoral Act, 2006, Section 93

YES: A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

18e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

Comments:

There are legal requirements for disclosure of donations to parties and candidates, otherwise there would be no way to know if the limits have been exceeded.

References:

Electoral Act 2006

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

18f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | NO

Comments:

The political parties are required to submit audited accounts of their finances.

References:

Electoral Act 2006

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

19. Are the regulations governing political financing effective?

17

19a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

Comments:

It is difficult to track down how much candidates spend.

References:

Publications on INEC website, where the former INEC Chairman Abel Guobadia lamented the numerous ways politicians can circumvent the limits
www.inecnigeria.org

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

19b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

Comments:

It is difficult to monitor corporate campaign donations.

References:

Publications on INEC website, where the former INEC Chairman Abel Guobadia lamented the numerous ways politicians can circumvent the limits
www.inecnigeria.org

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

19c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

It is difficult to monitor total expenditure.

References:

Publications on INEC website, where the former INEC Chairman Abel Guobadia lamented the numerous ways politicians can circumvent the limits
www.inecnigeria.org

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

19d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Independent National Electoral Commission (INEC) is empowered to initiate investigations. Potentially aggrieved rival parties can petition INEC to initiate investigations.

References:

Electoral Act 2006, Section 86
– for power to initiate inquiry on party compliance to rules

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

19e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Though the Independent National Electoral Commission (INEC) is empowered to impose penalties for violation, there has so far been no case of such penalties having been imposed.

References:

No reported case of penalty imposed

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

19f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

Comments:

Last 2003 election audited reports of the parties have been submitted to the Independent National Electoral Commission (INEC).

References:

Privileged information from a high official of INEC.

100: Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

20. Can citizens access records related to political financing?

0

20a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Although the Electoral Act empowers the Independent National Electoral Commission (INEC) to publish party audits in three National Newspapers, these publications are yet to be made.

References:

Electoral Act 2006, Section 88 (4)

100: Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

20b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Although such party finance audits are public documents, they have not yet been released to the public.

References:

No report of citizens getting access to the already audited reports.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

20c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Though it would cost only the price of a newspaper, the party audits are not yet released.

References:

Report not yet made public.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. ⁷⁰Executive Accountability

21. In law, can citizens sue the government for infringement of their civil rights?

100

21. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

Comments:

This is because the extant 1999 Constitution of the Federal Republic of Nigeria guarantees the numerous rights.

References:

All infringements of the fundamental rights guaranteed in Section 33 through Section 43 of 1999 Nigerian Constitution are actionable in Court;
See also power of adjudication of the Nigerian court between all authority and the citizen in Section 6 (B) of Nigerian Constitution of 1999

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

22. Can the chief executive be held accountable for his/her actions?

75

22a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

In order to convince the public to accept government policies, explanations even of the most unpopular policies are often offered in the press.

References:

No Going Back on Monetisation — Obasanjo”
The Punch, front page,
Monday, September 1, 2003, Vol. 17, No. 18,898;

“CBN to Contract Out Currency Operations”,
Vanguard, Vol. 21, No. 5672, p.6,
Friday, May 27, 2005

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

22b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

The judicial power of review is entrenched in the 1999 Nigerian Constitution.

References:

Nigerian Constitution, 1999, Section 6(b)

-specifically the power to adjudicate in all matters between government or authority and any person in Nigeria".

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

22c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

There are numerous court challenges of government actions by Nigerian citizens. However in most cases, the court has been very careful not to undermine the doctrine of separation of powers.

References:

For court challenges of government action see:
Danjuma's Oil Licence Has Ceased to Exist, FG Tells Court",
Vanguard, p.5,
Tuesday, June 20, 2006;

"Writ of Certiorari Cannot Lie Against Executive or Administrative Acts"
The Punch, Vol. 17, No. 18,898, p. 72,
Monday, September 1, 2003

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

22d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | **50** | 25 | 0

Comments:

Executive orders are often used even when opposed by legislature.

References:

Senate Halts Sale of Afribank Shares",
Vanguard, Vol. 21, No. 5672, p.1,
Friday, May 27, 2005

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

23. Is the executive leadership subject to criminal proceedings?

50

23a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

The Nigerian Head of State can be impeached but is NOT liable to prosecution in criminal matters while STILL IN OFFICE.

References:

See Section 308 of 1999 Nigerian Constitution for immunity of President, Vice-President, State Governors and Deputy Governors;

See also the case of immunity reported for Governor of Plateau State as acknowledged in the EFCC court corruption charge along with several state officials:

EFCC Files N700m Fraud Charges against Dariye, Others”

The Guardian, Vol. 12, No. 9,947, front page, ps. 2 and 4, Friday, February 17, 2006;

See also reference made to the immunity of corrupt Governors by ICPC:

“24 governors Corrupt, ICPC Chairman”

Daily Sun, p. 2,

Thursday, March 2, 2006

For procedure for impeachment see 1999 Nigerian Constitution, Section 143;

Independent Corrupt Practices and Other Related Offences Act 2000, Section 52 (1);

Fifth Schedule, Part I, Sec 18 (3) and (6)

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

23b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:

Any ministerial officer that commits an actionable offence can be prosecuted.

References:

Independent Corrupt Practices and Other Related Offences Act 2000, Section 8 (1)

Nigerian Constitution 1999, Fifth Schedule, Part I, Sec 18 (3) and (6).

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on

ministerial-level officials.

24. Are there regulations governing conflicts of interest by the executive branch?

38

24a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:

This is a constitutional requirement which he must fulfil within three month of assuming office and at the end of his term of office.

References:

Code of Conduct Bureau and Tribunal Decree 1 of 1989.;
Section 140, 1999 Nigerian Constitution;
Nigerian Constitution 1999, Fifth Schedule, Part I, Sec. 11.

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

24b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

Comments:

Ministers, as public officers, must declare their assets to the Code of Conduct Bureau within three months of assuming office and at the end of their term of office.

References:

Nigerian Constitution 1999, Fifth Schedule, Part I, Sec. 11

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

24c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

Comments:

Regulations are based of the Code of Conduct Regulations and Restrictions.

References:

Nigerian Constitution 1999, Sections 6, 7 and 8 of Part 1 of the 5th Schedule

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

24d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

Comments:

There is no independent auditing of asset declarations. The Code of Conduct Bureau simply examines the declarations”.

References:

Nigerian Constitution 1999, Third Schedule, Part I, A, Section 3 (b)

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

24e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

Comments:

There is no restriction on post-office employment of head of state.

References:

Reference inapplicable, since no such law exists.

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

24f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

Since no restriction exists, there is no issue of effectiveness.

References:

Reference inapplicable, since no such law exists.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

24g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

Though the present Obasanjo government is combating corruption, there are widespread indications that ministers past and present became wealthy while in office.

References:

No concrete reference yet, until exposed by the Economic and Financial Crimes Commission (EFCC).

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

24h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

There is no auditing done on asset declarations, which are only examined by Code of Conduct Bureau.

References:

Nigerian Constitution 1999, Third Schedule, Part I, A, Section 3 (b)

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

25. Can citizens access the asset disclosure records of the heads of state and government?

33

25a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

Comments:

The constitution enjoins Code of Conduct Bureau to make such declarations of asset available for inspection by any citizen of Nigeria as the National Assembly may prescribe”.

References:

Nigerian Constitution 1999,Third Schedule, Part I, A, Section 3 (c)

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

25b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Though legally a public document, there has never been a report even in the most radical newspapers of anyone having examined or commented on such asset declarations.

References:

No report of any journalist having examined the asset declarations.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Nobody has ever been reported as having examined them.

References:

Reference inapplicable.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

26. In practice, is the ruling party distinct from the state?

75

26. In practice, is the ruling party distinct from the state?

100 | 75 | 50 | 25 | 0

Comments:

Even though People's Democratic Party (PDP) controls both chambers of the National Assembly, the infamous Third Term Amendment clause was rejected by the Legislature.

References:

Senate Defeats Third Term. House Adjourns Abruptly; 21 for 18 against",
The Punch, front page,
Friday, May 12, 2006

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

27. Can members of the legislature be held accountable for their actions?

92

27a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

To the extent that the Supreme Court can interpret the constitution and rule on matters regarding the violation of Fundamental Rights of citizens, it can be said to have power to review actions of the legislature.

References:

Nigerian Constitution 1999, Section 233 (b) and (c)

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

27b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

There is only one recent case in the past year when the immediate past members of the National Assembly just before the end of their term attempted to rush (without adequate procedure) to repeal the anti-corruption act. The court ruled against the legislative attempt.

References:

Reference not readily available

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

27c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

Like any other Nigerian citizens, legislators are subject to prosecution on their personal capacities and as constitutionally recognised public officers" especially in cases of corruption.

References:

Independent Corrupt Practices and Other Related Offences Act 2000, Section 8 (1);
Nigerian Constitution 1999, Fifth Schedule, Part I, Sec 18 (3) and (6)

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

28. Are there regulations governing conflicts of interest by members of the national legislature?

29

28a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

Comments:

Every legislator is by constitution required to declare his/her assets and liabilities on taking office.

References:

Nigerian Constitution 1999, Section 52 (1)

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

28b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

Comments:

There is no such restriction.

References:

Reference inapplicable since no such law exists.

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

28c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:

Such gift will come under receiving gratification", which is an illegal corrupt practice.

References:

ICPC Act 2000, Offences and Penalties (10)

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

28d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

Comments:

There is no independent auditing of asset declarations. The Code of Conduct Bureau simply examines the declarations”.

References:

Nigerian Constitution 1999, Third Schedule, Part I, A, Section 3 (b)

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

28e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | **0**

Comments:

There is no restrictions on post-office employment of legislators. Lawmakers are often engaged in business while sitting in the legislature.

References:

Reference not applicable.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

28f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Legislators soon on getting to office begin to look very affluent, giving the suspicion that they are not clean.

References:

EFCC Swoops on Lawmakers over Bribery Allegation. Probes Their Bank Accounts”, Nigerian Tribune, front page
Monday, 15 May 2006

100: The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

28g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

There is no independent auditing of asset declarations. The Code of Conduct Bureau simply examines the declarations”.

References:

Nigerian Constitution 1999, Third Schedule, Part I, A, Section 3 (b)

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

29. Can citizens access the asset disclosure records of members of the national legislature?

33

29a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

Comments:

The Constitution requires Code of Conduct Bureau to make such declarations of asset available for inspection by any citizen of Nigeria as the National Assembly may prescribe”.

References:

Nigerian Constitution 1999, Third Schedule, Part I, A, Section 3 (c)

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

29b. In practice, citizens can access these records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Though legally a public document, there has never been a report even in the most radical newspapers, of anyone having examined or commented on such asset declarations.

References:

No report of any journalist having examined the asset declarations.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

29c. In practice, citizens can access these records at a reasonable cost.

100 | 75 | 50 | 25 | **0**

Comments:

Nobody has ever been reported as having examined them.

References:

Reference inapplicable

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

30. Can citizens access legislative processes and documents?

100

30a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

The debates in the legislatures are by law supposed to be published in Hansards.

References:

See National Assembly debates in Hansards.

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

30b. In practice, citizens can access these records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Where the legislature's press is efficient, the Hansard can appear within a few days after the debates.

References:

Reference not applicable.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access these records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

They are sold at minimum cost to the public and often sent for free to subscribers, such as libraries.

References:

Reference not applicable.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

63
III-3. Judicial Accountability

31. Are judges appointed fairly?

100

31a. In practice, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

The appointment of national-level judges is made by the President on the advice of the Federal Judicial Service Commission to the National Judicial Council. Its recommendation is subject to confirmation of the Senate.

References:

Nigerian Constitution 1999, Section 231; Section 238; and 3rd Schedule, Part I, Section 13(a)

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight.

31b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

They are experienced judges.

References:

Nigerian Constitution 1999, Section 231 (3) and Section 238 (3)

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

31c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

National level judges are confirmed by the Senate.

References:

Nigerian Constitution 1999, Section 231 (1) and Section 238 (1)

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

32. Can members of the judiciary be held accountable for their actions?

75

32a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:

Judges must show clearly that the Court considered all the evidence at trial and establish the rationale for the decision.

References:

The most authoritative source is the Locus Classicus case of *Mogaji V. Odofin* (1978)3 Supreme Court.

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

32b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

As it is in law, so it is in practice.

References:

Locus Classicus case of Mogaji V. Odofin (1978)3 Supreme Court.

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

32c. In law, there is an ombudsman (or equivalent agency or mechanism) for the national-level judicial system.

YES | NO

Comments:

There is no equivalent for the ombudsman specifically for the judiciary. In terms however of disciplinary power, the closest is the Federal Judicial Commission, which exercises disciplinary power over erring judges. However, because it is made up of judges, it cannot really be seen as an ombudsman per se.

References:

See power of Federal Judicial Service Commission to recommend to the National Judicial Council the removal of erring judges: Third Schedule, Part I, Sec 13 (b).

YES: A YES score is earned if there is a ombudsman or equivalent mechanism for the judicial system. A judicial ombudsman is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a judicial ombudsman.

32d. In law, the judicial ombudsman (or equivalent agency or mechanism) is protected from political interference.

YES | **NO**

Comments:

Since there is really no special ombudsman for the judiciary, its independence is inapplicable. The Federal Judicial Commission is made up of judges.

References:

See power of Federal Judicial Service Commission to recommend to the National Judicial Council the removal of erring judges: Third Schedule, Part I, Sec 13 (b).

YES: A YES score is earned if there are formal rules establishing that the judicial ombudsman is operationally independent from political interference by the executive, legislative or judicial branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial ombudsman. A NO score is given if the judicial ombudsman function is carried out by an inherently subordinate organization, such as an executive ministry or legislative committee.

32e. In practice, when necessary, the judicial ombudsman (or equivalent agency or mechanism) initiates investigations.

100 | 75 | **50** | 25 | 0

References:

See power of Federal Judicial Service Commission to recommend to the National Judicial Council the removal of erring judges: Third Schedule, Part I, Sec 13 (b).

100: The ombudsman aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The ombudsman is fair in its application of this power.

75:

50: The ombudsman will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The ombudsman, though limited in effectiveness, is still fair in its application of power.

25:

0: The ombudsman rarely investigates on its own or cooperates in other agencies' investigations, or the ombudsman is partisan in its application of this power.

32f. In practice, when necessary, the judicial ombudsman (or equivalent agency or mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The disciplinary organ to impose penalties on judiciary offenders is not an ombudsman per se, but the Judicial Service Commission.

References:

Third Schedule, Part I, Sec 13 (b);

Corruption In The Judiciary: What Their Lordships Say”,

The Guardian, p.62,

Sunday, August 14, 2005

-accounts of two retired Justices of the Supreme Court (Justice Esho and Justice Uwaifo) on the disciplinary issue of corrupt judges

100: When rules violations are discovered, the ombudsman is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The ombudsman enforces rules, but is limited in its effectiveness. The ombudsman may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The ombudsman does not effectively penalize offenders. The ombudsman may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The ombudsman may be partisan in its application of power.

III-4. Budget Processes

33. Can the legislature provide input to the national budget?

83

33a. In law, the legislature can amend the budget.

YES | NO

Comments:

The legislature has powers to approve any amounts it desires in respect of the Appropriation Bill.

References:

Nigerian Constitution 1999, Section 81, (1) ,(2) and (4)

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can approve, but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

33b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

References:

Nigerian Constitution 1999, Sections 80 and 81

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

33c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

The National Assembly has ample capacity to monitor the budget process. They also approve all the money they need for their operations.

References:

No specific reference, since the legislators have never complained of lack of capacity or funds.

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

34. Can citizens access the national budgetary process?

50

34a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | **50** | 25 | 0

Comments:

Budget debates are public, but many negotiations on items are done in closed sessions, and individual contributions are not made public. Bargains with the Executive are also not public.

References:

Interview with a Senator

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

34b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | **0**

Comments:

Formal inputs to the budget are between the executive and legislature, not open to ordinary citizens or CSOs.

References:

No specific reference

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

34c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

The President and the minister of Finance usually make public speeches in the media, in which they clarify budgetary allocations.

References:

See annual budget broadcasts

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

35. In law, is there a separate legislative committee which provides oversight of public funds?

100

35. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

Comments:

There is a Public Accounts Committee in the legislature as one of the Standing Committees.

References:

Nigerian Constitution 1999, Section 62 (3);
Standing Orders of each house of the National Assembly

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists. A NO score is earned if there is a body executing this function but it is not under the direction of the legislature.

36. Is the legislative committee overseeing the expenditure of public funds effective?

44

36a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

Regular reports of heads of department to the finance committee are rare.

References:

No specific reference

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

36b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

The chairmanship of major committees in the legislature is reserved for the majority party. However, other party members are represented in the finance committee.

References:

Standing Orders of the National Assembly

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee’s work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members’ ability to shape the committee’s activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

36c. In practice, this committee is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The Public Accounts Committee is often a weapon used by the Legislature to publicly harass the Executive on spending.

References:

These interviews with members of the Executive are often televised, e.g. Sunday NTA network program called Senate 105”.

100: This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

75:

50: This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

25:

0: This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee’s behavior and

decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

36d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

The committee is not effective. It is too partisan and is used more as window dressing.

References:

Due Process and Oil Windfall”

The Punch, p. 16,

Monday, June 19, 2006

– editorial on the ineffective noise made when it was discovered that the minister of Finance had already paid the negotiated debt to the Paris Club WITHOUT express legislative approval

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category IV. Administration and Civil Service

IV-1. ⁸⁵Civil Service Regulations

37. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

37a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

Comments:

The Federal Civil Service Commission is an independent statutory body charged with the responsibility of appointment, promotion and discipline of its members; this ordinarily minimizes nepotism in the service.

References:

Nigerian Constitution 1999, Third Schedule, Part I, D for Federal Civil Service Commission;
The Public Service Rules of 2000

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

37b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

Every public officer is prohibited from seeking the influence of prominent persons for ensuring the due consideration of his interests.

References:

See the combined effect of sections 02101, 04305, 02702 and Section 04426 of the Public Service Rules.

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

37c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

Redress can be sought through law courts or through petition to Public Service Commission and/ or Federal Character Commission.

References:

UNILORIN: Sacked Lecturers Lose at Appeal Court”,
The Punch, p. 9,
Thursday, July 13, 2006;

See 1999 Nigerian Constitution:

Third Schedule, Part I, D for Federal Civil Service Commission;
Part I, C for Federal Character Commission;

The Public Service Rules of 2000

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism’s decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

37d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

Comments:

Whenever a public servant is convicted, he is dismissed, and dismissal carries an infamy which prevents him from future government employment.

References:

Public Service Rules, Section 02206(b)

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist.

38. Is the law governing the administration and civil service effective?

83

38a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Politicians cannot touch the appointment of civil servants lightly, as there are rules of procedure governing the determination of such appointments.

References:

Nigerian Constitution 1999, Public Service Rules and the 3rd Schedule, Part I (12c)

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

38b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants are appointed according to established criteria.

References:

Nigerian Constitution 1999, The Publics Service Rules, Section 02102, and the 3rd Schedule, Part 12c

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

38c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

Established criteria are claimed to be relied on even though tacit nepotism, cronyism, or patronage may occur.

References:

Nigerian Constitution 1999, Public Service Rules, Section 02207

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

38d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

Although various department heads create job description, there are usually no rigid rules on this score.

References:

Nigerian Constitution 1999, Public Service Rules, Section 04427

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

38e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

Bonuses are rare, but there are entitlements to several allowances, such as housing, meal, transport, annual leave etc.

References:

Teachers Reject Salaries over Non-Inclusion of Servants' Allowance",
The Comet, Monday, July 17, 2006;

See Public Service Salary Scale

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

38f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

The available establishments" to be filled, listed in the department annual budgets, are internal documents largely available to managerial levels.

References:

Financial Regulations 2000

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

38g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | **50** | 25 | 0

Comments:

Law courts have often ruled on such disputes, sometimes in favour and sometimes against the plaintiff.

References:

UNILORIN: "Sacked Lecturers Lose at Appeal Court",
The Punch, p. 9,
Thursday, July 13, 2006

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

38h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

Wages and salaries become due and payable at intervals not exceeding one month. During the past year, due to an evident financial boom from oil sales, the government has paid salaries regularly.

References:

The most authoritative source is Section 15 of the Labour Act Cap.198 L.F.N. 1990

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

38i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

In practice as it is in law, a civil servant convicted of corruption is prohibited from further government employment, except when granted amnesty.

References:

The most authoritative is Section 02206(b)(i) of the Public Service Rules, Nigerian Constitution 1999

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

39. Are there regulations addressing conflicts of interest for civil servants?

46

39a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

Comments:

Law requires all public officers to declare when there is conflict of interest.

References:

The Code of Conduct of Public Officers

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

39b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | **NO**

Comments:

Civil servants, once retired, can take up employment anywhere.

References:

No reference needed, since no such law exists.

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

39c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

Comments:

In the civil service and public service, all officers are prohibited from accepting gifts or presentations in anticipation or recognition of service rendered in their official capacity.

References:

Nigerian Constitution 1999, Public Service Rules, Section 04432

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

39d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

Civil servants, once retired, can take up employment anywhere.

References:

No reference needed, since no such law exists.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

Since the Obasanjo regime's fight on official corruption is yet to be won, there are still cases of violations of the rule on gifts and hospitality.

References:

No reference needed

100: The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their

decisions.

39f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

With the level of corruption not yet drastically reduced, public servants hardly recuse.

References:

No reference needed

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

40. Can citizens access the asset disclosure records of senior civil servants?

75

40a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

Comments:

The Code of Conduct by law is required to make the asset declarations available for inspection by any citizen of Nigeria on such terms as the National Assembly may prescribe.”

References:

Nigerian Constitution 1999, 3rd Schedule, Part 1, Section 3 (c)

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

40b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In practice there are virtually no known cases of someone successfully obtaining these records.

References:

Nigerian Constitution 1999, 3rd Schedule, Part 1, Section 3 (c)

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

40c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The cost is reasonable because it is lawfully a public document. The challenge is obtaining the records in the first place.

References:

Nigerian Constitution 1999, 3rd Schedule, Part 1, Section 3 (c)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

41. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

63

41a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

The police are theoretically legally bound to protect whistleblowers in Nigeria.

References:

Police Act Chapter 359, Section 23 L.F.N. 1990.

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

41b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

The authority for police to protect does exist, but the efficacy is entirely a different thing.

References:

Nigeria Police Stinks," Nigerian News World, front page, Jan 16, 2006

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

41c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

Private sector employees receive equal treatment from police as public sector employees; in theory the police would be bound to protect private sector whistleblowers as well.

References:

Police Act Chapter 359, Section 23, L.F.N. 1990

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

41d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

The protection exists for all Nigerians, without discrimination, in law, but in practice its application is shallow.

References:

Police Act Chapter 359, Section 23, L.F.N. 1990

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

42. Is there an effective internal mechanism (i.e. phone hotline, e-mail address, local office) where civil servants can report corruption?

100

42a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The internal auditors of public sector establishments are usually qualified professionals.

References:

Financial Regulations 2000, Chapter 20 for required of trained staff

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

42b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Internal audit departments are not generally known to be starved of funds.

References:

No report of shortage of funds

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

42c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The internal audit often acts fast.

References:

There has been no report of slow performance.

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

42d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Discovery and documentation of corruption occur in the normal course of duty of internal auditors of public sector institutions.

References:

There have been recent discoveries of the non-payment by Nigerian National Petroleum Corporation (NNPC) of oil revenues into the Federation account.

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

81 IV-3. Procurement

43. Is the public procurement process effective?

85

43a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:

Both the Constitution and the Corrupt Practices and Other Related Offences Act 2000 relate to the question of conflict of interest by public procurement officials.

References:

Nigerian Constitution, Fifth Schedule, Part I, Sec (1)

The Corrupt Practices and Other Related Offences Act 2000, Sections 17 and 19

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private gain for public procurement officials.

NO: A NO score is earned if no such rules exist.

43b. In law, there is mandatory professional training for public procurement officials.

YES | NO

Comments:

This is provided for by law.

References:

Financial Regulation 2000

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, or voluntary.

43c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:

In spite of the new anti-corruption acts and efforts by the Economic and Financial Crimes Commission (EFCC) to prosecute corrupt officers, the problem of bureaucratic corruption is still not fully overcome.

References:

24 Governors Corrupt, ICPC Chairman",
Daily Sun,
Thursday, March 2, 2006.

-it is to noted that there are 36 State governors in Nigeria, and so 24 "corrupt" ones make up to two thirds of the total number;
Report of widespread corruption pronounced by the new Chairman of the Independent Corrupt Practices and Related Offences Commission Justice Emmanuel Olayinka Oyoola.

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

43d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

Comments:

The Economic and Financial Crimes Commission (EFCC) is now empowered to investigate individuals whose lifestyles are not justified.

References:

See Special powers of EFCC in Economic and Financial Crimes Commission (Establishment) Act 2004, Section 7 (1) b

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

43e. In law, major procurements require competitive bidding.

YES | NO

Comments:

There is a law on competitive bidding on major procurements.

References:

Government Regulation on Due Process;
Finance (Control and Management) Act 1958;
Circular No. F. 15775 of June 2000 on New Policy Guidelines for Procurement and Award of Contracts in Government Ministries/Parastals”

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

43f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

Comments:

Even though not exactly a law”, the extant new Due Process Regulations require competitive tendering.

References:

The Due Process Regulations on competitive bidding;
Circular No. F. 15775 of June 2000 on New Policy Guidelines for Procurement and Award of Contracts in Government Ministries/Parastals”

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

43g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | **NO**

Comments:

There is no such exact law empowering protest by unsuccessful bidders, but there has been a recent proposal on this issue.

References:

Public Sector Procurement Reforms: The Nigerian Experience”
presented by Mr. S.A, Ekpenhio, Permanent Secretary, Political Affairs, The Presidency, Office of the Secretary to the Government of the Federation, at the Regional Workshop on Procurement Reforms and Transparency in Government Procurement for Anglophone African Countries, held in Tanzania on 16th January, 2003.

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

43h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

Comments:

The courts are empowered to entertain all cases where parties feel aggrieved or injured by government actions.

References:

Court Cautions BPE over Sale of ALSCON”,
The Guardian, back page
Thursday, April 7, 2005
-an unsuccessful bidder sues BPE for lack of transparency

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

43i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

Comments:

Bribery, whether by individuals or company officials, is a punishable offence.

References:

The Corrupt Practices and other Related Offences Act, 2000

YES: A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

43j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

Major violations of procurement regulations are punished by blacklisting.

References:

On September 13, 2006, a Nigerian Television Authority news flash read: Government Blacklists Seven Banks on Tinapa". This clearly implies there is a blacklisting of businesses that are found guilty of corrupt or unacceptable conduct.

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

44. Can citizens access the public procurement process?

44a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

Public procurement regulations are public documents.

References:

Financial Regulations 2000

YES: A YES score is earned if procurement rules are, by law, open to the public.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

44b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

Comments:

At the end of Executive Council's approvals of contract, a minister often briefs the press. The details of the contract award can be obtained by the press.

References:

Financial Regulations 2000

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

44c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

They become available as soon as they are published.

References:

No specific reference

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

They are available upon asking.

References:

No specific reference

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

44e. In practice, major public procurements are widely advertised.

100 | 75 | 50 | 25 | 0

Comments:

Advertisements of tenders of major public procurements are published in at least two national dailies or government gazette at

least six weeks before the submission of tenders.

References:

Reclamation and Development of FESTAC Town Phase II Lagos Under the Infrastructure Concession Regulatory Commission Act, 2005",
The Punch, p.32,
Monday, June 19, 2006
-advertisement for tender published by the Federal Housing Authority

100: There is a formal process of advertising public procurements. This may include a government Web site, newspaper advertising, or other official announcements. All major procurements are advertised in this way.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

44f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

The results of such procurement awards are usually subjects of news publications.

References:

No specific reference

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

45. Is the privatization process effective?

83

45a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

Comments:

In law, all businesses domestic or foreign, are eligible.

References:

Public Enterprises Act 2000

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

45b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:

The Constitution provides for conflict to interest issues.

References:

Nigerian Constitution 1999, Fifth Schedule, Part I, Sec (1)

YES: A YES score is earned if there are formal regulations defining and regulating conflicts of interest for government officials involved in privatization.

NO: A NO score is earned if there are no such formal regulations.

45c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

Comments:

In Nigeria, information on the excise is rarely published, so the process is not transparent.

References:

Reference not applicable

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

46. Can citizens access the terms and conditions of privatization bids?

100

46a. In law, citizens can access the terms and conditions of privatization bids.

YES | NO

Comments:

The law requires that the bids should be published.

References:

Public Enterprises Act 2000

YES: A YES score is earned if there is a formal process of publishing the details of privatization bids that makes information available to all citizens.

NO: A NO score is earned if there is no formal publication process, or if any citizens are excluded by law from accessing this information.

46b. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments:

The results are usually publicly announced.

References:

Public Enterprises Act 2000

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

46c. In practice, citizens can access the terms and conditions of privatization bids within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

As soon as citizens get the announcements, they can proceed to the Bureau of Public Enterprises offices at the Federal Capital (Abuja), Port-Harcourt or Lagos.

References:

Public Enterprises Act. 2000

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

46d. In practice, citizens can access the terms and conditions of privatization bids at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

They incur only travel cost to the bureau's offices.

References:

Reference not applicable

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁸⁹National Ombudsman

47. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

47. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

Comments:

The agency is called Public Complaints Commission of Nigeria.

References:

Public Complaints Commission Act, Chapter 377 L.F.N. 1990

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

48. Is the national ombudsman effective?

75

48a. In law, the ombudsman is protected from political interference.

YES | NO

Comments:

The commission is not subject to the direction or control of any other authority or person.

References:

Public Complaints Commission Act, Chapter. 377 L.F.N. 1990, Section 5(6)

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

48b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The commission is not subject to the direction or control of any other authority or person.

References:

Public Complaints Commission Act, Chapter. 377 L.F.N. 1990, Section 5(6)

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

48c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Only the National Assembly can remove the chief commissioner.

References:

Public Complaints Commission Act, Chapter. 377 L.F.N. 1990, Section 2(3)

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

48d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

While in office, The commissioner shall not hold any other office for emolument, whether in the public service or elsewhere.

References:

Public Complaints Commission Act, Chapter. 377 L.F.N. 1990, Section 2(7)

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

48e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The appointment of the agency is a creation of statute, and it is autonomous.

References:

Public Complaints Commission Act, Chapter. 377 L.F.N. 1990, Section 1(1)

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

48f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The commission is regularly funded like its counterpart in the public sector.

References:

Public Complaints Commission Act, Chapter. 377 L.F.N. 1990, Section 3(2)

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

48g. In practice, the agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

The commission does refer cases for further action to the National Assembly or to the appropriate state governor.

References:

Public Complaints Commission Act, Chapter. 377 L.F.N. 1990, Section 7(2) and (3)

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

48h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The commission acts more on received complaints.

References:

No specific reference

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

48i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

Comments:

The operation of the commission seems to be more by persuasion.

References:

No specific reference

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

48j. In practice, the government acts on the findings of the agency (or agencies).

100 | 75 | 50 | **25** | 0

Comments:

By necessary implication, referral is acted on by the appropriate authority.

References:

Public Complaints Commission Act, Chapter. 377 L.F.N. 1990, Section 7(2) and (3)

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

48k. In practice, the agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

There is no fixed time.

References:

No specific reference

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

49. Can citizens access the reports of the ombudsman?

100

49a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

Any report, records of any meeting, investigation or proceedings are privileged, and the production may not be compelled. However, the commission has regularly published its Annual Report.

References:

Public Complaints Commission Act, Chapter. 377 L.F.N. 1990, Section 10 (2)

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

49b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The report is privileged when being considered. This can be made available on conclusion, but in their public reports the precise name of the person involved is protected.

References:

Public Complaints Commission Act, Chapter. 377 L.F.N. 1990, Section 10(2)

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The report is privileged, and even this is in respect of cases that have been concluded. Public reports are however generally made available for free or at minimal cost to the citizen.

References:

Public Complaints Commission Act, Chapter. 377 L.F.N. 1990, Section 10(2)

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-2. Supreme Audit Institution

50. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

50. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:

There is an auditor-general of the Federation.

References:

Nigerian Constitution 1999, Section 85(1)

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

51. Is the supreme audit institution effective?

51a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

The Constitution expressly states the Auditor-General shall not be subject to the direction or control of any other authority or person”.

References:

Nigerian Constitution 1999, Section 85(6)

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

51b. In practice, the head of the agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

He holds tenure until retirement age.

References:

Nigerian Constitution 1999, Section 87(1) and (2)

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

51c. In practice, the agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Officers of the Office of the Auditor-General of the Federation are professional civil servants.

References:

Financial Regulations 2000, Chapter 20

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

51d. In practice, agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The Office of the Auditor-General is staffed with normal civil servants.

References:

Financial Regulations 2000, Chapter 20

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

51e. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Office of the Auditor-General is funded through the normal federal budget.

References:

No reference required

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

51f. In practice, the agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The Auditor-General makes an annual report to the National Assembly. To that extent, we may call it a public document.

References:

Nigerian Constitution 1999, Section 85(4)

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

51g. In practice, the government acts on the findings of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The government acts on Auditor-General's report.

References:

Privileged conversation with a National Assembly legislator.

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

51h. In practice, the supreme audit institution is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

He has power to initiate investigation on the strength of the Accountant-General's reports to him.

References:

Nigerian Constitution 1999, Section 85(2)
Financial Regulations 2000.

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

52. Can citizens access reports of the supreme audit institution?

0

52a. In law, citizens can access reports of the agency.

YES | **NO**

Comments:

There is no law granting access by ordinary Nigerian citizens (save National Assembly members) to the Auditor-General's report.

References:

No reference required

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

52b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

Since ordinary citizens do not have access to the report, the time period of access is inapplicable.

References:

No reference required

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52c. In practice, citizens can access the audit reports at a reasonable cost.

Comments:

Since ordinary citizens do not have access to the report, the cost factor of access is inapplicable.

References:

No reference required

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

66 V-3. Taxes and Customs

53. In law, is there a national tax collection agency?

100

53. In law, is there a national tax collection agency?

YES | NO

Comments:

The Federal Board of Inland Revenue and the Joint Tax Board are harmonizing all tax laws and practices.

References:

Personal Income Tax Decree of 1993

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

54. Is the tax collection agency effective?

100

54a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

They are normal civil servants.

References:

Income Tax Management Act 1961 as (amended) 1993

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

54b. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Tax agencies receive funding from the national budget.

References:

Appropriation Bill 2005

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

55. In practice, are tax laws enforced uniformly and without discrimination?

25

55. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

In practice, there is ample evidence of complaints of double taxation of companies and even individuals in spite of orders to the contrary from the Joint Tax Board. Manufacturers are hit hardest by this.

References:

President Obasanjo himself in recent times has criticized the incident of double taxation: "FG Stops Agencies on Multiple Taxes", Vanguard, p.6, Wednesday, August 30, 2006.

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

56. In law, is there a national customs and excise agency?

100

56. In law, is there a national customs and excise agency?

YES | NO

Comments:

There is a Customs and Excise Service Department.

References:

Customs and Exercise Management Ordinance 1958

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

57. Is the customs and excise agency effective?

100

57a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The department's full time staff are hired under the same employment conditions as the civil service.

References:

Labour Act Cap.198 L.F.N. 1990, Section 15

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

57b. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The agency's source of funding is the usual Federal Government Budgetary Allocation.

References:

Appropriation Bill 2005

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

58. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

58. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

All citizens pay due rates equally, both for imports and exports. Cases of customs evasion are frequently reported.

References:

Tax Evasion: Oil firms' Directors Risk Jail Terms"
The Punch, p. 20,
Tuesday, June 19, 2006;

In addition, the presence in open markets of many banned goods is ample evidence of customs evasion.

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. Financial Sector Regulation

59. In law, is there a financial regulatory agency overseeing publicly listed companies?

100

59. In law, is there a financial regulatory agency overseeing publicly listed companies?

YES | NO

Comments:

Started as Capital Issues Committee in the 1960s, it became Capital Issues Commission in the 1970s and finally became known as Securities and Exchange Commission (SEC) since the 1990s.

References:

Investment and Securities Act (ISA) No. 45 of 1999, which repealed previous laws and widely expanded the powers of SEC.

YES: A YES score is earned if there is an agency tasked with overseeing publicly listed companies in the public interest and ensuring that disclosure rules are met.

NO: A NO score is earned if this function is spread over several agencies or does not exist.

60. Is the financial regulatory agency effective?

80

60a. In law, the financial regulatory agency is protected from political interference.

YES | NO

Comments:

The Securities and Exchange Commission (SEC) is a parastatal in the Ministry of Finance.

References:

The President can remove the Director-General.

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

60b. In practice, the agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Only graduates of Accounting, Business Administration and Economics are employed as Securities and Exchange Commission (SEC) professional staff.

References:

Financial Regulations 2000

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

60c. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Securities and Exchange Commission (SEC) receives regular funding from the budget under the Ministry of Finance. There are also revenues obtained from licence fees and penalties.

References:

Appropriation Bill 2005

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

60d. In practice, when necessary, the financial regulatory agency independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The agency has powers to investigate reports and acquire information.

References:

Investment and Securities Act 1999, Section 40

100: When irregularities are discovered, the agency is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

60e. In practice, when necessary, the financial regulatory agency imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Securities and Exchange Commission (SEC) regularly imposes penalties on erring companies in the stock exchange business.

References:

Nigerian Stock Exchange May Axe 41 Companies",
The Guardian, p. 19,
Thursday, March 21, 2002

100: When rules violations are discovered, the agency is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partis

61. Can citizens access the financial records of publicly listed companies?

100

61a. In law, citizens can access the financial records of publicly listed companies.

YES | NO

Comments:

The law requires accurate public disclosure of financial records of these companies. Failure to give accurate reports attracts severe penalties.

References:

A case in point was the punishment meted out to African Petroleum, when it was discovered that it had concealed part of its debts when it was put up for privatisation.

YES: A YES score is earned if the financial information of all publicly traded companies is required by law to be public.

NO: A NO score is earned if any category of publicly- owned or publicly-traded company is exempt from this rule, or no such rules exist.

61b. In practice, the financial records of publicly listed companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

All listed companies must update their information regularly.

References:

Investment and Securities Act (ISA) No. 45 of 1999

100: Publicly traded companies always disclose financial data, which is generally accurate and up to date.

75:

50: Publicly traded companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

25:

0: Financial data is not available, or is consistently superficial or otherwise of no value to investors.

61c. In practice, the financial records of publicly listed companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

Securities and Exchange Commission (SEC) requires that the financial reports sent by the companies be audited by recognized auditing firms.

References:

Investment and Securities Act (ISA) No. 45 of 1999

100: Financial records of all public companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of public companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: Publicly traded companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

61d. In practice, citizens can access the records of disciplinary decisions imposed by the government on publicly-listed companies.

100 | 75 | 50 | 25 | 0

Comments:

The decisions are publicly announced in the print and electronic media. However, the proceedings of the investigation are not made known to the public.

References:

See Capital Market Bulletin, Securities and Exchange Commission (SEC) Monthly Publication

100: These records are freely available to all citizens through a formal official process.

75:

50: These records are available to all citizens, with some exceptions.

25:

0: These records are generally not available through official processes.

61e. In practice, citizens can access the financial records of publicly listed companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The financial records of publicly listed companies are readily available shortly after they are published.

References:

They can be picked up at any broker's or Stock Exchange office.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

61f. In practice, citizens can access the financial records of publicly listed companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

They are available for the low cost of the newspaper in which they are published.

References:

They can be picked up at any broker's or Stock Exchange office at little cost.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

93

V-5. Business Licensing and Regulation

62. Are business licenses available to all citizens?

81

62a. In law, anyone may apply for a business license.

YES | NO

Comments:

Both domestic and foreign entrepreneurs can register their companies in Nigeria.

References:

Companies and Allied Matters Act, 1990, Section 20(4);
The Nigerian Investment Promotion Commission Act, 1995, which encourages foreign investment in Nigeria

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required.

62b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

Comments:

Any aggrieved person shall have recourse to the law court for redress.

References:

Nigerian Constitution 1999, Section 6(b)

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

62c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The process of registration both at the federal and state levels may take up to two months, due to bureaucracy. Recent computerization of C.A.C operations should reduce the time further.

References:

No specific reference

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months.

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

62d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The cost to register as a business enterprise is considerable.

References:

For business incorporation, applicants can spend as much as 90,000 naira (US\$ 702).

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

63. Do businesses receive equitable regulatory treatment from the government?

63

63a. In law, basic business regulatory requirements for meeting health, safety, and environmental standards are transparent and publicly available.

YES | NO

Comments:

They are readily available at the Nigerian Investment Promotion Commission offices.

References:

No specific reference

YES: A YES score is earned if basic regulatory requirements for meeting health, safety, and environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

63b. In practice, business inspections by the government are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

There is very low level of business inspection.

References:

No specific reference

100: Business inspections by the government (i.e. health, safety, or environmental inspections) are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government (i.e. health, safety, or environmental inspections) are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections (i.e. health, safety, or environmental inspections) are routinely carried out by the government in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁸⁴Anti-Corruption Law

64. Is there legislation criminalizing corruption?

100

64a. In law, attempted corruption is illegal.

YES | NO

Comments:

Any act of a person who attempts to corrupt another person is illegal.

References:

Independent Corrupt Practices and Other Related Offences Commission (ICPC) Act of 2000, Section 17(1)

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

64b. In law, extortion is illegal.

YES | NO

Comments:

Extorsion is illegal.

References:

I.C.P.C Act of 2000, Section 10

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

64c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

Comments:

Any person who offers bribe to any public officer is guilty of an offence punishable by law.

References:

I.C.P.C Act of 2000, Section 18

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

64d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

Comments:

Any public officer who solicits, counsels or accepts bribe is punishable by law.

References:

I.C.P.C Act of 2000, Section 18

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

64e. In law, bribing a foreign official is illegal.

YES | NO

Comments:

All forms of bribery in any official capacity, no matter where and who is involved, are illegal, therefore punishable.

References:

I.C.P.C Act of 2000, Section 24

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

64f. In law, using public resources for private gain is illegal.

YES | NO

Comments:

Any public officer who uses his office or position to gratify or confer any corrupt or unfair advantage upon himself or any of his relations is guilty of an offence.

References:

I.C.P.C Act of 2000, Section 19

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

64g. In law, using confidential state information for private gain is illegal.

YES | NO

Comments:

Any public officer who uses confidential state information for private gain is guilty of an offence.

References:

I.C.P.C Act of 2000, Section 19

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

64h. In law, money laundering is illegal.

YES | NO

Comments:

Money laundering is illegal; I.C.P.A Act definition of 'property' is wide enough to subsume money laundering.

References:

I.C.P.C Act of 2000, Section 46

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

64i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

Comments:

Conspiracy to commit a crime is illegal and criminalised.

References:

Criminal Code Act, Sections 516-518

Penal Code Act, Section 96-97

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

65. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

65. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

The agency is called Independent Corrupt Practices and Other Related Offences Commission (I.C.P.C).

References:

I.C.P.C Act of 2000, Section 3

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

66. Is the anti-corruption agency effective?

86

66a. In law, the agency (or agencies) is protected from political interference.

YES | NO

Comments:

It is vested with the responsibility for investigation and prosecution of offenders under the enabling act.

References:

I.C.P.C Act of 2000, Section 6

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by

partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

66b. In practice, the agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

It is a creation of statute, and it is not tied to the apron string of politicians; besides, it is a body corporate.

References:

I.C.P.C Act of 2000, Section 3(2)

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

66c. In practice, the head of the agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The head of the agency/commission can only be removed in accordance with the provisions of the law establishing his office.

References:

I.C.P.C Act of 2000, Section 3(8)

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

66d. In practice, appointments to the agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The criteria are established by the enabling enactment.

References:

I.C.P.C Act of 2000, Section 3(3)

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

66e. In practice, the agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The agency has full-time, professional staff.

References:

I.C.P.C Act of 2000, Section 3(3), Section 3(13) and Section 4(7)

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

66f. In practice, the agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The chairman in a seminar in Osun State recently called for increase funding.

References:

Withhold Information on Corruption, Face Prosecution of ICPC”,
Vanguard, p.6,
uesday, June 20, 2006

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency’s funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

66g. In practice, the agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The agency does not make regular reports.

References:

No specific reference

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

66h. In practice, the agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The agency is vested with powers and immunities of Police officers under the Police Act.

References:

I.C.P.C Act of 2000, Section 5

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

66i. In practice, when necessary, the agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The agency has powers to investigate reports and inquire into information.

References:

I.C.P.C Act of 2000, Section 64

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

67. Can citizens access the anti-corruption agency?

63

67a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

The Independent Corrupt Practices and Other Related Offences Commission (ICPC) investigates and prosecutes at the trial court, which is the final arbiter as to time and decision. The chairman recently complained of frustration in court prosecution.

References:

I.C.P.C Act of 2000, Section 64;

Withhold Information on Corruption, Face Prosecution of ICPC",
Vanguard, p.6,
uesday, June 20, 2006

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

67b. In practice, citizens can complain to the agency (or agencies) without fear of recrimination.

Comments:

There is protection for whistle-blowers who inform the agency.

References:

I.C.P.C Act of 2000, Section 64(1)

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

83 VI-3. Rule of Law

68. Is there an appeals mechanism for challenging criminal judgments?

50

68a. In law, there is a general right of appeal.

YES | NO

Comments:

Appeals lie as of right from High Court to Court of Appeal, to Supreme Court.

References:

Nigerian Constitution 1999, Sections 233, 241

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

68b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Appeals are notoriously slow in the Nigerian court system, due to delays both by lawyers and police investigators.

References:

Oshiomole Accuses Lawyers of Sabotaging Anti-Corruption War",
Vanguard, p.6,
Wednesday, August 30, 2006

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

68c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Legal fees are out of reach of the ordinary (even middle-class) Nigerian citizens. The Legal Aid Scheme marginally operates to fill this gap.

References:

No specific reference

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

69. In practice, do judgments in the criminal system follow written law?

100

69. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

Whenever any person is charged with a criminal offence, he is of necessity entitled to a fair hearing in public within a reasonable time.

References:

Nigerian Constitution 1999, Section 36(4)

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

70. In practice, are judicial decisions enforced by the state?

75

70. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

The present democratic regime has been willing to enforce judicial decisions. The problems arise when political cases are involved. The slow pace of prosecution is also a contributing factor.

References:

There were no reported cases of blatant government disregard for court decisions.

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

71. Is the judiciary able to act independently?

100

71a. In law, the independence of the judiciary is guaranteed.

YES | NO

Comments:

The Judiciary is one of the three tiers of government, and its independence is guaranteed by the separation of powers doctrine, which exists in Nigeria.

References:

Nigerian Constitution 1999, Chapter VII and Section 6

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

71b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Judges have unfettered authority to act judicially. No political interference has been reported.

References:

Nigerian Constitution 1999, Sections 233 and 240

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

71c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

Comments:

Cases are heard in the federal court nearest to the plaintiff.

References:

Rules of the Court

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

71d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

Comments:

The retirement age of Judicial officers is fixed. Only the President can, on an address supported by a two-third majority of Senate, remove a judicial officer on grounds of infirmity of the mind or body or for misconduct or contravention of the code of conduct.

References:

Nigerian Constitution 1999, Section 292(1)a

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

72. Are judges safe when adjudicating corruption cases?

100

72a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

Comments:

There has been no such reported attack on judges.

References:

Reference inapplicable

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

72b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

Comments:

There has been no report of murder of judges.

References:

Reference inapplicable

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

73. Do citizens have equal access to the justice system?

58

73a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

The Nigerian judiciary is ethnically well-mixed and judgements have no ethnic biases.

References:

Reference inapplicable

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

73b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

There is no gender bias per se in the dispensation of justice. In fact, there are many female judges. However, bearing in mind that the fact that legal service is expensive, and that women are generally economically weaker, women have weaker access to court.

References:

No specific reference

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence.

73c. In practice, the state provides legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

Whenever it is obvious that in serious criminal cases an accused cannot afford to have a counsel, the state through the presiding judge provides one.

References:

This is referred to as Dock brief". Unfortunately, try as the Nigerian Bar Association volunteers may wish, the Legal Aid Scheme is not effective for lack of lawyers.

100: State-provided legal aid is basic, but well trained and effective in representing the rights of indigent defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some indigent defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most indigent defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

73d. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

Cost of litigation is higher than median income earners can afford.

References:

No specific reference

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits.

73e. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | **25** | 0

Comments:

Cost of legal service is higher than small retailers can afford.

References:

No specific reference

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits.

73f. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | **50** | 25 | 0

Comments:

Although the Constitution gives right of fair hearing, remote arrears cannot often benefit of this right.

References:

Nigerian Constitution 1999, Sections 36 – Right to a Fair Hearing

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

74. Is the law enforcement agency (i.e. the police) effective?

67

74a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The Police Service Commission has the responsibility to appoint police officers on the basis of advertised professional criteria.

References:

Nigeria Constitution 1999, 3rd Schedule, Part 1, Section 30

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

74b. In practice, the agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The budget is not less favourable than those of related institutions from federal allocation. However, policemen are notoriously poorly paid in spite of the appointment of a new inspector general.

References:

Like Tafa Like Ehidero",
Nigerian Newsworld Magazine, Vol. 11, No. 50. J, pp. 14- 17,
January 16, 2006
-on the woes of the Nigerian Police

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

74c. In practice, the agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

It is to be noted that the President, who is a politician, appoints the chairman and members of the Police Service Commission.

References:

Nigerian Constitution 1999, Third Schedule, Part I, M, Section 29

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties.

Negative incentives may include threats, harassment or other abuses of power by the government.

75. Can law enforcement officials be held accountable for their actions?

75

75a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

There is the Public Complaint Commission, the Nigerian Police Council and the Code of Conduct Bureau.

References:

Nigerian Constitution 1999, Section 153

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions.

NO: A NO score is earned if there is no such mechanism.

75b. In practice, the independent reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

These agencies are slow-moving institutions.

References:

See Code of Conduct Bureau Reports for high number of cases still pending unresolved.

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

75c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

The Independent Corrupt Practices Commission (I.C.P.C.) is one of these agencies.

References:

I.C.P.C Act of 2000

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity is separate from the regular police department.

NO: A NO score is earned if no such agency/entity exists.

75d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | **50** | 25 | 0

Comments:

The agency's investigations are cumbersome, considering the small number of policemen prosecuted in a force that is widely believed to be corrupt.

References:

Nigeria Police Stinks",
Nigerian Newsworld Magazine,, Vol. 11, No. 50,
January 16, 2006

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application

of power.

75e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

They can also be prosecuted by the regular courts.

References:

I.C.P.C Act of 2000, Section 6

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

75f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | **75** | 50 | 25 | 0

Comments:

In law and in practice, the law enforcement officials are exposed to prosecution when they run break the laws.

References:

Recent prosecution and imprisonment of Tafa Balogun the dismissed Inspector General gives impression that policemen are not immune from prosecution.

Supreme Court Confirms Death Sentence on DPO",
The Comet, Vol. 8, No. 2507, p.1,
Monday, July 17, 2006

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.

