

Overall Score:

64 - Weak

Legal Framework Score:

79 - Moderate

Actual Implementation Score:

48 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁵¹ Civil 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:

The constitution guarantees freedom of association and peaceful assembly.

CSOs are generally allowed to register and operate legally. However, some civil society associations that are considered militant, secessionist and violent are banned and their members are subject to prosecution for terrorist activities and treason.

References:

(Section 40, chapter 1V of the 1999 Constitution of the Federal Republic of Nigeria.

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 is no law regulating or controlling sources of funding for CSOs.

References:

Interview with Mr. Chibuzo Ekwekwuo, Legal Practitioner and National Secretary, Zero Corruption Coalition (Abuja, Sept. 4, 2008).

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 is no law requiring CSOs to declare their sources of funding. The Company and Allied Matters Act of 1990 requires all organizations registered under it to file annual returns and audited accounts yearly. The audited accounts necessarily contain details of funds received and their sources. This law applies to all corporate bodies and not only CSOs.

There is an ongoing initiative to make CSOs declare the sources of their funding. This initiative is being undertaken by the Special Control Unit Against Money Laundering (SCUML) and extends to lawyers, accountants and real estate professionals. The initiative is aimed at stopping money laundering and the illicit flow of funds and is run from the Financial Intelligence Unit (FIU). The initiative is still at the preparatory stage and is not yet being implemented.

References:

Interview with Mr. Chibuzo Ekwekwuo, Legal Practitioner and National Secretary, Zero Corruption Coalition (Abuja, Sept. 4, 2008).

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?

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:

CSOs that are focused on promoting good governance freely organize with little interference from the government.

CSOs that are focused on promoting good governance can freely organize. Requirements for registration usually arise from donor agencies, which may require the status of a legal entity. In these cases, registration is done under the Companies and Allied Matters Act of 1999. Also, more recently, the know-your-customer, anti-money-laundering policy enforced by banks necessitate the registration of CSOs who otherwise cannot open accounts.

References:

Nigerian NIS Study, 2004, www.transparency.org.

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition (Abuja, Sept. 4, 2008).

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:

CSOs are free to offer opinions and engage with various aspects of the political process. In some instances, their opinions and ideas are taken into consideration in decision making, but often they are not.

References:

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition (Abuja Sept. 4, 2008).

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 is no reported case of a CSO on good governance being shut down within the reported period.

References:

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition (Abuja, Sept. 4, 2008).

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. YES is a positive score.

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?

67

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

YES | **NO**

Comments:

Joel Bisnia, a member of the Publish What You Pay Campaign and founder of a Warri-based NGO (Niger Delta Professionals for Development) was recently arraigned in court on charges of treason for accompanying foreign journalists to the Niger Delta Region. Also Judith Asuni of PEACE ASSOCIATE, an NGO was detained and charged with treason for taking foreign journalists to the Niger Delta to report on environmental pollution.

References:

www.publishwhatyoupay.org/english/pdf/releases/pwyp_nigeria_160408.pdf.

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition (Abuja, Sept. 4, 2008)

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

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 person 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. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

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

YES | NO

References:

Interview with Femi Falana, President of the West African Bar Association (Aug. 1, 2008).

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition (Abuja, Sept. 4, 2008).

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. YES is a positive score.

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:

There is no reported case of a civil society activist being killed in the past year for their involvement with anti-corruption work.

References:

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition (Abuja, Sept. 4, 2008).

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

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:

The Constitution guarantees freedom of association, including the right to organize into trade unions. Various labor and trade unions freely organize and are quite proactive on governance issues.

References:

Section 40, Chapter 1V of the 1999 Constitution.

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition (Abuja, Sept. 4, 2008).

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:

Citizens and workers are organized into several trade and labor unions that are quite active in politics.

References:

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition (Abuja, Sept. 4, 2008).

100: Trade unions are common and are an important part of 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?

100

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

YES | NO

Comments:

The constitution guarantees freedom to own, establish and operate any medium for the dissemination of information, ideas and opinions.” This provision is however subject to some exceptions which necessitate operating licenses for television or wireless broadcasting stations.

References:

Chapter IV, Section 39 of the 1999 Constitution.

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

NO: A NO score is earned if any specific publication relating to government affairs 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:

The constitution guarantees freedom of speech.

References:

Chapter IV, Section 39 (1) of the 1999 Constitution.

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to 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 print media entities?

81

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

100 | 75 | 50 | 25 | 0

Comments:

Print media can freely organize within the scope of the laws. However, the licensing process is cumbersome and often fraught with delays.

References:

Telephone interview with Mr. Lanre Arogundade, Coordinator, International Press Center (IPC); (Lagos, Sept. 11,2008).

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print 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.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

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

YES | NO

Comments:

The constitution provides for a right of appeal through a court process.

References:

Section 39(2) of the 1999 Constitution.

Telephone Interview with Mr. Lanre Arogundade, Coordinator, International Press Center (IPC); (Lagos, Sept. 11, 2008).

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

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

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

100 | 75 | 50 | 25 | 0

Comments:

Print media licenses are obtained at the state level and the processing time varies from state to state. Most of the time, it takes less than one month to obtain the license.

References:

Telephone interview with Mr. Lanre Arogundade, Coordinator, International Press Center, (IPC); (Lagos, Sept. 11, 2008).

Further e-mail communication with Mr. Lanre Arogundade (Oct. 16, 2008).

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 print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The costs are generally reasonable, but the process requires several visits to the approving office and this may entail additional costs. On average, the cost is about 5000 naira (US\$45.50).

References:

Telephone interview with Mr. Lanre Arogundade, Coordinator, International Press Center, (IPC); (Lagos, Sept. 11, 2008).

Further e-mail correspondence with Mr. Lanre Arogundade (Oct. 16, 2008).

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 citizens able to form broadcast (radio and TV) media entities?

50

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

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

Comments:

The broadcast media are allowed to operate subject to the granting of an operating license by the National Broadcasting Commission. The criteria for obtaining this license, as provided under Section 9 of the National Broadcasting Commission Act of 1999, is cumbersome and expensive because the final approval comes from the President on the recommendation of the National Broadcasting Commission. The government has been known to deny licenses to people who are political opponents.

On Sept. 16, 2008, the State Security Service (SSS) invaded the offices of Channels Television, a major television broadcasting station, and sealed up the premises after arresting some station staff. On Sept. 17, 2008, the government suspended the station's license alleging that they broadcast false information stating that the President of Nigeria was considering resigning on health grounds. The process followed in the closure of the station and arrest of the staff has been generally condemned.

References:

Telephone interview with Mr. Lanre Arogundade, Coordinator, International Press Center (IPC); (Lagos. Sept. 11, 2008).

Punch Newspapers, "FG Under Fire Over Channels TV Closure," (Thursday, Sept. 18, 2008, [<http://www.punchng.com/>]).

100: Broadcast 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. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast 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: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

An aggrieved party can bring an action in Court to challenge unlawful denial of a license under section 42 of the 1999 Constitution.

References:

Telephone interview with Mr. Lanre Arogundade, Coordinator, International Press Center (IPC); (Lagos, Sept. 11, 2008).

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

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

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

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

Comments:

The process of obtaining a broadcasting license is fraught with delays and takes a long time. There have been instances where applications have been pending for ten years.

The National Broadcasting Commission Act 1992 does not give the National Broadcasting Commission (NBC) full regulatory powers to grant licenses. The license application is filed with the NBC, but it has to be forwarded to the Information Minister for approval. The minister, in turn, ultimately has to forward the application to the President for final approval. This process is cumbersome and takes years, even in cases of successful applications. Most often applications are not successful, especially for groups and individuals perceived to be critical of the government.

References:

Telephone interview with Mr. Lanre Arogundade, Coordinator, International Press Center (IPC); (Lagos, Sept. 11, 2008).

Telephone interview with Mr. Akin Akingbulu, Institute of Media and Society, (Oct. 16, 2008).

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.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

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

Comments:

The cost of obtaining a broadcasting license is quite high. The application form alone costs 60,000 naira (US\$510.00). The licensing fee for category A radio stations (those located in Abuja , Lagos and Porthacourt) is 20 million naira (US\$169.981) while the fee for the rest of the country is 15 Million naira. For television licenses, a Category A license costs 15 million naira (US\$127,486) while the cost for a Category B license is 11,250,000 naira (US\$95,614).

An additional constraint is that licenses are granted for a period of five years after which the grant undergoes review. After the review, full licensing fees are required to be paid again. In addition to the licensing fees, there is an additional charge of 2.5 percent of the annual revenue of the radio and television station which is paid annually.

References:

Telephone interview with Mr. Lanre Arogundade, Coordinator, International Press Center (IPC); (Lagos, Sept. 11, 2008).

Telephone interview with Mr Akin Akingbulu, Institute of Media and Society, (Oct. 16, 2008).

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.

8. Can citizens freely use the Internet?

100

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

The government does not prevent Internet users from accessing online content.

References:

Telephone interview with Mr. Lanre Arogundade, Coordinator International Press Center, (IPC); (Lagos, Sept. 11, 2008).

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

There has not been any reported case of government attempts to restrict information or discussions that are posted online.

References:

Telephone interview with Mr. Lanre Arogundade, Coordinator, International Press Center (IPC); (Lagos, Sept. 11, 2008).

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting

political content.

9. Are the media able to report on corruption?

75

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

Comments:

Media reports are regulated only by the libel laws. It is legal to report news that is damaging to the reputation of public figures as long as it is accurate.

References:

Telephone interview with Mr. Lanre Arogundade, Coordinator, International Press Center (IPC); (Lagos, Sept. 11, 2008).

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.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

Self-censorship of private media companies is not common. However, there have been instances of journalists receiving threats from corporate bodies. Also, the fear of losing advertising sometimes makes media outlets reluctant to publish certain stories. As for government-owned media, they undergo prior censorship. They already know which stories they are not allowed to publish. In corruption cases, they mostly publish news of the arrests and prosecution that they receive from anti-corruption agencies, but they do not go further into the investigation.

References:

Telephone interview with Mr. Lanre Arogundade, Coordinator, International Press Center (IPC); (Lagos, Sept. 11, 2008).

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.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

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

Comments:

Prior government censorship of privately owned print and electronic media is rare. However, the government does engage in prior censorship of government-owned media.

References:

Telephone interview with Mr Lanre Arogundade, Coordinator, International Press Center (IPC); (Lagos, Sept. 11, 2008).

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. This score is appropriate if in countries where illiteracy is high, 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. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

65

10a. In law, print media companies are required to publicly disclose their ownership.

YES | NO

Comments:

The application process for a print media license requires that a Limited Liability Company(LLC) be registered under the

Companies and Allied Matters Act (CAMA) of 1990. The process requires that the directors be named in the form for Particulars of Directors.

References:

Telephone interview with Mr Lanre Arogundade, Coordinator, International Press Center (IPC); (Lagos, Sept. 11, 2008).

YES: A YES score is earned if print media companies are required by law to publicly 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 types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | NO

Comments:

The act requires that an applicant for a broadcasting license must be a corporation that is registered under the Companies and Allied Matters Act of 1990 (CAMA). The process requires a filing of the particulars of directors. Also, the application form contains a provision for disclosing names and nationalities of directors and shareholders of the applicant's corporate body.

References:

Section 9, National Broadcasting Commission Act of 1999.

Telephone interview with Mr. Lanre Arogundade, Coordinator International Press Center (IPC); (Lagos, Sept. 11, 2008).

YES: A YES score is earned if broadcast media companies are required by law to publicly 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 publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

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

Comments:

Nigerian journalists are reputed to accept brown envelopes" (containing tips and gratuities). Often they will not report on issues unless they have been given these "brown envelopes." It can also be assumed that they can withhold or alter their reporting in exchange for these.

References:

Telephone interview with Mr. Lanre Arogundade, Coordinator International Press Center (IPC); (Lagos, Sept. 11, 2008).

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.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

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

Comments:

Media coverage is tilted in favor of the ruling Peoples Democratic Party (PDP).

References:

Telephone interview with Mr. Lanre Arogundade, Coordinator, International Press Center (IPC); (Lagos, Sept. 11, 2008).

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.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

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

Comments:

The Electoral Act of 2006 provides that all government print or electronic media shall give equal access on a daily basis to all registered parties or candidates of such parties. It also prescribes a fine and possible withdrawal of license for denial of such access (Section 102[1] &[2]).

Furthermore, a media advisory, adopted by media owners and advocates (Newspaper Proprietors Association of Nigeria [NPAN], Nigerian Guild of Editors [NGE], Nigeria Union of Journalists [NUJ], and the Nigerian Press Council [NPC]) prior to the 2007 elections, provided for among others things, balance and impartiality in the coverage of the elections. Despite these measures, the reality is that the ruling People's Democratic Party (PDP) was given more coverage than other political parties.

References:

Telephone interview with Mr. Lanre Arogundade, Coordinator, International Press Center (IPC); (Lagos, Sept. 11, 2008).

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. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

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.

11. Are journalists safe when investigating corruption?

67

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

Comments:

There are no reported cases of journalists being imprisoned for reporting on corruption.

References:

Telephone interview with Mr. Lanre Arogundade, Coordinator International Press Center (IPC); (Lagos, Sept. 11, 2008).

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

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. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

A recent media report says that Luka Binniyata, who reports on energy issues for one of the Vanguard daily newspapers, was manhandled at the premises of the Nigerian National Petroleum Corporation (NNPC) for asking an irksome question on transparency within the organization.

References:

Chris Ochayi, Vanguard Staff Manhandled at NNPC Over Question on Transparency," <http://www.vanguardngr.com> (Wed., Aug. 20, 2008).

Telephone interview with Mr. Lanre Arogundade, Coordinator International Press Center (IPC); (Lagos, Sept. 11, 2008).

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. A YES score is positive.

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.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

Comments:

There are no reported cases of journalists being killed for reporting on corruption. Recently, Abayomi Ogundeji, a journalist and a member of the editorial board of the Lagos-based daily newspaper This Day was shot, apparently by armed robbers. However, there have been strong calls to thoroughly investigate the case to determine who the assassins were. The police are still investigating.

References:

Telephone interview with Mr. Lanre Arogundade, Coordinator, International Press Center (IPC); (Lagos Sept. 11, 2008).

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. A YES score is positive.

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.

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

0

12a. In law, citizens have a right of access to government information and basic government records.

YES | **NO**

Comments:

The constitution provides for freedom to receive and impart ideas and information without interference.” But it goes on to provide exceptions which validate laws imposing restrictions on government officials, members of the armed forces, police and other security agencies.

A combination of these restrictions on public officers and the provisions of the Official Secrets Act preclude citizen’s access to information and government records.

References:

S.39 [3] [a] and [b] of chapter 1V of the the 1999 Constitution.

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. 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.

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

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | **NO**

Comments:

There is no Access to Information Law which can provide a basis for a right to access information and resultant appeal process.

An NGO, the Media Rights Agenda (MRA) took the Code of Conduct Bureau (CCB) to court (Incorporated Trustees of Media Rights Agenda v. The Code of Conduct Bureau, et al) to get access to the Asset Declaration of then-President Olusegun Obasanjo. MRA lost the case on the basis that the existing legal framework does not allow the CCB to grant access to the required information

References:

Interview with Mr .Edet Ojo, Executive Director, Media Rights Agenda (MRA), Economic Community Of West African States (ECOWAS) Secretariat (Abuja, Sept. 12, 2008).

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

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

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | **NO**

Comments:

There is no Freedom of Information Law that provides a basis for this mechanism.

The Freedom of Information Bill has been in the Nigerian National Assembly since 1999. It has not yet been passed into law.

References:

Interview with Mr. Edet Ojo, Executive Director, Media Rights Agenda (MRA), Economic Community Of West African States (ECOWAS) Secretariat, (Abuja, Sept. 12, 2008).

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.

13. Is the right of access to information effective?

0

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

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

Comments:

There is no right of access to Information. The Freedom of Information Bill is yet to be passed into law. Such requests are therefore subject to the whims and caprices of the particular government department or official. Often such requests are denied.

References:

Interview with Mr. Edet Ojo, Executive Director, Media Rights Agenda (MRA), ECOWAS Secretariat (Abuja, Sept. 12, 2008).

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.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The issue of cost does not arise as there is no right of access to information.

References:

Interview with Mr. Edet Ojo, Executive Director Media Rights Agenda (MRA), ECOWAS Secretariat (Abuja, Sept. 12, 2008).

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.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The issue of appeal on access to information requests does not arise because there is no right of access to information.

References:

Interview with Mr. Edet Ojo, Executive Director, Media Rights Agenda (MRA), ECOWAS Secretariat (Abuja, Sept. 12,).2008

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.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no right of access to information, so the issue of cost does not arise.

References:

Why Reps Must Pass FOI Bill Without Defects," Punch Newspapers, www.punchng.com, (Aug. 8 2008).

Interview with Mr. Edet Ojo, Executive Director, Media Rights Agenda (MRA), ECOWAS Secretariat (Abuja, Sept. 12, 2008).

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.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

There is no right of access to information, so there is no need to give reasons for denial of access.

References:

NSCIA Pleads for Passage of FOI Bill," The Nation (Fri., Aug. 8, 2008).

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. ⁶²Voting & Citizen Participation

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

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

Comments:

All citizens 18 years of age and above are entitled to be registered as voters when they present themselves for registration; after that, they have a right to vote.

Section 13 of the Electoral Act provides for the registration of voters if they are citizens of Nigeria and eighteen years of age.

Section 50 provides that the presiding officer shall issue a ballot paper to individuals who present themselves if their names are on the list of registered voters.

References:

Sections 10[1] and 13[1] of the Electoral Act 2006.

Section 50 of the Electoral Act 2006.

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). 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.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

References:

S153[1][f] and Part I, Third Schedule, of the 1999 constitution.

Electoral Act of 2006.

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.

15. Can all citizens exercise their right to vote?

75

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

All adult citizens who have registered are entitled to vote.

The right to vote is open to all citizens who are eighteen years of age and subject to registration and inclusion in the votes registration list.

References:

Section 50, Electoral Act of 2006.

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN Foundation; Chairman, Transition Monitoring Group (TMG [2005- Feb. 2008]); (Sept. 1, 2008).

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.

15b. In practice, ballots are secret or equivalently protected.

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

Comments:

Section 53 [1] of the Electoral Act 2006 provides that voting shall be by open secret ballot. This means that a voters shall indicate their choice of candidate in secret and drop the ballot in the ballot box in open view of the public [Section 53[4] Electoral Act 2006].

Despite this law, there are several reported cases of ballot boxes being snatched or tampered with by unauthorized persons.

References:

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN Foundation; Chairman, Transition Monitoring Group (TMG [2005- Feb. 2008]); (Sept. 1, 2008).

Section 53 [1] and [4], Electoral Act 2006.

Nigeria: Presidential Election Marred by Fraud, Violence, [Human Rights Watch, <http://www.hrw.org/english/docs/2007/04/24/nigeri15763.htm>].

"Nigeria: "Elections Below Acceptable Standards," Preliminary Findings of IRI's [International Republican Institute] International Election Observation Mission, <http://www.iri.org/africa/nigeria/2007-04-22-Nigeria.asp>.

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.

15c. In practice, elections are held according to a regular schedule.

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

Comments:

The 1999 Constitution provides specific tenures for elected public officials and elections are held according to these tenures.

References:

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN Foundation; Chairman, Transition Monitoring Group (TMG [2005- Feb. 2008]); (Sept. 1, 2008).

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.

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

50

16a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

The constitution provides that every person shall have a right to associate freely and, in particular, may form or belong to any political party, trade union, or any other association for the protection of his interests.

References:

Section 40, 1999 Constitution.

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN Foundation; Chairman, Transition Monitoring Group (TMG [2005- Feb. 2008]); (Sept. 1, 2008).

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.

16b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

Citizens generally have a right to run for political office, subject to certain restrictions relating to age for certain offices; they must also belong to registered political parties. However, Section 32 of the Electoral Act 2006 provides that political parties must be the ones who submit the names of candidates, not the individuals themselves.

Candidates must be on party lists and must be sponsored and fielded by the political parties.

References:

Section 32, Electoral Act 2006.

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.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

The 1999 Constitution guarantees the right to peaceful assembly, which includes the right to form or belong to a political party.

There is also a court judgment which effectively removes restrictions to the registration of political parties.

References:

Section 40, Chapter 1V, 1999 Constitution.

INEC & Ors v Musa & Ors (2003) 3NWLR (Pt. 806) 72 at 150.

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN Foundation; Chairman, Transition Monitoring Group (TMG [2005- Feb. 2008]); (Sept. 1, 2008).

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.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

There is no provision for independent candidates. According to the 1999 Constitution all candidates have to be sponsored by political parties.

Candidates must be on party lists and must be sponsored and fielded by the political parties. As a result, citizens' aspirations for political office are dependent on the whims and caprices of political parties whose processes are fraught with irregularities and corruption. A lot of the electoral petitions regarding the 2007 elections are based on irregularities in the nominations of the political parties leading to wrongful exclusions and other forms of misconduct.

References:

Sections 65[2][b], [National Assembly]106[d], [State Assemblies], and 131[c] President, and 177[c] [Governors of States], 1999 Constitution.

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN Foundation; Chairman, Transition Monitoring Group (TMG [2005- Feb. 2008]); (Sept. 1, 2008).

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. A system of party lists may discourage or prevent independent 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.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

There is a main opposition party called the Action Congress. There are also smaller opposition parties such as the All Nigerian Peoples' Party (ANPP) that are represented in the legislature.

References:

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN Foundation; Chairman, Transition Monitoring Group (TMG [2005- Feb. 2008]); (Sept. 1, 2008).

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

18. Is the election monitoring agency effective?

65

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:

The Independent National Electoral Commission (INEC) has a formal structure and members of the Commission have security of tenure provided under Section 157[1] of the 1999 Constitution. They are appointed by the President and subject to confirmation by the Senate and are removed by the President subject to support by a two-thirds majority of the Senate.

A similar provision applies to members of the State Independent Electoral Commission (SIEC) under Section 201[1] of the Constitution.

References:

Section 157[1] of the 1999 Constitution.

Section 201[1] of the Constitution.

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting 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 domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The law provides for security of tenure of the key staff of the Independent National Electoral Commission-INEC.

However, the appointments are made by the President who is a member of a political party. Often people with clear affiliations have been appointed INEC officials and have been known to be partisan in the execution of their duties.

References:

Sections 153, 155, 157 & 158 of the 1999 Constitution.

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman Transition Monitoring Group (TMG [2005- Feb 2008]); (Sept. 1, 2008).

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.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Independent National Electoral Commission (INEC) has a professional full time staff.

References:

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman, Transition Monitoring Group (TMG [2005- Feb 2008]); (Sept. 1, 2008).

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.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

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

Comments:

Such information includes lists of registered political parties; summary of election petitions in 2007; and lists of candidates and election results.

However, the reports are not usually on time and give limited information.

References:

Independent National Election Commission (INEC) website, www.inecnigeria.org.

<http://www.inecnigeria.org/election/>.

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman, Transition Monitoring Group (TMG [2005- Feb 2008]); (Sept. 1, 2008).

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.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

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

Comments:

The Electoral Act of 2006 has provisions for conduct of Political parties and other citizens and also defines electoral offenses.

However the enforcement is not thorough and structured. Despite the huge misconduct observed in the 2007 elections, the Independent National Electoral Commission (INEC) has not prosecuted anybody for criminal offenses. Little effort is made to regulate the conduct of political parties.

References:

Sections 12-139, Electoral Act 2006.

Musikilu Mojeed, NEC Orders PDP to Conduct Fresh Congresses in 10 States," [<http://www.punchontheweb.com/Articl.aspx?theartic=Art200808112124657>] (Monday, Aug. 11, 2008)

"INEC Investigates PDP, AC, Others," <http://www.punchontheweb.com/Articl.aspx?theartic=Art20080824014898>.

:Alao-Akala Dares INEC, Says No Fresh PDP Congress in Oyo by Sunday Aborisade, Ibadan, <http://www.punchng.com/Articl.aspx?theartic=Art200808151382534> (Fri., Aug. 15, 2008).

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman, Transition Monitoring Group (TMG [2005- Feb 2008]); (Sept. 1, 2008).

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.

19. Are elections systems transparent and effective?

71

19a. In practice, there is a clear and transparent system of voter registration.

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

Comments:

The act provide a structure and process for a transparent voter registration.

However, the implementation is fraught with problems ranging from unavailability of registration materials to lack of access to registration booths caused by inadequate distribution. There is also outright disruption of the process. Many people were unable to register and a number of those who did were unable to vote because an incomplete voter registration list was produced for the elections. Many people were disenfranchised.

References:

Sections 10-25, Electoral Act of 2006.

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman, Transition Monitoring Group (TMG [2005- Feb 2008]); (Sept. 1, 2008).

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.

19b. In law, election results can be contested through the judicial system.

YES | NO

Comments:

The act provides for challenging election results and the conduct of elections through election petitions.

A summary of election petitions in respect of the 2007 elections is posted at the Independent National Election Commission (INEC) website.

The 2007 elections generated a lot of controversy and many election petitions. A number of elections were annulled and in some cases by-elections were ordered.

References:

Sections 140-151, Electoral Act 2006.

The Independent National Election Commission (INEC) website, www.inecnigeria.org.

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman, Transition Monitoring Group (TMG [2005- Feb 2008]); (Sept. 1, 2008).

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.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Under the law, election petitions are entitled to go through an appeal process. Parties can appeal as far up as the court of appeals regarding elections to all other offices; for the presidential election, they can appeal to the supreme court.

References:

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman, Transition Monitoring Group (TMG [2005- Feb 2008]); (Sept. 1, 2008).

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.

19d. In practice, the military and security forces remain neutral during elections.

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

Comments:

There have been reported cases of security agencies, especially the police, engaging in partisan behavior during elections.

References:

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman, Transition Monitoring Group (TMG [2005- Feb 2008]); (Sept. 1, 2008).

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 overtly 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.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

Comments:

There is no specific law allowing for election monitoring. It is at the discretion of the Independent National Election Commission (INEC) which exercises its rule according to its whims and caprices. For instance, local monitors were not accredited until a few days before the 2007 elections. However, the 2007 elections was monitored by domestic observers such as the Transition Monitoring Group (TMG) and international observers such as the European Union and the Network of Mobile Election Monitors (NMEM).

References:

Network of Mobile Election Monitors(NMEM) report, <http://www.mobilemonitors.org>.

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman, Transition Monitoring Group (TMG [2005- Feb 2008]); (Sept. 1, 2008).

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.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

Observers effectively monitor elections, but their reports are largely ignored by the government and the Independent National Electoral Commission (INEC).

References:

Stop Passing Buck, TMG Tells Iwu," <http://www.tribune.com.ng/05072008/news/news11.html> (July 5, 2008).

Compilation of Press Releases issued by the Transition Monitoring Group (TMG), <http://www.tmgnigeria.org/pressreleases.htm>.

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.

17. Is there an election monitoring agency or set of election monitoring agencies/entities?

100

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

YES | NO

References:

The Independent National Electoral Commission (INEC) set up under Section 153[1][f] of the 1999 Constitution.

The State Independent Electoral Commissions, (SIEC), set up under Section 197[1][b] of the 1999 Constitution.

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

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists 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, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

79 II-3. Political Financing

20. Are there regulations governing the financing of political parties?

100

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

Comments:

Regulates the funding of political parties, including restrictions on donations from outside Nigeria.

References:

Section 225 of the Constitution.

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

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

20b. In law, there are limits on individual donations to political parties.

YES | NO

Comments:

Empowers the Independent National Electoral Commission (INEC) to place limitations on the amount or assets an individual or corporate body can contribute to a political party.

References:

Section 92 of the Electoral Act 2006.

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also 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 in a discriminatory manner.

20c. In law, there are limits on corporate donations to political parties.

YES | NO

Comments:

Provides that no individual or other entity shall donate more than 1 million naira (US\$8,944) to any candidate.

Provides that "No association other than a political party shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election." It has been argued that this section debars corporate bodies from donating to political parties.

References:

Section 93[9] of the Electoral Act 2006.

Section 221, 1999 Constitution.

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

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

20d. In law, there are limits on total political party expenditures.

YES | NO

Comments:

Places a limitation on election expenses for categories of elective offices.

Provides that election expenses shall not exceed the sums specified under the offices.

References:

Section 93 of the Electoral Act 2006.

Section 93[1] of the Electoral Act 2006.

YES: A YES score is earned if there are any limits in 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.

20e. In law, there are requirements for the disclosure of donations to political parties.

YES | NO

Comments:

Requires that every political party maintain a record of all contributors and the amount contributed.

References:

Section 92[2] of the Electoral Act 2006.

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

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

20f. In law, there are requirements for the independent auditing of the finances and expenditures of political parties.

YES | NO

Comments:

Requires every political party to submit to the Independent National Election Commission (INEC) a statement of its assets and liabilities.

Provides that the INEC shall yearly submit to the National Assembly a report on the accounts and balance sheet of every political party. In the process of preparing this report, the INEC shall have access to the account books and records of the political parties

References:

Section 225 of the 1999 Constitution.

Section 226 of the 1999 Constitution.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures. 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' finances and expenditures or if such requirements exist but allow for parties to self-audit.

20g. In law, there is an agency or entity that monitors the financing of political parties.

YES | NO

Comments:

Gives the Independent National Electoral Commission (INEC) the legal power to monitor the financing of political parties.

References:

Section 225 of the 1999 Constitution.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are there regulations governing the financing of individual political candidates?

21a. In law, there are regulations governing private contributions to individual political candidates.

YES | NO

Comments:

Sets a limit of 1 Million naira (US\$8,944) on contributions to individual political candidates by private individuals and all other entities.

References:

Section 93[9] of the Constitution.

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to individual political candidates, including prohibitions against foreign donations.

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

21b. In law, there are limits on individual donations to political candidates.

YES | NO

Comments:

Sets a limits on the amount of money or other assets of up to 1 million naira (US\$8,944) an individual can contribute to a political candidate.

Provides that no association other than a political party can contribute to the election expenses of any candidate during an election.

References:

Section 93[9] of the Electoral Act 2006.

Section 221, 1999 Constitution.

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also 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 candidates in a discriminatory manner.

21c. In law, there are limits on corporate donations to individual political candidates.

YES | NO

Comments:

Prohibits corporate donations to individual political candidates: No association other than a political party shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at any election.”

References:

Section 221, 1999 Constitution.

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

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

21d. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | NO

Comments:

Requires political parties to submit to the Independent National Election Commission (INEC) details and analysis of its sources of funding.

Requires political parties to maintain records of all contributors and contributions. However, there is no requirement to disclose donations to individual candidates.

References:

S.225, 1999 Constitution.

S.93[2], 1999 Constitution.

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

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

21e. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates.

YES | NO

Comments:

Places a limit on the election expenses of individual candidates. It is therefore presumed that this provides a basis for monitoring and auditing of the finances of individual candidates.

The law states as follows: "The maximum election expenses to be incurred by a candidate at a Presidential election shall be N500,000,000 (US\$4,248,629)." The section goes on to provide ceilings for other elections such as Governorship, Senate, House of Representatives, etc. The reference here is to candidates and not political parties.

References:

Section 93 of the Electoral Act 2006.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures. 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 an individual candidate's campaign finances and expenditures or if such requirements exist but allow for candidates to self-audit.

21f. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | NO

Comments:

The financing of political parties is monitored by the Independent National Election Commission (INEC).

Sets a limit on spending for different categories of elective offices.

Political parties are required to maintain records of donations. There is no provision in the law compelling individual candidates to submit accounts.

By law, all candidates must run under a political party.[]

References:

Electoral Act of 2006

S. 93, Electoral Act of 2006.

S. 92, Electoral Act of 2006.

S. 65, 1999 Constitution.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

The limits on individual donations are not effective at all. The godfather" syndrome whereby one or two rich individuals bankroll the election of some candidates still persist. This gives the financiers undue influence and control over state affairs.

References:

Nigerian Integrity System Study, Transparency International, www.transparency.org. (2004, on the Governor Ngige saga).

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman, Transition Monitoring Group (TMG; 2005-Feb. 2008); (Sept. 1, 2008).

Interview with Emma Ezeazu

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which individuals can indirectly support 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 party; unregulated loans to 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 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.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

Corporate bodies contribute to political parties without check despite the provisions of section 221, 1999 Constitution which prohibits corporate donations to political parties or individual candidates.

References:

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman, Transition Monitoring

Group (TMG; 2005-Feb. 2008); (Sept. 1, 2008).

Interview with Emma Ezeazu, Coordinator, Alliance for Credible Elections.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which companies can indirectly support 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 party; unregulated loans to 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 political parties 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.

22c. 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:

The limits are not effective at all. Political parties flout the regulations with impunity and money politics" is still the order of the day.

References:

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman, Transition Monitoring Group (TMG; 2005-Feb. 2008); (Sept. 1, 2008).

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.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

There are no known cases of the Independent National Election Commission (INEC) initiating investigations over the finances of political parties.

References:

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman, Transition Monitoring Group (TMG; 2005-Feb. 2008); (Sept. 1, 2008).

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties. 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.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There has not been a reported case of the Independent National Election Commission (INEC) imposing a penalty on a political party for infringing party financing guidelines.

References:

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman, Transition Monitoring Group (TMG; 2005-Feb. 2008); (Sept. 1, 2008).

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.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

Comments:

The auditing of contributions to political parties are not thorough and there is no public access to the results (if any) of the audits.

References:

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman, Transition Monitoring Group (TMG; 2005-Feb. 2008); (Sept. 1, 2008).

100: Political party 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 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 may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party 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.

23. Are the regulations governing the political financing of individual candidates effective?

0

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

The limits are not effective and rich individuals still substantially sponsor a candidate with the aim of controlling the workings of government. This is known as the godfather syndrome."

References:

Nigerian National Integrity Study 2004, www.transparency.org.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. 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 particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates 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; unregulated loans to candidates (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 particular political candidate 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.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

Corporate organizations still make donations to candidates despite the legal restrictions. The law is not enforced at all.

References:

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman, Transition Monitoring Group (TMG; 2005-Feb. 2008); (Sept. 1, 2008).

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. 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 an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates 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; unregulated loans to candidates (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 individual candidates 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.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

There are no reported cases of the Independent National Electoral Commission (INEC) initiating investigations on this issue.

References:

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman, Transition Monitoring Group (TMG; 2005-Feb. 2008); (Sept. 1, 2008).

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns. 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.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There are no reported cases of the Independent National Electoral Commission (INEC) imposing penalties on offenders.

References:

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman, Transition Monitoring Group (TMG; 2005-Feb. 2008); (Sept. 1, 2008).

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.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

The law only requires the audit of accounts of political parties and not that of individual candidates. The Electoral Laws and the Constitution does not provide for independent candidates.

References:

Section 225, 1999 Constitution.

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman, Transition Monitoring Group (TMG; 2005-Feb. 2008); (Sept. 1, 2008).

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns 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.

24. Can citizens access records related to the financing of political parties?

8

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Political parties are required to submit the records of their financial expenditure to the Independent National Election Commission (INEC). The financial report is required to be submitted annually. However these records are not made public. There is no access to information law that would answer the public demand for access to such records.

References:

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman, Transition Monitoring Group (TMG; 2005-Feb. 2008); (Sept. 1, 2008).

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

75:

50: Political parties 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 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.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens have no access to the financial records of political parties.

References:

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman, Transition Monitoring Group (TMG; 2005-Feb. 2008); (Sept. 1, 2008).

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.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The issue of cost does not arise as citizens have no access to such records.

References:

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman, Transition Monitoring Group (TMG; 2005-Feb. 2008); (Sept. 1, 2008).

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.

25. Can citizens access records related to the financing of individual candidates' campaigns?

0

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Individual political candidates are not required to disclose data relating to their financial support. There are no known cases where they make such disclosure.

References:

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman, Transition Monitoring Group (TMG; 2005-Feb. 2008); (Sept. 1, 2008).

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

75:

50: Individual 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: Individual 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.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens do not have access to such records. Moreover such records are unlikely to exist as they are not required by law to be kept.

References:

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman, Transition Monitoring Group (TMG; 2005-Feb. 2008); (Sept. 1, 2008).

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.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The issue of cost does not arise as citizens do not have access to such records.

References:

Telephone interview with Mr. Innocent Chukwuma, Executive Director, CLEEN FOUNDATION; Chairman, Transition Monitoring Group (TMG; 2005-Feb. 2008); (Sept. 1, 2008).

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.

III-1. Executive Accountability

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

81

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

Most of the time, the Chief executive gives reasons and explanations for his policy decisions.

References:

Interview with Dr. Anthonia Ekpa, Assistant Director and Head of Department of Communications, Bureau for Public Service Reforms (BPSR); (Aug. 20, 2008).

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.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

The Constitution, in addition to other laws, has provisions that allow for judicial interrogation and review of executive actions.

This ranges from challenges to infringement of constitutional rights to issues under the Law of Contract and Law of Tort. State and Local governments can also challenge actions of the Federal government in court and vice versa.

References:

The 1999 Constitution.

Attorney General of Abia State v. Attorney General of the Federation and 19 others (SC. 73/2006).

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).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

There are many decided cases of judicial review and annulment of executive actions.

References:

Attorney General of Ondo State v. Attorney General of the Federation (1983) 2 S.C.N.L.R. 269.

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. It does not need to rely upon the executive to initiate a constitutional or legal review.

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.

27d. 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:

Most government policies and practices are backed by law.

References:

Interview with Dr. Anthonia Ekpa, Assistant Director and Head of Department of Communications, Bureau for Public Service Reforms (BPSR); (Aug. 20, 2008).

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.

28. Is the executive leadership subject to criminal proceedings?

50

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | **NO**

Comments:

Prohibits civil or criminal proceedings against the president, vice-president, the governor and deputy governor of a state while they are in office.

References:

Section 308 of the 1999 Constitution.

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

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.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:

Ministers do not enjoy immunity from prosecution while in office. Currently, former Minister of Education Professor Fabian Osuji is undergoing prosecution for bribing the senate president and other members of the National Assembly. Both the Minister and the senate president were removed from office as a result of the scandal.

Also former Minister of Health, Professor Adenike Grange was removed from office and is being prosecuted for embezzlement of public funds.

References:

Health Ministers, Grange, Aduku Resign Over Graft Charges,” Guardian Newspapers, <http://www.guardiannewsngr.com/news/article01/indexn2.html?update=260308&ptitle=Health%20ministers,%20Grange,%20Aduku%20resign%20over%20graft%20charges>, (Wed. March 26, 2008).

“Charges against Grange, Aduku, Others,” Punch Newspapers, <http://punchng.com/Articl.aspx?theartic=Art200804091448979>, (9th April 2008).

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.

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

63

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:

The code requires that all public officials (including the president, vice-president, governors and their deputies), to declare their assets before assuming office; at the end of every four years; and at the end of their term of office.

References:

The Code of Conduct Bureau and Tribunal Act, Cap 56, Laws of the Federation.

Section 11, Code of Conduct for Public Officers, Part 1 of the 5th Schedule, 1999 Constitution.

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. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

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

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

Comments:

Both apply to Ministers.

References:

The Code of Conduct for Public Officers, the Code of Conduct Bureau and Tribunal Act, Cap 56, Laws of the Federation.

Part 1 of the 5th schedule to the 1999 Constitution.

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.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

Comments:

Both regulate the giving and receipt of gifts by public officers including the president and his vice president as well as the governors and their deputies.

References:

The Code of Conduct for Public Officers, the Code of Conduct Bureau and Tribunal Act, Cap 56, Laws of the Federation.

Part 1 of the 5th Schedule to the 1999 Constitution (Sections 6-8).

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.

29d. 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:

The Code of Conduct Bureau, which is an agency established by statute, verifies the asset declaration of public officials.

References:

The Code of Conduct Bureau and Tribunal Act, Cap 56, Laws of the Federation.

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. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

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.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

Comments:

Provides that a retired public officer on pension shall not accept more than one remunerative position as chairman, director, or employee of a company controlled by the government or in any public authority.

Prohibits the president, vice president, governor and deputy governor of a state from service or employment in foreign companies or foreign enterprises. Other than these rules, there is no other post service restrictions on entering the private sector.

References:

Section 4 of the Code of Conduct for Public Officers, Part 1 of the 5th Schedule, 1999 Constitution.

Section 6 of the Code of Conduct for Public Officers, Part 1 of the 5th Schedule, 1999 Constitution.

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. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

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

29f. 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:

The restriction as it exists is seldom enforced.

References:

Interview with Dr. Anthonia Ekpa, Assistant Director and Head of Department of Communications, Bureau for Public Service Reforms (BPSR); (Aug. 20, 2008).

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases 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.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

The regulations are rarely enforced and are therefore not effective.

References:

Interview with Dr. Anthonia Ekpa, Assistant Director and Head of Department of Communications, Bureau for Public Service Reforms (BPSR); (Aug. 20, 2008).

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. 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.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

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

Comments:

The Code of Conduct Bureau verifies asset declaration by public officers, but due to limited capacity within the Agency, this process is not thorough and not carried out across the board.

References:

Interview with Dr. Anthonia Ekpa, Assistant Director and Head of Department of Communications, Bureau for Public Service Reforms (BPSR); (Aug. 20, 2008).

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. Audits may be performed by entities known to be partisan or biased in their practices.

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

0

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | **NO**

Comments:

The asset declaration of public officials are not accessible to the public.

A nongovernmental organization (NGO), Media Rights Agenda, has unsuccessfully sued the Code of Conduct Bureau in an attempt to gain access to the asset declarations.

References:

Declaration of a former President Obasanjo while he was in office.

Incorporated Trustees of Media Rights Agenda v. Code of Conduct Bureau.

Nigerian National Integrity Systems Study 2004, www.transparency.org.

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.

30b. 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:

Citizens have no access at all to the asset declarations of public officials.

References:

Nigerian National Integrity Study 2004, www.transparency.org.

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.

30c. 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:

There is no provision for citizens to access the asset declarations of public officials.

References:

Nigerian National Integrity Study 2004, www.transparency.org.

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. Can citizens sue the government for infringement of their civil rights?

100

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

YES | NO

Comments:

Provides for fundamental human rights which include right to life; right to dignity of human person; right to personal liberty; right to fair hearing; right to private and family life; right to freedom of thought, conscience and religion; right to freedom of expression and press; right to peaceful assembly and association; right to freedom of movement; right to freedom from discrimination; and right to acquire and own immovable property anywhere in Nigeria.

Furthermore, the African Charter on Human and Peoples' Rights has also been accepted in Nigeria and is now part of the domestic legal framework.

References:

Chapter IV of the 1999 Constitution.

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.

31. Official government functions are kept separate and distinct from the functions of the ruling political party.

50

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

Sometimes the boundaries between State and Party issues are effaced.

There have been instances when government vehicles are used for political campaigns. Also presidential official visits have been used by members of the president's party for mobilization especially in states where the opposition is in charge.

References:

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition (Abuja, Sept. 4, 2008).

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 the 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 bureaucracy 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

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

100

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

The judiciary has powers to review laws passed by the executive and assesses it for compliance with the Constitution and other laws.

Ondo State v. Federation is an example of where the judiciary reviewed the Corrupt Practices and Other Related Offences Act 2000. Some sections of the law were excised but the court held that the federal government has the power to make the law.

References:

Chapter VII 1999 Constitution.

Attorney General of Ondo State v. Attorney General of the Federation & 35 Ors (2002), 14 WRN 1.

Interview with Mr Femi Falana, President, West African bar Association (Aug. 1, 2008).

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).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

The judiciary has, at various times, reviewed laws made by the legislature.

References:

Attorney General of Ondo State v. Attorney General of the Federation & 35 Ors (2002) 14 WRN 1.

Interview with Mr Femi Falana, President, West African Bar Association (Aug. 1, 2008).

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.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

The law does not provide for immunity for members of the Legislature.

References:

The law does not provide for immunity for members of the Legislature.

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. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

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

46

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

Comments:

Makes it mandatory for all members of the National Assembly to declare their assets and liabilities before taking their seats.

References:

Section 52, 1999 Constitution.

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.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

Comments:

There are no restrictions on entering the private sector for national legislators.

References:

There are no restrictions on entering the private sector for national legislators.

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.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:

Members of the National Assembly are public officers under the Code of Conduct for Public Officers and are subject to restrictions on gifts and benefits under the Code.

In addition, the National Assembly has developed a Code of Conduct for Parliamentarians that has been adopted by the legislators.

References:

Section 6, Code of Conduct for Public Officers, Part 1, 5th Schedule, 1999 Constitution.

Interview with Auwal Musa Rafsanjani, Executive Director, Civil Society Legislative Advocacy Center (CISLAC); (Abuja, Sept. 17, 2008).

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.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

Comments:

The Code of Conduct Bureau verifies the Asset Declaration of Public Officers.

References:

The Code of Conduct Bureau verifies the Asset Declaration of Public Officers.

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.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no post-government employment restrictions for national legislators.

References:

Interview with Auwal Musa Rafsanjan, Executive Director, Civil Society Legislative Advocacy Center, (CISLAC); (Abuja, Sept. 17, 2008).

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases 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.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

The regulations on gifts and hospitality are not enforced.

References:

Interview with Auwal Musa Rafsanjan, Executive Director, Civil Society Legislative Advocacy Center, (CISLAC); (Abuja, Sept. 17, 2008).

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. 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.

33g. In practice, national legislative branch asset disclosures are audited.

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

Comments:

The Code of Conduct Bureau tries to verify declared assets but lacks the capacity to verify all declared assets and also to carry out thorough investigations.

References:

Interview with Auwal Musa Rafsanjan, Executive Director, Civil Society Legislative Advocacy Center, (CISLAC); (Abuja, Sept. 17, 2008).

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. Audits may be performed by entities known to be partisan or biased in their practices.

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

0

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | **NO**

Comments:

There is no right of access to information, including that of the asset declarations of public officers.

References:

Interview with Auwal Musa Rafsanjan, Executive Director, Civil Society Legislative Advocacy Center, (CISLAC); (Abuja, Sept. 17, 2008).

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.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.



Comments:

There is no right of access to information including that of the asset declarations of public officers.

References:

Nigerian National Integrity Systems Study 2004, www.transparency.org.

Interview with Auwal Musa Rafsanjan, Executive Director, Civil Society Legislative Advocacy Center, (CISLAC); (Abuja, Sept. 17, 2008).

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.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.



Comments:

There is no right of access to information including that of the asset declaration of public officers.

References:

Interview with Auwal Musa Rafsanjan, Executive Director, Civil Society Legislative Advocacy Center, (CISLAC); (Abuja, Sept. 17, 2008).

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.

35. Can citizens access legislative processes and documents?

67

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

Draft bills and other related documents used by legislators in the making of laws making are regarded as public documents which citizens can access by applying for certified true copies. However, since there is no right of access to information as the Freedom of Information Bill is not yet passed into law, access may be refused.

References:

Interview with Auwal Musa Rafsanjan, Executive Director, Civil Society Legislative Advocacy Center, (CISLAC); (Abuja, Sept. 17, 2008).

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.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access records of certain legislative processes, but the process takes one to two weeks.

References:

Interview with Auwal Musa Rafsanjan, Executive Director, Civil Society Legislative Advocacy Center, (CISLAC); (Abuja, Sept. 17, 2008).

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.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

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

Comments:

Applicants are made to pay for the cost of making copies. The staff also often ask for tips before they release such documents. There is no fixed cost.

References:

Interview with Auwal Musa Rafsanjan, Executive Director, Civil Society Legislative Advocacy Center, (CISLAC); (Abuja, Sept. 17, 2008).

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.

53
III-3. Judicial Accountability

36. Are judges appointed fairly?

92

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

Judges are usually appointed on the recommendation of the National Judicial Council, which has the constitutional power to recommend the appointment and removal of judges.

The appointment of national judges are also subject to ratification by the Senate.

References:

Section 20 of Part 1 of the Third Schedule 1999 Constitution.

Sections 231, 238, 250 of the 1999 Constitution.

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. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

Professional criteria is mostly applied to the selection of judges. To qualify as a judge a lawyer must have been at least ten years at the bar. Judges of higher courts are usually appointed on the recommendation of the National Judicial Council, which is an independent legal body. The list of nominated judges is usually released for public inputs, chiefly by the Nigerian Bar Association. For judges of the Court of Appeal and the Supreme Court, a ratification by the Senate is required.

References:

Nigerian National Integrity Systems Study 2004, www.transparency.org.

Interview with Mr. Femi Falana, President, West African Bar Association, (Nanet Suites, Abuja, Aug. 1, 2008).

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.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

Some categories of judges, such as the Justices of the Supreme Court, require confirmation by the Senate (Section 231), as do the President of the Court of Appeal (Section 238); and the Chief Judge of the Federal High Court (Section 250).

References:

1999 Constitution.

Interview with Mr. Femi Falana, President, West African Bar Association, (Nanet Suites, Abuja, Aug. 1, 2008).

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).

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

92

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:

Judicial decisions are based on written codes that have set criteria for arriving at decisions.

References:

Interview with Mr. Femi Falana, President, West African Bar Association, (Nanet Suites, Abuja, Aug. 1, 2008).

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).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

Judges are required to explain their judgments in detail. There is a strict procedure for following already-established precedents from higher courts.

References:

Interview with Mr. Femi Falana, President, West African Bar Association, (Nanet Suites, Abuja, Aug. 1, 2008).

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.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

The National Judicial Council has the Constitutional powers to investigate allegations of misconduct against judges and take disciplinary measures.

References:

Section 21, Part 1, 3rd Schedule, 1999 Constitution.

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency 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 disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

The members of the National Judicial Council are appointed by the President subject to confirmation by the Senate.

They can only be removed by the President acting on an address supported by a two-thirds majority of the Senate.

References:

Section 154, 1999 Constitution.

Section 157[1], 1999 Constitution.

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

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

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The National Judicial Council sometimes initiates investigation, but more often they only respond to complaints and petitions made by aggrieved parties.

References:

NJC Orders Retirement of Oyo CJ, 2 Other Judges,” Nigerian Tribune, <http://www.tribune.com.ng/03032008/news/news9.html>, (March 3, 2008).

“Obasanjo Okays Dismissal of Federal High Court Judge,” Vanguard Newspapers, <http://news.biafranigeriaworld.com/archive/2004/feb/26/0053.html>, (Feb. 26, 2004).

Interview with Mr. Femi Falana, President, West African Bar Association, (Nanet Suites, Abuja, Aug. 1, 2008).

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies’ investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

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

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

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

Comments:

The National Judicial Council has imposed disciplinary measures on several judges.

References:

The Nigerian National Integrity Systems Study 2004, www.transparency.org.

Interview with Mr. Femi Falana, President, West African Bar Association, (Nanet Suites, Abuja, Aug. 1, 2008).

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) 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 judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) 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 judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

86

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

Comments:

Members of the National Judiciary are Public Officers according to the definition of Public Officers in the Code of Conduct. It is therefore mandatory that they declare their assets in writing.

In addition, they are mandated to declare their assets before performing the functions of their office.

References:

Part 11, 5th Schedule, 1999 Constitution.

Section 290, 1999 Constitution.

YES: A YES score is earned if all members of the national-level judiciary 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 national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

Comments:

Judicial Officers come within the scope of Public Officers who are subject to the Code of Conduct for Public Officers. Such officers are subject to restrictions on accepting gifts and benefits.

References:

Section 6, Code of Conduct for Public Officers, Part 1, 5th Schedule, 1999 Constitution.

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

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

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

Comments:

The Code of Conduct Bureau set up under Cap 56, Laws of the Federation, investigates and verifies declaration of assets by Public Officers.

References:

Interview with Mr. Femi Falana, President, West African Bar Association, (Nanet Suites, Abuja, Aug. 1, 2008).

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary 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 national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

Comments:

The section prohibits persons who have held offices as Judicial Officers from appearing in any court or tribunal in Nigeria as legal practitioners when they have ceased to hold such office.

References:

Section 292[2], 1999 Constitution.

Interview with Mr. Femi Falana, President, West African Bar Association, (Nanet Suites, Abuja, Aug. 1, 2008).

YES: A YES score is earned if there are regulations restricting national-level judges' 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.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

Comments:

The restrictions are effective.

References:

Interview with Mr. Femi Falana, President, West African Bar Association, (Nanet Suites, Abuja, Aug. 1, 2008).

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges 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 cases, judges 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. Judges 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.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

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

Comments:

The score is based on the opinion of the interviewer. There is no available evidence to support breach of the provision, or lack of same.

References:

Interview with Mr. Femi Falana, President, West African Bar Association, (Nanet Suites, Abuja, Aug. 1, 2008).

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges 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 national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

38g. In practice, national-level judiciary asset disclosures are audited.

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

Comments:

The Code of Conduct Bureau verifies asset declarations of Public Officers but this process is largely ineffective due to agency's insufficient resources. Due to lack of capacity, the Code of Conduct Bureau conducts only random checks.

The bureau, in its random verification process, focuses more on political office holders due to their fixed and limited tenure. Regarding career public servants, the focus is on agencies perceived to be corruption flash points such as customs, immigration, and the Federal Inland Revenue Service where they conduct Conference Verification." It appears the judiciary is not one of the prioritized agencies.

References:

Interview with Mr. Femi Falana, President, West African Bar Association, (Nanet Suites, Abuja, Aug. 1, 2008).

Interview with Dr Uyim Akpabio, Director of Education and Training, Code of Conduct Burea (Oct. 13, 2008).

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary 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: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | **NO**

Comments:

There is no provision allowing citizens to access the asset declarations of public officers as there is no right to access of information in the first place.

References:

Interview with Mr. Femi Falana, President, West African Bar Association, (Nanet Suites, Abuja, Aug. 1, 2008).

YES: A YES score is earned if members of the national-level judiciary 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-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

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

Comments:

There is no provision allowing citizens to access the asset declarations of public officers.

References:

Nigerian national Integrity Study 2004, www.transparency.org.

Interview with Mr. Femi Falana, President, West African Bar Association, (Nanet Suites, Abuja, Aug. 1, 2008).

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.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no provision allowing citizens access to the asset declarations of public officers.

References:

Nigerian national Integrity Study 2004, www.transparency.org.

Interview with Mr. Femi Falana, President, West African Bar Association, (Nanet Suites, Abuja, Aug. 1, 2008).

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.

III-4. Budget Processes

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

40a. In law, the legislature can amend the budget.

YES | NO

References:

Sections 80 and 81, 1999 Constitution gives the legislature the power to approve budgets and pass the appropriation bill. Section 59 of the 1999 Constitution gives the legislature the power to override the presidential veto of bills passed by the National Assembly. This power includes the override of the veto in respect of the Appropriation Bill.

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

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

References:

Section 80 & 81, 1999 Constitution.

Interview with Mr. Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

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.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

Comments:

The legislators lack the capacity and diligence for effective monitoring. Furthermore, resistance from government institutions also interferes with the process.

References:

Interview with Mr. Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

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.

41. Can citizens access the national budgetary process?

42

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

Comments:

There is some public debate, but not all the of the processes are accessible to the public.

References:

Interview with Mr. Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

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.

41b. In practice, citizens provide input at budget hearings.

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

Comments:

Citizens have very limited input into budget hearings. Even when they are invited to provide input, the cost of participation deter citizens and civil society organizations (CSOs).

References:

Interview with Mr. Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

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.

41c. In practice, citizens can access itemized budget allocations.

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

Comments:

It is usually difficult to access itemized budget allocations, especially at the debating stage.

References:

Interview with Mr. Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

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.

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

58

43a. In practice, department heads regularly submit reports to this committee.

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

Comments:

Department heads sometimes submit reports to the Public Accounts Committee.

References:

Interview with Mr. Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

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.

43b. 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 membership of the Public Accounts Committee (PAC) is equitably distributed between the opposition parties and the majority party. Traditionally, a member of the largest opposition party usually chairs the PAC.

References:

Interview with Mr. Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

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.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

The Public Accounts Committee sometimes initiates investigations, but this does not happen often and these investigations are not usually effective.

References:

Interview with Mr. Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

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.

42. Is there a separate legislative committee which provides oversight of public funds?

100

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

YES | NO

Comments:

There is a standing Committee of the National Assembly, the Public Accounts Committee (PAC), which oversees the expenditure of public funds.

References:

Public Accounts Committee Act, Cap 375, Laws of the Federation 1990.

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 within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

Category IV. Administration and Civil Service

IV-1. ⁵⁹ Civil Service Regulations

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

75

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

Comments:

Establishes the civil service of the Federation.

Creates the Federal Civil Service Commission whose members have security of tenure.

Provides that the Federal Civil Service Commission shall not be subject to the direction or control of any other person or authority.

References:

Section 169, 1999 Constitution.

Section 153, 1999 Constitution.

Section 156, 1999 Constitution.

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.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

Provides that a Public Officer shall not put himself in a position where his personal interest conflicts with his duties and responsibilities.

The act has clear provisions aimed at preventing nepotism and cronyism.

References:

Section, 1 The Code of Conduct for Public Officers.

The Federal Character Commission Act.

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.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

There is a provision in the Public Service Rules for Petitions and Appeals. Aggrieved public servants can petition the Federal Civil Service Commission or the Head of the Civil Service in relation to matters of appointment, promotion, transfer and discipline. Public servants can also petition the Public Complaints Commission (Ombudsman). They can also appeal the decisions of these bodies in court.

The Public Service Rules are currently under review.

References:

There is a provision in the Public Service Rules for Petitions and Appeals. Aggrieved public servants can petition the Federal Civil Service Commission or the Head of the Civil Service in relation to matters of appointment, promotion, transfer and discipline.

Public servants can also petition the Public Complaints Commission (Ombudsman). They can also appeal the decisions of these bodies in court.

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. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

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

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | **NO**

Comments:

The Public Service Rules provide that after a conviction for a criminal offense, a Public Officer shall be suspended effective from the date of conviction while the Federal Service Commission determines what disciplinary measures to impose on the officer. The Commission may decide not to dismiss the officer.

References:

Interview with Dr. Anthonia Ekpa, Assistant Director and Head of Department of Communications, Bureau for Public Service Reforms (BPSR); (Aug. 20, 2008).

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 or if the ban is not a lifetime ban.

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

42

45a. In practice, civil servants are protected from political interference.

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

Comments:

The Code of Conduct for Public Officers requires them to be impartial (Section 1). However, they are not totally protected from political interference and may be victimized if they resist political pressures.

However, there are mechanisms for redress within the public service rules and within the Public Complaints Commission Act in the event of such victimization.

References:

Interview with Dr. Anthonia Ekpa, Assistant Director and Head of Department of Communications, Bureau for Public Service Reforms (BPSR); (Aug. 20, 2008).

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.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

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

Comments:

The Public Service Rules have clear guidelines for recruitment and promotions. However, these guidelines are not always followed.

References:

Interview with Dr. Anthonia Ekpa, Assistant Director and Head of Department of Communications, Bureau for Public Service Reforms (BPSR); (Aug. 20, 2008).

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.

45c. 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:

The Federal Character Commission Act, the Code of Conduct and Tribunal Act and the Civil Service Rules prohibit practices such as nepotism, cronyism and patronage. However, such practices still exist.

References:

Interview with Dr. Anthonia Ekpa, Assistant Director and Head of Department of Communications, Bureau for Public Service Reforms (BPSR); (Aug. 20, 2008).

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.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

In practice, very few civil servants have clear job descriptions.

According to the interviewee, civil servants are employed on specific grade levels. Beyond that, they do not have clear job descriptions and may be given any assignment by their supervisors. However, certain professionals such as lawyers, doctors, engineers and architects have clear job descriptions when they are employed within their area of professional competence.

References:

Interview with Dr. Anthonia Ekpa, Assistant Director and Head of Department of Communications, Bureau for Public Service Reforms (BPSR); (Aug. 20, 2008).

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility 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.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

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

Comments:

The Civil Service basic pay is very poor, so bonuses constitute a significant part of it.

References:

Interview with Dr. Anthonia Ekpa, Assistant Director and Head of Department of Communications, Bureau for Public Service Reforms (BPSR); (Aug. 20, 2008).

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.

45f. 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:

Such publications are rare.

References:

Interview with Dr. Anthonia Ekpa, Assistant Director and Head of Department of Communications, Bureau for Public Service Reforms (BPSR); (Aug. 20, 2008).

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.

45g. In practice, the independent redress mechanism for the civil service is effective.

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

Comments:

The redress mechanism is not effective because it is fraught with delays.

References:

Interview with Dr. Anthonia Ekpa, Assistant Director and Head of Department of Communications, Bureau for Public Service Reforms (BPSR); (Aug. 20, 2008).

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.

45h. In practice, in the past year, the government has paid civil servants on time.

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

Comments:

The timing varies in different ministries. There are often cases where payment to civil servants is delayed.

References:

Interview with Dr. Anthonia Ekpa, Assistant Director and Head of Department of Communications, Bureau for Public Service Reforms (BPSR); (Aug. 20, 2008).

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.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

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

Comments:

There have been cases of civil servants convicted of corruption who find their way back into the service in a different capacity. The interviewee was unable to give specific examples, perhaps out of fear of being victimized.

References:

Interview with Dr. Anthonia Ekpa, Assistant Director and Head of Department of Communications, Bureau for Public Service Reforms (BPSR); (Aug. 20, 2008).

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. Some bans are only temporary.

25:

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

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

56

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

Comments:

All public servants are required to file an asset disclosure form.

References:

The Code of Conduct for Public Officers, [Part 1, 5th Schedule, 1999 Constitution.

The Code of Conduct Bureau and Tribunal Act Cap 56, Laws of the Federation.

YES: A YES score is earned if senior members of the civil service 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 senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

Comments:

Provides that a public officer shall not put himself in a position where his personal interest conflicts with his duties and responsibilities.

References:

Section 1, Code of Conduct for Public Officers, Part 1, 5th Schedule, 1999 Constitution.

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.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

Comments:

There are no provisions in the law restricting civil servants from entering the private sector after leaving the government.

References:

Interview with Dr. Anthonia Ekpa, Assistant Director and Head of Department of Communications, Bureau for Public Service Reforms (BPSR); (Aug. 20, 2008).

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.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

Comments:

The section has restrictions on public officers accepting gifts. Also the Public Service Rules have similar restrictions.

However, there are several versions of the Public Service Rules in circulation. The last authorized version is the 2000 version but that has since been reviewed more than once. There is a 2006 version that is in the public domain but allegedly it is not officially approved. There is a 2007 version which is still in draft form after review by a presidential committee.

Because of this lack of clarity, specific sections of the Rule cannot be cited. However, the provisions cited in this study are factually correct and reflected in all the versions.

References:

Section 6, Code of Conduct for Public Officers.

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.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | NO

Comments:

The Code of Conduct Bureau is charged with the responsibility of verifying the asset declaration of public officers.

References:

The Code of Conduct Bureau is charged with the responsibility of verifying the asset declaration of public officers.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service 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 civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no restrictions on post-government, private sector employment for civil servants.

References:

Interview with Dr. Anthonia Ekpa, Assistant Director and Head of Department of Communications, Bureau for Public Service Reforms (BPSR); (Aug. 20, 2008).

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases 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.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are regulations governing gifts under the Public Service Rules and the Code of Conduct for public officers but they are not effective as they are rarely enforced. There are several structural issues which impede enforcement . One is the failure of the law to put a value to gifts recognized by custom.”

Section 10 of the Code of Conduct and Tribunal Act prohibits public servants from asking for or accepting gifts but section 10[3] makes an exception as follows: “A public officer shall only accept personal gifts or benefits from relatives or personal friends to such extent and on such occasions as are recognized by custom.” It does not provide a ceiling for such gifts and does not define what “relatives” or “personal friends” means. These three issues provide a very wide scope for acceptance of almost all gifts from all persons in the Nigerian context.

The second issue is the absence of structures within government agencies to keep records of gifts and ensure compliance.

References:

Section 10[3] of the Code of Conduct and Tribunal Act .

Telephone interview with Dr Uyim Akpabio, Director of Education and Training, Code of Conduct Bureau (Oct. 13, 2008).

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. 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.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

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

Comments:

The restrictions are not effective as there is still nepotism and cronyism in the civil service.

References:

Interview with Dr. Anthonia Ekpa, Assistant Director and Head of Department of Communications, Bureau for Public Service Reforms (BPSR); (Aug. 20, 2008).

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.

46i. In practice, civil service asset disclosures are audited.

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

Comments:

The asset disclosures are verified but due to the huge numbers of them, a random selection process is used. Not all of the disclosures are audited. The Code of Conduct Bureau focuses more on political office holders due to their fixed tenure.

In regard to career public servants, the "Conference Verification" method has been introduced. Here, public servants from designated agencies that are considered particularly vulnerable are called in groups. It is requested that they bring supporting documents for their declared assets. Any anomalies that are revealed by this exercise then leads to more in depth investigations.

References:

Telephone interview with Dr Uyim Akpabio, Director of Education and Training, Code of Conduct Bureau (Oct. 13, 2008).

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service 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: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

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

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | **NO**

Comments:

Citizens do not have access to the records on asset disclosure of civil servants. there is no Freedom of Information law yet.

References:

Citizens do not have access to the records on asset disclosure of civil servants. there is no Freedom of Information law yet.

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.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

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

Comments:

Citizens do not have access to such records.

References:

Interview with Dr. Anthonia Ekpa, Assistant Director and Head of Department of Communications, Bureau for Public Service Reforms (BPSR); (Aug. 20, 2008).

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.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The issue of costs do not arise as citizens do not have access to these records.

References:

Interview with Dr. Anthonia Ekpa, Assistant Director and Head of Department of Communications, Bureau for Public Service Reforms (BPSR); (Aug. 20, 2008).

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

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

13

48a. 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:

There is no legal protection for whistle-blowers, including civil servants. The Whistle-Blower Protection Bill is yet to be passed into law.

References:

There is no legal protection for whistle-blowers, including civil servants. The Whistle-Blower Protection Bill is yet to be passed into law.

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.

48b. 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:

There are no formal structures for accessing whistle-blowers' reports and there are no mechanisms set up to protect them from victimization.

References:

Interview with Dr. Tonia Ekpa, Assistant Director and Head of Communications, Bureau for Public Service Reforms (BPSR); (Aug. 20, 2008).

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.

48c. 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:

There is no whistle-blowers protection law. However, the Independent Corrupt Practices and Other Related Offences Act of 2000 provides that the Commission shall protect the identity of its informants and any information that may reveal this identity (Section 64). The Act, however, does not provide mechanisms for protecting informants when their identity is already known either through negligence or compromise by its staff or by any other means.

The Economic and Financial Crimes Commission (Establishment) Act of 2004 provides that officers of the Commission shall not be compelled to disclose the source of their information or identity of their informants except by court order (Section 39[1]). It also does not provide for mechanisms to protect informants where their identity is revealed despite these rudimentary protective measures.

References:

Section 64, The Independent Corrupt Practices and Other Related Offences Act of 2000.

Section 39[1], The Economic and Financial Crimes Commission (Establishment) Act of 2004.

Review of Legal and Political Challenges to the Domestication of the Anti-Corruption Conventions in Nigeria,” by Transparency International, <http://www.transparency.org> (2006).

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.

48d. 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:

There is no structured system for protection of whistle-blowers.

References:

Interview with Mr. Chibuzo Ekwewuo, National Secretary, Zero Corruption Coalition (Abuja, Sept. 4, 2008).

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.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

13

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The ACTUS staff are usually subgroups within the ministries. They have other primary responsibilities and often regard their assignment within the ACTUS as secondary.

References:

Interview with Dr. Tonia Ekpa, Assistant Director and Head Communications Department, Bureau for Public Service Reforms (BPSR); (Aug. 20, 2008).

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.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Funding for the ACTUS is dependent on the ministries where they are located. A number of the ACTUS are not functioning due mainly to the lack of independent funding.

References:

Interview with Ms. Onyinye Ugonna, former program officer and desk officer, ACTUS, Zero-Corruption Coalition (ZCC); (Aug. 13, 2008).

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.

50c. 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 ACTUS in most ministries are not functional. They are run by the staff of the very ministries that they are supposed to oversee. Their careers and promotions are dependent on their managers about whom they are supposed to receive reports. As a result, reports are seldom acted upon even when they are received.

References:

Interview with Ms. Onyinye Ugonna, former program officer and desk officer, ACTUS, Zero-Corruption Coalition (ZCC); (Aug. 13, 2008).

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.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The ACTUS rarely initiate investigations. Most of them do not have the capacity to investigate allegations.

References:

Interview with Dr. Tonia Ekpa, Assistant Director and Head Communications Department, Bureau for Public Service Reforms (BPSR); (Aug. 20, 2008).

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.

49. Is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

Comments:

There are anti-corruption units in Ministries, Departments and Agencies (ACTUS) that were set up by the dedicated anti-corruption agency known as the the independent Corrupt Practices and Other related Offences Commission (ICPC). They are usually located within the Ministries and use diverse ways to access reports. Some of them have hotlines and e-mails where reports can be made.

References:

There are anti-corruption units in Ministries, Departments and Agencies (ACTUS) that were set up by the dedicated anti-corruption agency known as the the independent Corrupt Practices and Other related Offences Commission (ICPC). They are usually located within the Ministries and use diverse ways to access reports. Some of them have hotlines and e-mails where reports can be made.

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

42 IV-3. Procurement

51. Is the public procurement process effective?

90

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:

Addresses issues of Conflict of Interest in Procurement.

References:

Section 57 (8-13), Public Procurement Act 2007.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

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

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

Comments:

The Public Procurement Act provides for training and development for Procurement officers.

The Bureau for Public Procurement has been conducting these trainings as part of its functions. However, the provision in the law does not make them mandatory.

References:

Section 5(k), Public Procurement Act of 2007.

Interview with Mr. Adebowale Adedokun, Special Assistant to the Director General Bureau of Public Procurement (BPP); (Abuja, Sept. 2, 2008).

Interview with Mr Chibuzo Ekwekwu, Legal Practitioner and National Secretary, Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

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

Comments:

The Bureau for Public Procurement (BPP) and the law setting it up are still relatively new. It is still too early to gauge how effective this process is.

The Bureau sensitizes the agencies about the need to enforce the conflict-of-interest regulations. It also does due diligence⁷ to ensure compliance. This is done in collaboration with the Corporate Affairs Commission (CAC), the body that registers companies to find out the people behind corporate institutions. This assists in detecting possible conflict of interest issues. However, the process of implementation of the Act is still new. It is therefore too early to judge the effects. Also the Public Procurement Act provides for the development of a Code of Conduct for Public Officers involved in the Procurement process. This Code is yet to be developed.

References:

Interview with Mr. Adebowale Adedokun, Special Assistant to the Director General Bureau of Public Procurement (BPP); (Abuja, Sept. 2, 2008).

Interview with Mr Chibuzo Ekwekwu, Legal Practitioner and National Secretary, Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

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.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

Comments:

The Public Procurement Act provides for no such mechanism. However the Code of Conduct Bureau (CCB) is mandated by law to monitor the assets, liabilities and general conduct of public officials. Procurement officials, by virtue of being employed in the public service, are public officials under the Code of Conduct and Tribunal Act.

References:

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

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.

51e. In law, major procurements require competitive bidding.

YES | NO

Comments:

The act requires that all procurement shall be conducted by open competitive bidding (but it is subject to some exemptions allowed under the Act).

References:

Sections 24, Public Procurement Act

Interview with Mr. Adebowale Adedokun, Special Assistant to the Director General Bureau of Public Procurement (BPP); (Abuja, Sept. 2, 2008).

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

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).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

Comments:

This section provides strict criteria for single source procurement.

References:

Section 40, Public Procurement Act 2007

Interview with Mr. Adebawale Adedokun, Special Assistant to the Director General Bureau of Public Procurement (BPP); (Abuja, Sept. 2, 2008).

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

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.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

Comments:

An unsatisfied bidder can appeal for an administrative review that first goes to the accounting officer of the procuring entity. If bidders are not satisfied, they file a complaint with the Bureau of Public Procurement and subsequently may contest the decision in Court.

References:

Section 54, Public Procurement Act of 2007.

Interview with Mr. Adebawale Adedokun, Special Assistant to the Director General Bureau of Public Procurement (BPP); (Abuja, Sept. 2, 2008).

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

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.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

Comments:

Unsuccessful bidders can challenge procurement decisions in court.

References:

Section 54(7), Public Procurement Act 2007.

Interview with Mr. Adebowale Adedokun, Special Assistant to the Director General Bureau of Public Procurement (BPR); (Abuja, Sept. 2, 2008).

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

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.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

Comments:

The Act empowers the Bureau for Public Procurement to debar companies that have contravened any provisions of the Act from public procurements for a period not less than five years as well as to impose a fine.

References:

Sections 6 & 58, Public Procurement Act 2007.

Interview with Mr. Adebowale Adedokun, Special Assistant to the Director General Bureau of Public Procurement (BPP); (Abuja, Sept. 2, 2008).

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

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

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Comments:

The 2007 Procurement Act and processes are still new so there are no reported cases of companies being sanctioned yet.

References:

Interview with Mr. Adebowale Adedokun, Special Assistant to the Director General Bureau of Public Procurement (BPP); (Abuja, Sept. 2, 2008).

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

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.

52. Can citizens access the public procurement process?

75

52a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

The rules and guidelines are generally made available to the public by the Bureau for Public Procurement (BPP). The BPP has also set up and facilitated a Civil Society Coalition to oversight the procurement process in ministries and agencies.

References:

Interview with Mr. Adebowale Adedokun, Special Assistant to the Director General Bureau of Public Procurement (BPP); (Abuja, Sept. 2, 2008).

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

Comments:

The Public Procurement Act provides that notice of acceptance of bids shall immediately be given to the successful bidder.

The Act also requires the The Bureau of Public Procurement (BPP) to publish details in the Procurement Journal.

Some professional bodies and civil society organizations (CSOs) are permitted to attend bid openings and awards where the results are announced in their presence. Furthermore, the Federal Executive Council usually announces award of contracts up to certain thresholds after the council meetings every Wednesday.

References:

Section 33, Public Procurement Act 200.

Section 6(f), Public Procurement Act 2007.

Interview with Mr. Adebowale Adedokun, Special Assistant to the Director General Bureau of Public Procurement (BPP); (Abuja, Sept. 2, 2008).

Interview with Mr Chibuzo Ekwekwu, Legal Practitioner and National Secretary, Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

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.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access the Public Procurement Regulations, but they have to visit the Public Procurement Bureau. For citizens who do not live in the capital city, this will usually take time.

References:

Interview with Mr. Adebowale Adedokun, Special Assistant to the Director General Bureau of Public Procurement (BPP); (Abuja, Sept. 2, 2008).

Interview with Mr Chibuzo Ekwekwu, Legal Practitioner and National Secretary, Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

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. These records are defined here as the rules governing the competitive procurement process.

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.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

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

Comments:

The regulation documents are issued free, but citizens have to go to the offices of the Bureau of Public Procurement (BPP) to get them. However, efforts are being made to put the documents on the Web site.

References:

Interview with Mr. Adebowale Adedokun, Special Assistant to the Director General Bureau of Public Procurement (BPP); (Abuja, Sept. 2, 2008).

Interview with Mr Chibuzo Ekwekwu, Legal Practitioner and National Secretary, Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

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. These records are defined here as the rules governing the competitive procurement process.

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.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Major public procurements are advertised in major newspapers.

References:

Interview with Mr. Adebowale Adedokun, Special Assistant to the Director General Bureau of Public Procurement (BPP); (Abuja, Sept. 2, 2008).

Interview with Mr Chibuzo Ekwekwu, Legal Practitioner and National Secretary, Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

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. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

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

Comments:

The Public Procurement Act enables interested members of the public to attend bid openings as observers. The Bureau of Public Procurement (BPP) has also put in a structures process to enable Civilian Service Organizations (CSO) monitors, as well as professional associations, attend bid openings as observers. This enables them have access to results of public procurement bids.

References:

Section 30(b), Public Procurement Act 2007.

Interview with Mr. Adebowale Adedokun, Special Assistant to the Director General Bureau of Public Procurement (BPP); (Abuja, Sept. 2, 2008).

Interview with Mr Chibuzo Ekwekwu, Legal Practitioner and National Secretary, Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

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.

IV-4. Privatization

53. Is the privatization process effective?

83

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

Comments:

Businesses can compete to purchase privatized State Assets. There is a government regulatory agency, the Bureau of Public Enterprises (BPE), that is charged with the overall responsibility for implementing the Nigerian policy on privatization and commercialization.

References:

Businesses can compete to purchase privatized State Assets. There is a government regulatory agency, the Bureau of Public Enterprises (BPE), that is charged with the overall responsibility for implementing the Nigerian policy on privatization and commercialization.

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.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:

The act, in addition to the Code of Conduct and Tribunal Act, has regulations on conflict of interest for public officers.

The Bureau of Public Enterprises (BPE) has also developed an internal regulatory manual which deals with the issue of Conflict of Interest among others.

References:

The Code of Conduct for Public Officers, Part 1. 5th Schedule, 1999 Constitution.

Interview with a government employee who requested not to be identified for fear of being sanctioned because he signed a confidentiality agreement.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

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

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

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

Comments:

The conflict-of-interest regulations are not always enforced. There is a regulation on Conflict of Interest but according to the interviewee, violators are not often sanctioned.

References:

Interview with a Government employee who requested not to be identified for fear of being sanctioned because he signed a confidentiality agreement.

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.

54. Can citizens access the terms and conditions of privatization bids?

55

54a. In law, citizens can access privatization regulations.

YES | **NO**

Comments:

Citizens cannot always access privatization regulations.

References:

Interview with a government employee who requested not to be identified for fear of being sanctioned because he signed a confidentiality agreement.

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Privatizations are mostly advertised.

References:

Interview with a government employee who requested not to be identified for fear of being sanctioned because he signed a confidentiality agreement.

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments:

The government is required to announce the results of privatization decisions.

References:

Interview with a government employee who requested not to be identified for fear of being sanctioned because he signed a confidentiality agreement.

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.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

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

Comments:

The regulations can be obtained, but it entails visiting the office of the Bureau for Public Enterprises.

References:

Interview with a government employee who requested not to be identified for fear of being sanctioned because he signed a confidentiality agreement.

100: Records (defined here as the rules governing the competitive privatization process) 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.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

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

Comments:

The regulations are usually given free of charge but it requires a visit to the office of the Bureau of Public Enterprises.

References:

Interview with a government employee who requested not to be identified for fear of being sanctioned because he signed a confidentiality agreement.

100: Records (defined here as the rules governing the competitive privatization process) 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. ⁶⁹National Ombudsman

56. Is the national ombudsman effective?

75

56a. In law, the ombudsman is protected from political interference.

YES | NO

Comments:

The commission has a formal organizational structure with offices in all the states of the Federation and it reports to the National Assembly.

The study discloses that there has not been any case of political interference with the work of the agency, However, the study also says that the agency is underfunded and has few resources to deliver on its mandate.

References:

The Public Complaints Commission, The Public Complaints Act, CAP 377, Laws of the Federation 1990.

The Nigerian National Integrity Systems Study 2004, Transparency International, <http://www.transparency.org>.

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.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

There has not been any incidence of political interference with the office or activities of the Public Complaints Commission.

References:

Nigerian National Integrity Systems Study 2004, Transparency International, <http://www.transparency.org>.

Interview with Mr. Chibuzo Ekwewuo, Legal Practitioner and Executive Director of the Public and Private Development Centre (PPDC); (a nongovernmental organization (NGO)).

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.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

A Commissioner of the Public Complaints Commission has a secured tenure of three years that is renewable for another term of three years.

There has not been an instance where Commissioner has been removed before the expiration of his or her tenure.

References:

Public Complaints Act CAP 377, Laws of the Federation.

Nigerian National Integrity Systems (NIS) Study 2004, Transparency International, <http://www.transparency.org>.

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.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The study disclosed that the capacity of the agency is low regarding human resources.

The agency has a full complement of staff including commissioners in all the thirty six states of the federation

References:

Nigerian National Integrity Systems (NIS) Study, 2004, [http:// www.transparency.org](http://www.transparency.org).

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition' (Abuja, Sept. 4, 2008).

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.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The act requires that appointments are based on criteria of personal integrity and other relevant qualifications: The Chief Commissioner and other Commissioners shall be appointed by the National Assembly and shall be persons of proven integrity and shall possess such other qualifications as the National Assembly may determine.”

References:

Section 2(1), the Public Complaints Act.

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition' (Abuja, Sept. 4, 2008).

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.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The agency receives regular annual budgetary allocation, which is not dependent on political considerations.

References:

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition' (Abuja, Sept. 4, 2008).

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.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

The agency publishes its annual reports which are made available to the public.

The NIS study also indicates that the Public Complaints Commission publishes its annual report.

References:

Nigeria's Public Administration Country Profile, Division for Public Administration and Development Management (DPADM).

Department of Economic and Social Affairs (DESA), United Nations 2004.

The Nigerian National Integrity Systems Study [NIS] 2004, <http://www.transparency.org>.

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition' (Abuja, Sept. 4, 2008).

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.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

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

Comments:

The Agency has the powers to initiate investigations under its enabling law as follows:

A Commissioner shall have power to investigate either on his own initiative or following complaints lodged before him by any person, any administrative action taken."

However, it is not very proactive in initiating investigations. In practice, it acts mostly on complaints lodged by citizens.

References:

Section 5(2), Public Complaints Act, CAP 377, Laws of the Federation.

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition' (Abuja, Sept. 4, 2008).

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.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

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

Comments:

The Commission's powers are mainly advisory and come in the form of recommendations to the appropriate government bodies or organs.

References:

The Public Complaints Act, CAP 377, Laws of the Federation.

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition' (Abuja, Sept. 4, 2008).

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.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

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

Comments:

Completed cases with concrete recommendations are usually acted upon. The problem is that the agency lacks the capacity to investigate and address most of the complaints it receives.

References:

Nigeria's Country profile 2004, Division for Public Administration and Development Management (DPADM).

Department of Economic and Social Affairs (DESA), United Nations, May 2004.

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition' (Abuja, Sept. 4, 2008).

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's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

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

Comments:

The Commission is underfunded and its resources are low. Therefore, response time is also very slow.

References:

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition' (Abuja, Sept. 4, 2008).

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.

57. Can citizens access the reports of the ombudsman?

58

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

The agency publishes an annual report with data and statistics about their activities. This report is available to the public.

References:

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition' (Abuja, Sept. 4, 2008).

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.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Commission periodically issues annual reports. Beyond that, there is no structured policy of obtaining the reports and records of the Commission.

The absence of a freedom of information law precludes any right of access to the reports or records, which are not voluntarily disseminated. In fact, the Public Complaints Act gives the Commissioners an absolute discretion on release of information to the public: Any Commissioner may decide in his absolute discretion whether and if so, in what manner he should notify the public of his action or intended action in any particular case." (5[3][b]).

References:

Public Complaints Act, CAP 377, Laws of the Federation.

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition' (Abuja, Sept. 4, 2008).

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.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

Comments:

The annual reports of the commission, when available, can be accessed at a minimal cost by visiting the offices of the commission. Other records and proceedings are privileged and are not available on demand.

References:

Public Administration Country Profile on Nigeria, Division for Public Administration and Development Management (DPADM).

Department of Economic and Social Affairs (DESA), United Nations, May 2004.

Interview with Mr Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition' (Abuja, Sept. 4, 2008).

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.

55. Is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

References:

The Public Complaints Commission, the Public Complaints Act Cap 377, Laws of the Federation.

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.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

69

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

The section provides as follows: In the exercise of his functions under this Constitution, the Auditor-General shall not be subject to the direction and control of any other authority or person.”

References:

Section 85(6), 1999 Constitution.

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.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Section provides that the auditor-general can only be removed by the president acting on an address supported by two-thirds majority of the Senate.

References:

Section 86, Constitution of the 1999.

Nigerian National Integrity Systems (NIS) Study 2004, <http://www.transparency.org>.

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.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Office of the Auditor-General has a formal structure and reasonably adequate staffing.

References:

Interview with Mr. Chibuzo Ekwekwuo, Legal Practitioner and National Secretary, Zero Corruption Coalition (Abuja, Sept. 4, 2008).

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.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Section provides that the president shall appoint the auditor-general on the recommendation of the Federal Civil Service Commission, subject to confirmation by the Senate.

This ensures two different layers of quality control and also the relative independence of the audit agency.

References:

Section 86, 1999 Constitution.

Interview with Mr. Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition (Abuja, Sept. 4, 2008).

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.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Office of the Auditor-General receives regular funding through appropriation by the National Assembly.

References:

Interview with Mr. Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition (Abuja, Sept. 4, 2008).

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.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

Section provides that the auditor-general shall audit all public accounts and report to the National Assembly.

However, this report is not issued regularly and is also not accessible to the public.

References:

Section 85 of the 1999 Constitution.

Interview with Mr. Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition (Abuja, Sept. 4, 2008).

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.

59g. In practice, the government acts on the findings of the audit agency.

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

Comments:

The government does not always act on the report of the auditor-general.

References:

Nigerian National Integrity Study (NIS) 2004, <http://www.transparency.org>.

Interview with Mr. Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition (Abuja, Sept. 4, 2008).

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.

59h. In practice, the audit agency is able to initiate its own investigations.

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

Comments:

In most cases, the auditor-general does not initiate investigations.

References:

Nigerian National Integrity Study (NIS) 2004, <http://www.transparency.org>.

Interview with Mr. Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition (Abuja, Sept. 4, 2008).

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.

60. Can citizens access reports of the supreme audit institution?

0

60a. In law, citizens can access reports of the audit agency.

YES | **NO**

Comments:

The reports are not readily available to the public, especially in the absence of an access to information law.

References:

Interview with Mr. Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition (Abuja, Sept. 4, 2008).

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.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The reports are not available to the public.

References:

Interview with Mr. Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition (Abuja, Sept. 4, 2008).

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.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The public has no access to the report and so the question of cost does not arise.

References:

Interview with Mr. Chibuzo Ekwewuo, Legal Practitioner and National Secretary, Zero Corruption Coalition (Abuja, Sept. 4, 2008).

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.

58. Is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:

The Office of the Auditor General of the Federation is responsible for this role.

References:

Section 85, 1999 Constitution.

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.

56
V-3. Taxes and Customs

62. Is the tax collection agency effective?

88

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The FIRS has an adequate complement of staff but not all the staff have the right set of skills.

References:

Telephone interview with Mr. Ike Nweje, Special Assistant to the Executive Chairman of Federal Inland Revenue Service [FIRS] from Oct. 2004 to July 2007, (Sept. 19, 2008).

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.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The agency receives its budgetary allocation from the federal government budget. The funding is quite adequate due to the fact that the FIRS retains 4 percent of all non-oil collections that it makes.

References:

Telephone interview with Mr. Ike Nweje, Special Assistant to the Executive Chairman of Federal Inland Revenue Service [FIRS] from Oct. 2004 to July 2007, (Sept. 19, 2008).

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.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Customs and Excise Department is an old, established government agency with an adequate full-time staff.

References:

Telephone interview with Mr. Ike Nweje, Special Assistant to the Executive Chairman of Federal Inland Revenue Service [FIRS] from Oct. 2004 to July 2007, (Sept. 19, 2008).

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.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The agency has a predictable source of funding from the federal government budgetary allocation and also generates a lot of revenue from duties and other tariffs.

References:

Telephone interview with Mr. Ike Nweje, Special Assistant to the Executive Chairman of Federal Inland Revenue Service [FIRS] from Oct. 2004 to July 2007, (Sept. 19, 2008).

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.

61. Is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

Comments:

The Federal Inland Revenue Service is the national tax collection agency created by Federal Inland Revenue Service (Establishment) Act, 2007.

References:

Telephone interview with Mr. Ike Nweje, Special Assistant to the Executive Chairman of Federal Inland Revenue Service [FIRS] from Oct. 2004 to July 2007, (Sept. 19, 2008).

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.

63. Are tax laws enforced uniformly and without discrimination?

75

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Tax laws are enforced uniformly and without discrimination according to the criteria set by the law. However, there are corrupt officials and their agents who sometimes subvert the process.

References:

Telephone interview with Mr. Ike Nweje, Special Assistant to the Executive Chairman of Federal Inland Revenue Service [FIRS] from Oct. 2004 to July 2007, (Sept. 19, 2008).

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.

64. Is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

Comments:

The act set up a Customs And Excise Service.

References:

The Customs and Excise Management Act ,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.

66. Are customs and excise laws enforced uniformly and without discrimination?

50

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

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

Comments:

The laws are enforced uniformly but there are regular allegations of corruption in which there is an evasion of custom requirements.

References:

Telephone interview with Mr. Ike Nweje, Special Assistant to the Executive Chairman of Federal Inland Revenue Service [FIRS] from Oct. 2004 to July 2007, (Sept. 19, 2008).

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. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

50

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | **NO**

Comments:

There is no specific agency or group of agencies overseeing state-owned companies. As stated earlier, the Bureau for Public Enterprises (BPE) has supervisory power when a particular enterprise is being privatized or commercialized. They are generally supervised by a relevant government ministry. These ministries are located within the executive arm of the government and therefore cannot be free from political interference.

References:

Interview with a government official who requested not to be named due to the fact that he signed a confidentiality agreement.

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational 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, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

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

Comments:

The ministries have a professional full-time staff. The Bureau of Public Enterprises (BPE) also has a professional full-time staff.

References:

Interview with a government official who requested not to be named due to the fact that he signed a confidentiality agreement.

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The ministries receive regular funding through the budgetary process.

References:

Interview with a government official who requested not to be named due to the fact that he signed a confidentiality agreement.

100: The agency, series of agencies, or equivalent mechanism 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, series of agencies, or equivalent mechanism 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.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

There is no centralized overseeing agency. However, the executive arm of the government, which is in control of all the ministries, sometimes sets up panels of inquiry to investigate issues and happenings in the state-owned companies if the need arises.

Also, when state-owned enterprises are under privatization or commercialization, the Bureau of Public Enterprises (BPE) sometimes initiates investigations. The BPE has a Post-Privatization Monitoring Department that monitors privatized state-owned enterprises. It also has a Commercialization and Privatization List and state-owned companies listed there are usually monitored and can be investigated.

References:

Interview with a government official who requested not to be named due to the fact that he signed a confidentiality agreement.

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There is no centralized overseeing agency or group of agencies. The supervising ministries are not known to impose penalties on state-owned enterprises. However, the executive arm or the legislative arm have sometimes set up panels of inquiry into the affairs of the agencies and, where necessary, have imposed corrective measures.

Also, the Bureau of Public Enterprises (BPE) can also impose penalties regarding companies listed for privatization and commercialization or that have already been privatized.

References:

Interview with a government official who requested not to be named due to the fact that he signed a confidentiality agreement.

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

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

25:

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

69. Can citizens access the financial records of state-owned companies?

5

69a. In law, citizens can access the financial records of state-owned companies.

YES | **NO**

Comments:

Unless the records are published, citizens have no access to them because there is no access to information law.

References:

Interview with a government official who requested not to be named due to the fact that he signed a confidentiality agreement.

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

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

Comments:

The financial records of state-owned companies are not publicly available and cannot therefore be assessed.

References:

Interview with a government official who requested not to be named due to the fact that he signed a confidentiality agreement.

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

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

Comments:

The audits of state-owned companies are poorly rated.

References:

Interview with a government official who requested not to be named due to the fact that he signed a confidentiality agreement.

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned 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: State-owned 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.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

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

Comments:

Citizens have no access to financial records of state-owned companies, unless they are published.

References:

Interview with a government official who requested not to be named due to the fact that he signed a confidentiality agreement.

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.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens have no access to such records unless they are published.

References:

Interview with a government official who requested not to be named due to the fact that he signed a confidentiality agreement.

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.

67. Is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

There is no centralized agency or group of agencies charged with overseeing government-owned enterprises but rather series of agencies who exercise different levels of oversight. The agencies have supervising ministries to whom they report. However, the Ministry of Finance is a major shareholder in state-owned companies and can exercise shareholder powers.

Also, the Bureau for Public Enterprises (BPE) oversees state-owned companies when they are in the process of privatization and commercialization.

The supervision and oversight of the Ministry of Finance and the BPE are episodic and cannot therefore be regarded as total oversight.

The National Assembly also exercises some level of oversight through parliamentary oversight and enquiries on the affairs and conduct of certain public enterprises.

References:

Interview with a government official who requested not to be named due to the fact that he signed a confidentiality agreement.

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

52 V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

75

70a. In law, anyone may apply for a business license.

YES | NO

Comments:

The act allows all citizens to apply for business license, which is granted upon fulfilling certain requirements.

References:

The Companies and Allied Matters Act.

Interview with Mr Chibuzo Ekewkwuo, Legal Practitioner and National Secretary Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

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

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

Comments:

The Companies Registry usually gives reasons for refusal. These reasons are mostly based on request for additional documentation. Approval is usually given when the requirements are met. Ultimately, citizens have a right of recourse to the law courts.

References:

Interview with Mr Chibuzo Ekewkwuo, Legal Practitioner and National Secretary Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

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.

70c. 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:

Registering a business takes about 30 days and may take longer.

References:

Interview with Mr Chibuzo Ekewkwuo, Legal Practitioner and National Secretary Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

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.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

Comments:

The cost of registering a business is high in comparison with the earnings of citizens.

References:

Interview with Mr Chibuzo Ekewkwuo, Legal Practitioner and National Secretary Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

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.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

Comments:

The requirements can be supplied by the appropriate regulatory agencies such as the Ministry of Health or the Nigerian Investments Promotion Council.

References:

Interview with Mr Chibuzo Ekewkwuo, Legal Practitioner and National Secretary Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

Comments:

The requirements can be found at the federal and state environmental protection agencies.

References:

Interview with Mr Chibuzo Ekewkwuo, Legal Practitioner and National Secretary Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

YES: A YES score is earned if basic regulatory requirements for meeting public 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.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

Comments:

The requirements can found at the offices and, in some cases, on the Web sites of the appropriate regulatory agencies such as the Standard Organization of Nigeria (SON).

References:

Interview with Mr Chibuzo Ekewkwuo, Legal Practitioner and National Secretary Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

42

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Yes. Regulatory agencies such as The Standards Organization of Nigeria (SON), the National Agency for Food, Drug Administration and Control and other agencies carry out inspections in a uniform and evenhanded manner. However, there are still "sacred cows" within the system who can get away with regulatory breaches.

References:

Interview with Mr Chibuzo Ekewkwuo, Legal Practitioner and National Secretary Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

100: Business inspections by the government to ensure that public health standards are being met 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 to ensure public health standards are met 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 to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Regulatory agencies, such as Federal Environmental Protection Agency (FEPA), carry out their inspections, but there are still lapses in the frameworks and the implementations.

References:

Interview with Mr Chibuzo Ekewkwuo, Legal Practitioner and National Secretary Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

100: Business inspections by the government to ensure that public environmental standards are being met 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 to ensure public environmental standards are met 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 to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable

treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

There are still a lot of lapses in the system. In recent times, there have been several instances of collapsed buildings leading to loss of life and property despite the regulations on public safety standards.

References:

Nigeria: 50 Trapped as Buildings Collapse in Abuja,” This Day Newspaper, <http://www.thisdayonline.com>, (July 30, 2008).

“Nigeria Tightens Insurance Law after Deadly House Collapses,” Yahoo News, http://news.yahoo.com/s/afp/20080826/wl_africa_afp/nigeriabuildingcollapseinsurance, (Aug. 26, 2008).

Interview with Mr Chibuzo Ekewkwuo, Legal Practitioner and National Secretary Zero Corruption Coalition, (Abuja, Sept. 4, 2008).

100: Business inspections by the government to ensure that public safety standards are being met 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 to ensure public safety standards are met 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 to ensure that public safety standards are met are routinely carried out by government officials 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. ⁸¹Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

YES | NO

References:

Sections 6 & 26, of Corrupt Practices and Other Related Offences Act 2000.

Section 17, the Money Laundering [Prohibition] Act 2004.

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

Comments:

The above section describes extortion without specific use of the word as follows:

... asks for, receives or obtains property or benefits of any kind for himself or any other person; ... on account of anything already done or omitted to be done, or any favour or disfavour already shown to any person by a public officer in the discharge of his official duties ... "

References:

Section 10, Corrupt Practices and Other Related Offences Act 2000.

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.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

Section 8, Corrupt Practices and Other Related Offences Act 2000 [Asking and Receiving].

Section 9, Corrupt Practices and other Related Offences Act 2000 [Giving].

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

Section, 8, The Corrupt Practices and Other Related Offences Act 2000.

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | NO

Comments:

While there is no specific mention of foreign officials in the CPA, the law prohibits offering, giving and receiving gratification generally.

In view of the fact that the United Nations Convention Against Corruption requires State Parties to criminalize bribery of Foreign officials, it may be necessary to amend domestic laws to specifically address the issue.

References:

Sections 8 and 9, Corrupt Practices Act.

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | NO

References:

Section 19, Corrupt Practices and Other Related Offences Commission Act 2000 (CPA).

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.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

Comments:

The act criminalizes the unauthorized use of confidential state information.

References:

The Official Secrets Act, Cap 335, Laws of the Federation 1990.

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.

73h. In law, money laundering is illegal.

YES | NO

Comments:

Money laundering and related offenses are prohibited under the the act. Section 14 addresses the specific offenses which are punishable by a term of imprisonment of not less than two years.

References:

Section 14, Money Laundering Prohibition Act 2004.

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.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

Comments:

Section 18(1)(b) states: Any person who engages in the management, organization or financing of any of the offences under this Act commits an offence.”

References:

Section 17, Money Laundering Prohibition Act 2004.

Section 18(1)(b), The Economic and Financial Crimes Commission [Establishment] Act 2004.

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

75. Is the anti-corruption agency effective?

67

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

The Independent Corrupt Practices and Other Related Offences Commission (ICPC) has legal independence which is aimed at protecting it from political interference. The Chairman and members of the ICPC also have security of tenure. They are appointed with the confirmation by a two-thirds majority of the members of the Senate and also cannot be removed without ratification of a two-thirds majority of the members of the Senate. Generally, the anti-corruption agencies have operational independence. They have established and formal organizational structures.

The other agencies such as the Code of Conduct of Bureau (CCB) and the Economic and Financial Crimes Commission (EFCC) do not have provision for legal independence. The key staff and members of these agencies also do not have security of tenure as they can be removed by the president without recourse to the Senate.

References:

Sections 3 (6), (8) & (14) of the Corrupt Practices and Other Related Offences Commission Act 2000 (CPA).

Section 3[2] of the Economic and Financial Crimes[Establishment] Act 2004.

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.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

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

Comments:

The case of alleged unlawful interference with the tenure of the former chairman of the economic and Financial Crimes Commission (EFCC) was widely reported in both local and foreign media.

References:

http://.wikipedia.org/wiki/Nuhu_

http://blogs.cgdev.org/globaldevelopment/2008/01/bring_back_nuhu_ribadu_nigeria.php

<http://allafrica.com/stories/200712300016.html>

http://www.transparency.org/news_room/latest_news/press_releases/2008/2008_05_30_nigeria

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.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

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

Comments:

There are a number of anti-corruption agencies in Nigeria such as the Independent Corrupt Practices and Other Related Offences Commission, (ICPC), the Code of Conduct Bureau (CCB) and the Economic and Financial Crimes Commission

(EFCC), among others. The key staff of some of the agencies such as the ICPC and the CCB have security of tenure while the key staff of the EFCC do not have such security. The removal of the former chair of the Economic and Financial Crimes Commission -EFCC-Nuhu Ribadu shows that in practice, there is no protection from arbitrary removal for the head of that particular agency

References:

Review of Legal and Political Challenges to the Domestication of the Anti-Corruption Conventions in Nigeria, Transparency International, "<http://2006-www.transparency.org>.

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.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

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

Comments:

Generally appointments are made on professional criteria but there have been instances of allegation of party or other affiliations influencing appointments. This kind of controversy followed the appointment of the current chairperson of the Economic and Financial Crimes Commission (EFCC), with the media and the public expressing the view that her political and other affiliations may impede the work of the agency

References:

Fawehinmi: Waziri Not Qualified to Head EFCC," This Day Newspapers, <http://www.thisdayonline.com> (June 6, 2008).

"Gani Asks Court to Annul Waziri's Appointment as EFCC Boss," <http://www.vanguardngr.com> (Aug.6, 2008).

Interview with Mr Femi Falana, President, West African Bar Association (Aug. 2, 2008).

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.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The agencies have full-time staff but are generally understaffed considering mandates, activities and the competencies required to deliver on the mandates.

References:

Nigerian National Integrity Study (NIS) 2004, <http://www.transparency.org>.

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

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.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The agencies have predictable sources of funding. Some of them like the Code of Conduct Bureau (CCB) and the Office of the Auditor-General have direct appropriation from the National Assembly. Others such as the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and Other Related Offences Commission (ICPC) access their budget as part of budget of the presidency. However, there is general complaint of underfunding and budget cuts from the agencies.

References:

Nigerian National Integrity Systems (NIS) Study 2004, <http://www.transparency.org>.

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

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.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

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

Comments:

Some of the anti-corruption agencies have annual reports, but the reports are not regularly issued and are not usually available to the public.

References:

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

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.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

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

Comments:

The enabling laws of the agencies give them wide powers, but there are a number of gray areas in their powers and mandates.

References:

Review of Legal and Political Challenges to the Domestication of the Anti-Corruption Conventions in Nigeria," Transparency International, <http://www.transparency.org>.

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

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.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The agencies have the power to initiate investigations which they exercise regularly. They have both investigative and prosecutorial powers and they usually cooperate with the police and other enforcement agencies.

References:

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

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.

76. Can citizens access the anti-corruption agency?

50

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The anti-corruption agencies act on complaints but usually not in a timely manner.

References:

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

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.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

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

Comments:

There is no comprehensive Whistle-blower protection law and regimen. However, agencies such as the Code of Conduct Bureau (CCB), the Independent Corrupt Practices and Other related Offences Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC) have internal mechanisms to ensure confidentiality of information and informants.

References:

Review of Legal and Political Challenges to the Domestication of the Anti-Corruption Conventions in Nigeria 2006, <http://www.transparency.org>.

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

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.

74. Is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

The Independent Corrupt Practices and Other Related Offences Commission (ICPC) set up under the Act has a broad mandate to combat corruption based on the tripod mechanism of Prevention, Education and Sanctions.

The Economic and Financial Crimes Commission focuses on economic crimes such as advanced fee fraud, money laundering, counterfeiting and other forms of fraud.

The Code of Conduct Bureau (CCB) is charged with enforcing the Code of Conduct for Public Officers and the Asset Declaration Regimen.

References:

Corrupt Practices and Other related Offences Act 2000.

The Economic and Financial Crimes [Establishment] Act 2004.

The Code of Conduct Bureau and Tribunal Act, Cap 56, Laws of the Federation.

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.

⁷²
VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

67

77a. In law, there is a general right of appeal.

YES | NO

Comments:

The Constitution creates different layers of courts with specific areas of jurisdiction.

References:

The 1999 Constitution.

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

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.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Court processes, including appeals, are fraught with delays.

References:

Interview with Mr. Femi Falana, President, West African bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

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.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Cost of appeal is often not affordable and prevents citizens from pursuing the appeal option.

References:

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorneys fees greatly discourage the use of the appeals process.

78. Do judgments in the criminal system follow written law?

75

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

Judgment in criminal proceedings usually follow written law; however; there have been cases of extra-judicial sanctions outside the written codes.

References:

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

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.

79. Are judicial decisions enforced by the state?

75

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

There have been allegations of government officials ignoring court orders. At a recent inquiry conducted by a committee of the National Assembly probing land allocation in the Federal Capital Territory, there were several allegations of the former Minister of the Federal Capital Territory ignoring court orders.

References:

El-Rufai's Newfound Love For The Rule Of Law!" Daily Independent Newspapers, <http://www.independentngonline.com/poli/view/article03>.

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

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.

80. Is the judiciary able to act independently?

100

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

Comments:

The judiciary is independent and its legal status, including financial autonomy, is guaranteed by the Constitution.

References:

Chapter VII, 1999 Constitution.

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.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The Constitution gives the judges security of tenure, which enables them to operate independently. Largely they operate without interference.

References:

Section 292, 1999 Constitution.

Nigerian National Integrity Systems (NIS) Study, <http://www.transparency.org>.

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

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.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

Comments:

The judges are assigned cases according to delineated jurisdictions. Assignment to individual judges in a particular jurisdiction is usually handled from the office of the Chief Judge of the particular jurisdiction.

The constitution also specifies the areas in which each tier of the Court structure has original jurisdiction or appellate jurisdiction

References:

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

Chapter VII, 1999 Constitution.

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.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

Comments:

National judges can only be removed by the president acting on an address supported by a two-thirds majority of the Senate and State Judges can only be removed by the Governor acting on an address supported by a two thirds majority of the State House of Assembly.

References:

Section 292, 1999 Constitution.

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.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

Comments:

There has been no reported case of any judge harmed or assaulted due to involvement in trying a corruption case.

References:

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

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. YES is a positive score.

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.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

Comments:

There has been no reported case of a judge being killed for adjudicating corruption cases.

References:

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

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. YES is a positive score.

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.

82. Do citizens have equal access to the justice system?

68

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

In the experience of the interviewee, he has not come across a case of racial or ethnic bias in the courts. Judicial decisions are either based on interpretation of codes or on precedents. A departure from these will constitute a ground for appeal.

References:

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

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.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

There are socio-cultural factors militating against womens' access to justice in Nigeria.

Nigeria operates a dual legal system; that is, the received English law and the Customary and Sharia laws. The dictates of the Customary laws are not codified and are substantially unfavorable to women. Also, the customary courts are manned by non-lawyers who are unable to appropriate modern legal principles.

The provisions of the Sharia Laws are also unfavorable to women. The Sharia courts are also manned by non-lawyers. Sometimes oppressive decisions of these Customary and Sharia courts are only overturned on appeal. Often, the women who are victims of these decisions do not have the resources to appeal and are forced to live with those decisions if they are not able to access pro bono legal service.

References:

Impact of Corruption on Women's Access to justice in Nigeria," 10th International Anti-Corruption Conference; <http://www.transparency.org>.

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. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

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. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

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. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

Comments:

The act provides for free legal services for defendants in criminal cases who cannot afford legal representation. Lagos State has also provided for the office of the Public Defender to provide legal assistance to the indigent even in civil cases.

References:

The Legal Aid Act Cap 205, Laws of the Federation of Nigeria, 1990.

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

There have been criticisms of the quality of service provided under the Legal Aid Scheme.

References:

Article by Eze Anaba, Vanguard Newspapers, http://www.justiceinitiative.org/db/resource2?res_id=1027, (May 27, 2005).

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished 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 impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

Cost of legal actions are prohibitive and the average citizen cannot afford it.

References:

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorneys fees do not represent a major cost to citizens.

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. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorneys fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

The cost of legal suits, especially attorneys' fees, are prohibitive.

References:

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

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. Attorneys fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorneys fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

All citizens have access to a court of law. However, in some cases, the distance to the courts may be quite far for citizens who live in remote areas.

References:

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

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

83. Is the law enforcement agency (i.e. the police) effective?

67

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The section provides that the president shall appoint the Inspector-General of Police on the advice of the Nigerian Police Council and Commissioners of Police shall be appointed by the Police Service Commission. This ensures some level of quality control in the appointments.

Generally, appointments to the Enforcement agencies are based on professional criteria.

References:

Section 215, 1999 Constitution.

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.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The agencies have predictable budgets but there is usually a complaint of insufficient budgets.

References:

Nigerian National Integrity Systems (NIS) Study 2004, <http://www.transparency.org>.

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

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.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The key enforcement agency, the Nigerian police, is generally independent in its operation, but there have been allegations about their processes and that officers are being used to achieve political aims.

References:

The Nigerian National Integrity Systems (NIS) Study 2004, <http://www.transparency.org>

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.

84. Can law enforcement officials be held accountable for their actions?

79

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

The Courts have Jurisdiction over the Police and can sanction them for excesses. The Human Rights Commission can highlight their excesses but has no powers of sanction over them. Also, the police have an internal mechanism to ensure discipline within the force. There is a Public Complaints Bureau within the Police where citizens can lodge complaints against police officers. The office of the Provost Marshall within the police investigates and sanctions erring police officers and the sanctions can result in suspension, demotion, or dismissal.

References:

Police Annual report 2007.

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

Comments:

The Court process through which citizens can seek redress from the excesses of law enforcement agencies is slow and it takes a long time to access redress.

References:

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

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.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

The enforcement agencies such as the police have an internal disciplinary body to investigate corruption-related activities. In the Nigerian Police, it is called the X Squad. The enforcement agencies also come within the mandate of the anti-corruption agencies — the Independent Corrupt Practices and Other Related Offences Commission (ICPC), the Code of Conduct Bureau (CCB) and the Economic and Financial Crimes Commission (EFCC) — regarding issues relating to corruption.

References:

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

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 may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. 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 agencies initiate investigations but are unwilling to take on politically powerful offenders. The former inspector general of police, Sunday Ehindero, has been accused of embezzling money, but the case has proceeded slowly.

References:

ICPC Quizzes Ehindero," Daily Trust Newspapers, <http://news.dailytrust.com>, April 3, 2008).

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.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

The law enforcement officers do not have immunity from prosecution or other legal sanctions for breach of the law or process. They are subject to the Criminal and Penal Codes as well as the laws of anti-corruption agencies such as the Code of Conduct Bureau (CCB), the Economic and Financial Crimes Commission (EFCC), and the Independent Corrupt Practices and Other Related Offences Commission (ICPC).

References:

Interview with Mr. Femi Falana, President, West African Bar Association (Nanet Suites, Abuja, Aug. 2, 2008).

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.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

Comments:

There have been instances of Law Enforcement Officers prosecuted for various criminal offenses. A former Inspector General of Police, Tafa Balogun, was prosecuted and convicted for money laundering and embezzlement. He entered a plea bargain, which enabled him to serve a short term in jail in exchange for forfeiting some property.

The Police Annual Report 2007 discloses that about eight hundred police officers were dismissed within the reporting period for various acts of indiscipline and corruption.

Also the former Inspector General of Police Sunday Ehindero is currently being prosecuted for alleged embezzlement of funds.

References:

Tafa Balogun Opts for Deal with EFCC * to Trade Off Assets for Freedom," Vanguard Newspapers on line, <http://www.vanguardngr.com> (Monday Oct. 17, 2005).

The Police Annual Report 2007.

"Yar Adua Orders Ehindero's Arrest," Daily Independent Newspapers, <http://www.independentngonline.com/>. (June 15, 2007).

"ICPC Quizzes Ehindero Over N557m Police Fund," Guardian Newspapers, <http://www.guardiannewsngr.com/news/article01/030408>].

"Ehindero In Fresh Trouble; May Be Declared Wanted By ICPC," Daily Trust Newspapers, <http://www.dailytrust.com/content/view/20179/343/>.

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.