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October 2017

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LIST OF ACRONYMS

ACMAP	–	Anti Corruption Monitoring Program
ACSF	–	Africa Corporate Sustainability Forum
ANEEJ	-	Africa Network for Environment and Economic Justice
AFF	-	Anti-corruption Funding Framework
AICC	–	African Institute for Corporate Citizenship
AUCPCC	–	African Union Convention on Prevention and Combating of Corruption
ADB	–	African Development Bank
ATI	-	Addis Tax Initiative
BAA	–	Business Action for Africa
BAAC	–	Business Action Against Corruption
BPP	–	Bureau for Public Procurement
BPSR	-	Bureau of Public Service Reform
BVN	-	Bank Verification Number
CAC	–	Corporate Affairs Commission
CAMA	–	Companies and Allied Matters **Act**
CBC	–	Commonwealth Business Council
CBI	–	Convention on Business Integrity
CBN	–	Central Bank of Nigeria
CCA	-	Common Country Analysis
CCB	–	Code of Conduct Bureau
CCT	–	Code of Conduct Tribunal
Centre LSD	-	African Centre for Leadership, Strategy and Development
CGP	–	Capacity of Governance Program
CPA	–	Criminal Procedure Act 2004
CP Act	-	Corrupt Practices and Other Related Offences Act 2000

CPS2	–	Country Partnership Strategy between Nigeria, DFID, World Bank, ADB and USAID
CRF	-	Consolidated Revenue Fund
CSOs	–	Civil Society Organizations
DFID	–	Department for International Development
EGP	–	Economic Governance Program
EFCC	–	Economic and Financial Crimes Commission
EPSR Act	–	Electricity Power Sector Reform Act 2004
FAAC	–	Federation Accounts Allocation Committee
FATF	–	Financial Action Task Force on Money Laundering
FEC	–	Federal Executive Council
FFR	–	Federal Financial Regulations
FIs	–	Financial Institutions
FIRS	–	Federal Inland Revenue Service
FIU	–	Financial Intelligence Unit
FOI	–	Freedom of Information
FRC	–	Fiscal Responsibility Commission
GIABA	–	Inter-Governmental Action Group against Money Laundering in West Africa
GIFMIS	-	Government Integrated Financial Management Information System
HDI	-	Human Development Index
HOS	–	Head of Service
IATI	-	International Aid Transparency Initiative
IATT	–	Inter Agency Task Team of Anti-Corruption Agencies
ICPC	–	Independent Corrupt Practices and other Related Offences Commission

ICT	–	Information Communication Technology
IFES	–	International Foundation for Electoral Systems
IIPG	–	Insurance Industry Policy Guidelines
INEC	–	Independent National Electoral Commission
ISA	–	Investment and Securities Act
LEAs	-	Law Enforcement Agencies
MDAs	–	Ministries, Departments and Agencies
MER	–	Mutual Evaluation Report
METF	–	Medium Expenditure Term Framework
MLA	–	Money Laundering Act 2003
MLPA	–	Money Laundering Prohibition Act 2004
MRA	–	Media Rights Agenda
NACS	-	National Anti-Corruption Strategy
NACSMIC	-	National Anti-corruption Strategy and Implementation Committee
NAICOM	–	National Insurance Commission
NAP	-	National Action Plan
NASB	–	National Accounting Standards Board
NDIC	–	Nigeria Deposit Insurance Corporation
NDLEA	–	National Drug Law Enforcement Agency
NEEDS	–	National Economic Empowerment and Development Strategy
NEITI	–	Nigerian Extractive Industries Transparency Initiative
NERC	–	Nigerian Electricity Regulatory Commission

NFIU	–	Nigerian Financial Intelligence Unit
NGOs	–	Non- Governmental Organizations
NIPEX	–	Nigerian Petroleum Exchange
NJC	–	National Judicial Council
NNPC	–	Nigerian National Petroleum Corporation
NOCOPO	-	National Open Contracting Portal
NSC	-	National Steering Committee of OGP.
NSWG	–	National Stakeholders Working Group
OAGF	–	Office of the Accountant General of the Federation
ODUG	-	Open Data User Group
OGIC	–	Oil and Gas Implementation Committee
OGP	-	Open Government Partnership
PAIA	-	Promotion of Access to Information Act
PAJA	-	Promotion of Administrative Justice Act
PCC	–	Public Complaints Commission
PENCOM	–	Pension Commission
PPA	–	Public Procurement Act
PIB	-	Petroleum Industry Bill
PIGB	-	Petroleum Industry Governance Bill
PPCB	–	Police Public Complaints Bureau
PPDC	–	Public and Private Development Centre
PSRP	–	Public Service Reform Program
WAI	-	War Against Indiscipline
WAIC	-	War Against Indiscipline and Corruption

Table of Content

Preface
Acknowledgment
List of acronyms

GOVERNMENT PERSPECTIVE

Section 1
Executive summary

Section 2
Introduction

Section 3
Issues in Existing Laws
and Policies on Anti-Corruption
in Nigeria

Section 4
Open Government Partnership
Laws and Policies on Anti-Corruption
from Other Jurisdictions

Section 5
Ongoing Efforts to Strengthen
Legal and Policy Measures on
Transparency

Section 6
Conclusion

CIVIL SOCIETY PERSPECTIVE

Purpose of the report
Issues and scope of work

1.0 Introduction

2.0 The journey so far with OGP implementation in Nigeria

3.0 Relevance of existing policies, laws that support OGP implementation in Nigeria

4.0 Issues in existing laws and policies on anti-corruption in Nigeria

5.0 Other laws needed to strengthen OGP implementation in Nigeria

6.0 Open Government Partnership implementation laws and policies from other climes

7.0 Perspectives of citizens and government on NAP implementation using working groups

8.0 Recommendations for a robust legislative environment framework . to support the implementation of the OGP process

Preface

It is well known that the Nigerian nation for several decades has continued to grapple with the challenge of effectively utilizing its resources to support equitable economic growth, effective service delivery and social cohesion. There is the belief that these challenges have remained so because majority of government activities are shrouded in secrecy and thus shrinked the space for citizens engagement.

The Federal Government of Nigeria (FGN) in its efforts to deepen institutional and policy reforms, joined the OGP in July 2016 as the 70th country. The OGP was formally launched in 2011 when the eight founding governments (Brazil, Indonesia, Mexico, Norway, the Philippines, South Africa, the United Kingdom and the United States) endorsed the Open Government Declaration, and announced their countries action plans. The Open Government Partnership (OGP) is governed by four key principles:

1. **Transparency:** Information on government activities and decisions is open, comprehensive, timely and freely available to the public, and meets basic open data standards.
2. **Accountability:** Rules, regulations, and mechanisms are in place that call upon government actors to justify their actions, act upon criticisms or

requirements made of them and accept responsibility for failure to perform.

3. **Citizen Participation:** Governments seek to mobilize citizens to engage in public debate, provide input, and make contributions that lead to more responsive and effective governance.
4. **Technology and Innovation:** Governments embrace the importance of new technologies in driving innovation, providing citizens with open access to technology, and increasing their capacity to use technology.

Every government that joins the partnership prepares a national action plan. The national action plan is co-created by government and civil society by identifying commitments that are most important to the context of the country. National Action Plans are at the very heart of OGP. Nigeria's OGP NAP seeks to promote fiscal transparency through more citizen participation in the budget process, implementation of open contracting in the public sector, enhancing disclosure in the extractive industries, improving the efficiency and effectiveness of the tax system and improving the ease of doing business in Nigeria.

The Nigeria OGP National Action Plan is organized around fourteen commitments under four thematic areas:

Fiscal Transparency

1. Ensure more effective citizens' participation across the entire budget cycle.
2. Full implementation of Open Contracting and

adoption of Open Contracting Standards in the Public Sector.

3. Work together with all stakeholders to enhance transparency in the extractive sector through a concrete set of disclosures related to payments by companies and receipts by governments on all transactions across the sector's value chain.
4. Adopt common reporting standards and the Addis Tax initiative aimed at improving the fairness, transparency, efficiency and effectiveness of the tax system.
5. Improve ease of doing business and Nigeria's ranking on the World Bank Doing Business Index.

Anti-Corruption

6. Establish a Public register of Beneficial Owners of Companies.
7. Establish a platform for sharing information among Law Enforcement Agencies (LEAs), Anti-Corruption Agencies (ACAs), National Security Adviser (NSA) and financial sector regulators to detect, prevent and disrupt corrupt practices.
8. Strengthen Nigeria's asset recovery legislation including non-conviction based confiscation powers and the introduction of unexplained wealth orders.
9. Take appropriate actions to co-ordinate anti-corruption activities; improve integrity and transparency and accountability.

Access to Information

10. Improved compliance of public institutions with Freedom of Information Act in respect of the annual

reporting obligations by public institutions and level of responses to requests.

11. Improved compliance of public institutions with Freedom of Information Act (FOIA) with respect to proactive disclosure provisions and stipulating mandatory publication requirements.

Citizen Engagement

12. Develop a permanent dialogue mechanism on transparency, accountability and good governance between citizens and government to facilitate a culture of openness.
13. Government-civil society to jointly review existing legislations on transparency and accountability issues and make recommendations to the National Assembly.
14. Adopt a technology-based citizens' feedback on projects and programs across transparency and accountability.

Acknowledgement

African Centre for Leadership, Strategy & Development (Centre LSD) thank the Almighty God for His ever-increasing faithfulness and for making this research report - Laws and policies: processes and procedure for Open Government Partnership implementation in Nigeria possible. The Centre appreciates the John D. and Catherine T. MacArthur Foundation for supporting the project "Promoting Transparency and Accountability through the implementation of the Open Government Partnership in Nigeria", a project which is helping to deepen the anti-corruption war in Nigeria through its co-creation methodology.

In carrying out this research, the African Centre for Leadership, Strategy and Development (Centre LSD), in the spirit of co-creation undertook the research from two perspectives - government and civil society perspectives. The Centre thanks Sulayman Dawodu of the Justice Reform Team, FMOJ and Mrs. Bola Lashmann, former Director, Department of Legal Drafting, FMOJ and Nneka Eze, OGP Secretariat who carried out the government side of the research. We also thank the Africa Network for Environment and Economic Justice (ANEEJ) team for their

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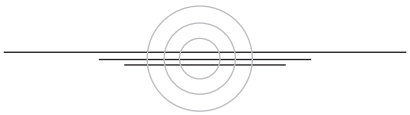
And finally, to the management and staff of the African Centre for Leadership, Strategy & Development (Centre LSD), for their determination to build an African Society with Strategic Leadership and Sustainable Development.

Centre LSD
October 2017

GOVERNMENT PERSPECTIVE

REVIEW OF LAWS AND POLICIES ON ANTI-CORRUPTION, TRANSPARENCY AND ACCOUNTABILITY IN THE IMPLEMENTATION OF OPEN GOVERNMENT PARTNERSHIP IN NIGERIA[1]



[1]Research developed by Sulayman Dawodu of the Justice Reform Team, FMOJ and Mrs. Bola Lashmann, former Director, Department of Legal Drafting, FMOJ and Nneka Eze, OGP Secretariat with the support of Centre for Leadership Strategy and Development.

Executive Summary

This book seeks to support the improvement in the implementation of the Open Government Partnership (OGP) principles in Nigeria through a critical review of the current laws and policies supporting the implementation of good governance and anti-corruption drive in the country. The book examines the laws and policies of the pioneering countries of the OGP and strategies for implementation. It further considers the legal and institutional framework of other countries in Africa and the developing countries who have committed themselves to the championing of OGP principles in their respective countries.

The comparative review of these laws and policies highlights the strengths and challenges of the jurisdictions examined. The strength of the sophisticated systems serves as the benchmark for the recommendations to the OGP implementing partners in Nigeria for the improvement of their laws, policies and institutional framework towards an improvement of their implementation strategies in the foreseeable future.

The review exercise highlights the reality that there is no one-size fit all solutions when it comes to the design and implementation of an anti-corruption strategy. It is however recognized that the effectiveness of a national strategy will only be achieved when it is designed taking

into consideration the country`s context and main corruption, transparency and transparency challenges.

The research work therefore has considered the national context needs by recognizing the importance of improving the anti- corruption, and transparency and accountability elements of the OGP principle. The recognition that over the decades, Africa`s riches including Nigeria, have been used not to benefit ordinary Africans but to enrich the few in governing classes, elites and international conglomerates underscore the urgency of addressing deficiencies in laws and policies relating to anti-corruption, anti-money laundering, whistleblowers, assets tracing and recovery to including non-conviction based regime, mutual legal assistance cooperation, witness protection regime, public procurement processes, beneficial ownership embellishment statutorily, sanctions for breach of freedom of information provisions.

The policies loopholes were identified to include the National Anti-Corruption Strategy documents, whistleblower, Fiscal responsibility, Open contracting, Common Reporting Standards and recent Executive Orders by the Acting President on Ease of Doing Business, Voluntary Assets and Declaration and Budget.

The experience with OGP initiatives across the board indicates that coordinating different government departments and agencies is a challenge for implementation. This lack of coordination is compounded by the powerful social and political forces at play, including behavioural barriers to policy integration. The research considered most of the best practices in other

jurisdictions in addressing our national coordination challenge and proffered necessary recommendations accordingly.

Section 2 provides the historical basis of Open Government Partnership in Nigeria, the present framework and the rationale for the review of the law and policies on the implementation of OGP in Nigeria.

Section 3 analyzed the existing law and policies in the implementation of anti-corruption, and transparency and accountability in governance commitments of OGP, it identified the gaps and challenges within the existing implementation framework for the review exercise.

Section 4 proposed recommendations for strengthening the implementation processes of the OGP commitments on transparency and accountability through legislative process and strengthening of the legal institutions driving the required changes.

Section 5 considers the laws and policies in other jurisdictions including United Kingdom and South Africa, in the implementation of OGP principles and highlights best practices from those jurisdictions

Section 6 is the summing up of the review exercise with specific guidance on legal and policy directions for the effective implementation of OGP principles in the area of anti-corruption, transparency and accountability in governance.

Section Two

Introduction

A major step taken by this administration was to immediately sign on to the Open Government Partnership (OGP) initiative in May 2016 by His Excellency, President Muhammadu Buhari at the International Anti-Corruption Summit organized by the government of the United Kingdom. By so doing, the President reaffirmed Nigeria's commitment to strengthen anti-Corruption measures through implementing the OGP principles on transparency and accountability geared towards exposing corruption, punishing the corrupt and driving out the culture of corruption in Nigeria.

Flowing from this commitment, the federal government sought to deepen legislative, institutional and policy reform in achieving the OGP principles.

The OGP is multi-stakeholder initiative that is focused on improving transparency, accountability, citizen participation and responsiveness to citizens through technology and innovation. Nigeria formally joined the initiative as the 70th country member in July 2016. Many Civil Society Organisations across the world are members of the OGP initiative. In Nigeria, the OGP framework is led by a National Steering Committee made up of representatives of Government Ministries, Department and Agencies, civil society organizations, organised private sector and professional associations. The Steering

Committee has developed a two-year National Action Plan (NAP) to mainstream transparency mechanism in the management of public funds across all sectors.

In addressing the Anti-Corruption commitment of the OGP process, all stakeholders in the Anti-Corruption working group within the OGP thematic area have developed the National Anti-Corruption Strategy (NACS) which has been duly ratified by the OGP National Steering Committee.

By and large, the corruption perception of the nation within and among the community of nations still remains at low ebb. Nigeria today is ranked by the world index, One Hundred and Thirty-Six (136) out of One Hundred and Seventy-Six (176) countries.
Therefore, for the OGP intervention to make any significant impact on the problem of corruption in Nigeria, the laws, the policies and institutions in place must be reviewed in their entirety to support the implementation of the OGP process.

"Political will is important in the actualization of the OGP"
– Dr. Eric Oluedo,
Enugu State Governors Office.

Section Three

1. Issues In Existing Laws And Policies On Anti-corruption In Nigeria

At its inception, this administration saw the significance in leveraging on the OGP initiative to drive home the much-required anti-corruption reforms by using the existing legal and policy framework. An in-depth analysis of these policies and legislation has however revealed the need to re-assess the applicability and effectiveness of the existing legal and institutional framework. In furtherance of this, OGP Stakeholders have clearly defined this need as a specific objective under the NACS and particularly have identified amongst the five objectives, the need to promote an improved legal, policy and regulatory environment for the fight against corruption. The aim is to improve public confidence in reliable and credible law enforcement consisting of effective, efficient prosecution, speedy adjudication and effective sanctions. The outcome of this strategy will be to strengthen the effectiveness, efficiency and synergy of the institutions, laws and measures designed specifically to prevent and combat corruption and to engage the public actively in the process.

1. EXISTING POLICIES ON ANTI-CORRUPTION

Most policies on anti-corruption have over the years been encased into legislation for implementation and to provide for effective sanction regime. The existing major policies under consideration relevant to the subject matter of corruption today are;

1. National Anti-Corruption Strategy (NACS) which is premised largely on the United Nations Convention on Anti-Corruption, 2000 which Nigeria since ratified in 2004;
2. Federal Ministry of Finance Whistle Blower Policy, 2016 which is a subject of a legislative proposal as the legal framework for this policy is currently before the National Assembly;
3. Policy on improving Transparency in the Business Environment through the establishment of a Public Register of Business Owners;
4. Policies of Fiscal Transparency and Accountability including the –
    - Introduction of the Treasury Single Account (TSA),
    - Government Integrated Financial Management Information System (GIFMIS),
    - Integrated Financial Management Information System (IPPS),
    - Introduction of the Bank Verification Number (BVN),
    - Open Contracting through Executive Order to improve transparency in government contracting by requesting all contract bids to be published

regardless of the threshold and to afford aggrieved bidders opportunity to submit complaints to the Bureau of Public Procurement,

- Executive Order No. 4 of 2017: Voluntary Assets and …. Declaration Scheme.
- Introduction of a Common Reporting Standard under the Addis Tax Initiative aimed at improving the fairness, transparency, efficiency in the tax system.

The salient features of each of the policies referred to in paragraph 1.2 above are expounded below as follows-

1.1 NATIONAL ANTI-CORRUPTION POLICY (NACS)- 2017 – 2020 (OGP)

The crux of this NACS Policy is set out in the introductory part of this paper. The NACS provides an enhanced framework for national and international cooperation on anti-corruption in Nigeria. The faithful and diligent implementation of NACS by this administration backed with the necessary demonstrable political will should in no small measure assist in positively changing the climate of endemic corruption in Nigeria. The NACS has provided for a three years implementation period from 2017 to 2020.

The NACS document sets out broad policy and clearly sets out its objectives in its paragraph 3. Simply put, the objective seeks to remove impediments to accountability in government institutions, strengthen the chasms and platforms by which citizens can hold to account and strengthen public officers the capacity of anti-corruption

and law enforcement institutions for increased deterrence and enforcement of anti-corruption measures.

From the broad policy in this NACS, it addresses broad foundation gaps and weaknesses in current institutional structures, frameworks and arrangements that undermined previous and current anti-corruption efforts, including weak and faulty legislative framework to combat corruption. Furthermore, it brought to the fore the lack of citizens participation in the anti-corruption crusade of government and near total absence of performance monitoring and oversight mechanism. There is also the ever-present problem of lack of coordination and cooperation amongst the ACAS. These shortcomings are issues that the NACS document presented by the OGP seeks to make the centre piece of its Strategy. The funding mechanism of the NACS (OGP) is through the development of an Anti-Corruption Funding Framework (AFF) and monies derived through recovered assets.

Current Status of Implementation

The NACS provided a time lined objective and implementation plan of the strategic objectives. It has however not met the time line provided for the setting up of the coordination framework, that is, the National Anti-Corruption Strategy Management and Implementation Committee (NACSMIC). The Committee has not been set up till date and it leaves the whole implementation plan in jeopardy because of lack of coordination of the various organs and bodies championing the Anti-Corruption crusade.

1.2 FEDERAL GOVERNMENT OF NIGERIA: - FEDERAL MINISTRY OF FINANCE: WHISTLE BLOWING POLICY

In reacting to the hues and cries in recent developments relating to the misuse, diversion and outright theft of public funds and assets and in the absence of any legislation on whistleblowers and offering protection or reward to persons making public interest disclosures, the Federal Ministry of Finance came up in 2016 with a Whistleblower Policy.

The Policy, which cuts across the public sector, is designed to deal with any concern raised in relation to breaches of the Government Financial Regulation, Public Procurement Act and other legislation on Public Funds and Finances. The Policy also specifically extends to issues relating to mismanagement or misappropriation of public funds and assets, fraud, corruption and theft, collecting or soliciting for bribes, improper or unethical behavior, acts that impact negatively on the integrity of Nigeria and any attempt to suppress or conceal any information relating to any breaches of the above legislation or ethical standards.

The Policy particularly extends to cover all public officers, in Ministries Department and Agencies of the Federal Government, Inter-Government Stakeholders, Institutional Stakeholders and members of the public having reasonable belief that there is serious misconduct or violation of any of the legislation referred to above. The Policy also sets clear ground rules on the nature of information to be provided which must be in public

interest and in good faith and the individual or person, or group of individuals making the disclosure or allegation believe it to be substantially true and the allegation made must not be made for personal gains.

The protection for whistleblowers as envisaged under the Policy is limited in scope and is not adequately framed or outlined. The protection regime of whistleblowers goes to the root of the successful implementation of the whistleblower regime.

The reward scheme is the central attraction of the Policy. It is however recognized across the various jurisdictions that issues of public interest disclosures go beyond monetary award. The Policy has not considered other alternatives where disclosures are made because patriotic values or national interest. It is, however, reassuring that the Policy has gained wider recognition and application in the country. It has triggered huge interests among the citizens. It has led to the proposition of a Bill from the National Assembly tagged 'The Executive and Civil Society Organisations Bill'. These Bills are currently being harmonised with a view to adopting a comprehensive legislation to address the deficiencies in the present Whistle-blower Policy.

1.3 IMPROVING TRANSPARENCY IN THE BUSINESS ENVIRONMENT THROUGH THE PUBLIC REGISTER OF BUSINESS OWNERS:

Businesses that drive the process of development in most countries are not immune from being associated with

corrupt practices. Domestic and Multinational companies and business often engage in acts of corruption, including bribery, payment of facilitation fees and other underhand practices, tax evasion, avoidance of payment of rents and royalties as predominant in the extractive industries.

The Financial Action Task Force on Money Laundering (FATF) an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering and terrorism financing strongly advocates for States to have in place a system of registering beneficial ownership for the much needed transparency in the business environment of a country which ultimately translates into economic growth due to the attraction to domestic and foreign investment in Nigeria. Having in place a register of Beneficial Ownership is a key to fight corruption.

From January 2017, Nigeria has been actively following the path of other countries and particularly the United Kingdom by seeking to establish a Register of Beneficial Owners in Nigeria and putting together a policy framework for this purpose. There is currently in place, a Policy Brief dated February 2017 captioned 'Improving Transparency in the Business Environment through the Public Register of Business Owners'. The Policy Brief was jointly put together by the representatives of the Federal Ministry of Justice, Nigeria; Extractive Industry Transparency Initiative (NEITI), Corporate Affairs Commission (CAC) under the leadership of the Federal Ministry of Justice.

Nigeria has constantly struggled with enforcement of sanctions and penalties in most of the laudable policies initiated by the government. It will be the greatest challenge in the implementation of this Policy. The publication of the list of defaulters periodically will enable active participation of the Civil Society Organizations and increase awareness amongst the members of the public.

Lack of adequate legislation on beneficial ownership presently is a serious setback in the implementation plan. Section 92 – 93 of the Companies and Allied Matters Act, 2004 defines Beneficial Ownership, in a limited way, as one that connotes 5% shareholding interest. The Corporate Affairs Commission (CAC) has indicated that the proposed 2017 Bill will expand the provisions of Section 92 – 93 to take into account the concerns of relevant stakeholders, and to bring it in line with international best practices. However, it is submitted rightly, that companies would not be expected to fully cooperate with the disclosure requirements of the Beneficial Ownership principle without Statutory or Regulatory provisions providing succinctly, for the regulation and enforcement of the Beneficial Ownership principle to ensure public disclosure and publication of the real owners of companies and trusts.

1.4 POLICIES ON FISCAL TRANSPARENCY AND ACCOUNTABILITY;

(A) TREASURY SINGLE ACCOUNT (TSA):

This Policy came into force in Nigeria in 2012 and officially

commenced the operation of the TSA on 17th September 2015. The TSA is a financial policy in use in several countries all over the world. It was introduced by the Federal Government to consolidate all inflows from all agencies of government into a single account at the Central Bank of Nigeria. In a continued bid to deepen the implementation of the TSA, the Federal Government has also introduced e-collection scheme. Amongst its benefits to government is the reduction of borrowing cost, extension of credit and improvement in government's fiscal policy. The IMF also recommends the establishment of a legal basis for the TSA to ensure its robustness and stability.

The introduction of the TSA policy therefore was vital in reducing the proliferation of bank accounts operated by ministries, departments and agencies (MDAs) towards promoting financial accountability among governmental organs. With the full implementation of this commercial banks in Nigeria remitted over Two Billion Naira (N2, 000, 000, 000) worth of idle and active government deposits in 2016.

One of the challenges in the implementation of the Policy is system failure and congestion of the service provider's platform which causes delay and most often, loss of business opportunities. Despite the stringent efforts to unify the payment structure into government accounts, series of accounts were discovered recently, belonging to the NNPC. Steps are being taken to bring these accounts within TSA.

It is worth to note that the policy is widely applauded and has contributed immensely to the transparency and accountability of government funds.

(B) BANK VERIFICATION NUMBER:

The Bank Verification Number popularly known a 'BVN' in Nigeria is an initiative of the Central Bank of Nigeria (CBN) to help protect customer banking information across the country by the assignment of, a unique and existing identification number. The BVN is an additional means to strengthen banking security system to protect individual accounts from fraudsters or against fraudulent acts. The BVN policy has also assisted in tackling issues of fraudulent and corrupt public officials in commercial banks and has assisted law enforcement agencies in tracking diversion of public funds. The policy is remarkably a success story having captured over 80% of bank customers across the country within the time frame provided. The initiative has no known major challenges in its operation.

(C) INTEGRATED PERSONNEL PAYROLL AND INFORMATION SYSTEM:

The Integrated Personnel Payroll and Information System (IPPIS) is the government's policy solution for tackling the fraud of 'ghost workers' that permeated the Public Service of Nigeria from the Federal, State down to the Local Government level. The scourge of ghost workers is a form of corruption in government that has obviously been responsible for Nigeria been rated amongst the most corrupt nations. Although this policy started in October

2006, the federal government under President Buhari has escalated and strengthened its implementation to provide a technology based, reliable and comprehensive database for the public service to facilitate manpower planning, eliminate record and payroll fraud, facilitate easy storage, update and retrieve personal records.

The application, it is noted, has not been fully utilised. Of the seven modules on the software, only the payroll module is in appreciable use. The Human Resource modules, which are modules meant to manage staff recruitment, posting, promotion, training, discipline and disengagement, are yet to be fully deployed for use by MDAs Service Wide.

Like every other major system dependent on the internet facility, connectivity remains a major challenge and MDAs are still not able to connect securely and consistently to the platform over a Virtual Private Network (VPN). Alongside this challenge, there is a weak network security impacting on the IPPIS roll out. Due to non-deployment of the HR modules, there are undue delays in the processing of issues bordering on exit and termination (retirement, dismissal, death, etc.).

(D) GOVERNMENT INTEGRATED FINANCIAL AND MANAGEMENT INFORMATION SYSTEM (GIFMIS)

GIFMIS is a sub component of the Economic Reform and Governance project. The ERG project is designed to significantly strengthen governance and accountability,

reduce corruption and deliver services more effectively with the objectives of improving the Federal Government economic and financial management systems. As a sub-component of the ERG project, GIFMIS is geared towards supporting public resource management and targeted anti-corruption initiatives area through modernizing fiscal processes using better methods, techniques and information technology.

The GIFMIS is also aimed at improving the acquisition, allocation, utilization, and conservation of public financial resources using automated and integrated, effective, efficient and economic information systems. The GIFMIS will aid strategic management of public financial resources for enhanced accountability, transparency, cost effective public service delivery and economic growth and poverty reduction efforts. Major attributes of GIFMIS include the ability to increase internal controls to prevent and detect potential and actual fraud and increasing the ability to demonstrate accountability and transparency to the public and cooperating partners.

The challenges of this system remain, in substance, the issue of:-

a. Building an integrated budget based on programmes that are clearly linked to key development objectives.
b. Ensuring greater accountability from budget holders.
c. Allowing greater emphasis on budget outcome(s) and impact.

d. Identifying and address the remaining sources of leakage in budget execution in order to strengthen efficiency of public expenditures.

(E) EXECUTIVE ORDERS (EO): OPEN CONTRACTING:

The Acting President, Prof. Yemi Osinbajo on 18th May, 2017 issued three (3) Executive Orders to support existing legislations on promotion of investment and Economic growth in Nigeria.

The executive order also seeks to promote transparency in government contracting by requesting all contract bids to be published regardless of the threshold. It also provided an avenue for aggrieved bidders to submit complaints on their bidding procedure/ processes to the Bureau of Public Procurement. These proposed reforms have heightened the transparency of procurement system and equal accessibility for all bidders of public sector contracts. The review of salient orders on transparency and accountability in government includes; Executive Order on Ease of Doing Business in Nigeria, Section 17 to 24 of the Order seeks to promote transparency and efficiency at the Nigerian ports by banning touting, bribery and illegal use of designated sections of the ports by unapproved dignitaries.

(F) EXECUTIVE ORDER ON BUDGETS

The Executive Order signed by the Acting President on Budget sets out to entrench transparency in government Ministries, Departments and Agencies (MDAs). It seeks to ensure that private businesses patronised by MDAs are

properly paid for work done. Section 1 of the EO mandates all government agencies including 31 listed in the Fiscal Responsibility Act to prepare and submit estimates of their revenues and expenditure latest May of every year. Section 2 of the EOB mandates the MDAs to submit annual budgets derived from the estimates latest by July every year. The Order imposed equally an obligation on agencies to spend strictly within the budget and to seek the approval of the President where there is a need to spend beyond approved figures except if such expenditure is for the payment of salaries. It is hoped that compliance with the directives of the order would address the delays experienced in the preparation and passage of annual budgets, which regularly stalls payments of mobilization funds to Contractors. The Order imposed equally an obligation on agencies to spend strictly within the budget and to seek the approval of the President where there is a need to spend beyond approved figures except if such expenditure is for the payment of salaries.

(G) COMMON REPORTING STANDARD: ADDIS TAX INITIATIVE

The present Federal Government of Nigeria is committed to Tax Transparency as declared by President Buhari in the London anti-corruption summit where he committed to sign the Common Reporting Standard Initiative. It is expected that the government will sign this through bilateral arrangements with interested countries.

The Government is also committed to joining the Addis Tax Initiative an international initiative promoting tax

transparency and accountability. Addis Tax Initiative (ATI) was launched in the course of the 3rd Financing for Development Conference in Addis Ababa in 2015. It was initiated by the governments of Germany, the Netherlands, UK and USA. It seeks to enhance the mobilization and effective use of domestic resources to improve the fairness, transparency, efficiency and effectiveness of tax systems.

In furtherance of the above commitment and policy of tax transparency by the present government, the Acting President, Professor Yemi Osinbajo SAN issued Executive Order No. 004 of 2017 on the Voluntary Assets and income Declaration Scheme takes effect from the 1st July 2017. It seeks to provide an avenue for tax evaders and defaulters to regularize their tax status for all the relevant years by setting all outstanding taxes, prevent and stop tax evasion and ensure full tax compliance.

The Common Reporting Standards has been labelled by the private sector as having an ambitious scope. The implementation in Africa (including Nigeria) remains a big problem especially for its modelling the standard on FATCA rules.

The other challenge in relation to the Common Reporting Standards is the costs of collecting and providing information which makes it an onerous task for developing country like Nigeria to actively participate in the scheme.

The implementation of the Common Reporting Standards under the Addis Tax initiative remains an illusion presently. The Federal Government will need to ensure that it has the requisite expertise, goodwill and the

financial resources to implement the initiative before signing the agreement.

3. EXISTING LAWS ON ANTI-CORRUPTION; TRANSPARENCY & ACCOUNTABILITY IN GOVERNMENT

3.1 With the advent of the democratic dispensation in Nigeria, the Constitution of the Federal Republic of Nigeria, 1999 became the grundnorm It is therefore a useful exercise to consider relevant provisions touching on anti-corruption, transparency and accountability in the constitution of Federal Republic of Nigeria 1999 (as amended)

THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (AS AMENDED) contains anti –corruption provisions. This may have been due to fact that in a Presidential Democracy Government that we practice, demarcation of functions of the Legislature, Executive and the Judiciary is purely a political move to checkmate the other arms of government from encroaching upon the function of the other. The truth is there are clear constitutional provisions in the constitution geared towards preventing corruption. We shall touch on some of such salient constitutional provisions thus:

POWERS AND CONTROL OVER PUBLIC FUNDS

Section 80 (1) of the Constitution provides that all revenues or other moneys raised or received by the federation (not being revenues or other moneys payable under this

constitution or any act of the national assembly into any other public fund of the federation established for a specific purpose) shall be paid into and from one consolidated revenue fund of the federation. The summary of the above section is to avoid a situation where some money received by the federal government is paid to other accounts where such money may be difficult to account for. Any money received by government and is not paid to an identifiable account may be subject to manipulation by some bureaucrats, hence the need for government to pay such money into the Consolidated Revenue Account.

Section 80 (2) provides that no money shall be withdrawn from the consolidated revenue fund of the federation except to meet expenditure that is charged upon the fund by this constitution or where the issue of those moneys has been authorized by an appropriation act, supplementary appropriate act or an act passed in pursuance of section 81 of this constitution. This section in part makes it compulsory that government can only spend money budgeted for by an act of parliament in form of an appropriation act, supplementary appropriation act or pursuant to an act of the parliament

Section 80 (3) provides that no money shall be withdrawn from any public fund of the federation, other than the consolidated revenue fund of the federation, unless the issue of those moneys has been authorized by an act of the National Assembly.
The implication of the above section is also to prevent a situation whereby the executive would withdraw money

from the federation without authorization from the National Assembly.

Section 80 (4) provides that no moneys shall be withdrawn from the consolidation revenue fund or any other public fund of the federation, except in the manner prescribed by the national assembly. Like the other section any withdrawal from the consolidated revenue fund must be in accordance with prescription by the National Assembly.

Section 81 (1) provides that the President shall cause to be prepared and laid before each houses of the National Assembly at any time each financial year estimate of the revenues and expenditure of the federation for the next following financial year. This section mandates the President to lay budget estimates before the National Assembly on yearly basis for consideration leading to passage of the estimates (as budget). Sub section (2) of section 81 of the constitution mandates the heads of expenditure contained in the estimates (other than expenditure charged upon the consolidated revenue fund of the federation by this constitution) to be included in a Bill to be known as an Appropriation Bill, providing for the issuance from the consolidated revenue fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein.
The President by this constitutional provisions must ensure that such estimates are compartmentalized into headings or groups to avoid subsequent manipulation or illegal transfer of Budget meant for category A to category B which may lead to abuse and or embezzlement of public fund.

Section 84 of the constitution provides " there shall be paid to the holders of the offices mentioned in the section such remunerations, salaries and allowances as may be prescribed by the –National Assembly, but not exceeding the amount as shall have been determined by the revenue mobilization allocation and fiscal commission. This section gives the National Assembly the power to fix the remuneration of the President and some specific government officials subject to such amount not exceeding the amount prescribed by the Revenue mobilization And Fiscal Commission. It can be seen that the above provisions that they are geared towards checkmating the executive from spending commonwealth as personal wealth.

The above Constitutional provisions clearly highlight the fact that the constitution to a large extent has anti-corruption provisions. More relevant is section 153 of the constitution which lists 14 statutory Agencies of the government in the Constitution. The implication of this is that it is difficult for the agencies to be scrapped at the will and caprices of the government considering the fact that Constitutional Amendment which is rigorous is needed to scrap such important Agencies. Thus, this guarantees the security of such Agencies to perform their function well without dancing to the tune of government officials. S158 provided further that the Code of Conduct Bureau, National Judicial Council, the Federal Civil Service Commission and the Independent Electoral Commission shall not be subject to the direction or control of any other authority or person.

The Constitution also established the Code of Conduct Tribunal under the fifth schedule of the 1999 Constitution to have an oversight power on the enforcement of the Code of Conduct for public officers in Part I of the fifth Schedule to the Constitution. It is interesting to note that S15(4) of Part 1 to the fifth Schedule granted the National assembly the power to confer additional powers on the Code of Conduct Tribunal, as it may appear necessary to enable discharge more effectively the functions conferred on it in the Schedule. This power could effectively be used to confer additional functions on the Tribunal to adjudicate on matters bordering on corruption by public officials, in addition to the Code of Conduct for public officers.

Successive administrations since 1999 also strived to put in place appropriate laws, policies and measures aimed at addressing the scourge of corruption in Nigeria. Such laws and institutions include the establishment of the –

- Economic and Financial Crimes Commission (EFCC), Act, 2004 that led to the establishment of EFCC and made provision for the Nigeria Financial Intelligence Unit
- The Independent Corrupt Practices and other Related Offences Commission (ICPC) set up by the ICPC Act, 2000;
- Code of Conduct Bureau Act, 1989
- Code of Conduct Tribunal, fifth Schedule, 1999 Constitution
- Bureau of Public Procurement Act (BPP), 2007 setting up the BPP;

- The Nigeria Extractive Industry Initiative Act (NEITI), 2007 setting up NEITI;
- The FISCAL Responsibility Commission (Establishment) Act which establishes the Fiscal Responsibility Commission;
- Public Complaints Commission Act (established for the Public Complaint Commission);

In addition to the above legislation creating these institutions, there are also some laws of general application notably the Money Laundering Prohibition Act of 2011 and the Advance Fee Fraud Act, 2006, and the Freedom of Information Act, 2011.

(H) ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC), ACT, 2004

The functions of the EFCC in Part II Section 6 include the following:

a. Investigation of all financial crimes of varied types, the coordination and enforcement of all economic and financial crimes laws and enforcement functions conferred on any other person or authority.

b. Taking charge of supervising, controlling, coordinating all the responsibilities, functions and activities relating to the current investigation and prosecution of all offences connected with or relating to the economic and financial crimes

c. Maintaining a liaison with the office of the AGF, Nigeria Customs Service, Immigration, Prison service Board, CBN, NDLEA, NDIC, all government security and law enforcement agencies and such other financial supervisory institutions involved in the eradication of economic and financial crimes. Section 7 (1) b states further that the Commission shall cause investigations to be conducted into the properties of any person if it appears to the Commission that the person's life style and extent of the properties are not justified by his source of income.

Section 7 (2) conferred on the commission the power of coordinating agency for the enforcement of various provisions under several laws including

a. Money Laundering Act, 2004,
b. Advance Fee Fraud and other Related Offence Act 1995,
c. Failed Bank (Recovery of Debt & Financial Malpractices in Banks) Act,
d. Banks & other Financial Institutions Act 1991,
e. Miscellaneous Offences Act,
f. Any other Law or regulation relating to economic and Financial Crimes, including the Criminal Code and penal Code

The Legal and Prosecution Unit is charged with responsibility of prosecuting offenders, conducting such

proceeding as may be necessary towards the recovery of any assets or property forfeited under the Act.

(I) THE INDEPENDENT CORRUPT PRACTICES & OTHER RELATED OFFENCES COMMISSION by and large replicates the provision of EFCC Act save for minor differences. Section 6 provides for the duties of the officers of the Commission to include:

- To receive and investigate any report of conspiracy to commit, attempt to commit or the commission of corruption offences,

- To examine the practices, system and procedures of public bodies and where such aid or facilitate fraud or corruption, to direct and supervise a review,

- To instruct, assist and advice any officer, agency or parastatals on ways by which fraud or corruption may be eliminated or minimized by such officer, agency or parastatal.

- To educate the public on and eradicate bribery, corruption and related offences, - to enlist and foster public supports in combatting corruption.

Part 3 creates Offences and Penalties including attempts, conspiracy punishable as offences; Section 12 creates the offences of fraudulent acquisition of property by a public officer, otherwise than as a member of a registered joint stock company consisting of more than 20 persons, any

private interest in any contract, agreement or investment emanating from or connected with the department or office in which he is employed or which is made on account of the public service is guilty of an offence interestingly, most of these offences are punishable with imprisonment without an option of fine.

Part 4 deals with investigation, Search, Seizure and Arrest. The Commission has various powers including examination, summon, arrest and detention. It also conferred power for seizure of property and administration of the seized property.

Part 7 deals with prosecution of offences by the Commission. Section 61 (1) confer prosecutory power on the Commission by deeming the consent of the Attorney General to have seen duly obtained.

(J) MONEY LAUNDERING PROHIBITION ACT 2011 (AS AMENDED)

The National Assembly in 2011 enacted the Money Laundering (Prohibition) Act 2011. It repealed the 2004 Act and expanded the scope of regulatory authorities to deal with money laundering and terrorism in financing challenges in line with International Standards.
This law was further amended in 2012, however, recent FATF evaluation indicate that the Nigeria anti-money laundering regime is still weak, hence the effort by the government to repeal and enact the Money Laundering Prohibition and Prevention (Repeal) Bill, 2017

(K) FREEDOM OF INFORMATION (FOI) ACT 2011

The Freedom of Information Act (FOI Act) 2011 enactment marked a turning point in the fight against corruption and Nigeria. It provides for the right of any person to access on request, information or records under the Act whether such information is in writing or not from public institution. It has made public records and information more freely available and accessible to members of the public.

The enactment has enhanced the citizen's participation in governance and laid bare the secrecy element encouraging bad governance to thrive. Section 1(1) protects the right of any person to access official information and document notwithstanding anything contained in any other Act, Law or regulation.

The regime of penalty for non- disclosure of requested information or documentation by public officers is absent and has been a major concern for the civil society organizations and the citizens generally. In addressing this concern, several initiatives have been proposed in meeting the deficiencies in relation to effective compliance with the Act. An amendment to the Act proposing sanctions and enforcement mechanism including the setting up of a commission to coordinate on a permanent basis the effective compliance with the Act has been proposed by some quarters. This paper will however propose for the other compliance mechanism other than an amendment of the Act at this stage. This is in view of the protracted delay involved in the passage of Bill by the

legislature, with the benefit of hindsight in relation to the experience of the existing Bill. The Bill could be effectively implemented by providing for Sanctions through Executive Order by the President or by Circular form the Federal Executive Council or Heads of Service for enforcement of sanctions against erring public officers who fails to comply with request for disclosure and proactive reporting.

The recently launched FOI Portal by the Federal Ministry of Justice and the OGP Secretariat is another development in the effective implementation of the FOI Act. This portal, if effectively utilized will enhance effective implementation of FOI Act by enabling the public to apply and access information easily.

Other initiatives proposed for an effective implementation of the FOI Act includes the following:-

I) Develop training programs for all the government agencies on FOI Implementation
(ii) Encourage the appointment of desk officers for the management of Information and privacy issues in MDAs
(iii) Train government prosecutors on the management of cases arising from the FOI Act

"The oxygen that sustains a vibrant democracy and guarantees citizens' participation and openness and equally promotes accountability and transparency is a platform that provides opportunity for citizens to engage governments every step of the way- the OGP Platform".
- Dr. Garba Abari, Director-General National Orientation Agency, Abuja.

(L) PUBLIC PROCUREMENT ACT 2007

The Enactment of the Public Procurement Act 2007, and subsequent establishment of the Bureau of Public Procurement has improved transparency and openness in the public procurement process.

The BPP determines when to set aside procurements that do not conform to the Public Procurement Act, 2007. Within the framework of the OGP process, The BPP has developed a National Open Contracting Platform as part of its mandate under commitment two of the OGP National Action Plan. Open contracting has commenced in the public sector. For instance, the Universal Basic Education Commission has adopted the open contracting standards in its operation. The BPP has also created a citizen monitoring portal and is working closely with Public and Private Development Centre (PPDC), a lead civil society group, in the development of its electronic procurement system.

A significant drawback of the Act is the failure of successive government to establish the Council of Public Procurement provided for in the Act till date. This has had

a significant Impact on policy making processes within the procurement sector because of its inability to carry out the function designated by the Act.

Importantly, the Bureau has by and large, been commended for a job well done over the years with various initiatives being put in place by the body towards safeguarding the procurement processes. However, the challenges are that some MDA's officials, consultants, contractors and service providers have refused to accept the change in the new public procurement reform policies as they continue to employ all sorts of tactics to frustrate the practice during bid solicitation and evaluations including contract execution stages. Other issues relating to public procurement is the contract splitting by MDAs in bringing their valve within the approved threshold of the Accounting Officers. Late passage of annual budget results in undue pressure on the MDAs to commence and conclude yearly procurements within a short period.

(M) NIGERIA EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (NEITI) ACT, 2007

The resultant failure to manage our natural resources and the income derived there from due to monumental corruption, lack of public accountability, transparency and good governance formed the basis of enacting this law by the National Assembly in 2007. This body was established with the objectives set out in Section 2 to include;

1. Ensuring due process and transparency in the payments made by all extractive industry

companies to the Federal Government and statutory recipients;
2. To monitor and ensure acceptability in the revenue receipts of the Federal Government from extractive industry companies;
3. To eliminate all forms of corruption practices in the determination, payments, receipts and posting of revenue accruing to the Federal Government from extractive industry companies.
4. To ensure transparency and accountability by government in the application of resources from payment received from extractive industry companies; and
5. To ensure conformity with the principle of Extractive Industries Transparency Initiative.

The NEITI has adopted the EITI standards definition of Beneficial Ownership to mean: - ***"The beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or control the corporate entity.***
The plight of endemic corruption within the industry underscores the urgency of checking the practice prevalent in Nigeria due to the shielding of the real owners of companies. Unless this practice is checked, it will continue to pose financial risks to the revenue generation of the country.

Consequently, in 2013, Nigeria volunteered alongside other EITI implementing countries to pilot the reporting of Beneficial Ownership in the oil, gas and mining sector

In this vein, the Companies and Allied Matters has been amended through a current Bill before the National Assembly to incorporate the definition of Beneficial Ownership principle and to provide for requirement of strict disclosure including penalties to include blacklisting of companies or individuals breaching the provision.

It is submitted that cooperation with the disclosure requirements of the Beneficial Ownership principle remain an illusion without a strong statutory provision. In this vein, the Companies and Allied Matters has been amended through a current Bill before the National Assembly to incorporate the comprehensive definition of Beneficial Ownership principle and to provide for requirement of strict disclosure including penalties to include blacklisting of companies or individuals breaching the provision.

It is equally a fact that the enactment of NEITI Act in 2007 has not been able to ensure annual audit and publication of oil receipts and expenditure and account of multinationals nor has NEITI been able to insist on compliance with international best practices in the audit and publication of oil revenues by companies operating in this sector.

(N) FISCAL RESPONSIBILITY ACT, 2007

The Act provides for the prudent management of the nation's resources, ensure long term macroeconomic stability of the national economy, secure greater accountability and transparency in fiscal operations within a medium term fiscal policy framework. The Act also led to

the establishment of the Fiscal Responsibility Commission (FRC) to ensure the promotion and enforcements of the nation's economic objectives and for related matters.

The Act requires simplified versions of the Federal and State medium term economic plans, annual budgets, appropriation act, rendering of accounts and prior statement of opinion, summary budget execution report and facial management report to be widely circulated in the media. It further requires the legislative arm of each government to ensure transparency by encouraging public hearing during preparation and discussion of annual plans, budgets or appropriation bills.
The imperatives of the Act are:

- structuring tax regime
- Eradication of corruption through the adoption of soft budget constraint to cure recession
- Reduction of deficits/methods of financing through money creation

The effective implementation of the Fiscal Responsibility Act will go a long way in curbing most of the problems that militate against sound public sector financial resource management. However, proper compliance is essential in promoting fiscal discipline, transparency, accountability and foster macroeconomic stability.

(O) PUBLIC COMPLAINT COMMISSION ACT (1975)

The Commission was established by the Act with wide powers of enquiry and investigation. It has wide powers to

receive complaints from members of the public against maladministration and misuse of administrative machinery by any public authority/companies or their officials.

The Commission was set up by the military head of State-General Murtala Mohamed in 1975 through the Public Complaints Commission Decree (now Act). The Commission was set up to check the excesses and overzealousness of officers of governments and flagrant use of their administrative powers for their own personal gains. The Commission is established to stem the tide of corruption and nepotism. The Commission is a relevant institution for the government to receive feedback from the public on the activities of its officers, policies and mode of administration of the government. The easy access to the Commission is to encourage the citizen to approach the office whenever there is a special need to do so.

The sphere of influence of the Commissioners is only limited to executive arms of government and may not investigate complaints about the legislative both at the Federal and State levels. It has been suggested that the scope of the Commission should include individuals especially professionals like lawyers, doctors, engineers and other associated individuals.

The Commission is not allowed to investigate any matter before the National Assembly, the Council of State or the President. The Act provides that the Commissioner shall not investigate any matter in where the complainant has

not exhausted all available legal or administrative procedures. This is in conflict with the need for an alternate ombudsman since the complainant would have to pursue the case all the way to the Court before coming to the Commission. The law disallows the Commission from investigating any matter in which the Complainant/Petitioner does not have a personal interest. It is advised that the law setting up the Commission be reviewed to enable the Commission have enough powers to exercise its statutory functions.

Section Four.

1. ONGOING EFFORTS TO STRENGTHEN LEGAL AND POLICY MEASURES ON TRANSPARENCY

The review of the laws and policies carried out in the previous chapters of this report formed the basis of the recommendations made under this chapter. The recommendations are based on two specific areas to include the review of laws through proposals for new Bills in the fight against corruption. The other area is the strengthening of our institutions leading the fight against corruption and transparency and accountability in governance.

The proposed Bills in support the implementation of OGP principle in the fight against corruption are: -

a- Proceeds of Crime Bill, 2017

b- Money Laundering (Prohibition and Prevention) Bill, 2017

c- Mutual Legal Assistance in Criminal Matters

d- Public Interest Disclosure Bill, 2017

e- Witness Protection Bill, 2017

f- Prosecution of Offences Bill, 2017

g- Company and Allied Matters Amendment Bill, 2017

h- Nigerian Financial Intelligence Agency Bill, 2017

i- Petroleum Industry Bill, 2016

1.1 MUTUAL LEGAL ASSISTANCE BILL CRIMINAL MATTERS:

The object of this Bill is to facilitate the provision and obtaining by Nigeria of international mutual assistance in criminal matters, including -

(a) the provision and obtaining of evidence and statements from persons;

(b) the making of arrangements for persons to give evidence or assist in criminal investigations;

(c) the location and identification of witnesses and suspects;

(d) the provision and production of relevant documents, records, items and other materials;

(e) the facilitation of voluntary attendance of persons in the requesting State;

(f) effecting a temporary transfer of persons in custody to assist in an investigation or appear as a witness;

(g) the identification, tracing, freezing, restraining, recovery, forfeiture and confiscation of proceeds, property and other instrumentalities of crime;

(h) the return and disposal of property;

(i) obtaining and preserving computer data;

(j) the interception of postal items;
(k) the interception of telecommunications;
(l) the conversion of electronic surveillance;
(m) the restraint of dealings in property, or the freezing of assets, that may be recovered, forfeited or confiscated in respect of offences;
(n) the execution of requests for search and seizure;
(o) the recovery of pecuniary penalties in respect of a serious offence or a serious offence in a foreign State;
(p) the examination of objects and premises;
(q) effecting service of documents; and any other assistance that is not contrary to the law of requesting State.

1.2 MONEY LAUNDERING (PREVENTION AND PROHIBITION) BILL 2017:

The purpose of the money laundering (prevention and prohibition) Bill, 2017 is to make comprehensive provisions to:

1. Prohibit the laundering of the proceeds of criminal activities.
2. Expand the scope of officers and definitions of money laundering.
3. Provide protection for employees of various institutions, bodies and professions who may discover laundered funds in the curl of their work.
4. Enhance compliance with customer due diligence, and customer identification across all sectors.

5. Provide appropriate penalties and enforcement measures and;
6. Expand the scope of supervising and regulatory bodies whilst recognizing the role of certain self-regulatory organization.

The Bill gives the Banks, Capital Market operators, Insurance Companies as well as regulators such as Central Bank of Nigeria, Securities and Exchange Commission, National Insurance Commission, the proposed Nigeria Financial Intelligence Centre and all law enforcement agencies in Nigeria the power to monitor, detect and prevent the withdrawal of funds in the line to the commission of various offences pending the conclusion of investigation and prosecution.

1.3 THE PROCEEDS OF CRIME BILL, 2017:

The proceeds of Crime Bill, 2017 provides a legal and institutional framework for the confiscation, seizure, forfeiture, recovering and arrangement of activities, and instrumentalities used or intended to be used in the commission of lawful activities. The Bill seeks to harmonize and consolidate the existing legislature framework on the recovering of proceeds of crime and related matters in Nigeria.

There is currently no single law in Nigeria providing a uniform scheme for the forfeiture of criminal assets. The present regime comprises of different laws establishing several law enforcement agencies including the NDLEA Act, the ICPC Act, the EFCC Act and the NAPTIP Act. The

new Bill seeks to consolidate and coordinate these framework powers within a single agency solely responsible for the investigation, prosecution and enforcement of this Anti- corruption regime.

1.4 PUBLIC INTEREST DISCLOSURE BILL, 2017

There is currently no legislation in the Nigeria making comprehensive provisions for whistleblowing. The furthest the Federal Government, its institutions or agencies have gone in this direction is to make sporadic policy pronouncements or policy documents on the matter.

The word "whistleblowing" as captured in laws of some common law jurisdictions that have enacted laws on the matter refer to the act of whistleblowing as "public interest disclosure". Invariably, the laws passed in such jurisdictions are aptly captioned – "Public Interest Act" "Public Interest Disclosure Protection of Informers Law" or Public Interest Disclosure Act".

In the past five years, the pressure on Nigeria to strengthen her Anti-Money Laundering and counter-financing of Terrorism (AML/CTF) measures makes it mandatory for certain laws to be enacted for Nigeria to attain the certification of the regional anti money laundering body ('GIABA').

Amongst the legislation require to be put in place by Nigeria are laws to ensure the protection of State witnesses used in the investigation and the prosecution of criminal matters and for the protection of whistleblowers.

- The Bill makes provision for disclosures to be made to the appropriate or competent authorities listed, in the Schedule to the Bill concerning any of the offence listed in section 2(1) (b) of the Bill (including terrorism, money laundering, drugs, trafficking in persons and corrupt, etc).
- The Bill makes provision for public interest disclosures to be made of wrong doings or unlawful activities by public authorities and officers in the performance of this statutory duties and responsibilities in exercise of public functions and public sector contractors;
- The Bill also extends to public interest disclosures in relation to wrong doings of all arms of Government subject to the limitation contained in the Bill or any other enactment, rules or regulation;
- A major innovative provision of the Bill is the creation of a central authority to take charge of the administration of public interest disclosure and the management of the Witness Protection Programme. This multi-faceted central authority is responsible for providing protection for all persons making public interest disclosure, as well as taking full charge and responsibility of the Witness Protection Programme.

/1.5 WITNESS PROTECTION BILL, 2017

A key feature of the Bill is the establishment of a Witness Protection Programme aimed at creating a formidable legal and administrative structure that guarantees maximum

security and protection for witnesses for the State signed on under the Programme.

On Witness Protection, the Bill will extend to all justice sector institutions and authorities, including the judiciary, law enforcement and security agencies and other regulatory institutions towards the protection of witnesses in the course of the investigation detection and prosecution of offences.

A major innovative provision of the Bill is the creation of a central authority to take charge of the administration of public interest disclosure and the management of the Witness Protection programme. This multi-faceted central authority is responsible for providing protection for all persons making public interest disclosure, as well as taking full charge and responsibility of the Witness Protection programme.

The general oversight responsibility for the Bill has been placed under the Hon. Attorney-General of the Federation who shall also be the Chairman of the Governing Council established under the Bill.

1.6 COMPANY AND ALLIED MATTERS BILL, 2017 (CAMA) DISCLOSURE OF BENEFICIAL INTEREST IN SHARES

116.The Bill provides for mandatory disclosure of Beneficial interest in shares in S116, the identity of the persons interested in the shares must be disclosed by

person holding other than as Beneficial owner within seven (7) days of becoming a holder of the shares in that capacity.

The provisions of subsection (1) provides that it shall apply to any person who holds shares in the company which entitle him to exercise at least 5 per cent (or such amount as the Minister may by regulation prescribe from time to time) of the unrestricted voting rights at any general meeting of the company

There is a corresponding requirement on the company after receiving or coming into possession of the information required under subsection (1) of this section, to notify the Commission within three (3) months or at the point of filling its annual return of such information.
The Commission is obliged to maintain a register of beneficial owners of shares in which it shall enter the information received from every company under subsection (2) of section1.

The Bill prescribed for default in compliance with the requirement or the making of any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular, to be liable to imprisonment for six months or to a fine of N500,000.

The same obligation is imposed on substantial shareholder in a Public company by S117 of the Bill to provide the name, address and number of shares which entitles him to

exercise at least 5 per cent of the unrestricted voting rights at any general meeting of the company. There is provision for penalty for default in the same vein

1.7 PROSECUTION OF OFFENCES BILL, 2017

This Bill seeks to establish institutional structures for the effective and efficient prosecution of offences created in legislation passed by the National Assembly

It establishes the Prosecution Directorate to be known as the Directorate of Public Prosecution Directorate of the Federation as an extra-ministerial department under the Federal Ministry of Justice to be manned by career prosecutors through whom the Attorney-General may exercise his prosecution powers in line with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as altered).

The Bill also provides for checks and balances in the prosecution of offences through the establishment of the Federal Prosecution Inspectorate, as a semi-autonomous body under the Federal Ministry of Justice to act as a watchdog over prosecution of federal offences and provide independent reports to the Attorney General in the interest of transparency, accountability and overall improvement in the prosecution of federal offences in Nigeria.

1.8 NIGERIAN FINANCIAL INTELLIGENCE AGENCY BILL, 2017

The Bill seeks to establish a body to be known as the Nigerian Financial Intelligence Agency (in this Act referred to as "the Agency") as the central body in Nigeria responsible for receiving, requesting, analysing and

disseminating financial intelligence reports on money laundering, terrorist financing and other relevant information to law enforcement, security and intelligence agencies, and other relevant authorities. It seeks to institutionalize best practices in financial intelligence management in Nigeria and to strengthen the existing system for combating money laundering and associated predicate offences, financing of terrorism and proliferation of weapons of mass destruction. The Bill also made adequate provisions for the Agency to exchange information with Financial Intelligence Institutions or similar bodies in other countries in matters relating to money laundering, terrorist financing activities and other predicate offences.

The Bill provides a veritable tool in the hands of the present administration in its anti – corruption war. This is because, AML/CFT efforts impacts heavily and positively on anti-corruption and other predicate offences. It will therefore be difficult to fight the anti – corruption battle successfully without first and foremost strengthening the Nigerian Financial Intelligent Unit.

It must be noted that the Technical Advisory Committee of the NFIA is basically made up of ex- officio members selected from AML/CFT Stakeholders. The very essence of the Committee is to achieve an enhanced collaboration and unity of purpose in the fight AML/CFT efforts. These Stakeholder MDAs are already members of the Presidential Committee on FATF and Inter – Ministerial Committee on AML/CFT.

The need to expeditiously pass this piece of legislation becomes more imperative in view of the recent blacklisting of Nigeria Financial Intelligence Unit (NFIU) from the Egmont Group of Financial Intelligence Units. The FATF has had persistent concerns with respect to the true autonomy and financial independence of the Nigerian Financial Intelligence Unit leading to its suspension in 2013 and on July 5, 2017.

In the same vein, there is a proposed FATF High Level Mission visit to Nigeria on the 21-22 November 2017. In preparation for this visit, Nigeria must demonstrate commitment to the AML/CFT, in particular, compliance with FATF standards. Recommendation 29 requires that the Nigeria Financial Intelligence Unit should be operationally independent and autonomous, it must be provided with adequate financial, human and technical resources, in a manner that secures its autonomy and independence. The NFIU presently is tied to the apron of EFCC and the Nigeria Financial intelligence Agency Bill, 2017 is set to cure this present position.

1.9 PETROLEUM INDUSTRY BILL (PIB) 2016

1. 1 The PIB seeks to revise, update and consolidate existing petroleum legislation in Nigeria including existing legislation on the taxation of upstream petroleum operations. The objectives of the Bill are stated to include:

- creating a conducive business environment for petroleum operations;

- enhancing exploration and exploitation of petroleum resources for the benefit of Nigerians;
- optimizing domestic gas supplies particularly for power generation and industrial development;
- establishing a progressive fiscal framework that encourages further investment in the petroleum industry while optimizing the revenue accruing to the Government;
- establishing commercially oriented and profit driven oil and gas entities;
- deregulating and liberalizing the downstream petroleum sector;
- creating efficient and effective regulatory agencies;
- promoting openness and transparency in the industry; and
- encouraging the development of Nigerian content.
- clear guidelines for the revocation of licenses and leases.
- All decisions of the Minister and on petroleum administration shall be based on equal rules applicable to all.

To achieve these objectives the Bill provides amongst other things for:

- the restructuring or reorganisation of industry institutions and the regulatory framework;
- a new fiscal regime for upstream oil and gas production;
- allocation of Domestic Gas Supply Obligations to licensees; and
- deregulation of the downstream sector.

1. 9.1. promoting openness and transparency in the industry

The need for openness and transparency in the administration and management of Nigeria's vast crude oil and gas reserves is the basis of the promotion of the Bill. The Bill thus provided that "the grant of a petroleum prospecting licence or a petroleum mining lease shall be by open, transparent and competitive bidding process conducted by the Inspectorate" reinforces the promotion of openness and transparency in the industry. It is however observed that the efficacy of these provisions is immediately streamlined by the subsequent provisions which empower the President "to grant a licence or lease under this Act" without expressly subjecting the President's powers in this regard to the requirement of an open and competitive bidding process.

These provisions have been criticized that, if passed in its current form, will arguably, have substantially failed in its objective to promote openness and transparency in the Nigerian oil and gas industry.

1.9.2. Another fundamental objectives of Bill is full compliance with the NEITI Act, 2007 by all the institutions and the National Oil company to be established.

Creates an open framework by eliminating confidentiality of:

- All texts of licenses, leases, contracts and amendments
- Amounts of revenue payments to government by individual companies.

- All geological, geophysical , technical and well data.
- Approved budgets of JVs &PSCs
- Production, lifting/quantities and values lifted.

1.9.3. THE INSTITUTIONAL AND REGULATORY FRAMEWORK UNDER THE PIB

The unbundling of the powers of present regulatory body, NNPC, has been targeted to enhance transparency and an open framework within the industry. The new Bill proposes in addition to the coordinating powers of the Ministers, the establishment of different regulatory bodies for the upstream, midstream and downstream including:- Petrochemical Technical Bureau, Upstream Petroleum Inspectorate, Downstream Petroleum Regulatory Agency, National Petroleum Assets Management Corporation, National Oil Company and National Gas Company Plc .

1.9.4. Conclusion

The implementation of these reforms will strongly open up the Nigerian Oil and Gas Sector to new local and international investors for competitive growth and sustainable development in line with international best practices. In particular, when the PIB is passed into law, it will help in:

- The creation of a modern petroleum legal framework
- Alignment of the Nigerian Oil & Gas Sector to international best practice
- Enhancement of transparency and an open

framework
- Establishing good governance practices and processes
- Reinforcing linkages between the oil and gas industry and other sectors of the Nigerian economy

The Bill has suffered legislative delays and limited attention from the executive, forestalling its passage despite the robust and regulatory framework provide by the Bill for the Nigerian oil industry.

Section Five

1. OPEN GOVERNMENT PARTNERSHIP LAWS AND POLICIES ON ANTI CORRUPTION FROM OTHER JURISDICTIONS

In considering the international best practices in the implementation of OGP principles on Anti- corruption, transparency and accountability in governance, this paper reviewed the laws and policies of the South Africa and United Kingdom as a classic example of how well-founded policies, pragmatic laws and focused institutions could drive the implementation of OGP principles successfully.

1.1 OGP ACTION PLAN IN SOUTH AFRICA: REVIEW OF LAWS AND POLICIES

The South African Government has made significant progress in implementing a range of cross-cutting measures aimed at combating corruption; enhancing citizen participation; guaranteeing the right of access to information; promotion of the administration of justice; consumer rights and promoting media and civil society freedom in order to increase transparency and accountability. These measures are underpinned by the South African Constitution of 1996 which, amongst other provisions, mandates the maintenance of a high standard of professional ethics in South African public

administration and entrench a rights-based governance regime.

1.2 COMBATING CORRUPTION

The South African Government has created many initiatives and structures to reduce the level of corruption and strengthen integrity management systems. The establishment of a Special Investigations Unit (SIU), Asset Forfeiture Unit, and an Anti-corruption Inspectorate Unit to investigate and manage disciplinary processes in the three spheres of government; the establishment of a Multi-agency Working Group to investigate corruption in procurement, the establishment of an Anti-corruption Task Team to coordinate the work of law enforcement agencies and watchdog bodies and the National Anti-corruption Forum which includes civil society organizations are amongst the key initiatives the South African Government has introduced to combat corruption.

Government has also developed and successfully piloted an Integrated Financial Management System which includes information on corruption, and allows for the electronic tracking of conflict of interest of public servants and political office bearers. Declaration of interests and assets are compulsory for all political office bearers and senior public servants. South Africa also ratified and acceded to various international anti-corruption instruments such as the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Public Officials in International Business Transactions.

1.3 ENHANCING TRANSPARENCY IN GOVERNMENT

To promote transparency in South Africa, Government has - among other legislation - enacted the Promotion of Access to Information Act (PAIA) in 2000 to ensure that information on Government activities and decisions are freely available to the public. PAIA seeks to promote a culture of transparency and accountability in public and private bodies and to actively promote a society in which the people of South Africa have effective access to information to enable them to more fully exercise and protect all of their rights. Other legislation includes the Protected Disclosures Act (Act 26 of 2000).

All three spheres of government in South Africa engage in transparent planning and budgetary processes. These good governance practices allude to why South Africa, one of the world`s newest democracies, scored the highest with an overall score of 92% on a good governance barometer such as the Open Budget Index of 2010. This independent, comparative, regular measure of budget transparency and accountability around the world indicates that South Africa provides extensive budget information in most areas examined by the Open Budget Index. This progress is significant especially in the context that South Africa, as a new democracy, scored 86% in the 2008 index after the UK`s score of 87%, one of the world`s more established democracies.

1.4 PROMOTING ACCOUNTABILITY IN GOVERNMENT

The Promotion of Administrative Justice Act (PAJA) was enacted in 2000 to give effect to the constitutional injunction that public administration in South Africa must be accountable. PAJA establishes the right to just administrative action by facilitating a culture of accountability, openness and transparency in the public administration. In general, PAJA ensures that there are rules, regulations and mechanisms in place that call upon Government organs to justify their actions, act upon requirements made of them, and accept responsibility for failure to perform.

Also, Chapter 9 of the South African Constitution provides for the establishment of institutions such as the Public Protector to safeguard and enforce the constitutional principles of openness, transparency, accountability, responsiveness, and ethical governance in the public and private sphere commensurate with good governance and international human rights practices. The Chapter 9 institutions are: the Auditor-General, Human Rights Commission, Public Protector, Commission for Gender Equality, The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Electoral Commission. Chapter 10 institutions such as the Public Service Commission play an equally important role in advancing public accountability.

1.5 INCREASING CIVIC ENGAGEMENT

The South African Government actively promotes responsive and effective governance by engaging communities and civil society organizations on an ongoing basis through consultative gatherings known as IZIMBIZO. IZIMBIZO provide a platform for Government-citizen dialogue about public service delivery and policy matters. In September 2009, the South Africa Government launched the Presidential Hotline as part of its drive to enhance interaction with citizens. The Hotline receives citizen complaints about issues such as public service delivery and corruption. Open government is central to achieving a better life for all South Africans, thus South Africa remains committed to using transparency, accountability and citizen engagement to towards increasing public faith in Government.

2. UNITED KINGDOM OPEN GOVERNMENT PARTNERSHIP IMPLEMENTATION PLAN (POLICIES AND LAWS)

2.1 OPEN GOVERNMENT INITIATIVE

UK Government is among the pioneering member of the OGP in 2011. The first UK National Action Plan focused on its commitments to open government data. Since September 2011, it has continued to press forward with an ambitious programme to make government data available online:

Refreshing data.gov.uk
Setting up the Open Data Institute
Creating Sector Transparency Boards and

departmental open data strategies across government Setting up the Open Data User Group (ODUG) to work with government to identify valuable new datasets to release

UK government is committed to supporting a culture of open-by-default, as highlighted in the UK Government's 2012 Open Data White Paper, in which data is shared and used to drive improvements in service delivery and choice, both inside and outside of government. It seeks to promote a similar approach with its partners through the G8. At the same time, it recognised the need to continue to protect the privacy of citizens, respecting the boundary between personal data and public-sector information.

From a strong domestic open data agenda, it explored open policy making, through the development of social media guidance for civil servants, to the digital strategies and the single domain. On the international stage, it also recognised the importance of openness through its leading role in the International Aid Transparency Initiative (IATI), support for the Extractives Industries Transparency Initiative (EITI), and extensive work on anti-corruption and the post-2015 development agenda.

The draft interim 2013 UK National Action Plan is the result of open government and open policy-making in action. It has been developed through the active collaboration of experts in open data, transparency, participation and accountability drawn from civil society and government departments.

Through regular meetings at the Open Data Institute and online collaboration, the draft action plan, and subsequently the commitments, has been drafted with extensive participation from civil society, with notes of meetings and working documents published along the way to ensure transparency and facilitate engagement.

In the G8 Leaders' Communiqué, members made a collective commitment to the open data agenda by announcing an Open Data Charter. They also endorsed eight core principles that are fundamental to the transparency of ownership and control of companies and legal arrangements. Furthermore, the G8 agreed to make progress towards common global reporting standards to make extractive industry payments more transparent and to work with resource-rich countries to help them better manage their extractive revenues, so as to provide a route out of poverty and reliance on aid.

The UK government is committed to building on the principles and agreements contained within the G8 Leaders' Communiqué and its subsidiary documentation as it develops the final Open Government Partnership UK National Action Plan. In the body of this draft, we focus on four key areas:

Open Data and Transparency
Participation and Responsiveness
Accountability
Global Partnerships

2.2 OPEN DATA AND TRANSPARENCY

The Transparency Team in the Cabinet Office leads on work across government to open up government data, increasing the number of data sets available through the world-leading data.gov.uk and improving their quality and timeliness. The Transparency Team also leads this agenda, on behalf of the UK Government, on the international stage, through the UK's participation in the Open Government Partnership (OGP) and through the Transparency and Open Data elements of the UK's Presidency of the G8. This international work is opening up world markets to British industry and providing the tools for citizens in developing countries to better hold their governments to account.

A natural extension of promoting open data is to allow anyone to be able to re-use the data in new and innovative ways in the context of information based products and services. This approach is underpinned by the removal of barriers to re-use, for example, using the Open Government Licence (at present 7959 datasets are published on data.gov.uk under the Open Government Licence).

To encourage local transparency, the Department for Communities and Local Government (DCLG) published a Code of Recommended Practice for Local Authorities on Data Transparency in September 2011. The code lists data which councils should provide and sets out three principles that should guide local authorities on transparency: open, demand-led and timely. By publishing

this information, local people can hold councils to account over how taxpayers' money is spent - they can highlight examples of inappropriate spend, and suggest ways of providing better value services which meet local needs.

2.3 NATURAL RESOURCE TRANSPARENCY

On 22 May 2013, the Prime Minister announced that the UK government intended to sign up to the Extractive Industries Transparency Initiative (EITI). The EITI is a coalition of governments, companies and civil society that provides a standard for companies to publish what they pay and for governments to disclose what they receive from oil, gas and mining. EITI shines a spotlight on the revenues that a country generates from its extractives riches. It gives citizens, parliament and media the information they need to hold governments and companies to account for how their country's resources are used, to determine whether revenues are going astray, and governments are getting a good deal.

In addition, the UK government is committed to transposing the EU Transparency and Accounting Directives into UK law and develop plans to make the data useable and accessible according to open data principles.

2.4 EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI)

The UK was a founding member of the Extractive Industries Transparency Initiative (EITI) over ten years ago and commits to supporting the implementation of a strong revised (EITI) standard which goes beyond revenues, for example, to include project-level reporting, licence

transparency, information about state-owned enterprises. EITI and other stakeholders will provide targeted support for civil society participation in the initiative to turn transparency into accountability across EITI countries.

2.5 OPEN CONTRACTING

The UK government is implementing a system of 'Open Contracting,' which would ensure public disclosure and monitoring of contracting, from procurement to the close of projects. This would mean the publication and updating of key documents related to all major projects associated with contracting and delivery, including details of the bidding and evaluation process, contract awards, terms and conditions, technical specifications, contract summary and amendments and beneficial owners of all contract parties. Information should be available as standardized data, including open corporate identifiers.

2.6 TAX TRANSPARENCY AND ILLICIT FINANCIAL FLOWS

The UK government is committed to:

Endorse, promote and implement greater openness of public data on companies, corporate transparency and beneficial ownership, to prevent money laundering, fraud, corruption, organized crime and stolen assets, all of which use corporate structures. This should include the free and open publication of statutory company data (e.g. publishing company registers as open data), transparent and detailed financial reporting (e.g. using the XBRL accounting data standard), and information on company ownership and officers. The UK is committed to promoting

this agenda at the G8, G20, EU and other international organizations, through the EU Anti-Money Laundering Directive, Financial Action Task Force, and other initiatives.

Drive progress towards the automatic exchange of information between revenue authorities.

Work with other governments to encourage tax havens to sign the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which requires countries to share information with each other about hidden wealth and assets.

Explore ways of extending country-by-country reporting beyond the extractives sector.

The UK Government is committed to amending the Finance Bill to require UK taxpayers, including companies, to report their use of tax avoidance schemes which affect developing countries. Tax is a vital source of income for developing countries and the OECD estimates that poor countries lose three times more to tax havens than they receive in aid each year. The UK is committed to leading the way in taking action to combat tax evasion.

2.7 OPENING COMPANY DATA

The UK Government is committed to the publication of full details of companies registered at Companies' House, including company accounts and shareholder registers (both of which are already collected as data), and the creation of an open register of company beneficial ownership. Clear and accessible data on companies,

including on beneficial ownership, is essential to ensure good corporate governance, accountability, and to combat illegal financial activity. Two cost benefit analyses (one in 2002 by the UK and one in 2007 by the European Commission) concluded that including beneficial ownership information in existing business registers would be cheaper than the status quo.

BUDGET TRANSPARENCY
PUBLIC PARTICIPATION IN THE BUDGET PROCESS
The UK Government is committed to reaching the highest standards on budget transparency, public participation and oversight by parliament and audit institutions, which will be measured through the Open Budget Survey. The Open Budget Survey 2012 ranked the UK third in the world for budget transparency and accountability, with a score of 88 out of 100.

Working with the voluntary sector, DCLG has already tested public demand for better access to budget, spend and contract information. Through the Code of Recommended Practice for Local Authorities on Data Transparency, the local authorities are required to make data more open and accessible.

The UK Government is working with others through the OGP to strengthen the budget transparency eligibility and reporting requirements for countries joining the initiative so that all OGP countries commit to publishing "significant" budget information (as per the Open Budget Index criteria) and reaching a high standard on public

participation as well as strengthening oversight institutions. The UK Government should work with others to endorse and encourage other OGP members to endorse, engage with and implement the principles of the Global Initiative on Fiscal Transparency as well as to support the roll out of the World Bank's BOOST data tool to a wider range of countries.

2.8 FREEDOM OF INFORMATION

The Government has widened the scope of the FoI Act to apply to any organization delivering public services. An effective FoI Act that applies across all organizations in receipt of public funds and with low barriers to use by citizens, the media, civil society and other interested parties is a critical element of open government.

The government is concerned to find FoI rights being weakened at precisely the time that the open government proposals are developed. The public's rights to information is considered not be reduced when a contractor assumes responsibility for providing a public service nor should the level of disclosure depend on the terms of each individual contract. As public service delivery is increasingly outsourced, it is essential that the public and parliamentarians have access to all the information they need to scrutinise the delivery of services.

The Government is committed not to proceed with its proposals to restrict access by reducing the threshold at which FoI requests can be refused on cost grounds. Nor should the time that officials expect to spend considering

whether to release information count towards this limit. This would make it less likely that requests raising new or complex issues would be answered. Charges should not be introduced for appeals to the Information Rights Tribunal. Instead, the time limits allowed for responding to FoI requests should be tightened, as recommended by the Justice select committee.

2.9 ACCOUNTABILITY AND ANTI-CORRUPTION

Transparency is an essential aspect of open government, but it is not sufficient. Open government requires robust accountability mechanisms and strong enforcement of anti-corruption legislation. It is about ensuring that public resources are used for public goods and service delivery, and not siphoned off through embezzlement, bribery or tax evasion.

Amongst the achievements to date, the UK Bribery Act 2010 is a landmark piece of legislation: it reforms the criminal law to provide a new, modern and comprehensive scheme of bribery offences. It requires companies to have procedures in place to prevent bribery, demonstrating the UK's commitment to tackle corruption, both at home and abroad.

2.9.0 WHISTLEBLOWER PROTECTION

The UK Government has put in place robust protection for whistleblowers and commits to close the loopholes in the Public Interest Disclosure Act, relating to the categories of workers covered, the provisions relating to gagging clauses, protection against blacklisting and the role of regulators, among others. This will help to ensure that

whistleblowing is seen as an effective and positive activity that protects individuals, promotes transparency and accountability, and protects society at large.

2.9.1 ANTI-CORRUPTION STRATEGY

The UK Government has initiated a cross-Whitehall anti-corruption strategy that outlines how different departments and agencies will work to tackle corruption and how anti-corruption is being prioritized in different international fora (e.g. OGP, G8, G20 etc). An Anti-Corruption Champion (whose role will cover both UK and overseas corruption) have the remit to bring coordinate and implement the strategy, and annually report to Parliament on progress. This will enable greater sharing of information across Government departments and increased scrutiny by parliament and civil society.

2.9.2 IMPLEMENTING AND ENFORCING THE UK BRIBERY ACT 2010

The UK Government has put in place mechanisms to ensure sufficient resourcing for the implementation and enforcement of the UK Bribery Act 2010, in order that UK companies do not fuel or facilitate bribery. In particular, support is being given to investigation and prosecution agencies and to the diplomatic posts that support UK businesses overseas to comply with the Act.

2.9.3 ANTI-MONEY-LAUNDERING ENFORCEMENT

The UK government shares best practice and collaborate with international partners to demonstrate anti-money-laundering enforcement activity. The UK has pushed for

commitment and resources to coordinate intelligence sharing and law enforcement, both inter-government and between governmental bodies and financial institutions.

Section Six

CONCLUSION

The realization of the hope and promises of the Open Government Partnership is hinged on the adoption of a strong and purposeful legal and institutional framework for the implementation of the OGP National Action Plan by the implementing partners. The implementation of the plan requires a deliberate coordinated effort from all stakeholders including Ministries, Agencies, private sector, and civil society organizations.

The paper has also demonstrated through the review of developed countries laws and policies on the implementation of OGP commitments, in anti-corruption, transparency and accountability in governance, that deliberate efforts to strengthen institutions by providing adequate resources and focused leadership is of absolute necessity in winning the fight against corruption.

The paper provided information on best practices from other jurisdictions to meet the challenges identified in our laws and policies, the paper has recommended certain institutional changes and the need for strong advocacy to enhance the smooth and expeditious passage of the Bills recommended above. The passage of the bills is of utmost importance in the fight against corruption and efforts to improve transparency and accountability in governance. A

strong advocacy team comprising of the Executive, Legislature and civil society organizations should be put in place to lobby the National Assembly members, educate the populace through the media houses, and town hall meetings on the importance and purports of the Bills, and consult relevant stakeholders through roundtable meetings, to seek their cooperation and contribution towards perfection of the Bills and their passage.

Finally, the need for constant review of the national laws, policies and strategies on anti-corruption to meet the emerging trends globally and the setting up of an Independent Review Team to monitor and evaluate the progress and challenges towards the implementation of the OGP principles on anti-corruption and transparency and accountability in governance is important to ensure that the objectives of OGP are achieved within the set timeframe.

CIVIL SOCIETY PERSPECTIVE

PURPOSE OF THE REPORT

The reports can be used in two main ways: (1) for advocacy work at the national level to encourage governments to fully implement the OGP using and reviewing some existing policies and laws (2) to provide the needed information to guide citizens on engaging government for accountability because transparency which OGP provides is not sufficient to prevent or curb corruption but a mix of transparency and accountability will ensure the right results in the fight against corruption in Nigeria.

This research also considers Open Government Partnership implementation laws and policies from other climes, identified gaps in the existing laws and makes recommendation of best practices and supportive infrastructure for laws and policies for Open government partnership implementation in Nigeria.

ISSUES AND SCOPE OF WORK

In line with the scope of work for this research addressed the following issues;

1. Issues in existing laws and policies on anti-corruption in Nigeria – gap analysis
2. Relevance of existing anti-corruption laws and

policies to the open government partnership implementation in Nigeria
3. Open government partnership implementation laws and policies from other climes
4. Recommendation of best practices and supportive infrastructure for laws and policies for open government partnership implementation in Nigeria

The scope of work for this research includes a review of;
1. Nigerian legislations on transparency and accountability issues
2. Laws and legislations relevant to the OGP process like the EFCC Act, CP Act, NEITI Act, FOIA, MLP Act and others
3. Possible recommendations for the robust legislative environment framework to support the implementation of the OGP process
4. Perspective of citizens and government for NAP implementation using working groups

1.0 INTRODUCTION

The Nigerian nation for several decades has been faced with the challenge of effective utilization of its resources to support equitable economic growth, effective service delivery and social cohesion. The identifiable catalysts to the development blockade has been lack of openness cum transparency and accountability in governance that ultimately led to entrenched corruption.

Corruption has precipitated frightening poverty level and horrible human development indicator in the country. Nigeria is a country of over 170 million people and UNDP Human Development Index report of 2016 says poverty rate is 62.6% with per capita income of $1280. Nigeria has an overall Human Development Index (HDI) of 0.47.

The Mo Ibrahim International Index for Governance in Africa placed Nigeria 36th out of 54 African countries in the measurement of overall governance, according to the index report released in October 2016. Nigeria scored 46.5 out of 100 points in the overall governance index.
A United Nations, UN, report on Nigeria's Common Country Analysis, CCA, published by The VANGUARD

said the country's population will be approximately 200 million by 2019 and over 400 million by 2050, becoming one of the top five populous countries in the world.

The situation has worsened over the decades, as poverty and hunger have remained high in rural areas, remote communities and among female –headed households and these cut across the six geo-political zones, with prevalence ranging from approximately 46.9 percent in the South West to 74.3 percent in North West and North East.

The UN report said over 80 million Nigerians live in poverty and are affected in one way or the other by the current humanitarian crisis. Available reports indicate that there are over 3.3 million internally displaced persons, IDPs, which is Africa's largest, ranking behind Syria and Columbia on a global scale.

A new report from the International Monetary Fund (IMF) has projected Nigeria as Africa's biggest economy, in spite of its current challenges. Nigeria is placed ahead of South Africa and Egypt which are second and third respectively. While this should ordinarily attract investors, the country is currently in a recession as is evident in the negative GDP growth rates of -2.06 percent and -2.24 percent in the second and third quarters of 2016 respectively.

The declining GDP has been accompanied by a high inflation rate of 18.3 percent in October 2016 as a result of government's monetary policy that starved the economy of foreign exchange as well as low oil prices in the

international oil market and high unemployment rate of 42 percent at the end June 2016. With the current weak global oil prices, the country's revenues have experienced a significant decline from the projected values. This has been aggravated by reduced production caused by the militancy in the Niger Delta region of the country, which has resulted in a fall in production from 2.2 million barrels-per-day (bpd) to about 1.4 million bpd in September 2016.

The Nigeria Foreign Exchange Reserves also fell to a ten-year low of about $24.6 billion in November 2016, a 30% decline from the October 2014 figure, reflecting the effect of lower oil prices, falling production volumes and dwindling foreign investments. Insurgency in the Northern part of the country has claimed over 20,000 lives and properties worth billions of naira. All these have put a strain on the country's import-dependent economy and increased the incidence of poverty.

Nigeria has consistently been rated as one of the most corrupt countries in the world on the Transparency International (TI) Corruption Perception Index (CPI). Nigeria's corruption index averaged 20.17 points from 1996 until 2016, reaching an all-time high of 28 points in 2016.
Taking pragmatic measures to curb corruption is of vital importance for Nigeria's future given its implications for security and the political, social and economic prospects of the country. Poverty, insurgency, militancy and infrastructural decay are largely a result of corruption that is deeply rooted in the fabrics of the society. Obviously, there is a direct correlation between poverty and corruption in the land.

To curb the menace of corruption, successive governments have made various efforts and rolled-out programmes to address the scourge including; Ethical Revolution by the Shagari administration, War Against Indiscipline (WAI) by the Buhari-Idiagbon regime of the early 1980s, War Against Indiscipline and Corruption (WAIC) by the Abacha regime in the 1990s; the Corrupt Practices and Other Related Offences Act of 2000, which berthed the ICPC (CP, 2006); as well as the Economic and Financial Crimes Commission set up in 2002 by the Olusegun Obasanjo administration to tackle economic and financial crimes, including advance fee fraud (419), overt looting of public treasury, and money laundering (EFCC, 2002). But all to no avail.

Scholars have posited that the inability of these programmes to deliver is traceable to the alienation and lack of citizens' engagement in governance. The Open Government Partnership offers a framework where government and citizens would come together for a tailored engagement based on clear principles. At the Anti-Corruption Summit in London in May 12, 2016, President Muhammadu Buhari who vowed to fight corruption in the country, committed to the Open Government Partnership, he said "We are demonstrating our commitment to this effort by bringing integrity to governance and showing leadership by example. We are also reviewing our anti-corruption laws and have developed a national anti-corruption strategy document that will guide our policies in the next three years, and possibly beyond". Interestingly, the Buhari administration is committed to

three top priorities of security, economy and fighting corruption.

The OGP is an international multi-stakeholder initiative focused on improving transparency, accountability, citizen participation and responsiveness to citizens through technology and innovation. It brings together government and civil society champions of reforms who recognize that governments are more likely to be more effective and credible when governance is subjected to public input and oversight. At the national level, OGP introduces a domestic policy mechanism through which the government and civil society can have an ongoing dialogue. At the international level, it provides a global platform to connect, empower and support domestic reformers committed to transforming governments and societies through openness.

The OGP was formally launched in 2011 when the eight (8) founding governments (Brazil, Indonesia, Mexico, Norway, the Philippines, South Africa, the United Kingdom and the United States) endorsed the Open Government Declaration, and announced their country action plans. The uniqueness of the OGP process lies in the implementation of the National Action Plan as it provides an organizing framework for international networking and incentives.

But following the enthusiasm that characterize most government pronouncements in Nigeria, the need to have an independent review of the laws as part of citizen's

contribution and input to the process is critical if the hope and promises the Open Government Partnership offers are to be realized.

2.0 THE JOURNEY SO FAR WITH OGP IMP LEMENTATION IN NIGERIA

Shortly after President Muhammadu Buhari announced Nigeria's commitment to Global Open Government Partnership Principles, he directed the Honorable Attorney General of the Federation and Minister of Justice to implement the commitments made in London. Subsequently, in June, 2016, Nigeria sent a Letter of Intention to Join the Open Government Partnership (OGP). In July 2016, OGP wrote to the Government of Nigeria to convey the International Steering Committee's acceptance of Nigeria as a member haven met the criteria. It further requested that Nigeria sets up a National OGP Steering Committee made up of civil society, organized private sector and selected government agencies and to commence the development of a National Action Plan.

The Federal Ministry of Justice under the leadership of the Honorable Attorney General of the Federation and Minister of Justice (HAGF), organized a stakeholder session on OGP to identify members of the steering committee and to discuss the implementation framework of the OGP Principles in July 2016. At this session, the CSOs also self-selected their members to represent them on the steering committee.

"The discourse on OGP is one that is most relevant to our development as a country"
– Dr. Michael Uzoigwe, DfID FOSTER

2.1 CONSULTATIONS WITH GOVERNMENT AND NON-STATE ACTORS ON THE DRAFT OGP NATIONAL ACTION PLAN

The National Action Plan (NAP) was developed through dialogue in a manner consistent with the OGP Guidelines on Country Consultation and commitments. Below are the consultations undertaken by the Nigeria OGP Secretariat to ensure an inclusive approach:

In October 2016, the Nigeria OGP Secretariat prepared and administered questionnaires to key MDAs requesting information on mandates, challenges and ongoing reforms in areas relevant to the OGP thematic commitments. Responses were received and incorporated into the relevant sections of the Commitment template.

On 23rd October 2016, the Open Alliance – a Civil Society OGP Coalition organized a civil society/private sector consultative workshop on the development of the OGP National Action Plan. The objective was to set the civil society agenda for the OGP retreat and agree on an outline for OGP National Action Plan. At the workshop, a draft OGP National Action Plan prepared by civil society was debated. It was also agreed, that the draft would be used to enrich the preparation of the Nigeria OGP National Action Plan.

The Federal Ministry of Justice organized the first OGP National Retreat held in Kaduna, Nigeria from 24th -26th October 2016. Members of OGP Nigeria Steering Committee, development partners, and key representatives of the OGP International Secretariat including the Chief Executive Officer, Mr. Pradhan Sanjay, attended the retreat. It provided the opportunity for the OGP Steering Committee to agree on a draft National Action Plan.

The Commitments were considered under four thematic areas: Fiscal Transparency, Anti-corruption, Access to Information, and Citizen's Engagement.

On 7th November 2016, the OGP Nigeria Secretariat shared the revised draft National Action Plan on the Federal Ministry of Justice's website. It also distributed the draft NAP to all government Ministries, Departments and Agencies as well as the OGP International Secretariat for review and feedback.

A half-day validation workshop was held on 8th November 2016, for senior level officials from members of the National Steering Committee. Presentations were made based on the four thematic areas and crosscutting issues, highlighting the logic and impact of the action plan, key performance indicators, and implementing agencies for each Commitment. The workshop provided an opportunity for strengthening and broadening ownership of the OGP National Action Plan. The workshop ended with participants undertaking a participatory risk analysis

of the National Action Plan involving the identification, probability, impact assessment and possible mitigation strategies of potential risks.
CSOs also disseminated the draft NAP via television and radio interviews as well as their tweeter handles and websites.

Upon completion, the NAP was presented at the OGP 4th Global Summit on 7th December 2016 and the implementation of the NAP commenced in January 2017. It is expected that the NSC in consultation with the OGP Nigeria Secretariat will develop a detailed action plan outlining implementation steps under each of the 14 NAP commitments. During the implementation period, the performance of the government in the implementation of the commitments will be assessed based on the NAP Monitoring and Evaluation strategy and the OGP International Review Mechanism (IRM).

2.2 NIGERIA'S OGP COMMITMENTS

Nigeria OGP National Action Plan contains 14 commitments spread around four thematic areas:
FISCAL TRANSPARENCY

1. Ensure more effective citizens' participation across the entire budget cycle.
2. Full implementation of Open Contracting and adoption of Open Contracting Data Standards in the public sector.
3. Work together with all stakeholders to enhance transparency in the extractive sector through a concrete set of disclosures related to payments by

companies and receipts by governments on all transactions across the sector's value chain.

4. Adopt common reporting standards and the Addis Tax initiative aimed at improving the fairness, transparency, efficiency and effectiveness of the tax system.
5. Improve the ease of doing business and Nigeria's ranking on the World Bank Doing Business Index.

ANTI-CORRUPTION

6. Establish a public register of Beneficial Owners of Companies.
7. Establish a platform for sharing information among Law Enforcement Agencies (LEAs), Anti-Corruption Agencies (ACAs), National Security Adviser (NSA) and financial sector regulators to detect, prevent and disrupt corrupt practices.
8. Strengthen Nigeria's asset recovery legislation including non-conviction based confiscation powers and the introduction of unexplained wealth orders.
9. Take appropriate actions to co-ordinate anti-corruption activities; improve integrity and transparency and accountability.

ACCESS TO INFORMATION

10. Improved compliance of public institutions with the Freedom of Information Act in respect of the annual reporting obligations by public institutions and level of responses to requests.
11. Improved compliance of public institutions with the

Freedom of Information Act (FOIA) with respect to the Proactive disclosure provisions and stipulating mandatory publication requirements.

CITIZEN ENGAGEMENT

12. Develop a Permanent Dialogue Mechanism on transparency, accountability and good governance between citizens and government to facilitate a culture of openness.
13. Government-civil society to jointly review existing legislations on transparency and accountability issues and make recommendations to the National Assembly.
14. Adopt a technology-based citizens' feedback on projects and programs across transparency.

3.0 RELEVANCE OF EXISTING POLICIES, LAWS THAT SUPPORT OGP IMPLEMENTATION IN NIGERIA

There are an avalanche of existing policies and laws that support the implementation of Open Government Partnership in Nigeria. Whereas a good number of provisions of the laws have provided for the establishment of needed institutional frameworks, some others need to be amended to bridge some of the gaps identified in this paper.

The existence of these laws does not imply that it is yet an Uhuru for OGP implementation. A couple of legislations need be put in place to effectively guarantee the implementation of OGP in the country. Below are some of the existing laws and how they support OGP implementation.

"The initiative to review our existing laws that are relevant to OGP because legislation is a fundamental component of the core principles of OGP. Failure to amend and review our legislations effectively makes mockery of our nation's eligibility for membership of the OGP".
– Dr. Ali Pantami, DG NITDA

3.1 THE 1999 CONSTITUTION AS AMENDED

The 1999 Constitution and the Guide to the previous civilian dispensation contain some provisions aimed at preventing or arresting the level of corruption in Nigeria. Kabiru Isa Dandogo, PhD, listed the major provisions in the constitution as seen below:

(i) Declaration of Assets and Liabilities:

Sections 140(1) and 185(1) of the 1999 Constitution say that "a person elected to the Office of the President (or Governor) shall not begin to perform the functions of that office until and unless it has been confirmed that he has declared his assets and liabilities …" Sections 149 and 194 are about assets and liabilities declaration by ministers and commissioners respectively, before assuming duties. There are also provisions for other government officers, for example, judges and members of parliament, to declare their assets and liabilities, before assuming office. These declarations are to be made to the Code of Conduct Bureau. They have to repeat every four years and at the end of the relevant term of office.

(ii)Gifts and Benefits:
The Fifth Schedule, part 1, section 6 (i) of the Constitution says "a public officer shall not ask for or accept any property or benefit of any kind for himself or any other person on account of anything done or omitted to bed one by him in the discharge of his duties". Section (2) says"…The receipts by a public officer of any gifts or benefits from commercial firms, business enterprises or persons who have contracts with the government shall be presumed to have been received in contravention of the said sub-paragraph unless the contrary is proved".

(iii) Bribing Public Officers and Abuse of Office:
Sections 8, 9 and 10 of the 5th Schedule (part I) warn that "No person shall offer a public officer any property, gifts or benefits of any kind as an inducement or bribe for the granting of favour or the discharge in his favour of the public officer's duties". And that, "a public officer shall not do or direct to be done, in abuse of his office, any arbitrary act prejudicial to the rights of any other person knowing that such act is unlawful or contrary to any government policy". Again "a public officer shall not be a member of, belong to, or take part in, any society the membership of which is incompatible with the functions or dignity of his office".

(iv) Power and Control over Public Funds:
Sections 80(1) and 120(1) of the 1999 Constitution have provided for the establishment of a Consolidated Revenue Fund (CRF) at the Federal and state levels, respectively. The CRF is intended to be a "pool" where all monies raised

or received by government, including public debts (internal and external), are to be paid.

Sections 80(2) and 120(2) have made it clear that no money shall be drawn from the CRF of the Federal and states respectively, "except to meet expenditure that is charged upon the Fund by this Constitution or where the issue of those monies has been authorized by an Appropriation Act, supplementary Appropriation Act or Act passed in pursuance of section 81 (section 121 for the states) of this Constitution". Similarly, section 80(2,3&4) and section 121(2,3&4) describe how money may be withdrawn properly to meet legitimate expenditure at the Federal and state levels.

(v) Audit of Public Accounts:
Section 85(1) and section 125(1) of the 1999 Constitution have provided for the appointment of Auditor-Generals for the Federation and each state who shall audit the public accounts of the Federation and the states, respectively and accounts of all offices and courts of the Federation and states and submit audit reports to the National Assembly and the House of Assembly of the states, respectively. For this reason, the auditor-generals or persons authorized by them shall have access to all books, records, returns and other documents relating to these accounts. Auditor-Generals are to serve as external auditors who are to report to the representatives of the stakeholders – the legislature.

(vi) Preparation of Financial Statements:
Section 85(5) and Section 125(5) of the 1999 Constitution

cover the requirement for the submission of annual financial statements to the relevant auditor-general who shall, within 90 days, submit reports to the relevant assembly (National Assembly or House of Assembly) which shall then cause the reports to be considered by a committee responsible for public accounts.

(vii) Checks and Balances:
Just as was the case with the 1979, 1989 and 1995 constitutions, the 1999 Constitution clearly segregates the powers of the judiciary, the legislature and the executive. Chapters V, VI and VII clearly spell out the powers of each of these three arms of government. These checks and balances should ensure that the financial affairs of the government are managed in a corrupt-free manner.

(viii) Punishment on Corrupt Practices:
Section 18(1), part I, Schedule 5 of the 1999 constitution has empowered the Code of Conduct Tribunal to impose punishment, specified in the constitution or prescribed by an Act of the National Assembly, on public officers found guilty of any corrupt practices.
Section 18(2) of the fifth schedule says, "the punishment which the code of conduct Tribunal may impose shall include any of the following:

(a) Vacation of office or seat in any legislative house, as the case may be;
(b) Disqualification from membership of a legislative house and from the holding of any public office for a period not exceeding ten (10) years; and

(c) Seizure and forfeiture to the state of any property acquired in abuse or corruption of office".

(xi) Legislative Powers:
Section 4(2) of the 1999 Constitution provides that "The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in part I of the Second Schedule of the Constitution".

The above are the major provisions in the 1999 Constitution aiming to prevent or control corrupt practices in government, society and business activities in Nigeria. It is disturbing that, despite these provisions, the country is still rated as one of the most corrupt countries in the world. This clearly shows that the Constitutional provisions are not strong enough to eliminate corruption from the country. Further stringent legal measures, based on the provisions of the Constitution, especially section 4(2) on legislative powers, must be adopted for the country to overcome its corruption-related problems

However, some of the challenges facing the smooth implementation of anti-corruption programmes in Nigeria as well as guaranteeing transparency and accountability are sluggish judicial system and lacuna created in the Constitution as well as the Administration of Criminal Justice Act (2014), which create opportunities for endless adjournment and other privileges to the accused, as many Nigerians still held that proper investigation prior to arrest

will guarantee, not only more convictions but also, quicker dispensation of justice .

Section 308 of the 1999 Constitution which guarantees immunity from prosecution for our President, Vice President, Governors and their Deputies, even on account of criminal charges. This has been a subject of dispute amongst citizens as it constitutes a clog in the wheel of anti-corruption efforts in the country.

The other issue in the 1999 constitution as amended that has grave impact on anti-corruption and, which may constitute a clog in the implementation of OGP in Nigeria is the issue of Joint State/Local Government account which took away the power of Local Government autonomy and vested it in the state governments. Re-affirming autonomy as a cardinal principle of our federal system, the Supreme Court further held that the duty cast on a State Government by section 162 (6) to maintain a State Joint Local Government Account as well as the power to manage such Account which is implied by the duty is so cast on it as an autonomous tier of government free of control by the Federal Government in the exercise of the function.

As was said by Uwais CJN in Att-Gen of Lagos State v. Att-Gen of the Federation (2003) 6 S.C (Pt 1) 1, "by the doctrine of federalism, which Nigeria has adopted, the autonomy of each Government, which presupposes its separate existence and its independence from the control of the other governments including the Federal Government, is essential to federal arrangement."

Issue of Accountability:
Although sections 85(5) and 125(5) have provided for the preparation of financial statements by Accountant-Generals, the period within which the statements are to be prepared was not made clear, likewise the action to be taken against the Accountant-General for a failure to prepare and submit complete financial statements to the Auditor-General are not defined.

Over the years, several Auditor-Generals have complained of receiving incomplete financial statements from Accountant-Generals and that the financial statements are delayed. The complete Accountant-General reports (financial Statements) are only available for the years before 2000. Again, the provisions of 1999 Constitution on the treatment of audited financial statements stopped on the consideration by a committee of the National Assembly or House of Assembly responsible for public account. It is hoped that with proper and sincere records keeping, the office of Accountant-General should be able to make available statements of Receipts and Payments, Incomes and Expenditures, and Assets and Liabilities for the consumption of the relevant Assembly and the general public in some few months after the end of a financial year.
(b) The need for Re-defining Consolidated Revenue Fund:
Under powers and controls over public funds, sections 80(1) and section120(1)of the constitution are on the establishment of Consolidated Revenue Fund (CRF) into which all monies raised or received by the federal or State government shall be put into. These monies raised or received include public debts (internal and external),

which, in modern public finance, are supposed to be treated separately from other revenues, especially in debtor countries, like Nigeria. The Constitution should have gone by what obtains in theory and practice of public finance nowadays and, so, remove monies raised or received by government through public debts from CR, and put them into a separate fund to be called Consolidated Debt Fund or Consolidated Loan Fund (CDF or CLF).

3.2 ANTI-CORRUPTION STRATEGY AND WHISTLE BLOWERS POLICY

The Federal Government in April 2017, rolled out a five-year strategic plan in a bid to institutionalize the fight against corruption with the adoption and validation of the harmonized National Anti-Corruption Strategy (NACS). The document, according to the Attorney General of the Federation (AGF) and Minister of Justice, Abubakar Malami, is a five-year strategy plan that aims at presenting a common and united platform of all stakeholders in the fight against corruption.

It also involves prevention of corruption, public engagement, campaign for ethical reorientation, enforcement and sanctions and recovery of proceeds of corruption.

Civil Society Organizations and development partners of Nigeria welcomed the new strategy and an important step towards the fight against graft. It is pertinent to reiterate that one of the cardinal objectives of the administration of President Muhammadu Buhari is to fight corruption in all

its ramified manifestations including the adoption of effective preventive measures against corruption, recovery, of stolen assets and putting mechanisms, systems and processes in place to profitably manage stolen and recovered assets.

The five-year strategy provides a framework to improve the anti-corruption regime in Nigeria by focusing on key areas of policy improvement, institution strengthening and technical support in the public and private sectors as well as society as a whole.

The Federal Ministry of Finance has just issued a Whistle Blowers policy that will enable voluntary disclosure of stolen assets or reporting by those who are aware that assets have been stolen. The application of this policy will ensure that administrative sanctions can be applied when public officials misuse public funds.

3.3 PUBLIC PROCUREMENT ACT 2007

The Public Procurement Act 2007 is one of the very important laws that currently exists for the effective implementation of OGP in Nigeria. The Public Procurement Act 2007 established the Bureau of Public Procurement as the regulatory authority responsible for the monitoring and oversight of public procurement, harmonizing the existing government policies and practices by regulating, setting standards and developing the legal framework and professional capacity for public procurement in Nigeria. It is important to note that over 90 percent of public corruption occur in the process of procurement.

One of the objectives of the Bureau of Public Procurement is to: "ensure probity, accountability and transparency in the procurement processes." The other objectives of the BPP are:

The establishment of pricing standards and benchmarks;
Ensuring the application of fair, competitive, transparent, value-for-money standards and practices for the procurement and disposal of public assets; and
The attainment of transparency, competitiveness, cost effectiveness and professionalism in the public-sector procurement system.

The Bureau for Public Procurement (BPP) is already working to implement and improve transparent and competitive procurement process in line with global open contracting principles. The federal Government is pursuing the full implementation of Open Contracting and adoption of Open Contracting Data Standards in the public sector before 2019. Already the Universal Basic Education Commission (UBEC) has adopted the open contracting standards in its operations and is one of the first agencies of government to do so.

The Bureau of Public Procurement, has developed an open contracting portal with active participation of CSOs and got useful feedback to improve the portal at a workshop facilitated by Africa Network for Environment and Economic Justice ANEEJ. The development of the platform, National Open Contracting Portal (NOCOPO) has been completed awaiting deployment.

3.3.1 ROLE OF CIVIL SOCIETY ORGANISATIONS AS PROCUREMENT MONITORS

Section 19(b) (ii) of the PPA, 2007 recognizes CSOs as one of the key stakeholders in every public procurement process, and specifically states that every procuring entity should:

"invite two credible persons as observers in every procurement process one person each representing a recognized non-governmental organization working in transparency, accountability and anti-corruption areas, and the observers shall not intervene in the procurement process but shall have right to submit their observation report to any relevant agency or body including their own organizations or associations."

Procurement Monitors are tasked with identifying irregularities in the procurement process and making sure those irregularities, when found, are independently reported to the relevant authorities.

In cases where authorities responsible for overseeing procurement processes do not fulfil their obligations, or worse, are part of a corruption scheme, CSOs can use the information they generate to mobilize citizens and demand greater accountability from their Government.

3.3.2 ROLE OF MONITORS

While Monitors are not auditors and do not have enforcement powers, they play an important role in increasing transparency in the procurement process. Civil society efforts can contribute to:

- Deterring corruption by the mere fact that Monitors are present and are observing the process;
- Generating trust among government officials who are committed to "sound" procurement and the efficient delivery of public services;
- Publicizing corrupt acts and generating social pressure against corruption in procurement; Identifying corrupt actors and preventing them from having access to procurement processes in the future;
- Encouraging citizens to be more engaged in the decision-making processes that have an impact on their local community;
- Advancing citizens' understanding of how government and public procurement work; Providing the public with the opportunity to influence and participate in development programs and projects;

Some lapses in the PPA 2007 have been recently addressed through the Public Procurement Act 2007 (amendment) bill 2016, which has been passed into law. The amendment provides for and adoption of Local Content Policy and timely completion of procurement processes. The speedy procurement processing will go a long way in ensuring that most of the funds are available as quickly as possible and that jobs are actually completed timeously.

3.4 FISCAL RESPONSIBILITY ACT 2007

In promoting fiscal transparency to give flesh to the anti-corruption policy of government, the Fiscal Responsibility

Act 2007 provides:

1) The Federal Government shall ensure that its fiscal and financial affairs are conducted in a transparent manner and accordingly ensure full and timely disclosure and wide publication of all transactions and decisions involving public revenues and expenditures and their implications for its finances.
2) The National Assembly shall ensure transparency during the preparation and discussion of the Medium-Term Expenditure Framework, Annual Budget and the Appropriation Bill.

The Act goes further to stipulate in the succeeding section:

1) The federal government shall publish their audited accounts not later than six months following the end of the financial year.
2) Federal government shall, not later than two years following the commencement of this Act and thereafter, not later than 7 months following the end of each financial year, consolidate and publish in the mass media, its audited accounts for the previous year.

The Fiscal Responsibility Act 2007 is another existing law that supports OGP implementation in the country. The Act provides for "prudent management of the nation's resources, ensure Long-Term Macro-Economic stability of the national economy, secure greater accountability and transparency in fiscal operations within the medium-term fiscal policy framework, and the establishment of the fiscal responsibility commission to ensure the promotion and

enforcement of the nation's economic objectives; and for related matters"

There is intensified effort to integrate more citizen participation and oversight in the budget making process and across all the commitments in the NAP. For the first time, the Nigeria's National Assembly held a three-day open session with citizens to review the 2017 budget –something that is unprecedented. The Ministry of Budget and National Planning is also publishing budget figures and expenditures online or in national newspapers and citizens are always welcome to interrogate the use of public funds.

With the law, Government has been able to drive some reforms in the following areas:

Financial Management Systems: Implementation of the Government Integrated Financial Management Information System (GIFMIS) and the Integrated Payroll and Personnel Information System (IPPIS) which has brought greater transparency to public financial management processes. The Federal Ministry of Finance, Office of the Accountant General and Budget Office regularly publish allocations of federation revenues to all tiers of government, and widely disseminate information on budget allocation and execution. Similarly, IPPIS has created a centralized database system for the Public Service with a single, accurate source of employee information.

In the same vein, the full implementation of the Treasury Single Account (TSA) has enabled the government to better monitor the financial activities of over 900 MDAs from a

single platform, reduced the amount the government loses in interest rates on borrowing from commercial banks, eliminated the process of cash backing MDAs' accounts with commercial banks, improved the reconciliation process for MDA accounts and saved the government several billions of naira which would otherwise have been lost through corrupt practices.

Bank Verification Number (BVN): The implementation of the BVN initiative has created a centralized biometric identification system for the financial system. It has reduced fraudulent practices by dubious individuals and restored confidence in our banking industry, given that it makes it possible to follow the trail of money.

3.5 ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC) ACT

Recovery of illicitly acquired assets is a formidable anti-corruption tool which helps to deter dishonest tendencies. This is because the corrective measure clearly demonstrates that corrupt officials can be deprived of their illicitly acquired wealth in addition to conviction and the attendant penalties. As a result of the enormous benefit of asset recovery to the open government initiative, the laws on asset recovery/disclosure need to be strengthened to give the requisite impetus to anti-corruption fight in Nigeria.

In giving incentive to the fight against corruption in Nigeria, the Economic and Financial Crimes Commission Act 2004 empowers the Economic and Financial Crimes

Commission (the Commission) to investigate all kinds of financial crimes like advance fee fraud, money laundering, counterfeiting, illegal transfers, future market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam, among others. As part of the functions of the Commission, the anti-corruption agency is equally empowered to coordinate and enforce all forms of economic and financial crimes laws together with the enforcement of the functions conferred on any other person or authority involved in the fight against financial and economic crimes.

By virtue of the respective provisions in section 6(d), (e) and (f), the Commission is free to adopt any measure as it desires to identify, trace, freeze, confiscate or recover proceeds derived from economic and financial crimes related offences or the properties, the value of which corresponds to such illegally acquired proceeds, and to adopt strategies to eradicate or prevent the commission of economic and financial crimes. The Commission is also authorized by section 6(h), (i) and (j) to, in the course of its investigation of economic and financial crimes, identify individuals, corporate bodies or group involved in the matter being investigated, determine the extent of financial loss and such other losses by government, private individuals or organizations; and collaborate with other government institutions within and outside Nigeria in reaching a logical conclusion in its investigative process. To further check or prevent the problem of corruption, section 7 gives special powers to the Commission to investigate any person or group, based on suspicion that

such a person has committed an economic or financial crime, or that the person's life style and extent of the properties he or she possesses are not justified by his or her sources of income.

As part of offences created by the Economic and Financial Crimes Commission Act (EFCC) 2004, in relation to economic and financial crimes, section 18(1) provides:
A person who, without lawful authority –

(a) engages in the acquisition, possession or use of property knowing at the time of its acquisition, possession or use that such property was derived from any offence under this Act; or
(b) engages in the management, organization or financing of any of the offences under this Act; or
(c) engages in the conversion or transfer of property knowing that such property is derived from any offence under this Act; or
(d) engages in the concealment or disguise of the true nature, source, location, disposition, movement, rights, with respect to or ownership of property knowing such property is derived from any offence referred under this Act commits an offence under this Act and is liable on conviction to the penalties provided in Subsection (2) of this section.

Subsection (2) of the Act clearly provides for a term of imprisonment of not less than two years and not exceeding three years for offences committed under subsection (1).
This provision on penalty is not justifiable, considering the fact that the Economic and Financial Crimes Commission

Act (EFCC) 2002, which was repealed by the 2004 EFCC Act, provided for a term of imprisonment of not less than fifteen years and not exceeding twenty-five years for offences committed under subsection (1). The provision for penalty in section 18(2) of the EFCC Act 2004 is weak and cannot deter potential offenders. Any penalty for grievous offences involving corruption that is less than five years is not a standard punishment that can deter potential offenders.

As can be gleaned from the following provision, the EFCC Act 2004 enables the government to temporarily and permanently recover proceeds of corrupt practices. It provides:

1) A person convicted of an offence under this Act shall forfeit to the Federal Government –

(a) all the assets and properties which may or are the subject of an interim order of the Court after an attachment by the Commission as specified in section 26 of this Act;

(b) any asset or property confiscated, or derived from any proceeds, the person obtained, directly or indirectly, as a result of such offences not already disclosed in the Assets Declaration Form specified in Form A of the Schedule to this Act or not falling under paragraph (a) of this subsection;

(c) any of the person's property or instrumentalities used in any manner to commit or to facilitate the commission of such offence not already disclosed in the Declaration of Assets Form or not falling under

paragraph (a) of this subsection.

2) The Court in imposing a sentence on any person under this section, shall order, in addition to any other sentence imposed pursuant to section 11(sic) of this Act, that the person forfeits to the Federal Government all properties described in subsection (1) of this section.

Section 21 of the Act provides for the forfeiture to the Federal Government, all properties of persons convicted of an offence under the Act which are shown to be acquired from illegal activities that is already the subject of an interim order. In section 22(1), it is provided that "[w]here it is established that any convicted person has assets or properties in a foreign country, acquired as a result of such criminal activity, such assets or properties, subject to any treaty or arrangement with such foreign country, shall be forfeited to the Federal Government." To further deter corrupt tendencies, section 23 of the Act provide for the forfeiture of the passport of any person convicted of an offence under the Act, and such passport shall not be returned to that person till he or she has served any sentence imposed by law. Further to the foregoing provisions, section 25 of the Act provides:

Without prejudice to the provisions of any other law permitting the forfeiture of property, the following shall also be subject to forfeiture under this Act and no property right shall exist in them –

(a) all means of conveyance, including aircraft, vehicles, or vessels which are used or are intended for use to transport or in any manner, to facilitate the transportation, sale, receipt, possession or

concealment of economic or financial crime;

(b) all real property, including any right, title and interest (including any leasehold interest) in the whole or any piece or parcel of land and any improvements or appurtenances which is used or intended to be used, in any manner or part to commit, or facilitate the commission of an offence under this Act.

Besides the power donated to the Commission by section 28 of the Act to trace and attach by court order all assets and properties acquired from illegal activities by persons arrested for their involvement in corrupt practices, the Act obligates such persons to make full disclosure of all assets and properties by completing the Declaration of Assets Forms as specified in Form A of the Schedule to the Act and the Declaration of Assets Form is to be forwarded to the Commission for full investigation to be carried out. Under the Act, it is an offence punishable with a term of imprisonment of five years for a person to deliberately fail to make full disclosure of his or her assets or to deliberately falsify the declaration made or to fail to furnish any information required in the Declaration of Assets Form.

In respect of monies garnered from proceeds of corruption, section 34(1) which gives the Commission power to take steps to freeze the account on behalf of the Federal Government provides:

Notwithstanding anything contained in any other enactment or law, the Chairman of the Commission or any officer authorized by him may, if satisfied that the money in the account of a person is made through the commission

of an offence under this Act or any enactments specified under section 6 (2) (a)-(f) of this Act, apply to the Court ex-parte for power to issue or instruct a bank examiner or such other appropriate regulatory authority to issue an order as specified in Form B of the Schedule to this Act, addressed to the manager of the bank or any person in control of the financial institution where the account is or believed by him to be or the head office of the bank or other financial institution to freeze the account.

The Commission can also rely on an order of court under subsection (2) of section 34 to direct the affected bank or other financial institution to supply any information and documents relating to the account under investigation.
Further to this law and provisions of other laws, the CBN (Banking Industry Regulator), the NDIC in collaboration with the EFCC have adopted the "Know Your Customer' (KYC) Directive and Money Laundering Examination Procedure/Methodology Guidance Note. Both of these provide procedures for checkmating the maintenance of anonymous accounts, particularly accounts with foreign transaction activity in Nigeria, applying to bank and non-bank financial institutions and even Non- designated institutions like professional practice firms etc. In further compliance with article14 of UNCAC, and pursuant to Section 6 of the EFCC Act, the EFCC has established an FIU, operating as an independent unit within the EFCC.

3.6 CORRUPT PRACTICES AND OTHER RELATED OFFENCES (CP) ACT

The Corrupt Practices and other related Offences (CP) Act

seeks to prohibit and prescribe punishment for corrupt practices and other related offences. It establishes an Independent Corrupt Practices and Other related Offences Commission vesting it with the responsibility of investigation and prosecution of offenders thereof.
Provision is also made in the Act for the protection of anybody who gives information to the commission in respect of an offence committed or likely to be committed by any other.

Section 8(1) of the Corrupt Practices and other Related Offences Act 2000 (CP Act) provides:
Any person who corruptly

(a) Asks for, receives or obtains any property or benefit of any kind for himself or for any other person; or

(b) Agrees or attempts to receive or obtain any property or benefit of any kind for himself or for any other person, on account of-

i. Anything already done or omitted to be done, or for any favour or disfavor already shown to any person by himself in the discharge of his official duties or in relation to any matter connected with the functions, affairs or business of a government department, or corporate body or other organization or institution in which he is serving as an official; or

ii. anything to be afterwards done or omitted to be done or favour or disfavor to be afterwards shown to any person, by himself in the discharge of his official duties or in relation to any such matter as aforesaid, is guilty of an offence of official Corruption and is liable to imprisonment for seven (7) years.

Section 19 of the CP Act provides:
Any public officer who uses his office or position to gratify or confer any corrupt or unfair advantage upon himself or any relation or associate of the public officer or any other public officer shall be guilty of an offence and shall on conviction be liable to imprisonment for five (5) years without option of fine.

In section 68, which is a general provision on penalty, the CP Act provides: "Any person convicted for an offence under this Act for which no penalty is specifically provided shall be liable to a fine not exceeding ten thousand naira or to imprisonment for a term not exceeding two years or both."

In relation to forfeiture or seizure of proceeds of corruption, section 37 of the CP Act provides:
(1) if in the course of an investigation into an offence under this Act, any officer of the Commission has reasonable grounds to suspect that any movable or immovable property is the subject matter of an offence of evidence relating it the offence, he shall seize such property.
Further to the above, the CP Act gives the Chairman of the Commission power to direct financial institutions in possession of property which is subject of corrupt practice to retain such property pending investigation. The relevant section provides thus:

(1) where the chairman of the commission is satisfied on information given to him by an officer of the Commission that any movable property, including any monetary

instrument or any accretion thereto which is the subject-matter of any investigation under this subject- matter of any investigation under this Act or evidence in relation to the Commission of such offence is in the possession, custody or control of a bank or financial institution, he may, notwithstanding any other written law or rule of law to the contrary by order direct the bank or financial institution not to part with, deal in, or otherwise dispose of such property or any part thereof until the order is revoked or varied.

3.7 CODE OF CONDUCT BUREAU AND TRIBUNAL ACT (CCB)

The Code of Conduct contained in the constitution of the Federal Republic of Nigeria restrains public servants from undertaking several actions including; putting themselves in a position where personal interest conflicts with official duties; operating a foreign account outside Nigeria; receiving personal benefit on account of anything done or omitted to be done, including gifts from private companies who have dealings with government; carrying out acts prejudicial to another person's right in abuse of his office; being member of a secret society etc . It also requires public officers at the time of commencement of their tenure, and at its end, and if in continuous service, every four years, to specify and declare all of their assets, properties and liabilities or those of their spouse or unmarried children.

The Code of Conduct Bureau is empowered to receive the declarations, verify them, receive and investigate complaints and where appropriate refer infractions to the

Code of Conduct Tribunal for hearing and pronouncement of administrative sanctions, if appropriate. However, as a result of lack of access to the declared information by the public, it is doubtful if verification of assets of these officers is being achieved.

The Act which is sure to support the implementation of OGP in Nigeria provides for the establishment of Code of Conduct Bureau and Tribunal to deal with complaints of corruption by public servants for breaches of its provisions. Public officials are required to make declarations about their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may arise. It requires that the disclosure rules be extended to at least the spouses and dependent children of the public officials. Section 15 of the Code of Conduct Bureau and Tribunal Act makes it mandatory for every public official to declare his assets prior to assuming public office, and at the end of the service, or every four years, if it is continuous service. Whilst the provision extends to spouses, children and dependants as required.

The Nigerian framework has failed to provide public access to the declarations of public officials, making verification very difficult. This is so given the low levels of documentation, similarity of names and extended family and cultural settings in Nigeria. Government needs to legislate on a mechanism for disclosure of information declared by public officials to the Public as only this can improve verification. Absence of such legislation is the reason put forward by the Code of Conduct Bureau for not

making declarations accessible to the public. Many public officials comply, but cases of anticipatory declarations and non-disclosure of full information still exists and despite existing mechanisms for penal sanctions, the perception persists that compliance is low.

The Code of Conduct Bureau and Tribunal Act in Section 16 requires any reports of breach of the code of conduct to be made to the Bureau. It grants the Bureau powers to investigate such complaints and where deemed necessary refer same to the Code of Conduct Tribunal. Section 20 of the Act establishes the Code of Conduct Tribunal (CCT) and vests it with powers to impose sanctions for infractions of the Code of Conduct. The sanctions the Tribunal may impose includes; vacation of elective or nominated office, disqualification from holding public office; seizure and forfeiture to the state of any property acquired by abuse or corruption of public office. This law aptly supports OGP implementation.

3.8 NIGERIA EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (NEITI) ACT

The Nigeria Extractive Industries Transparency Act is yet another important piece of legislation needed for OGP implementation. In 2013, Nigeria volunteered along with 11 other EITI-implementing countries to pilot the reporting of beneficial owners of oil, gas, and mining companies. In line with this commitment, NEITI Audit report of 2012 published in 2016 contained beneficial owners of 40 out of the 42 companies audited. Much of the information disclosed were recognised by EITI as "Legal owners." It

means for OGP commitment to be realized the NEITI needs to go the full hug of disclosing the names of persons behind the oil and gas and mining companies operating in Nigeria.
At the moment, the Nigerian Extractive Industries Transparency Initiative (NEITI) is developing a register of beneficial owners of all companies operating in the Nigerian extractive industry and would soon make it public in line with global standards.
In addition, the Corporate Affairs Commission is reviewing its laws to make it possible to disclose beneficial owners and would soon create a public register of beneficial owners of all public companies.
Also, the Money Laundering Act 2007 is currently being reviewed to better define who a beneficial owner of a company is.

3.9 FREEDOM OF INFORMATION (FOI) ACT

Participation of the people in governance begins with the process of law making. This is why the Freedom of Information Act which was finally passed by the National Assembly in 2011, after many years in the National Assembly's archive as a bill, is central to this discourse. This is because, despite its shortcomings, it is one form of legislation which contains provisions that makes public records and information more freely available to members of the public.

Apart from providing for procedures for creating access to public records and information, the Act protects serving public officers from adverse consequences of disclosing in good faith, classified official information without

authorization. This applaudable stand of the law will go a long way to promote whistle-blowing (a cherished anti-corruption policy of the Buhari administration) and properly equip citizens with the required tool or information to checkmate dubious government activities, thereby mitigating corruption in the overall interest of society.

Section 1 of the FOI Act gives members of the public right to access information of any kind that is in the custody of any public official, agency or institution. Such right to demand for public information can be exercised even without having to demonstrate that the applicant has any special interest in the information demanded for. Subject to minor qualifications under sections 6, 7, and 8, any public institution to which application for information is made has seven days under section 4 of the Act to make the required information available. Under sections 1(3) and 7(1), any citizen who requires any information can institute legal action either to compel an unwilling public officer or institution to comply with provisions of the Act, or to challenge in court the decision of an agency refusing access to information. Where a case of wrongful denial of access to public document is established, the defaulting officer or institution commits an offence and is liable on conviction to a fine of N500,000.

Going by the provisions of the Act, an officer or institution is only liable where it fails or refuses to provide on demand, information that is available in the said institution. Considering the lapses in the system, like the problem of

power supply, poor funding, poor infrastructure and lack of relevant facilities for generating and preservation of records, provisions like sections 2 and 9 which mandate government institutions to keep every information or record of its operations and ensure proper organization and maintenance of records in its custody in order to facilitate public access, may not be actualized. Similarly, government's lackluster attitude towards funding of its agencies and institutions makes the provisions in section 2(3) and (4) which mandate public institutions to regularly publish, through various means, activities and records kept by the institution, less effective.

The enactment of the FOI Act in 2011 has made public records and information more freely available and accessible to Nigerians. Several government agencies have set up compliance structures that now enable them to respond to requests for information within the ambit of the law. The Bureau of Public Service Reform (BPSR) has adopted a unique electronic FOI platform on its website that gives real-time information to citizens and encourages voluntary disclosure.

3.10 MONEY LAUNDERING PROHIBITION ACT (2011)

There exist a framework to combat money laundering and cooperation of agencies involved at local and international levels, covering banks, natural and corporate persons that provide formal and informal services for transfer of money and assets, it requires the establishment of financial Intelligence Unit to monitor movement of cash in and out

of State boarders. It requires that financial and non-financial institutions within State parties collect and keep information on origin of electronic fund transfers and scrutinize incomplete information, as well as, that banks and non–bank financial institutions keep customer and where appropriate beneficial owner identification, record and report suspicious transactions to relevant authorities. It also requires states to promote global, regional and sub-regional co-operation amongst judicial, law enforcement and financial regulatory authorities aimed at combating money laundering.

Again, to promote transparency in financial business in order to check corrupt practices, section 15 of the Money Laundering (Prohibition) Act 2011 of Nigeria (as amended), which is in tandem with the provisions in section 15 of the Money Laundering (Prohibition) (Amendment) Act 2012 provides:

(2) Any person or body corporate, in or outside Nigeria, who directly or indirectly-

(a) conceals or disguise the origin of;
(b) converts or transfers;
(c) removes from the jurisdiction; or
(d) acquires, uses, retains or takes possession or control of;

any fund or property, knowing or reasonably ought to have known that such fund or property is, or forms part of the proceeds of an unlawful act; commits an offence of money laundering under this Act.

(3) A person who contravenes the provisions of subsection (2) of this section is liable on conviction to a term of not less than 7 years but not more than 14 years imprisonment.

(4) A body corporate who contravenes the provisions of subsection (2) of this section is liable on conviction to –

(a) a fine of not less than 100% of the funds and properties acquired as a result of the offence committed; and

(b) withdrawal of license.

The MLA in Section 1 places a limitation on the amount of cash payment for any one transaction within the country, as well as a requirement that transfer from or to a foreign country of funds or securities exceeding $10,000 USD value shall be reported to the CBN. It imposes a mandatory duty person whose business is to undertake over the counter exchange transactions including financial institutions to collect and keep full customer identification information prior to such transactions, to keep a register for this purpose for at least ten years after the last transaction recorded in the register. Additionally, it requires financial institutions within seven days of any such transaction report any single transaction in excess of N1,000,000 or its equivalent in the case of an individual and N5,000,000 or its equivalent in the case of a body corporate to either of the NDLEA, the CBN, judicial authorities or officers of the Nigeria Customs or such other persons as the CBN may from time to time by order published in a gazette specify. Under this law money laundering is a crime punishable

with imprisonment for offenders ranging from 15 to 25 years imprisonment or a fine of 250,000 – 1,000,000. The language of the MLA betrays Nigeria's concern at the time of its making on drug related trafficking, but is expansive enough to cover other subject matter related laundering activity.

4.0 ISSUES IN EXISTING LAWS AND POLICIES ON ANTI-CORRUPTION IN NIGERIA

There are a couple of issues in the existing laws and policies on anti-corruption in the country which needs to be frontally addressed for successful OGP implementation.

4.1 ISSUES IN THE EFCC, CP, CCB, PCC, NDLEA, THE ICPC, THE EFCC AND THE NAPTIP ACTS

According to Article 6 (1) & (2) of the UNCAC: States Parties (Nigeria being one) are obligated to have an anti-corruption body or bodies in charge of preventive measures and policies, and to grant that body independence to ensure that it can do its job unimpeded by undue influences, and provide it with adequate resources and training. Nigeria has several Anti-Corruption bodies: the ICPC and the EFCC, the CCB, the PCC etc. Their legal regimes provide for a series of preventive mechanisms. In addition, Nigeria has such other bodies as Nigeria Extractive Industries Transparency Initiative (NEITI), Fiscal Responsibility Commission, Office of the Auditor-General of the Federation and Bureau of Public Procurement all with mandates to prevent corruption.

There is also the reality that in practice, though ICPC and

Code of Conduct Bureau and Tribunal appear to have structural independence by statute, like the other agencies they lack financial independence or autonomy. In the case of the EFCC it lacks both structural and financial independence. Section 3(2) of the EFCC Act allows the President to remove any member of the Commission (including the Chairman) from office, if he is satisfied that it is no longer in the interest of the Commission or the Public that the member should continue in office, additionally majority of members of its board are agency heads whose activities are subject to its scrutiny. Thus, whilst Nigeria has the required agencies, its agencies do not all appear to have the required independence. This gag, Sheriff Folarin, PhD argued that it constitutes brick walls in Nigeria's fight against corruption.

The legal framework of the Code of Conduct Bureau and Tribunal has made limited use of improving technology to fight corruption. The declaration and verification of assets process is still manual, reporting of infractions remains largely manual, and apart from maintaining a website, the Bureau does not appear to have any other strategic interface using ICT technology, this is common with most of the other Nigerian anti-corruption agencies and other MDAs, who appear to be reluctant to embrace the huge possibilities that ICT holds for corruption prevention and detection in Governance. Nigeria will benefit from a systematic computerization of operations of all government departments, particularly if clear policies, rules benchmarks are developed for the computerization exercise which is now being embarked upon by some

MDAs. Besides, public declaration of asset is still an issue to be sorted out in Nigeria as the CCB & T Act does not support public declaration of asset or public access to the records of public officers who have declared their assets.
Statutory amendments are needed to ensure the full financial and structural independence of the EFCC and ICPC. Such an amendment should review the Membership of the board of EFCC and ICPC in favour of independent and known anti-corruption crusaders. There is an urgent need to clear the air as to subjecting the confirmation of the appointment of the Chairmen of the anti-graft agencies to the approval of the Senate to remove the current logjam where the senate rejected the confirmation of the Acting Chairman of the EFCC in two occasions, yet he is being retained by the presidency in acting capacity and the presidency boasts of retaining him for the lifespan of the administration. It is therefore important to make necessary amendments to the anti-graft agencies to insulate the appointments of their CEOs from the presidency or fix a timeline for anybody to act in such positions.

According to Iheabuninke A. Godwin (2017), the NDLEA Act, the ICPC Act, the EFCC Act and the NAPTIP Act all provide for penal forfeiture in relation to the proceeds of crime. There is thus no single Act in Nigeria that provides a uniform scheme for the forfeiture of criminal assets. Since the year 2011, the Inter-Governmental Action Group Against Money Laundering (GIABA) have advised on the need for Nigeria to enact a standalone Asset Recovery and Confiscation law to address the weakness in the current legal framework. The Proceeds of Crime Bill, 2014 is

Nigeria's response to this demand. The Bill seeks to bring about a unified procedure for recovering, managing, restraining, confiscating and forfeiting the proceeds of crime in Nigeria. The Bill which is before the Nigerian National Assembly has been passed for second reading in the House of Representatives.

Also, despite the commendable anti-corruption provisions of the EFCC Act 2004, it appears that the rule of law is not followed in the implementation of the Act. This is as a result of obvious allegations bordering on the selective manner the Commission investigates and prosecutes persons and institutions perceived to be corrupt in Nigeria. Apart from very few isolated cases, the Commission appears not to have adequately directed its anti-corruption search light on members of the ruling party who have severally been accused of corruption in Nigeria.

The EFCC (Establishment) Act 2004 in Section 6, grants the EFCC the function of co-ordination of and enforcement of all economic and financial crimes laws and enforcement functions conferred on any other person or authority, and the adoption of measures to eradicate economic crimes including preventive and regulatory actions. In Section 6(f) & (g) it further makes the Commission responsible for adoption of measures which includes coordinated preventive and regulatory actions, facilitation of rapid exchange of scientific and technical information. In Section 6(j) it requires the Commission to establish and maintain a system for monitoring international economic and financial crimes in order to identify suspicious transactions

and persons involved, as well as maintain data, statistics, and records in persons, organizations, proceeds, properties or other items involved in economic and financial crimes.

Just like the EFCC Act which contains penalties that are not stringent enough to deter corruption minded individuals, the penalties prescribed by the ICPC Act is largely inadequate. This is evident in the general penalty provision in section 68 of the ICPC Act which recommends a fine not exceeding ten thousand naira or to imprisonment for a term not exceeding two years. Besides, the ICPC Act appears to directly bestow the power to seize property of any person suspected of involving in corrupt activities on the Chairman of the Commission without the Chairman having to obtain a court order to do so. This accretion of sweeping powers may be very dangerous as it is very open to abuse.

In respect of allegations of corruption made against the President, Vice-President, Governor or Deputy Governor, the CP Act provides as follows:

(1) When an allegation of corruption or anything purporting to contravene any provision of this Act is made against the President or the Vice-President of Nigeria or against any State Government or Deputy Governor, the Chief justice of the Federation shall, if satisfied that sufficient cause has been shown upon an application on notice supported by an affidavit setting out the Facts on which the allegation is based, authorize an independent

counsel (who shall be a legal practitioner of not less than fifteen years standing) to investigate the allegation and make a report of his findings to the National Assembly in the case of the president or Vice-president and to the relevant state House of Assembly in the case of the state Government or the Deputy Governor.

Until the constitution is amended in respect of immunity presently enjoyed by the designated public officers mentioned in section 52(1) above, this provision remains a futile tool for the fight against corruption perpetrated by this special category of public officers. The immunity provision will clearly frustrate any attempt to carry out a proper investigation of the affected officers.

4.2 ISSUES IN FOI, NEITI, ML (PROHIBITION) ACTS.

As commendable as the FOI Act, it, however, appears to deny members of the public more information than what it allows the public to have access to. For instance, section 11 of the Act provide thus:

(1) A public institution may deny an application for any information the disclosure of which may be injurious to the conduct of international affairs and the defense of the Federal Republic of Nigeria.

There are a number of such provisions in the Act which expressly deny members of the public certain kinds of information. Without specifying the criteria that would guide a public officer or institution in arriving at the conclusion that disclosure of a given information would be injurious to conduct of the nation's

> international affairs or the defence of the federation, nonconforming public officials or institutions can hide under such sweeping provisions to deny members of the public useful information since they are free in the circumstance to use their discretion to subjectively determine the effect a disclosure of public information may have on the nation's defence or international relations.

Similarly, section 12(1) of FOI Act provides:
A public institution may deny an application for any information which contains-
(a) Records compiled by the public institution for administrative enforcement proceedings and by any law enforcement or correctional agency for law enforcement purposes or for internal matters of a public institution, but only to the extent that disclosure would –
(i) Interfere with pending or actual and reasonable contemplated law enforcement proceedings conducted by any law enforcement or correctional agency.
(ii) Interfere with pending administrative enforcement proceedings conducted by any public institution.

Without clearly stating the yardsticks for measuring or situating the identified conditions that will warrant a denial of application for official records, corruption will thrive under such atmosphere as dubious public officers can capitalize on the lapses to perpetrate corruption. This is against the OGP principle which encourages openness in government activities. Although members of the public are permitted to challenge any denial of information in court,

this avenue will no doubt suffer frustration as many Nigerians do not have the economic wherewithal to sustain the financial demand and other rigours associated with litigation. Also, the seeming limitation of provisions of the Act to public documents makes it impossible for members of the public to demand accountability from private institutions even if their activities have serious negative consequence on public interest. Nigeria should borrow a leaf from Italy that has enacted a new anti-corruption law that introduced a new offence of private corruption.

Section 3(d) and (e) of the NEITI Act is designed in such a way as to accommodate the notion of confidentiality clauses. This practice is no longer in vogue. The standard practice is to do away with confidentiality clauses which promote secrecy and encourage companies or institutions to partially disclose or not to disclose information to members of the public. Unless such clauses are removed from the NEITI Act through legislative review, the agency would be less effective. As it relates to NEITI and other public agencies, the ordinary Nigerian knows little or nothing about NEITI, its enabling law, and activities of the anti-corruption agency. Such lack of awareness denies the people the crucial opportunity to participate and contribute to the fight against corruption in and outside the extractive industry. There is need for government to create the enabling environment and put adequate modalities in place to involve the people (both in the cities and in rural areas) in government activities. Such openness in governance will produce some form of partnership that

will be beneficial to all stakeholders in the business of governance.

NEITI Act was enacted to promote good governance in the management of resources from the extractive sector of the nation's economy. It is, however, observed that NEITI's activities in the Nigerian extractive industry over the years have not adequately projected the issue of beneficial ownership which is vital to the OGP process as a veritable tool for fighting corruption. As spelt out in section 2 (c) of the NEITI Act, it appears that the objective of the Act is not achievable as it is very ambitious. In section 2, the Act empowers NEITI to "eliminate all forms of corrupt practices in the determination, payment, receipts and posting of revenue accruing to the federal government from extractive industry companies." It is obvious that NEITI as an agency cannot fully execute the set task.

Also, other government agencies like the Central Bank of Nigeria (CBN) and the Federal Inland Revenue Service (FIRS), are already playing some of these roles arrogated to NEITI in the Act, and as such, it was not necessary to duplicate functions. The clause in the identified section can be modified to give NEITI a coordinating role in the fight against corruption in the extractive industry. Apart from NEITI's audit reports which are expected to be made available to members of the public, the NEITI Act, in attempting to promote information regime does not expressly give members of the public the power to assess other information relating to NEITI activities. Though the window provided by the provisions of the Freedom of

Information Act 2011 (FOI Act) may help to partially cure this defect, the challenges associated with the implementation of the FOI Act itself also constitute another stream of barrier to free access to public information.

Again, on civic participation in governance, section 6 of the NEITI Act gives the President of the Federal Republic of Nigeria the absolute powers to constitute the National Stakeholders Working Group (NSWG) which is the principal body responsible for organizing the affairs of the NEITI. The enormous powers given to the President in section 6 is apparently open to abuse if relevant checks and balances are not put in place to enable other institutions like the legislature monitor or scrutinize appointment made by the President in constituting the NSWG of NEITI. This will not help to actualize the goals of an anti-corruption body like NEITI as the appointments can easily be politicized, instead of using technocrats and reputable individuals of integrity to achieve result.

In the same vein, section 2(d) of the Act mandates NEITI to ensure that there is transparency and accountability by "government" in the application of resources from payments made by extractive industry companies. The use of the word "government" here requires clarity. This is because under the federal system of government which Nigeria operates, "government" would usually mean the three tiers of government – federal, state, and local governments. From experience, it is unrealistic for a federal agency like NEITI to effectively cover the field by functioning across board. Usually, activities of a federal

agency may be strong and well-coordinated at the center, whereas what obtains in the states and local government areas (if any) are mere skeletal services of the agency. It is for this and other reasons that states and local governments in Nigeria have been advised to adopt the EITI-NEITI model in their various jurisdictions. It is heartwarming to note that states like Bayelsa have adopted the NEITI platform.

It is only hoped that the initiative is implemented with all the due diligence and sincerity that it deserves in the states that have keyed into the initiative. If states are able to do this, it will make it easier for NEITI as a federal agency to work in tandem with the regions or local governments that are closer to the people, thereby achieving better result in the overall interest of society at large. Unfortunately, experience has continued to show that the NEITI Act is not properly implemented. Attendant breach of the law is not limited to extractive industry companies alone. Government itself has continued to honour the law in the breach. Recommendations, observations and issues raised from NEITI Audit Reports are hardly implemented or addressed by government. There is need for the proper political will to give effect to the dictates of the law no matter the circumstance or personality of those involved in the breach. This is the only way the goals and objectives of the law will be achieved.

Section 13(1)(b) of the NEITI Act allows NEITI to accept grants, donations or gifts from anybody or agency (including institutions or companies that NEITI is expected

to monitor) as a source of raising revenue for NEITI, so long as the source of revenue is disclosed. Despite the proviso in paragraph (b) of subjection 13(1), this provision, it is believed, may defeat the essence of the anti-corruption agency as it creates room for compromise in the discharge of duty. It is advised that funding for NEITI should be championed by government in order to make the NEITI neutral so that it can effectively discharge its duties as a watch-dog without fear or favour.

The provision in section 13(3) of NEITI Act which demand the governing body of NEITI (the NSWG) to submit to the President and the National Assembly an estimate of the expenditure and income of NEITI during the succeeding year not later than 30th September in each year, and expect NEITI to keep proper accounts in respect of each year, and proper records in relation thereto, is usually not complied with. If at all it is honoured, members of the public are not properly guided to enable citizens fully participate or follow up with the process of reporting.

Under section 16(1)(b), it is an offence which attracts a minimum of N30million for a NEITI official to render false statement of account or to fail to render a statement of account in a manner prescribed by the Act. Refusal by an extractive industry company to give information or give necessary report as required by the Act attracts a fine of not less than N30million, in addition to withdrawal or suspension of the company's operational license. By section 16(5), Directors or other concerned officers of a defaulting company are liable to conviction for a term of

not less than 2 years of imprisonment or a fine of N5million. Section 16(6) provides that government officials who knowingly render wrong statement of account are liable on conviction to a term of imprisonment of not less than 2 years or a fine of not less than N5million. These provisions reveal an encouraging determination on the part of government to suppress corrupt intentions in the Nigerian extractive industry. However, there is need for sincere effort to apply the rule of law in the implementation of the provisions. Without the proper political will and appointment of men and women of integrity in strategic anti-corruption agencies, no meaningful result will be achieved.

In addition to other encouraging provisions of the Money Laundering (Prohibition) Act, sections 2, 3, 5, 6, and 10 of the Act contain provisions that help to regulate and promote transparency in the transfer of funds by individuals, corporate bodies and groups through financial institutions.

Though the above provisions of the Money Laundering (Prohibition) Act are commendable, the penalty prescribed for violation of its provisions appear to be weak. This is particularly so for money laundering offences involving huge amounts of funds that seriously hinder economic growth of the nation, retard infrastructural advancement, and frustrate the developmental strides of individuals and investors.

A feeble penalty provision for corrupt practices in public

procurement can equally be found in the Public Procurement Act 2007 where it provides:

Any natural person not being a public officer who contravenes any provision of this Act commits an offence and is liable on conviction to a term of imprisonment not less than 5 calendar years but not exceeding 10 calendar years without an option.

There is need for review of the penalty provisions in affected laws so that the use of penalties in proscribing criminal behaviours will largely serve the purpose of deterring potential criminal tendencies in society.

There also needs to be a National effort to encourage and promote professional ethics and its enforcement, government needs to appoint credible persons preferably independent and known anti-corruption crusaders into the PCC and ensure it receives adequate operational funding. However, whilst Nigeria is fully compliant with the obligation to establish anti-corruption bodies, Nigeria has failed to make most of them truly independent, even in such a case as the PCC, where the constitution provides for charging its operations to the consolidated revenue account, the effect in practice is that salaries and emoluments of its principal officers, who Government has failed to appoint are provided for, whilst funds to purchase vehicle for investigation related travels are treated as capital expenditure and not provided for despite annual requests for it for many years now.

4.3 ISSUES IN PUBLIC PROCUREMENT ACT

The Public Procurement Act (2007) appropriately provides for public procurement based on transparent, competition and fair objective criteria in decision making that can be effective in preventing corruption.

The Act in sections 3, 5 and 6 establishes the Bureau for Public Procurement (BPP). It gives it the function and invests it with sufficient powers to regulate and supervise MDA procurement activity for the purpose of ensuring transparency, competitiveness, fairness, accountability and achievement of value for money. It also has powers to determine and enforce appropriate thresholds as required by UNCAC.

The PPA in section 25 mandates a six weeks' period of notification to bidders. Also the PPA effectively affirms procurement as an administrative function to be carried out by civil servants and by so doing limits political control and interference in the procurement process, which was found by the Country Procurement Assessment report in 2000 as one of the major problems.

The PPA in Section 6 vests the BPP with powers to ensure compliance with the rules, and powers to apply sanctions against erring public officials as well as contractors. In Section 54 it provides a systematic process of administrative redress, that compels public officials to review complaints within specific time and provides right of appeal and access to courts in enforcement of the rules. Section 57 of the PPA has detailed provisions relating to

conflict of interests of participants in the process and S 58 of the PPA criminalizes many infractions including one relating to non-disclosures and resolutions of conflicting interests, indeed the Nigerian law goes beyond UNCAC provisions to require bidders in its S 16(6)(f) to accompany bids with an affidavit of disclosure whether any officers of the procuring entity or BPP has any interest in their company or the particular transaction. Also, it provides in Section 19, 16(14) and 38 for mandatory citizen sector observation of the procurement process, and access to procurement information. The BPP in collaboration with the office of the Head of Service of the Federation is currently establishing a procurement cadre in the service to ensure professionalization of procurement practice at the Federal level in Nigeria.

However, as a result of Nigeria's fiscal federalist structure, this law is not applicable to state government expenditure, except in cases where the federal government is providing up to 35% of cost of the project. States therefore require passing their own procurement legislations. Amongst the 36 States of the Federation only eight, have similar laws at the time of this report, and even in those states implementation of those laws are weak. In practice the Federal Structure is improving in compliance. At the level of the law the PPA complies fully with UNCAC provisions. Whilst all MDA's have complied in setting up internal MDA structures created for implementing the Act, the Industry regulator is in place and has promulgated implementing rules, which are now being complied with, political pressures has led to very high thresholds limiting

number of procurement activities, which are subjected to prior contract approvals under the law, Resistance, poor knowledge and skill have contributed to reduce compliance levels, and it is expected that as capacities improve, resistance will reduce and compliance will continue to improve.

4.4 ISSUES IN FISCAL RESPONSIBILITY LAW

Article 9.2 of UNCAC requires States Parties to take appropriate measures to promote transparency and accountability in the management of public finances. Such measures should include procedures for the adoption of the national budget, timely reporting on revenue and expenditure, appropriate systems of accounting and auditing standards, related oversight, effective and efficient risk management and internal control. The procedure set out by the Fiscal Responsibility Law is reasonably compatible with UNCAC and is capable of improving transparency and accountability. They include consultative procedures for adoption of budget, and timely reporting requirements on revenue and expenditure. Its provisions further regulate debt and borrowing and create mandatory conditions for public borrowing, and expansion, or improvements in government action which results in an expenditure increase. It also creates an oil based fiscal rule requiring the saving of excess proceeds of oil price above the reference commodity price.

Initiatives have been taken by the Ministry of Finance (working with stakeholder such as the Federal Account Allocation Committee) since January 2004, to improve

transparency in fiscal management by engaging in a number of practices. These include publishing the Federal, State and Local Government shares of revenue from the Federal Account and introducing the MTEF into the budgeting process, improving regularity of budget performance reports at the federal level. However only a few states in Nigeria have similar legislations or have adopted similar processes, this is of significance because as a result of the constitutional fiscal federalist structure, the States in Nigeria and the local governments, which they control receive and expend above 54% percent of National Revenues.

The Federal Financial Regulations (FR), currently provide detailed guidance on Federal accounting records, the Federal Government has revised the FR three times since 1999, the latest being in January 2009. This revised rule has brought some improvements. It contains the details of the civil and administrative measures aimed at securing the integrity of accounting records and financial statements that together with the Fiscal Responsibility Act provisions achieve substantial compliance with the integrity of accounting records, except of course that no statutory time limit is yet given to the Accountant General to submit his reports to the Auditor General for Audit. The Regulations cover rules and procedures on all aspects of conduct and management of public finance, including revenue, records keeping, preparation of financial statements, stores control, internal audit, external audit, and reporting. They also include proformas for receipts, vouchers, cashbook, and registers, monthly and other returns, charts, etc. The

rules also cover custody of government assets and property, including the handling of title deeds and documents, and try to ameliorate some of the difficulties created by the age long parent legislation. Chapter 17 of the Regulations is devoted entirely to internal audit. It defines internal audit as "a managerial control, which functions by measuring and evaluating the effectiveness of (the) Internal Control system". Each State has its own FR, and often a FR for local governments too. However, at the State level, there has not been a current improvement in the FR as is the case at the federal level, most financial regulations used at those levels of government are archaic and out of date with today's reality.

4.5 LEGAL IMPLICATIONS OF SOFT LAW/HARD LAW DICHOTOMY TO OGP

In legal parlance, the OGP principles and values are like declarations which at best constitute what is referred to as "soft law." Therefore, it is from the onset not intended to have binding effect on the people or States partners of the OGP. In the context of international law/international relations where no state can claim sovereignty, the term "soft law" refers to quasi-legal instruments which are persuasive and not legally binding. They are rules, guidelines, declarations or codes of conduct adopted by a group to regulate their conduct. However, they are not directly enforceable. In other words, nations that have signed up as members of the international partnership cannot take steps to enforce the OGP principles in the manner that traditional law (otherwise referred to as 'hard law') can be enforced in court. Resolutions, declarations,

and other types of non-treaty obligations belong to this special class of law known as "soft law." However, initiatives like the OGP partnership is based on trust, understanding, or legitimate expectation that nations that have signed into the partnership will observe the terms, principles, value, or objectives of the pact. The OGP Global body may apply other means like negotiations, dialogue or mediation to influence member states in making sure that the understanding or undertaken made by OGP members are respected.

However, although obligations arising from international understanding created by the amalgamation of nations like the OGP are subservient to the constitution of any nation, international obligations occupy a high pedestal as they usually have strong influence within the domestic realm of member countries that have agreed to apply the principles of the charter. Such influence may largely goad adherence to "soft laws" even though such principles do not enjoy the binding force associated with "hard laws" which are products of established legislative processes. This is so because it is presumed that no responsible nation would intend to breach an international obligation because of the attendant effects such breach may have on the defaulting nation where the coalition is properly organized. In international relationship among nations, positive and negative enforcement mechanisms can be adopted to ensure that agreements are obeyed by member nations. Positive enforcement mechanism is adopted where cooperating nations are encouraged to comply with the collective agreement reached by providing rewards or

incentives for those who comply. Negative enforcement mechanism is applied where organizers demand compliance by using deterrents. Such deterrents may include the straining of trade relations, forfeiture of military support and other related benefits that a defaulting nation may gain from cordial relationship or partnership with other member states.

4.6 EFFECT OF NIGERIAN SYSTEM OF GOVERNMENT ON THE FIGHT AGAINST CORRUPTION AND OGP PRINCIPLE

Nigeria practices a federal system of government which distributes power of governance between the federal government and the federating units (states). Although they share certain traits in common, all federal systems of government are not exactly the same. This is because it is a nation's constitution that ultimately determines the pattern of her system of government. Presently, the extant 1999 Constitution of the Federal Republic of Nigeria determines the nature and extent of power that the federal and state governments can exercise. A tier of government can only exercise powers in areas where it enjoys legislative authorities. The Nigerian Constitution contains exclusive and concurrent legislative lists in part I and part II of the constitution respectively. Some of the sixty-eight items in the exclusive list are more germane to the fight against corruption than the items in the concurrent list; and it is only the federal government that can exercise legislative powers on the items in the exclusive list. Although both state and federal governments can legislate on the thirty items in the concurrent list, once the federal government

takes steps to legislate on any of the items, the states are barred from enacting conflicting legislations on the same issue. This is based on the constitutional principle of "covering the field. "Some of the items in the exclusive list that are directly or indirectly connected with anti-corruption drive include: item 45 – Police and other government security services established by law; item 32 – incorporation, regulation and winding up of companies; item 31 – implementation of treaties relating to matters on the exclusive list; item 39 – mines and minerals, including oil fields, oil mining, geological surveys and natural gas; item 27 – extradition; item 30 – immigration into and emigration from Nigeria; item 68 – Any matter incidental or supplementary to any matter mentioned elsewhere in the exclusive list.

This arrangement does not favour a swift and holistic fight against corruption in Nigeria. For instance, the EFCC, which is a federal anti-corruption agency, only has nine zonal offices to cover the thirty-six states in the country at the moment. The robust facilities/resources and manpower at the center cannot be compared to what is obtainable at the zonal offices. There is no doubt that more result would be achieved if states can establish similar institutions to make fight against corruption manifest in every nook and cranny of the federation. This will enhance easy access to the anti-corruption agency and investigation and other moves against corruption will be swift and more coordinated. In the main time, states are advised to partner with the EFCC and other relevant anti-corruption agencies in Nigeria. To ensure that the benefits of OGP principles

and values are widespread in Nigeria, OGP commitment should not be a federal affair. States in Nigeria are encouraged to join the OGP initiative and tailor state anti-corruption legal framework in line with the OGP principles. This will create a more holistic approach to the fight against corruption in Nigeria.

5.0 OTHER LAWS NEEDED TO STRENGTHEN OGP IMPLEMENTATION IN NIGERIA

5.1 PROCEEDS OF CRIME BILL 2017

One piece of legislation that needs to be put in place to strengthen anti-corruption and OGP implementation in Nigeria is the Proceeds of Crime Act (POCA). The Proceeds of Crime Bill, 2016 provides a legal and institutional framework for the confiscation, seizure, forfeiture, recovery and management of assets or proceeds derived from unlawful activities; and instrumentalities used or intended to be used in the commission of unlawful activities. The Bill seeks to harmonize and consolidate the existing legislative framework on the recovery of proceeds of crime and related matters in Nigeria.

'The law and practice on forfeiture and recovery of proceeds of unlawful activities varies greatly and depends on the kind of crime and … the statute being enforced.' Thus the Economic and Financial Crimes Commission (Establishment) Act, Corrupt Practices and Other Related Offences Act, Foreign Exchange (Monitoring and Miscellaneous) Provisions Act, Code of Conduct Bureau and Tribunal Act, Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act, Advanced Fee Fraud

and other Fraud Related Offences Act, Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (as amended), etcetera provide the extant framework for forfeiture in Nigeria. Forfeiture under these legislations cover instances where the property subject to forfeiture constitutes evidence of an offence, is liable to be forfeited for restitution purposes, or where the instrumentalities of the crime are confiscated. It is therefore correct to say that there is no single legal framework for the recovery and management of the proceeds of crime in Nigeria.

In coming up with the present Bill, officers of the Legal Drafting Department, FMOJ, have had to collaborate with various stakeholders and development partners to ensure that the contents of the Bill are in conformity with global best practices while meeting domestic needs. The Bill benefitted from comparative best practices of the existing body of enactments from other common law countries such as the United Kingdom, Australia, Canada, Singapore, South Africa and standards obtainable internationally in other countries with similar challenges.
Nigeria need a law governing the recovery and managing of the proceeds of crime for the following reasons:

a) Crimes are committed for profit such that asset deprivation attacks criminality: Research has shown that most crimes are committed for profit such that asset deprivation attacks criminality through this profit motive.

b) Absence of a comprehensive legal framework to deal with recovery and management of assets: At the moment, the law on the recovery and management of proceeds of crimes in Nigeria are fragmented in some existing legislations including the Economic and Financial Crimes Commission (Establishment) Act, 2004, the Independent Corrupt Practices Offences and Other Related Matters Act, 2000, the National Drug Law Enforcement Agency Act, 2004, the National Agency for the Prohibition of Traffic in Persons Act, 2003, etc.

c) Wholesale theft and corruption threatens the future of the Nation: A new way of asset recovery and management is required to effectively demonstrate that crime does not pay and that whole sale theft and corrupt practices threatens the fabrics of the nation with avoidable security implications.

d) The effect of proceeds of unlawful activity on the economy

The effect of proceeds of unlawful activity on the economy can be destructive. As proceeds of crime filter into the legitimate economy, distortions appear and confidence in a fair and effective criminal justice system is undermined; criminals become role models and more money is available for reinvestment in the business of crime.

e) Following the asset trail may prove impossible in the absence of a comprehensive legal mechanism. It is cliché that money is the lifeblood of crime; thus, it is the duty of investigators to follow the asset trail. According to the Stolen Asset Recovery (STAR)

> Initiative by the World Bank and the United Nations Office on Drugs and Crime, developing countries lose between $20 billion and $40 billion each year to bribery, embezzlement and other corrupt practices. The STAR Initiative notes that over the past 15 years only $5 billion has been recovered and returned. This minute fraction of recovered sums over actual amounts lost shows the importance of wholesome and practical measures to recover the proceeds crime.

This Bill was passed by the 7th National Assembly but was not accented to. The passage of the Bill was required to beat the deadlines of the FATF and GIABA towards the exit of Nigeria from watch list. This was not to be as a negative public statement was issued against Nigeria because the Bill was not passed by the time of the Mutual Evaluation exercise, held in June 2017. Without the passage of this Bill, Nigeria may not clinch the membership of the FATF. The passage of this Bill is awaited by the International Community to enable the return of proceeds of crime to Nigeria.

In the absence of requisite Presidential accent, the Bill was updated and forwarded to the President for onward transmission to the National Assembly. A 2017 version of the Bill is currently before the National Assembly.

5.2 THE MONEY LAUNDERING (PREVENTION AND PROHIBITION) BILL

The purpose of the Money Laundering (Prevention and Prohibition) Bill, 2016 is to repeal the Money Laundering

(Prohibition) Act, 2011 (as amended) and to make adequate provisions to prohibit the laundering of the proceed of criminal activities, expand the scope of money laundering offences, provide protection for employees of various institutions, bodies and professions who may discover money laundering, enhance customer due diligence, provide appropriate penalties and expand the scope of supervisory bodies while recognizing the role of certain self-regulatory organizations to address the challenges faced in the implementation of a comprehensive anti-money laundering and terrorism financing regime in Nigeria.

In 2011, the National Assembly enacted the Money Laundering (Prohibition) Act, 2011 which repealed the Money Laundering (Prohibition) Act, 2004. The purpose of the Act is inter alia to prohibit money laundering and terrorism financing and to expand the scope of regulatory authorities to deal with money laundering and terrorism financing challenges.

The Act was agreeably a remarkable improvement on the Money Laundering Act, 2004, and brought about a new regime in Nigeria's Anti – Money Laundering and Combating the Financing of Terrorism.

Shortly afterwards, the Federal Ministry of Justice in collaboration with the Presidential Committee on FATF forwarded a Bill to amend the 2011 Act, which incorporated some of the major FATF and GIABA recommendations. The Bill was eventually enacted into

Law as the Money Laundering (Prohibition) (Amendment) Act, 2012. The amendment Act expanded the scope of money laundering predicate offences and made copious provisions for enhanced customer due diligence measures in a bid to bring the country's money laundering regime in conformity with international best practices.

By all standards, it is believed that Nigeria is a country of strategic importance in the promotion and enforcement of the FATF Standards, Nigeria's application for the membership of FATF is under consideration by the World Body. Nigeria is also a pioneer and an active member of GIABA. Being a founding and the highest financial contributor to GIABA and ECOWAS, Nigeria is committed to the implementation of FATF standards.

The Bill is to provide for an effective and comprehensive legal and institutional framework for the prevention, prohibition, detection, prosecution and punishment of money laundering and other related offences in Nigeria. Nigeria has continued to address identified legal deficiencies in the Anti Money Laundering and Combating of the Financing of Terrorism (AML/CFT) legal regime to ensure a hitch free admission into the membership of the FATF. The effectiveness of this legal regime will be tested during the fast approaching GIABA. The Money Laundering Bill 2017 incorporating the NFIC Bill is currently before the National Assembly.

5.3 THE MUTUAL ASSISTANCE IN CRIMINAL MATTERS BILL, 2017

The purpose of the Mutual Assistance in Criminal Matters Bill, 2017 ("the Bill") is to facilitate the provision and obtaining by Nigeria of mutual assistance in criminal matters to and from foreign States. The term "mutual assistance" means to give or receive any cooperation necessary for the investigation or trial of a criminal case between Nigeria and a foreign country. The Bill recognizes and makes provision for mutual assistance in the investigation of cases where a person or object is, presentation of documents and records, service of documents, gathering of evidence, seizure, search and verification, delivery of objects, such as evidence, the hearing of statements and other measures to make any person testify or cooperate with the investigation in the requesting country.

The existing legislation on the subject matter known as the Mutual Legal Assistance in Criminal Matters in the Commonwealth, (Enactment and Enforcement) Act, 2004 has limited application to Commonwealth countries. This enactment has never served the wider needs of Nigeria for mutual cooperation and collaboration globally especially in the area of criminal matters.

Apart from the said legislation, there is currently no specific law to address the broad spectrum of criminal matters that require mutual legal assistance or international co-operation. It is as a result of the apparent limitations in this enabling legislation that Nigeria has had

to enter into bilateral agreements with countries outside the Commonwealth for the purpose of mutual legal assistance in criminal matters as an interim measure.

One of the recurrent issues in criminal law in Nigeria is the problem of massive corruption, especially money laundering. Evidence has shown that in most cases, the looted funds are taken outside the country to the detriment of Nigeria. This poses two difficulties in relation to prosecution. Firstly, Nigeria finds it extremely difficult to prosecute perpetrators and when convictions are secured, Nigeria encounters difficulties in tracing looted funds for repatriation back to the country. The recovery of the Abacha loot is a case in point

This negatively impacts on government's efforts to stop the incidence of capital and resource flight from Nigeria. Unfortunately, the existing law is very limited in its scope. These shortcomings typified by the prevalence of corruption, mismanagement of public funds and money laundering by public officers necessitated the sponsoring of this bill by the executive. The bill is expected to reduce the menace of corruption when passed into law

The Bill will enable the effective prosecution of cross border crimes and will in no small measure assist in the reduction or elimination of offences with cross border dimension including terrorism and terrorist financing, money laundering, advance fee fraud, proliferation of weapons of mass destruction, cybercrime, war crimes, human trafficking, economic and financial crimes, drug

trafficking, smuggling, oil theft and other emerging predicate offences. The Bill will therefore promote cooperation for the prosecution of offenders across borders.

5.4 NIGERIAN FINANCIAL INTELLIGENCE CENTRE BILL, 2017

The Nigerian Financial Intelligence Centre Bill, 2017 is an Executive Bill. The Bill seeks to establish the NIGERIAN FINANCIAL INTELLIGENCE CENTRE as the central body in Nigeria responsible for requesting, receiving, analyzing and disseminating financial and other information to all law enforcement and security agencies and other relevant authorities. The Bill provides for the legal, institutional and regulatory framework to ensure transparency, effective and efficient management, administration and operation of the Nigerian Financial Intelligence Centre. It seeks to institutionalize best practices in financial intelligence management in Nigeria and to strengthen the existing system for combating money laundering and associated predicate offences, financing of terrorism and proliferation of weapons of mass destruction. The Bill also made adequate provisions for the Centre to exchange information with Financial Intelligence Institutions or similar bodies in other countries in matters relating to money laundering, terrorist financing activities and other predicate offences.

The Nigerian Financial Intelligence Centre Bill, 2015 is the outcome of a deliberate Federal Government Policy towards achieving high level compliance with

Recommendation 29 of the Financial Action Task Force (FATF) which required countries to establish Financial Intelligence Centre (FIU) which serves as a national centre for the receipt and analysis of suspicious transaction reports and other information relevant to money laundering, associated predicate offences and terrorist financing; and for the dissemination of the result of that analysis. This compliance is ideally very imperative towards the favourable consideration of Nigeria into the membership of the world body. In a letter Ref HAGF/FATF/2014/VOL.1/2 dated March 21st, 2014, Nigeria applied for the Membership of the FATF and pledged that the Country is working assiduously towards addressing deficiencies including the passage of this Bill to give the NFIU the requisite legal and institutional autonomy. Indeed, Nigeria's application to become a member of FATF is a demonstration of her commitment to be fully involved in FATF's efforts of establishing and maintaining an effective Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) regime in the world. These efforts are geared towards safeguarding the international financial system from money laundering and terrorist financing.

In October 2013, Nigeria had assured the World Body that it has the political will to pass this Bill and a handful of others and this assurance contributed to the removal of Nigeria from the FATF''s monitoring process. Further delay in the passage of this Bill may constitute a ground for public statement.

5.5 WHISTLE BLOWERS AND WITNESS PROTECTION, BILL

These Bills were passed by the 7th National Assembly but was not accented to. The passage of Bill is urgently required to meet the deadlines of the FATF and GIABA towards the exit of Nigeria from watch list.

5.5.1 WHISTLE BLOWERS BILL, 2017

The main objects of this Bill are to encourage and facilitate disclosure of wrongdoing in the public sector; regulate and ensure that a disclosure received from a whistle blower (in this Act referred to as "protected disclosure") is properly assessed, investigated and dealt with; ensure that appropriate consideration is given to the rights of whistle blowers; and afford protection from reprisals or other adverse consequences to whistle blowers.

5.5.2 WITNESS PROTECTION BILL, 2017

The main focus of the Bill is to provide for the due administration of justice in criminal and related proceedings and to ensure that trial of cases are not prejudiced by the unwillingness of witnesses to give evidence for fear of violence, serious injury or death. The Bill inter alia seeks to establish in Nigeria a legal and institutional framework for giving special protection to persons in possession of relevant information and who are likely to face risk of intimidation in the course of investigation or prosecution of cases in courts or tribunal, as the case may be.

The Whistle Blowers Bill, 2016 and The Witness Protection

Bill, 2017 have been reworked and merged. It has also been retransmitted to the National Assembly.

5.6 TERRORISM (PROHIBITION AND PREVENTION) BILL, 2017

This Bill seeks to repeal the Terrorism (Prevention) Act, 2011 and the Terrorism (Prevention) (Amendment) Act, 2013, and to enact the Terrorism (Prevention and Prohibition) Act, to provide for measures for the detection, prevention, combating and prohibition of acts of terrorism for the effective implementation of the international instruments on the Prevention and Combating of Terrorism and Suppression of the Financing of Terrorism. The Act establishes institutional framework, including the Nigeria Sanctions Committee for the implementation, coordination and enforcement of the provisions of the Act.

5.7 PETROLEUM INDUSTRY BILL

The Petroleum Industry Bill 9PIB) which provides for massive reforms in the Oil and Gas sector is key to the implementation of OGP in Nigeria when passed considering the fact that the nation's budget is yearly funded by 70 per cent oil exports which accounts for 90 per cent of the nation's total foreign exchange earnings.

The Petroleum Industry Bill was first introduced to the sixth national assembly during the tenure of late President Umaru Yar'Adua (2007-2010). It was represented by Goodluck Ebele Jonathan administration during the seventh assembly (2011-2015). The House of Representatives passed it at its valedictory session on 4th June 2015 but there was no concurrence from the Senate

and it was not signed into law. It has been re-introduced into the 8th national assembly as Petroleum Industry Governance Bill. The Petroleum Industry Bill (PIB) was formulated to bring under one law the various legislative, regulatory and fiscal policies, instruments and institutions that govern the Nigerian Petroleum Industry. The bill was expected to establish and clarify the rules, procedures and institutions that will entrench good governance, transparency and accountability in the oil and gas sector. The bill proposed the introduction of new operational and fiscal terms for revenue management to enable the Nigerian government to retain a higher proportion of the revenues derived from operations in the petroleum industry.

A new bill, the Petroleum Industry Governance Bill (PIGB) 2016 was presented on the floor of the Senate on 13th April 2016. The bill, according to Otive Igbuzor (2016) addresses only the institutional and governance structure of the petroleum industry. The Petroleum Industry Governance Bill (PIGB) is different from previous versions of the PIB in many ways. For instance, previous versions of the PIB created several agencies to regulate the technical and commercial aspects of the petroleum value chain: upstream, midstream and downstream but the PIBG seeks to create one strong regulatory body responsible for both technical and commercial aspects of industry regulation. The regulatory body to be known as Nigeria Petroleum Regulatory Commission is expected to take over the rights, interests, obligations and liabilities of the Petroleum Inspectorate, the department of Petroleum Resources

(DPR) and Petroleum Products Pricing Regulatory Agency (PPPRA). In addition, the PIGB is different from previous bills in relation to the power of the Minister in three respects. First, it removes the Ministers advisory and approval role before the President can appoint board of various agencies. Second, it removes the power of the Minister to make regulations and vests the power on the regulatory commission. Third, the power of the Minister to issue licenses and leases is now based on the recommendation of the commission. Moreover, unlike the previous versions, the PIGB does not address all the issues relating to petroleum regulation. Rather, it deals with institutional and governance structure of the petroleum industry. The objectives of the bill are to:

create efficient and effective governing institutions with clear and separate roles for the petroleum industry;

establish a framework for the creation of commercially oriented and profit driven petroleum entities that ensures value addition and internationalization of the petroleum industry;

promote transparency and accountability in the administration of the petroleum resources of Nigeria; and

foster a conducive business environment for petroleum industry operations. The bill deals with issues affecting ministerial powers, industry regulation, NNPC restructuring and establishment of commercial entities. This Bill has been passed by the Senate and awaiting concurrence by the House of Representatives.

As stated earlier and despite its laudable objectives, the PIB has endured an extended period of legislative delay since 2008 due a number of contentious issues.

These include the host community clause (10.0% Petroleum Host Community Fund), unfavorable fiscal regime (as claimed by the IOCs) and the enormous amount of power vested in the Minister.

To address these issues and ease passage, the Buhari administration broke down the provisions of the PIB into parts in 2016. Some of the known parts currently before the National Assembly include;

- The Petroleum Industry Governance Bill
- The Petroleum Industry Fiscal Bill
- The Host Community Development Bill

It must be noted that the PIGB is seen as the low hanging fruit bit of the various parts of the comprehensive PIB.

6.0 OPEN GOVERNMENT PARTNERSHIP IMPLEMENTATION LAWS AND POLICIES FROM OTHER CLIMES

Andy McDevitt and Jose Marin (2016), in their policy brief published by Transparency International captured an array of anti-corruption laws and policies from other climes that could be of immense learning benefit to Nigeria OGP implementation:

Below the duo present a selection of commitments from OGP action plans and beyond as an illustration of what

governments can achieve with high levels of ambition. It draws on the Independent Reporting Mechanism (IRM) evaluations of OGP commitments as well as submissions from TI National Chapters. It also includes examples of national level initiatives beyond the framework of the OGP.

Defining what constitutes an ambitious commitment, according to Andy McDevitt and Jose Marin is challenging in the absence of a broader analysis of the national context in which each commitment is being implemented and given the limited information on many cases. Nevertheless, criteria for inclusion included: (i) receiving a star rating from the IRM and/or; (ii) being recommended by TI National Chapters; and/or (iii) being considered unique/cutting edge and/or; (iv) aligning with current international policy discussions on anticorruption.

6.1 STRENGTHENING ANTI-CORRUPTION FRAMEWORKS

In 2015 the Mexican Supreme Audit Institution was significantly strengthened thanks to constitutional amendments enabling it to conduct audits throughout the fiscal year, audit federal resources transferred to sub-national entities, investigate public officials, and propose sanctions to the administrative court. Meanwhile a group of civil society actors in Mexico has drafted a legislative bill proposing a number of additional 'innovative' anti-corruption features. These include: (a) the creation of a national public registry of sanctioned public servants to be consulted during all public-sector selection or hiring

processes; (b) a mechanism to share recovered assets with whistleblowers; (c) a system that allows legal entities to self-report cases of corruption in exchange for reduced sanctions; and (d) a process to allow the complainant/accuser to be kept informed about the case and to contest decisions. This was a non-OGP initiative but currently helping to support the implementation of OGP in Mexico.

In the United Kingdom, as part of its second OGP national action plan, the government brought together all of the UK's anticorruption efforts under one cross government anticorruption plan. This led to the creation of an anti-corruption unit in the Cabinet office and to sustained interagency coordination and communication on anti-corruption issues, linking up above all the domestic and international aspects of anticorruption policy. This coordination of anticorruption was supported by increased interface with civil society, which promoted the agenda. The UK maintains complete OGP status.

In Slovania, the Integrity and Prevention of Corruption Act from 2010 made provision for asset declarations to be chosen for content verification through a random selection process to identify which cases reveal a disproportionate increase in wealth or a discrepancy between the contents of the declarations and information contained in external registries. In 2009, 33 percent of all declarations were selected to undergo verification. Also, to ensure contract transparency, many countries adopted the Open Contract Data Standards (OCDS). It was developed by the Open

Contracting Partnership enables disclosure of data and documents at all stages of the contracting process through a common data model. To date, the following countries have made commitments to adopt the standard: Canada, Colombia, Mexico, Paraguay, Romania, Moldova, UK, Ukraine, Vietnam and Zambia. Meanwhile, Slovakia's new procurement regulation requires all public contracts, with only limited exceptions, to be published online. To avoid secret contracts, any unpublished contracts are declared unenforceable. Interestingly too, this is a non-OGP initiative supporting OGP in the listed implementing countries.

In similar manner, the G20 AntiCorruption Working Group (ACWG) established open data as a priority measure to tackle corruption. Accordingly, they developed the G20 Open Data Principles as a first step to leverage open data in enabling a culture of transparency and accountability to prevent corruption. In the same vein, TI UK along with other partners are currently exploring the best ways open data can be used to fight corruption. Both initiatives provide a platform for countries to develop anti-corruption open data commitments.

6.2 CONTROLLING BUREAUCRATIC CORRUPTION

In the area of citizens over sighting public administration, the Government of Colombia implementing OGP has committed to establish an anticorruption observatory to analyze government information on corruption prevention activities, administrative management, and

complaints handling. It should be noted that, according to the IRM report, it is not clear whether citizens or CSOs with anticorruption experience are allowed to play an active role in the observatory.

The Government of Albania has established a standardized procedure for citizens to report corruption through a single portal. Through the portal, which was launched in February 2015, citizens may choose to disclose their identity or submit claims anonymously. Complainants can trace progress of their report submitted at the portal, provided they are not anonymous. The number of reports reached close to 7,000 entries by the end of June 2015. However, there is limited information on the outcome of the reported cases and it has been suggested that the lack of information on concrete measures taken as a result of complaints may lead to public apathy and mistrust in the new system. Albania is at substantial completion stage of OGP implementation.

6.3 CONTROLLING POLITICAL CORRUPTION

Ireland with a limited completion status of OGP has committed to introducing a 'legislative footprint' in relation to current legislative initiatives, to be published on each Department's website, including details of general schemes, consultations, draft Bills, prelegislative scrutiny by Committees, submissions received, and meetings held with stakeholders, etc. The legislative footprint allows civil society and others to better track and monitor the real level of influence of lobbyists on the decisions that are taken by democratically elected representatives. From the civil

society side, TI EU and TI France are advocating for introducing legislative footprints in EU Institutions and in France respectively, and have created online monitoring tools to bring this information to a wider public.

Japan has an interesting non-OGP initiative which represents an example of a country which drastically changed its political finance regime in response to public pressure to tackle corruption. The introduction of public subsidies, stricter disclosure requirements and increased contribution and spending limits have strengthened political competition, cut electoral costs, and produced more party centered campaigns.

Another non-OGP initiative that can support OGP implementation in Nigeria is Brazil's eDemocracia platform, launched in 2009, allows citizens to interact with lawmakers on specific issues. Citizens can use the portal to markup legislation and propose and debate solutions to policy problems. The wiki legislation feature (wikilegis) allows citizens to track and comment on pending legislation, including anticorruption legislation, article by article. Citizens can also suggest specific new text to be incorporated. The platform has facilitated crosscountry dialogue among disparate groups and has thousands of active users. It has also improved legislative transparency.

6.4 CONTROLLING PRIVATE SECTOR CORRUPTION

The government of Norway has put forward a bill on

countrybycountry reporting to the parliament. Country-bycountry reporting differs from standard financial reporting as it presents financial information for every country that a company operates in, rather than a single set of information at a global level. Reporting, for example, taxes, royalties and bonuses that a multinational company pays to a host government makes it easier to spot irregular activity including cases of corruption and bribery. Norway has complete OGP status and EU countries are considering extending country-by-country reporting to all sectors.

Increasing beneficial ownership in the UK with a substantial completion status of OGP is yet another interesting learning. The use of shell companies to hide the identity of their true owners makes it easier for criminal networks and the corrupt to hide and launder illicit money. Public registers of beneficial ownership allow such ill-gotten gains to be more easily traced and make it more difficult and less attractive for people to benefit from the proceeds of corruption and crime. To this end, the UK government has committed to creating a publicly accessible central registry of company beneficial ownership information, containing information about who ultimately owns and controls UK companies. One limitation of the initiative is that it only covers domestic law and not the beneficial ownership standards for legal entities and trusts incorporated in the British Overseas Territories and Crown Dependencies.

The regulation of private-private bribery initiative in Italy is another interesting non-OGP initiative that can help

strengthen OGP implementation. In 2013, Italy enacted a new anticorruption law that introduced a new offence of private corruption. The new law includes individual liability, including for those who do not have managerial roles. It also allows for corporate liability in cases where a company has not adopted adequate preventive measures in its corporate compliance structures. It remains to be seen how the law will be implemented in practice. As of 2013, (the latest date for which information was available) only one case had been adjudicated.

6.5 CONTROLLING CROSS BORDER CORRUPTION

Despite the inherent challenges involved, asset recovery can have an important development impact when returns are used for development purposes. Asset recovery also helps to deter corruption by showing that corrupt officials can be deprived of their illicit gains. Switzerland, the United States, and the United Kingdom are three examples of countries that have developed highlevel policies, a wide range of asset recovery tools, and dedicated teams working on asset recovery cases. The Kleptocracy Initiative in the USA, for example, has achieved some notable wins including a recent settlement in which Teodoro Obiang, the son of the President of Equatorial Guinea was ordered to give $30 million from the sale of his American assets to a charity to benefit the people of Equatorial Guinea.

The USA with a limited member status of OGP has committed to launching an interagency process to explore ways to strengthen efforts to deny safe haven to corrupt individuals. These efforts include the possibility of strengthening the Presidential Proclamation that denies

safe haven in the USA to those who have committed, participated in, or were beneficiaries of, corrupt practices in performing public functions.

6.6 STRENGTHENING LAW ENFORCEMENT AND JUDICIARY

The Brazilian government has committed to strengthen procedures for preliminary investigation and information gathering as well as to increase the number of attorneys assigned to deal exclusively with cases related to corruption and public asset recovery. It should be noted that the IRM suggests minor potential impact, because the activity focuses on expanding government practices already underway.

The Ukrainian Government has committed to developing, with the involvement of members of the public, methodological recommendations on the identification of corruption risks in judicial officials' work and on ways to counteract them. This risk based approach to anti-corruption is a good practice that has not been used in the Ukrainian public sector to date. However, it is not clear the extent to which civil society was actually involved in the development of the methodology. Ukraine has substantial completion status of OGP.

Georgia is working toward judicial transparency. As part of its draft OGP commitments for 20162017, the Government of Georgia is planning to develop a unified standard for common court decisions, and to elaborate a methodology, criteria and standards for the reasoning of

court decisions. This is a positive step in the light of the Ombudsman's criticisms of the persistent problem of judges' failure to provide reasoned evidence and legal analysis behind their decisions. The need to clearly and publicly explain decisions is particularly important in corruption cases given the heightened risk of political interference often associated with cases.

6.7.1 OPEN CONTRACTING GLOBAL PRINCIPLES

Open Contracting thrives on a set of global principles which all OGP participating countries must adhere to. These Principles reflect the belief that increased disclosure and participation in public contracting will have the effects of making contracting more competitive and fair, improving contract performance, and securing development outcomes.

Mokuolu Adesina (2017) notes that while recognizing that legitimate needs for confidentiality may justify exemptions in exceptional circumstances, these Principles are intended to guide governments and other stakeholders to affirmatively disclose documents and information related to public contracting in a manner that enables meaningful understanding, effective monitoring, efficient performance, and accountability for outcomes.
These Principles are to be adapted to sector-specific and local contexts and are complementary to sector-based transparency initiatives and global open government movements.

7.0 PERSPECTIVES OF CITIZENS AND GOVERNMENT ON NAP IMPLEMENTATION USING WORKING GROUPS

In line with the directives of President Muhammadu Buhari, the OGP National Steering Committee (NSC) was constituted, with the Federal Ministry of Justice as the Coordinating Ministry and Co-chair. As the OGP process requires 50 percent civil society participation, a co-chair was also nominated by the Civil Society Organizations. The NSC have two incoming co-chairs, one each from Government and non-state actors in line with best practices. The NSC is currently made up of representatives of Government Ministries, Agencies, Departments (MDAs) as well as civil society organizations, organized private sector and professional associations who worked together to co-create the 30-month (Jan 2017 - June 2019) National Action Plan (NAP). The NAP aims to deepen and mainstream transparency mechanisms and citizens' engagement in the management of public resources across all sectors.

Through a consultative process between government and civil society, the NSC agreed to consolidate existing and new reforms within four thematic areas in this NAP. The thematic areas are: (1) promoting fiscal transparency; (2) access to information; (3) anti-corruption and asset disclosure; and, (4) citizen engagement and empowerment.

The participating 42 MDAs and CSOs were further constituted into working groups, their activities are still sketchy in the public domain.

For Abubakar Malami, the Honourable Attorney-General and Minister of Justice "Under the citizen's engagement thematic area, the NAP is expected to lead to the development of a permanent dialogue mechanism between citizens and government; review of legislation around transparency and accountability issues; and the adoption of a technology-based citizens' feedback on projects and programs. The last two commitments are aimed at improving access to information by increasing compliance with the Freedom of Information Act.

"Beyond the commitments, the NAP also took into consideration crosscutting issues that will empower citizens to engage with the government and ensure proper dissemination and management of information. The crosscutting issues are: (i) Technology and Innovation; (ii) Monitoring and Evaluation; and (iii) Communication Strategy for the NAP. To ensure effective deployment of these tools across all the thematic areas, three working groups have been set up to develop implementation strategies and to articulate action plans (set out in Section 6), to support the work of these groups.

"Enacting the right laws and having the best regulations in place will not be enough to achieve the visions of the Nigerian Government. It is hoped that through the OGP process, these laws, regulations and systems will be robustly implemented across MDAs in a concerted effort supported by the NSC. It is hoped that the full implementation of the NAP over 30 months (January 2017 - June 2019) will improve on the existing initiatives of the

Nigerian government, by strengthening ongoing reform and empowering public servants and citizens."

The working groups have developed one-work plan from the two-year action plan and all stakeholders are currently working to implement the action plan. According to Adesina Moloku," the Technology and Innovation working group has advanced work on the development of an open contracting portal tagged NOCOPO which has been completed with both government and CSOs and private sector input. It contains page for Citizens engagement in the process. When launched all MDAs are expected to use this portal for all contracts and procurements. It will provide beneficial owners of companies that execute such contracts and citizens can use such information to hold government to account."

"The NOCOP needs to be further developed in a way and manner to ensure that citizens who do not have formal education are also carried along to be able to use the platform by way of non-formal training on its use," says Benson Attah, National Coordinator of Society for Water and Sanitation, (NEWSAN)
Chair of the group and Executive Director of ANEEJ, Rev. David Ugolors says: "The anti-corruption working group has made much progress in its work. We have made some substantial recommendations for the review of mechanisms for assets forfeiture and management. We have also made some progress in the reform of anti-corruption laws to bring it up to date with expectations of the OGP. The Proceeds of Crime Bill, Mutual Legal

Assistance in Criminal Matters Bill 2017, and Money Laundering Bill 2017 have been developed by the Ministry of Justice with inputs from all stakeholders and are currently before the National Assembly for passage into law."

Otive Igbuzor (2017) posits that research and experience show that the programmes to achieve open government principles must be carefully planned and implemented otherwise the required results will not be achieved. Igbuzor emphasized the need to focus on both tactical and strategic approaches in the implementation of OGP in Nigeria. "Tactical approaches are bounded, localized and information led while strategic approaches bolster enabling environment for collective action, scale up citizen engagement beyond the local arena and attempt to bolster governmental capacity to respond to voice."

'The OGP Platform offers CSOs the opportunity to engage with the government officials in a more systematic fashion and enables CSOs to contribute their ideas for the reform of many aspects of our laws for the benefit of the people".
Edetaen Ojo, OGP Nigeria Co-Chair.

8.0 RECOMMENDATIONS FOR A ROBUST LEGISLATIVE ENVIRONMENT FRAMEWORK TO SUPPORT THE IMPLEMENTATION OF THE OGP PROCESS

In respect of the fight against corruption in Nigeria, it is commendable to note that the review and presentation of a national anti-corruption strategy is one of the fulfilled campaign promises made by the Muhammadu Buhari administration. It is equally on record that the present administration has made significant attempts to confront the problem of corruption in Nigeria, among which is the launching of National Action Plan with one of the thematic areas being anti-corruption fight. However, for the anti-corruption strategy to succeed, it is necessary for all stakeholders to ensure that the action plan is religiously implemented with integrity. This cannot be achieved if anti-corruption laws are not properly positioned to attain the set goals. In addition to suggestions for the speedy passage of some bills relevant to the fight against corruption and OGP implementation in 5.1-5.6 above, the following recommendations are needed for a robust legislative environment framework.

1. Attitudinal Change: The aim and objectives of anti-corruption laws in Nigeria is to ensure that very high standard of morality is maintained in the conduct of government business and to ensure that the actions and behaviour of public officers conform to the highest standards of public morality and accountability. To achieve a corruption free society, there is need for

attitudinal change and change in orientation by public officers and every citizen of Nigeria. This is in line with the "change begins with me" mantra which is being championed by the federal government of Nigeria. Every well-meaning Nigerian must live and lead by example by eschewing corruption and all its ancillary practices. This is a very sure way of assuring a better future for present and future generations of Nigerians.

2. Constitutional Amendment. In light of the foregoing consciousness, it is recommended that the ongoing constitutional amendment process in Nigeria be utilized to ensure that grey areas in the Constitution, relating to corruption, are refined to promote the anti-corruption plan in the country. To this end, activities and information at the disposal of government agencies must be made more transparent and public officials at all levels made accountable to the people through a regular and easily accessible audit system.

Much more, section 308 of the 1999 Constitution which guarantees immunity from prosecution for our President, Vice President, Governors and their Deputies, even on account of criminal charges, should be amended to enable their prosecution on criminal matters such as corruption, if we are serious about the fight against corruption.

Section 162 (6) of the 1999 Constitution provides for a State Joint Local Government Account and vests on States the power to manage such Account. This section should be expunged, and full autonomy given to Local Government

Councils to enable them to be more accountable to incomes and expenditures at the third tier of government while State Governments would have to focus on their affairs and account to citizens at the second tier of government.

3. Strengthening Existing Anti-Corruption Agencies. Again, the activities of the EFCC, ICPC and other anti-corruption agencies in Nigeria appear to be concentrated at the federal level. This will work against the swift actualization of the nation's anti-corruption objectives. There is need to extend and strengthen the work of the anti-corruption agencies at the states and local government areas. The concentration of powers in the federal government under the exclusive legislative list of the extant 1999 constitution of the federal republic of Nigeria is not helpful. There is need to amend the constitution by unbundling the enormous legislative powers given to the center at the

expense of the federating units. This move must be supported by increase in revenue allocations to the states and local governments to enable these other tiers of government effectively execute their additional responsibilities.

4. Effective Domestication of UNCAC and Enforcement of Section 12 of 1999 Constitution. The National Assembly should urgently invoke the provision in section 12 of the 1999 Constitution of the Federal Republic of Nigeria and domesticate the United Nations Convention against Corruption (UNCAC), which Nigeria voluntarily signed in

2003, and the African Union Convention on Preventing and Combating of Corruption 2003. If this is done, it will significantly boost the fight against corruption in Nigeria, discourage the culture of impunity, enhance civic participation in governance and increase the confidence of the people in government.

5. Citizens' Participation in Legislative and Budgetary processes. Steps should be taken to boost the involvement of the citizens in legislative processes both at the federal and regional (state and local government) levels. In this era of technology, it is not a tenable excuse that everybody cannot approach the federal capital territory to participate in legislative process or attend public hearing. Special and simplified portals or electronic gateways should be designed to enable citizens all over the country interact with legislators at every point in time. This strategy is used in other climes like Brazil. The problem of power supply and other ancillary issues must however be addressed in order for this recommendation to achieve result. Power is a vital infrastructure or basic amenity needed for fighting corruption.

Also, one of the OGP commitments of the Federal Government is Citizens' budget. The country's budget cycle and process should be reviewed to accommodate effective citizens' participation.

6. Public Registers of beneficial owners of companies. As it is obtainable in other climes, public registers of beneficial owners of companies should be created to allow fraudulently acquired resources to be traced with ease.

This will make it more difficult and less attractive for people to benefit from the proceeds of crime and corruption. The use of shell companies to hide the identity of true owners of companies makes it attractive for corrupt public officials to conceal and launder illicit wealth. The NEITI is said to be developing a register of beneficial owners of all companies operating in the Nigerian extractive industry. It is hoped that the opaqueness and secrecy hitherto associated with the oil sector, which presently sustains the Nigerian economy, will be removed when the register is made available for public consumption as it is obtainable in the United Kingdom. Other institutions or public agencies like the Corporate Affairs Commission (CAC) are equally encouraged to develop register of beneficial owners to enhance openness and reduce corrupt tendencies in the management of public resources.

7. Development and Enforcement of Code of Conduct for staff public and private organizations. Public and private organizations should put in place professional codes of conduct to regulate activities of staff and take timely steps to reward hardworking staff with integrity, while corrupt and indolent members of staff are disciplined in a fair process. This will encourage industry and integrity while discouraging corruption and dubious practices.

8. Amendment of CP Act. Section 27 of CP Act 2000 only invokes the powers of the ICPC to investigate information or petitions that it receives in writing. This means that complaints about corrupt activities made viva voce (orally)

cannot be acted upon by the Commission. In a nation where very many people are not literate and are poor, the ordinary Nigerian who cannot transmit written petition to the Commission or possess the financial wherewithal to communicate his or her complaints to the offices of the ICPC cannot participate in the fight against corruption, even though he/she possesses the most reliable evidence to bring a corrupt individual to justice. There is the need to amend the CP Act (if EFCC and ICPC are not merged) to make it easier for all Nigerians to participate in the fight against corruption, irrespective of their level of education or social status in Nigeria.

9. Review of Current Assets forfeiture and Management mechanisms. For the purposes of assets forfeiture and management, the following recommendations are direly needed:

a. There should be transparency in the management of assets; law enforcement agencies should proactively disclose to members of the public the position of all assets under their custody.
b. Laws of the various law enforcement agencies should be strengthened on asset management.
c. There is a need to push for the passage of Proceeds of Crime Bill.
d. The Chief Justice of the Nigeria (CJN) should as a matter of urgency put in place guidelines for judges on pronouncement when granting forfeitures.
e. Members of the judiciary need to be sensitized on the issue of asset seizure and management in the country.

f. The government should put in place mechanism that shall allow for the forfeited assets to be used for the good of the people. It is not enough to have recovered asset or monies stashed in the CBN, they should be routed into conspicuous projects/programmes in the society following appropriation by the National Assembly to shame looters and further deter criminally minded elements.

g. Law enforcement agencies having the problem of absconded defendants should use laws of other agencies for example Section 17 of the Advance Fee Fraud Act 2006 to deal with the situation.

h. There should be a guideline on how to manage perishable goods like petroleum on how they should be managed in the interim.

i. There should be Property Verification Number for all properties in Nigeria, just like the BVN, it will help in the easy identification of persons who own assets in the country.

Ultimately, it is hoped that sincere adherence to the OGP process in Nigeria would help to influence the review and implementation of anti-corruption laws in Nigeria. This will go a long way to strengthen the anti-corruption agenda of the Nigerian government.

About Centre LSD

AFRICAN CENTRE FOR LEADERSHIP, STRATEGY & DEVELOPMENT

AFRICAN CENTRE FOR LEADERSHIP, STRATEGY AND DEVELOPMENT (CENTRE LSD)

…Building Strategy Leadership for Sustainable Development in Africa.

The African Centre for Leadership, Strategy and Development (Centre LSD) is a non – profit, non – governmental organization established under Nigerian laws to build strategic leadership for sustainable development in Africa.

The African continent is very rich and diverse. There are abundant human and natural resources in the continent. But the continent has the worst development indices in the world: maternal mortality, infant mortality, literacy rate, HIV/AIDS prevalence, poverty rate, life expectancy etc. More than half of the populations of African people are living in abject poverty. Most country in Sub-Sahara Africa are unlikely to achieve the modest Millennium Development Goals (MDGs) adopted by world leaders at the UN Millennium Declaration in 2000. Many African countries continue to suffer food shortages. Some countries are in conflict. We have experienced democratic reversals in some countries with the military coming into power in Guinea Bissau. All of these make the development of Africa a huge challenge. The continents to grapple with the developmental challenges have been complicated by its colonial history, globalization, leadership failures and adoption of development approaches that have been proved to be inadequate.

The importance of leadership for the success of organizations and nations cannot be overemphasized. Some scholars have pointed out that everything rises and falls on leadership. Despite this recognition, there is scarcity of leaders all over the world. There is a saying that the world is filled with followers, supervisors and managers but very few leaders. There are four kinds of people in the world: those who watch things happen; those who let things happen; those who ask what happen and those who make things happen. Leaders are those who make things happen. A visionless, insecure and incompetent leadership is a killer of organization and nations.

Similarly, strategy is very crucial to the development and performance of any organization or nation. Strategy occupies a central position in the focus and proper functioning of any organization or nation. This is because it is a plan that integrates an organization or nation's major goals, policies and actions into a cohesive whole. A well formulated strategy should therefore help to marshal and allocate an organization or nation's resources into a unique and viable posture based on its relative internal competencies and shortcomings, anticipated changes in the environment, and contingent moves by others. Strategies help to create a sense of politics, purpose and priorities.

A dynamic and visionary leadership combines with appropriate strategy process will produce a correct development approach that will lead to the prosperity and

development of Africa. Centre LSD is poised to contributing to the transformation of Africa through building dynamic and visionary leadership and proposing appropriate strategies and development approaches.

The major focus of work will be in the giant of Africa Nigeria but the centre will work across Africa with a Pan-African perspective with partners in all the sub-regions in Africa. The Centre's strategy, programme and actions will focus on Africa with the operations being run from Nigeria partnering with organizations across Africa. Centre LSD is registered with Corporate Affairs Commission as an NGO in Nigeria.

CENTRE LSD'S VISION

The vision of Centre LSD is an African society with strategic leadership and sustainable development.

CENTRE'S LSD MISSION

The Centre's mission is to work with forces of positive change to empower citizens to transform society.

Centre LSD's Values

The Centre is guided by the following values:

Transparency and accountability
Integrity
Transformative change
Feminism
Diversity
Dignity of the human person
Pan-Africanism

The objectives of the centre include:

1. To promote ideas, policies and actions that will lead to transformative change in Africa.
2. To promote leader development (expanding the capacity of individuals for effective leadership roles and processes) and leadership development (expansion of organizations' capacity to enact basic leadership tasks including setting direction, creating alignment and maintaining commitment).
3. To develop the capacity for strategic thinking, formulation, implantation and evaluation.
4. To promote human centre and sustainable development with special focus on Governance, Human Centre Development and Environment.
5. To collaborate with individuals, organizations, networks, coalitions and movements that will help in achieving the Centre's objectives

OPERATIONAL APPROACH

The centre carries out its programmes through the following methods:

Research

Think Thank

Capacity Building

Advocacy and Campaign

PROGRAMMATIC APPROACH

The Centre's programme is built on the principles of catalytic partnership and rights based approach.

The programme conception, design, implementation and evaluation are built around four principles:

1. Dynamic and visionary leadership
2. Appropriate strategy
3. Relevant development approaches including the promotion of women's right, citizen participation, ownership, pro-poor orientation and focus on the next generation of youth and children.
4. Building people and institutions.

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