

# RESEARCH REPORT

## Evaluating the Implementation of Open Contracting Commitment under the first National Action Plan (January 2017 – June 2019) of Nigeria's Open Government Partnership

*Prepared For*

African Centre for Leadership Strategy and Development

(Centre LSD)

by Tunde Salman

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## LIST OF ABBREVIATIONS

BPP	Bureau of Public Procurement
CPAR	Country Procurement Assessment Report
CSJ	Centre for Social Justice
CISLAC	Civil Society Legislative Advocacy Centre
CSOs	Civil Society Organisations
FOIA	Freedom of Information Act
NAP	National Action Plan
OCC	Open Contracting Commitments
OCDS	Open Contracting Data Standards
OGP	Open Government Partnership
PE	Procuring Entities
PFM	Public Finance Management
PPDC	Public Private Development Centre
PPA	Public Procurement Act
TAP	Transparency, Accountability and Participation

## **1.1 Introduction**

This research report is contextualized against the backdrop of implementation of open contracting (Commitment No. 2) under Nigeria's first National Action Plan (NAP I, January 2017 – June 2019) of the Open Government Partnership (OGP). The acceptance of open contracting commitment was seen as a clear strategy to deepen the implementation of public procurement reforms in Nigeria through the adoption of Open Contracting Data Standard as an innovative tool to increase procurement transparency and accountability. The theory of change was predicated on the assumption that if Nigeria effectively implements the open contracting commitment, corruption, and procurement related frauds will be significantly curtailed thereby guaranteeing increased competition and value for money in the public sector contracts award process.

## **1.2 Scope and Objective**

**The research scope is shaped by the following terms of reference:**

- i. Examine the level of implementation of the commitment and identify issues limiting its full implementation;
- ii. Review the Public Procurement Act 2007;
- iii. Identify all stakeholders' roles in the open contracting process and ascertain how well the stakeholders have played their roles;
- iv. Identify and analyze legal and regulatory frameworks for improving open procurement and contracting in line with global standards in public procurement operations; and
- v. Recommend measures to improve compliance by public institutions.

Thus, the research evaluates the level of implementation of commitment 2 of NAP I (January 2017 – June 2019) against set targets and performance indicators. It examines the extent of stakeholders' involvement; documents best practices and lessons learned for better implementation of NAP II.

## **1.3 Methodology**

The research layout commenced with a comprehensive desk review of relevant documents, followed by exploratory visits to key stakeholders: Bureau of Public Procurement (BPP), OGP National Secretariat, and selected civil society organisations (CSOs) to harvest views of ICT experts, civil society and public procurement and actors<sup>1</sup>. Lastly, a qualitative 'traffic light' scoring scale of Green (2), Yellow (1), and Red (0) were used to evaluate performance indicators linked to specific milestone activities.

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<sup>1</sup>The researcher also participated at a two-day Open Contracting Workshop organized by Media Rights Agenda and Public Private Development Centre at 3J Hotel, Jabi, Abuja from November 19 – 20, 2019 which availed him further opportunity to gain deeper perspectives on the subject matter.

**Table 1: Open Contracting Global Principles<sup>2</sup>**

Preamble	<ul style="list-style-type: none"> <li>• These Principles reflect the belief that increased disclosure and participation in public contracting will have the effects of making contracting more competitive and fairer, improving contract performance, and securing development outcomes.</li> <li>• 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.</li> </ul>
Affirmative Disclosure	<ol style="list-style-type: none"> <li>1. Governments shall recognize the right of the public to access information related to the formation, award, execution, performance, and completion of public contracts.</li> <li>2. Public contracting shall be conducted in a transparent and equitable manner, in accordance with publicly disclosed rules that explain the functioning of the process, including policies regarding disclosure.</li> <li>3. Governments shall require the timely, current, and routine publication of enough information about the formation, award, execution, performance, and completion of public contracts to enable the public, including media and civil society, to understand and monitor as a safeguard against inefficient, ineffective, or corrupt use of public resources.</li> </ol>
Participation, Monitoring & Oversight	<ol style="list-style-type: none"> <li>1. Governments shall recognize the right of the public to participate in the oversight of the formation, award, execution, performance, and completion of public contracts.</li> <li>2. Governments shall foster an enabling environment, which may include legislation, that recognizes, promotes, protects, and creates opportunities for public consultation and monitoring of public contracting, from the planning stage to the completion of contractual obligations.</li> <li>3. Governments shall work together with the private sector, donors, and civil society to build the capacities of all relevant stakeholders to understand, monitor, and improve public contracting and to create sustainable funding mechanisms to support participatory public contracting.</li> <li>4. Governments have a duty to ensure oversight authorities, including parliaments, audit institutions, and implementing agencies, to access and utilize disclosed information, acknowledge and act upon citizen feedback, and encourage dialogue and consultations between contracting parties and civil society organizations to improve the quality of contracting outcomes.</li> <li>5. With regard to individual contracts of significant impact, contracting parties should craft strategies for citizen consultation and engagement in the management of the contract.</li> </ol>

<sup>2</sup>For details, go to: <https://www.open-contracting.org/implement/global-principles/>

## 2.1 Open Contracting and Open Contracting Data Standards

The concept of open contracting describes a set of global principles aimed at improving procurement data disclosure and the importance of public participation in the contracting process<sup>3</sup>. It is predicated on the use of innovative technology to increase access to procurement information; delivering value for money, creating a more level playing field for business, reduce fraud and corruption, and improve service delivery. As a senior civil society commentator puts it succinctly:

Open contracting is done for overriding purposes and these include improvement of accountability, transparency, and popular participation; reduction of corruption and promoting integrity in the public procurement process; promotion of fairness, competition, and professionalism; improvement of service; improving the business environment, and using the feedback and lessons learned to improve the procurement system over time<sup>4</sup>.

Ultimately, open contracting revolves around the disclosure of key procurement documents about public contracts to stimulate improved accountability and engagement. On the other hand, open contracting data standards (OCDS) involve the publication of procurement data in open and structured formats that enable public use and reuse at the user's discretion. It is a schema to provide shareable, reusable open data on public contracting across the entire cycle of public procurement<sup>5</sup>. It provides access to contracting information as a basis for participation, feedback, and making informed contributions to the learning and improvement process.

Hence, OCDS entails information on procurement must be technically open (i.e., machine-readable, free of proprietary software requirements, etc) and legally open (i.e., published in the public domain or in line with copyleft principles)<sup>6</sup>. It is not designed as a 'pass or fail' system for compliance but to provide guidance; "first publish what you can, and then improve the amount and quality of data that you publish", promoting dynamic updates rather than a 'publish and forget' approach.

OCDS is mostly designed with data interoperability to allow reusable tools to be built to drive participation. It is often designed around four distinct use cases to meet a broad spectrum of user needs: value for money, detecting fraud and corruption, competing for contracts, and monitoring service delivery, and improving internal efficiency. It ensures

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<sup>3</sup><https://www.open-contracting.org/wp-content/uploads/2016/12/OC-HivosArticle19-synthesisreport-1.pdf>

<sup>4</sup>Onyepkere, Eze, "The Case for Open Contracting in Nigeria", The Punch (Newspaper), October 21, 2019

<sup>5</sup>Ridwan Sulaimon, available at: <http://mediarightsagenda.net/web/if-nigerias-open-contracting-commitments-are-effective-implemented-nigeria-will-eradicate-corruption-ridwan-sulaimon/>

<sup>6</sup><https://www.open-contracting.org/implement/#/>

<sup>7</sup>[https://standard.open-contracting.org/latest/en/getting\\_started/](https://standard.open-contracting.org/latest/en/getting_started/)

the contracting documents publish meet global best practices and are fit for purpose for a range of different users. Thus, the adoption of this data publication technology enables greater transparency in the public procurement process, support accessible and in-depth analysis of the efficiency, effectiveness, fairness, and integrity of public contracting systems.

## **2.2 Public Procurement Act and Open Contracting Principles**

The most important component of a strong public procurement system is transparency. The open contracting global principles (table 1), which draw together best practices and norms for disclosure and participation in the public procurement process, serve as a barometer to benchmark the extent of transparency, accountability, and participation (TAP) regimes codified in procurement policy and legislative framework available in a country. A careful review of the Public Procurement Act (PPA, 2007) indicates that Nigeria's procurement law contained over 30 (TAP)<sup>8</sup> provisions that reflect the principles of open contracting.

Other legislative frameworks relevant here include the Freedom of Information (FOI) Act 2011 and the Fiscal Responsibility Act (FRA) 2007. While the FOI Act guarantees proactive disclosure of key information that appears not expressly stated in the PPA; S.48 of the FRA states that: "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 expenditure and their implication for its finances".

The PPA somewhat prescribes a limited regime of access to procurement information largely based on paper documentation. The proactive disclosure in FOI, through the publication of key information such as procurement records and budget implementation report(s) on the websites of procuring entities (PEs), is significantly constrained by the non-availability of these sets of information required and where available, not up to date. Thus, while the TAP provisions codified in the PPA are progressive but not proactive enough unless is linked to FOI. Even at that, the experience so far is more in abeyance as information expected to be disclosed at PEs' level (MDAs) through their official websites are not often uploaded or outdated.

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<sup>8</sup>See, the appendix

procurement transparency embedded in PPA with proactive information disclosure regime of FOI to ensure that Nigeria achieves the objectives of the public procurement reform in the country.

### **3.1 Open Contracting Commitment Milestones and Performance Indicators**

Table 2 shows specific activities and or milestones of Open Contracting commitment under NAPI. To what extent were these milestone activities implemented? Were the targets met or missed? What were the salient issues around the implementation of the commitment; whether or not progress was made? Answering these questions dig out empirical evidences to evaluate the extent of implementation of the open contracting commitment vis-à-vis set milestones and performance level indicators. A traffic light system of Green, Yellow and Red were employed to score and evaluate the milestone activities. Thereafter, the Bureau of Public Procurement official reports was extrapolated with the first National Action Plan's status exit report to explore the performance level assessment of the commitment.

**Table 2: Open Contracting Commitment Specific Activities and Milestones**

No	Milestones/Specific Activities	Date/Duration
1	Increased sensitization of citizens on how to engage at every stage of the procurement cycle	January 2017 – January 2019
2	Establish an Open Contracting portal with a feedback mechanism that is populated with procurement data and available online	January 2017 – January 2018
3	Establish Open Contracting Forum comprising of government, civil society, and the private sector to ensure sustained engagement and improved procurement process	January 2017 – June 2017
4	Establish and properly constitute the National Procurement Council	January 2019
5	Establish administrative directive and guidelines and ethical codes mandating the application of an open contracting system for public contracts	January 2017 – June 2018
6	BPP to compile and manage a publicly available databank on public sector procurement that is both human and machine-readable	January 2017 – January 2019
7	Clear administrative rules and guidelines issued by the highest level of government mandating open contracting in priority MDAs/Sectors and setting timelines for compliance	January 2017 – June 2019

Source: Nigeria's Open Government Partnership first National Action Plan (January 2017 – June 2019)

## Research Report on the Level of Implementation of Open Contracting Commitment (Commitment No. 2) under Nigeria's Open Government Partnership first National Action Plan

Table 3: Evaluating Implementation of Milestone Activities				
Milestone Activity	Official Exit Status Report	Independent Observation/Gaps	Scoring	Further Actions
Increase the sensitization of citizens on how to engage at every stage of the procurement cycle	Awareness creation and sensitization have been mainstreamed and institutionalized through a plethora of mechanisms by BPP and civil society partners (including Budeshi Radio) to sensitize the public on procurement related issues in Nigeria.	The awareness creation efforts are considered generic and not specific to advance the knowledge of the procurement process. Several subnational NGOs expressed the desire to upskill their procurement knowledge to specifically focus on monitoring government procurement within their communities but lamented insufficient information. This is because the existing form of awareness creation and sensitization are too generic to capacitate citizens and civic group to deepen their engagement in open contracting. Also, the number of stakeholders engaged and the actors involved in the sensitization are too limited to cover the field.	1	There is a need to deepen awareness creation across the entire procurement process. Formal and informal avenues should be explored to demystify procurement knowledge amongst the non-state actors through capacity strengthening for CSOs to be able to do more sector-specific monitoring of the procurement process aside from the generic observation at bid opening. More so, there is a need to expand the numbers of CSOs engaged in the procurement process in the country.
Establish an Open Contracting portal with a feedback mechanism that is populated with procurement data and available online	The Nigeria Open Contracting Portal ( <a href="http://nocopo.bpp.gov.ng">http://nocopo.bpp.gov.ng</a> ) went live on June 8, 2018. The NOCOPO portal was co-created with CSOs in line with S. 5(r) of PPA 2007 and fulfillment of Commitment 2 of NAP I.  The BPP Regulation and Database/ICT Department created and granting users access to the NOCOPO portal to enable staff of MDAs to input data on the portal and resolve users' complaints.  About 180 MDAs requested access to the platform.	NOCOPO was achieved five months behind schedule. However, thorough navigation of the platform indicated the underutilization of the NOCOPO to disclose real-time information on the procurement process because procurement data were not fed to the portal and traffic was low from both the CSOs and the general public. The root cause of this underutilization as exacted from expert commentaries were attributed to the inadequate technical capacity of MDAs to optimally navigate the portal to proactively disclose information, lack of policy leadership to drive the reform to fruition, etc. More so, the technical functionality of the portal with regards to its data interoperability with other databanks is not independently verified by this assessment.	2	Upskill MDAs capacity to use the portal. Whilst the NOCOPO remains a very good idea to make available procurement information hitherto inaccessible but the portal needs to be made more functional to populate all procurement information by the MDAs. Several stakeholders interviewed call for intensification of awareness creation and sensitizations particularly on the popularization of NOCOPO
Establish an open contracting forum comprising of government, Civil Society, and Private Sector to ensure sustained engagement and improved procurement processes	The Public Procurement Monitoring Working Group (PPMWG) reconstituted with CSOs from across the six geopolitical zones of the country. A six-month work plan was developed to strengthen collaborative engagement in procurement monitoring. The PPMWG collaborated with Open Contracting Partnership (OCP) and BPP to organize a 'User Needs and Requirement Gathering' workshop for the upgrade of NOCOPO which was held on 22 <sup>nd</sup> February 2018.	There is no evidence to verify that the open contracting forum is operational even with the reported reconstitution of PPMWG. More importantly, the private sector was insufficiently engaged. A civil society expert noted that BPP has not demonstrated strong interest and follow through to get organized private sector buy-in into the conversation around open contracting in the country.	1	There is a need for the self-sustainability of the forum to support advocacy for necessary public procurement reform. There is also a need for increased funding for PPA to improve coordination. There is a need to cultivate the buy-in of private sector stakeholders especially through the BSOs and their think tanks such as MAN, NESG, etc.
Establish and properly constitute the National Procurement Council	The constitution of the National Procurement Council has begun and potential members have been contacted by the Secretary of the Government of the Federation	The National Council on Public Procurement (NCPP) has not been constituted. The continued absence of NCPP was identified as a clog in the wheel of progress of the full implementation of the commitment evidence in lack of visible leadership to champion OCC within the government circle.	0	Inaugurate the NCPP to provide strong policy leverage and visibility to champion open contracting at the highest level of governmental bureaucracy. CSOs and other stakeholders include partners to should intensify advocacy for the establishment of the council by Mr. President
Establish administrative directive and guidelines and ethical codes mandating the application of an open contracting system for public contracts	BPP is developing the framework for the guidelines but claimed to be working on the timeline. When the guideline becomes operational, a feasible timeline for activities will be set for the guidelines.	There was no evidence to verify the claims	1	Fast track reported ongoing action
BPP to compile and manage a publicly available databank on public sector procurement that is both human and machine-readable	BPP plans to introduce e-Government Procurement (e-GP) that will integrate all its existing public procurement software applications towards full realization of e-GP System. A technical audit of the IT infrastructure of the BPP and six pilot MDAs was undertaken by NITDA with a view to effect necessary adjustments and upgrades that will facilitate seamless implementation of e-procurement in the first instance and the entire country in the very near future. According to BPP, the implementation of electronic government procurement to integrate all its existing public procurement software applications was near the solicitation stage for the IT firm (developer) in the project implementation strategy.	The electronic procurement database as envisaged by section 5q of the PPA 2007 is yet to come on stream. The pace of development or deployment of digitalized procurement database has remained very slow.	1	Fast track the implementation of e-GP system to digitalize Nigeria's procurement process as mandated by relevant sections of PPA (S. 2e and 5q & r) respectively. Nigeria's e-procurement readiness assessment report should outline the rollout implementation plan of the e-GP system that will digitalize Nigeria's procurement process in addition to NOCOPO.
Clear administrative rules and guidelines issued by the highest level of government mandating open contracting in priority MDAs/sectors and setting timelines for compliance	The SGF issued a circular dated July 10, 2018 directing MDAs to use NOCOPO software for all their procurement records from 2018 Fiscal Year.	The SGF circular was somehow obscured and not well amplified even by the BPP itself.	1	Implement the SGF Circular. BPP should invoke the SGF NOCOPO circular to mandate the MDAs to use platform to upload all their procurement information and records.
<b>Total Scoring is 7 (divided by 7) = 1</b>		<b>Average Scoring</b>	<b>1</b>	

Table 3 reviews issues around the implementation of the commitment to ascertain whether or not progress was made. With an average score of 1 representing partial implementation, the open contracting commitment under NAP I was not fully implemented. As noted under column three in table 3 above even when a milestone activity was purportedly implemented like the establishment of NOCOPO it was five months behind schedule. The portal itself remains unknown, shunned, and or underutilized by the MDAs. A thorough navigation of the NOCOPO portal compared with other similar open contracting platforms has shown that much success has not been recorded due to underutilization of the NOCOPO portal to disclose real time information on the procurement process thereby achieving procurement transparency through technology.

This finding was affirmed by several stakeholders interviewed, including the CSOs, that “many of the targets, indicators and milestones identified in NAP I were not met.” For example, the NOCOPO supposedly seen as the biggest concrete achievement of Commitment No. 2 was also described as its biggest disappointment. Aside the fact that the platform has been created, no further progress has really been made. As captured by an observer: “If you check the platform, [www.nocopo.bpp.gov.ng](http://www.nocopo.bpp.gov.ng), you would see that a number of sections are yet to be developed and even those sections that are developed are still on a test running mode with historical data not updated when we are supposed to have implemented full open contracting in [at least] eight pilot MDAs.”<sup>9</sup>

However, since OCDS is an iterative learning process not necessarily another box ticking exercise to satisfy the demand of external donors or some fancy new schema, popularizing and upskilling MDAs capacity to use the NOCOPO portal is a useful lesson learned for NAP II. Nonetheless, an altruistic implementation of Open Contracting is a vital development in public sector procurement which will make procurement information available to citizens and ensures citizens engagement across the entire procurement cycle. As BPP rightly stated: NOCOPO portal is about opening up public procurement through increased disclosure of procurement information to all stakeholders to ensure improved transparency and competition, prevent corruption, enhance active citizen participation towards achieving better service delivery and improved ease of doing business in Nigeria<sup>10</sup>.

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<sup>9</sup><http://mediarightsagenda.net/web.if-nigerias-open-contracting-commitments-are-effectively-implemented-nigeria-will-eradicate-corruption-ridwan-sulaimon/>

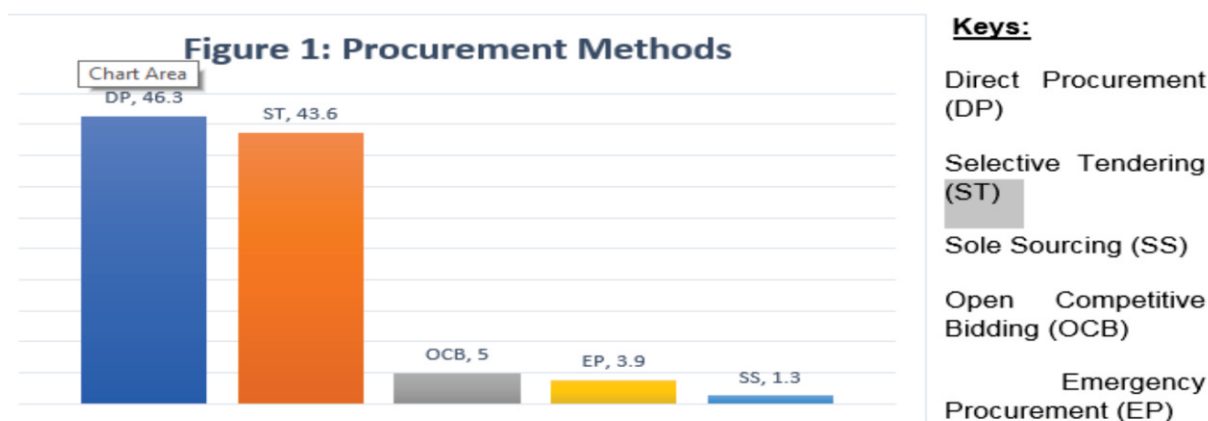
<sup>10</sup><https://www.bpp.gov.ng/procurement-management-system/>

The National Council on Public Procurement (NCPP) has not been constituted. The absence of an established National Procurement Council as mandated by the Public Procurement Act, 2007 has been a clog in the wheel of progress of the full implementation of the commitment evident in the lack of visible leadership to champion OCC within the government circle. CSOs and other stakeholders must intensify advocacy for the establishment of the NCPP by Mr. President to provide strong policy leverage and visibility to champion open contracting at the highest level of governmental bureaucracy. The gaps between existing public procurement law/rules and their enforcement/implementation should be addressed to mitigate the huge integrity challenges confronting the nation's procurement systems.

### 3.2 Evaluating Performance Indicators link to Commitment No. 2

#### I. Percentage of Public Procurement Contracts Using Open Competitive Bidding Method

The PPA 2007 considers open competitive bidding (OCB) as the default method and the best practice in public procurement literature. While other methods of public procurement certainly have a place in a robust procurement system, at least 80% of all contracts awarded should be effected through OCB in line with good practice in public procurement system.



However, a rigorous analysis of BPP data<sup>11</sup> indicates that from a baseline of about 18% in 2016 prior to the commencement of open contracting implementation, there have been steady drops in the number of procurement effect through OCB. Rather than be the preferred default method, only about five per cent of all procurement contracts are carried using OCB (figure 1) even prior the COVID-19.

Using non-competitive procurement methods run against the spirit of the PPA 2007 (S. 40 (I) and clause 73.2 of the Public Procurement Procedures Manual 2011 which consider OCB as the default method. According to BPP, "MDAs' persistently make requests for issuance of 'No Objection' to adopt Special/Restrictive Methods of Procurement based on reason which is not supported by relevant sections as stipulated under the Public Procurement Act 2007". The excuses of for non-preference for OCB method by the MDAs are not tenable as it undermines level playing ground and the degree of competitiveness.

Therefore, BPP should take steps to ensure MDAs comply with the section 40(I) of the PPA 2007 and Clause 73.2 of the Public Procurement Procedures Manual 2011 on Open Competitive Bidding as the preferred default method for all public procurement in the country.

<sup>11</sup>Bureau of Public Procurement's Online Procurement Method Spreadsheet and Annual Reports 2016, 2017, 2018.

**i. Increased Number of Bidders per Bid**

The report could not assess this indicator due to insufficient information. However, one procurement officer, who responded to questions around this performance indicator, notes: “people response to our bid has increased tremendously because people now have confidence in doing business with government”.

**ii. Government's response to the Public on identified deficiencies in the bidding process**

Assessment of this performance indicator was based on BPP's administrative review of petitions or complaints from bidders and other stakeholders. Available evidence indicates that BPP received 490 complaints from petitioners [in 2018], out of which 453 (92.4%) of the petitions were treated as closed while 37 (7.6%) still remained ongoing. Further analysis of the closed petitions indicates that 49 (11%) was in favour of petitioners, 307 (68%) in favour of procuring entity, two in favour of third party, 86 (19%) for debriefing, and 7 (2%) recommended for re-procurement. The high percentage of treated petitions has a positively impact to “ensure a more competitive, fair, transparent and effective procurement process that give optimal value for money” and improve service delivery in the public sector.

Instructively, most of the PEs with the highest level of complaints are also the MDAs being investigated by oversight institutions for contravening the provisions of the PPA 2007. For example, the 2017 Auditor's General report disclosed that 51 procurement transactions across several MDAs did not comply with the provisions of the PPA 2007 with N27.83billion classified as waste or loss of public funds. The violation ranged from ignoring due process, over invoicing/contract's prices inflation, to payments for contracts/services not executed and other forms of deviations from the Act<sup>12</sup>. Moreover, these same capital expenditure big spender MDAs are the least transparent. There is a need to intensify advocacy for the proposed amendments to the PPA 2007 to include the debarment provision to enhance efficiency and effectiveness in the procurement process.

**iii. Number of Projects monitored by Open Contracting Forum, using the OCDS and the web portal**

Several civil society organizations (CSOs) have developed platforms to facilitate access to procurement information and monitoring. Notable examples of OCDS efforts include:

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<sup>12</sup>See, Nelson , Guardian December 11, 2019

<sup>13</sup><https://www.tracka.ng/about>

- Tracka: is a tracking tool that creates access to data for active citizens interested in monitoring the implementation of budget funded projects in their communities to ensure service delivery. Built by BudgIT, the platform connects community champions to government through their legislators to ensure implementation and funding of projects listed in the budget<sup>13</sup>.

Budeshi: is a dedicated web platform that seeks to link budget and procurement data to various public services using the Open Contracting Data Standards (OCDS). It was created by the PPDC. The Budeshi platform is primarily being used to demonstrate the

- utility of linking procurement and budget data using uniform data standards<sup>14</sup>. Budeshi (which is Hausa for "Open it") is a dedicated site that links budget and procurement data to various public services. It is accessible to the public to interact with and make own comparisons.

- Udeme: is an initiative of Premium Times Centre for Investigative Journalism (PTCIJ). It was designed to educate citizens on what part of the budget is earmarked for developmental projects in their community and thus, empower them to track, investigate and report any form of corruption in the procurement process and implementation of capital projects in the past and present government budgets<sup>15</sup>. among others.

- ConsTrack- app empowers citizens to track the implementation of constituency projects and it comes loaded with verified and validated information on the location of the projects, amount appropriated level of funding provided the implementing ministry, department or agency, status of implementation and the profiles of the legislators concerned.

<https://www.orderpaper.ng/category/projects/constrack/>

- iFollowTheMoney: – allows rural communities to follow utilization of money meant for projects in their communities and working with a network of journalist, data wranglers, development consultants, information analyst, legal practitioners to engage government on proper utilization of funds.

Notwithstanding these commendable CSOs' efforts, appraisal of the establishment of an open contracting forum comprising of government, civil society, and private sector to ensure sustained engagement and improved procurement processes clearly shows that

the forum is not yet operational and the private sector stakeholders have not been successfully drafted into the process. Some of the identified challenges include; lack of proper coordination, inadequate funding, self-sustainability as well as inadequate support amongst others.

### **I. Number of MDAs whose procurement data are represented on the BPP Public Databank**

A thorough navigation of the NOCOPO platform clearly shows there has been an underutilization of the portal by MDAs to populate their procurement information. This was largely attributed to inadequate technical capacity of MDAs to optimally navigate the portal to proactively disclose information (data not properly fed to the portal), cyber insecurity, and inadequate access to internet to populate data on the platform as well as inadequacy in organizational leadership to drive the reform to fruition.

Other platforms designed by CSOs play overlapping roles as evident in the Open Contracting ID (OCID) they generated even when same procurement data are churned out due to lack of harmonization. Digitalized database technologies like NOCOPO must be designed to have data interoperability to other databases. The BPP should therefore leverage on such technologies to ensure data interoperable. As the repository of large amount of data on procurement, the BPP must invest in IT capabilities to manage its pool of procurement data and information which the OCDS technologies offer.

More so, while digitalizing the vast amount of procurement information already gathered manually, the BPP should simplify the NOCOPO portal to meet the needs of all stakeholders (MDAs, Private Sectors, Media, CSOs, and the Citizens).

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<sup>14</sup>PPDC (November 2019). "Open Contracting and Public Procurement Transparency Platforms in Nigeria" (PPT), A presentation at a multi-stakeholder training workshop on Open Contracting in Nigeria: Slide 12

<sup>15</sup><https://www.udeme.ng>

## 4.1 Nigeria's Open Contracting Stakeholders

The key stakeholders in the Nigeria's open contracting and public procurement process can be categorized into two broad groups; namely: the state and non-state actors as presented in table 4. The state stakeholders include the the government MDAs (procuring entities) with the Bureau (the regulatory body) as the leading implementing institution. The non-state stakeholders cover all nongovernmental entities including the private sector, media, CSOs and the the citizens.

**Table 4: Open Contracting Stakeholders in Nigeria and their Roles**

Key Stakeholders	Classification	Role & Responsibilities	Remarks
Bureau of Public Procurement	Lead Agency	Drive the implementation of OCC and provide technical assistance to other stakeholders, including capacity building and sensitizations, data management role.	Inadequate political will
MDAs	Procuring Entities	Utilize NOCOPO for all their procurement process to proactively disclose relevant information as the data primary source	Inadequate capacity and
National Assembly	Legislature	Legislative review and oversight	Compromised oversights of MDAs
Anti-Corruption Agencies (ICPC, EFCC, CCB, NFIU, SCUML, etc)		Combat and prevent corruption, through investigation and prosecution, including those related to procurement frauds	Inadequate synergies
CSOs	Non-State Actors	Awareness creation and sensitization, advocacy, project monitoring and budget tracking, and capacitate citizens involvement in procurement process monitoring through capacity building and training, conducting in-depth research on the challenges of the procurement process, etc	Shrinking funding and insufficient capacities
Media	Third Estate	Awareness creation and Sensitization to educate stakeholders on the provisions of the law and ensure compliance of provision of PPA	Inadequate investigative reporting and follow up stories
Business Members Organizations	Private Sector	Contractors / suppliers educate members of OPS	Currently not engage
Citizens	Citizen	Monitor, track and report on the state of publicly funded projects in their communities.	Every citizen has a common interest to see government spends public money wisely and efficiently, since the citizenry themselves are ultimately the people who pay for these goods and services, and for whose benefit they are being procured.
Development Partners	Donors	Providing technical and financial support	Funding
Nigeria's OGP Secretariat		Interfacing with all the other stakeholders and Documentation, Reporting	Lack of funding for self sustainability

## **5.1 Findings and Conclusion**

The implementation of Open Contracting is a vital development in public sector procurement which will make procurement information available to citizens and ensures citizens engagement across the entire procurement cycle. However, the assessment has revealed that it was not fully implemented. Almost all the milestones were missed or partially implemented. For example, the establishment of NOCOPO was five months behind schedule. The portal itself remains unknown, shunned, and/or underutilized by the MDAs.

A thorough navigation of the NOCOPO portal compared with other similar open contracting platforms has shown that much success has not been recorded due to underutilization of the NOCOPO portal to disclose real time information on the procurement process. This major finding was affirmed by several stakeholders interviewed, including the CSOs, that “many of the targets, indicators and milestones identified in NAPI were not met.”

However, since OCDS is largely seen as an iterative learning process, popularizing and upskilling MDAs capacity to use the NOCOPO portal is a useful lesson learned for NAP II. Nonetheless, an altruistic implementation of Open Contracting is a vital development in public sector procurement which will make procurement information available to citizens and ensures citizens engagement across the entire procurement cycle.

The non-inauguration of National Council on Public Procurement (NCPP) as mandated by the Public Procurement Act, 2007 also undermined the full implementation of the commitment evident in the lack of visible leadership to champion OCC within the government circle. As the second National Action Plan acknowledges, despite the deployment of NOCOPO, stakeholders are still faced with the challenge of accessing public finance data of value to them. In addition, it says, open contracting discourse in Nigeria is yet to include key actors relevant in its sustainability and achievement of greater impacts.

## **5.2 Key Recommendations**

- I. Inaugurate the National Council on Public Procurement to provide strong policy leverage and visibility to champion the open contracting at highest level of governmental bureaucracy
- ii. Improve the functionality of NOCOPO portal and upskilling the capacity of MDAs to populate the platform with their procurement data for optimal utilization

- iii. Intensify awareness creation and sensitizations particularly on the popularization of NOCOPO; including amplifying the SGF circular on the application of the platform for upload of all their procurement records in all BPP correspondences to MDAs
- iv. Fast track the implementation of e-GP system to digitalize Nigeria's procurement process as mandated by relevant sections of PPA (S. 2e and 5q & r) respectively. More specifically, Nigeria's e-procurement readiness assessment report should outline the rollout implementation plan of the e-GP system that will digitalize Nigeria's procurement process in addition to NOCOPO.
- v. Expand the numbers of civil society engaged in deepening awareness creation across the entire procurement process in the country; including CSOs capacity strengthening to be able to do more sector specific monitoring of procurement process aside the generic observation at bid opening.
- vi. Increased sensitization of citizens on how to engage at every stage of the procurement cycle; CSOs and other stakeholders should also regularly interface and engage regularly with NOCOPO portal at: <http://nocopo.bpp.gov.ng> to enable them provides useful feedback.
- vii. Cultivate the buy-in of private sector especially through the business membership organizations and their think tanks such as MAN, NESG, etc.

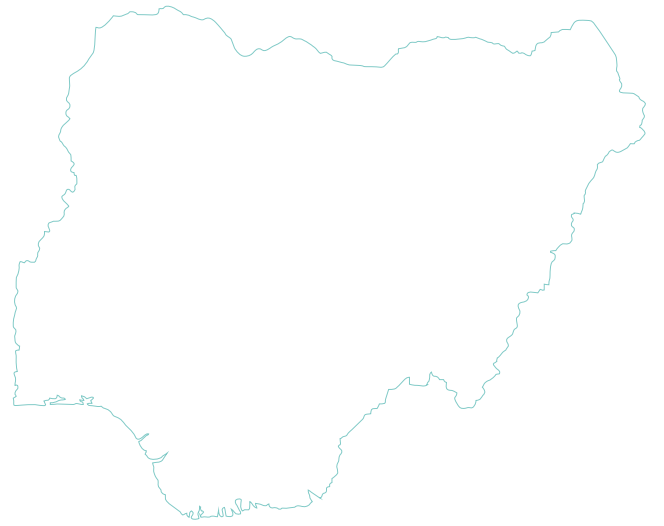
## Appendix

### The Public Procurement Act 2007 relevant TAP provisions

1. Section 2e: "...the procurement process to adapt to improvements in modern technologies..."
2. Section 4a: "the harmonization of existing government policies and practices on public procurement and ensuring probity, accountability and transparency in the procurement process;
3. Section 4c: "ensuring the application of fair, competitive, transparent, value-for-money standards and practices for the procurement and disposal of public assets and services;
4. Section 4d: "the attainment of transparency, competitiveness, cost effectiveness, and professionalism in the public sector procurement system.
5. Section 5n: "prevent fraudulent and unfair procurement and where necessary apply administrative sanctions;
6. Section 5f: "publish the details of major contracts in the procurement journal;
7. Section 5g: "publish paper and electronic editions of the procurement journal and maintain an archival system for the procurement journal;
8. Section 5i "collate and maintain in an archival system, all federal procurement plan and information;
9. Section 5p: "perform procurement audits and submit such report to the National Assembly biannually;
10. Section 5q: "introduce, develop, update and maintain related database and technology;
11. Section 5r: "establish a single internet portal that shall...serve as a primary and definitive source of all information on government procurement containing and displaying all public sector procurement information at all times;
12. Section 16 (1d): "in a manner which is transparent, timely, [and] equitable for ensuring accountability...;
13. Section 16 (5): "a supplier, contractor or service provider may be a natural person, a legal person or a combination of the two...;
14. Section 16 (10, 11) "All communications and documents issued by procuring entities and the Bureau shall be in English language...all communications regarding any matter from this Act or proceedings of public procurement shall be in writing...
15. Section 16 (12): "every procuring entity shall maintain both file [paper] and electronic records of all procurement proceedings made within each financial year...for a period of ten years from the date of contract award;
16. Section 16 (13): "copies of all procurement records shall be transmitted to the Bureau not later than 3 months after the end of the financial year...;
17. Section 16 (14): "all unclassified procurement records shall be open for inspection by the public at cost of copying and certifying the document plus an administrative charges as may be prescribed...by the Bureau;

18. Section 19: "...a procuring entity shall in implementing its procurement plans: 19a) advertise and solicit for bids in adherence to this Act...; 19b) invite two credible persons as observers in every procurement process, one person each representing a recognized 19bi] professional organization...19bii] nongovernmental organization...and the observers...shall have the right to submit their observation report to any relevant agency or body including their own organizations or associations;
19. Section 19 (e, j): "debrief the bid losers on request...announce and publicize the award in the format stipulated by this Act and guidelines as may be issued by the Bureau from time to time;
20. Section 25 (2i): "...under International Competitive Bidding, the invitation for bids shall be advertised in at least two national newspapers and one relevant internationally recognized publication, any official websites of the procuring entity and the Bureau as well as the procurement journal not less than six weeks before the deadline for submission of the bids for the goods and works, 2ii) "under National Competitive Bidding, the invitation for bids shall be advertised on the notice board of the procuring entity, any official web sites of the procuring entity, at least two national newspapers, and in the procurement journal not less than six weeks before the deadline for submission of the bids for the goods and services;
21. Section 32 (8) "after opening of bids, information relating to the examination, clarification and evaluation of bids and recommendation concerning award shall not be disclosed to bidders or to persons not officially concerned with the evaluation process until the successful bidder is notified as to the bid solicitation;
22. Section 33 (3) "Notice of the acceptance of the bid shall immediately be given to the successful bidder;
23. Section 38 (1): "every procurement entity shall maintain a record of the comprehensive procurement proceedings. 38 (2): The portion of the record...shall, on request, be made available to a) any person after a tender, proposal, offer or quotation has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract; and b) suppliers, contractors or consultants that submitted tenders, proposals, offers or quotations, or applied for prequalification, after a tender, proposal, offer or quotation has been accepted or proceedings have been terminated without resulting in a procurement contract;
24. Section 38 (3): "A disclosure of procurement proceeding records, prior to award of contract may be ordered by a court, provided that when order to do so by a court, the procurement entity shall not disclose such information, if its disclosure would a) be contrary to law; b) impede law enforcement; or c) prejudice legitimate commercial interest of the parties;
25. Section 38 (5): "the records and documents maintained by procuring entities on procurement shall be made available for inspection by the Bureau, an investigator appointed by the Bureau and the Auditor General upon request, and where donor funds have been used for the procurement, donor officials shall have access upon request to procurement files for the purpose of audit and review;
26. Section 40 (3): "...the procuring entity shall cause a notice of the selected tendering proceeding to be published in the procurement journal;

27. Section 44a: "it shall solicit for expression of interest or application to pre-qualify to provide services by publishing a notice to that effect in at least 2 national newspapers and the procurement journal
28. Section 45 (2): "the procuring entity may make direct requests to a limited number of consultants, requesting proposals for the provision of a service if...;
29. Section 57 (9): "every public officer involved directly or indirectly in matters of public procurement and disposal of assets shall: 9a) divest himself of any interest or relationships which are actually or potentially inimical or detrimental to the best interest of government and the underlining principles of this Act; and 9b) not engage or participate in any commercial transaction involving the federal government, its ministries, extra-ministerial departments, corporation where his capacity as public officer is likely to confer any unfair advantage - pecuniary or otherwise on him or any person directly related to him;
30. Section 57 (12a-h) " a conflict of interest exists where a person:...

A large teal-colored map of Nigeria is centered on the page. The map has a white interior where the title is placed. The title is written in a bold, teal, sans-serif font. The map's border is a solid teal color.

# **Review of BO Implementation In Nigeria**

# Review of BO Implementation In Nigeria

## Introduction

In May 2016, Nigeria's participation at the Anti-Corruption Summit organized by UK Prime Minister, David Cameron was preceded by a video recording of Mr Cameron telling Queen Elizabeth that Nigeria was a “fantastically corrupt” country.

The media onslaught triggered controversy and whispers of diplomatic discord as President Muhammadu Buhari arrived London days later, with journalists eager to know how Nigeria would respond to the video, and whether President Buhari would seek a public apology from the UK Prime Minister. At a pre-summit event by the Commonwealth Secretariat, however, the president of Africa's most populous nation retorted: “what would I do with an apology? I need something tangible. I am not going to demand any apology from anyone. What I am demanding is a return of assets.”<sup>1</sup>

Nigeria's focus on using offshore assets as its main fulcrum to engage with the global anti-corruption community set the tone for her president's revelation of a series of commitments at the Summit.

President Buhari prioritised beneficial ownership by announcing Nigeria's commitment to establishing a public, central register of company ownership information. The goal was for the country to have a database of registered companies, charities, and trustees, thereby providing lawyers and law enforcement agencies access to beneficial ownership information for companies and entities registered within her jurisdiction. (The President of Nigeria has presented a draft Money Laundering Prevention and Prohibition Bill to the National Assembly in February 2016<sup>2</sup>. This Bill has defined Beneficial Ownership in line with FATF standards.)

This would be complemented by the establishment of a transparent central register of foreign companies bidding on public contracts and buying property, with the primary aim of tracking ownership and control of all companies involved in property purchase and public contracting<sup>3</sup>.

For the first time, Nigeria expressed unequivocal support for “the proposal from countries to restrict the ability of those involved in grand corruption to travel, invest and

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<sup>1</sup><https://www.theguardian.com/politics/2016/may/11/nigeria-not-seeking-cameron-apology-wants-assets-back>

<sup>2</sup><http://placbillstrack.org/8th/upload/HB390.pdf>

<sup>3</sup>Nigeria is already collating this information through the Extractive Industry Transparency Initiative process and would extend it to other sectors. <https://eiti.org/files/documents/neiti-bor-281216.pdf>

<sup>4</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/523799/NIGERIA-FINAL\\_COUNTRY\\_STATEMENT-UK\\_SUMMIT.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/523799/NIGERIA-FINAL_COUNTRY_STATEMENT-UK_SUMMIT.pdf)

## Review of BO Implementation In Nigeria

do business overseas,” with President Buhari suggesting the activation of these measures “where there is a conviction, or public information of the involvement in grand corruption and where it is in the public interest to impose those restrictions.”<sup>4</sup>

Nigeria's sharing of beneficial ownership information with partner countries and other announced commitments were hinged on the implementation of the principles of the Open Government Partnership – a two-year journey involving civil society, citizen representatives and government officials.

### The road to Beneficial Ownership

Before President Buhari's announcement at the London summit, civil society organisations (CSOs) formed the Open Alliance<sup>5</sup> and spent two years campaigning for Nigeria to join the Open Government Partnership (OGP). Membership of this global cohort of 78 countries where government leaders and civil society advocates negotiate “unique partnerships to promote accountable, responsive and inclusive governance,”<sup>6</sup> was dependent on Nigeria fulfilling long standing principles as set by the OGP.

In March 2016 therefore, the Alliance drafted open government commitments Nigeria could implement, should the country sign on to OGP. This CSO-led Draft National Action Plan for Nigeria had eight commitments, including one to open a 'Public Registry of Licenses with Beneficial Ownership data disclosure'.<sup>7</sup>

The CSO draft beneficial ownership commitment covered the extractive sector and was largely driven by NEITI's pilot implementation of EITI standards on Beneficial Ownership<sup>8</sup>. In the days leading up to the London summit, a series of consultations were held, to further articulate Nigeria's OGP statement and enable CSOs advocate their contributions.

By July 2016, tangible progress had been made; the government and CSOs agreed on broad measures critical to tackling corruption, and Nigeria formally joined the OGP. In October 2016, stakeholders embarked on a retreat in Kaduna, northern Nigeria, to develop a National Action Plan. Senior government officials presided over sessions

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<sup>5</sup><https://openalliance.ng/home/main>

<sup>6</sup><https://www.opengovpartnership.org/about/>

<sup>7</sup><https://docs.google.com/document/d/1hRCvMMuwzGLUPigY7iqJllgWEkIF7GHMPPr9BaY4-gbk/edit>

<sup>8</sup>[https://eiti.org/sites/default/files/documents/BP/board\\_paper\\_30-4-b\\_beneficial\\_ownership\\_pilot\\_-\\_evaluation\\_report.pdf](https://eiti.org/sites/default/files/documents/BP/board_paper_30-4-b_beneficial_ownership_pilot_-_evaluation_report.pdf)

<sup>9</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/523799/NIGERIA-FINAL\\_COUNTRY\\_STATEMENT-UK\\_SUMMIT.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/523799/NIGERIA-FINAL_COUNTRY_STATEMENT-UK_SUMMIT.pdf)

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where the main documents under review were the Draft CSO National Action Plan and Nigeria's Country Statement<sup>9</sup>. With a draft NAP, further consultation included the invitation of comments from the public, before approval by President Buhari.

The final approved NAP covered four thematic areas with 14 commitments – two of the commitments cover a Beneficial Ownership Register.

### **Anonymous companies have public consequences**

Nigeria committed “to establish a Public Central Register of Beneficial Owners of companies” with a main objective “to put in place a system that enables openness, transparency and full disclosure of beneficial ownership information”.

The commitment rightly identified that “anonymous companies constitute potential and real dangers to the economy and security of the countries where they operate. These companies deny the countries of valuable revenue through tax avoidance, mask links to corruption, money laundering, drug trafficking and terrorism financing. People use proxies and fronts to register companies and the legal owners are usually not those who control and benefit from the companies.” To fully achieve the tenets of this commitment, Nigeria's plan outlined the following activities:

1. Establishment of a Beneficial Register designed according to Open data standards.
2. Defining clear rules on beneficial ownership and constitute coordinating committees with the Corporate Affairs Commission (CAC) and NEITI as lead organizations.
3. Regular update of the Register, using innovative technology.
4. The Corporate Affairs Commission would commence consultations, workshops, and the process of establishing the Register of Beneficial Ownership.
5. Capacity-building on the Beneficial Ownership scheme for public officials, civil society, and investigative journalists.
6. Dissemination of information on Beneficial Ownership.

### **Why an Open Register?**

Revelations from leaked Panama and Paradise papers reinforced the need for global attention to the issue of owners of shell companies. According to the Registrar General of CAC, “beneficial ownership is currently not only in the front banner of the global space but an absolute necessity to ensure transparency and accountability, integrity of financial system and check corruption, money laundering and financing terrorism”

Shell (or anonymous) companies are known to be used by those seeking to carry corrupts act and Nigeria's Malabu Oil scandal involving a former Petroleum Minister was made possible through the use of shell companies. “Anonymous companies - that

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is companies where the ultimate or “beneficial owners” are hidden - have been used to enable corruption, tax evasion, money laundering and other illegal activities... In Nigeria, we have experienced significant challenges in managing sector corruption, leading to significant loss of revenues, security challenges and eroding public trust. This reality has served as a sobering wake-up call and resulted in a move towards establishing measures and standards that mandate the disclosure of beneficial owners of such anonymous companies, and the coordinated development of a national public register.” said Nigeria's Minister of Finance, Budget and National Planning, Mrs Zainab Shamsuna Ahmed.

### Implementing Nigeria's Beneficial Ownership Disclosure Commitment

To fully achieve these commitments, the following activities were carried out:

	Activity		Cited Outcomes
	Government actor	Civil Society actor	
<b>1. CAC to commence consultations, workshops and process of establishment of a Register of Beneficial Ownership</b>	<ul style="list-style-type: none"> <li>- Officials undertook a study tour of the UK Companies House to understand the process of setting up the UK People with Significant Control (PSC) Register<sup>10</sup></li> <li>- The report made recommendations on how to overcome Nigeria's challenges, including a need for technical capacity to build software for developing the register.</li> <li>- On 9 February 2017, the CAC and the Federal Ministry of Justice hosted a Meeting to review the findings from the UK study tour and consulted on next steps to help Nigeria achieve set goals towards the BO Register.</li> </ul>	<ul style="list-style-type: none"> <li>- Civil Society Legislative and Advocacy Centre (CISLAC) published a factsheet on BO in Nigeria, outlining the old and new regime for the implementation of a BO register, identifying possible hurdles that would hamper implementation<sup>11</sup> policies.</li> <li>- In July 2018, Open Ownership trained officials from Nigeria, Ukraine, Ghana and Kyrgyzstan on activating BO disclosure, on the side-lines of the Open Government Partnership 5th Global Summit in Tbilisi Georgia.</li> <li>- Open Ownership also trained CAC delegates on Beneficial Ownership Data Standards as well as provided technical support to the commission in deciding thresholds for disclosure of BO information and for the redesign of CAC's annual return forms to accommodate BO Information disclosure.</li> </ul>	<ul style="list-style-type: none"> <li>- Following the study tour to the UK, the Nigerian Government identified in detail the technological and manpower requirements for the establishment of a BO register.</li> <li>- CISLAC's fact sheet provided broader awareness of the existing laws and regulatory powers that enable CAC and NEITI to establish the Register, pending passage of the repeal and re-enactment of the Companies and Allied Matters Act CAMA Bill. This sharpened institutional advocacy, pushing Nigeria's government to establish the Register</li> </ul>

<sup>10</sup>The government team comprised of Juliet Ibekaku (Special Assistant to the President on Justice Reform and OGP Nigeria National Coordinator), Waziri Adio (Executive Secretary of Nigeria Extractive Industries Transparency Initiative, NEITI); Muniru Wambai (Director, Finance and Accounts, Corporate Affairs Commission) and Grace Ekanem (Deputy Director, Public Prosecutions, Federal Ministry of Justice)

<sup>11</sup><http://cislacnigeria.net/wp-content/uploads/2018/02/BO-FACTSHEET.pdf>

## Review of BO Implementation In Nigeria

### Resistance to transparency

In summary, at least one of these activities reflected a hybrid of CSO-to-Government action; most notable is that the training of government (CAC) officials was undertaken by international NGO, Open Ownership, to assist Nigeria in setting standards for the type of information required from companies and hold same transparently in trust for citizens. Following this training support from Open Ownership, Nigeria's CAC revised the Annual Returns Form submitted by companies registered in Nigeria, to include BO information.

A growing concern about these revised Annual Returns Form is that companies may challenge the lack of enabling laws that empower the CAC to collect Beneficial Ownership Information as a component of Annual returns when these are filed by companies. Already, this situation is demonstrated with NEITI's effort to establish a Beneficial Ownership register for extractive companies - multinationals are cited as some of the corporate entities refusing to provide the requested shareholder information, under their obligation to NEITI audits.

Most pressing is that asides initiatives like NEITI's, Nigeria has no legally backed, comprehensive BO Register - due to delayed legislative processes.

“The National Assembly amended the CAMA Bill and specifically made a provision (therein) for the opening of a beneficial ownership register for all companies in Nigeria,” Eze Onyekpere, Lead Director of Centre for Social Justice, notes, adding that CSOs “were excited” at the development. However, the CAMA Bill was not signed by the president<sup>12</sup>, making the BO Register an associated casualty.

For Auwal Ibrahim Musa, Executive Director of CISLAC, an unsigned CAMA Bill means “a decade of work will be lost, and irreparable diplomatic, economic and reputational damage inflicted on Nigeria.”

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<sup>12</sup>The new bill removed the power of the Attorney General of the Federation to approve the registration of companies limited by guarantee, allowing such organizations to only publish the names of their directors in the national dailies after which CAC can register them. CAC argued that the requirement for AGF's approval makes no difference in the registration (or not) of such companies and causes delays in the process.

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<p><b>2. Capacity Building on Beneficial Ownership for public officials, civil society and investigative journalists.</b></p>	<ul style="list-style-type: none"> <li>- NEITI with support from Trust Africa and FOSTER hosted several sensitization/capacity building workshops for civil society organisations, private sector bodies as well as public institutions relevant to the implementation of the BO Register. These public institutions include financial regulators (CBN, SEC), extractive sector operators and regulators (NNPC, DPR), and anti-corruption agencies (NFIU, EFCC and ICPC).</li> </ul>	<ul style="list-style-type: none"> <li>- CISLAC organised 3 capacity-building workshops for CSOs on Beneficial Ownership.</li> </ul>	<ul style="list-style-type: none"> <li>- The workshops gave participants, especially government agencies, dedicated sessions to learn how the register would contribute to their specific efforts to combat corruption, and how to articulate their campaigns of choice.</li> </ul>
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### **A foundation needed**

Without a BO Register, there was nothing to tangibly situate the capacity-building initiatives for public officials, civil society and investigative journalists on. To persist in carrying out capacity building on a non-existent register will amount to a waste of resources, as the basis will be continually speaking and planning in theory, rather than practical terms.

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When asked about this activity, Mr A. G. Abubakar who was Director of Compliance of CAC at the time of interview but is currently Registrar-General said: “You can't do anything at this stage because you don't have the framework; you have to have the framework. It is at the level of implementation...and after implementation, that you now expose people to what it entails, how to access this information.”

Mr Bassey expressed a similar opinion, saying: “CISLAC recognised this vacuum and decided to focus advocacy on the legislative process of amending the CAMA law to give (a) legal stamp to the establishment of the register and also make disclosure of BO information enforceable.”

	Activity		Cited Outcomes
	Government actor	Civil Society actor	
1. <b>Establishment of Beneficial Ownership Register designed according to Open data standards.</b>	NEITI began working on a register of extractive companies covered in the NEITI audit as part of EITI Standards	No role in the implementation of this activity.	<ul style="list-style-type: none"> <li>- NEITI was expected to launch the register in the last quarter of 2019.</li> <li>- UPDATE: On December 16, 2019, NEITI launched the BO register<sup>13</sup> of companies in the extractive sector.</li> </ul>

### A makeshift approach

Nigeria leaned on NEITI to establish a BO register of companies working in the extractive sector as a stop-gap measure, pending the establishment of a full register of all companies in Nigeria, by the CAC. NEITI was already collecting BO information from companies covered in its oil and gas audit. Though this system also fulfils Nigeria's obligation under the EITI BO Standards<sup>14</sup>, it leaves an imbalance of sorts - extractive companies are obliged to provide BO information, while the vast majority of companies in other sectors in the Nigerian economy continue may get away with operating as shell companies, if they chose to.

However, Mr Bassey maintains that the establishment of the extractives-specific BO register is commendable, even though it is not all encompassing, because the sector contributes 80% of Nigeria's revenue and disclosure “would go a long way to solving the issues of opacity and non-accountability practices in procurement, contracting (and) award of licenses.”

<sup>13</sup><https://bo.neiti.gov.ng/>

<sup>14</sup>Section 2.5 <https://eiti.org/document/eiti-standard-2019#r2-5>

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	Activity		Cited Outcomes
	Government actor	Civil Society actor	
<b>1. Regular update of the Register using innovative technology.</b>	Not started	No role in the implementation of this activity.	N/A

This activity is premised on the existence of a beneficial ownership register by the CAC, and at the end of the two years of implementation of the OGP National Action Plan, there was therefore no register to be updated under this activity.

Mr Abubakar said “we are still focused on building the register and we hope that with the keen eyes of CSOs monitoring the process, it will be designed in such a way that it will allow for regular update of both the system and the information of beneficial owners as the information changes.”

The implication of the non-implementation of this activity is that it will count against Nigeria in the global OGP review process, which is usually undertaken by an Independent Reporting Mechanism (IRM) reviewer outside the country under assessment.

Ann Iyonu, an Abuja-based open government expert is of the opinion that the framers of the Action Plan “appeared too optimistic in their assumptions for this commitment. This will affect Nigeria's performance when experts check for the level of implementation of each activity.”

	Activity Carried Out		Cited Outcomes
	Government actor	Civil Society actor	
<b>1. Dissemination of Information on Beneficial Ownership.</b>	Not started		N/A

This activity is premised on the existence of a beneficial ownership register by CAC, at the end of the two years of implementation of the OGP National Action Plan, there was no register to be updated under this activity.

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	Activity Carried Out		Cited Outcomes
	Government actor	Civil Society actor	
<p><b>1. Establish clear rules on beneficial ownership, constitute coordinating committee with CAC and NEITI as lead organizations.</b></p>	<ul style="list-style-type: none"> <li>- CAC proposed the repeal and re-enactment of the CAMA Bill.</li> <li>- CAC and NEITI set up a coordinating committee to oversee the implementation of the BO register.</li> <li>- CAC revised its Annual Returns Form to include BO information while NEITI included BO information in its audit form for extractive companies.</li> </ul>	<p>No role in the implementation of this activity.</p>	<ul style="list-style-type: none"> <li>- The committee agreed on an incremental approach, with NEITI setting up BO for the companies under their audit process while CAC continues the process of repeal and re-enactment of the Companies and Allied Matters Act (CAMA) Bill.</li> <li>- The CAC designed relevant Forms for disclosure – Forms CAC-PSC01 (Notice of Person with Significant Control) &amp; Form CAC-PSC02 (Change of Details of Notice of Person with significant Control) to support Beneficial Ownership implementation as soon as the law is passed.</li> </ul>

## Review of BO Implementation In Nigeria

The reason why CAC and NEITI were designated as lead organizations was due to their direct responsibility for registration of companies and organisations in Nigeria and implementation of Nigeria's commitment to the global EITI process respectively. At the time, anti-corruption agencies in Nigeria and local media revealed large scale corruption in the extractives sector. With NEITI therefore already putting together a proactive road map for BO in the sector, policymakers agreed that the two agencies work together to ensure synergy and avoid integration challenges in the long-term. It was also expected that NEITI would rely on CAC's extensive database to extract information on company registration.

Though this has greatly benefitted NEITI's strides towards attaining BO disclosure, the reality is that while the rules are being fashioned out for the extractives sector, we reiterate that Nigeria will likely lag behind on confronting any associated challenges with other sectors, without a general BO Register.

Chinedu says: “despite the strides made in the Extractive sector, there is a need for an overarching law governing BO register,” due to the number of companies operating outside of this sector being too numerous to be ignored. If we continue to read about corruption in these other sectors, then we will be losing a lot to corruption in these other sectors. Remember that the extractive sector does not bid for most of the government contracts.”

### **How did the BO Register become linked to the “new” CAMA Bill?**

The drive to implement Beneficial Ownership in Nigeria began over a decade ago, when Nigeria sought to implement Recommendation 24 of the Financial Action Task Force (FATF), which states that countries must guarantee adequate, accurate and timely information on beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. This led to the current legal framework on BO in Nigeria, Section 94 of the Company and Allied Matters Act (CAMA) 2004 outlines the Power of Company to disclose.

Furthermore, Section 27(3) of CAMA provided disclosure measures that applied only to publicly quoted companies and allowed for this information to be issued upon request. This does not meet the expectations set out in this commitment.

These were some of the considerations that the CAC took on in 2017.

Working with experts including those in the business sector of the Nigerian Bar Association and the Nigerian Economic Summit Group, the CAC drafted an

## Review of BO Implementation In Nigeria

amendment Bill to repeal and re-enact the Companies and Allied Matters Act, and included a provision for Beneficial Ownership.

Abubakar notes that: “CAMA is all encompassing but the aspect on Beneficial Ownership was agreed at the level of the OGP. We adopted the UK model of Persons with Significant Control, which covers anybody that owns a minimum of a certain number of shares, equal voting rights or anybody that controls appointment of (a) majority of the Directors.”

The CAMA Bill had other provisions, such as Trust arrangements where, whether registered or not, shares are controlled or owned in a trust within a company, then this has to be disclosed, so long as an entity either directly or indirectly owns a certain number of shares or voting rights. In addition, any individual or any organisation that controls the appointment of any of the majority of Directors of the companies would be required to disclose their identity.

### **New provisions in the Draft Bill**

This 'new' CAMA Bill, was introduced to the National Assembly, and approved by both chambers of the National Assembly on 12 May 2019 - the draft Bill was thereafter sent to the President Muhammadu Buhari for approval on May 27, 2019.

The proposals in the amendment of the CAMA included a broader framework for BO disclosure to include persons with significant control, rather than mere ownership. The new provisions were concentrated in Section 119<sup>15</sup> of the draft Bill.

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<sup>15</sup>Notwithstanding the provisions of section 120 of this Act, every person with significant control over a company shall within seven days of becoming such a person indicate to the company in writing the particulars of such control.

1. A company after receiving or coming into possession of the information required under subsection (1) of this section, shall not later than one month from the receipt of the information of any change therein, notify the Commission of that information provided that a company shall in every annual return disclose the information required under subsection (1) of the section in respect of the year for which the return is made.
2. The Commission shall maintain a register of persons with significant control in which it shall enter the information received from the company or any change therein under subsection (2) of this section.
3. A company shall inscribe against the name of every member in the register of members the information received in pursuance of the requirements of this section.
4. If default is made by any person or company in complying with subsections (1), (2) and (4) of this section, the person or company and every officer of the company shall be liable to such fines as the Commission may prescribe by regulation for every day during which the default continues.

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Similar BO-centric provisions were delineated in Section 792 of the Draft Bill with respect to Limited Liability Partnership, while Section 869<sup>16</sup> (1) of the Draft Bill detailed the definition of a Person with Significant Control (PSC).

The proposed changes would have applied to all types of companies, as well as imposed legal obligations on persons with significant control to provide information to the company and furnish the CAC with the information of persons with significant control, all within a specified period.

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<sup>16</sup>Person with Significant Control (PSC) means any person:

- directly or indirectly holding at least 5% of the shares or interest in a company or limited liability partnership;
- directly or indirectly holding at least 5% of the voting rights in a company or limited liability partnership;
- directly or indirectly holding the right to appoint or remove a majority of the directors or partners in a company or limited liability partnership otherwise having the right to exercise or actually exercising significant influence or control over a company or limited liability partnership; or having the right to exercise, or actually exercising significant influence or control over the activities of a trust or firm whether or not it is a legal entity, but would itself satisfy any of the first four conditions if it were an individual.

## Review of BO Implementation In Nigeria

The CAC would also have been mandated to maintain a public Register of persons with significant control, which came to 5% of the shares or interest or voting rights in a company or limited liability partnership.

### Why the CAMA bill was not signed

Bukola Saraki, the Senate President at the time, said in May 2018: “the passage of the repeal and re-enactment of the Companies and Allied Matters Act is a significant milestone in our legislative agenda. This is by far the most far-reaching legislation ever passed by any legislature in our country.”<sup>17</sup>

With President Buhari withholding his signature, CSOs took on advocacy and engagement campaigns, in an effort to get the President to sign the Bill - these actions may have come too late, according to insiders familiar with the proceedings.

“The bill was passed at the twilight of the last Assembly and CSOs took it for granted that the bill will be signed by the President. They largely relied on private assurance from a few government officials instead of mounting public pressure on the government” said Abayomi Akinbo, an Open Government advocate.

Chinedu Bassey, Program Officer at CISLAC said the organisation had “multisectoral dialogue for all the institutions directly implementing the BO,” and the general public. With the mandatory 90 days from the date of receipt within which the President must sign a bill of the National Assembly closing in, CISLAC began mobilizing support for the Bill by direct communication with the government. At a lunch meeting hosted by CISLAC for representatives of government agencies, the invited agencies acknowledged they received a letter from the Presidency with respect to the Bill asking for their opinion and feedback. Most of the agencies reported they had written a no-objection response to the Presidency. CISLAC mobilised other partners to address a press conference<sup>18</sup> to pressure the government to sign the draft CAMA Bill into law. During this period, the Presidency maintained no public position on the Bill; it was neither rejected nor returned to the National Assembly with any objection or requests for correction.

It soon emerged that Nigeria's Attorney-General had advised the President not to sign. According to Mr Abubakar: “the only reason why the Bill was not signed...relates to the powers of the Attorney General to approve the registration of companies limited by

<sup>17</sup><https://twitter.com/bukolasaraki/status/996380728337354752?s=20>

<sup>18</sup>[http://cislacnigeria.net/text-of-a-press-conference-on-beneficial-ownership-register-in-nigeria/#iLightbox\[gallery13382\]/0](http://cislacnigeria.net/text-of-a-press-conference-on-beneficial-ownership-register-in-nigeria/#iLightbox[gallery13382]/0)

## Review of BO Implementation In Nigeria

guarantee. The role of the Ministry of Justice was completely removed. Instead, provisions (were cited) that says if you are registering a company limited by guarantee, you should publish the names of the Directors and their objectives in a newspaper; similar to what is obtained for associations. So, if anybody has any objections, they will raise the issue within 28 days but if no objection is raised, the CAC should proceed to register. The government was not comfortable with that.

The government decided that the role of the Attorney General should be maintained. So that was the only reason why that Bill was not accepted.”

In December 2019, a new version of the CAMA Bill was re-submitted to the National Assembly, with the powers of the Attorney-General restored, in Section 26(5). President Buhari formally requested the National Assembly to accelerate passage of the Bill, noting it has direct implications to government efforts to combat corruption and improve Nigeria's business environment.<sup>19</sup>

### **The challenge with implementing Nigeria's BO Commitments without the CAMA Bill**

Without clear authorisation (encoded in the law) empowering the CAC to establish a publicly available register of beneficial owners of entities operating in Nigeria, it is anticipated that companies resisting disclosure may challenge CAC's authority in court. This possible legal challenge may impede successful establishment of the BO Register and enforcement of its tenets.

In the journey so far, it is clear that these contextual flaws hampered CAC's ability to begin the actual process of building the BO register as the Commission focused all efforts towards securing the required legal backing for the register.

Experts told us:

- “There was no challenge with the process of amending the CAMA, as all stakeholders were engaged by the National Assembly in the process. The only challenge came from the approval of the passed Bill. Effort was made for the government to disclose their position on the Bill without success. It is sad that the reason this process is being restarted could have been averted if the Attorney General communicated his objection.”
- “There is still no synergy between the tenets of engagement between state actors and non-state actors. State Actors believe that things must follow the bureaucratic processes that cause undue delay...while non-state actors are more interested in

<sup>19</sup><https://www.thecable.ng/buhari-writes-senate-over-cama-seeks-retention-of-agfs-power-to-register-companies>

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the results and outcome. It seems to us that the government was satisfied with the process, even if the result was not achieved.”

“It is possible that the government will successfully build a register without the required changes in the CAMA Bill but it will only serve as ticking the box in the implementation of this commitment, as disclosure will not be enforceable - or will be bugged down by legal challenges.”

### Associated hurdles

#### Technical capacity issues at CAC:

The CAC is considering approaches for the implementation of the register; including whether to engage experienced developers to build the register or to buy existing software off a vendor. The National Information Technology Development Agency (NITDA)'s Guidelines for Nigerian Content Development in Information and Communications Technology (ICT)<sup>20</sup> in section 11.5 requires Ministries, Department and Agencies (MDAs) and companies in Nigeria to:

1. Source software for which there is local capacity to design, develop, compile, test troubleshoot, launch, maintain and improve such software applications.
2. Source and procure software from only local and indigenous companies; where the capacity for developing such software does not exist locally, procurement, installation and support will be provided by a Nigerian company.

To overcome this challenge, the CAC must begin consultations with NITDA to explore exemptions for this requirement should they wish to procure an off-the-rack software to facilitate the establishment of the register.

**Financial resources:** What the CAC can accommodate in their budget is somewhat at odds with what is needed to build a register and digitize historical data. However, funding from the World Bank is cited as enabling financial support for the implementation of the BO commitment. Mr Abubakar is optimistic: “the major advantage is that you have the benefit of getting the best to do the work for you; the vendor selection will be using their own (World Bank) standards and you don't expect anybody coming from that source to fail. We never had the benefit of an independent Consultant that was evaluating every step of the process.”

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<sup>20</sup><https://nitda.gov.ng/wp-content/uploads/2018/08/Guidelines-for-Nigerian-Content-Development.pdf>

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### **Pushback from companies:**

Within Nigeria's business community exists the erroneous notion that the register is a means by which the government plans to intrude on the operations of the private sector. Allowing these perceptions fester may lead businesses and citizens to resist the establishment of the register. Mr Waziri Adio, the Executive Secretary of NEITI has admitted a need for enlightenment in an interview with local media: “we have a responsibility to reassure Nigerians the register will be more about the benefits the country is going derive against the companies that have been “cheating” government and Nigerians in their operations. If we need a more inclusive framing for this issue, NEITI will like to say the Register is not a “we against them” issue. The Register will also benefit businesses. Again, not all businesses use anonymous ownership structure or engage in bad business practices. We must see the Register in a more inclusive way. The more inclusive we see the Register, the more the government will get more support.”

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<sup>21</sup><https://www.premiumtimesng.com/business/business-news/367378-nigeria-set-to-open-extractive-industry-ownership-register-heres-how-it-will-work.html>

# Review of BO Implementation In Nigeria

## Recommendations

1. Increase executive and legislative backing for the implementation of the Beneficial ownership register, to overcome bottlenecks and delays by the implementing agency and her partners. “Changes with very high impact such as BO require the highest political support to succeed. It is clear that President Buhari through his words supports this process, but what is missing is backing this support with requisite actions which will propel his subordinates both at the Ministerial and departmental levels to act.” - Chinedu Bassey, Program Manager at CISLAC. The National Steering Committee provides an opportunity for stakeholders to advocate and increase executive support for process. Non-State Actors members of the committee should use the high-level political representation from the executive branch of government to make their input to the process.
2. Civil Society Organisations should deploy proactive engagement with the National Assembly and all actors in the BO register process to ensure passage of the Bill and signing by the President as soon as it is passed. Sustained public pressure this time around is what respondents advise. “What we need to be doing in civil society is get together and begin to talk to key stakeholders... develop a strategy, an advocacy matrix, pay courtesy visits and network with people across the divides. Assign roles to different CSOs and individuals, some will focus on granting radio and television interviews, others will generate newspapers and online news content including opinion articles and others engaging senior government officials in the executive and legislature.” Eze Onyekpere, Lead Director of Centre for Social Justice. Open Alliance should set up a focus group on Beneficial Ownership to carry out targeted engagement on legal support for the register.
3. The CAC should collaborate with the BPP to introduce new regulatory requirements that mandate companies doing business with the government to provide their BO information to the CAC as part of the confirmation of compliance stage in the contract bidding process.
4. Inter-agency coordination must be established and sustained between the CAC, law enforcement agencies and financial regulating agencies, to ease information sharing and identification of incidences where compliance must be enforced on erring entities or individuals.
5. Identify champions within and outside of government who can advocate for the full implementation of the BO register. This can be achieved via the same strategy deployed by the Nigeria Economic Summit Group, which established the

## Review of BO Implementation In Nigeria

National Assembly Business Environment Roundtable to ensure speedy passage of sector-relevant Bills relevant through the provision of technical assistance for the process. In the same vein, the CAC and Nigeria Open Government Partnership Secretariat may explore establishing a Beneficial Ownership Support Group to sensitise lawmaker committees on the BO register and its direct role in enabling a transparent procurement, taxation and business environment that secures the commonwealth of Africa's most populous nation.



**Review of  
Commitment II of  
NAPI of the OGP  
Implementation**

# Review of Commitment II of NAPI of the OGP Implementation in Nigeria.

*First draft* 

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## **EXECUTIVE SUMMARY**

This report presents the findings of an assessment undertaken by the African Centre for Leadership, Strategy and Development (Centre LSD) on the implementation of Commitment 11 of the 1st Open Government Partnership (OGP) National Action Plan of Nigeria 2017-2019 – the improved compliance of public institutions obligation to proactive disclosure under Nigeria’s Freedom of Information (FOI) Act, 2011

The report examines the level of compliance of public institutions in Nigeria with the proactive disclosure mandate in accordance with Section 2 (3) and (4) of the FOI Act. The FOI Act outlines an extensive list of information categories that public institutions must disclose proactively. These categories included information to be listed (e.g., a list of all classes of records under the public institution’s control); information to be described (e.g., a description of the organization and responsibilities of the institution); and information to be disclosed in full (e.g. the names, salaries, titles, and dates of employment of all employees and officers of the institution). Section 2(4) states that a public institution must ensure that published information should be “widely disseminated” through “various means”, including print, electronic and online sources, and understandable including for those with physical or literacy challenges, free or low-cost, and up to date.

The FOI Act also specifically creates an obligation on every public institution to “ensure that it records and keeps information about all its activities, operations and businesses” and to “ensure the proper organization and maintenance of all information in its custody in a manner that facilitates public access to such information.”. As such the information specified under Section 2 (3) ought to be already available to enable disclosure.

Predominantly, the report utilizes both quantitative and qualitative methods, generated from primary and secondary data gotten through desk review and consolidation of findings with feedback from consultations with key stakeholders. The overall objective of this report is to assess the level of compliance with the mandatory reporting requirement, identify the gaps, and proffer recommendations towards effective compliance within the provisions of the Act.

The report finds that there are challenges that mitigate effective compliance and implementation of the FOI Act in general, and specifically, proactive disclosure. Several general challenges for non-compliance with Section 2 (3) can be grouped into three main headings namely, structural, attitudinal and technical. These include a lack of archival and record-keeping practice in a manner that facilitates access; non-availability of the information on the institutions’ official website; nonexistence of an official website in some cases; lack of knowledge of the existence and/or content of the FOI Act; lack of understanding of the distinction between Proactive Disclosure with Information Requests.

In addition to the structural challenges, there is also an attitudinal opposition and resistance to proactive disclosure. Primarily, this opposition is often grounded in the practice of institutionalized secrecy premised on the provisions of the Official Secrets Act, which specific provisions have been

nullified by the FOI Act. In spite of this, there is still a dearth of information disclosure in compliance with Section 2 (3) & (4) of the FOI Act.

Based on the research and findings, the report recommends that:

1. Public institutions need to train staff on the FOI Act, including records management, and proactive disclosure
2. Public institutions should endeavor to take advantage of and maximize diverse platforms and technologies to expand the avenues for proactive disclosure.
3. Public institutions should ensure full disclosure of all the classes of information prescribed under Section 2 (3) (a-f) of the FOIA.
4. Public institutions should ensure adequate and proper record-keeping infrastructure that facilitates easy retrieval.
5. Available remedies should be used to compel compliance by public institutions with the provisions of the FOI Act generally, and the obligation to proactively disclose information.
6. Strengthen public awareness campaigns on the proactive mandatory disclosure requirements of the FOI

## **CONTEXT**

Nigeria has been identified as Africa's most populous country and predicted to be the third most populous country in the world by 2050. The country, which in previous years, boasted of having the largest economy and democracy in Africa, has been faced with daunting development challenges. The challenges faced by the country have resulted in an increase in the number of people living in poverty, and declining revenues. For many years, lack of openness and corruption has meant that resources meant for development have been frittered away through the entrenchment of a culture of opacity. Openness and accountability are principles worth championing not just for their own sake, but also as great enablers for honest delivery of public services and management of scarce public resources. These are principles which anchor a lot of the work being promoted by the Open Government Partnership (OGP).

The OGP established in 2011 is a multi-stakeholder initiative, jointly led by governments and civil society groups, serving as a platform for co-learning and support for efforts aimed at creating sustainable innovations for promoting openness and accountability among member states. Transparency and accountability mechanisms are essential elements of this framework. Nigeria, in July 2016, joined the Open Government Partnership (OGP) as the 70th country. To join OGP, governments commit to upholding the principles of open and transparent government by endorsing the Open Government Declaration.

The uniqueness of the OGP process lies in the implementation of the National Action Plan (NAP) which is co-created by government and civil society organizations as action plans are created that make governments more inclusive, responsive, and accountable.

## **A General Overview of the NAP**

Nigeria's First action plan addressed relevant areas of open government in the country such as fiscal transparency, anti-corruption, access to information, and citizen engagement. The NAP thus included commitments in priority areas that addressed access to information which sought to improve the relationship between government and citizens by opening up governance for citizens to know and participate in how their government is being managed. It focused on transparency and access to information initiatives – specifically, Commitments 10 and 11 on improving compliance with the Freedom of Information Act (FOIA). Commitment 11 is stated thus:

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

The commitment as stated in the action plan “seeks to improve compliance with the FOIA mandatory publication requirements and secure the right of citizens to information”.

Milestones:

11.1. Design and implement the publication of fully compliant information as provided in the FOI Act, regardless of platform/form by at least 200 public institutions and make it easily accessible to the public.

11.2. Punitive administrative measures to be applied against public institutions adjudged to be in breach of the mandatory publication requirements of the FOI Act.

11.3. Publish responses to recurrent FOI requests on the public platform/in the publication.

## **Highlight and Utility of The Freedom of Information Act**

Freedom of Information (FOI) refers to the right of individuals to access information held by public bodies and relevant private institutions. It is also often referred to as, Access to Information (ATI), or the Right to Information (RTI). Regardless of whatever nomenclature, this legislation fosters the “right to know”; every person has the right to access public information. Access to government-held information is thus definitive of and pivotal to the effective practice of democracy and Nigeria's constitutional norms.

The 1999 Constitution reflects the democratic principle of the vestiture of sovereignty in the Nigerian people, from whom government derives its powers. Democracy holds that Government should be open to public scrutiny, be receptive and responsive to public opinion and that public participation in governance must be fuelled by accurate, up-to-date information, documents and proceedings of government for effective public oversight. Thus, the government is the custodian and guardian of information that ultimately belong to the public.

Nigeria's FOI Act, which was passed on May 28, 2011, remains one of the most significant piece of legislation ever enacted in Nigeria's democratic history and is vital for the consolidation of the principles of democracy in Nigeria. It is not the only legislation that mandates access to information in Nigeria. However, the FOI Act consolidates the right to information and transforms the general arena of governance from one that was predicated on a foundation of secrecy, established by the Official Secrets Act and other laws and practices, to one where openness and access to information is the prescribed norm.

## **Benefit of the FOI**

The right to access information is not only a right in itself but a tool for exercising other rights. The right to freedom of /access to information is key to:

**securing democracy:** Information has been called ‘the oxygen of democracy’ as Democracy cannot flourish if the government operates in secrecy. Thus, information is essential for openness, accountability and good governance. For inherent in any democratic dispensation of government is the right to know, it is not dependent on legislation or constitution.

**enabling development:** as it allows for public participation in governance. The right to information is also a key tool in combating corruption and wrongdoing in government as individuals can use the right to access information to expose wrongdoing and help root it out.

In contextualising the FOI with respect to the Nigerian Public service, the duty of public institutions to create, keep, organize and maintain records of all daily activity in such a manner that facilitates the public’s right to know – Section 2(1) & (2) 9 (1) & (2) which enhances productivity, effectiveness and efficiency, such as providing an empirical basis that aids in long-term strategic planning and evaluation of government processes.

- promotes transparency, efficiency and effectiveness in budgeting and implementation processes, policy formulation and appropriations and evaluations.
- promotes processes for public participation which builds public faith and established legitimacy.

## **Understanding Proactive Disclosure - Section 2(3) (4)**

Section 2 (3) and (4) of the FOI Act outlines an extensive list of information categories that public institutions must disclose proactively. These categories include information to be listed (e.g. a list of all classes of records under the public institution’s control); information to be described (e.g. a description of the organization and responsibilities of the institution); and information to be disclosed in full (e.g. the names, salaries, titles, and dates of employment of all employees and officers of the institution). Section 2(4) states that a public institution must ensure that published information should be “widely disseminated” through “various means”, including print, electronic and online sources, and understandable including for those with physical or literacy challenges, free or low-cost, and up to date.

Under the law, all information/records that the institution is obliged to disclose proactively must be readily available to the public and:

- disseminated widely using various means including printing hard copies, through print and electronic media, online (i.e. the internet), and made available in all the offices of the institution.
- Speedily updated and likewise disseminated whenever changes occur in relation to the content.
- Failure to proactively disclose information could result in an action for enforcement.

The duty of public institutions to proactively disclose 40 classes of information/records as provided under Section 2 (3) (a-f), (4) and (5) promotes effectiveness in intra- and inter-agency communications/eradication of illegal channels of outflow such as ghost-workers; a situation that constantly plagues the public service.

Proactive disclosure is an integral component of an FOI regime and forms a core aspect for the success or failure of the efficient and effective implementation and sustainability of such a system.

Proactive disclosure has benefits for both the public and the public institution, including the speed and ease, and cost-effectiveness of disseminating information with the public. Through Proactive disclosure, all members of the public have equal and contemporaneous opportunity to be routinely better-informed about the workings of government.

On the part of the government, proactive disclosure is a vehicle through which governments are better able to systematically inform the public of the services it provides for the public, and how to access them. Proactive disclosure also reduces the government institution's time spent on processing individual requests and may even preclude the need for members of the public to make information requests, if the information of interest is already proactively disclosed. By institutionalizing data management and data sharing protocols, proactive disclosure enables planned release, eliminating unplanned strain on public institutions' resources, thus promoting institutional efficiency.

The benefits of proactive disclosure in curbing corruption by allowing the public to track expenditure is put into practice by several countries. For instance, in Canada, the law requires the proactive disclosure, to include of all travel and hospitality expenses of senior government officials, internal audits, budget expenditure, and contacts, as well as grant contributions over a specified amount. Chile, in an effort to increase transparency in government procurement, also established an electronic public procurement system which requires the disclosure *inter alia* of public spending, staffing contacts.

Thus, proactive disclosure also is a demonstration of public institutions' commitment to openness, and accountability, which also contributes to engendering public trust in the government's institutions and processes.

## **Scope and Objective**

The study focused on the implementation of the section of the FOI Act as stated in the NAP (commitment 11), which seeks to improve compliance with the FOIA mandatory publication requirements and secure the right of citizens to information in Nigeria (Jan 2017 – June 2018).

All ministries, departments and agencies of government fall within the definition of what is a public institution under the FOI Act, and, as such, are duty-bound to comply with the obligations the Act imposes. However, with over 800 government ministries, departments and agencies at the Federal level alone, this assessment was restricted to government MDAs that have taken the commendable strides to comply with their annual FOI reports. The MDAs statutory obligation to comply with the submission of their annual FOI Compliance reports for the year in review (2017 – 2018) to the Office of the Attorney General, in compliance with Section 29 of the FOI Act, is seen as an indication of some level of effort to implement the FOI Act. The assumption is that government MDAs that have not made any attempt to comply with their obligations under Section 29 are not in compliance with their obligations under Section 2.

In 2018, seventy-three (73) institutions made submissions while in 2019, seventy (70) institutions made submissions to the office of the Attorney General at the Ministry of Justice. A total number of 77 MDAs were assessed as the research focused on the institutions that complied

The overall objective is to assess the level of compliance of the mandatory reporting requirement, identify the gaps, and proffer recommendations towards effective compliance with the provisions of the Act.

### **Research Limitation**

The FOI Act changes the way government relates with the public quite fundamentally, by establishing the public's right to access information held by public institutions and relevant private institutions in the country and is applicable to all levels of government – Federal; State; and Local.

Although the applicability of the FOI Act to state and local governments has been reinforced several times through the law courts, it remains that most of the advocacy for FOI implementation from both the demand and supply perspectives has been at the federal level. The tests of the legislation are centered predominantly in the major urban centers, primarily in Abuja and Lagos, and demanded predominantly by CSOs and legal practitioners. Only isolated tests have been reported at the state level, and these are even rarer at the local government level, and as **such the study is limited to institutions at the federal level.**

### **Analysis approach and Methodology**

Both qualitative and quantitative methods were used for this research report. These methods include i. Desk review and research. ii. Consolidation of findings with feedback from consultations with key stakeholders.

## **METHODOLOGY/ ANALYSIS**

The FOI Act came into force immediately upon its passage on May 28, 2011, and years down the line, the strength of the argument often touted for non-implementation that a period of transition would be necessary in order to effect such change is beginning to wane. It has oft been stated that the success of FOI implementation hinges largely on information management and proactive disclosure and that by institutionalizing the necessary protocols and processes, the efficiency of government administration, and information sharing is enhanced.

Thus, the purpose of this study is to examine the level of implementation of Commitment 11 of the NAP public institutions in Nigeria with the proactive disclosure mandate in accordance with Section 2 (3) and (4) of Nigeria’s Freedom of Information Act 2011 (FOI Act).

### ***Sample Population & Sampling Frame***

The definition of ‘public institution’ under the FOI Act includes “... all authorities whether executive, legislative or judicial agencies, ministries, extra-ministerial departments of the government, corporations established by law and all companies in which government has a controlling interest...”. While the Act includes under the definition of public institution private bodies utilizing public funds, carrying out public functions or providing public services, the survey was limited to government Ministries, Departments and Agencies (MDAs).

With over 800 government ministries, departments and agencies at the Federal level alone, the survey was further limited to a sampling frame of those government MDAs that have taken the commendable strides to meet their statutory obligation to submit annual FOI Compliance reports to the Office of the Attorney General, in compliance with Section 29 of the FOI Act. This sampling frame was selected on the assumption that government MDAs that have not made any attempt to comply with their obligations under Section 29 are not complying with their obligations under Section 2. On this basis, a total of 77 government MDAs were assessed.

FEDERAL MINISTRY OF JUSTICE
OFFICE OF THE ACCOUNTANT GENERAL OF THE FEDERATION
LEGAL AID COUNCIL
DEBT MANAGEMENT OFFICE
NIGERIAN INVESTMENT PROMOTION COMMISSION
CENTRAL BANK OF NIGERIA
NATIONAL YOUTH SERVICE CORPS
THE FEDERAL POLYTECHNIC, ADO EKITI
NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES

NIGERIAN EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE
FEDERAL GOVERNMENT STAFF HOUSING LOANS BOARD
NATIONAL PENSION COMMISSION
NATIONAL PRODUCTIVITY CENTRE
NIGERIAN PRESS COUNCIL
NIGERIAN AIRSPACE MANAGEMENT AGENCY
NIGERIAN LAW REFORM COMMISSION
NIGERIAN EXPORT PROMOTION COUNCIL
FEDERAL UNIVERSITY, DUTSIN-MA, KATSINA STATE
CUSTOMARY COURT OF APPEAL
UNIVERSITY OF BENIN TEACHING HOSPITAL
MINISTRY OF BUDGET AND NATIONAL PLANNING
CENTRE FOR MANAGEMENT DEVELOPMENT
NATIONAL INFORMATION TECHNOLOGY DEVELOPMENT AGENCY (NITDA)
FEDERAL MEDICAL CENTRE, LOKOJA
FEDERAL INLAND REVENUE SERVICE (FIRS)
NATIONAL ORIENTATION AGENCY
ECONOMIC AND FINANCIAL CRIMES COMMISSION (EFCC)
MODIBBO ADAMA UNIVERSITY OF TECHNOLOGY, YOLA, NIGERIA
NATIONAL BUREAU OF STATISTICS
FEDERAL ROAD MAINTENANCE AGENCY
FEDERAL CHARACTER COMMISSION
NIGERIAN ELECTRICITY REGULATORY COMMISSION
NIGERIAN COMMUNICATIONS COMMISSION
F.C.T COLLEGE OF EDUCATION, ZUBA, F.C.T
FEDERAL ROAD SAFETY

REVENUE MOBILIZATION ALLOCATION AND FISCAL COMMISSION
FEDERAL UNIVERSITY OF TECHNOLOGY
USMAN DAN- FODIYO UNIVERSITY, SOKOTO
FEDERAL UNIVERSITY, DUTSE, JIGAWA STATE
NIGERIAN NUCLEAR REGULATORY AUTHORITY
SUPREME COURT OF NIGERIA
NATIONAL FILMS AND VIDEO CENSORS BOARD
BANK OF AGRICULTURE
AUCHI POLYTECHNIC, AUCHI, EDO STATE
TEACHERS REGISTRATION COUNCIL OF NIGERIA
NIGERIA SOCIAL INSURANCE TRUST FUND
PUBLIC COMPLAINTS COMMISSION
MINISTRY OF NIGER DELTA AFFAIRS
NATIONAL PRIMARY HEALTH CARE DEVELOPMENT AGENCY
FEDERAL COLLEGE OF EDUCATION AKURE
FEDERAL COLLEGE OF EDUCATION (TECH), GOMBE
NIGERIAN SECURITY PRINTING AND MINTING PLC.
NIGERIAN INSTITUTE OF SOCIAL AND ECONOMIC RESEARCH, OJOO-OYO
FEDERAL MINISTRY OF POWER, WORKS AND HOUSING
THE FEDERAL POLYTECHNIC, ILARO
THE FEDERAL POLYTECHNIC, ILE-OLUJI, ONDO STATE
NATIONAL BOARD FOR TECHNOLOGY INCUBATION
PENSION TRANSITIONAL ARRANGEMENT DIRECTORATE
FEDERAL UNIVERSITY, BIRNIN, KEBBI
NATIONAL COMMISSION FOR COLLEGE OF EDUCATION
FEDERAL AIRPORT AUTHORITY OF NIGERIAN

NEWS AGENCY OF NIGERIA
NIGERIAN RAILWAY CORPORATION
NATIONAL TEACHER'S INSTITUTE, KADUNA
FEDERAL UNIVERSITY OF TECHNOLOGY, OWERRI
NATIONAL AGENCY FOR PROHIBITION OF TRAFFIC IN PERSONS
INFRASTRUCTURE CONCESSION REGULATORY COMMISSION
INDEPENDENT NATIONAL ELECTORAL COMMISSION
INDUSTRIAL TRAINING FUND
FEDERAL UNIVERSITY, KASHERE, GOMBE
OFFICE OF THE HEAD OF CIVIL SERVICE OF THE FEDERATION
NATIONAL COUNCIL FOR ARTS AND CULTURE
THE FEDERAL POLYTECHNIC, BIDA

### **Data Collection**

The primary data gathering instrument was a desk review from the listed information that should be proactively disclosed under Section 2 (3) of the FOI Act. The mode of data collection was through online searches for information that ought to be proactively disclosed on the websites of the surveyed public institutions and random physical visits to selected public institutions' offices in Abuja recording and evaluating the responses given.

### **Data Collection**

Based on the modes of disclosure prescribed under Section 2 (4) of the FOI Act, which includes via print, electronic and online formats, the institutions were assessed, and points are given. The format below was used to evaluate the institution's online disclosure:

## Data Collection

Based on the modes of disclosure prescribed under Section 2 (4) of the FOI Act, which includes via print, electronic and online formats, the institutions were assessed, and points are given. The format below was used to evaluate the institution's online disclosure:

- Staff Information **2pts**
- Income & Expenditure Information **3pts**
- Information of contracts, Licenses etc **2pts**
- List of Materials containing Information on contracts and grant **2pts**
- Classes of records held by the institution **2pts**
- List of manuals for the day to day running of the institution **2pts**
- Organogram **2pts**
- Description of Responsibility **2pts**
- Description of programmes **3pts**
- Functions of each division, branch and department **3pts**
- Description of documents containing consenting and dissenting opinion **1pt**
- Assessment sum 24 but presented in percentages **%**

## Assumptions and Limitations

The research did not investigate the accuracy of the information provided nor if it was current, in situations where there was disclosure. The research assumes that where there is a disclosure by an MDA by any of the various means, that such information is factual and up to date. No further steps were taken to authenticate whether the information was updated and accurate.

The research also does not assess the extent of disclosure, whether the information is disclosed in full, or in part. Since only the institution is fully cognizant of the information it holds, it remains that the researcher cannot of a fact determine that full disclosure has been made. Therefore, marks were allocated where basic disclosure is identifiable and seen to have been made.

# ASSESSMENT

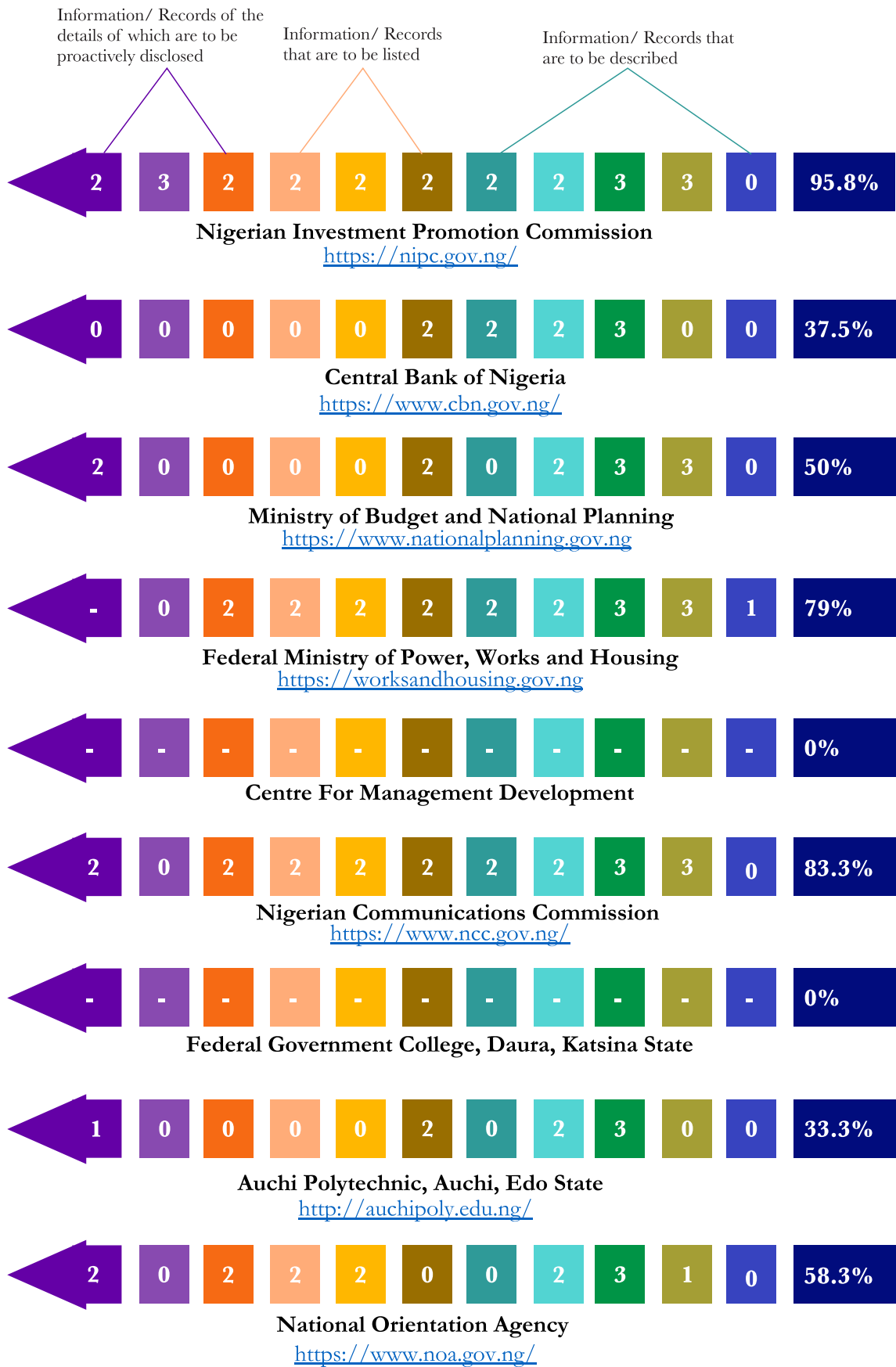
## ONLINE DISCLOSURE

Section 2(4) of the FOI Act states that a public institution must ensure that published information should be “widely disseminated” through “various means”, including print, **electronic and online sources**, and understandable including for those with physical or literacy challenges, free or low-cost, and up to date.

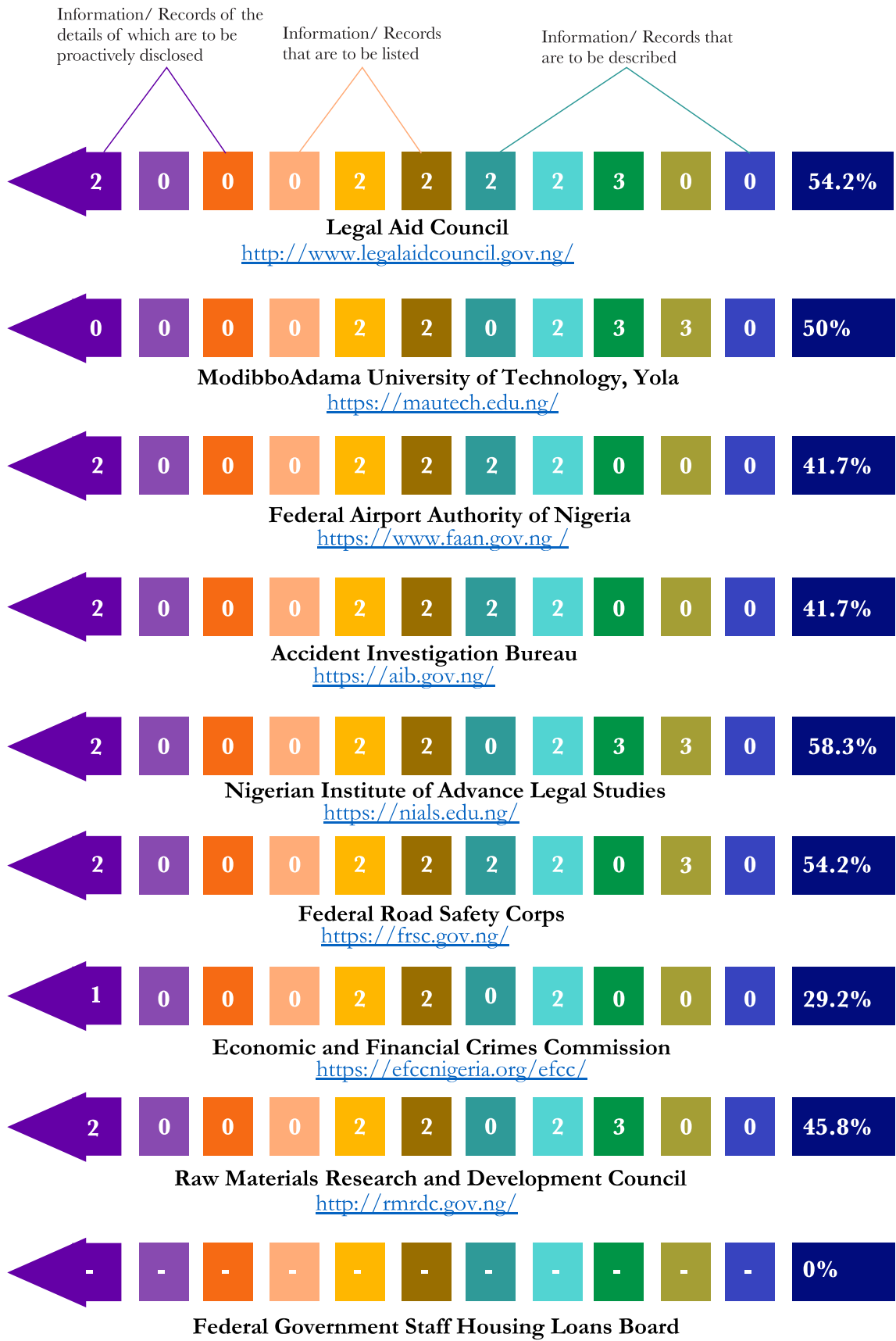
The internet has opened up many opportunities to communicate more effectively with diverse audience. Government institutions now have access to computer systems and internet access that can make enormous amounts of data and information immediately accessible to the public, from an officially designated access point, such as a website. This table enumerates information that ought to be proactively disclosed, available on the websites of public institutions reviewed.



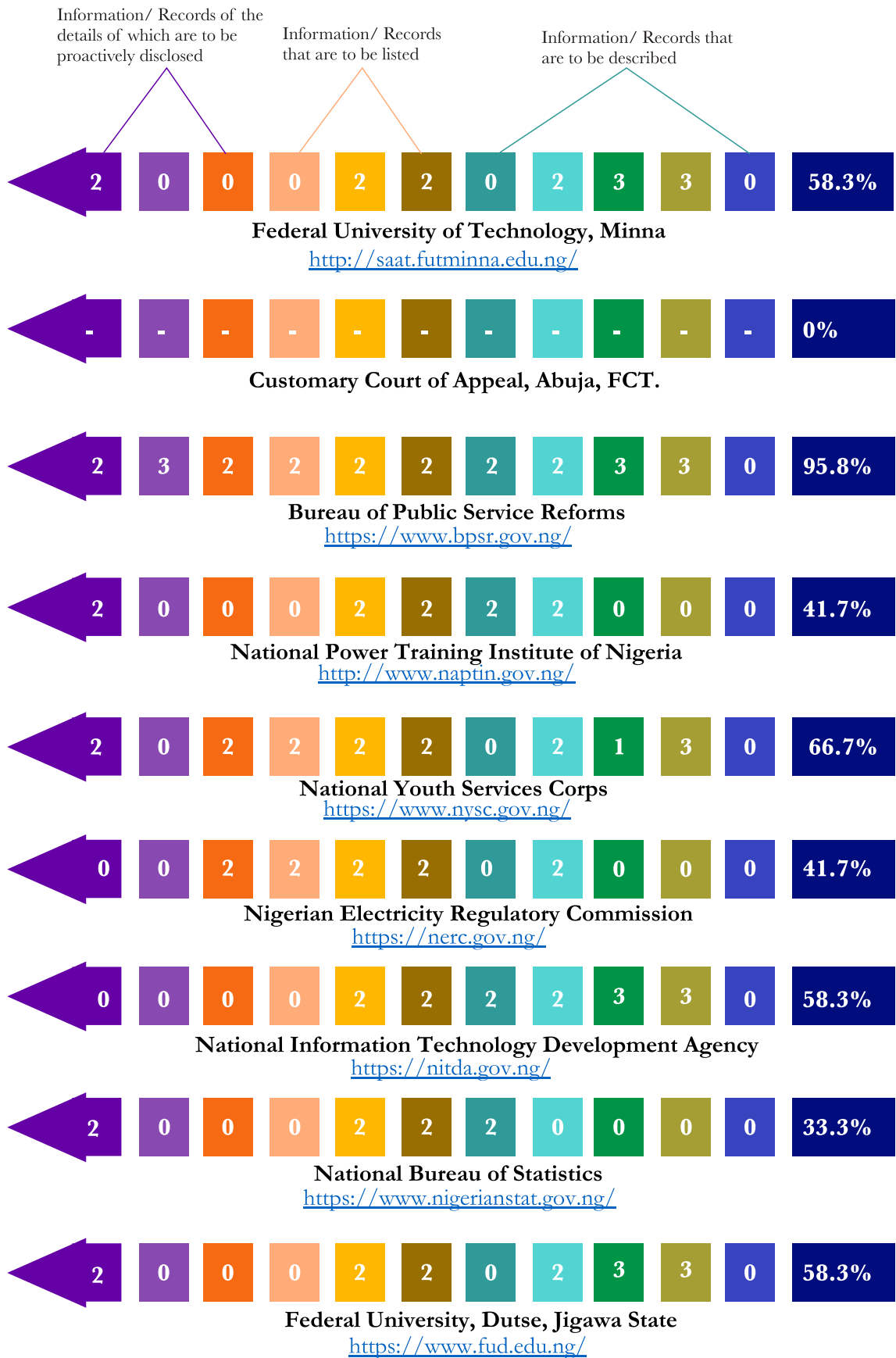
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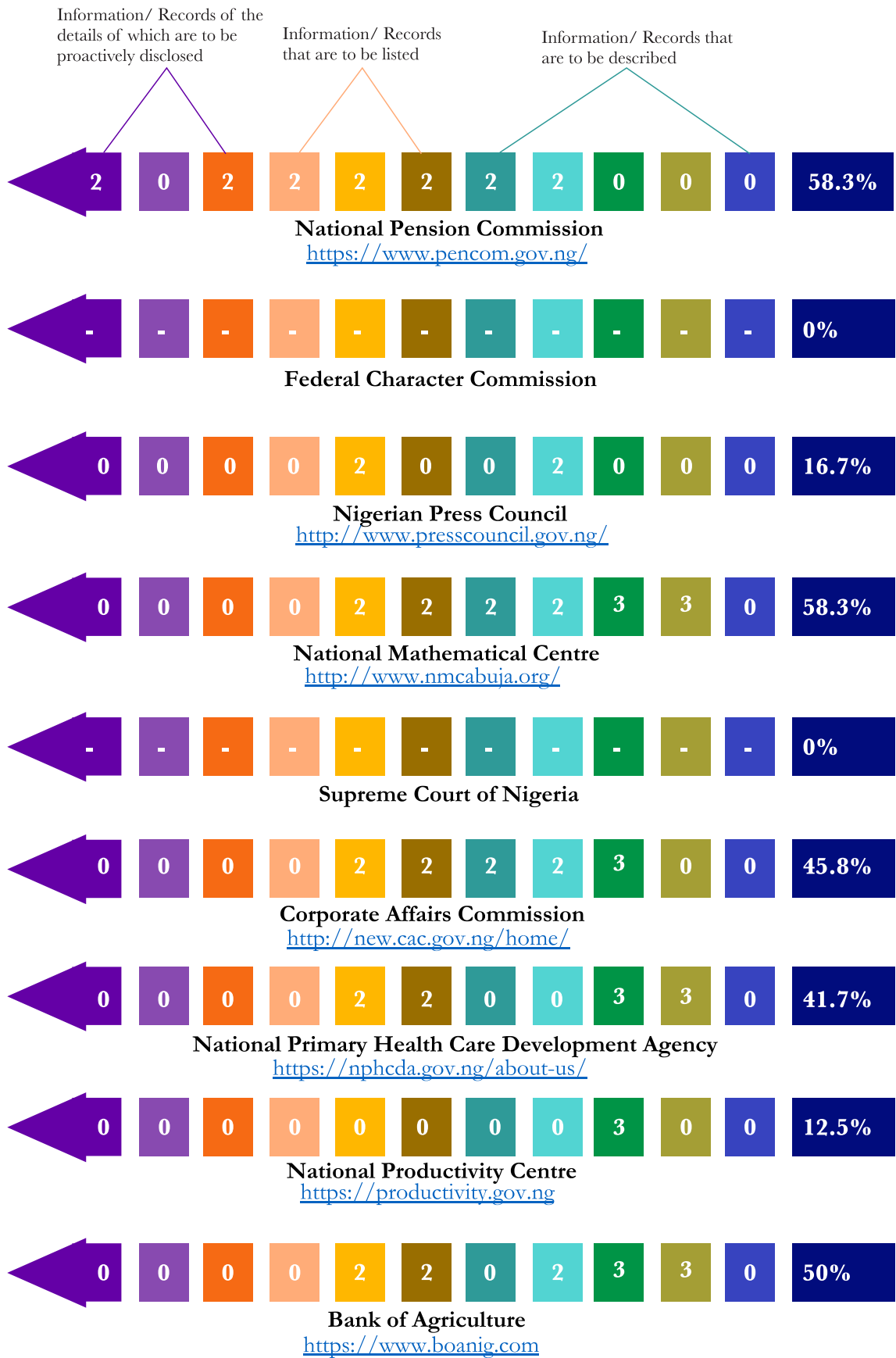
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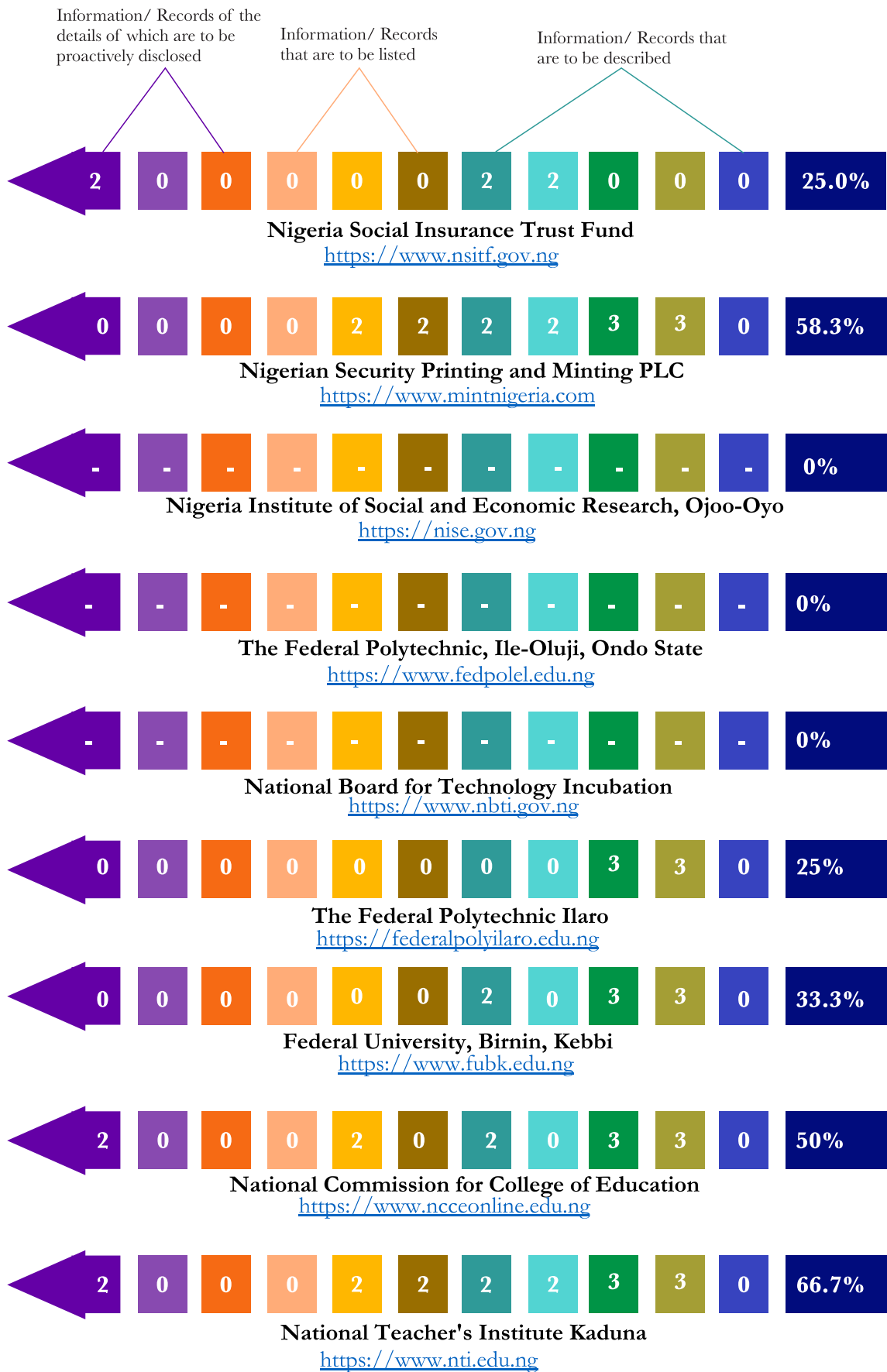
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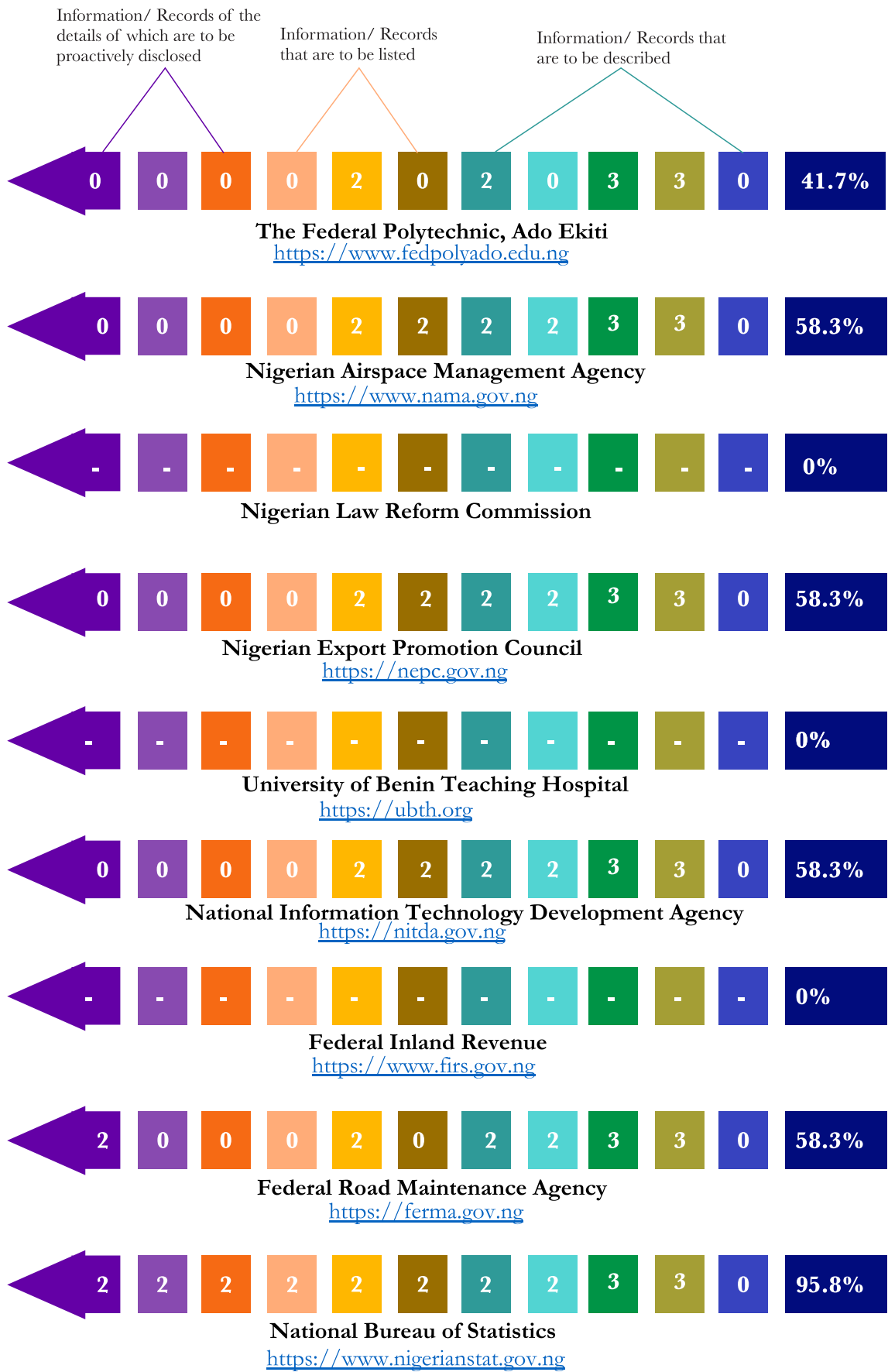
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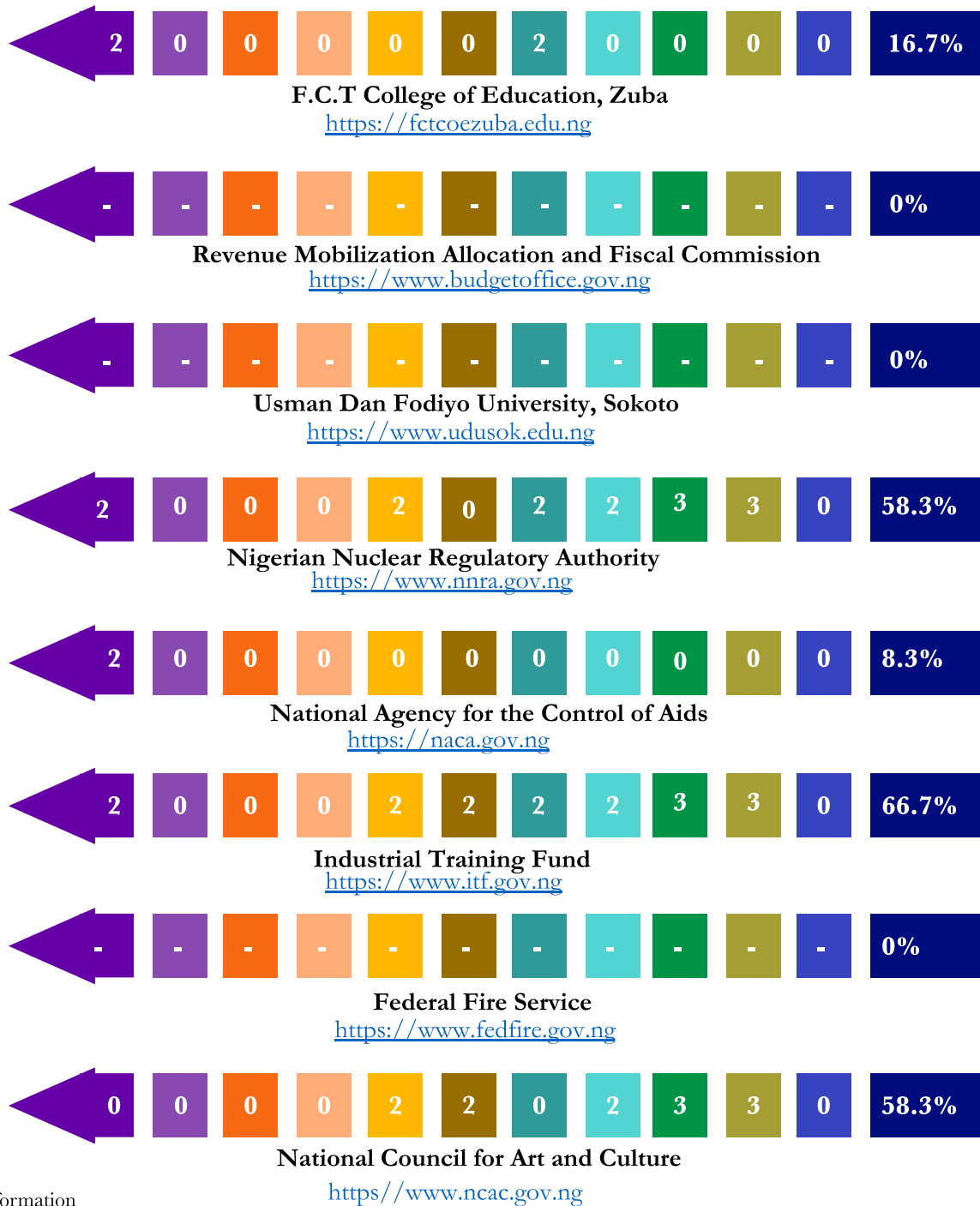
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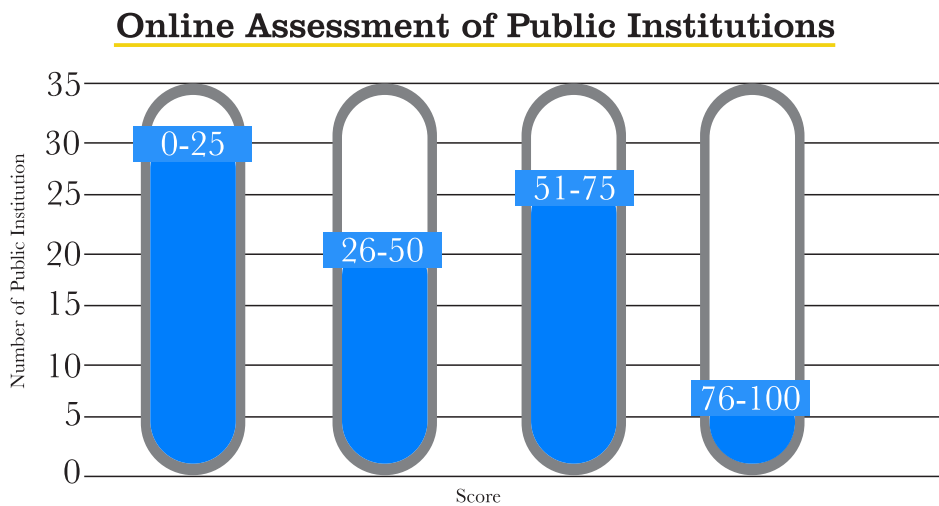


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- Staff Information
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- Assessment sum 24 but presented in percentages

This graph below highlights how public institutions proactively disclose their information online. Of the 77 that was surveyed, it was observed that a total of 29 institutions proactively made available their information online and only 5 of them scored above 75%. While the majority (85%) of institutions assessed maintain an official website, this medium is underutilized for proactive disclosure. Rarely does the information provided on the website exceed a level of compliance with Section 2 (3) (a) of the FOI Act, and most disclosures are limited to basic information about the structure and general functions of the relevant institution.



## **DISCLOSURE ON HARD COPY**

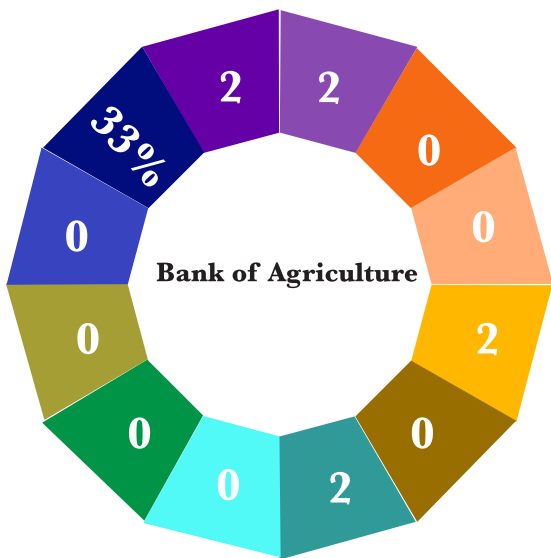
As mentioned earlier, the FOI Act prescribes disclosure in print, electronic, online and in **hard copy**. These disclosure methods are not mutually exclusive, and one disclosure method is not intended to be given precedence over another. Similarly, the form of the disclosure may fit into more than one of the prescribed categories. For example, print may refer to publication in newspapers or newsletters, bulletins, or other periodicals which would also qualify as hard copy or may be an institutional brochure register or annual report.

For the purpose of this survey, the distinction is made between disclosure in print/hardcopy and online. The hard copies of printed materials, which were obtained at the offices of the various institutions, primarily in the form of information brochures and manuals, were considered as printed in hardcopy.

This table below enumerates scores of proactive disclosure sampling physical visits undertaken to the public institutions. The report observed that some institutions proactively made available certain information in hard copy at their offices, while others were doing not.



- Staff Information
- Income & Expenditure Information
- Information of contracts, Licenses etc
- List of Materials containing Information on contracts and grant
- Classes of records held by the institution
- List of manuals for the day to day running of the institution
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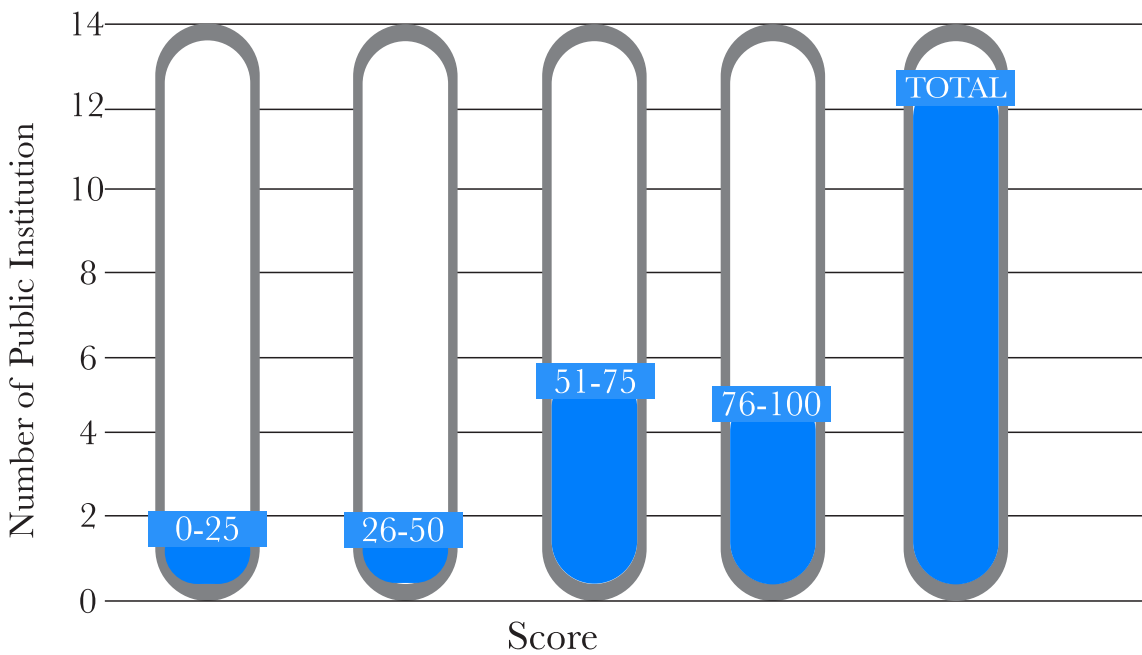






This graph below shows the scores of proactive disclosure sampling physical visits undertaken to the public institutions. The report observed that 10 of 17 of the institutions proactively made available more than 50% of their information in hard copy at their offices, with 5 of them scoring above 75%.

**Physical Assessment of Public Institutions**



## **FINDINGS**

The FOI Act, which has been in force since 2011, is an important step towards government openness, as the FOI Act changes the way government relates with the public by establishing the public's right to access information held by public institutions and relevant private institutions in the country. However, the implementation/compliance of the law, has shown little or no progress. Out of the over 800 public institutions in Nigeria, a combined number of 77 public institutions made their submission of FOI Annual reports to the Office of the Attorney General of the Federation (AGF) in 2019 and 2018 (for the 2018 and 2017 fiscal year) and this formed the criterion on which the selection for this assessment was made. These criteria for selection were hinged on the premise that those who complied with section 29 which provided for submissions to the Office of the AGF would take further steps to comply with section 2 of the act. A breakdown of this figure in terms of compliance with Section 29 stands at an abysmal 9.6%, less than 10%.

Commitment 11 of the NAP sought to improve the level of compliance with the FOI Act's mandatory proactive disclosure requirements in order to ensure that basic information on government activities and services is readily available to citizens by extending full compliance with mandatory FOI information categories to 200 institutions (25% of the approximate total). However, this assessment shows that little to no effort overall is being made to comply with the requirement to proactively disclose information prescribed under Section 2(3) & (4) of the FOI Act. The average disclosure rate indicates very low-level compliance with the proactive disclosure mandate of the law.

## **AGGREGATE OBSERVATIONS & RECOMMENDATIONS**

The FOI Act consolidates the right to information and transforms the general arena of governance from one that was predicated on a foundation of secrecy, established by the Official Secrets Act and other laws and practices, to one where openness and access to information is the prescribed norm. Nigeria's centennial history before the passage of the FOI Act was of colonial rule, military authoritarianism, and civilian rule, none of which was accountable to the Nigerian public.

The FOI Act birthed a breakthrough, is presaged as a transformational tool in eliminating corruption, and consolidating a culture of transparency, open and participatory government in Nigeria. However, its power lies in the effectiveness of the implementation of the Act, which would require commitment from various stakeholders, including government, civil society, and the public to ensure its success.

The general finding is that while efforts made by some handful of public institutions are commendable, the level of compliance is sub-par. There are gaps and challenges that hinder a vast majority's effective compliance with the Act. Observations and recommendations obtained from feedback from interviews of relevant stakeholders and partners are summarized below:

### **1. Poor Record Keeping and Management**

Most public institutions lack proper record keeping and systematic means of record management and archival infrastructure in a manner that facilitates easy access to information. There is a lack of an organized electronic document management system or protocol in most MDAs as most times staff state that information resides severally in various department and would require the arduous task of collection and collation.

**Recommendation:** Public institutions should ensure that their record management infrastructure is updated and restructured to enable easy access to files, documents and information.

## **2. Officials Secret Act and Other Conflicting Law**

Duties of public officials are governed primarily by the Public Service rules which provide for basic rules, regulations and procedures that are germane for carrying out the business of government geared towards efficient service delivery. The rules derived from the Official Secrets Act has not been amended to recognize the Freedom of Information Act and has become a form of limitation to improved compliance to the FOI Act as public officials view it as the bible of public service. The existence of other subsisting laws such as the Evidence Act, Criminal Code, Public Complaints Commission Act, and the National Archives Act have sections that conflict with the FOI Act and are still in use despite the FOIA having repealed them

**Recommendation:** The Nigerian public servant is guided by the Public Service Rules and the Act establishing each institution. Certain provisions of the Public Service Rules conflict with the provisions of FOIA. It is, therefore, imperative that the rules, establishing these laws and other subsisting laws guiding the mandates of the Public Service be reviewed to conform to the relevant sections of the FOI Act.

## **3. Training**

It has been reported over time that many staff of public institutions are not aware of the FOI Act nor of its implications. There is a lack of adequately trained staff on the essential elements of FOIA despite the provision for that in Section 13 which states that there should be training for officials on the public's right to access information or records held by the government or public institutions. Sadly, most public institutions are not adhering to this provision with the excuse of budgetary deficiencies.

**Recommendation:** There is need for MDAs to ensure that they understand and distinguish between their duties under proactive disclosure mandated under Section 2 (3) & (4) of the FOI Act, as differentiated from the duty to process information requests under Sections 3 and 4. Thus training modules should be developed and institutionalized for relevant institutions to offer courses on freedom of information and ICT respectively.

## **4. Structural Alignment**

The FOI act provides for institutions to have desk officers without a structure to accommodate such change. To ensure efficiency, institutions must ensure the availability of trained personnel to serve as FOI desk officers.

## **5. Punitive Measures**

The FOIA does not provide for sanctions or penalties where a public institution defaults in its obligations to the provisions of the Act. This gap contributes to the apathetic attitude willfully displayed by some officers in these institutions.

**Recommendation:** Sanctions are important in ensuring the effective implementation of FOIA in Nigeria. Stakeholders involved in access to information were of the opinion that application of punitive administrative measures would improve the level of compliance significantly, as lack of consequences for non-compliance has contributed greatly to the near-total disregard for this requirement of the FOI Act.

Sanctions for failure to comply with the FOIA should be introduced to the Public Service rules for institutions as well as for the officers who fail to provide information. The necessary instruments should be put in place to enforce it in accordance with the appropriate civil service guideline for punitive measures.

## **DEVELOPING NEXT STEPS**

### **Strategizing for FOI Compliance.**

*Ownership* – The starting point for effective compliance with the Act is political will. All relevant demand and supply side actors and stakeholders must demonstrate ownership and a sustained commitment to reform, including the likelihood of relinquishing a level of operational powers and turf control.

*Assessment* – This requires a thorough mapping of the FOI infrastructure, including legislation and policy that are in conflict with the Act; institutions and actors that inform the status quo, to understand their functions and interactions, and identify systemic conditions that contribute to ineffective compliance. The assessment will form a baseline for developing a shared understanding of the challenges, and the necessity and opportunities for change.

*Training & Capacity Building* – Extensive training is inevitable for ensuring the adequate professionalization of institutions. Sustainable capacity building will require the incorporation of the FOI modules into training programmes to ensure standardization of such trainings.

*Monitoring and evaluation* – activities and programs promoting compliance/implementation of the Act should be regularly assessed, monitored and evaluated, and lessons documented to ensure that not only do they deliver on the intended results; less than effective strategies and activities should be modified accordingly.

### **Room For Civil Society Organization (CSO) Engagement.**

It has been established that successful and effective FOI regime requires buy-in from a range of actors and stakeholders, including CSOs who play an indispensable role in supporting the establishment of democratic governance. Possible avenues for CSO engagement include the following:

- Develop a cohesive and integrated CSO advocacy towards building political will in favor of FOI compliance and implementation.
- Build a wider audience, especially at the local government level of FOI generally by increasing media coverage and raising public awareness.
- Strengthen the civic engagement component of the commitment through public awareness campaigns on the proactive mandatory disclosure requirements of the FOI
- Facilitate sensitization and training of the demand and supply side of the Act.
- Utilize social media platforms for the creation of awareness and to engage relevant institutions on compliance and implementation.

## **CONCLUSION**

Proactive Disclosure is a crucial element of the FOI composite, which together work to facilitate a robust FOI regime. This commitment sought to improve the level of compliance with the FOI Act's mandatory proactive disclosure requirements in order to ensure that basic information on government activities and services is readily available to citizens. To achieve this objective, the Commitment proposed to:

- design and implement the publication of fully compliant information as provided in the FOI Act by at least 200 public institutions and make it easily accessible to the public.
- apply punitive administrative measures against public institutions adjudged to be in breach of the mandatory publication requirements; and
- publish responses to recurrent FOI requests on the public platform/in the publication (an information category not currently mandated by the current law).

Extending full compliance with mandatory FOI information categories to 200 institutions (25% of the approximate total) would have been a major achievement. If fully implemented, this commitment would be a major step forward for proactive disclosure and would have a transformative impact on the relationship between government and citizens. However, this assessment shows significant public sector non-compliance with the proactive disclosure mandate under the FOI Act as stated in the Commitment.

To be successful, the implementation of the FOI Act must be holistic and across board since every obligation created under the Act has a vital role in ensuring that the right of the public to information is duly exercised. Therefore, it becomes imperative for the public and civil society to demand compliance with the provisions of the FOI Act by public institutions.

It is equally important to ensure effective implementation of laws, to avoid inevitable redundancy. All processes, from enactment to implementation and monitoring must incorporate robust transparency and wide stakeholder involvement, including citizens' engagement. There is danger in allowing the FOI Act to remain simply a paper legislation by not allowing the promotion of meaningful access to information. Citizens need to ensure they hold the government accountable and this is strengthened through the enforcement of their right to information.



About  
Centre LSD

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:

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

### **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.

### **ORGANS OF CENTRE LSD**

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Dr. Omano Edigheji, South Africa  
Dr. John Ojediran, Nigeria  
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### Founding Executive Director

Dr. Otive Igbuzor

### Headquarters:

Suites 27, Tolse Plaza,  
4, Franca Afegbua Crescent,  
Formerly Lawan Gwadabe Crescent,  
Off Jereton Mariere Road,  
After Apo Legislative Quarters,  
Apo, P. O. Box 9661, Garki, Abuja Nigeria.  
Website: [www.centrelsd.org](http://www.centrelsd.org)  
E-mail: [info@centrelsd.org](mailto:info@centrelsd.org)  
Tel: +23498703178

### Niger Delta Office:

Odeyovwi Villa  
Emonu Orogun, Ughelli, Delta State.

### Northern Regional Office:

Kebbi Office: No 4, Off Muhammed Adamu Aliero Road,  
Behind Bahamas Food Restaurant,  
Birnin Kebbi, Kebbi State.

**Yola Office:** Suite 220-221 Police Shop Wasiri Street,  
Opposite Murtala Mahammad College,  
Jimeta, Yola-Adamawa State.

Website: [www.centrelsd.org](http://www.centrelsd.org)  
Email: [info@centrelsd.org](mailto:info@centrelsd.org)  
Facebook: [@centrelsd](https://www.facebook.com/centrelsd)  
Twitter: [@centrelsd](https://twitter.com/centrelsd)  
Tel: +234(0)8122556434



**(Centre LSD)**

**Headquarters:**

Suite 26-28, Second Floor, Tolse Plaza, 4 Franca Afegbua Crescent, Off Samuel Jereton Mariere Road, Near Apo Legislative Quarters Zone E Gate, Before BestWay Luxury Suites, P.O. Box 20298, Abuja, Nigeria.

**Niger Delta Office:**

Odeyovwi Villa, Emonu-Orogun, Ughelli North LGA, Delta State.

**Northern Regional Office:**

N0. 220-221 Police Shop, Waziri street, Opposite Murtala Mohammed College, Jimeta, Yola, Adamawa State.

Tel: 08122556434

Twitter: @centrelsd

Facebook: @centrelsd



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