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Table of Content

Resource Rent to Riches: Exploring Neiti Oil and Gas Audits and Financial Sustainability in Nigeria, 2012 2020……..2

External and Internal Impediments to the Role of Human Resources in the Implementation of the District Health System in Enugu State……..19

Managing Excesses in Nigerian Civil Service Delivery: An Appraisal of Effectiveness and Public Policy Regulatory Mechanisms……..36

Impact of Government Sectorial Expenditure on Economic Growth in Nigeria: An Empirical Analysis…….49

Strategic Management of Herdsmen-Farmers' Conflicts: A Sustainable Step Towards the Resolution of Fulani Herdsmen Versus Farmers' Conflict in Benue State, Nigeria…….69

Anatomy of the challenges to the procurement governance in Nigeria…….85

A Theoretical Discourse on Performance Effectiveness Issues in Governmental Institutions in Nigeria…….108

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ANATOMY OF THE CHALLENGES TO THE PROCUREMENT GOVERNANCE IN NIGERIA

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Abstract

In recent times there has been public expression of concerns over poor implementation of the 2007 Public Procurement Act in Nigeria. Blame has been traded, with the executive branch of government taking much of the blame. This paper examines the state of implementation of the Act with a view to assess the causes and appropriately situating the blame. Utilizing descriptive documentary design, content analysis and the institutional theory, the study identified a number of causes for the inadequate implementation. It found out that non-compliance with the provisions of the Act, occasioned by the institutional weaknesses of the regulatory framework and inadequate funding to the regulatory institution contribute to poor implementation of the Act. With respect to situating the blame for the inadequacies in the implementation, a number of actors have been indicted. These include the executive, the legislature and the judiciary. Against this backdrop, the study recommends both policy and non-policy measures including modification of the Act with emphasis on strict compliance; a strong and credible enforcement mechanism consisting of effective detection and diligent investigation, efficient prosecution, speedy adjudication and effective sanctions against culpable parties to arrest the pervasive culture of non-compliance.

KEYWORDS: Public Procurement, Procurement Act, Policy Implementation & Blame.

Introduction

Public procurement reforms have been initiated in several African countries (Hunja, 2003). Essentially, the reforms were aimed at purging the public procurement sectors of fraudulent practices, encouraging competition, transparency, efficiency, accountability and to achieve the value for

the money goal, among others. However, reform efforts were oftentimes unsuccessful (World Bank, 2003b). According to the World Bank, there is a high prevalence of poor implementation of public procurement laws in Anglophone African countries. This can be attributed to incidences such as: inconsistencies in the implementation of the laws, fragmentation of the legal and institutional framework and weak capacity utilization. These have resulted in confusion, overlapping mandates, inefficiencies and delays in the implementation (World Bank, 2016). As a result of these weaknesses, implementation of public procurement laws has been disappointing despite progressive efforts in the institutionalization of public procurement laws.

In Ghana, Ameyaw et al (2012) stated that the 2003 public procurement law introduced as a guideline for the conduct of public procurement progressed well but faltered after an initial period of progress. A number of factors were referenced in trying to explain why reform implementation was impeded. This was due to the combined influence of inadequate strategies, political resistance or interference, corruption, inadequate funding, failure to sustain long-term reform efforts and the lack of knowledge about appropriate tools to establish systemic change. Others were lack of political will, lack of adequate office accommodation, lack of procurement capacity among Ministries, Departments and Agencies (MDAs) and District Assemblies (DAs), amongst others (Ameyaw et al, 2012).

The National Public Procurement Authority of Sierra Leone in its 2005 Annual Procurement Report outlined certain challenges confronting it: inadequate funding, deficient staff strength and organizational and logistical limitations. Others were poor record keeping, delays in payment of contractors and suppliers (NPPA Annual Report, 2005). Studies in Tanzania and Kenya revealed that corruption through hidden violation of laid down procurement rules has mainly been the problem with reform implementation (Transparency International, 2009). Similarly, study on the Ugandan procurement system revealed lack of knowledge of the tendering process, lengthy procurement process, excessive requirement of financial guarantees, corruption and protectionism, lack of enforcement, lack of capacity, lack of monitoring and evaluation mechanism, resource constraints, amongst others (Common Wealth, 2010; Agaba & Shipman , 2007).

The situation in Nigeria very much reflects the African perspective above. A review of the BPP Annual Reports from 2008-2015 revealed a number of challenges ranging from non-compliance with the provisions of the Act, occasioned by the institutional weaknesses of the regulatory framework to inadequate funding to the regulatory institution. It is, therefore, possible to discern that there are problems with implementation. Consequently, there have been repeated public outcries in recent times about poor implementation of the Act in Nigeria. This find expression in publications like: "Why procurement cost remains high in Nigeria, by experts" (https://guardian.ng/news/)**,** "N1.9 trillion (US $5 billion) defiance contract for the construction of railway lines" (Daka, 2015), "Honourable Dimeji Bankole N2.8 billion Peugeot purchase scandal in the National Assembly" (Onyema, 2011), "US $500 million defiance contract awarded to Mr. Arthur Eze to weaponize six puma helicopters" (Onah, 2015), "Stella Oduah car purchase scandal of N255 million" (Onah, 2015), "US $21 million loan to buy equipment supposedly for the printing of ballot papers for election" (Oluwole, 2015), "Over N75 billion defiance contracts awarded by the Office of the National Security Adviser" (ONSA) headed by Sambo Dasuki, between 2011 and 2015 which indicted more than 300 companies and prominent citizens including serving and retired officers of the armed forces, amongst others (Wakili, 2015; Olalemi, 2016).

Within this setting, a number of actors have been blamed for the poor implementation of the Act. These include the executive/bidders for non-compliance with the provisions of the Act; the legislature (Senate and House of Representatives Committees on Public Procurement) for poor oversight functions and control of the legal and regulatory framework including inadequate funding to the BPP; and the judiciary for conniving with most defending counsels to resort to unnecessary and ridiculous injunctions and adjournments to frustrate the trials of suspects of procurement crimes in Nigeria. In view of the centrality of effective public procurement in the realization of developmental and service delivery goals of government, it becomes imperative to investigate this problem.

Therefore, this paper to examine the reality in the concern expressed about poor implementation of the Act, the factors that contributed to the undesirable situation and possible measures to turn around the situation.

1. Conceptual Clarification

Public Procurement

Public procurement has been variously defined (Lloyd and McCue, 2004; OECD, 2007; Arrowsmith, 2010; Sarfo and Mintah, 2014) and can be viewed from different perspectives. According to the Public procurement Act, 2007, it is the process of acquisition by established rules and procedures of goods, services and works by the government (PPA, 2007). The process as described by Thai (2001:9) involves (i) deciding which goods and services are to be bought and when (procurement planning); (ii) the process of placing a contract to acquire those goods and services which involves, in particular, choosing who is to be the contracting partner and the terms on which the goods and services are to be provided; and (iii) the process of administering the contract to ensure effective performance (Thai, 2001:9).

Similarly, the World Bank defines public procurement as a process that involves the purchasing, hiring or obtaining by any other contractual means of goods, construction works and services by the public sector. It is alternatively defined as the purchase of commodities and contracting of construction works and services if such acquisition is effected by resources from state budgets, local authority budgets, state foundation funds, domestic loans or foreign loans guaranteed by the state, and foreign aid as well as revenue received from the economic activity of the state. Public procurement thus means procurement by a procuring entity using public funds (World Bank, 1995).

Viewing public procurement from a different perspective, Simpson, Sharma & Aziz, (2011: 9) write that "public procurement resembles a reverse auction, whereby suppliers compete to offer the lowest price for a good or service". Essentially, to enable government achieve the value for money goal following due process to improve welfare and enhance economic growth (Simpson, Sharma & Aziz, 2011). In Nigeria, the process of award of any government contract starts with the call for bids by potential service providers, followed by the tendering of sealed bids by contractors. Upon evaluation and scrutiny of qualified bids, the contract is awarded to the most suitable firm or company. A procurement procedure leads to the conclusion of a public contract (BPP Procurement Manual, 2011).

The Public Procurement Process

The scope of public procurement consists of five core elements: policy making

and management, procurement regulations, procurement authorization and appropriations, public procurement function in operations, and feedback. The "procurement regulations" element, established by policy makers and management executives, becomes the institutional framework within which public procurement professionals (be it contract officers, buyers, or procurement officers), and programme managers implement their authorized and funded procurement programmes or projects, and also are accountable to policy makers and management executives. Finally, feedback will go to policy makers and management for possible adjustments or improvements, and to procurement professionals and managers for adjustments or improvements in procurement operations (Thai, 2001).

2. Theoretical Basis of the Study

The theoretical framework adopted for this work is the institutional theory which seeks to examine the effectiveness of legal and institutional frameworks in organizational studies (Scott, 2012). It has a long history dating back to the mid-nineteenth century and incorporates the pioneering insights of seminal scholars of the social sciences such as Max Webber, with Émile Durkheim as the foundational author of this approach (Scott, 2005). The choice of this theoretical paradigm is predicated on the fact that institutional theory is the traditional approach that is used to examine elements of public procurement laws (Checkland and Scholes, 1990; Thai, 2001; Scott, 2001).

Institutional theory comes from the concept of institutions described as the building blocks of society, providing the assurance of security, ease of social transactions, and a sense of established order (Scott, 2008; Green et al, 2009). As such, they feature strongly in the literature of many diverse fields: political science (Nardulli, 1991; Thelen & Steinmo, 1992), law (Hauriou, 1925), economics (Eggertsson, 1990; Furubotn & Richter, 1997), and sociology (DiMaggio & Powell, 1983; Meyer & Scott, 1983; Powell & DiMaggio, 1991; Scott, 2001; Selznick, 1949, 1957, 1996). Iconic sociologist W. Richard Scott provided a comprehensive conceptual schema based on his extensive survey to institutional literature that guides directions for pursuing this theory. He posits that institutions consist of carriers (cultures, structures, and routines) and pillars (cognitive, normative, and regulative structures) including financial resources and activities that provide stability and meaning to social behaviour (Scott,

2004). Central to the application of this theory is the regulatory pillar which emphasized the use of laws, rules and sanctions as enforcement mechanism, with expedience (deterrence) as means for compliance (Scott, 2012).

For effective implementation of the 2007 PPA, authorities are encouraged as a matter of expediency to apply sanctions where necessary to control fraudulent practices in the procurement process because studies have shown that deterrence is more reliable in dealing with procurement crimes than relying on cultures and values, particularly in developing societies (Imperato, 2005). According to Zubcic and Sims (2011), enforcement action and increased penalties lead to greater levels of compliance with laws. Corruption among government procurement officials in developing countries such as Bangladesh, India, Sri Lanka, Nigeria and Venezuela has been linked to a weak enforcement of the rule of law (Nwabuzor, 2005). A study on corporate governance in Africa revealed that countries such as: Nigeria and Ghana suffer from weak law enforcement mechanisms (Okeahalam, 2004). In counties with complaint and review mechanisms, bidders are allowed to verify whether the procurement processes conform to the prescribed procedures. The possibility of review is also a strong incentive for procurement officials to abide by the rules (Hui *et al.*, 2011). Gunningham and Kagan (2005) argue that the threat of legal sanctions is essential to regulatory compliance and that enforcement action has a cumulative effect on the consciousness of regulated organizations and it reminds organizations and individuals that violators will be punished and to check their own compliance programmes. This is also supported by Gunningham and Kagan (2005) who opined that the outcome of sustained enforcement action instilled a culture of compliance and had a direct impact on corporate compliant behaviour. Sutinen and Kuperan (1999) further argue that coercive enforcement measures remain essential ingredients in any compliance regime.

Similarly, the availability of adequate human and material resources in the pursuit of any institutional mandate in order to provide stability and meaning to social life, has been emphasized and importantly, no institution can successfully deliver on its mandate without adequate funding or budgetary allocation to sustain the needs of its human and material resources (Scott, 2001). This is because, finance is the life blood of an institution and the instrument

through which other resources like: labour, human skills, information technology, professionalism, expertise, and machines are sourced, secured and sustained, and objectives realized.

3. Implementation of the 2007 Public Procurement Act in Nigeria

The introduction of Public Procurement Reforms in Nigeria followed a World Bank Country Procurement Assessment survey conducted in 1999-2000. The survey established the link between poor/weak public procurement procedures and corruption as well as its far reaching negative consequences on national development especially in the area of infrastructural development (World Bank, 2000a). The Report revealed that 60 kobo was being lost to underhand practices out of every N1.00 spent by Government and that an average of US $10 billion was being lost annually due to fraudulent practices in the award and execution of public contracts (CPAR, 2002). The procurement system was characterized by the absence of legal and institutional frameworks, absence of thresholds, lack of procurement capacity among MDAs, lack of periodic reviews and evaluations of procurement practices, absence of standard bidding documents, limited or no advertisement, amongst others (Stephen and Basil, 2012; Olatunji et al, 2016).

The net effect of all of these lapses were inflation of contract costs, bid splitting, collusion between bidders and between bidders and procuring entities staff, kick-backs and bribery, selective tendering, contract price negotiations, limited and ineffective public bidding, extra budgetary projects, political interference, lack of transparency, limited mandates given to tender boards (World Bank, 2000b; Eze, 2015). Also, there were cases of wrongful exclusion of qualified bidders, use of fake documents and falsification of records, conflict of interest was dominant and unchecked, and other kinds of manipulations of the procurement and contract award processes, amongst others (Fayomi, 2013; Jibrin et al, 2014; Bodunrin, 2016).

It was in an attempt to address these anomalies, that the Federal Government initiated the Public Procurement Reform Policy as part of its economic reform agenda designed to restore due process in the award and execution of federal contracts. This led to the setting up of the Budget Monitoring and Price Intelligent Unit (BMPIU) known as Due Process in June 2003 (Ekpenkhio, 2003; Achimugu, 2013). Its operations were guided by the Treasury Circulars which were based

on the 1958 Finance (Control and Management) Act authorizing the Accountant-General of the Federation to issue guidelines on public expenditure. To institutionalize the operations of the BMPIU, a Public Procurement Bill was articulated in 2003/2004 by the leadership of the BMPIU and presented to the National Assembly. Thereafter, it was passed on the 30th of May, 2007 and subsequently signed into law on the 4th of June, 2007 (Ezekwesili, 2003).

The Public Procurement Act, 2007 provides for the establishment of supervisory institutions and operational structures for procurement practice as well as defined scope, process, method, supervision, complaint mechanism, code of conduct and offences relating to procurement of goods, works, services (PPA, 2007). The Act established two bodies namely, the National Council on Public Procurement (NCPP) and the Bureau of Public Procurement (BPP) as the regulatory authorities responsible for the monitoring and oversight of public procurement, harmonizing the existing government policies and practices by regulating, setting standards and developing the legal framework and professional capacity for public procurement. However, the NCPP is yet to be inaugurated since its establishment in 2007 (William-Elegbe, 2011). The Act also provides for "Relevant Authority". They include the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and Other Related Offences Commission (ICPC). Their mandates were to investigate and prosecute all procurement crimes or offences in contravention of the law referred to them by the BPP (PPA, S. 53 & 60).

Implementation of the Act in Nigeria very much reflects the African perspective presented in our introduction. A review of the BPP Annual Reports revealed a number of challenges ranging from non-compliance with the provisions of the Act, occasioned by the institutional weaknesses of the regulatory framework to inadequate funding to the regulatory institution (BPP, Annual Reports, and 2008-2015). Similarly, studies on the country's implementation challenges has mainly been through non-compliance with procurement proceedings, open abuses or violation of laid down procurement procedures, rules and regulations (Fayomi, 2013; Ojo and Gbadebo, 2014; Nworgu and Eyisi, 2015). Others identified absence of strong and compelling institutions to promptly prosecute offenders, pervading corruption that has become Nigeria socio-cultural value, citizen's refusal to demand accountability, political interference, use of

proxy-contractors, delay and non-release of funds, amongst others (Nworgwugwu and Adebayo, 2015; Olatunji et al, 2016). These and other challenges appear to be common in the country's procurement environment as in many other African countries.

There has been a poor implementation of the 2007 Public Procurement Act in Nigeria. Summary of findings of factors that affected the effective implementation of the Act are:

Non-compliance with the provisions of the 2007 Public Procurement Act, contract splitting and variation in awards and execution, inadequate capacity of procurement staff in MDAs, inadequate funding to sustain capacity building and other reform outcomes, mismatch between budgetary appropriations and the actual release of funds, lack of proper administrative control and oversight in contract award and execution, delays in processing and approval of request for "NO Objection", delays in the investigation of alleged infractions and prosecution of offenders, weak enforcement mechanism, lack of deterrence against contravention, non-operationalization of the National Council on Public Procurement, limited procurement surveillance, audit and oversight by the BPP, delays in payments and sometimes non-payment of contractors for work done, political interference, the near absence of oversight and control of the legal and regulatory framework by the National Assembly, lack of special measures (model) to prevent and detect procurement fraud, delays in the investigation of alleged infractions and lack of knowledge and capacity in investigation officers, complaints review system lacks the political will to handle complaints efficiently and the means to enforce the remedy imposed and Other factors that militated against the effective implementation of the Act by the BPP were challenges during due process review reports, bid opening observation exercise, procurement audit exercise and other operational and non-operational challenges, amongst others.

4. Issues in the Implementation

Arising from the study findings, a number of actors in the public procurement process are to blame.

The Executive/Bidders

The executive within the context of this paper consists of the BPP, EFCC &ICPC, the Ministry of Finance, Office of the President and MDAs who not only procure but also implement and oversight public procurement in Nigeria. On the other hand,

bidders consist of contractors, suppliers and consultants. Hence, within the domain of the executive, findings show that institutional weaknesses of the regulatory framework were the first set of challenges in Nigeria's effort towards effective implementation of the Act (Bodurin, 2016). The agencies consist of the BPP, EFCC and ICPC. The institutions, by their acts of omission and commission, appear to lack complete independence and adequate mechanisms. For instance, the BPP cannot investigate and prosecute, the ICPC is very slow to act and cannot in the strict sense of things prosecute; while the EFCC seems more effective and can prosecute but rarely achieves convictions. According to the laws establishing the EFCC and ICPC, they cannot charge cases to courts after investigation without the authorization of the Attorney General (Familoye, Ogunsemi & Awodele, 2015). These situations, according to experts, frustrate the eagerness of the anti-graft agencies to prosecute such offences, and highly placed people will normally get their prosecution dropped or unduly delayed. Against this backdrop, the study observed the reason why the Anti-Corruption Agencies cannot promptly try and dispose-off public procurement cases.

On the other hand, findings also show that Ministries Department and Agencies of government (procuring entities) and bidders do not comply with the provisions of the Act. It shows that some officials of public procuring entities and bidders do not comply with the provisions of the Act. Such practices include : awards of projects to companies using minimum deviation from In-House Estimates which is contrary to the provisions of the Act; manipulation of the procurement process to inflate contract sum; bid splitting so as to avoid approval thresholds and appropriate procurement methods; companies owned by the same individual/source submit multiple bids for the same projects; some procuring entities do not advertise and solicit for bids in adherence to the Act and the standard bidding documents (SBDs) (Eze, 2015).

More so, some bidders fake documents and procurement records to prequalify for the award of contracts; some procuring entities do not invite credible persons from CSOs and professional bodies as observers as required by the Act in every procurement process; some procuring entities do not set out precise criteria upon which it seeks to give consideration to the prequalification applications and in reaching decisions as to which supplier; contractor or

service provider qualify (Wakili, 2015). Also, some projects are at times allocated rather than being subjected to open competitive bidding while some procuring entities collude with contractors to make unresponsive bid responsive, including contract price negotiation, kick-backs and bribery as well as the use of restricted tendering method where not appropriate, amongst others (Wakili, 2015).

Most MDAs still make it difficult for the CSOs and professional bodies to effectively observe the processes. For example, most MDAs have resorted to giving the CSOs short notices of their bid opening and pre-qualification exercises. They are equally known to be hostile to the CSOs when some details of the procurement processes are being demanded for. The role of CSOs entails having access to and analyzing solicitation and bidding documents; being present to observe procurement proceedings; and gaining access to procurement records and information (Freedom of Information Act, 2011). The CSOs do not have the right to interfere directly with the procurement proceedings; but they can send a report of the observations to the relevant regulatory or anti-corruption agencies for further action (PPA, S. 19(b)(ii)).

Despite the clear distinction made by the Act, in terms of responsibilities between ministers as political heads and the permanent secretaries as accounting officers, evidence has shown that the ministers dictate the procurement processes and override the powers and functions of the accounting officers (Bodurin, 2016). In many instances, contracts are alleged to have been shared by the politicians, with the assistance and supervision of the ministers manning the ministries even before they are advertised. Also, perhaps, in order to obey their masters, the accounting officers direct procurement officers to work towards ensuring that preferred contractors or service providers are pre-prequalified and emerged as winners of contracts (Bodunrin). Similarly, the frosty working relationship between the ministries and the parastatal under them has been variously reported as a challenge in guaranteeing the effective implementation of the Act. Most of the ministries according experts still insist in micromanaging of the parastatal and even starving them with essential information that will enable them independently conduct their procurement activities. In many instances, the ministries still insist on approving payments for contracts in the parastatal under them contrary to the relevant circular from the

Office of the Secretary to the Government of the Federation (Olalemi, 2016).

The Committees on Public Procurement in the legislature has accused the BPP of under hand practices in the procurement process and failing to perform its crucial and statutory duty, particularly the conducts of post- procurement audit and submission of reports to the National Assembly bi-annually (Eze, 2015). They legislators alleged that, "This neglect of duty by the BPP has affected the National Assembly in its constitutional duty of conducting oversight, with respect to the application of public funds (PPA, 2007 Section 5(Q). They warned that if urgent steps were not taken to address the alleged infractions, the BPP was likely to transform itself from the regulator to a disruptor and endanger the entire public procurement system in Nigeria.

The study also found out that though the BPP has saved the country some hundreds of billions of naira (₦732,607,950,182.75 between 2007 and 2015) through regulatory functions; it however discovered that MDAs appropriated contracts are still being split to keep their value within the approved threshold of the Accounting Officers (Wakili, 2015). This ultimately, when not found, shield such contracts from the proper scrutiny/review of the BPP before the issuance of Certificate of NO Objection and therefore results to inflated contract.

The Legislature

The legislature within the context of this paper consists of the Senate and House of Representatives Committees on Public Procurement. The study found out that the Committees have not been actively involved in oversight and control of the legal and regulatory framework as well as reviewing and acting on the findings and reports of the BPP over the years (BPP Annual Reports, 2008-2015). As an oversight body over the BPP, it is the responsibility of the legislature to ensure and guarantee adequate funding to the regulatory institution. However, findings show that the legislature also failed in this regard. A careful examination of the Bureau's official documents on the budgetary allocations to it since it commenced full operation in 2008 shows a paltry take-off and oscillating budgetary allocations. From N659, 220,437 million in 2008 and the highest was N1.4 billion in 2011 to a declining N1 billion in 2015 (BPP Annual Reports, 2008-2015). The situation according to experts was further compounded by the staff strength of the BPP which is put at 107 for an agency with the mandate to regulate,

monitor and oversight the procurement activities of over 700 federal procuring entities. Moreover, the 107 staff are not all in monitoring and evaluation but spread across the various departments in the Bureau (BPP Annual Reports, 2008-2015).

The effects of these inadequacies as deduced from the analysis of data were the Bureau's inability to sustain capacity building and other reform outcomes; absence of zonal or state offices; inability to engage the services of consultants for periodic reviews and evaluation of procurement activities (BPP Annual Reports, 2008-2015). Others were the lack of professional procurement training and retraining of staff of the Bureau and its relevant authority; inability to conduct regular seminars and workshops for all the federal procuring entities; inability to create more awareness for its activities as well as the lack of operational vehicles, facilities and space, amongst others(BPP Annual Reports, 2008-2015).

The Judiciary

The judiciary within the context of this paper consists of the Federal High Court and this is so because the Public Procurement Act clearly stated that all procurement cases will end at the Federal High Court. Section 58 (2 & 3) of the PPA, 2007 stipulates that prosecution of offences under the Act by the relevant authority (EFCC & ICPC) shall be tried by the Federal High Court. However, in terms of implementation, the study found out that not enough culpable parties have been sanctioned or punished for procurement crimes in Nigeria to serve as deterrent to potential violators (Wakili, 2015). The posture of the Federal High Court and the Lawyers in prosecuting procurement crimes is another hindrance in ensuring effective implementation of the Act over the years. According to experts, the law courts connive with most defending Counsels to resort to unnecessary and ridiculous injunctions and adjournments to frustrate the trials of suspects (Eze, 2015). It is worthy of mentioning here that some cases, mostly those involving past political office holders at the federal level, that were charged to courts since 2007 are still pending before the Federal High Court. However, the EFCC has prosecuted or facilitated the prosecution of some procurement crimes two most famous being EFCC v. Dimeji Bankole and the Federal Republic of Nigeria v. Chief Olabode George and others (Wakili, 2015).

5. The Way Forward

For public procurement to be an effective instrument for the attainment of government developmental goals and services delivery in

Nigeria, the process must be strengthened. Flaws at different stages of the procurement process which culminate in poor implementation Act have been articulated. These must be through policy and non-policy initiatives. To this effect, the following recommendations are proffered:

1. All procuring entities must procure in strict compliance with the Act or face severe sanctions. Second, is for the BPP to establish rules requiring bidders to disclose certain cost information during the bidding process and impose penalties for failure to disclose accurate cost data. Third, is for the Bureau to require bidders to certify that they have set their prices independently and not in collusion with officials of procuring entities or other bidders. Fourth, it would involve the preparation of internal estimates of the competitive-market cost of significant projects, goods or services by all MDAs as a benchmark to evaluate the possibility of collusive overcharges and lastly, is the development of econometric tools by the regulator that can assist in the identification of suspicious bidding patterns.

2. There is a compelling need to further deepen the institutional capacity of the relevant agencies to effectively prevent, detect, investigate, and prosecute cases of procurement fraud with dispatch. Therefore, a strong and compelling enforcement mechanism consisting of effective detection and diligent investigation, efficient prosecution, speedy adjudication and effective sanctions for culpable parties to serve as deterrent to potential violators, is inevitable. This will entail: fast tracking of cases of infringements by the Federal High Courts or establishment of special courts to handle procurement crimes, increasing higher fines and prison sentences and additional measures, such as permanent debarment, among others.

3. The procurement course has to be de-politicized (non -involvement of the political class), just as the NCPP needs to be inaugurated. Second, the BPP should step up procurement reviews, compliance audits, and field inspection and stringent monitoring of ongoing projects and apply appropriate sanctions where and when there is a contravention of the Act. Third, would require building the institutional capacity of the relevant agencies to effectively prevent, detect, investigate, and prosecute cases of procurement fraud.

4. Deployment of adequate funding and manpower by the federal government to the BPP to enable it regulate, monitor, and oversight the procurement activities of all the federal procuring entities. This will be in addition to soliciting and canvassing for foreign support in the area of human capacity development by the Bureau from international development partners and donor organizations

9. Conclusion

The paper has raised critical issues about public procurement in Nigeria with the view to address the public concerns about poor implementation of the 2007 PPA. Numerous impediments to effective implementation of the Act are highlighted. These impediments or challenges have been examined within the setting of the Act and the role of key actors in the procurement process. It was observed that each and every category of actors in the public procurement process contributes in one way or another, to poor implementation of the Act. Against this backdrop, it is our conviction that we have attempted to provide some way forward to the challenges of the implementation of the 2007 PPA in Nigeria.

REFERENCES

Achimugu, H. (2013). Public administration and the challenge of national development in Nigeria. Issues and concerns. *Mediterranean Journal of Social Sciences, 4(6), 113-119.*

Agaba, E. & Shipman, N. (2007). Public procurement reform in developing countries: The Ugandan experience. Chapter 16 in G. Piga and K. V. Thai (eds.), *Advancing Public Procurement: Practices, Innovation and Knowledge-Sharing* (373-391). Boca Raton, FL: PrAcademics Press.

Ameyaw, C.; Mensah, S. & Osei-Tutu, E. (2012). Public procurement in Ghana: The implementation challenges to the public procurement law 2003 (act 663). *International Journal of Construction Supply Chain Management, 2 (2), 55-65.*

Arrowsmith, S. (2010).Horizontal policies in public procurement: Taxonomy. *Journal of public Procurement*, vol.10 (2), 149-160

Bodunrin, A. K. (2016). Empirical review and analysis of public procurement practices in Nigeria: Challenges and Prospects. *Public Policy and Administration Research, 6(3), 128-135*

Bureau of Public Procurement. (2008-2015). *Annual reports*. Abuja: Federal Government Press.

Bureau of Public Procurement. (2011). *Procurement procedures manual for public procurement in Nigeria*. Abuja: Federal Government Press.

Bureau of Public Procurement. (2013). *Public procurement journal*. 19th Edition, January-March. The Presidency, Abuja.

Bureau of Public Procurement. (2013). *Public procurement journal*. Combined 20th Edition, July-December. The Presidency, Abuja.

Bureau of Public Procurement. (2014). *Public procurement journal*. 21st Edition, January-March. The Presidency, Abuja.

Bureau of Public Procurement. (2014). *Public procurement journal*. Combined 23rd & 24th Edition, July-December. The Presidency, Abuja.

Bureau of Public Procurement. (2015). *Public procurement journal*. 25th Edition, January-March. The Presidency, Abuja.

Checkland, P. & Scholes, J. (1990). *Soft systems methodology in action*. New York: John Wiley & Sons.

Commonwealth Secretariat. (2010). *Improving SMEs access to the Public Market. Trade, Enterprise & Agricultural Department*, October, Draft report, Republic of Uganda.

CPAR. (2002). *Country procurement assessment report*. Procurement policy and services group. Washington, D. C.

Daka, T. (2015). *Reps probe alleged N1.69 trillion railway contract scam*. Retrieved 12 January, 2016. www.ngrguardiannews.com/2015/12/rep...

DiMaggio, P. J., & Powell, W. W. (1983). The iron cage revisited: Institutional isomorphism and collective rationality in organizational fields. *American Sociological Review, 48(2), 147-160.*

DiMaggio, P. J. & Powell, W. W. (1991). Introduction. In Powell, Walter W. and DiMaggio, Paul J. (Eds.) (1991), *The new institutionalism in organizational analysis* (pp. 232-263). Chicago: The University of Chicago Press.

Eggertsson, T. (1990). *Economic behavior and institutions*. Cambridge, UK: Cambridge University Press.

Ekpenkhio, S. A. (2003) *Public sector procurement reforms: The Nigerian Experience*. Paper presented to the Government of the Federation at the Regional Workshop on Procurement Reforms and Transparency in Government Procurement for Anglophone African Countiries in Tanzania.

Eze, N. M. (2015). Due process in the procurement system: The Nigeria experience. *International Journal of Engineering Sciences & Research Technology*, 9655(7), *234–243.*

Ezekwesili, O. (2003). *Due process guidelines and 2003 budget implementation*. Paper presented at Abuja and Discussion on the Due Process by Office of the Secretary to the Government of the Federation

Familoye, O., Ogunsemi, D. R., & Awodele, O. A. (2015). Assessment of the challenges facing
the effective operations of the Nigeria public procurement act 2007.

International Journal of Economics, Commerce, and Management, 3(11), 957–968.

Fayomi, I. O. (2013). Public procurement and due process policy in Nigeria: Thrust, prospects and challenges**.** *Peak Journal of Social Sciences and Humanities, 1(4), 39-45.*

Furubotn, E., & Richter, R. (1997). *Institutions and economic theory: The contribution of the new institutional economics*. Ann Arbor: The University of Michigan Press.

Gunningham, N., & Kagan, R. A. (2005). Regulation and business behavior. *Law & Policy, 27, 213-18.*

Hunja, R. R. (2003), Obstacles to public procurement reform in developing countries: The Continuing Revolution, in Arrowsmith, S., & Trybus, M. (eds.), *Public procurement in Africa*. Ghana Publishing Corporation, Printing Division, Accra.

Hauriou, M. (1925). The´orie de l'institution et de la fondation. Essai de vitalisme social.[Theory of institution and foundation. A test of social vitalism]:Cahiers de la Nouvelle Journe´e, *(4), 1–45.*

Hui, W. S., Othman, R. O., Normah, O., Rahman, R. A. & Haron, N. H. (2011). Procurement issues in Malaysia. *International Journal of Public Sector Management,* 24(6), 567-593.

Imperato, G. L. (2005). Corporate crime, responsibility, compliance and governance. *Journal of Health Care Compliance, 7(3), 11-19.*

Jibrin, M. S.; Ejura, S. B. & Nwaorgu, I. A. (2014). The public procurement reforms in Nigeria: Implementation and compliance challenges. *Journal of Asian Business Strategy,149-162.* Availalable at http://aessweb.com/journal-detail.php?id=5006.

Lloyd, R. E. & McCue, C. P. (2004). What is public procurement. Definitional problems and implications, *Int'l Public Procurement Conference Proceedings*. Vol. 3. Retrieved on 12 -09-2014 from www.ippa.ws/IPPC1/Proceedingpapers/LloydMcCue.pdf

Meyer, J. W., & Scott, W. R. (1983). *Organizational environment: Ritual and rationality*. Beverly Hills, CA: Sage.

Nardulli, P. (1991). *The Constitution and American political development: An institutional perspective*. Urbana: University of Illinois Press.

NPPA Annual Report. (2005). *National Public Procurement Authority Annual Report,* 2005. Sierra Leone: Government Press.

Nwabuzor, A. (2005). Corruption and development: new initiatives in economic openness and strengthened rule of law. *Journal of Business Ethics, 59(1), 121-138.*

Nwogwugwu, N. & Adebayo, O. A. (2015). Appraisal of integrity in public procurement processes in Nigeria. *IOSR Journal of Business and*

Management (IOSR-JBM), 17(7), 110-115.

Nworgu, I., Okeke, G. N. & Eyisi, A. S. (2015). Due process and procurement procedure in the Nigerian public service: Content analysis perspective. *International journal of Innovative Research in Management, 4 (5), 38-44.*

Organization for Economic Cooperation and Development (OECD) (2007). Integrity in public procurement: Good practice from a to z. Retrieved on 12 -09 – 2014 from *www.oecd.org/dataoecd/43/36/38588964.*pdf

Okeahalam, C. C. (2004). Corporate governance and disclosure in Africa: Issues and challenges. *Journal of Financial Regulation and Compliance, 12(4), 359-370.*

Ojo, A. E. & Gbadebo, A. M. (2014). An assessment of non-compliance with the procurement of works in Nigeria. *International Journal of Economic and Business Management, 2(3), 25-34.*

Olalemi, A. (2016). *Shocker! Presidential panel indicts over 300 companies in N75 billion contract scam*. https://greennews.ng/shocker-presidential-panel-indices-over-300-companies-in-n75-billion-contract-scam/ Retrieved November 15, 2016.

Olatunji, S. O.; Olawunmi, T. O. & Odeyinka, H. A. (2016). Nigeria's public procurement law: Pursuant issues and projected amendments. *Public policy and administrative research, 6 (6), 73-85.*

Oluwole, I. (2015). Top 20 *corruption cases and scandals in Nigeria…* 2011-2015. Retrieved from www.nigeriaeye.com/2015/03/top-corruption-cases-and-scandals-in.html-Nigeria News.

Onyema, M. E. (2011). *Challenges and prospects of public procurement practice in Nigeria: An analysis*. retrieved on 12 January, 2015…file://c:/User/USER/Donloads/challenges of nig. Public procurement.htm

Onah, R. C. (2015). Poor government budget implementation in Nigeria: Who is to blame? *94th Inaugural Lecture of the University of Nigeria Nsukka*: UNN Press Ltd.

Powell, W. W., & DiMaggio, P. J. (Eds.). (1991). *The new institutionalism in organizational analysis*. Chicago, IL: University of Chicago Press.

Sarfo, P. A. & Mintah, R. B. (2013). Assessing the effect of the procurement act (663) on the public financial management in Ashanti Region. *American Journal of Rural Development, 1(4), 91-98.*

Scott, W. R., Meyer, J. W., & Associates. (1994). *Institutional environments and organizations:Structural complexity and individualism*. Thousand Oaks, CA: Sage.

Scott, W. R. (2001). *Institutions and organizations*. (2nd Ed.). London: SAGE Publications, Inc.

Scott, W. R. (2004). *Institutional theory. Encyclopedia of social theory*. SAGE Publications. Retrieved 6 April 2009 from http://www.sageereference.com/socialtheory/Article_n155.html.

Scott, W. R. (2008). Approaching adulthood: The maturing of institutional theory. *Theory and Society, 5*(37), *427-442.*

Selznick, P. (1949). *TVA and the grass roots. Berkley*: The University of California Press.

Selznick, P. (1957). *Leadership in administration*. New York: Harper & Row.

Simpson, R., Sharma, N., & Aziz, I. (2011). *A Guide to public financial management literature, for practitioners in developing countries. London: Overseas Development Institute. Retrieved online* on 15-01-2015 from http://www.who.int/pmnch/media/events/2013/pfm_literature.pdf.

Stephen .O. & Basil .C.N. (2012). Assessment of application of due process policy in public procurement and contracts under Obasanjo Administration in Nigeria 2003-2007. *International Business and Management, 5(1), 93-98.*

Sutinen, J. G., & Kuperan, K. (1999). A socio-economic theory of regulatory compliance. *International Journal of Social Economics,* 26(1/2/3), *174-193.*

Thai, K. V. (2001). Public procurement re-examined. *Journal of Public Procurement, 1(1), 9-50.*

Thelen, K., & Steinmo, S. (1992). Historical institutionalism in comparative politics, in K. Thelen, S. Steinmo, & F. Longstreth (Eds.), *Structuring politics: Historical institutionalism in comparative analysis*. Cambridge, UK: Cambridge University Press.

Transparency International. (2009). *The East African Bribery Index*. Available at: http://www.tikenya.org/documents/EABIReport09.pdf. (Accessed on 15th February, 2009)

Wakili, I. (2015). *Nigeria presidential committee unveils 300 contractors indicted over NSA scam*. West African News International. Retrieved from www.dailytrust.com.ng

Williams-Elegbe, S. (2011). *A comparative analysis of the Nigerian public procurement act with international best practice*. Paper presented on the occasion of the Fourth National Procurement Forum, marking the Tenth Anniversary of the Public Procurement Reform at the Lagos/Osun Hall of TranscorpHilto Hotel, Abuja, 25th of July, 2011.

World Bank. (1995). *Strengthening the effectiveness of Aid. Lessons for donors, Development in Practice Series*. Washington: World Bank Publication.

World Bank. (2000). *Nigeria country procurement assessment report. Summary of findings and recommendations*, vol. 1

World Bank. (2000). *Nigeria country procurement assessment report*. Main text and annexes, vol. 2

World Bank. (2003b). *Country procurement assessment report.* Washington D.C. - The World Bank. Report No. 29055. (2). Available at: http://documents.worldbank.org/curated/en/2003/06/3582670/ghana-country-procurement-assessment-report-vol-2-5-main-report. (Accessed on 14th May, 2009)

World Bank. (2016). Despite progress, transparent and efficient government procurement rules remain a global challenge: WBG report. http://www.worldbank.org/en/news/press-release/2016/12/05/despite-progress-transparent-and-efficient-government-procurement-rules-remain-a-global-challenge-wbg-report

Zubcic, J., & Sims, R. (2011). Examining the link between enforcement activity and corporate compliance by Australian companies and the implications for regulators. *International Journal of Law and Management, 53(4), 299-308.*