

The role and responsibilities of civil society organizations in transparent public procurement process in a developing democracy

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Abstract

An active civil society organization is the realm of organized social life that is voluntary, self-generating, self-supporting, autonomous from the state and bound by the legal order or set of shared values. It serves to check the excesses of government and its officials in power, human rights violation and monitoring of the application of constitutional provisions like transparent public procurement procedures. This paper advocates that an active civil society organization should insist on transparent public procurement procedures with regular audits by external parties. It recommends that procurement rules should minimize secrecy, guarantee access to information, ensure that bidding documents, procedures, evaluations and awards are publicly and timely available. In that way, regulatory institutions are strengthened and emerging democracies evolve to yield rewarding and sustainable dividends.

Introduction

As one of the largest democracies, Nigeria's socio-economic development and political affairs have always been of special interest to the rest of the world. The country has fared very poorly in many indicators of economic and social development on just about any metric used since the 1980s, inspite of having earned over 200 billion US dollars from oil. Its income per capita of 955.0 dollars is below the 3,797 dollars for oil

producing countries and below the 2,076 dollars for all developing countries (World Bank, 2003). On all fronts, according to the World Bank reports, the coefficient indices for any modicum of development remain abysmal: life expectancy is in the decline, poverty rages on, death, despair and destruction haunt the nation from incessant terrorism as a result of political intolerance and religious violence. To make the matter worse, infrastructural

designs and development are in serious decay. The country has not done well in keeping her citizens out of poverty or in distributing income among its people equitably. Poor management of the entire national human capital and natural resources between 1966 and 2000 is largely to blame. Drucker (1979:12) very aptly remarks: "It can be said without too much oversimplification that there are no underdeveloped countries, there are only under-managed economies".

Compared with other African nations and Asian Tigers, especially Indonesia which is comparable to Nigeria in many respects, economic development in terms of development projects through transparent public procurement has not been very successful. Corruption, a cankerworm in the land has not spared the domain of public procurement, corruption in procurement affects the efficiency of public spending and development partners' resources, ultimately affecting the quality of goods and services arising from such contracts. With a Gross Domestic Product (GDP) of 45 billion dollars in 2001 and per capita income of about three hundred (300) dollars a year, Nigeria has become one of the poorest countries in the world (National Planning Commission, 2004: 7-9).

As at 2000, Nigeria had earned 300 billion dollars from crude oil exports since the mid-70s but its per capita now stands at twenty (20) percent lower than that in 1975. So inspite of the enviable natural resource endowments, the country has been unable to utilize the proceeds from oil successfully to reduce

poverty by initiating and executing development projects through transparent public procurement initiatives. Many development experts at different fora have fingered the high incidence of corruption in the system as our Achilles' heel. The heart-rending matter is that in spite of the efforts by the immediate past administration of Yar'dua and Goodluck (2007 – 2011) at rebranding Nigeria, the incontrovertible truth is that Nigeria's policy makers, development project planners and managers have done little to bring real development to the country. Little wonder then, Nigeria is today rated in the comity of nations as one of the poorest countries in the world. It is as if the country is still groping in the dark, which could be likened to a barber's seat: all motion yet no movement. Civil society is an ethical ideal of the social order that harmonizes the conflicting demands of individual interests and social good. Civil society refers to the arena of uncoerced collective action around shared interest, purposes and values. In theory, its institutional forms are quite distinct from those of the state and market. In practice the boundaries between state, civil society and market are often complex, blurred and even negotiated (www.cse.ac.uk). Civil society seeks to operate independently of the local, state and national governments where it operates and functions. It functions to check the excesses of government and its officials in power, human rights violations and monitoring of the application of constitutional provisions. Against the following backdrop this paper shall

attempt to explain what a contract, procurement, public procurement and the concept of civil society organizations are. The paper presents the benefits of civil society organizations. It also examines different stages of public procurement highlighting the existence of corruption in the process. Finally the paper presents the role and responsibilities of civil society in curbing such prevalence.

Conceptual Framework

A contract is a formal agreement between two parties wherein one party (the contractor) obligates itself to perform a service and the other party (the client) obligates itself to do something in return, usually in the form of a payment to the contractor (Gray and Larson, 2008:413). For instance, a microfinance bank in Nigeria contracted with a consulting firm to reprogram segments of their information system to conform to MS Vista. In the dictionary part of Business, the Ultimate Resource, 2006:1449, it defines contract as a mutually agreed, legally binding agreement between two or more parties. Contracting is the main way a government operates and public money is spent. Contracts are the vehicles for implementing public policy.

A significant portion of health, education, housing and urban development expenditure goes into procurement or contracts for goods and services. A contract is more than just an agreement between parties. A contract is a codification of the private law that governs the relationship between the parties to it. It defines the

responsibilities, spells out the conditions of its operations, defines the rights of the parties in relationship to each other and grants remedies to a party if the other party breaches obligations. A contract attempts to spell out in specific terms the transactional obligations of the parties involved as well as contingencies associated with the execution of the contract. It should be noted that an ambiguous or inconsistent contract is difficult to understand and enforce.

✓ Public contracting occurs at different government levels: in local government areas, states and in national or federal government. While federal or national level contracting can be bigger in terms of value per contract, local government contracting is significant in terms of the number of processes and their impact because of their closeness to the people at the grassroots (Worthington and Goldsman, 1998). The term procurement is often used in the field of contract administration. Procurement ✓ refers to the acquisition of goods and services by an individual or organization, public/private organization (Fleming, 2003). Public procurement means the acquisition by any means of goods, works or services by the government. Procurement proceedings refer to the initiation of the process of effecting a procurement up to award to a procurement contractor (Public Procurement Act, 2009:55). Examples include privatizations, licenses, concessions and other types of contracts which also affect the national budget.

Just like the concept of democracy, the attempts at defining civil society have been very difficult and confusing.

Beyond the ubiquity and even the ambiguities surrounding the attempts, there are even further problems as to whether the concept itself can be applied to Nigeria (Kukah, 2007). Hall (1995:1) defines civil society as an opposite of despotism, a space in which social groups could exist and move, something which exemplifies and would ensure softer, more tolerable conditions of existence. Gold (1990) defines civil society as a whole range of social groups that seek to operate independently of the state such as private business, enterprises, labour unions, trade associations, religious bodies student organizations, and artistic associations. Diamond's definition of civil society needs to be restated here because it is more elastic. He says that civil society is

the realm of organized social life that is voluntary, self generating, self-supporting, autonomous from the state and bound by the legal order or set of shared values... it involves citizens acting collectively in a public sphere to express their interests, passions and exchange of ideas, exchange information, achieve mutual goals, make demands on the state and hold state officials accountable. It is an intermediary entity, standing between the private sphere and the state (Diamond, 1995: 9-10).

The London School of Economics and Centre for Civil Society's working

definition is one illustrative example: civil society refers to the arena of uncoerced collective action around shared interests, purposes and values. In theory, its institutional forms are distinct from those of the state and market, though in practice, the boundaries between state, civil society and market are often complex, blurred and negotiated. Civil society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power (www.lse.ac.uk). Civil societies are often populated by organizations such as registered charities, development of non-governmental organizations, community groups, women's organizations, faith-based organizations, professional associations, trade unions, self-help groups, social movements, business associations, coalition and advocacy groups.

Definitions often run into difficulty when they are applied universally across social and cultural divides. As part of their research on the state of civil society in over 50 countries around the world, World Alliance for citizen participation (civicus) has adopted the following definition as a means of dealing with this issue "the arena, outside of the family, the state and the market where people associate to advance common interests (www.civicus.org/new/media/csi).

The functions of civil society in a democratic set-up include providing the basis for the limitation of state power. It is supposed to supplement the role of political parties by stimulating political participation. It also promotes the

development of political attributes by creating channels other than political parties to articulate, aggregate and represent their interests. Oyovbare, (2000) conceptualizes civil society as consisting basically of non-state and non-governmental groups activity organized to pursue definitive issues and interests. Democracy is a political system providing for the popular participation of citizens in political decision making often by representatives of governing bodies (Giddens, 2001).

Benefits of Civil Society

Diamond (1995) in defining civil society describes some of the characteristics and benefits of an organized civil society as follows:

- a. An organized civil society serves as a check against the excesses of government in power, human rights violation, abuse of the rule of law, monitoring of the application of constitutional provisions.
- b. Increases the participation and the skills of all the various segments of society and instills a sense of tolerance, thrift, hardwork, moderation and compromise among the various competing groups in the society.
- c. It serves as an alternative to political parties and can offer a refuge for those who are shut out from their rights due to non-membership of political parties.
- d. It enhances the bargaining power of interest groups and provides inclusive mechanisms for them.

- e. It provides alternatives for negotiation within a multifaceted society by mitigating the excesses of fundamentalists extremists and maximalists' who tend to have a narrow view of life.
- f. It serves as a recruiting ground for and training of prospective members of the political or economic class to enhance the quality of participation in governance.

Requirements for Public Procurement

According to Public Procurement Act (2009:12) the fundamental principles for public procurement shall be conducted based on the following:

- a. Based only on procurement plans supported by prior budgetary appropriations and no procurement proceedings shall be formalized until the procuring entity has ensured that funds are available to meet the obligations and subject to the thresholds in the regulations made by the Bureau has obtained a "Certificate of No Objections to Contract Award" from the bureau.
- b. By open competitive bidding in a manner which is transparent, timely, equitable for ensuring accountability and conformity with the act and regulations.
- c. With the aim of achieving value for money and fitness for purpose

- d. Be in a manner which promotes competition, economy and efficiency.
- e. Be in accordance with the procedures and timeline laid down in this Act as may be specified by the Bureau from time to time.

The Stages in Public Procurement

The stages in public procurement are listed and discussed as follows:

- **Identification of need:** Here the government takes decision to purchase or sell goods or services or to outsource the management of a unit of its establishments.
- **Identification/definition of contract characteristics:** At this stage, the government determines what it needs to buy or sell or privatize. At this stage, the technical requirements, specific characteristics are highlighted. Equally the contracting methods and agency responsible for defining these characteristics are discussed.
- **The contracting process:** At this stage, a contracting process gets underway. It should take place according to what method the law determines should be used to receive proposals or expression of interests. For instance, open bidding system or evaluation of contractors by the use of single source.
- **The award of contract:** At this stage, the contract process ends with a decision to select the winning bidder (in open bids) or the contractor in case of single-source process.

- **Contract Implementation and Supervision:** Finally the contract is signed with the selected bidder or contractor as the case may be.

The Prevalence of Corruption in Public Procurement Process

Experts identify procurement as one of the areas most prone to corruption in the management of development projects in developing countries. Corruption in public procurement affects the efficiency of public spending and donors' resources, creates wastes and ultimately affects the quality of development projects constructed and managed in developing democracy. Corruption gives a great concern for the socio-economic and political issues that seem to threaten the survival of Nigeria as the most populous black country in the world. Most authorities/researchers and observers have variously defined corruption.

Otite (1982) cited by Imaga (2005) posits that corruption takes place: "when at least two parties have interacted to change the structure of processes by the society or the behaviour of functionaries in order to produce dishonest, unfaithful or defiled situation". Corruption involves the giving or taking of a bribe or illegal acquisition of wealth using the resources of a public office including the exercise of discretion. In this perspective, it is those who have business to do with government that are compelled somehow to provide inducement to public officials to make

