

# **Promoting Engagement and Partnership Between the National Assembly Committees on Public Petitions and Civil Society Organizations Working on Rights and Governance Issues**

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(PROTOCOL)

## **Introduction**

I would like to thank the House of Representatives Committee on Public Petitions for inviting me to make a presentation on the above topic. I am aware that the House Committee is collaborating with the Policy and Legal Advocacy Centre (PLAC) in this regard and that the collaboration is supported by the Ford Foundation.

In a democratic dispensation such as ours the guarantees of the rights of the citizens, the mechanisms for remedying administrative injustice especially injustice arising from the action or inaction of Ministries, Departments and Agencies (MDAs) and governance issues are critical signposts for measuring the level of development of any particular country.

Critical stakeholders in this area are the Civil Society Organizations (CSOs). CSOs include trade unions, professional associations, faith-based groups, media organizations, community-based groups and other forms of non-governmental organizations. These are critical actors in the advancement of universal values around human rights, the environment,

labour standards, anti-corruption and good governance. As global market integration has advanced, their role has gained particular importance in aligning economic activities with social and environmental priorities.

Although my invitation came from the House Committee on Public Petitions, my topic extends to the National Assembly Committees on Public Petitions. To that extent, the presentation will cover the Senate Committee on Ethics, Code of Conduct and Public Petitions.

In this presentation, we shall focus on how to promote the engagement and partnership between the National Association Committees on Public Petitions and CSOs in the areas of human rights and good governance.

### **Establishment of Committees on Public Petitions**

Consistent with the provisions of sections 60 and 62 of the 1999 Constitution, as amended (“the Constitution”), dealing with regulation of procedure and committees respectively, the House of Representatives set up two main committees, namely,

(a) the Special Committees and the

(b) the Standing Committees.

One of the Special Committees is the Public Petition Committee.

Order XVIII Rule 117(d) of the Standing Orders of the House of Representatives, 7<sup>th</sup> Edition of 28 July, 2011 provides for the establishment of a Committee on Public Petitions.

Order XVIII, Rule 121 provides as follows:

1. There shall be a Committee to be known as the Public Petitions Committee consisting of not less than 37 and not more than 40 members appointed or constituted at the commencement of the life of the House.
2. The Committee's jurisdiction shall include:
  - a. oversight of the Public Complaints Commission;
  - b. annual budget estimates;
  - c. consider the subject matter of all petitions referred to it and shall report from time to time to the House its recommendations on actions to be taken thereon, together with such other observations on the petitions.

Similarly Chapter XIII, Order 96 of the Senate Standing Orders, 2011 provides for Special Committees. One of the Standing Committees is the Committee on Ethics, Code of Conduct and Public Petition. Order 97(4) provides as follows:

*There shall be a Committee to be known as Committee on Ethics, Code of Conduct and Public Petitions appointed at the commencement of the life of the Senate. The jurisdiction of the Committee shall include:*

- a. consideration of the subject matter of all petitions referred to it by the Senate and shall report from time to time to the Senate its opinion of the action to be taken thereon together with such other observations on petition and the signatures attached thereof, as the Committee may think fit;*

*. the Committee shall recommend to the Senate from time to time such administrative actions as it may deem appropriate to establish and enforce standards of official conduct for the Senators;*

*.the Committee shall oversee and monitor the activities of Code of Conduct Bureau.*

It is clear that the mandate of the two Committees in the Senate and House of Representatives is not quite the same.

### **Areas of Engagement and Partnership**

Nigeria is blessed with CSOs in various areas. According to the provisions of section 1 of the Trade Unions Act, Cap T14, LFN 2004, a "trade union" means any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers, whether the combination in question would or would not, apart from this Act, be an unlawful combination by reason of any of its purposes being in restraint of trade, and whether its purposes do or do not include the provision of benefits for its members. In the area of trade unions, therefore, we have the Nigeria Labour Congress, the Trade Union Congress, Nigerian Union of Teachers, Academic Staff Union of Universities and its non-academic counterpart; in professional associations, we have the Nigerian Bar Association, the Nigeria Medical Association, Chartered Accountants of Nigeria; several media organizations – print and electronic.

The CSOs can partner with the Committee on Public Petitions to achieve its mandate in the following areas:

a. Oversight over Public Complaints Commission

In October 1975, the Public Complaints Commission Act (now Cap P37 LFN, 2004) was passed into law. The Long Title to the Act provides thus:

*An Act to establish the Public Complaints Commission with wide powers to inquire into complaints by members of the public concerning the administrative action of any public authority and companies or their officials.*

Section 5 of the Public Complaints Commission Act provides for its powers as follows:

*(1) All Commissioners shall be responsible to the National Assembly but the Chief Commissioner shall be responsible for co-ordinating the work of all other Commissioners.*

*(2) A Commissioner shall have power to investigate either on his own initiative or following complaints lodged before him by any other person, any administrative action taken by-*

*(a) any Department or Ministry of the Federal or any State Government;*

*(b) any Department of any local government authority (howsoever designated) set up in any State in the Federation;*

*(c) any statutory corporation or public institution set up by any Government in Nigeria;*

*(d) any company incorporated under or pursuant to the Companies and Allied Matters Act whether owned by any Government aforesaid or by private individuals in Nigeria or otherwise howsoever; or*

*(e) any officer or servant of any of the aforementioned bodies.*

*(3) For the purposes of this Act-*

*(a) the Chief Commissioner may determine the manner by which complaints are to be lodged;*

*(b) any Commissioner may decide in his absolute discretion whether, and if so, in what manner, he should notify the public of his action or intended action in any particular case;*

*(c) any Commissioner shall have access to all information necessary for the efficient performance of his duties under this Act and for this purpose may visit and inspect any premises belonging to any person or body mentioned in subsection (2) of this section;*

*(d) every Commissioner shall ensure that administrative action by any person or body mentioned in subsection (2) will not result in the commitment of any act of injustice against any citizen of Nigeria or any other person resident in*

*Nigeria and for that purpose he shall investigate with special care administrative acts which are or appear to be-*

*(i) contrary to any law or regulation;*

*(ii) mistaken in law or arbitrary in the ascertainment of fact;*

*(iii) unreasonable, unfair, oppressive or inconsistent with the general functions of administrative organs;*

*(iv) improper in motivation or based on irrelevant considerations;*

*(v) unclear or inadequately explained; or*

*(vi) otherwise objectionable; and*

*(e) a Commissioner shall be competent to investigate administrative procedures of any court of law in Nigeria.*

This Act came into force on 16 October, 1975. Nothing much seem to have been known about its activities. The CSOs can partner with the Committee on Public Petitions in educating the public on the philosophy behind the establishment of the Commission and the powers and duties of the Commission.

In a society where access to justice in the conventional courts is almost outside the reach of the common man and maladministration is found in all MDAs, the CSOs can carry out public enlightenment in this area.

Even where access to justice is guaranteed and effectively utilized, the administrative procedures of the courts may affect the

administration of justice. The CSOs should be able to inform the public that a Commissioner in the Commission has powers to investigate the administrative procedures of any court of law in Nigeria.

b. Annual Budget Estimates

In Nigeria, annual budgeting raise serious governance issues partly because of the controversy between the Executive and the Legislature in their respective roles in the budgeting process. When section 81(1) and (2) of the 1999 Constitution provides thus:

*(1) The President shall cause to be prepared and laid before each House of the National Assembly at any time in each financial year estimates of the revenues and expenditure of the Federation for the next following financial year.*

*(2) The heads of expenditure contained in the estimates (other than expenditure charged upon the Consolidated Revenue Fund of the Federation by this Constitution) shall be included in a bill, to be known as an Appropriation Bill, providing for the issue from the Consolidated Revenue Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein.*

When subsection (1) provides that ‘the President shall cause to be prepared and laid before each House of the National Assembly,’ what is the intention of the lawmakers – that the National Assembly should



pass the budget as laid by the President or the National Assembly can adjust the figures?

Similarly when subsection (1) refers to 'estimates of the revenues and expenditures', what does this mean? Does it mean that the estimates so approved by the National Assembly are the actual figures that will be available to the Executive in the financial year? Thus when oversight functions are being carried out, what is the Legislature looking for?

The CSOs are made up of various professional associations. Such associations can partner with the National Assembly in determining the respective roles of the parties. Such partnership can result in a framework on budgeting as a thematic area.

Similarly, section 11(1) and (2) of the Fiscal Responsibility Act, 2007 thus:

*(l) The Federal Government after consultation with the States shall-*

*(a) not later than six months from the commencement of this Act, cause to be prepared and laid before the National Assembly, for their consideration a Medium--term Expenditure Framework for the next three financial years; and*

*(b) thereafter, not later than four months before the commencement of the next financial year, cause to be*

*prepared a Medium-Term Expenditure Framework for the next three financial years.*

*(2) The frame-work so laid shall be considered for approval with such modifications if any, as the National Assembly finds appropriate by a resolution of each House of the National Assembly.*

It is noteworthy that the wording of subsection (2) is different from the wording of section 81(1) and (2) of the Constitution.

Subsection (3) of section 11 provides for what should be contained in the Medium-Term Expenditure Framework including macro-economic framework, fiscal strategy paper and expenditure and revenue framework, among others.

Every year, this framework is prepared and agreed upon by both the Executive and Legislature especially the benchmark for petroleum products to be used for the budget. However, when the annual budget is presented, there are usually arguments about the understandings reached between the Executive and Legislature.

The CSOs include professionals in law, accounting, management, taxation, fiscal regimes and allied professionals. If the CSOs partner with the two arms of government in the budgeting process, we submit that our annual budgets will be passed before the end of every year – all things being equal.

c. Petitions referred to the Committee

Some times petitions are sent to the Committee on Public Petitions directly or are referred to it by the National Assembly. In the case of the Senate, it is one of its core mandates.

A proper framework of engagement between the CSOs and the Legislature will ensure that where there is a right, there is a remedy – *ubu jus ubi remedium*. Such a framework can be a Policy Document on Engagement bordering on thematic areas – rights, governance issues, etc with clear guidelines on the roles of the CSOs, the citizens and the National Assembly.

d. Right Issues

Rights are conventionally categorized into first, second and third generation of rights. Consistent with the UN Declaration of Humans of 1948, the civil and political rights are largely enshrined in Chapter IV of the 1999 Constitution and are justiciable. However, the economic and environmental rights as enshrined in Chapter II of the 1999 Constitution are said to be non-justiciable.

A starting point for the development of a framework in this regard is The Constitution of the Federal Republic of Nigeria, 1999 Fundamental Rights (Enforcement Procedure) Rules, 2009 especially the overriding objectives. Thus no human rights case may be dismissed or struck out for want of *locus standi*. The consequence is that CSOs call can institute human rights applications on behalf of any potential applicant.

We believe that the CSOs can embark on public interest litigation and ensure that the proactive approach adopted in India and South Africa

is adopted in Nigeria. Indeed the human rights provisions and the African Charter should be expansively and purposely interpreted and applied with a view to advancing and realizing the rights and freedoms contained in them and affording the protections intended by them.

What is right to life to someone who has no food to eat? The CSOs should partner with the National Assembly to ensure that the rights in Chapter II of the 1999 Constitution are justiciable.

e. Governance Issues

In the private sector, there are Codes of Corporate Governance – SEC, CBN, NAICOM and PENCOM. In the public service, there is the Public Service Rules and Financial Regulations.

Sections 153(1)(a) of the Constitution and 1(1) of the Code of Conduct & Tribunals Act, Cap C15, LFN, 2004 respectively provide for Code of Conduct Bureau. The functions of the Bureau are in the Third Schedule, Part I, paragraphs 1-4 and section 3 of the Code of Conduct & Tribunals Act. Essentially the Bureau receives declarations made by public officers, examine the declarations, retain custody of the declarations, ensure compliance with the Code of Conduct and receives complaints about non-compliance.

Paragraphs 1-14, Fifth Schedule, Part I prescribes a Code of Conduct for Public Officers and the Fifth Schedule, Part II defines public officers while paragraphs 15-19 provides for a Code of Conduct Tribunal.

The CSOs as members of the public can lodge complaints against public officers before the Bureau and the Bureau shall in turn investigate the complaints and where appropriate refer to the matter to the Code of Conduct Tribunal.

f. Oversight Functions

The powers to carry out investigations are carefully encapsulated in sections 88 and 89 of the 1999 Constitution. The powers conferred on the National Assembly in section 88(1) are exercisable only for the purpose of enabling the National Assembly to make laws with respect to any matter within its legislative competence and correct any defects in existing laws; and expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.

It would seem that the focus of the National Assembly in this regard is only on disbursement or administration of funds appropriated by it.

Since CSOs cut across all sectors of the economy and functioning nationwide, a strategic partnership with the National Assembly will ensure that projects are properly monitored and regular reports submitted to the National Assembly. More fundamentally thematic areas can be agreed on where the CSOs can assist with formulation of proposals for drafting new bills and monitoring how laws enacted are implemented. For example, the Infrastructure Concession Regulatory Commission Act was passed in 2005 but the Commission was not set up till 2008?

Thus in relation to laws passed by the National Assembly, for example, the Child Rights Act, Public Procurement Act, Fiscal Responsibility Act, National Budgets, etc relevant NGOs can be engaged to monitor compliance and report. Similarly when treaties are signed, partnerships can be created with CSOs for the purpose of domesticating them and ensuring compliance.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is yet to be passed into law. It is surely a candidate for the CSOs.

g. Oversight of the Code of Conduct Bureau

This is one of the core mandates of the Senate Committee on Ethics, Code of Conduct and Public Petitions.

The aims and objectives of the Bureau is to establish and maintain a high standard of morality in the conduct of government business and to ensure that the actions and behavior of public officers conform to the highest standards of public morality and accountability.

It should be noted that the provisions in the Code of Conduct Bureau and Tribunal Act are similar to the those in the Constitution.

The CSOs can partner with the Committees to ensure good governance and accountability. They can act as whistle blowers. To do this, there must be a Policy Document in place on the procedure for reporting breaches of the Code of Conduct and the protection of informants.

## Lessons from Global Institutions

The World Bank interacts with thousands of CSOs throughout the world at the global, regional, and country levels. These interactions range from CSOs who critically monitor the Bank's work and engage the Bank in policy discussions, to those which actively collaborate with the Bank in operational activities. These range from formal institutional agreements within ongoing programs and local projects, to informal collaborative initiatives on research studies, and joint events. Thematic areas which have Bank – CSO partnerships include forest conservation, AIDS vaccine research, water service provision, rural poverty reduction, micro-credit finance, and Internet development.

The World Bank has reached out to other organizations to build a variety of **institutional partnerships** geared to promoting social development. Partnerships have been established with governments, private businesses, universities, other donor agencies, and with civil society organizations. These partnerships have ranged from formal agreements and large multi-stakeholder programs such as the Global Environment Facility (GEF) to informal collaborative efforts on country-level projects.

The World Bank has established partnerships with CSOs and other organizations such as governments, businesses, and other donor agencies, to promote poverty reduction efforts. These partnerships are organized according to thematic areas.

The emergence of a global civil society reflects the surge in the will and capacity of people to take control of their lives – a fact that the National Assembly should not ignore. Nowhere is this more evidence than in the UN over the past decade. The influx and impact of international and national

CSOs became highly visible at the United Nations Conference on Environment and Development (1992) and has continued through subsequent UN conferences. There are over 1,900 CSOs officially accredited to the Economic and Social Council.

The CSOs have participated closely in all stages of conference preparation and follow-up, holding parallel forums and lobbying for alternative language and initiatives.

The UN Charter gives the United Nations Development Programme (UNDP) mandate to work with CSOs. At the Millennium Summit 2000, the Secretary-General reaffirmed the centrality of civil society and its organizations to the mission of the UN in the 21<sup>st</sup> century:

*Not only do you [civil society organizations] bring to life the concept of 'We, the Peoples' in whose name our Charter was written; you bring to us the promise that 'people power' can make the Charter work for all the world's peoples in the twenty-first century*

Like the World Bank, UNDP works in thematic areas like poverty reduction, governance, crisis and recovery, energy and the environment, HIV/AIDS, gender and information and communication technology.

The National Assembly can adopt the UNDP Strategy on Civil Society and Civil Engagement (October 2012). Such a policy should provide for general principles and corresponding commitments that together provide a coherent foundation for partnership.

## **Conclusion**



CSOs are a crucial resource, constituency and partner for the National Assembly in advancing human rights and governance issues on the one hand and sustainable human development goals and principles on the other. The National Assembly should broaden and deepen its interaction with CSOs at all levels of its work. The National Assembly should create the space for CSOs perspectives to be heard and incorporated into policy and programmes of Government. However, no matter the critical role of the CSOs, the National Assembly should recognize that CSOs are not substitutes for government but are central to sustainable governance.

CSOs have emerged a powerful force for social justice, equity and good governance.

Like the Secretary General of the UN said in 2000, we look forward to when in Nigeria, the CSOs will bring life to the Preamble to the 1999 Constitution 'We the People of the Federal Republic of Nigeria' in whose name the Constitution was written and bring to us the promise that 'people power' can make the Constitution work for all Nigerians. This is so because 'We the People of the Federal Republic of Nigeria' demand that Chapter II be justiciable.

Thank you for your attention and God bless.

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