

A BILL

FOR

AN ACT TO PROVIDE FOR THE PROTECTION OF INVESTORS AND PROMOTION OF INVESTMENT; TO ACHIEVE A BALANCE OF RIGHTS AND OBLIGATIONS THAT APPLY TO ALL INVESTORS; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH

Sponsored by Senator Stella Oduah

[] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

- 1 1. In this Act, unless the context indicates otherwise- Interpretation
- 2 "Constitution" means the Constitution of the Federal Republic of Nigeria,
- 3 1999;
- 4 "dispute" means a claim by an investor, instituted in accordance with section
- 5 11, that the government has allegedly breached the protection provided for
- 6 in this Act, provided that a dispute will only arise once the parties agree, or as
- 7 prescribed by the law;
- 8 "enterprise" means any natural person or juristic person, whether
- 9 incorporated or unincorporated;
- 10 "government" means the government of the Federal Republic of Nigeria;
- 11 "investment" has the meaning assigned under section 2;
- 12 "investor" means an enterprise making an investment in Nigeria regardless
- 13 of nationality;
- 14 "measure" means an administrative action by a person or body duly
- 15 authorised thereto, acting within the scope of authority granted by the
- 16 Constitution or a law of general application;
- 17 "Minister" means the Minister responsible for trade, Investment;
- 18 "Ministry" means the Ministry of Trade and Investment;
- 19 "prescribe" means prescribe by regulation;

	1	"regulation" means a regulation made under this Act;
Investment	2	2. For the purpose of this Act, an investment is-
	3	(a) any lawful enterprise established, acquired or expanded by an
	4	investor in accordance with the provisions of any enactment or law,
	5	committing resources of economic value over a reasonable period of time, in
	6	anticipation of profit;
	7	(b) the holding or acquisition of shares, debentures or other
	8	ownership instruments of such an enterprise; or
	9	(c) the holding, acquisition, or merger with another enterprise outside
	10	Nigeria, only in so far as such holding, acquisition or merger with another
	11	enterprise outside Nigeria has an effect on an investment in Nigeria.
Purpose of Act	12	3. The purpose of this Act is to-
	13	(a) promote and protect investment in accordance with and subject to
	14	the Constitution, in a manner which balances the public interest and the rights
	15	and obligations of investors;
	16	(b) confirm the protection of an investment in respect of national
	17	treatment and the security of an investment;
	18	(c) affirms Nigeria's sovereign right to regulate investments; and
Application of Act	19	4. This Act applies to investments in Nigeria which are subject to
	20	national legislation and made in accordance with the requirements set out in
	21	section 2.
Right of establishment	22	5.-(1) This Act does not create a right for a foreign investor or
	23	prospective foreign investor to establish an investment in the Nigeria.
	24	(2) All investments must be established in compliance with the law.
National treatment	25	6.-(1) Subject to national legislation, foreign investors and their
	26	investments must not be treated less favourably than Nigerian investors in like
	27	circumstances.
	28	(2) For the purposes of this section, "like circumstances" means the
	29	requirement for an overall examination of the merits of the case by taking into
	30	account all the terms of a foreign investment, including the-

- 1 (a) effect of the foreign investment on Nigeria, and the cumulative
2 effects of all investments;
- 3 (b) sector that the foreign investments are in;
- 4 (c) aim of any measure relating to foreign investments;
- 5 (d) factors relating to the foreign investor or the foreign investment
6 in relation to the measure concerned;
- 7 (e) effect on third persons and the local community;
- 8 (f) effect on employment; and
- 9 (g) direct and indirect effect on the environment.
- 10 (3) The examination referred to in subsection (2) shall not be
11 limited to or be biased towards any one factor.
- 12 (4) Subsection (1) shall not be interpreted in a manner that will
13 require Nigeria to extend to foreign investors and their investments the
14 benefit of any treatment, preference or privilege resulting from-
- 15 (a) taxation provisions in any international agreement or
16 arrangement or any law in Nigeria;
- 17 (b) government procurement processes;
- 18 (c) subsidies or grants provided by the government or any organ of
19 state;
- 20 (d) any law or other measure, the purpose of which is to promote
21 the achievement of equality in Nigeria or designed to protect or advance
22 persons, or categories of persons, historically disadvantaged by unfair
23 discrimination on the basis of race, gender or disability in Nigeria;
- 24 (e) any law or other measure, the purpose of which is to promote
25 and preserve cultural heritage and practices, indigenous knowledge and
26 biological resources related thereto, or national heritage;
- 27 (f) any special advantages accorded in Nigeria by development
28 finance institutions established for the purpose of development assistance or
29 the development of small and medium businesses or new industries; or
- 30 (g) domestic laws designed to regulate foreign ownership in

	1	respect of a specified sector.
Security of investment	2	7. Nigeria must accord foreign investors and their investments a level
	3	of security as may be generally provided to domestic investors, subject to
	4	available resources and capacity.
Protection of property	5	8. Investors have the right to property in terms of Section 25 of the
	6	Constitution.
Transfer of funds	7	9. A foreign investor may, in respect of an investment, transfer funds
	8	subject to taxation and other applicable legislation.
Right to regulate	9	10.-(1) notwithstanding anything to the contrary in this Act, the
	10	government or any organ of state may, in accordance with the Constitution and
	11	applicable legislation, take measures, which may include-
	12	(a) upholding the rights guaranteed in the Constitution;
	13	(b) promoting and preserving cultural heritage and practices,
	14	indigenous knowledge and biological resources related thereto, or national
	15	heritage;
	16	(c) fostering economic development, industrialisation and
	17	beneficiation;
	18	(d) achieving the progressive realisation of socio-economic rights; or
	19	(e) protecting the environment and the conservation and sustainable
	20	use of natural resources.
	21	(2) The government or any organ of state may take measures that are
	22	necessary for the fulfilment of the Nigeria's obligations in regard to the
	23	maintenance, compliance or restoration of international peace and security, or
	24	the protection of the security interests, including the financial stability of
	25	Nigeria.
Dispute resolution	26	11.-(1) An investor that has a dispute in respect of action taken by the
	27	government, which action affected an investment of such foreign investor, may
	28	within six months of becoming aware of the dispute request the Ministry or
	29	any other competent authority to facilitate the resolution of such dispute by
	30	appointing a mediator or other competent body.

1 (2) The Minister may prescribe criteria for the appointment of a
2 mediator.

3 (3) In order to facilitate a resolution of a dispute contemplated in
4 subsection (1), the Minister must prescribe the information and forms to be
5 submitted by an investor.

6 (4) Subject to applicable legislation, an investor, upon becoming
7 aware of a dispute as referred to in subsection (1), is not precluded from
8 approaching any competent court, independent tribunal or statutory body
9 within the Nigeria or the resolution of a dispute relating to an investment.

10 (5) The government may consent to international arbitration in
11 respect of investments covered by this Act, subject to the exhaustion of
12 domestic remedies. Such arbitration will be conducted between Nigeria and
13 the home state of the applicable investor.

14 12.-(1) The Minister may, by notice in the Gazette, make Regulations
15 regulations regarding-

16 (a) the criteria for the appointment of a mediator or competent
17 authority for the resolution of a dispute;

18 (b) the processes and procedures relating to the resolution of
19 disputes contemplated in subsection 11(1);

20 (c) any matter which may or must be prescribed in terms of this
21 Act; or

22 (d) any other matter the regulation of which may be necessary or
23 expedient in order to achieve the purposes of this Act.

24 (2) The Minister must, by notice in the Gazette, make regulations
25 regarding the information and forms to be submitted by an investor,
26 contemplated in section 11(3).

27 13.-(1) Existing investments that were made under Bilateral
28 Investment Treaties will continue to be protected for the period and terms
29 stipulated in the treaties. Transitional
arrangements

30 (2) Any investments made after the termination of such treaties, but

1 before promulgation of this Act, will be governed by the general Nigerian law.

Citation

2 14. This Bill may be cited as the Investment Assurances Bill, 2019.

EXPLANATORY MEMORANDUM

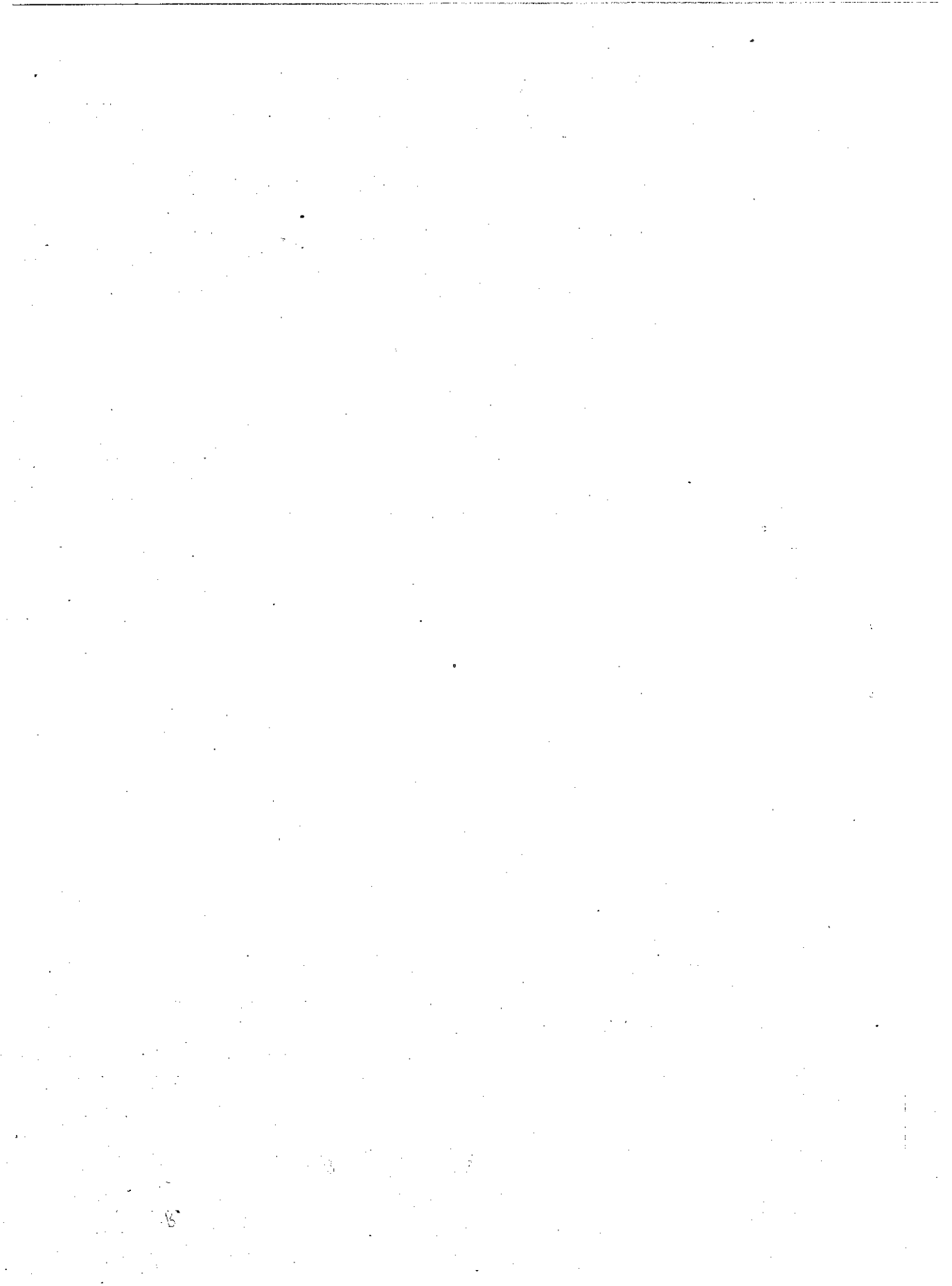
The Bill seeks to achieve a balance between the rights and obligations of all investors in Nigeria, to provide adequate and equal protection to foreign investors and domestic investors, and to promote investment

GOVERNMENT PERFORMANCE AND RESULTS BILL, 2019

ARRANGEMENT OF SECTIONS

Section:

1. Short Title
2. Objectives of the Act
3. Strategic Planning
4. Annual Performance Plans and Reports
5. Programme Performance Reports
6. Exemptions
7. Administrative Procedural Flexibility
8. Public Servants Performance Contracts
9. Legislative Oversight and Legislation
10. Training
11. Application of Act



A BILL

FOR

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE GOVERNMENT ACCOUNTABILITY DEPARTMENT AND TO INSTITUTIONALIZE STRATEGIC PLANNING AND PERFORMANCE MEASUREMENT IN GOVERNANCE AND THE IMPLEMENTATION OF THE POLICIES OF THE FEDERAL GOVERNMENT OF NIGERIA, AND FOR CONNECTED PURPOSES

Sponsored by Senator Stella Oduah

[] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

1 1. This Bill may be cited as the Government Performance and
2 Results Bill, 2019.

Short title

3 2. The objectives of this Act are to-

Objectives of the Act

4 (1) improve the confidence of Nigerians in the capability of the
5 Federal Government to discharge its duties of maintenance of public law
6 and order, provision of social amenities and services, by systematically
7 holding Federal Government Ministries, Departments, Institutions,
8 Agencies and public servants accountable for achieving programme results;

9 (2) initiate programme performance regime in setting programme
10 goals, measuring programme performance against those goals, and
11 reporting publicly on their progress and final results;

12 (3) improve the effectiveness of the Federal budget and public
13 accountability by promoting a new focus on results, service quality, impact
14 assessment and citizen satisfaction;

15 (4) assist the Federal public service system to improve service
16 delivery to Nigerians, by requiring that they make effective planning for
17 meeting programme or project objectives set in each year's budget, and by

1 (a) establish performance goals to define the level of performance to
2 be achieved by a programme activity of such ministry or agency;

3 (b) express such goals in an objective, quantifiable, and measurable
4 form unless authorized to be in any other alternative form under the provisions
5 of this Act;

6 (c) briefly describe the operational processes, skills, technology, and
7 the human, capital, information, or other resources required to meet the
8 performance goals;

9 (d) establish clear performance indicators to be used in measuring or
10 assessing the relevant outputs, service levels, and outcomes of each
11 programme activity on a quarterly basis;

12 (e) provide a basis for comparing actual programme results with the
13 established performance goals; and

14 (f) describe the means to be used to verify and validate measured
15 values.

16 (2) If a ministry or an agency, in consultation with the Secretary,
17 determines that it is not feasible to express the performance goals for a
18 particular programme activity in an objective, quantifiable, and measurable
19 form, the Secretary may authorize an alternative form. Such alternative form
20 shall-

21 (a) include separate descriptive statements of-

22 (i) a minimally effective programme, and

23 (ii) a successful programme, or

24 (b) such alternative as authorized by the Secretary, with sufficient
25 precision and in such terms that would allow for an accurate, independent
26 determination of whether the programme activity's performance meets the
27 criteria of the description;

28 (c) state why it is infeasible or impractical to express a performance
29 goal in any form for the programme activity; or

30 (d) For the purpose of complying with this section, a ministry or an

1 agency may aggregate, disaggregate, or consolidate programme activities,
2 except that any aggregation or consolidation may not omit or minimize the
3 significance of any programme activity constituting a major function or
4 operation for the ministry or agency.

5 (2) A ministry or an agency may submit with its annual
6 performance plan an appendix covering any portion of the plan that-

7 (a) is specifically authorized under criteria established by an
8 Executive Order of the President to be kept secret in the interest of national
9 security or foreign policy; and

10 (b) is properly classified pursuant to such Executive Order.

11 (3) The functions and activities of this section shall be considered
12 to be inherently governmental functions. The drafting of performance plans
13 under this section shall be performed only by Federal employees.

14 (i) For purposes of this Act, the term-

15 (a) 'outcome measure' means an assessment of the results of a
16 programme activity compared to its intended purpose;

17 (b) 'output measure' means the tabulation, calculation, or recording
18 of activity or effort and can be expressed in a quantitative or qualitative
19 manner;

20 (c) 'performance goal' means a target level of performance
21 expressed as a tangible, measurable objective, against which actual
22 achievement can be compared, including a goal expressed as a quantitative
23 standard, value, or rate;

24 (d) 'performance indicator' means a particular value or
25 characteristic used to measure output or outcome;

26 (e) 'programme activity' means a specific activity or project as
27 listed in the programme and financing schedules of the annual budget of the
28 Federal Republic of Nigeria; and

29 (f) 'programme evaluation' means an assessment, through
30 objective measurement and systematic analysis, of the manner and extent to

1 remuneration shall precisely express the monetary change in compensation or
2 remuneration amounts, such as allowances or awards that shall result from
3 meeting, exceeding, or failing to meet performance goals.

4 (4) Any proposed waiver of procedural requirements or controls
5 imposed by a ministry or an agency (other than the proposing agency or the
6 Government Accountability Department) may not be included in a
7 performance plan unless it is endorsed by the ministry or agency that
8 established the requirement, and the endorsement included in the proposing
9 ministry or agency's performance plan.

10 (5) A waiver shall be in effect for only the fiscal year in which such
11 waiver was approved and may be renewed for a subsequent year.

12 PERFORMANCE CONTRACTS

Performance
contracts for
Public Servants

13 8.-(1) Upon the appointment of any person into any public office as
14 pursuant to the provisions of the constitution or an Act of the National
15 Assembly, such person shall, not later than three months after assumption of
16 office, sign a performance contract as provided in subsection (2) of this section.

17 (2) The performance contract referred to in this section shall be
18 prepared by the Government Accountability Department and shall state key
19 performance indicators and expectations from such public servant as provided
20 in the strategic plan and performance plan of the relevant ministry or agency as
21 provided in sections 3 and 4 of this Act.

22 (3) The parties to the said performance contract referred to in
23 subsection (1) and (2) above shall be the concerned public servant and the
24 people of Nigeria.

25 (4) Copies of the duly signed performance contract under subsection
26 (1) shall be submitted to the President, the National Assembly and the
27 department, and shall also constitute a public document for the purposes of the
28 operation of the Freedom of Information Act.

29 (5) the National Assembly may, pursuant to its oversight powers and
30 functions, evaluate the output of any public servant with the aid of the key

1 indicators as contained in the performance contracts entered into by the
2 concerned public servant with the people of Nigeria;

3 (6) Where in its opinion and judging from the report of the
4 evaluation of a performance contract as provided in (5) above, the National
5 Assembly comes to the conclusion that a public servant has consistently
6 fallen below expectation in meeting his obligations according to the
7 performance contract with the people of Nigeria, the National Assembly
8 may recommend to the Executive the removal of such person from office.

9 (7) Where the National Assembly pursuant to its evaluation in
10 subsection (6) above, is of the opinion that the failure of the public servant to
11 satisfactorily accomplish his objectives in accordance with the performance
12 contract was as a result of corruption or gross negligence, the National
13 Assembly shall refer the concerned public servant to the appropriate law
14 enforcement agencies for necessary action.

15 9.-(1) Nothing in this Act shall be construed as limiting the ability
16 and powers of the National Assembly to establish, amend, suspend, or annul
17 a performance goal of any government agency. Any such action shall have
18 the effect of superseding that goal in the plan submitted under the relevant
19 provisions of this Act.

Legislative
Oversight and
Legislation

20 (2) No later than three months after the enactment of this Act, the
21 Secretary to the Government of the Federation shall report to both Houses of
22 the National Assembly on the implementation of this Act, including the
23 prospects for compliance by Federal ministries and agencies.

24 10. The Office of the Head of Service shall, in consultation with
25 the Commission shall develop a strategic planning and performance
26 measurement training component for its management training programme
27 and otherwise provide Federal employees with the relevant orientation and
28 training on the development and use of strategic planning and programme
29 performance measurement.

Training

Application of Act

1 **11.** No provision or amendment made by this Act may be construed
2 as-

3 (1) creating any right, privilege, benefit, or entitlement for any person
4 who is not an officer or employee of the civil service of the Federal Republic of
5 Nigeria or acting in such capacity, and no person who is not an officer or
6 employee of the Federal Government acting in such capacity shall have
7 standing to file any civil action in a court law to enforce any provision or
8 amendment made by this Act.

9 (2) This Act shall apply to the Federal Government of Nigeria and its
10 Ministries and Agencies.

EXPLANATORY MEMORANDUM

This Bill seeks to make provision for Government accountability and institutionalize strategic planning and performance measurement in Governance and the implementation of policies and programmes of Government