

## BEYOND SYMBOLISM - THE POLITICS OF ASSETS DECLARATION AND PUBLIC ACCOUNTABILITY IN NIGERIA

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*Assets declaration requirement is a cardinal tool for the promotion of integrity in the public service. The fifth schedule of the 1999 Nigerian constitution elaborately encases a code of conduct for all public officials. This code of conduct provision is an important constitutional bulwark to rein in the temptation associated with the abuse of one's official position for private gains. But what is highly doubtful is the sincerity of the custodians of power to allow the code to have its full course and impact. Consistent with elite preoccupation with class survival, several hurdles appear to have been placed on the path of assets declaration requirement with the result that it has not served as a disincentive to unwholesome practices in the public domain as it ought to have done. The supervisory institution set up by the constitution, the Code of Conduct Bureau (CCB) seems to be hamstrung by certain systemic inadequacies. This paper examines these systemic inadequacies that undermine the effectiveness of assets declaration mechanism in Nigeria's public domain. It concludes that the conversion of public office for personal gains is still rife. This is compounded by the deliberate elite conspiracy to shield completed assets declaration forms (CADFs) and treat the institutional incapacity of CCB with noticeable indifference.*

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### INTRODUCTION

In Nigeria, assets declaration mechanism is a constitutional component of the code of conduct for public officials. The 1999 Nigerian constitution explicitly provided for every public official to "submit to the Code of Conduct Bureau (CCB) a written declaration of all his properties, assets, and liabilities and those of his unmarried children under the age of eighteen years" (Fifth Schedule, Part 1, Sec. 11(1), 1999 Nigerian Constitution). The importance of assets declaration in nudging up the integrity system within a state is anchored on its

high potentiality as a "whistle-blower" as it keeps tab on every public official and enables a critical examination of the trajectory of personal accumulation. Such a mechanism discourages wanton abuse of office that often manifested in single-minded looting of the Commonwealth.

Under Nigeria's assets declaration provision, public officials are expected to declare their assets on assumption of, and exit from, office. While it is not designed to be a punitive strategy, it places a searchlight on public officials with the ultimate aim of ensuring a high integrity quotient for

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them. In spite of the elaborate institutional frameworks put in place to administer, investigate and recommend defaulters of assets declaration to the Code of Conduct Tribunal (CCT) for trial, the Code of Conduct Bureau has performed under average as exemplified by massive evidence of looting by government officials between 1999 and 2007. The Economic and Financial Crimes Commission (EFCC) revealed that since 1999 political office holders had looted US\$100 billion from public coffers (Daily Independent 18/09/2006).

The seeming failure of assets declaration strategy in reining in abuse of office in the public domain in Nigeria is not an indictment on its efficacy but attributable to the several hurdles put on its operational path by the ruling elite. In spite of the burgeoning number of government officials which was made possible by democratic governance, there was no commensurate increment in the number of staff to administer and investigate assets declaration forms. The effect was that the constitutional provision that assets declaration forms be completed "immediately after taking office" has been obeyed in the breach. In addition to that, the Nigerian Senate has been lethargic in giving legal backing to public access to completed assets declaration forms.

This paper argues that these two major shortcomings of assets declaration administration in Nigeria have imbued the public official with certain confidence that has exacerbated corruption and infused doubts about the sincerity of the government to enthrone a worthy integrity system. The paper further contends that unless the

necessary political will is summoned and channelled to the enthronement of good governance practices, assets declaration provision will be a mere emblematic signpost of good intentions with the erection of the integrity system necessary for a corruption-free Nigeria being a mirage.

### **EXAMINING THE ARCHITECTURE OF ASSETS DECLARATION IN NIGERIA**

The central idea behind the erection of constitutional structures to enthrone a regime of accountability and transparency was to subvert corruption and open the floodgate of "wholesome dividends of democracy in terms of the greatest good for the greatest numbers" (Okore 2003:x). Assets declaration connotes the legal and constitutional requirements for public officials to declare their wealth and assets either upon entry into public service or promotion into a position with potential for illicit enrichment (Chene 2008). Asante (2005) asserts that assets declaration law is one of the most effective compliance mechanisms adopted by nations to prevent or curb the incidence of conflict of interests among public office holders. A credible and effective assets declaration regime has dual advantages: it complements the ensemble of rules and structures necessary for democratic governance and it is good for the public official as it protects his private assets from wrongful and extra-legal confiscation as well preserve his integrity (Gyimah-Boadi 2005:1).

The defunct 1979 Nigerian constitution pioneered the constitutional baseline for



code of conduct for public officials. The current constitution of Nigeria, the 1999 constitution contains identical provisions. Assets declaration requirement appears a cardinal weapon to beat public officials into line. One, it tends to serve as a mirror of the integrity system. Two, it aims to regulate the conduct of public officials and thus decelerate the incidence of corruption. And, three, it places the worth of public officials in the public domain to enable public scrutiny and whistle-blowing on corrupt enrichment. The Code of Conduct Tribunal (CCT) was set up as a corollary of CCB to administer the "killer bite" on contraveners. The Nigerian Constitution offers definitional interpretation of "assets" to mean "any property, movable and immovable and incomes owned by a person" (Section 19, Part I, Fifth Schedule, 1999 Nigerian Constitution). Part II of the Fifth Schedule of the 1999 Nigerian Constitution lists in detail who it recognizes as a public officer.

An analysis of the assets declaration provision shows that the Nigerian constitution envisaged that every person in the employ of government should declare their assets. In other words, assets declaration requirement for public officials is non-discriminatory in application. But in reality the CCB has not been able to implement this. This great dereliction of duty seemingly exacerbated corruption. As Alhaji Kaita lamented:

Corruption is now institutionalized in Nigeria. People fraudulently display ill-gotten wealth and move about in flashy cars. You see an officer on Grade level 08 ridding(sic) big Mercedes

Benz cars, you would see somebody earning N10,000.00 and building N10 million house to live in. (Cited in Nwala 1997:172).

The CCB blames its shortcomings in executing its mandate on institutional incapacity. As Sam Saba, its then Secretary admitted, "though assets declaration is a constitutional provision for all public officers irrespective of status in service, the Bureau had for logistic reasons pegged the requirements to declare as it found convenient" ([www.icac.org.hk/news...](http://www.icac.org.hk/news...)) The Bureau had at inception concentrated on officers on Grade level 14 and above, that is, management cadre and later officers on Grade level 07 upwards. The seeming inability of the Bureau to effectively discharge its mandate resulted in the setting up of several ad hoc bodies. While Ekanem (2003:60) believes that such ad hoc arrangements were politically and strategically calculated to paint glorious image of regimes, Bello-Imam (2004) contends that the creation of new institutional structures to tackle new ethical issues as well as implement extant code of ethics in the public service domain was an incontrovertible pointer to the failure of the Bureau. Mohammed Yakubu puts it forcefully when he laments that:

The enforcement of the Code...has been far below standard...in fact one is forced to believe that there is no code of conduct for anybody at all. People conduct themselves in public office and business as if there is no code. Bribery and corruption is rampant everywhere. The few who may attempt to observe



the code appear odd and are resented...  
(Cited in Ekanem 2003:61).

The result was a free reign of public office abuse. For instance, in 1992 the Financial Times reported that "... three hundred Nigerians own over US\$30 billion in European and North American banks..." (Cited in Ijewere 1999:253). Creating a code of conduct for public officials in a polity appears to be the first and indeed the easy part; the difficult aspects seem to be the enforcement and implementation of extant provisions of the law; and the inculcation of the ethics of accountability in public service through proactive strategies. The Nigerian experience has shown that enforcement and implementation of public accountability ethos can neither be achieved outside of a competent corps of well-motivated staff: there is a disjuncture between optimal personnel requirement and the Bureau's actual staff strength; nor without the involvement of the masses through "whistle-blowing". The Bureau is at a crossroads; a kind of the devil and the deep blue sea as it lacks the capacity to execute its mandate and yet it is expected to do so. As the CCB Annual Report (2004:36) asserts, "the Bureau since inception has grappled with the problem created by government embargo on staff recruitment". The response of Obasanjo's government when the situation became very critical and almost paralyzed activities in the Bureau was to authorize the recruitment of staff for skeletal services. A non-performing Bureau, of course, serves the best interest of politicians and other public officials as their loots tended to be unchallenged.

### **SATISFICING FOR WHO? INSTITUTIONAL INCAPACITY AND ASSETS DECLARATION ADMINISTRATION**

Ideally, the Bureau requires for effectiveness, about 1,200 personnel to man its various departments and offices in its headquarters at Abuja and thirty-six (36) state-offices but has not been able to attain this figure (CCB Annual Report 2004). In fact from 2004, the Bureau's total strength of 813 staff plummeted to 772 staff in 2006 (CCB Annual Report 2006). A combination of factors accounted for the contraction in staff strength: one was embargo placed on staff recruitment; two was retirement, resignation and dismissal of workers without replacement; three was inadequate funding of the Bureau and four was the categorization of the Bureau as part of the civil service of the federation. The last point has its own demerits. There is this perception of unseriousness associated with the civil service in Nigeria: duties are performed in such imprecise and lackadaisical manner that the civil service is generally regarded as corrupt, incompetent and inefficient (Omoleke 2003:191). Being categorized as civil service, there was no special incentive or separate salary structure to motivate the staff of the Bureau: the other agencies fighting corruption such as the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and other Related Offences Commission (ICPC) enjoy enhanced salary/allowances (CCB Annual Report 2004:37).



The 1999 Constitution confers on the Bureau the responsibility of administering, processing and safekeeping of assets declaration forms by public officials. This responsibility is part of the overall task of establishing and maintaining a high standard of morality and accountability amongst public officials in the conduct of government business. The staff constraints suffered by the Bureau made it impossible to enforce prompt compliance with the provisions of assets declaration. Thus, the assets declaration forms (ADFs) issued out were not promptly received in accordance with the rules: out of 8,839 ADFs issued in 2006, only 2,461 ADFs were received (CCB Ministerial Press Briefing 2007). The rest were probably received years later. These delays created loopholes for "would-be corrupt officers" as it provided room for the legitimization of anticipatory declaration of assets as well as emboldened non-compliance. The operational inadequacies of the Bureau opened the floodgate of crisis of discipline and accountability; the twin-crisis that the Political Bureau identified as "the two most serious problems, which have confronted the Nigerian political process since independence" (CCB Annual Report 2004:2).

Part of the strategies used by successive military regimes to decelerate the momentum of the Bureau was the non-release of funds to carry out its operations. This strategy remained in place even in the post-military era between 2000 and 2003, making it impossible for the Bureau to be effective in discharging its mandate.

Democratic rule increased the operational needs of the Bureau. As the CCB Annual Report (2004:4) observes:

Democratic governance has brought about an increased number of public officers at all levels of government for Assets Declaration. This has put additional pressure on the resources of the Bureau (personnel, logistics, funds) for administration of Assets Declaration on all political office holders who, constitutionally, must declare their assets before assuming office.

And yet there was no correlational increase between the increasing number of public office holders on whom assets declaration forms would be administered and the number of staff to administer them. Indeed there was an increasing gap between what the Bureau needed for optimal performance and what it actually had. Not even the budgetary allocation to the Bureau improved in any significant way to give room for ingenious expansion of personnel base either through consultancy or ad hoc arrangement.

The Table 1 above shows a progressive increment in the personnel allocations. The increment in the allocation does not suggest increment in the number of staff in the Bureau. The increment was a response to the reforms in the public service which the government called monetization as well as promotions and yearly increments to staff salaries.



Table 1: Budgetary Allocation to the Code of Conduct Bureau

Year	Personnel Cost	Overhead Cost	Capital
2000	133,123,412.00	46,626,101.40	Nil
2001	209,357,145.00	140,028,960.35	31,875,000.00
2002	199,107,072.00	42,123,158.94	Nil
2003	217,959,058.00	85,855,752.97	Nil
2004	334,464,355.00	150,000,000.00	50,000,000.00
2005	327,081,128.00	136,143,753.00	180,320,000.00
2006	340,692,089.00	276,728,955.00	257,578,658.00
2007*	55,425,754.00	88,524,512.00	75,000,000.00

\* The figure covers January –March 2007

Source: CCB Annual Reports, Various issues.

The Table 2 above shows a consistent depletion in the number of staff without addition since 2004. The minimum staff requirement for near-optimal performance of the Bureau has been projected to be 1,200. The Bureau has never approached this number since its inception particularly from 2004, the period in which we could gather data. From a combination of statutory retirement, resignation and death, the number of staff has been on the downward trend reflecting increased gaps between optimal staff strength and actual staff strength. While the difference

in 2004 was 387, it increased to 423 and 428 for 2005 and 2006 respectively. The discrepancy between the Bureau's actual and ideal staff strength led to ineffectiveness in the administration of assets declaration requirement. It led to slow processing of assets declaration forms as well as shyness in the invocation of punishment on defaulters. This scenario led Nwala (1997:169); Agalamanyi (2003:310) to undermine the Bureau's relevance in instilling a sense of accountability in the Nigerian public service.

Table 2: Staff Strength (2004 – 2006)

Year	Actual Staff Strength	Yearly Shortfall from Actual Staff Strength	Minimum Staff Requirement	Actual Shortfall from Minimum Requirement
2004	813	-	1200	387
2005	777	36	1200	432
2006	772	5	1200	428

Source: CCB Annual Reports 2004:36; 2005:38; 2006: 21.



Table 3: Assets Declaration Form Administration

Year	Nominal Received	Assets Declaration Forms Issued
2000	8,682	90,554
2001	504,151	282,175
2002	190,321	219,299
2003	190,654	121,039
2004	170,041	31,983

The differences between the nominal received (i.e. total number of eligible public officers to be issued with assets declaration forms) and assets declaration forms actually issued as recorded in Table 3 show that the Bureau has consistently flouted the time limit provided in the Constitution and its Act. For instance, in 2000, the Bureau issued ADFs to 90,554 as against the nominal figure of 8,682. The reason was that it carried over the ADFs that would have been issued in 1999 to 2000. In 2001 when the Bureau would have issued out 504,151 forms it was able to distribute 282,175 forms. Those who were not accommodated in 2001 were issued with the form in 2002 hence the higher number of forms issued in contradistinction to the number on the nominal roll.

The same trend is observable in 2003 and 2004 where the number of assets declaration forms issued was less than the number in the nominal roll. Thus between 2000 and 2004, assets declaration forms were issued to a total of 745,050 out of 1,063,849 leaving out 318,799 persons. The Bureau has not been able to match its distribution of assets declaration forms with the nominal received for ministries, departments and agencies (MDA). The lack of promptness on the part of the Bureau created certain negativities: assets declaration requirements became a hollow ritual as public officials themselves determined the datelines for collection, completion and submission of CADFs.

There are two dimensions to the effect which inadequate personnel have had upon the fight

Table 4: State Operations (36 States and FCT)

Year	No. of Forms Issued	No. of Forms Returned	Difference Between Forms Issued and Forms Returned	Percentage of Forms Returned	Percentage of Forms Unreturned
2005	100,043	84,840	15,203	84.80	15.20
2006	141,339	96,499	44,840	68.27	31.73
<b>Federal Operations</b>					
2005	8,839	2,461	6378	27.84	72.16
2006	6,565	21,142	-14,577	-	-

Sources: CCB Annual Report 2005:10-11; 2006:10).



to enthrone public accountability and high moral standard in the conduct of government business. One, it created a lacuna which enabled public officers, especially political office holders, to get acclimatized with the system and thus corruptly enriched themselves even before the assets declaration forms were administered upon them. Two, the discrepancies evident in the yearly entries suggested that the provision of the law stipulating thirty (30) days for the return of completed assets declaration forms (CADFs) was hardly held sacrosanct.

The failure of the Bureau to enforce the provisions of assets declaration within the limits of the law introduced some interpretative confusion. While the law setting up assets declaration stipulated that public officers should, on assumption of office, fill the assets declaration form and submit same, most public office holders did not fulfil this provision until much later in their tenure with no sanctions imposed upon them. This is attributable to the Bureau's narrow definition of a defaulter as exemplified by the negligible number of people declared defaulters. Going by the 1999 Nigerian constitution, defaulters should include those public officers who fail to declare their assets immediately after taking office or fail to return their completed assets declaration forms within 30 days of collection.

Several things are wrong with the Bureau which made it difficult for it to take a hard-line posture on strict adherence to the provisions of assets declaration. First, up till now, only public officers on Grade Levels 07 and above are covered by the assets declaration requirements even when

the constitution does not exempt anybody in the employ of government. Second, there is no authentication mechanism in place to constantly keep a tab on the declarations by public officials. This knowledge had led to abuse and perfunctoriness in asset declaration by public officials.

### **ELITE AND CULTURE OF IMPUNITY: THE POLITICS OF EXCLUSION IN ASSETS DECLARATION**

Assets declaration is an official attestation by an individual in public service detailing his/her worth materially. Assets declaration serves some other purposes: it provides a "calibrative" basis against which the integrity level of a public officer could be adjudged or measured. Assets declaration puts the public officer on an integrity scale. Because people who occupy public offices do not live in isolation but are part and parcel of the society, their activities are not enamoured of people's prying eyes. In authoritarian and unaccountable regimes, the public might see and hear but are forbidden, through draconian decrees, to talk. Even institutions empowered by law to act are restrained from doing so through reprisals on the top echelons of such institutions. But in democracy, the story ought to be different. The special features of democratic governments (namely, rule of law, accountability and the sovereignty of the people being the anchor of government) compel public officials to submit themselves to certain irreducible standards of accountability and morality in government business.

Thus, the creation of assets declaration as part of the general framework of



accountability in governance constitutes a requirement which public officers must adhere to. The general underlying idea behind assets declaration is that public officers provide economic information about themselves. As Chene (2008:2) observes, "assets declaration schemes generate baseline information against which later disclosure can be compared to identify which wealth is not attributable to income, gift and loans...". The usefulness of assets declaration as a bulwark against personal exploitation of public office lies in the feedback mechanism put in place by the system. One of such mechanisms is public access to assets declaration records. Luh (2003:3) puts it succinctly:

...allowing public access to officials' declarations greatly enhances the value of an asset-declaration scheme. Public access to declarations facilitates public scrutiny of government and government officials, backs up enforcement of the declaration requirements, and promotes public confidence in the declaration system and the government.

The 1999 Nigerian Constitution recognizes the need for public access to assets declaration records and therefore provides that "the Bureau shall have power to retain custody of such [assets] declarations [made by public officers] and make them available for inspection by any citizen of Nigeria on such terms and conditions as the National Assembly may prescribe" (S.3(c), Part 1, Third Schedule, 1999 Nigerian Constitution). But since 1999, the National Assembly has neither proposed nor stipulated modalities for public access to

assets declaration records. A major constraint in allowing public access to assets declaration records was the erroneous categorization of assets declaration records as official documents protected within the ambit and contemplation of Official Secrets Act, a relic of Nigeria's colonial past. The recourse to this categorization has nevertheless served the "useful" purpose of shielding government officials from public scrutiny. The Official Secrets Act Cap 335, Laws of the Federation of Nigeria 1990 prohibits public officials from disclosing official and classified information to the public.

Hiding under the umbrella of Official Secrets Act, public officials had made their activities impervious to public knowledge. To counteract the inaccessibility of information occasioned by this Act, proposals were sent to the National Assembly for the enactment of freedom of information (FOI) laws. The ruling elites played roulette with the Bill stalling it either at the National Assembly or at the presidency. There is no gainsaying the gains of liberalizing and dismantling the secrecy surrounding government business. Open access to CADFs would decelerate the incidence of corruption through its potential to expose as well as dissuade (Poroznuk 2005).

Even though Obasanjo developed a code of conduct for his ministers and special advisers, his government lacked the political will to champion the implementation of the constitutional provision of access to CADFs. One could say that this lack of access suited the economic interests of Obasanjo and the ruling class. This assertion is based on two issues of misconduct perpetrated

by Obasanjo: the use of state apparatus to raise funds for his private library and the acquisition of shares in Transnational Corporation (Transcorp), a private company, while in office. Because the constitutional provision empowering citizens' access to CADFs had not been effected by the National Assembly, no individual possessed the locus standi in law to initiate prosecution either to access these CADFs or force the Code of Conduct Bureau to act.

Unconfirmed reports had insinuated that Obasanjo in 1999 was at the brink of bankruptcy but in 2006 his other company (Obasanjo Holdings), which was hitherto unknown, donated a whopping N100

million to support Obasanjo's library project (Ejinkonye 2006; Ayobolu 2006). The speculations which surrounded these events would not have arisen were people allowed access to assets declaration by public officials. In spite of the Bureau's aggressive public enlightenment to encourage the public to assist it with information for the success of its activities through complaints on any perceived conflicts of interest and corrupt enrichment (CCB Annual report 2006:3), the volume of petition has been abysmally low in a country where corruption is considered ubiquitous.

Both concrete and anecdotal evidence since 1999 suggested an increment in both the

Table 5: Data on Petitions Received

Year	No. of Petitions Received
2004	323
2005	299
2006	107
*2007	67

\*2007 entry covers January – March

Source: CCB Ministerial Press Briefing 2007:14.

Table 6: Nigeria: Corruption Perception Index (CPI)

Year	Country Rank	Total No of Countries Ranked	*CPI Score
2000	90	90	1.2
2001	90	91	1.0
2002	101	102	1.6
2003	132	133	1.4
2004	144	145	1.6
2005	152	158	1.9
2006	142	163	2.2
2007	147	179	2.2

Source: *Transparency International Corruption Perception Index 2000-2007* [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/](http://www.transparency.org/policy_research/surveys_indices/cpi/)

\* **CPI Score** relates to perceptions of the degree of corruption as seen by business people and country analysts and ranges between 10 (highly clean) and 0 (highly corrupt). Although there has been improvement in the CPI Score since 2000, it is generally low. What this means is that corruption is still very high in Nigeria.



incidence and pervasiveness of corruption amongst public officials yet only a total of 796 petitions were received from the public by the Bureau between 2004 and March 2007. The Economic and Financial Crimes Commission (EFCC) revealed that since 1999 political office holders had looted US\$100billion from public coffers (Daily Independent 18/09/2006).

The crisis of public accountability and eroded morality in public service are products of high level exploitation of systemic contradictions and flaws. As has been noted earlier, the shield of Official Secrets Act whose utility lay in the exclusion of public eyes from government and its activities created a perfect scenario for the blossoming of culture of impunity amongst public officers. This culture spawned four mechanisms through which the elaborate structure of maintaining "a high standard of morality and accountability in public service" had been subverted namely, operation of ghost accounts under pseudonyms, anticipatory declaration, the use of fronts and cronies outside the ties of consanguinity and minimal declaration. Anticipatory declaration, according to Justice Emmanuel Ayoola, the Chairman of Independent and Corrupt Practices and other Related Offences Commission (ICPC), connotes a situation where:

Assets declaration form is filled up with assets [which] the public official hopes to acquire while in office with a corruption margin drawn in the form. If the public official has two cars on assumption of office, he could declare six, and in due course he buys the

additional four cars or he could record a vacant plot of land as a fully built up structure.

When the declaration is finally checked after months or years, the assets would have been put in place ([www.anticorruptionleague.org](http://www.anticorruptionleague.org))

The scenario pointed out by Justice Ayoola is made possible where public access to CADFs is straitjacketed in thick layers of officialdom. Ekpu (2005:2-3) contends that lack of access to CADFs not only stymied the fight against corruption but also undermined the Code of Conduct Tribunal (CCT) reducing it to "less than tribune of the people". It is only when people have access to concrete data that they can be helpful in contributing information relevant to uncovering corrupt enrichment in all its ramifications and manifestations, including the operation of ghost bank accounts and the use of fronts and cronies.

Another strategy through which public officers exploit the secrecy in assets declaration regime is what has been termed minimal declaration. As Nwanma (2007) explains, minimal declaration denotes a situation "where an incumbent official, for fear of arousing curiosity, chooses to declare just part of his total assets". This kind of scenario is possible with people who had been in the corridors of power for a long time. The only way through which these various strategies could be immobilized is the liberalization of access to assets declaration records of public officials. Legal frameworks that are bereft of this important provision can