

# **An Appraisal of the Code of Conduct for Public Officers in Nigeria**

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*In most nations, the proper implementation of government policies depends solely on public officers who are required to be sincere and patriotic in the course of their duties. Historical evidence attests to the fact that public officers in Nigeria were very effective before the attainment of Independence. The unfortunate records of indiscipline, corruption, greed and inefficiency that have characterized their performances in recent times, have necessitated the introduction of a Code of Conduct to direct, guide and regulate the activities of public officers in Nigeria. This article answers questions on the historical antecedents in the introduction of the Code of Conduct for Nigerian Public Officers; the comparative nature of the Code of Conduct for Public Officers in other countries; and the extent to which the provisions of the Code of Conduct has been applied to sanitize the activities of public officers in the Nigerian Civil Service.*

## **Introduction**

The phenomenal growth in the size and responsibilities of the Nigerian civil service and the realities of the social, economic and political situation within which it operates, have made this institution to become embroiled in many serious problems. Today, an average Nigerian perceives the civil service negatively and attributes to it all kinds of vices like red-tape, rigidity and conservatism on the one hand, and corruption, inefficiency, nepotism, ineffectiveness, wastefulness, laziness, absenteeism, high-handedness and insensitivity on the other hand (MAMSER 1987: 111).

The challenges posed for the civil service bureaucracy by its ever-increasing size, complexity and responsibility and the problems of the institution as outlined above, have made it a subject of many inquiries by the government, all in an attempt to improve it. In post-independence era, the most prominent of such studies include the Adebo Commission on the Review of the Salary Structure of the Civil Service (MAMSER 1964), the Public Service Review Commission, otherwise known as the Udoji Commission (MAMSER 1974), and the Dotum Philips Study Group on Civil Service (MAMSER 1985) and the Allison Ayida Panel of 1994. Despite the detailed nature of the reports and recommendations of these various committees, the problems of the civil service have remained. In spite of its strategic position, the institution has basically remained a problematic cog in the wheel of the development of the nation. Any attempt to chart a new political order for Nigeria therefore, has to squarely grapple with the problems of the civil service.

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The Political Bureau set up in 1987 was extremely conscious of the fact that the new political order for the nation could not produce the expected results without a high standard of morality in the conduct of government business. Hence, the Bureau cited among other things the urgent need to strengthen existing machineries for monitoring the actions and behavior of public officers to ensure that they conform to the highest standard of morality, public probity and accountability. An important instrument for doing this was the Code of Conduct for Public Officers.

This article provides historical analysis of the Code of Conduct for public officers in Nigeria. It then examines the constitutional provisions on the Code of Conduct and the problems of their enforcement.

### **The Terms “Code of Conduct” and “Public Officers”**

A code is a collection, compendium or revision of laws. It is a complete system of positive law, scientifically arranged and promulgated by legislative authority (Black 1979: 323). It can also be said to be any systematic body of laws.

A conduct is a personal behavior, deportment and mode of action. It is any positive or negative act. A conduct is any behavior or moral; good or bad (Black 1979: 367; Hornby *et al.* 1962: 198).

On the other hand, the term “public officers” may be defined as persons who perform the services of the Federation or of a State in any capacity. This definition is in line with Section 319 of the 1999 Constitution which defines Public Service of the Federation or of a State as the Service of the Federation or of a State in any capacity.

In the light of the above definitions, the term Code of Conduct for Public Officers within the context of this paper means a collection of laws which have been systematically organized and entrenched in the Constitution to direct, guide and regulate the behavior of persons who perform the services of the Federation or of a State in any capacity.

By virtue of Part II of the Fifth Schedule to the 1999 Constitution, public officers for the purposes of the Code of Conduct include: the President, the Vice-President, Members of the National Assembly and Houses of Assembly of States, Governors, Deputy Governors, Chief Justice of the Federation and all judicial officers on the Bench, Attorney-General of the Federation, Ministers, Commissioners, all members of the armed forces of the Federation, Persons in the Civil Service of the Federation and the State, Ambassadors, High Commissioners and Officers of Nigerian Missions abroad, Chairman and Staff of Code of Conduct Bureau and Local Government, members of Boards of Statutory Corporations, all staff of Universities, Colleges and Schools owned by Federal or State governments etc.

As stated earlier, public officers are persons who carry out public services of the Federation or those of the State in any capacity. The question is what had been the performance of Nigerian public officers in the past as compared to what operates in recent times? An attempt to answer this question will lead us to a historical survey of the past records of Nigerian public officers before the introduction of the Code of Conduct into the Constitution.

### **Historical Survey of the Code of Conduct for Public Officers in Nigeria**

It is now widely acknowledged that the public service has become an important and powerful arm of government. The proper implementation of government policies now depends solely on the administration, but that has become so complex that only well-groomed servants in a well-organized, disciplined and efficient public service system will be able to cope with the day to day management of government affairs. The administration, aware of this fact, has risen to the challenge and emphasis is now placed more on the recruitment of well trained professionals in various disciplines to man the various departments.

The Nigerian public service, a British Colonial heritage, known for its efficiency, thoroughness and discipline, started losing its good qualities soon after independence, following its indigenization. Technocrats who had been groomed in the traditional phenomenon of being public servants saw themselves as public masters, with the opportunity to run the services as their personal estates. The trust put on them as servants to manage state affairs on behalf of the people started being abused. Appointment and promotion, which ought to be based on competence were soon based on favoritism and sectionalism. Corruption, the worm that destroys any system, reared its ugly head and ate deep into the fabric of the civil service. Of course, inefficiency, bureaucratic laziness became the order of the day. Matters became worse when public servants started stealing government fund either directly or through kickbacks from contracts awarded on behalf of the government.

Though the Criminal Code has always provided opportunities to bring the culprits to book (Laws of Federation of Nigeria 1990a), the problem has been the unwillingness on the part of the government to enforce the law. In fact, this could not be possible, as those who were supposed to enforce the law were also the ones involved in the abuse of office. Matters became unbearable that the first cleaning exercise of the military government that toppled the civilian government in 1996 was to set up investigating panels to look into the assets of public officers. Various laws (decrees and edicts) were promulgated to recover public properties that were fraudulently acquired by public servants and their accomplices.<sup>1</sup>

Unfortunately, the military government that came to instill discipline into the public service soon got involved in the same corruption and indiscipline. In fact, experience has shown that corruption reached its peak during military regimes in

Nigeria (MAMSER 1987). The Gowon regime which came at a time when money was "not the country's problem," succeeded in allowing public officers to become emergency millionaires through direct stealing of government funds or through contract awards. The situation was so bad that ordinary citizens started accusing public servants openly of corruption. The government did not care and even sometimes came out to absolve such public officers without any investigation (*Daily Times*, 3 November 1974: 1).<sup>2</sup>

The first official recognition of people's disenchantment with corruption in high places was the promulgation of the Corrupt Practices Decree (Laws of Federation of Nigeria 1990b), which incidentally was a forerunner of the Code of Conduct provisions in the 1979 Constitution.

The explanatory note to the Decree stated that it was designed for the suppression of corrupt practices in both the public and private sectors. The Decree also provided stiff penalties<sup>3</sup> for any person found guilty of bribery and corruption, but made exception for bona fide customary gifts (Laws of Federation of Nigeria 1990b).

The Decree set up an autonomous government department known as the Corrupt Practices Investigation Bureau, headed by a Director, which would be responsible for investigating all allegations of corruption after which reports would be submitted to the Director of Public Prosecution, who would be responsible for prosecuting such cases. The Decree also set up adhoc tribunals comprising a judge of the High Court of a State or of the Federal High Court and two other members, one of whom was drawn from the armed forces. Convicted persons had a right of appeal to the Supreme Court (Laws of Federation of Nigeria 1990b).

That Decree, which was promulgated by Muritala Mohammed regime shortly after it toppled Gowon regime (which was noted for corruption) was aimed at minimizing corruption in high places. Unfortunately, no recorded case known to this writer was ever tried under the Decree.

### **Code of Conduct for Public Officers in Other Jurisdictions**

The failure of any prosecution under the corrupt practices decree promulgated by the military in 1976 and the determination of well meaning Nigerians to minimize corruption, motivated the Constitution Drafting Committee (CDC) to propose the inclusion of the Code of Conduct for Public Officers into the 1979 Constitution of Nigeria.

In this regard, the CDC drew inspiration from Tanzania and Zambia where such codes were already existing. According to the CDC:

The purpose of the Code is that a leader should not put himself in a position where his personal interest conflicts with his responsibility as leader, or which

enables him to exploit others. With certain exceptions, the code therefore forbids a leader or his spouse to draw more than one salary, to employ workers in connection with any trade, business, profession or vocation, including the running of a hotel, boarding house or like establishment for gain or profit, to own a house to let out or rent to others, to be shareholder or director in a privately-owned enterprise (Report of the CDC 1976).

Though the Tanzanian and Zambian codes, as stated above, could be regarded as too harsh in a capitalist system, the CDC agreed that it was necessary to establish a code of conduct, which, though may not be part of the Constitution should exist as a separate document, the amendment of which could only be carried out by Parliament by two-thirds majority.

The corrupt practices provisions which could have served the same purpose was subsequently repealed (FMINO 1999a). The provisions reappeared and in a more permanent form, as part of the 1979 Nigerian Constitution (FMINO 1999b). The code contains provisions which if strictly followed and enforced would have made corruption in public office a thing of the past in Nigeria. The code is however applicable only to public officers, which made it more restrictive than the corrupt practices decree, which applied to workers in both public and private sectors.

### **Impact of the Military on Code of Conduct for Public Officers in Nigeria**

The code of conduct tribunal, as prescribed by the 1979 Constitution was not constituted, while the Code of Conduct Bureau that was constituted could not function due to the deliberate inability (*Daily Times*, 8 November 1983) of the National Assembly to pass the Code of conduct (Procedure) Bill, which could have laid down procedures for the enforcement of the Code. Public officers, especially political appointees, were therefore left with the opportunity to misbehave and steal government funds without any check.

With the military takeover on 31 December 1983, the Constitution (Suspension and Modification) Decree No. 1, 1984 was promulgated. It repealed paragraphs 15-20 of the Code of Conduct, which could have set up the Bureau and the Tribunal. To perform the same function, the Recovery of Public Property (Special Military Tribunals) Decree No. 3, 1984 was promulgated under which there were investigations of assets and trials of public officers. Those found guilty of contravening the code of conduct (FMINO 1999b) were sentenced to various terms of imprisonment. Their properties were forfeited to the state.

Early in 1989, the military promulgated the Code of Conduct Bureau and Tribunal Decree 23 (Laws of Federation of Nigeria 1990c) which constituted the Code of Conduct Bureau and Code of Conduct Tribunal. The decree not only constituted those bodies, it updated the Code of Conduct provisions of the 1979 Constitution.

### **Code of Conduct for Public Officers in the 1999 Constitution of Nigeria**

It is important to note that the provisions of the Corrupt Practices Decree No. 38, 1975 were incorporated into the 1979 Constitution as the Code of Conduct for Public Officers. In line with the advice of the members of the National Constitutional Conference Commission which functioned under the General Abubakar military regime, the provisions on the Code of Conduct for Public Officers were also entrenched into the 1999 Constitution (FMINO 1999c).

According to Section 1 of Part I of the Fifth Schedule to the 1999 Constitution, a public officer must not put himself in a position where his personal interest conflicts with his duties and responsibilities. Such officer must not receive or be paid the emoluments of any public office at the same time as he receives or is paid the emoluments of any other public office. The officer is still precluded from engaging or participating in the management or the running of any private business, profession or trade (FMINO 1999c).

The code of conduct prohibits those public officers specified in Part II of the Schedule or any other persons from maintaining or operating a bank account in any country outside Nigeria. It also prohibits a retired public officer who is receiving pension from accepting more than one remunerative position as chairman, or director or employee of any government controlled company or receive any other remuneration from public funds in addition to his pension, and the remuneration of such one remunerative position. Retired public officers who have held offices as President, Vice-President, Chief Justice of Nigeria, Governor and Deputy-Governor are prohibited from service or employment in foreign companies or foreign enterprises (FMINO 1999c).

A public officer is prohibited from asking for or accepting any property or benefits of any kind for himself or for any other person on account of anything done or omitted to be done by him in the discharge of his duties. This section is presumed contravened if a public officer accepts gifts from a business organization or persons who have contracts with the government. The only exception to this is the acceptance of gifts from relatives or personal friends on such occasion as are recognized by custom. However, a gift received during public or ceremonial occasion is presumed received or accepted for the institution represented by the public officer and that does not contravene the code (FMINO 1999c).

By Section 7 of the Code, the President, Vice-President, Governors, Deputy-Governors, Ministers, Commissioners, Directors-General, Heads of Public Corporations, Universities or other parastatals are forbidden from accepting loans from any body except government or its agents, banks, building societies and other financial institutions recognized by law. They are also precluded from accepting any benefit of whatever nature from any company, contractor or businessman or their agents for themselves. They may, however, accept loans from their institutions for themselves, subject to the rules and regulations of such institutions.

Section 8 forbids any person from offering to public officers, any property, gift or benefit of any kind as an inducement or bribe for the granting of any favor or the discharge of his favor, of the public officers' duties.

Section 9 forbids a public officer from doing or directing to be done, in abuse of his office, any arbitrary act prejudicial to the rights of any other person knowing that such act is unlawful or contrary to any government policy.

The government, realizing the incalculable damage done to the effectiveness of the administration of government due to the influence of cultism and secret societies, forbids, through section 10, any public officer from belonging to or taking part in any society the membership of which is incompatible with the functions or dignity of his office.

One of the strongest allegations against public officers is the inordinate ambition to acquire properties illegally while in office. The Code of Conduct therefore mandates every public officer to declare his assets and liabilities within three months after the coming into force of the Code of Conduct or immediately after taking the oath of office and thereafter: (a) at the end of every four years; (b) at the end of his term of office; and (c) in the case of serving officers, within 30 days of the receipt of the form from the Bureau (FMINO 1999c).

The declaration of assets shall be made by submitting to the Code of Conduct Bureau a written declaration of all his properties, assets and liabilities and those of the officers' spouses, or unmarried children under the age of 21 years.

It amounts to a breach of the code to make false declaration. Properties or assets that are thereafter acquired and not declared or fairly attributable to income, gift or loan are deemed to have been acquired in breach of the code, unless the contrary is proved.

Where the code is breached through an agent, nominee or trustee, such breach is attributable to the public officer on whose behalf such agent, nominee or trustee is acting. Where a breach of or noncompliance with the code is alleged, it shall be made to the Code of Conduct Bureau.

### **The Code of Conduct Bureau**

The Code of Conduct Bureau is one of the two bodies set up by the corrupt practices Decree No. 1 of 1989 to be responsible for the enforcement of code of conduct provisions. According to Section 2 of the decree, the aims and objectives of the Code of Conduct Bureau include the establishment and maintenance of a high standard of morality in the conduct of government business and ensuring that the actions and behavior of public officers conform to the highest standards of public morality and accountability.

Section 3 of the decree states the functions of the Bureau as follows:

- a) To receive assets declarations by public officers in accordance with the provisions of the Decree;
- b) To examine the assets declaration and ensure that they comply with the requirements of the Decree and of any law for the time being in force;
- c) To take and retain custody of such assets declarations; and to
- d) Receive complaints about noncompliance with or breach of the Decree (now the Code of Conduct in the 1999 Constitution) and where the Bureau considers it necessary to do so, refer such complaints to the Code of Conduct Tribunal in accordance with the provisions of section 20 of the Decree (now section 12 of the code of conduct in the 1999 Constitution) (FMINO 1999c); provided that where the person concerned makes a written admission of such breach or noncompliance, no reference to the Tribunal shall be necessary.

The Bureau consists of a chairman and ten other members who are men of impeccable or unimpeachable character in the Nigerian society. They are to be appointed by the President, Commander-in-Chief of the Armed Forces. Apart from the powers conferred by the Decree, the then Armed Forces Ruling Council (AFRC) might also confer on it other powers as could be necessary to enable the body to discharge its functions more effectively. The tenure of office of members and staff of the Bureau is to be in line with that of officers in the Civil Service of the Federation (Federal Government of Nigeria 1988).<sup>4</sup> Members of the staff of the Bureau are to be appointed by the Bureau.

To perform its functions effectively without fear, the corrupt practices Decree No. 1 of 1989 (now Code of Conduct Bureau and Tribunal Decree, Cap. 56, Laws of Federation of Nigeria 1990), grants judicial immunity to members of the Bureau. They shall not be liable and shall be indemnified in any action or litigation for any act or omission done or purported to be done in the course of the discharge of their duties.

The Assets Declaration Forms sent to officers on Grade level USS 13 (now HATISS 13) and above in the Universities and Grade Level 15, upwards in the Civil Service, contain many questions ranging from particulars of personal properties (real or cash) to Bank accounts, (local or foreign). Officers are also expected to state how these properties were acquired. Details of the properties of spouse and unmarried children under the age 21 years must also be stated. The officers also have the opportunity of stating their liabilities.



The catchment of public officers (USS/HATISS 13/GL 15) appears reasonable since responsibility coupled with influence begins from that level. However, there are officers at the lower cadre whose positions are more likely to be abused. It is conceded that to ask every public officer to declare his assets (as envisaged by the Decree and now by the Code) may make the work of the Bureau too unwieldy. It must be recognized that some lower level officers are strategically or administratively placed (especially in the account, customs, immigration or contract awarding sections) to be susceptible to abuse of office. The Bureau should therefore take this into consideration, identify such areas and let these officers declare their assets.

### **The Code of Conduct Tribunal**

A tribunal, known as the Code of Conduct Tribunal was set up under the Corrupt Practices Decree consisting of a Chairman and four other persons. The Chairman, by the Decree, must be a retired judge of a Superior Court or a person qualified to hold office as a Judge of a superior court. Both the chairman and the members are appointed by the president. They must not be less than 50 years of age. The AFRC may confer on the Tribunal more powers to enable it to perform its functions more effectively (Laws of Federation of Nigeria 1990c).

The tenure of office of the staff of the Tribunal is to be in accordance with the practice in the Civil Service of the Federation. They could hold office until the age of 70 years, and when they retire at that age and have served for a period of not less than 10 years, they would be entitled to pension for life at a rate equivalent to their last annual salary in addition to other retirement benefits to which they may be entitled.

The chairman and members of the Tribunal could only be removed by the President, Commander-in-Chief of the Armed Forces for inability to discharge the functions of their office (whether arising from infirmity of mind or body or for misconduct or for contravention of the Code of Conduct) (Laws of Federation of Nigeria 1990c).

When there is a breach or contravention of the Code of Conduct, the Tribunal has the power to order:

- a) Vacation of office or seat in any legislative house as the case may be;
- b) Disqualification from membership of a legislative house and from the holding of any public office for a period not exceeding 10 years; and
- c) Seizure and forfeiture to the state of any property acquired in abuse or corruption of office.

Apart from the above sanctions, the Tribunal, may refer the breach of the Code for prosecution, if such amounts to a breach of the Criminal Code.

An aggrieved party to the decision of the Tribunal has the right to appeal to the Court of Appeal. One fails to understand why the appeal should be elevated to the Court of Appeal directly from the Tribunal, which is an 'inferior court.' This may however be based on the erroneous belief that the Tribunal, being chaired by a Judge may be equivalent to a High Court. In fact, the chairman may not necessarily be a retired Judge.

By virtue of section 24 of the Decree (Laws of Federation of Nigeria 1990c), the Attorney-General of the Federation or his officers are responsible for the prosecution of public officers who have breached or contravened the Code. The Attorney-General of the Federation, after consultation with the Attorney-General in the State may request any State counsel to prosecute such cases. The Tribunal may, if contingencies so dictate allow a legal practitioner to prosecute public officers.

An accused person has the right to defend himself in person, or through a legal practitioner. Under Section 25, of the Decree, the Tribunal has the power to order any member of the police, the armed forces or security agents, to conduct a search of premises, even with force.

The Decree improved upon the 1979 constitutional provisions by providing for procedure for the enforcement of the code. The procedure for prosecution, under the decree is akin to trials under the Criminal Procedure Act and Criminal Procedure Code (Laws of Federation of Nigeria 1990c).

### **Analyses of the Code of Conduct**

As noted in this article, part I of the fifth schedule to the 1979 constitution made provisions for the general conduct of public officers through a Code of Conduct Tribunal. In the process of this study, it has been observed that provisions on the Code of Conduct Bureau were omitted in the 1989 and the current 1999 constitutions of Nigeria. Section 12 of the 1989 constitution and section 11 of the 1999 constitution mandate a public officer to declare in writing, his assets to the Code of Conduct Bureau. Also, section 13 of the 1989 constitution and section 12 of the 1999 constitution allow the making of any allegation of a breach of or noncompliance with the provisions of the Code of Conduct by a public officer to the Code of Conduct Bureau. On the strength of the above cited provisions therefore, one is tempted to conclude that the omission of the provisions on the Code of Conduct Bureau in the 1989 constitution could not have been a deliberate attempt but by some errors emanating either from the process of compilation or printing. It is therefore, suggested that the Constitution Review Committee set up by the present Obasanjo civilian administration correct this error.

One of the reasons for the entrenchment of the Code of Conduct in the 1979, 1989 and 1999 constitutions of Nigeria is to ensure and enforce compliance with the standards stipulated therein. In the course of the national debate however, many Nigerians blamed the low standard of morality resulting in the open looting of the treasury partly on the non-activation of the provisions of these constitutions. They pointed out that during the second Republic, the Code of Conduct Bureau was not properly constituted early enough. They insisted that the vacillation and reluctance on the part of both the President and the National Assembly to activate the Fifth Schedule part I of the 1979 constitution was a deliberate design to enable them loot the treasury and recoup their election expenses. Regarding some of the specific provisions of the Code of Conduct, the Code of Conduct Bureau and the Code of Conduct Tribunal as to membership, mode of appointment, tenure of office and the possible impact of their activities throughout the country, the following areas need be examined if the objectives of the Code are to be realized:

1. Limiting the Code to public officers appears too restrictive. Though, it is aimed at reducing or eradicating corruption and indiscipline in public office, the Nigerian environment should be taken into consideration. It is true that 'persons' are not allowed to offer bribes to public officers, if they do, the code provides no sanction against such persons. The sanction mentioned under section 23 appears to be limited to public officers. The sanctions against any other person are not clear under the Decree, especially where no crime is committed.
2. The line between personal gifts, which a public officer may accept, and bribes, is very thin and unclear. In Nigeria, when bribe is offered, it normally passed through relatives and friends as gifts, and such will be delivered at occasions that "are recognized by custom." Public officers may therefore hide under this paragraph, when challenged as having abused their office.
3. Section 3 has provided a strong defense for public officers, to get away from the breach of the Code. The Decree gives the Bureau, the power to receive complaints about noncompliance with or breach of the Code and where it considers it necessary to do so, refer such complaints to the Tribunal. However, when the person concerned has made a written admission of such breach or noncompliance, no reference to the Tribunal shall be made.

It is only the Tribunal that can punish and punishment will have to be based on cases reported to it by the Bureau, after being found proved. When an allegation is therefore made to the Bureau, to escape the wrath of the Tribunal, all that the public officer needs to do is to make a written admission, and the matter ends there.

Apart from this, the discretion given to the Bureau, on whether to report a case to the Tribunal or not, stands the danger of being abused. The code may therefore not be as effective as it sounds.

4. In declaring their assets as required by the provisions of the Constitution on the Code of Conduct, public officers should be categorized and not lumped together. Those public officers elected or appointed to public offices like the President, Vice-President, Governors, Deputy-Governors, Ministers, Commissioners, Legislators, advisers and other political officers, rather than the normal career officers, should declare their assets publicly. These are people who in their vantage positions could easily abuse their offices. They also have direct access to the wealth and opportunities of the nation. Since they have decided to accept those responsible positions, there should be nothing secret in their assets. Since many of them are catered for by the public, the public also should know their worth. If their assets are publicly declared, it will be easy for the public to point out other assets acquired after coming into office.

Nigerians have been known to become millionaires, having mansions and large properties, after about a year in political office, even when there has been evidence that they found it difficult to make ends meet before appointment. The present practice of secret declaration of assets should be limited to public officers in public career employment.

5. As it was in the initial stage of its creation, one wonders how the Tribunal based in Abuja, the capital city of Nigeria would be able to try cases coming from all over the country. Would the Tribunal move round different zones or would it expect accused public officers to travel down to Abuja for their cases? If the latter was the case, a lot of hardship and risks would have been involved. It is suggested that the Tribunal should move round the State capitals or zones comprising the states for its operation.

Since the present democratic government of Nigeria is just finding its feet in office, it will be premature to assess how effective the Code of Conduct Tribunals have been. To the knowledge of this writer, no allegation of contravention of the Code of Conduct has yet been made against any public officer to warrant any trial before the Code of Conduct Tribunal. Going by the provisions of the Code, it would need a strong determination and boldness of a person to demand from the Bureau, the opportunity to see the assets declared by a person, since these declarations were secretly done. In fact, the Bureau has no power to make the contents of Assets Declaration Form public. Hence, to know whether the contents are false or not, is therefore very difficult. Aside, the sociocultural aspects of the Nigerian society have always made it difficult for people to speak the truth for the purpose of exposing

corrupt practices of any other person in a public office. It is part of Nigerian culture to run away from any position which can be taken to mean that one is responsible for the downfall of another person not minding any crime which that person might have committed against the State.

In the course of this research, it is observed that countries such as the United States of America, France, Germany, Australia, Switzerland do not have separate schedules in their Constitutions on the Code of Conduct for public officers. In those countries, penal laws and regulations exist to guide public officers in the course of their administrative duties. Civil servants in those countries are well remunerated, properly protected and are always loyal to the service of their nations. This should be the attitude of Nigerian government and civil servants towards ensuring effective and enduring public administration instead of paying lip service to constitutional provisions on the Code of Conduct for public officers without proper avenues for their enforcement.

### Conclusion

Lack of probity has remained the major shortcoming of public administration in Nigeria. The Code of Conduct provisions of the Constitution are intended to correct this. In spite of all efforts that have so far been made to stop or even minimize corruption in high places, and to instill discipline in public office, there has not been any appreciable progress. The Government too, has been inconsistent in its determination to clean the administration of the dirt. Legislations have been duplicated, thus leading to confusion and contradiction. For example, while Government, through the Code of Conduct, forbids the operation of foreign accounts by public officers, the same government promulgated the Second-Tier Foreign Exchange Market Decree No. 23, 1986 (Laws of Federation of Nigeria 1990d) which allows persons to bring into the country any amount of foreign currency for exchange.

Section 3(1) of the Decree permits any person transacting in the Market, not to be required, and if required not obliged to disclose the source of foreign currency he is transacting. It is not unlikely that public officers who kept foreign accounts had brought into Nigeria through their agents such foreign currencies. Section 1(3) of the Decree even indirectly nullifies that particular of the Code of Conduct by providing that:

If the provisions of any other enactment are inconsistent with the provisions of this Decree, the provisions of this Decree shall prevail, and that other law shall to the extent of the inconsistency, be void.

The former Head of State, General Babangida, must have noted with dismay the fruitless efforts made so far before he setup the National Committee on Corruption and Other Economic Crimes in April 1989 under the Chairmanship of Hon. Justice Kayode Eso JSC.

Corruption in high places will continue and public officers will continue to find ways of beating the provisions of the Code of Conduct, unless the Government tackles the causes rather than solution, of the deadly disease. A system which allows a senior public officer who has worked for 35 years, without having a house of his own to retire to, will definitely continue to have corruption as its integral part. The Government should therefore provide effective social security for the comfort of its public officers while in service and after retirement.

More important, example is better than precept. The rulers themselves must show the way for others to follow. If the rulers follow the Code of Conduct strictly, they will have the moral justification for its enforcement. In the words of Hon. Justice Kayode Eso while submitting his Committee's report to the president on 5 September 1990:

We do recognize most solemnly that our Committee's set of novel and comprehensive legislative remedies may fail to achieve their desired purpose if rulers and the ruled do not observe them in their letter and spirit (*The Guardian*, 6 September 1990: 16).

The above observation has now been vindicated by the disturbing revelations about allegations of corruption and embezzlement of public money levied against members of the Nigerian Senate through fraudulent procedures in awarding contracts (*TELL*, 7 August 2000: 36; *The Punch*, 19 July 2000: 1). Since the allegations have been proved against some legislators, some Nigerians (*Post Express*, 27 July 2000: 1) have expressed the view that the erring legislators should be made to face the National Anti-Corruption Commission. However, against one of the cardinal principles of jurisprudence is that a person must not be punished under a law which did not exist when he committed an offense. By the time the erring legislators were fraudulently awarding illegal contracts and embezzling public money, the Anti-Corruption Act which people requested to be administered by the Anti-Corruption Commission to try the erring legislators had not yet been passed. Hence, trying the erring legislators under the newly enacted Anti-Corruption Act will go against the principle that there must be no crime or punishment except in accordance with a pre-determined law—*nullum crimen sine lege, nullum poena sine lege*. Applying the Anti-Corruption Act will be an open route for them to escape punishment.

Instead, it is hereby suggested that since the language of part I of the Fifth Schedule to the 1999 Constitution makes all legislators public officers; they should be made to face the Code of Conduct Tribunal. The submission of the Report of the Senate Investigating Committee to the Code of Conduct Bureau will satisfy the requirement that sufficient allegations of corruption have been made against them which justify their being tried by the Code of Conduct Tribunal.

Apart from the application of Code of Conduct in the 1999 Constitution, the erring legislators can also be convicted under Chapter Twelve of the Criminal Code which deals with official corruption and abuse of office by persons employed in public service (Laws of Federation of Nigeria 1990a).

There must be the willingness on the part of the Government, to enforce any punishment that may be given to a corrupt public officer by any Tribunal, whatever name called. There is no assurance that all the properties confiscated after due process of law, between 1979 and today have been physically taken, from the corrupt officers. There were strong rumors that the properties of some corrupt officers confiscated during the Muritala/Obasanjo era, were later returned to them during Shagari era. That is the tragedy of the system which encourages corruption. Political officers, whose properties were forfeited to the state still nurse hopes of repossessing them when 'their' government returns to power.

It is therefore suggested that properties forfeited after due process of law should be possessed immediately by the state and disposed of or made use of. The war against corruption which is the basis of the Code of Conduct provisions can only be won if the Government shows determination and willingness by showing examples, by attacking the root causes and by promptly enforcing orders made by the Code of Conduct Tribunal.

Finally, it is observed that the Code of Conduct in the Nigerian Constitution is restrictive because it applies only to public officers. It is therefore suggested that the Nigeria Anti-Corruption Bill which was passed into Law in June 2000, should be properly administered and thoroughly enforced so as to make it complimentary to the Code of Conduct for the overall purpose of mounting a consistent check on corruption within the rank and file of Nigerian workers in both public and private sectors. After all, it will be most unfair to attribute the present deteriorating level of corruption in Nigeria only to the activities of public officers.

### Endnotes

<sup>1</sup>See Forfeiture of Assets Edict No. 5 of Western State, 1967, validated by Forfeiture of Assets (Validation) Decree No. 45, 1968; Forfeiture of Assets (Votenisky Nigerian Ltd.) Act No. 24, 1967; Forfeiture of Assets (8 Okotie-Eboh Street, Ikoyi) Act No. 18, 1976; Forfeiture of Assets (Messrs Davis of America etc.) Act No. 29, 1975; Forfeiture of Assets etc. Act No. 64, 1977; Forfeiture of Assets Acts No. 28, 1977; Recovery of Public Property Acts No. 57, 1970; No. 58, 1970; No. 43, 1971; No. 22, 1972; No. 58, 1976.

<sup>2</sup>See also Public Officers (Protection Against False Accusation) Decree No. 4, 1984 promulgated by Buhar/Idiagbon Regime.

<sup>3</sup>Ranging from 7 to 14 years imprisonment or N5,000 to N10,000 fine or both.

<sup>4</sup>Like proceeding on retirement after 35 years of unbroken service. See the Nigerian Civil Service Guidelines.

### References

Black, Henry Campbell  
1979 *Black's Law Dictionary*. 4th edition. U.S.A.: St. Paul Minnesota West Publishing Company.

## Constitution Drafting Committee (CDC)

1976 *Report*. Vol. II. Lagos, Nigeria: Nigerian Government Press.

*Daily Times*

1974 General Yakubu Gowon had an occasion to clear Governor Gomwalk of Plateau State of corruption levied against him by Mr. Ape Aku. 3 November.

## Directorate for Social Mobilisation (MAMSER)

1987 *Report of the Political Bureau*. Government Press, P.M.B. 27. Abuja, Nigeria.

1985 *Report of the Political Bureau*. Government Press, P.M.B. 27. Abuja, Nigeria.

1974 *Report of the Political Bureau*. Government Press, P.M.B. 27. Abuja, Nigeria.

1964 *Report of the Political Bureau*. Government Press, P.M.B. 27. Abuja, Nigeria.

## Federal Government of Nigeria

1988 *Nigerian Civil Service Guidelines*. Lagos, Nigeria: Government Press.

## Federal Ministry of Information and National Orientation (FMINO)

1999a *The Constitution of the Federal Republic of Nigeria*. Wuse Zone II, Abuja, Nigeria.

1999b Part I of the Fifth Schedule to the *Constitution of the Federal Republic of Nigeria*. Wuse Zone II, Abuja, Nigeria.

1999c 5th Schedule to the *1999 Constitution of Nigeria*. Wuse Zone II, Abuja, Nigeria.

*The Guardian*

1990 6 September:16.

## Hornby, A.S., Gatenby and Wakefield

1962 *The Advanced Learner's Dictionary of Current English*. 2nd edition. London: Oxford University Press.

## Laws of Federation of Nigeria

1990a Criminal Code Act, Cap. 77, formerly Cap. 42 of Laws of Federation of Nigeria, 1958. London: Grosvenor Press (Portsmouth) Limited.

1990b Public Officers (Protection Against False Accusation) Decree No. 4 (1984); Decree No. 38 (1975). Nigerian Law Revision Committee under the Chairmanship of Justice G.B.A. Coker. London: Grosvenor Press (Portsmouth) Limited.

1990c Code of Conduct Bureau and Tribunal Act, Cap. 56. Nigerian Law Revision Committee under the Chairmanship of Justice G.B.A. Coker. London: Grosvenor Press (Portsmouth) Limited.

1990d Second-Tier Foreign Exchange Market, Cap. 405. Nigerian Law Revision Committee under the Chairmanship of Justice G.B.A. Coker. London: Grosvenor Press (Portsmouth) Limited.

*Post Express*

2000 Opinion of the First Executive President of Nigeria in the Second Republic, Alhaji Shehu Shagari that the legislators should be made to face Anti-Corruption Commission. 27 July: 1.

*The Punch*

2000 Contract Awards: Senate Probes Okadigbo, Deputy. Wednesday, 19 July.



**TELL**

2000

**The Okadigbo Scandals: highlighting a heap of scandals from the Senate probe of wrongful procedures for awarding contracts, No. 32, 7 August: 36.**