



**UNIVERSITY of the
WESTERN CAPE**

FACULTY OF LAW

SOUTH AFRICAN-GERMAN CENTRE FOR TRANSNATIONAL CRIMINAL JUSTICE

**AN ASSESSMENT OF ASSETS DECLARATION BY PUBLIC OFFICERS
AS AN ANTI-CORRUPTION MEASURE IN NIGERIA**

**UNIVERSITY of the
by
WESTERN CAPE**
DARE JOSEPH AYINDE

Student Number: 3857828

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Supervisor: Professor RA Koen

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DECLARATION

I, **Dare Joseph Ayinde**, declare that **An Assessment of Assets Declaration by Public Officers as an Anti-Corruption Measure in Nigeria** is my own work, that it has not been submitted for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged by complete references.

Student: Dare Joseph Ayinde

Signature: Date:

Supervisor: Professor RA Koen



Signature: Date:

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KEY WORDS

Accountability

Assets declaration

Conflict of interest

Corruption

Illicit enrichment

Nigeria

Public Officer

Transparency

Verification



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LIST OF ABBREVIATIONS AND ACRONYMS

ALLFWLR	All Federation Weekly Law Report
AU CONVENTION	African Union Convention on the Preventing and Combating Corruption
CCB	Code of Conduct Bureau
CCBT Act	Code of Conduct Bureau and Tribunal Act
CCT	Code of Conduct Tribunal
ECHR	European Court of Human Rights
ECOWAS PROTOCOL	Economic Community of West African States Protocol on the Fight against Corruption
EWHC	England and Wales High Court
FATF	Financial Action Task Force
FRN	Federal Republic of Nigeria
FOI Act	Freedom of Information Act
PEPs	Politically Exposed Persons
NWLR	Nigerian Weekly Law Report
OECD	Organisation for Economic Co-operation and Development
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Offices on Drugs and Crime

CHAPTER ONE

INTRODUCING THE STUDY

1.1 Background to the Study

Although corruption is a global problem,¹ its nature, extent and consequences in Nigeria are alarming. Nigeria has a plethora of laws, policies and institutions that have been put in place by the government to keep corruption at bay.² One such law is the Code of Conduct Bureau and Tribunal Act of 1989 (CCBT Act) which regulates, *inter alia*, the declaration of assets by public officers. However, corruption has defiled all these initiatives. Eloquent evidence of unsuccessful attempts at curbing corruption in Nigeria is the fact that the country consistently has been rated by Transparency International as one of the most corrupt countries in world. For example, in the 2017 Corruption Perceptions Index, Nigeria was ranked 148 out of 180 countries that were assessed.³ The Corruption Perceptions Index is based on a scale of 0 to 100: any score above 50 denotes low levels of corruption in the public sector and any score below 50 denotes high levels of corruption in the public sector. Nigeria scored 27. This indicates that the public sector in Nigeria is perceived to be significantly corrupt.

It is an incontrovertible fact that corruption has eaten deep into the fabric of Nigerian society⁴ and one of the areas of our national life that has been infected badly by this menace is the public sector.⁵ This is not to say that there is no corruption in Nigeria's private sector, but the strategic role of the public service in governance, especially in the management of government's income and expenditure *vis-à-vis* the procurement processes, makes corruption a more serious concern in the public sector. Corruption in the Nigerian public sector is largely

1 Corruption may be seen as "the abuse of entrusted power for private gain". See <https://www.transparency.org/what-is-corruption> (visited on 4 April 2018).

2 For example, the Economic and Financial Crimes (Establishment) Commission Act of 2004, the Independent Corrupt Practices and Other Related Offences Commission Act of 2000, the Nigerian Extractive Industries Transparency Initiative Act of 2007, and the Money Laundry (Prohibition) (Amendment) Act of 2012, as well as the respective statutory bodies responsible for implementing the provisions of these Acts.

3 Available at https://www.transparency.org/news/feature/corruption_perceptions_index_2017 (visited on 2 April 2018).

4 Smith (2008) at 8.

5 Udombana (2003) at 468.

responsible for poor implementation of budget, inefficient infrastructural facilities and ineptitude in public service.⁶

Several studies on corruption in Nigeria have established that the level corruption amongst public officers is high and that it is pervasive. For example, recent research conducted by the National Bureau of Statistics showed that the Nigerian Police Force, the Prosecutorial Unit and the Judiciary are the most corrupt institutions in Nigeria.⁷ These findings have been corroborated by several allegations of abuse of office for personal gain in its different dimensions (embezzlement, bribery and illicit enrichment) against public officials. For example, the former secretary to the present national government and the former head of the National Intelligence Agency purportedly were removed from office on grounds of corruption. The former secretary to the national government was accused of a conflict of interest in awarding a grass cutting contract worth about 600 million naira to a company in which he has substantial interests.⁸ The former head of Nigeria's spy agency could not account for how he came about the sum of US\$43 million found in his apartment.⁹

The same can be said of a former head of the Nigerian National Petroleum Corporation, whose justification for cash in excess of US\$ nine million and £74 000 found in his apartment was that it was made up of gifts he had received while in office.¹⁰ This is no doubt a clear violation of the CCBT Act of 1989, which prohibited him from accepting gifts, except personal

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- 6 Owolabi A "Corruption and Financial Crimes in Nigeria: Genesis, Trends and Consequence", available at <http://www.cbn.gov.ng/OUT/PUBLICATIONS/TRANSPARENCY/2007/TRANSPARENCY2007.PDF> (visited on 2 April 2018).
 - 7 "Corruption in Nigeria, Bribery: Public Experience and Response" National Bureau of Statistics and UNODC (2017), available at <https://www.google.co.za/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwj35e7nxJzaAhUHJsAKHbbyATqQFqgmMAA&url=http%3A%2F%2Fwww.nigerianstat.gov.ng%2Fdownload%2F599&usq=AOvVaw3uesWmuHH irOHGcSnCByr> (visited on 2 April 2018).
 - 8 "Babachir; The Real Price of Grass Cutting" *The Daily Trust* (20 April 2017), available at <https://www.dailytrust.com.ng/news/general/babachir-the-real-price-of-grass-cutting/194296.html> (visited on 2 April 2018).
 - 9 "\$43 million Ikoyi Money, EFCC Summons ex-NIA Chief and Wife" *The Premium Times* (1 November 2017), available at <https://www.premiumtimesng.com/news/headlines/248041-43-million-ikoyi-money-efcc-summons-ex-nia-chief-oke-wife.html> (visited on 2 April 2018).
 - 10 "How EFCC Recovered \$9.8 Million Yakubu Ex-NNPC GMD's" *The Premium Times* (10 February 2017), available at <https://www.premiumtimesng.com/news/headlines/223140-efcc-recovered-9-8million-yakubu-ex-nnpc-gmd-see-mountains-dollars.html> (visited on 2 April 2018).

gifts from family members and friends.¹¹ Any gift accepted in violation of said Act is deemed to belong to the institutions he represented. Perhaps a more damning indication of the pervasiveness of corruption in the public service is the case of an assistant director in the federal civil service who was made the head of the government task force responsible for sorting out allegations of mismanagement of police pension funds. However, he and his committee members channeled the funds of about 33 billion naira into their various personal bank accounts.¹²

Corruption in the public service in Nigeria is not a recent phenomenon. It is like the proverbial cat with nine lives. This menace has been in existence since colonial days, through the post-independence era, to the present.¹³ The proponents of successive *coups d'état* that Nigeria had experienced before the restoration of democratic rule in 1999 always hinged their inexplicable intrusions into the political space on the unbearable level of corruption in the public service.¹⁴ Like the military *juntas*, successive democratic regimes since 1999 all came to power with a promise to curb corruption. Ironically, little attention has been given to enforcement of the assets declaration regime in Nigeria by any of these administrations.

Assets declaration by public officials is acknowledged globally as an important means of promoting accountability, transparency and integrity in the conduct of government business.¹⁵ Perhaps it was a realisation of the indispensable role that assets declaration by public officials could play as a preventive and combative measure that convinced the drafters to include it in the 1979 Constitution of the Federal Republic of Nigeria. This laudable step was followed a decade later by the enactment of the CCBT Act. Since the 1979 Constitution, a code of conduct for public officers has become a regular feature of all other constitutions of the Federal

11 Section 10 of the CCBT Act.

12 "Pension Fund Scam: Embattled Maina Flees Nigeria" (18 February 2013), available at <file:///C:/Users/AYINDE/Downloads/Pension%20fund%20scam%20%20Embattled%20Maina%20flees%20Nigeria%20-%20Vanguard%20News.htm> (visited on 2 April 2018).

13 Udombana (2003) at 451.

14 Mbaku (2000) at 124.

15 Hatchard (2014) at 40.

Republic of Nigeria. And this includes the 1999 Constitution, as amended in 2011, which is currently in force.¹⁶

The Code of Conduct Bureau (CCB) is established by the Third Schedule, Part I pursuant to section 153 of the Constitution. It is burdened, *inter alia*, with the duty of accepting assets declaration forms from public officers and establishing whether the declarations are in compliance with the requisite law.¹⁷ The Code of Conduct Tribunal (CCT), a quasi-judicial body established by the CCBT Act, has exclusive original jurisdiction to try public officers who violate the code of conduct for public officers.¹⁸

Nigeria has signed and ratified a number of international anti-corruption treaties, including the United Nations Convention against Corruption (UNCAC),¹⁹ the African Union Convention on Preventing and Combating Corruption (AU Convention),²⁰ and the Economic Community of West African States Protocol on the Fight against Corruption (ECOWAS Protocol).²¹ All these instruments contain provisions on assets declaration by public officers. For example, Article 8 of UNCAC, Article 7 of the AU Convention and Article 5(g) of the ECOWAS Protocol have such provisions.

The assets declaration regime of Nigeria predates all the above-mentioned international instruments. However, despite the fact that the Nigerian assets declaration regime has been in existence for close on three decades, its impact in deterring and combating corruption in the public service has been abysmally low.²²

16 Constitution of the Federal Republic of Nigeria, as amended in 2011, CAP C27 Laws of Federation of Nigeria 2004.

17 Section 3 of the CCBT Act.

18 Section 20 of the CCBT Act.

19 Nigeria signed UNCAC on 9 December 2003 and ratified it on 14 December 2004. See <https://www.unodc.org/unodc/en/corruption/ratification-status.html> (visited on 2 April 2018).

20 Nigeria signed the AU Convention on 16 December 2003 and ratified it on 26 January 2006. See <https://au.int/en/treaties/african-union-convention-preventing-and-combating-corruption> (visited on 2 April 2018).

21 A/P3/12/01. Nigeria ratified the ECOWAS Protocol on 23 August 2002. See https://eos.cartercenter.org/uploads/document_file/path/406/ECOWAS_Protocol_on_Corruption.pdf (visited on 2 April 2018).

22 Nwabweze B "The Problem with Code of Conduct Bureau" *The Guardian* (21 March 2016), see <https://guardian.ng/features/the-problem-with-code-of-conduct-bureau-by-nwabueze/> (visited on 4 April 2018).

Assets declaration in Nigeria is saddled with several challenges which have eclipsed its role as a prime anti-corruption measure. Some public officers make anticipatory assets declarations, while others under-declare their assets.²³ Ineffective verification of assets declarations by the CCB compounds the problem.²⁴ In addition, despite the provisions prohibiting public officers from having and operating foreign bank accounts,²⁵ many of them have and maintain such accounts.

Another challenge to the effectiveness of the assets declaration regime in Nigeria is the fact that the human resources available to the CCB and the CCT are grossly inadequate in relation to the large number of public officers required to declare their assets.²⁶ Also, the CCB and the CCT, as currently constituted, are not independent institutions. Both are under the control of the executive arm of government and thus susceptible to its whims and caprices. The cases that have been taken up by both institutions have been motivated more by political vendetta than by a genuine interest in combating corruption.

A further weakness of the assets declaration regime in Nigeria is that it makes little or no provision for the active participation of the public and civil society organisations. The CCBT Act allows members of the public to submit complaints about violation of the assets declaration law, yet the CCB consistently has maintained a non-disclosure policy in relation to assets declared by public officers.²⁷ The relevant question is how do the members of the public collaborate with the CCB regarding complaints when they do not know which assets have been declared by the public officers concerned?

23 See *Dr. Olubukola Abubakar Saraki v Federal Republic of Nigeria* (2016) 6 Part 836, All FWLR.

24 Waziri (2014) at 6.

25 Section 7 of the CCBT Act.

26 According to the Chairman of the CCB, there are about four million Nigerians working in the civil service, all of whom are required to declare their assets. See Umar Y "Nigeria: Code of Conduct Tribunal Lacks Enough Funds to Fight Corruption", available at <http://allafrica.com/stories/201209290446.html> (visited on 4 April 2018).

27 Section 3(e) of Part I(A) of the Third Schedule to the Nigerian Constitution mandates the CCB to receive petitions for non-compliance with and violation of the assets declaration laws. Section 3(c) provides that the Bureau shall make the assets declarations available to Nigerians on terms and conditions that the National Assembly may prescribe. The National Assembly is yet to make any law in this regard. A Nigerian court has held that the right to inspect assets declared by public officers is not enforceable until the National Assembly prescribes the conditions for its exercise. See "Nigeria: Court Dismisses MRA's Suit over Public Officers Asset Declarations", available at <https://www.pambazuka.org/governance/nigeria-court-dismisses-mra%E2%80%99s-suit-over-public-officers-assets-declarations> (visited on 4 April 2018).

The summation of these issues is not that assets declaration by public officers in Nigeria has lost its potency, but rather that assets declaration in Nigeria never has had any potent effect as an anti-corruption measure. Assets declaration in Nigeria is a mere ritual carried out by public officers.²⁸ The CCB and the CCT are toothless bulldogs that neither bark nor bite. It is against this background that this research paper examines critically the effectiveness and adequacy of the assets declaration regime in Nigeria. This study is in line with Article 5(3) of UNCAC, which provides that States Parties from time to time should assess their applicable legal and administrative frameworks for the purpose of ascertaining their adequacy in deterring and combating corruption.

1.2 Objectives of the Study

The general objective of this study is to examine the effectiveness of the legal framework on assets declaration by public officers in Nigeria. Specifically, the study aims to:

- (a) examine the adequacy or otherwise of the laws on assets declaration by public officers in Nigeria;
- (b) identify the factors militating against the effectiveness of the assets declaration regime in Nigeria; and
- (c) make recommendations on measures that can make the assets declaration regime in Nigeria more effective.

1.3 Research Questions

This research seeks to answer the following questions:

- (a) How adequate are the provisions of the Code of Conduct Bureau and Tribunal Act in combating corruption in the public service in Nigeria?
- (b) What measures, if any, must be put in place to make assets declaration in Nigeria more effective?

28 Erero & Oladoyin (2000) at 284.

1.4 Significance of the Study

Although Nigeria has laws on assets declaration by public officers, they have had little impact on the level of corruption in the public service. This is due partly to the weaknesses of the legal framework on assets declaration by public officers, coupled with certain external factors. The research aims to identify the factors responsible for the ineffectiveness of the assets declaration regime in Nigeria and to proffer recommendations on how to make assets declaration by public officers in Nigeria more effective as a means of preventing and combating corruption.

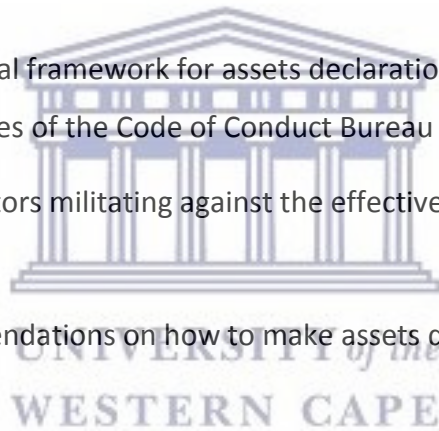
1.5 Outline of the Remaining Chapters

Chapter Two discusses the importance of assets declaration by public officers in curbing corruption in the public sector.

Chapter Three analyses the legal framework for assets declaration in Nigeria. It considers the scope, strengths and weaknesses of the Code of Conduct Bureau and Tribunal Act.

Chapter Four discusses the factors militating against the effectiveness of assets declaration in Nigeria.

Chapter Five proffers recommendations on how to make assets declaration in Nigeria an effective anti-corruption tool.



CHAPTER TWO

THE IMPORTANCE OF ASSETS DECLARATION IN CURBING CORRUPTION IN THE PUBLIC SECTOR

2.1 Introduction

Assets declaration law typically imposes an obligation upon public officers to declare their assets, incomes and liabilities. Assets declaration by public officers is recognised globally as a vital part of a holistic programme that states can employ to prevent and combat corruption in the public service. Assets declaration by public officers is a tool that can be used to prevent and detect illicit enrichment. It can be used also to prevent and detect conflicts of interests by public officers in the discharge of their duties. It can assist in the investigation and in the prosecution of corruption cases. Besides, it helps to establish a culture of integrity in the public service and it plays an important role in the recovery of stolen assets.¹ It is because of the benefits inherent in assets declaration that UNCAC encourages States Parties to establish measures and systems requiring public officials to declare their assets.²

The rest of this chapter examines in detail the importance of assets declaration, and it also considers the impact of assets declaration on the level of corruption in a country.

2.2 Prevention and Detection of Illicit Enrichment

Illicit enrichment may be described as a significant increase in the assets of public officers which is not proportionate to their legitimate income and they cannot provide a satisfactory explanation for such significant increase in their assets.³ As a result of the clandestine nature of corruption, most times the only most visible proof that public officers have engaged in corrupt practices is a significant increase in their wealth that does not correspond with their legitimate income.⁴ Assets declaration provides an avenue for states to make public officers accountable for ownership of assets beyond their means.

1 Aisuloo *et al* (2013) at 1.

2 Article 8(5) of UNCAC.

3 See Article 20 of UNCAC.

4 Muzila *et al* (2012) at 5.

Illicit enrichment raises the presumption that a significant increase in the assets of public officers was derived from corrupt practices. Declaration of assets by public officers upon assumption of office helps to establish the baseline of their assets.⁵ Thereafter, any public officer who engages in acts of corruption likely would be detected, because an effective assets declaration regime allows competent authorities to make a comparison across assets that are declared by public officers over a period of time. Data collected from previous assets declared can be compared with a view to discovering any increase in wealth that cannot be attributed fairly to legitimate income, loans or gifts received by public officers within the period under review. Any unjustifiable increase in wealth *vis-à-vis* the income received over the period under review could be an indication of illicit enrichment through bribery, fraud or illegitimate gifts.⁶ Therefore, unjustifiable discrepancies in assets declared by public officers over a period of time can aid the detection, investigation and prosecution of public officers for illicit enrichment. Assets declaration does play a crucial role in uncovering and preventing the theft of public funds by public officers.

The usefulness of assets declaration by public officers was demonstrated in the case of *Nigeria v Santoli Investment Company*.⁷ In this case, Mr Dipreya Alamiyeseigha, a former governor of Bayelsa State in Nigeria, was accused of money laundering and other corruption related offences. Under Nigerian law, Mr Alamiyeseigha was required to declare his assets when he assumed office as state governor and when his term of office came to an end. In compliance with the law, Mr Alamiyeseigha declared his assets in 1999 when he became the governor of Bayelsa State and sometime in April 2003, at the end of his tenure, he also declared his assets. Mr Alamiyeseigha was re-elected as the governor of Bayelsa state in 2003, and he again declared his assets. In all, Mr Alamiyeseigha made three assets declarations as governor of Bayelsa State. An examination of all his assets declarations showed that he did not disclose at any time that he had bank accounts in the United Kingdom nor did he declare the companies and other assets which he had in the United Kingdom, the Seychelles and in the British Virgin Islands. In support of its application for summary judgment in the UK courts, Nigeria made

5 Chaikin & Sharman (2009) at 63.

6 Mugarura (2017) at 65-66.

7 *Nigeria v Santoli Investment Company* (2007) EWHC 437.

attempts to establish a case of illicit enrichment against Mr Alamiyeseigha. Nigeria also alleged that the funds used by him to purchase properties overseas were proceeds of corruption and that Nigeria was the rightful owner of the properties. Nigeria made this claim because Mr Alamiyeseigha could not explain the source of the money he used to purchase the properties. And, more importantly, the amount expended by Mr Alamiyeseigha on the properties was more than his legitimate income. The initial attempt made by Nigeria to obtain summary judgment against Mr Alamiyeseigha and his companies failed. However, the second application for summary judgment succeeded mainly because Mr Alamiyeseigha, in a separate criminal trial in Nigeria, had pleaded guilty to the charge of making false assets declaration and was convicted.⁸

2.3 Detection and Prevention of Conflicts of Interests

According to the Organisation for Economic Co-operation and Development (OECD) guidelines, a conflict of interests is:

a conflict between the public duties and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.⁹

A conflict of interest exists when a public officer finds himself in a situation where he could use his position to further his private interests, although he has not actually done so.¹⁰ Public officers may have interests in private companies. Such interests can be in the form of partnerships, shareholding or ownership of other securities; or a public officer may be a director or trustee in a private company or a non-governmental organisation.

The recognition of potential conflicts of interests is not conclusive evidence that a public officer has abused his office; rather it is a pointer to the likelihood of a conflict of interests.¹¹

The detection of conflicts of interests seeks to safeguard public officers from situations in which

8 See generally UNODC *Digest of Asset Recovery Cases* para 20, available at <https://www.unodc.org/documents/treaties/UNCAC/COSP/session5/V1388146e.pdf> (visited on 10 October 2018).

9 OECD (2005) at 13.

10 Burdescu *et al* (2009) at 5.

11 OECD (2003) at 22.

the public interest is likely to be compromised in favour of their personal interests.¹² Disclosure of private interests of public officers, as required by most assets declaration systems, serves as a quick guide to public officers in recognising and avoiding potential conflicts of interests in the discharge of their duties.¹³ Avoidance of conflicts of interests is crucial to preventing corruption in the public service, because such avoidance minimises opportunities for public officers to abuse their offices.

2.4 Recovery of Stolen Assets

Although assets declaration by public officers neither is conceived nor designed for the purpose of recovering stolen assets, an effective system can play a vital role in the identification and recovery of stolen public assets.¹⁴ Corrupt public officers are more likely to make false assets declarations in a bid to conceal their ill-gotten wealth. And where such stolen assets have been laundered abroad, a conviction by a court on a charge of making a false assets declaration could form the basis of proceedings for the freezing, forfeiture and recovery of such stolen assets.¹⁵

Also, conviction on a charge of making a false assets declaration and confiscation of undeclared assets by the court can form the basis of a request for mutual legal assistance to the country where the ill-gotten assets are being held.¹⁶ However, this would be the case only in a country where making a false assets declaration is a criminal offence. For example, in Nigeria one of the sentences that the Code Conduct Tribunal (CCT) can impose upon any public officers convicted of making a false assets declaration is forfeiture of the undeclared assets to the state.¹⁷ In *Nigeria v Santoli Investment Company*, the conviction of the former governor of Bayelsa State, Mr Alamiesyeseigha, on the charges of false assets declarations and money laundering were the main grounds for the forfeiture, recovery and repatriation of the assets he stole.¹⁸ A corollary to this is that stolen public assets can be recovered after a successful case of illicit enrichment has been brought against a public officer. Once a public officer cannot prove

12 Burdescu *et al* (2009) at 1.

13 Habershon *et al* (2012) at 7.

14 UNODC (2015) at 10.

15 Mugarura (2017) at 66.

16 Brun *et al* (2011) at 158.

17 Para 18(2)(c) of Part I of the Fifth Schedule to the Nigerian Constitution.

18 See *Nigeria v. Santoli Investment Company*.

that a tainted asset was derived from legitimate earnings or gifts or loans, such tainted asset could be forfeited to the state.

UNCAC recognises the importance of assets declaration by public officers in the recovery of stolen assets. Thus, it provides in Chapter V, which deals with asset recovery, that State Parties should consider establishing an “effective financial disclosure systems for appropriate public officials”.¹⁹ It also encourages States Parties to take measures to permit their competent authorities to share such information with authorities in other States Parties for the purpose of investigating, claiming and recovering stolen assets.²⁰

2.5 Establishment of Culture of Accountability in the Public Service

In a country like Nigeria, where corruption in the public service is endemic and systemic,²¹ assets declaration can be used to establish and strengthen a culture of transparency and accountability among public officers and in public institutions.²² It is common knowledge that some public officers in Nigeria see their offices as private enterprises from which they have to maximise profits.²³ Regular declaration of assets by public officers will check this perception, as it will keep public officers informed of their ethical and moral obligations in the discharge of their official duties.²⁴ Regular declaration of assets also will remind public officers of the need to be transparent and accountable.²⁵ It will make public officers conscious of the fact that their assets and their financial and business interests are under scrutiny.²⁶

2.6 Enhancement of Public Trust in the Government and Public Institutions

Besides the uncovering of illicit enrichment, assets declaration can restore and enhance public trust in public officers and in state institutions.²⁷ The relationship between the state and its citizens is based on trust. Trust connotes that the state and, by extension, public officers will

19 Article 52(5) of UNCAC.

20 Article 52(5) of UNCAC.

21 Smith (2008).

22 Rossi *et al* (2017) at 1.

23 Ninsin (2000) at 451.

24 Jenkins (2015) at 4.

25 Mpambije (2016) at 150.

26 Rexha (2014) at 6.

27 OECD (2011) at 12.

use public power to advance the public interest. However, since corruption denotes the use of entrusted power for private gain,²⁸ the failure of public officers to exercise power and use state resources to advance the public interest undermines the trust of citizens in state institutions and, by extension, in the state itself.²⁹ Thus, corruption weakens the legitimacy of the state.

Besides, the perception by members of the public that the decisions of public officers are motivated by private interests is inimical to the credibility of public officers and public institutions.³⁰ This erodes the trust of the people in public institutions and undermines the legitimacy of the government. Therefore, an assets disclosure system that focuses on illicit enrichment and prevention of conflicts of interests will enhance the confidence of the citizens in public institutions.³¹ This is because the citizens will be assured that government decisions are not being influenced by the personal interests of public officers. Also, assets declaration provides a means through which citizens and civil society organisations can assess whether public officers are living within their means. The realisation that they are doing so will strengthen the confidence of the citizens in public officers and state institutions.³²

2.7 Increasing the Probability of Convictions in Corruption Cases

The detection and prosecution of corruption crimes, such as bribery of public officers and embezzlement of public funds, are usually difficult because of their clandestine nature. Further, most times prosecutors do not have sufficient evidence to prove the charges of corruption against public officers beyond a reasonable doubt. In such instances, the offence of making a false assets declaration can be a fall-back crime that the prosecutor can rely upon to pursue corrupt public officers.³³ In order to secure a conviction for the crime of false assets declaration, the prosecutor only needs to prove that a public officer under-declared or over-declared his assets.

28 See <https://www.transparency.org/what-is-corruption> (visited on 4 April 2018).

29 Igbinedion (2014) at 153.

30 Chaikin & Sharman (2012) at 66.

31 Habershon *et al* (2012) at 8.

32 Mpambije (2016) at 150.

33 Habershon *et al* (2012) at 7.

In the case *Nigeria v Santoli Investment Company*, while it was difficult for the prosecutors to establish the charges of embezzlement of state funds and money laundering against Mr Alamiyeseigha, the overwhelming evidence of his failure to disclose his foreign bank accounts and the properties which he had in London and other places “compelled” him to plead guilty to the charge of making false assets declarations. And he was convicted subsequently by a Nigerian court for false assets declaration. Thus, the prosecution of public officers for the crime of false assets declaration, without prejudice to the underlying corruption crimes, will increase the probability of securing convictions, and thus ensure that the corrupt public officers do not evade justice.

2.8 Identification of Politically Exposed Persons

Besides their traditional significance, assets declaration by public officers can be used to identify politically exposed persons (PEPs).³⁴ PEPs are the persons who occupy or who had occupied prominent public positions in a country,³⁵ including their family members.³⁶ Identification of PEPs is important because these persons, by reasons of the positions they occupy or had occupied, are more susceptible to corruption and money laundering than ordinary public officers.

The information derived from the assets declaration forms of public officers can be used to build a database of PEPs in a country.³⁷ Making the declarations available and accessible to financial institutions and regulatory and reporting agencies, such as the Financial Intelligence Unit, would enhance the capacity of these agencies to combat corruption and money laundering.³⁸ It would assist financial institutions in taking proper measures in their engagement with PEPs. The Financial Intelligence Unit could compare the transactions of PEPs with their income and assets as contained in their assets declaration forms in the investigation of suspicious transactions and in suspected money laundering cases.³⁹ It will provide financial

34 Ross *et al* (2012) at 11.

35 FAFT (2013) at 3.

36 FAFT (2013) at 3.

37 Greenberg *et al* (2010) at 42.

38 Rossi, Pop & Berger (2017) at 7.

39 Greenberg *et al* (2010) at 42.

institutions with a checklist of names of persons on whom they are required to conduct enhanced due diligence, both at the beginning and throughout the course of a business relationship.⁴⁰ Information declared can help financial institutions in carrying out their know-your-customer obligation through the identification of the sources of wealth of PEPs with whom they transact business.⁴¹

There is a general presumption that assets declaration has an impact on the perceived level of corruption, even though only a few studies have been conducted in this regard.⁴² Results from these studies show that effective assets declaration regimes help lower the level of corruption. However, the effectiveness of assets declaration as an anti-corruption measure is not dependent just on having applicable laws, but on a number of variables.⁴³ These variables include the period of time for which assets declaration law has been in force in a country, verification of assets declared by public officers, prosecution of erring public officers when they contravene assets declaration law, and accessibility and availability of assets declaration documents to members of the public.⁴⁴

A study was carried out in 2006 by Gokcekus & Mukherjee on the effectiveness of assets declaration by public officers in the reduction of the level of corruption in a country.⁴⁵ The study shows that the level of corruption in countries which have an established culture of assets declaration by public officers is lower in comparison with countries where assets declaration laws are recent. The study also indicates that the level of corruption in countries where the assets declared are verified and public officers who contravene assets declaration laws are prosecuted is lower than in countries where verification of assets declared and prosecution of offending public officers are not carried out. Likewise, assets declaration by public officers is more effective in combating corruption where members of the public and civil society groups have access to the declared information than in countries where it is not accessible and available to the public. Overall, assets declaration systems in countries where

40 Ross *et al* (2012) at 11.

41 Greenberg *et al* (2010) at 48.

42 Vargas & Schlutz (2016) at 441.

43 Gokcekus & Mukherjee (2006) at 326.

44 Gokcekus & Mukherjee (2006) at 325.

45 Gokcekus & Mukherjee (2006) at 325.

verification is done and members of the public have access to assets declared result in a lowering of the level of corruption.

A similar study was carried out by Djankov, La Porta and others on the effects that assets declaration by members of parliament have upon good governance and upon a good governance indicator such as the perceived level of corruption.⁴⁶ The study shows that assets declaration which is accessible and available to members of the public has a positive impact on good governance and the perceived level of corruption. However, none of these studies suggests that the lack of an assets declaration system causes corruption but rather that such a system can be used to tackle corruption among public officers.⁴⁷

The implication of the results of these studies for Nigeria is that assets declaration could reduce the level of corruption among public officers in the long run if members of the public are allowed access to assets declaration documents, and the CCB carries out effective verification of the declarations. Likewise, the CCT must prosecute and punish public officers who violate the assets declaration law.



46 Djankov *et al* (2010) at 196.
47 Vargas & Schlutz (2016) 460.

CHAPTER THREE

AN ANALYSIS OF THE LEGAL FRAMEWORK ON ASSETS DECLARATION IN NIGERIA

3.1 Introduction

This chapter examines the legal framework on assets declaration in Nigeria. It identifies its strengths and its weaknesses.

3.2 Laws Regulating Assets Declaration in Nigeria

The legal framework on assets declaration in Nigeria is contained in the Third Schedule, Part I and the Fifth Schedule, Part I to the Nigerian Constitution; and in the Code of Conduct Bureau and Tribunal Act of 1989 (CCBT Act). Although studies have shown that the inclusion of assets declaration in the constitution does not guarantee its effectiveness,¹ its incorporation in the Nigerian Constitution shows the premium that its drafters placed on assets declaration. It enhances the stability of the legal framework and it confers legitimacy on the assets declaration regime in Nigeria.² It makes the law accessible and ascertainable. And it gives assets declaration law a greater force because constitutional provisions are deemed to be *primus inter pares* in the hierarchy of laws in Nigeria.³ However, the fact that assets declaration law enjoys constitutional standing means that it cannot be repealed or amended in the way an “ordinary” statute of the National Assembly can be repealed or amended. While this safeguards the law from being repealed or rendered ineffective through malicious amendment by an unsupportive government, its amendment will remain difficult even when there are valid reasons to do so. This is because the procedure for amending the Nigerian Constitution is cumbersome.⁴

The provisions in the Nigerian Constitution dealing with assets declaration are to a great extent the same as those in the CCBT Act. However, the fact that the provisions on assets declaration are spread across two laws brings some disadvantages. For example, there are a

1 Gokcekus & Mukherjee (2006) at 326.

2 Habershon & Trapnells (2012) at 27.

3 Section 1(3) of the Nigerian Constitution.

4 See section 9 of the Nigerian Constitution. See also Oloyede (2001) at 6.

number of provisions in the Constitution and the CCBT Act which conflict. These conflicting provisions will be identified and discussed below.

3.3 Objectives of Assets Declaration Law in Nigeria

The main objectives of assets declaration are identification and prevention of conflicts of interests, and prevention and detection of illicit enrichment.⁵ While some assets declaration regimes are designed to achieve both objectives, others pursue one or the other.⁶ Nigeria is an example of a country where the assets declaration law seeks to achieve a dual purpose. This approach is laudable because it provides comprehensive measures for the prevention and for the detection of abuse of office by public officers. In practice, though, more emphasis is placed on the prevention and the detection of illicit enrichment than on the prevention of conflicts of interests. This may be because the CCB does not have the resources and capacity to achieve these objectives concurrently.

3.4 Conflicts of Interests

The objective of requiring public officers to disclose their private interests in their assets declaration forms is to prevent them from participating in decisions where their personal interests might conflict with their official duties.⁷ The assets declaration form template⁸ contained in the schedule to the CCBT Act requires public officers to disclose the sources of their incomes. Also, they are required to disclose shares, debentures and other securities that they have in and outside Nigeria. However, in my view, the information that public officers are required to give is not detailed enough to indicate all likely cases of conflicts of interests. For example, public officers are not required to indicate whether they are directors in any private companies, neither are they required to state whether they are trustees of any non-governmental organisations. The involvement of a public officer in any of these capacities could bring about conflicts of interests.

5 Habershon & Trapnells (2012) at 23.

6 Habershon & Trapnells (2012) at 16.

7 Messick (2009) at 7.

8 See Annexure.

The goal of the assets declaration regime to detect and prevent conflicts of interest is reinforced by certain provisions of the Constitution. For example, the Constitution provides that “a public officer shall not put himself in a position where his personal interest conflicts with his duties and responsibilities”.⁹ Also, the Constitution prohibits public officers who are employed on a full-time basis from engaging or participating in the management or running of any private business, profession or trade.¹⁰ The only exception to this is that public officers are allowed to engage in farming.¹¹ Although the law does not specify whether the farming activities of public officers are to be subsistence or commercial farming, in practice involvement in commercial farming could create conflicts of interests.¹²

The President, the Vice-President, State Governors and their Deputies, after leaving office, are prohibited by the Constitution from being employed in the service of foreign companies and enterprises.¹³ Also, the law prohibits the President, the Vice-President, State Governors, Deputy Governors and some other public officers¹⁴ from accepting any benefit of whatever nature from any companies, contractors, businessmen or their nominees or agents.¹⁵ However, in over three decades of the existence of the assets declaration law in Nigeria, its impact in detecting and preventing conflicts of interests hardly has been felt. This is not because there have not been incidents of conflicts of interests involving public officers. For example, the case of the former secretary to the present national government, who was accused of awarding a contract to a company in which he has a controlling interest, was not pursued by the CCB. Lack of political will appears to be the main reason for this inaction on the part of the CCB in enforcing the law on conflicts of interests.

3.5 Illicit Enrichment

There is a presumption of illicit enrichment where property acquired by a public officer after he has declared his assets cannot be attributed fairly to his earning or any other legitimate source

9 Para 1 of the Fifth Schedule to the Nigerian Constitution. See also section 5 of the CCBT Act.

10 Section 6(b) of the CCBT Act.

11 Section 6(b) of the CCBT Act.

12 Lawal (2009) at 229.

13 Para 5 of Part I of the Fifth Schedule to the Nigerian Constitution.

14 Section 11(b) of CCBT Act.

15 Para 7 of Part I of the Fifth Schedule to the Nigerian Constitution.

of income.¹⁶ In such an instance, the onus lies on the public officer to prove that he acquired the property from a legitimate source. The assets declaration form template contained in the schedule to the CCBT Act requires public officers to declare their annual income. Also, they are required to declare buildings, farms, vacant land and factories that they have. They are required to state the vehicles, boats or other means of transportation, machinery and furniture that they possess; and how these properties were acquired. In addition, they are obligated to declare shares, debentures and other securities that they possess in and outside Nigeria.

The goal of the assets declaration law to detect and prevent illicit enrichment by public officers is strengthened by other provisions of the CCBT Act. For example, the Act prohibits a public officer from requesting or accepting benefits of any kind in relation to anything he does or omits to do in the discharge of his duties.¹⁷ In the event that a public officer accepts any benefit or gift from any commercial entities or persons involved in a business or contractual relationship with the government, such gifts or benefits are presumed to have been received on behalf of the government.¹⁸ However, this provision hardly has been enforced, despite the fact that some public officers allegedly have collected gifts from companies with which the government was involved in business transactions.

Perhaps in a bid to ensure that there is proper monitoring of bank accounts of public officers, the Constitution and the CCBT Act prohibit them from maintaining and operating foreign bank accounts.¹⁹ This is because it might be easier to monitor bank accounts that are operated in Nigeria than to monitor those operated outside Nigeria. The implication of this prohibition is that public officers who operate foreign bank accounts would not disclose them in their assets declaration forms and, by extension, such public officers would make false assets declarations. However, this prohibition has been observed more in the breach than in

16 Aigbokhan (2014) at 19.

17 Section 10(1) of the CCBT Act.

18 Section 10(2) of the CCBT Act.

19 Para 3 of Part I of the Fifth Schedule to the Nigerian Constitution.

compliance, as most of the public office holders who have been indicted for corruption maintained foreign bank accounts.²⁰

3.6 Public Officers Required to Declare Assets

The Constitution requires the President, the Vice-President, ministers, members of parliament, judicial officers, commissioners, special advisers and all other public officers to declare their assets.²¹ The definition of public officers in the Constitution and the CCBT Act includes all workers at all levels of government in Nigeria.²² This implies that all government workers at the local, the state and the federal levels are mandated by law to declare their assets. This was restated recently by the CCB director in charge of Gombe State, Mr Panyi Baira. He said that:

asset declaration is a constitutional requirement that has to be fulfilled by all government workers from the lowest government employees to the highest office.²³

Nigeria has about four million public officers.²⁴ The high number of public officers who are required to declare their assets undermines the effectiveness of the assets declaration law. Besides, the CCB does not have the capacity to handle such a high number of assets declarations.²⁵ In order to reduce the burden on the CCB, public officers who are less vulnerable to corruption should be excluded from assets declaration obligations. This will ensure optimum utilisation of available resources and will enhance the effectiveness of assets declaration as an anti-corruption measure.

Furthermore, the drafters of the law took cognisance of the fact that, in an attempt to conceal stolen assets, public officers sometimes register them in the names of their spouses and children.²⁶ Thus, public officers are required to declare also the income, assets and

20 UNODC (2015) at 38.

21 Part II of the Fifth Schedule to the Nigerian Constitution.

22 See section 26 of the CCBT Act.

23 See "Code of Conduct Bureau Advises Public Officers to Declare Assets", available at <https://www.vanguardngr.com/2019/02/code-of-conduct-bureau-advises-public-officers-to-declare-assets/> (visited on 19 February 2019).

24 Umar "Nigeria: Code of Conduct Tribunal Lacks Enough Funds to Fight Corruption", available at <https://allafrica.com/stories/201209290446.html> (visited on 24 April 2018).

25 Habershon & Trapnells (2012) at 35.

26 OECD (2011) at 14.

liabilities of their spouses and unmarried children.²⁷ However, there is a variation in the age of the designated unmarried children in the Constitution and in the CCBT Act. While the Constitution refers to children who are less than 18 years old,²⁸ the CCBT Act specifies children who are less than 21 years of age.²⁹ This discrepancy needs to be resolved, because unscrupulous public officers can use it as an excuse to defeat the purpose of this provision.

It is plausible that children in this context are not limited to biological children and includes step-children, lawfully adopted children, children born out of wedlock, and children to whom a public officer stands *in loco parentis*.³⁰

3.7 Filing Frequency

Assets declaration law in Nigeria makes provision for public officers to declare their assets at regular intervals. Although the law adopts an entry and an exit assets declaration obligation for political office holders, there are conflicting provisions in the Constitution and in the CCBT Act regarding when political office holders are to make their first assets declaration. While substantive provisions of the Constitution obligate certain categories of public officers to declare their assets before they take the oath of office and oath of allegiance,³¹ the Codes of Conduct in the Fifth Schedule to the Constitution and the CCBT Act provide that public officers are to declare their assets “immediately after taking office”.³² The public officers who the substantive provisions of the Constitution obligate to declare their assets before being sworn in include the President, the Vice-President, State Governors, their Deputies and other senior political office holders.³³ The word “immediately” in this context is vague and unscrupulous political office holders could hide behind this provision to delay declaring their assets.³⁴

The reason for requiring political office holders to declare their assets before their terms of office commence is to provide benchmarks against which increases in their assets by the end

27 Para 11(1)(b) of Part I of the Fifth Schedule to the Nigerian Constitution.

28 Para 11(1)(b) of Part I of the Fifth Schedule to the Nigerian Constitution.

29 Section 15(1)(c) of the CCBT Act.

30 Section 26 of the CCBT Act.

31 Sections 140(1), 142(2), 149, 152, 185, 187(2), 194 and 196(4) of the Nigerian Constitution.

32 Para 11(1) of the Fifth Schedule to the Nigerian Constitution and section 15(1) of the CCBT Act.

33 See sections 140,145 and 185 of the Nigerian Constitution.

34 Lawal (2009) at 232.

of their terms may be measured. The assets declared by the political office holders could be compared with their legitimate income to ascertain whether there is any increase that cannot be attributed to their legitimate income. Delay by political office holders in declaring their assets as specified by the substantive provisions of the Constitution, that is, before assuming office, is a threat to achieving this objective. According to the CCB, in 2015, while President Mohammed Buhari and Vice-President Professor Yemi Osinbanjo declared their assets before taking oath of office, some State Governors did not declare their assets for more than a month after they had been sworn in.³⁵ This is a clear violation of the constitutional provisions that require them to declare their assets before taking the oaths of office and allegiance. The omission by these State Governors implies that the baseline of their wealth before they were sworn in might not be established.

Unlike political office holders, civil servants do not have a fixed term of office. Thus, requiring them to declare their assets when their employment commences and when they retire or leave government employment would not be effective. Hence, the Constitution requires civil servants to declare their assets and liabilities within 30 days of receipt of the assets declaration form from the CCB or at the end of every four years or such other intervals as the CCB may specify.³⁶ The four-year period is appropriate and will ensure that the CCB has a regular update on the assets of civil servants. Also, it will ensure that civil servants and the CCB are not subjected to the undue pressure that is associated with assets declaration regimes which require public officers to disclose their assets on an annual basis.³⁷ Moreover, it gives the CCB ample time to carry out the verification of the declared assets.

The CCT has convicted a number of public officers for failing to declare their assets within the 30-day period prescribed by the law. For example, in November 2007, the CCT

35 “Nigerian Governors yet to declare assets say CCB Boss”, available at <http://thenewsnigeria.com.ng/2015/07/nigerian-governors-yet-to-declare-assets-says-ccb-boss/> (visited on 9 October 2018).

36 Para 11 of the Fifth Schedule to the Nigerian Constitution.

37 Rossi *et al* (2017) at 27.

convicted three civil servants for failing to declare their assets within the stipulated time,³⁸ and in April 2018 the CCT convicted 16 public officers for the same failure.³⁹ Significantly, it is low- and middle-level public officers who often are the defendants in such criminal proceedings. PEPs hardly are prosecuted when they fail to declare their assets within the time stipulated by law. Although the prosecution of low- and middle-level public officers for failing to declare their assets can enhance a culture of assets declaration among public officers, the enforcement of this law should be extended to PEPs because they pose a higher risk of corruption than low- and middle-level public officers.⁴⁰

3.8 Verification of Declared Assets

Verification is the process of confirming the truthfulness or otherwise of the assets declared by public officers.⁴¹ The potency of assets declaration as an anti-corruption measure is dependent on the certainty or a high probability that any public officer who makes a false assets declaration would be detected. The Constitution empowers the CCB to examine assets declaration forms submitted to it by public officers with a view to confirming whether they are in accordance with the requirements of the law.⁴² In addition, the Constitution provides that any statement in an assets declaration form that is found to be false will be deemed to be a violation of the law.⁴³

Whereas the Constitution makes provision for the verification of assets declared by public officers, the methods that the CCB uses in verifying assets declarations are not known. Be that as it may, there are a number of methods that could be used. The CCB could compare assets declared by public officers over a period of time. It could confirm the assets declared with land registries, vehicle registries, the Corporate Affairs Commission and the Federal Inland

38 See "CCT convicts 3 Civil Servants for Non- declaration of assets", available at <https://www.dailytrust.com.ng/cct-convicts-3-civil-servants-for-non-declaration-of-assets.html> (visited on 3 October 2018).

39 See "Assets Declaration: CCT Convicts 16 Defaulters", available at <https://www.premiumtimesng.com/news/top-news/266309-%E2%80%8Eassets-declaration-cct-convicts-16-defaulters.html> (visited on 3 October 2018).

40 Habershon *et al* (2012) at 1.

41 Rossi *et al* (2017) at 67.

42 Para 3(b) of the Third Schedule to the Nigerian Constitution.

43 Para 11(1) of Part I of the Fifth Schedule to the Nigerian Constitution.

Revenue Service. It could conduct a lifestyle check on public officers to confirm whether their standards of living correspond with their income. Also, it could examine the assets declaration forms submitted by public officers with a view to detecting any internal inconsistency in them.⁴⁴

Regrettably, ineffective verification of assets declared is one of the major weaknesses of the assets declaration regime in Nigeria.⁴⁵ The high number of public officers who are required by law to declare their assets compounds this problem. Lots of resources and time are expended by the CCB in ensuring that public officers declare their assets, while little attention is given to the verification of the declared assets.⁴⁶ This makes assets declaration a mere cosmetic exercise and such a system neither would prevent nor deter public officers from engaging in corrupt practices.

3.9 Sanctions for Non-Compliance with Assets Declaration Laws

Closely connected to verification is the issue of sanctions for public officers who violate the assets declaration laws. It is not enough for the CCB to ensure that public officers comply with the laws which require them to declare their assets, nor does it suffice for it simply to verify the declared assets. It must ensure that public officers who make false assets declaration are tried and punished. The certainty and adequacy of punishment for public officers who violate assets declaration law is one way in which compliance with assets declaration laws can be enhanced.⁴⁷

Under the CCBT Act, a public officer found guilty of violating the assets declaration law may be ordered to vacate his position, irrespective of whether he occupies said position through an election or through nomination.⁴⁸ Also, a culpable public officer could be disqualified from holding public office for a period not exceeding 10 years. This sanction, too, is applicable whether the affected public officer was elected or nominated. This sanction accords with UNCAC, which requires States Parties, subject to the fundamental principles of their legal systems, to establish procedures for disqualifying anyone convicted of corruption-related

44 Rossi *et al* (2017) at 75.

45 Nwabweze "The Problem with Code of Conduct Bureau", available at <https://guardian.ng/features/the-problem-with-code-of-conduct-bureau-by-nwabueze/> (visited on 10 October 2018).

46 Waziri (2014) at 6.

47 Burdescu *et al* (2009) at 76.

48 Section 23(2)(b) of the CCBT Act.

offences from holding public office or holding office in an enterprise owned by the state in whole or in part.⁴⁹

For the sanction of vacation of office to be enforceable, it must be imposed during the period that the perpetrator is in office. However, the wheels of justice move so slowly that by the time such a sentence is imposed, the tenure of office of the perpetrator could have lapsed.⁵⁰ Hence, it is important for the CCB to conduct verification of declared assets expeditiously, so that, in the event that a charge of false assets declaration is to be brought against a public officer, a sentence of vacation of office could be enforced before the expiration of his term of office.

However, in practice convicted public officers seldom are ordered to vacate their offices. The reason, according to the former chairman of the CCB, Mr Sam Saba, is that “many mouths would be rendered hungry, so a judge would prefer to issue a fine”.⁵¹ The fine is often less than US\$100.⁵² While a fine may be appropriate for minor violations of the assets declaration law, such as failure to declare assets within the stipulated time, arguably it would not be a proportional punishment for a PEP who makes an anticipatory assets declaration or for a PEP whose assets, at the end of his term of office, does not correspond with his legitimate income. The preference of the CCT for a fine as opposed to vacation of office undermines the value of the latter punishment.

The CCT may order the seizure or forfeiture of the property acquired by convicted public officers as a result of abuse of office. Such an order is a vital tool for recovering stolen public assets. Although the order is dependent upon a conviction for making a false assets declaration, it is easier to recover stolen assets through this procedure than through an asset recovery mechanism that is dependent on a conviction for predicate crimes. Besides, it is easier for the prosecution to prove the crime of false assets declaration than predicate crimes such as bribery

49 Article 30(7) of UNCAC.

50 Oko (2002) at 39.

51 Human Rights Watch (2011) at 51.

52 See “CCT convicts 3 Civil Servants for Non-declaration of assets”, available at <https://www.dailytrust.com.ng/cct-convicts-3-civil-servants-for-non-declaration-of-assets.html> (visited on 3 October 2018).

and misappropriation of public funds. There seems to be no explanation as to why prosecutors have not been making use of this provision against public officers accused of corrupt practices.

Moreover, it is instructive to note that the punishment that the CCT can impose on a convicted public officer operates without prejudice to the punishment that any other court may impose on the same officer if the conduct amounts also to a crime under any other law.⁵³ This seems to suggest that the conviction of a public officer for false assets declaration would not stand in the way of prosecuting him in another trial, if the conduct constitutes a crime under the criminal code or any other law. For example, where a public officer has been convicted of making a false assets declaration by the CCT, another court could convict him of perjury. This provision may have been enacted because the CCT cannot impose a custodial punishment, whereas a “proper court” could do so if the conduct amounts to a crime under the criminal code or any other law. Although the constitutionality of this provision has not been tested in court, its compatibility with the right against double jeopardy is in doubt.⁵⁴ It endorses double punishment for one course of conduct and hence violates the right against double jeopardy enshrined in the Nigerian Constitution.⁵⁵ It amounts to subjecting a public officer to two different trials and punishing him twice for one and the same conduct.⁵⁶ This provision ought to be expunged from the Constitution and the CCBT Act. In the alternative, the scope of punishment that the CCT can impose ought to be amended to include custodial sentences.

The drafters of the Constitution seem to have been aware that the public officers who are likely to make false assets declaration are the PEPs, who might have access to the President. And if such PEPs could not stop their prosecution, they could influence the President to pardon them pursuant to section 175 of the Constitution.⁵⁷ This undesirable practice played out in the case of Mr Alamieyeseigha, who was pardoned by the President after he had been convicted of

53 Para 18(3) of Part I of the Fifth Schedule to the Nigerian Constitution.

54 Lawal (2009) at 238.

55 Section 36(9) of the Nigerian Constitution.

56 Waziri (2014) at 10.

57 Udofa (2018) at 114.

making false assets declarations and money laundering.⁵⁸ Although a presidential pardon does not obliterate the crime, it does obliterate the punishment.⁵⁹ To guard against this, the Constitution states that the provision relating to the prerogative of mercy is not applicable to any of the punishments imposed by the CCT.⁶⁰ This limitation is designed to ensure that any public officer who is convicted of making a false assets declaration does not escape punishment.⁶¹

In my view, it might be more effective if the CCB publishes the names of public officers who fail to declare their assets or those who make false assets declarations, in addition to prosecuting them. The citizens and civil society organisations, on the basis of the names of defaulters that are published, could mount pressure on the affected public officers to comply with the law. Besides the prospect of prosecution, publication of their names could have negative consequences for the political prospects of the affected public officers, especially with regard to election to office. In other words, the publication of the names of public officers who violate the assets declaration law could be one of the ways of enhancing compliance with the law.

3.10 Public Access to Assets Declarations

The issue of granting members of the public access to assets declaration forms of public officers is a debatable issue globally.⁶² While some countries allow members of the public access, others do not. Security concerns and the need to protect the privacy of public officers are the main reasons for not allowing access to members of the public.⁶³

However, overriding public interests and the need to prevent abuse of office trump the argument that public access to assets declarations by public officers infringes their right to

58 See "Nigeria President Pardons Ex-Governor Convicted of Graft", available at <https://www.reuters.com/article/us-nigeria-pardon/nigeria-president-pardons-ex-governor-convicted-of-graft-idUSBRE92COWK20130313> (visited on 11 October 2018).

59 Osamor (2012) at 321.

60 Section 175 of the Nigerian Constitution.

61 Adangor (2015) at 189.

62 Messick (2009) at 8.

63 *Andrzej Wypych v Poland* ECHR Application : 2428/05 at 11.

privacy.⁶⁴ Arguably, public officers, especially PEPs, cannot claim the same level of privacy as ordinary citizens. Besides, the right to a corruption-free society, which is embedded, in this instance, in public access to assets declarations, trumps the right of public officers to privacy regarding the assets declared.

The Nigerian Constitution provides that the CCB should make assets declared by public officers available to Nigerians subject to such terms and conditions as the National Assembly may prescribe.⁶⁵ Over the years, many Nigerians and civil society organisations have made requests to the CCB to disclose or make available to them for inspection the assets declarations by public officers, especially political office holders. However, the CCB has refused all such requests. It hinges its refusal on the fact that the National Assembly has not passed an enabling law to that effect. For example, in *The Incorporated Trustees of Media Rights Agenda v the Code of Conduct Bureau and the Attorney General of the Federation*,⁶⁶ the Media Rights Agenda (MRA), a civil society organisation, requested the assets declaration forms of certain public officers, but the CCB refused the request. Subsequently, the MRA instituted an action in the Federal High Court for an order compelling the CCB to release copies of the assets declaration forms of these public officers. The court rejected the application of the MRA and held, *inter alia*, that:

the terms and conditions to be prescribed by the National Assembly is a condition precedent to the exercise of the unimpeded right of access to inspect the declaration forms submitted to the Code of Conduct Bureau by Public officers.⁶⁷

In essence, the court held that the right of Nigerians to inspect assets declaration forms submitted by public officers is not enforceable until the National Assembly enacts a law that prescribes the terms and conditions under which the declarations could be inspected.

There has been a suggestion that the Freedom of Information Act could be used in lieu of such a law. One of the supporters of this suggestion is the immediate past Attorney-General

64 *Andrzej Wypych v Poland* at 11 & 12.

65 Para 3(c) of Part I of the Third Schedule to the Nigerian Constitution.

66 See <https://www.pambazuka.org/governance/nigeria-court-dismisses-mra%E2%80%99s-suit-over-public-officers-assets-declarations> (visited on 29 October 2019).

67 See <https://www.pambazuka.org/governance/nigeria-court-dismisses-mra%E2%80%99s-suit-over-public-officers-assets-declarations> (visited on 29 October 2019).

of the Federation, Mr Abubakar Malami. He proposed that Nigerians could gain access to the assets declaration forms of public officers by making use of the Freedom of Information Act.⁶⁸ However, recent attempts by civil society organisations to do so have not been successful. For instance, two civil society organisations, the African Centre for Media and Information and the Public and Private Development Centre, requested access on the basis of the Freedom of Information Act, but their request was denied by the CCB.⁶⁹

The CCBT Act provides that a complaint that any public officer has contravened the assets declaration law should be made to the CCB.⁷⁰ A similar provision in Constitution empowers the CCB to receive complaints about non-compliance with or a breach of the provisions of the Code of Conduct.⁷¹ And the CCB has an obligation to investigate the veracity of such allegations.⁷² However, the potency of these provisions is undermined by the fact that assets declaration forms of public officers are not made available to members of the public. In the absence of such access, members of the public do not have a basis upon which to question the assets of public officers. This view was corroborated by retired Justice Bashir Sambo, a former chairman of the CCT, who asked:

How then do members of the public verify claims in the asset declaration of public office holders? How does the public cross-check to know if these public officers actually declared certain assets traced to them?⁷³

The fact that members of the public do not have access to assets declaration forms of public officers probably accounts for the low number of petitions that the CCB has received over the years, in comparison to the petitions that other anti-corruption agencies in Nigeria have received. For example, between 2000 and 2013, the Independent Corrupt Practice and Other

68 Malami “Nigerians can Use FOI to Access Assets Declaration”, available at <https://www.vanguardngr.com/2016/10/nigerians-can-use-foi-to-access-assets-declaration-abubakar-malami/> (visited 25 November 2018).

69 See “CCB Refuses to Release Asset Declaration Forms of Current, Past Public Officers”, available at <https://www.thisdaylive.com/index.php/2017/02/21/ccb-refuses-to-release-asset-declaration-forms-of-current-past-public-officers/> (visited 16 October 2018).

70 Section 3(d) of the CCBT Act.

71 Para 3(e) of Part I of the Third Schedule to the Nigerian Constitution.

72 Para 3(e) of Part I of the Third Schedule to the Nigerian Constitution.

73 See “Why the Code of Conduct Bureau Cannot Perform!”, available at <http://www.nigerianmuse.com/importantdocuments/?u=CodeofConductBureauantperform.htm> (visited on 20 October 2019).

Related Offences Commission received 9 817 petitions; while the Economic and Financial Crimes Commission received 24 278 petitions between 2010 and 2013. However, the CCB received only 501 petitions between 2007 and 2013.⁷⁴

Public access to assets declaration forms of public officers is central to the effectiveness of assets declaration as an anti-corruption measure. The active involvement of members of the public and civil society organisations in assets declaration has a number of advantages. Firstly, it ensures that the duty of carrying out verification of assets declared by public officers is not limited to the CCB. Public officers live among the people and the citizens thus are in the best position to carry out a lifestyle check on public officers. Through such a check, the citizens can detect whether the standard of living of a public officer is at variance with his legitimate source of income.⁷⁵ Secondly, it establishes a form of partnership between the CCB and members of the public and it confers legitimacy on the anti-corruption effort of the government. Moreover, it makes assets declaration more transparent and credible.

It is instructive to note that public access is not limited to information on assets declared by public officers. It encompasses information on the level of compliance, the number of assets that are verified, and the number of public officers who are prosecuted for violation of the assets declaration law. Also, it includes information on the enforcement of punishment and on the overall effectiveness of the assets declaration regime.⁷⁶

3.11 Conclusion

This chapter has analysed the assets declarations laws in Nigeria. The analysis of these laws showed that they contain the essential provisions of a first-rate assets declaration regime. However, these provisions have some weaknesses. These weaknesses include the high number of public officers required by law to declare their assets, poor verification of the assets declared, lack of public access to assets declarations, and the incongruities between the provisions of the Constitution and the provisions of the CCBT Act. In order to make Nigerian assets declaration law effective, the government should reduce the number of public officers

74 UNODC (2015) at 143.

75 Habershon & Trapnells (2012) at 19.

76 Habershon & Trapnells (2012) at 19.

who are required to declare their assets, the CCB should ensure that it carries out effective verification of assets declared, and the constitutional provisions on assets declaration and those in the CCBT Act should be harmonised.



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CHAPTER FOUR

FACTORS MILITATING AGAINST THE EFFECTIVENESS OF ASSETS DECLARATION IN NIGERIA

4.1 Introduction

A number of factors undermine the effectiveness of assets declaration as an anti-corruption measure in Nigeria, apart from the weaknesses in the legal framework. These factors include: inadequate human resources; political interference in the work of the CCB and the CCT; inadequate budgetary provisions; the use of paper-based assets declarations; immunity of certain public officers; and poor inter-agency collaboration. The remainder of this chapter examines these factors.

4.2 Inadequate Budgetary Provision

Adequate budgetary provision is crucial to an effective assets declaration system.¹ Funds are required to ensure that public officers declare their assets, to keep proper custody of assets declarations, to carry out verification of the assets declared, and to enforce assets declaration law. Unfortunately, one of the factors undermining the effectiveness of assets declaration in Nigeria is inadequate funding. This view was corroborated by the chairman of the CCT, Justice Danladi Umar, who has said that poor budgetary allocation is hindering the work of the CCT.²

When compared with other anti-corruption agencies in Nigeria, the CCB is the most poorly funded of all. For example, in 2015, the Economic and Financial Crimes Commission received 10.5 billion naira from the federal government of Nigeria,³ the Independent Corrupt Practices and other Related Offences Commission received 4.5 billion naira,⁴ whereas the CCB received only 1.8 billion naira.⁵ Perhaps the disparity in the funds allocated to the various anti-corruption agencies in Nigeria is the reason why

1 Burdescu *et al* (2010) at 2.

2 Umar "Nigeria: Code of Conduct Tribunal Lacks Enough Funds to Fight Corruption", available at <https://allafrica.com/stories/201209290446.html> (visited on 24 April 2018).

3 This is about US\$30 million. See UNODC (2016) at 9-10.

4 This is about US\$13 million. See UNODC (2016) at 9-10.

5 This is about US\$5.2 million. See UNODC (2016) at 9-10.

some are more visible and active than others in the fight against corruption. Therefore, there is a need for the government to increase budgetary allocation to the CCB and the CCT to a level that is at least on par with the other anti-corruption agencies.

4.3 Inadequate Human Resources

An effective assets declaration system does not depend only on having the right legal framework, but also on the existence of a pro-active regulatory body with adequate personnel. The CCB needs adequate manpower to carry out the duties of receiving assets declarations, verifying the declared assets, and enforcing the assets declaration law. Regrettably, the CCB does not have adequate personnel to carry out these duties. This problem is compounded by the high number of public officers who are required by law to declare their assets. The CCB has 936 employees,⁶ of whom 80 are investigators.⁷ Assuming that all these employees are deployed in the compilation and the verification of assets declared by four million public officers in Nigeria, one employee of the CCB will have to verify the assets of 4 333 public officers. This kind of system cannot ensure effectiveness and efficiency. Thus, there is a need for the CCB to employ more personnel, especially investigators.

4.4 Inadequate Training for Staff of the CCB and the CCT

Closely connected to inadequate manpower is the issue of training for the staff of the CCB and CCT. Verification of assets declared by public officers with a view to detecting illicit enrichment and conflicts of interests requires expertise. The capacity of the CCB's investigators to carry out their duties is undermined if they do not possess the requisite investigative skills. In an interview with *Punch*, a Nigerian newspaper, one of the legal officers of the CCB said that some members of staff of the CCB do not possess the competency and skills required to carry out their roles.⁸ Also, it was alleged that some staff members of the CCB do not understand its

6 See "CCB: Sleeping Giant in Need of Redemption", available at <https://punchng.com/ccb-sleeping-giant-in-need-of-redemption/> (visited on 16 October 2018).

7 Human Rights Watch (2011) at 50.

8 See "CCB: Sleeping Giant in Need of Redemption", available at <https://punchng.com/ccb-sleeping-giant-in-need-of-redemption/> (visited on 16 October 2018).

mandates and powers.⁹ This was corroborated by a former chairman of the CCB, Mr Sam Saba, who declared that “some members of staff of the CCB do not have the capacity to investigate and prosecute” public officers who violate assets declaration law.¹⁰ In the light of this information, there is a need for the government to give continuous training to the personnel of the CCB. The same applies to the staff of the CCT.

4.5 The Use of Paper-Based Assets Declarations

The assets declaration regime in Nigeria is essentially paper-based. The CCB deals with a large volume of paper in the process of issuing, receiving, verifying and storing assets declarations. This makes the management of data obtained from these declarations cumbersome. It takes a lot of time to process information that is obtained from assets declarations in a paper-based system, as the CCB officials will have to go through each of the declarations. The implication of this is that the verification of the assets declared might not be effective as more time is likely to be given to issuing and receiving of the assets declarations than verifying their contents.

Moreover, space constraints and the preservation period for these declarations raise doubts about the viability of a paper-based system. Although the law does not stipulate how long the CCB is required to keep assets declarations,¹¹ there is no doubt that it might need to do so for a considerable period of time, especially as regards assets declared at different times by public officers who might be in service for many years.

The solution to the problems associated with a paper-based system lies in the use of online submission and electronic storage of assets declarations.¹² This could be complemented with effective data management software that will make it easy to store, retrieve and analyse the information.¹³ An assets declaration system that makes use of both online submission and electronic storage of data has a number of advantages over a paper-based system. Firstly, it can identify easily public officers who have not declared their assets. Secondly, it can be designed in

9 See “CCB: Sleeping Giant in Need of Redemption”, available at <https://punchng.com/ccb-sleeping-giant-in-need-of-redemption/> (visited on 16 October 2018).

10 Human Rights Watch (2011) at 50.

11 Para 3(c) of the Third Schedule to Nigerian Constitution.

12 OECD (2011) at 15.

13 Burdescu *et al* (2010) at 49.

such a way that public officers would not be able to submit their assets declarations unless all the required information has been supplied. This will reduce the incidence of incomplete assets declaration documents and save the time that the CCB spends in corresponding with public officers who have submitted incomplete assets declarations.¹⁴ Thirdly, it can assist the CCB with the verification of assets declared by public officers, because an online system can detect immediately any unjustifiable differences between the assets declared by public officers over a period of time. Also, it can simplify the process of verification by allowing the CCB to verify assets declared by public officers against the databases of the land registries, the Federal Inland Revenues Service, the Central Bank of Nigeria, the Corporate Affairs Commission and other relevant government agencies. In addition, the CCB could make a summary of assets declared by public officers available online in a bid to boost public access to the declarations¹⁵.

4.6 Political Interference in the Work of the CCB and the CCT

Another factor that is responsible for the ineffectiveness of the assets declaration regime in Nigeria is undue political interference in the work of the CCB and the CCT. Such interference sometimes prevents the CCB from prosecuting indicted public officers before the CCT. This is because the CCB needs the consent of the Attorney-General of the Federation before criminal charges can be brought against any public officer.¹⁶ Often, this consent is not granted, especially when the indicated public officer is a PEP.

Another instance where political interference impedes the effectiveness of assets declaration in Nigeria is in the exercise of the power of *nolle prosequi* by the Attorney-General. This power allows the Attorney-General to withdraw criminal charges at any stage of proceedings, without giving any reason whatsoever to the court.¹⁷ Although the Constitution provides that the Attorney-General should consider the interests of justice, the public interest, and the need to prevent the abuse of legal process in exercising this power,¹⁸ the practice

14 Burdescu *et al* (2010) at 48.

15 Burdescu *et al* (2010) at 48.

16 Section 174(a) of the Nigerian Constitution and section 24(2) of the CCBT Act.

17 Section 174(c) of the Nigerian Constitution. See Igwenyi (2016) at 11. See also Hambali (2013) at 195.

18 Section 174(3) of the Nigerian Constitution.

hardly reflects these criteria.¹⁹ Charges of false assets declaration that are brought against PEPs often are withdrawn at the instance of the Attorney-General in the exercise of the power of *nolle prosequi*. For example, the charges of false assets declaration that were brought against the former governors of Enugu,²⁰ Abia²¹ and Benue²² States were withdrawn at the instance of the Attorney-General in exercise of this power.

Closely connected to this is the use of assets declaration as a political tool by the government. Prosecution of former political office holders for making false assets declarations often is used as a weapon by the government to deal with perceived political opponents.²³ Although the prosecution of these persons does not gainsay the fact that they might be culpable, such lopsided prosecution negatively affects the perception of members of the public about assets declaration.²⁴ It unwittingly depicts assets declaration as a political tool that the government uses to silence opposition. Thus, there is a need for the government to put in place measures that would ensure that the Attorney-General does not abuse his power to initiate and withdraw criminal proceedings before the CCT.

4.7 Immunity of Certain Public Officers

The immunity of certain public officers from prosecution impedes the effectiveness of assets declaration in Nigeria.²⁵ The Nigerian Constitution provides that no civil or criminal proceedings can be initiated against the President, the Vice-President, State Governors and their Deputies during their terms of office.²⁶ Thus, even when the CCT has concrete evidence that any of these public officers has violated assets declaration law, it cannot prosecute him during the period that he occupies the office.

The purpose of granting immunity to these public officers is to ensure that they give full attention to their official duties without any undue distraction that may be occasioned by

19 Human Rights Watch (2011) at 29.

20 *Federal Republic of Nigeria v Ogonnaya Nnamani*, CCT/ ABJ/IE/2006.

21 *Federal Republic of Nigeria v Orji Kalu*, CCT/NC/ABJ/KW/3/2005.

22 *Federal Republic of Nigeria v George Akume*, CCT/ABJ/4B/2006.

23 Onuigbo & Innocent (2015) at 7.

24 Human Rights Watch 2011) at 28.

25 Fabamise (2017) at 158.

26 Section 308 of the Nigerian Constitution. See also *Tinubi v IMB Securities* (2001) 8 NWLR Part 740 at 708.

frivolous litigation.²⁷ However, these public officers use this constitutional provision as a shield from prosecution for corrupt practices.²⁸ The application of immunity to proceedings before the CCT was affirmed by the Nigerian Court of Appeal in the case of *Attorney General of the Federation v Atiku Abubakar*.²⁹ In that case, the respondent, then a Vice-President of Nigeria, was charged before the CCT with abuse of office and diversion of public funds. He successfully challenged the competency of the CCT to prosecute him on the ground that he enjoyed immunity from prosecution.

However, it bears noting that the immunity enjoyed by these public officers does not prevent the CCB from verifying their declared assets, nor does it prevent the CCB or other law enforcement agencies from investigating these public officers.³⁰ Even though only 74 public officers are covered by this provision — the President, the Vice-President, Governors and Deputy-Governors of the 36 states in Nigeria — it is important because these officers are more vulnerable to corruption and are more likely to make false assets declarations. There is a need to strike a balance between the immunity enjoyed by these public officers and the enforcement of assets declaration law.³¹ In other words, there is a need to amend the Constitution to exclude the liability of these public officers for violation of assets declaration law from the scope of their immunity.

4.8 Poor Inter-Agency Collaboration

The CCB is the only body that is empowered statutorily to receive assets declarations from public officers and to verify the truthfulness or otherwise of such declarations. However, the objective of combating corruption in the public sector cannot be achieved by the CCB without the active collaboration of other anti-corruption agencies. In any event, in carrying out its duties, the CCB needs the support of other government agencies³² as it cannot verify the assets

27 Savage-Oyekunle (2007) at 159.

28 Abegunde & Akinluyi (2017) at 17.

29 (2007) 12 Part 389 ALLFWLR at 154.

30 See *Gani Fawehimi v Inspector- General of Police* (2002) 7 NWLR Part 767 at 606.

31 Article 30(2) of UNCAC.

32 Human Rights Watch (2011) at 50.

declared by public officers without collaborating with relevant government agencies that have data that can assist it.³³

The Constitution and CCBT Act do not contain any provisions that empower the CCB to collaborate with other government agencies in order to achieve its mandates. However, the CCB needs to collaborate with land registries in verifying the landed properties declared by public officers, with vehicle registries to verify ownership of vehicles, with the Nigerian Financial Intelligence Unit in order to obtain information on any suspicious transactions by public officers that are at variance with the assets declared, with the Central Bank of Nigeria in order to verify bank accounts and financial transactions by public officers, and with the Corporate Affairs Commission in order to identify the ownership of corporate entities.

Poor inter-agency collaboration also manifests itself in the enforcement of assets declaration law. There are several corruption offences that were prosecuted under other anti-corruption laws which, if they had been prosecuted by the CCB or under CCBT Act, could have resulted in convictions or more punitive sentences. In addition, poor collaboration between the CCB and other anti-corruption agencies in Nigeria is evident in poor exchange of intelligence and information.³⁴ Most of the corruption cases that were lost by other anti-corruption agencies as a result of lack of evidence could have been salvaged if assets declared by the indicted public officers were tendered in evidence to support charges of illicit enrichment and other corruption-related charges.³⁵ For example, the Economic and Financial Crime Commission blamed its inability to carry out a full investigation into the allegation of corruption against a former Chief Justice of Nigeria on its inability to obtain his assets declaration forms from the CCB.³⁶

The work of other anti-corruption agencies would be enhanced greatly if they have access to assets declaration forms of public officers. Such access would assist them in the investigation and prosecution of corrupt public officers, and in the recovery of stolen assets.

33 Rossi *et al* (2017) at 83.

34 Ikpeze (2013) at 161.

35 Rossi *et al* (2017) at 98.

36 See "We are Still Investigating Onnoghen- Magu Writes Buhari", available at <https://googleweblight.com/i?u=https://www.thecable.ng/we-are-still-investigating-onnoghen-magu-writes-buhari&hl=en-NG&tq=310&pt=19> (visited on 7 February 2019).

Besides, information and evidence that other anti-corruption agencies have about corrupt practices of a public officer could form the basis of a charge of false assets declaration or illicit enrichment by the CCB against such officer. The advantages of such inter-agency collaboration in the fight against corruption have not been explored in Nigeria. In practice, the CCB is treated as a separate anti-corruption institution, undertaking little or no collaboration with other anti-corruption agencies.³⁷ There is a need for a robust inter-agency collaboration to reduce duplication and save costs in the investigation and the prosecution of corrupt public officers.³⁸

4.9 Conclusion

A good law that is poorly implemented cannot be effective. It is against this background that this chapter examined factors, besides the weaknesses in the legal framework, which hinder the effectiveness of assets declaration law in Nigeria. It identified these factors and suggested measures that could be used to correct the anomalies. These measures include making adequate budgetary provisions for the CCB and CCT, employing more staff for the CCB, organising regular training for the staff of the CCB and CCT, and ensuring that the Attorney-General of the Federation does not abuse his power to initiate and withdraw criminal proceedings before the CCT. Other suggested measures are excluding the immunity enjoyed by some public officers from charges relating to assets declaration, arranging for the CCB to use online assets declaration as against the present paper-based system, and establishing a robust collaboration between the CCB and other anti-corruption agencies in Nigeria.

37 See generally “Inter-Agency Rivalry Hurting Anti-Corruption War”, available at <https://punchng.com/inter-agency-rivalry-hurting-anti-corruption-war/> (visited on 14 October 2018).

38 Chene M “Co-ordination Mechanisms of Anti-Corruption Institutions”, available at <https://www.u4.no/publications/coordination-mechanisms-of-anti-corruption-institutions.pdf> (visited on 14 October 2018).

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

This research paper has examined the effectiveness of assets declaration by public officers as an anti-corruption measure in Nigeria. The assets declaration regime in Nigeria has been in existence for about three decades, yet its impact in curbing corruption among public officers is low. Corruption among public officers, especially PEPs, has not abated; rather, it seems to be on the rise. This paper has examined the main features of the assets declaration regime with a view to appraising how adequate they are in curbing corruption among public officers. It also analysed the legal framework on assets declaration in Nigeria. This framework contains the essential provisions of a first-rate assets declaration regime. However, these provisions do have some weaknesses. These weaknesses include the high number of public officers required to declare their assets, ineffective verification of the assets declared, and lack of public access to the assets declarations. Also, a number of discrepancies between the provisions of the Constitution and the CCBT Act were identified. For example, while the Constitution provides that public officers should declare the assets of their unmarried children who are under the age of 18, the CCBT Act extends this duty to children under the age of 21 years.

Although the CCBT Act contains certain more detailed provisions on assets declaration when compared with those of the Constitution, the value of these provisions are limited. This is because the Constitution is superior to all other laws and any law that is inconsistent with the Constitution is a nullity. The implication is that all the provisions of the CCBTA Act that conflict with the Constitution are void. Also, this paper examined the punishments that may be imposed on public officers who violate assets declaration law. Further, it identified other factors that undermine the effectiveness of assets declaration in Nigeria. Such factors include inadequate budgetary provision, inadequate human resources, inadequate training for the staff of the CCB and the CCT, political interference in the work of the CCB and the CCT, poor inter-agency collaboration and the fact that the assets declaration system in Nigeria is paper-based.

Finally, the paper discussed how the immunity of certain public officers undermines the power of the CCT to prosecute them when they violate assets declaration laws.

In a bid to remedy the loopholes identified in this paper and make assets declaration more effective in preventing and combating corruption, the following recommendations are offered.

5.2 Recommendations

5.2.1 Reduction in the Number of Public Officers Required to Declare Assets

Where the number of public officers required to declare their assets are too many, a country can limit them on the basis of their rank or duties. Nigeria's assets declaration laws envisage the possibility of excluding some categories of public officers from the assets declaration obligation. The Constitution empowers the National Assembly to make laws exempting any category of public officers from the assets declaration regime if it appears that the positions occupied by such officers are below the rank it considers appropriate for the application of assets declaration law.¹ In furtherance of this power, the CCBT Act, which is deemed to be an Act of the National Assembly (though it was promulgated by a military government), empowers the President to make an order exempting any category of public officers if he considers that such officers are not senior enough to be required to declare their assets.² In line with this provision, there is a need for the President to make such an order, especially for those public officers whose positions do not make them vulnerable to corruption, namely, low-level and some middle-level public officers. This will reduce the number of public officers required to declare their assets to those whom the CCB can manage effectively within its means and capacity.

5.2.2 Public to Access Assets Declarations

The access of members of the public and civil society organisations to assets declarations is central to the effectiveness of an assets declaration system. Article 13 of UNCAC requires States Parties, *inter alia*, to promote active participation of individuals and civil society organisations to seek, receive, publish and disseminate information on corruption. In line with UNCAC, the

1 See Para 14 of Part I of the Fifth Schedule to the Nigerian Constitution.

2 See section 18(1) of the CCBT Act.

National Assembly should enact a law that will stipulate the terms and conditions under which members of the public and civil society groups can have access to assets declarations. The legislators should ensure that such terms and conditions are not so onerous as to make it nearly impossible for members of the public to view the declarations.

5.2.3 Harmonisation of the Constitution with the CCBT Act

The Third Schedule, Part I and the Fifth Schedule, Part I to the Nigerian Constitution should be harmonised with the CCBT Act. The provision of the CCBT Act that public officers should declare the assets of their unmarried children who are under the age of 21 years should be amended to accord with the age of 18 years stated in the Constitution.

The provisions of the Schedule to the Constitution and of the CCBT Act requiring that public officers should declare their assets immediately after assumption of office contradict the substantive provisions of the Constitution requiring political office holders to declare their assets before taking the oath of office. The former should be amended. In other words, political office holders should declare their assets before they take the oath of office, in line with the substantive provisions of the Constitution.

Moreover, the scope of punishments that the CCT can impose on public officers who violate assets declaration laws should be expanded. The CCT should be given the power to impose custodial punishments in addition to other punishments.

Finally, the provisions of the Constitution and CCBT Act that violate the right against double jeopardy should be expunged.

5.2.4 Capacity Building

Corruption is both a clandestine and a complex crime. It takes sound knowledge and expertise to unearth it. Therefore, regular training should be organised for investigators at the CCB so as to enhance their investigative skills and increase their capacity to verify effectively the assets declared by public officers.

Also, the CCB staff should be trained in information and communications technologies in order to improve their data management skills.

5.2.5 Use of Technology

The government should digitalise the assets declaration system in Nigeria so as to make it more effective. The use of paper-based assets declaration, given the sheer numbers of public officers, is a recipe for ineffectiveness. The CCB should make provision for online submission and electronic storage of assets declarations. This would reduce human errors associated with paper-based assets declaration. Also, it will enhance the capacity of the CCB to verify effectively assets that are declared by public officers.

5.2.6 Institutional Measures

The CCB needs to be pro-active in analysing assets declarations to identify potential conflicts of interest that could necessitate excluding public officers from decisions where their private interests may conflict with their official duties. Moreover, the procedures for verifying the declared assets need to be improved to ensure that they are capable of detecting any discrepancies.

There is a need for timely prosecution of public officers, especially PEPs, who violate assets declaration laws. Instead of imposing fines, the CCT should impose other sentences, such as removal from office and disqualification from occupying public office for a specific period. And measures should be put in place to limit the power of the Attorney-General to discontinue cases before the CCT. In other words, the Attorney-General's power to withdraw cases from the CCT should be based on the interests of justice, public interest and the need to prevent abuse of the legal process, rather than on political considerations.

5.2.7 Inter-Agency Collaboration

The CCB needs to collaborate with other anti-corruption and relevant government agencies. At present, there is no provision in the CCBT Act that requires the CCB to collaborate at all. However, collaborations are essential because some government agencies, such as the Central Bank of Nigeria, the Nigerian Financial Intelligence Unit, the Corporate Affairs Commission and Land Registries, can assist the CCB in the verification of the declared assets. Besides, collaboration between the CCB and other anti-corruption agencies will enhance the exchange of intelligence and information between these agencies. And this will go a long way to reducing

duplication and costs in the investigation and prosecution of corrupt public officers. Hence, the CCBT Act should be amended to spell out expressly the relationship between the CCB and other relevant government agencies.

5.2.8 Adequate Budgetary Provision

There is a need for the government to make adequate budgetary provision for the CCB and the CCT so that they can carry out their duties effectively. The CCB needs adequate funds in order to ensure that all public officers declare their assets. Also, it needs funds to carry out verification of assets declared by public officers.

The CCT needs to be funded properly to ensure that the prosecution of public officers who violate assets declaration law is not frustrated by financial constraints.

5.2.9 Public Education

There is a need for the CCB to collaborate with both the federal and state civil service commissions in sensitising public officers, especially civil servants, to the fact that they have a constitutional obligation to declare their assets within a stipulated time. There is a need also for the CCB and civil society organisations to educate political office holders that the Constitution requires them to declare their assets before they take their oaths of office and allegiance. In addition, the CCB should educate Nigerians about its mandates and the central role it plays in the prevention and the detection of corrupt practices among public officers. This will encourage Nigerians to collaborate with the CCB in checking corruption among public officers.

If these recommendations are implemented, assets declaration could become an effective measure in preventing and combating corruption in Nigeria. And the CCB and the CCT could become more pro-active in tackling corruption among public officers in Nigeria.

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ANNEXURE

Assets Declaration Template Form Contained in the Schedule to the CCBT Act

FIRST SCHEDULE

FORM (CCB. 1)

[Order II Rule (2).]

Writ of summons in action in personam in the Federal High Court in the Admiralty Judicial Division

Assets declaration form for public officers

1. Full name of declarant:

2. Present appointment and date:

3. Rank:

4. Address:

5. (a) Last appointment.....

(b) Date of appointment:

From.....To.....

6. Details of assets:

(a) Cash in hand (if over N1,000)

(b) Cash in bank in Nigeria (give particulars of banks)

(c) Cash in bank outside Nigeria (give particulars of banks and countries)

(d) Landed property in Nigeria (give details together with value of each and annual income derived from each) - Date acquired Total value

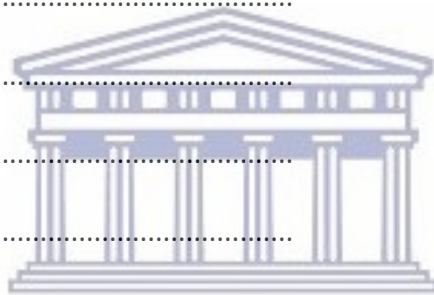


Annual income

- i) Buildings
- (ii) Farms
- (iii) Vacant land
- (iv) Factories
- (v) Other enterprises

How acquired:

- (i)
- (ii)
- (iii)
- (iv)
- (v)



(e) Movable property or assets: UNIVERSITY of the

Date acquired..... WESTERN CAPE

Total value.....

Annual income.....

- (i) Vehicles
- (ii) Boats/other means of transport
- (iii) Machinery, etc
- (iv) Furniture

(f) How acquired:

(i)

(ii)

(iii)

(iv)

(g) Details of property outside Nigeria (as in (d) and (e) above) Total value

Annual income.....

Total value.....

Annual income.....

(h) Government securities including premium banks, savings certificates.....

(i) Shares, debentures and other securities

(i) in Nigeria and

(ii) outside Nigeria

(j) Details of assets/property of (a) wife/wives (b) children if not public officers, liable to assets declaration

(i) Wife/wives

(ii) Children



(k) I, (full names)

solemnly declare that the facts given by me in this form are correct and that I conscientiously believe same to be true by virtue of the provisions of the Oaths Act.

.....

Signature of declarant

Declared at.....

Registry.....

This.....day of 20.....

Before me

High Court Judge

Space for additional relevant information under paragraphs 6(a)-(i) if necessary



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For official use

1. Date of receipt of Form.....

2. Action taken

(a) acknowledgement slip issued

(b) file

(c) sent for variation

Signature:

Name: (Receiving officer)

Acknowledgement slip

(From Office of deposit) Receipt No

Received from

.....

of copies of Form CCB.I

Signature Name

Receiving officer

Date



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Word Count: 16 037