

PUBLIC SERVICE IN NIGERIA- AN OVERVIEW OF FUNCTIONS AND CODE OF CONDUCT

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ABSTRACT: *This paper examines the functions of public service and the code of conduct for public servants in Nigeria with a view to ascertaining the provisions of the relevant laws. The public sector, represent the realm where the government operates for the benefits of the citizenry. This is different from the private sector where individual operates. The public service is a typical bureaucratic organization made up of public servants who are recruited on the basis of their skills/qualification and expertise. A part from the 1999 Constitution of the Federal Republic of Nigeria, which is regarded as the grund norm and which creates the public service, there is also the Revised Public Service Rules, 2006 for the public servants to obey and follow. The paper adopts descriptive analyses. It argues that Nigeria has basic legislations for regulation the code of conduct for public service, but the code of conduct Bureau and Tribunal has minimal impact as enforcement mechanisms put in place as result of general corruption in all sectors of the economy. This paper recommends that there is need for desire and willingness on the part of the public servants to adhere to the public service laws and regulations and not to violate the law. It also recommends that corruption and other vices in all sectors of the economy must be tackle by the government for effective public service in the country. It finally recommends that penal sanctions and punishment alone are not enough to curb public misconduct, there has to be patriotism, honesty, integrity, commitment, dedication and above all fear of God on the part of the general public and public officers in particular.*

KEYWORDS: Public Service; Code of Conduct Bureau; Tribunal; Civil Service; Parastatals

INTRODUCTION

This paper examines the functions of public service and the code of conduct for public servants in Nigeria with a view to ascertaining the provisions of the relevant laws. The public service is an organized that is responsible for managing the resources of a nation on behalf of the people who are the owners of these resources; it is run by both elected and appointed officials. According to section 318 (1) of the constitution of the Federal Republic of Nigeria, 1999 (as amended), elective as well as appointed officials include: The President, Vice President, Governors and their Deputies, Ministers and commissioners, members and staff of legislative Houses, Chairmen, Directors of all corporations and companies in which the government has controlling shares. The public sector, therefore, represent the realm where the government operates for the benefits of the citizenry. This is different from the private sector where individual operates. The public service is a typical bureaucratic organization made up of public servants who are recruited on the basis of their

skills/qualification and expertise. A part from the 1999 Constitution of the Federal Republic of Nigeria, which is regarded as the grund norm and which creates the public service, there is also the Revised Public Service Rules, 2006 for the public servants to obey and follow.

CONCEPTUAL CLARIFICATION

The term public service includes the following:

- a. The Civil Service: the career personnel of the presidency, ministers, Extra – Ministerial Departments, the National Assembly and the Judiciary.
- b. The Armed Forces, the Police, Other Security agencies e.g Para – Military organizations
- c. The Parastatals or Public Enterprises.

Meaning of Public Service

The meaning of Public service is contained in section 277 (91) of the Constitution of the Federal Republic of Nigeria of 1979 now section 169 of the 1999 Constitution as encompassing the civil service (Ministerial departments), statutory corporations or parastatals, judiciary, legislature, educational institutions, financially wholly or principally owned by government at the State, Local and Federal levels, Nigeria Police or Armed Forces and other organizations in which the Federal or state governments owned controlling share or interest¹. In Nigeria, the Country's government bureaucracy is the public service. This is because government at whatever level enunciates and implements its policies, programs and projects through the instrumentally of the public service. Most public services are service – oriented.

Meaning of Civil Service

The Civil service is an organ created to ensure that policies and programs of any government at any particular time are carried out. The Civil service as part of Government never dies because of its perpetual nature and the changing nature of constitutionally elected government, it has to be endowed with specific peculiarities or leaning's of that government. Further characteristics of the civil service are that:

- a). It has to be non - partisan to enable it serve any government of the day
- b) It has to be made u of experienced men and women with the technical and professional know – how to enable it implement government policies.
- c) It has to be orderly and also ensure that orderly administration of the country is continuous.
- d). The Civil Service is indispensable since it continues the traditional role of keeping the functions of government running no matter what changes occurs in the administration of the country.
- e). It operates under rules which guide its conduct.

¹ The meaning of the concept of Public or Civil Service as established by the Nigerian Constitution is provided for in sections 171, 172, 206, 208 and 318 and in section 10 of Third Schedule of the 1999 Constitution, as amended.

f) The Civil Service is an entity but operates in hives of activities, divided between Ministers and Departments. Each or Department has it set functions and goals.²

Meaning of Parastatals or Public Enterprises

Parastatals are the operational arm of government ministers; that are established to provide services to the populace. The scopes of the services they provide are usually sufficiently complex to warrant their establishment as separate bodies outside the normal operations of government departments. The laws setting them up do not only allow considerable flexibility as against the rigid demands of the Civil Service for high degree of accountability, but also guarantee some measure of autonomy. This autonomy is subject to government general direction of their operations to ensure the achievements of the desired objective without sacrificing accountability.

Meaning of Code of Conduct

A code of conduct is a set of rules outlining the responsibilities of, or proper practices for, an individual, party or organization. Related concepts include ethical, honor and moral codes, as well as halachic and religious laws.³ The International Federation of Accountants provides a working definition of code of conduct as, ‘principles, values, standards, or rules of behavior that guide the decisions, procedures and systems of an organization in a way that (a) contributes to the welfare of its key stakeholders, and (b) respects the rights of all constituents affected by its operations’⁴.

FUNCTIONS OF PUBLIC SERVICE

The public service (Ministers, Department and Agencies) has always been the tool available to the Nigeria government for the implementation of development goals and objective. It is seen as the pivot for growth of African economies. It is responsible for the creation of an appropriate conducive environment in which all sectors of the economy can operate maximally.

Under the New Public Management, the public service is expected to play a catalytic role in the economic sector by providing the enabling policies for all the sector of the economy. The functions of public service include:

1. Implementing and enforcing economic, political and social policies of the current government and
2. Designing and implementing public service
3. Raising revenue for the government
4. Ensuring managerial, political and financial accountability
5. Serving the people
6. Monitoring and evaluating the performance of organizations (Public, private or non – governmental) that are rendering service on behalf of government
7. Driving all development initiatives

² O.F Ayodele, ‘Performance Measurement and Management,’ a publication of the National Open University, School of Business and Human Resources Management, Lagos <www.nou.edu.ng? Accessed on 20/06/2014.

³ En.m.wikipedia.org/wiki/code-of-conduct. Accessed on 05/02/2015.

⁴ In its 2007 International Good Practice Guidance, Defined and developed an effective code of conduct for organization, available at <http://www.ifac.org> Accessed on 05/02/2015.

8. Delivering quality public service (such as education, electricity, water and transportation)⁵. In summary, the public service is crucial to the overall efforts towards nation building.

THE CODE OF CONDUCT FOR PUBLIC OFFICERS

The public service is the machinery that Government uses to render services to the people and as such, public servants should think of how they can constantly and conveniently improve themselves to give better service. The process of rendering of these services must conform to the prescribed code of conduct provided by the constitution of the Federal Republic of Nigeria. Thus the said constitution has established a threshold or standards that would guide a public servant in the discharge of his or her duties. Part I of the fifth schedule of the 1999 constitution has generally made provision in respect of code of conduct and work attitude for a public servant. Section 1 provides that, 'a public officer shall not put himself in a position where his personal interest conflicts with his duties and responsibilities'.

This section makes it imperative for a public officer not to put himself in a position where his personal interest conflicts with his duties and responsibilities. This duty is an aspect of the common law duty to act in good faith. It shows that the law imposes on the public officer the duty to show good faith in the discharge of his duties and responsibilities. The rule is strict and is justified on the basis that would a public officer be faced with such a conflict between his personal interest and his official duty, he will naturally favour his personal interest over that of his duty. The law, therefore, requires him not even to allow to be exposed to such temptation. Sometimes in the course of his official duty, a public officer may experience a situation where his personal interest is in conflict with his duty. In such a situation, the public officer is liable for a breach of code of conduct, if he allows his personal interest to take precedent.

Section 2 (a) provides that, 'public officer shall not receive or be paid the emoluments of any public office at the same time as he receives or is paid the emoluments of any other public officer'. This section restricts a public officer from receiving or being paid the emoluments of any public office at the same time as he receives or is paid the emoluments of any other public office. This rule is closely linked to that which prohibits a conflict of interest considered above. It seeks to prevent a public officer from receiving or be paid emoluments from two different public offices. Emolument according to section 19 of the Fifth Schedule of the 1999 Constitution as amended means;

Any salary, wage, over – time or leave pay, commission, fee, bonus, gratuity, benefit, advantage (whether or not that advantage is capable of being turned into money or money's worth), allowances, pension or annuity paid, given or granted in respect of any employment or office.

Sub – paragraph (b) of this section goes ahead to restrict a public officer from engaging or participating in the management of running of any private business, profession or trade except where his employment is on part – time basis. But the rule did not prevent a public officer from engaging in farming.

⁵ Ibid.

Section 3 prohibits maintaining or operating a foreign bank account by the President, Vice – President, Governor, Deputy Governor, and Ministers of Government of the Federation and Commissioners of the Governments of the States, and such other public officers or persons as the National Assembly may by law prescribed.

Section 4 ban a public officer from accepting more than remunerative position as chairman, director or employee of a company owned or controlled by the Government; or any public authority after his retirement from public service and while receiving pension from public funds. However, section 14 (a) exempt members of legislative houses from the provision of this section.

Sub – paragraph (2) of this section also bans a retired servant from receiving any other remuneration from public funds in addition to his pension and the emolument of such one remunerative position. This provision disallows a public officer from benefiting twice from public funds, while there others that are yet to benefit even once.

Section 5 prohibits retired and ex – serving, vice president, Vice – President, Chief Justice of Nigeria, Governor and Deputy Governor of a State from serving or accepting employment in foreign companies or enterprises. This is due to the sensitive nature of offices they held.

Section 6 prohibits a public officer from asking for a accepting property or benefit of any kind for himself or any other person on account of anything done or omitted to be done by him in the discharge of his duties.

Sub – paragraph 2 prohibits the receipt by a public officer of any gifts or benefits from commercial firms, business enterprises or persons who have contracts with the Government.

Sub – Paragraph 3 allows a public officer to accept personal gifts or benefits from relatives or personal friends, and donations or gifts to public institutions are allowed.

The import of these consideration and stipulations is that a public servant must be loyal to government and must also be honest and fight against graft. Public servants are paid from government for doing their jobs and must receive gratifications for jobs being done by them.

Section 7 provides that President and his Vice, Governor and his Deputy, Minister and Commissioner, Permanent Secretary, head of any public corporation, university, or other parastatals organization shall not accept –

(a) A loan, except from government or its agencies, a bank, building society, mortgage institution or other financial institution recognized by law; and

(b) Any benefit of whatever nature from any company, contractor, or businessman, or the nominee or agent of such person.

With a proviso that head of a public corporation or a university or other parastatal organization may, subject to the rules and regulations of the body, accept a loan from such body.

Section 8 is also an important aspect of good faith and it is to the effect that a public officer is under an obligation not to take bribe or any kind of inducement while executing his duties or responsibilities. A bribe can take the form of cash payment as secret commission, discount against

other transaction or bonus for service rendered. A bribe represent a particular type of secret profit and the law takes a very serious view of secret benefits as it can compel a public officer to compromise his position. Therefore, where it is established, it constitutes a violation of the code of conduct.

Section 9 provides that:

A public officer shall not do or direct to be done in house of his office, any arbitrary act prejudicial to the rights of any other person knowing that such act is unlawful or contrary to any government policy.

Section 10 also provides that, ‘a public officer shall not be a member of belong to, or take part in any society the membership of which is incompatible the functions or dignity of his office’.

This provision is similar to Rule 020210 of the Public Service Rule which provides that;

No public officer shall become a member of any secret society. Any public officer who is a member of such society shall renounce his membership forth with by be making a statutory declaration to that effect, or resign his appointment, or retire from the service.

This rule encourages ethics and morality in the public service by restraining officers from cultism and other unwanted social behaviors⁶.

Section 11 is another important provision of the code of conduct that has a very good foundation in enhancing probity, honesty and good public image for the public servants. Thus, the section provides that any public officer shall within three (3) months after being appointed into office and thereafter, the end of every four (4) years or the end of his term, submit to the code of conduct Bureau a written declaration of all his properties, assets and liabilities and those of his unmarried children under the age of 18 years. Any statement in the declaration that is found to be false by any authority of person authorized in that behalf to verify it shall deemed to be in breach of the code and any property or assets required by a public officer after any declaration required under the constitution and which is not fairly attributable to the income, gift or loan approved by the code shall be deemed to have been required in its breach unless the contrary is proved.

The provision of the law is in line with the legal concept of public accountability. Public officers shall remain honest and shall not misuse or misapply public funds. They are not expected to enrich themselves by the advantage of their access to public funds and authority.

Section 12 provides that any allegation that a public officer has committed a breach of or has not complied with the provisions of this code be made to the code of conduct Bureau. The Bureau has the power to investigate the alleged violation and if a case is found, institute an action at the code of conduct Tribunal. The Tribunal has the power to handle cases of breach of work ethnics and code of conduct. Where any public officer is found guilty of contravening any section of the

⁶ A.M. Sani, ‘Discipline and Ethical Values: A Tool for Effective Public Service Delivery in Wamako A.M (ed), *Ethics and Discipline in Public service* (Ahmadu Bello University Press Ltd, Zaria, 2013).

provision of the code of conduct, then the tribunal shall impose punishment which include any of the following: -

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

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In the recent case of *Ahmed v Ahmed*⁸ Supreme Court while given life to the above provision, held thus:

'Any allegation that a public officer has committed a breach of or has not complied with the provisions of this code shall be made to the code of conduct Bureau'. The foregoing provisions are clearly unambiguous and so construed literally mean that any breaches of any provisions of the said 5th Schedule or matters of non compliance with any provisions of the code shall (meaning that it is mandatory i.e must) be made to the code of conduct Bureau that has established its Tribunal with the exclusive jurisdiction to deal with any violations of any provisions under the code, if I may emphases any violation shall be made to code of conduct Bureau...This provision has expressly ousted the powers of ordinary regular courts in respect of such violation.

ESTABLISHMENT OF CODE OF CONDUCT OF BUREAU AND TRIBUNAL

The Political Bureau recommended to the Federal Military Government in 1988 the need for strengthening of existing machineries for monitory the actions and behavior of public officers, to ensure that they conform to the highest standards of public morality and accountability. The Bureau observed that corruption and indiscipline where bane of our development. The recommendation of the Public Bureau resulted in the establishment of Code of Conduct Bureau and Code of Conduct Tribunal with powers to enforce the code of conduct for public officers as enshrined in the 1979 Constitution of the Federal Republic of Nigeria. These provisions have been retained in the Third and Fifth Schedules of the 1999 Constitution of the Federal Republic of Nigeria (as amended) respectively and Code of Conduct Bureau and Tribunal Act⁹.

The importance of Code of Conduct Bureau was aptly stated by Ademola in the following words:

... The Bureau has been doing all within its powers and limited resources to put public officers in constant check through public enlightenment, Administering of Assets Declaration Forms (Form CCB – 1) to public officers, and prosecuting earring officers at the Code of Conduct Tribunal.

At the moment, more efforts are being channeled into prevention of various abuses of public office through constant monitoring of pubic officers' assets base and verification

⁷ See section 18 (2) of the code of conduct Bureau and Tribunal Act, Cap. 15 Laws of the Federation of Nigeria 2004.

⁸ (2013) LPELR- 21143 (SC). Per Chukwuma-Eneh, JSC (Pp. 56-57, paras. B-G.).

⁹ Cap 15 laws of the Federation of Nigeria, 2004.

of same at regular intervals, workshops, seminars and other forms of public enlightenments¹⁰.

Statutory Functions of Code of Conduct Bureau

The Code of Conduct Bureau has a clear mandate to ensure corrupt free public service in all tiers of government in Nigeria as its functions are clearly provided for under paragraph 3 of the Third Schedule, Part 1, Section A of the 1999 Constitution of the Federal Republic of Nigeria as follows:

- a. To receive declarations by Public Officers made under paragraph 11 of Part 1, of the fifth schedule of the 1999 Constitution.
- b. Examine the declarations in accordance with the requirements of the Code of Conduct or any law of the Federal Republic of Nigeria.
- c. Retain custody of such declarations and make them available for inspection by any citizen of Nigeria on such terms and condition as the National Assembly may prescribe.
- d. Ensure compliance with and where appropriate enforce the provisions of the Code of Conduct or any other related law.
- e. Receive complaints of non compliance with the Code of Conduct, investigate the complaint and where appropriate refer such matters to the Code of Conduct Tribunal.

It is clear from the above functions of the Code of Conduct Bureau, it renders strategic and importance role in ensuring that public officers are working and conducting themselves within ambit of the law.

CONCLUSION AND RECOMMENDATIONS

Public service is the vehicle for public service delivery and governance. The quality of the public service largely determines the pace of development of any nation. This is because of the crucial role public servants play in the formulation and implementation of programs of governments. The public officers who are meant to propel the engine of societal growth through the bureaucracy must as matter of principle set good examples to other members of the society by acting above board. The Constitution of the Federal Republic of Nigeria 1999 (as amended) has therefore provided the template for the kind of behavior expected of public service in terms of probity. Despite the enormous impotence of the code of conduct, many public servants are not fully aware of the provisions therein. Even those that are aware of it hardly put its provisions into implementation. There are scanty of cases at the code of conduct tribunal, and its performance has been very poor albeit the enormous powers under the Constitution. In fact the tribunal hardly passes judgment against violators of the code of conduct of the law. This paper recommends that there is need for desire and willingness on the part of the public to adhere to the public service laws and regulations and not to violate the law. It also recommends that corruption and other vices in all sectors of the economy must be tackled by the government for effective public service in the country. It finally recommends that penal sanctions and punishment alone are not enough to curb

¹⁰ Ademola Adebo (2012). Why Code of Conduct Bureau should not be Removed from the Constitution - available at www.thisdaylive.com/article/why-code-of-conduct-bureau-should-not-be-removed-from-the-constitution. Accessed on 05 / 02 / 2015.

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