ASSET DECLARATION AND BEST PRACTICES: AN OVERVIEW OF THE NIGERIAN LAW.

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Introduction :

Asset Declaration

Declaration of asset and liability is an important tool to enhance transparency and accountability of public employees as custodians of public resources to the general public. Besides, it also helps disclose financial interests and, therefore, helps prevent accumulation of disproportionate wealth. It is also a requirement as per BCSR 2006. ACC in collaboration with the RCSC in 2008 has

refined and finalized the rules after the RCSC decided to follow one rule on asset declaration.[1]

In accordance with the Asset Declaration rule, the responsibility to administer and manage asset declaration system lies with the heads of respective agencies. Furthermore, the responsibility to audit and conduct investigations pertaining AD has also been decentralized to RAA and RCSC for certain categories of public servants.[2] The system needs to be fully operationalized and owned by respective Ministries and agencies. Asset declaration was brought about with the aim of bringing about a sharp drop in the incidence of corruption, through the speedy arrest and prosecution of corrupt public officials.[3] The second objective was to reduce or remove incentives for corruption among public officials, via a comprehensive reform of the public sector (including the judiciary). Specifically, the reforms aimed at the following: eliminating monopoly, by privatisation and deregulation; reducing discretion, by the streamlining of functions and reinforcement of controls; and removing administrative opacity, by the increasing of transparency and accountability, particularly in public revenue collection and expenditure. The aggressive implementation of these policies, it was hoped, would

[1] Transparency International (2002), *Corruption fighters' tool kit: Civil society experiences and emerging strategies*. Berlin.
[2] Enweremadu DU. Anti-corruption campaign in Nigeria (1999-2007)
[3] ICPC (2005a), *Summary of the criminal matters filed in the different States of the Federation*. Abuja: Public Enlightenment Department, Independent Corrupt Practices and Other Related Offences Commission.

reduce the opportunities for corruption among public officials. Some aspects of these reforms – privatisation, reform of the management of public finance, and the adoption of a new policy on employment and compensation (also known as 'professionalisation' and 'rightsizing') in the public service – were pursued with considerable vigour. But their cumulative effect on corruption has proved difficult to see. While the third objective was to redress some of the worst consequences of past corruption on the economy and improve the financial health of the nation.[4]

Best Practices

A best practice is a method or technique that has been generally accepted as superior to any alternatives because it produces results that are superior to those achieved by other means or because it has become a standard way of doing things, e.g., a standard way of complying with legal or ethical requirements. Best practices are used to maintain quality as an alternative to mandatory legislated standards and can be based on self-assessment or benchmark. Best practice is a feature of accredited management standards such as ISO 9000 and ISO 14001.[5]

Some consulting firms specialize in the area of best practice and offer pre-made templates to standardize business process documentation. Sometimes a best practice is not applicable or is inappropriate for a particular organization's needs. A

[4] Federal Republic of Nigeria (1979), *Constitution of the Federal Republic of Nigeria*. Lagos: Federal Government Press.

[5] Bretschneider, S., Marc-Aurele, F.J., Jr., and Wu, J. (2005). "Best Practices" Research: A methodological guide for the perplexed, *Journal of Public Administration Research and Theory (15)*2:307-323.

key strategic talent required when applying best practice to organizations is the ability to balance the unique qualities of an organization with the practices that it has in common with others.

Good operating practice is a strategic management term. More specific uses of the term include good agricultural practices, good manufacturing practice, good laboratory practice, good clinical practices and good distribution practice. Best practice is a form of programme evaluation in public policy. It is the process of reviewing policy alternatives that have been effective in addressing similar issues in the past and could be applied to a current problem. Determining best practices to address a particular policy problem is a commonly used but little understood tool of analysis because the concept is vague and should therefore be examined with caution. Vagueness stems from the term "best" which is subjective. While some research and evidence must go into determining a practice the "best" it is more helpful to simply determine if a practice has worked exceptionally well and why. Instead of it being "the best", a practice might simply be a smart practice, a good practice, or a promising practice. This allows for a mix and match approach for making recommendations that might encompass pieces of many good practices.[6]

The clean air financing programme is a quick guide put together by the NGA Center for Best Practices. It explores what clean air programs currently exist and

[6] Macmillan, J.R., Huddleston, T., Woolley, M., and Fothergill, K., (2003) "Best management practice development to minimize environmental impact from large flow-through trout farms." *Aquaculture* 226, 91-99

how they are being financed. Rather than stating one best practice to tackling clean air, this report creates a table of the different programs, how they are being financed, and in what state. Governors and their staffs can then look for characteristics and solutions that are most realistic and applicable to their situation. The key is to tailor current practices that are in the world to the specific situation you are looking to solve. Best practices are meant to give insight into existing strategies.[7]

There are no international standards mandating how asset declarations are made and monitored. However, there are core principles that should form the foundation of any legal framework.

- An asset declaration is a person's balance sheet and should cover assets, from all homes, valuables and financial portfolios, to liabilities, such as debts and mortgages, and all sources of income from directorships and investments to consulting contracts. It should also include gifts and sponsorship deals and any potential conflicts of interest such as unpaid employment contracts and participation in non-governmental organisations.
- The leadership of the three branches of government – executive, legislative and judiciary – and senior career civil servants should be required to file

[7] Clean Energy Financing. *NGA Center for Best Practice. Archived from the original on 14 December 2011. Retrieved 22 September 2011.*

asset declarations before and after taking office as well as periodically (annually or every two years) during office.

- Ideally, the asset declaration records exact values, but some countries opt for ranges of value.
- The administration of an asset disclosure programme requires a monitoring and evaluation agency to collect and verify information and investigate, prosecute and sanction those who fail to comply.

Nigerian Law and Asset Declaration

The Nigerian Constitution seeks to prevent corruption and abuse of office through its provisions on the declaration of assets by public officers. Although they are not obliged to do so, many public officers have publicly declared their assets. This has in turn put pressure on others to do so. In forging a synergy between the law and practice of asset declaration in Nigeria, the paper examines the human rights implications of the recent trend and proffers suggestions for improvement.[8] Paragraph 3(c) of the third schedule, Part 1 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), provides that the CCB shall make assets declarations of public officers available for inspection by any citizen of Nigeria only on such terms and conditions prescribed by the National Assembly.[9]

[8] Ibid

[9] Federal Republic of Nigeria (1977), *Report of the Federal Assets Investigations Panel*. Lagos, unpublished government report.

On 29 May 1999, Nigeria concluded a successful transition to civil democratic rule with the inauguration of President Olusegun Obasanjo as the country's second popularly elected president. The election of President Obasanjo, himself a former military dictator, came after sixteen years of uninterrupted military rule, during which corruption and financial crimes[10] were more or less installed as state policies (Federal Republic of Nigeria 1977, 1978, 1980, 1987, 1990, 1994 & 1999).[11] Although corruption is a major challenge for several other developing states[12], very few countries have been so ravaged by graft as Nigeria. This fact was duly underlined by the voting of Nigeria as the world's most corrupt nation in 1999, just weeks before Obasanjo was elected. This conclusion, produced by Transparency International (TI),[13] the global corruption watchdog (1999), could

[10] Nigeria's anti-corruption legislation provides straightforward definitions of the twin concepts of corruption and economic crimes. To begin with, the ICPC Act defines corruption to include "bribery, fraud and other related offences". The word bribery is used interchangeably with gratification, which the Act defines, under Section 8, to mean "money, donation, gift, loan, fee, reward, valuable security, property or interest in property being property of any description whether movable or immovable, or any other similar advantage, given or promised to any person with intent to influence such a person in the performance or non-performance of his duties". According to Section 46 of the EFCC Act, "economic crime means the non-violent criminal and illicit activity committed with the objective of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt practices, illegal arms deal, smuggling, human trafficking and child labour, oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc.". (Federal Republic of Nigeria: Independent Corrupt Practices and Other Related Offences Commission Act 2000a, Economic and Financial Crimes (Establishment) Act 2004). For more details on available definitions and theories of corruption, see Heidenheimer (1989) and Andvig & Fjeldstadt (2001).

[11] Federal Republic of Nigeria (2004), *Economic and Financial Crimes (Establishment) Act 2004*. Abuja: National Assembly.

[12] Federal Government of Nigeria (1999-2007b), *Annual Report and Statement of Accounts*. Abuja: Nigerian Deposit Insurance Corporation.

[13] Ibid.

itself be corroborated not only by the findings of dozens of official inquiries set up by successive Nigerian governments before and after 1999, but also by several academic studies. These research studies have been unanimous in their conclusion that in Nigeria corruption has become the norm.

Code of Conduct Bureau (CCB) is the pioneer anti-corruption agency set up by the Federal Government of Nigeria. It has the primary responsibility of checking corrupt practices in the Nigerian Public service and has been doing so since 1989. The Code of Conduct Bureau originated from old institutions found in governments all over the world. It operated under different names in different countries and can be traced from as far back as the 6th century AD in the Middle East. It was established within the Islamic court of the Caliphate, to monitor the behavior and check the excesses of officials, etc.

The CCB was established in Nigeria in 1979 during the Second Republic after 13 years of military rule by the founding fathers of the first post-military constitution. The 1979 Constitution provided a list of Codes of Conduct for public officers. The military administration of Murtala /Obasanjo inaugurated a Board before handing over power to the civilian government in July, which failed to make any impact because the National Assembly of the second republic failed to pass the enabling law. Ten years later in 1989, the Bureau got its legal mandate under the Babangida regime.

The Code of Conduct provision has since then maintained a permanence of some sort, in the 5th schedule of all constitutions following thereafter; 1989, 1993, 1995 and the current 1999 constitution.

The Act to make the assets declared by public officers accessible to the public in order to give effect to the provisions of the Constitution of the Federal Republic of Nigeria 1999 and for related matters was sponsored by Hon. Hazeez Babajide Akinloye and enacted by the National Assembly of the Federal Republic of Nigeria as follows[14]:

1. The objectives of this Act are to:
   (a) promotes efficient public administration and good governance;
   (b) promotes a culture of accountability, openness and transparency in public administration;
   (c) promotes public confidence in the integrity of public office holders and the decision-making process in government; and
   (d) give effect to the right to inspect asset declarations of public officers, as provided under the Constitution of the Federal Republic of Nigeria, 1999.
2. This Act shall apply to all asset declarations by public officers pursuant to the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

[14] A bill for an act to make Asset Declaration to Effect according to CFRN 1999 [HB. 17.07.1068] C 2473.

3. -(1) The Code of Conduct Bureau (in this Act referred to as "the Bureau"), 'shall make the asset declarations of public officers in its custody available for inspection by any person, who has satisfied the following:

(a) a citizen of Nigeria;

(b) applies in writing to the Chairman of the Bureau;

(c) shows evidence of payment of tax in the preceding three years;

(d) has not been convicted of a breach of the Code of Conduct for Public Officers or of any offence of fraud or dishonesty by any court of law or tribunal in Nigeria;

(e) informs the Bureau in writing that he has reasonable suspicion that the person whose declaration is sought has not complied with the provisions of the Code of Conduct for Public Officers.

(2) The written application referred to in sub-section (1)(b) of this section shall clearly state:

(a) The applicant's name and address, including an email address and phone number;

(b) the name of the public officer whose asset declaration is sought to be inspected;

(c) the period covered by the application; and

(d) any office in which the public officer concerned is serving or served during the period.

(3) Where a person has satisfied the criteria in subsection (1) of this section, the Bureau shall, within 21 days of receiving an application to inspect the declaration, notify the applicant in writing as appropriate below:

(a) where the Bureau is not in custody of the declaration sought to be inspected that, the declaration is not in its possession,

(b) where such declaration sought to be inspected is in its possession, the date, time, place, when and where the applicant may inspect and the fees for such access; or

(c) where the Bureau is denying access to the declaration sought to be inspected, the reasons for the denial.

(4) The right to inspect shall also include the right to apply for and obtain Certified Copies of an asset declaration, or any part thereof.

4. -(1) Physical inspection under this Act shall take place at the office of the Bureau, in the presence of an officer of the Bureau and within working hours.

(2) The person inspecting shall take reasonable care to avoid damage to the record being inspected.

5. -(1) Where the Bureau allows an applicant to inspect or obtain a copy of any declaration, the Bureau shall produce for inspection or delivery a certified copy of the relevant declaration excluding prejudicial information..

(2) Prejudicial information for the purposes of sub-section 1 of this section shall include:

(a) street addresses of any immovable property;

(b) bank account numbers;

(c) certificate numbers of bonds, debentures, stocks, savings certificates, pension accounts, life insurance, trust funds and other securities;

(d) vehicle registration numbers; and

(e) full names of minors, except initials.

(3) The portion of a declaration containing prejudicial information shall be blanked out in white and shall carry the inscription "Redacted".

6. -(1) Where the Bureau refuses or is unable to give access to a record or information applied for under this Act, or a part thereof, the:

(a) Bureau shall give notice to the applicant stating the grounds for the refusal or inability to give access; and

(b) (b) applicant shall have the right to challenge the decision refusing access and have it reviewed by the Tribunal.

(2) Without prejudice to the forgoing, the Bureau may within 14 days write to an applicant requesting for further information to enable it identify the asset declaration sought to be identified.

(3) The Bureau shall for the purposes of this Act, be deemed to have refused access to inspect any asset declaration, where it fails to give access to an applicant within 21 days of the receipt of an application or after receipt of further information supplied under subsection 2 of this section..

7. The Bureau shall, in writing and through the address on record, inform the person whose declaration has been accessed under this Act within one month of granting such access, without disclosing the identity of the applicant.

8. -(1) A person shall not obtain or use a declaration for:

(a) any unlawful purpose;

(b) any commercial purpose;

(c) determining the financial soundness of any individual; or

(d) direct or indirect solicitation of money for any purpose.

(2) No information accessed by virtue of this Act shall be admissible in any civil proceedings instituted by any person for any claim, damages, declaration or other civil remedies except in defence of any such suit.

9. -(1) Any person who violates any of the provisions of section 8 of this Act commits an offence and shall on conviction be liable to a fine of not exceeding two million Naira or imprisonment for two years, or both.

(2) Any person who violates any other provisions of this Act for which no specific provision has been made commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand Naira or imprisonment for six months, or both.

10.-(1) No information obtained pursuant to the provisions of this Act shall be published or in any way made public except with prior written authority of the Bureau.

(2) The Bureau shall upon application grant authority to publish any part of an asset declaration inspected under this Act, where no pending investigation is likely to be prejudiced by such publication.

(3) Nothing in this Act shall bar a person from inspecting any asset declaration as a source material for a journalistic or research publication, however, no asset declaration inspected shall be published verbatim.

11.-(1) The Bureau may charge reasonable fees for inspection or obtaining copies of any declaration applied for.

(2) The fees shall be limited to standard charges for document duplication and fees for transcription where necessary.

(3) The Chairman of the Bureau shall within three months of the coming into force of the Act make regulations for a scale of fees applicable to different categories for accessing declarations.

12. The Federal High Court and State High Courts shall have jurisdiction to try any offence created under this Act.

13.-(1) Any applicant who has been denied access to a declaration, or any part thereof, may apply to the Code of Conduct Tribunal for a review of the matter within 30 days after the Bureau denies or is deemed to have denied the application, or within such further time as the Tribunal may allow.

(2) The Chairman of the Code of Conduct Tribunal shall within three months of the coming into force of this Act, make regulations for proceedings on the review of the rights and duties created by this Act.

14.-(1) The Bureau shall maintain an "Access to Asset Declarations" register wherein the name of every person requesting access to asset declarations, date of request, name of person whose declaration is sought and action taken by the Bureau is recorded.

(2) Not later than the last week of November each year, the Bureau shall prepare a report indicating the total number of requests made in that year, the number of requests granted and the number declined.

15. In this Act: "Applicant" means the person who has applied to inspect asset declarations required by the Constitution to be filed by a public officer with the Bureau; "Asset Declaration" means a written declaration of all the properties, assets, and liabilities of a public officer, his spouse and those of his unmarried children under the age of 18 years; "Bureau" means the Code of Conduct Bureau established by the Constitution of the Federal Republic of Nigeria, 1999, as amended;

    "Constitution" means the Constitution of the Federal Republic of Nigeria 1999, as amended; "Public officer" has the meaning assigned in the Constitution of the Federal Republic of Nigeria 1999, as amended; "Tribunal" means the Code of Conduct Tribunal established by the Constitution of the Federal Republic of Nigeria 1999, as amended.

16. This Bill maybe cited as the Access to Public Officers' Asset Declarations Bill, 2017.[15]

This Bill gives effect to the right to access declarations of assets of public officers as contemplated by Paragraph 3(c) of Part 1 to the Third Schedule of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and for matters incidental thereto.[16]

[15] LawNigeria.com. Code of Conduct Bureau and Tribunal Act.
[16] Ibid