

## **Declaration of Assets by Public Officers: When Breach of Duty to Declare Assets is a Technical Offence in Nigeria**

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### **ABSTRACT**

The Code of Conduct Bureau and Tribunal Act 1991 established the Code of Conduct Bureau and the Code of Conduct Tribunal, primarily for the purpose of tracking assets owned by public officers as a mechanism against corrupt enrichment. Section 15 of the Act mandates public officers to declare their assets at various times in the course of employment. Though the Act criminalises failure to declare assets, the proviso to section 3 thereof however restrains the Bureau from referring cases of non-compliance to the Tribunal if a public officer admits his breach in writing. This makes such infraction a mere technical offence for which no blame can be ascribed to an 'offender' who admits his breach. Therefore, initiating criminal proceedings where the law absolves public officers from liability seems to violate the object of the law. It also undermines the right not to be tried for offences that are unknown to law. To give effect to the object of the Act, this paper proposes that the proper order the Tribunal should make, where cases covered by the proviso to section 3 of the Act are referred to it, is to dismiss the action *in limine* or strike out same for lack of jurisdiction.

**Keywords:** Assets, Corruption, Declaration, Public-officers, Technical-offence

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## **Introduction**

The Code of Conduct Bureau (the Bureau) and Code of Conduct Tribunal (the Tribunal) were established to enhance the integrity of public officers. It is also to ensure that public officers maintain a high standard of morality and accountability in the conduct of government business.<sup>2</sup> This is to ensure that the personal interests of public officers do not interfere with the performance of their official duties.<sup>3</sup> Whereas section 1 of the Code of Conduct Bureau and Tribunal (CCBT) Act 1991<sup>4</sup> established the Bureau to carry out the day to day administrative functions of the agency, the Tribunal, established by section 20 of the CCBT Act,<sup>5</sup> is like a regular court of law that is responsible for trying public officers for infractions committed against the Code of Conduct for public officers, where such breaches are referred to the Tribunal by the Bureau in deserving cases.<sup>6</sup> In view of the objectives of the CCBT Act, it is believed that public officers are less likely to abuse their offices if they know that their accumulation of wealth is being monitored just as their assets are scrutinised from time to time.

As a cardinal measure for meeting the goals of the Code of Conduct for public officers, the Act obliges every public officer<sup>7</sup> to submit to the Code of Conduct Bureau, a written declaration of all his properties, assets and liabilities, and those of his spouse(s) or unmarried children under the age of twenty-one years; where the spouse or children are not public officers. This is to be done immediately after taking office, at the end of every four years, at the end of his term in office as public officer, and whenever the Bureau requests public officers to declare their assets.<sup>8</sup>

Besides the declaration of assets, other responsibilities of a public officer under the Code of Conduct are to ensure that he does not put himself in a position where his personal interests will conflict with his duties as a public officer;<sup>9</sup> to ensure that he is not paid emoluments of two different public offices at the same time;<sup>10</sup> and he must not

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<sup>2</sup> Code of Conduct Bureau and Tribunal Act 1991, s 2 (CCBT Act).

<sup>3</sup> CCBT Act, s 5.

<sup>4</sup> Cap C15 LFN 2004. Also see the Constitution of the Federal Republic of Nigeria 1999 (as amended), s 153 (1999 Constitution).

<sup>5</sup> 1999 Constitution, para 15, part I of the fifth schedule.

<sup>6</sup> CCBT Act, s 3.

<sup>7</sup> 'Public officer' means a person holding any of the offices listed in the 1999 Constitution, part II of the fifth schedule.

<sup>8</sup> CCBT Act, s 15. By para 11(1), part I of the fifth schedule of the 1999 Constitution, public officers are not obliged to submit a written declaration of their spouses' properties, assets and liabilities. Also, the Constitution limits the age of unmarried children for who a public officer is obliged to submit a written declaration of their assets to children under the age of eighteen years.

<sup>9</sup> CCBT Act, s 5.

<sup>10</sup> CCBT Act, s 6(a).

ask for, or accept, any property or benefit of any kind as gift for himself or any other person on account of anything done or omitted to be done in the course of discharging his duties as a public officer.<sup>11</sup> A public officer who holds office as head of any public corporations must not accept loan or benefit from other persons or institutions apart from government, its agencies or other financial institutions recognised by law;<sup>12</sup> he must not accept any inducement or bribe as a reason for performing or refusing to perform his official functions;<sup>13</sup> he must not operate a foreign account if he is in the category of public officers listed in paragraph 3 of the Fifth Schedule to the Constitution;<sup>14</sup> and he must not engage in private businesses while being employed as a public officer.<sup>15</sup>

The language of the Act generally shows that failure by a public officer to declare his assets at the times stipulated by law is a criminal offence. However, the proviso to section 3 of the CCBT Act exempts a public officer who fails to declare his assets from trial where the public officer admits his non-compliance in writing when the breach is brought to his knowledge. This proviso appears to qualify the nature of breach envisage therein by making it a mere technical offence for which no public officer should be tried or punished. This paper appraises the law regulating declaration of assets by public officers in Nigeria. This is against the backdrop of the trial of public officers like Onnoghen, CJN (as he then was) who was arraigned and tried by the Code of Conduct Tribunal<sup>16</sup> for failure to declare some of his assets, even when he admitted his non-compliance in writing. He was subsequently suspended as the Chief Justice of Nigeria before his conviction by the Tribunal. This appraisal is with a view to highlight the legal implications of the proviso to section 3 of the Act. To achieve this goal, the paper considers the import of technical offences and the right of public officers not to be tried for offences that are not defined by law. It examines legislative provisions governing declaration of assets by public officers in Nigeria, and rationalises the object of the

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<sup>11</sup> CCBT Act, s 10.

<sup>12</sup> CCBT Act, s 11.

<sup>13</sup> CCBT Act, s 12.

<sup>14</sup> CCBT Act, s 7.

<sup>15</sup> CCBT Act, s 6(a) and (b); *Okoya v Santilli* [1994] 4 NWLR (pt 338) 256, 289. The CCBT Act, s 6(b) however permits public officers to engage in farming. Also, the Supreme Court has affirmed in *Nwankwo v Nwankwo* [1995] 5 NWLR (pt 394) 153, 166 that the 1999 Constitution, para 2(b) of part I of the fifth schedule, as worded and enacted, cannot by any stretch of imagination be said to have intended to prevent any public officer from acquiring interest in private businesses like partnership. What is prohibited by para 2(b) is a situation where public officers 'engage in the management or running of any private business, profession or trade'.

<sup>16</sup> Trial proceedings of Onnoghen commenced on 14 January 2019, while he was formally arraigned before the Tribunal on 15 February 2019. He tendered his resignation letter on 4 April 2019. See K Olasanmi 'Nigeria: Onnoghen Arraigned, Granted Bail' *Leadership Newspaper* (Nigeria, 16 February 2019).

proviso to section 3 of the CCBT Act. Besides proffering relevant suggestions towards ensuring that assets declaration regime in Nigeria is enhanced in the interest of justice, the paper concludes by upholding the view that non-compliance with the provisions of the extant CCBT Act on declaration of assets remains a technical offence, provided that the act of non-compliance occurs in the manner provided for in section 3 of the Act. In view of the language of the Act, such offences should not attract grave moral obloquy or criminal sanction in situations where the public officer in question admits his breach in writing when invited by the Bureau to explain the lapses observed in his assets declaration form.

### **Import of Technical Offences and the Right not to be tried for an Offence that is not defined by Law**

Section 2 of the Criminal Code Act 1916<sup>17</sup> defines 'offence' as an act or omission which renders the person doing the act or making the omission liable to punishment under the Criminal Code or under any applicable Act or Law in Nigeria.<sup>18</sup> It can be inferred from the definition of 'offence' in the Criminal Code, which has similar import with section 36(12) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), that a person cannot be punished for doing or omitting to do an act unless that act or omission constitutes an offence under a law that is in force when the act or omission occurred. A 'technical offence' has equally been defined as an act or omission which is prohibited by law, but for which no blame can be attached to the person who committed the offence.<sup>19</sup> In other words, it is a harmless misconduct or mistake of fact or of law that may be excused because it is considered to be negligible or unintentional; particularly where it is evident that the offender did not intend to breach the law by such mistake.<sup>20</sup> Relating the above postulation on 'technical offence' to the statutory requirement on declaration of assets in Nigeria, Professor Ben Nwabueze opined that failure by a public officer to declare some of his assets is a 'misconduct' that is, in its nature, only a 'technical offence' that does not warrant prosecution at the Tribunal.<sup>21</sup> The written voluntary admission of breach by a public officer, when the Bureau draws his attention to the breach, is evident that the public officer who failed to declare some of his assets, in the first place, never intended to breach the law requiring him to declare all his assets.

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<sup>17</sup> Cap C38 LFN 2004.

<sup>18</sup> Alabo Eni Eja, *Criminal Law and Sexual Offences in Nigeria - with Criminal Code Act* (Princeton & Associates Publishing Co. Ltd 2016) 21.

<sup>19</sup> Collins English Dictionary <<https://www.collinsdictionary.com/dictionary/english/technical-offence>> accessed 1 January 2021.

<sup>20</sup> Black's Law Dictionary (10th edn 2014).

<sup>21</sup> Clifford Ndujihe, 'Assets Declaration Charge: Nwabueze Backs Onnoghen' *Vanguard Newspaper* (Nigeria, 19 January 2019).

According to Nwabueze, the principle is logical in that the public officer's misconduct in the circumstance does not attract grave societal opprobrium or moral obloquy like fraud, stealing, or other cases of corrupt practices truly so-called.<sup>22</sup>

To subject a public officer to trial in situations where the law expressly exempts him from trial, seems to be tantamount to punishing an individual for an offence that is unknown to law. This is at variance with provisions of domestic laws and international bill of human rights.<sup>23</sup> In this regard, section 36(12) of the 1999 Constitution provides:

Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law; and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.

Taking into consideration the universality of human rights, the Universal Declaration of Human Rights (UDHR) 1948, upon which internationally recognised rights are founded, also provides in Article 11(2) as follows: 'No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed'. Similarly, Article 7(2) of the African Charter on Human and Peoples' Rights 1981 provides that '[n]o one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed'.

The African Charter has full legal force in Nigeria since it has been domesticated by the National Assembly in line with the constitutional requirement on implementation of treaties as enshrined in section 12(1) of the 1999 Constitution.<sup>24</sup> The legal implication of the provisions referred to in the Constitution and international instruments, as they relate to the significance of the proviso to section 3 of the CCBT Act, is that, it is rather unfair and unlawful to expose a public officer to the rigours of criminal trial in the situation envisaged by the proviso to section 3 of the Act since, as argued under the following section, no offence would have been committed under the CCBT Act if the public officer admits his non-compliance in writing. Therefore, in line with Article 30 of

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<sup>22</sup> *Ibid.*

<sup>23</sup> Human rights, which enhance human civilization, are assumption of principles of natural rights. They denote all rights that are inherent in nature and without which people cannot live as human beings.

<sup>24</sup> The African Charter was enacted as 'African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1983, Cap A9 LFN 2004'.

the UDHR,<sup>25</sup> it is unlawful and unjustifiable to take away the constitutional right not to be tried for an offence that is not recognised by law, from any public officer who is entitled to equal protection of the law at all times.<sup>26</sup>

### **The Rules Governing Declaration of Assets by Public Officers in Nigeria**

Section 15 of the CCBT Act which imposes a duty to declare assets at specified intervals on public officers provides as follows:

- (1) Every public officer shall, within fifteen months after the coming into force of this Act or immediately after taking office and thereafter-
  - (a) At the end of every four years;
  - (b) At the end of his term of office; and
  - (c) In the case of a serving officer, within thirty days of the receipt of the form from the Bureau or at such other intervals as the Bureau may specify,

Submit to the Bureau a written declaration in the Form prescribed in the First Schedule to this Act or, in such form as the Bureau may, from time to time, specify, of all his properties, assets and liabilities and those of his spouse or unmarried children under the age of twenty-one years.

- (2) Any statement in any declaration that is found to be false by any authority or person authorized in that behalf to verify it shall be deemed to be a breach of this Act.
- (3) Any property or assets acquired by a public officer after any declaration required by subsection (1) of this section and which is not fairly attributable to income, gift or loan approved by this Act, shall be deemed to have been acquired in breach of this Act unless the contrary is proved.

In consonance with the need to ensure proper declaration of assets by public officers, section 3 of the CCBT Act requires the Bureau to verify assets declaration forms submitted by public officers, receive complaints of non-compliance with provisions of the Act on declaration of assets from interested members of the public, and refer deserving cases of breach to the Tribunal for trial. It provides:

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<sup>25</sup> Art 30 provides: 'Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein'.

<sup>26</sup> Art 7 UNDHR.

The functions of the Bureau shall be to –

- (a) receive assets declarations by public officers in accordance with the provisions of this Act;
- (b) examine the assets declarations and ensure that they comply with the requirements of this Act and of any law for the time being in force;
- (c) make and retain custody of such assets declarations; and
- (d) receive complaints about non-compliance with or breach of this Act and where the Bureau considers it necessary to do so, refer such complaints to the Code of Conduct Tribunal established by section 20 of this Act in accordance with the provisions of sections 20 to 25 of this Act:

*Provided that where the person concerned makes a written admission of such breach or non-compliance, no reference to the Tribunal shall be necessary.*<sup>27</sup>

Though the Constitutional provision in paragraph 3 of Part I of the Third Schedule, which is *in pari materia* with the provision in section 3 of the Act, does not contain a proviso, it clearly provides in paragraph 3(d) and (e) that in ensuring compliance with provisions of the Code of Conduct or any other law, the Bureau can only refer cases of breach to the Tribunal, 'where it is appropriate to do so'. Although the Constitution is not specific on 'when it is appropriate' for the Bureau to refer a case of breach to the Tribunal, what amounts to 'appropriate time' in this regard is evidently spelt out by the National Assembly in the above proviso to section 3 of the Act.

A 'proviso' has been defined in legal context as a provision in a legislation that provides a condition, exception, addition, limitation, or stipulation upon whose compliance a legal validity or application may depend.<sup>28</sup> This is the case with the proviso to section 3 of the Act which limits the general rule upon which the provision it relates to must depend. It is worthy of note that the proviso in section 3 of the Act is the only proviso in the CCBT Act which gives the Bureau power to refer matters to the Tribunal. Therefore, such provision cannot be taken lightly.

Breach of Code of Conduct by a public officer for failing to declare all his assets may be discovered by the Bureau, either in the course of verifying the assets declaration forms submitted to it by public officers under sections 3(b) and 15(2) of the Act, or following

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<sup>27</sup> (Emphasis added).

<sup>28</sup> Black's Law Dictionary (10th edn 2014).

the receipt of complaints or petitions intimating the Bureau that a public officer has failed to declare all or some of his assets under sections 3(d) and 16 of the Act. However, the proviso to section 3 of the Act is an exception to the general powers of the Bureau to refer cases of breach to the Tribunal under section 3(d) of the Act. It is only after the breach is brought to the public officer's knowledge and he fails to admit the defect in writing that the offence of failure to declare assets becomes ripe for prosecution. Before that time, the offence is at best inchoate and it is needless for the Bureau to refer the matter to the Tribunal.

Again, the use of the word 'shall' in the proviso to section 3 has definite legal implications. It imposes a duty on the Bureau in respect of the conditions that must exist before a case of breach can be referred to the Tribunal. The court has held in a long line of cases that the word 'shall' is a mandatory word of command that must be complied with.<sup>29</sup> In *Adams v Umar*<sup>30</sup> the court stated that;

In its ordinary meaning, the word 'shall' is a word of command which must be given an obligatory meaning as denoting compulsion. It has the invaluable consequence of excluding the thought of discretion to impose a duty which must be enforced. Therefore, if a statute provides that a thing 'shall' be done, the expected and proper meaning is that a peremptory and absolute mandate is enjoined.<sup>31</sup>

In another case, the court equally stated that where the word 'shall' is used in a mandatory sense in a statute, as in the proviso to section 3 of the CCBT Act, it requires strict obedience and fulfillment. Failure to do exactly what is required by the law could be fatal to the object of the law.<sup>32</sup> Therefore, it is not within the purview of the discretion of the Bureau to determine whether or not to refer a case of breach to the Tribunal, once the public officer concerned, as an imperfect mortal being, admits his error in writing. The only option open to the Bureau is to accept the written explanation of the public officer and cause him to properly declare his assets. The Bureau will thus be travelling in the opposite direction to its enabling law if it goes ahead to refer a matter to the Tribunal in defiance of what is envisaged in the proviso to section 3 of the Act. Also, since cases that are instituted at the Tribunal must originate from the Bureau, through the Office of the Attorney-General of the Federation,<sup>33</sup> the Tribunal lacks the

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<sup>29</sup> *Nganjiwa v FRN* [2018] 4 NWLR (pt 1609) 301, 347.

<sup>30</sup> [2009] 5 NWLR (pt 1133) 41.

<sup>31</sup> *ibid* 109.

<sup>32</sup> *Umeakaama v Umeakaama* [2009] 3 NWLR (pt 1129) 598, 611- 612.

<sup>33</sup> CCBT Act, s 24(2); *Saraki v FRN* (2016) 262 LRCN 116.



power to *suo motu* initiate actions against any perceived offender under the Act. If the Tribunal proceeds to hear a matter when the conditions precedent for initiating a proceeding, as provided by the applicable law, are not met, it simply means that the powers of the Tribunal have been invoked prematurely without jurisdiction and the Tribunal's proceedings will ultimately amount to absolute nullity.<sup>34</sup>

The position of the law on acts not done within the confines of the law is clear. In *Apapa v INEC*,<sup>35</sup> the court held that 'It is trite law when a statute provides a procedure for performing a duty that procedure alone must be adopted otherwise the act will be nullity'. In the enforcement of rules on declaration of assets, it is in the interest of justice to follow due process which has been defined to mean the conduct of legal proceedings in accordance with laid down rules and principles for the protection and enforcement of the right of an individual.<sup>36</sup> A court or Tribunal is only competent to exercise its jurisdiction if the action before it is initiated by due process of law and the condition precedent to the exercise of jurisdiction is fulfilled.<sup>37</sup> In *Saraki v FRN*<sup>38</sup> and a host of other cases,<sup>39</sup> the court held that failure to satisfy any of the conditions required for exercise of jurisdiction is fatal to the adjudication or outcome of a case, because jurisdiction is the lifeline of every trial.

It is beyond peradventure that the Code of Conduct Tribunal has power to impose punishment on a public officer who is duly found to be guilty of any provision of the Act.<sup>40</sup> In fact, no other court is vested with jurisdiction to hear cases arising from breach of Code of Conduct for public officers in Nigeria.<sup>41</sup> However, on the nature of punishment which the Tribunal may impose on public officers, section 23 of the CCBT Act provides:

(1) Where the Tribunal finds a public officer guilty of contravention of any of the provisions of this Act, it shall impose upon that officer any of the punishments specified under sub-paragraph (2) of this section.

(2) The punishment which the Tribunal may impose shall include any of the following -

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<sup>34</sup> *Nganjawa v FRN* [2018] 4 NWLR (pt 1609) 301, 350.

<sup>35</sup> [2012] 22 WRN 140, 160.

<sup>36</sup> *Nganjawa v FRN* [2018] 4 NWLR (pt 1609) 301, 355.

<sup>37</sup> *NSL Ltd v AG Lagos State* [2009] 11 NWLR (pt 1152) 304, 312.

<sup>38</sup> (2016) 262 LRCN 116.

<sup>39</sup> *NSL Ltd v AG Lagos State* [2009] 11 NWLR (pt 1152) 304, 312; *Wabara v Nnadede* [2009] 16 NWLR (pt 1166) 204, 221.

<sup>40</sup> CCBT Act, s 23(1).

<sup>41</sup> *Ahmed v Ahmed* [2013] 15 NWLR (pt 1377) 274, 329.

- (a) vacation of office or any elective or nominated office, as the case may be;
- (b) disqualification from holding any public office (whether elective or not) for a period not exceeding ten years; and
- (c) seizure and forfeiture to the State of any property acquired in abuse or corruption of office.

Nonetheless, section 23(1) of the Act makes it clear that the Tribunal may only impose any of the penalties prescribed by the Act *after a public officer is found guilty of the charge brought against him*.<sup>42</sup> According to Aniagolu, JSC in *Olaniyan v University of Lagos*,<sup>43</sup>

To remove a public servant in flagrant contravention of the rules governing him, whether under contract or under provisions of a Statute or Regulations made thereunder, is to act capriciously and to destabilize the security of tenure of the public servant, frustrate his hopes and aspirations, and thereby act in a manner inimical to order, good government and the wellbeing of society.<sup>44</sup>

It therefore means that a public officer does not lose his status as a public officer simply because he is alleged to have breached the Code of Conduct. It is after the conclusion of trial that the accused may cease to be a public officer if the verdict of the Tribunal is the option prescribed in section 23(2)(a) of the Act.<sup>45</sup> Therefore, no public officer can be deprived of his rights, properties, or freedom until the Tribunal finds him guilty of breaching provisions of the Code.<sup>46</sup> Arguing in similar vein, Falana opined that the Tribunal is not vested with powers to order the executive arm of government or any other authority to suspend public officers from their offices before the end of the trial<sup>47</sup> because the Tribunal lacks the powers to impose punishments that are not prescribed in the Constitution or the CCBT Act.<sup>48</sup> Also, based on the entrenched principle of natural

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<sup>42</sup> (Emphasis added).

<sup>43</sup> (1985) 2 NWLR (pt 9) 599.

<sup>44</sup> *ibid* 655.

<sup>45</sup> See the 1999 Constitution, 36(5).

<sup>46</sup> Henry Ojelu, 'Onnoghen: Falana Writes AGF, Proffers Way to End Crisis' *Vanguard Newspaper* (Nigeria, 4 February 2019) 11.

<sup>47</sup> President Muhammadu Buhari suspended Onnoghen, CJN on 25 January 2019 following and *ex parte* order made by the Code of Conduct Tribunal.

<sup>48</sup> CCBT Act, para 10 of the third schedule; Jiti Ogunye 'Suspension of CJN Onnoghen: An Illegal Executive Coup against a Recalcitrant Chief Judicial Officer' *Premium Times* (Nigeria, 26 January 2019).

justice, the Tribunal cannot decide a case brought against a public officer without giving the public officer fair hearing. The Supreme Court's pronouncement in *Okoya v Santill*<sup>49</sup> gives credence to this proposition. According to Mohammed, JSC,

It is quite clear therefore that until the Code of Conduct Tribunal finds a public officer guilty of contravention of the Code of Conduct for public officers no public officer shall be deprived of his rights, properties or freedom and the Tribunal cannot decide his case without hearing him. It should be borne in mind that taking unilateral decisions, without following the proper procedure laid down by the Constitution would result in depriving a citizen of his status or property. It is not for any person other than the Code to declare that a particular act amounts to an infringement of the Code of Conduct. Such declaration could only be made by the body empowered to do so by the Constitution.<sup>50</sup>

Though the sanction which the Tribunal can impose is limited by statute, the court has rightly held that the punishment open to the Tribunal is not exhaustive at the moment. This is because the effect of paragraph 18(1) of the Fifth Schedule to the Constitution is that the National Assembly may prescribe 'such other punishment', other than the ones currently recommended in the Code, to be imposed by the Tribunal.<sup>51</sup> Therefore, the Tribunal can impose punishments as specified in the Code of Conduct for public officers, or other punishment as may be prescribed by the National Assembly.<sup>52</sup> At the moment, the National Assembly, to the knowledge of this writer, has not prescribed other punishments for breach of the Code of Conduct, and none of the punishments provided in the Constitution or the CCBT Act empowers the Tribunal to order the executive arm of government or any other authority to suspend a public officer while trial is pending.

However, the view that the proviso to section 3 of the Act exempts a public officer who admits his breach in writing from trial, for failure to declare his assets, does not preclude such officer from prosecution for any other offence arising from what he admitted in writing when the Bureau draws his attention to the lapses observed in his assets declaration form.<sup>53</sup> Unlike other forms of infringements of the Code of Conduct, where a public officer admits in writing that some of his assets were omitted from the

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<sup>49</sup> [1994] 4 NWLR (pt 338) 256.

<sup>50</sup> *ibid* 323 (Mohammed, JSC).

<sup>51</sup> CCBT Act, s 20(5).

<sup>52</sup> *Omoworare v Omisore* [2010] 3 NWLR (pt 1180) 58, 111.

<sup>53</sup> CCBT Act, s 23(6).

declaration made earlier, and goes ahead to include in his written admission, the assets that were inadvertently left out in the initial declaration, it cures the defect and satisfies the object of the Act in that regard. In all other cases of breach of provisions of the Code of Conduct, admission of the breach remains an infringement of the law. Therefore, if there is a *prima facie* evidence that the assets subsequently admitted by the public officer amounts to a criminal offence under any other provision of the CCBT Act, or under any other law in Nigeria, the Bureau, as an anti-corruption agency, may refer the matter to the Tribunal, if it is an infraction of the Code,<sup>54</sup> or refer the case to the appropriate anti-corruption agency for further investigation and possible trial, where it is an infraction outside the Code of Conduct.<sup>55</sup> For instance, it was alleged that Onnoghen, CJN failed to declare a domiciliary (US Dollar) bank account.<sup>56</sup> If after verification by the Bureau it is found that the bank account(s) which Onnoghen later admitted in writing, contains proceeds of corruption, or that the money deposited therein were not justified by his legitimate source of income, or where the public officer in question belongs to the class of public officers that are prohibited from operating a foreign bank account under section 7 of the Act and the asset admitted in writing is a foreign bank account, the Bureau may refer the public officer to the Tribunal for offences that come under the CCBT Act; or refer the matter to other appropriate agencies for further investigation and possible trial for charges that are alien to the CCBT Act but provided for by any other law in Nigeria. If the affected public officer enjoys immunity under the Constitution, the trial may commence when his period of immunity expires.<sup>57</sup>

The following cases decided by the Code of Conduct Tribunal give credence to the view that the object of the Code of Conduct is not to punish a sincere public officer who acknowledges his non-compliance with provisions of the Act on declaration of assets by willingly admitting his error and providing details of his assets that were earlier excluded in the declaration in compliance with provisions of the law on assets declaration. In *FRN v Isioma*,<sup>58</sup> the accused, who was charged for failing to complete and return his assets

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<sup>54</sup> For instance, if what the public officer admitted in writing reveals that he operated a bank account in any country outside Nigeria, contrary to the 1999 Constitution, para 3 of part I of the third schedule, he may be referred to the Tribunal for trial for operating a foreign bank account if he belongs to the category of public officers listed in para 3.

<sup>55</sup> CCBT Act, s 23(33)(6). Part of the functions of the Economic and Financial Crimes Commission (EFCC) as prescribed by the EFCC Act 2004, s 5(1)(j), is to 'collaborate with government bodies both within and outside Nigeria carrying on functions that are wholly or partly analogous with those of the Commission'. The EFCC Act, s 6(2)(f) also gives powers to the EFCC to enforce provisions of 'any other law or regulations relating to economic and financial crime'.

<sup>56</sup> Dare Babarinsa, 'The Deity we now Worship' *The Guardian* (Nigeria, 7 February 2019) 9.

<sup>57</sup> The President, Vice President, Governors, and Deputy Governors in Nigeria enjoy immunity while they are in office. See the 1999 Constitution, s 308.

<sup>58</sup> Suit No CCT/TR/13/08 (CCT).

declaration form to the Bureau, pleaded guilty when the charge was read to him. The accused pleaded with the Tribunal to temper justice with mercy, stating that he was willing to comply with the law and that he had never been in breach of the law before. In consideration of his *allocutus* the Tribunal discharged the accused after cautioning him not to breach the Code again. The Tribunal came to the same conclusion in *FRN v Saidu*.<sup>59</sup>

As observed in the above cases, the accused persons were not convicted, neither were they sentenced, even though they honestly admitted to have breached the provision of the law on declaration of assets. It is believed that the Bureau may have referred the above cases to the Tribunal because the affected public officers failed to admit their non-compliance in writing when the breach was brought to their attention. Otherwise, cases where a defaulting public officer admitted his non-compliance with the rule on declaration of assets ought not to have been referred to the Tribunal in view of the proviso to section 3 of the Act. This is in order not to waste the limited time of the Tribunal on trivial breaches that, by the standard of the applicable law, only amount to technical offence. The decisions of the Tribunal in the above cases are virtually on all fours with the following cases where the Tribunal found that the accused public officers had no case to answer because they possessed evidence of compliance with provisions of the Act on declaration of assets. In *FRN v Lily*,<sup>60</sup> the second accused person presented his original acknowledgement slip (issued by the Bureau to public officers as evidence of filling and returning Form CCB 1 in compliance with the CCBT Act on declaration of assets) and he was acquitted by the Tribunal on that basis. Similarly, in *FRN v Danmallam*,<sup>61</sup> the accused presented his original acknowledgement slip in his defence to the charge and the Tribunal acquitted the accused person. The perceived reasons why makers of the CCBT Act included the proviso to section 3 in the Act as an exception to the general rule, which proscribes failure to declare assets by public officers, are appraised in the following section to buttress the points made above.

### **Rationalising the Proviso to Section 3 of the CCBT Act**

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<sup>59</sup> Suit No CCT/TR/16/08 (CCT).

<sup>60</sup> Suit No CCT/GB/01/10 (CCT).

<sup>61</sup> Suit No CCT/GB/05/10 (CCT).

It is an elementary principle of law that a person who breaches provisions of any law cannot escape liability by pleading ignorance of the law.<sup>62</sup> However, the application of this principle is necessarily limited by inevitable exceptions. In relation to the rules on declaration of assets, it seems that ignorance may exculpate an offender in the circumstance envisaged in section 3 of the CCBT Act since admission of omitted assets by a public officer does not adversely affect the object of the law; rather, it fulfills the requirement of the law. As a special form of legislation, admission of breach of the provision in section 15 of the Act by a public officer is not a 'confessional statement', neither does it amount to proof of guilt of the crime of failure to declare assets. Flowing from this reasoning, it has rightly been argued that under the CCBT Act, admission in writing by a public officer that he actually failed to declare his assets, or part thereof, is in fact a defence and not proof of guilt.<sup>63</sup> Meanwhile, the nature of defence is not the type that is available to an accused who is facing a criminal charge before a court of law. It is more or less a civil form of defence because at the time the public officer admits his breach in writing to the Bureau, no criminal action would have been instituted against him.

The proviso to section 3 of the Act brings to bear the postulation that law, as a set of rules aimed at regulating human conduct, is usually but not always backed by sanctions.<sup>64</sup> By admitting his breach in writing, it is deemed by the Act that the act of non-compliance was an oversight and that the public officer did not intend to breach provisions of the Code which require him to declare all his assets. This provision no doubt enhances the standard of assets declaration regime in Nigeria. Though there is no doubt that some individuals may be dubious, the truth is that as mere mortals, public officers are fallible. Therefore, they can make mistakes or genuinely forget to include all their assets when making their statutory declarations of assets. As rightly argued by Jakpa, the aim of the CCBT Act is not to punish public officers. Rather, the object of the Act, in ensuring that public officers disclose their assets, is to encourage sincerity. That is why the Act 'pardons' late disclosure that is built on truth.<sup>65</sup> It is believed that this may

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<sup>62</sup> *George v FRN* (2011) 10 NWLR (pt 1254) 1, 98.

<sup>63</sup> Unini Chioma, 'Real Reasons Why the Code of Conduct Tribunal Lacks Jurisdiction to Try the CJN in the Present Circumstance by Emmanuel Jakpa' <[www.thenigerialawyer.com](http://www.thenigerialawyer.com)> accessed 2 February 2019.

<sup>64</sup> Ilias B Lawal 'Public Declaration of Assets in Nigeria: Conflict or Synergy between Law and Morality?' (2009) 1 AHRJ 225.

<sup>65</sup> Though the common law, as applicable in Nigeria, puts justice before truth, Aniagolu, JSC has rightly stated in *Onafowokan v State* (1987) 2 NSCC 1101, 1107 that 'the laws of all civilised nations maintain that it is better that the guilty persons should go scot-free than that one innocent person should be found guilty'. A party is successful at the end of trial if he is able to present evidence to support his case in line with rules laid down to regulate the legal process, not necessarily because he has presented the truth of the matter. The system is akin to the old story of

have influenced the law makers in their decision to include the proviso in section 3 of the Act. Jakpa further argued that the rationale for the proviso is to prevent a situation where public officers are compelled to tell lies about the true status of their assets in order to evade the legal consequences of any breach, no matter how innocent the omission may have been. This will encourage public officers to break the law, thereby defeating the object and essence of enacting the CCBT Act.<sup>66</sup>

If section 3 of the Act mandates the Bureau, as part of its statutory functions, to examine assets declared by public officers and to ensure that the assets declaration complies with requirements of the Act, then the Bureau should envisage errors in some assets declaration forms submitted by public officers. Where such errors are found, justice and fairness, which are the bedrock of any civilised and descent society, demand that public officers are given the opportunity to cure any defect noticed in their assets declaration forms. This is a proper way to serve the ends of justice. If there is guarantee that the law will pardon their shortcomings, public officers may readily come forward to admit their breach in writing, and proceed to declare their outstanding assets to correct the error in the previous declaration. On the contrary, if public officers are threatened with prosecution for voluntarily accepting mistakes in their assets declaration forms, the effect is that many will be dissuaded from telling the truth. They may either deny ownership of the omitted assets, or, as suggested elsewhere, use fraudulent means to retrieve the assets declaration forms they earlier submitted from proper custody and make fresh declaration retrospectively.<sup>67</sup> If such practice is allowed to foster, it will embolden corruption and defeat the noble object of the Act.

### **How to Improve Assets Declaration Regime in Nigeria**

To further the object of the Code of Conduct for public officers in relation to assets declaration in Nigeria, Sam Sanga, a former Chairman of Code of Conduct Bureau, has rightly suggested that declaration of assets by public officers should not be restricted to filling assets declaration forms with the Bureau. According to him, assets declaration would be more effective as a mechanism for determining whether public officers are living above their earnings if the declarations of assets made by public officers are disclosed to members of the public for scrutiny. If this is done, in addition to curbing corruption among public officers, assets declaration will equally serve as a tool for

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the Irish prisoner who, when asked whether he pleaded 'guilty' or 'not guilty' to the charge brought against him, said in reply – 'and how should I be knowing whether I am guilty until I have heard the evidence [against me]' - V Kilmuir 'The Migration of the Common Law: Introduction' (1960) 76 LQR 41, 42 – 43.

<sup>66</sup> Chioma (n 62).

<sup>67</sup> *ibid.*

increasing public confidence in government and people in position of authority who are able to demonstrate integrity and accountability by declaring their assets publicly. He argued that if members of the public were not allowed to access assets declarations made by public officers, it will defeat the essence of the Freedom of Information Act which members of the public are supposed to leverage on as stakeholders in the fight against corruption. Sanga therefore called on the National Assembly to enact a law that will give legal backing to the disclosure of assets declared by public officers.<sup>68</sup> Similarly, Obla, a legal practitioner and Senior Advocate of Nigeria, has expressed the view that the present legal framework in the country appears to favour the preservation of the privacy and secrecy of assets declaration details. Obla noted that citizens' access to information about the assets held by public officers is significant in the nation's fight against corruption, as it is indispensable to the promotion of probity, transparency and accountability. He equally called for the passage of a law that will grant average tax-paying citizens the right to access information on the assets declared by public officers.<sup>69</sup>

So long as the amount of information made available to the public excludes confidential information of public officers, in order not to threaten the safety of public officers, this writer supports the views expressed by Sanga and Obla on the need to make assets declared by public officers available to members of the public. This, it is believed, will largely enhance the value of assets declaration, increase public confidence in the anti-corruption drive of government, and ultimately stimulate local and foreign investments. Failure to make assets declared by public officers open to the public may be detrimental to society in that some public officers may abuse the leeway created by the existing law to make false declarations so as to shield assets acquired in abuse of public office.<sup>70</sup> However, Lawal has argued that demanding publication of assets declared by public officers at a time when there is no law mandating public officers to declare their assets publicly, amounts to violation of the rights of public officers.<sup>71</sup> It is for this and other opinions canvassed in this paper that legislation in this regard becomes necessary, bearing in mind that societal interest trumps individual interest where both interests

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<sup>68</sup> Femi Ogunshola, 'Asset Declaration: A Paradigm Shift in the Fight against Corruption?' *Vanguard Newspaper* (Nigeria, 2 July 2015) <<https://www.vanguardngr.com/2015/07/asset-declaration-a-paradigm-shift-in-the-fight-against-corruption/>> accessed 1 January 2021.

<sup>69</sup> *ibid.*

<sup>70</sup> Lawal (n 63) 226.

<sup>71</sup> Lawal (n 63) 242.



are in conflict.<sup>72</sup> It is believed that any law enacted by the National Assembly that allows public access to relevant parts of assets declared by public officers will not violate public officers' right to privacy as provided in section 37 of the Constitution. This is because the Constitution has already empowered the National Assembly to enact a law to regulate the disclosure of assets declared by public officers. Towards this end, paragraph 3(c) of Part I of the Third Schedule to the Constitution provides that: 'The Bureau shall have power to retain custody of such declarations and make them available for inspection by any citizen of Nigeria on such terms and conditions as the National Assembly may prescribe'. The same Constitution also confirms that citizens' right to privacy is not an absolute right, by restricting the right of citizens to privacy in section 45(1) of the Constitution which provides as follows:

Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society

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- (a) in the interest of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedom of other persons.

From the foregoing, it is clear that any law enacted to allow publication of assets declared by public officers will be justified under section 45 of the Constitution. According to Obilade, a limitation of the right to privacy for the purpose of preserving public morality [which is the primary aim of the Code of Conduct] is significant. He added that the idea of using legislative measures as instruments of social advancement is in line with contemporary realities.<sup>73</sup> Even without any legal obligation, it is on record that former Nigerian President, Umaru Musa Yar'Adua (of blessed memory) publicly declared his assets in fulfillment of his electioneering campaign promise. Other high ranking public officers were influenced by Yar'Adua's noble gesture to equally declare their assets publicly.<sup>74</sup> The call for legislation to provide for disclosure of assets declared by public officers to the public is in consonance with the practice in some African countries like

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<sup>72</sup> In Bhutan, the Asset Declaration Rules 2017, s 47 requires copies of asset declarations made by public officers to be made available to any applicant within 5 days of the date the Commission receives the application, so long as the applicant gives cogent reason for the request.

<sup>73</sup> AO Obilade 'The Corrupt Practices and Other Related Offences Act and the Right to Privacy' in AO Obilade and others (eds) *Contemporary Issues in the Administration of Justice: Essays in Honour of Justice Atinuke Ige* (2001) 126 cited in Lawal (n 63) 242.

<sup>74</sup> Lawal (n 63) 225. Other high ranking public officers who also declared their assets publicly include the then Vice-President of Nigeria, Goodluck Jonathan; former Kogi State Governor, Ibrahim Idris; former Governor of Zamfara State, Sanni Ahmed; former Governor of Ogun State, Gbenga Daniels.

Liberia, Sao Tome and Principe, and South Africa, where publication of asset declarations made by public officers is a legal requirement.<sup>75</sup> In addition to the passage of an Act to provide for public disclosure of assets declared by public officers, there is need to urgently pass the Whistle-blowers Bill that is currently before the National Assembly in a manner that guarantees the protection of whistle-blowers who may want to blow the whistle if they know of any irregularity in the assets declared by any public officer. This will further encourage openness in government business and mitigate corruption by detecting illicit enrichment and conflicts of interests among public officers.

### **Conclusion**

From the foregoing, there is no doubt that the Code of Conduct Bureau and Tribunal Act 1991 is one of the cardinal legislations put in place to fight corruption in Nigeria, a priori, among public officers. One dependable way to actualise the object of the Act and give effect to the intendment of makers of the Act is to enforce the law on assets declaration in the way and manner prescribed by law. This is necessary because due process is a fundamental principle of the rule of law. It is true that a crime [corruption]-free society is the desire of every well-meaning individual in Nigeria. However, the pursuit of a corruption-free society should not compromise citizen's basic right to justice.<sup>76</sup> Illegality, perpetrated in defiance of due process, is incapable of creating any right in law.<sup>77</sup> Therefore, in keeping with the due process of law, definite effect must be given to the Code of Conduct for public officers, particularly as it relates to declaration of assets. In doing this, the Act made it abundantly clear that it is inappropriate to refer a case of infringement to the Tribunal for trial where the public officer concerned admits his non-compliance in writing. This is in line with the true import of the proviso to section 3 of the Act.

As responsible government agencies and custodians of their enabling law, it is expected that the mandate of the Code of Conduct Bureau and Tribunal is to serve the course of justice at all times. In keeping with this obligation, the Bureau should always be determined to honour its enabling law by referring cases to the Tribunal only in deserving situations. On the other hand, where the Bureau refers cases that come under the proviso to section 3 of the Act to the Tribunal in error, it is believed that it will be tantamount to a mere academic exercise for the Tribunal to proceed with the trial. The appropriate order the Tribunal should make in such circumstance is to dismiss the action

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<sup>75</sup> U4 Anti-Corruption Resource Centre (2008) 3 <<https://www.u4.no/publication/african-experience-of-asset-declarations>> accessed 1 January 2021.

<sup>76</sup> NE Ojukwu-Ogba, AO Enabulele 'Access to Justice and Realities in Justice Administration in Nigeria' (2010-2012) 12(1) **University of Benin Law Journal** 236.

<sup>77</sup> *Bello v A.G of Oyo State* (1986) 1 SC 1, 76.

*in limine* by invoking its powers contingent on the Code of Conduct Tribunal Rules of Procedure in paragraph 2 of the Third Schedule to the CCBT Act. Paragraph 2 of the Third Schedule to the Act requires the Tribunal to preliminarily scrutinise any matter referred to it for trial and be satisfied that the accused has a case to answer before directing the trial to commence against the accused public officer. In the language of the CCBT Rules of Procedure:

Where, after the perusal of the application and the summary of evidence, affidavit or any further evidence in such forms as the Tribunal may consider necessary, the Tribunal is satisfied that any person appears to have committed an offence provided under this Act, it shall cause that person to be brought before the Tribunal on such date and at such time as it may direct.

By this provision, it also means that the Tribunal may, at the preliminary stage, refuse to slate a matter for hearing if it has no legal merit. In the alternative, where the details of the case is not clear to the Tribunal at the preliminary stage and trial commences before it becomes obvious to the Tribunal that the matter falls under the proviso to section 3 of the Act, the Tribunal may strike out the action for non-compliance with the proviso to section 3 of the Act, or for lack of jurisdiction on the part of the Tribunal to entertain the action.

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