

ASSET DECLARATION AND PUBLIC ACCESS AS INSTRUMENTS OF PUBLIC
ACCOUNTABILITY IN NIGERIA: A CRITIQUE*

Abstract

It is a common knowledge that corruption is one of the most serious problems bedevilling almost all developing countries of the world and that Nigeria is not an exception. In order to fight and avert corruption and corruption related problems, various national, international and regional anti-corruption instruments and strategies are usually adopted by different countries including Nigeria, international and regional organisations respectively. Among other anti-corruption strategies, assets declaration schemes and public access to information have been recognized both nationally, internationally and regionally by anti-corruption instruments and agencies as a vital component of transparency and a means of ensuring integrity in public offices. This work examined the legal regimes for assets declaration scheme and public access to information with a view to ascertaining they have enhanced public accountability in Nigeria. The work found that though the different legal, policy and institutional frameworks put in place to ensure accountability through assets declaration and public access to information, they have not been able to achieve the desired goals. The laws are not usually implemented, enforced or monitored. Public agencies have not been able to effectively and efficiently perform their functions as it relates to enhancing accountability. This work therefore recommends that an improved policy framework that ensures efficient and effective implementation of the legal frameworks for assets declaration and public access to information will enhance public accountability in Nigeria.

Keywords: Asset Declaration, Public Access, Public Accountability, Nigeria, Critique

1. Introduction

Ideally, government is representative and accountable; representative in the sense that its policies align with citizens' interests, and accountable in the sense that it is answerable to citizens for its conduct and responsive to their demands.¹ There is no way good governance can be discussed without introducing the ethical principle of accountability.² Accountability, argues Cameron 'is an important element of governance'.³ This point to the importance of accountability in modern democracy and the role it plays in promoting good governance. The absence of accountability in talks on democracy is like running a motor-vehicle on a flat tyre. Accountability was originally seen as part of a command-and-control relationship involving a master and his servant. Today, however, the concept is more fluid and includes a number of practices which explain, justify and open the area in question to public dialogue and scrutiny. The difference is captured by Professor Vernon Bogdanor's distinction between 'sacrificial' and 'explanatory' accountability. The former involves taking the blame for what goes wrong, and forfeiting one's job if something goes seriously wrong. The latter involves giving an account of stewardship, for instance, in the case of ministers to Parliament and to the electorate.⁴ It is a common knowledge that corruption is one of the most serious problems bedevilling almost all developing countries of the world and that Nigeria is not an exception.⁵ Thus one cannot have an incisive discussion on the concept of accountability without mentioning the issue of corruption. In order to fight and avert corruption and corruption related problems, various national, international and regional anti-corruption instruments and strategies are usually adopted by different countries, international and regional organisations respectively. Among other anti-corruption strategies, assets declaration schemes and public access to information have been recognized both nationally, internationally and regionally by anti-corruption instruments and agencies as a vital component of transparency and a means of ensuring integrity in public offices. Experts suggest that perhaps the single most important preventive tool for

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¹C Kam, 'Representation, Accountability and Electoral Systems' (2016) *Canadian Parliamentary Review/Winter*, pp17-21 at 17

²M L Koeneke & F Mangena, 'Ethics, accountability and democracy as pillars of good governance Case of South Africa' (2017) *African Journal of Public Affairs* Volume 9 number 5, pp. 68

³W Cameron, 'Public Accountability: Effectiveness, Equality and Ethics' (2004) *Australian Journal of Public Administration*, 63(4):59-67.

⁴V Bogdanor, 'Parliament and the Judiciary: The Problem of Accountability' being the text of a speech delivered to the UK Public Administration Consortium, on the 9th day of February, 2006 during the Third Sunningdale Accountability Lecture 2006.

⁵I I. Eme, *et al*, African Anti-Corruption Agencies: Challenges and Prospects, (2017) *Management Studies and Economic Systems (MSES)*, 3(4) 225-243

combating money laundering and corruption is the registering of officials' assets and income.⁶ However, it must be observed that if these declarations are not made accessible to the public, the desired goal of accountability cannot be achieved. This is based on the fact that accountability and transparency in public service are essential prerequisites in a democracy. This is based on the rule of law which is an essential foundation for independent and accountable government and which enables public officials to lead by example and enhance their credibility.⁷

2. The Concept Public Accountability as an Element of Good Governance

The concept of public accountability is an index of good governance and the hallmark of modern democratic governance.⁸ Democracy remains a paper procedure if those in power cannot be held accountable in public for their acts and omissions, for their decisions, their policies, and their expenditures.⁹ Public accountability, as an institution, therefore, is the complement of public management. Public accountability derives strong roots from democratic traditions, and the constitutional/legal framework of a given country or organisation. The rules, regulations and standard procedures are important benchmarks for guiding the actions and behaviour of public officials, given that public officials play an agent role – agents of the people. The inherent high degree of regulations in the public sector dictates that, such agents/agencies must operate as expressions of the will of the people.¹⁰ Accountability also refers to the ability of voters to select the most 'able' candidate, where ability can be interpreted as integrity, technical expertise, or other intrinsic features valued by voters at large. Nowadays, accountability comes in many shapes and sizes. It has moved beyond its bookkeeping origins and has become a symbol for good governance, both in the public and in the private sector.¹¹ The concept holds the promise of equity and justice, of learning and improvement, of transparency and democratic oversight, and of integrity and ethical appropriateness. Accountability has become an icon for good governance. Anyone reflecting on public accountability cannot disregard these strong evocative overtones. Powell argues that electoral accountability exists when; (i) there is clarity of responsibility for political outcomes, and (ii) voters can effectively sanction those responsible for those outcomes.¹² The above postulations can be found in the provisions of the Constitution relating to recall of legislators and impeachment.

One of the reasons for the introduction of the power to recall is to empower the citizens to be able to discipline erring legislators; so also is the introduction of power of impeachment to check the excesses of the executive. Furthermore, it was based on the belief that, Nigerians have an idea of the goals of nationhood and the objectives of representation. It is this idea of conception which determines the depth of their faith in popular democracy and the nature of political judgment they form on the behaviour of their elected representatives. Both are instruments of accountability just as the policy of declaration of assets and access to information. Most of the traditional mechanisms of accountability, both vertical and horizontal, are present in Nigeria. As a democracy, it has elected legislatures that have oversight functions over the Executive and an independent judiciary that can hold both the legislative and executive arms of the state accountable. It has a variety of independent authorities and commissions that perform accountability function vis-à-vis different parts of the government.

The electoral process which is the heart of heart of a representative democracy the ultimate accountability mechanism in a democratic society, has continued to improve in the present republic. The foregoing notwithstanding, the concept of accountability has continued to be elusive in Nigeria. Though there are different legal, policy and institutional frameworks put in place to ensure accountability, they have not been able to achieve the desired goals. The laws are not usually implemented, enforced or monitored. Public agencies have not been able to effectively and efficiently perform their functions as it relates to enhancing accountability. Public audits of accounts and parliamentary reviews are done, without any satisfactory follow up actions.

In view of the foregoing, the situation we have in Nigeria is one where the existence of formal mechanisms of accountability does not guarantee or even promote actual accountability. This situation has been attributed to a

⁶D Chaikin & J.C. Sharman, *Corruption and Money Laundering: A Symbiotic Relationship* (New York: Palgrave Macmillan, 2009)

⁷INTOSAI, 'INTOSAI-P-20 -Principles of Transparency and Accountability' <<https://www.issai.org/pronouncements/intosai-p-20-principles-of-transparency-and-accountability/>> accessed on 10/08/2022

⁸E Ferlie, L Lynne & C Pollitt (eds.), *The Oxford Handbook of Public Management* (Oxford: Oxford University Press 2004) p1

⁹FA Akinbuli, 'An Assessment of Accountability in the Public Sector in Nigeria' (2013) *Arabian Journal of Business and Management Review (Nigerian Chapter)* Vol. 1, No. 3, p. 1-13.

¹⁰JC Pauw, *et al*, *Managing public money* (Sandown, South Africa : Heinemann, 2002) p. 134

¹¹MJ Dubnick, 'Seeking Salvation for Accountability' (2002) paper presented at the 2002 Annual Meeting of the American Political Science Association. Boston. Pp7-9

¹²GB Powell, *Elections as instruments of Democracy: Majoritarian and proportional visions* (USA: Yale University Press, 2000) pp. 50-51

variety of factors including collusion between those who are responsible for performance and those who are charged with their oversight, well-known weaknesses in civil society institutions, and the prevalence of corruption.¹³ It is based on the foregoing that the author observes that unless there is access to information by the public it would be difficult to achieve accountability in Nigeria. The people need to be aware of the state of things and demand for enforcement and implementation to make these mechanisms work. The state was still the major provider of basic services to the people, regulator of important economic activities, and custodian of the law and order function. These basic functions are critical to the productivity of the people and of all the sectors of activity in which they are engaged. If the government were more responsive to people's needs and more transparent and efficient in its transactions, it would make the people, especially the poor, more productive and make Nigeria a better place to do business. Better infrastructure, easier access to information, an efficient legal system and enforcement mechanisms are precisely what a democratic economy need to compete effectively in the global environment. But these changes cannot come about as long as the political process and the quality and accountability of democratic institutions are themselves flawed.

3. Corruption

Corruption means the abuse of entrusted power for private gain. It may include improperly influencing the actions of another party or causing harm to another party or a vicious and fraudulent intention to evade the prohibitions of the law. The Black's Law Dictionary defines corruption as the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.¹⁴ The gain or benefit may be for the person doing the act or for others. Corruption is not the simple problem of individual bad behaviour.¹⁵ Even organisations or institutions where corruption is common, there is usually the tendency to focus on individual transgressors and imply that the problem is that of a few 'bad apples'.¹⁶ This position seems to suggest that corruption is more ingrained in some persons than it is a learned behaviour. Cox posits that it is a learned behaviour.¹⁷ According to Cox, it survives because the organization has learned (and it has become internalized tacit knowledge) that such behaviour is justified. Thus, while those on the outside may find the behaviour incomprehensible¹⁸ those inside the organization have successfully rationalized the behaviour and incorporated it into the organizations customs. Corrupt persons seemingly have an infinite capacity to excuse their own behaviour.¹⁹ They are usually inclined to justify their own behaviour by distinguishing the circumstances necessitating their own acts from that necessitating other's acts suggesting that everyone does it, but their case is different. As Arendt noted

The trouble, I think, is less that power corrupts than that the aura of power, its glamorous trappings, more than power itself attracts: for all those men we have known in this century to have abused power to a blatantly criminal extent were corrupt long before they attained power. As far as the criminals themselves are concerned, the chief common weakness in their character seems to be the rather naive assumption that all people are actually like them, that their flawed character is part and parcel of the human condition stripped of hypocrisy and conventional clichés.²⁰

Equally disturbing is the willingness of those attracted to power, to support actions which they would otherwise reject. For instance, in Nigeria today, most persons would agree on the qualifications or capacity of a candidate in an election to govern. However, they may differ in terms of whom they would support or vote for because of their closeness to another candidate or religious as well as ethnic affiliations. Their willingness or desire, to be close to power is as much a form of corruption as the behaviour of those who acted criminally.²¹ Stopping corruption does not begin or end with identifying the criminal act of the individual, but in uncovering the organizational cultural behaviours that makes the behaviour attractive. In most cases, as is obtainable in Nigeria, it is usually a matter of orientation or in some cases lack of proper remuneration for some public officers.

¹³S Paul 'New Mechanisms for Public Accountability: The Indian Experience' < <https://etico.iiep.unesco.org/en/new-mechanisms-public-accountability-indian-experience> > accessed on 10/08/2022

¹⁴ BA Garner (ed), *Black's Law Dictionary* (10thedn, St. Pauls-Minnesota: Thomson West, 2014)

¹⁵RW Cox III, 'Accountability and Responsibility in Organizations: the Ethics of Discretion' (2004) *VIEŠOJI POLITIKA IR ADMINISTRAVIMAS* Nr. 13, pp 39-51.

¹⁶TA Johnson, and RW Cox III, 'Police Ethics: Organizational Implications' (2005) *Public Integrity* 7 (1), 67-79.

¹⁷ *Ibid.*

¹⁸KR Hope, 'Corruption in Africa: A Crisis in Ethical Leadership' (1999) *Public Integrity* 1 (III), 289-308; S Bok, *Lying: Moral Choice in Public and Private Life* (New York: Vintage Books, 1978)

¹⁹ Cox, *op cit*, p. 47.

²⁰ H Arendt, *Responsibility and Judgment* (New York: Schocken Press, 2003) p 268

²¹ *Ibid.*

4. Asset Declaration

According to Rossi *et al*, Asset Declaration is ‘a mechanism by which a public official must periodically submit information about his or her income, assets, liabilities, and/or interests’.²² It is also referred to as asset disclosure and registration, asset disclosure, income and asset declarations, wealth reporting, financial disclosure systems interest declarations, etc. Further, the terms refer to the entire process of disclosing assets, and interests, from the blank form to submission, verification, and sanctioning.²³

Historical Evolution

Asset Declaration as means of fighting corruption is not a new phenomenon.²⁴ The systems and framework for Asset Declaration by public officers began to evolve into modern form after the Second World War.²⁵ In the 1960s, due to corruption scandals in the places like the United States of America, Hong Kong and the Netherlands, governments changed its direction to Asset Declaration system as a mechanism for prevention of corruption.²⁶ Following USA, the UK House of Commons introduced the register of interests in 1974, while other European countries followed with laws of their own in the early 1980s.²⁷ The global number of laws providing for asset declaration as a means of combatting corruption spiked dramatically in the 1990s as the cold war ended and a large number of countries in the former Soviet Bloc adopted new constitutions along with the newly-independent nation-states of Africa.²⁸ As Vargas and Schlutz indicated, Asset declaration regulation has greatly expanded across the world since 1990s to the present day.²⁹ In spite of growth both in the number of countries with Asset declaration laws and in the role that disclosure plays in both national and international efforts to fight corruption, it is worthy to note that such provisions have not always translated into effective systems.³⁰ Thus, its implementation is often leaving a large gap between the system ‘in law’ and ‘in practice’ in different countries of the world.³¹ The implication being that over the years that there have been a lot of questions on how best to implement the Asset Declaration system and they include the following; How do you decide who should file? And how often? On-line or in hard copy? And what exactly? Everything they own directly—or also those apartments they own indirectly? How should information in declarations be checked? Should it be shared with public? How accessible should it be?³² These and many more questions were in my mind as at the time of preparing this paper.

Legal Regime for Asset Declaration in Nigeria

There are several laws regulating the policy of declaration of asset declaration both at the international sphere and at the national level. On the international sphere, Article 8 of United Nations Convention against Corruption (UNCAC)³³ which provides for the ‘Codes of conduct for public officials’ addresses in general terms the need for states parties to ensure probity in public office. Article 8(5) particularly requires States Parties to establish systems that require public officials to declare, *inter alia*: their outside activities, employment, investments, assets and substantial gifts or benefits. The said Article 8(5) of UNCAC provides as follows;

Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, *inter alia*, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.

²²I. M. Rossi, L Pop & T Berger, *Getting the Full Picture on the Public Officials: A How to Guide for Effective Financial Disclosure* (Washington DC; World Bank Publications, 2017) p. xix

²³*Ibid*, p. 2.

²⁴D.A. Tulu, ‘The Role of Asset Disclosure and Registration Law in Combating Corruption in Ethiopia: A Comparative Analysis with the Hong Kong and Rwanda Legal Systems’ (2020) Vol 95 *Journal of Law, Policy and Globalization* pp7-18 at 9

²⁵R. Burdescu *et al*, *Income and Asset Declarations: Tools and Trade-Offs* (Washington DC: World Bank Publications, 2009) p 28 available at https://www.unodc.org/documents/corruption/Publications/StAR/StAR_Publication_-_Income_and_Asset_Declarations.pdf accessed 15/05/2021

²⁶ *Ibid*, p. 2.

²⁷OECD, ‘Fighting Corruption in Eastern Europe and Central Asia Asset Declarations for Public Officials: A Tool to Prevent Corruption Paris’ (OECD Publishing, 2011), at 22

²⁸R. Burdescu *et al*, *op cit*.

²⁹G. A. Vargas & D. Schlutz, ‘Opening Public Officials Coffers: A Quantitative Analysis of the Impact of Financial Disclosure Regulation on National Corruption Levels’ (2016), *Eur J Crim Policy Res* 439-475.

³⁰ *Ibid*.

³¹ *Ibid*.

³² <https://www.amazon.co.uk/Getting-Full-Picture-Public-Officials-ebook/dp/B01N37PGLG>

³³Adopted by the UN General Assembly in October 2003 and entered into force in December 2005. UNCAC has been ratified by 186 countries, including Nigeria.

At the regional level, among other regional anti-corruption instruments, Article 7(1) of the African Union Convention on Preventing and Combating Corruption (AUCPCC)³⁴ also provides a similar requirement for public officials to declare their assets before, during, and after serving in public office. For clarity, the said Article 7(1) provides as follows;

In order to combat corruption and related offences in the public service, State Parties commit themselves to:

1. Require all or designated public officials to declare their assets at the time of assumption of office during and after their term of office in the public service.

These Conventions accept the significant role that asset declaration by public officials plays in combating corruption and related offences in the public service. At the national level, Nigeria is one of the few countries with this model for fighting corruption. By virtue of the provisions of the 1999 Constitution and the Code of Conduct Bureau (CCB) and Tribunal Act, The CCB is empowered to receive, verify, examine and keep in custody such asset declarations and to enforce compliance when necessary.

Paragraph 11 of the 5th Schedule to the Nigerian Constitution requires all public officers to declare their assets. It provides as follows

(1) Subject to the provisions of this Constitution, every public officer shall within three months after the coming into force of this Code of Conduct or immediately after taking office and thereafter –

- (a) at the end of every four years; and
- (b) at the end of his term of office,

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 eighteen years

Section 15(1) of the Code of Conduct Bureau (CCB) and Tribunal Act also requires all public officers to declare their assets in the following words;

15. Declaration of assets

(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.

Sections 52, 94, 140 and 185 of the 1999 Constitution specifically require the Members of the National Assembly, members of the State Houses of Assembly, the President and the Governors to declare their assets and liabilities.

The basic idea behind the concept of declaration of assets by public officers is to enable the government know the worth of every public servant on resumption of duty. The worth is revisited every 4 years and at the end of the tenure of the political office holder where one is involved. For those like President, Governors, Local Government Chairmen and members of both the National Assembly and State Houses of Assembly, they are also expected to declare their assets at the beginning and at the end of their tenure. The law also requires every public servant in government employment to declare his/her assets after every 4 years. This means that a civil servant for example, will declare his/her assets every 4 years within the period of his/her employment.³⁵ The only exception to this requirement for declaration is where the National Assembly by law exempts any cadre of public officers from the provision of paragraph 11 of the Code which requires declaration if it appears to it that their position in the public service is below the rank which it considers appropriate for the application of those provisions requiring declaration.³⁶ The implication is that the National Assembly may by law exempt any cadre of public servant from declaring their assets.

Public Officers for the purposes of the Code of conduct include;

1. The President of the Federation.
2. The Vice-President of the Federation.

³⁴ Adopted in 2003 and ratified by 44 out of the 55 member States of the AU including Nigeria.

³⁵ See Paragraph 11 of the 5th Schedule to the Nigerian Constitution (*supra*)

³⁶ See Paragraph 14(b) of the 5th Schedule to the Nigerian Constitution.

3. The President and Deputy President of the Senate Speakers and Deputy Speaker of the House of Representatives and Speakers and Deputy Speakers of Houses of Assembly of States, and all members and staff of legislative houses.
4. Governors and Deputy Governors of States.
5. Chief Justice of Nigeria, Justices of the Supreme Court, President and Justices of the Court of Appeal, all other judicial officers and all staff of courts of law.
6. Attorney-General of the Federation and Attorney-General of each State.
7. Ministers of the Government of the Federation and Commissioners of the Governments of the States.
8. Chief of Defence Staff, Chief of Army Staff, Chief of Naval Staff, Chief of Air Staff and all members of the armed forces of the Federation.
9. Inspector-General of Police, Deputy Inspector-General of Police and all members of the Nigeria Police Force and other government security agencies established by law.
10. Secretary to the Government of the Federation, Head of the Civil service, Permanent Secretaries, Directors Generals and all other persons in the civil service of the Federation or of the State.
11. Ambassadors, High Commissioners and other officers of Nigeria Missions abroad.
12. Chairman, members and staff of the Code of Conduct Bureau and Code of Conduct Tribunal.
13. Chairman, members and staff of local government councils.
14. Chairman and members of the Boards or other governing bodies and staff of statutory corporations and of companies in which the Federal or State Governments or local governments councils.
15. All staff of universities, colleges and institutions owned and financed by the Federal or State Governments or local government councils.
16. Chairman, members and staff of permanent commissions or councils appointed on full time basis.³⁷

The effect of part 2 of the 5th Schedule which defines public officer is that everyone in the public service of the Local, State and Federal Governments including Clerks of any cadre is a public servant except such a person is exempted by a law passed by the National Assembly under Paragraph 14(b) of the 5th Schedule. The definition of a public servant is too wide and makes effective implementation impossible. The CCB does not have the capacity to monitor compliance with the provisions of the Code of Conduct for Public Officers. That explains why the CCB does selective monitoring and enforcement. It is possible that up to 80% of possible declarants do not know they have to declare their assets. A survey of about 2,000 participants across different cadres and levels of government revealed that about 50% of the participants said they didn't know the law applies to them and that they had never completed and Code of Conduct Form for the Declaration of Assets. It is very doubtful if the CCB understands the scope of its job. The essence of the law on declaration of assets is to monitor unjust enrichment of public servants and political appointees. The drafters of the law assumed that every public servant is corrupt or didn't know where to draw the line. The findings reveal that those who know they are to complete the form end up under declaring their assets and the CCB does not have the capacity to find out or investigate the declarations. It only trusts in the sincerity of the declarations.

The asset declaration provisions have met with considerable criticism, especially when one considers the provision under the Code of Conduct Bureau (CCB) and Tribunal Act relating to the declaration of a spouse's assets and liabilities. It is submitted that such provisions of the Act violates the spouse's fundamental right to privacy especially for a spouse who is not a public officer. The said section also presupposes that a person must know the extent of his/her spouse's assets and liabilities which in most cases are usually not true. On the issue of the assets of children, it has been argued that an independent, self-sufficient child would not want parents to interfere in his private matters.³⁸ Furthermore, if the children are also public officers, this would amount to a double declaration that may cause unnecessary and avoidable paper work for the Code of Conduct Bureau, more so when the Code of Conduct contains ample provisions against a false declaration.³⁹ The inclusion of the provision for declaration of Spouse's and children's assets may have been influenced by the country's experience during the First and Second Republics when public officers corruptly acquired assets through their friends and relatives including their spouses and under-age children, as witnessed in the case *Lakanmi v Attorney-General, Western Nigeria*.⁴⁰ Many public officers are also engaged in similar acts during the present dispensation.

³⁷ See Part 2 of the 5th Schedule to the Nigerian Constitution.

³⁸JO Akande *Introduction to the Constitution of Federal Republic of Nigeria* (Lagos: MIJ Professional Publishers (2000) 522; I B Lawal, 'Public Declaration of Assets in Nigeria: Conflict or Synergy between Law and Morality?' (2009) 9 *African Human Rights Law Journal*, pp 224-261

³⁹ *Ibid.*

⁴⁰ (1971) IUILR 218

5. Public Access

It must be observed from the outset that the issue of public access to asset declaration revolves on the concept of right; and more importantly, that just like most concepts in law, the concept of right is not easy to define as it is susceptible to plethora of interpretations. This afore-said difficulty was captured by Holman, J. when he remarked that, 'the word 'right' is one of the most deceptive of pitfalls; it is so easy to slip from a qualified meaning in the premise to an unqualified one in the conclusion'.⁴¹ In spite of the perceived difficulty stated above, several scholars have attempted to define the illusory concept. Thus, right has been defined as 'a legally enforceable claim that another will do or not do a given act; a recognized and protected interest the violation of which is a wrong.'⁴² Human rights have been classified generally into civil and political rights; and economic, social and cultural rights. Civil and political rights impose limitations on the activities of government and other persons; and are called negative rights. According to Schmidt, civil and political rights are at the centre of upholding human dignity and their importance has gained recognition because of conflict over their violation and the development of legitimate claims for their protection. There is much to learn from the process in which civil and political claims gain legitimacy and are applied to the benefits of the world community.⁴³ The right to privacy belongs to civil and political rights. The right to privacy is guaranteed by virtually all national, international and regional instruments on human rights. Article 12 of the Universal Declaration on Human Rights provides that 'No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference and attacks'.⁴⁴ Section 37 of the 1999 Nigerian Constitution provides for the right to privacy in the following words: 'The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.' The right, just like some other rights provided for in the constitution, is not absolute. Section 45(1) of the Constitution allows derogation in certain circumstances. The section provides that nothing in sections 37...of the Constitution shall invalidate any law that is reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality, or public health; or for the purpose of protecting the rights and freedoms of other persons.

There is no provision in the 5th Schedule to the Constitution or in the Code of Conduct Bureau (CCB) and Tribunal Act that mandates the Bureau to make public the assets declaration details of any public servant or mandates a public officer to declare his assets publicly. There is also nothing in the said provisions of the law precluding the Bureau from making the declaration details of any public servant accessible to any Nigerian. The issue that arises at this juncture is whether in view of the express provisions of the Constitution and the Code of Conduct Bureau (CCB) and Tribunal Act on one hand; and the fundamental right to privacy enshrined in the constitution, a public officer is required to publicly declare his/her asset. It has been argued by Professor Osipitan that public officers cannot lay claim to absolute privacy, especially in accounting for public funds entrusted to them.⁴⁵ According to him, there is an overriding public interest in the disclosure of information on the assets of public officers who obviously are trustees of the nation's wealth; there is therefore, nothing inherently private in the affairs of such public officers. The view has also been expressed that in declaring assets as required by the provisions of the Code of Conduct, public officers should be categorised and not lumped together; those public officers, such as the President, Vice-President, Governors, Deputy-Governors, Ministers, Commissioners, legislators, advisers and other political office holders, rather than normal career officers, should declare their assets publicly. According to Osipitan, these people are in advantaged positions which could be easily abused because they have access to the wealth and opportunities of the nation. He then concluded that, since they have decided to accept those responsible positions, there should be nothing secret in their assets.⁴⁶ It is further argued that many of them (political office holders) are catered for by the public, the public should know their worth. If their assets are publicly declared, it will be easy for the public to point out their assets after coming into office; thus, the present practice of secret declaration should be limited to public officers in public career appointment.⁴⁷

⁴¹*American Bank & Trust Co. v Federal Reserve Bank of Atlanta* 256 US 350, 358, 41 S. Ct. 499,500 (1921)

⁴²BA Garner, *op cit*.

⁴³PR Schmidt, 'African Configuration in the right to a Cultural Heritage' (1995) 2 *East African Journal for Peace and Human Rights*, 41.

⁴⁴See also Article 7 of the International Covenant on Civil and Political Rights (CCPR); Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950); Article 11 of the American Convention on Human Rights (1969). It must be observed however that while the African Charter on Human and Peoples Rights makes elaborate provision for the rights to life and integrity of the person, respect for human dignity as well as liberty and security, there is unfortunately no mention of the right to privacy.

⁴⁵T Osipitan *et al*, 'Structuring Measures against Corruption for Sustainable Development' being the text of a paper delivered in NALT Proceedings of the 38 Annual Conference Faculty of Law LASU (2002), p 334

⁴⁶ *Ibid*.

⁴⁷ IB Lawal, *op cit*, p.233

In responding to the above issues, it must be stated at the outset that a mandatory public declaration of assets, which is neither contemplated by the Constitution and the Code of Conduct Bureau (CCB) and Tribunal Act will amount to a violation of the fundamental right to privacy. This proposition is of course subject to the liberty of the declarant who may wish to make his/her declaration public. The basic idea of human right protection laws is an attempt to balance the respective rights of people i.e. protecting the right of a person from being interfered with as against the right of others expressing their own rights. In the context of this research, it is an attempt to balance the rights of a public officer to his private life with the right of the general public to the information relating to the public officer's assets and liabilities. It is therefore submitted that the right of public officers to their respective private lives will be better protected by the current arrangement under the Constitution and the Code of Conduct Bureau (CCB) and Tribunal Act which requires public officers to file their asset declaration forms with the CCB without the need to make same public unless in accordance with the law. It is also submitted that the current arrangement also guarantees the right of the public to access such information in appropriate cases and circumstances. In this wise, let us take a cursory look at Section 109 of the Evidence Act which defines a public document. It provides as follows: The following documents are public documents- (a) documents forming the acts or records of the acts- (i) of the sovereign authority; (ii) of official bodies and tribunals; and (iii) of public officers, legislative, judicial and executive, whether of Nigeria or elsewhere; (b) public records kept in Nigeria of private documents.

It is not a subject of argument that by virtue of the definition of the public document contained in section 109 of the Evidence Act above, such declaration forms kept with the CCB qualify as public documents and are available to the public upon application of any interested party. Thus, such declaration forms could technically be said to have been made public. The question that arises at this juncture is, how can Nigerians access these asset declaration forms? It is not in doubt that by the nature of public document and the fact that they are usually in the custody of a government official; there is some form of discretion exercisable by such public officer in deciding whether or not to issue a CTC of such document to a prospective applicant. For instance, where a public officer reasonably believes that such documents may be used in furtherance of an illegal venture; the said officer has both legal and moral obligation to refuse the issuance of such CTC. Sometime in the past in Anambra State for instance, any application for the issuance of a CTC of any document relating to title to land from the Ministry of Lands must be accompanied by a Court order. And the courts in making such orders usually take a dispassionate look at the affidavit in support of the application in order to determine the purpose of the application and whether the need to make such order outweighs the risk involved in same. The said policy was necessitated by various complaints received from land owners by the Ministry of Lands that CTC of title documents relating to land issued by the Ministry were being used to perpetrate plethora of frauds.

It is accepted that most times, the Bureau is reluctant to release asset declaration forms to a person making such application unless when in the opinion of the Chairman, it is most pertinent. The Bureau however releases same to law enforcement and security agencies as it will assist them in the performance of their duties of investigating the particular public officer. The Bureau may also release the form to anybody on the orders of the court. It will be sheer recklessness to expect the Bureau to release information to every person who requests for it. This is because it will aid fraudsters, Kidnappers and other criminal elements in the society to easily identify their victims. However, since those documents are public documents, they can easily be assessed by responsible Nigerians and other security agencies. There are various ways through which these forms can be assessed. They include;

(a) Information can be accessed pursuant to Section 39 of the Constitution.

Section 39 of the Constitution of the Federal Republic of Nigeria makes provision for the fundamental right to information. The said section of the Constitution provides, *inter alia*, as follows;

- (1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to **receive and impart ideas and information without interference.** ⁴⁸

The Fundamental Rights Enforcement Procedure Rules has made elaborate provisions on how to enforce fundamental rights of citizens under S. 39 of the Constitution. Any person seeking information from the CCB can come under S. 39 of the Constitution by filing an application for the enforcement of his/her fundamental rights. It is submitted that critical information such as assets declaration forms and other information of interest to the public can be accessed through the Fundamental Right (Enforcement) Procedure Rules 2009. The advantage of this is that it is founded on the Constitution and exceptions thereto are very limited. More so, the Constitution is the Supreme law and is preferred to the FOI Act.

⁴⁸ Emphasis ours.

(b) Information can be accessed from the Bureau under the FOI Act.

Nigeria is one of the few countries in the world with a Freedom of Information enshrined in the Constitution. The said Act was promulgated to give the people more access to information that are kept by the government. It is regrettable that nothing much has been achieved under the Act in giving access to the Public on information they seek. In furtherance of this right to information, section 1 of The FOI Act provides as follows;

- (1) Notwithstanding anything contained in any other Act, law or regulation, the right of any person to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official, agency or institution howsoever described, is established.
- (2) An applicant under this Act needs not demonstrate any specific interest in the information being applied for.
- (3) Any person entitled to the right to information under this Act, shall have the right to institute proceedings in the Court to compel any public institution to comply with the provisions of this Act.

It must be mentioned however that the Bureau can also refuse to provide such information citing exceptions under the FOI Act.⁴⁹ Where it refuses to release such information under the Act however, the courts can be approached by the applicant seeking an order of mandamus in order to mandate the necessary officers of the Bureau to provide the information sought. In this wise, see Section 20 of the Act which provides as follows;

Any applicant who has been denied access to information, or a part thereof, may apply to the Court for a review of the matter within 30 days after the public institution denies or is deemed to have denied the application, or within such further time as the Court may either before or after the expiration of the 30 days fix or allow.

What is more, section 28. (1) of the Act provides that the fact that any information in the custody of a public institution is kept by that institution under security classification or is classified document within the meaning of the Official Secrets Act does not preclude it from being disclosed pursuant to an application for disclosure thereof under the provisions of this Act. The implication is that except for those information specifically enumerated by Act as being exempted, every document or information that is kept by a government institution as a public document are liable to disclosure; and the Asset Declaration Form is one of them.

It must be observed, however, that the FOI is, at best, a mere surplusage to the provisions of the Constitution especially in view of the implication of the combined reading of the provisions of the Constitution and the Evidence Act in that regard.

6. Conclusion and Recommendation

A well-conceived and effectively implemented asset declaration system with public access is a veritable tool for achieving public accountability. It can provide investigators and prosecutors with an invaluable tool for investigating corruption and for detecting the flow of proceeds of corruption out of the country. However, where it is not properly managed, the information obtained from such forms may be a dangerous instrument in the hands of criminals; thus, there is need to always strike a balance between the right of the public to information and the right of public officers to their private lives. Asset declarations can also be used as *prima facie evidence* in Nigeria where lying on an asset declaration form constitutes a criminal offense: proving the lie in such cases can often be easier than proving the underlying act of corruption that was concealed by the lie. Discrepancies between an asset declaration form and other evidence an investigator has uncovered regarding a public official's assets, income and liabilities can provide the basis for a subsequent criminal prosecution, and can improve the odds of conviction in corruption trials. A combined reading of the Constitution, Code of Conduct Bureau (CCB) and Tribunal Act, Evidence Act, Freedom of Information Act and Fundamental Rights Enforcement Procedure Rules will bring to fore the intention of the legislature; which is to make declaration of assets by public officers public, albeit under very stringent preconditions for accessibility. This is understandably made in order to ensure that there is a balance between the public officers' fundamental right to privacy and the right of the public to access such information; and also to give the different machineries for checking corruption as established by the easy access to information relating to public officer. The idea behind the establishment of CCB was for the purpose of maintaining a high standard of morality in the conduct of government business and to ensure that the actions and behaviour of public officers conform to the highest standard of public morality. Thus, what the Constitution and other relevant laws have done is to vest the power to make decision as to whether, how and what terms of asset declaration will be made accessible to the public in the Chairman of the CCB subject to the overriding powers of the court to determine whether the said decision has been exercised judiciously. It therefore is recommended that there should be a department of the CCB attached to all ministries and major parastatals to enhance the efficiency of the Bureau and create the necessary awareness that will help in the sensitization of public officers. The National Assembly is also urged to examine the gamut of the 5th Schedule to the Constitution and the provisions of the Code of Conduct Bureau (CCB) and Tribunal Act and review them to meaningfully reduce the public officers covered by the Schedule so as to make monitoring and enforcement more realistic.

⁴⁹ See Sections 11,12,14,15,16,17,19,20 or 21 of the Act.