

PUBLIC ACCOUNTABILITY IN FEDERAL STATES: THE GAP BETWEEN NIGERIA AND THE UNITED STATES OF AMERICA*

Abstract

Public offices are sacred trusts. Accordingly, every holder of any public office is and/or ought to be a trustee of the powers/authority of that office and every act [whether of omission or commission] of the holder of any such public office should be for public good. Democracy will be a mirage and/or a mere window dressing if the people cannot hold public officers/official accountable and responsible for their policies, decisions, acts, omissions, and expenditures. It is thus not in doubt that public accountability (otherwise known as public sector accountability) is pivotal to democratic governance. It is our observation that the [spate of] corruption in any Society, Community or nation can be traced to the lack of public accountability therein. As a constitutional system of governance, democracy in a Federal State should offer a firm platform of valid hope for entrenching and enhancing public accountability in the Federal State. This work interrogates the imperative of public accountability in federal states and accessed the gap between Nigeria and the United States of America vis-à-vis effectiveness of public accountability in governance. The research methodology adopted in this work is doctrinal while the approach is analytical and comparative. It is our finding that there are relevant laws in Nigeria to ensure public accountability but the spirit of the rule of law seem to be bound; in other words, there is no prevalence of the rule of law in Nigeria. Among other recommendations, the researchers recommend that certain levels of breach/violation of public accountability (whether administrative, political or fiscal accountability) by any public officer in Nigeria should be made to become capital offences or at least, serious offences that may carry up to life imprisonment. It is further recommended inter alia in this work that the payment of life pensions to past political leaders should be abolished and the salary and allowances payable to our political leaders should not only be made public but should be reduced to be at the same with the earnings of a civil servant.

Keywords: Public accountability, Federal states, Nigeria, United States of America, Gap

1. Introduction

A traditional cornerstone of democracy is the notion that each political representative and public official is subject to what is known as accountability.¹ Public officers/officials including political leaders are and/or ought to be ultimately responsible to the people for government / official actions, and this means that there has to be accountability in public service. How this accountability is ensured and/or enforced varies widely in different countries, depending upon the system/type of government, cultural characteristics, historical development, political institutions, administrative capacities, and the public's access to and use of information. Public Accountability, *simpliciter*, means holding public officials responsible for their actions.² In essence, records of government activities should be open to the people unless such openness may be contrary to national security.³ Put differently, public accountability connotes holding both elected and appointed public officials/officers responsible for their governmental policies, actions and inactions including the application/use of power and utility of public funds. We can therefore say that public accountability means the implication, recognition, acceptance, and implementation of the fact that all public officers / officials owe and hold their offices/positions in trust for the people. It implies that those [whether elected or appointed] who are in public service must answer/respond and account to the people.

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¹Uni Assignment Centre, 'The Meaning of Public Accountability Law Constitutional Administrative Essay' <<https://www.uniassignment.com/essay-samples/law/the-meaning-of-public-accountability-law-constitutional-administrative-essay.php>> accessed on October 22, 2019.

²The World Bank, *Governance and Development* (1992) 13 – 14 <http://www.gsid.nagoya-u.ac.jp/sotsubo/Governance_and_Development_1992.pdf> accessed on October 19, 2019.

³M. Bovens, 'Analyzing and assessing accountability: A conceptual frame work' *European Law Journal* (2007)13 (4) 447- 468 at 453 <<http://dx.doi.org/10.1111/j.1468-0386.2007.00378.x>> accessed on October 15, 2019.

2. The Basic Nature and Structure of a Federal State vis-à-vis Public Accountability

A federal state is a sovereign complex state where the commonwealth (national resources) and governmental powers are distributed/ shared between the central government and the governments of the constituent / federating units. In a federal state there are at least two levels of government, the central or national and the regional, each of which has specific powers/competencies (legislative, executive and judicial) to be granted by the Federal Constitution.⁴Of the eight largest countries in the world by area, seven – Russia, Canada, the United States, Brazil, Australia, India, and Argentina – are organized on a federal basis. Federal countries also include Austria, Belgium, Ethiopia, Germany, Malaysia, Mexico, Nigeria, Pakistan, Switzerland, the United Arab Emirates, and Venezuela, among others.⁵There are numerous advantages of federalism which this work may not have space to dwell upon in details. These include but not limited to the following:

1. The classical horizontal division of the powers of government (legislative, executive and judicial arms of government) is made more effective (complemented) by a vertical division of powers between the national/federal/central government and each of the federating units. This ensures that there are checks and balances, helping to prevent abuse of governmental powers.
2. The Citizens in a federal state enjoy more rapid access to the public authorities and more importantly, the government remains closer to the people at the grassroots.
3. The identity and culture of the federating units are protected and preserved.
4. While the autonomy of the federating units is safeguarded, important issues like foreign affairs, national defense, economy, citizenship, immigration, etc are being handled jointly at the federal/national level.
5. Development of the country is encouraged through decentralization and regionalization. It allows for unique and innovative methods for tackling social, economic and political problems.

Be it as it may, it is our view that no matter how immense the advantages of federalism could be, take away public accountability from a federal state, the spate of corruption will inevitably swallow up democratic governance and the basic dividends thereof. In other words, effective, enforceable and/or enforced public accountability makes the difference between one federal state and the other. The concept of public accountability is thus a matter of vital public concern. All the three organs of the government, to wit: Legislature, Executive and Judicature/Judiciary ought to be subject to public accountability both at the federal level and at level of each of the federating units .Public accountability consists of two basic components: the explanation and justification of public officers' activities to the public, and an accompanying mechanism for public sanctions. Accordingly, an institutional design for public accountability should be grounded in an explanatory requirement (ensuring that agencies explain and justify their actions), and a punitive element.⁶'The more strictly we are watched, the better we behave' perhaps best captures the rationale behind the imperative of public accountability. We give an account only when it is firmly requested, and only when that request is backed up by power and that power donated by law. This is the reason that accountability has for long been a key issue in constitutional scholarship.⁷

There are different manifestations of accountability—public and private—but this work is interested in public accountability, which again manifests itself in many forms such as political, administrative, and fiscal accountability.⁸ Administrative accountability revolves on virtually every worker or official or officer in the public

⁴E. Kozakou-Marcoullis, 'Understanding Federalism: Different Models – Different Challenges, Advantages – Disadvantages' (2015)3 <<http://www.europarl.europa.eu/cyprus/resource/static/files/understanding-federalism--advantages-and-disadvantages.pdf>> accessed on October 19, 2019

⁵Encyclopaedia Britannica, *Federal Systems* <<https://www.britannica.com/topic/political-system/Federal-systems#ref416916>> accessed on October 19, 2019; E. Kozakou-Marcoullis, 'Understanding Federalism: Different Models – Different Challenges, Advantages – Disadvantages' (2015)4 <<http://www.europarl.europa.eu/cyprus/resource/static/files/understanding-federalism--advantages-and-disadvantages.pdf>> accessed on October 19, 2019.

⁶J. Shkabatur, 'Transparency With(out) Accountability: Open Government in the United States', *Yale Law & Policy Review* (2012) 31 (1) 80 – 140 at 82 available at <<https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1639&context=ylpr>> accessed on October 14, 2019.

⁷Hood, Christopher, Oliver James, George Jones and tony Travers (1999) *Regulation Inside Government: Waste-watchers, Quality Police, and Sleaze-busters*. Oxford: Oxford University Press cited in S. I. Lindberg, 'Accountability: the core concept and its subtypes', *Africa Power and Politics*(2009) 7<<https://assets.publishing.service.gov.uk/media/57a08b4740f0b652dd000bd6/APPP-WP1.pdf>> accessed on October 19, 2019.

⁸Amoke, O., Asogwa, O. (2000). The secretary to the local government and public accountability in local government financial management. In Ozor, E. (Ed.), *Public accountability in Nigeria* (pp. 145-169). Lagos, Nigeria: Lizziborn Printing and

sector (public service). Political accountability assumes that occupants of political offices would meet the expectations of the electorate by fulfilling the promises made in the manifestoes of their parties. Fiscal accountability, on the other hand, is directed toward ensuring that funds are utilized by governments in accordance with established regulations and guidelines for purposes for which they are intended. To ensure public accountability in any democratic governance, there should be firm constitutional and statutory framework for the citizens to demand and enforce public accountability. There should be enactment of relevant laws vis-à-vis public accountability, rule of law, and unfettered access to justice. Existence of relevant laws no matter how impressive the laws may appear, they will not command any effect in the absence of the rule of law and unfettered access to justice.

3. Interrogating the Place of Public Accountability in Nigeria

It is our view that it is the lack of effective legal framework for public accountability that breeds corruption and abuse of power in a given country. We observe that the Federal Republic of Nigeria is not bereft of relevant laws to ensure public accountability. For instance, *section 15(5) of the extant Nigerian Constitution*⁹ provides that ‘the State shall abolish all corrupt practices and abuse of power’ and that constitutional obligation on the Federal Government provides for a solid constitutional platform for effective public accountability. *Section 14 (2) (a) of the extant Constitution of Nigeria* invariably makes it clear that public officers in Nigeria hold public offices in trust for the people when it provides that ‘sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority’. Also, the constitutional provisions for recall of Lawmakers savour of political accountability.¹⁰ The Fundamental Objectives and Directive Principles of State Policy situate in *chapter II of the Constitution of the Federal Republic of Nigeria 1999* are, in our view, geared towards responsibility, accountability and transparency of government. The constitutional requirement that ‘the programme as well as the aims and objects of a political party shall conform to the provisions of Chapter II of this Constitution’¹¹ is equally geared towards responsibility, accountability and transparency of government, likewise other provisions relating to, moderating and regulating the formation, operation and activities of political parties in Nigeria. The provisions for periodic general elections, party system, and right to vote and be voted for are also part of the legal framework for public accountability. The provisions for impeachment/removal of some elected public officers are to enforce the spirit of public accountability.

Furthermore, many decisions and policies of government command some measure of financial implications and accordingly, on the crucial aspect of fiscal/financial public accountability, the constitutional establishment of the Consolidated Revenue Funds, the power and control of the Legislature over public funds, audit of public accounts, and the authorization of expenditure from the consolidated funds, are all in favour of public accountability.¹² In addition to the foregoing constitutional provisions on fiscal public accountability, the *Fiscal Responsibility Act, 2007* establishes the *Fiscal Responsibility Commission* which has power, *inter alia*, to ‘compel any person or government institution to disclose information relating to public revenues and expenditure’.¹³ The *Fiscal Responsibility Act, 2007* equally makes provisions for conditions for borrowing money,¹⁴ fiscal transparency,¹⁵ publication of audited accounts,¹⁶ and publication of a summarized report on budget execution¹⁷. By *section 51 of the Responsibility Act, 2007*, unfettered *locus standi* is freely donated to the people of Nigeria to apply to the Court for the enforcement of the Act, without having to show special or particular interest.

Upon the coming into force of the Freedom of Information Act 2011 [on 28th May 2011], the legal framework was made more solid for enforcement of public accountability in Nigeria. For example, the Act provides that:

Publishing; Bayene, G. A., Otobo, E. (1994). The incentives effects of tournament compensation system. *Administrative Science Quarterly*, 1, 221-230, both cited in S.U. Agu, ‘Instrumentalities for the Effectiveness of Measures of Public Accountability in Africa: The Nigeria Perspective’, *SAGE Journal* (2016) 2 <<https://journals.sagepub.com/doi/pdf/10.1177/2158244015627189>> accessed on October 25, 2019.

⁹The Constitution of the Federal Republic of Nigeria 1999 (as amended).

¹⁰*Sections 69 and 110 of the Constitution of the Federal Republic of Nigeria 1999.*

¹¹*Section 224 of the Constitution of the Federal Republic of Nigeria 1999.*

¹²*Sections 80 – 129 of the Constitution of the Federal Republic of Nigeria 1999.*

¹³*Sections 1 (1) and 2(1) (a) of the Fiscal Responsibility Act, 2007.*

¹⁴*Ibid, Section 44*

¹⁵*Ibid, Section 48*

¹⁶*Ibid, Section 49*

¹⁷*Ibid, Section 50*

1. (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.¹⁸

The Freedom of Information Act, 2011 also provides that: ‘A public institution shall ensure that it records and keeps information about all its activities, operations and businesses.’¹⁹ More so, the enactment of anti-corruption laws in Nigeria such as Corrupt Practices and Other Related Offences Act, 2000²⁰ and Economic and Financial Crimes Commission (Establishment) Act, 2004²¹ form part of the legal framework to ensure public accountability in Nigeria. Section 46 of the *Economic and Financial Crimes Commission (Establishment) Act, 2004* for example provides that:

Economic and Financial Crimes mean the non-violent, criminal and illicit activities committed with the objectives of earning wealth illegally...individually or in a group or in organized manner thereby violating existing legislations governing the economic activities of the government and its administration and it includes any form of fraud, narcotics, drug trafficking, money laundering, embezzlement, bribery, looting... (emphasis mine).

It is not therefore incongruous to assert that there is firm constitutional platform upon which the people of Nigeria can stand to request/demand for accountability from public officers in the Nigerian government and agencies of the government, both at the federal and state levels. In the premises of the foregoing constitutional framework, one may now be taken aback seeing/observing how corruption and abuse of power have eaten deep into the fabric of our country. In the area of fiscal accountability, the amount of money that is often reported to be missing or to have been looted, embezzled in Nigeria is mindboggling whereas the masses are progressively/continually languishing in poverty, unemployment, and all manner of ill-conditions.

4. Accessing the Legal Gap between Nigeria and the United States of America vis-à-vis Effectiveness of Public Accountability

Federalism, separation of powers, and rule of law are the heart of the American Constitution. The American Constitution and the power of judicial review are an extension of rule of law. In America, the Constitution is law, the highest law, and the President of America, the Congress, and the Federal Judiciary are bound by the terms of the American Constitution. A government according to laws is thus the underlying principle of the American political and legal system. This means that no person, however powerful or connected, would be allowed to act as if he were superior to the law of the land. Public decisions must be made upon the basis of law, and the laws must be general rules that everybody obeys, including those who make and enforce the law. Even the incumbent President of America, Donald J. Trump, as well as previous Presidents of America, are subject to the law. The provisions of the law in America on impeachment and removal from office of the President have been invoked on a number of occasions against some past Presidents of America and are even being invoked against the incumbent President of America, Donald J. Trump. This is unlike Nigeria where the President could violate the law with impunity and the National Assembly would at best bark as a toothless bulldog.

We need to observe here that the seeming wide legal gap (difference) between Nigeria and the United States of America vis-à-vis public accountability does not lie in the latter having more abundance of laws than the former to ensure accountability neither does it lie in America having more elaborate and solid legal framework than Nigeria for public accountability. The difference lies in the prevailing attitude of the respective countries to the rule of law. While the rule of law seems to be in abeyance in Nigeria, the rule of law is the constitutional culture of the United States of America.

¹⁸Section 1 of the Freedom of Information Act 2011.

¹⁹Section 2(1) of the Freedom of Information Act 2011

²⁰ Cap. C31, Laws of the Federation of Nigeria, 2004.

²¹Cap. E1, Laws of the Federation of Nigeria, 2004.

The above explains why the incumbent President of Nigeria and even some past Presidents of Nigeria seem to have been getting away with many gross misconducts and serious constitutional violations and the Nigerian National Assembly is there merely watching and at times barking like a toothless bulldog though the Constitution of Nigeria has donated unto her (the National Assembly) ample and strong teeth; likewise the Governors of the States and the State Houses of Assembly. Instances of breach of public accountability in Nigeria include:

1. On December 1, 2015, Rtd. Col. Sambo Dasuki was arrested by the State Security Service for allegedly embezzling/looting about \$2.1 billion of public funds which was given to him in his capacity as the National Security Adviser for purchase of arms to combat *boko haram*. The retired Army Colonel is equally accused of awarding phantom contracts for purchasing of 12 helicopters, four fighter jets and other ammunition meant for the Nigerian military campaign against Boko Haram.
2. Since assuming power on May 29, 2015, President Muhammadu Buhari has showed a stunning disregard for the rule of law and human rights, ignoring Nigerian judges on many occasions. And Mr. President seems to be getting away with all the impunities, the National Assembly doing nothing to call Mr. President to account. Court orders/judgments that are yet to be complied with include:²²
 - i) those obtained by human rights lawyer and Senior Advocate of Nigeria, Femi Falana, ordering the release of Islamic Movement of Nigeria leader, Sheikh Ibrahim El-Zakzaky and his wife, Zeenah, from unlawful detention.
 - ii) Similarly, the government's State Security Service (SSS) continued to arbitrarily detain activists Mr Omoyele Sowore and Olawale Bakare who called a national protest, in spite of court orders that they should be released on bail and meeting their bail conditions.
 - iii) Rt. Col. Sambo Dasuki has been detained since 2015 despite Court orders for his release on bail.
 - iv) Neglect of and refusal to comply with judgments obtained by the anti-corruption and human rights group, Socio-Economic Rights and Accountability Project (SERAP). The first of the judgments is the judgment by Justice Hadiza Rabiuh Shagari ordering the government to tell Nigerians about the stolen assets it allegedly recovered, with details of the amounts recovered. The second judgment, by Justice Mohammed Idris, ordered the government to publish details on the spending of stolen funds recovered by successive governments since the return of democracy in 1999, while the third judgment, by Hon. Justice Chuka Austine Obiozor ordered the immediate release of details of payments of billions of naira to all defaulting and allegedly corrupt electricity contractors and companies since 1999. The fourth judgment, by Hon. Justice Mohammed Idris [as he then was], ordered Mr. President to prosecute senior lawmakers suspected of padding and stealing ₦481 billion from the 2016 budget. The court also ordered Mr Buhari to 'direct the publication of the report of investigations by security and anti-corruption bodies into the alleged padding of the 2016 budget.'

5. Conclusion and Recommendations

Any country with high levels of corruption, or which lack effective rule of law or public accountability are usually prone to socio-economic deficiencies and developmental setbacks. The persistence of corruption adversely affects the delivery of health, education and other social benefits, and is a serious contributing factor to the persistence of poverty, unemployment, high rate of crimes and other inequalities. The basic purpose of the doctrine of public accountability is to check the spate of corruption and the growing misuse of power by public officers and to make available speedy relief(s) to the victims of such abusive exercise of power. The doctrine is based on the premise that the power in the hands of the public officers is a public trust which must be exercised in the best interest of the people. It is our finding that there are relevant laws in Nigeria to ensure public accountability but the spirit of the rule of law seem to be bound; in other words, there is no rule of law in Nigeria. Nigeria is a country where some laws seem to stand in the books for fancy. Our leaders seem to be accountable to the interest of their political cabal

²²PM News, 'Buhari is ignoring Nigerian judges—we must not let him get away with it' <<https://www.pmnewsnigeria.com/2019/11/20/buhari-is-ignoring-nigerian-judges-we-must-not-let-him-get-away-with-it/#>>; Sahara Reporters, 'Buhari Has Disobeyed 40 Court Orders, Says Amnesty International's Lawyer' <<http://saharareporters.com/2019/11/25/buhari-has-disobeyed-40-court-orders-says-amnesty-international%E2%80%99s-lawyer>>; Premium Times, 'SPECIAL REPORT: How Buhari administration serially disobeys court orders' <<https://www.premiumtimesng.com/news/headlines/233665-special-report-how-buhari-administration-serially-disobeys-court-orders.html>> all accessed on 27 December 2019.

only. They see public offices as opportunity to loot the commonwealth of the country. Finally, we make the following recommendations:

1. Certain levels of breach/violation of public accountability (whether administrative, political or fiscal accountability) by public officers in Nigeria should be made to become capital offences or at least, serious offences that may carry up to life imprisonment. For example, the breach of the constitutional provisions on public funds (misappropriation, looting or embezzlement of public funds) should not be taken lightly but sanctioned severely. Without serious sanctions provided for and enforced, public accountability and of course, any real or feigned fight against corruption will continue to be a mirage or even a deception in Nigeria.
2. Public accountability system should be the top priority of the government of Nigeria, both at the federal and states' levels.
3. The payment of life pensions to past political leaders should be abolished and the salary and allowances payable to our political leaders should not only be made public but should be reduced to be at the same with the earnings of a civil servant.
4. The Judiciary should rise up to duty to give effect to the provisions of the Constitution of the Federal Republic of Nigeria 1999 and other Laws vis-à-vis public accountability. The rule of law cannot thrive in Nigeria save through the courage of the courts of law. Justice should be done and seen to be done without fear or favour. No cabal should be allowed in any wise to hold the people of Nigeria to ransom.
5. The ouster clause in Section 6(6) (c) of the Constitution of the Federal Republic of Nigeria 1999 should be deleted most urgently from the constitution.