

## CONSTITUTIONALISM AND CODE OF CONDUCT: TOOLS FOR INSTILLING DISCIPLINE IN THE PUBLIC SERVICE IN NIGERIA

**OJEWALE, Kamorudeen Adesina**

*Department of Social Studies*

*College of Education, Lanlate, Oyo State*

*08038128943*

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### **Abstract**

*The supremacy of constitution of any nation is not doubtful in the sense that its provisions have binding force on all authorities and persons, irrespective of status. This necessitates the constitutional stipulation that a person in the public service of a state shall observe and conform to the code of conduct of that state. Establishment of the Code of Conduct Bureau is to enforce compliance to the code of conduct so as to curb act of indiscipline among public servants and as well instill sanity in the public service. This paper therefore examined the issue of public service / public servants and code of conduct public officers affected by code of conduct and code of conduct for public officers in Nigeria. Finally, it looked at the impact of Code of Conduct Bureau and the extent of its compliance by public servants in Nigeria.*

**Keywords:** *Code, Conduct, Bureau, Tools*

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### **Introduction**

Every nation has its own constitution, the provisions of which have binding force on all authorities and persons regardless of status. This is also true of the Nigerian constitution which compels public officers to observe and conform to the code of conduct. According to the 1999 Nigerian Constitution; section 209 and 1989 section 70 (i), "a person in public service or a public servant in public service of a state shall observe and conform to the code of conduct" This provision necessitated the establishment of Code of Conduct Bureau to enforce compliance by public servants to the code of conduct. This is in a quest to curb in totality or reduce to the barest minimum the incidence of myriad of problem of indiscipline among public servants and to instill sanity into the public service. This will, in no small measure, ensure establishment of a functional and effective administrative structure that will be devoid of indiscipline in departments, ministries and agencies as well as other public establishments in Nigeria. This paper, therefore, approached this issue by looking at the meaning of public services affected by the code of conduct as well as

code of conduct for public officers in Nigeria. Finally, it examined the effects of Code of Conduct Bureau on public servant compliance to the code of conduct highlighted.

### **Conceptualizing Emerging Terms**

#### **Public Service**

Ilofa, (2017) opined that public service is the administrative arm of the executive organ of government which is made up of departments and ministries and which recruits permanent staff of various categories to provide various services to the public: Diibie (2012) posited that public service is the term used to describe the entire governmental administration including the civil service, the Armed Forces, the Police, Public Corporation and Government owned companies and that its personnel are referred to as public servants. Making a distinction between public service and civil service, Appadorai (1975) asserted that civil service is a body or department in the executive arm of the government responsible for the execution of policies and programmes of government and that its personnel are

referred to as civil servants, who are also public servants, in the public service. He clarified that public service is larger than the civil service since the latter is part of the formal.

### **Code of Conduct**

A code of conduct is referred to as rules and regulations made and which are binding on every worker in an organization or establishment. It could also be seen as the standard of behaviour, set for all the public officers to meet in pursuance of their public duties. Public officers in the federation are expected to observe and conform to the code of conduct. The 1989 Nigerian constitution section 70 (i) states that “a public servant in the federation shall observe and conform to the code of conduct” According to the 1999 Nigerian Constitution section 209, “a person in public service of a state shall observe and conform to the code of conduct” Suffice it to say here, the code of conduct is not limited to the public officers alone, other establishments, professions or vocations also have their own set of rules that govern the duties of members of these institutions. For instance, there are codes of conduct for members of the Journalism, law or legal profession, teaching profession, and so on. Expectedly, the code of conduct would have been clearly stated in the constitution of each profession. Whether public or private officers, the rules centre on the dos and don'ts of the members in the organization or institution.

### **Code of Conduct Bureau**

The Code of Conduct Bureau (CCB) was established in 1979 after thirteen years of military rule during the Second Republic of Nigeria. According to Abaka (2019), it is the first anti corruption agency that was set up in Nigeria. The official report of House of Representatives of the National Assembly (1979) revealed that the Code of Conduct Bureau serves as a special court under the jurisdiction of the Federal High Court which prosecutes public servants that are found guilty of public funds embezzlement among other crimes. Generally therefore, its aim is to battle corruption in the Nigerian public service. In 1979, an enumeration of code of conduct was made for public office holders.

Shedding light on its establishment, Omotoso (2016) affirmed that the military administration led by Gen. Olusegun Obasanjo inaugurated a board which would oversee the code of conduct laid out to public officers hence, the formation of Code of Conduct Bureau before the handing of power to the civilian government in July, 1983. Also, Adeh (2010) confirmed that in 1989 during the reign of the General Ibrahim Babangida, the Code of Conduct Bureau got its legal backing as it was signed into law by the National Assembly in the Third Republic. In 1990, the National Assembly of Nigeria enacted an enabling law that supports the Bureau in carrying out its functions.

### **Why the Code of Conduct Bureau**

The code of conduct Bureau (CCB) in essence, was established for the purpose of addressing issues relating to the conduct of public officers during their tenure of holding office, also especially to fight corruption in the public service. The Code of Conduct Bureau and Tribunal Act Chapter 58 LFN, 1990 gave the Bureau the mandate to establish and maintain a high standard of public morality in the conduct of government business and to ensure that the actions and behaviours of public officers conform to the highest standards of public morality and accountability.

The Bureau's constitutional mandate as provided for in the 1999 Constitution is to:

1. receive declaration by public officers made under paragraph 12 of part 1 of the Fifth Schedule to the 1999 Constitution.
2. examine the declaration in accordance with the requirements of the code of conduct or any law
3. 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
4. ensure compliance with and where appropriate, enforce the provision of the code of conduct or any law relating thereto.
5. receive complaints about non-compliance with or breach of the code of conduct or any law in relation thereto, investigate the complaint

- and, where appropriate, refer such matters to the Code of Conduct Tribunal (CCT)
6. appoint, promote, dismiss and exercise disciplinary control over the staff of the Code of Conduct Bureau in accordance with the provisions of an Act of the National Assembly enacted in that behalf.
  7. carry out such other functions as may be conferred upon it by the National Assembly
- In the light of the above, the primary functions of the Code of Conduct Bureau are to;
- a. ensure minimum standard of morality;
  - b. retain custody of declarations;
  - c. receive declaration of asset;
  - d. ensure due process by public officers
  - e. give the judiciary, more powers to discipline erring judges
  - f. protect public officers from the press
  - g. ensure accountability in government business and
  - h. give the police more powers to make arrest

### **Public Officers in Nigeria Affected by the Code of Conduct**

According to the 1999 Constitution of the Federal Republic of Nigeria (revised edition), the Bureau has power over the following categories of public office holders.

1. The president and the vice-president
2. Senate President, Deputy Senate president, other members of the senate and the officers of the senate
3. Speakers, Deputy Speakers; other members of the House of Representatives and State Houses of Assembly and the officers of the House of Representatives and State Houses of Assembly.
4. State Governors and Deputy Governors
5. Chief Justice of Nigeria, Justices of the Supreme Court, President and Justice of the Court of Appeal, all other judicial officers and all staff of court of law
6. Accountant Generals of the Federation and of each State
7. Ministers of the Federal Republic of Nigeria and State Commissioners
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 police force.
10. Secretary of the Government of the federation, Head of Civil Service, Permanent Secretaries, Director Generals and all other persons in the civil service
11. Ambassadors, High Commissioners and other officers of Nigerian missions abroad
12. Chairman, members and staff of the Code of Conduct Bureau, Code of Conduct Tribunal; staff of commissions or councils or parastatals or other tribunals etc appointed on full time basis.
13. Chairman and members of the boards or other governing bodies and staff of statutory corporations and of companies in which the federal or state government has controlling interest.
14. All staff of universities and colleges and institutions owned and financed by the Federal or State Government or Local Government Councils
15. Chairman, members and staff of permanent commissions or councils appointed on full time basis
16. All officers working for government (Federal, State and Local).

### **Code of Conduct for Public Officers in Nigeria**

Part 1 of the Fifth Schedule of the Nigerian Constitution provides for the public officers the following codes of conduct

1. **Conflict of interest with duty:** A public officer shall not put himself/herself in a position where the personal interest conflicts with his duties and responsibilities, for example, a public officer should not use his/her position to amass wealth for himself or his friends or family. He should not use the office to award contract to his private companies

because as a public office holder, he is not allowed to own any other private companies

2. **Prohibition of foreign accounts or employment in foreign companies:** All serving public office holders are prohibited from maintaining and operating any foreign account during the period of their service. In the same vein, such officers are prohibited from service or employment in foreign enterprises
3. **Prohibition of certain property transactions and of gift or benefits:** All public officers are prohibited during the tenure of their offices, to acquire or take any property of the state in which they hold offices or sell such property or exchange such property with any property belonging to them. Also, a public office holder shall not ask for or accept any property or benefit of any kind for himself or any other person on account of anything or favour done, to be done or omitted to be done by him in the discharge of his duties. A public officer shall only accept personal gifts or benefits from relatives or personal friends to such extent and on such occasions as are recognized by custom. No person shall offer a public officer any property, gifts or benefits of any kind as an inducement or bribe for granting of any favour or the discharge in his favour of the public officer's duties.
4. **Restriction on loans or benefits and abuse of office:** Public office holders are restricted from accepting a loan except from government or its agencies, a bank, building society or other financial institutions recognized by law,

Also, they are not to accept any benefit of whatever nature from any company, contract or businessmen, or nominee or agent of such person. A public officer shall not do or direct to be done in abuse of his office any arbitrary act prejudicial to the rights of any other person knowing that such act is unlawful or contrary to any state policy or public morality.

5. **Membership of Societies:** A public officer shall not be a member or belong to, or take part in any society the membership of which is incompatible with the function or dignity of his office, he is only allowed to join professional bodies that will help him develop new skills and techniques in his day –to-day office duties and not a secret society.
6. **Retired public officers:** A public officer shall not, after his retirement from public service and while receiving pension from public funds from government, except more than one remunerative position, of a company owned or controlled by the government or public authority. A retired public officer shall not receive any other remuneration from public funds in addition to his person and the enrolment of such one remunerative position. Retired public officers who hold offices are prohibited from service or employment in foreign companies or foreign enterprises
7. **Declaration of assets:** Every public officer shall within thirteen months after the coming into office and thereafter at the end of every four years or at the end of his term of office, submit to the Code of Conduct Bureau a written declaration of all his property, assets and liabilities and those of his spouse and unmarried children under the age of 18 years. Any statement in such 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 the code of conduct, and such officer shall be referred to the Code of Conduct Tribunal. Any property or assets acquired by a public officer after any declaration and which is not fairly attributable to income, gift or loan approved by this code shall be deemed to have been acquired in breach of this code unless the contrary is proved.

### Code of Conduct Tribunal

The Code of Conduct Tribunal was established by the Constitution of the Federal Republic of Nigeria. It is a special court empowered to try public officials for breach or contravention of the provisions of the Code of Conduct Bureau and Tribunal Act. Any allegations that a public officer has committed, a breach of or has complied with the provisions of the code of conduct shall be made to the Code of Conduct Tribunal which has been set up to investigate allegations and impose appropriate sanctions or punishment on any public officer who is found guilty. The Code of Conduct Tribunal has the power to impose punishment such as any of the following on any officer found guilty.

1. Vacation of or removal from office or seat of any officer found guilty by the tribunal
2. Disqualification from membership of legislative house or from holding any public office for a period not exceeding ten years
3. Seizure and forfeiture to the state of any property acquired in abuse or in fraudulent ways or by corruption of office
4. The officer found guilty may also be recommended for further trial in court of law when the offence committed is a criminal offence.

### Contravention of Code of Conduct

The stated code of conduct enable us to shed light on the high standard of discipline behaviours by which public officers in Nigeria must live. It also allow us to determine whether our leaders or public officers are indeed leading by example, especially when we x-ray the degree of their compliance to the provisions of the code of conduct.

There is no gainsaying in the fact that public service in Nigeria in the recent time is the home of indiscipline behaviours. Only a very few proportion of public office holders in Nigeria live up to expectation of the provisions of the code of conduct. This is glaring especially when we look at the extent of compliance by public officers and our leaders. Cases of violations or contraventions of code of conduct abound and they assume different dimensions including the following:

1. False declaration or falsification of age
2. False declaration of number of children in order to evade tax
3. Non- declaration of assets
4. False declaration of assets
5. Membership of secret societies
6. Establishment of private businesses while still in public service
7. Embezzlement of private business while still in public service
8. Engaging in private businesses in the public offices
9. Absenteeism from and lateness to work
10. Keeping foreign accounts.
11. The prevalence of these abuses and other indiscipline
12. Behaviours amount to flagrant disregard to the provisions of the code of conduct. Without mincing words, this in no doubt constitutes a great threat to the functional and smooth administration in the nation's public service.
13. Bribe taking or inducement
14. Taking up federal appointment after retiring from state public service

### Suggestions

1. The Code of Conduct Bureau should make public officers aware of the code of conduct in Nigeria on assumption of duty
2. Implementation of code of conduct should be properly monitored by the Code of Conduct Bureau and other anti-corruption agencies such as EFCC and ICPC
3. Strict compliance to the code of conduct by public officers, should be enforced by Code of Conduct Bureau and other anti-corruption agencies
4. Erring public officeholders should be arrested, prosecuted and punished accordingly if found guilty
5. Public officers should be made to declare their assets on the first month of assumption of duty and of retirement
6. Public officers should be forced to swear to affidavit on the assets declared at least first month of assumption of duty.

7. Public officers at all levels should comply strictly to the code of conduct while in service and after the retirement.

### Conclusion

The constitution of the Federal Republic of Nigeria established the Code of Conduct Bureau and Code of Conduct Tribunal: These in turn specified the code of conduct for Nigerian public officers to comply with and try and sanction erring offenders respectfully. A larger proportion of public office holders contravene the provisions of the code of conduct thus, flagrantly disregarding them. The overall consequence of this gross indiscipline is incongruous with the objective of achieving a porousless public service in the country. To accomplish a descent and discipline civil service therefore, the highlighted and other suggestions should be strictly adhered to by the relevant bodies and other stakeholders in the legislative, executive and the judiciary arms of government.

### References

- Abaka, M. (2019). "Code of Conduct Bureau Wants Outgoing Political Office Holders in Kano to Declare Assets"
- Adeh Lgnatius (2010). Corruptions and Environmental Law: The case of the Niger Delta LIT. Verlag Minister
- Appadorai, A. (1975). Substance of Politics, Oxford University Press.
- Bureau Nigeria Political; Nigeria (1987). The Third Republic, White Paper for 1987 – 1992. Daily Star Publication
- Code of Conduct Bureau (2019). Enabling Law
- Federal Government of Nigeria (1987): Report of the Political Bureau Federal Government Printer
- Federal Government of Nigeria (1989) Constitution of the Federal Republic of Nigeria
- Federal Government of Nigeria (1999). Constitution of the Federal Republic of Nigeria
- Ilofa, Y. T. (2017). National Examination Council. Civil Education Marking Guide
- Nigeria Code of Conduct Bureau and Tribunal Act, (1991) PDF
- Nigeria National Assembly House of Representatives (1979): National Assembly Debates. House of Representatives Official Report. National Academy Press.
- Omolayo, S. and Arowolaju, B. (1987): Elements of Government Friends Foundation Publishers; Nigeria
- Omotoso, F. et al (2016): Democratic Governance and Political Participation in Nigeria, 1999 – 2014. African Books Collective
- Ramalan, I. (2019): Code of Conduct Bureau Urges Outgoing Political Office Holders to Declare Assets: Daily Nigerian Publications