



© Socio-Economic Rights and
Accountability Project (SERAP)
Lagos, Nigeria - 2020

**CITIZENS' GUIDE TO
ASSET DECLARATION
BY PUBLIC OFFICERS IN NIGERIA**

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**Socio-Economic Rights and
Accountability Project (SERAP)**

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EXECUTIVE SUMMARY

Assets declaration serves as a tool for detecting and preventing illicit enrichment and conflicts of interests among public officials in many countries. However, not all countries with an assets declaration regime in place require all employees in the public service to make such declarations. Further compounding the problem is that numerous assets declaration regimes do not make it explicitly mandatory for the affected categories of public officials to disclose their declared assets beyond mere filing of such with the appropriate bodies.

Nigeria falls in the category of states where ensuring full compliance with the ample provisions of the law on assets declaration is further exacerbated by a pervasive culture of resistance to the public disclosure of declared assets. Reflecting on the array of international and comparative legal instruments as well as standards of comparative best practices from around the globe, this Guide by the Socio-Economic Rights and Accountability Project (SERAP) demonstrates that disclosures constitute an integral component of assets declaration systems and do not pose a significant risk to the ancillary rights of public officers in Nigeria. On the contrary, the Guide establishes that the transparency and accountability benefits provide strong reasons for the custodians of the assets declared by public officers to release such to members of the public in furtherance of the national, regional and global anti-corruption campaign. The Guide also provides insights on the legal and policy pathways towards implementing the extant laws and realizing the ends of transparency and accountability in Nigeria.

The analysis here examines the legal framework of the assets declaration systems as well as the institutional arrangements for their management. It reviews the categories of public officials and related individuals who are required to submit declarations, as well as the particular information required. Attention is paid to procedures for processing and verifying declared information, and sanctions for

violations, as well as their efficacy where existent. Various approaches to public disclosure of the information contained in declarations are also reviewed. Issues of privacy encroachment and overall usefulness in the fight against corruption are covered as well. Case studies are presented – from Africa, Asia, America and Europe as country examples and regional references of juridical best practices.

The overall objectives of this Guide are (i) to facilitate the strengthening of the operational capacity of public officers, government functionaries and institutions involved in the implementation and daily management of asset and income disclosure systems in Nigeria, and (ii) to inform the legal and policy discourses around these issues through a good practice manual and other tools. In summing up, the Guide proffers capacity-building strategies and tools covering practical implementation aspects of such systems, highlighting good practices by pooling existing knowledge in the field and analyzing comparative country systems to draw relevant lessons for Nigeria.

Keywords: Accountability; Anti-Corruption; Assets Declaration; Corruption; Public Officials; Nigeria; Transparency.

1. CONCEPTUAL OVERVIEW AND PROGNOSIS

Assets declaration, declaration of interests, and financial disclosures are quickly becoming a fundamental tool for anti-corruption agencies and/or governments to fight corruption throughout the world. The roots of these instruments lay in efforts at addressing concerns by citizens about the honesty of their public servants and political office holders in several countries. By the middle of the twentieth century, many of the more developed democratic countries had some form of disclosure requirements for public officials.¹ Today, however, the laws and rules are widely varying: some rely on voluntary statements, some require declarations to be public, some regard them as confidential, and some provide a review process while some only require filing.²

In the 1960s and 1970s, because of corruption scandals in places like Hong Kong, the US and the Netherlands, governments turned to declarations as one mechanism of prevention. The use of disclosures grew over the past decade and they were finally embodied as a worldwide standard in the first global anti-corruption agreement, the UN Convention against Corruption (UNCAC), 2003.³ Several regional systems and national jurisdictions have latched on to the growing trend.

Overwhelming empirical research studies have proven that an asset declaration open to public scrutiny is a way for citizens to ensure leaders do not abuse their powers for personal gain.⁴ A transparent and verifiable assets declaration system is therefore a way to deepen the issues of ethics and

¹ Alicia Adsera, Carles Boix, & Mark Paine, "Are You Being Served? Political Accountability and Quality of Government," (2003) 19(2) *Journal of Law, Economics & Organization* 445.

² Simeon Djankov, Rafael La Porta, Florencio Lopez-de-Silanes & Andrei Shleifer, *Disclosure by Politicians*, NBER Working Paper Series No. 14703 (Cambridge, MA: National Bureau of Economic Research, 2009) 2-3; Organization for Economic Co-operation and Development (OECD), *Asset Declarations for Public Officials: A Tool to Prevent Corruption* (Paris: OECD Publishing, 2011) 23-25.

³ Articles 8 and 52 (5) and (6). See also World Bank, *Concept Note Asset and Income Declaration Guide* (Washington, DC: World Bank, 2009), 2.

⁴ See, eg, Krabbe Boserup, *An Introduction to Openness and Access to Information* (Copenhagen: Danish Institute for Human Rights, 2005); John Hogan, Raj Chri & Gary Murphy, *Walking in Sunshine, or Away from It? Creating a Unified Transparency Index* (Dublin: Dublin Institute of Technology, 2012); World Bank and UNODC, *Public Office, Private Interests: Accountability Through Income and Asset Disclosure* (Washington, DC: World Bank, 2012).

integrity in the political classes, more so, because politicians and civil servants hold substantial power over the allocation of resources in their countries and the citizens who elect them, and who in effect pay their emoluments through tax contributions. We should never forget the reason for creating these systems. As part of an overall anti-corruption strategy, they help ensure that scarce resources are spent honestly and wisely. In this way, we help citizens get the health care, the education, the roads and the quality of life they have paid for and deserve. And, in the best sense, this attention to good governance acts as a reinforcing foundation for prosperity and stability.

While Nigeria has a set of laws and institutions that are pivotal in facilitating assets declaration, the contentious issues have revolved around non-compliance by the majority of public officials, lack of transparent follow-up and verification of declared assets as well as the persistent reluctance of the custodian of declared assets to publish the records for public scrutiny. It has been acknowledged that a number of the assets declaration forms have been left unverified by the regulatory body saddled with the responsibility of custody in Nigeria, thus making the system ineffective.⁵

Transparent assets disclosure systems can be used to spot problems early in a person's tenure and used as prima facie evidence in either criminal prosecution or civil asset forfeiture. Their use depends on the efficacy of the applicable laws, practices and institutions in the country. In addition, the creation and enforcement of asset and income disclosure systems has the potential to prevent illicit enrichment, not only by making it more difficult to acquire assets through corrupt actions without being held accountable for such actions, but also ultimately changing the mind-sets of public officials so that they are less prone to engage in corrupt practices.

⁵ See Jacob Audu, *An Assessment of the Code of Conduct Bureau and Code of Conduct Tribunal (CCB and CCT)'s Public Ethics Practices (1999-2007)*, unpublished PhD thesis (Ahmadu Bello University, 2012); John Sunday Ojo, "e-Governance and Anti-Corruption War in Africa: The Nigeria Experience", *IntechOpen*, 27 September 2019, at <https://www.intechopen.com/online-first/e-governance-and-anti-corruption-war-in-africa-the-nigeria-experience> (last visited 2 February 2020).

In an effort to broaden the approach to asset recovery and to link it properly with governance and anti-corruption strategies in Nigeria, SERAP is currently working in the area of assets and income declaration, using multi-modal strategies of advocacy, litigation, citizen participation, training, research and documentation. The underpinning stance is that transparent and openly verifiable disclosure systems can be an essential element in both preventing the theft of assets as well as in detecting and prosecuting those who have misappropriated public funds for selfish use.

A well-defined asset declaration system is a strong tool to fight public sector corruption and abuse of power. Published information on a person's assets allows civil society to hold leaders to account. If leaders are seen to live beyond their means, an asset declaration can be a starting point for investigations.

2. NORMATIVE FRAMEWORK OF ASSETS DECLARATION IN NIGERIA

The body of laws forming the normative framework of assets declaration in Nigeria consists of the provisions of pertinent global and regional treaties that are applicable in Nigeria, national statutes and policy directives. Among these are the United Nations Convention against Corruption (UNCAC),⁶ which requires States Parties to comply with a broad range of measures aimed at preventing and combating corruption, including but not limited to the establishment of ethical codes of conduct for public officials; the African Union Convention on Preventing and Combating Corruption (AU Convention),⁷ which addresses several aspects of corruption, including concealment of property by public officials and illicit enrichment; and the ECOWAS Protocol on the Fight against Corruption,⁸ which seeks to promote and strengthen development among the state parties in their efforts towards preventing corruption and also creating opportunities for state parties to have bilateral relations. It is important to note that Nigeria is a state party to all these treaties and is therefore bound by their tenets under international law.

In accordance with global practice, Nigeria has a litany of statutes that provide basis for assets declaration in the fight against corruption. At the center of all these enactments is the Constitution of the Federal Republic of Nigeria (CFRN), 1999, which makes it mandatory for all public officers to declare their assets and those of their spouses and dependent minors.

Whereas in many countries, the manner of assets declaration is prescribed by separate anti-corruption or ethics laws, in Nigeria, it is a matter centrally regulated by the Constitution. This has a tinge of history behind it.

Against the backdrop of rising and pervasive corrupt practices among the rank and file of the federal public service system in the years immediately following

⁶ UN Doc. A/58/422, adopted on 31 October 2003 by the UN General Assembly and entered into force on 14 December 2005.

⁷ Adopted on 11 July 2003 and entered into force on 5 August 2006.

⁸ ECOWAS Protocol A/P3/12/01, adopted on 21 December 2001.

the end of the Civil War (6 July 1967 to 12 January 1970), the Federal Military Government headed by the late General Murtala Mohammed and continued by General Olusegun Obasanjo (29 July 1975 to 30 September 1979) enacted the Corrupt Practices Decree No 39 of 1975, proclaimed the “Jaji Declaration”, and created the Public Complaints Commission, all aimed at stemming the tide of corruption in the public sector.⁹ The Fifth Schedule to the CFRN 1979 that birthed the Second Republic (1 October 1979 to 31 December 1983) introduced the Code of Conduct for all public officers while the National Assembly established by the same constitution subsequently created both the Code of Conduct Bureau and the Code of Conduct Tribunal as institutional mechanisms for the enforcement of the new rules of public service behaviors.¹⁰ The comprehensive code of conduct regime in Nigeria was eventually encapsulated as the Code of Conduct Bureau and Tribunal Act,¹¹ giving the Code of Conduct Bureau (CCB) the powers to establish, maintain and sustain public morality in the conduct of government businesses and to make sure that the behaviors of public officers also comply to the highest quality of public morality and accountability. This system was further reinforced through the provisions of the Code of Conduct Bureau and Tribunal Act,¹² to handle complaints against corrupt public servants and for infringements of the law. All subsequent administrations have retained the Code of Conduct system ever since.

The current Constitution of the Federal Republic of Nigeria (CFRN), 1999 (as amended) thus retains the the form and content of the assets declaration regime that had evolved in Nigeria over the course of four decades. Ample provisions exist in the CFRN 1999 directly and unequivocally making assets declaration a cardinal component of the kind of governance envisaged for Nigeria.

⁹ See Declan Amaraegbu, “Goals and Failures of Anti-Corruption Agencies in Nigeria”, in ‘Femi Omotoso & Michael Kehinde (eds), *Democratic Governance and Political Participation in Nigeria 1999-2014* (Denver, CO: Spear Media Press, 2016) 217, 225.

¹⁰ *Ibid.* See also National Assembly, *National Assembly Debates: House of Representatives, Official Report, Volume 2* (Lagos: National Assembly Press, 1979) 178-180.

¹¹ Chapter 58 LFN 1990.

¹² No. 1 of 1989, with a commencement date of 1 January 1991.

Under sections 140(1) and 142(2), the CFRN respectively require persons elected to the offices of President and Vice-President respectively to declare their assets and liabilities before they begin to perform the functions of those offices. In particular, section 140(1) provides that:

A person elected to the office of President shall not begin to perform the functions of that office until he has declared his assets and liabilities as prescribed in this Constitution and he has taken and subscribed the Oath of Allegiance and the Oath of Office prescribed in the Seventh Schedule to this Constitution.

Section 149, which has similar content as Section 152,¹³ provides that:

A minister of the Government of the Federation shall not enter upon the duties of his office, unless he has declared his assets and liabilities as prescribed in this Constitution and has subsequently taken and subscribed the Oath of Allegiance and the Oath for the due execution of the duties of his office prescribed in the Seventh Schedule to this Constitution.

The provisions concerning the declaration of assets and liabilities by members of the National Assembly have their unique features. Section 52 of the Constitution provides as follows:

- (1) Every member of the Senate or the House of Representatives shall, before taking his seat, declare his assets and liabilities as prescribed in this Constitution and subsequently take and subscribe the Oath of Allegiance and the Oath of Membership as prescribed in the Seventh Schedule to this constitution before the President of the Senate or, as the case may be, the Speaker of the House or Representatives, but a member may before taking the oaths take part in the election of a President and a Deputy President of

¹³ *Applicable to Special Advisers.*

the Senate, as the case may be, or a Speaker and Deputy Speaker of the House of Representatives.

- (2) The President and Deputy President of the Senate and the Speaker and Deputy Speaker of the House of Representatives shall declare their assets and liabilities as prescribed in this Constitution and subsequently take and subscribe the Oath of Allegiance and the Oath of membership prescribed as aforesaid before the Clerk of the National Assembly.

There are equivalents of all the above provisions for public functionaries at the state levels.¹⁴ Section 290 covers the assets declaration obligation of holders of judicial offices in Nigeria.

To reinforce the intentions of the drafters of the Constitution and to make the obligation all-encompassing, Part 1 of the Third Schedule to the CFRN in its paragraph 3 and Part 1 of the Fifth Schedule to the same Constitution in its paragraph 11 require the CCB, among others, to collect, verify and make available to the public the duly filled assets declaration forms of these public office holders.

For purposes of clarity, the full mandates as expressed under the CFRN are as follows:

- a) receive declarations by public officers made under paragraph 12 (sic) of Part 1 of the Fifth Schedule to this Constitution;
- b) examine the declarations in accordance with the requirements of the Code of Conduct or any law;

¹⁴ See sections 94(1) – members of a State House of Assembly; 94(2) Speaker and Deputy Speaker of a House of Assembly; 185(1) Governor of a State; 187(1) Deputy Governor of a State; 194 – Commissioners; 196(4) – Special Advisers at the State level.

- c) 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;¹⁵
- d) ensure compliance with and, where appropriate, enforce provisions of the Code of Conduct or any law relating thereto;
- e) receive complaints about non-compliance with or breach of the provisions of the Code of Conduct or any law in relation thereto, investigate the complaints and, where appropriate, refer such matters to the Code of Conduct Tribunal;
- f) 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; and
- g) carry out such other functions as may be conferred by the National Assembly.¹⁶

In sum, all public officers have an obligation under the CFRN 1999 and the Code of Conduct Bureau and Tribunal Act to declare their assets as well as those of their spouses and dependent minors. These declarations are to be made by both elected and appointed public officials and deposited with the CCB, the statutory custodian of all such submissions.

Any allegation that a public officer has committed a breach of – or has not complied with the provisions of – the Code shall be made to the Bureau which has the exclusive jurisdiction to try such allegations through the Code of Conduct Tribunal (CCT).¹⁷

The penalties of a conviction by the CCT are more portentous than is often imagined by the generality of Nigerians. The punishments specified under paragraph 18 of the Fifth Schedule to the CFRN 1999 include vacation of office or

¹⁵ *Italicized for emphasis.*

¹⁶ *Paragraph 3 of Part I of the Third Schedule to the CFRN, made pursuant to section 153.*

¹⁷ *See paragraphs 12 and 15 of the Fifth Schedule to the CFRN.*

seat in any legislative house; disqualification from members of a legislative house, and from holding of any public office for a period of ten years; seizure and forfeiture to the State of any property acquired in abuse or corruption of office.

Beyond the foregoing, other local laws that have crucial implications for public disclosures and availability of assets declaration in Nigeria are the National Archives Decree, 1992; National Inland Waterways Authority Act, 1996; Nigeria Extractive Industries Transparency Initiative (NEITI) Act, 2007; Fiscal Responsibility Act, 2007; Public Procurement Act, 2007; and the Freedom of Information (FOI) Act, 2011.

The summation of these national statutes is the espoused commitment to transparency and accountability, and the abolition of secrecy in governance. Section 2(4) of the FOI Act encapsulates this summation of all correlative statutes by providing that a public institution shall ensure that public information “is widely disseminated and made readily available to members of the public through various means, including print, electronic and online sources, and at the offices of such public institutions.” By which other language can the intention of the National Assembly be made more explicit?

When read together and juxtaposed with the historical narratives of public sector corruption in Nigeria as well as the plethora of other extant laws, therefore, the irresistible conclusion to be drawn from the elaborate provisions above is that the assets declarations anticipated under the Third and Fifth Schedules to the CFRN are not only to be submitted but that the custodian of the submissions shall make them available to citizens of Nigeria for purposes of transparency, verification and accountability.

Regrettably, this has not been the dominant scenario and we shall examine the controversies in the next segment of this Guide.

3. CHALLENGES TO IMPLEMENTATION AND EFFICACY

As mentioned above, an ever-growing number of countries have adopted ethical codes and anti-corruption laws that require public officials to declare their assets and income and, increasingly, the assets and incomes of their spouses and dependent children. The officials who are required to declare, and the amount of detail required, vary significantly from country to country. While the requirement to declare income and assets generally is imposed by anti-corruption laws, these laws generally do not require that all of the declared information be made public and indeed some laws only require disclosure to a public agency.¹⁸

Across many jurisdictions of the world, one of the most formidable impediments to the public disclosure of declared assets is the alleged encroachment of the rights to privacy and data protection.¹⁹ In several countries, proponents of public disclosure dismiss the privacy issue saying that individuals could choose whether to enter public service and if they chose to do so, a part of the price they paid was waiving their right to privacy.²⁰

As learnt from the Nigerian experience, merely mandating assets declaration by law is no guarantee that the public will obtain this information. Some twenty-one years after the onset of elective civilian government in Nigeria and despite the passage of the FOI Act in 2011, the CCB has failed, refused and neglected to exert its capacity to verify the claims made in the assets declaration forms of public officials and has continued to obstruct Nigerians who seek access to this information in order to verify the claims made in them. By this action, the CCB abdicates its constitutional responsibility which mandates it to receive, examine, retain in its custody and allow for public access to these asset declaration forms. The Bureau has consistently excused its maladroitness to allow for public access

¹⁸ Djankov, et al, above note 2, at 3-5.

¹⁹ Richard Messick, *Income and Assets Declarations: Issues to Consider in Developing a Disclosure Regime* (Bergen: U4 – CMI, 2009) 8.

²⁰ *Ibid*, 9.

by stating that the National Assembly has not prescribed the terms and conditions to allow for public access, even with the FOI Act in place.²¹

In January 2019, The International Center for Investigative Reporting (ICIR) filed an FOI request to the CCB demanding the provision of assets declared by President Buhari and his cabinet members. The CCB however declined the request, two months after the FOI request was sent, a clear violation of the 7-day official deadline prescribed in the statute. Part of the response by CCB quoted that “section 14(1) of the Freedom of Information Act, 2011, has exempted asset declarations of public officers from documents that can be accessed via reliance on the provisions of the FOI Act”.²²

Previously, in 2015, the CCB gave similar reasons for refusing to provide the assets declaration forms of the heads of the CCB, Code of Conduct Tribunal, and Nasir El-Rufai, governor of Kaduna State. According to the Bureau, “By virtue of sections 12(1)(a)(v), 14(1)(b) and 15(1)(a) of the same Act [FOI Act], the Bureau is not under any obligation to grant your request which constitutes invasion of personal privacy.”²³

The CCB has persistently maintained this anachronistic stance.²⁴ The inaction by the Bureau demonstrates that it is institutionally complicit in the plunder of Nigeria’s resources by corrupt public officials and their evasion of accountability.

²¹ See Robert Egbe, “CCB Won’t Publish Buhari’s, Osinbajo’s Assets”, *The Nation*, 18 October 2019, <https://thenationonlineng.net/ccb-wont-publish-buharis-osinbajos-assets/> (last visited 7 Jan 2020).

²² *Ibid.*

²³ Ben Ezeamalu, “Code of Conduct Bureau Chair Refuses to Disclose Own Assets”, *Premium Times*, 14 October 2015, at <https://www.premiumtimesng.com/news/headlines/191491-code-of-conduct-bureau-chair-refuses-to-disclose-own-assets.html> (last visited 7 Jan 2020).

²⁴ Rebecca Akinremi, “National Assembly Has Not Empowered CCB To Release Asset Details of Buhari, Osinbajo, Others Chairman”, *iNewsFeatured News*, 7 Jan 2020, at <https://www.icirnigeria.org/national-assembly-has-not-empowered-ccb-to-release-asset-details-of-buhari-osinbajo-others-%e2%94%80-chairman/> (last visited 7 Jan 2020).

The attitude of the CCB is illogical and reprehensible having regard to the rulings of the Federal High Court in a litany of decided cases.

In *Legal Defence & Assistance Project (Gte) Ltd. (LEDAP) v. Clerk of the National Assembly of Nigeria*,²⁵ LEDAP had on 6 July 2011 applied to the National Assembly (NASS) for information “on details of salaries, emolument, and allowances paid to the Honourable Members of Representatives and Distinguished Senators, both of the 6th Assembly, from June 2007 to May 2011”.²⁶ The NASS did not respond to the request, prompting LEDAP to bring suit in the Federal High Court. The NASS argued primarily that the applicant did not file within the time limit set in Section 20 of the FOI Act, that it would be “prejudicial” to pending cases to grant LEDAP’s request; and that the information constituted personal information that was exempted under Section 14 of the Act.²⁷

The Court denied the argument regarding late filing, agreeing with LEDAP that Section 20 of the Act granted the Court discretion to extend the time limitations for filing suit. Before looking into the exceptions, the Court emphasized that “the onus...is on the denying authority to show that it is justified by the Act to deny the information requested”.²⁸ With respect to the “prejudicial” argument, the Court found that the NASS explanation for “what interest...will be prejudiced” had to do with a jurisdictional issue that was irrelevant to the present proceedings.²⁹ Since the Court could not “speculate” as to the actual relevance, the NASS’ rationale was “not justified by the Act”.³⁰ Nor was the NASS’ Section 14 argument persuasive. After reviewing the wording of the relevant provision, the Court concluded that LEDAP “did not request any of the personal information relating to the Honourable Members, but simply what was paid to

²⁵ *Suit No: FHC/ABJ/CS/805/2011*, 25 June 2012, *Federal High Court, per BB Aliyu, J.*

²⁶ *Ibid*, pg 4.

²⁷ *Ibid*, pg 5.

²⁸ *Ibid*, pg 19.

²⁹ *Ibid*, pg 21.

³⁰ *Ibid*.

them while they were in service from the public fund,” and that such information was “not among those exempted” under Section 14(1) of the Act.³¹

In *Uzoegwu F.O.C. Esq v. Central Bank of Nigeria & Attorney-General of the Federation*,³² Uzoegwu had in November 2011 requested from the Central Bank of Nigeria (CBN) information regarding “the amount payable to the Governor, Deputy Governor and Directors of the CBN as monthly salary”.³³ The CBN did not reply, although the Director of Finance at the CBN had acknowledged receipt of the request. One month later, Uzoegwu filed an Originating Summons in the Federal High Court, to which the CBN and the Attorney-General of the Federation responded by arguing that the requested information was “personal information which was communicated to [the officers] upon their appointments” at the CBN”.³⁴ The CBN also argued that “the information is protected by trade and commercial secrets (section 15(1)) read together with section 13(3) (training of officials) of the [FOI] Act”.³⁵

First, the Court examined the Central Bank’s claim that the information was “protected by Section 15(1) read together with Section 13(3)” of the FOI Act and found the argument to be muddled. For one thing, Section 13 of the Act does not have any subsections and is in no sense related to trade and commercial secrets.³⁶ As for Section 15(1), the Court concluded that “the salaries of the Governor of the CBN and Deputy Governors and Directors of the Bank cannot, by any stretch of imagination, be trade secrets contemplated by...Section 15(1)”.³⁷

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³¹ *Ibid*, pg 24.

³² *Suit No: FHC/ABJ/CS/1016/2011, 5 July 2012, per BB Aliyu, J.*

³³ *Ibid*, pgs 2-3.

³⁴ *Ibid*, pg 3.

³⁵ *Ibid*, pgs 4-5.

³⁶ *Ibid*, pgs 8-9.

³⁷ *Ibid*, pg 10.

However, the central question before the Court was whether the requested information regarding the salaries of high-level officials of the CBN qualified as “personal information” under Section 14(1) of the Act. Section 14(1) provides that a public institution “must deny” a request for information “that contains personal information,” which “includes” several types of personal information listed, none of which pertain to salaries of public officials.³⁸ While the CBN argued that the word “include” indicated a non-exhaustive list, the Court was not convinced, “for the simple reason that the salaries and allowances of officers are such intrinsic part of their public employment or appointment that if the legislature intended to exempt them as personal information[...], they will have stated so clearly”.³⁹ In fact, the Court claimed it would “not [be] logical to say that the payments of public officers from the public funds for their services to the public is personal information”.⁴⁰ Moreover, the Court claimed that the remaining subsections of Section 14 indicate that “where the interest of the public is in clash with the individual interest...the collective interest must be held paramount”.⁴¹ Namely, the Court relied on Sections 14(2) and 14(3), which provide certain situations where even information that is protected as personal information under Section 14(1) may be disclosed.⁴² By the wording of Section 14(3) of the Act, the “legislature clearly intended that the public interest [be] placed above all else, including the personal interest of the individuals”.⁴³ As such, the Court ordered disclosure of the information about the salaries of CBN officials.

In *Boniface Okezie v. Attorney-General of the Federation and The Economic and Financial Crimes Commission*,⁴⁴ Boniface Okezie had on 26 January 2012, requested from the Attorney-General of the Federation the following pieces of

³⁸ *Ibid*, pg 13.

³⁹ *Ibid*, pg 14.

⁴⁰ *Ibid*, pg 15.

⁴¹ *Ibid*, pg 16.

⁴² *Ibid*, pgs 15-16.

⁴³ *Ibid*, pg 17.

⁴⁴ *Suit No: FHC/L/CS/514/2012, 22 February 2013, per MB Idris, J.*

information relating to the operations of the Federal Ministry of Justice: (1) a list of criminal prosecutions being carried out through private lawyers; (2) the total amount spent in the course of the said prosecutions and the source of funding; (3) the amount the Ministry of Justice pays to its legal officers; (4) the amount the Federal Ministry of Justice spent in training its legal officers over the past year; and (5) the reason for abandoning the legal officers in the Federal Ministry of Justice in favor of private lawyers. On the same day, Okezie also requested similar items of information from the Economic and Financial Crimes Commission (EFCC), in addition to information regarding the EFCC's monetary dealings with Cecilia Ibru, the former Managing director of Oceanic Bank. Both the Federal Ministry of Justice and the EFCC acknowledged receipt of the requests for information but failed to comply with the requests. When Okezie brought suit against the Attorney-General and the EFCC to compel disclosure, the Attorney-General denied that the government had deliberately refused Okezie's request, instead claiming that "the request by the Plaintiff [was] being processed, and due to the classified nature of the request, the Ministry need[ed] to collate the data relating to financial issues from the Finance Department and the other department handling training matters." The EFCC argued that the Federal High Court in Lagos "lacked territorial jurisdiction," since "the cause of action arose in Abuja, and...the head office of the EFCC was in Abuja." The EFCC also advanced that "the Plaintiff had no locus standi to institute [the] action, that the nature of the information would infringe on state security and the right of the lawyers in relation to client and solicitor relationship."⁴⁵

At the outset, the Court established that the "basic principle behind most freedom of information legislation is that the burden of proof falls on the body asked for information, not on the person asking for it."⁴⁶ As such, the individual requesting information "does not usually have to give an explanation for their

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

actions, but if the information is not disclosed a valid reason has to be given.”⁴⁷ To comport with individuals’ rights to request information under the FOI Act, public institutions are expected to convey the requested information “promptly but not later than seven days after it has received a request.” Where a request is denied, the institution must “give notice to the Applicant” stating the basis for refusal within the FOI Act “within seven days.” Since the Attorney-General did not appear to be “contesting the case on the merits” and provided no basis under the Act for not supplying the information, the Court concluded that the Attorney-General “ha[d] no...power under the law” to have “kept mute.”⁴⁸

The Court also rejected in large part the various arguments advanced by the EFCC. Mainly, the EFCC erred in claiming that the Court lacked territorial jurisdiction because the action was not brought in Abuja. It found that such rules of civil procedure are “not mandatory, but directory.” Moreover, even if the EFCC’s headquarters were in Abuja, it was a “known fact that the [EFCC] carries on [a] substantial part of its business...in Lagos.” As to the locus standi issue, the Court held that it is not necessary for a plaintiff “to demonstrate any specific interest in the information being applied for” to have standing to bring suit. Rather, the requester of information was “entitled as a Citizen of [Nigeria] to institute [the] proceeding to compel the Defendants...to comply with the provisions of the Freedom of Information Act.”

As to the other two exceptions raised by the EFCC, the Court noted that while the EFCC was “entitled to protect information that is properly classified in the interest of national security,” and while “some of the information requested [...] threatened national security”, the EFCC still had the duty to respond to the request. With respect to EFCC’s attorney-client privilege argument, the Court acknowledged that such an exemption did exist (see Section 14(1)(a) of the FOI Act) but explained that it was not able to opine on the issue. “Whether there

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

exists a confidentiality agreement” is “an issue of fact,” and the EFCC failed to provide specific information on the “nature of the relationship.”

Finally, the Court addressed the issue of fees paid by the defendants to their legal practitioners by referring to an earlier judgment finding that such information would “interfere with the contractual or other negotiations of a third party”,⁴⁹ and that public interest in disclosure, in this case, does not outweigh the protected interest.

In *Public & Private Development Center Ltd./GTE (PPDC) v. Federal Ministry of Finance*,⁵⁰ the Applicant had applied for access to a loan agreement executed between the Federal Republic of Nigeria and the Chinese Exim Bank on the execution and completion of the Abuja light rail Project in the custody of the Federal Government of Nigeria (FGN). The FGN denied the request on the grounds that the documents contain the trade secrets of the Chinese Exim Bank which ought not to be disclosed. After perusing the documents, the Court held that the respondents had no justification in denying the Applicants the documents sought under the FOI Act.⁵¹

In *Socio-Economic Rights and Accountability Project (SERAP) v. Federal Government of Nigeria/Ministry of Power*,⁵² the applicant civil society organization had instituted an action for the disclosure of information on: “specific names and details about contractors and companies paid by each government, the total amounts paid by each government and the objects for the payments, the level of implementation of electricity projects, as well as details and specific locations of projects executed across the country by each government

⁴⁹ *Ibid.*

⁵⁰ *Suit No. FHC/ABJ/CS/856/13, 15 December 2014, per AFA Ademola, J.*

⁵¹ For further discussions on related cases, see NJ Madubuike-Ekwe & Joseph N. Mbadugha, “Obstacles to the Implementation of the Freedom of Information Act, 2011 in Nigeria” (2018) 9(2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 96, 102-103; Abiola Abioye, “Freedom of Information Law Enforcement in Nigeria: Emerging Issues from Court Cases”, paper presented at the 7th International Conference on Information Law and Ethics, Pretoria, South Africa, 22-23 February, 2016 [on file].

⁵² *Suit No. FHC/L/CS/105/19, 5 July 2019, per CA Obiozor, J.*

since 1999”,⁵³ claiming, inter alia, that “the failure by the government of President Muhammadu to provide SERAP with the details of payments made to contractors by each government since 1999 is a breach of the Freedom of Information Act, 2011.”⁵⁴

The Federal High Court granted the orders as prayed and also ordered the government of President Muhammadu Buhari to “urgently disclose if there is an ongoing investigation or prosecution of contractors and companies paid by successive governments since 1999 to carry out electricity projects but failed to execute the projects for which public funds were collected.”⁵⁵

It is instructive to know that the courts in all the cases referred to above relied on the letters and intendment of the FOI Act to reach their laudable decisions.

Despite the stiff resistance by the CCB towards public access to declared assets, experience across the globe shows that it is often journalists, non-governmental organizations and concerned citizens who scrutinize published asset declarations and trigger investigations by questioning implausible data.⁵⁶ Otherwise, most of the cases where impropriety was uncovered would probably never be investigated if the declarations were not accessible.

It is incontrovertible that the refusal of the CCB to make available the assets declared by public officials and government functionaries in consonance with the opportunity provided by the FOI Act, among several other normative instruments, is an Achilles' heel in the fight for transparency and accountability in Nigeria. As the following segment would show, Nigeria is lagging behind the best global standards of best practice.

⁵³ Channels TV, “SERAP Reacts As Court Orders Release Of Payment Details For Runway Electricity Contractors”, Updated July 7, 2019, at <https://www.channelstv.com/2019/07/07/serap-reacts-as-court-orders-release-of-payment-details-for-runway-electricity-contractors/> (last visited 12 March 2020).

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ Tilman Hoppe, *The Case for Asset Declarations in The Judiciary: Identifying Illicit Enrichment and Conflicts of Interests U4 BRIEF May 2014 No 5* (Bergen: U4-CMI, 2014) 3.

4. COMPARATIVE JURISPRUDENCE ON ASSETS DECLARATION

The principal goal of income and asset disclosure systems is to combat corruption. In a growing number of cases, information published in asset declarations has led to the exposure of substantial unjust enrichment. Several countries with detailed disclosure requirements, such as Estonia, Latvia, Lithuania, Malaysia, the Philippines, Romania, Singapore, Spain, Thailand, Ukraine, among others, have experienced a decline in corruption, as evident in the Transparency International's most recent reports.⁵⁷ Among other benefits, asset disclosure programs enhance the legitimacy of government in the eyes of the public and stimulate foreign direct investment. There is now a growing trend toward requiring financial disclosure by government officials, including publication of asset declarations, in order to combat corruption, foster public confidence in government, and encourage foreign investment.

According to the World Bank, more than 150 countries have introduced asset disclosure requirements for their public officials. Many of these countries make asset declarations available for public scrutiny. Public access to declarations multiplies their anti-corruption value, as civil society and journalists often play a crucial role by uncovering irregularities and triggering formal verification of declarations by anti-corruption/asset declaration agencies. This is of immense implications for Nigeria where there is a vibrant civil society and media. Public disclosure of the private assets of public officials and family members does not clash with the rights to privacy and data protection. These rights are not absolute and can be restricted provided there is a basis in law and a legitimate public interest justifies the restriction. Prevention of corruption and exposing unexplained wealth of officials are serious and legitimate public interests.

As in other countries the world over, corruption is a threat to national security and undermines the well-being of citizens in Nigeria. Limitations on the privacy

⁵⁷ *Transparency International, Corruption Perceptions Index 2019*, at <https://www.transparency.org/research/cpi/overview> (last visited 2 February 2020). See also *Transparency International, Corruption Perceptions Index*, at <https://www.transparency.org/research/cpi/overview> (last visited 2 February 2020).

of public officials by requiring them to disclose their income, assets and liabilities serves the public interest. Empirical studies have shown that public access to declared information is associated with lower levels of perceived corruption.⁵⁸ Country experiences also indicate that public access can greatly increase the ability of disclosure systems to deliver results. National policies and court rulings differ on the extent to which declarations can be made public.

Significant for our present purposes, however, superior courts of record in Albania, Bulgaria, Chile, Germany, India, Peru, the Philippines, Romania, South Africa, Ukraine and the US, as well as the European regional human rights court, to mention a few, have decided that financial disclosures by public officials do not contravene the constitutional right to privacy or the right to data protection. In several of such instances, the courts have upheld the contention that the right to access information encompasses access to the declared assets and interests of public functionaries and their families except where such access is proven to be indeed a threat of national security.⁵⁹

We shall endeavor to consider few among some of the most progressive standards of best practices in institutionalizing public access to declared assets even where the law is silent or vague, with the aim of spotlighting their importance for the Nigerian context.

Bulgaria

In *Rosen Bosev (Capital Weekly) v. Director of The Government Information Service*,⁶⁰ Rosen Bosev, a journalist with Capital weekly requested information under the Access to Public Information Act (ATI Law) about the contract and its terms for the procurement of software licenses signed between the former

⁵⁸ See note 4 above.

⁵⁹ See generally Right2Info, "Asset Declarations", at <https://www.right2info.org/testing/deleted-stuff/asset-declarations#section-28> (last visited 2 February 2020).

⁶⁰ Case No: 03528/2006, 2 November 2007, Sofia City Court.

Minister of State Administration and Microsoft amounting to more than 28 million USD. Administrative Reform and Government Information Service (GIS), the body addressed, refused to grant access asserting that the contract concerned trade secrets and that disclosure would result in unfair competition. Arguing violation of the Access to Public Information Act the journalist lodged a complaint before the Sofia City Court. The court held that when a member of the public requests access to an agreement between a government agency and a third party, the government agency is required to seek consent of the third party to disclose the information; mere assertion that disclosure would harm commercial interests does not suffice.

Chile

In re Constitutionality of Law No. 20.088,⁶¹ the Chilean Congress passed amendments to the Constitution which expanded upon the disclosure requirements for public officials. According to the 2006 Law No. 20.088, civil servants and members of the legislative and judicial branches and other autonomous agencies must submit sworn declarations of assets and conflicts of interest (Article 1 et seq.). All assets declarations must include assets held by the official's spouse and are public in their entirety (Article 1.1). The amendments required public officials to disclose, among other things, personal interests in land, businesses, and personal property. The amendments also required that those declarations be publicly accessible. The Tribunal (apex chambers of the Chilean Constitutional Court) found that unrestricted public access to asset declarations is consistent with the Constitution's privacy protections, provided that third party access to the declarations serves the legitimate goals pursued by the statute, and emphasized that government agencies administering the disclosures must take great care that the information is not abused. Although these public agencies were also given some authority to make rules regarding the disclosures, the Tribunal

⁶¹ *Sentencia Rol No. 460.12-005, 6 December 2005, Constitutional Tribunal (apex court of Chile).*

interpreted this authority to include mere “administrative regulations for the execution of the law.” The Tribunal held that any attempt by these agencies to expand upon the substance of the disclosures required would be unconstitutional.

Given these limiting interpretations, the Tribunal ruled over one dissent that the amendments were constitutional. The Tribunal emphasized that constitutional principles which guarantee individual rights, such as the right to privacy, must be interpreted and applied in harmony with other principles in the Constitution. The amendments did not disrupt this constitutional harmony, the Tribunal held, because personal property is “an attribute external to one’s personality,” and pertains to an economic sphere which is distinct from the intimate personal sphere of privacy guaranteed by the Constitution.

The Tribunal also pointed to Article 8 as a competing constitutional principle, which states that “the exercise of public functions obligates holders of public office to strictly comply with the principle of integrity in all of their actions.”⁶² Public office is legally distinct from the private sphere because the relationship between the state and public officials is not a natural relationship, but a legal one established by statute which “may be permanently altered by the legislature for the benefit of the public interest.” Because the legislature duly enacted the amendments, and because they did not violate the constitutional guarantee of privacy, the Tribunal held that they were constitutional.

In accordance with Article 93 of the Constitution, the Congress submitted the amendments to the Constitutional Tribunal to determine their constitutionality before promulgating them. The Tribunal’s primary concern was with the potential invasion of private life, guaranteed by Article 19 of the Constitution, which could arguably result from these expanded disclosures.

⁶² *Ibid.*

India

In *Union Of India (UOI) v. Respondent: Association For Democratic Reforms and another; with People's Union For Civil Liberties (PUCL) and another v. Union Of India (UOI) and another*,⁶³ the Association for Democratic Reforms filed a petition with the High Court of Delhi to compel implementation of certain recommendations regarding how to make the electoral process in India more fair, transparent and equitable (pg. 1). As requested by the Government of India, these recommendations had been produced by the Law Commission and provided that the Election Commission should require all candidates to disclose personal background information to the public, including criminal history, educational qualifications, personal financial details and other information necessary for judging a candidate's capacity and capability (pg. 1-3). Ruling that a candidate's background should not be kept in the dark as it is not in the interest of democracy, the High Court of Delhi ordered the Election Commission to obtain such information for the benefit of the voters (pg. 3). The Union of India challenged the decision through an appeal to the Supreme Court of India, arguing that the Election Commission and the High Court did not have such powers and that voters did not have a right to such information. The Supreme Court issued two main rulings: (1) When the legislature is silent on a particular subject and an entity (in this case, the Election Commission) has been granted implementation authority with respect to such subject, the Court assumes that the entity has the power to issue directions or orders to fill such a void until a suitable law on the subject is enacted; and (2) Citizens have a right to know about public functionaries, which is derived from the concept of freedom of speech and expression and which includes the right to know about the backgrounds of candidates for public office.⁶⁴

⁶³ Reported 2002 AIR 2112; 2002 (3) SCR 294, 2 May 2002, Supreme Court of India.

⁶⁴ *Ibid*, at pgs 9 and 14.

Peru

In *Cardenas v. Mayor of Huamanga*,⁶⁵ Mario Cueto Cárdenas, a journalist, requested from the General Secretary of the City Council of Huamanga all information related to trips approved and taken by public officials to other cities within and outside the country, including dates, purpose and money allocated per diem.⁶⁶ After receiving no response from the Mayor or City Council, a demand of habeas data (i.e. an individual complaint based on a fundamental right to know information stored about oneself) was filed with the court of first instance, which dismissed the demand. Cárdenas appealed the decision.⁶⁷

The Supreme Court overturned the decision of the lower court, ruling that the city must deliver certified copies of the information requested once the applicable fee payment had been received by the requester.⁶⁸ The Court's reasoning was based on (1) the principle of publicity, (2) the right to access information (as protected by the Law on Transparency and Access to Information), and (3) Law 27619 which regulates foreign travel authorization of public servants and officials.⁶⁹ First, all information possessed by the state is governed by the principle of publicity, which obligates government bodies to produce and keep information related to the travels and expenses of their officials.⁷⁰ Second, the right to access information is explicitly embedded in the statutory law of Peru. Third, Law 27619 provides for the documentation and retention of all information needed to satisfy such travel requests.⁷¹ The Court ordered delivery of the requested information as soon as the requisite fee had been paid and warned that continuation of such failures to provide information could result in further corrective action.⁷²

⁶⁵ Case No: 2010-487, 20 January 2011, Supreme Court of Ayacucho, unreviewable.

⁶⁶ *Ibid*, pgs 1, 3.

⁶⁷ *Ibid*, pgs 1-2.

⁶⁸ *Ibid*, pg 4.

⁶⁹ *Ibid*, pgs 2-3.

⁷⁰ *Ibid*, pg 2.

⁷¹ *Ibid*, pg 3.

⁷² *Ibid*, pg 4.

The Philippines

In *Chavez v. National Housing Authority*,⁷³ in his capacity as taxpayer, Francisco Chavez petitioned the Court directly for, among other things, access to all documents and information relating to the Smokey Mountain Development and Reclamation Project (the "Project"), including its underlying Joint Venture Agreement (JVA) between the National Housing Authority (NHA), a government body, and R-II Builders, Inc (RBI).⁷⁴

With Congress having approved the Project as a boost to infrastructure through its development of low-cost housing projects, a private sector joint venture scheme was pursued in accordance with the Build-Operate-and-Transfer Law whereby "the contractor undertakes the construction...[for] the government agency or local government unit concerned which shall pay the contractor its total investment expended on the project, plus reasonable rate of return".⁷⁵ After multiple design changes, cost overruns, and corresponding amendments to the JVA, the Project was ultimately suspended, and RBI made demands for payment. A few years later, the Housing and Urban Development Coordinating Council initiated a bidding process for the work remaining on the Project, and the NHA reached a settlement with RBI to terminate the original JVA.⁷⁶ Raising constitutional issues and asserting his right to all information related to the Project, Mr. Chavez filed a petition directly with the Court.

Deciding on the issue of whether the NHA must be compelled to disclose all information related to the Project, the Court ruled that relief must be granted because the right of the people to information on matters of public concern is enshrined in the 1987 Constitution.⁷⁷ Specifically, Article II, Section 28 and Article III, Section 7 of the Constitution, taken together as "twin provisions,"

⁷³ *Case No. G.R. No. 164527, 15 August 2007, Supreme Court of the Philippines.*

⁷⁴ *Ibid*, pg. 1-3.

⁷⁵ *Ibid*, pg. 5-10.

⁷⁶ *Ibid*, pg. 39-47.

⁷⁷ *Ibid*, pg. 86.

adopt a policy of full public disclosure on all transactions involving public interest and acknowledge the people's right to information. Case law further elucidates these constitutional tenets by stating that "an essential element of these freedoms is to keep open a continuing dialogue or process of communication between the government and the people ...These twin provisions of the Constitution seek to promote transparency in policy-making and in the operations of the government, as well as provide the people sufficient information to exercise effectively other constitutional rights".⁷⁸ In defining the limits of these freedoms, the Court noted that such information requests must pertain to definite propositions of the government and that information might be shielded by applicable privileges (e.g. military secrets and information relating to national security).⁷⁹ Finally, the Court recognized that because no enabling law exists providing government agencies with the procedural mechanics to disclose such information, the NHA cannot be faulted for an inability to disclose. Nevertheless, where a duty to disclose does not exist, there still may exist a duty to permit access, and so the Court ordered the NHA to permit access to all information related to the Project.⁸⁰

South Africa

In *SA Airlink (Pty) Limited v. Mpumalanga Tourism And Parks Agency*,⁸¹ SA Airlink is a privately owned airline operator. Mpumalanga Tourism and Parks Agency (MTPA) is an organ of the state tasked with developing market tourism. In 2009, MTPA contracted with Comair, a competitor of SA Airlink, to provide flights between two airports; no tender was issued prior to awarding the contract. SA Airlink, asserting that MTPA unfairly favored Comair, sought a copy of the agreement between MTPA and Comair under the Promotion of Access to Information Act ("PAIA"). MTPA refused the request and denied an appeal,

⁷⁸ *Ibid*, pg. 86-87.

⁷⁹ *Ibid*, pg. 88-90.

⁸⁰ *Ibid*, pg. 89-90.

⁸¹ Case No: 01011/12, 22 August 2012, South Gauteng High Court, Johannesburg (Appellate).

asserting that disclosure would cause Comair to suffer prejudice because the contract contained a confidentiality clause and commercial information. The appellate South Gauteng High Court held that the burden to justify a refusal to disclose information rests on a public body, not the requester. Parties relying on harm to third party interests to justify refusals must show that these harms are “not simply possible, but probable”. A confidentiality clause cannot shield a contract of a state body with a third party from disclosure.

Ukraine

It was a salutary step in 2014 when the Parliament of Ukraine adopted a new Corruption Prevention Law that required the comprehensive disclosure of asset and income information of public officials and their family members. The new Law entered into force in April 2015 but – with regard to asset declarations – has been enforced only starting from 1 September 2016, when the new electronic system of online submission and publication of asset declarations was launched.

The Law is based on the previous anti-corruption legislation that also provided for declaration and publication of a broad scope of personal data, introducing new types of data to be disclosed, including information on cash savings, valuable movable assets and beneficial owners of property.

The 2014 Law provided the foundation for building a highly effective asset declaration system. It sets a clear legal basis for collection and publication of personal data in asset declarations. The Law explicitly states what information is public. The Law also states what data should be kept confidential and the Personal Data Protection Law duplicates these provisions.

It should be noted that Ukraine is not unique in this regard and that 70 percent of countries in Europe and Central Asia, as well as 97 percent of Organization for

Economic Co-operation and Development (OECD) high-income countries require mandatory public disclosure of information in asset declarations.⁸²

European Court of Human Rights

The European Court of Human Rights has emerged as perhaps the most formidable purveyor in the campaign for the right of access to information particularly where such relate to transparency and accountability. Recovery of assets resulting from crime or corruption has surfaced in the jurisprudence of the Court in recent times and the Court has on several occasions disallowed the Article 10 protection of the right to privacy from fettering the right of access to information in deserving cases.⁸³

(i) Hungary

In *Társaság A Szabadságjogokért (Hungarian Civil Liberties Union) v. Hungary*,⁸⁴ after a Member of the Hungarian Parliament and other individuals lodged a complaint with the Constitutional Court for an abstract review of amendments to national drug legislation, the Hungarian Civil Liberties Union (HCLU), a non-governmental organization active in the field of drug policy, requested a copy of the complaint from the Constitutional Court. The Constitutional Court denied the request on the ground that the complaint contained 'personal data' that could only be disclosed with the authors' permission. After litigating the denial without success in national courts, the HCLU filed an application with the European Court of Human Rights. The European Court of Human Rights noted that the activities of social 'watchdogs' like the HCLU warrant similar protection

⁸² *The World Bank, Asset Declarations: A Threat to Privacy or a Powerful Anti-Corruption Tool?* 26 September 2016, at <https://www.worldbank.org/en/news/opinion/2016/09/26/asset-declarations-a-threat-to-privacy-or-a-powerful-anti-corruption-tool> (last visited 2 February 2020).

⁸³ ETS 5, signed 4 November 1950; entered into force on 3 September 1953. Article 10 of the *European Convention on Human Rights, 1950*, provides the right to freedom of expression, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society". This right includes the freedom to hold opinions, and to receive and impart information and ideas, but allows restrictions for: interests of national security; territorial integrity or public safety; prevention of disorder or crime; protection of health or morals; protection of the reputation or the rights of others; preventing the disclosure of information received in confidence; and maintaining the authority and impartiality of the judiciary.

⁸⁴ Case number: 37374/05, 14 April 2009, *European Court of Human Rights*, at https://www.right2info.org/resources/publications/case-pdfs/echr_hclu-v-hungary_dec_eng (last visited 2 February 2020).

to that afforded to the press, as they are essential contributors to an informed public debate.⁸⁵ By creating obstacles to the legitimate gathering of information 'on a matter of public importance', the Hungarian authorities interfered with the applicant's 'right of access to information' grounded in Article 10 of the Convention.⁸⁶

The Court found that the right of access to government information may be restricted at times to protect other rights, such as personal privacy, but any such restrictions must meet the three-part test set forth in article 10(2): they need to be provided by law; serve one of the legitimate interests listed in article 10(2); and be necessary in a democratic society. Applying that test to the current facts, The Court found "it [to be] quite implausible that any reference to the private life of the MP, hence to a protected private sphere, could be discerned from his constitutional complaint," and concluded that "it would be fatal for freedom of expression in the sphere of politics if public figures could censor the press and public debate in the name of their personality rights".⁸⁷

This was the first time that the European Court recognized that Article 10 of the Convention guarantees the "freedom to receive information" held by public authorities, finding a violation of that right. The Court found that especially when the state has a monopoly over information of public interest in its possession, denying access to such information is tantamount to a form of censorship.⁸⁸ The Court remarked that "it is difficult to derive from the Convention a general right of access to administrative data and documents" but that its case law had gradually advanced nevertheless "towards the recognition of a right of access to information".⁸⁹

⁸⁵ *Ibid*, para 26.

⁸⁶ *Ibid*, paras. 27-28.

⁸⁷ *Ibid*, para. 37.

⁸⁸ *Ibid*, para. 36.

⁸⁹ *Ibid*, para. 35.

(ii) Poland

In *Wypych v. Poland*,⁹⁰ the European Court of Human Rights rejected the complaint of a local council member in Poland who refused to submit his asset declaration claiming that the obligation to disclose details concerning his financial situation and property portfolio imposed by legislation was in breach of Article 8 of the European Convention of Human Rights. The Court found that the requirement to submit the declaration and its online publication were indeed an interference with the right to privacy, but that it was justified and the comprehensive scope of the information to be submitted was not found to be excessively burdensome. In the Court's own words,

The Court "considers that it is precisely this comprehensive character which makes it realistic to assume that the impugned provisions will meet their objective of giving the public a reasonably exhaustive picture of councilors' financial positions...that the additional obligation to submit information on property, including marital property, can be said to be reasonable in that it is designed to discourage attempts to conceal assets simply by acquiring them using the name of a councilor's spouse."⁹¹

The European Court of Human Rights also endorsed the publication and internet access to declarations arguing that "the general public has a legitimate interest in ascertaining that local politics are transparent and Internet access to the declarations makes access to such information effective and easy. Without such access, the obligation would have no practical importance or genuine incidence on the degree to which the public is informed about the political process."⁹²

⁹⁰ Application No. 2428/05, 25 October 2005, at <http://hudoc.echr.coe.int/eng?i=001-71236> (last visited 2 February 2020).

⁹¹ *Ibid.*

⁹² *Ibid.*

5. IMPLICATIONS FOR POLICY AND STRATEGIC RESPONSES

An asset declaration is a person's balance sheet and should cover assets, from all homes, valuables and financial portfolios, to liabilities, such as debts and mortgages, and all sources of income from directorships and investments to consulting contracts. It should also include gifts and sponsorship deals and any potential conflicts of interest such as unpaid employment contracts and participation in non-governmental organizations.

As we have shown, not all countries have the same approach towards publication of declared assets. Some make public the entirety of the declaration (except for information such as ID number or date of birth). Others keep several categories of information confidential. In other cases, the declarations of high-level officials are made public, while those of low-level officials are kept confidential. Many countries make available the asset declaration information online and the number of countries publishing declarations online is constantly growing.

Notionally, the Nigerian legal framework on asset disclosure is comparable with other countries in the region both in terms of the scope of the information declared and its approach towards public access. Regrettably, however, implementing the law as expressed through the FOI Act has encountered formidable institutional resistance through the CCB. While public access can raise valid privacy and security concerns, the benefits outweigh the costs and any interference with privacy rights in the declaration is proportionate to the public interest. Online disclosure of public declarations has been introduced in many countries and is essential if public servants are to be held to account. Sadly, the assets declaration regime in Nigeria remains archaic as no online submission is possible as at date.⁹³

⁹³ As at the time of writing this Guide, the website of the CCB had no electronic form available for assets declaration. The page created for electronic submission was blank for a whole month while this document was being prepared. See Code of Conduct Bureau, "Assets Form", <http://ccb.gov.ng/online-assets-declaration/assets-form/> (last visited 2 February 2020).

Software for managing asset declaration regimes needs to be tailored to the local legislation and declaration items. No universal software can embrace the wide diversity of required specifications and functionalities that vary greatly across countries. Most oversight bodies implementing a technology-based asset declaration system have developed their own customized technical solution to perform their core functions. The required information should be wide enough to avoid creating loopholes for unscrupulous public officials in Nigeria.

While there are no international standards mandating how asset declarations are made and monitored, however, below are some core principles and recommendations that should form the foundation of a re-energized and refocused assets declaration framework for Nigeria, derivable from the best practices collated from across the globe.

CONCLUSIONS

This Guide attempted to examine, analyze, and compare the asset declaration systems in Nigeria and in other countries, as well as the problems and obstacles in practice. The Guide established that in order to improve the effectiveness of the asset declaration system in Nigeria, the CCB should make it compulsory for all types of public officials to submit an account showing particulars of their assets and liabilities, and proceed to verify an account when there are doubts about a submitted account or only for positions with high risk of conflict of interest. In line with global best practice, the CCB should begin to view the organized civil society, body of journalists as partners in enthroning the culture of transparency and accountability in Nigeria rather than antagonize their efforts. The deployment of information technology in the asset declaration system especially for the filing process and the verification process as well as linking the information from other government agencies and private organizations will increase the efficacy of the system in Nigeria. The disclosure of account showing particulars of assets and liabilities should be required from everyone who is holding a political position and from every public official in a way that the general public will be able to examine the disclosed information. Finally, refocusing the CCB to act in consonance with the spirit and letters of the FOI Act will require proactive and robust commitment across all strata of the judicial system in Nigeria. To this end, all those who wield the powers of interpretation should be sentinels of action in enhancing the assets declaration and verification system within the framework of extant laws in ways that will increase the effectiveness of the system.

RECOMMENDATIONS

(a) To the CCB

- The administration of an efficient asset disclosure system requires a monitoring and evaluation agency to collect and verify information and investigate, prosecute and sanction those who fail to comply. The CCB should promote transparency and accountability by granting access for reasonable requests.
- The use of technology can improve the effectiveness and efficiency of asset declaration schemes by increasing compliance and decreasing management costs. The use of technology can contribute to reducing human error in the submission process, increasing the efficacy of the verification process and facilitating public access to asset declaration information. In this regard, the CCB should study the assets declaration systems in Argentina, Bhutan, the Philippines and Thailand, among others, with a view to improving on the execution of its mandate.

(b) To Federal and State Governments

- The leadership of the three branches of government – executive, legislative and judiciary – and senior career civil servants should file asset declarations before and after taking office as well as periodically (annually or every two years) during office. It should be a routine observance across all tiers of governance in Nigeria.
- In light of the lapses and laxities that have been witnessed in coordinating the obligations of public functionaries to declare their assets, all tiers of government should consider setting up independent and distinct administrative units to monitor compliance; to collate and publish summaries of submissions from each of the three branches of government such that it will become easier for the CCB and the civil society to know which officials are defaulting in which of the three branches of government.

(c) To the Attorney General of the Federation

- The Attorney-General of the Federation (AGF), as Chief Law Officer, should initiate executive bills to correct any perceived legislative flaws and to strengthen the proper interpretation of the provisions of the extant laws on assets declaration.
- Further to the above, the critical areas of focus of the AGF's intervention should be on the verifiability of declared assets (CCB to verify all declarations received and to require public officers to amend declarations or seek clarification appropriately in cases of any inconsistencies or inadequacies); public disclosure (to provide for public disclosure, limited or otherwise, but certainly not in its current form); and the clarification of "gifts" (insertion of guideline provisions as to what is reasonably attributable to "gift").

(d) To the Judiciary

- Through proactive interpretation, the law courts in Nigeria should be willing to pronounce against unduly withheld access and to progressively entrench the culture of transparency and accountability in governance as has become the trend in other open and democratic societies.
- Rather the often antagonistic attitude that many judges of the superior courts exhibit towards lawyers and litigants in anti-corruption matters, in general, and assets declaration cases, in particular, the Chief Justice of the Federation as well as the heads of judicial organs at the federal and state levels should encourage all judges to support the fight against corruption in high and low places in Nigeria. Practice directions should be initiated to guide the courts in expediting corruption cases.

(e) To the Civil Society

- The organized civil society should lead vigorous campaigns for the use of technology for managing assets declarations throughout Nigeria. The specific areas of activism should include creating and managing a register of

officials obligated to file; keeping track of the number and identities of the officials occupying these positions and their career development over time; notifying officials of their obligations to file within deadlines; developing forms for submission, in some cases online forms; receiving asset declarations and conducting a formal review for completeness and consistency of declared information; contacting filers to complete and clarify incomplete declarations; transferring data from the declarations to a database for facilitating retrieval of information, verification, data tacking and publication of data; and securing safe storage and easy retrieval of declared information.

- Learning from past approaches and current practices, the organized civil society should advocate for targeted verification of declared assets. In this regard, focus should be on declarations of high ranking officials (this requires a system for maintaining an updated database of senior officials and their rank); declarations of officials from certain agencies (tax, customs, etc) who have higher risks of corrupt behavior; declarations of officials with particular duties and functions regardless of the agency they work for (managing state resources, procurement, licenses and permits, transactions with private sector and the public); declarations for which red flags have been detected or allegations of misconduct have been made; and random verification of a number of asset declarations.

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SERAP is a non-profit, nonpartisan, legal and advocacy organization devoted to promoting transparency, accountability and respect for socio-economic rights in Nigeria. SERAP received the Wole Soyinka Anti-Corruption Defender Award in 2014. It has also been nominated for the UN Civil Society Award and Ford Foundation's Jubilee Transparency Award. SERAP serves as one of two Sub-Saharan African civil society representatives on the governing Committee of the UNCAC Coalition, a global anti-corruption network of over 380 civil society organizations (CSOs) in over 100 Countries.