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A Critique of the Punishments for Breach of Code of Conduct for Public Officers in Nigeria

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Abstract:

The Code of Conduct for Public Officers as well as the Code of Conduct & Tribunal Act (hereinafter to be called “the Code” and “the Act” respectively) provide punishments for breach of code of conduct for public officers contained in Part I of the 5th Schedule to the 1999 Constitution (as amended), which include vacation of office or seat, disqualification from being a member of legislative house or any office and seizure and forfeiture to the state of any property acquired in abuse or corruption of office. The two laws also provide that a public officer found liable by the Code of Conduct Tribunal will still be subject to criminal trial in respect of same misdeeds in conventional court of law. This paper discusses these provisions of the two laws and contends that it will amount to double jeopardy for the same person who has been punished by the Tribunal to be subjected to further trial on account of the same infractions of the law. The paper suggests that the two laws be amended to state all the attendant punishments should there be any breach of the Code instead of the present situation where the public officer will be made to proceed to ordinary law court for further trial and punishment after successful trial by the Code of Conduct Tribunal.

1. Introduction

The Code of Conduct for Public Officers which is contained in *PART I, 5th Schedule to the 1999 Constitution (as amended)* and the *Code of Conduct & Tribunal Act*ⁱ are aimed at combating corruption in the public service of the nation with particular emphasis on maintaining a high standard of morality in the conduct of government business and to ensure that the actions and behaviour of public officers conform to the highest standards of public morality and accountability.ⁱⁱ To achieve their aims and objectives, the two laws prohibit the following: conflict of interest; reception of two or more salaries from different public service employments; operation of foreign bank account; reception of gift of any property; obtaining loans from non-government organizations; taking of bribes; abuse of powers, membership of questionable societies, failure to declare assets periodically and etc.

These laws prescribe punishments for any person found guilty of any of the above injunctions. These include vacation of the office occupied, disqualification from holding a legislative office, confiscation of the property obtained in breach of the injunctions. Above all, a person convicted under the laws is still triable before the regular courts.ⁱⁱⁱ In the same vein, a convict cannot be entitled to prerogative of mercy.^{iv}

This paper will look at the above provisions in detail, see whether there is any brush with the Constitution with regard to human rights and suggest measures to make the laws have complete human face.

2. Prohibited Acts under the Code of Conduct

As pointed out above, the *Code of Conduct for Public Officers* contained in the 1999 Constitution of Nigeria and the *Code of Conduct Bureau and Tribunal Act* have identical provisions with regard to what the public officer should not be involved in or what constitutes breach of code of conduct. The Act however, in addition, provides for how the Code of Conduct Bureau^v and Code of Conduct Tribunal^{vi} should perform their functions. Consequently, we shall take in brief the prohibited acts as contained in the *Code of Conduct for Public Officers* and the Act.

2.1. Conflict of Interest

A public officer is prohibited from putting himself in a position where his personal interest conflicts with his duties and responsibilities.^{vii} In other words, at all material time the public officer should place public interest above his personal interest in whatever assignment or job he is engaged to do. Where there is evidence of the public officer placing his interest above public interest he is deemed to have breached this injunction and therefore liable to punishment

2.2. Double Salary

A public officer shall not receive or be paid the emoluments of any public office at the same time as he receives or is paid the emoluments of any other public office.^{viii} Here it is a breach of the Code for a public officer to be fully employed in two different

public offices where he will be collecting double salaries. Again he cannot be engaged in the management of any other business, profession or trade save, if his appointment is on part-time basis^x. He can however be engaged in farming while on full time public service. However, one wonders the type of farming activity that a public servant can embark on in the major cities where land for cultivation is difficult to come by.

2.3. Prohibition of Foreign Bank Account

Some categories of public officers such as the President, the Vice-President, Governors, Deputy Governors, Ministers, Commissioners, National and State Assembly members and such other public officers or persons as the National Assembly may by law prescribe are barred from maintaining or operating bank account in any country outside Nigeria.^x

2.4. Retired Public Officer to be Restricted to only One Other Remunerative Position

A public officer shall not, after his retirement from public service and while receiving pension from public funds accept more than one remunerative position as chairman, director or employee of any government establishment.^{xi} What applies to public officer also applies to a retired public servant. Public officers who have retired such as the President, Vice President, Chief Justice of Nigeria, Governor and Deputy Governor of a State are barred from taking up any employment in any foreign company or enterprise.^{xii}

2.5. Prohibition of Reception of Any Gifts or Benefits in Kind

Paragraph 6 of the *Code of Conduct for Public officers* and section 10 of the *Code of Conduct Bureau & Tribunal Act*, bar public officers from asking for or accepting any property or benefits of any kind for themselves or any other person on account of anything done or omitted to be done by them in the discharge of their duties. Reception of gifts or benefits from contractors working for any level of government shall be presumed as a contravention of this injunction unless the contrary is proved. However, a public officer shall only receive gifts or benefits from relatives or personal friends to such extent and on such occasions as are recognized by custom. This may include birth day gift, wedding gifts, Christmas or sallah gifts as the case may be. In addition, a gift to a public officer on any public or ceremonial occasion shall be treated as a gift to the appropriate institution represented by the officer and therefore not considered a contravention of the code.^{xiii}

2.6. Prohibition of Loans

The President, Vice- President, Governor, Deputy Governor of a State, Ministers, Commissioners or any public officer of the rank of Permanent Secretary or head of any public corporation, university or any other parastatal of the government are prohibited from accessing loan from outside government agencies. They are also barred from accepting any benefit whatsoever from any company, contractor or businessman or the nominee or agent of such person. However, head of universities or public corporations may take loans for their organizations subject to extant rules.^{xiv}

2.7. Prohibition of Bribery

No person shall offer a public officer any property, gift or benefit of any kind as an inducement or bribe for the granting of any favour or the discharge in his favour of the public officer's duties.^{xv} This provision appears not to be directed at the public officer but offerors of such bribe but it is nonetheless an injunction that he should not accept bribe for carrying out his duties as a public officer.

2.8. Public Officer Not to Abuse His Powers

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 government policy.^{xvi}

2.9. Public Officer Not to Belong to Certain Societies

A public officer is barred from belonging to or being a member or taking part in any society the membership of which is incompatible with the function or dignity of his office.^{xvii} In other words, this is another ban on membership of secret societies.

2.10. Public Officer Shall Periodically Declare His Assets and Liabilities

Paragraph 11 (1) of the Code prescribes that every public officer shall within three months after coming into force of this code of conduct or immediately after taking office and thereafter- at the end of every four years; and at the end of his term of office submit to the Code of Conduct Bureau a written declaration of his assets and liabilities and those of his children under the age of eighteen years. Any false statement herein is a breach of the Code. Any property or assets acquired by public officer after any declaration required and which is not fairly attributable to his income, gift or loan approved by this Code shall be deemed to have been acquired in breach of the Code unless the contrary is proved.^{xviii} Section 15 of the *Code of Conduct Bureau and Tribunal Act* has similar provision save that the period for making the declaration is fifteen months after coming into force of the Act and that in the case of a serving officer he should file his declaration within thirty days of receipt of the form from the Bureau or at such intervals as the Bureau may specify.

2.11. Miscellaneous

Any allegation that a person has violated any provisions of the Code of Conduct shall be sent to the Bureau.^{xix} Any public officer who uses a proxy to do any of the prohibited acts is deemed to have done it by himself.^{xx} Members of the legislature who have retired are

exempted from paragraph 4 of the Code of Conduct prohibiting taking of double remuneration after retirement.^{xxi} Again the National Assembly may make law exempting certain categories of public officers from the provisions of paragraph 4 and 11 of the code.^{xxii}

3. An Appraisal of the Punishments for Breach of Code of Conduct for Public Officers

The punishments for any public officer found liable by the Code of Conduct Tribunal are as follows:

- a. vacation of office or seat in any legislative house, as the case may be.
- b. disqualification from membership of a legislative house and from the holding of any public office for a period not exceeding ten years.
- c. seizure and forfeiture to the state of any property acquired in abuse or corruption of office^{xxiii}

The punishments above are without prejudice to other penalties that may be imposed by any law where the conduct is also a criminal offence.^{xxiv} That is to say, that a public officer who is tried for say breaching the Code by taking bribe or accepting corrupt gifts or benefits or receiving double salaries as the case may be and convicted and punished by the Code of Conduct Tribunal as above can still be further arraigned before the regular Court and tried and punished for corruption.^{xxv}

This is the crux of this paper. It is the crux of this paper because though the trial and conviction before the Code of Conduct Tribunal are seen as quasi-criminal proceeding and not trial before a conventional court, evidence is normally led and all the paraphernalia of criminal court are present. The Chairman of the Tribunal is supposed to be somebody capable of being appointed judge of High Court or who has held such judicial office.^{xxvi} Other members of the Tribunal whose qualifications are not specified almost always will have something to do with knowledge of the law.

There is also our concern that the punishments outlined above for breach of the code and the susceptibility of the convict to further trial before the regular courts amounts to double jeopardy which the Constitution frowns at.^{xxvii}

We contend that the Code of Conduct Tribunal by its constitution and procedure is a criminal court and that whoever is tried and convicted has been visited with the full weight of the law and ought not be further tried. This is because a person who has been convicted and visited with loss of his position or disqualification from holding public office for ten years and his property seized and or forfeited to the state cannot be said not to have received enough punishment for his infraction of the code.

This is even compounded by the fact that a person who is found liable by the Tribunal cannot be granted state pardon^{xxviii} which right is available to even convicts in respect of capital offences such as murder, armed robbery, treason and etc. What injustice to a person tried for breach of code of conduct under the Code of Conduct Tribunal.

No wonder there appears to be no reported case for breach of code of conduct as those brought before the Tribunal do everything to avoid it or prefer to go to the regular Courts.

Few examples can bear us out. During the Presidency of Dr. Goodluck Jonathan, Asiwaju Ahmed Bola Tinubu was brought before the Code of Conduct Tribunal for alleged operation of ten (10) foreign bank accounts contrary to paragraph (3) of the Code of Conduct when he was the Governor of Lagos State between 1999– 2007. After all said and done, the charge was dismissed on the following grounds: “defective and shoddy charges”, abuse of court process by not seeking the leave of Tribunal before filing two additional counts, the condition precedent of inviting the accused to deny or admit the charge was not followed by the Code of Conduct Bureau before coming to the Tribunal and absence of prima facie evidence.^{xxix} So the matter which was seen as politically motivated was killed on both technical and political grounds.

In similar vein, under the current dispensation, the Senate President, Dr. Bukola Saraki is facing 13-count charge of failure to declare or improper declaration of assets before the C.C.T. There has been a lot of tension generated by the trial as most people see the exercise as political victimization of Dr. Saraki for emerging as Senate President against the interests of leadership of his political party (A.P.C). In the same tribunal, Elder Godsway Orubebe, a former Minister of Niger Delta is also now facing a charge of false declaration of assets.^{xxx} Hence, it would appear that no one likes to be tried for breach of Code of Conduct and the fears are justified by the nature of the punishments which are not conclusive of the matter. Whereas, persons charged before the regular courts can get “soft landing” treatment by invoking “plea bargaining”,^{xxxi} those charged before the Tribunal do not enjoy such favours.

As pointed out herein before, *S. 36 (9) of the 1999 Constitution of Nigeria (as amended)* provides as follows:

- No person who shows that, he has been tried by any Court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.

We contend seriously that subjecting somebody who had been convicted and punished by the Code of Conduct Tribunal to further trial before the regular courts is a breach of the section of the Constitution on fundamental human rights. Better reasoning should have been that whoever is tried under the CCT should be left to bear his cross therein as it amounts to double trial and punishment for the same person who has been punished for a particular infraction of the law to be still susceptible to another trial elsewhere because the act has criminal element.

Therefore, there is the need to amend the *Code of Conduct for Public Officers* as well as the Act so as to remove this tendency of second trial after being at CCT or in the alternative rephrasing the paragraphs in the code so that each breach will be separately punished at the end of each paragraph or section as the case may be.

4. Conclusions

We have in the preceding part of this work tried to ex-ray the philosophy and provisions of the *Code of Conduct for Public Officers in Nigeria* and *Code of Conduct Bureau & Tribunal Act* and observed some lapses. The crime of corruption in Nigeria, no doubt is a disturbing phenomenon because of its adverse consequences on the majority of the citizens in particular and the country as an entity.

No measure to fight corruption should be discouraged but we contend that in doing so we should place side by side the punishment against corruption and other crimes. In the same way, we should not lump punishments for all forms of breach as if all of them are one of the same kind.

Consequently, in order to make the Code and Act to wear human face, we make the following suggestions.

First, it is our view that a public officer who has been tried and punished as provided in the two enactments above should not be subjected to further trial in the regular Court. This is particularly where the facts used at the Tribunal will also be used in subsequent trial. This is because it will amount to double trial and punishment which is not altogether constitutional.

Second, we recommend that a person tried and convicted by the Tribunal should be entitled to grant of state pardon as provided in sections 175 and 211 of the Constitution (as amended). We contend so because if persons convicted of capital offences can enjoy prerogative of mercy, why not a person who is just in breach of the Code and Act. It is monumental act of discrimination to allow this provision to continue to be in a country which is preaching equality of all before the law and all that. Three, it is also our suggestion that all the different paragraphs in the Code as well as sections of the Act should be separately punished as we think that the different breaches should not carry the same punishment. A situation where a person who receives bribes or benefits to do his job has the same punishment with a person who fails to declare his assets and liabilities in good time or at all is not a decent law. Hence, each infraction should be stated and separately punished. Herein, all the punishments whether criminal or civil can be stated so that there will be no room for trial before the regular court after a case has been tried and concluded at the Tribunal. Four, in the alternative, where a case is brought before the Tribunal and it is of the opinion that there are many criminal acts that will be treated at the regular High Courts, it should transfer such matters accordingly. It will amount to waste of time and money for the government to continue to leave the law where it is now where a convict at the Tribunal still has to go to other courts if there is criminal element in the punished act.

It is our belief that the Code and the Act will achieve their mandate if the above suggestions are implemented by the government.

5. References

- i. Cap C 15 Laws of the Federation of Nigeria, 2004
- ii. Section 2, Ibid
- iii. Section 23 (6) *ibid*; Paragraph 18(3) Code of Conduct for Public Officers
- iv. Paragraph 18 (7) *ibid*; see also section 23 (7) of Code of Conduct & Tribunal Act.
- v. Established under S. 1 (1) of the Code of Conduct Bureau & Tribunal Act
- vi. Established under S. 20 (1) *ibid*
- vii. Paragraph 1 of the Code of Conduct for Public Officers.
- viii. Paragraph 2 (a) *Ibid*.
- ix. Paragraph 2 (b) *Ibid*.
- x. Paragraph 3 *ibid*. See also section 7 of the Act.
- xi. Paragraph 4 (1) (a) (b) *ibid*. See also section 8 of the Act.
- xii. Section 9 (1) and (2) of the Act. See also paragraphs 5 (1) and (2) of the Code *op-cit*
- xiii. Paragraph 6 (3) *ibid*; See also section 10 (3) of the Act.
- xiv. Paragraph 7 *ibid*; Section 11 of the Act.
- xv. Paragraph 8 *ibid*; See also section 12 of the Act.
- xvi. Paragraph 9 *ibid*; See section 13 of the Act.
- xvii. Paragraph 10, *ibid*; See also section 14 of the Act.
- xviii. Paragraph 10 (3) *ibid*.
- xix. Paragraph 12, *ibid*; See section 16 of the Act.
- xx. Paragraph 13, *ibid*; See section 17 of the Act.
- xxi. Paragraph 14, *ibid*
- xxii. Paragraph 14 (b), *ibid*
- xxiii. Paragraph 18 (2) (a) (b) and (c) *ibid*. Same provision in section 23 (2)(a-c) of the Act.
- xxiv. Paragraph 18 (3), *ibid*
- xxv. Say under the Criminal Codes, Economic and Financial Crimes Commission and Independent Corrupt Practices and Other Related Offences Commission Acts and etc.
- xxvi. See paragraph 15 (2) *ibid*, Section 20(3) of the Act.
- xxvii. Section 36 (9) of the C.F.R.N 1999 Constitution (as amended)
- xxviii. See paragraph 18 (7) *ibid*. Sections 175 and 211 of the 1999 Constitution of Nigeria (as amended) empower the President and State Governors respectively to grant clemency to all categories of convicts.
- xxix. See "Code of Conduct Tribunal Dismisses Case against Tinubu" www.disevening.com/tribunal.dismisses-case-against-tinubu.php. Accessed on 21st July, 2016 by 11.35am.
- xxx. See <http://www.informationng.com/tag/code-of-conduct-tribunal>. Accessed on 21-07-2016 by 12 noon. See also Juliana Taiwo-Obalongo and Romanus Ugwu, "Asset Declaration: CCT indicts Orubebe, Seizes House", Daily Sun Wednesday, October 5, 2016. In this report the Code of Conduct Tribunal convicted the former Minister for non declaration of a house in Abuja.
- xxxi. Section 270 of Administration of Criminal Justice Act, 2015