



## Reforming Nigeria's Assets Declaration Framework: Policy Brief No. 1

# The Case for Online Assets and Liabilities Declaration System in Nigeria

## 1. Introduction

Articles 8 (5) and 52 (5) of the United Nations Convention against Corruption (UNCAC) provides as follows:

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

*Each State Party shall consider establishing in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanction for non-compliance...*

Also, article 7 of the African Union Convention against Corruption mandates States Parties to:

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

The implication of the foregoing provisions is that Nigeria as a state party to these treaties has a margin of discretion within the treaty obligation in the design of the regime for declaration of assets, liabilities and conflict of interest as a subset of the general anti-corruption regime. It may be manual or online. However, Nigeria is expected to bring its domestic law in alignment with her treaty obligations under UNCAC, either before ratifying

the treaty or shortly thereafter. Domestic law cannot be pleaded as defence to the violation of **internationally** agreed principles<sup>1</sup>.

A typical assets and liabilities declaration regime comprises of five different aspects namely the list of persons and officials bound to declare assets; what they should declare; the submission process; verification of submitted information; recourse and enforcement proceedings. In reviewing assets and liabilities practices and policies under constitutional and statutory provisions, it is pertinent to identify the gaps and mischief while advancing remedies to ensure greater compliance with the law. Questions will arise which are related to the overall compliance rate by persons who have a legal obligation to declare their assets; what is the rate of verification or what percentage of declared assets is verified by the Code of Conduct Bureau? (CCB or Bureau); what are the challenges faced by declarants? Are the resources available to the Bureau sufficient to properly manage the regime for the number of declarants involved? etc. The review process should also learn from empirical evidence as well as fit and good practices from jurisdictions similar to Nigeria. The review should be directed at improving the efficiency and effectiveness of the declaration regime whilst improving transparency and accountability.

## 2. Extant Domestic Law Position

The Constitution of the Federal Republic of Nigeria 1999 (Constitution) provides an enforceable Code of Conduct (Code) for public officers<sup>2</sup>. This Code covers issues of prevention of conflict of interest, illicit enrichment, bribery and corruption, influence peddling, membership of certain societies and acting through fronts and nominees. The Constitution makes it mandatory for all public officers to declare their assets and liabilities. It specifically states<sup>3</sup>:

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

*(a) at the end of every four years; and*

*(b) at the end of his term of office.*

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<sup>1</sup> See articles 26 and 27 of the Vienna Convention on the Law of Treaties ratified by Nigeria: (26). *Every Treaty in force is binding on all the parties to it and must be performed by them in good faith - pacta sunt servanda.* (27). *A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.*

<sup>2</sup> Fifth Schedule, Part 1 of the Constitution.

<sup>3</sup> Fifth Schedule, Part 1, Paragraph 11 (1) of the Constitution.

*submit to the Code of Conduct Bureau a written declaration of all his properties, assets and liabilities and those of his unmarried children under the age of eighteen years.*

The definition of public officers for the purpose of the Code is all encompassing starting from the President of Nigeria to the cleaner in a local government office<sup>4</sup>. Essentially, it covers all persons on the payroll of the federal, state and local governments. Informed estimates indicate that the number will not be less than five million Nigerians.

The Constitution establishes the Code of Conduct Bureau (CCB or Bureau)<sup>5</sup> which is mandated inter alia to<sup>6</sup>:

*(a) receive declarations by public officers made under paragraph 12 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*

*(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.*

*(d) ensure compliance with, and where appropriate enforce the provisions of the Code of Conduct or any law relating thereto;*

*(d) receive complaints about non-compliance with or breach of the provisions of the Code of Conduct or any law in relation thereto, investigate the complaint and, where appropriate, refer such matters to the Code of Conduct Tribunal.*

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<sup>4</sup> The List as stated in Fifth Schedule, Part II of the Constitution is as follows: 1. The President of the Federation. 2. The Vice-President of the Federation. 3. The President and Deputy President of the Senate Speakers and Deputy Speaker of the House of Representatives and Speakers and Deputy Speakers of Houses of Assembly of States, and all members and staff of legislative houses. 4. Governors and Deputy Governors of States. 5. Chief Justice of Nigeria, Justices of the Supreme Court, President and Justices of the Court of Appeal, all other judicial officers and all staff of courts of law. 6. Attorney-General of the Federation and Attorney-General of each State. 7. Ministers of the Government of the Federation and Commissioners of the Governments of the States. 8. Chief of Defence Staff, Chief of Army Staff, Chief of Naval Staff, Chief of Air Staff and all members of the armed forces of the Federation. 9. Inspector-General of Police, Deputy Inspector-General of Police and all members of the Nigeria Police Force and other government security agencies established by law. 10. Secretary to the Government of the Federation, Head of the Civil service, Permanent Secretaries, Directors General and all other persons in the civil service of the Federation or of the State. 11. Ambassadors, High Commissioners and other officers of Nigeria Missions abroad. 12. Chairman, members and staff of the Code of Conduct Bureau and Code of Conduct Tribunal. 13. Chairman, members and staff of local government councils. 14. Chairman and members of the Boards or other governing bodies and staff of statutory corporations and of companies in which the Federal or State Governments or local governments councils. 15. All staff of universities, colleges and institutions owned and financed by the Federal or State Governments or local government councils. 16. Chairman, members and staff of permanent commissions or councils appointed on full time basis.

<sup>5</sup> S. 153 (1) (a) as amplified in Third Schedule Part of the Constitution.

<sup>6</sup> Third Schedule, Paragraph 3 of the Constitution.

The Constitution has therefore defined the category of persons bound to make a declaration of assets and liabilities, the items to be declared, the fact that the declarations have to be verified, the enforcement mechanism for violations of the Code and disclosure of assets and liabilities declarations to Nigerians. However, the Constitution was silent on the process of submitting the declaration of assets and liabilities. This has been provided for in S.15 (1) of the Code of Conduct Bureau and Tribunal Act<sup>7</sup> (Act) which supplements the constitutional provision on the Code and assets and liabilities declaration. It states that:

*Every public officer shall within fifteen months of the coming into force of this Act or immediately after taking office and thereafter...*

*Submit to the Bureau a written declaration in the form prescribed in the First Schedule to this Act, or in such form as the Bureau may from time to time specify<sup>8</sup>, of all his properties, assets and liabilities and those of his spouse or unmarried children under the age of eighteen years.*

In the First Schedule to the Act, there is a form to be filled and submitted manually to the Bureau. However, the underlined words show that the Bureau in its discretion, has the power to specify any other form for submission of declarations. The extant assets declaration form contains what appears to be the need for the declarant to depose to the declaration before a High Court Judge. It is as follows:

*I.....attest that the statements provided in my assets and liabilities declaration are true and I understand that if upon verification any statement turns out to be false, I will be liable to legal action before the Code of Conduct Tribunal and or criminal prosecution as determined by the Attorney General of the Federation or his delegate.*

The above declaration adds nothing new to the constitutional requirement for truthful and honest declarations considering that paragraph 11 (2) of the Fifth Schedule to the Constitution has already provided as follows<sup>9</sup>:

*Any statement in such declaration that is found to be false by any authority or person authorised in that behalf to verify it shall be deemed to be a breach of this Code.*

The Constitution provides a recourse mechanism for the trial and punishment of any person who supplies false information on his declaration of assets and liabilities. So, whether there is a deposition on oath or not, providing false information in a declaration has been outlawed and made punishable under the law.

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<sup>7</sup> Cap C.15, Laws of the Federation of Nigeria, 2004.

<sup>8</sup> Underlining supplied for emphasis.

<sup>9</sup> This is also replicated in S.15 (2) of the Act.

### 3. Nigerian Online Assets Declaration

From the foregoing analysis of the method and process of submitting assets declarations under the extant law, there is nothing barring the Bureau from introducing and adopting the Online Assets and Liabilities Declaration System (OADS). It is now a question of designing the right OADS that will suit the needs of the Nigerians, from the CCB being the regulator, to public officers who are declarants and the tax payer and the treasury that bears the cost of running an efficient and effective assets declaration system.

It is on record that Nigeria, through the CCB, has been designing the OADS in the last ten years. A lot of public funds and international donor support had gone into the design and these funds have been channeled into software design, relevant hardware, training and other preparations for the commencement of the OADS. But what should be the contours of the Nigerian OADS.

The Nigerian OADS should be designed to simplify the assets declaration system. It should have strong support mechanisms through websites, media, designated staff, telephone hotlines, etc. It should in accordance with international good practices request information that reflects the objectives of the disclosure system, relevant and useful and streamlined in a way that is not burdening to the declarants. The system should be designed to facilitate comprehensive compilation of declarants, sending out notices and reminders; make filling out of the forms and submission easy; facilitate verification including comparison of information with data from other datasets, etc. For functionality and effectiveness of the OADS, it should be designed in a way that declarations can be searchable (using data management software programme) by name, position, agency and other objective criteria. It should be very helpful for comparing numerical and non-numerical values. This will facilitate the examination and review of the declarations and in future, when public access has been guaranteed, this will facilitate transparency and accountability in the declaration process.

The software to support the OADS should be context specific, designed to meet the identified challenges of the Nigerian situation and not generic software. It should be user friendly with such common place buttons as “save”, “edit”, “add”, “skip”, “next”, etc. It should be designed to be useable like internet banking applications that use passwords and tokens for login combined with registration of specific telephone numbers for ease of communication. However, to facilitate compliance by declarants, accessing the online system should be at no extra cost to the declarant.

#### 4.1 Benefits Accruable from a Nigerian OADS

**4.1 Ease of Compliance for Declarants:** The introduction of the OADS will make it easy for declarants to comply with the constitutional requirement to declare their assets and

liabilities. With enhanced access to digital technology and data services across the country, it will be easy for declarants to use computers and possibly cell phones to fill the forms and submit same online. The declarant will access the forms online, completes the form on or offline but submits the form online. Even corrections, rectifications and additions will be easily done online without undue costs and burden. The online process will save transport and logistics costs of approaching the offices of the Bureau to collect and return filled forms.

The ease of compliance will come with increased compliance by declarants as shown by comparative evidence in the case of Argentina and other countries<sup>10</sup>. However, at this initial stage, there would be need for appropriate communication through training, detailed user manuals and guides, websites, media dissemination of information, fliers and dissemination of frequently asked questions. This is to provide effective communication between the declarants and the Bureau.

**4.2 Ease of Managing the Process for the Bureau:** The Bureau, with a staff strength of less than 1000 and an average annual budget of N2.1billion in the last six years has the task of demanding, receiving, verifying, processing and activating the enforcement mechanism for over 5million declarations. This is virtually an impossible task because the available human and material resources do not match the assignment given to the Bureau. However, the OADS will automate the system, reduce the drudgery and make it easier to process the declarations. With the relevant search engines and identification mechanism, it will be easier for the Bureau to verify and review assets declarations.

The extant filing system in the Bureau is manual, with shelves, racks, a strong room, scanning facilities for an electronic storage system. The attempt to start electronic filing and storage at the Bureau is an acknowledgement of the need to reduce paper work and its associated challenges. It is estimated that a massive warehouse will be needed to properly arrange the files in shelves and racks and to ensure easy access and retrieval of the files when needed. The Bureau is one of the few government agencies without a building of their own. The manual system also needs fumigation to keep insects and rodents away from destroying the files. The OADS system guarantee integrity and continuity of records as records remain complete and accessible despite changes in agency organization and personnel; minimizes time wasted in searching for information and separates records with different retention values to assist retention and disposal activities<sup>11</sup>. It will provide a best practice storage and management of submitted data.

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<sup>10</sup> See the Impacts of Electronic Submission Process in Argentina - Public Office, Private Interest-Accountability through Income and Assets Disclosure - Stolen Assets Recovery Initiative (STAR), World Bank UNODC.

<sup>11</sup> Uniform Filing System for Records: <https://www.nd.gov/itd/services/records-management-program/uniform-filing-system-records>

**4.3 Quality Control:** The OADS will provide the facilities for a review of the disclosures for completeness, internal consistency or obvious filing errors. From the way it will be designed, the process will allow the declarant to complete filling the form, an opportunity to proof-read before submission. When the relevant columns and disclosures have not been made, it will call the attention of the declarant to it and submission may not be possible without completing the appropriate columns. Inconsistencies may be red-flagged so that corrections can be made. The OADS software provides an opportunity for appropriate programming for trends and issues that will automatically be highlighted for the attention of officers assigned to verify assets and liabilities. The introduction of the OADS provides the opportunity for the Bureau to comprehensively review the assets and liabilities declaration forms to ensure that they reflect the demands of a modern declaration system.

The database arising from the OADS will help researchers, system and risk managers to review the efficiency and effectiveness indicators embedded in the assets and liabilities declaration system. It will facilitate the identification of risks, their documentation, analysis and provision of remediation measures.

**4.4 Improved Verification:** The current assets and liabilities declaration system can only afford random or targeted selection of declarations for verification. This is based on the fact that the human and material resources cannot support the verification of all declared assets. But with the OADS and improved inter agency collaboration, there will opportunities to verify more assets through access to other databases and information from sister agencies. Also, a well-designed OADS will have internal mechanisms through appropriate software for an automated verification system to detect inconsistencies, red flags, potential conflicts of interest, unjustified variations in wealth and related problems. Indeed, more red flags will be automatically available and point the way for Bureau officials to follow the lead.

**4.5 Improved Inter Agency Collaboration:** The Bureau is a constitutional anti-corruption agency. The interdependence and inseparability of all anti-corruption systems and agencies makes a strong case for enhanced collaboration, access to and sharing of information on different databases. The Bureau needs to develop collaborations with a number of key public agencies - to have access to their information/data and also to provide CCB's information/data to them. This distinguishes access to declared information by the public from access to the information by other government agencies that need such information in the course of their duties.

Electronic and digital information in the OADS will facilitate these collaborations especially when they are reduced to a searchable database with markers and unique identifiers.

Banking information available at the Central Bank of Nigeria and Financial Intelligence Unit will assist the Bureau in verifying the assets through the Bank Verification Numbers (BVN). The BVN will also assist in identifying individual public officers as every bank customer has one BVN. The Financial Intelligence Unit may also find assets declarations useful in its work of checking money laundering and illicit money transfers. Collaborations with the respective vehicle registration offices and land registration and titling offices will be helpful in verification exercises. Also, collaboration with the Corporate Affairs Commission and the Stock Exchange through the Central Securities and Clearing System will facilitate access to company related information and shareholding necessary for verification of assets and liabilities<sup>12</sup>.

Other collaborations should include CCB and the National Identity Management Commission for proper identification of declarants; Federal Inland Revenue Service which issues Tax Identification Numbers (TIN) which can also facilitate the identification and tracking of transactions of declarants. There is also the need for collaboration with Human Resources Departments, especially the managers of the Integrated Payroll and Personnel Information System for a continuous update of those bound to declare their assets. The OADS will also encourage other agencies to digitize their systems.

It should be understood that these relationships will not be developed as a sprint run; they should form part of the long-distance mile race approach to enhancing the efficiency of assets declaration and verification. Collaborations will be meaningful if at the outset, information and data collection is standardised for data that will be common to various datasets. CCB should be encouraged to develop collaborations through Memorandum of Understanding with identified agencies and stakeholders and harmonise data collection and analysis methodologies.

**4.6 Facilitate Realisation of Core Objectives of the Assets Declaration System:** The OADS will facilitate the realization of the core objectives of the assets and liabilities declaration system. These objectives include reduction of corruption through prevention of conflict of interest situations, illicit enrichment, influence peddling, etc. Any process that improves the compliance rate by declarants makes it easier for the Bureau to verify assets and liabilities and improves collaboration by critical government agencies will definitely contribute to the realization of system goals. These will reflect as more targeted outputs, milestones, outcome and impact of the assets declaration system. Thus, the OADS will improve accountability for results on the part of the Bureau – the system will be more

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<sup>12</sup> Collaborations can also be established with the Supreme Audit Institution, being the Auditor-General of the Federation and the States, the Economic and Financial Crimes Commission, the Independent Corrupt Practices and Other Related Offences Commission and the Police.



focused on delivering services to meet the intentions of the legislature in the constitutional provision for declaration of assets and liabilities.

#### **4.7 Reducing the Cost of Running the Assets and Liabilities Declaration System:**

The OADS will eliminate the cost of printing and distribution of assets and liabilities forms. It will also reduce the cost of verification by the Bureau which may include the cost of travels and investigations related to assets disclosure. With links to other official databases, travel and manual searches will be replaced with a desk-top search of a portal or website. Running costs like scanning paper declarations to store them in an electronic format will be eliminated while the cost of hiring and maintaining large warehouses and a filing system will be eliminated.

It has been stated that the experience of many countries show that the costs of collecting hand-written disclosures greatly outweighs the benefits<sup>13</sup>. Essentially, it will reduce the cost of governance in the Bureau through improving economy and efficiency of operations thereby leading to effectiveness. Given the same level of resources, the Bureau will produce a higher level of results and will eliminate inefficiency.

**4.8 Improved Transparency:** In the current march for public access to declarations of assets and liabilities, on *such terms and conditions as the National Assembly may prescribe*, the OADS will facilitate such access without undue costs and burden on the Bureau, the declarant or the citizen who seeks such information. It is imperative to note that verification and public access complement each other. The OADS will gather declared assets under a searchable database that will provide ease of access. Otherwise, seeking access in the manual format of declarations will be cumbersome and costly for both the Bureau and the citizen who seeks the information. It will require dedicated staff who will provide and keep back the files or process certified true copies of declarations after an application for inspection has been approved.

Transparency is at the heart of good assets and liabilities declaration systems. It helps prevent public officials and institutions from doing things that cannot stand the test of scrutiny from outside. It provides the feedback for informed debate on ethics on government; it is pre-requisite for public debates which can lead to improvements in assets declaration, verification and enforcement. Transparency facilitates the identification of weaknesses which will lead to reforms. It also facilitates the identification of best practices which can be replicated<sup>14</sup>.

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<sup>13</sup> Getting the Full Picture on Public Officials: A How-To Guide for Effective Financial Disclosure at page 65.

<sup>14</sup> Adapted with approval from Mike Obadan in workshop paper - *Achieving Value for Money and Sustainable Impact*, Budget Office of the Federation, 2002.

## 5. The Transition Phase

Nigeria needs to plan the transition from a manual to an electronic portal-based filing system based on variables such as internet access and information technology capacity<sup>15</sup>. There is also the need for enough time for capacity building, training and sensitization of both the Bureau staff and declarants. It has been stated that:

*In the transition to e-filing, both disclosure agencies and disclosure practitioners need to be deeply involved in the design of the terms of reference for the electronic system and in the subsequent development of the system. Information technology experts alone cannot be expected to design a template for an electronic disclosure form that best fits the needs of disclosure practitioners for data management and analysis<sup>16</sup>.*

Thus, a realistic timeframe should be set during which both systems can coexist until the terminal date when the manual system will be phased out. The transition phase will also provide the opportunity for identifying and fixing any systems or software/programme and or data security challenges. Key and strategic agencies and declarants can be targeted to compulsorily pilot the OADS pending when it becomes the only mode of access declaration allowed by the system.

## 6. Conclusions

Extant Nigerian law gives the Bureau the power to prescribe the forms to be used for declaration of assets and liabilities as well as the method to be used in submitting the declarations. The Constitution makes it a breach of the Code for any person to submit a declaration containing false statements. Thus, there is no need for a new law to authorize the deployment of OADS in Nigeria.

The OADS is a mechanism to simplify and automate the assets and liabilities declaration system, make it easier for declarants to comply with the law and facilitate the management and use of the declared assets for the purpose of realizing the overall goals of the constitutional Code of Conduct for public officers. It will improve quality control, facilitate verification of declared assets, reduce the cost of running the assets and liabilities declaration system, mainstream risk management as well as improve inter agency collaboration for the strengthening of the anti-corruption campaign. It will improve transparency and lay the foundations for public access to declarations in accordance with the Constitution.

There should be transition phase from the manual to the electronic assets and liabilities declaration system based on variables such as internet access and information technology capacity and the time required for training, capacity building and sensitization.

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<sup>15</sup> Getting the Full Picture on Public Officials: A How-To Guide for Effective Financial Disclosure at page 64.

<sup>16</sup> Supra at page 64.

The Bureau and international development partners have invested heavily in the OADS over a period of ten years. This investment should not be left to waste. Nigeria needs to take that critical last step to move the process to completion.

## **7. Recommendations**

The following recommendations flow from the analysis.

### **The Bureau**

- ❖ Design the OADS to simplify the assets and liabilities declaration system and make it easy for declarants to comply with the law.
- ❖ Take the necessary steps and resolutions to publicly launch the OADS and set a transitional time frame for the full emergence of the OADS as the only method for assets and liabilities declarations.
- ❖ Design training and user manuals, frequently asked questions and fliers to be used in training and sensitization of Bureau staff, declarants and other stakeholders.
- ❖ Engage in sensitization and reach out programmes to stakeholders on the OADS.
- ❖ Negotiate Memorandum of Understanding with relevant government agencies whose collaboration is needed to fully activate all the components of the OADS. The agencies include the Central Bank of Nigeria, Financial Intelligence Unit, Federal and State Inland Revenue Services, various land registries, Corporate Affairs Commission, the Stock Exchange, Auditors-General of the Federation and the States, Economic and Financial Crimes Commission and the Independent Corrupt Practices and Other related Offences Commission, etc.
- ❖ Prepare draft Bill on public access to declared assets and liabilities taking into consideration the need to protect the privacy of the declarants.
- ❖ In the event of paucity of resources for the full roll out of the OADS, make a special request to the President for more funds and or consider convening a donors'/development partners meeting for the purpose of soliciting for funds.

### **The National Assembly**

- ❖ Support the Bureau through improved funding in subsequent federal budgets and use oversight mechanism to guarantee value for money.

- ❖ Consider amending the Constitution or the CCB Act to make the funding of the Bureau a first line charge/statutory transfer.

### Civil Society and the Media

- ❖ Engage in advocacy for the conclusion of the OADS project in the Bureau.
- ❖ Engage in public sensitization on the benefits that will accrue to Nigeria from the full rollout of the OADS.
- ❖ Generate national dialogue on the entire assets and liabilities declaration system with a view to reforms.



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This Policy Brief is produced by CSJ under the Project – *Reforming Nigeria’s Assets Declaration Framework*. The project has four core objectives as follows: **(i)** To improve the transparency of the Assets Declaration Framework (ADF) and thereby engender greater citizens participation; **(ii)** To advocate for the review of the ADF documentation - the Assets and Liabilities Declaration Form; **(iii)** To advocate for the improved funding of the Bureau and; **(iv)** To build the capacity of Civil Society to engage the ADF.

*CSJ, 17 Yaounde Street, Wuse Zone 6, Abuja, ☎09092324645; [www.csj-ng.org](http://www.csj-ng.org);*

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