

Full Length Research Paper

Nigeria's experience in dealing with public service ethical dilemmas

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The overarching thrust of this article is to share Nigeria's experience in dealing with normative ethical dilemmas towards fostering sound public service fitness and better governance. The experience indicates that these dilemmas arise from critical relations involving "civil servants" and "political office holders", "civil servants" and "citizens", and "intra-civil service". Also, the dilemmas could take the form of either personal cost, or right-versus-right, or even a hybrid of the former and the latter. Nigeria has adopted a framework of mechanisms for enthroning sound ethical fitness. These mechanisms are designed to prevent ethical misconduct, and enforce ethical principles. But challenges do arise, which can be surmounted if there exists a demonstrable commitment from the highest political authority level; and respect for public perception, because public functionaries are stewards of public confidence and trust. And this can be gained and maintained not only by consistently avoiding actual ethical misconduct, but also by the public perception of same.

Key words: Public service, better governance, citizenry, ethical misconduct.

INTRODUCTION

These reflections on Nigeria's experience in dealing with public service ethical dilemmas is a continuum of the growing global concern for promoting ethical fitness as an underpinning tonic for sound public service and better governance (OECD, 1998; UNDESA/UNDP, 2001; Makrydemetres, 2002; ILG, 2009). Be that as it may, the reflections seek to highlight the types of ethical dilemmas experienced in Nigeria's public service and the framework of mechanisms that the country has adopted to navigate through the labyrinths of the ethical dilemmas as well as the commonly encountered challenges.

Normative nature of public service ethical dilemmas

In the public service domain, normative nature of ethics tends to be in the frontline of ethical reasoning, as against its empirical dimension. Consequently, public servants usually understand ethics to be a system of prescribed and commonly shared "standard values" (for example trustworthiness, responsibility, fairness, respect and compassion etc), and "rules of conduct" (especially, those regarding financial gains, use of public resources, transparency and accountability, fair process, etc.) for guiding the obligatory, permissible and prohibitive official

actions in the public service. Invariably, demonstrable due compliance with ethical standard values and rules would bolster public confidence and trust in the public service. And a converse action would lead to erosion of public confidence and trust. But, ethical dilemmas do arise when a "public-servant-decision-maker" has to choose between competing considerations of ethical standard values and rules in order to determine the "right-thing-to-do". These dilemmas could take the form of either "personal cost" (arising from situations in which compliance with ethical conduct results in a significant personal cost to the "public-servant-decision-maker" and/or the agency); or "right-versus-right" (arising from situations of two or more conflicting sets of bona fide ethical values for example Justice vs Mercy, or "security" vs "privacy" etc); or even a hybrid (arising from situations in which a conscientious "public-servant-decision-maker" is exposed to a combination of the above-indicated ethical dilemmas in searching for the "right-thing-to-do") (ILG, 2009: 9).

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Predicating the thrust of this write-up on the above-

sketched defining characteristics of normative ethics, it is worthwhile to focus on the:

- i) Frequently encountered ethical dilemmas in Nigeria's Public Service; and
- ii) Nigeria's adopted framework of mechanisms for improving ethical fitness.

Frequently encountered ethical dilemmas

Frequently encountered ethical dilemmas tend to arise from three critical relations of:

Civil servants and political office holders

Classical cases arise from the management of the relationship between the Minister (an extraction of the political-office-holder class) and the Permanent Secretary (an extraction of the career-civil-servant class). Conventionally, the Minister is the Political Head and Chief Executive of the Ministry (FGN, 2009b: 7 to 9) and before assuming duty, subscribes to the "ministerial code of conduct and ethics" (FGN, 1999b); whilst the Permanent Secretary is the Chief Policy Adviser to the Minister, Administrative Head, and Accounting Officer of the Ministry (FGN, 2009b: 7 to 9). In the exercise of his/her responsibilities, the Permanent Secretary ought to strictly adhere to the prescribed and commonly shared ethical standard values and rules of conduct in the public service, whilst demonstrating unflinching loyalty to the Minister. Nonetheless, in practice, this often triggers conflict, especially over expenditure and administrative controls. The Minister may, for instance, decide to ignore the "ministerial code of conduct and ethics", which may lead to violation of the acceptable accounting standards and practices, as well as administrative ethical principles. In trying to arrive at the "right-thing-to-do", the Permanent Secretary's conscience may raise a myriad of perplexing questions, including:

- i) Would refusal to oblige the Minister's directive not displease him/her, thereby straining his/her relationship with the Permanent Secretary and echoing the latter's disloyalty to the former?
- ii) Would a protracted conflict, arising from this incident, not stunt the delivery on the Ministry's mandate and adversely affect the corporate image of the Ministry with a collateral damage on the required public confidence and trust?
- iii) Would succumbing to the pressures of the Minister, with a view to pleasing him/her, not lead to the violation of the acceptable accounting standards and practices, as well as administrative ethical principles, thereby derailing Nigeria's crusade for sound public service ethical fitness?
- iv) Would a violation of the public service ethics not

expose the Permanent Secretary to the risk of misconduct sanctions (that is termination, dismissal, retirement in public interest etc.) as contained in the applicable sections of the "2008 Public Service rules", and "anti-corruption" laws, notably, the ICPC Act 2000, EFCC Act 2002 and Public Procurement Act 2007?

v) Would such an act not be inimical to the overall corporate image of the public service?

vi) In such a situation, would the Permanent Secretary's reliance on the advice of participants at the "Maiden Annual Forum of Serving and Retired Permanent Secretaries" (July 2009) provide a valuable exit? The advice is that Permanent Secretaries should, "inter alia":

a) Strike a healthy balance between their responsibilities as Accounting Officers and that of the Honourable Ministers as Chief Executives to avoid unnecessary conflict;

b) Uphold the rule of law, due process, firmness, fairness and tact in carrying out their responsibilities; and

c) Uphold the highest administrative, financial, ethical and moral standards in the Civil Service, irrespective of political pressure (FGN, 2009b: 7 to 9).

Be that as it may, it is worthwhile to note that the Nigerian experience has indicated successful artful manoeuvre of this dilemma by many a Permanent Secretary in managing relationship with their Political Heads and Chief Executives.

Civil servants and citizens

Ethical dilemmas, arising from the relationship between the civil servants and citizens, are generally in the domain of service delivery. In a bid to meet citizens' expectations in this area, civil servants have subscribed to "SERVICOM charters" (FGN, 2007b: 13 to 16). The "charters" are expected to be complied with in a manner that does not compromise the principle of confidentiality of official information. Conversely, in practical terms, the selection of a deemed best course of action, from amongst several competing options, has usually depended on the administrative discretionary choice (Wali, 2006: 1; Menyah, 2010: 2) of the "civil-servant-decision-maker". This may pose an acute anxiety for appropriate answers to nagging questions such as:

i) Which preferred administrative discretionary choice would demonstrate professional discipline, equity, impartiality, fairness, honesty, integrity, reliability, pursuit of excellence, accountability, and pre-eminence of loyalty to the principle of safeguarding the best interest of the citizens?

ii) Which preferred administrative discretionary option would offend the sensibilities of the citizens with a collateral damage on public confidence and trust in the public service?

iii) Which preferred administrative discretionary choice

would please the citizens at the expense of the survival, growth and development of the public service?

Intra-civil service

Being the Administrative Head of the Ministry, the Permanent Secretary is frequently confronted with situations requiring his/her decision on meeting staff expectations on a range of matters. In search of the “right-thing-to-do”, he/she is guided by the applicable policies on staff matters and institutional management structures. However, he/she is also confronted with pressures from a myriad of vested interests. In trying to strike a balance, the “civil-servant-decision-maker” faces a daunting quandary that may trigger series of questions. They include:

- i) What would be the best line of action towards boosting staff morale and productivity?
- ii) What would be the best course of action towards promoting professional merit and meeting staff expectations whilst avoiding waste of resources?
- iii) What would be the best line of action towards preventing conflict between self-interest and best interest of staff?

Framework of mechanisms for improving ethical fitness

In navigating through the labyrinths of ethical dilemmas, Nigeria’s public servants have had to be creative and artful whilst relying on guidance from the country’s adopted framework of mechanisms for enthroning sound ethical fitness. Generally, the country’s framework of mechanisms resonates the contemplation of Article 23 of the Charter for Public Service in Africa, which enjoins public functionaries to refrain from, “inter alia”, abuse of office and any act(s) inimical to ethics and morality. But challenges do exist in the operationalization of this framework of mechanisms. The foregoing is summarised as follows:

Preventing ethical misconduct

The common methodology for delivering on this framework of mechanism includes:

Continuing sensitisation programme on standard ethical values: This is being undertaken with a view to halting the decline of the time-honoured ethical principles and rules in the public service; broadening and deepening the general public’s understanding of ethics in the public service; and promoting the culture of sound ethical fitness. Highlights of operational activities comprise:

i) General public enlightenment campaign which spans the “ethical revolution” (1981); War Against Indiscipline (1986); MAMSER (mass mobilization for self-reliance, social justice, and economic recovery) (1987) and its successor agency, NOA (national orientation agency). Others are the independent corrupt practices and other related offences commission (ICPC), established in 2000 with a mandate to educate and enlighten the public on and against corruption and other related offences towards enlisting and fostering public support for the anti-corruption war; SERVICOM (service compact with all Nigerians), established in 2004 and has produced “charters” for its day-to-day operational implementation in all the Federal Government Agencies - the “charters” are the basis for customer expectations of quality service delivery, rights demand for good service, recourse when service delivery fails, and involvement in the Service Delivery Programme; Nigeria’s Re-branding Project (2009), and STEPS (stewardship, trust, engagement, and professionalism) (2009); peer consultative forums, notably, the Federal Service Management Committee (an assembly of all serving Federal Permanent Secretaries under the chair of the Head of the Civil Service of the Federation) for peer-review and advice on performance in the MDAs, including analysis of ethical dilemmas; “retreats and workshops” where ethical issues resonate both in deliberations and conclusions, culminating in public declaration of re-commitment to uphold ethical values and standards (for example 2001 Kuru declaration; deliberations and conclusions of the Maiden Annual Forum of Serving and Retired Permanent Secretaries (July 2009) etc.); and the embodiment of values re-orientation in the national development agenda, notably Nigeria’s “2008 National Programme of Action (NPoA)” under the initiative of the African peer review mechanism (APRM), which underscores ethical re-orientation of public servants as a critical step in curbing corruption and scaling up integrity;

ii) Training in standard ethical values, as embodied in the Public Service Ethics/Integrity Resource Project, under the on-going Federal Public Service Reform Programme, for enhancing the capacity of public functionaries in analysing and resolving the commonly encountered ethical dilemmas;

Leading by example: as subscribed by all the serving Ministers and Special Advisers to the President in the Ministerial Code of Conduct and Ethics (FGN, 1999b), and as further demonstrated in the case of late President Yar’Adua’s declaration of assets and liabilities to the “Code of Conduct Bureau” and publishing same in the media. This has been adjudged by many public policy analysts as a practical demonstration of the topmost political leadership commitment to promoting a culture of sound ethical fitness in the public service. This action transcends mere compliance with the constitutional

compulsion in the “Code of Conduct for Public Officers” as spelt out in the “5th Schedule, Part 1, Section 11 of the 1999 Constitution of the Federal Republic of Nigeria”. Indeed, the 2009 “APRM Country Review Report on Nigeria” (a deliverable from Nigeria’s governance review by the Committee of Participating African Heads of State and Government in the APRM) has recognised and celebrated this development as one of Nigeria’s best practices of commitment to transparency in governance.

Promoting administrative accountability: This has been done by enshrining standard ethical values in the:

i) Codes of conduct, encouraging public servants to adhere to the mandatory and permissible conduct in the public service. Relevant indicators include, the 1999 “Constitution of the Federal Republic of Nigeria”, which provides for “National Ethics, Code of Conduct for Public Officers”, abolishment of corrupt practices and abuse of power, and “Oath of Office” for Principal Officers of the Executive, Legislative and Judiciary Arms of Government at both the Federal and State Levels (vide Chapter II, Section 23; 5th Schedule, Part I; Chapter II, Section 15

(5), and 7th Schedule, respectively, of the said constitution); “Nigeria’s National Anthem; Nigeria’s National Pledge; Civil Service Handbook (FGN, 1997)”, which spells out the “Code of Ethics in Government Business in its Chapter 4”, underscoring the value of discipline and adherence to service rules and regulations; “Ministerial Code of Conduct and Ethics (FGN, 1999b)”, to which all serving Ministers and Special Advisers to the President publicly subscribe and express commitment to uphold towards preserving and enhancing public confidence and trust in the integrity, objectivity and impartiality of public functionaries;

ii) Laws and rules, which prohibit misconduct and corruption, as well as prescribe appropriate punishments for violators, for example regular penal codes criminalising corruption; Corrupt Practices and Other Related Offences Act (2000); Economic and Financial Crimes Commission (Establishment) Act (2002); Public Procurement Act (2007); Fiscal Responsibility Act (2007); Nigeria EITI (Extractive Industries Transparency Initiative) Act 2007; 2008 Public Service Rules (PSR), which prohibit misconduct, and serious misconduct, as defined in PSR 030301 and PSR 030401 respectively, as well as seeking influence of prominent persons (FR 030427), receipt of presents in recognition of service rendered or anticipation of service to be rendered (FR 030433), bribery and corruption (FR 030434), including conduct prejudicial to state security (FR 030501); and the 2009 Financial Regulations (FR), which provide appropriate guidance to all public officers in carrying out government financial transactions (FR 101);

iii) Public service reforms, a series of which was

inaugurated with the constitution of the “Gorsuch Committee” in 1954, have been undertaken to reposition the federal public service for better performance. In the same vein, the Federal Government of Nigeria launched the on-going public service reform programme (PSRP) in 2003. Its implementation is being guided by the National Strategy for Public Service Reform (NSPSR) (FGN, 2008b). The “strategy” document provides a common vision and a long term agenda (including ethical and accountable workforce with a changed work culture) to guide the rebuilding and transformation of the Federal Public Service to a world-class standard for achieving Nigeria’s Vision 20:2020;

Establishment of integrity and moral rectitude watchdog bodies: Including the:

i) Internal bodies, such as the Code of Conduct Bureau, which has been enshrined in the 1999 Constitution of the Federal Republic of Nigeria by the provisions of its Section 153, and 3rd Schedule, Part 1, Section 1; Public Complaints Commission (PCC) (Nigeria’s Ombudsman), established by Decree No. 31 of 1975 (as further amended by Decree No. 21 of 1979) with the mandate to provide impartial investigation of complaints received from aggrieved citizens against government agencies (that is Federal, State, and Local Governments), corporate organisations and their officials; Bureau of Public Procurement (BPP), established by the provisions of the Public Procurement Act 2007, with the mandate to prevent fraudulent and unfair procurement, and where necessary apply administrative sanctions; Auditor-General for the Federation (AuGF), mandated to undertake financial audit, appropriation audit, financial control audit, and value-for-money audit with a view to ensuring due compliance with the applicable accounting practices and standards (vide FR 108 and FR 109 of the 2009 Financial Regulations);

ii) Independent external bodies, including the “media”, organised Non-Governmental Actors (for example Nigerian Chapters of Transparency International, and Friedrich Ebert Foundation, Integrity Club (formed in 1998) etc.), recent upsurge of a plethora of Integrity Forums, and professional bodies (for example Institute of Management Consultants Nigeria (IMC-Nigeria), Institute of Chartered Accountants of Nigeria (ICAN), Nigerian Medical Association (NMA), Nigerian Bar Association (NBA), etc.). These bodies have been actively involved in the crusade for promoting compliance with professional ethical principles in the country.

Managing misconduct and enforcing ethical principles and laws

Nigerians generally believe that the emplacement of a

framework of mechanism for preventing misconduct in the public service is necessary but not sufficient “per se”. This measure needs to be supported with structured mechanisms for managing misconduct and enforcing compliance with acceptable ethical principles. To this end, Nigeria has established a system for:

i) Disclosure of misconduct and corruption, which, “inter alia”, encourages and protects whistle-blowers under the principle of confidentiality of official information, whilst providing adequate avenues and procedures for facilitating disclosure and investigation of misconduct or corruption cases. This measure, which necessitated the placement of “public suggestion boxes” at the entrances and exits of “government agencies”, has been reflected in several administrative instruments, with varying degrees of emphasis, notably, the 2008 Public Service Rules (PSR), which provide procedures to be followed in reporting misconduct (PSR 030304), in disciplining misconduct and serious misconduct (PSR 030305), and in processing petitions and appeals (Chapter 9); and the Code of Conduct Bureau, Public Complaints Commission, SERVICOM, and Economic and Financial Crimes Commission etc. have established hindrance-free procedures for receiving complaints and appeals from aggrieved citizens and for protecting the petitioners. Furthermore, the Auditor-General for the Federation (AuGF) is empowered by Section 88 of the 1999 Constitution of the Federal Republic of Nigeria to investigate and expose inefficiency or waste of public funds to the National Assembly, whilst Section 128 of the same “constitution” replicates the same provisions for the 36 States of the Federation;

ii) Disciplinary control is being exercised via occasional Ad-Hoc Commissions of Inquiry, and the established investigating, disciplinary, and prosecuting bodies, notably, the Disciplinary Committees enshrined in the 2008 Public Service Rules, especially its Chapter 3 which is dedicated to discipline; Independent Corrupt Practices and Other Related Offences Commission (ICPC), and Economic and Financial Crimes Commission (EFCC), are mandated to prohibit and prescribe punishment for corrupt practices and other related offences as well as economic and financial crimes, whilst the Attorney-General of the Federation and Minister of Justice is empowered to prosecute perpetrators of corruption in his/her capacity as the Chief Law Officer of the Federation (vide Section 150 of the 1999 Constitution of the Federal Republic of Nigeria). Furthermore, the ICPC has the power to investigate petitions levelled against public functionaries hitherto granted constitutional immunity that is the President, Vice-President, State Governors and Deputy-Governors. Again, the Constitutional Oversight Bodies (that is the Senate Committees on Ethics and Petitions, Public Accounts, and Finance and Appropriations; and House of

Representatives’ Committees on Ethics and Privileges, Public Service Matters, Public Petitions, Appropriation, Finance, and National Ethics, Values and Anti-Corruption) have powers to investigate alleged cases of corruption and visit the necessary disciplinary penalties on violators.

Commonly encountered challenges

The commonly encountered challenges of managing misconduct and enforcing ethical principles and laws in Nigeria include the:

i) immunity clause in Section 308 of the 1999 Constitution of the Federal Republic of Nigeria, which protects sitting President and Vice-President at the Federal level, and Governors and Deputy Governors at the State level from facing civil or criminal proceedings. Undeniably, this constitutes a daunting hurdle in driving the anti-corruption crusade, in spite of the ICPC’s powers to investigate but without the powers to prosecute the beneficiaries of the immunity clause;

ii) Reticence of some public servants to disclose ethical misconduct within the Public Service in spite of provisions for encouraging and protecting whistle-blowing. This is believed to arise from the prevailing ignorance on the rights and obligations of whistle-blowing, and/or the fear of risking “personal-cost-ethical-dilemma” (for example jeopardising held position, missing opportunity for financial or material benefits, injuring valued relationship etc.);

iii) Subsisting obstacles to sound ethical fitness, notably self-interest, self-protection, self-deception, self-righteousness, and self-indulgence in dishonesty, corruption, nepotism, indiscipline, and prejudices etc;

iv) Insecurity of tenure of Civil Servants (especially regarding the uncertainties of retirement life), and lack of fair remuneration that is commensurate with the civil servants’ responsibilities and performance, and enables them to live in dignity. These undeniably do stimulate and sustain ethical misconduct in the public service. This concern, which has sustained the perennial tug of war of wits between the Civil Service Unions and the Government, featured prominently at the discussions of the Maiden Annual Forum of Serving and Retired Federal Permanent Secretaries (July 2009) leading to the call on government to emplace a living wage package for Civil Servants by “assessing the correlation between the existing salaries and inflationary trends and establishing a sensitive salary regime”; and

v) Conflict of interest, arising mainly from pressure to make ends meet. For instance, as a result of poor

remuneration, a sizeable number of Civil Servants engage in secondary income generating activities which often times clash with their official time.

CONCLUDING REMARKS

As a way of conclusion, it is worthwhile to recall and underscore some valuable issues. The first is that: preventing and managing misconduct as well as enforcing standard ethical values and rules are very complex issues. However, a possible exit is for the public servants to ensure that their official conduct is always guided by the emplaced mechanisms for improving ethical fitness. Also, demonstrable political commitment at the highest political authority level is critical for successful promotion of durable sound ethical fitness. Again, peer consultation is very valuable in navigating through the labyrinths of ethical dilemmas in the public service. Besides, respect of public perception is very critical because public functionaries are stewards of public confidence and trust. And this can be gained and maintained not only by consistently avoiding actual ethical misconduct, but also by the public perception of same.

REFERENCES

- APRM Forum (2009). APRM Country Review Report No.8: Federal Republic of Nigeria, APRM Continental Secretariat, Midrand, Republic of South Africa.
- Federal Government of Nigeria (FGN) (1997). Civil Service Handbook, FGN Printing Press, Lagos, Nigeria.
- FGN (1999a). Constitution of the Federal Republic of Nigeria 1999, FGN Printing Press, Lagos, Nigeria.
- FGN (1999b). Ministerial Code of Conduct and Ethics, FGN Printing Press, Lagos, Nigeria.
- FGN (2000). ICPC Act 2000, FGN Printing Press, Abuja, Nigeria.
- 3rd Biennial Pan-African Conference of Ministers of Public/Civil Service (2001). Charter for the Public Service in Africa, Editions Marocaines et Internationales, Tanger.
- FGN (2002). EFCC (Establishment) Act 2002, FGN Printing Press, Abuja, Nigeria.
- FGN (2004). Guidelines for Appointments, Promotion and Discipline, FGN Printing Press, Abuja, Nigeria.
- FGN (2007)(a). Fiscal Responsibility Act 2007, FGN Printing Press, Abuja, Nigeria.
- FGN (2007)(b). *Public Procurement Act 2007*, FGN Printing Press, Abuja, Nigeria.
- FGN (2007)(c). Nigeria EITI Act 2007, FGN Printing Press, Abuja, Nigeria.
- FGN (2007)(d). SERVICOM Book, FGN Printing Press, Abuja, Nigeria.
- FGN (2008)(a). Public Service Rules, FGN Printing Press, Abuja, Nigeria.
- FGN (2008)(b). National Strategy for Public Service Reform: Towards a World-Class Public Service (Draft).
- FGN (2009)(a). Financial Regulations (Revised to January 2009), FGN Printing Press, Abuja, Nigeria.
- FGN (2009)(b). Report of the Maiden Annual Forum of Serving and Retired Permanent Secretaries (Draft), Abuja, Nigeria.
- Institute for Local Government (ILG) (2009). Understanding the Basics of Public Service Ethics: Promoting Personal and Organisational Ethics, California, USA. pp 1-30
- Makrydemetres A (2002). "Dealing with Ethical Dilemmas in Public Administration: The "ALIR" Imperatives of Ethical Reasoning". *Int. Rev. Admin. Sci.* 68(2): 251-266
- Menyah D (2010). "Ethics, Ethical Dilemmas and Public Service", being a presentation at the 2010 CAPAM African Regional Conference, May 17-19, 2010, Abuja, Nigeria
- OECD (1998). Principles for Managing Ethics in the Public Service: OECD Recommendation, PUMA Policy Brief No. 4.
- UNDESA/DPADM (2004). Nigeria: Public Administration Country Profile, UN, New York.
- UNDESA/UNDP (2001). Public Service Ethics in Africa: Vols. 1 & 2, UN, New York.
- Wali MA (2006). "Ethical Dilemmas: Cultural Dimension", being a presentation at the National Workshop on Ethics, Integrity and Professionalism, July 17-20, 2006, Banjul, The Gambia.