

To Whom Much Is Given

[National Accountability Stewardship and the Role of Public Servants]

By

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1.0 Introduction

For clarity, it is always prudent to start with a definition of terms, particularly as some terms that are presumed to mean the same things to everybody could actually mean different things to different people. There are many definitions of the word “Accountability.” Some definitions, perhaps unhelpfully, simply define Accountability as “being accountable.” Others focus on key attributes such as information, explanation and consequences. Writing for the World Bank in 2005, Professor John Ackerman defines Accountability as “...a proactive process by which public officials inform about and justify their plans of action, their behaviour and results and are sanctioned accordingly.”

I would prefer to view Accountability as a mutually-reinforcing relationship between the donation of power and the responsibilities expected of the exercise of that power. In public life, this concept of Accountability directly affects three constituencies: The People, The Politicians, and The Public Servants. I will therefore explore this topic with regards to donation of power and the responsibilities expected of each of the constituencies. This means that, conceptually, the paper will be slightly wider than its sub-topic, which is limited to public servants, may suggest.

2. The People

According to the 1999 Constitution, “...sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority.” The term “The People” therefore encompasses all citizens and groups, including politicians and public servants. It gives all citizens of Nigeria the power to choose their government and to give that government a mandate to govern, accompanied by certain expectations and demands. This is the start of the accountability chain.

Politicians develop manifestos that promise the citizens the good life: stable electricity, better healthcare, safer streets, improved national security, more food, economic prosperity, and more jobs. Through elections, they seek the mandate of the people to govern and ask to be judged on their record of delivering on their promises. This raises certain responsibilities for each of the three constituents. First, there is a responsibility on citizens to vote, so that they can partake in choosing which set of politicians to entrust their future to. This is a civic privilege and responsibility that many citizens lost their liberty, and even their lives, to secure

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for the people. There is a responsibility on all eligible Nigerians to exercise that privilege by registering to vote, casting their votes, ensuring that their votes are counted and making sure that their votes count. The freer the elections, the more accountable the politician is likely to be. Nothing focuses the mind of the politician like the prospect of losing power at the next elections, knowing that they cannot manipulate those elections.

Second, the public service has the solemn responsibility to organise free, fair and credible elections. The public service must ensure that elections represent the will of the people. If the comedian, thief or village idiot is the preferred choice of the electorate, the public service must ensure that that choice is actualised through free, fair and credible elections.

Third, the politician has the responsibility to seek the mandate of the people to exercise power on its behalf. At all times, it must do so with patriotism and responsibility, seeking the greatest good for the greatest number.

It is my opinion that of all the freedoms that the people have, the two it must guard most jealously are freedom of speech (including the freedom to ask questions and demand answers without fear of retribution) and the freedom to vote and be voted for in free, fair and credible elections. As Rosa Luxembourgh rightly noted:

“Without general elections, without unrestricted freedom of press and assembly, without a free struggle of opinion, life dies out in every public institution, becomes a mere semblance of life, in which only the bureaucracy remains as the active element.”

Accountability in its truest sense stems from these two freedoms. Citizens have a right to demand information and explanations from the people it has elected and appointed, and those people that have been elected or appointed have a duty to provide information, explanations and answers. Where they fail to do so or do not do so in a satisfactory manner, the ultimate sanction available to the people is to withdraw the mandate they had earlier given through a subsequent exercise of their votes.

Nigeria has in place a Freedom of Information Act, 2011. Unfortunately, this immensely powerful legislation is grossly underutilised. Apart from a few exceptions, the Act FOI Act says that the only law that you can rely on to deny a request for information under the Act is the Constitution. Although this, in effect, makes the FOI the second most powerful accountability mechanism under Nigerian law, many public servants still hold on to the Official Secrets Acts of 1962. Section 28 of the Freedom of Information Act, 2011 expressly supersedes the Official Secrets Act when it says:

“The fact that any information in the custody of a public institution is kept by that institution under security classification or is classified document within the meaning of the Official Secrets Act does not preclude it from being disclosed pursuant to an application for disclosure thereof under the provisions of this act”, so long as the said information does not fall under one of the exclusions in the FOI Act.

I therefore call on the government to urgently issue a circular to this effect, as many public servants are still not sure about how the FOI Act affects the Official Secrets Act that they swore to upon their appointment with regards to their official assignments. Anyone that has worked in the public service knows that public servants relate more directly to rules and circulars than to laws. A circular will help to dispel any doubts in the minds of the public servant.

Civil society has a very important role to play in ensuring accountability on behalf of the people. First of all, it has the responsibility to deepen its own knowledge and understanding of the way government works. Secondly, it has the responsibility to demand explanations and answers from government officials on behalf of the people. Civil society organisations do this best when they have been able to develop a reputation for thoroughly professionalism and rigour. Tools such as Citizen Scorecards have been very effective in focusing the minds of public servants that public service is about the service to the public, not just service to the public servant, which tends to be uppermost in the minds of many public servants. The debate in the public service tends to be about “our pay”, “our training” and “our promotion”, not often enough about the wellbeing and convenience of the public.

Many civil society organisations have used the FOI Act to very good effect as an accountability mechanism. As Nigerian civil society organisations continue to mature and deepen the collaboration with each other, leveraging the areas of strength of each organisation to the benefit of others, their ability to demand and receive answers is improving. The co-creation of the OGP National Action Plan by government and civil society is certainly a step in the right direction. Joint monitoring of progress towards the lofty ambitions of that plan is perhaps even more important.

The media similarly has a role to play in demanding accountability on behalf of the people. The media has the responsibility to raise awareness about issues, demand answers, raise and praise and name and shame. It has the responsibility to wield its immense powers with knowledge and professionalism, putting national interest first at all times. Press freedom is a key element of Freedom of Speech, one of the two key freedoms I had pointed out that we must guard jealously. It is not immediately clear how well the media uses the FOI Act in its work. It seems to rely more on press releases issues by government officials, and investigative journalism does not appear to be common, except for some online media platforms. It is my view that the media should make more use of the FOI Act in its work and should also help to apply pressure on government to comply with the provisions of the Act. For instance, the performance of the National Assembly on FOI requests should be under constant scrutiny by the media, since it was the National Assembly that passed the law and it is a public institution under the Act.

Government’s track record of response to FOI requests has been poor. Year-on-year, many public service organisations fail or even blatantly refuse to respond to FOI requests. There do not seem to be any administrative sanctions for an organisation that fails or refuses to provide information. Although the law requires all public institutions to make annual returns to the Attorney General of the Federation, there are no sanctions for failing or refusing to do so. Similarly, when the Attorney General submits his report to the National Assembly, the report seems to enter a black hole. The National Assembly often doesn’t exercise its accountability

powers by demanding an explanation from nonresponsive public organisations as to why they did not respond to an FOI request, or why they did not file their returns to the Attorney General, nor does it compel those nonresponsive organisations to appear before it to explain their recalcitrance.

Therefore, the only remedy available to ordinary members of the public and civil society organisations seems to be to go to court. Unfortunately, the court system in Nigeria is slow, expensive and daunting for the average Nigerian. Many simply cannot afford the money or the time required to pursue FOI requests through the courts. Consequently, this constrains one of the two fundamental rights that I said we must fight to protect in our quest for accountability: the freedom to demand information and explanation from the people we elect or appoint.

Some progress has been made since the fuller implementation of the FOI Act was made a commitment in Nigeria's Open Government Partnership National Action Plan. In this regard, I must commend the efforts of the Federal Ministry of Justice in the mediation role that it has started to play between government organisations and citizens that demand information from government. Of course, the fact that a mediation role is necessary when there is a law that mandates disclosure is indicative of the size of the problem.

A few organisations, such as the Bureau of Public Service Reforms (BPSR), which I led until recently, and the Nigeria Extractive Industries Transparency Initiative (NEITI), have been practicing proactive disclosure. However, it is my opinion that the FOI Act should be amended to provide some administrative sanctions for non-compliance with its provisions. For instance, the Public Procurement Act, 2007 says that the Bureau of Public Procurement can recommend the removal of a Chief Executive that fails to comply with the Act or recommend investigation of any perceived infraction by the anticorruption bodies such as EFCC. Therefore, Chief Executives tend to jump when they get a letter from the BPP that reminds them of those provisions of the Public Procurement Act. The FOI Act should be amended to include similar provisions, if it is to be taken seriously by government officials.

Increasingly, individual citizens are taking advantage of social media to demand accountability. Similarly, many government organisations now have a presence on social media, with some being more responsive than others. For the 2017 budget, the Bureau of Public Service Reforms, the National Bureau of Statistics and the Nigeria Extractive Industries Transparency Initiative defended their budget proposals online before members of the public before even defending them before the National Assembly. This is an example of real transparency and accountability in action. I am aware that the Presidential Office of Digital Engagement is making efforts to ensure that many more government organisations are available to answer questions online to the public. This is important for building the confidence of citizens in the government.

We will next look at the role of politicians in ensuring accountability.

3. The Politicians

As former Soviet Premier Nikita Khrushchev once said, “Politicians are the same all over. They promise to build a bridge even where there is no river.” Once elected into power, politicians are supposed to devise policies to respond to the demands that the electorate has placed on them and that they had promised in their manifestos and during their campaigns. Their performance against these demands and promises should determine the extent to which they can retain power in subsequent elections. Quite rightly, some civil society organisations have started tracking these promises and campaign commitments and reporting them to citizens through the media.

Politicians focus on outcomes, such as the life expectancy rates of citizens, and rely on public servants to deliver outputs, such as ensuring that a patient in a hospital is attended to within a reasonable time of arriving at a health facility. The politician provides the enabling environment for the public servant to perform, including setting out the right policies, approving suitable budgets and refraining from undue political interference. Once the politician has created the enabling environment, they pass on the responsibility for direct delivery to the public service. It is important to note that politicians who are in government either in the Executive or Legislature are also public servants. However, I will make a distinction for the purpose of this paper by using the term “Public Servant” to refer to those public officials in the Executive arm below the rank of Minister. Therefore, when I refer to public servants in this paper, I mean Permanent Secretaries, Directors-General and below.

The politician demands accountability from the public service, or at least is supposed to. The mandates of Ministries are not clear and efforts to clarify them remain inchoate. Many agencies and parastatals have duplicate or conflicting mandates and the political will to address the Oronsaye Report has not been apparent with successive governments a full 7 years after the report was completed.

Without clarity about what each organisation is supposed to deliver to the people, it is rather difficult for the politician to demand accountability from the public service in a way that helps to deliver on the mandate that they obtained from the people at the polls and the campaign promises that they made. I recommend that the political class should make urgent efforts to clarify the mandates of ministries, agencies and parastatals and to streamline delivery mechanism by removing duplication and working with the National Assembly to avoid further proliferation of delivery agents. Without this clarity, it is difficult to know which public service organisation to hold accountable for what. An example is the role of the National Emergency Management Agency and the National Commission for Refugees when dealing with internally displaced persons.

Unfortunately, we also still do not have a robust performance management system through which politicians can demand this accountability of the public service. The Office of the Head of the Civil Service of the Federation, the Ministry of Budget and National Planning and the Federal Civil Service Commission had made some effort to develop a new performance management system, but it seems that the support of politicians have been lukewarm at best. I believe that if politicians make it a priority that there must be a means through which they can hold public servants to account, the system, which has been in development for quite a while now, will finally be completed and put into use for the benefit of citizens.

The current public financial management system only demands accountability for expenditure, not accountability for performance. Therefore, there does not appear to be any means through which public servants are held accountable for the results that monies were budgeted and released for. The current audit function only tries to ensure that monies received were not stolen, not that the monies released delivered the benefit that the politician promised the public that it would.

The proper thing should be that government priorities, taken from manifestos and campaign promises, should guide organisational priorities. Suitable organisational mandates should then be clarified to help deliver on those priorities. That should guide capacity building efforts to ensure that public servants can deliver required outputs. This, in turn, should guide how both the organisation and the individual public servants should be held accountable and have their performance managed. This golden thread from government priorities all the way through to individual performance is sadly missing in the Nigerian public service. Efforts to introduce it when Ministries were merged in 2015 remain inchoate 3 years on.

Without clarity about government priorities, without clear organisational mandates, a functional performance management system, and a robust impact assessment mechanism, the ability of the politician to hold the public servant to account is severely constrained. This, in turn, constrains the ability of the politician to deliver on campaign promises in a coordinated way. The politician becomes reliant on the goodwill of a few good public servants who have, entirely on their own, become pockets of effectiveness and accountability. The sustainability of this arrangement is suspect.

4. The Public Service

The public service has dual accountability responsibilities. It is accountable to the politician in that it translates the policies and priorities developed by the politician into tangible public goods and services. The public servant is also accountable to the public in that it is responsible for ensuring that services are delivered impartially to all citizens.

However, according to John Baptiste Moliere, “It is not only what we do, but also what we do not do for which we are accountable.” One thing that the public service does not do well enough, and in some cases, does not do at all, is to explain to the Public what it is doing and why it is doing it.

Reformers are often too busy doing the reforms that they do not spare the time to explain to the public on whose behalf they are doing the reforms what they are doing and how the reforms will benefit them. In my three decades of doing public service reforms, this is a trait that I have seen time and again. Indeed, those that take the trouble to inform the public are seen as attention-seeking show-offs who try to claim that they are better than everybody else. Some public servants are even so scared that the reforms that they are engaging in may unravel, leading to embarrassment and shame for the reformer. In my experience, there is absolutely no need for this. The reformer has a duty to inform the public of the efforts that they are making. When things go wrong, as they inevitably do, the astute reformer will admit that something has gone wrong, take responsibility for it, apologise, and set out the steps

that they will take to put things right and ensure that failures do not recur. In my experience, Nigerians actually appreciate this sense of honesty and accountability.

In my interaction with many Nigerians, I have been surprised at how little the general public knows about the workings of government. The things that public servants know intuitively as a matter of course are complete mysteries even to highly educated and informed civil society groups and members of the public. Many do not understand the difference between Capital and Recurrent expenditure. In the quest for more and more capital expenditure, many do not understand that every item of Capital expenditure has recurrent implications. Every new school you build needs new teachers. Every new hospital you build needs doctors and nurses. Their salaries come out of Recurrent expenditure, which is often demonised by civil society, the media and members of the public. This has meant that many public service organisations simply do not have the minimum resources to run a functional government system with the attendant checks and balances.

Many commentators on the subject do not understand that, with a mono-product economy and the attendant fluctuations in things like the price of oil, it is not everything that is budgeted that is released and it is not everything that is released that is spent. Once people see an item in the budget, they assume that the money has already been spent (or rather, stolen) by the public servant. The public does not understand the nuances. The public servant does not make enough effort to explain.

Because the resources of the people and their taxes pay the salaries of the public servant, the public servant has a duty to respond to requests for information about their actions. The public has a right to ask questions. When government claims that monies have been recovered or ghost workers discovered, the public has a right to demand to know where the money is and what it has been applied to. I have seen many instances where government appears to claim that certain sums have been spent on Capital project, when it actually meant to say that those sums have been released. Therefore, when citizens ask “Where are the projects?”, there is deafening silence. Sometimes, assets that are claimed to have been recovered are still subject to court proceedings and cannot really be treated as income until the final determination of the case. Oftentimes, the public servant does not bother to explain this to the public.

The public service has a duty to inform the media in order for them to inform the public, and also to inform civil society and the general public directly through reports, publications, dialogues and announcements. It should always seek to perform this duty proactively, without waiting for the public to ask for the information. The items of proactive disclosure required of the public service are clearly set out in the FOI Act and the various guidance documents produced to operationalise the Act. They include procurement information, such as requests for expressions of interest, organisations to whom Requests for Proposals have been issued, details of contract awards and details of payments to contractors. They also include organisational structures, responsibilities of key officers, remuneration of staff (which public institutions can show by simply supplying relevant circulars from the Revenue Mobilisation and Fiscal Allocation Commission and the National Salaries, Incomes and Wages Commission), and the publications and reports of the organisation.

In my experience, proactive disclosure lessens the burden of responding to FOI requests. The more information you proactively disclose, the less FOI requests you will receive and the less time you will spend responding to them. It is not advisable for the public service Chief Executive to delegate the responsibilities for disclosure of information to a junior officer. The Chief Executive of the public organisation, as the Accounting Officer entrusted with the responsibility of expending public funds, must be the chief FOI officer of the organisation they lead.

The concept of Annual Reports, a perfectly normal practice in the private sector is sorely lacking in the public sector. Government should make it compulsory for all government entities to produce Annual Reports that should be easily accessible to civil society, the media and members of the public. This will provide the basic information with which the organisation can be held to account.

5. Conclusion

The privilege of exercising state power is one that majority of Nigerians will never experience in their lifetimes. Those that are fortunate enough to enjoy that privilege must be aware that privilege breeds accountability and accountability breeds responsibility. Transparency is the first step towards accountability. Without transparency in policies, actions and expenditure, it is difficult to pursue accountability. As Ralph Nader said, "Secrecy destroys accountability" and the misconception about the application of the Official Secrets Act, 1962, needs to be clarified urgently. However, in my view, the greatest enemy of accountability is impunity, the feeling that you are doing the public a favour and do not owe them any explanations. If the politician and the public servant is to win the trust of the public, this is something that must change. To whom much is given, much is expected. God bless Nigeria.