NATIONAL OPEN UNIVERSITY OF NIGERIA

FACULTY OF MANAGEMENT SCIENCES

COURSE CODE: PAD 844

COURSE TITLE: ADMINISTRATIVE LAW

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INTRODUCTION

Administrative Law is a one semester three Credit Unit course. The c ou r s e code is P AD844.

In the broadest sense, administrative law involves the study of how those parts of our system of government that are neither the legislatures nor the courts make decisions. These entities, referred to as administrative agencies, are normally located in the executive branch of government and are usually charged with the day-to-day details of governance. These agencies carry out these tasks by making decisions of various sorts and supervising the procedures by which the decisions are carried out.

Thus, administrative law is the law that regulates administration. It regulates the powers and duties of government and administrative authorities, and provides remedies for mal-administration and other administrative wrongs. The course therefore examines the growth and characteristics of Administrative Law, legal safeguard over administration, Fundamental Human rights, judicial review of administration, administrative procedure, and the Ombudsman. Case studies found in the various units will assist the student in coming to terms with the theories and principles of law and thus aid the understanding of the topics.

COURSE AIMS

The aim of the course can be summarized as follows; to give you an understanding of general principles Public Administration.

COURSE OBJECTIVE:

Set out below is the wider objectives of the course as a whole. By meeting these objectives you should have achieved the aims of the course as a whole. These objectives include for you to be able to;

Define Administrative Law and discuss its purpose and scope

Discuss the relationship of Administrative Law and other areas of Law

Discuss the development of administrative law in Nigeria and some other

Jurisdiction
Give an overview of Administrative Theories
define and explain the natur e of fundamental human rights
Explain the difference between fundamental human rights and other rights
discuss the various fundamental rights under the 1999 constitution
Discuss issues involved in the justiciability debate
Appreciate the attitude of the Courts in matters involving fundamental human rights
understand the principles of audi alteram partem and nemo judex in causa sua and their application in administrative processes
Understand the various types of judicial review (like Mandamus, certiorari, injunctions) and when they can be applied
Understand the limitations on the powers of

WORKING THROUGH THIS COURSE:

To complete this course you are required to read the study units, recommended text books and other materials like the cases cited under the various units. You are expected to undertake the Self Assessment Exercise for each unit. The course should take you about 12 weeks or more to complete the course materials. At the end of the course there is also a final examination. Below you will find listed all the components of the course, what you have to do and how you should allocate your time to each unit in order to complete the course successfully and timeously.

COURSE MATERIALS:

Major components of the course are:

Course guide
Study units
Textbooks
Presentation schedule.
Assignment file

COURSE GUIDE:

This suggests some general guidelines and the amount of time you are likely to spend on each unit of the course in order to complete it successfully. It also gives you some guidance on your Tutor- Marked Assignments (TMAs). Detailed information on TMAs is found in the separate assignment file, which will be available to you in due course. There are regular tutorial classes that are linked to the course and students are advised to attend these sessions.

STUDY UNITS:

On the whole the course comprises 5 Modules which are broken into 22 study units list as follows;

MODULE 1 INTRODUCTION.
UNIT 1 CONCEPTS CLARIFICATION
UNIT 2 DEVELOPMENT OF ADMINISTRATIVE LAW
UNIT 3 INTRODUCTION AND OVERVIEW OF ADMINISTRATIVE THEORIES
UNIT 4 THE EMERGENCE OF GLOBAL ADMINISTRATIVE BODIES

MODULE 2 FUNDAMENTAL RIGHTS UNDER THE 1999 CONSTITUTION
UNIT 1: DEFINITION AND NATURE OF FUNDAMENTAL HUMAN RIGHTS
UNIT 2 DIFFERENCE BETWEEN FUNDAMENTAL HUMAN RIGHTS (FHR) AND OTHER RIGHTS
UNIT 3 FUNDAMENTAL RIGHTS UNDER THE 1999 CONSTITUTION
UNIT 4 THE JUSTICIABILITY DEBATE

MODULE 3 ADMINISTRATIVE PROCEDURE
UNIT 1: WHAT IS ADMINISTRATIVE PROCEDURE
UNIT 2 RIGHT TO FAIR HEARING
UNIT 3 AUDI AL TERAM PARTEM
UNIT 4 NEMO JUDEX IN CAUSA SUA

MODULE 4 JUDICIAL REVIEW

UNIT 1 LOCUS STANDI
UNIT 2 MANDAMUS
UNIT 3 CERTIORARI
UNIT 4 DECLARATORY JUDGMENT/DAMAGES
UNIT 5 INJUNCTIONS
UNIT 6 NON QUASI JUDICIAL

MODULE 5
UNIT 1 OMBUDSMAN
UNIT 2 THE CIVIL SERVICE
UNIT 3 THE POLICE
UNIT 4 PERSONAL LIBERTIES OF OFFICERS

Textbooks:

You should endeavor to obtain the recommended book; these are not provided by NOUN, obtaining them is your own responsibility. You may purchase your own copies. You may contact your tutor if you have problems in obtaining these textbooks.

PRESENTATION SCHEDULE.

There are two aspects to the assessments of the course. First are the TMAs, second, there is a written examination.

In tackling the assignments, you are expected to apply information, knowledge and techniques gathered during the course. The assignments must be submitted to your tutor for formal assessment in accordance with the deadlines stated in the presentation schedule and the Assignment file. The work you submit to your tutor for assessment will count for 30% of your total course mark.

At the end of the course you will need to sit for a final written examination for three hours duration. This examination will also count for 70% of your total course mark

ASSIGNMENT FILE:

Tutor-Marked Assignments

There are four tutor-marked assignment in this course. You only need to submit f of four assignments. You are encouraged, however, to submit all four assignments, in which case the highest four assignments count for 30% towards your course mark.

Assessment questions for the units in this course are contained in the Assignment file. You will be able to complete your assignments from the information and materials contained in your set books, reading, and study units. However, it is desirable in all degree level education to demonstrate that have read and researched more than the required minimum. Using other references will give you a broader viewpoint and may provide a deeper understanding of the subject. When you have completed each assignment send it together with a TMA form to your tutor. Make sure that each assignment reaches your tutor on or before the deadline given in the presentation schedule and Assignment file. If, for any reason, you cannot complete your work on time, contact your tutor before Assignment is due to discus the possibility of an extension. Extensions will not be granted after the due date unless there are exceptional circumstances.

Final examination and grading

The final examination for PUL844 has a value of 70% of the total course grade. The examination will consist of questions that reflect the types of self- testing, and tutor-marked problems you have previously encountered. All areas of the course will assessed.

Use the time between finishing the last unit and sitting the examination to revise the entire course. You might find it useful to review your self-assessment exercises, TMAs and

comments by your tutorial facilitator before the examination. The final examination covers information from all parts of the course.

Course marking schedule

The following table lays our how the actual course mark allocation is broken down:

Assessment	Marks
Assignments 1-4	Four assignments, best three marks of the count at 30% of course marks.
Final examination	70% of overall course marks
Total	100% of course marks

COURSE TITLE: PUBLIC ADMINISTRATION LAW

MODULE 1

UNIT 1 Concepts Clarification

UNIT 2 Development of Administrative Law

UNIT 3 Introductions and Overview of Administrative Theories

UNIT 4 The emergence of global administrative bodies

UNIT 1 CONCEPTS CLARIFICATION

CONTENTS

1.0 INTRODUCTION

This introductory Unit seeks to apprise the student with the definition, scope of administrative law, relationship between Administrative law and other areas of law like Constitutional law, Human rights, etc. For the student to understand administrative law, it is essential that the student has a broad idea of the definition, nature and scope of administrative law.

2.0 OBJECTIVES

At the end of this Unit, students are expected to:

- Define administrative law.
- Understand clearly the basic purpose of administrative law and analyse the way such purpose is attained.
- Describe the similarities and difference between administrative law and other concepts
- Explain the place of administrative law in ensuring rule of law and enforcement of human right.

3.0 MAIN CONTENT

3.1 DEFINITION OF ADMINISTRATIVE LAW

There is a great divergence of opinion regarding the definition of the concept of the administrative law. This is because of the tremendous increase in the administrative process that it makes impossible to attempt any precise definition of administrative law which can cover the entire r ange of administrative process.

Austin has defined administrative Law. As the law, which determines the ends and modes to which the sovereign power shall be exercised. In his view, the sovereign power shall be exercised either directly by the monarch or directly by the subordinate political superiors to whom portions of those are delegated or committed in trust.

Holland regards Administrative Law "one of six" divisions of public law.

In his famous book "Introduction to American Administrative Law 1958", Bernard **Schawartz has defined Administrative Law as "the law applicable to those** administrative agencies which possess of delegated legislation and ad judicatory authority."

Jennings has defined Administrative Law as "the law relating to the administration. It determines the organization, powers and duties of administrative authorities."

Dicey in 19th century defines it as.

Firstly, portion of a nation's legal system which determines the legal statues and liabilities of all State officials.

Secondly, defines the right and liabilities of private individuals in their dealings with public officials.

Thirdly, specifies the procedure by which those rights and liabilities are enforced.

However, two important facts should be taken into account in an attempt to understanding and defining of administrative law. Firstly, administrative law is primarily concerned with the manner of exercising governmental power. The decision making process is more important than the decision itself. Secondly, administrative law cannot fully be defined without due regard to the functional approach. This is to mean that the function (purpose) of administrative law should be the underlying element of any definition. Bearing in mind this two factors, let us now try to analyze some definitions given by some scholars and administrative lawyers.

Ivor Jennings defines administrative law as:

"Administrative law is the law relating to the administration. It determines the organization, powers and duties of administrative authorities".

Criticisms of the definition

Even though this is perhaps, the most widely accepted definition of administrative law, it is not without its attendant criticism.

According to Massey, there are some difficulties associated with this definition. Firstly, it does not distinguish administrative law from constitutional law. It lays entire emphasis on the organization, power, and duties to the exclusion of the manner of their exercise. In other words, this definition does not give due regard to the administrative process, i.e. the manner of agency decision making, including the rules, procedures and principles it should apply.

According to Professor P.A. OLUYEDE:

> "Administrative law means that branch of our law which vests powers in administrative agencies, imposes certain requirements on the agencies in the exercise of the powers and provides remedies against unlawful administrative acts".

PROF. B.O. ILUYOMADE and HON. JUSTICE B.U. EKA stated that:

> "Administrative law is that body of rules which aim at reducing the areas of conflict between the administrative agencies of the state and the individual."

MASSEY gives a wider and working definition of administrative law in the following way:

> "Administrative law is that branch of public law which deals with the organization and powers of administrative and quasi administrative agencies and prescribes the principles and the rules by which an official action is reached and reviewed in relation to individual liberty and freedom".

From this and the previous definitions we may discern that the following are the concerns of administrative law.

It studies powers of administrative agencies. The nature and the extent of such power is relevant to determine whether any administrative action is ultra vires or there is an abuse of power.it studies the rules, procedur es and principles of exercising these powers.

It studies the controlling mechanism of power. Administrative agencies while exercising their powers may exceed the legal limit abuse their power or fail to comply with the minimum procedural requirements. Administrative law studies control mechanism like legislative & institutional control and control by courts through judicial review.

Lastly it studies remedies available to aggrieved parties whose rights and interests may be affected by unlawful and unjust administrative wrongs. Mainly it is concer ned with remedies through judicial review, such as certiorari, mandamus, injunction and habeas corpus.

It is crystal clear from the various definitions above, and as earlier pointed out, that there is no comprehensive definition of administrative law, and that it only depends on the view point of the definer.

PURPOSE OF ADMINISTRATIVE LAW

There has never been any serious doubt that administrative law is primarily concerned with the control of power. With the increase in level of state involvement in many aspects of everyday life during the first 80 years of the twentieth century, the need for a coherent and effective body of rules to govern relations between individuals and state became essential. The 20th century saw the rise of the "regulatory state" and a consequent growth in administrative agencies of various kinds engaged in the delivery of a wide variety of public programs under statutory authority. This means, in effect, the state nowadays controls and supervises the lives, conduct and business of individuals in so many ways.

Hence controlling the manner of exercise of public power so as to ensure rule of law and respect the right and liberty of individuals may be taken as the key purpose of administrative law.

Administrative law embodies general principles applicable to the exercise of the powers available to the executive conform to basic standards of legality and fairness. The ostensible purpose of these principles is to ensure that there is accountability, transparency and effectiveness in exercising of power in the public domain as well as the observance of rule of law.

Peer Leyland and Tery Woods have identified the following as the underlying purposes of administrative law.

- It has a control function, acting in a negative sense as a brake or check in respect of the unlawful exercise or abuse of governmental/administrative power.
- It can have a command function by making public bodies perform their statutory duties, including the exercise of discretion under a statute.
- It embodies positive principles to facilitate the good administrative practice; for example, in ensuring that the rules of natural justice or fairness are adhered to.
- It operates to provide accountability and transparency, including participation by interested individuals and parties in the process of government.
- It may provide a remedy for grievances at the hand of public authorities.

Similarly, I. P. Massey identifies the four basic bricks of the foundation of administrative law as:

To check the abuse of administrative power
To ensure to citizen an impartial determination of their disputes by officials so as to protect them from unauthorized encroachment of their rights and interests.
To make those who exercise public power accountable to the people.

SCOPE OF ADMINISTRATIVE LAW

Distinction between Public Law and Private Law

The boundaries of administrative law extend only when administrative agencies and public official exercise statutory or public powers, or when performing public duties. In both civil and common law countries, these types of functions are sometimes called "public law function" to distinguish them from "private law functions". The former govern the relationship between the state and the individual, whereas the later governs the relationship between individual citizens and some forms of relationships with state, like based on government contract.

For example, if a citizen works in a state owned factory and is dismissed, he or she would sue as a "private law function". However, if he is a civil servant, he or she would sue as a "public law function".

The point here is that the rules and principles of administrative law are applicable in a relationship between citizens and the state: they do not extend to cases where the nature of the relationship is characterized by a private law function.

3.2 THE RELATIONSHIP OF ADMINISTRATIVE LAW TO CONSTITUTIONAL LAW AND OTHER CONCEPTS

For a long time, the similarity between constitutional law and administrative law had led to confusion between both because the latter was, until very recently, treated as an appendage of or annexure to the former. One of the reasons therefore is that the two were fused for a long time because English scholars such as Austin and Maitland hesitated to see administrative law as a body of law distinct from constitutional law.

Also A.V.Dicey's denial of the existence of administrative law in the UK in his exposition on the rule of law worsened the non-recognition of administrative law as an autonomous course of study. Moreover, this blurred relationship between administrative law and constitutional law was not helped by the fact that the UK operates an unwritten constitution. Thus, it was usual for textbooks on constitutional law and administrative law to contain much of constitutional law and little of administrative law. However, with the recognition of administrative law as an independent course of study, the situation has since improved as we now find books that are exclusively devoted to administrative law.

3.2.1 ADMINISTRATIVE LAW AND CONSTITUTIONAL LAW

Administrative law is categorized as public law since it governs the relationship between the government and the individual. The same can be said of constitutional law. Hence it is undeniable that these two areas of law, subject to their differences, also share some common features. With the exception of the English experience, it has never been difficult to make a clear distinction between administrative law and constitutional law. However, so many administrative lawyers agr ee that administrative law cannot be fully comprehended without a basic knowledge of constitutional law. As Justice Gummov has made it clear

> "The subject of administrative law cannot be understood or taught without attention to its constitutional foundation".

This is true because of the close relationship between the two laws. To the early English writers there was no difference between administrative law and constitutional law. Therefore, Keitch observed that it is

> "logically impossible to distinguish administrative law from constitutional law and all attempt to do so are artificial".

However, in countries that have written constitution, their difference is not so blurred as it is in England. One typical difference is related to their scope. While Constitutional law, deals in general with the power and structures of government. i.e. the legislative, the executive and the judiciary, administrative law in its scope of study is limited to the exercise of power by the executive branch of government. The legislative and the judicial branches are relevant for the study of administrative law only when they exercise their controlling function on administrative power.

Constitutional law, being the supreme law of the land, formulates fundamental rights which are inviolable and inalienable. Hence, it supersedes all other laws including administrative law. Administrative law does not provide rights. Its purpose is providing principles, rules and procedures and remedies to protect and safeguard fundamental rights. This point, although relevant to their differences, can also be taken as a common ground shared by constitutional and administrative law. To put it in simple terms, administrative law is a tool for implementing the constitution.

Constitutional law lays down principles like separation of power and the rule of law. An effective system of administrative law actually implements and gives life to these principles. By providing rules as to the manner of exercising power by the executive, and simultaneously effective controlling mechanisms and remedies, administrative law becomes a pragmatic tool in ensuring the protection of fundamental rights. In the absence of an effective system of administrative law, it is inconceivable to have a constitution which actually exists in practical terms.

Administrative law is also instrumental in enhancing the development of constitutional values such as rule of law and democracy. The rules, procedures and principles of administrative law, by making public officials, comply with the limit of the power as provided in law, and checking the validity and legality of their actions, subjects the administration to the rule of law. This in turn sustains democracy. Only, in a government firmly rooted in the principle of rule of law, can true democracy be planted and flourished.

A basic issue commonly for administrative law and constitutional law is the scope of judicial review. The debate over scope is still continuing and is showing a dynamic fluctuation, greatly influenced by the ever changing and ever expanding features of the form and structure of government and public administration. The ultimate mission of the role of the courts as

‘custodians of liberty ‘, unless counter balanced against the need for power and discretion of the executive, may ultimately result in unwarranted encroachment, which may have the effect of paralyzing the administration and endangering the basic constitutional principle of separation of powers. This is to mean that the administrative law debate over the scope of judicial review is simultaneously a constitutional debate.

Lastly, administrative and constitutional law, share a common ground, and supplement each other in their mission to bring about administrative justice. Concern for the rights of the individual has been identified as a fundamental concern of administrative law. It ultimately tries to attain administrative justice. Sometimes, the constitution may clearly provide right to administrative justice. Recognition of the principles of administrative justice is given in few bills of rights or constitutional documents.

3.2.2 ADMINISTRATIVE LAW AND HUMAN RIGHTS

Every branch of law has incidental effects on the protection or infringement of human rights, whether by constraining or enabling actions which affect other people. Administrative law is, however, particularly vulnerable to the permeation of human rights claims, since, like human rights law, it primarily constrains the exercise of public power, often in controversial areas of public policy, with a shared focus on the fairness of procedure and an emphasis on the effectiveness of remedies.

At an abstract level, there is a consonance of fundamental values underlying human rights law and administrative law. Both systems of law aim at restraining arbitrary or unreasonable governmental action and, in so doing, help to protect the rights of individuals. Both share a concern for fair and tr ansparent process, the availability of review of certain decisions, and the provision of effective remedies for breaches of the law. The correction of unlawful decision-making through judicial review may help to protect rights. The values underlying public law – autonomy, dignity, respect, status and security closely approximate those underlying human rights law.

Moreover, each area of law has been primarily directed towards controlling public ‘power, rather than interfering in the private ‘realm, despite the inherent difficulties of drawing the ever-shifting boundary between the two. A culture of justification permeates both branches of law with an increasing emphasis on reasons for decisions in administrative law and an expectation in human rights law that any infringement or limitation of a right will be justified as strictly necessary and proportionate. There is also an ultimate common commitment to the basic principles of legality, equality, the rule of law and accountability. Both administrative and human rights laws assert that governments must not intrude on people ‘s lives without lawful authority. Further, both embody concepts of judicial deference (or restraint) to the

expertise of the executive in certain matters. In administrative law, for example, this is manifested in a judicial reluctance to review the merits, facts or policy of a matter.

There ar e also marked differences between the two areas of law. Human rights law is principally concerned with protecting and ensuring substantive rights and freedoms, whereas administrative law focuses more on procedure and judicial review attempts made to preserve a strict distinction between the legality and the merits of a decision. Human rights law protects rights as a substantive end in themselves, whereas administrative law focuses on process as the end and it may be blind to substantive outcomes, which are determined in the untouchable political realm of legislation or government policy. It is perfectly possible for a good administration to result in serious human rights violations (and conversely, compatibility with human rights law does not preclude gross mal administration).

Human rights law is underpinned by the paramount ideal of securing human dignity, whereas administrative law is more committed to good decision-making and rational administration. The three broad principles said to have underpin administrative law are largely neutral on substantive outcomes: administrative justice, executive accountability and good administration.

The traditional emphasis of administrative law on remedies over rights reverses the direction of human rights law, which may provide damages for the breach of a right, whereas this is not the natural consequence of invalid action in administrative law. At the same time, administrative law remedies may still guarantee essential human rights; an action for release from unlawful detention (habeas corpus) can secure freedom from arbitrary detention, and an associated declaration by the courts may provide basis for pursuing compensatory damages in a tortious claim for false imprisonment.

3.2.3 ADMINISTRATIVE LAW AND GOOD GOVERNANCE

Administrative law plays an important role in improving efficiency of the administration. The rules, procedures and principles of manner of exercising power prescribed by administrative law are simultaneously principles underlying good governance. They also share a common goal. One of the common destinations of administrative law and good governance is the attainment of administrative justice. The set of values of administrative justice which mainly

comprises openness, fairness, participation, accountability, consistency, rationality, legality, impartiality and accessibility of judicial and administrative individual grievance procedures are commonly shared by administrative law and good governance.

Administrative law also helps to realize the three underlying principles of good administration: i.e. accountability, tr ansparency and public participation. Accountability is fundamental to good governance in modern, and open societies. A high level of accountability of public officials is one of the essential guarantees and underpinnings, not just of the kinds of civic freedoms enjoyed by the individual, but of efficient, impartial and ethical public administration. The administrative law system, when working properly, supplements and enhances the traditional processes of ministerial and parliamentary accountability in any system of government.

Administrative law also ensures transparency in the conduct of government administration and the decision making process. One of the r equirements of an open government is the right of individuals to obtain and have access to information. Government has to implement the right to get information through specific legislation. Freedom of information act, adopted in most democratic countries, affords citizens the right to have access to public documents and the right to be timely informed of decisions affecting their interests.

In addition to this role of administrative law enabling citizens have access to government information, it also ensures openness in the decision-making process.

Administrative law lays down the legal framework by which public's participation is recognized and practically implemented. The principle of public participation as an element of good administration allows citizens to have their say or their voice be heard in the conduct of government administration. In a developed system of administrative law, agencies are required to observe minimum procedures while making judicial decisions or issuing rules and procedures. The principle of natural justice which mainly requires an individual's defence be heard and get an impartial and fair treatment in the adjudication process acts as a stimulant for public participation indirectly creating public confidence.

3.2.4 ADMINISTRATIVE LAW AND RULE OF LAW

The Expression “Rule of Law” plays an important role in the administrative law. It provides protection to the people against the arbitrar y action of the administrative authorities.
In simple terms, the rule of law requires that government should operate within the confines of the law; and that aggrieved citizens whose interest have been adversely aff ected be entitled to approach an independent court to adjudicate whether or not a particular action taken by or on behalf of the state is in accordance with the law. In these instances, the courts examine a particular decision made by an official, or an official body to determine whether it falls within the authority conferred by law on the decision maker. In other words, the courts rule as to whether or not the decision is legally valid.
It is in this way that the principle of rule of law serves as the foundation of the administrative law. It has been repeatedly said that the basic purpose of the administrative law is to control excessive and arbitrary governmental power. This purpose is mainly achieved through the ordinary courts by reviewing and checking the legality of any administrative action.
Therefore, administrative law as a branch of law, is rooted in the principle of the rule of law.
This principle mainly stipulates that every administrative action should be according to law.
The different control mechanisms of power in administrative law by preventing government not to go beyond the authority granted to it by law ensure that rule of law is respected.
Hence, the expression Rule of Law plays an important role in administrative law. It provides protection to the people against arbitrary action of the administrative law.
To clearly understand the relationship between the rule of law and the administrative law, it is important to examine a related doctrine of the administrative law, which is the doctrine of ultra vires. The doctrine to some extent is a derivation of the principle of the rule of law. The former underlines that power should be exercised according to law. The later, goes one step further and states that an action of any official or agency beyond the scope of power given to it is ultra vires (i.e. beyond power), hence it is considered as null and void. An ultra vires act does not have any binding effect in the eyes of the law.
The simple proposition that a public authority may not act outside its powers (ultra vires) might fitly be called the central principles of the administrative law. The juristic basic of judicial review is the doctrine of ultra vires. According to Wade & Forsyth an administrative act that is ultra vires or outside of jurisdiction (in case of action by administrative court) is

void in law, i.e. deprived of any legal effect. This is, in order to be valid, it needs statutory authorization, and if it is not within the powers given by the act, it has no legal leg to stand on it. Once the court has declared that some administrative act is legally a nullity, the situation is as if nothing has happened. Administrative law by invalidating an ultra vires act ensures that every administrative action is in conformity with the law; indirectly guaranteeing the observance of rule of law.

4.0 CONCLUSION

Although the relationship between constitutional law and administrative law is not very emboldened to be seen with naked eyes but the fact remains that concomitant points are neither so blurred that one has to look through the cervices of the texts with a magnifier to locate the relationship. The aforementioned veracities provide a cogent evidence to establish an essential relationship between the fundamentals of both the concepts. If doubts still persist, the very fact that each author, without the exception of a single, tends to differentiate between the two branches of law commands the hypothecation of a huge overlap.

5.0 SUMMARY

Administrative law could be defined in so many different ways. However, its main purpose, to control of power, should always be the basic element in any attempt made to define it. It is not an isolated subject. However, it is influenced by different factors and it shares a common ground with other concepts. Administrative law has now become a pivotal legal instrument to maintain rule of law, to facilitate good governance, to ensure the protection of human rights and to uphold the principle of democracy.

6.0 TUTOR MARKED ASSIGNMENT

1.“It is logically impossible to distinguish Administrative law from Constitutional law and all attempts to do so are artificial” Keith. Discuss.

2. Examine the statement that administrative law has always been an appendage of constitutional law till date.

3. In the light of your understanding of administrative law, does this definition cover all the aspects? Can you define administrative law in your own words?

7.0 REFERENCES AND FURTHER READINGS

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2. Cumper, Peter &with Walters Terry, Constitutional & Administrative Law (Oxford University Press, 2001
3. Cane, Peter, An Introduction to Administrative Law (3rd ed., Oxford University Press, 1966)
4. See other definitions of administrative law by Friendly (Friendly 'New trends in administrative law' (1974) 6 Md Bar J 3; quoted Devenish, et al Administrative law and justice in South Africa (2001) 7.

MODULE 1

UNIT 2 DEVELOPMENT OF ADMINISTRATIVE LAW

CONTENTS

1.0 INTRODUCTION

Unlike other fields of law, administrative law is a recent phenomenon and can fairly be described as 'infant.' Historically, its emergence could be dated back to the end of the 19th

centur y. This era marked the advent of the ‘welfare state’ and the subsequent withering away of ‘the police state’. The interventionist role of the welfare state practically necessitated the increment of the nature and extent of power of governments. Simultaneous, with such necessity came the need for controlling the manner of exercise of power so as to ensure protection of individual rights, and generally legality and fairness in the administration. With such background, administrative law, as a legal instrument of controlling power, began to grow and develop too fast. Typically, with the proliferation of the administrative agencies, administrative law has shown significant changes in its nature, purpose and scope.
Presently, administrative law, in most legal systems, is significantly developed and undoubtedly recognized as a distinct branch of law.

2.0 OBJECTIVES

It is expected that at the end of this unit,
You should be able to discuss the growth and development of Administrative law in Nigeria.
You should also have an understanding of what Administrative law is in other jurisdiction.

3.0 MAIN CONTENT

3.1 GROWTH AND DEVELOPMENT IN NIGERIA

In its reception of English laws, Nigeria inherited English jurisprudence of administrative law into its domestic legal system at independence in 1960. Desirous of fast-tracking the socio-economic and political development of various societal sectors, the national leadership of the newly independent Nigeria adopted State-centered economy by which the country assumed responsibilities previously performed by private persons and corporations. The by-product of this was the necessity of creating myriad governmental agencies such as the rail way corporations, marketing boards, etc.
Over and above the capacity of civilian governments, successive military regimes had a field day churning out series of agencies or tribunals. Such capacity was under standably fueled by the fact that the modus operandi of militar y regimes is to act with dispatch. At present, there are hundreds of governmental agencies charged with different functions including the delivery of goods and services, and the enforcement of certain rules and regulations.

The principal institution driving the machinery of administrative law is the executive branch of government. Thus, Section 5 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 provides that the executive power is vested in the President or Governor and may be exercised by him directly or through the Vice-President or Governor or Deputy Governor, Ministers or Commissioners and other officers of the public service. Such powers extend to the execution and maintenance of the CFRN and all laws made by the National Assembly and all matters with respect to which the National Assembly is competent to make laws. It is the process of executing this power that makes up the administrative arm of government and administrative law.

Therefore, the study of administrative law is the study of how the President carries out his enormous duties through the ministries, public corporations and other government agencies in accordance with the provisions of the constitution, thus maintaining the rule of law which is the president's primary function. Also, this study is important because it is through these agencies that citizens have their closest contact with government.

3.4 GROWTH AND DEVELOPMENT IN THE U.S

It has been observed that we live in a changing world, a world of new moral concept but of outworn legal institutions. Even in the 19th century, administrative law was developing in the United States and today, it is in many phases of equal or greater importance than the judicial system developed through the common law. The causes of this new law originated in the fundamental changes which occurred throughout the past century in the social and industrial life.

Administrative law seemed to have developed from the most powerful forces – economic and social; as observed by Aristotle, the first of all causes and the principal one is necessity. The development of administrative agencies and of the law which governs them was a social necessity. If we look back to the continental U.S. of 1790, we find a nation occupied with tremendous territorial expansion – natural resources were tremendous, cheap immigrant labour flowed into the country – and mass production enormously elevated the standards of living. Demands for special regulation were made when striking abuses appeared but there was practically no sentiment for governmental control as a general principle.

Professor Dickinson has to some extent summarized the reasons for the gr owth of administrative law which were inherent in the legal system when he wrote: -

"The particular advantages which a system of regulation by government thus has over one of regulation by law differ in the different fields of r egulation, but the different one in the matter of emphasis the respective advantages fall, with greater or less incidence, under one or more of the following heads:

a. Regulation by government opens up a way for action to be taken in the public interest to prevent future harm where there would be no assurance that any action would be taken if the initiative wee left wholly to interested individuals;

b. It provides for action that will be prompt and preventive, rather than merely remedial, and will be based on technical knowledge which would not be available if it were taken through the ordinary course of law;

c. It ensures that the actions taken will have regard for the interests of the general public in a way not possible if it were only the outcome of a controversy between private parties to a law suit;

d. It permits the rules for the prevention of socially hurtful conduct to be flexible rules, based on discretion, and thus makes possible the introduction of order in fields not advantageously admitting the application of rules of a rigid and permanent character.

Professor Frankfurt summarized the reasons for the general growth of administrative law when he said:

"Administrative law is, in effect, a major response of law to the complexities of a power age. It constitutes the processes by which great activities of government – the activities that perhaps touch most people and touch them most intimately – are subdued by the reasons most appropriate to them. Most of the contemporary energy of law, it is now plain to all, runs into fresh channels. The new intervention of government into the affairs of men cannot be adjusted by the limited, litigious procedure, well enough adapted for ancient common law actions, or through hallowed instrumentalities."

4.0 CONCLUSION

In the beginning, Professor A. V. Dicey had declared administrative law to be foreign to the British constitution, and incompatible with the rule of law, common law and constitutional liberty. Despite the influence he wielded, his theory has failed to stand the test of time. This is manifested in the fact that administrative law has become a recognized and independent course of study amongst researchers, and a decisive component in the effective governance of States around the world.

Since Nigeria got its independence in 1960, administrative law has grown by leaps and bounds especially with the government's involvement in, or even monopolization of, certain activities that were traditionally the usual domain of private individuals and corporate entities. On this score, it is important to note that, by virtue of S.5, the CFRN1999 gives a pride of place to administrative law.

We can conclude by saying that despite the many definitions of administrative law, its basic minimal attribute is that it governs or regulates the powers of administrative agencies, the procedures for exercising such powers and the remedies available to victims of such exercise.

5.0 SUMMARY

In this Unit, we considered the historical background and development of administrative law. This took us to the legal systems of US and Niger ia. Administrative law does not have a very long history. However, its nature, essence and scope is expanding and rapidly changing. Such rapid growth and change could be explained by the ever- fluctuating form and structure of nature of government and administrative process. It has now become a pivotal legal instrument to maintain rule of law, to facilitate good governance, to ensure the protection of human rights and to uphold the principle of democracy.

6.0 TUTOR MARKED ASSIGNMENT

Compare and contrast the growth of Administrative law in Nigeria and U.S

7.0 REFERENCES / FURTHER READINGS

Constitutional and Administrative law; A. W. Bradley and K. D. Ewing, 14th Edition; Longman

MODULE 1
UNIT 3: OVERVIEW OF ADMINISTRATIVE THEORIES
CONTENTS

MODULE 1

UNIT 3: OVERVIEW OF ADMINISTRATIVE THEORIES

1.0 Introduction

Administrative law is the bye product of the growing socio-economic functions of the state and the increased powers of the government. The relationship of the administrative authorities and the people having become complex, some law is necessary which may bring about regularity and certainty in order to regulate these complexities.

With the growth of the society, its complexity increased thereby pr esenting new challenges to the administration. In the ancient times, the functions of the state were very few among them being protection from foreign invasion, tax issues, etc.

This chapter provides a starting point in building up your basic knowledge of administrative law. The essential reading and this chapter provide a good overview of the topic under study. At the end of the unit, we provide a list of further reading that we would encourage you to review if you wish to do well in this course.

2.0 Objectives

By the end of this unit, and the relevant readings, you should be able to:

Give different definitions of administrative law

Explain the various theories behind the administrative state

Illustrate the concept of a welfare state

Form your own view as to what the main purpose of administrative agencies should be.

3.0 Main body

3.1 Theories of administration

In the 19th century it was widely believed that there is a 'higher law', a fundamental moral order, upon which a firm and moral society must rest and in accordance with the rules of which it must be built. The nature and the ultimate sanction of this fundamental order were differently concerned, according to the individual. As the century drew close, the acidity of modernity eroded this belief.

"One of the most inspiring movements in human history is now in progress…..a wave of ***organized democracy is sweeping the world, based on a broader intelligence and a more enlightened view of civic responsibility than has ever before obtained. The theory that government exists for common welfare, that a public office is a public trust is old…."***

3.1.1 The Welfare state

Definition

The welfare state, a simple phrase covering a complex and ill-defined set of social policies, evolved in western countries during the twentieth century, mainly after the World War II.

What is welfare state?

A comprehensive approach is offered by the OECD taking the pluralistic approach, which covers:-

- A minimum protection of the individual citizen from a variety of social risks i.e. social security in relation to sickness, disability, loss of employment, retirement, etc
- Provision of services essential for individuals to function effectively in modern society i.e. education, housing, childcare.
- Promotion of individual wellbeing, which in the modern sense includes aspirations that go beyond social security and services as traditionally concerned.

Another side of the medal is looking at the justification for the intervention and objectives of the government in the social sector. A number of reasons are clearly distinct:

a. It can be inspired by the ethnic-social principle of the community, such as the humanitarian one of helping those in need
b. Another very important principle in inspiring government intervention ever since the French revolution is represented by the egalitarian motive which requires significant direct wealth transfers among the members of the community in order to reduce, or even abolish economic difference.
c. A final motive for government intervention can be found in merits want i.e wants with regard to which consumer choice is abandoned and satisfaction of which is imposed.

R. Klien in his article said:

Social policy is about coercion. Its very essence lies in compelling people to do what they would otherwise not do, either for their own good or for what is conceived to be the good of the society as a whole"

The most important merit want covering social policy is represented by the desire to protect workers, or any citizens from the fundamental risks of life.

As we mentioned earlier, the great depression established the welfare state but it was not until after the World War II that social scientists began to turn their attention to it as a governmental institution.

3.1.2 Theories of the welfare state

Ideological consensus:

This ideology was the first, and for many years, the dominant theory of the post-World War II period, which lasted until it disintegrated in the early 1970s.

Drawing on the pluralistic convention of American political science, this consensus believed in the existence of a beneficent state. It assumed that this state funded social programs for interest groups.

Functionalist sociology

This draws from works of authors as Talcott Parsons and Robert Merton. Consistent with its view of other system, functionalist sociology sees the welfare state as homeostatic. Change is therefore slow, and when it does occur, the system quickly absorbs it. By stressing integration, institutional complexity and specializations of tasks to the exclusion of factors such as power, class conflict and social inequality, functionalist analysis light the smooth operation of systems.

~~Worthy of note is~~ T.H Marshall's view of the state as a form of social citizenship. Marshall postulates that along with civil and political rights, full participation in a modern industrial society entails social rights – a right to social citizenship.

Critique of Marshall's theory.

It is often difficult to transfer rights in law to rights in practice;

By emphasizing factions such as industrialization, the evolution of the class structure, and comparative social policy, Marshall is able to posit a simple progression of rights – political to civil to social that the historical record does not reflect.

The ideological consensus disintegrated in the early 1970s. Two factors led to its break up.

First is the critique of pluralism and the notion of a neutral state used the experience of

Vietnam and the civil rights struggle to undermine the idea of an impartial and disinterested government.

Second, economic stagnation strengthened the argument of conservatives who asserted that the growth of the welfare stated impinged on the functioning of a market economy.

As long as the economic growth had lasted, the chief tenets of the ideological consensus – empiricism, a faith in expertise, the absence of political conflicts and gradual change through

the addition of new programs – had been easy to maintain. But when an increased cynicism about government was combined with a poorer economic performance, the ideological consensus came apart, and three new theories arose in its place.

a. The conservative view

Conservatives blamed economic stagnation on the size of the welfare state. They contended that an excess of social benefits had become a drag on capitalism's natural productivity;

b. Moderate view

There is the phenomenon of neoliberalism. Fundamentally capitalist in its vision, the neo liberal welfare state justifies social expenditure as an investment in people. This money is not allocated because the poor are needy, or, because the welfare state is benevolent. The rationale is, rather that, since the poor are already costly, the money is far better spent equipping the useful skills. Work, efficiency and international competitiveness are the hallmarks of this welfare state.

c. The radical view

Instead of affirming the primacy of the private sector or seeking reconciliation with it, these theorists have tried to understand the role of the welfare state as it interacts with a market economy.

3.2 Characteristics of Administrative Systems

The Anglo American system

The British system of administrative law, which is followed throughout the English speaking world, has some salient characteristics.

The ordinary courts, and not special administrative courts, decide cases involving the validity of governmental action; e.g. applications for prerogative orders would usually come before a Queen's Bench Division. However, procedural reforms were introduced in 1977 which concentrated cases concerned with administrative law, in the Queen's Bench Division, so that the court in effect became an administrative division of the High Court

The Continental system

In France, Italy, Germany and many other countries, there is a separate system of administrative courts which deal with administrative cases exclusively. Administrative law

therefore develops on its own independent lines, and not enmeshed with or dinary private law as it is in the Anglo American system.

European Union Law

The European communities, now the EU, of which Britain became a member in 1973, have their own legal system, which has been vigorously developed by the European court of Justice in Luxembourg in accordance with a series of treaties (Rome 1957) (now supplemented by the Treaty of Maastricht (1992) and the European communities Act 1993.

Read Lord Denning's comment in Bulmer (H.P.) Ltd. V. J. Bollinger S.A. (1974) Ch. 401 **at 418.**

Community law has become an amalgam of British and European rules.

3.2.1 A brief history of institutional development

Germany

The origin of this branch of German law are legislative. It is all part of the resolution from the unitary state that Europeans designate as "the public" state to a democratic state of law and justice. The tremendous industrial and commercial development of modern times caused the old unitary state to disappear. Government assumed functions everywhere – locally, in the states and in the nation. It is usual to attribute this transition to the disappearance of the self-sustained and self- contained family and community, to changes in the business organizations. The development of applied science, indeed, reduced the system of the world and increased dependence of man on each other.

The last three quarters of the century has been marked by an unparalleled increase in governmental activities. As these functions were created, who was to administer them? It has come about that these powers are exercised by a vast agglomer ate of agencies within the executive branch of the government.

United States

An insight into the degree and direction of American administrative law development may be obtained by analyzing some of the factors which have induced the growth. The chief causes which have influenced the development of American administrative law are:

a. The rapid increase of industrial and social legislation
b. A more liberal construction of the separation of powers principle;

c. The growth of executive powers at the expense of the legislature
d. A more sympathetic attitude towards administrative law on the part of certain leaders of the legal profession
e. A clearer recognition of the full scope of administrative law;
f. The administrative law r esearch and teaching.

3.2.2 Social legislation and administrative law

The United State is a government of commission. Practically all the commissions are independent or detached tribunals. So, taken in the large, this development can be interpreted in only one way: in a relatively brief period of time, the United States has created one of the largest, most ramified, most powerful bureaucracies in the world.

The need for remedies arising out of disputed administrative action has not been met entirely by the ordinary civil court system, despite the tradition of the "rule of law." A group of tribunals and courts have been established which may be classed properly as administrative courts.

In the important case of Ex parte Bakelite 279 U.S. 438 (1929), the Supreme Court clearly indicated that the aforesaid courts are "legislative" or administrative courts, as distinguished from "constitutional" courts. This ruling gives judicial support to a practical differentiation which has been growing up since the earliest days of the country and which was encouraged most by the establishment of the Court of Claims in 1855. It should be noted that these courts are agencies which exist for the purpose of reviewing administrative action. The only matters which the Bakelite decision permits to be cut away from the constitutional courts are those which Congress could, but does not ordinarily, commit to the final determination of the executive officers.

3.2.3 Liberal Construction of the Separation of Powers Doct rine.-

The strict or the liberal interpretation of the separation of powers principle is one of the main problems of administrative law expansion. This is particularly important in the United States, where the courts have the power to review legislative acts. It stands to reason that before a

development like the one described above could occur, where commissions perform important judicial functions, a rationalizing of the strict separation of powers theory must have taken place.

In McGrain v. Daugherty, "Field v. Clark, 143 U.S. 649 (1892) and U nited States v. **Louisville and Nashville R.R. Co.227 U.S. (1913); 235 U.S. 314 (1914) It should be noted as** a matter of practical importance, that in all of these cases Congress had passed laws making it clear that a liberal construction of powers was necessitated in order to bring about gr eater efficiency.

3.2.4 The Growth of Executive Power.-There is a third factor which is stimulating the development of American administrative law: the growth of executive power at the expense of legislative power.

An excellent recent example of the liberality that is now permitted the executive department in exercising power which appears to be legislative is found in the case of Hampton Co. v. **United States, 276 U.S. 394 (1928) where the powers of the President under the flexible tariff** law were upheld.

3.2.5 Friendlier Attitude of Legal Profession

One of the best friends of American administrative law is Dean Roscoe Pound of Harvard Law School.

In his presidential address to the New York Bar Association in 1923, William D. Guthrie discussed the development of American administrative law, praised the French system of administrative courts, and concluded: It has been found in France, as it will be ultimately found with us, that private rights can be afforded full protection by independent judicial tribunals without unduly interfering with or hampering administrative efficiency . . .

3.2.6. Enlarged Ambit of Administrative Law.

One of the unquestioned difficulties of the past has been the failure to consider the entire ambit of administrative law

3.2.7 The Progress of Research.-

Administrative law is a large field, and it can be developed best by a clear recognition of the fact.

India

In India itself, administrative law can be traced to the well-organized administration under the Mauryas and Guptas, several centuries before the Christ, following through the administrative, system of Mughals to the administration under the East India Company, the precursor of the modern administrative system. But in the modern society, the functions of the state are manifold, In fact, the modern state is regarded as the custodian of social welfare and consequently, there is not a single field of activity which is free from direct or indirect interference by the state. Along with duties, and powers the state has to shoulder new responsibilities. The growth in the range of responsibilities of the state thus ushered in an administrative age and an era of Administrative law.

Nigeria

Ever since the changing political scene in Nigeria's history from colonial to civilian and military regimes, a noticeable constant factor has been the ever-increasing involvement in government and its agencies in the life and welfare of the populace. The proliferation of governmental agencies commenced earnestly at independence, geared perhaps by the desir e on the part of successive governments to improve the lot of people. From a humble beginning of a railway corporation and marketing boards, the list of government agencies, federal and states have grown to virtually uncountable numbers, touching almost ever y facet of life

England

Administrative law in England has a long history, but the subject in its modern form did not begin to emerge until the second half of the seventeenth century.

See :

Tudor monarchy; The ef fect of the abolition of the Star Chamber in 1642.

Note the period during and after the Second World War when a deep gloom settled upon administrative law which reduced it to its lowest ebb.

The judicial mood began to change in 1963

See the following cases: Ridge v. Baldwin (1964) AC 40 @ 72; Breen v. Amalgamated **Engineering Union (1971) 2 Q.B. 175 @ 189.**

4.0 Conclusion

We are living in an ever -changing world, and it is evident that systems have to be adopted to meet these great changes. As Edward L. Metzler right sly puts it, the development of the past few decades have resulted mainly in the establishment of a system of administrative agencies, tribunals and law. Furthermore, these changes occurred as a result of the fundamental changes which occurred in the social and industrial life of a country, affecting all spheres of social. and industrial activity. .

5.0 Summary

This unit has discussed the growth of administrative law, the characteristics of administrative law as well as theories of administrative law. The unit also considered different jurisdictions as well as give a future direction on this aspect of the law.

6.0 Activity

Administrative institutions have been developed to cater for the needs of modern government. Modern government will always find the need to establish administrative institutions and ther e is no end to such development.

Examine this statement with the development of administrative institutions in at least three countries.

7.0. Further reading

Journals/articles

Maitland "The State as Corporation" (1901) 17 LQR 131. Laski "The Responsibility of the State in England" (1919) 32 HLR, 447

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MODULE 1

UNIT 1 Concepts Clarification

UNIT 2 Development of Administrative Law

UNIT 3 Overview of Administrative Theories

Unit 4
The emergence of global administrative bodies

1.0 Introduction

Underlying the emergence of global administrative law is the vast increase in the reach and forms of trans governmental regulation and administration designed to address the consequences of globalized interdependence in such fields as security, the conditions on development and financial assistance to developing countries, environmental protection, banking and financial regulation, law enforcement, telecommunications, trade in products and services, intellectual property, labor standards, and cross-border movements of populations, including refugees.

Increasingly, these consequences cannot be addressed effectively by isolated national regulatory and administrative measures. As a result, various transnational systems of regulation or regulatory cooperation have been established through international treaties and more informal intergovernmental networks of cooperation, shifting many regulatory decisions

from the national to the global level. Further, much of the detail and implementation of such regulation is determined by transnational administrative bodies including international organizations and informal groups of officials that perform administrative functions but are not directly subject to control by national governments or domestic legal systems or, in the case of treaty-based regimes, the states party to the treaty.

These regulatory decisions may be implemented directly against private parties by the global regime or, more commonly, through implementing measures at the national level. Also increasingly important are regulation by private international standard-setting bodies and by hybrid public-private organizations that may include, variously, representatives of business

2.0Objective

3.0. Main Content

3.1. What is global administrative law?

Definition

global administrative law as comprising the mechanisms, principles, practices, and supporting social understandings that promote or otherwise affect the accountability of global administrative bodies, in particular by ensuring they meet adequate standards of transparency, participation, reasoned decision, and legality, and by providing effective review of the rules and decisions they make.

global administrative include formal intergovernmental regulatory bodies, informal intergovernmental regulatory networks and coordination arrangements, national regulatory bodies operating with referencing with reference to an international intergovernmental regime.

Structure of global administrative space:

The conceptualization of global administrative law presumes the existence of global or transnational administration.

Five Types of Global Administration Five main types of globalized administrative regulation are distinguishable:

(1) Administration by formal international organizations;
formal intergovernmental organizations established by treaty or executive agreement are the main administrative actors. a central example is the UN Security Council and its committees which adopt subsidiary legislation, take binding decisions related to particular counties and even act directly on individuals through targeted sanctions.

(2) Administration based on collective action by transnational networks of cooperative arrangements between national regulatory officials; this is characterized by the absence of a binding formal decisions making structur e and the dominance of informal cooperation among state r egulators. This horizontal form of administration can take place in a treaty framework.

(3) Distributed administration conducted by national regulators under treaty, network, or other cooperative regimes; domestic agencies act as part of the global administrative space. They take decisions on issues of foreign or global concern. An example is in the exercise of extra territorial regulatory jurisdiction, in which one state seeks to regulate activity primarily occurring elsewhere. See for example, WTO's appellate body's ruling in 1998 in U.S. Import Prohibition of Certain Shrimp and Shrimp Products (Shrimp-Turtle) WT/DS 581/AbIR/Doc No. 98-3899 (Oct 12, 1998)

(4) Administration by hybrid intergovernmental-private arrangements; bodies that combine private and governmental actors take different forms and are increasingly significant. An example is the internet address protocol regulatory body which was established as a non-governmental body, but which has come to include government representatives who have gained consider able powers.

(5) Administration by private institutions with regulatory functions. Many regulatory functions are carried out by private bodies.

In practice, many of these layers overlap or combine, but we propose this array of ideal types to facilitate further inquiry.

Yet even among the traditional sources of public international law, there might be room for development of norms relevant to global administrative law.

Stop and think.

The involvement of state actors, subject to national and international public law constraints, alongside private actors who are not, and who indeed may have conflicting duties such as commercial confidentiality threatens a ver y uneven and potentially disruptive set of controls.

Stop and Think

In what ways can global administrative bodies be made more accountable and effective?

3.2 The scope of global administrative law

Understanding global administrative law allows us to recast many standard concerns about the legitimacy of international institutions in a more specific and focused way. it provides useful critical, distance or general, and often overly broad claims about democratic deficits in these institutions.

it shifts the attention of global governance to several accountability mechanisms for administrative decision making, including administrative law, that in domestic systems operate alongside, although not independently from classical, democratic procedures such as elections, and parliamentary and presidential control.

3.3 Sources of global administrative law

The formal sources of global administrative law include the classical sources of public international law – treaties, customs and general principles.

4.0 Conclusion

The concept of global administrative law, it is argued goes beyond the exercise of international public authority but concerns itself more, with law of global governance. Scholars of global administrative law share the idea that it transcends international law because it also includes national civil societies among its actors. Global administrative law includes supranational regional or local agreements and authorities. This aspect of law also require global institutions; it also features legislations i.e treaties, rules, policies, standards, soft law, without legislatures.

5.0 Summary

Global administrative law is undergoing constant development, change, and improvement. At the global level, it is considered that global actors are the protagonists. Several authors have argued that global administrative law approaches strengthen analysis of operational issues such as emergency actions of international organizations and the human rights implications of their activities, involvement in public-private partnerships, and normative issues, etc.

6.0 Activity

What do you understand by global administrative law?

7.0 Further readings/References

The Emergence of Global Administration Law: Benedict Kingsbury,* Nico Krisch, &** Richard B. Stewart.

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MODULE 2
FUNDAMENTAL RIGHTS UNDER THE 1999 CONSTITUTION

UNIT 1: DEFINITION AND NATURE OF FUNDAMENTAL HUMAN RIGHTS

UNIT 2 DIFFERENCE BETWEEN FUNDAMENTAL HUMAN RIGHTS (FHR) AND OTHER RIGHTS

UNIT 3 FUNDAMENTAL RIGHTS UNDER THE 1999 CONSTITUTION

UNIT 4 THE JUSTICIABILITY DEBATE

UNIT 1: DEFINITION AND NATURE OF FUNDAMENTAL HUMAN RIGHTS

1.0 INTRODUCTION

This is an introductory Unit which will focus on Definition and Origin of Administrative Law, Functions of Law in Society and Sources of Nigerian

Administrative Law. It is necessary for the student to understand these concepts in order to place in perspectives the duties and functions of administrative agencies in Nigeria.

2. 0 OBJECTIVES.

The objective of this Unit is to introduce the student generally to what r ights mean from a legal point of view and within the context of fundamental human rights as enshrined in the 1999 Constitution of the Federal Republic of Nigeria. The students w ill al so under sta nd th e natur e or char acte r ist ics of the se r ights .

3.0 MAIN CONTENT

3.1 DEFINITION OF RIGHTS

Essentially, Human rights are the basic freedoms and protections that belong to every single one of us. Human rights are those basic freedoms and protections innate or inborn in us by the mere fact that we are human beings. The rights attach to us irrespective of our nationality or ethnicity, place of residence, sex, colour, religion, language, or any other status in life. In other words, these rights are not earned; no one did anything to deserve or merit these rights. We are entitled to them just because we are human beings and not because of any special quality of qualification. These rights are based on dignity, equality and mutual respect. Therefore, refusal to accord anyone these rights will amount to discrimination and an aggrieved person may decide to apply to court for redress. These rights do not stand on their own but are all interdependent, interrelated, and indivisible.

Globally these FHR founded and defined by Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law , general principles and other sources of international law. Thus, internationally FHRs creates obligations for Governments of various countries with regards to how to conduct their affairs with a view to upholding and preserving the FHRs of the citizenry.

According to the Universal Declaration of Human Rights (UDHR), the United Nations in 1948 created some 30 basic rights to provide a global understanding of how to treat individuals. Most of these rights formed the basis for the rights provisions found in our Constitution.

3.2. NATURE OF FUNDAMENTAL RIGHTS

i. Universal and inalienable.

The principle of universality of human rights is to the effect that the rights are not limited to some people or countries but is available to entire mankind. The principle is the foundation of international human rights law. Although originally emphasized in the UDHR in 1948 this principle has been reiterated in numerous international human rights conventions, declarations, and resolutions. The 1993 Vienna World Conference on Human Rights, for example, noted that it is the duty of States to promote and protect all human rights and fundamental freedoms, regardless of their economic, political and cultural systems. Also it is on record that many States have ratified some of the human rights treaties thereby creating for themselves a legal obligations through such expression of consent and universality.

Some fundamental human rights norms enjoy universal protection by customary international law across all boundaries and civilizations.

Human rights are inalienable. Ordinarily, they cannot be taken away from us, except under certain circumstances and in accordance with due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law. Others include the right to life, the right to a nationality, the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. and the right to own property alone as well as in association with others.

ii. Interdependent and indivisible

This means that these rights are integrated or inseparable., be they civil and political rights, like equality before the law, freedom of expression and the right to life,; economic, social and cultural rights, like education, social security and the rights to work, or collective rights, such as the rights to development and self-determination, are indivisible, interrelated and

symbiotic. The interdependence is such that any improvement of one right facilitates advancement of the others. In the same sein, the withdrawal of one's right equally affects the other rights adversely. Thus some have argued that in the circumstance, Governments should not be able to pick and choose which rights are to be respected.

Human rights include social rights, civil rights, political rights, economic rights and cultural rights. In the hierarchy of human rights, civil and political rights are mostly referred to as the "first gener ation rights", Social, Economic and cultural Rights constitute the second while the Right to development comes as the third. How ever , the Right to a Sustainable Environment and the Right to Democr acy and Good Governance appear are being peddled as the fourth and fifth generation rights respectively (Orie 2014)

4.0 Conclusion

From the above discussion it is clear that everyone is born with some rights. This is not because of any other quality or achievement but because of the very fact of being human.

5.0 Summary

The unit has examined what rights are. It has equally look at their unique characteristics as rights which attaches to ever y ne by the ver y fact of our existence.

6.0 SELF ASSESSMENT EXERCISE

What are rights.? Mention the basic characteristics of human rights?

7.0 References/Further Reading

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3. The Universal Declaration of Human Rights (UDHR) hrlibrar y.umn.edu/edumat/hreduseries/hereandnow/Part-5/8_udhr-abbr.htm

4. What are human rights? - Amnesty International Australia
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UNIT 2 DIFFERENCE BETWEEN FUNDAMENTAL HUMAN RIGHTS (FHR) AND OTHER RIGHTS

CONTENT

1.0 INTRODUCTION

Although the fundamental human right are described as innate rights of man the f act remains that ther e are different kinds of right. Some of these right have been adjudged by some schools of thought to be more important than others while others are said to be merely complementary. Whatever the case is it is important for the student to have a good understanding of these rights.

2.0 Objectives

The objective of this Unit is to introduce the student to the difference between the fundamental human rights and the other type of rights and to discuss their relevance in the society.

3.0 MAIN CONTENT

3.1 DIFFERENCE BETWEEN FHR AND OTHER RIGHTS

It has been submitted in some quarters that the First generation rights are arguably a logical beginning for human rights in the sense that they provide answers to the dynamics between actors in a social contract. They are seen as basic rights, traditional or primary form of rights created within a social contract contraption. Elisabeth Ellis (2005) a defines social contract as a society "in which individuals independently endowed with property and with the capacity to exercise political judgment contract together to found the state" (p. 545).

According to Alston, Goodman and Steiner, the bulk of first generation rights covers an individual's right in a state or organized body of society. Viewed in this context, the First generation rights tends to strengthen the state's claim to authority by bridging the gap between state and citizen in allowing the citizen to have a voice in determining the future of the government. In other words sovereignty of political authority stems from the consent of the governed, and they do not lose their rights in accepting the rule of a sovereign (Chandra **Sririam and others 2014)p35.**

The second generation rights are concerned with the economic, social and cultural rights of individuals and found on the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The ICESCR was adopted and opened f or signature, ratif ication and accession by GA Resolution 2200A (XXI) of 16 December 1966, and entered into force on 3 January 1976 – of rights. It has however been submitted in some quarters that due to the dynamic nature or characteristics of human rights its categories are not c a s t i n s t o n e . In the circumstance therefore, human rights have been categorized into varied generations of rights. Notwithstanding, in application, the first generation rights are given more legitimacy than second generation rights causing profound divisiveness in the international community. Some have argued that whereas the first generation rights strengthen the authority of a leader(s) or the status-quo, second generation rights at their basic take that power away to give greater access to individuals in an unequal environment. Thus that in a world dominated by an increasingly interconnected market, a state's primary paradigm for human rights is economic agency or Capitalism and not the individual. This is

where the clash is- between Capitalism, Globalization, inequality, power and person.

Simply put, the divide between the two rights can be likened to one between negative and positive rights. First generation rights are argued as negative, in that an individual has the right to disallow an action to happen to them. Inversely, the state does not have the right to do certain things to a person. Advocates of negative rights see second generation rights as being positive, or an obligation the state must provide and only civil and political rights as negative, therefore rendering ESCR to that extent illegitimate.

In fact in the context of the dynamics of Capitalism and Globalization a seemingly more challenging scenario plays out because of the interconnectedness between markets and a government. Globalization has on one hand erased political borders and raised countless people out of poverty, but on the contrar y, it appears to have equally further ingrained the separation of communities and created smaller yet much graver conditions of inequality in a scenario of social dislocation. The fact that it may not be possible to easily neutralize social dislocation if at all accentuates the need for ESCR in the world more than ever before but this is not to say that the civil and political rights are now irrelevant.

4.0 CONCLUSION The unit has attempted to examine the distinction between the first and second generation human rights. It also noted the relevance of the two sets of rights in the society vis-a –vis the opinion of some writers that perhaps there is no need for separating the two set of rights.

5.0 SUMMARY

The society recognizes the existence of different types of rights most of which are traceable to the individual in the society. These categories of rights are not inelastic.

6.0SELF ASSESSMENT EXERCISE

What are first generation rights. How ar e they different from other rights.

7.0 REFERENCES/FURTHER READINGS

1. Dr Gloria Orie, Environmental protection and Fundamental Human Right to life: A review of the Nigerian judicial posture. 2014 Vol.4 NOUN Current Legal Issues in Nigerian Law, pp 148-196.
2. Ellis, E. (2006). Citizenship and Property Rights: A New Look at Social Contract Theory. The Journal Of Politics, 68(3), 544-555
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5. Evans, T. (2005). International human rights law as power/knowledge. Human Rights *Quarterly, 27(3), 1046-1068.*
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UNIT 3: FUNDAMENTAL RIGHTS UNDER THE 1999 CONSTITUTION

CONTENT

1.0 Introduction

UNIT 3 THE FHR PROVISIONS

1.0 INTRODUCTION

Earlier on we have defined Human rights and its characteristics. In This segment will discuss the FHR provisions as contained in Chapter IV sections 33-44 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended). These rights include Right to Life, Right to Dignity of the Human Person, right to Personal Liberty, Right to Fair Hearing, Right to Private and Family Life, Right to Freedom of thought, Conscience and Religion, Right to Freedom of Expression and the Press, Right to Peaceful Assembly and Association, right to Freedom of Movement, Right to Freedom from Discrimination, Right to Acquire and own Immovable Property anywhere in Nigeria and Right to Freedom from compulsory Acquisition of own Property without Due Process.

2.0 OBJECTIVE

The objective of this Unit is to expose the student to the concept of rights and the various categories of fundamental rights protection enshrined in the Constitution for the protection of the citizens. At the end of the Unit therefore, the student should be able to know when his rights have been infringed upon and the various heads of legal redress available to him. Furthermore, practical examples of decisions of Courts of Superior Record on alleged breaches of fundamental human rights provisions would enrich the students understanding of the relevant constitutional provisions.

3.0 MAIN CONTENT

3.1 What is Fundamental Human Right

There are basic rights that not only align with the principles of natural law but also enure to the nature of man as rational human being. These rights are generally referred to as fundamental human rights.

The purpose of the Fundamental Rights is to preserve individual liberty and democr atic principles based on equality of all members of society. The 1999 Constitution confers a special jurisdiction on the high court for the purpose of enforcement of the fundamental

Rights provisions. It provides that "Any person who alleges that any of the provision of chapter IV of the 1999 Constitution has been, is being or likely to be contravened in any state in relation to him, may apply to a High Court in that state for redress." See section 42 of the Constitution; Union Bank v Sogunro [2006] FWLR 5945. They act as limitations on the powers of the legislature and executive and in case of any violation of these rights the courts have the power to declar e such legislative or executive action as unconstitutional and void.

The Fundamental Rights are not absolute but are subject to reasonable restrictions as essential for safeguarding public interest. Durga Das Basu, Shorter Constitution of India (13th ed.) Nagpur: Wadhwa & Co. 2003)p. 1972. In The Kesavananda Bharati v. State of Kerala case in 1973, the Supreme Court, overruling a previous decision of 1967, held that the Fundamental Rights could be amended, subject to judicial review in case such an amendment violated the basic structure of the Constitution. The Fundamental Rights can be enhanced, removed or otherwise altered through a constitutional amendment. The imposition of a state of emergency may lead to a temporary suspension of any of the Fundamental Rights. The President may, by order, suspend the right to constitutional remedies as well, thereby barring citizens from approaching the Supreme Court for the enforcement of any of the Fundamental Rights, under certain conditions, during the period of the emergency in order to ensure proper discharge of their duties and the maintenance of discipline.

3.2 Right to Life

Section 33(1) of the CFRN 1999 Constitution states that:

> "Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal Offence of which he has been found guilty in Nigeria."

This right is equally re-echoed by s4 of the African Charter Human Peoples' Rights (ACHPR) which provides that, 'Human beings are inviolable . Every human being shall be entitled to respect his life and the integrity of his person. No one shall be arbitrarily deprived of this right." The domesticated version of this provision is also found in s4 of the African Charter on

Human Rights(ACHR). Similar provisions for the protection of life is also f ound in Article 3 of UDHR, Article 2(1) of the European Charter on Human Rights and Article 6 of the International Covenant on Civil and Political Rights(ICCPR) These provisions recognize the sanctity of human life and thus the need to preserve it. To achieve this objective the right to life has been given an extended meaning to include all other necessar y attributes that will make the attainment of the right to life possible. These include but are not limited to water, food, and housing.

Notwithstanding the sanctity of life, section 33(2) of the CFRN like several international laws makes exceptions to the right to life. It provides that a person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is
reasonably necessary;

(a) For the defence of any person from unlawful violence or for the defence of property;
(b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
(c) For the purpose of suppressing a riot, insurrection or mutiny.

In recent years there has been public discussions as to whether this exception should be expanded to include cases of 'Euthanasia- popularly referred to as 'mercy killing.'' This is the act or practice of hastening the death of a person who suffers from an incurable or terminal disease or condition especially a painful for reasons of mercy.

3.3 Right t o dignity of the human person

This Right is embedded in Section 34(1) of the 1999 Constitution which states that:

"Every individual is entitled to respect for the dignity of his person, and accordingly
(a) No person shall be subjected to torture or to inhuman or degrading treatment.
(b) No person shall be held in slavery or servitude

(c) No person shall be required to perform forced or Compulsory labour."

From the foregoing, it is evident that the Constitution prohibits cor poral punishment. It is degrading to the human person. Any institution, school or state government that permits corporal punishment by way of using horse whip and other gadgets, contravenes this Section of the Constitution and their actions are therefore ultra vires i.e. acting above authorized powers.

OSUNDE & ANOR V. BABA [2014- COURT OF APPEAL] is an appeal against the judgment of the Federal High Court, sitting in Benin City in suit No. FHC/B/CS/301/2009, delivered on the 12th of March, 2010, dismissing the appellants preliminary objection, and granting the claim of the plaintiffs. The plaintiffs filed a motion on notice seeking the enforcement of their fundamental rights pursuant to Sections 35 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Therein, they prayed the lower court for some reliefs including ; a declaration that the arrest of the applicants in the house of the 1st Applicant on 30th July, 2010 at Maiduguri and their continued detention since that date for more than two (2) months by the 1st and 2nd Respondents without charging them to a court of competent jurisdiction even when there are courts within a radius of 1 kilometre from the place of their incarceration amounts to an infringement of their fundamental rights to personal liberty guaranteed under Section 35 of the Constitution of the Federal Republic of Nigeria 1999 and the relevant provisions of the African Charter on Human and Peoples Rights as well as the Universal Declaration on Human Rights.

In a different decision in Alhaja Abibatu Mogagi and Others v. Board of Customs and Excise and Another(1982)3 NCLR 552 p. 562 where market women brought an action against men of the Customs and Excise for horse whipping and tear gassing market women whose shops they raided with the suspicion that they were selling prohibited goods, the court held that the action by the Customs officials and their aids violated the fundamental human rights of the market women as enshrined in the

Constitution. The actions of the men of Customs and Excise aided by policemen were seen to be barbaric and ultra vires.

3.4 RIGHT TO PERSONAL LIBERTY

Section 35(1) of the 1999 Constitution documents the Right to Personal Liberty. The Section explicitly states that:

> "Every person shall be entitled to his personal liberty and no personal shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law".

This right is frequently abused by law enforcement agents who detain suspects and imprison them without warrant and without due process. In Obeka v. **commissioner of Police (1981) 2 NCLR 420, the accused in this case was held** in custody on an allegation of theft. When he applied for bail the police opposed it, but the court which is a defender of the Constitution and human rights stated that the action of the police is in violation of this Section of the Constitution. The court therefore granted the accused bail unconditionally.

In CHIMA UBANI v. DIRECTOR OF STATE SECURITY SERVICES & ANOR **(1999) LPELR-11177(CA)**

The court granted leave to the appellant pursuant to the Fundamental Right (Enforcement Procedure) Rules, 1979 to pursue the reliefs he sought arising from his detention by the Inspector-General of Police under a Detention Order. The reliefs sought by the appellant included a declaration that the continuous detention of the applicant by the r espondents at the said detention cell is a flagrant violation of the applicant's right to freedom of movement and is unconstitutional, null and void.

See also MAGIT V. UNIVERSITY OF AGRICULTURE, MAKURDI & ORS [2005- SUPREME COURT] ; ZENITH BANK PLC V. UMOM [2013- COURT OF APPEAL] ; CENTRE FOR OIL POLLUTION WATCH V. NNPC [2013- COURT OF APPEAL]

3.6 RIGHT TO FAIR HEARING; This shall be treated as a separ ate topic under Module 4 below.

3.7 RIGHT TO PRIVATE AND FAMILY LIFE Section 37 of the 1999 Constitution states that "the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected".

This right is often abused by authorities and some government officials with modern advancement in technology. There are situations where the homes of citizens have been bogged or wire-tapped which are clear violations of this section of the Constitution.

In Nigeria many cases of violation of this right are not reported. However in the United States of America, evidence abound of violation of Right to Private and Family Life. For example, in Olmstead v. U.S. a home was raided by the police even though their owners were not at home. The court regarded this as a violation of a right to private and family life. In this case, the Supreme Court held that the evidence obtained by wire- tapping of a family telephone in a criminal prosecution can be admissible as proof of violation of the right to private and family life.

In SANYA AYENI, ESQ. v. NAVY CAPT. ABIMBOLA ADESINA **(2007) LPELR-4932(CA) the learned trial Judge after reviewing the evidence and** submissions of counsel held that exhibit 'P1' (Petition) is libelous of the plaintiff and this view was also upheld by the Court of Appeal.

In TRIMSKAY NIGERIA LTD V. BANKOLE-OKI [2015- COURT OF APPEAL]

SIDI DAUDA BAGE, J.C.A. (Delivering The Leading Judgment): the Appellant commenced its action before the trial High Court on May 19, 2005 to recover the property situate at No.54, Ladipo Labinjo Crescent, Surulere, Lagos and filed its originating frontloaded processes in that regard seeking, inter alia, possession of same **and mesne profit.**

Other cases include: OYEDIRAN & ORS V. ADEGBITE & ORS [2013- COURT OF APPEAL]; KALIO & ANOR V. WOLUCHEM & ORS. [1985- SUPREME COURT]

3.8 RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

This right is guaranteed by Section 38 of the 1999 Constitution which States that

> "Every person shall be entitled to freedom of thought, Conscience and religion including freedom to change his religion or belief and freedom (either alone or in Community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance."

This Right is very relevant to the affairs of Nigerian citizens where religion is a sensitive phenomenon. There are several religions in Nigeria but the very predominant are Christianity and Islam. The citizens are often pitched against themselves on issues of religion and if only the provision of this Section is emphasized before them, peace would reign and members of the various religions would co-exist in harmony. It is a fundamental human right for a citizen to express his or herself freely. To be free to live in community with others and to worship his Maker the way he wants. It has been observed that the freedom guaranteed by this Section of the Constitution is sometimes abused by preachers and leaders of thought. In Oluyede (1988) Justice T.A. Aguda made the following comments regarding this Section as follows:

> "In so far as freedom of religion is concerned, many Nigerians like myself have developed grave doubts if this Freedom is not

being carried so far as to amount to an Abuse in some cases. Many so-called Christian Churches Have been established mainly as pro fitable trades, and in Some cases as a means of perpetuating incredible fraud on credulous followers. On the other hand the extremism of some Muslims in the name of freedom of religion has led to blood shed in recent years. The President of the country was of course quite right in proscribing these extremist
sets recently since they denied to others the same freedom they are claiming for themselves." (p. 473)

In the case of SOLOMON ADEKUNLE v. ATTORNEY-GENERAL OF OGUN **STATE (2014)LPELR-22569 (CA) is an appeal by the defendant/Applicant against** the judgment of A.I. CHIKERE J, sitting at the Federal High Court holden at Abuja. The Plaintiffs/Respondents had filed an Originating Summons dated 6th January, 2005 consequent upon a letter from the appellant requesting the Respondents to submit their religious advertisements for vetting to avoid abuse. This request Plaintiffs/Respondents contested the power of the Appellant thereof in the originating summons. That it constitutes an infraction of their Constitutional rights vide Sections 10, 28, 39, 40 42 of the 1999 Constitution.
In its judgment, the Lower court upheld the contentions of the Plaintiffs/Respondents on the ground that the Advertising Practitioners Registration Act, Cap. 7, Laws of the Federation of Nigeria 1990 as amended by Decree No. 93 of 1992 imposed limitations on the right to freedom of worship as guaranteed under Section 38 of the 1999 Constitution, holding also that the Plaintiffs not being members of the Appellant, are not bound by the provisions of the Act. The Court of Appeal upheld the judgment and orders as made by the Court below.

Furthermore in ADEKUNLE v. A-G OF OGUN STATE [2014- Court of Appeal] The Appellant herein, was charged, tried, convicted and consequently sentenced to

death at the Ogun State High Court. His appeal to the Court of Appeal and the Supreme Court was dismissed. HARUNA SIMON TSAMMANI, J.C.A. (Delivered the Lead Judgment).

See also BISHOP NYONG DAVIS AYAKNDUE & ORS. v. BISHOP E. E. EKPRIEREN & ORS. (2012) LPELR-20071(CA) and ADAMS OSHIOMHOLE & ANOR. V. FEDERAL GOVERNMENT OF NIGERIA & ANOR. (2004) LPELR-5188(CA)

3.9 RIGHT TO PEACEFUL ASSEMBLY AND ASSOCIATION

Section 40is to the effect that ever y person is entitled to assemble f reely and
associate with other persons, and also to for m or belong to any political party, trade union or any other association f or the protection of his interests. The caveat however is that such assembly or association must be for a peaceful purpose. In furtherance of this objective the National Assembly enacted the Public Order Act 1979 Cap 42, LFN, 2004. The Act empowers the Governor of a State through a Police Officer to regulate or stop assemblies, meetings and processions adjudged not to be peaceful. On the other hand the Act expects any person desirous of convening any assembly or meeting or of forming any procession in any public road or place of public resort to first apply for and obtain the a p p r o v a l of the
governor.

3.10 RIGHT TO FREEDOM OF MOVEMENT

Section 41 of the 1999 Constitution guarantees the right to freedom of movement and residence in any part of the country except under certain circumstances.

See CHIMA UBANI v. DIRECTOR OF STATE SECURITY SERVICES & ANOR] (1999) LPELR-11177(CA)
where on 26-7-95, the Federal High Court in Lagos granted leave to the appellant pursuant to the Fundamental Right (Enforcement Procedure) Rules, 1979 to pursue the reliefs he sought arising from his arrest and subsequent detention by the Inspector-General of Police under a Detention Order. The reliefs sought by applicant

included a declaration that the continuous detention of the applicant by the respondents at the State Security Services detention cell at Shangisha, Lagos without being charged to court is a flagrant violation of the applicant's right to freedom of movement and is unconstitutional, null and void. OGUNTADE, J.C.A. Delivering the Leading Judgment upheld the judgement of the lower court that there was inter alia a breach of the Section 41 of the 1999 Constitution.

A leading case where this right was violated and the court decried such action is the case of Shugaba Abdulrahman Darman v. The Federal Minister of **Internal Affairs and Others (1981)1 NCLR p. 25. Alhaji Shugaba who was a** majority leader in the Bornu State House of Assembly was deported by the Minister of Internal Affairs to Niger Republic on the grounds that he is not a Nigerian whereas Shugaba had acquired his Nigerian citizenship by birth. His fundamental right to freedom of movement and right to peaceful assembly and association as a member of an opposing party to the majority party in Bornu State were violated. The court held that Alhaji Shugaba's right to free movement cannot be restricted unless by law. The court ordered that his Nigerian Passport which had been seized should be released to him and he should be restored to his former position before his deportation. In Adewale v. Lateef Jakande and Others (1981)1 NCLR p. 262, the court held that a circular of the Lagos State
Government purporting to abolish private schools infringed the right to freedom of movement of school children.

From the foregoing, it is discernible that the courts are protectors of fundamental human rights as enshrined in the Constitution and they are always impatient with government officials who violate fundamental human rights of Nigerian citizens.

3.11 RIGHT TO FREEDOM FROM DISCRIMINATION

Section 42(1) provides that;

"A citizen of Niger ia of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:

(a) Be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or

(b) Be accor ded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions."

This Section prohibits discrimination of any kind to any citizen. Discrimination includes grounds of disability, religion, state of origin and tribe etc. In the famous case of Adewale and Others v. Lateef Jakande already cited, the court also held that the right of every citizen in Nigeria to freedom from discrimination on grounds of ethnic or communal belonging, sex, religion or political opinion is guaranteed under this Section. The purported abolition of private schools was discriminatory and unconstitutional. See also COP, ABIA STATE & ORS v. **OKARA & ORS [2014- Court of Appeal]**

3.12 RIGHT TO ACQUIRE AND OWN IMMOVABLE PROPERTY ANYWHERE IN NIGERIA

Section 43 is to the ef fect that a Nigerian citizen can acquire immovable property in any part of Nigeria e.g a Nigerian citizen from the South-West can acquire immovable property in North-Central or North-East region of Nigeria. Irrespective of the state of origin, the court confers on every Nigerian citizen the right to live anywhere in the Feder ation and acquire immovable property such as houses, estate etc without fear of victimization because he is not from the state where the immovable property is situated.

In OKONKWO TIMOTHY V. OFORKA & ANOR. (2007) LPELR-8195(CA) The third respondent in paragraph 9 of his counter-affidavit admitted that Chief Ezenwammadu granted the land to the 2nd applicant and that she had built upon the land inside her father's compound but that the grant of the land breached the Oraifite native law and custom which forbids women and children from dealing with land. The lower court held inter alia; that a custom cannot derogate from the clear provisions of the Nigerian Constitution dealing with right to own movable and immovable properties. This view was upheld by the Court of Appeal.

See also NWELE V. ODUH [2013- Court of Appeal] (2013) LPELR-21236(CA) ;

KANDIX LIMITED & Anor v. ATTORNEY-GENERAL & COMMISSIONER FOR JUSTICE, CROSS RIVER STATE & Anor (2010) LPELR-4389(CA) . FAMFA OIL LIMITED v. HON. ATTORNEY-GENERAL OF THE FEDERATION & ANOR (2007) LPELR-9023(CA)

3.13 RIGHT TO FREEDOM FROM COMPULSORY ACQUISITION OF OWN PROPERTY WITHOUT DUE PROCESS

Section 43 of the 1999 Constitution should be taken with Section 44 for completeness. Section 44 declares that it is unconstitutional to forcibly or compulsorily acquire a citizen’s immovable property without following due process of law. Specifically the Section states that

> "No immovable property or any interest in immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law…"

Nigeria is one indivisible country and citizens are free by the provisions of the Constitution to live in any part of the country and establish immovable property. However, in certain circumstances, government may seize immovable property belong to a citizen where it is proven that such immovable property was acquired fraudulently or with public funds. Examples abound where immovable property belonging to citizens have been seized by government. For example Dr. Samuel Ogbemudia's Palm Royal Motel in Benin City, Edo State was seized by government because it was allegedly built with public funds. Also, some immovable property belonging to E.K. Clark who was then Commissioner for Education in Bendel State was seized by government because they were fraudulently acquired.

In COP, ABIA STATE & ORS v. OKARA & ORS [2014- Court of Appeal], the appeal raises the question concerning actions or Suit that can be commenced or brought pursuant to the FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES 2009 made by the Chief Justice of Nigeria under Section 46 (3) of the Constitution of Nigeria, 1999 in matters.

4.0CONCLUSION. The Unit has examined the various rights provided by the Constitution and in particular the various judicial interpretations. Attempt has been made to provide the students with current cases on the areas and they r eflect the views of the Courts.

5.0 SUMMARY

The FR under chapter 4 are guaranteed by the Constitution and therefore justiciable. To this extent the courts whether sitting as court of first instance like the High courts or in an appellate jurisdiction are always keen to uphold these rights.

6.0 TUTOR MARKED ASSIGNMENTS

i. In your view would you agree with the submission that rights of citizens are well protected under chapter 4 of the 1999 Constitution as amended. Your answer should be supported with decided cases.

ii. With the help of decided cases examine the adequacy of the fundamental rights provisions in the protection of the citizens.

7.0 REFERENCES/FURTHER READING

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5. Malemi, E. (1999). Administrative Law (3rd Ed), Princeton Publishing Co, Lagos.

6. Oluyede, P.A (1988). Nigerian Administrative Law (5th Ed.) University Press, PLC. Ibadan.

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UNIT 4 MODULE 3 THE JUSTICIABILITY DEBATE

6.0Tutor Marked Assignments

7.0 References/Further Reading

1.0 Introduction. The debate as to the justiciability or non justiciability of the chapter II rights is an interesting one. The debate stems from the fact that the Constitution separated from the FHR. In addition the constitution made the chapter II rights unenfor ceable or non-justiciable which amounts to granting them a lesser status than the chapter IV rights.

2.0 Objectives. A good understanding of the rationale for separating the rights and the arguments of each school of thought will be helpful in sharpening the students analytical mind and in addition pr ovide a robust understanding of these very vital sections of the Constitution.

3.0 Main Content

3.1 THE JUSTICIABILITY DEBATE

As discussed above the CFRN grants a number of rights captured under chapter IV to the citizen. These are generally described as first generation rights and are enforceable rights. The Fundamental Rights Enforcement Procedure Rules 1999 was enacted to deal with violations of Fundamental rights. On the contrary, the second generation rights and all other forms of rights are described as not justiciable or unenforceable. These second generation rights are found in chapter II. Some of the sections include sections 16-20.

Section 16 guarantees, among others, the right to any person to participate and engage in any economic activities, subject to necessary restrictions and obliges the government to protect the right of every citizen to engage in any economic activities outside the major sectors of the economy. Section 17 is to the effect that the state is obliged to direct its policy towards ensuring that there is no discrimination against any citizens with respect to opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment. By section 18, the Government is obliged among other things to direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels. While section 21 deals with the protection, preservation and promotion of the

cultural rights of the citizens section 20 provides for the protection and improvement of the environment and safeguard of the water, air and land, forest and wild life of Nigeria".
Several of the chapter 2 right provisions are also found in the African Charter on Human and Peoples Rights. It should be noted that Nigeria is not only a signatory to the African Charter on Human and Peoples Rights but also greatly energized the process leading to its birth. Furthermore, Nigeria has also domesticated the Charter by enacting the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, 2004. This Charter, unlike the Constitution, makes no distinction between the civil and political rights on the one hand and economic, social and cultural rights on the other hand. The Constitution created a dividing wall between the two and until recently this division was a veritable area of debate and 'confusion.' The problem with the dichotomy created between the rights by the Nigerian Constitution, is that while the provisions of chapter iv containing the civil and political rights are justiciable, the provisions of chapter 11 dealing with social, economic and cultural rights are declared non- justiceable by the Constitution.
The debate has to do with the fact that in the event of deliberate and systematic violations of the economic, social and cultural rights, the citizens are powerless to seek legal redress, since the Constitution which declar es those rights non-justiciable is supreme.

The further implication of this dichotomy is that Nigeria is indirectly constitutionally empowered to evade the international obligations voluntarily undertaken by it upon its ratification of the various international human rights instruments especially, the social economic or cultural rights. This dichotomy as (Dada 2012) noted is what has made the
economic, social, environmental and cultural rights, a neglected category of human rights in Nigeria. The preservation and the enforcement of human rights constitute one of the cardinal objectives of sustainable development and ought to be given serious consideration. Africa is a continent that is seriously threatened by poverty, hunger and environmental degradation. Some scholars even consider poverty and hunger as greater threat to Africa than climate change. According to (Oke 2011), the major threats to the environment in sub-Saharan Africa are poverty and corruption; the challenges of climate change only exposes the level of institutional and social decadence in the polity.

To this extent therefore one can argue that realising human rights in Africa is an economic and political project of eliminating poverty, disease and their adverse consequences and liberating the citizens and inhabitants of the continent to realise their fullest potentials (Odinkalu 2003; Obiagwu 2003). These rights have been repeatedly declared to be "universal, indivisible, and interdependent and interrelated." Thus (Orie 2014) is of the view that environmental protection and other chapter II rights are complimentary to the enjoyment of the right life and as such inseparable components of the right to quality life. She asserts therefore, that there is no real justification for 'categorizing or prioritizing' the rights –promotion of one set of rights at the expense of the other. In conclusion she submits that there is need for a review of this section of the Constitution to bring it in line with the African charter and the overall objectives of the principle of sustainable development.

Fortunately, the controversy over the non-justiciability of the economic, social, cultural, educational and environmental objectives due to the provision of section 6(6)(c) of the Constitution has been laid to rest by virtue of the Supreme Court's decision in Attorney-*General of Ondo State v. Attorney-General of the Federation and Ors (2002) and Chief Adebiyi Olafisoye v. Federal Republic of Nigeria (2004) 4 NWLR (Pt. 864) 580. In Chief Adebiyi Olafisoye's case , Niki Tobi J.S.C. laid to rest the controversy on the effect of s.* 6(6)(c) on Chapter II of the Constitution, more particularly s. 15(5). According to His Lord Justice, s. 6(6)(c) of the Constitution makes s. 15(5) not justifiable. But that is not the end of the issue as reliance must be placed on item 60(a) of the Exclusive Legislative List of the second Schedule to the Constitution, which empowers the National Assembly to establish and regulate authorities "to promote and enforce the observance of the provisions of Chapter II of the Constitution". (Chief Adebiyi Olafisoye, 661). The phrase "except as otherwise provided by this Constitution" in s. 6(6)(c) of the Constitution anticipates, among other possible provisions, the provision of item 60(a) of the Exclusive Legislative List of the second Schedule. (Chief Adebiyi Olafisoye 665) Therefore, a community reading of these inextricable related provisions of the Constitution made Niki Tobi, J.S.C. to conclude that Chapter II is no more a toothless dog which could only bark but cannot bite since it is clearly and obviously justiciable. (Chief Adebiyi Olafisoye). The community approach adopted by

Niki Tobi J.S.C. in the construction of s. 6(6)(c) and Chapter II of the Constitution is based on the fact that a written Constitution can best be understood if considered as a whole.

3.0 . Conclusion

Whatever perspective one adopts regarding the debate the fact still remains that the different rights have to do with the well being of an individual in the society. To this extent which ever right that the constitution accords him will affect his total wellbeing if such rights are not enforceable.

5.0 Summary

This unit has examined the various arguments as to the justiciability and non justiciability of the rights. It also noted the fact the various right complement one another with the single objective of ensuring the wellbeing of the individual.

6.0 Tutor Marked Assignments

i. Discuss the argument in favour of the justiciability or otherwise of the rights contained under chapter II and chapter IV of CFRN.

7.0 References/Further Reading

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2. Oke Yemi,' Adapting to climate change: sustainable mitigation options for developing countries in Sub-Saharan Africa', NIALS Journals of Environmental Law vol.1 (2011) 59-101.
3. C.A. Odinkalu, Back to the Future: The Imperative of Prioritizing for the Protection of Human Rights in Africa" (2003) JAL1–37,1; C.E. Obiagwu, International Human Rights Framework: A Challenge to Nigerian Courts" in Current Themes in the

Domestication of Human Rights Norms, C.C. Nweze & O. Nwankwo (eds), Proceedings of CIRDDICS Judicial Colloquium on Domestic Application of International Human Rights Norms. Enugu: Fourth Dimension publishing Co. Ltd 2003 at 59.

4. Vienna Declaration and Programme of Action UNGAROR World Conference on Human Rights 48th Session 22nd Plenary Meeting Pt. J art. 5 UN DOC.A/Conf. 157/24 (1993) Reprinted (1993)321 LM 1661; The African Charter on Human and Peoples Rights (Ratification and Enforcement) Act.
5. Attorney-General of Ondo State v. Attorney-General of the Federation and Ors (2002) 9 NWLR (Pt. 772) 222
6. Chief Adebiyi Olafisoye v. Federal Republic of Nigeria (2004) 4 NWLR (Pt. 864) 580.
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8. Erimma Gloria Orie, Environmental protection and fundamental human right to life: a review of the Nigerian constitutional provision and the judicial posture. NOUN Current Issues in Nigerian Law volume 4, 2014, pp148-196.
9. C.E. Obiagwu, International Human Rights Framework: A Challenge to Nigerian Courts" in Current Themes in the Domestication of Human Rights Norms, C.C. Nweze & O. Nwankwo (eds), Proceedings of CIRDDICS Judicial Colloquium on Domestic Application of International Human Rights Norms. Enugu: Fourth Dimension publishing Co. Ltd 2003 at 59.
10. Iluyomade B.O. & Eka B.U. (1992). Cases and Materials on Administrative Law in *Nigeria (2nd Ed.) Obafemi Awolowo University Pr ess, Ile Ife.*
11. Malemi, E. (1999). Administrative Law (3rd Ed), Princeton Publishing Co, Lagos.
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MODULE 4

UNIT 1: WHAT IS ADMINISTRATIVE PROCEDURE
UNIT 2 RIGHT TO FAIR HEARING
UNIT 3 AUDI AL TERAM PARTEM
UNIT 4 NEMO JUDEX IN CAUSA SUA

UNIT 1: ADMINISTRATIVE PROCEDURE

UNIT 1

1.0 Introduction

2.0 Objectives

3.0 Main Content

3.1 What is Administrative procedure

Administrative procedures are certain steps that administrative agencies should take to perform their administrative duties. This includes external steps that an administrative agency should take, in advance, with the other party or other interested parties, when issuing a disposition, report, administrative legislation notice, or an administrative direction. Administrative procedures are necessar y to accomplish administrative purposes smoothly and to protect citizen rights by ensuring administrative fairness, transparency, and trustworthiness by allowing citizens to

participate in the administrative process. The administrative agencies and concerned parties are the persons subject to administrative procedures.

Over the years, the courts have built up detailed rules of what is required of decision makers procedurally in different circumstances to ensure that a given decision complies with the requirements of fairness. Thus, different decision and decision makers will need to comply with different standards of procedural propriety.

These requirements of procedural fairness are what traditionally has been referred to as the rules of natural justice. Indeed these rules of natural justice is said to be founded on both divine and an eternal law- that even God did not pass judgement on Adam until Adam had had the opportunity of making his defence. Over the years these rule of natural justice became more generally known as the principles of fair hearing and are classified into two broad head namely;

1). The principles of Nemo judex in causa sua (No man can be a judge over his own case)

2). The principles of Audi alterem partem.

In the Nigerian constitution, the principle of fair hearing is one of cardinal tenets of the fundamental human rights as provided for under chapter iv.

4.0 Conclusion. The Unit has examined the meaning of the term Administrative **procedure as it relates to the rules of natural justice.**

5.0 Summary

The unit has examined what Administrative procedure as it relates to the rules of natural justice.

6.0 Self assessment exercise

Explain in your own words what Administrative procedure and the rules of natural justice mean.

7.0 References/Further Reading

1. Alston, P., Goodman, R., & Steiner, H. J. (2013). International human *rights: Text and materials. Oxford, United Kingdom: Oxford University Press.* P278

2. Connolly Carmalt, J. (2007). Rights and place: Using geography in human rights work. Human Rights Quarterly, 29(1), 68(18). pp. 78-85
3. 5. Evans, T. (2005). International human rights law as power/knowledge. Human Rights Quarterly, 27(3), 1046-1068.

UNIT 2: RIGHT TO FAIR HEARING

UNIT 2

1.0 Introduction.

This is one of the most litigated aspects of human rights. It is equally one of the rights that the individ ual is quick to notice and object to when breached. This right is innate and not earned. This means that it is a right that attaches to man just by the very fact that he is a human being.

2.0 Objectives

The objective of this right is to ensure that all human beings are treated fairly in the settlement of disputes between one person and another. For there to be peace in the society people must have a level of confidence that the judicial system will not be manifestly partial in handling any dispute brought before it. This will encourage people not to take laws into their hands knowing that justice would not only be done but be seen to have been done.

3.0 Main Content

3.2 RIGHT TO FAIR HEARING

S. 36(1) provides that in the deter mination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence or impartiality.

"In the locus classicus case of Isiyaku Mohammed v. Kano Native Authority (1968) 1 All N.L.R. 42, one of Nigeria's most erudite Jurist and Pioneer Chief Justice of the Federation, Adetokunbo Ademola (C.J.N), had illumined the dark fissures of the principles of fair hearing and the true test to be applied when confronted with issues involving fair hearing. He stated that "……a fair hearing involves a fair trial and a fair trial of a case consists of the whole hearing. …..The true test of fair hearing, …is the impression of a reasonable person who was present at the trial, whether, from his observation justice has been done in the case. .." See also Gaji v. The State (1975) 5 S.C 61 where the Supreme Court speaking in the same vein held further that the test is that of a fair view of a dispassionate visitor to the court who watched the entire

proceedings and it may as well be added that the test also includes that of an un-officious by-stander or reasonable man who upon perusal of the record of proceedings would go with the impression as to whether justice was done to the parties or not. Thus, in the case of J.C.C Inter Ltd. v. N.G.I. Ltd (2002) 4 W.R.N 91, 104; it was held that in the determination of the principles of fair hearing, the primary question is not whether any injustice has been done on any party due to want of hearing but whether an opportunity of hearing was afforded the parties entitled to be heard. In line with this principle the Supreme Court per Mohammed JSC in Awoniyi Vs 14 Registered Trustees of Amorc (2000) 10 NWLR (part 676) 522 at 533, held at paragraph G - H, that, "??? The first error is the failure of the applicant to make both the Registrar general of the Corporate Affairs commission and the Inspector General of Police parties to the applicant's motion. Re-affirming this point, the Supreme Court, per Mukhtar JSC in the case of G & T. Invest, Ltd. Vs Witt & Bush Ltd. (2011) 8 NWLR (part 1250) 500 at 531 - 532 H – B held thus: "I take solace in the above principle of law and hold that the learned trial judge was incompetent to decide on the suit, and in consequence the Court of Appeal did not err when it found thus: 'The consequence is that the action is not properly constituted for want of proper parties. In the situation as found there, there is no way the trial Court could have competently dealt with the matter in controversy, that is, as regards the rights and interests of parties when the proper parties are even before the Court".

Right to fair hearing is the mother of all rights because it is the core of justice. In simple terms, fair hearing is the act of listening to the person or persons and giving them equal opportunities to state their positions on an issue before adjudicating.

hearing is to listen from the commencement of a matter to the end including delivery of judgment, fair trial is mandatory. In other words, both sides in a matter or suit must be given ample opportunity to state their case, usually in Nigeria through counsels.

In ORISAKWE & SONS LTD. & ANOR V. AFRIBANK PLC. (2012) The COURT OF APPEAL observed that "Basically, the right to fair hearing is a fundamental one, duly guaranteed by section 36 (1) of the 1999 constitution of the Federal Republic of Nigeria. In this vein, any decision which is given without due compliance therewith is a nullity and is liable to be set aside, either by the court that delivered the said decision or by an appellate court. See Bamigboye v. University of Ilorin (1999) 10 NWLR (Pt. 22) 290. Hence, the question is whether or not the party who is entitled to it and who is seriously deserving of being heard before his fate is decided, determined or sealed, had in fact been given ample and adequate opportunity as provided under the relevant applicable procedural rules of court to do so. See Kotoye v. C.B.N. (1989) 1 NWLR (Pt. 98) 419. In a civil case just as in a criminal case, the inviolable rule of fair hearing entails inter alia, that any of the parties is entitled to prosecute or defend the matter either in person or by a legal practitioner of his choice.

The courts have always sympathized with victims, in established cases of violation of the right of fair hearing. The maxims, nemo judex in causa sua, *and audi alteram partem, (no one can be a judge in his own cause, and* Listen to the other side) have remained persuasive arguments for plaintiff applicants in fair hearing proceedings.

3.2 Instances when principles of fair hearing will not apply

i. Fair hearing is also an exception to the rule that a court of appeal must consider and pronounce on all issues presented for determination by parties to appeal. UBN PLC. V. NWANAJUO (2012) LPELR-7914(CA) where the court held that "The resolution of the issue 1 would appear to have overtaken the issue 2 since the proceedings leading to the judgment appealed against are by the breach of the principle of fair hearing therein, rendered void" .

ii. SECTION 294(1) OF THE 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA : provides that every court established under this Constitution shall deliver its decision in writing not later than ninety days after the conclusion of evidence and final addresses. Thus where the

judgment is delivered out of time, it will be vitiated and the issue of fair hearing will not arise. See NWANONYE V. ANANTI [2017- COURT OF APPEAL]

Furthermore, the law is settled that where, owing to a pending relevant appeal, the hearing of a case could work injustice or constitute exercise in futility, prudence, if not common sense, dictates that the proper course of action open to the Court would be to stay or adjourn the case pending the determination of such an appeal with liberty to either side to apply for the hearing of the case to be resumed. In ISHAKU & ANOR v.KANTIOK & ORS (2011) LPELR-8944(CA) the court had this to say, " Without fair hearing, the principles of natural justice are abandoned; and without the guiding principles of natural justice the concept of the rule of law cannot be established and grow in the society". It is said that if strict observance of a rule of practice will produce injustice then a Court of justice should tow the line of handing down justice than slaughtering it on the altar of technicalities, i.e., obeying the rule which is no longer an aid to administration of justice. The Court should ensure that justice is done and that rule of law prevails in all cases. "Per ORJI-ABADUA, J.C.A.(Pp. 61-63, paras. C-C).

4.0. Conclusion :

In conclusion the segment has discussed the meaning of fair hearing as an aspect of the fundamental right of a person. It also examined some of the circumstances when the principle of fair hearing will not apply.

4.0 Summary

Cases involving Fair hearing are synonymous with natural justice. Considering the important nature of natural justice, it is reiterated that every act of administrative procedure must respect it. The root of the doctrine is an age long one found in the roman era. The unit thus deals with f air hear ing and equity.

6.0 Self assessment exercise.

Explain what fair hearing is and the attitude of the courts in preserving the right of fair hearing. What are the circumstances under which the principle cannot apply.

UNIT 3 : AUDI ALTERAM PARTEM -LISTEN TO THE OTHER SIDE

1.0 INTRODUCTION

This Unit introduces the students to the fir st maxim under fair hearing rule.- AUDI **ALTERAM PARTEM. The maxim seeks to ensur e that no party to a dispute is** 'handed down' a judgement in his absence or without first having an opportunity to state his own side of the case. This rule also implies that each party inherently has a right to also hear what the other party had said concerning the case that is the evidence of the other party. The essence is to make it possible for the party to make infor med and relevant response.

2.0 OBJECTIVES

At the end of this Unit students are expected to be able to have a good understanding of the latin maxim AUDI ALTERAM PARTEM. It is also expected that students should be able to discuss the attitude of the courts in the application of the maxim in the context of the right to fair hearing under the constitution.

3.0 Main Content

3.1 AUDI ALTERAM PARTEM -LISTEN TO THE OTHER SIDE

This latin maxim means that the other side must be heard before judgement is passed. The principle of fair hearing becomes invocable where a party is untowardly shut out and openly denied the opportunity to be heard. It is not applicable in favour of a party who fails to appear and defend an action filed against him. Thus, a party or his counsel who fails to appear in court on a date fixed for hearing which he is aware of and without justifiably excusing his absence, does so at his own peril and would have nobody to blame but himself. In a recent decision of the Supreme Court, NEWSWATCH COMMUNICATIONS LTD. V. ATTA (2006) 12 NWLR (pt. 993) 144/171 per Tobi; IHEZUKWU V. UNIVERSITY OF JOS & ORS. [1990-

SUPREME COURT where the Judge after hearing learned counsel for the appellant in elaboration of the brief of argument he has already filed, this court decided not to call upon learned counsel for the respondents and summarily dismissed the appeal with N500.00 costs to the respondents.

In ORISAKWE & SONS LTD. & ANOR V. AFRIBANK PLC an interlocutory appeal against the ruling of L. C. Dakyen J. (as he then was) of the Plateau State High Court, delivered on 19th April, 2004 in suit No. PLD/J259/88 wherein some of the reliefs sought by the defendants/appellants wer e refused/dismissed.

The facts of this appeal gleaned and garnered from the record of appeal are to the following effects. On 14th May, 1998 the plaintiff/respondent herein commenced action against the defendants/appellants under the undefended list procedur e, claiming the following reliefs:

"The plaintiffs claim against the defendants jointly and severally is for:-

1. The sum of N9, 706,049.52 (Nine Million Seven hundred and six thousand, and forty nine Nair a fifty two kobo) being personal loan/overdraft the plaintiff granted to the defendants at the defendants' request at No. 23 Murtala Mohammed Way, Jos which the defendants failed to pay despite repeated demands.
2. 21% interest on the said sum of N9, 706,049.52 from 1/5/98 until judgment.
3. 10% interest from the date of judgment until final liquidation."

The said writ of summons was filed together with an accompanying affidavit of 18 paragraphs with various documents annexed thereto. Upon being served with the said writ, the defendants/appellants filed their notice of intention to defend. However the case suffered several adjournments over a long period and mostly at the instance of the defendant. Eventually when the case was opened and the plaintiff's witness concluded his evidence, the defendants failed to utilize several opportunities given to them to cross examine the plaintiff's witness. When eventually the defendants wanted to cross-examine the plaintiff's witness it had become impossible to secure the witness again, because he has left the plaintiff's employment. Defendants' application for a recall of the witness was therefore refused. Dissatisfied with the said ruling, the defendants/appellants appealed to this court alleging among other things the breach of his fundamental right. The Court of Appeal held inter alia, that since opportunities have reasonably been given to the defendants to cross examine the plaintiff's witness and they failed to do so that the arm of relief therefore lacks merit and the same is dismissed.

The courts thus have drawn a distinction between the refusal to utilize a given opportunity and situations where such opportunities are not given at all as in the case of FRAMAN ENTERPRISES LTD & ANOR V. SPRING BANK PLC & ORS **[2016- COURT OF APPEAL] The Fundamental nature of the service of hearing** notice on parties in the adjudication process and effect of failure to serve hearing notice where required] "It is trite and has been held in seemingly endless judicial authorities that any proceeding in a case which holds without the parties having been duly served with a hearing notice of the date for hearing of the matter does violence to the principles of fair hearing as enshrined in the constitution. Also in SENATOR **AHMED MOHAMMED MAKARFI & ANOR v. PRINCE BIYI POROYE & ORS (2016) LPELR-41296(CA)**

Senator Ahmed Mohammed Makarfi as Chairman of PDP National Caretaker Committee, was not Joined as parties to the suit. In that suit (originating processes), 1st to 9th Respondents had set out to stop their rival faction of the Peoples Democratic Party (PDP) led by Senator Ahmed Makarfi and Senator Ben Obi (of the National Caretaker Committee) from asserting influence over the Executive Committee members of the Party in the South West States or nominating and fielding Governorship candidate for the PDP in the States Governorship Election in 2019. Common sense and the dictates of justice required that such persons should have been joined to defend the Suit, before any order could be made to bind them.

Allowing the Appeal the court set aside the judgment of the lower Court in FHC/ABJ/CS/395/2016 delivered on 29/06/2016, having been reached in the absence of Appellants, in gross violation of Appellants right of fair hearing and without jurisdiction.
See also the case of Ayoade V. Spring Bank (2014) 4 NWLR (part 1396) 93 at 132, (2013) LPELR - 30763 where this Court held:
"it is trite that a Court has no power to make orders either in favour of or against persons who are not parties to an action." Egbuchu Vs Continental Merchant Bank Plc & Ors (2016) LPELR - 40053 (SC); Adeleke vs Raji (2002) 13 NWLR (part 783)142, Okadigbo Vs Chidi (No. 1) (2015) 10 NWLR (part 1466) 171 at 197 -

Thus, Section 36(1) of the Constitution forbids a court to make order that affects the interest of a person, without hearing him or giving him opportunity to be heard. The right of fair hearing forms the "soul" of any judicial decision/order of Court, and where one has not been heard or given opportunity to be heard, the decision is a complete nullity and cannot be enforced against the party, having not been heard.

It is to be noted however that it is the Duty of a judge to be seen as impartial such that where there is evidence of corruption on his part the judgment may be set aside. Invariably, a decision is said to be perverse where it's so obvious on the record that - (1) It runs brazenly contrary to the evidence adduced at the trial; or (2) it is duly established that the trial Court took into consideration some matters which it ought not to have done so or turns a blind (shuts it's) eyes to obvious facts; or (3) it has occasioned a miscarriage of justice.

See EBBA VS. OGODO (1984) 1 SCNLR 372; BUNYAN VS. AKINGBOYE (1999) 7 NWLR (pt. 609) 31; ADEGOKE VS. ADIBI (1992) 5 NWLR (pt. 242) 410.

4.0 Conclusion

The Nemo judex rule, commonly referred to as the rule against bias, ensures that a "judge" is not partial. He should not be influenced by personal interest; for jurists and laymen alike have insisted that justice should be manifestly seen to have been done. Where the judge has interest in the subject matter, or in the party, or his own financial interest is involved, the objectivity of his decision is bound to be questionable

5. 0Summa ry

It is firmly established that a judge or anyone exercising a judicial function must hear both sides; not only the plaintiff or the prosecutor but the defendant as well. This rule is well recognized as one of the fundamental principles of natural justice.

6.0 Self assessment exercise

With the help of decide cases discuss the principle of audi paterem

7.0. References/Further Reading

1. E.C.S. Wade & A.W. Bradley, Constitutional Law 64 (London: Longman, 8th Edition, 1970.

2. The case of Alakija v. Medical Disciplinary Committee[1959] 4 F.S.C. *38.*

UNIT 4: NEMO JUDEX IN CAUSA SUA

NEMO JUDEX IN CASUA SUAM, (NO ONE CAN BE A JUDGE IN HIS OWN CAUSE):

1.0 INTRODUCTION

This Unit introduces the students to the second maxim under fair hearing rule. The maxim seeks to ensure that no party to a dispute is privileged or given undue advantage over the others. This is another major way of eliminating bias and ensuring fair ness to all the parties.

2.0 OBJECTIVES

At the end of this Unit students are expected to be able to have a good understanding of the latin maxim. It is also expected that students should be able to discuss the attitude of the courts in the application of the maxim in the context of the right to fair hearing under the constitution.

3.0 Main Content

3.1 EXAMINATION OF THE MAXIM

Nemo judex in causa sua means that no person can be a judge in his o w n matter. It is a rule against bias, a rule that disqualifies a person occupying an

adjudicator y office from seating in judgement over a matter in respect of which he has an interest. See the case of Alakija v. Medical Disciplinary Committee [1959] 4 ***F.S.C. 38.***

In LPDC v. Fawehinmi (1985) 2 NWLR pt. 7, p. 300 at 370 SC, the Legal Practitioners Disciplinary Committee (LPDC) was to examine the alleged misconduct of Mr. Ganiyu Fawehinmi a legal practitioner at that time over his publication in a West Africa Magazine of 23rd March 1985 and requested him to show cause why disciplinary measure should not be taken against him for the publication which they regarded as a professional misconduct. The case was brought to the LPDC by the Attorney-General of the Federation. Ganiyu Fawehinmi went to court to file an application for an order of prohibition under the fundamental human right alleging that his fundamental human right to fair hearing under the Nigerian Constitution was likely to be contravened by the LPDC because the Attorney-General of the Federation who brought or filed the cause with the Legal Practitioners Disciplinary Committee was also a member of the Disciplinary Committee. Ganiyu Fawehinmi reasonably thought that the right to fair hearing would be violated because the Attorney-General who is the accuser will also be a member of the Disciplinary Committee that will judge. So the maxim nemo judex in causa sua i.e. no one can be a judge in his own case was advocated. The plaintiff respondent's complaint was serious enough to persuade the High Court to grant the respondent's application and made an order of prohibition to stop the Committee from trying Ganiyu Fawehinmi. The Disciplinary Committee appealed to the Supreme Court and the Supreme Court held that the Legal Practitioners Disciplinary Committee's appeal failed and upheld the judgment of the High Court in favour of the plaintiff respondent. Justice Karibi-Whyte, Justice of the Supreme Court state that

> "in the circumstances of this country, fair hearing is an entrenched provision of the a Constitution which cannot be displaced by legislation however unambiguously worded'.(p. 300)

4.0 Conclusion.

The right to fair hearing cannot be ousted by law because the Nigerian Constitution is superior to any law. There is no contradiction that the Nigerian Constitution is supreme. Fair hearing is the cornerstone of any judgment process and is hinged on two major ingredients to wit; audi alteram partem and nemo judex in causa sua.

5.0 Summary.

It is obvious therefore that the rules of natural justice as reflected the principles of fair hearing apply to both judicial and administrative adjudication in all cases.

6.0 Tutor Marked Assignments

Explain the maxim Nemo judex in causa sua. and how the courts employ it to ensure that the right to f air hearing is preserved in appropriate cases.

7.0 References/Further Reading

1. E.C.S. Wade & A.W. Bradley, Constitutional Law 64 (London: Longman, 8th Edition, 1970.
2. ***See the case of Alakija v. Medical Disciplinary Committee[1959] 4 F.S.C. 38.***
3. P.A Oluyede: Nigerian Administrative law (2007)

MODULE 5 JUDICIAL REVIEW
UNIT 1 LOCUS STANDI
UNIT 2 MANDAMUS
UNIT 3 CERTIORARI
UNIT 4 DECLARATORY JUDGMENT/DAMAGES
UNIT 5 INJUNCTIONS
UNIT 6 NON QUASI JUDICIAL

UNIT 1 THE DOCTRINE OF LOCUS STANDI

1.0 INTRODUCTION

Locus standi is a Latin phrase meaning "place to stand". It refers to whether or not someone has the right to be heard in court. It is a threshold issue in litigations that affects access to justice, jurisdiction, judicial powers and remediation of civil wrongs in the field of administrative law.

2.0 0BJECTIVES

At the end of this unit, you should be able to:
Discuss the meaning of the doctrine of locus standi and its application in Nigeria.
Discuss the nature of locus standi .

3.0 MAIN CONTENT

3.1 LOCUS STANDI

The term 'locus standi' denotes the legal capacity to institute proceedings in a court of law and is used interchangeably with terms like 'standing' or 'title to sue'.It has been held in several cases to be the right or competence to initiate proceedings in a court of law for redress or assertion of a right enforceable at law.

The phrase 'locus standi' originates from the Latin language which literarily in English refers to the center of something or place where something exists. In judicial matters, it refers particularly to the principle that a party who brings a case to court must establish that the issue that he complains against directly affects him or violates his right. It is generally treated as a threshold issue that must be resolved in favour of

the applicant/claimant/plaintiff/petitioner or party before the jurisdiction of the court can be invoked.

Locus standi is the way in which the courts determine who may be an applicant for judicial review or remedies. If a particular applicant is found to have standing, then they will be permitted to have their request heard (though determining that an applicant has locus standi will not necessarily mean that they will be successful in their final application). On the other hand, if the applicant is not found to have standing to bring the action, the court will not hear their complaint

The rule relating to locus standi developed primarily to protect the courts from being used as a playground by professional litigants, meddlesome interlopers and busy bodies who really have no real stake or interest in the subject matter of the suit.

3.2 GENERAL NATURE OF THE DOCTRINE OF LOCUS STANDI

The doctrine of locus standi is a rule of substantive law by which a person with little or no interest at all is debarred from bringing an action against individual, the government, other public authorities or agencies. Properly conceived, the doctrine operates as a practical limitation on the availability of judicial review of administrative actions since it requires that in order to be able to challenge an action, a person must have an interest which is sufficiently affected by the action being challenged. If the quantum of interest demonstrated is held to be legally insufficient, a party might not be able to obtain judicial relief. The applicant must show that the declaration he sought related to a right that was personally vested in him and that he had a "real interest" at stake. It is not enough to show that one falls within the class affected, he must go further to show that he has some personal interest that have been or is certain to be affected by the action complained of.

In the case of Adeshina v. Lemonu (1965) 1 All NLR 233, the defendant argued inter alia, that it was not competent to the plaintiff to sue (as the crown was the real owner, he could not have an injunction without joining the Attorney Gener al. The court held that the plaintiff had proved the existence of that right and its violation, and that he made money from fishing, as a result, he suffers special damages, peculiar to himself from the interference with the public right. And was entitled to sue and obtain injunction without joining the Attorney General.

In the case of Olawoyin v. Attorney General (1961) All NLR 269, the court held that the appellant failed to show that he had sufficient interest to sustain a claim. "It seems

to me that to hold that there was an interest here would amount to saying that a private individual obtained an interest by mere enactment of a law with which he may, in the future, come in conflict, and I would not support such a proposition."

Generally, action may be public or private in nature. By private action, it is meant that a person has suffered damages in conjunction with the public at large. Generally, the courts have tended to apply the doctrine in the same manner to both instances without necessarily recognizing whether the injury is private or public. While the courts have strictly applied this doctrine to private actions, they insist that only the Attorney General has locus standi to challenge any public wrong. In Gouriet v. Union of Post Office Workers (1977) 1 All E.R. 696, when he said that 'it is a fundamental principle of English law that private right can be asserted by the individual but that a public right can only be asserted by the Attorney General as representing the public"

It is the strict application of the doctrine of public law that has tasked the intellect of writers, legal writers, judges and civil right activists. Judges have unwillingly tied their hands in the face of stark illegalities on the basis of lack of locus standi on the part of the litigants.

In the case of Missisipi& Missouri Railway Co. V. Ward (1813) 67 U.S. 485, the court held that the plaintiff in that case would not be heard unless he shows that he sustained, and is still sustaining individual damages.

In the Nigerian case of Onyia v. Governor in Council (1962) WNLR 89, it was argued that the claim was not properly before the court in that the right alleged to be infringed was a public right and that the plaintiff had no locus standi. The court held that the plaintiff cannot sue in his private capacity to enforce a public right or restrain interference with a public right in which he has no particular or special interest or where he has suffered no special damage without joining the Attorney General.

It is not enough for someone to claim that he belonged to a society against which the action is directed. He must also show that his interest has been, or is been, or is likely to be affected in a significant way.

See: Dada v. University of Lagos (1961) I U.I.L.R. 344; Mohammed v. Governor of Kaduna State (1981(1 NCLR 117)

The Supreme Court of Nigeria had a unique opportunity to reverse this situation in the case of Senator Abraham Adesanya v. The President (supra) but unfortunately it shirked that duty by engaging in a judicial somersault. In that case, the court held that

the plaintiff had no locus standi to bring an action challenging the appointment of the Chairman of FEDECO since he participated in the deliberations of the senate.

Admittedly, in cases where a plaintiff seeks to establish a "private right" or "special damage", either under the common law or administrative law, in non-constitutional litigation, by way of an application for certiorari, prohibition, or mandamus or for a declaratory and injunctive relief, the law is now well settled that the plaintiff will have locus standi in the matter only if he has a special legal right or alternatively, if he has sufficient or special interest in the performance of the duty sought to be enforced, or where his interest is adversely affected.

Recently, there has been a tremendous relaxation of a locus standi doctrine in England with Lord Denning been in the vanguard of that crusade. Standing has now been given to complainants who merely show that they are members of the society. These cases are known as Blackburn cases –

1. R. v. COP of the Metropolis ex parte Blackburn (1968) 2 QB 118; Blackburn v. A.G. (1971) 1 WLR 103; R v. Police Commissioner ex parte Blackburn (1973) QB 241; R. v. Greater London County Council exparte Blackburn (1976) 1 WLR 550

In the case of Gani Fawehinmi v. Col. Akilu (1987) 4 NWLR Pt. 57 the Nigerian Supreme Court gave locus standi to the applicant to compel the Attorney General to prosecute some state officials for murder because according to the court “the peace of the society is the responsibility of all persons in the countr y. And as far as protection against crime is concerned every person in the society is “each other’s keeper”.

The relaxation of the doctrine in England which is based on the common law has limitations in Nigeria where every right and liability to sue derives from the constitution and other statutes.

3.3 THE CONSTITUTIONAL POSITION OF LOCUS STANDI IN **NIGERIA.**

Locus standi as applied in Nigeria has its root in common law as developed in England. The doctrine has been argued to have developed in the first place, under both English and Roman-Dutch law, to ensure that courts play their proper function of protecting the rule of law among others. At common law, a person who approaches a court for relief is required to have an interest in the subject matter of the litigation in the sense of being personally adversely affected by the alleged wrong. The applicant/plaintiff must allege that his or her rights have been infringed. It is not enough for the applicant/plaintiff to allege that the defendant has infringed the rights

of someone else, or that the defendant is acting contrary to the law and that it is in the public interest that the court grants relief. Essentially the courts' approach followed the common law until the coming into force of the 1979 Constitution and its provisions, especially sections 6(6), 33 and 42(1) (now sections 6(6) 36 and 46(1) of the1999 Constitution). According to the decisions of the Nigerian courts locus standi is predicated on the assumption that no court is obliged to provide a remedy for a claim in which the applicant has a remote, hypothetical or no interest.

A lot of scholarly writings and expositions have been done on the subject of locus standi in Nigeria, that have chronicled the development of the different approaches employed by the courts in the determination of the locus standi of applicants/plaintiffs in cases before them.

According to the decisions of the Nigerian courts locus standi is predicated on the assumption that no court is obliged to provide a remedy for a claim in which the applicant has a remote, hypothetical or no interest.

For a person to have locus standi, he must have sufficient interest and be able to show that his civil rights and obligations have been or are in danger of being infringed. In effect, the person instituting an action before the court must have legal capacity otherwise the court is robbed of the necessary jurisdiction to entertain the matter

Section 46(1) of the 1999 Constitution provides that

> "any person who alleges that any of the provision of this chapter has been, is being or likely to be contravened in any state in relation to him may apply to the high court in that state for redress".

This section relates to fundamental rights contained in chapter IV of the Constitution.

Also in section 272(1), a state High Court has jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person

3.4 LOCUS STANDI IN RELATION TO JURISDICTION

The relationship between Locus standi and jurisdiction was discussed by the supreme court in Ajayi v. Adebiyi [2012] 11 NWLR (Pt. 1310) 137 at 176 where it was observed that locus standi and jurisdiction are interwoven in the sense that locus standi goes to affect the jurisdiction of the court before which an action is brought.

Thus where there is no locus standi to file an action, the court cannot properly assume

jurisdiction to entertain the action, it is a condition precedent to the determination of a case on the merit. Thus locus standi being an issue of jurisdiction can be raised at any stage or level of the proceedings in a suit even on appeal at the Court of Appeal or Supreme Court by any party without leave of court or by the court itself suo motu.

It is now well settled that where a plaintiff has no locus standi, the court has no jurisdiction to entertain the action and such suit must be struck out as such the issue of locus standi is a fundamental one which affects the jurisdiction of the court to adjudicate between the parties to settle the issues in controversy. Where the question of the locus standi of a party to initiate civil claims is raised it should be settled first and decisively and not shelved. Where a party lacks locus standi, the court lacks jurisdiction to hear or determine the party's suit, no matter the public importance of the issues raised in the suit

4.0 CONCLUSION

To have locus standi therefore, one must show that his civil right and obligations are or are about to be affected for only then can he invoke the judicial power of the Court.

The constitutional provisions on locus standi are contained in sections 6(6) (b), 46(1) and 272(1) of the 1999 Constitution as amended.

The interest must be manifest in the claim. Locus standi is an aspect of justiciability as such the problem of locus standi is surrounded by the same complexity and vagaries inherent in justiciability. The fundamental aspect of locus standi is that it focuses on the person seeking to get his complaint before the court not on the issue he wishes to have the court to look into.

See the case of Amusa v. Jimoh Olotu (1970) 1 All NLR 117

5.0 SUMMARY

In summary, Nigeria has thus like most Commonwealth systems adopted the test of 'sufficient interest' in interpreting locus standi, especially for non-constitutional law, litigation, and even in constitutional law cases the applicant/plaintiff must plead sufficient constitutional interest to sustain and meet locus standi requirement. It is the law that to have locus standi to sue, the plaintiff must show sufficient interest in the suit or matter. A person has an interest in a thing when he has rights, advantages, duties, liabilities, losses or the like connected with the thing, whether present or future, ascertained or potential provided that the connection, and in the case of potential rights and duties, the possibility, is not too remote.

6.0 TUTOR - MARKED ASSIGNMENT

Discuss the doctrine of locus standi in relation to jurisdiction.

7.0 REFERENCES/FURTHER READING

Bernard Schwartz, AdministrativeLaw (Toronto: Little, Brown&Co.,1976) .

H.W.R. Wade, AdministrativeLaw (Oxford: ClarendonPress,3rdEdition, 1971).

Akintunde Emiola, Review in Administrative Law (Emiola publisher Limited 2nd Edition 2011)

David Scott &Alexandra Felix, Principles of Administrative Law (Great Britain: Cavendish PublishingLtd,1997).

UNIT 2 MANDAMUS

1.0 INTRODUCTION

In the pr evious module, we considered the principles which the courts apply to the exercise of administrative powers by public authorities. We now examine the procedures by which the procedures by which the courts exercise their supervisory jurisdiction. The law provides a lar ge number of possible remedies – prerogative orders and the equitable remedies. These traditional remedies were means by which the royal courts exercised the supervisory jurisdiction over the inferior courts, and which were originally granted by the king as the 'fountain of justice'.

2.0 COURSE OBJECTIVES

It is expected that at the end of this unit,

You should be able to discuss the development and the general nature of the prerogative writs. You should also be able to discuss mandamus as a remedy and its inadequacies.

3.0 MAIN CONTENT

3.1 Emergence of Prerogative writs

DEFINITION OF PREROGATIVE WRITS

The name 'prerogative writs' indicates that it is a writ associated with the king. Most modern writers have said that prerogative writs are writs which originally were issued only at the suit of the king but which were later made available to the subject.

The prerogative writs of mandamus, prohibition and certiorari (later restyled as prerogative orders) were the principal means by which the former Court of King's Bench exercised jurisdiction over local justices and other bodies. Although the writs issued on the application of private persons, the word 'prerogative' was apt because they were associated with the right of the Crown to ensure that justice was done by inferior courts and tribunal. The Crown played no part in the proceedings, and orders could be sought by or against a minister or government department.

There was later the shift of power from the Crown to the Parliament. This shift of power form the Crown to Parliament and the Government did not leave the prerogative unaffected. Thus, the exercise of prerogative became dependent on the government of the day. What then had started as a royal prerogative become to all interest and purpose government or even prime ministerial are now in the following forms:

(i) those acts where sovereign plays no part e.g. relater actions and nolle prosequi;

(ii) Sovereign on the advice of minister (i.e. conduct of foreign affairs, negotiating treaties pardoning criminals etc.; and

(iii) Sovereign acting alone (the original form) e.g. conferment of certain honours and appointment and dismissal of ministers. For instance, the Bill of Right, 1689 has removed a significant number of the Sovereign's prerogatives. The Crown Proceeding Act, 1947 removed the crown immunity for liability in contract and tort.

All the writs, except the writ of habeas corpus, are now to be known as 'prerogative orders. The family name 'prerogative' indicates that they share the same ancestry.

3.1.1 PREROGATIVE WRITS IN NIGERIA

The history of prerogative powers in Nigeria is traceable to the English laws because of the colonial history that Nigeria experienced with Britain. With the advent of the British administration in Nigeria came the English laws on prerogative powers. Interpretation Act, Cap. I23 Laws of the Federation of Nigeria, 2004 (the "IA") Section 32(1) provides that:

"Subject to the provisions of this section and except in so far as other provision is made by any federal law, the common law of England and the doctrines of equity, together with the statutes of general application that wer e in force in England on the 1st day of January, 1900, shall, in so far as they relate to any matter within the legislative competence of the Federal legislature, be in force in Nigeria. Section 32(2) however provides that such imperial law shall be in force so far only as the limits of the local jurisdiction and circumstances shall permit and subject to any Federal Law".

Unlike England which operates parliamentary system of government and whose constitution is unwritten, Nigeria now operates presidential system of government with a written constitution, which in addition to various statutes setting out the power of the President and Governors. As at now, Nigeria has operated nine constitutions. It started with the Sir Frederick Lugard's Amalgamation Report of the 1914. Thereafter, there were the sir Clifford Constitution (1922); Sir Arthur Richards Constitution (1946); Sir John Macpherson Constitution (1951), Oliver Littleton's Constitution (1954), the Independence Constitution (1960); the Republican Constitution (1963), the 1979 Constitution (1979) and the 1999 Constitution.

In the case of Faki Burma v. UsmanSarki (1962) 2 All NLR 62, Udoma J (as he then was) said that "in the absence of a prescribed procedure for attacking the exercise of powers by a minister, the normal processes and principles of the general law, including the prerogative orders, are available to be invoked to advantage by any aggrieved person whose rights have been infringed."

Until 1934, the writs remedies were regarded as writs. But by the Administration of Justice (Miscellaneous Provisions) Act, these ancient writs were replaced by the word 'order'. It should be noted however, that in Nigeria, the courts still erroneously refer to these 'orders' as writs.

3.2 MANDAMUS

The term "Mandamus" is a Latin word meaning "we command".

A writ of mandamus is in the form of command directed to the inferior Court, tribunal, a board, corporation or any administrative authority, or a person requiring the performance of a specific duty fixed by law or associated with the office occupied by the person.

The writ is issued to compel an authority to do his duties or exercise his powers, in accordance with the mandate of law.

An order in the nature of mandamus is not made against a private individual. The rule is now well established that a writ of mandamus cannot be issued to a private individual, unless he acts under some public authority.

Essentially, it is an order generally sought by private person to command the performance of some ascertaining public duty The duty to be performed must be of a public nature. It is a very useful means of securing the performance of public obligation. It lies to compel the performance of any public duty, whether the duty is judicial or administrative or of any other function. Its purpose is to supply the need of justice where there is a specific legal right but no specific legal remedy for enforcing that right

Under this writ, an inferior court which refuses or neglects to exercise the jurisdiction conferred on it by law may be compelled to do so by the High court. A writ of mandamus is the most extensive remedial measure which is in form of a command issuing from the High Court of Justice directed to any person, corporation or inferior tribunal requiring him or them to do some particular thing therein specified which appertains to his or their responsibility which is in nature of a public duty.

For an order of mandamus to issue, there must have been a demand on the respondent to perform a public duty and a refusal to perform the same. However, an order of mandamus will, therefore, not issue when there is an alternative specific remedy at law which is equally convenient, beneficial and ef fective.

GROUNDS OF THE WRIT OF MANDAMUS

Before an applicant for judicial review can succeed in invoking mandamus, there must be an imperative public duty imposed on someone and not just a discretionary power to act.

Secondly, the applicant must have made a request for the performance of the duty and the request must have been refused.

The thirdfeature is that the applicant must have a substantial personal interest in the performance of the duty concerned.
Fourthly, it is well settled that where there is a remedy equally convenient, beneficial and effectual, an order of mandamus will not be made.
Lastly, the court to which the application for mandamus is made must itself have jurisdiction to entertain and grant it.

Element of public duty

Where the duty of an administrative officer in a particular situation is so plainly prescribed that it is free from doubt but equivalent to a positive command, it is so far ministerial that performance may be compelled by mandamus.
In the case of Bashir AladeShitta-Bey v. Federal Public Service Committee (1981) 12 NSCC 19, the court stated that the order of mandamus will be issue to a person or corporation requiring him/them to do some particular thing specified which appertains to his office and is of a public nature.
However, in compelling performance of a public duty by an inferior tribunal or a government functionary, the court will consider carefully whether the duty is of a judicial, quasi – judicial or of a merely ministerial nature. If the duty is of a judicial, quasi – judicial nature the order will be issue only where there has been a refusal to perform that the duty in any event, but not where it as performed one way in preference to another or in an alternative manner.
There are variety of situations in which a tribunal or government functionary may be held to owe a duty to the applicant. One of them is where a public duty has to be performed and the duty is imposed on a particular person or body. If that, person refuses to act, the way is open to the applicant to seek an order of mandamus to compel the performance.
Take note that mandamus will not lie to enforce a discretionary duty. The court can only make him to exercise the discretion but not to tell him which way to exercise that discretion. An applicant for the order of mandamus must show that nonperformance of the duty he seeks to enforce would affect him prejudicially even if it is a duty to the public generally.

3.3.2 The duty must be to the applicant

The second element which the applicant must show is that the duty imposed on the other party is owed to him. The duty need not owed to the applicant as an individual person; it is enough if he can show that he is a member of a class is owed. In Federal Electoral Commission V. Dr. Ibrahim Datti Ahmed (1978) 4 F.C.A 361, Coker, J.C.A. held that "the respondent must show a legal right conferred by the said Act before he can call in aid the discretionary remedy of mandamus to enforce the performance by the appellant of the statutory duties imposed on them by the Act. Also, in the case of Shitta-Bey v. Federal Public Service Commission (1981) 12 NSCC 19 where Idigbe JSC held that ' …Exhibit D invests the appellant with a 'legal right' to remain in office and carry out his public duties as a civil servant…"

3.3.3 Request for performance and ref usal

An applicant must have addressed a specific demand or request to the respondent that he performs the duty imposed upon him, and the respondent must have refused to comply. The request must be in respect of a duty which the authority is in a position to perform of its own volition. There are however exceptions to this rule, which are based on the assumption that default of performance by the respondent might be as well to an oversight or inadvertence. Therefore, a hasty demand by the applicant before performance by the respondent may lead to failure of the application. Where it is clear that the person cannot perform the act unaided, then mandamus may not issue. See the case of Layanju v. Emmanuel Araoye (1961) All NLR 83.

Mandamus also lies where a body has performed his duty in bad faith or for improper purposes or having taken into account wrong consideration. See the case of Shitta-Bey (supra). See R. v. Cotham (1898) 1 Q.B. 802, Banjo and others v. Abeokuta UDC (1965) NMLR 295. In The Queen v. Chief Ozogula II ex parte Ekenga (1962) 1 All NLR 265, there was evidence to show that a request for performance was expressly made.

Mandamus is comparable to mandatory injunction in many respects. Mandatory order or order of mandamus is a discretionary remedy and the courts have the full discretion to withhold it in unsuitable circumstances. Disobedience to a mandatory order is contempt of court, punishable by fine or imprisonment. It could be issued against any person including public functionaries. It even lies against government departments, provided that such bodies have public duty to perform.

Mandamus may be invoked:

i. To review the quashing of an Information.
ii. To review refusal to issue a subpoena.
iii. To compel a hearing concerning shackling of the accused in court.
iv. To compel disclosure at preliminary inquiry.

In summary of the principle for the award of mandamus Sir Carleton Allen wrote:

"When a public authority is under a duty-which must be obligatory and not merely discretionary – to perform a certain function and when required to do so refused or omits to perform it, any person who has a legitimate and suf ficient interest in its execution may apply to the High Court for a mandamus commanding it to perform it.

The applicant must satisfy the court that no other remedy (e.g. an appeal) equally convenient, beneficial and effectual is available to him"

4.0 CONCLUSION

Today the majority of applications for mandamus are made at the instance of private litigants complaining of some breach of duty by some public authority. But public authorities themselves may still use the remedy, as they did in the past, to enforce duties owed to them by subordinate authorities

5.0 SUMMARY

In summary, mandamus will be issued when the Government or its officers either overstep the limits of the power conferred by the statute, or fails to comply with the conditions imposed by the statute for the exercise of the power. The writ of mandamus will not be issued if there is mere omission or irregularity committed by the authority. It will not lie for the interference in the internal administration of the authority.

Mandamus is often used as an adjunct to certiorari. It belongs essentially to public law. It would not be granted to enforce the duties of trustees since there are sufficient remedies in private law. Nor will it be granted to enforce private rights of shareholders against companies. It is also a discretionar y remedy.

6.0 TUTOR MARKED ASSIGNMENT

What are the conditions that must be met before mandamus can be issued?

7.0 FURTHER READING/REFERENCES

N.A Inegbedion& J.O. Odion, Constitutional Law in Nigeria, Ameitop Books Publishers, 2000, p.213

UNIT 3 CERTIORARI

1.0 INTRODUCTION

The law is settled that one of the very important powers which every High Court has is the supervisor y power over all inferior courts or tribunals to call for proceedings and examine them with a view to ascertaining if the inferior court or tribunal acted strictly within the laws that established it and that its decisions are within the jurisdiction conferred on it by the enabling laws.

Certiorari is used to bring up into the High Court the decision of some inferior tribunal or authority in order that it may be investigated. Certiorari and prohibition have established themselves as the most important and effective remedies in administrative law. Although the two orders differ in the spheres of function but similarly the principles applicable to them and the conditions for their availability to applicants are substantially the same. The quashing order and the prohibiting order

are complementar y remedies, based upon common principles, so that they can be classed together. We shall consider the remedy of certiorari in this unit.

2.0 COURSE OBJECTIVE

At the end of this unit, and after the relevant readings, you should be able to :-

- Discuss the nature and development of the remedy of certiorari
- Explain the use of the remedy of certiorari
- Describe under what circumstances the remedy will be available to an applicant;

3.0 Main Content

3.1 NATURE OF CERTIORARI

Certiorari is a Latin word which means “to be informed of”. It is issued in the form of an order by a superior Court to an inferior civil tribunal which deals with the civil rights of persons and which is public authority to certify the records of any proceeding of the latter to review the same for defects of jurisdiction, fundamental irregularities of procedure and for errors of law apparent on the proceedings.

It is an appropriate remedy where an inferior court or tribunal has exceeded its jurisdiction or failed to follow the requisite procedure for the exercise of its power or failed to comply with the principles of natural justice. Certiorari is thus said to be corrective remedy.

It is one of the traditional common law machinery for the review of proceedings of inferior courts, statutory or administrative bodies and individual officers, discharging public functions. The purpose of the remedy is to cause the decision of such institutions and individuals discharging public functions to be investigated.

3.2 DEVELOPMENT OF THE REMEDY

The form of the old writ was that of a royal demand to be informed (certiorari) of some matter, and in early times it was used for many different purposes. It became a general remedy to bring up for review in the Court of King's Bench any decision or order of an inferior tribunal or administrative body. Its great period of development as a means of controlling administrative authorities and tribunals began in the latter half of the seventeenth century

There was also the problem of controlling special statutory bodies, which had begun to make their appearance. The Court of King's Bench addressed itself to these tasks, and became almost the only coordinating authority until the modern system of local

government was devised in the nineteenth century. The most useful instruments which the Court found ready to hand were the prerogative writs. But not unnaturally the control exercised was strictly legal, and no longer political. Certiorari would issue to call up the records of justices of the peace and commissioners for examination in the King's Bench and for quashing if any legal defect was found. At first there was much quashing for defects of form on the record, i.e. for error on the face. Later, as the doctrine of ultra vires developed, that became the dominant principle of control. Certiorari is a prerogative order which enables a superior court or tribunal to call upon an inferior court or tribunal to certify the record upon which an inferior court or administrative tribunal backs its decision of a judicial or a quasi-judicial nature. It lies to quash inferior proceeding or decision tainted by jurisdiction defects or to invalidate decisions or action taken in breach of natural justice or to correct errors of law apparent on the face of the record. The purpose is to enable the superior court to review that record in order to adjudge the legality of the decision based on it. The underlying policy is that the inferior courts or tribunals must keep strictly within the defined jurisdiction.

On the question whether certiorari will lei when other remedies are available, the Court per Ademola, C.J.F. in The Queen v. District Officer and Ors(1961) 2 NSCC 35 at 39held inter- alia that certiorari would not normally, except upon application of the Attorney-General, lie when other remedies are available. It is also noteworthy that though certiorari is discretionary, it will nevertheless be granted "ex debitojustitiae" to quash proceedings which the Court has power to quash, where it is shown that the Court below has acted without jurisdiction or in excess of jurisdiction. It has been held by Lord Green, M.R. in R. v. Stafford Justices ex parte Stafford Corporation (1940) 2 K.B. 33 C.A at pg 44that unless there is something in the circumstances of a case which makes it right to refuse the relief sought, the Court will grant it, and that is the way in which the Court will and must on ordinary principle exercise its discretion.

GROUNDS OF WRIT OF CERTIORARI:

The writ of certiorari can be issued on the following grounds:

(1) Want of jurisdiction, which includes the following:

(a) Excess of jurisdiction.

(b) Abuse of jurisdiction.

(c) Absence of jurisdiction.

(2) Violation of Natural justice.
(3) Fraud.
(4) Error on the face of records.

(1) Want of jurisdiction: This may arise from.
(1) The nature of subject matter.
(2) From the abuse of some essential preliminary, or
(3) Upon the existence of some facts collateral to the actual matter, which the Court has to try, and which is the conditions precedent to the assumption of jurisdiction by it.It may be added that jurisdiction also depends on
(4) The character and constitution of the tribunal. The Court does not interfere in the cases where there is a pure exercise of discretion, and which is not arbitrary if it is done in good faith. They do not ignore the legislative intention in the statute which might give a wide aptitude of powers to the administrative authority or the social needs, which demand the bestowal of some wider jurisdiction, or the historical circumstances under which a certain tribunal got exclusive jurisdiction of a particular subject-matter.
2) Violation of Natural Justice The next ground for the issue of writ of certiorari is the violation of natural justice.
(3) Fraud
The superior Courts have an inherent jurisdiction to set aside orders of convictions made by inferior tribunals if they have been procured by fraud or collusion a jurisdiction that now exercised by the issue of certiorari to quash Where fraud is alleged, the Court will decline to quash unless it is satisfied that the fraud was clear and manifest and was instrumental in procuring the order impugned.
(4) Error of law apparent on the face of record.
An error in decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceeding.
Necessary conditions or the issue of the Writ: When anybody persons
(a) Having legal authority.
(b) To determine questions affecting rights of subjects,
(c) Having duty to act judicially,

(d) Acts in excess of their legal authority, writ of certiorari may be issued. Unless all these conditions are satisfied, mere inconvenience or absence of other remedy does not create a right to certiorari.

3.3 UTILITY OF THE DOCTRINE

1. It is a corrective order.

It is the proper remedy to be granted for actions which have already been completed. Therefore, certiorari is the appropriate order when a final decision has been made on a matter. This order is available against government and public authorities but not against private person(s) and bodies.

See R v. His Honour Judge Sir Donald Hurst, (1960) 2 All ER 385 at 389 Lord Parker CJ said: "I am quite satisfied that certiorari will lie against a … judge if he has acted without jurisdiction".

This position was re-affirmed in R v. Patents Appeal Tribunal, Ex Parte Champion Paper and Fibre Co., 1957) 1 All ER 227Goddard LCJ said:

"In the opinion of this court, certiorari will lie, if the tribunal exceeds its jurisdiction, and equally if the tribunal gives a decision which the court conceives to be bad on the face of the decision".

2. It is a purely supervisory function of a higher court and not an appellate one.

Therefore, in considering whether or not an order of certiorari will lie against an inferior court, a tribunal, panel of inquiry or an administrative body, the superior court must not substitute its own views for those of the court as an appellate court would do.

3. An order of certior ari will also issue to anybody exercising statutory authority and this includes departments of State, local authorities, individual ministers and public bodies. However, these bodies must exercise judicial or quasi-judicial powers that may affect the administration of justice in the legal system. Thus, for an order of certiorari to lie against the body, it must be established that it had legal authority to act, as distinct from contractual powers. Furthermore, the body must have powers to determine questions affecting the rights of subjects in the society. Rights include privileges.

4. Certiorari is equally an appropriate remedy in cases of alleged violation of fundamental rights as well as alleged victimization in employment matters. In Arzike v. Governor of Northern Region, (1961) 1 All NLR 279 an order of certiorari was

issued to quash the order of the then Governor of Northern Region by which the applicant and others were removed from their offices in the native court.

3.4 WHEN WILL THE REMEDY LIE?

Certiorari will only lie where a public officer in the dischar ge of his function is bound to act judicially. It does not lie to quash the decision of an administrative agency if the agency has no duty to act judicially. In the case of Fela Anikulapokuti& 70 Ors v. C.O.P Lagos State (1977) 5 CCHCJ 797, it was held that certiorari will not lie to quash purely administrative acts.

Take note that the existence of an alternative remedy will not deny the application of the remedy to an applicant; however, the court will consider the reasons why the applicant is not pursuing those alternatives.

Also, certiorari will not lie to question the decision of a court with jurisdiction over an issue merely because the decision is against the applicant. See Nwaribe v. President and Registrar Eastern Oru District Council, Orlu (1964) ENLR 24

3.5 APPLICATION OF THE DOCTRINE IN NIGERIA

In Nigeria, certiorari is employed to review acts of administration. Certiorari lies only against statutory bodies. Such a body may be a Court of inferior jurisdiction. It will lie against a magistrate.

4.0 CONCLUSION

From the above, it appears that the most effective remedy available to a citizen injured by a decision of an administrative agency is the remedy of certiorari. The principle underlying this remedy is that all inferior courts and authorities have only limited jurisdiction or powers, and must be kept within their bounds.

5.0 SUMMARY

We have learnt from this unit, that certiorari is a discretionary remedy and as such, lies at the discretion of the court. We also learnt that the existence of alternative remedy does not deny the applicant of the remedy. It will only deny the applicant where the alternative remedy is statutorily made or if it is a more exclusive and adequate remedy.

6.0 TUTOR MARKED ASSIGNMENT

1. Under what circumstances will the remedy of certiorari lie?

7.0 FURTHER READING AND REFERENCES

1. N.A Inegbedion& J.O. Odion, Constitutional Law in Nigeria, Ameitop Books Publishers, 2000, p.213
2. M.C. Okany, Nigerian Administrative Law, Africana Academy.

DECLARATORY JUGDMENT/ DAMAGES

1.0 INTRODUCTION

Declaration may be taken as a judicial order issued by the court declaring r ights of the parties without giving any further relief. Thus a declarator y decree declares the rights of the parties. In such a decree there is no sanction, which an ordinary judgment prescribes same sanctions against the defendant. By declaring the rights of the parties it removes the existing doubts about the rights and secures enjoyment of the property.

It is an equitable remedy. Its purpose is to avoid future litigation by removing the existing doubts with regard to the rights of the par ties. It is a discretionar y remedy and cannot be claimed as a matter of right

2.0 OBJECTIVES

The objective of this Unit is for student to

Have an understanding of declarator y judgment.

Know when the Court can give a declaratory judgment to parties seeking redress.

3.0 MAIN CONTENTS

3.1 DECLARATORY JUGDMENT

A declaration of rights, also known as a declaratory judgment is the declaration by a court of the legal rights and obligations of the parties in a suit with or without making any consequential order. When the rights of parties are in dispute or uncertain, it is the duty if the court to ascertain the rights of the parties and then make a declaration of rights as to whether a right exists and whether or not such right has been, is being or only to be contravened. It is the earliest and first method, procedure, relief or remedy devised by court to do justice. In other words, it is the foundation of justice.

A declaration of rights is binding whether a court makes consequential orders along with it or not, unless the judgment is reversed on appeal. Though, as a general rule defiance of a declaratory judgment is not a contempt of court, nonetheless, parties normally abide by the judgment as declared by court. However, where there is a disobedience, an aggrieved party is at liberty to bring a later action or application to court for a consequential order such as injunction or damages.

For example, in Shugaba v. minister of Internal Affairs &Ors(1981)2 NCLR 459, Shugaba the plaintiff applicant, a member of the Great Nigeria Peoples Party and Majority Leader in the Borno State House of Assembly in the second Republic, was forcefully deported from Nigeria to Niger Republic by the then Minister of Internal Affairs in the belief that the said applicant (Shugaba) was an illegal alien. Shugaba believed that a wrong had been done to him. He sought a judicial remedy and a declaration of his right as a Nigerian citizen who had been illegally deported. In its judgment, the court held that the deportation of the plaintiff applicant was unconstitutional and illegal. The deportation was set aside because a Nigerian citizen cannot be deported from his country. Section 25(1) of the 1999 Constitution confers citizenship on:

"ever y person born in Nigeria before the date of independence either of whose parents or any of whose grandparents belongs or belonged to a community indigenous to Nigeria."

Shugaba was born in Nigeria before independence and so is a Nigerian citizen by birth and the action of the Minister of Internal Affairs was an administrative wrong committed against Shugaba.

A declaration of rights is binding on all persons, bodies, and government in Nigeria. Government usually obeys declaratory judgments not because of any coercive orders of the court but in order to ensure that rule of law prevails.

3.2 THE SCOPE AND UTILITY OF THE REMEDY

Declaration is used to test the validity of a legislation. The remedy is particularly ideal where the aggrieved party is desirous of challenging the validity of a statute with a view of having such act declared a nullity. See Independent National Electoral Commision v. Balarade Musa (2003) 3 NWLR (pt 806) 72; (2003) 10 WRN 1., A.G of the Federation v. AG of Abia State & 35 Ors (2003) 6 NWLR (pt. 763)264; (1003)6 WRN 1

Secondly, the remedy is particularly ideal where the aggrieved party intends to challenge the validity of a decision or act of another party or public authority with a view of having such act annulled. With regard to the annulment of illegal acts, the court has consistently held that statutory bodies must act within the scope of the powers granted to them by the constitutive enactment.

Most of the decisions within this segment arose f rom contracts of public employment and the exercise of compulsive powers by government and other public authorities. It is also used to challenge an abuse of excess of power. See Adeniyi v. Governing Council of Yaba College of Technology (1993) 6 NWLR (pt. 300) 426. See also Director, State Security Service v. OlisaAgbakoba (1999) 3 NWLR (pt. 595). 425. In both cases, the acts of the defendant were declared null and void by the courts.

Thirdly, declaration is a ready tool employed to settle disputed point of law. See Attorney – General of Bendel State V. Attorney- General of the Federation & Ors (1981) ANLR 85, (1981) 10 S.C. 10 1.

Fourth, it may be use by a public body to secure a judicial ruling for the purpose of resolving doubts about its powers rather than act in peril.

Fifth, declaration also serves as a guide to check abuse and usurpation of power by authorities. See Emuze v. Vice – Chancellor, University of Benin & Anors (2003) 10 NWLR (pt. 828) 378.

Sixth, although it is settled law that a declaratory judgment is not enforceable, it is nonetheless a basis for the enforcement of an existing right. In fact, there is no other area of public law in which declaration is sought more than the enforcement of personal rights. See Director, SSS (Supra).

Seventh, it is useful in settling budding of disputes and it is a remedy in administrative law where it is difficult to pick on a right remedy of the remedy, as already stated, is inadequate.

3.3 AWARD OF DAMAGES

Damage is the injur y or loss suffered by a person as a result of the breach of his right by another person. An award of damages is the monetar y compensation which court usually orders a defendant to pay to the plaintiff as reparation of indemnity for the injury or loss by the plaintiff.

The damages may be Special damages or General damages.

Special damages are damage which is not presumed by law but must be expressly or clearly pleaded and proved, for the court to award. While general damage on the other are damages which the law presumes have resulted from the harm suffered by the plaintiff and which the plaintiff need not specifically set out in his pleadings. Example of such damages includes: Assault and battery; Loss of liberty; such as arrest, or detention Sufferings; Pain; and Nervous shock, caused for instance, by an illegal detention, act or omission.

4.0 CONCLUSION

When a person believes that an administrative wrong has been committed against him, he is at liberty to seek redress in form of r emedies judicially or non-judicially.

An aggrieved person who seeks judicial remedies is prepared to engage the court system to examine the wrong that is done against him with a view to seeking a declarationthat the wrong has indeed been committed followed by a judicial remedy.

The courts are firm in Nigeria in awarding r emedies in the cases of established wrongful acts by public authorities. Shugaba v. Minister of Internal Affairs, **Adeniyi v. Governing Council, Yaba College of Technology and The Director, SS v. Agbakoba are some of those cases where the court affirmed that wrongful acts** have been committed against plaintiff applicants.

Declaratory judgments play a lar ge part in private law and are a particularly valuable remedy for settling disputes before the reach the point where a right is infringed. In conclusion, the purpose of declarator y judgment is to make the parties to an action aware of their legal rights if those rights ar e not entirely clear to them up front.Declaratory judgment s is final order which declare the rights of the parties.

5.0 SUMMARY

The constitution is the grand norm and mother of all laws in Nigeria. Citizens who feel that administrative wrongs have been committed against them are at liberty to employ judicial or non-judicial means to settle the wrong of the wrongf ul party or making restitution. Cases abound in Nigeria legal system where the courts which are the principle actors in declaring judicial remedies for wrongful administrative acts have been firm where the wrongful acts clearly violate the provisions of the Nigerian Constitution and the rights of the plaintiff applicants. Examples of such declarations include Shugaba v. Minister of Internal Affairs, Adeniyi v. Governing Council, **Yaba College of Technology and The Director, SS v. Agbakoba.**

6.0 TUTOR- MARKED ASSIGNMENT

With the aid of decided cases, discuss the scope of declarator y judgment.

7.0 REFERENCE AND FURTHER READINGS

1. Iluyomade B.O. &Eka B.U. (1992). Cases and Materials on Administrative Law in Nigeria (2nd Ed.) Obafemi Awolowo University Press, Ile Ife.
2. Malemi, E. (1999). Administrative Law (3rd Ed), Princeton Publishing Co, Lagos.
3. The 1999 Constitution of the Federal Republic of Nigeria.

INJUNCTIONS

1.0 INTRODUCTION

An injunction is an order of the court prohibiting or restraining a person or body from doing a specific thing. It is a judicial process by which one who has invaded or is threatening to invade the rights of another is restrained from continuing or commencing such wrongful act. It can be issued against any person, without any exception, whether: a private individual, or private body, company, government, any public officer, or public authority.

An injunction may be granted in any kind of court proceedings to prohibit any kind of thing from being done, and maintain the status quo until the matter is heard.

An order of injunction is a remedy for an act which has already been carried out. See A.G. Bendel State v. A.G. Federation (1981) 3 NWLR 1 SC.

An injunction is usually granted where there is a serious issue or question to be tried in a matter, that is, the claim is not frivolous and vexatious. Also when damages, (monetary compensation) will not be adequate remedy if the injunction is not granted to the applicant

An injunction is a preventive remedy use to prevent a statutory body from doing an ultra vires act, apart from the cases where it is available against private individuals e.g. to restrain the commission or torts, or breach of contract or breach of statutory duty. An injunction can be issued to both administrative and quasi-judicial bodies.

2.0 OBJECTIVES

The objective of this Unit is that:

The student should be able to understand the meaning of an Injunction,

The various types of injunction and

Conditions for grant of injunction

3.0 MAIN CONTENT

3.1 INJUNCTIONS

An injunction is an order of the court prohibiting or restraining a person or body from doing a specific thing. It is a judicial process by which one who has invaded or is threatening to invade the rights of another is restrained from continuing or commencing such wrongful act. It can be issued against any person, without any exception, whether: a private individual, or private body, company, government, any public officer, or public authority.

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An injunction is a preventive remedy use to prevent a statutory body from doing an ultra vires act, apart from the cases where it is available against private individuals e.g. to restrain the commission or torts, or breach of contract or breach of statutory duty. An injunction can be issued to both administrative and quasi-judicial bodies.

3.2 CONDITIONS FOR GRANT OF INJUNCTION

An injunction will be granted to protect vested legal rights. Wher e a person's legal right has been invaded and there is a continuance of such invasion, he is entitled to an injunction. See Ibenwelu v Lawal(1971) 1 All N.L.R. 23.

An injunction will not be granted where the act complained of has been completed or the proceedings now in court have become stale or the order will not be enforceable. Injunction may not be granted where specific remedied are provided of some other remedies would be equally or more efficacious.

3.3 TYPES OF INJUNCTION

An injunction can thus be broadly classified as Mandatory and Prohibitory or positive or negative.

Mandatory injunction.

The mandatory injunction may be taken as a command to do a particular act to restore things to their former condition or to undo, that which has been done. It prohibits the defendant from continuing with a wrongful act and also imposes duty on him to do a positive act. For example, construction of the building of the defendant obstructs the light for which the plaintiff is legally entitled. The plaintiff may obtain injunction not only for restraining the defendant from the construction of the building but also to pull down so much of the part of the building, which obstructs the light of the plaintiff. The court may therefore in its discretion grant an injunction to prevent the breach complained of an also to compel performance of the requisite acts.

Prohibitory Injunction

Prohibitory injunction forbids the defendant to do a wrongful act, which would infringe the right of the plaintiff. A prohibitory injunction may be interim, interlocutory or perpetual injunction.

Interim injunction

An order of interim injunction is an order of injunction usually granted to maintain the status quo for a shor t period of time. It is usually granted by way of motion ex parte application brought by the applicant to maintain the status quo from damage, or further damage. The person against whom the order is sought is not usually put on notice by the service of the court process on him.

An interim injunction will not be granted unless the applicant gives a satisfactory undertaking as to damages, except under special circumstances of the case which may render such undertaking unnecessar y.

Interlocutory injunction

An interlocutory injunction is an injunction granted upon motion on notice served on the party against whom the order of injunction is sought, so that he may appear in

court for its hearing. It is made to preserve the matter in dispute or maintain the status quo pending the final determination of the suit.

See Kotoye v. Central Bank of Nigeria (1989) 1 NWLR pt 98, 419 SC., Obeya Memorial Hospital v. A.G. Federation (1987) 3 NWLR pt 60, p 325

In an application for interlocutor y injunction the court has to decide a number of important factors which include:

The applicant must show that there is a serious question to be tried at the hearing of the case.

The applicant must show that balance of convenience is on his side

The applicant must show that damages cannot be an adequate compensation for his damage or injury

Perpetual injunction

This is an injunction which is granted after the final determination of a case to prohibit the threatened act for all time. It prohibits in perpetuity the doing the thing specified in the order.

When an injunction or any other of court has been granted against a person or body, any defiance or breach of it is a contempt of court.

4.0 CONCLUSION

In view of the aforesaid, it can be concluded that grant of injunction cannot be claimed by the party as a matter of right non can be denied by the court arbitrarily.

However, the discretion to be exercised by the court is guided by the principles mentioned hereinabove and it depends on the f acts and circumstances of each case.

The party seeking relief not only has to establish prima facie case but also the irreparable loss that would be caused in the case of denial to grant relief and that the balance of convenience lies in his favour

5.0 SUMMARY

Injunction as a widely accepted and discretionary order of the court has gained currency administration of justice in Nigeria and is also a prevalent and applicable in diverse aspects of human endeavor and transactions. However, it is pertinent to note that injunction will not be granted where it is not sought for or where it would cause hardship to a third party neither will it be granted in favour of a volunteer as equity will not assist a volunteer.

Finally, though injunction is an equitable remedy, the court must act judiciously in granting or refusing the injunction and must necessarily take into consideration

amongst other things conduct of the parties. As no two cases are the same, injunctions should be granted to the peculiar facts of each case, but in any circumstance, justice must not only be done but must be seen to be done.

6.0 TUTOR- MARKED ASSIGNMENT

Discuss the various type of injunctions mentioned in this unit.

7.0 REFERENCE AND FURTHER READINGS

P.A Oluyede: Nigerian Administrative law (2007)
Niki Tobi: The law of interim injunction in Nigeria

NON-QUASI JUDICIAL
TRIBUNALS/INQUIRY

1.0 INTRODUCTION

The administrative in the dischar ge of its functions of executing and implementing laws will usually be involved in processes of exercising judicial or quasi-judicial powers for findings of facts, application of law to facts, and the determination of the rights and obligation of persons. These processes may take the form of administrative

disciplinary procedure; panel of inquiry; administrative tribunal; statutory tribunal; special tribunal; inf erior court; domestic or autonomic bodies; and such other bodies. These processes are known as administrative adjudication, administrative justice, or administrative of judicial tribunals or simply as tribunal.

2.0 OBJECTIVES

At the end of this unit students should:
be able to define administrative adjudication and its classifications
know the reasons for administrative adjudication, and
also understand what judicial inquiries are.

3.0 MAIN CONTENT

3.1 ADMINISTRATIVE TRIBUNAL

Tribunals are bodies established outside the structure of ordinary courts to adjudicate disputes that involve the government as a party on matters pertaining to governmental functions. The dispute could be between two or more government agencies, or between government agencies or between one or more individual parties. Hence, the typical tribunal, like an ordinary court, finds facts and decides the case by applying legal rules laid down by statute or legislation. In many respects, the tasks performed by tribunals are similar to that of performed by regular courts. As the jurisdiction of these tribunals are restricted to adjudicating disputed cases involving administrative agencies as parties in their governmental functions based on the principles, rules and standards set under administrative law, it seems appropriate to call them with the designation "administrative tribunals" instead of simply "tribunals."

Tribunals generally are special adjudicator y or fact finding bodies set up outside the normal hierarchy of cour ts, as part of the machinery of justice. This is recognized by Section 36(1) of the 1999 Constitution that

"In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure independence and impartiality."

3.2 CLASSIFICATION OF ADMINISTRATIVE ADJUDICATION IN NIGERIA

Administrative adjudication is difficult if not impossible to classify. Various attempts at classifying administrative adjudication have led many authors to subjecting the

concept of administrative adjudication to division and subdivision of the concept: a symptom of fluidity of
the subject matter and its resistance to proper compartmentalization. The result is that many authors seek to classify the concept in different ways. So what we have is cacophony of classifications through which one must meander in attempt to discover a coherent understanding of the subject at hand.

The difficulty at classification lies in the fact that sometimes it is difficult to classify the various acts of administrative bodies. It is the characteristics of the act rather than the appellation that determines the proper understanding of the act and then the classification.

The challenge with classification is the difficulty encountered in deciding the particular act being carried out which has its roots in the breakdown of the doctrine of separation power in the face of onslaught of administrative realities. Sometimes it is difficult to determine when a matter has gone from the realm of mere inquiry to adjudication with all the attendant consequences.

Administrative adjudication has been classified into inquiries and tribunals.

The various forms of formal administrative adjudication that can be identifiable in Nigeria are:

- Judicial inquiries
- Statutory/Administrative Tribunals
- Domestic or Autonomous Bodies
- Other Adjudicatory Bodies

3.2.1 JUDICIAL INQUIRIES

Just as the name sounds, formal judicial inquiries are formal inquiries that ar e basically judicial or quasi-judicial in nature. Judicial inquiries can also be described as formal judicial tribunal of inquiries. The formal nature of judicial inquiries is that it statutorily provided for. The basic law that provided for judicial inquiries is the Tribunal of Inquiry Act. The law empowers the President to, whenever he deems it desirable by instrument under his hand (hereafter in this Act referred to as "the instrument") constitute one or more persons (hereafter in this Act referred to as "member" or members") a tribunal to inquire into any matter or thing or into the conduct or affairs of any person in respect of which in his opinion an inquiry would be for the public welf are; and the proper authority may by the same instrument or by

an order appoint a secretary to the tribunal who shall perform such duties as the members shall prescribe.

3.2.2 STATUTORY OR AUTONOMOUS BODIES

Statutory or administrative tribunals are as their name suggests are judicial bodies crated by statutes for the purpose of adjudication. One common thread that runs through all statutory administrative tribunals is that they are created by statutes and are usually executive bodies. Thus their memberships, appointments and administration are all under the purview of the executive arm of the government. Although some of the tribunals may have judges as their members, they may still be categorized as executive bodies. A good example includes the Code of Conduct Bureau established under the 1999 Constitution and Electoral Tribunals.

A tribunal can also be defined as a person or body exercising judicial and quasi-judicial functions outside the r egular court system. It is a special court consisting of a person or a panel of persons who are officially chosen by government to look into a problem of a particular kind or perform such judicial or quasi-judicial functions as may be assigned to it. Thus, a tribunal is a body with judicial or quasi-judicial functions usually set up by government under statute and existing outside the hierarchy of the regular court system to do the following:

- Investigate matters of public importance or
- To hear and determine cases, matters or claims of a particular kind between parties whether such parties be persons, bodies or government.

In the case of Onuoha V Okafor (1985) 6 NCLR 503 pt 509 Oputa CJ (as he then was) explained the nature of a court or tribunal as envisaged under the fair hearing provisions of the Nigeria Constitution and said

> "The terms, court or tribunal … is usually used to indicate a person or body of persons exercising judiciary functions by common law, statute, patent, charter, custom, etc whether it be invested with permanent jurisdiction to determine all causes or a class or as and when submitted or to be clothed by the state or the disputants with merely temporar y authority to adjudicate on a particular group of disputes"

One difference between judicial inquiries and statutory tribunal is that a judicial tribunal of inquir y is usually appointed by government pursuant to the Tribunals and

Inquiries Act or its equivalent laws in the states or under other specific statute enacted for that purpose while statutory tribunals are usually set up under a particular statute or law.

Generally, administrative tribunals are subject to the courts with appeals emanating from their decisions to the High Court or Court of Appeal. While some of them are inferior to the High Court, others enjoy concurrent jurisdiction with the High Courts. Generally, the High Court has power of judicial review over the findings of a tribunal that is inferior to them. Therefore, statutory or ouster provisions that an order or determination of a tribunal shall not be called into question in any court do not prevent the removal of the proceedings into the High Court by an order of certiorari or the powers of High Court to make an order of prohibition, or mandamus or otherwise review the findings of a tribunal. However, the statutes establishing a tribunal may provide that all appeals from the decision of the tribunal shall lie directly to the Court of Appeal especially where the tribunal is the equivalent of a High Court in which case, the Court of Appeal is the relevant court to review the findings of such tribunal.

3.2.3 DOMESTIC OR AUTONOMOUS BODIES

Domestic or autonomy bodies are independent tribunals established under chartered professional and self-governing bodies which are usually outside the mainstream government set up. They are autonomous or domestic tribunals set up under the laws that established or chartered professional bodies. Thus domestic or autonomous types of administrative adjudication are set by charted professional bodies pursuant to the extant laws that established or chartered the professional bodies.

A good example of domestic tribunal is the Institute of Chartered Institute of Taxation of Nigeria (CITN) Disciplinary Tribunal. The Chartered Institute of Taxation of Nigeria Act sets up the Disciplinary Tribunal and provides that the duty of considering and determining any case of an alleged professional misconduct of member of the Institute shall lie with the Chartered Institute of Taxation of Nigeria Disciplinary Tribunal otherwise known as the "The Tribunal" as set up in accordance with the provision of the Act. The function of these domestic bodies is to meet the regulatory needs within the profession or industry concerned.

Apart from the various categories of formal adjudicatory bodies afore mentioned, there are also other adjudicatory bodies that also perform administrative adjudication.

These other bodies are grouped together as they are very difficult if not impossible to categorize.

The functions of these public officers as provided by statutes are usually judicial as they are empowered to conduct quasi-judicial proceedings. Apart from internal discipline, there are also other arms of f ederal agencies that are empowered to carry out quasi-judicial or adjudicatory functions in the course of their duties. Pursuant to the Investment and Securities Act the Securities and Exchange Commission (SEC) established the S.E.C. Administrative Proceedings Committee (APC) which is an in house adjudicator y arm of the Securities and Exchange Commission to try disputes arising from Capital Market operations. The APC also has a power to impose sanctions. Appeal from the APC lies to the Investment and Securities Tribunal.

3.3 REASONS FOR CREATION OF ADMINISTRATIVE TRIBUNALS

The main reasons for the creation of administrative tribunals may be identified as:

Court Congestion and Speedy trials

Use of Expert or Technical Knowledge Administrative tribunals are filled by a panel of persons vested with special skill and expertise related to the complicated dispute they adjudicate. Whereas ordinary court judges are generalists in law and lack such expertise knowledge on the needs of the administration in this technologically advanced world.

Administrative adjudication is more convenient and accessible to individuals compared to ordinary courts.

The process of adjudication in administrative agencies is flexible and informal compared to the rigid, stringent and much elaborated ordinar y court procedures.

3.4 PANEL OF INQUIRES

In this complex technological and democratic world, in addition to tribunals that investigate facts and apply laws to resolve specific administrative disputes, the formation of inquires that conduct fact and/or legal findings and provide recommendation to ministers or other agency heads to take policy considered action based on the findings of facts is becoming a paramount importance. Inquiries are concerned with fact-finding directed towards making recommendations on questions of policy. The statutory inquiry is the standard device for giving a fair hearing to objectors before the final decision is made on some question of government policy affecting citizens' rights or interests.

3.5 DIFFERENCE BETWEEN TRIBUNALS AND INQUIRES

The typical tribunal finds facts and decides the case by applying legal rules laid down by statute or regulation. The typical inquiry hears evidence and finds facts, but the person conducting it finally makes a recommendation to a minister as to how should the minister act on some questions of policy.

The tribunal needs to look no further than the facts and the law, for the issue before it is self-contained. The inquiry is concerned with the local aspects of what will usually be a large issue involving public policy which cannot, when it comes to the final decision be resolved merely by applying law.

Tribunals are normally employed where cases can be decided according to rules and there is no reason for the minister to be responsible for the decision. Inquiries are employed where the decision will turn upon what the minister thinks is in the public interest, but where the minister, before he decides, needs to be fully informed and to give fair consideration to objections… Where an appeal has to be decided by a minister, he must necessarily appoint someone to hear the case and advise him.

In a nutshell, inquires, unlike tribunals, cannot pass binding decisions but, as their name indicates they inquire or search for facts by conducting preliminary fair hearing on objections raised against proposed administrative actions. Based on the results of the fact finding, the inquiry recommends the concerned minister or agency to take or not to take a certain course of action, although the latter may not be bound by the recommendation involving policy considerations.

4.0 CONCLUSION

Administrative adjudication has developed considerably and there have come into existence a good number of administrative tribunals, boards and other bodies which exercise judicial, quasi-judicial or adjudicatory functions conferred upon them by various statutes. In addition, there are professional or vocational bodies which exercise disciplinary control over their members.

5.0 SUMMARY

Today, administration is not confined to the execution and maintenance of law, it goes further to play a significant role in initiating and formulating policy decisions. The bulk of the laws enacted by the legislature are initiated and drafted by the executive department. The reason is quite clear. He who wears the shoe knows where it pinches

and calls for flexibility. The administration concerned with the day to day application of the existing laws knows best what defects or shortcomings there are in the legal systems and what modifications are necessary to update the system and make it efficient and defective in action.

6.0 TUTOR MARKED ASSIGNMENT

Discuss the various types of administrative adjudicatory bodies mentioned in this unit.

7.0 FURTHER READINGS/REFERENCE

1. Kenneth Culp Davis, Administrative Law and Government (Minnesota: West Publishing Co., 2nd Edition 1975).
2. StephenG.Breyer&RichardB.Stewart, Administrative Law and Regulatory Policy (Toronto: Little, Brown and Company,1979).
3. William Wade &Christopher Forsyth, Administrative Law (Oxf ord, UK: LarendonPress,1994).

MODULE 5

UNIT 1 OMBUDSMAN

1.0 Introduction

An ombudsman or public advocate is usually appointed by the government or by parliament, but with a significant degree of independence, who is charged with representing the interests of the public by investigating and addressing complaints of maladministration or a violation of rights. The institution has also been likened to a mechanism, an essential feature of democracy (Enika Hadjari). Since its evolution, the institution is present in almost all countries, with different features such as Defender of Justice; parliamentar y Commissioner; Civil Defender. In some countries an Inspector General, Citizen Advocate or other official may have duties similar to those of a national ombudsman, and may also be appointed by a legislature. Below the national level an ombudsman may be appointed by a state, local or municipal government. Unofficial ombudsmen may be appointed by, or even work for, a corporation such as a utility supplier, newspaper, NGO, or professional regulatory body. The typical duties of an ombudsman are to investigate complaints and attempt to resolve them, usually through recommendations (binding or not) or mediation. Ombudsmen sometimes also aim to identify systematic issues leading to poor service or breaches of people's rights. At the national level, most ombudsmen have a wide mandate to deal with the entire public sector, and sometimes also elements of the private sector (for example, contracted service providers). In some cases, there is a more restricted mandate, for example with particular sectors of society. More recent developments have included the creation of specialized Children's Ombudsman and Information Commissioner agencies. In some jurisdictions an ombudsman charged with handling concerns about national government is more formally referred to as the "Parliamentary Commissioner" (e.g. the United Kingdom Parliamentary

Commissioner for Administration, and the Western Australian state Ombudsman). In many countries where the ombudsman's responsibility includes protecting human rights, the ombudsman is recognized as the national human rights institution. The post of ombudsman had by the end of the 20th century been instituted by most governments and by some intergovernmental organizations such as the European Union.

2.0 Objectives of the Study

At the end of this unit, student should be able to

Analyze the operation and main features of the institution of the Ombudsman
Consider the role and functions of the ombudsman;
examine the challenges facing the effectiveness of the ombudsman in Nigeria

3.0 Main Content

The term Ombudsman is Swedish in origin and means "representative". The Swedish term is said to be etymologically gender inclusive but in English Language, the term is often modified as "ombudsperson" and "ombuds office". In a state, Ombudsman constitutes "the ears of the people". The institution is the ears of the people because it serves as a mechanism of redressing the grievances of citizens in a political system. It is one of the two methods of enforcing accountability that are showing some promises of effectiveness in African countries that accept them. It is noteworthy that only the Ombudsman institution has been widely adopted by a significant number of African states as an instrument for making government responsible and accountable to the governed. By the 1980s, Ombudsman-like institutions had been established in three other sub-Saharan African countries and by 2005, the number of countries that adopted it had increased to twenty-six and they spread across Central, Eastern, Southern and Western Africa.

3.1 Historical Evolution and Concept of Ombudsman

The concept of Ombudsman, with its current characteristics, owes its origin from Sweden; however, its tr aces may be found in ancient history. The History of the Ombudsman can be linked with the concept of social justice which predates the birth of John Locke (1632-1704). The Swedish legislature first created the position of

ombudsman in the early 1800s; the liter al translation of ombudsman is "an *investigator of citizen complaints". This official was considered to be a person of* "known legal ability and outstanding integrity" and was chosen by the Swedish parliament to serve for four year term. This institution has been adopted by many countries and by some intergovernmental organizations such as the European Union.

The genesis of the institution may also be found in Sparta and Athens, where the office of the "Eflore" and the "Euthynoi", r espectively controlled the activities performed by the officials of government and municipal actions. The Romans installed an officer called the 'tribune' to protect the interests and rights of the plebeians from the patricians. In China, during the Yu and Sun dynasty, an officer called 'Yuan' was appointed to report the voice of the people to the Emperor and to announce the Emperor's decrees to the people. In the Persian Empire, King Cyrus charged the "O Olho de Rei" with the duty to supervise the activity of all his officials. During the 15th century, the Council of the Ten, in Venice, had the mandate to control the bureaucratic excesses committed in the city. In this regards, Dr. Pickle, Director General of the Austrian Ombudsman's Office made the following observation in his renowned paper: -

> "Institution to investigate complaints can only be seen in the context of public administration; hence their history is also the history of public administration as a whole. It goes back to the Koran. In the Koran itself the term 'administration' is not used, but in many of its verses the principles of political and administrative system are expounded. Justice is one of the basic principles of Islamic Ideology.

Before the times of Prophet Muhammad (PBUH) there was no administration in the proper sense of the word. It was the Prophet who first introduced administrative authorities. He appointed governors of the provinces, judges and tax collectors. They were all accountable to the Prophet. We have no report of complaints about these institutions. As essential principles of government and administration, the Prophet bequeathed trust, justice and effectiveness as well the combination of authority with responsibility.

It was Omar, Second Caliph of Islam, who created the Institution of Mohtasib. Mohtasib means a person, who conducts accountability. Its function was to be a guardian of public morals in many fields of life, especially in the towns and above all in the market place. He was the market supervisor, the Sahib as-sup, as well as the settler of disputes.

He enjoyed complete independence and functioned within the framework of an institution called 'hisbah'. Its role was to ensure the observance of religious principles in daily life. In Egypt this institution existed up to the middle of the 19th century. An interesting fact in this context is that the institution of 'hisbah' and its functions was also adopted by the Crusaders in Jerusalem; they even used the even used the Arab word 'Mohtasib' although they changed it into 'Mathessep'.

Hazrat Ali, forth Caliph of Islam, in his famous epistle to Malik Ashtar, the Governor of Egypt, stressed the very fact in the following manner: -

> "O*ut of your hours of work fix a time for complaints and for those who want to approach you with their grievances. For this purpose you must arrange public audience for them, and during this audience, for the sake of God, treat them with kindness, courtesy and respect. Do not let your army and police be in the audience hall at such a time so that those who have grievances against your government may speak to you freely, unreservedly and without fear. All this is a necessary factor for your rule because I have often heard the Prophet (Peace of God be upon him) saying: "that nation or government cannot achieve salvation where the rights of the depressed, destitute and suppressed are not guarded, and where mighty and powerful persons are not forced to accede to these rights".*

During the Abbasids era (750-847), complaint-handling agencies called "Diwan-al-Mazalim" were established. Its function was to examine complaints brought by the public against government officials. The institution was headed by a senior judge responsible for examining the grievances.

During his exile in Turkey, the King of Sweden, Charles XII, observed the working of Dewan-i-Mazalim. On restoration, the King ordered to establish a similar institution

in Sweden. In Sweden the office was institutionalized in 1809 with the title of *Justitieombudsman. According to Ibrahim al-Wahab*

> *"Of course one could not draw definite conclusion regarding the origin of any institution anywhere…. But being aware of the history of complaint handling in the Islamic law system and the fact that during the time of King Charles XII in Turkey this system was existing, the influence seems to be evident".*

'Ombudsman' is an old Swedish word that has been used for centuries to describe a person who r epresents or protects the interests of another. The word was originally derived from medieval Germanic tribes where the term was applied to a third party whose task was to collect fines from remorseful culprit families and give them to the aggrieved families of victims. The part word, 'man' is taken directly from Swedish (the old Norse word was 'umbodhsmadr') and does not necessarily mean that the holder be of the male gender. At present, there are several women, who are part of ombudsman community worldwide.

3.2 Contents/Features of the Ombudsman

What is the underlying principle for the establishment of the office of the ombudsman?

The original purpose for adopting the Ombudsman system was to provide the individual citizens with an office wher e they could lodge complaints against administrative decisions and through which they could get their grievances redressed.
The Ombudsman system performs two significant functions at which all developing countries are aiming – to promote the general efficiency of administration and to bridge the gap between the government and the people.

The main purpose has become promotion of better public administration.

Sir Guy Powles quoting from John Milton, wrote more than 350yeasrs ago in the middle of the English Civil War that: 'For this is not the liberty which we can hope, ***that no grievance should ever arise in the commonwealth – that let no man in the world express; but when complaints are freely heard, deeply considered, and***

speedily reformed, there is the utmost bond of civil liberty attained that wise men look for'.

In considering the scope of the function of the ombudsman, there is the broader approach which took account of the special characteristics of this office and contrasted it with the characteristics of the court. Louis Marceau, the Quebec Public Protector makes a valuable comment in support of this approach that:

'A court whose sessions are public and decisions final cannot proceed without strict receivability conditions or fairly elaborate norms of procedure. It cannot give up all the rules of evidence nor free itself from basic formalism, any more than it can in principle do without the auxiliary role of attorneys. Nor can it formulate conclusions exceeding the specific cases it handles. In contrast, because he has no coercive power and can only render opinions which he hopes will be shared by the authorities, and because his investigations are informal, direct and private, the Ombudsman can easily be more available, eliminate all formalities, complete files on his own, discuss solutions freely and, finally, go beyond specific cases if necessary to influence administrative policy or even the regulation or legal text concerned. The Ombudsman has certainly not the powers of a court since his action is more or less comparable to that of a conscience but in a way he can go further and, in any case, he does not seek to fill the same need'.

However, Wade draws attention to the fact that the Ombudsman is not a substitute for the ordinary courts and tribunals. He therefore further asserted that the ombudsmen should not investigate cases where the person so aggrieved has or had a remedy in court of law or a right of appeal.

In summary, an Ombudsman is an official usually appointed by the government, parliament, or legislature who is charged with representing the interest of the public by investigating and addressing complaints of maladministration or violation of rights.

3.2.1. Features of an Ombudsman

Imhanlahimhin, in his publication identifies the salient features of an ideal ombudsman institution to include the following:

1) Professional preoccupation with complaints handling: The main functional responsibility of the ombudsman is with complaints handling, hence the need for expertise of the ombudsman in terms of having the requisite knowledge of his work.
2) Freedom of Action: The Ombudsman enjoys freedom of action as he is generally allowed to carry out his functions within the defined jurisdiction.
3) Speedy Disposal of Complaints: Speedy action is expected to be a major advantage of any ombudsman in the true expression of "justice denied" hence the temporal dimension is given due attention by the ombudsman.
4) Informality and Non-bureaucratic: The ombudsman is not bound by strict officialism as he is allowed to be informal in its operations or procedures if need be.
5) Accessibility: The services of the Ombudsman is provided at little or no cost to the genuinely aggrieved person so as to make the services of the institution available to all complainants irrespective of strata in the society.
6) Publicity: It is generally agreed that an ombudsman needs wide publicity for people to know about its existence and activities. Publicity plays a vital role in the dissemination about the existence, responsibilities and functions of the ombudsman to the people.
7) Persuasiveness: Persuasion is the favoured option of a true ombudsman rather than imposition of sanctions.
8) Ombudsman as a moderator: The ombudsman acts as a moderator or facilitator in cases of administrative injustice rather than an arbiter. He protects the citizens from abuse of administrative power and the administrations from false allegations by the citizens.
9) Independence: The ombudsman is usually regarded as an independent officer principally because his appointment is guaranteed against arbitrary termination and his emolument is provided for in the consolidated revenue fund. Either the President or the Parliament appoints him.

3.3 Definition of the Concept of Ombudsman

The International Institute of Ombudsman defines the concept of Ombudsman thus:

> *"An office provided by the constitution or by action of the legislature or parliament and headed by an independent, high-level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against government agencies, officials and employees, or who acts on his own motion, and who has the power who investigate, recommend corrective action and issue reports."*

This internationally acclaimed definition of Ombudsman indicates quite clearly that the institution should be set up by the legislature rather than the executive or judicial arms of government; perhaps this is informed by the idea that it's the legislature that is constitutionally empowered to check the exercise of the executive or administrative powers in the society.

To Oluyede, he asserts that the Public Complaints Commission, Nigeria's ombudsman, was created to examine and deal with cases of undue influence, negligence, error or mal-administration by government officials and staff officials and staff of parastatals.

3.4 Ombudsman In Nigeria: An Overview Of The Public Complaints Commission

3.4.1. Origin of the Public Complaints Commission

In 1969, Mr. Justice Ayoola recommended in his Report on Civil Disturbances in Western State of Nigeria that: Government should consider the possibility of appointing a Public Complaint Commissioner on the same basis as Parliamentary Commissioner in Britain, whose duties would include the spotlighting of public grievances, receipt of complaints of a public nature and so on. The Government of the Western State then was unable to accept this recommendation on grounds of cost and the duplication of efforts.

Subsequently, one of the first legislations creating the institution of ombudsman in Nigeria dates back to 1974 when the defunct North Central State Government promulgated an edit No. 5 of 1974 creating what then came to be known as the Public Complaints Bureau in the Northern part of Nigeria.

The recommendations of the Udoji Public Service Review Committee to examine the organization, structure and management of the public service and recommend reforms where desirable, brought up the establishment of Public Complaints Commission (PCC) in 1972 which the Federal Military Government accepted. The enabling Decree N0. 31 of 1975 has been incorporated in the 1990 LFN as Public Complaints Commission Act Cap 337(now Cap P37 LFN 2004) ("the Act) &Section 273(5) of the 1999 Constitution of the Federal Republic of Nigeria. The Udoji Commission made a strong case for the setting up of an ombudsman institution. As the commission puts it:
"In the course of our inquiry, a number of persons complained that they have suffered *one form of injustice or another in the hands of public officers. How many such cases there have been that are never brought to light and in which aggrieved persons may have in silence may never be known. We believe therefore that the need exists in Nigeria for the institution of an ombudsman"*

3.5 Reasons For Its' Establishment

The major purpose of establishing the PCC was the need to correct the terrible human rights abuses prevalent among political/corporate entities; where laws are like cobwebs where the small flies are caught but the big ones break through. In other words, it was geared towards ensuring good governance, administrative justice and respect for human rights.
Secondly, the absence of a specialized or small claim courts system where minor claims and relatively less significant issues and grievances, can be heard.
Thirdly, litigation is often slow, cumbersome, complex, costly and frightening to the average person.
Finally, the attitude of superiority and insolence of office which often lead to inadequate consideration of the complaints of members of the public. In the words of D.C. Rowat many times officials resort to a:

> "Too closed fisted approach towards minor claims and a disposition to apply *pre- determined rules of practice rather than exercise their discretion on the merit of each case.*

3.6 Powers of the Public Complaints Commission:

The Public Complaints Commission is charged with the following responsibilities:

(i) Receiving complaints from the general public and investigating such complaints if they are within the terms of reference of the commission.
(ii) Recommending the outcome of its investigations to the appropriate body for implementation.
(iii) Initiating investigations into matters of public or general interests.
(iv) Making recommendations to the appropriate body including the government on the need for a ruling or modifying existing law based on the result of it self-initiated investigation or complaint lodged by citizens.

Section 5 (2) of the Act provides that a commissioner shall power to investigate either on his own initiative or following complaints lodged before him by another person, any administrative action taken by:
(a) Any department or ministry of the federal or any state government.
(b) Any department of any local government authority (however designated) set up in any state in the federation.
(c) Any statutory corporation or public institution set up by any government in Nigeria.
(d) Any company incorporated under or pursuant to the companies Decree of 1968 whether owned by any government aforesaid or by private individuals in Nigeria or otherwise whosoever or,
(e) Any officer or servant of any of the aforementioned bodies.
In order to protect the citizens of Nigeria as well as any person President in Nigeria against any act of administrative injustice committed by any of the above persons or bodies, every public complaint commissioner is expected to investigate administrative acts, which are or appear to be:
(a) Contrary to any law or regulation.
(b) Mistaken in law or arbitrary in the ascertainment of fact,
(c) Unreasonable, unfair, oppressive or inconsistent with the general functions of administrative organs,
(d) Improper in motivation or based on irrelevant consideration;
(e) Unclear or inadequately explained, or otherwise objectionable..

The following additional provisions further strengthen the powers of the Public Complaint Commission:

(a) any commissioner shall have access to all information necessar y for the efficient performance of his duties... and... may visit any premises belonging to any person or body.....

(b) a commissioner shall have power to summon in writing any person who in the opinion of the commissioner is in a position to testify on any matter before him to give evidence in the matter and any person who falls to appear when required to do so shall be guilty of an offence...

In the exercise of the powers conferred upon a commissioner by this section, the commissioner shall not be subject to the direction or control of any other person or authority.

Some of the Commissions' achievements are enumerated below:

Getting the consent of the Minister of FCT to construct pedestrian bridges across strategic, densely patronized junctions within the FCT, such as Area 1 Garki, Wuye Junction, Bannex Junction and Nicon Junction.

The PCC interventions at Garam Village in Bwari Area Council where ther e was almost break down of law and order because of non- inclusion of some people affected by the Road Project in that area for compensation. PCC, FCT saved the situation by intervening timorously. Payment of various sums of pensions and gratitude's to retirees, even from the various states of the Feder ation.

The contract between a Nigerian contractor and a foreign company, G.F.C. Ltd was already breached by the foreign company doing business in Nigeria. The Nigerian contractor completely lost trace of the respondent in a contractual deal where the Nigerian was to be paid N3.1 million only. Until the Commissioner stepped in, the complainant who initially thought his entitlement was N2.988 m ended up getting N3.1m by the time justice prevailed at the instance of the Commission

3.7 Limitation of Powers of the Public Complaints Commission

In terms of limitations, Section 6(1) of the Act provides that the Commission is prohibited from taking action on complaints that falls within any of these categories:

a. that is clearly outside its term of reference,
b. that is pending before the National Assembly, the Council of State or the President.
c. That is pending before any court of law in Nigeria,
d. Relating to anything done or purported to be done in respect of any member of the Armed Forces in Nigeria or the Police Force under the Armed Forces Act or the Police Act, as the case may be.
e. In which the complainant, in the opinion of the Commissioner, has not exhausted all available legal or administrative procedures.
f. Relating to any act or thing done before 29th July, 1975 or in respect of which the complaint is lodged later than twelve months after the date of the act or thing done from which the complaint arose,
g. In which the complainant has no personal interest.

3.8 Challenges of the Ombudsman

The Ombudsman institution has continued to fail especially in African States because of over centralization of government and bureaucr atization. Prior to the Fourth Republic in Nigeria, "the dominant role of the military institution on the Nigerian state has been all pervading", this makes the PCC in Nigeria to be seen as working in tandem with the past military rulers to deny the greater proportion of citizens' happiness and justice. In the current democratic setting, however, democracy as a western concept allows for rule of law to prevail, freedom of speech to thrive, happiness of the citizens, popular participation of the citizens and above all, acceptance of people's f undamental human rights in the Nigerian state. Des pite these features of democratic rule, there factors militating against the effective operations of PCC in Nigeria towards addressing citizens' happiness. These are:

Prolonged military rule
Interference by Government
Insufficient funds
Bureaucratic problems

Inadequate institutional capacity to deal with cases etc

Furthermore, the ombudsman being a special institution, its effectiveness has to be specially considered to embrace its substantive, psychological and subtle impact. Since the ombudsman's credibility is at stake in each case investigated, a simple input-output ratio in assessing its effectiveness is rather inadequate. Other reasons are:

1. **Resolution of Cases: Between 1975-1985, out of 64,928 cases referred to it,** the commission successfully resolved a total of 60, 102 cases, leaving a balance of 4,826. This implies that 93 per cent of the cases entertained during the period under review were successfully resolved thereby suggesting a high success rate and good performance. Yet, opinion are evenly divided amongst writers(50% for and 50% against) in respect of whether or not the commission has been effective in discharging its responsibilities.

   This may be due to the realization that in assessing the effectiveness of the ombudsman institution a simple input-output ratio is rather inadequate hence other considerations must also be taken into account in evaluating its performance such as the timeframe within which such resolutions were made and the remedial benefits accorded to the complainant. Therefore, it would appear that the impact of the Public Complaints Commission is not being generally felt in the Nigerian society.

   2. Funding and Staffing: Inadequate funding has made it difficult for the Public Complaints Commission to attract, recruit and retain high calibre staff particularly in its investigation department. Furthermore, there is no specialized institution in existence within Nigeria to provide appropriate training to improve the knowledge and skills of the commission's personnel. It is therefore not surprising that 55% of the total number of respondents interviewed by some academic researchers is of the view that officials of the Commission do not know their work.

   4. Independence from External Control: In order to secure the independence of the public complaints commissioners, in the discharge of their duties, they are exempted from being legally liable for any act done or omitted to have been done in the due exercise of their powers. Section 10(1)provides "No Commissioner shall be liable to be sued in any court of law

for any act done or omitted to be done in the due exercise of his duties under or pursuant to this Act". Also, these commissioners are paid from the consolidated revenue fund of the federation.

However, the Commission does not have financial autonomy as it depends on the government for the money needed to run its activities. There are, as such, serious doubts as to whether the commission can be truly independent in the circumstance. Section 2 (3) of the Act states that "A Commissioner may at any time be removed from his office of appointment by the National Assembly." This leaves the termination of the Commissioners' tenure of office at the discretionof the Legislature.

Section 2(4) and (5) further provide that " There shall be paid to the Chief Commissioner and other Commissioners such salaries and allowances as the President may from time to time direct".
"There shall also be paid to every Commissioner upon completion of his period of service a gratuity calculated in such manner as the President may direct".
The two sections above clearly indicate that the fixture of the salaries and allowances of the Commissioners is at the behest of the President of the country.
The prevalent belief during the military junta is that the Public Complaints Commission did not enjoy freedom of action. This position is seemingly buttressed by the fact that "ouster clauses" were injected into decrees by Nigeria's military rulers thereby preventing the Commission from entertaining certain cases of obvious misadministration in which the government is interested or involved. The situation is however different under democratic governance.

5. Delay in Case Resolution: Given the undue delays, on the part of relevant parties, in responding to the queries of the Public Complaints Commission, Decree No. 21 of 1979 which requires all agencies or bodies complained against to give reply to the inquiries of the commission within 30 days was promulgated. Despite this measure, it has been observed that complaints take an average of 2 years before they are resolved by the commission Most complainants are of the view that complaints lodged with the public complaints commission are speedily resolved.

6. Affordability of Service and Accessibility: It is widely believed that the services of the Commission are not affordable and accessible to all. This may be due to the fact that, though the services of the commission are notionally free of charge but in reality complainants inevitably incur costs attendant to their complaints. For instance, a complainant may be asked to provide transportation money to facilitate the work of the investigation officer in charge of his case. Moreover, the Commission is yet to establish local government offices nation-wide thereby denying a significant number of Nigerians easy access to its services.

7. Publicity: The role of publicity in the operations of the institution of the ombudsman has been noted elsewhere
Yet, we find that the activities of the public complaints commission are not being given adequate publicity in Nigeria. An overwhelming majority of the belief that the commission suffers from lack of publicity as members of the public are unaware of its existence and activities.
8. Effectiveness. Complainants are usually not informed at all stages about how their complaints are progressing. Also there are limitations to their jurisdiction; and most of the time they can only investigate and not prosecute.
9. Lack of awareness. A lot of people are not aware of the services provided by the Commission. There should be more publicity, especially through the media.
10. Responsiveness. Staffs of the Commission are sometimes not as responsive as they should. Some are even partial at handling issues. Sometimes some authorities being investigated are hostile in their reactions and do not give necessary information.

4.0 Conclusion

The role of the ombudsman institution is manifestly critical. This is because in the absence of an institutional mechanism to provide relief to persons suffering from administrative injustice, the integrity of government could be seriously undermined and public confidence shaken. Hence this institution has universal appeal. Nigeria established its own ombudsman institution in the form of the public complaints commission in 1975, this institution has continued to be in existence in spite of whatever defects it may have. Thereby being a clear pointer to the utility of the

institution for the polity especially with regard to meeting the dictates of democratic governance

5.0 Summary

This unit has discussed the ombudsman in Nigeria, its forms, implementation and challenges.

6.0 Tutor Marked Assignment

Discuss the ombudsman operations in two differ ent jurisdictions of your choice

7.0 Further Reading/References

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MODULE 5
UNIT 1 OMBUDSMAN
UNIT 2 THE CIVIL SERVICE
UNIT 3 SUIT AGAINST THE ADMINISTRATION
UNIT 4 SOVEREIGN IMMUNITY/IMMUNITY CLAUSE

UNIT 2 THE CIVIL SERVICE

1.0 Introduction

The executive arm of government implements policies, directives and instruments through the various MDG and ministries created under it. These are the instrumentalizations of the civil service. The civil service plays a vital role in formulation, implementation and review of government policies and programs. The civil service is seen as a necessity in every government without which, government cannot function and civilization will stop. The executive arm of government implements policies, directives and instruments through the various MDG and ministries created under it. A viable civil service is a sine qua non for the maintenance of good governance, production and distribution of public goods and services, fiscal management and sustainability and efficient and effective performance of government (Schiavo-Campo, tommaso and Mukherejee, 1997). It is in the light of this that this unit seeks to examine the concept and working of the civil service in Nigeria while also highlighting reforms, challenges and issues facing the Nigerian civil service as a whole.

2.0 AIM & OBJECTIVES

To analyze the conceptual definitions of the civil service
To examine the evolution of the public service
To extrapolate the various civil service reforms
To do a comparative analysis of civil service in dif ferent jurisdictions.

MAIN CONTENT

3.1 CONCEPTUAL FRAMEWORK OF THE CIVIL SERVICE

a. 3.1.1 Constitutional framework

Section 169 (2) of the Constitution created the Public Service of the Federation by providing thus: 'There shall be a civil service of the Federation'
Section 318 of the Constitution provides thus:
"C*ivil service of the Federation means service of the Federation in a civil capacity as staff of the office of the President, the Vice-President, a ministry or department of the government of the Federation assigned with the responsibility for any business of the Government of the Federation"*

"civil service of the state means service of the government of a state in a civil capacity as staff of the office of the governor, deputy governor or a ministry or department of the government of the state assigned with the responsibility for any business of the government of the state"

A further look at section 5 of the Constitution reveals that the executive powers are exercised through ministries and agencies created at the Federal and State levels.

The President or the Governor alone cannot execute all the functions allocated to them by the Constitution. Therefore, they delegate some of their functions to a body of public organizations who implement government policies.

Malemi defined the civil service as : "Generally the civil service is the body of workers excluding who work for any branch, or department of government, or any agency, authority, body, institution or establishment owned by government, and are usually paid out of money voted or budget passed by parliament".

Public service on the other hand, may be defined as a section of the government charged with the principal duties of implementing government

policies and decisions. Those who work in the Public Service are called public servants. Their work is guided by rules and procedures and they serve successive governments in a complete order of tenure separate from the elected officials who they serve. The units of government under this category include institutions established by government, public corporations, commissions, agencies and ministerial departments.

The remuneration of public servants is based on salary and conditions of service approved for civil servants. As a subset of public service, the Civil service is a creation of the Constitution. Ministries, Local government councils, public service commissions and other service organization as funded by the government comprise the Civil Service and those that work in the civil service referred to as civil servants.

Discipline and promotion of civil servants of all grades including clerical, secretarial, professional and administrative staff in the various services is carried out by the Civil Service Commission which comprises men and women of integrity and of various professional backgrounds appointed by the President in the case of the Federal Civil Service Commission and the Governor in the case of the State Civil Service Commission.

b. 3.1.2 Conceptual framework

A national civil service is the mechanism by which laws are administered. It is the entity that is charged with the responsibility of carrying out government policies, providing services to the public and keeping the machinery of government running. (See www.virtualkollage.com/2016/11/feature. http://profbrarao.com/74-characteristics-of-the-civil-service/

Another definition is given by Dr. Herman Finer when he defined it as ‘a professional body of officials, paid and skilled’. Also. E.N. Gladden defines it as ‘’

3.1.1(a) The international civil service

An international civil service has been conceptualized by virtue of the existence and development of the international arena. The international cohesion between states has contributed to the growth and development of an international civil service akin to the domestic level. These international relations, multilateralism is multiple countries working in concert on a given issue.

Peter Lengyel addresses some key issues which face the international body in his work : Some Trends in the International Civil Service. He notes that the "most important characteristics of the international administration is that the staff must be completely interchangeable so that, subject to their knowledge of languages, it becomes a matter of indifference whether a particular post is filled by a Frenchman, a Russian, ….This can be achieved when the staff is all keen on serving the organization as such, "

A problem that bedeviled the international secretariat at the inception of the League of Nations was 'building up an able and efficient secretariat while at the same time mirror national membership in their composition'? He noted that this position might not be in consonance with the principle of 'the best man for the job'

3.2 Features of the civil service

The Civil Service has the following characteristics:

Hierarchy

One of the prominent features of the civil service is the hierarchy. The Civil Service consists of a hierarchy. Orders are passed from top to bottom. The civil service is designed to serve the people but does not receive orders directly from them. it is done on their behalf by the people who elect them.

Secrecy

The civil service has also been described as the instrument of public policy which works under conditions of utmost secrecy.

Permanency

The Civil Service has a permanent structure. The tenure of civil servant is permanent and succeeds all governments. He does not belong to any political party and they survive the tenure of politicians whom they work with in the interest of good order and governance. The tenure of Civil Servants is not affected by changes in the administration which they serve. In other words, if there is a change in government which sweep all the political office holders, civil servants as career officers remain in their posts in readiness to serve the next administration by proffering advice, engaging in policy formulation, program planning and budget pr eparation as the case may be.

Neutrality

Neutrality is an essential characteristic of the civil service. Civil Servants are required to be neutral as public servants. They are not aligned with any political party, and they are not agents of any political party in power.

Impartiality

Civil servants render their support service to government without prejudice to political party in power or irrespective of the religion, class, gender or ethnic group of members of the public whom they serve.

Anonymity

Civil servants are expected to discharge their functions to the best of their ability. They are expected to serve every successive government professionally and to take exception that they are anonymous and cannot be held responsible for the failure of any administration.

Bureaucracy

The civil service is governed by bureaucracy. This is a reference to a structured order or system of official roles as prescribed by general orders. It has been said that this structured way of doing thing causes delay and diminishes the creative and innovative nature of the civil servants.

SELF ASSESSMENT QUESTION

The Civil Service consists of a hierarchy. it serves people but does not receive orders directly from them. Explain

3.3.A. Composition of The Civil Service In Nigeria

Since the independent era, the structure and composition of the Nigerian civil service has changed and witnessed significant transformation. Immediately after independence, the Civil Service comprises the Federal civil service and the other civil services in three regions (West, East and North) and later between the Federal civil service and that of the twelve states of the federation. Currently, the Nigerian civil service comprises the federal civil service, the thirty-six autonomous state civil services, the unified local government service, and several federal and state government agencies, including parastatals and corporations. The federal and state civil services were organized around government departments, or ministries, and extra ministerial departments headed by ministers (federal) and commissioners (state), who were appointed by the president and governors, respectively. These political heads were r esponsible for policy matters. The administrative heads of the ministry were the permanent secretaries who were formerly called Director-General. The chief director general was the secretar y to the government and until the Second Republic also doubled as head of the civil service. As chief adviser to the government, the head of the civil service conducted liaison between the government and the civil service. Generally, the structure of Nigerian Civil Service is patterned on the British style. The service is divided into the following classes: administrative class, executive class, professional class, clerical class and the messengerial class who function as a catalyst for crystallizing the shared goals of the society and as a machinery of public policy formulation and implementation.

3.3.1 Office of the Head of the Civil Service

The civil service comprises of all government agencies and the human resources who work for the agencies. Section 170 of the 1999 Constitution empowers the President to appoint persons to the position of the Head of the Civil Service of the Federation.

a. Secretary to the Government;

b. Head of Service of a State;
c. Permanent Secretary;
d. Personal staff to the Governor

Section 171 (3) mandates the President to appoint a person to the Office of the Head of the civil Service of the Federation from among Permanent Secretaries or equivalent rank in the civil service of the federation or a state.

c. Permanent Secretary

The office of the Permanent Sectar y is a creation of the constitution by virtue of section 171 (2) of the 1999 Constitution vests the power of appointment of Permanent Secretaries on the President. The Permanent Secretary in a Federal Ministr y used to be the administrative head of the Ministry and the accounting officer before the acceptance of the Udoji Commission which made Ministers the administrative head and accounting officer of their respective Ministries.

3.4 Reformation of the Civil Service in Nigeria

Since the independence era, the Nigerian Civil service has undergone series of reforms aimed at tackling the problems of the institution and repositions it to meet the development challenges of the 21st centur y. The civil service as we have it today is a modified form of the civil service that Nigeria inherited at independence. In pre-independence Nigeria, civil servants held their appointment at the pleasure of the Crown – Dunn v. The Queen (1896) 1 QB 116. In post-independence Nigeria, this position has changed as their appointment is no longer at the pleasure of the state. They may no longer be dismissed or removed from office indiscriminately – Bashir ***Alade Shitta-Bey v. Federal Public Service Commission (1981) 1 SC 40. The federal*** and state governments as employers of labor now follow labour laws and procedures in dispensing with the service of civil servants.

Civil servants may now seek redress in court if the tenure of their service is disrupted by unjustified infringement of their fundamental human right. – see the case of ***Sokefun v. Akinyemi (1981) 1 NCLR 135 at 145 -6 where the Supreme Court held*** that the purported dismissal of Dr, Sokefun was illegal, null and void and of no effect. Security of tenure for civil servants is now the same as for any employment in other sectors of the economy where an employee is given all necessary training and tools of work in order to give of his best to the organization. This is without prejudice to

genuine disciplinar y actions of staff that include possible dismissal or termination of appointment for gross misconduct, after all due process has been followed. As it stands today, tenure in the civil service is guaranteed and severance (retirement) f rom service for a civil servant with a good record is to be at 35years of continuous service or the attainment of the age of 65years.

3.4.1The Morgan Commission (1963)

The nationalist movement that ushered independence in 1960 used indigenisation of civil service as part of its campaign. Shortly after the colonial rule, prescient Nigerian leaders at that time introduced and implemented Nigerianisation policy where British officials in the civil service were replaced with Nigerians. The fallout of this policy came with attendant problems such as shortage of skilled manpower, inefficiency, politicization and complaint about wages. The general strike of September 27, 1963 put intensive pressure on the government and was forced to set up Morgan commission to look into the agitations of trade unions for increases in wages. Morgan commission not only revised salaries and wages of junior staff of the Federal government but introduced for the first time a minimum wage for each region of the country.

3.4.2Elwood Grading Team (1966)

The outcome of the Morgan Report metamorphosed into the Elwood Grading Team. The Elwood commission was appointed to identify and investigate anomalies in the grading and other conditions relating to all posts in the Public Service of the Federation, with a view to determining an appropriate grading system and achieving uniformity in the salaries of officers performing identical duties.

3.4.3The Adebo Commission (1971)

The Adebo panel was commissioned to ‘review the existing wages and salaries at all level in the public ser vices and in the statutory corporations and state-owned companies. The commission observed that low remuneration package is responsible for extreme shortage of senior civil servants. The Adebo Commission therefore ‘recommended the setting up of a Public Service Review Commission to exhaustively examine several fundamental issues, such as the role of the Public Service Commission, the structure of the Civil Service, and its conditions of service and training arrangements. The acceptance of the recommendations of the Commission led to the setting up of the Udoji Public Service Review Commission.

3.4.4 Udoji Commission Of 1974

The Udoji Public Service Review Commission of 1974 was set up during tenure of General Yakubu Gowon to review and over-haul the entire public service, and to ensure development and optimum utilization of manpower for efficiency and effectiveness in the service. The major thrust of the commission is to carr y out holistic reform of the civil service in terms of 'organization, structure and management of the public service; investigate and evaluate methods of recruitment and conditions of employment; examine all legislation relating to pension, As regarding all post; establish scale of salaries corresponding to each grade as a result of job evaluation. The Commission recommended a coordinated salary structure that would be universally applicable to the Federal and State Civil Services, the Local Government Services, the Armed Forces, the Nigeria Police, the Judiciary, the Universities, the Teaching Services and Parastatals. The Commission further recommended the introduction of an open reporting system for performance evaluation, and suggested the creation of a senior management group, comprising administrative and professional cadres. The relevance of Udoji Commission is particularly salient in its proposition of modern management style, techniques and procedures that enhance the efficient functioning of the institution (such as the adoption of a "New Style Public Service based on Project Management, management by objective (MBO) and Planning Programming and Budgeting System (PPBS). Added to this is the recommendation that encourage the mobility of manpower between the private and public sectors. Udoji commission is credited with providing a comprehensive review of standard and quality service delivery, and compensation in the entire public service.

3.4.5 Dotun Phillips Commission (1985)

The Dotun Philips Civil Service Reform of 1988 was set up by the Military regime of General Ibrahim Babangida to review the structure, composition and methods of operation to cope with the demands of government in the 1980s and beyond. The commission looked into the problems of inefficiency, lapses and inadequacies in the civil service and attempt to introduce structural changes that could ensure swiftness in administrative practices and eliminate rigour of red-tapism. The repor t of Dotun Philips commission recommended that the position of Permanent secretary be replaced by more politically oriented position of Director-General. The overview of the commission report suggests that the minister was made both the chief executive and the accounting officer of his ministr y. But before the r eform, the permanent

secretary was the accounting officer of the ministry. The permanent secretary's appointment was made political as its duration/tenure was left at the pleasure of the president or governor by making their position non-permanent any longer. The Dotun Philips reforms properly and correctly aligned the civil service structur e with the constitution and presidential system of government, designating permanent secretaries as directors-general and deputy ministers. They were meant to retire with the president or governor. The permanent secretary had a choice whether or not to accept the post. The review commission professionalized the Civil Service, because every officer whether a specialist or generalist made his career entirely in the ministr y or department of his choice. Each ministry was made to undertake the appointment, discipline and promotions of its staff and the ministries of finance and national planning were merged'. The acceptance of some of the recommendations of Dotun Philips Commission report led to the Civil Service Reform Decree No. 43 of 1988.

3.4.6 Civil Service Reform Decree No. 43 of 1988

The Civil Service Reform Decr ee No. 43 was pr omulgated under the Military regime of General Ibrahim Babangida in 1988. The reform which was widely termed 'Decr ee No. 43' was a military fiat that aimed at repositioning civil service without input and democratic discussion from the public. The 1988 reforms formally recognized the politicization of the upper echelons of the civil service and brought about major changes in other areas. The main highlights of 1988 reforms are: the merging of ministerial responsibilities and administrative controls and their investment in the Minister as Chief Executive and Accounting Officers; (b) replacement of the designation of Permanent Secretary with 'Director-General' whose tenure will terminate with the Government that appointed him/her and who will serve as Deputy Minister; greater ministerial responsibility in the appointment, promotion, training and discipline of staff; vertical and horizontal restructuring of ministries to ensure overall management efficiency and effectiveness; permanency of appointment, as every officer, is to make his/her career entirely in one Ministry; abolition of the Office of the Head of Civil Service; and abolition of the pool system. The reform also established new administrative department called—the Presidency with retinue of top government officials, purposely to coordinate the formulation of policies and monitor their execution, and serve as the bridge between the government and the civil service (all federal ministries and departments). However, the 1988 Civil Service Reforms

despite its lofty ideals of efficiency, professionalism, accountability, and checks and balances, did not achieve its desired objectives.

3.4.7 Alison Ayida Panel of 1994

The Ayida Review Panel on the Civil Service Reforms was inaugurated on 10th November 1994 to, amongst others, re-examine the 1988 Reforms. The Report of the Panel was highly and constructively critical of the 1988 Reforms. It reversed most of the reforms of 1988, namely, that the: civil service should revert to the system that is guided by the relevant provisions of the Constitution, the Civil Service Rules, the Financial Regulations and Circulars; the Ministers should continue to be the Head of the Ministry and should be responsible for its general direction but he/she should not be the Accounting Officer. Instead, the Permanent Secretar y should be the Accounting Officer of the Ministry; the title of Permanent Secretar y should be restored. She/he should be a career officer and should not be asked to retire with the regime that appointed him/her; the post of Office of the Head of Civil Service should be re-established as a separate office under the President and a career civil servant should be appointed to head the office; the pool system be restor ed for those professional and sub-professional cadres that commonly exist in ministries/extra ministerial departments; ministries/extra-ministerial departments should be structured according to their objectives, functions and sizes and not according to a uniform pattern as prescribed by the 1988 Reforms. Each could have between two(2) to six(6) departments; personnel management functions in the Civil Service should be left to the Federal Civil Service Commission with delegated powers to ministries; financial accountability in the Civil Service should be enhanced through strict observance of financial rules and regulations; recruitment into the Federal Civil Service at the entry point should be based on a combination of merit and Federal Character, but further progression should be based on merit; Decree 17 of 1984 which empowers government to retire civil servants arbitrarily should be abrogated; the retirement age in the Civil Service should be sixty (60) years irrespective of the length of service; Government should harmonize the pension rates of those who retired before 1991 and those who retire after 1991; and salaries, allowances and welfare packages of civil servants should be substantially reviewed upwards and should be adjusted annually to ameliorate the effects of inflation, and discourage corruption.

4.0 Conclusion

The various r eforms highlighted show a trajectory of failed reforms and measures. When reforms neglect the political dimension of implementation, they only become technicist in a way that is not conducive to success, especially within a debilitating bureaucratic context. This technicist methodology reduces the execution of reform to the mere issues of tactics and operational strategies that fail essentially to take into consideration the trajectory of reforms management. This trajectory involves moving from one point to another in a coordinated manner with strong emphasis put on technical issues on the one hand, and the governance reforms issues and therefore the value of constitutional order, rule of law, state legitimacy and trust by the citizens.

5.0 Summary

This study has been able to examine chiefly, the Nigerian experience at reforming the civil service since the attainment of independence in 1960. Each reformed aimed at key policy measures essential for bringing about a sustainable civil service as well as improving the effectiveness and performance of the arm of government.

6.0 Tutor Marked Assignment

Discuss the past, changes and continuity in the Nigerian civil service.

7.0 Further Readings/References

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UNIT 1 OMBUDSMAN
UNIT 2 THE CIVIL SERVICE
UNIT 3 SUIT AGAINST THE ADMINISTRATION
UNIT 4 SOVEREIGN IMMUNITY/IMMUNITY CLAUSE

UNIT 3 SUIT AGAINST THE ADMINISTRATION

1.0 Introduction
2.0 Objectives

1.0 Introduction

The law that regulated proceedings by and against the administration in Nigeria till 1969 was part of our colonial heritage from Britain. This was the English law of crown proceedings which remained in force in England until 1947 when the crown proceedings had a common law origin and became applicable to Nigeria as part of the common law, doctrine of equity and statutes of general application in force in England before 1900 expressly introduced into Nigeria. It is therefore difficult to understand the Nigerian law of proceedings by and against the administration without having a clear understanding or appreciation of the English law of crown proceedings.

In this unit, we shall examine the legal status of the crown, how, like other public authorities it bears its own fair share of legal liability and how it is answer able for the wrongs done to its subjects.

2.0 Objectives

This unit has as its objective to examine the concept of suits against the administration, specifically tracing it f rom the British colonial heritage.

3.0 Main Content

3.1 The Period before 1947 in England

The Crown means the sovereign acting in a public or official capacity. The Before the Crown Proceedings Act of 1947, no British subject could sue the crown and none was competent to prove any act or default of the crown to be tortious. Two fundamental legal principles (one procedural and the other substantive) accounted for this and made direct action or justification of certain claims against the crown very difficult.

Eka aptly captured this, quoting Professor Street that: "Its true meaning is that the King has no legal power to do wrong. His legal position, the powers and prerogatives which distinguish him from an ordinary subject, is given to him by the law, and the law gives him no authority to transgress". Professor Jaffe also wrote that "the King must not, was not allowed, not entitled to do wrong".

First the federal rule that no lord of the manor could be sued in his own court meant that the king too, the great overlord and the peak of the English socio economic system could not be sued either in his own court or in the court of any of his vassals. This barred all cases to the court except with the permission of the king himself which was of course, rarely granted.

Added to this procedural difficulty was the principle of substantive law that 'the king could do no wrong' which in effect meant that no act or omission of the sovereign was open to impeachment, investigation of the condemnation on the ground that it was wrongful or tortious. This implies that even when permission was given by the crown, claims based on tort would fail for inability to justify them by attributing or imputing wrongs to the crown. It was on this basis, that the king though not suable in his court (since it seemed an anomaly to sue a writ against oneself), nevertheless endorsed on petitions "let justice be done" thus empowering the court to proceed, thus empowering the court to proceed.

3.1.1 Contractual Liability of The Crown

Because of the above doctrine that the king can do no wrong, and his courts were more favourably disposed toward claims based on contract while those based on tort have little or no chance of ever getting to the courts.

Although the king was disposed to listen to contractual claims by his subjects, such claims did not take the form of writ of summons as we know them today, rather, they came in form of supplications to the king imploring him to look into their claims. As an act of grace the king will refer such petitions to his courts for determination. This informal process however crystallized into petition of rights in the 13th century under King Edward I who usually refer them to his chancellor or a special commission to

look into them. The petition of right became the only process through which claims against the king in contract could be brought. This informal process continued till the 19th century when it was found that the informality of the procedure could hardly cope with the industrial and commercial needs of the society thus came the Petition of Rights Act 1866 which regularized and simplified the procedure.

The second aim of contractual liability of the crown concerns its liability with regard to the employment of its servants. At common law, a servant of the Crown held his office at the mercy of the crown except in cases where statute otherwise provided. Thus although Petition of Rights was the proper procedure to vindicate a right of wrongful dismissal or breach in a contract of employment with the crown, the true position was that as a rule of substantive law, such a case, will never succeed.

The common law will regard the power of the crown to dismiss at will as an implied term of the contract being a prerogative right of the crown subject only to statute. In this case, the dismissed employee can only proceed against the official of the state for the common law gave no remedy against the crown for breach of agreed terms of service because the official (as an agent) had been authorized to do what he did.

3.1.2. Tortious Liability of The Crown

In tort, just as the crown will not in law commit a wrong it could not authorize one to be committed in his name. Thus, the wrongful acts or omissions of its servants or agents were never imputed to it. This was because the doctrine of 'respondent superior'. Vicarious liability, well known in the field of master-servant relationship had no application to the crown in its relationship with its servant. The principle that the king can do no wrong also implies that the crown was never vicariously responsible for the misdeeds of its servants or agents.

Ministers and departments of the realm were also exempt and were not sueable for torts committed by the servants attached to them. This was because to make them liable would be to enforce the claim indirectly against the Crown for they were merely arms of the crown through which it acted and communicated with the public at large.

It needs be noted however that the immunity of the crown in tort was not absolute. The subjects were allowed to bring action in torts which bordered on real property. Thus, it was not immuned from the tortious taking or acquisition of land if the land belonged or has been acquired by a subject pr ovided that the subject claimed by

petition of right for restitution of the property or for some monetar y compensation thereof.

3.1.3 Other Privileges/Immunity of The Crown

Quite apart from the immunity it enjoyed against tortious liability and the principles of not being sued in contract except with its prior consent or permission, the crown also claimed and was allowed the following further privileges:

a. The crown could never be compelled to answer interrogatories nor could discovery ever be ordered against it. It always had the right to withhold any information or document from the courts on the grown that it was against public interest to disclose them.
b. Although the crown could always levy execution against any private citizen, the common law never allowed execution to be levied against the crown.
c. The principle of nulus tempus ocrit regit (time does not run against the crown) is a well-established principle of common law. This meant in practice that while time ran against a subject with a claim against the crown, the crown itself had the liberty to institute its claim against a subject at any time.
d. As earlier mentioned the principle of respondent superior never applied to the crown in regard to its entire servant except by statute.

From the above, it could be seen that before the Crown Proceedings Act 1947, every claim of an ordinary citizen against the Crown was most precarious. Access to the courts was carefully blocked and none could institute any claim against the Crown except with the prior consent of the crown itself.

Even when the claim was instituted, the Crown could still frustrate the outcome by claiming a number of privileges to which it was entitled under common law. This was the position of the law in England before the enactment of the Crown Proceedings Acts 1947. Accordingly, Sir Amas wrote in 1928 that "contrary to the belief there is *so far as we know, no civilized country in which the right of ordinary citizen to judicial protection against government is more limited or more embarrassed by obscurities, paradoxes and pitfalls than is the case in England".*

The Crown Proceedings Act gave the subjects the right of action against the Crown in contract and in tort. It rendered the crown vicariously liable for the torts committed by its servants in the course of their employment and curtailed most if not all, the other

privileges of the crown. By section 2 (1) of the Crown Proceedings Acts 1947, it makes the Crown specifically liable for:

a. torts committed by its servants or agents;
b. breach of duties which a person owes to his servants or gents at common law by reason of being their employer; and,
c. breach of duties attaching at common law to the ownership, occupation, possession or control of property.

3.2 The Position in Nigeria before the 1979 Constitution

Prior to 1979, proceedings against the state were governed by the principles that regulated suits against the crown in England before 1948. In fact, up to the latter part of 1963, such an action had to be instituted against the crown itself before the government of Nigeria carried on in his name though under the immediate headship of the Governor-General and regional governors. When Nigeria became a republic those rights, privileges and immunities which the crown in right of the state had hitherto enjoyed in litigation, now had to be claimed by the state itself. Hence, it could be said of the state that it could not be sued in its courts and that it could neither do wrong nor authorize it to be done. In Nigeria, ass in England, the above situation led to a distinction between the contractual and tor tious liabilities of the state.

3.2.1 Contractual Liability of a State

In colonial Nigeria as in other dependencies of Britain, civil servants including the governors were but servants or agents of the crown as such were not personally liable for the breach of any contract signed for on or behalf of the crown. Accordingly, such contracts if at all enforceable, must be forced against the crown itself. As to the crown it could not be sued as of right for breach of contract, neither could a government department be sued for, apart from not being a legal person, the depar tment was simply an organ of action or expression of the crown. Now, any person who suffered some damage as a result of the breach of the contract could submit a common law petition or right to the governor a personal representative of the crown for redress. This ~~procedure was in 1915 su~~perseded by a statutory procedure prescribed by the petition of Rights Act 1915 which was drafted after the model of the British Petition of Rights Act 1860.

Section 3 of the 1915 Act reads "all claims against the government or against any *government department being of the same nature as claims which may be preferred*

against thee crown in England by petition manifestation or plea of right, may with the consent of the governor be preferred in the supreme court by the claimant as plaintiff as against the Attorney General as defendant or such other officer as the governor may vary from time to time designate for that purpose"

A petition of rights under the Act had the scope which an English Petition of Rights had in 1915 for it was available only in situations which in 1915 would have supported claims against the crown in England by petition, manifestation or plea of right. Those circumstances included cases where restitution of money in the hands of the crown or where rights arising out of the crown or where rights arising out of a contract such as damages for a breach of a contract where claimed. They also included cases where claims were made either for an unliquidated sum due under a statute or for a payment of a debt or liquidated sum due under a contract or statute. Also covered wher e claims for any right arising under a state lease. It also lay for the recovery of compensation due under a statue for land compulsorily acquired by the state. In the case of Are v. A.G Federation (1958) WNLR 126, the government had compulsorily acquired lands owned by the plaintiffs in 1941. When the government failed to pay compensation to the plaintiffs, they commenced a suit for compensation by a Petition of Rights to which the Governor General's deputy had given his fiat. It was held that it was not necessary to invoke the English procedure in seeking redress by Petition of Rights in as much as a procedure had been laid down in Nigeria by section 3 and 4 of the Petition of Rights Ordinance, the provisions of which had been complied with by the claimant.

The position of government employees in Nigeria was the same as the position of the Crown in England. They held their office at the pleasure of the state and could be dismissed at will without notice. But any servant who wished to sue on his contract of service could only do so by a petition of right even though he had not much chance of success. See the case of Martins v. Federal Administrator General (1963) LLR 65.

Also in the case of Ayoola v. Public Service Commission (unreported Suit No. ***622/62) an action for wrongful dismissal failed because plaintiff did not bring his*** action by means of a Petition of Right.

The government could also var y or determine the contract of service of tis servants without incurring any liability there – In Braggs v. AG Eastern Region (163) 2 All ***NLR 113, the applicant applied for an order of certiorari to bring up to the High court*** for the purpose of being quashed an order of the Gov. of Eastern Nigeria r everting the

applicant to the post of Teacher Grade II. Counsel for the respondent admitted that the investigation into the case against the Applicant did not comply with the requirement of the Regulation 30 (1), (2) and (3) of the Eastern Region Public Service Commission Regulations and only opposed the order sought on the ground that the court had no jurisdiction to make such order because the applicant being a civil servant of the crown, held his office at pleasure and was subject to dismissal at pleasure without cause assigned and consequently no action for wrongful dismissal or wrongful reduction in rank could be entertained. It was held that the Eastern Region Public Service Commission Regulations being validly made must necessarily have the force of law. That by reason of these regulations the prerogative of the Crown to dismiss at pleasure is fettered and consequently the order of the Governor reverting the applicant was made without jurisdiction and therefore subject to certiorari. However, where grounds are made out upon which the court might grant the order; it will not do so when no benefit could arise from granting it. Consequently, in this case, since the granting of the order would not result in the applicant acquiring a legal right or restoring a lost are to him, it could be of no benefit to him and therefore the court would not exercise its discretion at his favour.

Note however, that an action for a prerogative order had never been and was not required to be commenced by a means of a petition of rights. Thus, a wrongful dismissal of a servant of the crown could only be challenged by a means of a certiorari and not by a petition of right.

3.2.2. Tortious Liability of the State

The common law position operated with regards to the tortious liability of the administration and its agencies in Nigeria. Thus, the state could not be sued in its courts for it could do no wrong and could not authorize a wrong to be done by its agencies. No tortious act could be attributed or imputed to the state and no tortious liability attached to it. Also, except where otherwise authorized by state, no ministry or department of state could be sued because they were not corporate bodies and no minister, head or department or superior officer could be sued for the wrongs committed by his surbordinate officials because they were all servants of the state and non could be made vicar iously liable for the wrongful acts of his fellow servants. See the case of Bainbridge v. Postmaster General (1906) 1 KB 178, Martins v. Federal

Administrator General

However, following the English common law, the Nigerian law allowed the injured to proceed dir ect against the actual tortfeasor or wrongdoer who may or could avail himself of whatever statutory protection or defences he could have. c

Thus, the position appears to be that no action can be brought from the Federal or State Government unless the immunity is waived, except where special procedure of petition of rights appears. In the case of Mrs. Ransome Kuti v. Federal Attorney ***General & ors (1985) 6 S.C, 246, the plaintiff claimed monetary damages from the*** Federal Government for the wrongful burning down of the plaintiff's house by some soldiers. The Supreme Court held thus: the position of the law on the liability of the state for torts committed by its servants as repr esenting the state is well settled. The liability of the state which clothes it with immunity for wrongs committed o+.0n its behalf is still with us.

3.3 Constitutional Protection

Prior to the military coup of January 1966, the president of Nigeria and the regional governors enjoyed a special immunity from legal actions while they remained in office. Section 161 1963 Constitution provided that no criminal or civil action was to be instituted or continued against any of these chief executives during any period they held office or was required to perform functions of that office.

From January 1966, that immunity inured to the benefit of the militar y head of state and the governors and the administrator of the then East Central State. Significantly, the substantive law with regard to the tortious liability of these chief executives remained the same as under English law. Each was still personally liable for any tortious act he committed in the course of his official duties except where he had some other statutory protection but such an action could only be commenced after he must have left office.

3.3.1 Statutory Protection

The Public Officers Protection Act 1966 offered protection to a wide range of public servants. It protected any person for any tort he committed in the course of executing a law, public duty or pubic authority. By section 2 (a), it is mandatory that action against any public officer for any act done in pursuance or execution or intended execution of any public duty or authority or in respect of any alleged neglect must be commenced within three months of the act complained of. Moreover, before bringing such action, the law required that the plaintiff gave prior notice of his intention to sue to the public servant to be sued.

Again, the law sought to protect all persons engaged in the execution of the lawful public duty or public authority. Thus the benefit of the Act was not restricted to civil or public servants, The default would still be protected whether it occurred by an act, omission, default or negligence, In the case of Ekemode v. Alausa (1961) 1 All NLR ***135, the court held that the word ''any person in section 2 of the 1947 Ordinance was*** wide enough to cover any person whose employment requires him to act pursuant to or in execution or intended execution of any ordinance or any public duty or authority, whatever his status or grade. In Fasoro v. Milbourne (1923) 4 All NLR 85, the court held that since notice of the claim of assault against the second defendant wasnot given until more than three months after the occurrence, the claim was barred by section 2 of the Public Officials Protection Ordinance. See also the case of ***Obiefuna. V. Okoye (961) All NLR 537. The defendant, a police constable was*** involved in a collision with the Plaintiff, a motor cyclist. The court held inter alia, that the defendant was, at the time of the accident, a police officer within the meaning of section 2 of the Public Officers Protection Ordinance.

However, such an action must be commenced within three months otherwise it will fail for time bar - Obanor v. Ogbe (1958) WNLR 1 In an action wher e the plaintiff claimed the sum of 550pounds from the defendant as damages for malicious prosecution. The defendant argued that the Suit was not commenced within three months of the act complained of. It was held that the claims was out of time, not being brought within the stipulated time; Barkin v, LCC (1965) LLR 151

Note that the Act did not cover the following situations:-

a. Where the acts are committed outside the scope of the def endant's duty or authority – Ekemode v Alausa (supra);
b. Acts which though apparently within the scope of the defendant's duty or authority were done out of spite, malice, bad faith or improper motive – ***Nwankwere v. Adewunmi (1962) WLR 298. Here, the appellant, an ASP was*** charged with demanding bribe from the respondent before he could issue him with a certificate of road worthiness. The court held that the Public Officers Protection Law applies only to acts done in pursuance or execution of any law or of any public duty or authority but does not protect a person who knows he is doing wrongful act and does not act in good faith in the execution or intended execution of his public duty, but acts in colore officii, but for his own

benefit in knowingly committing a crime by using his office to extort money without any attempt or intention to act in pursuance of his statutory duty.

c. Matters controlled by the fatal accidents law. The Fatal Accident Law specifically provide for a limitation period of 12months. Thus a matter coming within the purview of that law will not be protected by the provisions of public officers Protection Act

d. Matters which cannot properly be described as acts or omissions of the defendant in the course of his duty or authority. – See Nariode v. Urobho NA ***(1956) WNLR 67 where the court held that the performance of a specific*** contract made in pursuance of a public duty is not the performance of a public duty and that the respondents have not got the necessary protection that they thought they had under s.62 (1) of the N.A. Ordinance.; See also Soule v. ***LEDB (1965) LCR 118***

Thus the position of a prospective plaintiff against the administration and its agencies in Nigeria before 1979 was similar if not the same with that of its counterpart in England before 1948. Its ways were blocked in contractual actions except through the invidious process of petition of rights which made the government a judge in its own cause. In tort, the administration could neither do wrong nor could have one imputed to it. This made an action by an ordinary citizen against the administration before 1979 a most precarious venture.

3.3. The Impact of the 1979 Constitution

With effect from Oct 1 1979, the above position of the law became altered. A number of provisions in the constitution gave access to the court and renders the state liable in suits brought against it by private citizens. S. 6 (6) (b); 33 (1) and 236. These sections accomplished this by:

i. Refining and vesting in the court an unlimited powers of entertaining, hearing and determining the claims against the government and their agencies;
ii. According to the citizens, the right to fair hearing of their legal rights and obligations

Section 6 vests in the country courts, the judicial powers of the federation and then provides in subsection (6) (b) that the judicial powers vested in accordance with the foregoing provisions of this section shall extend to all matters between persons or governments or authority and any person in Nigeria and to actions or proceedings

relating thereto for the determination of any question as to the civil rights and obligations of that person.

Section 236 (1) enables the high court of each state to exercise unlimited jurisdiction over such questions that affect not only rights and obligations but also power, duty and liability, privilege, interest or claim of a citizen in his relationship with the state.

The section reads 'subject to the provisions of this constitution in addition to such other jurisdiction as may be conferred upon it by law, the high court of a state shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue'.

The above provision vests in the court unlimited jurisdiction over any question or dispute between government and any person in Nigeria where such a question or dispute touches on the person's interest regardless of whether the interest consists of legally protected rights and obligations or merely comprises interests not amounting to rights and obligations such as privileges, immunity and other claims. See the case of Savannah Bank of Nigeria v. Pan Atlantic (1987) 1 SC 198

Section 33 (1) on the other hand, focuses attention on civil rights or obligations including any question or determination before or against any government or authority. The section provides that a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality. This essence of this section is that it ensures that any person who alleges that his legal rights or obligations have been interfered with by any government or authority in Nigeria is entitled as of right to have it determined by a court or other tribunals observing the rules of fair hearing.

This provision therefore jettisons the Petition of Rights Act, for no government shall still has the power to determine arbitrarily whether or not such a matter should be handled or determined by the court of law. Such a matter can now be brought straight to a court which under s. 6 (6) (6 (b) and s. 236 have unlimited jurisdiction to make determination on any matter whatsoever.

Under the 1979 constitution therefore, private citizens have access to the court to sue the administration and or any of its agencies to vindicate their rights, be they in contract, tort, property or indeed bordering on fundamental human rights. In so doing, it is often the Attorney General (the chief law officer of the government) who is usually sued.

Other agencies of the administration such as parastatals that were creations of the constitution could be sued in their own names being legal entitles without joining the AG though they were the agencies of the administration. Public corporations could also be sued in their own name subject to the exact provisions of the statute establishing them. Accordingly, most of those corporations could only be sued with one month prior notice. Noncompliance with this was fatal to the action.

On vicarious liability of the state to the wrongs of its servants, the constitution did not expressly provide for this. However, since the state could now be sued and held liable for its action then it could be argued that provided the agent or servant of the state had acted within the scope of his authority and the colour of his employment, his fault could be imputed to the state.

To further guarantee access to the court, the constitution in s.4 (8) pr ohibited the national assembly from enacting Acts ousting the jurisdiction of the courts – Uwaifor ***v. AG Bendel State (1982) 7 SC 124 at pp.142-143 per Idigbe JSC that 's.6 (6) (a),*** *(b) and 4 (8) of the 1979 constitution provides the courts with a general power to inquire into the validity of enactments in existence in our statute books made by the National or State Assembly or deemed, under the Constitution to be made so and for this purpose, the provisions of any law which seek to oust the jurisdiction of the courts for this exercise is invalid".*

CONSTITUTIONAL AND STATUTORY PROTECTION

1. Under the 1979 Constitution, s.267 the President, Vice President, the state Governors including Deputy Governors were immuned from court actions both civil and criminal in their personal capacity for anything done while in office. Moreover, they could not be compelled to appear in court during their tenure of office to attend any civil proceedings Bisi Onabanjo v. Concord Press Ltd
2. The Public Officers Protection Act 1966 was in application before 1979 and still applied thereafter. Thus, any action to be brought against any public officer was to be commenced within 3months. Where this is not done, such action will fail for time bar. However, as earlier noted the Act does not cover acts done outside the officer's scope of employment or acts done out of spite, malice, bad faith or improper motive.

   It must be noted that the current attitude of the supreme court on the last aspect of the Act is that even where the Act was done out of malice or spite,

the action must still be commenced within 3months failure which the action will abate.

4.0 Conclusion

The scope of immunity clause applies to anybody holding the office of the President, vice president governors and deputy governors for the period of their office. The protection offered by this clause or doctrine lapses on the expiration of the tenure of office. Not all serving governmental officials are covered by this immunity – it excludes local government chairmen, ministers or traditional rules whether in their official or private capacity.

5.0 Summary

This unit has been able to trace the origin, meaning and scope of immunity. The unit considered the concept of immunity under the crown, the scope, application and limitation of the concept that "the king can do no wrong". It can be seen from the unit that, the immunity doctrine is of great antiquity which has played an important role in the past and present

6.0 Tutor Marked Assignment (TMA)

"The King can do no wrong". Discuss this statement with its limitations, scope and exceptions.

7.0 Further readings

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1.0 Introduction

During the last two decades, the courts have struggled with how to interpret statutes of limitations contained in waivers of sovereign immunity. Specifically, the courts have struggled with the issue of application, extent and jurisdiction of these provisions. This seemingly mundane issue of statutory interpretation has proven to be contentious and one which can have severe impact on litigants. It must be recalled that the previous constitutions, such as the 1963 Republican Constitution, by section 161 (1), the 1979 Constitution, section 267 and even the still born 1989 Constitution all had the immunity clause – section 320.

2.0 Objectives

This unit will explain examine the concept of immunity of executives under the 1999 Constitution, explain the rationale for the doctrine of immunity as well as examine the scope of the doctrine under the relevant sections of the 1999 Constitution with the exceptions and limitation to the application of the doctrine.

3.0 Main Content

3.1 Conceptual definition of immunity

The concept of immunity is one that removes or bars an otherwise right. Prince Bola Ajibola has described the word as an "exemption". Immunity has been described as 'freedom from duty or penalty, an exception from any charge, duty, tax, or imposition (Webster's New Wor ld dictionary and Thesarus 2nd ed. Editors of Webster's New World Dictionaries, Charlton laird 2002) 1643. It has also been defined as a right peculiar to some individual or body, an exception from some general duty or burden, a personal benefit or favour granted by law contrary to the general rule. The Black's Law Dictionary (Garner B.A, The Black's Law Dictionary, the d. West Group Publishing Co. St. Paul Minn, 1999) 1114 defines it as :

"A*n exemption as from serving in an office, or performing duties of law generally requires other citizens to perform, for instance, exemption from penalty, burden or duty, also called special privilege"*

Kionka:

"Immunity is a defence to tort liability which is conferred upon an entire group or *class of persons entitled under circumstances where considerations of public policy are thought to require special protection for the person, activity or entity in question at the expense of those injured by its tortious act. Historically, tort litigations against units of government, public officers, and charities and between spouses, parents and children, has been limited or prohibited on this basis".*

Immunity could be absolute or qualified. Absolute immunity is a complete exemption from civil liability, usually afforded to officials while performing their duties.

However, by reversal, the provision allows such public officers to sue in their personal capacity even while in their office. This is the decision in the case of Duke **v. Global Excel Communications (2007) 1 WRN 63**

3.2 Justification for immunity

The holding of Justice Power in Nixon v. Fitzgerald 457U.S (1982) 731 is apt in describing the significance of immunity when he said that: "(1) the President cannot *make important and discretionary decisions if he is in constant fear of civil liability; and (2) diverting the President's time and attention with a private civil suit affects the functioning of the entire federal government thereby abrogating the separation of powers mandated by the constitution"*

Nwabueze in his opinion said that:

"……I*t is for the office and not for the man….It is the majesty and dignity of the nation that is at stake. To drag an incumbent president to court and expose him to the process of examination and cross examination cannot but degrade the office. The affront to the nation involved in this could be easily perceived if it is a foreigner temporarily resident in the country were to take its president to court for, say, a breach of contract, and attempt to discredit him in cross-examination as a liar and disreputable person. It makes no difference that the complainant is a national. The interest of the nation in the preservation of the integrity of its highest office should outweigh the inconvenience to the individual of the temporary postponement of his suit against the president."*

The sole justification for immunity is that the heads of state and government should enjoy absolute immunity to enable them to perform official duties without distractions. Cases filed before the assumption of office of public officers covered by the immunity are stayed to await the expiration of their tenure – See the cases of **Media Technique Nig. Ltd .vs. Lam Adesina (2004) 44 WRN 19.**

The President has supervisory duties and special r esponsibilities entrusted to no other officer of the government, he is the penultimate member of the executive arm. The President faces issues and makes decisions on matters that are far reaching, very sensitive and it is in the interest of the pubic for the President, Governors and their deputies to have the opportunity to make these decisions efficiently, skillfully and without fear of civil liability.

3.3 Scope of the immunity clause under the 1999 Constitution

Under the 1999 Constitution, section 308 of the Constitution has clearly restricted legal proceedings against the President and Vice President of Nigeria and the Governor and Deputy Governors, respectively of the various states. Section 308 of the Constitution provides that:

1) Notwithstanding anything to the contrary in this Constitution, but subject to subsection (2) of this section–

(a) no civil or criminal proceedings shall be instituted or continued against a person to whom this section applies during his period of office;

(b) a person to whom this section applies shall not be arrested or imprisoned during that period either in pursuance of the process of any court or otherwise; and

(c) no process of any court requiring or compelling the appearance of a person to whom this section applies, shall be issued:

Provided that in ascertaining whether any period of limitation has expired for the purposes of any proceedings against a person to whom this section applies, no account shall be taken of this period of office.

(2) The provisions of subsection (1) of this section shall not apply to civil proceedings against a person to whom this section applies in his official capacity or to civil or criminal proceedings in which such a person is only a nominal party.

(3) This section applies to a person holding the office of President or Vice-President, Governor or Deputy; and the reference in this section to "period of office" is reference to the period during which the person holding such office is required to perform the functions of the office.

The scope of the immunity clause applies to anybody holding the office of President, Vice President, Governors and Deputy Governors for the period of their office, the period of their office is a period within which they hold the office in the respective capacity. It follows that immunity clause will not shield them when they leave office. The clause also does not extend to local government chairmen, ministers or traditional rulers. Section 308 is a complete bar to civil and criminal suits against the named officials during their tenure of office. The provision clearly suspends the right of action or the right to judicial relief. In other words, the right of action is put in the limbo until the expiration of the tenure of office of the affected official, which right of action is revived as soon as that tenure expires. In the case of Industrial & **Commercial Serving Nigeria Limited v. Balton (2003) 8 NWLR (Pt. 822) 223, it** was held that once one of the parties to the suit belongs to the category of office holders named in section 38 (3), the suit must be struck out, this is the appropriate order. Also in R v. Madan, (196) 2 QB 1 it was held that immunity need not be expressly claimed, that its existence renders the exercise of jurisdiction null and void. Thus, the Court is robbed of its jurisdiction. Thus the court is robbed of its jurisdiction.

The above provisions of the Constitution have received wide judicial interpretation. We shall, therefore, hereby examine the extent of applicability of section 308 and also comment on its merits, given Nigeria's peculiar circumstances.

3.4. Meaning and limits of section 308

The provisions of section 308 of the Constitution came up for interpretation in the case of Abacha vs. Fawehinmi, (2000) 4 SCNJ 400 at 460 wherein his lordship, Uwaifo, J.S.C., held thus:

The immunity provided for does not apply to the person in question in his official capacity or to a civil or criminal proceeding in which such a person is only a nominal party. The immunity is to protect such a person from the harassment of his person while in office for his action done in his private capacity before or during his tenure in office. In fact in the present case, the suit is against the "Head of State and Commander-in-Chief of the Armed Forces (General Sani Abacha)" and it is in respect of his alleged action in his official capacity. The immunity provided for in the Constitution does not arise and does not apply.

The court of appeal has further held that the intendment of the drafters of the Constitution is to provide a shield for the person of the President, vice President, Governor or deputy governor from frivolous or vexatious litigation in respect of personal or criminal proceedings that would distract him from the business of governance.

Thus, in the case of Rotimi v. MacGregor (1974) 11 SC. 133, the then Military Governor of Western State, 1st appellant, was sued personally over a parcel of land.

The Supreme Court held that by virtue of a similar provision in the 1963 Constitution, the action was incompetent. The provisions of section 308 also came up in the case of Fawehinmi v. I.G.P where the Court of Appeal held as follows:

"the simple and ordinary meaning of section 308 (1) is that the person(s) to which the *provisions apply should not be made to face civil or criminal proceedings in court. The word 'proceedings' after 'civil or criminal' makes it clear and not incontrovertible that what was intended was proceedings in court or tribunal and not police investigations. Section 308 does not shield or protect any of the persons named therein from police investigation. But such investigation should be done as not to infract on the provisions of section 308. The word 'otherwise' in section 308 (1) (b) is to cater for and cover situations not specifically provided for under the paragraph, but which may result in the arrest or imprisonment of the person concerned".*

Kekere-Ekun JCA (as he then was) also, in Ali v. Alibirshi (2005) All FWLR (Pt. **246) 1285 C.A. held that the immunity is to protect the incumbent from civil or**

criminal proceedings being instituted 'against' him in his personal capacity while in office. See further the cases of Tinubu v. I.M.B Securities (2001) 8 NWLR (Pt. **714) 192 CA; Attorney General of the Federation v. Abubarkar (2007) All FWLR (Pt. 389) 1264, at 129801299 CA; G.E.C Limited v. Duke (2007) All FWLR (Pt. 387) 782 S.C.**

3.5 Immunity and criminal investigations

The courts have held that although public officers covered by the immunity clause cannot be arrested or prosecuted, they are not excluded from investigation for corruption and other criminal offences. It was the view of Uwaifo JSC that 'the *evidence may be useful for impeachment purposes if the House of Assembly may have need of it. It may no doubt be used for prosecution of the said incumbent Governor after he has left office. But to do nothing under pretext that a Governor cannot be investigated is a disservice to the society'*

3.6 Exceptions to Section 308

a. **The provisions of section 308 are restricted to the persons named therein and** do not cover members of their families – See the case of Abacha v. F.R.N **(2014) 6 NWLR (pt. 1402) 43 S.C.**
b. **The immunity lasts only during the tenure of the protected official and cannot** be extended by a second thereafter. See the case of Alamieyeseigha v. Teiwa **(2002) FWLR (Pt. 96) 552 CA;**
c. **The limitation in section 308 does not apply to an election petition or a suit** challenging the protected official's election into office. In the case of Obih v. **~~Mbakwe (1984) 1 SCNLR~~ 192 the Supreme Court held that a similar section** under the 1979 Constitution did not shield a Governor from being sued by his opponent over an election petition. Justice Kayode Eso said in Obih's case that "With respect, to extend the immunity to cover the governors from being *legally challenged when seeking a second term will spell injustice". The case* of Alliance for Democracy v. Fayose (2004) All FWLR (Pt. 218) 951 CA held that the immunity enjoyed by a Governor under that section applied to ordinary civil and criminal proceedings and not to election petitions wherein the election of the Governor is being challenged. In Fayose's case, the respondent challenged the issuance of a subpoena on him on the ground that section 308 has conferred immunity on him as a governor. While dismissing

the objection, the Court of Appeal (per Muri Okunola JCA) held that "…the *immunity provided by the provisions of section 308 of the constitution of the Federal Republic of Nigeria 1999 on a State Governor is put in abeyance when his election is being disputed before an election Tribunal as to make him amenable to being compelled by a subpoena to tender document(s) or give evidence before the election tribunal".*

d. The immunity clause does not apply to the President, Vice President, Governors and deputy governors in their official capacities, or to civil or criminal proceedings in which any of these people is a nominal party. See the case of Abacha v. Fawehinmi (2000) 77 L.R.C.N 1258. The Court of appeal held on the immunity under section 267 of the 1979 Constitution, that subsection (2) of the se

3.7 Comparison with other jurisdictions

India

Article 361 of the India Constitution provides for certain privileges such as:

"no civil proceedings in which relief is claimed against the President (or a Governor) shall be instituted during his term of office in a court in respect of any act done or purported to be done by him in his personal capacity whether before or after he entered upon his office until:

i. A notice in writing has been delivered to the president or governor
ii. ~~two months have elapsed after the~~ service of such notice
iii. the notice states the nature of proceedings and description of the party taking the proceedings and the relief claimed"

Attached to this are other privileges under the constitution as:

(i) The President (or the Governor of a state) shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any of those powers and duties. The only exception to this rule is that only the conduct of the president may be brought under review by any court, tribunal or body appointed or designated by either house of parliament for the investigation of a charge in impeachment proceedings.

The immunity clause under the India constitution is an absolute protection clause just as we have under the Nigerian constitution.

Cyprus

The 1960 Constitution provides restricted immunity for the President and Vice President. Article 45 (2) provides that the President or the Vice President may be prosecuted for High Treason on a charge pref erred by the Attorney General and Deputy Attorney General before the High Court. Article 45 (3) provides that the President or Vice President may be prosecuted for an offence involving dishonesty or moral turpitude.

4.0 Conclusion

The attitude of various nations of the world with regards to immunity has gained a considerate popularity. It is in this wise, necessary to juxtapose its application in other jurisdictions. Akin in her work concluded that the application of the doctrine in Nigeria has been a horrendous, traumatic and a reflection of social anomaly. According to her, it has served as conduit pipes to siphon the nation's wealth without any fear of litigation. The work in its analysis, cited examples of past executives who have enjoyed the immunity and used it to perpetuate several criminal offences while abusing the spirit and intent of the clause.

5.0 Summary

This unit has been able to consider the treatment of the immunity clause under the Nigerian 1999 constitution (as amended). By considering other jurisdictions of the world where this doctrine is in operation, the student is able to analyse, the extent, and limitations of the doctrine, as well as the varying degrees of immunity in each jurisdiction.

6.0 Tutor Marked Assignment

Consider whether or not, the proceedings of a tribunal of enquiry constitutes or amount to a Court proceedings as envisaged under section 308 of the 1999 constitution ?

7.0 References/further readings

http://opinion.premiumtimesng.com/2016/07/07/official-corruption-and-immunity-in-nigeria-by-femi-falana/ assessed on 12 September 12, 2017 at 1.08pm

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