NATIONAL OPEN UNIVERSITY OF NIGERIA

FACULTY OF SOCIAL SCIENCES

COURSE CODE: POL 337

COURSE TITLE: PRINCIPLES OF ADMINISTRATIVE LAW

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CONTENT **PAGE**

INTRODUCTION

Pol. 337 Principles of Administrative Law is a three-credit unit course for undergraduate students of Political Science. The materials have been developed to meet global standards. Also, it is meant to expose students to the prominent concerns which Administrative Law represents and covers. In order to give students solid foundation, the course starts with an introductory module. Therefore, in this section, issues highlighted include the definition, nature and scope of Administrative Law; functions and powers of Administration; Definition of Administrative Powers, sources and types; Administrative Law and Constitutional Law; Relevant Constitutional principles. Furthermore, the study units are organised into modules with each module arranged into 5 units. A unit guide includes instructional materials. Also, it provides a concise course content, course guidelines and suggestions and steps required during study. Likewise, some self-assessment exercises for your study are found in each unit.

COURSE AIMS AND OBJECTIVES

The basic aim of this course is to give students requisite insight and encompassing understanding of Administrative Law in contemporary times. Nonetheless, the course specific objectives include the following to help you:

i. understand basic principles and concepts in administrative law;
ii. get acquainted with the powers as well as limitations within the Administrative system of government;
iii. have practical knowledge of the workings of these institutions; and
iv). know the remedies available to citizens in cases of administrative abuse.

Moreover, the specific objective(s) of each study unit can be found at the beginning and you can make references to them as you study. Doing this is vital in order to ascertain, at the end of the unit, whether your advancement is in line with the stated objectives; and, see if you can confidently answer the self-assessment exercise. More importantly, the primary objectives of the course will be achieved if you thoroughly study and finish all the units in this course.

WORKING THROUGH THIS COURSE

To complete this course, you are required to read the study units and other related materials. You will also need to undertake practical exercises for which you need a pen, a notebook, and other materials that will be listed in this guide. The exercises are to facilitate your understanding of the concepts and issues being presented in this course. At the end of each unit, you will be required to submit written assignment for assessment purposes. At the end of this course, you will write a final examination.

THE COURSE MATERIAL

The major materials you will need for this course are as follows:

1. Course Guide
2. Study Units
3. Textbooks
4. Assignment File

STUDY UNITS

There are 5 Modules broken into 25 units in this course. They are listed below:

Module 1: The Definition, Nature, and Scope of Administrative Law

Unit 1 The Definition, Nature and Scope of Administrative Law
Unit 2 The Functions and Powers of Administration
Unit 3 Definition of Administrative Powers, Sources and Types
Unit 4 Administrative and Constitutional Law
Unit 5 Relevant Constitutional Principles

Module 2: The Local Government System in Nigeria

Unit 1 The Local Government System
Unit 2 Functions and Finances of Local Government
Unit 3 Control of Local Government in Nigeria
Unit 4 Delegated Legislation
Unit 5 Control of Delegated Legislation

Module 3: Administrative Panels and Tribunals of Enquiries

Unit 1 Administrative Panels and Tribunals of Enquiries
Unit 2 Independence of Tribunals
Unit 3 Rights of Appeal from Tribunals
Unit 4 Judicial Review
Unit 5 Shortcomings of Judicial Review

Module 4: The Nigeria Police Force

Unit 1 The Police from Colonial to Civilian Rule
Unit 2 Legal Status and Responsibility of the Police Force
Unit 3 Executive Oversight of the Police
Unit 4 Responsibility of the Inspector General of Police
Unit 5 The Debate for State Police

Module 5: Public Complaints Commission/Ombudsman

Unit 1 Public Complaints Commission/Ombudsman
Unit 2 Powers and Functions of Public Complaints Commission
Unit 3 Actions and Proceedings against Government
Unit 4 Prerogative Remedies in Nigeria
Unit 5 Non-Judicial Remedies for Administrative Acts

As you can notice, the pattern of the above outlines has been purposely structured in a manner to acquit you with the rudiments of the course, so that as you progress, the more complex aspects of the course are easily grasped. All that is required on your part is to follow the instructions provided in each unit. Also, some self-assessment exercises have been made available to aid/test your progress with the text and ascertain whether you are achieving the stated objectives. Tutor-marked assignments have also been made available to assist your study. All these will ensure that you are capable to comprehend the essence of Administrative Law.

TEXTBOOKS AND REFERENCES

At the end of each unit, there are some essential reference materials provided, which you may need to consult in the course of your study. The essence is to enable you develop the habit of consulting as much materials as you can, although sufficient information to better equip you to pass this course have been provided. You will have to supplement them by reading from library, or purchase them. Also, you may also need to listen to programmes and news on the radio and television, local and foreign. As a beginner, you need to read newspapers, magazines, journal articles, and if possible, log on to the internet.

ASSESSMENT

For this course, two types of assessments are required – the Self-Assessment Exercises (SAEs) and the Tutor-Marked Assessment (TMA) questions. The former (SAEs) are to be done by you, but not submitted; it is basically to enable you evaluate yourself as you study. On the other hand, the Tutor-Marked Assignments (TMAs) are to be answered by you and kept in your assignment file for submission and marking. The work you submit to your tutor for assessment will account for 30 per cent of your total score.

TUTOR-MARKED ASSIGNMENTS (TMAs)

You will have to submit a specified number of the Tutor-Marked Assignment (TMAs). Each unit in this course has a TMA. You will be assessed on four of them but the best three performances from the TMAs will be used for computing your 30 percent. When you have completed each assignment, send it together with a tutor-marked assignment form to your tutor. Make sure each assignment reaches your tutor on or before the deadline for submissions. If for any reason, you cannot complete your work on time, contact your tutor for a discussion on the possibility of an extension. Extensions will not be granted after the due date unless under exceptional circumstances.

FINAL EXAMINATION AND GRADING

At the end of the course, final examination will be administered, which will attract 70 percent of the total course grade. All areas of the course will be examined. Find time to read the study units all over before your examination. The examination will consist of questions, which reflect the kind of self-assessment exercise, and tutor-marked assignment you have previously encountered. You should use the time between completing the last unit, and taking the examination to revise the entire course.

COURSE MARKING SCHEME

The following table lays out how the actual course mark allocation is broken down.

ASSESSMENT	**MARKS**
Four assignments (the best four of all the assignment submitted for marking)	Four assignments, each marked out of 10%, but highest scoring three selected, thus totaling 30%
Final Examination	70% of overall course score
Total	**100% (of course score)**

COURSE OVERVIEW PRESENTATION SCHEME

Units	**Title of Work**	**Week Activity**	**Assignment (End-of-Unit)**
Course Guide	**Principles of Administrative Law**		
Module 1	**The Definition, Nature and Scope of Administrative Law**		
Unit 1	The Definition, Nature and Scope of Administrative Law	Week 1	Assignment 1
Unit 2	The Functions and Powers of Administration	Week 2	Assignment 1
Unit 3	Definition of Administrative Powers, Sources and Types	Week 3	Assignment 1
Unit 4	Administrative Law and Constitutional Law	Week 4	Assignment 1
Unit 5	Relevant Constitutional Principles	Week 5	Assignment 1
Module 2	**The Local Government System in Nigeria**		
Unit 1	The Local Government System	Week 6	Assignment 1
Unit 2	Functions and Finances of Local Government	Week 7	Assignment 1
Unit 3	Control of Local Government in Nigeria	Week 8	Assignment 1
Unit 4	Delegated Legislation	Week 9	Assignment 1
Unit 5	Control of Delegated Legislation	Week 10	Assignment 1
Module 3	**Administrative Panels and Tribunals of Enquiries**		
Unit 1	Administrative Panels and Tribunals of Enquiries	Week 11	Assignment 1
Unit 2	Independence of Tribunals	Week 12	Assignment 1
Unit 3	Rights of Appeal from Tribunals	Week 13	Assignment 1
Unit 4	Judicial Review	Week 14	Assignment 1
Unit 5	Shortcomings of Judicial Review	Week 15	Assignment 1
Module 4	**The Nigeria Police Force**		

Unit 1	The Police from Colonial to Civilian Rule	Week 16	Assignment 1
Unit 2	Legal Status and Responsibility of the Police Force	Week 17	Assignment 1
Unit 3	Executive Oversight of the Police	Week 18	Assignment 1
Unit 4	Responsibility of the Inspector General of Police	Week 19	Assignment 1
Unit 5	The Debate for State Police	Week 20	Assignment 1
Module 5	**Public Complaints Commission**		
Unit 1	Public Complaints Commission/Ombudsman	Week 21	Assignment 1
Unit 2	Powers and Functions of Public Complaints Commission	Week 22	Assignment 1
Unit 3	Actions and Proceedings against Government	Week 23	Assignment 1
Unit 4	Prerogative Remedies in Nigeria	Week 24	Assignment 1
Unit 5	Non-Judicial Remedies for Administrative Acts	Week 25	Assignment 1

WHAT YOU WILL NEED FOR THE COURSE

This course builds on what you have learnt in the 100 Levels. It will be useful if you try to revisit what you studied earlier. Also, you may need to purchase one or two texts recommended as important for your mastery of the course content. You need quality time in a study-friendly environment every week. If you are computer literate (which ideally you should be), you should be prepared to visit recommended websites. The frequent visit to any public library close or accessible by you is highly advised.

FACILITATORS, TUTORS AND TUTORIALS

Tutors are responsible for tutorials for this course. There are 15 hours of tutorials provided in support of the course. You will be notified of the dates and location of these tutorials, together with the name and phone number of your tutor as soon as you are allocated a tutorial group. Your tutor will mark and comment on your assignments, and keep a close watch on your progress. Ensure to send in your tutor-marked assignments to the study centre well before the due date (at least two working days are required). They will be marked by your tutor and returned to you as soon as possible. And, do not hesitate to contact your tutor if you have any problem with your Self-Assessment Exercise (SAE), Tutor-Marked Assignment (TMA) or the grading of an assignment. You should as well try your best to attend the tutorials. This is the only chance to have face-to-face contact with your tutor and ask questions which are answered instantly. To gain the maximum benefit from course tutorials, prepare a question list before attending them. You will learn a lot from participating in discussions actively.

ASSESSMENT EXERCISES

There are two aspects of the assessment for this course. First is the Tutor-Marked Assignments; second is a written examination. In handling these assignments, you are required to apply the information, knowledge and experience obtained during the course. The tutor-marked assignments are now done online. Make sure that you register all your courses so as to have unhindered access to the online assignments. Your score in the online assignments will account for 30 percent of your total coursework. At the end of the course,

you will need to sit for a final examination. This examination will account for the other 70 percent of your total course mark.

TUTOR-MARKED ASSIGNMENTS (TMAs)

Normally, there are four online tutor-marked assignments in this course. As noted earlier, each of this assignment will attract 10 percent mark. However, the best three (the highest three of the 10 marks) will be taken. It means that the total score for the selected best three assignments will be 30 percent of your total course work. You should be able to complete your online assignments very well given the information and materials contained in your references, reading and study units.

FINAL EXAMINATION AND GRADING

The final examination for Pol. 337: Principles of Administrative Law will be of two hours' duration, which will attract a score of 70% of the total course grade. The examination will consist of multiple choice and fill-in-the-gaps questions which will reflect the practice exercises and tutor-marked assignments you have previous encounters. All areas of the course will be assessed. Hence, it will be helpful for you to go through the whole course. In addition, reviewing your tutor-marked assignments before the examination will be valuable.

HOW TO GET THE MOST FROM THIS COURSE

1. In distance learning, the study units replace the university lectures. This is one of the great advantages of distance learning; you can read and work through specially designed study materials at your own pace, and at a time and place that suits you best. Think of it as reading the lecture instead of listening to the lecturer. In the same way a lecturer might give you some reading to do, the study units tell you where to read, and which are your text materials or set books. You are provided with exercises to do at appropriate points, just as a lecturer might give you in a class exercise.

2. Each of the study units follows a common format. The first item is an introduction to the subject matter of the unit, and how a particular unit is integrated with the other units and the course as a whole. Next to this is a set of learning objectives. These objectives let you know what you should be able to do by the time you have completed the unit. These learning objectives are meant to guide your study. The moment a unit is finished, you must go back and check whether you have achieved the objectives. If this is made a habit, then you will significantly improve your chance of passing the course.

3. The main body of the unit guides you through the required reading from other sources. This will usually be either from your set books or from a reading section.

4. The following is a practical strategy for working through the course. If you run into any trouble, telephone your tutor or visit the study centre nearest to you. Remember that your tutor's job is to help you. When you need assistance, do not hesitate to call and ask your tutor to provide it.

5. Read this Course Guide thoroughly, it is your first assignment.

6. Organise a study schedule. Design a "course overview" to guide you through the Course. Note the time you are expected to spend on each unit and how the assignments relate to the units.

7. Important information; e.g. details of your tutorials and the date of the first day of the semester is available at the study centre.

8. You need to gather all the information into one place, such as your daily or a wall calendar. Whatever method you choose to use, you should decide on and write in your own dates and schedule of work for each unit.

9. Once you have created your own study schedule, do everything to stay faithful to it.

10. The major reason why students fail is that they get behind with their course work. If you get into difficulties with your schedule, please, let your Tutor or Course Coordinator know before it is too late to help.

11. Turn to unit one and read the introduction and the objectives for the unit.

12. Assemble the study materials. You will need your references for the unit you are studying at any point in time.

13. As you work through the unit, you will know what sources to consult for further information.

14. Keep in touch with your Study Centre. Up-to-date course information will be continuously available there.

15. Well before the relevant online TMA due dates, visit your Study Centre for relevant information and updates. Keep in mind that you will learn a lot by doing the assignment carefully. They have been designed to help you meet the objectives of the course and, therefore, will help you pass the examination.

16. Review the objectives for each study unit to confirm that you have achieved them, if you feel unsure about any of the objectives, review the study materials or consult your Tutor. When you are confident that you have achieved a unit's objectives, you can start on the next unit. Proceed unit by unit through the course and try to space your study so that you keep yourself on schedule.

17. After completing the last unit, review the course and prepare yourself for the final examination. Check that you have achieved the unit objectives (listed at the beginning of each unit) and the course objectives (listed in the Course Guide).

CONCLUSION

Embedded in this course are the effective set of knowledge to enable you interpret socio-political happenings in the society. As stated earlier, you may also need to listen to programme and news on the radio and television, local and foreign. As a beginner, you need to read newspapers, magazines, journals and if possible, log on to the internet to further expose you.

SUMMARY

The course guide gives you an overview of what to expect in the course of this study. The course teaches you the basic principles and concepts of Administrative Law. It also acquaints you with the powers as well as limitations within the administrative system of government. We wish you success with the course and hope that you will find it both interesting and useful.

List of Acronyms

AGF	Attorney General of the Federation
ANLR	All Nigeria Law Report
CBN	Central Bank of Nigeria
CJ	Chief Judge
CJN	Chief Justice of Nigeria
CCB	Code of Conduct Bureau
CP	Commissioner of Police
CFRN	Constitution of the Federal Republic of Nigeria
EFCC	Economic and Financial Crimes Commission
FCSC	Federal Civil Service Commission
FEDECO	Federal Electoral Commission
GNPP	Great Nigeria Peoples Party
HC	High Court
ICPC	Independent Corrupt Practices and Related Offences Commission
IGP	Inspector-General of Police
IGR	Internally Generated Revenue
LEDB	Lagos Executive Development Board
LGA	Local Government Area
MBN	Merchant Bank of Nigeria
NDLEA	National Drug Law Enforcement Agency
NFIU	Nigerian Financial Intelligence Unit
NGF	Nigeria Governors Forum
NNPC	Nigerian National Petroleum Corporation
NULGE	National Union of Local Government Employees
NCLR	Nigeria Commercial Law Reports
NLR	Nigerian Law Reports
NWLR	Nigeria Weekly Law Report
PSC	Police Service Commission
PCC	Public Complaints Commission
JSCN	Justice of the Supreme Court of Nigeria
TV	Television
VAT	Value Added Tax

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TABLE OF CONTENTS

MODULE 1: THE DEFINITION, NATURE, AND SCOPE OF ADMINISTRATIVE LAW

INTRODUCTION

In this Module, we set to focus on the very basis of Administrative Law, by first looking at the unsettled definitions of the concept. Although scholars have not been able to give a generally acceptable definition, that notwithstanding, students will be able to glean from various definitions the common denominator. However, despite the seemingly unsettled nature of administrative law, it is arguably an established field. The module also briefly discussed the various sources and types of Administrative powers and the related aspects and dissimilarities between administrative law and constitutional law. To aid the student's understanding, the module will try to use existing cases for graphical illustrations. This module is made up of five units; it is upon these outlines that we shall base discussion of the basics of Administrative Law.

UNIT 1: THE DEFINITION, NATURE AND SCOPE OF ADMINISTRATIVE LAW

CONTENTS

1.0 INTRODUCTION

The primary focus of this unit is to give insight into the very meaning and range of administrative law as essential feature in running modern day governments. The survival of the state as an entity actually depends on the activities of the institution called the government. Mainly, the executive branch of government plays a greater role for the fulfilment of the socio-political and economic obligations of the state. In order to guide against arbitrary use of power, there arises the need for law to explicitly state limits to the exercise of powers, as well as provide for remedies in cases of abuse. It is in this context that administrative law comes to play. Therefore, in this unit, students are expected to have a good grasp of what administrative law is.

2.0. OBJECTIVES

At the end of this Unit, you should be able to:

- define administrative law.
- explain the scope and sources of administrative law.

3.0 MAIN CONTENT

3.1 Definition and Nature of Administrative Law

In the social sciences, there is hardly any concept that is not a subject of unsettling argument. As result, many concepts scarcely have a generally acceptable definition amongst scholars. One of such polemics is about what administrative law is? Globally, there is no generally accepted definition even among classical writers such as Frank Goodnow, I Jennings and K.C. Davis among others. As regards administrative law, one of the reasons proffered for this definitional quagmire is due to the dynamics of the administrative process. Therefore, there seem to be some degree of skepticism about having a conception of administrative law that can encompass the whole gamut of the administrative process. Hence, scholars have been arguably reluctant to give what may

come to be a superfluous definition of administrative law. Also, it should be noted that administrative law is not yet fully emergent rather it is susceptible to the vagaries of active actors in the political arena. As Osorio remarked that the centrality of issues being focused by administrative law has been susceptible in numerous respects to the caprice of judges, attorneys, and politicians. To a large extent therefore, the distortions that result from these interferences may have directly or indirectly affected the course of administrative law development and consolidation. Moreover, with regard to the hazy consensus that exist among scholars blamed on the broad and eclectic nature of administrative law as a field because it is basically derived from multifaceted sources such as the constitution, statutory law, judicial decisions, and Executive Orders as issued by the president. Osorio further stated that administrative law covers a variety of substantive areas, including air and water quality, immigration, labour, taxation etc. In fact, some have even opined that administrative law is not possible to be determined. Finally, the interdisciplinary nature of administrative law has further complicated the confusion that exists in the field. Administrative Law straddles across public administration, political science and legal studies. Therefore, given these different disciplinary approaches to administrative law, it will no doubt be subjected to varying definitions and interpretations by scholars. In fact, it is most unlike for a political scientist or a legal practitioner to reach a concrete agreement in terms of the meaning and scope of administrative law.

Nevertheless, several definitions have been put forward by scholars. The first apparent definition of administrative law was given by Frank Goodnow, in 1893, who defined it as "that part of the law that governs the relations of the executive and administrative authorities of government". This set the tune for further views to be expressed by other scholars. Ivor Jennings defines administrative law as relating to the administration. It determines the organization, powers and duties of administrative authorities. Although this definition widely accepted, however, it has been criticized for being too broad because the law that defines the power and functions of administrative authorities may also deal with the functional aspects of such power. Also, its failure to differentiate between constitutional and administrative law as well as the exclusion of possible violation of rights of private individuals in the course of discharge of their duties by the administration forecloses the rights of citizens and therefore, means that administration cannot be brought to account. For K.C. Davis, Administrative law is the law concerning the powers and procedures of administrative agencies especially, the law governing judicial review of administrative actions. Also, Davis has been criticized for not putting into account the substantive laws that these administrative bodies make rather much emphasis is placed on procedures. On his part, Deshpande view administrative law in two seemingly related ways. In the first sense, it is seen as law relating to administration, while on the other hand, it is seen as law made by administration. In this latter connotation, Deshpande argued that rule-making is not the exclusive reserve of one institution, particular as it has to do with delegated powers. In this regard, delegated administrative authorities are empowered by statute to make rule, regulations, orders, schemes, or bye-law-hence, such agencies are involved in rule-making. On the other hand, there are adjudicatory role which quasi-judicial administrative authorities play in deciding matters of law, or justice as it has to do with citizens' engagement with specific institutions of the state. The implication of the activities of these quasi-judicial agencies is their consistent handling of matters within the context of existing statute, or administrative policy as applicable to specific cases, which, will overtime amount to a body of administrative law.

Also, other scholars have appreciable attempt in bringing their perceptive to bear in trying to define administrative law. Aman sees administrative law as primarily concerned with the legal processes that relate power to principles. That is to say that administrative law regulates the legal processes by which executive, legislative, and judicial powers are used and through administrative agencies. Wade & Bradley defined administrative law as simply a branch of public law primarily concerned in stating and outlining the composition, powers, duties, rights and liabilities of the different organs of government involved in administration. IIuyomade & Eka defined administrative law as that body of rules which aims at reducing the areas of conflict between the administrative agencies of the state and individuals.

Furthermore, Rosenbloom defines administrative law as the body of constitutional provisions, statutes, court decision, executive orders, and other official directives that, first, (a) regulate the procedures agencies use in adjudicating, rulemaking, and adopting policies, (b) control the exercise of their authority to enforce laws and regulations, and (c) govern the extent to which administration is open to public scrutiny; and second, provide for review of agency decisions, rules, orders, policies, actions, and other aspects of their operations (cited in Osorio, 2016, p.3). The above definition appears to be encompassing, and at the same time complicated. Nonetheless, in modern terms, Rosenbloom definition gives a broader understanding of the province of administrative law. In particular, it brings to the fore the democratic goals and norms which administrative agency tends to attain and pursue in meeting their mandate and fulfilling societal needs. From the foregoing therefore, it is apparent that opinions are yet to reach a generally accepted consensus as regards defining administrative law.

In another vein, some views have been expressed to the fact that administrative law should be conceptualized to reflect present global realities. In this line of thought, particularly, Harlow has argued that there seem to be the emergence of a global administrative law hinging his argument on the fact that the global nature and malleability of the principles of administrative law may form the bedrock of a global administrative law system. This includes: the principles of legality and due process, adherence to the rule of law, practice of good governance values and human rights tenets. However, he leaves us with a pessimistic note of not seeing the manifestation of a globalized administrative law system. This is hinged on the fact that it will be difficult to attain a consensus universal administrative law system for the reason that the defining principles are value-laden; mainly Western construct, basically aimed at protecting Western interests too. To this extent, it may adversely affect developing areas were these principles are mostly imposed. While this strand of argument brings to the fore another perspective, it is however, doubtful to expect the full emergence of a seamless universal administrative law system despite the present globalizing tendencies in the world today. Nonetheless, our escapade in this section points to the fact that there still exists an unsettled debate about the meaning of administrative law. That notwithstanding, it is important for students to note that administrative law is the law that regulates the powers and duties of government and administrative agencies against abuse, and provides remedies of abuse to aggrieved individuals.

3.2 The Scope of Administrative Law

Since administrative law essentially controls the powers and responsibilities of

government and several administrative authorities as well as mechanisms opened to aggrieved individuals. Therefore, the term "scope of administrative law", we mean the coverage of administrative law. What area does it cover? What does it entail etc? Administrative law covers a variety of issues amongst which are:

i) The Civil Service of the Federal, States and Local Governments

Here, the hierarchical structures are defined with the head of civil service heading the Federal and State Civil Service respectively. There are permanent secretaries for each ministry with numerous administrative and executive cadres. There are laws binding the implementation and execution of works in various departments. The director of personnel heads each local government administration. The State House of Assembly enacts substantive laws that govern the local government administration. For example, Lagos State Local Government Election Tribunal (Amendment) Law, LSGN No. 24, Law No 7 of Lagos State.

ii) Administrative decision and rule making procedures

The administrators make rules and decisions to govern conduct of government. In making rules, they rely on facts and information, whether to give procedural notice to the affected person or not, they bear in mind the nature of the problem at hand, persons that will be affected by the proposed rules and decision, whether the matter to be attended to is an urgent one, the moral stand of the rule, whether the procedure adopted in reaching the decision can stand the test of *locus standi* when challenged in a court of law, etc. All these are what the administrative decisions and rules deal with and put into consideration.

iii) The control of administrative power

The essence of this is to avoid the arbitrary use of power as a result of powers conferred by law. The machineries employed for controlling the power are the legislative control, the Executive control and the judicial control.

iv) Delegated legislation and delegation of powers

Under civilian regimes, the laws made by the federal legislature are called Acts (for instance, the Petroleum Act, the Matrimonial Causes Act, etc) while the ones made by the states are called laws of the State (for instance, the Wills Law of Lagos State, Lagos State Environmental Protection Agency Law, etc). However, under military regimes, federal laws are made by Decrees. Edicts are Laws promulgated by the state while the laws made at the local government are called bye-laws. The laws passed by the law-making bodies are called legislation. Where legislation provides that a constituted authority responsible for administering the law can make further laws or regulations to enable him carry out his or her function, this latter law is called delegated legislation.

iv) Judicial remedies

Where a person is aggrieved by the performance of an administrative function, he is at liberty to apply to the court for redress of the wrongful act. In administrative law, remedies can be grouped into statutory remedy, common law remedy, equitable remedy and prerogative remedy.

Statutory remedies

These are an amount stipulated within the statute rather than calculated based on the degree

of harm to the plaintiff. Lawmakers will provide for statutory damages for acts in which it is difficult to determine the value of the harm to the victim. Mere violation of the law can entitle the victim to a statutory award, even if no actual injury occurred.

Common law remedies

These are laws developed by judges through decisions of courts and similar tribunals rather than through legislative statutes or executive branch action. A common law system is a legal system that gives great precedential weight to common law, on the principle that it is unfair to treat similar facts differently on different occasions. The body of precedent is called common law and it binds future decisions. In cases where the parties disagree on what the law is, an idealised common law court looks to past precedential decisions of relevant courts. If a similar dispute has been resolved in the past, the court is bound to follow the reasoning used in the prior decision (this principle is known as *stare decisis*).

Equitable remedies

These are judicial remedies developed and granted by courts of equity, as opposed to courts of common law. Equitable remedies were granted by the Courts of Chancery in England, and remain available today in most common law jurisdictions. In many jurisdictions, legal and equitable remedies have been merged and a single court can issue either or both remedies. Despite widespread judicial merger, the distinction between equitable and legal remedies remains relevant in a number of significant instances. The two main equitable remedies are injunctions and specific performance and in casual legal parlance, references to equitable remedies are often expressed as referring to those two remedies alone.

Prerogative remedies

These are discretionary remedies, and have been known as prerogative orders in England and Wales since 1938. The writs of *quo warranto* and *procedendo* are now obsolete, and the orders of *certiorari*, *mandamus* and *prohibition* are under the new Civil Procedure Rules 1998 of England is known as "quashing orders", "mandatory orders" and "prohibiting orders" respectively.

3.3 Sources of Administrative Law

Given the fact that administrative law is part of public law of a country, it derives its legitimacy from legal system of such country. Since administrative law is obtained from various sources, it creates a kind of fusion of several laws of the state in order to ensure democratic legitimacy and performance of administrative authorities in their discharge of delegated powers. And in case where abuse occurs, the victim is appropriately attended to. In view of the fact that administrative law is a derived one, the following are the basic sources of administrative law irrespective of country-specificity.

The Constitution

It is the constitution that establishes the various administrative authorities or agencies that mainly guided by administrative law. The Constitution is the supreme law of a state that other existing laws derive legitimacy. In case of Nigeria, Chapter 1 of the 1999 Constitution (as amended) Section 1(3) explicitly states that "if any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void". Thus, the Constitution serves as

the basis and provides legitimacy to existing laws.

Legislative Acts or Statutes

These are rules made by legislative body by giving in details and the comprehensive powers, functions and methods of control of several administrative authorities.

Executive Orders

These are direct orders issued by the President personally meant to address a particular but urgent national problem or issue. And, it is mainly expected to last for a specific period. Essentially, Executive Orders gives extra powers to administrative authorities in order to meet certain critical issues.

Judicial Decisions

These are pronouncements of Judges that accounts for the laid down principles associated to administrative actions.

SELF ASSESSMENT EXERCISE

Examine the factors that led to the emergence of Administrative Law.

4.0 CONCLUSION

There is no generally accepted definition of administrative law; all definition depends on individual's opinion. Generally, however, administrative law is the law, which keeps the powers of government within the legal bounds in order to protect the citizen against the abuse of power and where abused, to provide the remedy for the aggrieved person. Its province involves the control of administrative decision, judicial remedy, and so on.

5.0 SUMMARY

In this unit, we have discussed and defined various definitions of administrative law by various scholars. We have mentioned passively the nature of administrative law, its scope as well as the main sources of administrative law. Therefore, we concluded that where the administrators act beyond their limit thus infringing on the right of any citizen, judicial remedies are available to aggrieved citizen to redress the wrong done.

6.0 TUTOR-MARKED ASSIGNMENT

Define what you understand by the concept "Administrative Law."

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UNIT 2: THE FUNCTIONS OF ADMINISTRATIVE LAW AND POWERS OF ADMINISTRATION

CONTENTS

1.0 INTRODUCTION

Administrative law regulates government or administration such that the agencies do not arbitrarily exercise their powers or exceed them. This means that the laws play vital roles in administration. The functions entrusted to administrative bodies, that is, public officers and administrative authorities are many. Their powers are often great. In this section, we take a look at some these functions and powers of administrative bodies.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- discuss the functions of administration or government
- explain the powers of administration or government.

3.0 MAIN CONTENT

3.1 Functions and Characteristics of Administrative Law

Administrative law encompasses a number of defined powers and responsibilities held by administrative agencies of government. Administrative law encompasses a number of statutes and cases, which define the extent of the powers and responsibilities held by administrative agencies of the government. The executive, legislative, and judicial branches of the government cannot always directly perform their constitutional responsibilities. Powers are therefore delegated to Agency, Board, or Commission, etc. These administrative governmental bodies oversee and monitor activities in complex areas, such as immigration, taxation, and housing. Others are regulation of food and drugs, medical device manufacturing, and securities markets. Administrative law must therefore observe the rule of natural justice.

Natural justice is divine justice or justice according to God. There is no universally, or generally accepted definition of natural justice. However, concisely natural justice means: The inherent right of a person to a fair and just treatment in the hand of rulers, their agents

and other persons. Administrative law plays a vital role in the realm of administration and society, some of which are:

(i) Administrative law acts as a check in respect of the unlawful exercise or abuse of governmental administrative power. In Bello vs Lagos Executive Development Board (LEDB) (unreported Supreme Court 1970), a piece of land acquired under Lagos Town Planning Act purportedly acquired for public purpose but in actual fact sold to a religious organisation was held *ultra vires*.

(ii) It embodies principles that facilitate good administrative practice. For instance, the two rules of natural justice that a man cannot sit on his own case (*Nemo Judex in Causa Sua*) and that no man can be condemned unheard (*Audi Alterem Partem*). In Cinnamond vs. British Airports Authority (1980) I WLR 582, it was held that a taxi driver cannot be deprived of his licence to operate at an Airport because of an alleged misconduct without first being given a chance to put his side of the case.

(iii) It provides remedy for grievances occasioned at the hand of public authorities. In Shugaba vs Ministry of Internal Affairs & Ors (NCLR1981), the applicant, a member of Great Nigeria Peoples Party (GNPP) and the majority leader in Borno State House of Assembly was deported by the Federal Authority and its agents from Nigeria. An application was filed on his behalf under the fundamental human right for redress for violation of his right. The court held that the infringement of fundamental human right of Nigeria citizen must attract compensation, damages and in some cases ought to invent exemplary damages.

(iv) It commands public bodies to perform their statutory duties under the statute (including the exercise of discretion (See Merchant Bank of Nigeria. vs. Federal Ministry of Finance (1961) ANLR 568). This is termed a "Command Function." In Queen vs. Chief Ozogula II Exparte Ekpenga (1962) I ANLR, 265, the respondent obtained an order of mandamus in the High Court to compel the applicant to perform certain traditional ceremonies which by Ibo customary law, it was his duty to perform on the death of a certain class of Ibo Chiefs to which class the respondent's deceased father belonged.

(v) It aids accountability and transparency, including participation by interested individuals and parties in the process of governance. For instance, through membership of pressure groups.

(vi) It allows the administrative agencies to be observed on when not to commit an error of law i.e. an action or decision that is in conflict with the statute. Lord Goddard CJ in Powell vs. May 1946 1K B. 330 at 338 held as follows: In our opinion, it is beyond the powers of a county council to enact a bye-law, which prohibit…that which the general statute enables to do…"

3.2 The Functions and Powers of Administration

The functions and powers vested on administrative authorities and public officers are conferred on them by the constitution and statutes. These functions are many with varying powers depending on the establishment or institution. For instance, Section 2 of the Petroleum Act, Cap. P.10, Laws of the Federation of Nigeria, 2004 vests power on the minister of petroleum to grant licences known as oil exploration license, oil prospecting

license and a lease to be known as oil mining lease. He or she has many functions, which he or she can delegate to his or her subordinates for the proper and effective discharge of his function. One of his key tasks is the implementation of government policies on petroleum resources. In the health sector, the functions include promoting of public health, conduct of medical research, funding of health institutions throughout the country depending on whether the health sector is that of the federal or state.

In the education sector, their responsibility includes but is not limited to the implementation of policies on education. In the area of communication, the main functions are the implementation of policy on communication and promotion of the knowledge and use of information and communication technology. The maintenance, equipment, funding and general welfare of the Nigeria Police is the total function of the police affairs. The aforementioned functions point to the fact that functions to be performed by the administration will depend on the organisation, body or authority.

3.3 The Powers of Administrative Authorities

The legislations may confer very wide discretionary power on the authorities for the performance of their duties. In Merchant Bank of Nigeria vs. Federal Ministries of Finance (1961) ANLR 568, the appellant bank held a banking license granted and issued under the granting ordinance. The respondent later revoked through an order, the license and ordering the winding up of the bank's business. The bank brought an action in the high court contending that the license issued conferred a right, which could be revoked only by court. The action was dismissed. On appeal to the Supreme Court, it was held that a right or licence to engage in the business of banking under the Banking Ordinance is not a civil right and that such a licence may be determined by ministerial order without recourse to the courts or other tribunal, that is, the minister could revoke it in accordance with the provisions of Section 14 of the Banking Ordinance. Thus, the appeal was dismissed.

By and large, the powers of administrative authorities include:

(i) the power to hear and determine disputes, investigate objections and to examine issues on practical, economic and social aspects of life and submit report and probably make recommendation to the government for instance, the power of industrial arbitration panel to investigate and determine industrial disputes and make recommendation to the government.

(ii) the power to grant or refuse the issuance of licence or lease or permission to execute a business or any activity. For instance, the power endowed on the minister of petroleum to grant or refuse permission in relation to petroleum exploration in Nigeria (see Section 2 of Petroleum Act).

(iii) the powers to investigate and make enquiry, gather information and facts from people, organization or society. An example is a committee set up to look into a land crisis between or among settlers of a domain bothering on the ownership of the land. The committee has the right to request information, materials and facts from all the factions so as to determine the real ownership of the said property.

(iv) the administrative authority has the power to direct a body or individual or community to do or refrain from doing an act. A town planning section of the local government can

refuse someone from building a house where such will contravene the town planning law. From the above, it is clear that the administrative authorities are wrapped with powers to enable them discharge their various functions.

SELF ASSESSMENT EXERCISE
Discuss the functions of Administrative Law.

4.0 CONCLUSION

Administrative law plays a vital role in confining the administration within their legal framework and ensuring that the principles of natural justice are conformed with. On their own side, the administrative authorities are given various tasks to execute in accordance the primary duty of each establishment, organisation or body. In discharging their duties, they are vested with wide powers some of which are discretionary but must be exercised within the purview of the statute, bye-law or any legislation conferring such powers on them.

5.0 SUMMARY

In this unit, we have analysed the functions of administrative authorities or public officers and the powers conferred on them for their functions.

6.0 TUTOR-MARKED ASSIGNMENT
Examine with the aid of judicial authorities, the characteristics of Administrative Law.

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UNIT 3: SOURCES AND TYPES OF ADMINISTRATIVE POWERS

CONTENTS

1.0 INTRODUCTION

The powers vested in administrative authority of government for discharging their functions are many and great. In the discharge of these functions, they perform and exercise the powers conferred on the three arms of the government. Although, it is difficult to know when the powers of each of the three arms are being performed as they are often overlap. However, the legal implication of the mode of exercise of the powers indicates whether the power being performed is that of the legislature, executives or judiciary.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- discuss and understand administrative powers
- analyse whether the implied power is a dangerous form of administrative power.

3.0 MAIN CONTENT

3.1 Sources of Administrative Powers

Administrative powers are discretionary powers of an executive kind that are given by law on government ministers, public and local authorities, and other bodies and persons for the purpose of giving full outcome to broadly outline policy. These powers are mostly exercised by administrative agencies whether at the federal or state level. Therefore, the powers exercised by government and administrative agencies may be categorized into three, such as:

Express powers

These are powers that are expressly provided for by the statutory provisions. Examples are:

a) The Constitution: This is the supreme law of the land and any provision of any other law, which is inconsistent with its provision, shall to the extent of the inconsistency, be void (Section1 (1) and (3) of 1999 Constitution (as amended) of the Federal Republic of Nigeria, 1999. By virtue, of Section 4(1), the legislative powers of the Federal Republic of Nigeria

are vested in the National Assembly of the Federation. Section 5 vests executive powers on the president while section 6 confers judicial powers on the judiciary. Going by virtue of these provisions, no administrative agencies can make any law that negates or contradicts the constitution. If there be any law inconsistent with any section of the constitution, such a law shall to the extent of the inconsistency be void, and therefore, of no effect.

b) By an act of Parliament, state laws or charter establishing such public authority, body agency or corporation. In this regard, the National Assembly being the lawmaking institution in the country, and moreover, having the exclusive role to legislate on all of the items/matters covered in the Exclusive List (Second Schedule Part 1) of the 1999 Constitution (as amended), is the paramount creator of administrative agencies in Nigeria. Thus, the National Assembly has enacted several Statutes which sanctioned the establishment of certain Federal Administrative Agencies. These include the Economic and Financial Crimes Commission (EFCC) Act 2004, Independent Corrupt Practices Commission (ICPC) Act 2000, and the National Drug Law Enforcement Agency (NDLEA) Act 1989. Also, the Nigerian National Petroleum Corporation Act (NNPC), 2004 Law of the Federation of Nigeria, vests express power on the board for the proper administration of their duties. For instance, the law establishing the Lagos State Development and Property Corporation is an example of law conferring express power.

c) A subsidiary legislation or delegated legislation made pursuant to the Act of Parliament, thus conferring the said power. However, in a country with an unwritten constitution, such as Great Britain, some government functions or power may be based on constitutional conventions, practice or even judicial precedents.

Incidental power

This is a power is not expressly granted, but necessary for the accomplishment of the express powers. It is the power to do things which are auxiliary, related, subordinate, incidental to or providing support to express duties and functions, and are necessary to achieve the purpose of the express power, even though such incidental power is not expressly granted by statute. The law looks at the reasonableness of the act done pursuant to the exercising the power and determines whether such power could be regarded as related, incidental or ancillary to the express power or not.

Implied powers

These are those that are not expressly provided for by any of the aforementioned and are not incidental to the performance of their functions but are based on the assumption of the body or authority exercising it that the powers are right or wrong thus making majority of the powers exercised to be declared *ultra vires.* In fact, it is a dangerous type of power. It is used arbitrarily with unlimited range. It is advisable that administrative authorities should confine themselves within the express powers and powers incidental to the express powers so as not to declare the exercise of any of their power as *ultra vires*.

3.2 Types of Administrative Powers

Governmental powers may be classified as follows:

i) Legislative powers

In accordance with the doctrine of separation of powers which shall be discussed in later unit, the powers of government are divided amongst the three arms to forestall any form of

abuse and undemocratic practices by either individuals or particular institution. Therefore, in democratic societies around the world, as in the case of Nigeria, the powers to make laws for the peace, order and good government are vested on the legislative branch of government. In Nigeria, legislative power is exercised by the National Assembly at the Federal level or House of Assembly at the state level. Although the National Assembly consists of two Houses - the Senate and House of Representatives respectively- generally referred to as bicameral system, the various state Houses of Assembly operate only one House each. Interestingly, the Nigerian legislative system is patterned according to the United States of America, which, consists of the Senate and House of Representatives, and collectively called the Congress.

Therefore, it is the National Assembly or House of Assembly at the state level that legitimately possesses legislative powers. Legislative powers entail the law-making powers of a legislative body, which includes the power to make, alter, amend and repeal laws. As contained in Section 4 (1-5) of the 1999 Constitution (as amended) the National legislative powers cover the whole Federation. As a result, no state House of Assembly can make any law that is inconsistence with those made by National Assembly. As stated in Section 4(5) if any law enacted by the House of Assembly of a State is inconsistence with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other Law shall, to the extent of the inconsistence, be void. In effect, the National Assembly has the exclusive powers to make laws contained in the exclusive List Second Schedule Part 1 of the 1999 Constitution (as amended) and others included in the Concurrent List too. Although it may be delegate rule making and regulatory powers to Ministries, agencies, and commissions, etc in the executive arm, its law-making powers are its exclusive reserve.

ii) Executive powers

Generally, the executive branch is considered as the enforcer of laws made by the legislature. In fact, some have argued that this view makes the executive appear as an errand boy of the legislature, and therefore, broader perceptive is needed. For such view, the Executive power is not just the power to execute the laws but the capacity to administer the dictates of such laws. More broadly is the understanding that the executive power denotes the capacity to use the resources of the government to perform the functions of the government or administration, dependent on stipulations of laws enacted by the Legislative arm. These powers exercisable by the executive organ of government in performing particular act or giving particular order or making decisions generally in relation to particular statutory duties within their competence is what is referred to as executive powers. In Nigeria, Section 5 provides the exercise of executive powers of in the President, or the Vice-President and Ministers of the government among other delegated authorities.

iii) Judicial powers

These are exercised when there is an existing dispute *lis inter partes* (conflict among people) between two or more parties and it involves four conditions:

a) the presentation (not necessarily orally) of their case by the parties;
b) the ascertainment of any disputed facts by evidence adduced by the parties, often with the assistance of argument on that evidence
c) the submission of argument on any disputed question of law, and
d) a decision which disposes of the whole matter by a finding on the disputed facts

and an application of the law to the facts so found including where required a ruling upon any disputed question of law.

iv) Quasi-Judicial powers

The above pre-requisite of judicial power would also be available in a quasi- judicial power but it may not involve submission of argument on any question of law and the decision may not be final.

v) Administrative decision

Here, the authority in question is not required to employ any of the processes familiar in court of law (hearing evidence and arguments, and so on) and where the grounds upon which no acts left entirely to his discretion.

3.0 Essence of Classifying Governmental Powers

It is necessary to determine whether the act or power exercised by the administrative authority is that of executive, legislative or judiciary because each of them has its own legal implication. It has been contended that remedies available to an aggrieved person depend upon the types of power exercised by the administrative authority. If such power is classified as judicial or quasi-judicial, the order of Mandamus, certiorari and prohibition may be issued to stop or quash it. However, where he is acting in a legislative or executive capacity, a prerogative order of mandamus may not as a general rule lie against it to compel the performance of the public duty. In Banjo vs. Abeokuta Urban District Council (1965) I, NMLR 295, the applicants requested for the issuance of permit to operate their cabs in the area of jurisdiction of the Council after having paid the necessary fees and filling required forms. The permit was denied by the secretary to the Council. They brought an action for an order of mandamus against the Council. It was held that if a body against whom an order of mandamus is sought from the previsions laid down in the law empowering that body to perform a public duty, mandamus would lie against it to compel it to act according to law.

The general rule of "*delegatus non potest delegare*" meaning, a delegate cannot sub delegate his power unless empowered by statute applies strictly to judicial or quasi-judicial power or function. However, an executive or administrative function may be delegated unless the enabling law expressly forbids the sub-delegation. In Banner vs. National Dock Labour Board, (1953) 2 Q.B. 18, was held that no judicial functionaire can delegate its functions unless he is enabled to do so expressly or by necessary implication.

Where an administrative body is performing a judicial or quasi-judicial function, he is expected to act in accordance with the principles of natural justice. These are: *Audi alterem Partem a* person cannot be condemned unheard) and *Nemo Judex in causa sua, meaning:* one cannot sit in his own case (See Merchant Bank of Nigeria vs. Federal Ministry of Finance (1961), ANLR 568).

Where however, the administrative power is classified as legislative, executive or administrative, he need not apply the rules of natural justice as a rule. However, such

administrative agent must act fairly. See R.V. Liverpool Corporation Ex Parte Liverpool Taxi Owner Association, 1972 2 Q.B. 299 AT 307.

Generally, a legislative power will not be declared invalid or void on the ground that it is unreasonable, arbitrary or *ultra vires* but where it is administrative or judicial, it can be set aside as *ultra vires* on ground of unreasonableness or arbitrariness.

Where an administrative body is acting in a judicial capacity, it will be protected against civil or criminal liability on the basis of judicial privilege. They must however act in good faith. In Collins vs. Henry Whiteway & Co. (1927) 2 KB, 378, the plaintiff, Louisa Collins, who sued by Williams Collins, her best friend claimed damages from the defendants; her former employers for false imprisonment, malicious prosecution and libel. These claims failed except in regard to one libel contained in a letter dated July 7, 1926. As to this, Horridge J. held that the occasion was privileged but the jury found that it was written with malice and awarded damages in favour of the Plaintiff.

SELF ASSESSMENT EXERCISE
Explain the various sources of administrative power.

4.0 CONCLUSION

The administrative agencies derive their powers from express, implied or incidental power. Where it is exercised arbitrarily, it will be declared as *ultra vires*. In exercising these powers however, particularly when there is need for judicial review of their action, the issue of classification of powers ensues. This is a great task and despite this task, the legal consequence(s) of the function or power exercised by the administrators determine(s) what capacity he is acting.

5.0 SUMMARY

In this unit, we have discussed types of administrative powers such as express, implied and incidental powers. We have also discussed classification of governmental powers and finally the importance of classifying these administrative or governmental powers.

6.0 TUTOR-MARKED ASSIGNMENT
Discuss the various ways into which a governmental power may be classified.

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UNIT 4: ADMINISTRATIVE LAW AND CONSTITUTIONAL LAW

CONTENTS

1.0 INTRODUCTION

The constitution of any nation in the world is the supreme law and guide actions and structure of every machinery of state and other matters within the jurisdiction of the state. In other words, constitutional law defines the roles, powers, and structures of the various entities within a state. On the other hand, administrative law regulates the use of powers granted by the constitution. It is therefore apparent that the distinguishing line between constitutional law and administrative law is seemingly blurred. Hence, it is important to have a working understanding between the similarities and differences between the constitutional law and administrative law.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- understand the difference between constitutional law and administrative law.

3.0 MAIN CONTENT

3.1 Features of Administrative Law

As stated earlier, administrative law is the body of law that governs the activities of administrative agencies of government. Government agency action can include rule making, adjudication, or the enforcement of a specific regulatory agenda. Administrative law is considered a branch of public law. As a body of law, administrative law deals with the decision-making of administrative units of government (for example, tribunals, boards or commissions) that are part of a national regulatory scheme in such areas as police law, international trade, manufacturing, the environmental, taxation, broadcasting, immigration and transport. Administrative law expanded greatly during the twentieth century due to the increased role of the state worldwide to regulate the rising complex social, economic and political spheres of human interaction following the neo-liberal policies of early 90s. In some way,

The following are some of the features of administrative law:

i) administrative law regulates administration. It is concerned with the organisation, power and conduct of government and administrative authorities.
ii) it regulates the procedure of administrative authorities, bodies and agencies;
iii) iit regulates the organisation, powers and duties of government and administrative authorities
iv) it provides remedies for aggrieved persons against any administrative acts exercised contrary to the enabling laws.

3.2 Features of Constitutional Law

Generally, every modern written constitution confers specific powers to an organisation or institutional entity, established upon the primary condition that it abides by the said constitution's limitations. According to Scott Gordon, a political organization is constitutional to the extent that it contains institutionalised mechanisms of power control for the protection of the interests and liberties of the citizenry, including those that may be in the minority.

The following are the characteristics of a constitution of a country:

i) it is the supreme law of the land, nation, country or state;
ii) any law that is inconsistent with the provision of a nation's constitution shall be declared null and void and of no effect to the extent of its inconsistency (see Sec. 1 of the Federal Republic of Nigeria Constitution, 1999). A constitution may either be written, (drawn up in legal form like in the United States of America and Nigeria) or unwritten (resting mainly on custom and convention like in the United Kingdom);
iii) it may be flexible (capable of being altered by ordinary legislative act) or rigid (capable of being altered only by special procedure;
iv) it is a code of government deriving its authority from the people; it shows the structure of the government of a country;
v) it lays down the basic provisions which will govern the internal life of a country;
vi) it assigns and limits the functions of the different authorities and departments of government;
vii) it assigns and regulates the exercise of constitutional powers by government and administrative authorities.

3.3 Similarities between Constitutional law and Administrative Law

There are similarities between both subjects, some of which are:

i) they both deal with the application of constitutional law and powers and their administration
ii) the same set of principles, rules and maxims apply to both of them.
iii) they both provide remedies for breach of rights of an aggrieved person.
iv) they both make use of judicial precedents or case law.
v) they are both enforced by state institutions, while, at the same time regulate these

institutions.

3.4 Dissimilarities between Constitutional Law and Administrative Law

The following are the fundamental distinctions between constitutional and administrative laws.

i) Constitutional law is wider in scope than administrative law. The former covers such matters as citizenship, distribution of powers among the organs of government that is, the executive, the judiciary and the legislature, which administrative law is not so much concerned with.

ii) The sources of constitutional law are to be found in the constitution and conventions while the sources of administrative laws include delegated legislation, letters of instructions, treasury circulars, decisions of administrative bodies, and so on.

iii) Constitutional law deals with the structure of the government while administrative law is concerned with the functions and exercise of powers by administrative authorities.

iv) Constitutional law is centred around the restrain on organ of government administrative law is concerned with how to confine administrative bodies to their legal role and limit.

SELF ASSESSMENT EXERCISE

Compare and contrast Administrative Law and Constitutional Law.

4.0 CONCLUSION

Administrative law and constitutional law are interwoven in relation to the principles governing both rules and remedies however; each is a separate body of law on its own. While constitutional law establishes the organs of government and confers powers on them, administrative law regulates how the functions and powers on them and administrative authorities are to be exercised as assigned by the constitution.

5.0 SUMMARY

This unit has taken a detailed look at the underlining similarities and differences between Constitutional law and administrative law. This is important because the functions of both maybe misconstrue to mean the same thing and have equivalent applicability. While Constitutional law is the law, which regulates the application, enforcements and interpretation of the constitution, which is the supreme law of the land, administrative law is law for administration, guiding the conduct of administrative authorities to avoid arbitrary use of power.

6.0 TUTOR-MARKED ASSIGNMENT

Explain the key features of the constitution of the Federal Republic of Nigeria, 1999.

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UNIT 5: RELEVANT CONSTITUTIONAL PRINCIPLES

CONTENTS

1.0 INTRODUCTION

The constitution of a country may either be written or unwritten. It is the guideline accepted and adopted by the citizens of the country to be guiding them. A constitution is a set of fundamental principles or established precedents according to which a state is governed. These rules together make up or explain what the entity is. When these principles are written down into a single or set of legal documents, those documents may be said to comprise a written constitution.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- describe certain constitutional principles that aid the smooth running of administration.

3.0 MAIN CONTENT

3.1 Parliamentary/Legislative Supremacy

Parliamentary means the independent and unlimited power of the parliament to make, amend or repeal any law on any matter whatsoever in the country. This concept is a legacy of the British Parliamentary democracy, which is now being adopted in many countries of the world. Under an unwritten constitution like that of Britain, it refers to the capacity of the parliament to:

i) pass any law on any matter in the country.

ii) amend or repeal any law in the same way as ordinary legislation, no matter how fundamental the laws to be amended are. This means that the parliament has a transcendental and absolute power, which cannot be limited or confined. As rightly put by Dicey, "Parliament can do anything except make man a woman or woman a man." It is arguable that Parliament can do so but it would not, because it would be unreasonable. William Blackstone commenting on the parliamentary supremacy of the British parliament

said:

> It had sovereign and uncontrollable authority in making, confirming, enlarging, restraining, abrogating, repealing, reviving and expounding laws concerning matters of all possible denominations

This supremacy of the parliament is absolute and no court can invalidate any law made by the parliament according to law. In addition, the powers to make and unmake laws cannot be confined or limited. As rightly put by Lord Edward Coke, CJ thus: "of power and jurisdiction of parliament for making of law and proceeding by bill, it is so transcendent and absolute that it cannot be confined for causes or person within any bounds." In Edinburgh & Dalkeith Railway vs. Wauchop (1842) 8 Er, 279, Lord Campbell had this to say:

> All that a court of justice can do is to look to the parliament roll; if from that it should appear that a bill has passed both houses and received the Royal Assent no court of justice can enquire into the mode in which it was introduced into parliament, nor into what was done previous to its introduction, or what passed in parliament during its progress in its various stages through both houses.

In his own contribution on this supremacy of the British parliament, Erskine May opines:

> The constitution has assigned no limit to the authority of parliament over all matters and persons within its jurisdiction. Law may be unjust and contrary to sound principles of government, but parliament is not controlled in its discretion, and when it errs, its error can only be corrected by itself.

Note however that the parliament cannot pass any law, which will limit or bind its successors. This exception is illustrated in Ellen Street Estates Limited vs. Minister of Health (1934) 1KB. 590 where Maugham, L. J. submits:

> The legislature cannot, according to our constitution, bind itself as to the form of subsequent legislation, and it is impossible for parliament to enact that in a subsequent statute dealing with the same subject matter, there can be no implied repeal . . .

In addition, the parliament is supreme and can do no wrong, it however believes in being guided in law-making and exercise of its discretion by reason and the best interest of the country. Finally, since ultimate power resides with the people - the electorate. Parliament is inhibited by the attitude of the electorate and the desire to continue in office from doing anything unreasonable or inexpedient. In the word of Alexander Hamilton:

> There is no position on which depends on clearer principles than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised is void. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves.

In contrast, a distinction can be made between the parliamentary system of Britain and other countries that operate written constitution such the United States, Canada, and Nigeria respectively. Unlike Britain, in these countries, the legislature is limited in exercising its powers and functions by the constitution. In fact, what is obtainable is the supremacy of the constitution. Therefore, through judicial reviews, legislation which contravenes the inherent principles or spirit of the constitution, are voided by the courts.

3.2 Constitutional Supremacy

In a country like Nigeria with a written constitution, constitutional supremacy must be distinguished from parliamentary supremacy as herein stated. The Nigerian Constitution is supreme to all other laws, and its provisions have binding effect on all persons and authorities within its jurisdiction. For instance, under the Constitution of the Federal Republic of Nigeria 1999, Section 1 (1) provides that, the constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. Section 1(3) further provides that if any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void.

The above clause providing for supremacy of the constitution (except the 1960 Constitution) has been part of every constitution of the Federal Republic of Nigeria. The effect is to confine the act of the authorities and all persons in the country within the purview of the constitution. In addition, the legislative powers of parliament are limited by the provisions of the constitution, (the will of the people) and where the legislature has by law conferred powers on any person or authority contrary to the provisions of the constitution, such action by the legislature will be declared unconstitutional, null and void by the court. Confirming this principle, the court in Doherty vs. Balewa (1961) 1 ALL NLR 604 held as unconstitutional and invalid Section 3(4) of the Commission and Tribunal of Inquiry Act, 1961, which purports to oust the jurisdiction of the court in inquiring into any acts done pursuant to the Act.

Other examples include:

A.G. Bendel State vs. A.G. Federation & 22 others (1981) ALL, N LR. 85 S.C. In this case, a bill titled "Allocation of Revenue (Federal Allocation)" setting out a new formula for the distribution of the amount standing to the credit of federation account among federal, states and the local government council but was irregularly passed and was assented to by the president. Dissatisfied with the mode and manner the National Assembly had exercised its legislative power in respect of the bill; the government of Bendel State challenged the constitutionality of the act. The Supreme Court held in favour of the plaintiff that the bill did not comply with the prescribed legislative procedure.

i) National Assembly vs. President (2003) 9 NWLR PT. 824, P. 104 CA

ii) Williams vs. Majekodunmi (1962) ALL NLR 418, the above situation under Constitutional Supremacy cannot be said to be true under a military regime. The reason is that decrees are supreme under the military era. For instance, immediately the army took over in 1966 and in subsequent years, the first thing the military did was to promulgate constitution (suspension and modification), decree (for example, Decree No.1 of 1966).

Section 1(1) of the decree provides that the provisions of the constitution of the federation mentioned in the schedule of this decree are hereby suspended. Section 1(2) further states that subject to this and any other decree, the provisions of the constitution of the federation, which were not suspended by subsection (1) above should have effect subject to the modifications specified in schedule two of the decree. Under Section 3(1) of the same decree, the federal military government gave itself unqualified supremacy "to make laws for the peace, order and good government of Nigeria or any part thereof with respect to any matter whatsoever."

In 1984, during the Buhari/Idiagbon Military regime, all the above provisions were re-enacted in Sections 1 and 2 of the constitution (suspension and modification) decree No 1 of 1984. The effect of the legislative supremacy of the military government is that it can by decree or edict (edict is the law enacted by the state during military era), confers power on any authority or person to any extent and no court of law can nullify or declare such power unconstitutional, null or void. In addition, nothing in the Constitution of the Federal Republic of Nigeria shall render any provision of a decree or edict void to any extent whatsoever.

In military governor of Ondo State vs. Adewunmi (1988) 3 NWLR Pt 82, P.280 S.C 1, the Supreme Court stated the hierarchy or superiority of legislative authority during military rule in Nigeria as follows:

i) Decrees of the Federal Military Government
ii) Unsuspended provisions of the constitution
iii) Existing laws of the National Assembly
iv) Edicts of the military government of the states, and
v) Existing laws of the state

Thus, under the civilian regime, the constitution is the supreme law of the land, but the same cannot be said under the military regime where decrees are supreme.

3.3 The Rule of Law

The concept of rule of law is founded upon the theories of early Greek philosophers whose notion of law was that it is a primary means of subjecting governmental powers to control. According to Aristotle: "The rule of law is preferable to that of an individual..." In the 13th century, Bracton adopted the theory and went ahead to say that, "The world is governed by law, human or divine… The king ought not to be subject to man, but subject to God and to the law, because the law makes him king." The modern notion of the concept has been popularised by A. V. Dicey, adopted and modified by other writers and commentators.

A. V. Dicey in his book titled the "Law of the Constitution" defined the rule of law as follows:

i) It means the absolute supremacy or predominance of laws as opposed to the influence of arbitrary powers and excludes the existence of arbitrariness, of prerogative, or even wide discretionary authority on the part of the government. He further asserts the importance of rule of law by stating that "Englishmen are ruled by the law, and by the law alone; a man may be punished for a breach of law, but he can be punished for nothing else." This means

that powers of whatever description must be exercised in accordance with the ordinary law of the land, nothing more.

ii) The second aspect of the concept is "equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts". The rule excludes the idea of any exemption of officials from the duty of obedience to the law, which governs other citizens or from the jurisdiction of the ordinary tribunals. Thus, law is no respecter of persons and any person, irrespective of his rank or status in life, is subject to the ordinary laws of the land. It needs be noted however that there are various laws, which confer special privileges and immunities on some classes of persons. For instance, immunities granted to the state governors, heads of government, judges, and so on.

iii) Rule of law may be used as a formula for expressing the fact that with us the law of the constitution, the rules which in foreign countries naturally form part of a constitutional code, are not the source but the consequence of the rights of individuals as defined and enforced by the courts. The above postulation implies that the liberties of the citizen among others as enshrined in the Constitution are the result of judicial decisions on particular cases; that the constitution is judge-made. It should be noted however that in Nigeria, rights are identifiable even before disputes arise since they are enshrined into the constitution.

However, Dicey's has been severely criticised for his postulation. Among others is that the concept of the rule of law is narrow to capture the informal and institutional constraints in society to control government instead of only judicially driven rule books. In other words, there are morals and traditions of society that can keep government under confinement. Also, it has been observed in fragile democracies and authoritarian regimes that the law can be manipulated by the ruling elites against the postulation that the law is formalized, neutral and objective which stands above all and every private interests.

3.4 Separation of Powers

Separation of powers is the division of the powers and functions of government among the three separate arms of government, that is, the legislature, executive, and the judiciary. The origin of this doctrine may partly be traceable to John Locke whose views were subsequently expanded and expounded by French Jurist, Baron de Montesquieu in his book titled "The Spirit of Law (*Espirit Des Lois*)", where he said:

> Political liberty is to be found only where there is no abuse of power, but constant experience shows us that every man invested with power is liable to abuse it, and to carry his authority as far as it will go…to prevent this abuse, it is necessary from the nature of things that one power should be a check on another…when the legislative and executive powers are united in the same person or… Again, there is no liberty if the judicial power is not separated from the legislative and executive… there would come an end to everything if the same person or body, whether of the nobles or of the people, were to exercise all three powers.

Simply put, Montesquieu proposition means that: No one organs of government should control or exercise power over the other; no one person belonging to an arm of government should belong to another and one arm of government should not perform the function of the

other arm of government.

In practice, it is not possible to define the area of each of the three arms that each remains independence and supreme in its sphere of authority. Separation of powers does not mean equal balance of powers. To be meaningful, power must create room for overlapping, co-operation and co-ordination among the arms of government; otherwise, the business of government will become stagnant due to rigidity. In other words, there should be no strict or watertight separation. The essence is to prevent tyranny by the overconcentration of powers in any person or body. Thus, one arm should act as a check on the other within the permissible scopes allowed by the constitution or any other enabling law.

In Kilburn vs. Thompson (1881)103 US 168 at 197, the US Supreme Court said:

> It is essential to the successful working of this system that persons entrusted with power in any of these braches should not be permitted to encroach upon the powers conferred in the others but that each shall by law of its creation be limited to the exercise of the powers appropriated to its department and no other.

Confirming the fact that there should be no strict or watertight separation of powers, Abiola Ojo in his Article titled "Separation of powers in a Presidential Government" said:

> A complete separation of powers is neither practicable, nor desirable for effective government. What the doctrine can be taken to mean is the prevention of tyranny by the conferment of too much power on any one person or body, and the check of one power by another.

See the following cases:

Orhionwhom Local Government Council vs. Ogieva (1993) 4 NWLR Pt. 288 Pg. 468 Ca. Governor of Lagos State vs. Ojukwu (1986) 2 NWLR, Pt. 18. Pg. 621.

3.5 Ministerial Responsibility

In the constitutional sense, a minister is a person at the head of a Ministry or Department of state and a member of the Cabinet. He is a political appointee and remains in office at the pleasure of his appointor who may be a President, Prime Minister and so forth. Every act of government is done through ministers and their ministries, departments, offices and so forth under a minister.

A ministerial responsibility is the responsibility of the entire cabinet. The concept of ministerial responsibility is peculiar to the parliamentary system of government as in Britain. Thus, the concept means the following:

Every member of the cabinet or executive who does not resign is collectively responsible for all that is decided at the cabinet or executive meetings and for the actions of the government during their tenure in office. In other words, the ministers are collectively responsible to the parliament and ultimately to the people in whom power resides for all policies and actions of the executive arm of government while that government is in power or during his personal tenure in office whichever is later.

Each minister is also responsible for all the acts of his own ministry. He/she is responsible for his personal actions and all actions emanating from any part of his/her ministry and public agencies. Hood Phillips described the individual responsibility thus:

> A minister must accept responsibility for the actions of the civil servants in the department, and he is expected to defend them from public criticism, unless they have done something reprehensible which he forbade or of which he disapproves and of which he did not and could not reasonably be expected to have had previous knowledge. In the latter case, which is unusual, he may dismiss them.

The essence of the concept is to promote responsibility, accountability, morality and good conduct in government.

SELF-ASSESSMENT EXERCISE

Differentiate between constitutional and parliamentary supremacy.

4.0 CONCLUSION

In every civil society with written or unwritten constitution, the parliament or the constitution is supreme. In these societies, everyone must be subject to the law of the land and no one shall act outside the provisions of the law. In addition, the doctrine of separation of powers acts as a check on any of the arms of government and safeguards against abuse of power. Ministers are liable collectively and individually for their personal actions, all actions emanating from any of their domain and for all the actions of the government.

5.0 SUMMARY

In this unit, we have discussed parliament supremacy, supremacy of the constitution, the rule of law, doctrine of separation of powers and the ministerial responsibility. Thus, it is pertinent to conclude that for good governance and respect for human dignity, these doctrines must be founded in the constitutional principles of a given state in a normal situation.

6.0 TUTOR-MARKED ASSIGNMENT

Examine critically, the concept of rule of law as postulated by A. V. Dicey.

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MODULE 2: THE LOCAL GOVERNMENT SYSTEM

INTRODUCTION

Local government in most political systems is the lowest tier of government for the singular fact that it is the closest to grassroot. Inother words, it the government below the central, regional or state government as the case may be. In Nigeria, the local government system which has its roots in pre-colonial society has seen various reforms over the decades with the aim to make it a veritable mecahnism in driving democracy and development at the grassroot. There have been arguments whether the local government has been able to achieve those goals delegated to it or not. But it seems to be generally agreed that the local government is exemplified by poor governance and weak institutional capacity to effectively fulfill its mandate. In this Module, we focus on local government system in Nigeria and the concept of delegated legislation.

UNIT 1: THE LOCAL GOVERNMENT SYSTEM

CONTENTS

1.0 INTRODUCTION

The local government council is the closest government to the people in a democratic setting. In the case of Nigeria, the local government is the third tier in the hierarchy of administrative structure aside from state and federal governments. Since the colonial era, this tier of government has been playing critical role in governance of the country albeit a mixed one. Before the local government reforms of the 1970s in Nigeria, there were destructive frictions between local governments throughout the federation and the regional (now state) governments; and in consequence, the local government of that era made minimal contribution to the progress and development of the Nigerian nation. That it still exists today is attributable to the efforts of the federal military administrations of 1970s, to ensure a better representation at the grassroot levels.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- define and analyse the guarantees provided by the 1999 Constitution for the existence of local government.
- examine functions of local government.

3.0 MAIN CONTENT

3.1 The Local Government System

The local government globally is considered to be a lower subordinate unit of administrative structure in a country. It is important to make some conceptual clarification here before we go ahead to define what local government is so that students do not confuse between local government and local administration in their usage. Although local government and local administration are used interchangeably, conceptually, there are distinct (Ezeani, 2006). While local government denotes a legal entity with substantial autonomy (including administrative, political and fiscal), constituted by representatives elected by the local people within a specific geographical area, constitutional empowered to carry out some assigned functions; local administration on the other hand is a form of deconcentration in which subordinate units of government acts as agents or appointees of the central or state government, and only accountable to the establishing authority.

Basically, the clear distinction between the two is the degree of autonomy enjoyed by local government compared to local administration which lacks it. In Nigeria, prior to the 1979 local government reform, local councils were mere administrative extentions of the federal government. The use of local administration was mostly noticeable during the military era in Nigeria, where the sole administrator and Caretaker Committee system were used. Interestingly, such is observed in present democratic setting where some state governors solely appoint Caretaker Committee to run local councils within their state.

Presently, Nigeria operates a federal system of government where there exist three tiers of administrative structures, consisting of the federal, state and local government respectively. Every one of these strata has constitutionally given responsibilities to carry out. As a matter of fact, globally, local government authorities are considered to be closer to the people, and critical facilitator of economic and social development at the local level. Defined by United Nations as the sub-national spheres of government and a result of decentralization, a process of transferring political, fiscal, and administrative powers from the central government to subnational units of government distributed across the territory of a country to regulate and/or run certain government functions or public services on their own. It must be borne in mind that despite the fact that local government is a global phenomenon, institutional and operational diversity should be taken into consideration. For instance, their degree of independence in terms of both administrative and political capacities differs. But the definition given above local government is represented as a relatively autonomous tier of government with both political and administrative powers exercised within a specific geographical area. On his part, Oyediran (1988) regard local government as being a channel for popular participation both in the choice of decision-makers and in the decision-making process is done by local bodies in recognition and in exercise of its constitutional/delegated powers. Although the 1999 Constitution did not expressly define what a Local Government is, however, it states explicitly the organization, composition and its functions. It was the 1979 Constitution that expressly defined what a Local Government is, and this definition is important to drive home the point of the delegated powers of local council in Nigeria. According to the 1979 Constitution, local government is:

> Government at the local level exercised through Representative Council established by law to exercise specific powers within defined areas. These powers should give the council substantial control over local affairs as well as the staff and institutional and financial powers to initiate and direct the provision of services, and to determine and implement projects, so as to complement the activities of the State and Federal government in their areas, and to ensure through active participation of the people and their traditional institutions, that local initiates and response to local needs are maximized (cited in Ezeani, 2006, p.255).

The intent of the framers of this constitution no doubt intended to give the local government a great capacity to deliver social services at the grassroots. From the above definition, we can draw some salient points that maybe to some degree consonance with the present constitutional provisions for Local Government. As Adewale notes that one of the genuine requirements of Local Government is that it is a legal personality. Also, it ought to have specified powers and functions different from both state and federal government respectively. Corollary to this, Local Government should be autonomous, as well as have the legitimacy to make laws, rules, and regulations. And finally, local government should have the ability to formulate and execute its own policies. Though Adewale among other scholars have expressed pessimism as to failure of Local Government enjoying the points

explicated above, it is no doubt that to a large extent, Local Government make their own rules and regulations, as well as formulate and execute initiated policies in the present democratic dispensation in Nigeria, with occasional restrains from either state or federal government. Presently, there are 774 Local Government Areas (LGAs) in Nigeria under the 1999 Constitution (as amended). Each Local Government Area is administered by a local government council comprising of the Chairman who is the Chief Executive of the Local Government Area, the Vice-Chairman and other elected members who are referred to as Councilors. The Chairman is normally elected, but can under special circumstances be appointed by the Governor of the State as provided by the state law pending an election as caretaker chairman as confirmed by the State House of Assembly. He presides over all meetings of the council and supervises the activities of the Local Government. The Constitution of the Federal Republic of Nigeria, 1999 (as amended) guarantees the existence of the local government under a law, which makes provision for their establishment, finance, structure, composition and finance. For instance, Section 7(1) of 1999 Constitution states thus:

> The system of local government by democratically elected local government councils is under this Constitution guaranteed; and accordingly, the Government of every State shall, subject to section 8 of this Constitution, ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such councils.

It further provides in Section 7(2) that the person authorised by law to prescribe the area over which a local government council may exercise authority shall:

(a) define such area as clearly as practicable; and

(b) ensure, to the extent to which it may be reasonably justifiable that in defining such area regard is paid to:

i) the common interest of the community in the area;
ii) traditional association of the community; and
iii) administrative convenience.

In essence, a local government council within a state is also a partner in progress for the purpose of achieving desired economic planning and development. Section 7(3) provides:

> It shall be the duty of a local government council within the State to participate in economic planning and development of the area referred to in subsection (2) of this section and to this end an economic planning board shall be established by a law enacted by the House of Assembly of the State.

The relevance of local government councils generally, in particular, in Nigeria, is borne out of the fact that they represent government at the grassroots and thus must be carried along in all endeavours of the government whether state or federal. In modern times, it is well acknowledged that no government all over the world has sufficient capacity to carry out administration entirely and exclusively from the centre. Therefore, there is need for powers to be decentralized in order to reach and meet their social demands.

3.3 Functions of the Local Government Council

Generally, all functions of Local Government in Nigeria are uniformed based on stipulation under the Fourth Schedule of the 1999 Constitution (as amended). As Section 7(5) provides thus "the functions to be conferred by law upon local government councils shall include those set out in the fourth schedule to this constitution." However, the various categories of these functions either extend or limit the local government mandate. In the first set of functions of Local Government, is made up of functions that are exclusively for Local Government Areas to perform. While the second part deals with shared functions between the councils and their State government respectively. And the last parts of the functions for local governments are those which occasionally the State may direct it to execute.

Therefore, the functions of the local governments as spelt out in the Fourth Schedule of the Constitution (as amended) are as follows.

Exclusive functions of local government include the following:

a) the consideration and the making of recommendations to a state commission on economic planning or any other similar body on:

i) the economic development of the state, particularly in so far as the areas of authority of the council and of the state are affected, and

ii) proposal made by the said commission or body;

b) collection of taxes, radio and television licenses;

c) establishment and maintenance of cemeteries, burial grounds and homes for the destitute or infirm.

d) licensing of bicycles, trucks (other than mechanically propelled trucks), canoes, wheel barrows and carts;

e) establishment, maintenance and regulation of slaughter houses, slaughter slabs, markets, motor parks and public conveniences

f) construction and maintenance of roads, streets, street lightings, drains and other public highways, parks, gardens, open spaces, or such public facilities as may be prescribed from time to time by the House of Assembly of a State;

g) naming of roads and streets and numbering of houses;

h) provision and maintenance of public convenience, sewage and refuse disposal;

i) registration of all births, deaths and marriages

j) assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a State; and

k) control and regulation of:

i) out-door advertising and hoarding,

ii) movement and keeping of pets of all description,

iii) shops and kiosks

iv) restaurants, bakeries and other places for sale of food to the public,

v) laundries, and

vi) lLicensing, regulating and control of the sale of liquor.

Concurrent functions of Local Governments in Nigeria:

In addition to the above, the schedule also states the roles of a local government in a participatory function thus:

2. participation in the government of a state in respects of the following

matters, namely:

a) the provision and maintenance primary, adult and vocational education;
b) the development of agriculture and natural resources, other than the exploitation of materials
c) the provision and maintenance of health services; and
d) such other functions as may be conferred on a local government council by the House of Assembly of the State.

Concurrent functions may be performed by the state government and local government while those in paragraph 1 above are exclusive functions of the local government councils. Form their main functions and allow no interference by the state or federal governments.

SELF ASSESSMENT EXERCISE
Discuss the historical development of local government in Nigeria.

4.0 CONCLUSION

Local government council is the closest of all the three tiers of government to the common citizen; they exist at the grass root level. For it to perform its duties, Section 7 of the 1999 Constitution (as amended) guaranteed each local government council separate existence, local government character and the main functions. The constitutional guaranteed nature of the local government shows the importance of that tier of government. Also, throughout the country they have functions which they perform exclusively and those they perform concurrently with the state government.

5.0 SUMMARY

In this unit, we have discussed the early system of local government before the 1970 reforms and system under the 1999 Constitution and the functions granted the local government council for the effective performance by the constitution.

6.0 TUTOR- MARKED ASSIGNMENT

Explain briefly the local government system existing in your area of residence.

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UNIT 2: AUTONOMY AND FINANCES OF LOCAL GOVERNMENT

CONTENTS

1.0 INTRODUCTION

There is a raging debate on the status of local councils in Nigeria, as regards granting full autonomy or not. While the constitution recognises local councils as the third tier of government, it still provides for a huge degree for State control of them. As a result, this seems to have created ambiguity which in turn fuels the debate. Hence, in this unit, the constitutional guarantees for local government autonomy is stated as well as sources of revenue open to them.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- discuss the autonomy of local government councils
- explain sources of the local government finances

3.0 MAIN CONTENT

3.2 The Autonomy of the Local Government

Nigeria operates a federal system which, ideally should guarantee the autonomy of sub-national units as it is obtainable in other federating states. But Nigeria federal system as some have argued is flaw and rather centralised. Going by their argument, there exists an overwhelming strong central government relative to weak sub-national units. While some blame it on the military overcentralizing tendencies, others are keen to point to historical factors like the need for national interest to override sub-national interests particularly after the first military coup and civil war respectively. Interestingly, federal practice dates back to pre-independence period when in 1954, fiscal autonomy was given to regional governments to deal exclusively with their expenditure and revenues. Still, federal collected revenues were distributed among the regions based on derivative principle. Later in late 60s, the then military government centralized the revenue collection and administration, thereby, making the federal government to take up the responsibility of driving social and economic development in the country. One consequence of this action was that the federal government came to assume an overreaching role. Although in the post-independence period, the 1976 local government reform granted political, administrative and fiscal powers to councils, yet, the constitution was weak in the sense

that there were a lot of loopholes politicians exploited to their political advantage. For instance, the constitutional provision for the state controlled local government service board and other state oversight functions largely diminished the autonomy of local councils. More deteriorating, was the misunderstanding that followed the allocation of functions between the federal, state and local councils during the second Republic. It further gave the State governors the opportunity to emasculate the local councils in terms of responsibilities and finance. Surprisingly, some of these manifestations are still inherent in the present 1999 constitution (as amended). The following are some of the areas in which local government councils exercise autonomy according to the 1999 Constitutional provision.

a) The 1999 Constitution makes provisions relating to fundamental objectives and directives principles of state policy as enshrined in Sections 13-24. Section 14(4) of the 1999 Constitution directs each local government to observe what may be termed "local government character ". The section provides:

> The composition of the government of astate, local government council or any of the agencies of such government or council and the conduct of the affairs of the government or council or such agencies shall be carried out in such manner as to recognize the diversity of the people within its area of authority and the need to promote a sense of belonging and Federation.

b) Section 7(1) of the 1999 Constitution (as amended) assures the separate existence of the local government council as a separate tier of government. Section 7 (1) states that the system of local government by democratically elected local government council is under the constitution, guaranteed and that except as provided by Section 8 of the constitution, the government shall ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of such councils. In addition, confirming the separate existence of local government, Section 3(6) makes provisions to the effect that there shall be Seven 774 local government areas in Nigeria. Faced with the task of determining the appropriate legislative organ with power to legislate with respect to some provisions dealing with the local government, the Supreme Court in Attorney General of Abia State & Ors vs. Attorney General of the Federation (2002) 2 SCJN 158 held inter alia that:

> The National Assembly has no power, except in relation to the Federal Capital Territory alone, to make any law with respect to conduct of elections into the offices of Chairman, Vice-Chairman or Councilors of a Local Government council except the power to make laws with respect to the registration of voters and the procedure regulating elections to a Local Government Council

c) Statutory allocation of funds: Section 7(6) (a) makes constitutional provision for statutory allocation of public revenue to the local government councils in the federation and Section 7(6)(b) enjoins the House of Assembly of a state also to make provisions for statutory allocation of public revenue to local government councils within the state.

d) Separate and distinct functions of a local government council are enshrined in the fourth schedule to the constitution of the Federal Republic of Nigeria, 1999. All the above confirm the autonomy of local government councils.

Rising contention about autonomy for local governments, have made some to argue that it is unconstitutional for local governments to be granted autonomy. Others maintain that it is inevitable as Nigeria claim to be practicing federalism and more importantly, to ensure that local councils are properly positioned to perform maximally. As a matter of fact, the argument for and against autonomy for local government system in Nigeria had undergirded some reforms in order to well position them for better performance and impact. Majorly, the autonomy of the local councils has attended to get the central concern of the various reforms. As stated earlier, popular amongst the reform efforts, was the 1976 reform which recognised local government as the third tier of government in Nigeria, and laid the foundation for uniform model of local government throughout the Federation. Subsequently, the military regime of General Ibrahim Babangida further the cause for autonomy for local governments in Nigeria, by ensuring that local councils got their allocation drawn from Federation Account directly without going through State government. Also, the regime raised the statutory allocation to local government from 15% to 20%. Moreover, it introduced administrative structure- the executive and legislative arms of the local councils. In furtherance with the military regime to ensure local government autonomy, in 1988, all states ministry of local government was abolished across the country.

Failure of successive administrations to consolidate on the gains made during the military era is regrettable. It has been argued that despite the present democratic era that should naturally encourage measures to further strengthen the local government in Nigeria, administrations (federal and state) since 1999, have deliberately undermined councils' autonomy. Perhaps the reason for this outcome is due to the fact that one of the worst violations of local council autonomy comes from political machinations. As noted by Ukiwo, politicians noticed they could trade local councils for votes following agitations for more councils to be created not because of economic viability or administrative efficiency considerations, but rather, funding from them was guaranteed. He futher noted that as elections approached, state governors usually dissolve local councils and appoint their stooges who could deliver votes. It was reported that as the 2003 elections approached, about 500 new local government areas were either created or underway by state governments. It resulted into heated disagreement between the federal and state, as the former insisted that only local government areas mentioned in the constitution will be recognized instead of the state created ones. The federal government threat of not funding the new local councils created by state government, forced state governors to scrap them. However, only Lagos state remained adamant despite the danger of non-release of funds to it. Obviously, Lagos State refusal to reverse its creation of local councils stemmed from the fact that the state has capacity to financially sustain itself without federal allocation.

However, motivated to improve local governance, the constitutional amendment in 2012 attempt met stiff resistance from State governors. In the meantime, the National Assembly had considered it fit to grant financial autonomy to local government, for greater and better service delivery. Rather the State governors argued that the federal and States should be considered as the only tiers of government. No wonder structures are put in place by State governors across Nigeria to bring local government in their respective States under control. This includes; the establishment of Ministry of Local government, Local Government Service Commission, use of Caretaker Committee, and the appointment of Sole Administrators to run the councils. This is despite the fact that Section 7 (1) states that

"The system of local government by democratically elected local government councils is under this Constitution guaranteed…" Notwithstanding the constitutional and financial autonomy guarantees, the local government in Nigeria is severely faced indiscriminate control from the State governors.

Arguably, the constitution seems to be ambiguous on the issue of local government autonomy. For instance, while it recognises the local government as the third tier of government, yet, Section 162 (6) states that "Each State shall maintain a special account to be called "State Joint Local Government Account" into which shall be paid all allocation to the Local Government Councils of the State from the Federation Account and from the Government of the State". But as been observed, those State governors' preferences override those of the local councils with regard to the use of the money in that account. Although there are bills before the National Assembly to tackle the constitutional ambiguity that surrounds the local government autonomy; particularly, with regard to both financial and political autonomy, as well as grant a four-year tenureship for chairmen. At least, if this effort eventually succeeds, the governors will be largely constrained in intervening in the affairs of local councils in their respective States.

3.2 Finances of the Local Governments

Local government councils are noted to be established to extend benefits of governance and development to areas deemed to be too remote for immediate impact both to the State and Federal governments respectively. Although the essential human and material resources may be available to accelerate viable and desirable development at the local level, more fundamental is that the achievement of these responsibilities contingent upon the financial resources offered or generated by the local council. Consequently, for local government to meet adequately its responsibility of providing sustainable development, such as primary education, health services and agriculture etc, the council is expected to be well funded, and for the resources to be prudently managed. In Nigeria, there are two main sources local governments get their finances, these are: Internal sources and External sources.

For internal sources, these are ways local governments generate their Internally Generated Revenue (IGR) which are used to run the council. As stated in the previous section, source of revenue for local government is derived from their functions as specified under the Fourth Schedule to the Constitution where exclusive rights are given to generate funds from specific areas. These include: taxes (development levy, special services such as electricity, water etc), Rate (Tenement, penalty, ground rent, etc), local license fees and fines (fees on bus/commercial vehicles, slaughter, abattoir, kiosk, hunting, marriage, naming street and house registration, birth and death fees, welding machine license fee, electric radio and TV workshop license fees, work shop receipt, sales of market stores, vehicle/car parking violation and towed fees), earning from commercial undertakings (markets fees, motor parks fees, Abattoirs slaughter house fees, proceeds from sales of consumer agriculture, transport services etc), Rent on Local Government Property (rents on Local Government buildings among others), Interest payment and Dividend on Investment (Interest on loans to other local governments, Parastatals, other limited liability companies, dividends and interest from investments, etc), Grants/Donations (from wealthy individuals, groups, and industries within the jurisdiction of the Local Government), Miscellaneous (any other opportunities available to generate revenue). These and several others that are not mentioned here, are avenues which local governments can generate revenues to carry out their activities. A cursory look at all these sources to generate revenues may lead to hasty

conclusion that funds should not be an issue even with statutory allocations from both the State and Federal government.

On the other hand, local governments get funds from external sources which include: Statutory allocation from the Federation Account (20.6%), Statutory allocation from State government (10%), Foreign Aids and Grants, Local Government share of Value Added Tax (VAT), Loans from Financial institutions and State government. Specifically, the provision in Section 7 (6) of the 1999 Constitution (as amended) provides, "subject to the provisions of this Constitution the National Assembly shall make provisions for statutory allocation of public revenue to the local government councils in the federation; and the House of Assembly of a state shall make provisions for statutory allocation of public revenue to local government councils within the state." The essence of the above provisions is that firstly; the local government have direct share of the federally collected revenue. It is the duty of the federal government to fix the amount and terms of apportioning it among all the local governments in the various states. The share is paid to the local government through the state government acting in capacity as trustee. Also, the Constitution imposes a duty on each state government to make grants, which is to be a proportion to its total revenue, to local government councils within its area of jurisdiction as may be prescribed by the federal legislation.

Interestingly, finance/funding has remained a contentious issue in local government administration in Nigeria. Apart from the Joint Account issue raised in the previous section, local councils have always complained of inadequate funds to execute projects. For some scholars and commentators, it is not an issue of lack of funds but rather the mismanagement of resources. While others attribute it to overwhelming control of State governors' unnecessary diversion of funds meant for local councils in Joint Account. For instance, in 2006, the Economic and Financial Crimes Commission (EFCC) announced a frightening figure, alleging that 31 out of 36 state governors have intrude into the local government council funds. The consequences of these interferences have had direct impact on the capacity of local councils because it is blamed for breeding corruption, misery and disempowerment. Therefore, such situation cannot bring development and community empowerment closer to the people. Following the over bearing influence of State governors with regard to control and use of funds in the State Joint Local Government Account, recently, the Nigerian Financial Intelligence Unit (NFIU) issued a directive to banks not to honour transactions done with the State and Local Governments Joint account, arguing that the account was only meant to distribute allocations to the respective accounts of local governments. Consequently, the Nigeria Governors Forum (NGF) took the NFIU to court, arguing that the order of NFIU to banks is contrary to the Constitution. But other pro-autonomy bodies like the National Union of Local Government Employees (NULGE) have supported the move of the Nigerian Financial Intelligence Unit (NFIU), maintaining that State governors overbearing influence to emasculate local government in their respective jurisdiction should be curtailed to ensure smooth and effective administration of local government.

SELF ASSESSMENT EXERCISE

Examine constitutional provisions for local autonomy in Nigeria.

4.0 CONCLUSION

The autonomy of local councils has been an issue of contention so that some believe it is the greater requirement for better and effective functioning. Others, State governors see it as undesirable and therefore impracticable. On the other hand, to discharge their functions effectively, they derive their funds from the State government, Federal government and through the internally generated fund made possible by the functions they perform.

5.0 SUMMARY

This unit covered the autonomy of local government councils as enshrined in the 1999 Constitution and the finances of local government. Efforts to address the existing lapses or contradictions are ongoing, whether they succeed or not depends on the compromise reached by those opposed to it and those in favour of it. Noteworthy, is that the local government has been the most marginalized of the three tiers of government. And, mostly State governors simply see local councils as extension of a Ministry in their State.

6.0 TUTOR-MARKED ASSIGNMENT

Analyse the sources of funds or finance for local government areas.

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UNIT 3: CONTROL OF LOCAL GOVERNMENT

CONTENTS

1.0 INTRODUCTION

The local government in Nigeria exercise some powers that make them relative autonomous. This granted status was tended to make local government an effective and efficient organization in delivering required development at the local level. However, the local governments seem to be encumbered by issues such corruption, dislocated development agenda, lack of skilled manpower, inadequate planning, weak execution of projects, general ineptitude, and disconnect from communities and the public it is meant to serve. In fact, the local government system has become other means of politically settling supporters. Given this pathetic situation, certain institutional means are put in place to ensure control oflocal government against some these anomalies. It is these available institutions of control we focus in this unit.

2.0 Objectives

At the end of this Unit, you should be able to:

- understand the various means by which local governmenst are controlled
- state the reasons for the control of local governments

3.0 Main Content

3.1 Control of Local Government

The following are means by which local government is controlled:

Legislative Control

The 1999 constitution (as amended) gives the local government councils some exclusive powers and fucntions as contained in the residual list. These functions cut across several sectors of the economy and society, which ordinarily cannot be left alone for the council without some level of control. In particular, the Constitution provides that legislative powers of a state shall be vested in the House of Assembly, as the House is expected to make laws for the peace, order and good government of the state or any part thereof (Section 4 (6-7). Furthermore, in Section 128 (1) states that the House of Assembly shall have power by resolution to direct or cause to be directed an inquiry or investigation into any matter or thing with respect to which it has power to make laws. Such matters include the executing or administering laws enacted by the House of Assembly, disburtsing or

administering moneys appropriated or to be appropriated by the House of Assembly. To that extent, money appropriated to local councils may come under the scrutiny of the House of Assembly if the need arises. Since the local governments are subject to the laws made by the state House of Assembly, it is constitutionally mandated to oversight the local government for the good government of the state. Exercising its powers in Section 129 (1) (a-d), the House of Assembly can summons anybody, including the chairman of a council in order to investigate the activities of, or allegations against a local government.

Judicial Control

The local government in Nigeria exists as a legal entity. To that extent, the it is liable for its actions in a court of law. In a situation where a local government acts outside the powers vested in it, a court of competent jurisdiction can declare such actions ultra vires, hence, null and viod. Anyone who may have been affected by the actions or policy of a local government which they feel is beyond the provisions of enabling statute setting up the council can approach the court for adjudication on the matter. Also, the local government can as well take any matter to court against any individual or corporate entity for adjudication by a competent court of law.

Executive/Administrative Control

In almost all states in Nigeria, in order to maintain effective control over local government councils, establish a separate ministry of Local Government Affairs to supervise the activities of local councils within a state. The Ministry of Local Government Affairs is charged with the responsibility to handle all matters that pertain to local governments' administration in the state. These include: consideration and approval of annual budgetary proposal of local governments, deliberation on implementation of major projects, monitoring of bylaws to ensure that its impact is manifest. Interestingly, the Ministry of Local Government Affairs carries out ectensive surpervision of projects executed by each local government such as street roads constructed, health care centres built, schools and markets buildings constructed too. In its capacity as the supervisory ministry over local government, it is empowered to take punitive action against errimng officials of the council, including the Chairman. Whwere it alleged that cooruption is blatantly perpetrated in the council, the council can be dissolved by the executive and in its place a Care-Taker Committee is set up to pilot the affairs until new representatives are elected. Furthermore, the Constitution provides that the Local Government account be audited by state Auditor-General, whois an appointee of the Governor.

Public Complaints Commission Control

The Public Complaints Commission is a statutory institution which is meant to receive requests from the public against any administrative wrong suffered in the hand of any public official. Therefore, anyone who may have suffered from administrative excesses, discrimination, unfair decision, delay as well as any corrupt practice, can approach the PCC for redress. Where such right violation petition is lodged with the Commission, investigation is carried out, and there after make necessary recommendations for amends or discipline to be enforced.

3.2 Justifications for Control of Local Government

The need to control local governments is very important given the enormous resources put under their care, and the responsibility expected of them to execute. The following may be the reasons for exercising control over local government:

Discreet Use of Resources

As Khemani (2001) notes that among developing countries, Nigerian fiscal federalism is

distinguished by the overconcentration of all major sources of revenue at the centre which subsequently dispensed to both state local governments respectively. It is from this central purse that Local governments get their funding. These include: statutory allocations both from federal and state government, grants to execute special projects, its share of Value Added Tax (VAT) as well as Loans from Financial institutions and State government. It is therefore mandatory for measures to be taken to supervise the way and manner the resources are spent. In this regard, contracts awarded by local government are scrutinized to see that it meets with acceptable standards.

Co-ordinated Implementation of Policies
The federal or state government mwy ensure control if local government so that policies and projects executed are in line with broader objectives set out by these authorities. For instance, even though it is recognized that delivery of basic services such as primary health care, education and agriculture among others, the federal government still hugely intervenes in these areas as it propably distrust that both state and local government will be able to successfully handle it. Hence, the federal government invest hugely in primary health care, basic education and other areas through its interventionist agencies, such as: Universal Basic Education (UBE), National Primary Health Care Development Agency (NPACDA) even though state governments tend to exoress reservations about the federal overreaching in its responsibility, local government hardly complain.

Improved Personnel Recruitment and Discipline
Another reason local governments are controlled is because the efficiency and effectiveness is depended on the quality of personnel. Unlike other organization which gives mush emphasis on such matters, local government is noted to be in sufiicient lack of skilled manpower. This may be due to compromised recruitment process where political leaning and considerations seem to supersede merit in the employment of staff. In order to stop this trend, a supervision of local government activities is important to ensur improved quality of personnel recruited.

Equal Distribution of Facilities and Services
Again Khemani (2001) and Ukiwo (n.d) have argued that the rationale which majorly account for the creation of local governments in Nigeria were more political and ethnic than for economic viability. Given this kind of condition, it would be exoected that only majority ethnic groups may be able to attract projects and development to their areas. On the other, the reverse may be the case where someone from a minority ethnic group but with well political connection may attract some projects regardless of its economic viability to his place. It is necessary to provide adequate supervision of local governments in order not to deprive some communities' basic facilities such as primary health care, water supply, schools, street roads etc.

Appropriateness of Bylaws
Although local governments are empowered to laws, however, there are subject to the consent of the state government. Hence, the control of local governments within a state is necessary so as not to usurp the authority of state government.

SELF ASSESSMENT EXERCISE
Mention and discuss the reasons why it is important to control local governments.

4.0 CONCLUSION

The control of local government is very important to ensure that their primary mandate of

bringing development of the grassroot is achieved. But the problem is that with the indiscriminate desire for state governments to emasculate the respective councils within their state, issues may further prop up to undermine activities of councils.

5.0 SUMMARY

As in every organization where supervision is necessary to maintain effectiveness and efficiency, local governments are no exceptiion. In this unit, some institutional control mechanisms have been examined as well as some reasons why control is important.

6.0 TUTOR MARKED ASSIGNMENT

Discuss the different means by which local governments are controlled.

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UNIT 4: DELEGATED LEGISLATION

CONTENTS

1.0 INTRODUCTION

Previously, governments around the world were deemed to be only interested in few matters such as raising tax, raising army for defence of the country and maintenance of security of the state. However, modern system of government has imposed on governments social, cultural economic, agricultural and other matters of human endeavour; legislation in these areas is so enormous that it is virtually impossible for the legislature to cope or legislate alone on these matters. As a result of this, the legislature gives powers to other persons or bodies to make necessary laws as applicable. These laws made by the administrative bodies, agency or authority in exercise of the powers given or delegated to them by the constitution or enabling statutes, which is referred to as delegated legislation. Examples of these are byelaws, Orders, regulations by local governments, departments, corporations and agencies.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- explain the meaning and methods delegated legislation
- discuss argument for or against delegated legislation

3.0 MAIN CONTENT

3.1 Meaning and Methods of Delegation

Delegated legislation is the law or regulation made by an individual or government agency besides the legislature but authorized by the law made by it. Okoeguale defines delegated legislation as rules, instructions, directives which are made pursuant to a delegate authority to legislate. This definition seen to be loose as possibly circular could be taken as a legal instrument which, must be obeyed. This is actually not the case. For Egwummo delegated legislation are laws rightly made by subordinate law makers. For Salmond, it is seen as laws which proceeds from any authority besides the sovereign power, and depends on a supreme

authority for its existence. On his part, Onu said it is the conferment of power by an act of parliament or constitution on a person, institution or authority to make laws. Generally considered as an approximate of a comprehensive definition was stated in Section 37 of the Interpretation Act (1990), which define delegated legislationt as "any order, rule, regulation, rules of court, bye laws, made either before or after commencement of this act in exercise of powers conferred by an act". This definition as others, points to the fact that delegated legislation are subsidiary instrument enabled by an act. In this regard, the subsidiary power for legislation is delegated to the President, Governors, Ministers, Commissioners, Administrative Agencies, Professional Bodies etc. As Benson further notes that:

> When carrying out these powers, these bodies act every bit like the parliament and make laws that have the same force as laws made by the parliament. These legislations derive their legitimacy from Acts of Parliament and they can only be made where there is express provision in the Primary Legislation to do so.

Thus, delegated, administrative, subordinate, subsidiary, or secondary legislation as generally referred to, denotes those laws made by persons or bodies whom the legislature has given law-making power. It is interesting to note that a legislative principal Act provides for the delegated legislation, which, to a large extent contains the necessary administrative details to guarantee that the provisions of the Act succeed. Essentially, it is important to note that the various definitions above have something in common that runs through them, which, is that delegated legislation are laws made by an authorized body or person granted by the legislature and backed its Act. In delegating or conferring authority on subordinates, the method may be general or specific as explained below.

General delegation

The general or simple delegation of powers to make subordinate legislation comprise a delegation to a donee of wide powers to make laws or act in his or her discretion within the limits which may have been set for him. For instance, Section 7 of the Federal Environmental Protection Agency Act, Cap. F10, Laws of the Federation of Nigeria, 2004 provides that, "...the President may give to the agency, directions of a general nature or relating generally to particular matters …"

Specific Delegation

Specific delegation enumerates the subject matters on which the regulations may be made. The donee of such power is restricted to taking action only in respect of the specified matters. For instance, Section 10(2)(a)–(c) of the Nigerian National Petroleum Corporation Act, Cap. N123, Laws of the Federation of Nigeria, 2004 empowers the Minister to "delegate to the alternate chairman (where one is appointed or the chief executive of the inspectorate such powers as are conferred upon him under the Oil Pipe lines Act, the Petroleum Act or any other enactment as he may deem necessary and in particular for the following matters: Issuing permits and licenses for all activities connected with petroleum exploration and exploitation; Acting as the agency for the enforcement of the provisions of the said Acts; Carrying out such other functions as the minister may direct from time to time. In another case, the Chief Justice of Nigeria (CJN) is granted the right to make rules as regards the practice and procedure of a High Court in line with Section 46(3) of the 1999 Constitution as amended).

Requirements of a delegated legislation:

Publicity: Delegation to make regulations must be published for public notice. See Section

10 (2) of the Nigerian Citizenship Act.
Approval by legislature: Delegation to make regulations may be required to be laid before the legislature for necessary approval. See Section 10 (3) of the Nigerian Citizenship Act.
Confirmation: Delegation to make regulations may be subjected to the requirement for confirmation or approval or by consultation with the minister or other persons See Section 15 (2) of the Legal Practitioner Act.

3.2 Powers that cannot be delegated

Each arm of the government performs different task with different measure of inherent powers. However, it is inevitable that each of the arms of government cannot wholly exercise these powers, there are certain powers, which under no circumstances, must be delegated. Among those powers that cannot be delegated are:

i) the judicial powers of the regular courts
ii) the parliamentary powers of the legislature such as:
    a) legislative functions other than power to make subsidiary legislation (that is delegated legislation under the relevant enabling laws already made by the parliament).
    b) power to declare war;
    c) power to impeach; and
    d) power to create new states
iii) duty which must be performed personally; and
iv) duty which involves exercise of discretion.

Thus, for a power or function to be delegated, it must be that which another person can perform and no provision against it have expressly been made. In A.G. Bendel State vs. A.G. Federation & 22 Others (1981) ALL NLR 85, the Government of Bendel State brought an action challenging the passage of the allocation of revenue (Federal Account) bill into law by Joint Finance Committee of both Houses of the National Assembly. The Supreme Court held *inter alia*, setting aside the allocation of revenue (Federal Account) Act 1981 as null and void, that neither the senate nor the House of Representatives of the National Assembly has power to delegate its legislative functions to a committee. Consequently, the Joint Finance Committee has no power to decide whether a bill shall be passed into law as it is incompetent to take over the legislative powers of the National Assembly (Tende & ORS vs. A. G. Federation (1988) I NWLR pt.71 P. 506 C.A.).

3.3 Merits for Delegated Legislation

The dynamic nature of society demands a corresponding increased capacity of the state to meet citizens' needs and be able to regulate their activities. State may not be able to do this except powers are delegated. Hence, several reasons have been canvassed for the practice of delegated legislation, namely:

i) It reduces parliamentary workload: Parliament as a matter of fact, does not have all the time and capacity required to deal with the volume of legislations required by a modern government or state.

ii) It enables experts to legislate on technical and specialised matters on which many of the members of parliament may lack the requisite knowledge that may be required to legislate in detail. Buttressing this point, the British Committee on Ministers Powers in 1932 said,

"The truth is that if parliament were not willing to delegate law making power, parliament would be unable to pass the kind and quality of legislation which modern public opinion requires." And by extension, quality of legislation to regulate and govern modern and complex society.

iii) It creates room for the legislation of laws which conform to local needs: When the power of delegated legislation is properly exercised and not abused, the administrative authority located in the local community can be reached by the people. The administrative authority can see the local situation for himself and thus properly use delegated legislation to make laws or rule that conform to the needs of the local community.

iv) It affords quick response to a state of emergency: Parliament may not be able to sit and deliberate due to their cumbersome procedures to be able to respond to situations at hand as they unfold. Delegation of powers is desirable to address urgent situation. In essence, it encourages flexibility to any unforeseen situation that may arise as a threat to orderly administration at any time.

From the above few mentioned reasons for the delegation of legislation, it becomes apparent that the Parliament cannot afford to solely carry out legislating always for society on everything as they arise. Nonetheless, it does not mean that its conventional role of law making will be done away with. The concern is that sufficient precautions are put in place to forestall abuse of delegated legislation. As a result, clarity of powers granted should be explicit, extent to exercise powers defined and for what purpose, as well as procedure to be followed. More essentially is that the exercise of delegated authority must be established in the enabling Act of parliament otherwise such an action will be considered as ultra vires.

3.4 Criticism against Delegated Legislation

Despite the desirability of delegated legislation for the smooth running of government in several countries around the world, certain misgivings as regards the tendencies of administration to exceed prescribed powers, and the seemingly over empowering a particular arm of government which, to all intent and purpose is unhealthy for democratic practice and adherence to the rule of law. Hence, there is a rising call for accountability in the making of government policies. In this regard, countries have subsequently taken varying degrees of measures in order to be able to control, supervise and review substance of delegated legislation. This notwithstanding, some criticisms have attended to the practice of delegated legislation. This includes that:

i) Delegated legislation is a usurpation of the powers of the parliament to make laws for the nation. Apart from arguably undermining the doctrine of parliamentary supremacy, it is seen as challenging the peoples mandate given to their representatives to make laws for the good governance of the country instead, based on technically, such powers are given to unelected administrators or rule making agency to carry out.

ii) It is a negation of the concept of rule of law as the usual procedures for the making of laws are not always observed. In the parliament for instance, there certain procedures that are followed to enact laws so every segment of society is taken into consideration in order to make legislation a popular opinion. Unfortunately, this democratic aspect is not even considered by administrative agencies with exception of local councils which give opportunity to the people to participate in governance

iii) The control of delegated legislation is inadequate: Parliament has no time, opportunity or the special expertise that may be required to keep close surveillance and make needed objections to administrative legislations. Since in some cases, an open-ended discretion may be granted to delegates to the extent that exercise of powers is left to the subjective judgement of the administrative authority. In such a condition where the limits of powers cannot be explicitly defined, abused may be inevitable. Particularly, in fragile democracy like Nigeria, impunity set in without caution.

iv) Administrative rule-makers sometimes have too much power and discretions. For instance, the delegation of legislative power to ministers, head of departments and so forth, is often done in phrases such as "As the Hon. Minister deems fit", "In the opinion of the Hon. Minister and so on." These subjectively worded phrases may lead to arbitrary use of delegated power. Generally, such delegated legislation is seen as empowering the executive branch of government than is legally required, hence, tipping the balance. In essence, it is a threat of the doctrine of separation of powers among the various in order to vesting overwhelming powers in an individual or institution which in turn may undermine democracy.

3.5 The Rule against Sub-Delegation

As a general rule, a delegate may not sub-delegate his/her authority, power or functions to another person, authority, body or agency. This rule is couched in the maxim "*Delegatus non potest delegare*". In A.G. (Bendel State) vs. A.G. (Federation) (Supra), the Supreme Court held *inter alia* that, two Houses of the National Assembly cannot delegate its law-making functions to a committee of the House.

However, statute may provide for sub-delegation to certain persons and under certain condition. For instance, Section 10(2) of the NNPC Act, Cap NI23, LFN 2004 empowers the minister of petroleum to delegate to the alternate chairman or the chief executive of the petroleum inspectorate such powers as conferred upon him. Generally speaking, a delegate may sub-delegate duties that do not involve exercise of discretion such as:

i) ministerial powers, which include the signing of letter, memorandum and instruction on behalf of the person delegating the power.
ii) executive or administrative powers, which involve issuing of license, permits, institution of legal proceedings, and so on.

However, a delegate cannot sub-delegate the following functions or powers:

i) judicial or quasi-judicial powers;
ii) legislative or rule making powers;
iii) duties requiring personal performance; and
iv) duties involving exercise of discretion.

SELF ASSESSMENT EXERCISE

Explain some of the criticisms against delegated legislation.

4.0 CONCLUSION

Delegated legislation is the law made by a delegated authority in exercise of powers to make the laws, which have been conferred by the constitution or other enabling laws. It is essential in a modern society for various reasons. Delegated legislation has its usefulness

and disadvantages. You also noted that there are some powers which cannot and must not be delegated or sub-delegated.

5.0 SUMMARY

In this unit, we have discussed the ways through which delegation of authority may come to being, the powers and functions which may not be delegated or sub-delegated, the arguments for and against delegation and the rules in respect of sub-delegation.

6.0 TUTOR-MARKED ASSIGNMENT

Discuss what you understand by the term "delegated legislation".

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UNIT 5: CONTROL OF DELEGATED LEGISLATION

CONTENTS

1.0 INTRODUCTION

Powers may be delegated by the legislative arm of the government and may also be subject to arbitrary use and thus, the need to control and safeguard its use. There are three machineries available for controlling the delegated legislations. They are the legislative control, the executive control and the judicial control, and these form the subject of this discourse.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- describe various ways through which the administrative activities of delegated legislation can be effectively controlled.

3.0 MAIN CONTENT

3.1 The Legislative Control

The legislature may delegate powers to the executive to perform certain legislative functions. In the same vein, it possesses the power to control its exercise. According to Lord Coleridge in Huth vs. Clarke 25 QBD 391:

> But delegations do not imply a denudation of power and authority. The word 'delegation' implies that the powers are committed to another person or body, which are as a rule, always subject to resumption by the power delegating (it) and many examples of this might be given. Unless, therefore, it is controlled by statute, the delegating power can at any time resume its authority.

Legislative control is exercised by the legislature. As the donor of the power, it may prescribe that the proposed delegated legislation shall be laid before the legislature for

purpose of debating, approving or rejecting it, suspend its approval or amend any part of the legislation, etc. It may also prescribe the procedure to be followed before a delegated legislation may be made. The enabling law may require that any regulation made under it be laid before the legislature before the legislation is made or as soon as possible immediately after making it. The operation or determinate may be time specific or contingent on the occurrence of a prescribed event.

The Executive Control

The executive exercises a lot of control over a delegate of power and delegated legislation. The control may be exercised by authorising the donee of the power to submit the proposed rules to the relevant supervisory body within the authority for perusal, consideration, amendment or approval. The essence of this is to avoid any embarrassment to the government. In addition, the executive exercises such control through the power to appoint and dismiss unbecoming donee of power. This is more so when the executive is embarrassed by certain rules and regulations made by a department which do not receive their approval or causes public outcry. However, this power to dismiss must be exercised in accordance with the laid down rules. However, the delegated power may be revoked (In Ondo State University State vs. Folayan State University 1994) 7 NWLR pt.354, p. 1 SC). The Supreme Court held inter alia that power to delegate function also includes a power to revoke such delegation.

Judicial Control

Section 6 of the 1999 Constitution of the Federal Republic of Nigeria provides, among other things, that the judicial powers of the federation shall be vested in the courts established for the Federation and shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for determination of any question as to the civil rights and obligations of that person. The truth about delegated legislation is that every legislation is at the mercy of the courts, which apply settled principles for the interpretation of statutes. This is sometimes called judicial review. In Okogie & ORS vs. AG. Lagos State (1981) I NCLR 218 HC, Justice Agoro of the Lagos High Court held while setting aside the Lagos State Government Circular titled "Abolition of Private Primary Education in Lagos State" dated 26th March, 1980 and which was to take effect and operate in the State from 1st September, 1980. His lordship said that it was not necessary for the plaintiffs to await the happening of the event before applying to the court for redress. The right to commence action in the court could be exercised by the plaintiff as soon as there exists a threat or likelihood of their fundamental right being infringed or contravened. Thus, the application made by the plaintiff was not premature.

Also, in Adewole & ORS vs Jakande & ORS (1981) I NCLR 262 HC a group of parents challenged the aforesaid Lagos State Government circular purportedly abolishing private primary school education in Lagos State. The defendant's counsel contended that the applicants have no right in law, which they can claim to have been infringed or threatened as the Circular had not yet come into force and that the parents ought to have waited until September 1, 1980 to know the fate of the children. Omololu-Thomas J. held, setting aside the said circular as null and void, that the action of the plaintiffs was not premature. It is trite law that the courts have power in its equitable jurisdiction, and by the constitution, statute and rules of procedure and under its inherent powers to make a declaration against intending infringers, where there is a threatened breach of a right, and where the

apprehended act would be unlawful.

SELF ASSESSMENT EXERCISE
Explain why it is important to control delegated powers.

4.0 CONCLUSION

In order to avoid arbitrary exercise of the powers delegated, certain machineries are put in place to check mate the exercise of such powers. Thus, the legislature, executive and the judiciary act as checks on the administrator via various controls exercised by the three arms of government.

5.0 SUMMARY

In this unit, we have discussed various ways through which delegated legislation may be controlled. The purpose of this checks and balances on the delegated legislation as there are many problems in this area of administration is to ensure that there is effective control of subordinate legislation.

6.0 TUTOR-MARKED ASSIGNMENT

Discuss the various way through which the three arms of government have succeeded in checking the administrative law makers over powers conferred on them.

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MODULE 3: ADMINISTRATIVE PANELS AND TRIBUNALS OF INQUIRIES

INTRODUCTION

Generally, tribunals are special adjudicatory or fact-finding bodies instituted outside the regular courts, but still is part of the machinery of justice. The rising complexities of administration as well as the overwhelmed capacity of ordinary courts have given impetus to tribunals as effective and fair system of remedies for the citizens. With its constitutional thrust derived from section 36(1) of the 1999 Constitution (as amended) tribunals are increasingly becoming a permanent feature of administrative law in Nigeria. Therefore, in this module, apart from examining the tribunal system, we also look at various means of judicial review and inherent shortcomings.

UNIT 1: ADMINISTRATIVE PANELS AND TRIBUNALS OF INQUIRIES

CONTENTS

1.0 INTRODUCTION

Administrative panels and tribunals of inquiries are bodies that find fact in respect of specific cases referred to them and decide them by applying legal rules laid down by statutes and regulation. The origin of administrative panel and tribunal is traceable to the colonial legal system. At independence in 1960, the government of Nigeria aligned herself closely with the British legislations on administrative adjudication. In 1961, the government promulgated the Commissions and Tribunals of Enquiries Act, which empowered the prime minister to appoint commissioners wherever he deemed desirable to do so. A multitude of tribunals has since independence become an important feature of governmental machinery. Such tribunals are creatures of one statute or the other and they are intended by the administration for various purposes.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- discuss various types and classes of tribunal of inquiries.
- the scope and powers of tribunal of inquiries.

3.0 MAIN CONTENT

3.1 Meaning of Tribunals and Inquiry

A tribunal in the strict sense is a special court usually established by government outside the hierarchy of the regular court system to hear and determine matters of a particular kind. It is a special court consisting of a person or a panel of persons who are officially appointed by government to look into a specific problem or perform such judicial or quasi-judicial functions as may be assigned to them. Also. Tribunal is defined as consisting of a person or body of persons exercising judicial functions by common law and statute. Meaning that a tribunal is subject to the Constitution, Statute, and the rules of natural justice and fair hearing. On the other hand, inquiries are set up to investigate any apparent misconduct or indiscretion which has public implication. Unfortunately, there seen to be a confusion

between tribunals and inquiries particularly in terms of their use interchangeably. For instance, in Nigeria, the government has frequently used words such as Panel, Commission, Committee, Inquiry and Tribunal in both judicial and investigating functions. However, the terms of reference may give the distinctions between these bodies despite the interchangeability of these words. This clarity is further appreciated by the explanation of Adediran (1995), who stated thus:

> When inquiries are set up to investigate matters of public interest, the normal practice is to name them 'Inquiry into ABC', 'Judicial Panel of Inquiry into XYZ', 'Tribunal of Inquiry into ZYX', 'BBC Tribunal of Inquiry', 'Commission of Inquiry into JAC', 'Panel of Inquiry into MIC'. There has been no noticeable uniformity in the use of the words 'tribunals' and 'inquiries'. 'Tribunals' in its legal term means body or body of persons set up to perform a function which is judicial in nature, while 'inquiry' means investigation. Where the administration joins both words, they mean to say a body of persons set up or constituted to investigate a matter. Both words may precede matters to be investigated as in 'Tribunal of Inquiry into the Importation of Cement' or succeed such matter as in 'Kano Disturbances Tribunal of Inquiry'. Whatever be the arrangement, such body is constituted to investigate matters under reference (pp. 530-531).

Tribunals are at times referred to as administrative tribunals, acting as quasi-judicial bodies established by the administrative to offer answers and explanations to administrative problems. This, in no way make tribunals machinery of administration, but rather must be viewed as adjudicatory bodies. As is generally acknowledged that tribunals are essentially an alternative procedure to the court system for the enforcement of legal rights. In another vein, Adediran explains that matters referred to tribunals could have been taken to regular courts, but for the fact that administration require an expeditious answer to problems, hence, their referral to tribunals to provide quick, easy and accessible means of justice to the citizens better than regular courts.

3.1 Types of Tribunals of Inquiries

Judicial powers in Nigeria are vested in Courts established by Section 6 of the 1999 Constitution (as amended) or any other courts established for the Federation by an Act of National Assembly or State Assembly. Nonetheless, there has been some considerable expansion of judicial powers to various administrative and statutory tribunals among others to carry out both judicial and quasi-judicial functions. As a result of the enormity of litigations and criminal trials which far outstretched the ability of ordinary courts, came to be handled by special tribunals which were established for specific purpose. Moreover, the complexity of modern administration has made the feasibility of regular courts to exclusively cope with adjudicatory powers impossible. Therefore, it became reasonable for several administrative agencies and tribunals to be given adjudicatory powers to handle some judicial and quasi-judicial matters. Surprisingly, Nigerian jurisprudence had only recognized the ordinary and conventional courts as bodies charged with the sole responsibility for adjudication both in criminal and civil matters. Tribunals are of recent development in our judicial system, dating back to the Tribunal Commission Act of 1961; all the same, they perform such functions as ordinary courts do. For instance, Section 36 (1) of the 1999 Constitution (as amended) provides 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 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 and impartiality". Thus, the constitution mandates both the Courts and Tribunals to ensure fair hearing in their determination of civil rights and charges of citizens. Therefore, we have Judicial Tribunals; Public Officers Tribunals; Land and Rent Tribunals; Industrial Relations Tribunals and Election Petition Tribunals.

Judicial Tribunals: They perform such functions as the conventional courts, by virtue of the fact that they determine disputes and try offences as the courts. In determining a case, the rules of evidence and objections which usual processes at regular courts, are forbidden. This was peculiar with military regimes in Nigeria such as the Armed Robbery and Fire Arms Tribunals, the Exchange Control (Anti-Sabotage) Tribunal, and the Recovery of Public Properties Tribunals among others.

Public Officers Tribunals: These are set up, mainly for the adjudication of erring public officers. The country has witnessed allegations of corruption in the public offices after independence. There was the establishment of Corrupt Practices Investigation Bureau, which would carry out investigation when there is allegation that an offence had been committed.

Land and Rent Tribunals: The Land Tribunal was set up to deal with land dispute and allocation of land. The Land Use Act 1978 vested title of land in State Governors and Allocation Committee was also set up to advice the governor of each state on any matter connected with the management and allocation of land; the settlement of persons affected by revocation of rights of occupancy and to determine dispute as to the amount of compensation payable for improvements on land. The Rent Tribunal was set up for the general rent control due to the chaotic movement of people in both urban and rural areas, accommodation and supply of other social utilities could not cope with the influx. The astronomical increase in rent and other charges became unbearable for the populace; the government had to set up Rent Tribunal to determine incessant disputes between landlords and tenants.

Industrial Relations Tribunals: They are set up to ameliorate the friction between employers and employees in the industrial establishments and in the public service. As a result of this kind of problem, the Trade Disputes Act of 1971 was promulgated.

Election Petition Tribunals: These are set up to deal with issues arising from elections in 1962, but the government was taken over by the military and f o r several years, issues of elections and consequential petitions were shelved. When there were prospects of a return to civilian rule, another electoral Act was promulgated. In the Second Republic, election cases were handled by courts, who were adjudged to have performed abysmally. It was observed that election cases with the same facts, were decided contrarily. This subsequently set the stage for the Constitution Review Committee to recommend that election issues by removed from the jurisdiction of regular courts, rather Election Tribunals be mandated to handle any pre- and post-election matters. The transfer of adjudicatory powers to Election Tribunals has not in any stopped the fraud and malaise peculiar in the Second Republic. There have been so many cases of Election Tribunals that have been quashed since democratic rule returned to Nigeria. Section 285(14) of the 1999 Constitution (as amended) provides for the establishment of Election Tribunals for the specific purpose of handling all election matters. The Six Schedule stipulate the composition of Election Tribunals., also,

the 2011 Electoral Act. However, certain drastic amendments have been made to the Electoral Act for expeditious adjudication of electoral matters. For instance, Election Tribunals are expected to conclude on cases within 180 days as against unspecified period between 1999 and 2007 respectively.

3.2 Classes of Administrative Panels and Tribunals

These are classified in to three groups: Statutory Tribunals; Autonomous Bodies and Other Bodies.

i) Statutory Tribunals are usually set up from time to time as the need arises under specific statutes enacted for that purpose by the federal or state government. Example of the statutory tribunals established by government includes Armed Robbery & Fire arms Tribunals; Recovery of Public Properties Tribunals; Miscellaneous Offences Tribunals, and Failed Banks & other Financial Malpractice in Banks Tribunals.

ii) **Autonomous Bodies** are independent tribunals set up under chartered and self–governing bodies outside government establishment. They are autonomous and are usually set up by relevant professional bodies to meet their domestic regulatory needs within such profession. The autonomous bodies include Medical and Dental Practitioners Disciplinary Tribunal; Legal Practitioners Disciplinary Committees; Estate Surveyors and Valuers Disciplinary Tribunal; Registered Engineers Disciplinary Committee and so on.

iii) Other Bodies which perform adjudicatory role comprise administrative authorities, which make policies, and decisions, which affect people one way or the other. These administrative authorities include the President of the Federal Republic of Nigeria; State governors; Ministers of the federation; Commissioners of the State; Director General of Parastatal and so forth. The functions of these public officers as provided by statute are mainly administrative. The decision taken by a public officer may affect someone who may challenge the decision, for the court to determine whether such decision was properly made in accordance with the law.

E.g in Imade vs.Inspector-General of Police (1993) in WLR PT 271 Pg. 608. The matter was dealt with in an orderly room proceeding by the police authorities. He was found innocent of the charges; the appropriate authority after considering the report instead dismissed the appellant. The appellant brought an action for wrongful dismissal and for reinstatement, payment of his salaries and entitlements. The court of appeal granted all the appellant's prayers held that where a police officer disobeys a police regulation or directive which amount to an allegation of crime, such officer like any other person, must first be tried in a court of law or criminal tribunal before any disciplinary action can be taken against him, in any orderly room proceedings.

3.3 Scope and Powers of Tribunals of Inquiries

At the early stage, only the ordinary courts are charged with the duty of adjudication both in criminal and civil matters. However, judicial tribunals are now saddled with such functions as ordinary courts do and there has been proliferation of tribunal activities in the successive military regime in Nigeria between 1966 and 1999. The powers, jurisdiction and composition of tribunals of enquiries are usually specified in the statutes creating them. For instance, Section 285 of the 1999 Constitution provides for the establishment and jurisdiction of election tribunals. Administrative tribunals normally have defined

jurisdictions under their statutes, which must be strictly adhered to, or else the doctrine of *ultra vires* may be invoked by the court against them. For instance, a statute creating professional tribunals regulates guidelines for the proceeding of such tribunals. Some statutes even provide that the rule of court should apply. It is pertinent to note that administrative tribunals of enquiries are bound by the principles of natural justice: "*Audi alteram Partem* and *Nemo judex in causa sua*." Where they take decisions in disregard of these maxims, such decisions are regarded as null. Most decisions of administrative tribunals of enquiries, which have been nullified are based on the ground of non-conformity with principles of natural justice. See the submission of Justice Kayode Eso JSC in LPDC vs. Fawehinmi (1985) 2 in WLR (pt7) 300 at P. 347:

> It is not easy to place a tribunal in the compartment of purely administering predominantly administrative, or one with judicial or quasi-judicial functions. In my view, a purely administrative tribunal may turn judicial, once it embarks on judicial or quasi adventure. The test to my mind should be the function the tribunal performs at a particular time. During the period of in-course into judicial or quasi functions, an administrative body must be bound in process thereof to observe the principles that govern exercise of judicial functions. Even God himself did not pass sentence upon Adam before he was called upon to make his defence. Merely to describe a statutory function as administrative, judicial or quasi-judicial is not by itself sufficient to settle the requirements of natural justice. This certainly leaves it open for the court to go into the substance of the very act of the tribunal than the form of description.

3.4 Nature of Independence of Administrative Tribunals

Independence of administrative tribunals simply connotes that tribunals make their decisions independently and are ultimately expected to be free from political influence judicial independence is recognised to be a significant factor in maintaining the credibility and legitimacy of international tribunal system and administration. One major reason for this is the unsteady political atmosphere in the country, which accounts for unsteady policies and the resultant confusion. It is a common feature for new governments to dismantle bodies set up by the previous regime on the ground of improvement, but to end by setting up other untidy bodies, that may later be equally dismantled by a secondary government. The first general observation of independence of tribunal is that it is a means to an end rather than an end itself.

The goal of judicial independence is to provide objective guarantees to litigants that tribunal judges will adjudicate upon their disputes in a fair and impartial manner. Judicial characteristic and mode of conduct links tribunal independence with the process of adjudication itself rather than of the person who is doing the adjudication. There is, however, a second time of thinking in Nigeria in which tribunal independence is viewed as the foundation for a set of governance relationships that are needed to enable tribunal to carry out their statutory mandates. The purpose of independence series is to ensure that the tribunal is able to carry out its statutory mandate in a manner that has integrity.

Relationship between Independence and Accountability

Tribunals of enquiries are set up mostly as a matter of exigency and prompt dispensation of justice. The regular course is arguably slow and cumbersome in the dispensation of justice. Hence, tribunals should be accorded adjudicative independence such as are necessary to enable it function effectively. However, being substantially independent does not mean the

tribunal must be completely independent in an administrative sense of the department with which it is associated; thus, the need for making them (tribunals of enquiries) accountable.

Since tribunals are part of the government, accountability of these tribunals as administrative establishments is to sway public confidence in the perceived integrity of decision making of tribunals on matters where there are winners and losers and government authorities do not wish tobe seen at taking sides. More so, to de-politicise decision making in areas of potential public controversy. In relation to the independence of tribunals of enquiries accountability measures is necessary because tribunals must be administered according to public standards of transparency, probity and efficiency as well as non-negotiation of natural justice principles. To this extent, administrative adjudication may be held accountable for different reasons. Inadequate legal knowledge, loyalty to the appointing government, inadequate observance of legal procedure, application of draconian laws, violation of natural justice principles, secrecy of sitting, and so on.

The accountability measure pre-supposes legislative control and executive control of administrative adjudication. Above all these is judicial control or review. This is because the tribunal of enquiries may have been set up by the legislature or the executive, and it may not want to upset the tribunal's findings so that through the tribunals finding, it will be able to achieve its set objective policy (for public good government hidden selfish agenda). Judicial control and review is the commonest and most favoured accountability measure/control of administrative adjudication for several obvious reasons such as *locus standi*, right of appeal, lack of jurisdiction, acting *ultra vires*, breach of fair hearing rules and so on.

From the mode of creation, there are three types of administrative tribunals-statutory, authorised and single-officer tribunals. These are administrative tribunals created by statutes. In creating such, they provide for their establishment, composition, duties, powers and procedure. Since they are created by statutes the provision of the statutes must be strictly adhered to, otherwise such tribunals would be illegally constituted. Where specific persons are mentioned to belong to such bodies, the statute must be complied with. The minister cannot alter their duties, powers and procedures, if any.

Authorised Tribunals: These are tribunals set up as a result of authority derived from statutes. In most cases, statutes simply authorise without providing for membership, duties, powers and procedure. These are left to the appropriate authority, in a few cases, for the minister to decide. For example, while statutes expressly name the investigating panel to make recommendations on their findings to the various Disciplinary tribunals set up for professional misconduct, the composition of the panels is not so well spelt out. This is left to each profession to decide. There are also those tribunals that are set up to recommend certain actions to the Minister or the appointing authority. Their membership and terms of reference are not determined by the statutes, but by the appointing authority.

Single-Officer Tribunals: These tribunals are constituted single officers. They are called tribunals since they perform quasi-judicial functions as other tribunals. Most times the statutes constituting these tribunals, spell out their duties, powers and procedure if any.

SELF ASSESSMENT EXERCISE

Explain the reasons why courts and tribunals do not share same powers.

4.0 CONCLUSION

The administrative panels and tribunals of enquiries play a vital role in the adjudicatory system, the process of determining issues in dispute between parties and between citizens and an administrative agency. An administrative adjudication though is a judicial function as we have already observed, it will be too burdensome for the regular courts to attend to all matters that required administrative adjudications. As we know, the court of law is the last hope of the common man, any person who is affected or injured is free to challenge any administrative decision in the court of law.

5.0 SUMMARY

In this unit, we have discussed the types of administrative panel and tribunal of enquiries, the classes of the tribunal of enquiries, the powers conferred on the tribunal by the statutes creating them. We have also seen that some administrative decisions by the tribunal could be reversed by the regular court based on the nature of decision vis-a-vis the requirements of the law.

6.0 TUTOR- MARKED ASSIGNMENT

Examine the classification of tribunals. Discuss why the classification is not sacrosanct as some tribunals may come under more than one classification.

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UNIT 2: PROBLEMS OF TRIBUNALS

CONTENTS

1.0 INTRODUCTION

Tribunals as a body with either administrative or judicial (or quasi-judicial) functions usually set up by government under statute outside the regular court system to investigate matters of public importance or to hear and determine matters between parties. The tribunals are also faced with some problems like every other organisation. In most cases, the problem may impede the ability of Tribunals to carry out their functions properly, and therefore, undermine their decisions. It is the focus of this unit to examine some of these problems.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- discuss the basic problems of tribunals in contradiction to the regular courts.

3.0 MAIN CONTENT

3.1 Basic problems of Tribunals

The basic problems of tribunals are essentially as follows.

i) Inadequate of legal knowledge and non-observance of legal procedure: The members sitting at a tribunal may lack legal training and reasoning. Where the members of a tribunal or panel are not legal practitioners, arriving at a just and fair decision according to law could be difficult, because the rules of natural justice and rule of law must be fully complied with.

ii) Loyalty to government: The executive usually appoints the members adjudicating at the tribunals and they are often loyal to the authority setting up the tribunal. This leads to lack of independence and impartiality as required for natural justice and fair hearing principles.

iii) There is secrecy of sittings: some tribunals usually sit in camera and without allowing members of the public watch the proceedings. This secrecy usually creates the atmosphere to deny the accused the due process of law and justice.

iv) Inadequate rationale for judgment: The tribunals in most cases do not give detailed reasons for the decision reached, unlike the conventional practice in the regular courts. The rationale behind the judgment delivered by the tribunal are also not published for the general public to read, unlike the regular courts where the proceeding of a case are published in various law reports for sale to the general public for its information.

v) Fettering of the right to counsel of one's choice: the tribunal before which an accused is standing trial in most instances have constrained a party to choose specified counsel provided by the tribunal, contrary to the provisions of the Constitution of the Federal Republic of Nigeria (as amended) which provides that a person is entitled to defend himself by legal practitioners of his own choice. The choice of counsel is entirely the business of the person standing trial and not that of the tribunal.

vi) To legalise government hidden agenda: A tribunal in its strict sense is a mere rubber stamp to justify and legalise the predetermined results and create a legal basis for government to deal with and get rid of preserved opposition of the government. The tribunals are often a tool to enable the authority frame any person for misconduct, carry out a kangaroo trial, and return a guilty verdict, all with the aim to provide legal cover to enable the authority get rid of the person. For instance, the trial and execution of Ken Saro Wiwa during the military government of General Sanni Abacha.

3.2 The Council on Tribunals

A council on tribunals if established will scrutinise such procedural rules and promote intelligible and consistent ones on issues such as publicity of hearing, the rights of cross-examination and even the rights of representation as guaranteed by the constitution. The council on tribunals will be a permanent standing body on tribunal, which provides the machinery for the general supervision of tribunals' organisation and procedure throughout the country. It should consist of both legal and lay members to reflect public opinion so that it will not be looked at as a kind of lawyers' counterrevolution against modern methods of government and the welfare of state. The duty of the council amongother things will be to ensure that:

a) Tribunals are administered according to public service standards of transparency, probity and efficiency.
b) Tribunals should be staffed by public servants who are selected and employed according to public service standards of fairness, transparency, professionalism and non-partisanship.
c) Tribunals have an obligation to work effectively, and often closely, with government departments and their ministers. The establishment of a council on tribunals has some of the following advantages.

i) The council will have a duty to constitute fewer and strong tribunals by grouping the existing tribunals according to their functions, thereby preventing proliferation of tribunals.

ii) The council will ensure that no tribunal is predisposed against any person appearing before it by ensuring that the procedure employed by the tribunal should be adversary and not inquisitional.

iii) In essence, a council on tribunals if established will scrutinise such procedural rules and promote intelligible and consistent ones on issues such as publicity of hearing, right of cross-examination.

iv) It will ensure that no rules are introduced that are against the rules of natural justice.

Members of the public should feel free to lodge complaints about tribunals with the council with a view to improving the administration of tribunals.

3.3 Control of Tribunals

This may be done by the legislature, executive, or the judiciary. We will briefly look at control by the legislature and the executive, while the discussion on judicial control will be fully discussed in subsequent discuss.

Executive Control

These may be done in many ways such as subjecting the tribunals decision to ratification or approval by the executive council before they have the force of law, rejecting or failing to implement the tribunal's decision, hire or fire members of the tribunal, disband the tribunal where it serves no useful purpose, make itself the appellate body of the tribunal, tamper with tribunal's judgment by justice with mercy and vary or lessen the sanctions, or grant a pardon in exercise of clemency where possible.

Legislative Control

As the law-making organ of the government, legislative may control the operation of tribunals by various means. This includes requiring the tribunal to follow certain procedure, amending the law and procedure on ground, enlarging its membership to secure or enhance access to justice, abolishing the tribunal or by repealing the law establishing the tribunal thereby making it defunct. It limited the jurisdiction of the tribunal, requiring it to mandatorily observe the rules of natural justice and fair hearing in line with Section 36 of the 1999 Constitution, and so on.

SELF ASSESSMENT EXERCISE

Discuss the means by which tibunals are controlled.

4.0 CONCLUSION

There is no system that is totally accurate or problem-free. A look at the justice sector will reveal bottlenecks some of which prompted the setting up of tribunals in the first place, hence tribunals are not left out. Efforts should be made at ensuring that tribunal system attains considerable level of accuracy that is finding of facts should reflect the most likely interpretation of the evidence, and the conclusions of law should reflect the most likely meaning the applicable legal sources.

5.0 SUMMARY

In this unit, we have examined the basic problems of administrative tribunals, means of control of administrative tribunals, suggest establishment of the council on tribunals in order to ensure qualitative functioning tribunals.

6.0 TUTOR-MARKED ASSIGNMENT

Examine the essence of judicial control of administration tribunals with the aid of legal authorities

7.1 REFERENCES/FURTHER READING

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UNIT 3: RIGHTS OF APPEAL UNDER TRIBUNALS

CONTENTS

1.0 INTRODUCTION

It is imperative that a tribunal is set up to investigate matters of public importance, to hear and determine such cases under specific statute enacted for that purpose. In most cases, the judgment of the tribunals lack rationale, and such aggrieved persons will want to seek for justice by way of appeal. There must be a right of appeal from the decision of the tribunal. Although there are numerous ways of appeals from various tribunals, the general principle still applies to every one of them. It should be noted that an appeal may lie from a tribunal to a minister or commissioner, from a tribunal to a court of law, from a tribunal to the head of state or governor by way of confirmation of the decision or no appeal may lie at all.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- explain various mode and the numerous ways of appeals from various tribunals in Nigeria
- examine different grounds of appeal under tribunals
- discuss principles of natural justice.

3.0 MAIN CONTENT

3.1 Various Ways of Appeal under Tribunals

As against regular courts, the decisions of tribunals are conclusive or final. The decisions could be appealed where it may have concluded it proceedings. Therefore, the following ways by which appeal could be pursued:

Tribunals to the court: This is a situation where an appeal goes from tribunals to the court on the ground that the enquiries were conducted in a manner contrary to the principles of natural justice. In Alakija vs. Medical Disciplinary Committee (1959) 4 FSC, 38 the appellant appealed from a decision of the Medical Disciplinary Committee, which had ordered that the appellant's name be removed from the register of medical practitioners for the period of two years. The appellant averred that the inquiry was conducted in a manner

contrary to principles of natural justice, who was in fact the prosecutor took part in the Disciplinary Committees deliberations. The Supreme Court held that the decision of the Disciplinary Committee could not stand and was quashed.

Tribunals to Minister or Commissioner: This is a situation where the enabling statutes provide for an appeal in the first place to a minister or a commissioner as the case may be. In R vs. Director of Audit (Western Region) and Another Ex Parte Oputa & others (1961) All NLR 659, the Director of Audit of the defunct Western Region wrote to the appellant and certain other councilors to show cause why they should not be surcharged. They were given two months within which to make representations in the matter. Many of them did not reply and those who did fail to satisfy the Director of Audit that a surcharge should not be made. They were surcharged. They appealed to the minister and they were informed that the minister did not allow their appeal. Thereafter, they appealed to court for certiorari but it was refused by the court, as no rule of natural justice was broken.

Tribunal to another higher tribunal: This is a situation where the statute provides for an appeal to lie from one tribunal to another higher tribunal, which is not a court in the real sense of it. A good example is that appeal lies from the decision of the Industrial Arbitration Panel to the National Industrial Court, which is not a superior court of record. In Nigerian Breweries Ltd vs. Nigerian Breweries Managements Association (1978-79) N.I.C.L. (Pt.1) pg 35, the issue was whether medical facility for managers and assistant managers was negotiable or not. There was no agreement between the parties, the Industrial Arbitration Panel awarded in favour of the workers that medical facility was negotiable. The company appealed and the National Industrial Court held that in the circumstances of the case, medical facility was not negotiable and set aside the award of the Industrial Arbitration Panel in favour of the workers.

Tribunal to the Head of State: This is a situation where the tribunal's decision shall not be treated as a sentence of the tribunal until confirmed by the Head of State. This Tribunal and its kind do not provide for rights of appeal; it makes it difficult for any aggrieved party to seek remedy by way of appeal.

3.2 Grounds of Appeal under Tribunals

Administrative tribunals within the context and dictates of the Nigerian 1999 Constitution (as amended) view the decisions of such tribunals as not final or conclusive. In other words, pronouncements made by Tribunals are subject to judicial appeals. As Justice of the Court of Appeal, Justice Awogu notes that 'A tribunal no matter how highly clothed with power is still a tribunal and so an inferior Court and subject to the supervisory jurisdiction of a superior Court of record', in this regard, to the High Court. Consequently, the outcome or even the proceedings of administrative or statutory tribunal regardless of how highly clothed with power is inferior and therefore, can be appealed at the High Court on certain presumably grounds of abuse. The grounds or basis of appeal from a decision of a tribunal may be one or any of the following.

Ultra vires: This refers to lack of or excessive use of authorized powers. Any act in excess of powers conferred is regarded as being outside jurisdiction or *ultra vires.* Thus, a tribunal is only restricted to do what the law setting it up permits it to do. Where a tribunal exceeds its sphere of authority, a Court of Law will entertain appeals from its (tribunals) findings.

Excess/lack of jurisdiction: Where the tribunal entertains a matter without having jurisdiction, appeal will lie to the law Court that may set aside the whole judgment or part of it. Jurisdiction might be exceeded if a tribunal is wrongly constituted, where the tribunal tries a case outside its area of competence, by committing procedural errors made an order outside its competence, for instance imposition of a fine when it was empowered to impose compensation. Lack of jurisdiction robs the tribunal of its powers. The concept of jurisdiction is well laid out in Madukolu vs. Nkemdilim (1962) 1 ANLR 587 at 589.

Error of law on the face of the record: Where, upon the face of the order of a tribunal, anything is shown to be erroneous, the decision of the tribunal will be subject to appeal.

Fraud or Collusion: Where the decision of a tribunal is obtained through fraud or collusion, such decision will be quashed by the law court on appeal. In State vs Senior Magistrate (S.A. Akaeke, Senior Magistrate Court II or the Successor) Ex parte; Alhaji Maru (1976) 6 E.C.S.L.R. 221, it was held that an order of certiorari will be granted to quash proceedings tainted with fraud…provided the applicant was not guilty of delay and the fraud had not become irretrievable.

Locus standi: Parties in a tribunal must have the locus standi to be able to file for an appeal before the court of law. *Locus standi* means right is the right to sue or defend a claim in law court. It is the right of a party to appear in a court, tribunal or other judicial proceedings and be heard on matter before it. Mohammed Bello JSC, as he then was in Senator Abraham Adesanya vs. President of Nigeria (1981) 2 NCLR 358 at 380 defined locus standi as: "The right of a party to appear and be heard on the question before the court or tribunal" (See also the case of Owodunni V. Regd. Trustees of C.C.C. (2000) 10 NWLR pt 675, p. 293 S.C.).

Breach of the rules of fair hearing: The provision of section 36 of the 1999 Constitution on fair hearing is sacrosanct for anybody acting judicially or quasi-judicially. If the tribunal fails to adhere to the rules of fair hearing, the decision of such tribunal can be subjected to an appeal in the law courts.

Non-observance of the principles of natural justice: This can be summed up as minimum standards of fair decision making imposed by law on tribunals. It is necessary for anybody acting judicially or quasi judicially. Strict adherence must be placed on principle of natural justice or else the decision of such tribunal will be set aside on appeal. The decisions of most tribunal are nullified based on the ground of non-observance of principles of natural justice. Consider the dictum of Kayode Eso, JSC in Legal Practitioners Disciplinary Tribunal vs. Chief Gani Fawehinmi (1985) 2 NWLR (pt.7) 30 at p. 347:

> It is not easy to place a tribunal in the compartments of purely administering predominantly administering or one with judicial or quasi-judicial function. In my view, a purely administrative tribunal may turn judicial once it embarks on judicial or quasi-judicial adventure. The test to my mind should be the function the tribunal performs at a particular time. During the period in-course into judicial or quasi-judicial function, an administrative body must be bound in process thereof to observe the principles that govern exercise of judicial function…

The above stated grounds are sufficient enough for any decision of a tribunal to be challenged in a competence court of jurisdiction.

3.3 Principles of Natural Justice

This presupposes the principles of justice, equality, fairness, which impose obligation on person who have power to make decisions affecting other people to act fairly, in good faith and without bias. It is a doctrine of variable contents. Though it is of common law origin, its application in Nigeria has always been on constitutional provision. The doctrine has metamorphosed into two maxims: *audi alteram partem and nemo judex in Causa sua.*

Audi Alteram Partem

This means that a person shall not be condemned unheard. It is a Latin expression, which means, "Hear the other party". This principle is now established by chain of authorities. In the case of Mayor of Westminster vs. London & North Western Railway Co. (1905) AC 426 at 430, Lord Macnaghten said, "A public body invested with statutory power must take care to exceed or abuse its power. It must keep within limits of the authority committed to it. It must act in good faith, and it must act reasonably." Similarly, Eso JSC in Adigun vs. A.G. Oyo State & Anr (1987) 18 N.S.C.C. (pt 1) 346 put it this way: "Natural justice demands that a party must be heard before the case against him is determined. Even God gave Adam an oral hearing on his nakedness, before the case against his continued stay in the Garden of Eden was determined against him" Other decision on this includes, Wilson vs. A.G. Bendel State (1982) 2 NWLR pt 106, p.265 SC.

Nemo Judex in Causa Sua (nemo debet esse judex in propria causa)

This is the second leg of the principle of natural justice meaning, "no one should be a judge in his own cause." In essence, no one should be both the accuser and the judge, in a matter in which he has interest or is a party, it is a rule of impartiality or likelihood of bias. Where a matter is before a tribunal, the person who has interest in such matter must not take part in the deliberations, or else, such decision will be invalid for likelihood of bias. See Mohammed vs. Kano N.A. (1968) I All NLR 424, Fawehinmi vs. LPDC (1983) 3NCLR 719. E.g the Alakija vs. Medical Disciplinary Committee (1959) 4 F.S.C. 38. See also, the dictum of Blackburn J. in R V. Rand (1866) L R I CP 230 at 232.

SELF ASSESSMENT EXERCISE

Discuss the circumstances under which the decisions of tribunals can be appealed.

4.0 CONCLUSION

The principle of natural justice is cardinal in administrative adjudication as well as dispensation of justice either in judicial or quasi-judicial form. An administrative tribunal must perform its duty within the authorization of the law or else such tribunal finding will be quashed on appeal.

5.0 SUMMARY

In this unit, we have highlighted the various ways of appeal under tribunals. We have also taken a look at the factors or basis of appeals against decision of tribunals and the principles of natural justice as a cardinal principle and pillar of justice.

6.0 TUTOR-MARKED ASSIGNMENT

Discuss the jurisprudential basis of the principles of natural justice as laid down by the Supreme Court in Nigeria in the dispensation of administrative adjudication.

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UNIT 4: MEANS OF JUDICIAL REVIEW

CONTENTS

1.0 INTRODUCTION

Judicial review is a procedure where court can review administrative actions and decision in order to ensure that the executive complies with the provisions of the law or to ensure that justice is done. For example, the court could review a decision of the tribunal on the grounds of abuse of principles of natural justice. It is assumed that the rules of natural justice are known to almost all the systems of law and should at all times guide those who are saddled with the responsibility to discharge judicial functions. Statute authorising the exercise of certain types of powers is deemed to intend that those powers should be exercised in conformity with the rules of natural justice.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- discuss what judicial review entails and the purpose of judicial review
- explain available remedies under judicial review
- analyse the contents of the application for judicial review.

3.0 MAIN CONTENT

3.1 Meaning and Scope of Judicial Review

Judicial review is the control by the ordinary courts of the exercise of power by government, or administrative authorities. In other words, it is the judicial control of other arms of government. Nwabueze explained that judicial review is the power of the court in appropriate proceedings before it to declare a governmental measure either contrary or in accordance with the constitution or other governing law, with the effect of rendering the measure invalid or void or vindicating its validity. In essence, the court exercises supervisory jurisdiction/role over the acts of the executive and legislative arms of government. In Abdulkarim vs. in Car Nigeria Ltd (1992) 7 NWLR Pt. 251 p. 1, the issue of judicial review was examined by the Supreme Court, and Nnaemeka-Agu JSC took time to explain the role of the court in judicial review as follows: In Nigeria, which has a written presidential constitution, judicial review entails three different processes, namely:

i) The courts particularly the Supreme Court, ensuring that every arm of government plays its role in the true spirit of the principle of separation of powers as provided for in the Constitution;
ii) That every public functionary performs his functions according to law, including the constitution; and
iii) For the Supreme Court that reviews court decisions including its own, when the need arises in order to ensure that the country does not suffer under the same regime of obsolete or wrong decisions.

The purpose of judicial review of the acts of public or administrative authorities is to ensure that the scope and limit of statutory powers are not exceeded by such authorities. However, in cases where there is an infringement or breach of the rights of individuals by any official or any government institution in the course of the discharge of duties, there are redemies available for such aggrieved individual.

3.2 Remedies in Judicial Review

The court in reviewing the conduct of public authorities may grant remedy as it deems fit in every circumstance. Interestingly, applicant for judicial review need be based on a definite remedy, subject to the nature of power being challenged and the type of grievance(s) faced. Also, the aggrieved party for review case is usually expected to have exhausted other statutory means such as appealing to higher administrative officer, head of department, minister, or a tribunal before applying for prerogative remedy among others. In a normal case for judicial review, the applicant may attract the sympathy of the court if he/she is able prove either or all these grounds:

(a) That an agency acted without or in excess of its jurisdiction; meaning, it acted ultra vires, either procedural or substantive. (b) That concerned agency violated or ignore the rules of natural justice in a situation necessary for their application; or (c) That the agency committed an error of law which is obvious on the face of the record of a given proceeding.
To this end, we shall consider some of the remedies available to an aggrieved party:

Declaration of Rights

This is also known as a declaratory judgment; it is a declaration by a court of the legal rights and obligations of the parties in a suit with or without making any consequential order. A declaration of rights is a declaration that one party is right and another party is wrong, that one party has a right and the party owes an obligation and the making of an appropriate order by court to do justice in the circumstances. For example, a plaintiff who does not obtain a consequential relief or order may at least get a declaration of his right in the first instance and with liberty to apply again to court for such consequential relief if his rights are breached or if there is a continuation of the breach against which he complained in the first instance.

Order of Mandamus

This is a court order commanding the performance of a public duty, which a person or body is bound to perform. It is trite that where an applicant has fulfilled the legal requirements for performance, a court will issue an order of mandamus to compel its performance. This order of mandamus is generally regarded as a mandatory injunction, because it is compulsive. An order of mandamus may be directed to a private company or public corporation, security agency, or any of its officer, an executive, or judicial officer or,

to an inferior court or tribunal, commanding the performance of the particular act stated in the order, which act must be his or their public, officer or mandatory duty imposed by law, or compelling the reinstatement of the applicant to his work, officer, privileges or rights of which he has been wrongfully deprived.

Order of Certiorari

This is an order issued to bring up the record of an inferior statutory tribunal or lower court, even still to an administrative authority to be quashed. The import is to ensure that those saddled with the duty to determine issues affecting others rights do not exceed their legal limits. Meanwhile, three conditions must be met before an order of certiorari can be issued. They are:

i) The body must be a tribunal
ii) The tribunal must be statutory
iii) It must be of inferior character to the authority issuing the order

Tribunals and inferior courts have limited powers hence the need to ensure that such bodies are kept strictly within legal bound in the interest of the liberty of the common nom and good administration. It is a corrective order granted for actions, which have already been completed. It may be issued based on some of the following ground: *ultra vires*, jurisdiction (lack or excess of it), lack of fair hearing, breach of natural justice, error of law on the face of the record, uncertainty (vagueness), error of fact on the face of the record or misdirection of self, irrelevant consideration, uncertainty and vagueness, unreasonableness, corruption etc. (See the case of Denloye vs. Medical and Dental Practitioners Disciplinary Tribunal (1968) I ANLR 298 At 304, Adekunle vs. University of Port Harcourt (1991) 3 NWLR p t 181, 534 CA.)

Order of Prohibition

An order of prohibition restrains a public administrative authority from exercising its judicial or quasi-judicial powers. It is an order to prevent the performance of administrative action, which must be judicial in nature. While certiorari looks to the past, prohibition looks to the future. As such, prohibition lies where an administrative tribunal has not yet reached its decisions while certiorari is the remedy for an action already completed. It is usually granted to restrain a person or body from doing an act on the ground that it is unwarranted, unlawful, unconstitutional, baseless, directed at the wrong persons and so forth. It has the following effects when granted.

i) Absolutely prohibiting an inferior authority from exercising its jurisdiction

ii) Prohibits that part of the proceedings, which is beyond the jurisdiction of the inferior court or tribunal and or leaving it free to proceed with the residue, which is within its jurisdiction.

iii) Temporarily prohibits an action until a particular act or condition is fulfilled thereby automatically discharging the order. It does not lie where the decision is a final decision. Consider the case of Shugaba vs. Minister of InternalAffairs & Ors (1981) I NCLR 25;
LPDC v. Fawehinmi (1985) 2 NWLR pt 7, p.300 SC.

iv) Order of Injunction: A court order, which is equitable in nature and usually to prohibit a

person or tribunal from doing a specified thing. As decided in American Cyanide Company Ltd vs. Ethicon Ltd (1975) I ALL E R 504 HL. It must be used judicially and according to settled principles of law. There are two types of injunctions namely: prohibitive injunction directs a person not to do or continue with a wrongful act; and mandatory injunction directs the doing of an act. In essence, where there is an allegation that a tribunal or public authority intends to take an action, which will result in injury to an individual, an injunction may be granted to stop the threatened action. This was the decision in Shugaba vs. Federal Minister of Internal Affairs & ORS (Supra); Williams vs. Majekodunmi (1962) ANLR 413.

The following conditions must be met before an injunction could be granted:

i) There must be a serious issue or question of law to be tried
ii) The balance of convenience lies in granting the injunctions
iii) Monetary compensation will not be adequate remedy if injunction is not granted.

Injunction can be classified as follows.

a) Mareva injunction, which prevents a person from removing property from one jurisdiction to another pending the hearing of a suit. See Mareva Compagiria Nanera vs. International Bulk Carriers Ltd (1980), All ER 213.

b) Interim injunction is usually granted to maintain *status quo ante* for a short period. It is usually exparte and granted in cases of real urgency. However, in granting interim injunctions, the applicant must give a satisfactory undertaking as to damages. See Kotoye vs. C.B.N (1989) INWLR pt 98, 419 at 456 SC.

c) Interlocutory injunction is usually granted to maintain the *status quo* until the determination of the substantive suit. Usually on notice to the other party, it is granted to preserve the matter in dispute or maintain the status quo pending the full determination of the substantive suit. See Governor of Lagos State vs. Ojukwu (1989) INWLR pt 18, 621 SC; Obeya Memorial Hospital vs. A.G Federation & ORS. (1987) 3 NWLR pt 60, 325 SC.

d) Perpetual injunction is granted after the final determination of a case to prohibit, in perpetuity, the doing of the thing specified in the order.

e) Quick time injunction is an interim injunction, which is pre-emptive or preventive. It seeks to prevent the commencement of a threatened act. An order of injunction is not granted for an act, which is past or completed. Per Mohammed JSC in Badejo vs. Federal Ministry of Education and ORS (1996) 8 NWLR (pt 464), p. 15 at 43 SC; An injunction is not a remedy for" an act which has already been carried out".

Quo Warranto: This means "By what authority or warrant?" It was incorporated into the Nigerian system of administrative law through the common law of England and statutes of general application; but later superseded by injunction in the nature of *quo warranto*. It has been abolished in England and in the Northern region. It is a common law writ issued to inquire into the authority by which a public office is held or franchise is claimed. It seeks to inquire into whether authority existed to justify or authorise certain acts of a public officer, character or interest.

Habeas Corpus: It is a writ for achieving the liberty or immediate release of a person from unlawful custody or unjustifiable detention. In Agbaje vs. Commissioner of Police (1969) NMLR 137 the applicant, a legal practitioner was held in custody by the Police and was later transferred to Ijebu Ode Prison. The court held that his detention was unlawful. It obtains as of right of the highest constitutional importance in line with section 35 of 1999 Constitution. It is used for determining the legality of the detention of a person who is in official custody or private hands. See Agbaje vs. COP (Supra), Tai Solarin vs. IGP (unreported) suit No. M/55/84 H C; R V. Jackson (1981) I QB 67I.

The purpose of the writ of *habeas corpus* is not to decide whether the detention is according to due process of law. Where it is certain the detention is illegal, a writ is usually issued to command the custodian of the prisoner to bring the detainee to court and justify the detention, where he cannot, the detainee is released forthwith. It is usually by motion ex-parte, supported by an affidavit, starting the circumstances of the detention. The basis of the writ of *habeas corpus* is founded on the principle that no person ought to be subject to unlawful detention in contravention of the fundamental rights to personal liberty of the person involved (See the Dictum of Lord James Atkin in Liversidge vs. Anderson (1942) AC 2006 HL**,** also the dictum of Lord Denning MR in DPP vs. Head (1959) AC 83 at 106).

Under the military regime, the fundamental rights provisions in the constitution are often ousted. Sometimes, the whole constitution is suspended to pave way for rule by military decree; hence, the more the incidences of fundamental rights in military regimes. Other species of *habeas corpus* are *habeas corpus ad faciendum et recipiendum,* h*abeas corpus testificandum, habeas corpus ad satisfaciendum, habeas corpus ad subjiciendum, habeas corpus ad presequendum, habeas corpus ad deliberandum et recipiendum, habeas corpus ad respondum.*

3.3 Content of the Application for Judicial Review

Time must not be wasted in asking for any of the remedies as soon the cause of complaint comes into the applicant's knowledge. Although the court has discretion in granting extension of time, it is always safer to bring the application within the time limit. Meanwhile, the issue of time frame has been abolished in some cases. For instance, under the 1999 Fundamental Human Rights (Enforcement Procedure) Rules, the issue of bringing application within a specified time is abolished. Secondly, an applicant for judicial review must show utmost good faith as well as disclose all material facts, make no false statement to the court when applying for leave or else the court may refuse to grant the application or order sought.

SELF ASSESSMENT EXERCISE

Explain what you understand by the term judicial review.

4.0 CONCLUSION

The importance of judicial review of administrative authority or tribunal cannot be over-emphasized. It is *sine qua non* to governance and a catalyst to the principle of checks and balances. The effective use of judicial review as a means of ensuring administrative compliance with the provision of the law promotes development, transparency and accountability.

5.0 SUMMARY

In this unit, we have x-rayed judicial review in relation to administrative actions as a means of ensuring compliance with the provisions of the law and the cause of natural justice. Thus, we have looked at the power of the courts in undertaking judicial review of administrative action; judicial review of administrative tribunal actions as well as the conduct of an applicant for judicial review.

6.0 TUTOR-MARKED ASSIGNMENT

Discuss the circumstances under which judicial review be made.

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UNIT 5: SHORTCOMINGS OF JUDICIAL REVIEW

CONTENTS

1.0 INTRODUCTION

Judicial review is no doubt one of the veritable means to both ensure the preservation of human rights of citizens as well as bringing into account the actions and activities of any arm of government or public authority in tandem with constitutional requirements. Even though any individual may choose to institute an action for a wrongful administrative act in a court, there have some observed shortcomings that perhaps account for limited benefits to citizens. It is therefore, the focus of this unit to highlight some of these shortcomings of judicial review process.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- explain the weaknesses inherent in judicial review

3.0 MAIN CONTENT

3.1 Shortcomings of Judicial Review

The doctrine of jucdicial review is no doubt very significant aspect in the exercise public law. It stems from the fact that with increasing complexities in administration in modern society and its interference in the freedom of individuals, it becomes inevitable that measures are put in place to safeguard the rights of people. Nonetheless, there are several factors impeding its apparent gains to the pupolace. The following are some shortcomings that may limit the impact of judicial review; this list is in no way exhaustive:

Absence of Judicial Independence

In accordance to the principle of separation of power, the judicial is meant to enjoy unquestionable independence from other arms of governemtn namely: the executive and legislature. The independence of the judiciary is an obvious indicator of democratioc nature of the political system. It is essential to safeguard and guarantee the rights of citizens against abuses from the government. Broadly, judicial independence is the capacity of a court or judicial tribunal established by law to make decisions void of any undue external pressure from any other arm of government. On a personal level, it denotes the freedom of judges from any form of restrictions, influence, inducements, threats, or interferences, either directly or indirectly from any quarter or for any reason in deciding any matter before him.

In other words, matters brought before any judge should be handled on its merit; meaning that judgement or decision of the court must be impartial, only based on facts (evidence) and in accordance with the law. Encapsulated in the above connotation, is the necessity to adhere to the principles of separation ofpower, the rule of law and natural justice. In another vein, some scholars have advanced few indicators as a templte to judge whether a judicoial system is independent or not. These include: separation of power, exclusive authority, and finality of decisions, enumerated qualifications, guaranteed terms, and fiscal autonomy. As stated earlier, in order to ensure the separation of power, the authority of judiciary must be respected and formally separated from opther arms of government. In terms of exclusive authority, the must be allowed to exercise jurisdiction over all matters of judicial nature as stipulated by law. Finality of decision denotes that no outside authority is allowed to question the decisions of the court, rather judgements should ba allowed to stand without reversal or revision by any outside authority only liad down appeal procedures should be allowed to challenge any judicial decision. Others include enumerated qualifications, meaning appointment or promotion of judges should be based on merits rather than on bias considerations; guaranrantee terms in office connotes that the appointment, promotion, discipline or removal of judges void of ulterior intentions such as personal vendetta against the person of the judge. And lastly, the financial independence from the executive is essential for the judiciary in order not to be muzzled it.

Interestingly, the 1999 Constitution (as amended) has sufficiently made provisions so as to ensure the independence of te judiciary. First, judiciary can order inquiry into the actions and activities of other arms of government to determine whether they fall within the confines of the law or not. Other constitutional provisions to guarantee the appointment, promotion, discipline or removal void of any executive excesses or bias.

Issue of Locus Standi

One major challenge that have hampered the complete use of the judicial process to secure protect the human rights of citizens is the problem of *Locus standi.* It does not in any mean that deliberate restrains are encouraged; rather, it is because of the restrictive nature of the concept of *Locus standi.* The application of the doctrine of *locus standi* in law extinguishes completely the claim of the complainant and shut the door finally against him or her. Section 46(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) defines a person who has *locus standi* as "any person who alleges that any of the provisions of this chapter 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." A person who seeks redress in a court of law against a wrongful act must show that he is directly affected by such act before he can be heard. The right must have been infringed, but a general interest common to all members of the public is not a litigable interest and it is not *locus standi* in a court of law. In line with decisions of the courts, the notion of *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. Accordingly, it is not just adequate for a plaintiff to allege that the defendant has abused or infringed the rights of another individual, or that the wrong done by the defendant s in the public interest for the court to grant relief sought. In Senator Adesanya vs. The President & Ors (1981)2 NCLR 358, Fatayi-Williams, CJN (as he then was) said "the term *locus standi* denotes legal capacity to institute proceeding in a court of law." In its strict application, *locus standi* is a rule of substantive law by which a person with little or no interests at all is debarred from bringing an action

against any person, the government or any of its agencies. The sole object of the rule is to prevent professional litigants from fishing in troubled waters. As stated earlier, under the Common law, a party could only seek intervention of the court based on his/her direct personal interest being affected.

However, the application of *Locus standi* by courts in Nigeria has been criticized for it being too restrictive and limiting enough to hinder citizens to completely use the judicial process in protecting human rights. Albeit, from study of some cases decided by courts, there seem to be a shift from this narrow conception of *Locus standi.*

Unwillingness to pursue Judicial Remedy

Judicial intervention on any matter is predicated on the concern party (ies) approaching the courts. In other words, judicial review is not solely invoked by the court even though obvious reasons exist for such intervention as in an administrative infrigement. The courts can only intervene when an application is made by the person affected by such administrative action or inaction. Otherwise, the jurisdiction of the court cannot be invoked. It all boils down to the willingness of the victim of administrative wrong to seek judicial review of the action of the defendant as the case may be. But, as been widely reported that Nigerians are mostly not willing to take their cases to the court due to several factors among which are lack of finance to bankroll the case, ignorance of remedial means available, corruption in the judiciary, fear that the case may unnecessarily been elongated, lack of trust in the judiciary. The implication of this kind of disposition is that administrative wrongs are left to perpetuate themselves, and in turn under the rule of law. Also, the judiciary will not be inundated with cases that have to do with administrative injustices.

Delayed and difficult Judicial Process

Flowing from the above discussion is that frequent complains of delays and difficulty in falicitate the speedy dispensation of justice in Nigeria. Given the need to adhere to professional and technical processes, the pace of handling cases has been delayed. Moreover, indiscriminate application for adjuncments from parties in the case perhaps due to insuuficient preparation for court proceedings, or as a ploy to technically elongate the case. Further complicating the issue, are reports confirming rising incidences of corruption in the judiciary. In this regard, some inducement may be deployed to hinder the efficiency of the courts. In fact, these delays may actually turn out to be denial of justice.

SELF ASSESSMENT EXERCISE

Discuss the factors that endanger judicial independence in Nigeria.

4.0 CONCLUSION

The judicial review system is faced with certain problem that undermines the opportunity of citizens to seek full judicial redress. This is generally attributed to the notion of *locus standi*, which require the plaintiff to be directly affected by the defendant wrong otherwise; it cannot be entertained by the courts. Therefore, it is quite commendable that there has been a reasonable shift in its applicability to accommodate public interest as a justifiable basis to invoke judicial jurisdiction on matter.

5.0 SUMMARY

In this unit, we have seen that there are some impediments hindering the complete use of the judicial process in order to mitigate for human rights issues by the citizenry.

6.0 TUTOR-MARKED ASSIGNMENT

Explain some problems a citizen can face in seeking judicial review of a matter.

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MODULE 4: THE NIGERIA POLICE FORCE

INTRODUCTION

The Nigeria Police Force (NPF) has gone through various historical phases that have subsequently defined its structure and philosophy. These phases include: the colonial era, military, and the present democratic era. No doubt, the way it functioned in other eras is not the way it is expected to function in a human-rights guaranteed era. Unfortunately, the police is yet to totally extricate itself from the past in order to meet public expections in a democratic setting. The inherent contradictions that confront it in this dilemma is critical to examine as the primary agency for the maintenance of internal security and the prevention of crimes. In thie module, we shall look at various aspects of the Nigeria police and the current debate on state police.

UNIT 1: THE POLICE FROM COLONIAL TO CIVILIAN RULE

CONTENTS

1.0 INTRODUCTION

The police force is comprised of men and women, whose duty is to protect people and property, make everyone obey the law, arrest criminals and to prosecute suspects if necessary. The Nigerian people want to live in a peaceful atmosphere where no one takes the law into his/her hands by resorting to mob action against suspected offenders like thieves or armed robbers in the society. Unfortunately, there is rising dissatisfaction with the Nigeria Police among the public due to rising indiscriminate brutality and torture, abuse of human rights, excessively militarized among others. Sadly, some of these inadequacies are relics of both colonial and military eras, which have continued to hunt the Police in present democratic era. Regrettably, to a large extent, the Police has arguably seen declining co-operation and trust in the Police Force.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- discuss the state of the Nigeria police both under the military and civilian governments.

3.0 MAIN CONTENT

3.1 Origin of the Nigeria Police

Scholars of police and policing in Nigeria trace the origin of Police to the colonial era even though there were some communally identified measures for policing in pre-colonial period. The Nigeria Police is traced to 1861 when the British colonial government established a Consular Guard of 30 men in Lagos, by 1863, it was renamed the Hausa Guard. In 1879, the Constabulary of the Colony of Lagos was established by an ordinance but still maintained the name, Hausa Constabulary. In the Southern part of Nigeria, the Niger Coast Constabulary was established in Calabar in 1894. Similarly, the Royal Niger

Company established for the Northern part of Nigeria the Royal Niger Constabulary headquartered in Lokoja. In 1900, Nigeria was effectively divided into southern and northern protectorates, which in turn led to the regionalization of the police, with Royal Niger Constabulary becoming the Northern Nigeria Police Force, while in 1906 the Niger Coast Constabulary and the Lagos fused to form the Southern Nigeria Police Force. This status quo remained up till 1930 when the various police forces across the newly formed entity called Nigeria were unified into one command with headquarters in Lagos. Scholars admit to the fact that police in the colonial era was basically created as an instrument for pacification, domination and exploitation. Within this logic, the primary concerns of the colonial rule were their interests against the people they governed. For instance, the various peoples forcefully brought together under a direct colonial rule, without considering their peculiarities needed to be pacified for economic exploitation and political domination to take place. To this end, the colonial police force served as an instrument for subjugation and exploitation of local people and the disruption of their socio-economic live. This was the trend that perverted several African countries, which, till today, to varying degrees, the relics of colonial excessive control and domination is manifested through the overcentralisation of police powers, and most instances, its personalization.

3.2 The Nigeria Police under the Military Era

One of the enduring inheritances from the colonial era was the police force by the military regime. It has been observed that post-independence governments, including the military and civilian, received in wholesale colonial policing philosophy, recruitment policies as well as deployment strategy. Immediately after independence, several civilian governments were removed across Africa, thereby, putting the military in charge of administering these countries for a long time. Subsequently, the long rule of military regimes across Africa, in particular, in Nigeria, ostentatiously encouraged the retention of the police undemocratic character. Also, the military was noted for relegating the police to the background as virtually every state security apparatus of government came under the direct control and supervision of the ruling Armed Forces. Furthermore, as a result of relegating the police to background, funding was either deliberately cut or diverted to shore up the security of the regime. Therefore, the long rule of dictatorial regimes actually reinforced the use of excessive force since even the state as in the colonial period needed disproportionate force to command obedience and ensure its survival. The police among other security agencies became primarily concerned for regime protection, to the extent that opposition of government were arrested, gagged, tortured, killed. Within this period, the police lost its professionalism, civility, competence, accountability, respect for human rights, the rule of law, and its capacity to provide effective and efficient policing. Its primary responsibility of policing- possessing the capacity and enforcing measures to safeguard the law, order and security in the country was hugely undermined.

3.3 Police under the Civilian Rule

The professional and institutional battering of the police during the military era was seen as usual given the nature of dictatorial tendencies associated with military rule. But with transition to democracy, the expectation of the public was that the character of the police will improve to reflect present democratic values. Scholars have argued that police are by-product of society, its power structure and relations, values and culture. Therefore, the

police culture reveals the predominant values in a particular society. To that extent, for police in any democratic setting to be able to regulate social relations and practices in order to maintain order and values of society should be guided and show respect for human rights and the rule of law. Unfortunately, the Nigeria police is still plagued with the structural and institutional inadequacies that affected its capacity in previous era. Mainly, in Nigeria, the ability and political will to transform the police from regime police to a people police seem arguably to be lacking. This is despite the fact that some reform committees have been set up by various administration to proffer implementable recommendations in order to reform the police since 1999. This includes, the Presidential Committee set up by former President Olusegun Obasanjo in 2006, Presidential Committee on the Reform of the Nigeria Police instituted by former President Musa Yar Adua, in 2008, and the Presidential Committee on the Re-Organisation of the Nigeria Police Force by former Goodluck Jonathan in 2012. The recommendations of these committees were broad and encompassing which included the reorganization of police formations across the country, decentralization of administration and powers to zonal, state and divisional levels, improve training facilities, general welfare of police personnel, integration of community policing model, improved police-public relations, capacity development among others. Although some of the recommendations of these committees have received some degree of government attention, but this is meagre compared to the other weighty recommendations from these Presidential Committees which require both political will and systematic implementation to tackle serious fundamental issues in the police force. Some these issues include corruption, poor welfare, rising interferences and partisanship, lack of equipment and facilities to aid both for training and investigations, flaw recruitment processes, inadequate police personnel, weak organizational leadership among others. The presence and manifestation of these issues, which are both structural and institutional, have largely undermined the capacity of the police in meeting its primary responsibility. It is no wonder that the Nigeria police since the inception of democracy in Nigeria, has been terribly overwhelmed by internal crises such as the Nigeria Delta conflict, Boko Haram, rural banditry, kidnappings, oil theft, and communal crises, which, has also led to the increased engagement of the military in internal security operations.

In another vein, since return to democracy, there has been noticeable poor police-public relations. The police have been noted to carry out political repressive measures against opposition to government in power, brutality and general abuse of the rights of the citizens. Constantly, there are reports of police extrajudicial killings or indiscriminate arrest of innocent citizens as suspects to unconnected crimes. Furthermore, instead of the police to aid in strengthening democracy in Nigeria, it rather undermined the electoral process due to its partisan role. For instance, there have been reports of police committing electoral fraud and thereby, might have assisted ruling parties to retain power despite the wishes of the people through voting. No doubt, this is a carry-over from the military era where police were used to intimidate opponents and dissent groups fighting military regimes. Understandably, scholars have blamed these manifestations to the organic unbroken relic of colonialism, others put the blame on the military; for some it is the reflection of the nature and character of the Nigerian State, yet, others say it is the unwillingness of present political leaders to ensure changes. For sure, these perspectives are quite justifiable. Nonetheless, the present political elites have more to be blame for the seemingly unwillingness to mid-wife drastic changes in the Nigeria Force in order to reflect

democratic standards and values.

Regrettably, some have claimed that the continued repressive nature of the police combined with its inability to ensure security and safety of citizens have triggered alternative policing bodies to rise such as vigilante groups and other ethnic or religious security outfits. To this end, there have been increasing loss of trust and confidence of the public on the police.

3.4 Some Complaints against Police by the Public

The fact that the Nigeria police emergence is traced to the domineering colonial context, with all its manifestations was primarily meant to serve a narrow and alien goal; it bred animosity between the police and the public. Unfortunately, in its transitional phases from one historical epoch to another, the police have maintained this particular trait. As against the traditional goal for which police all over the world are established to prevent crimes, enforce law and order, ensure the respect and protection of citizens' rights, in Africa situation, the circumstance was rather different in that the society was configured to reflect the interest of colonial powers. Therefore, the character and culture of the police was characterized mainly with repression, disregard for law, perpetration of violent confrontation against citizens, disrespect for rights of the people etc. Collaborating this point, Arase (2018) note thus:

> Against this historical background of its evolution, the Nigerian Police is not generally seen as a product of the consent of the citizens of Nigeria, accepted as reflective of their values and expectations, or embraced as a friendly force with the right orientation to protect their interests. This situation creates an 'us' and 'them' mentality between the police and the citizens that engenders rights violations that continually feed mutual distrust.

The above statement explicitly reveals the urgent need for drastic reform of the Nigeria police if it must operate in a democratic setting. Similarly, the Civil Society Report on Police Reform (2012) identified the failure of post-independence political leaders to change the Nigeria Police from a colonial occupation force to a service oriented and accountable public institution, the repressive and coercive character of the Nigerian state, overcentralisation of the police which constrain engagements with local communities, instead priorities are placed more on directives from above rather than emphasise on the needs of the local people in rendering policing services. As a result, the police hardly meet the expectations of the public, which has elicited criticisms from them. As further observed by the Civil Society Report on Police Reform (2012) the citizens hardly get response from the police when in distress. The public complained about the highhandedness which the police treat ordinary citizens such as arbitrary arrest, torture of all kinds, denial of medical treatment or assistance, extrajudicial executions. Also, police cells are said to be overcrowded, filthy with no lack of essential office stationeries among others. As a result, citizens are left to bear the cost of rendering any kind of service which includes, buying paper and pen to make statement at the police station, or fueling the operational police van to effect an arrest or respond to urgency. In order to remedy some of these ugly incidences, the Complaint Response Unit (CRU) was created to give required attention to the complaints of citizens. Before the establishment of the CRU under the present police leadership, the police authority had set up the Inspector-General of Police mintoring unit, Police Complaint Bureau, X Squad and the Provost Marshal.

SELF ASSESSMENT EXERCISE
Discuss some public complaints you know against the police.

4.0 CONCLUSION

The evolution of the Nigerian Police Force in Nigeria did not give it a solid footing to enjoy a support and popularity of the populace, following allegations of brutality, corruption, extortion, extra-judicial killings etc. It was observed that post-independence governments, including the military and civilian, because they received wholesale the colonial policing philosophy, recruitment policies as well as deployment strategy, little or nothing has actually changed in the character and nature of the Nigeria Police Force. This, to a large extent impinge on the capacity of the police to performance, thereby, alienating the citizens. generally, this has elicited calls to overhaul the police in order for it to meet with fundamental practices of policing in the 21st century.

5.0 SUMMARY

In this unit, effort has been expended to examine the performance of the police in Nigeria's political development trajectory in relation to the degree of transformation. Notably, the level of relationship between the police and the populace both under the military and civilian rule seem not to have experienced drastic changes since the structural and institutional belief system still remain the same. Expected, this has led to complaints against the police by the public, and the efforts made at re-organising the police force.

6.0 TUTOR-MARKED ASSIGNMENT

Examine role of the police force in the political development of Nigeria as a nation.

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UNIT 2: LEGAL STATUS AND RESPONSIBILITY OF THE POLICE FORCE

CONTENTS

1.0 INTRODUCTION

The Police Force under the 1999 Constitution (as amended), take orders from the central government, even though in practice, orders are also taken from the state governments. The truth is that at common law a police officer holds a public office that of a peace officer, in which he owes obedience to no executive power outside the police force. The chain of command should terminate with a Police chief, and not a politician, who is an independent authority, and must act free from all political influence whether national or local. Despite all the regulatory powers, which the federal government may have, it is submitted that the responsibility for deciding whether the Police shall arrest or prosecute some particular persons cannot rest upon any one but the police themselves.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- explain various statutes giving recognition to the police force
- discuss the responsibilities of the police force and their effective crime control.

3.0 MAIN CONTENT

3.1 Various Statutes Establishing the Police Force

One outstanding fact about the framework of any administrative authority in any country is that there is always the police. The colonial administration introduced into Nigeria a system of Police Force. In 1943, the Police Ordinance was promulgated and came into force on April 1, 1943. It was an ordinance to make provision for the organisation, discipline, powers and duties of the Police. In 1959, the local Police Force was established under the local government Police Law, of the Western region. That law confirmed existing Police Forces in the region and further authorised every local government council with the approval

of the Minister for local government in the region to establish a Police Force.
Subsequently, the 1963 Constitution permitted the legislature of a region to make provision for the maintenance by any authority or local government authority established for a province or any part of a province a Police Force for employment within that province. However, the provision precludes a regional government from organising a Police Force on a regional basis. In 1969-70, the federal military government abrogated all Local or Native Authority Police Forces and their personnel were absorbed into the newly created Nigeria Police Force. It was the 1979 Constitution that firmly and formally established the Nigeria Police Force as the only single police force in Nigeria. Particularly, Section 194(1) of the 1979 Constitution established for the whole country a single Police Force, and specifically prohibited the establishment of any other Police Force in the federation without exception. Furthermore, Sections 214 to 216 of the 1999 Constitution (as amended) constituted the Nigeria Police, the primary state instrument for maintaining public order and ensuring the safety of the citizenry. On the other hand, the Police Act makes provision for the organisation, discipline, powers and duties of the Police, the special constabulary and the traffic wardens. Within the Police Act, comprise of the Constitution of the Force, general administration and powers of police officer, offences and miscellaneous provisions.

3.2 Duties of the Police

The responsibility for exercising power as a police officer is by virtue of his office and that responsibility cannot be that of any person but himself. The Nigeria Police Force is listed on the federal government's Exclusive Legislative List. It was also by the Supreme Court in A.G. Ogun State vs. A.G. Federation (1982) 2NLLR 166 that the state governments are not competent to confer functions or impose duties on the Police. The oath of office, as provided by the Act, makes it imperative and essential for the Police to carry out their duties. Despite these express provisions, there seems to be evidence of former Inspector-General of Police, Sunday Adewusi's interference. For example, he was reported in the *Daily Sketch* of Saturday, December 17, 1983 as complaining that one of his problems was the interference of politicians in his duties, and cited the case of a senator who ordered him not to move against illegal foreign exchange dealers at the Bristol Hotel in Lagos.

The primary duty of the Police, as public servant and officer of the state (crown), is to preserve the peace, to prevent crimes and to apprehend offenders. Hence in the leading old English case of Fisher vs. Oldham Corporation (1930) 2 K.B. 364, the police force is described as a servant of the state, a ministerial officer of the central powers, though subject, in some respect, to local supervision and regulation. The general duties of the police force spelt are in Section 4 of the Police Act Cap 359 L.F.N, 1990, includes such duties as:

(i) Prevention and detection of crime
(ii) Apprehension of offenders,
(iii) Preservation of law and order,
(iv) The protection of life and property,
(v) Due enforcement of all laws and regulations with which they are directly charged,
(vi) Perform such military functions within or without Nigeria as may be required by them or under the authority of the Police Act or any other act. Furthermore, Section 10(1) of the Police Act saddled the police force with the maintenance of public safety and public order.

Generally, police across the world are given certain powers that are discretionary mainly to guarantee the fulfillment of their responsibilities. In some sense, these discretionary powers are met to complement statutory functions. Like in the case of Nigeria. These include, powers to search individuals or properties suspected of use or involvement of crime, arrest, interrogate suspects, gathering evidence to by any means prescribed by Law, prosecution of suspects, detention of suspects in line with dictates of the law etc.

3.3 Police Responsibility and Crime Control

An important responsibility of the police force is the detection and prevention of crime. In doing this, the police may make arrest with or without warrant based on the circumstances at hand. The power to arrest without warrant is guaranteed by Sections 24, 25 of the Police Act, Section 10 of the Criminal Procedure Act and Section 26 of the Criminal Procedure Code. The provisions contain different circumstances when police may make an arrest with or within warrant. However, the power to arrest without warrants is limited to the confine of the state or within a state, though exception abounds (See the case of Jackson vs. Omorokuna (1981) 1N.C. R 283)**.**

Meanwhile, a person arrested by the police may be granted bail as basic fundamental rights guaranteed by Section 35 of 1999 Constitution. See Section 17 Criminal Procedure Act, Criminal Procedure Code and Section 27 of the Police Act. Another important responsibility of the police in crime control is the authority to conduct criminal proceedings. This is provided for in Section 23 of the Police Act. The powers of the police to prosecute/conduct criminal proceedings are however subject to the constitutional power of the Attorney-General as entrenched in Sections 174 and 211 of the 1999 Constitution. The authority of the police to prosecute can also be found in Section 78(b) of the Criminal Procedure Act. Thus, according to the Supreme Court decision in Osahon vs. State, the police can prosecute in any court of law in Nigeria.

SELF ASSESSMENT EXERCISE

Discuss the police responsibilities and crime control under the Nigeria law.

4.0 CONCLUSION

The present legal status of the police force has gone through several developmental stages in the political and developmental history of Nigeria. Moreover, the duty and responsibility of the police in nation building is sacrosanct.

5.0 SUMMARY

In this unit, we have undertaken a summary of the functions, duties and responsibilities of the police in crime detection, prevention and prosecution.

6.0 TUTOR MARKED ASSIGNMENT

Examine the statutes establishing the police force in Nigeria.

7.0 REFERENCES/FURTHER READING

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UNIT 3: EXECUTIVE OVERSIGHT OF THE POLICE

CONTENTS

1.0 INTRODUCTION

The governmental department charged with the preservation of public order, the promotion of public safety, and the prevention and detection of crime. A contingent of the Nigeria Police Force is located in each state and is under the command of the Commissioner of Police, who is answerable to the Inspector-General of Police. The Inspector-General of Police, in turn, is answerable to the President or a duly authorised Federal Minister in relation to public safety and public order. However, there are other executive bodies such as the Nigeria Police Council and the Police Service Commission which have some statutory roles to play in exercise of executive oversight over the police.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- discuss the administration and appointment of police personnel
- examine the responsibilities of Police Council/Plice Service Commission.

3.0 MAIN CONTENT

3.1 The Administration and Appointment

It appears that two police forces with two different commands existed at least in the Western and Northern Regions; however, between 1969 and 1970 the military government abrogated the Local and Native Authority Police Forces in the country. The Constitution of the Federal Republic of Nigeria, 1979, particularly Section 194(1) lucidly states that the police shall be the single police force in Nigeria. The results of the previously mentioned abrogation are that the federal government has effective regulatory power over the Nigeria Police Force. This is reinforced by the central financial control, which ensures, that the pay allowances, dress and other conditions of service. The police force became uniform throughout the country.

The uniformity empowers the Inspector General of Police to give orders directly to any members of the force in any part of the country. The Police Commissioners under the existing hierarchy and composition do not seem to have any measure of independence whatsoever. The appointment, disciplinary control and or dismissal of police personnel rest with the Police Service Commission. Under the 1999 Constitution, the Inspector-General of Police is appointed and removable by the President acting in consonance with the recommendations of the Police Service Commission. The day to day administration of the Police rests with the Inspector-General of Police, who is assisted by other branches and departments of the Force. While at the state level, the Commissioners of police are responsible for the daily activivies in their command. As stated earlier, recourse to the Inspector-General of Police is essentially a convention amongst the Commissioners.

3.2 The Nigeria Police Council

The Nigeria Police Council was established by Section 9 (1) of the Police Act Cap 359 L. F. N. 1990. In the 1999 Constitution (as amended) it is part of the Federal Executive Bodies established under Section 153 (m) in the Third Schedule (Part 1). It is charged with the organization and administration of the Nigeria Police Force and all other matters relating thereto. However, the range of its functions does not in any way include the matters related to the use and operational control of the police. Further excluded as stipulated in the 1999 Constitution (as amended), are the appointment, disciplinary control and dismissal of members of the police force. On the other hand, the Council plays general supervisory role on the Nigeria Police; in situation where the President intends to appoint an Inspector-General of Police from among serving officers, the Council is expected to advise him. Also, before the dismissal of a serving Inspector-General of Police, the President has to consult the Council. Likewise, Section 216 (1) gives power to the Council with the approval of the President to delegate any of the powers conferred upon it to any member of the Council or the Inspector-General of Police, or yet still, any other member of the Nigeria Police Force. The Council is made up of the President, who serves as the chairman, the Governor of each State of the Federation, the Chairman of the Police Service Commission, and the Inspector-General of Police.

The Nigeria Police Council has attracted criticisms with regard to the fragile role it has been assigned to play. Since its establishment, its impact has been minimal given its supervisory role. More importantly, is that no provision was made to include the Federal Minister for Police Affiars, nor was the Attorney-General of theFederation included. Thses are important officers whose role inpigne seriously in the administration of the Nigeria Police Force.

3.3 Police Service Commission

The Police Service Commission is another body created which is also concerned with the administration and organisation of the Nigeria Police. The Police Service Commission performs important executive functions. The Police Service Commission is also one of the Federal Executive Bodies established under Section 153 (m) in the Third Schedule (Part 1) of the 1999 Constitution (as amended) and Clause 6(1) (a-g) of the Police Service Commission (Establishment) Act 2001. The Commission has more direct and broader functions than the Nigeria Police Council. According to the Constitution, the Commission is responsible for the appointment and promotion of persons to offices other than the

Inspector-General of Police which is the prerogative of the President to do. Also, the Commission is empowered to dismiss, exercise disciplinary control over persons excluding the Inspector-General of Police; it is responsible to formulate polices and guidelines for appointment, discipline and dismissal of officers of the force; identity factors undermining discipline in the police; formulate and implement policies designed to ensure efficiency and discipline in the police force; perform such other functions which in the opinion of the Commission are required to ensure the optimal efficiency of the Nigeria Police Force; and carry out such other functions as the President may, from time to time, direct. Furthermore, since the Commission has a critical mandate in giving direction to the police, in terms of the policies articulation, its independence is inevitable. The Constitution declares that the Commission shall not be subject to the direction, control or supervision of any other authority or person in the discharge of its duties except as specified in the Constitution. According to Section 215 (b) of the 1999 Constitution (as amended), the Commission is mandated to appoint Police Commissioner for each state.

SELF ASSESSMENT EXERCISE
Do you think the Nigeria Police Council and Police Service Commission are able to provide adequate oversight on the police force? Discuss.

4.0 CONCLUSION

The Nigeria Police Force is under the operational control of the Inspector-General of Police and exercises the power to give orders directly to any arm of the force in any part of the country. The Commissioner of Police in each state is responsible to the Inspector-General who in turn is responsible to the executive President of the country. It has been argued that the centralisation of the police structure is likely to endanger liberty and may not safeguard against abuse of rights of citizens and partisan interferences. Hence, the suggestion that the appointment of the Inspector-General should not be the sole prerogative of the president, but should rather be based on the recommendation and final approval by the National Assembly.

5.0 SUMMARY

In this unit, we have looked at the structure of the police force in Nigeria. We have also looked at the dispensation of the police force, the regulation and appointment of the members of the force, the establishment of the Nigeria Police Council and the Police Service commission.

6.0 TUTOR-MARKED ASSIGNMENT

Do you think that the recruitment of police personnel is effective? Discuss.

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UNIT 4: RESPONSIBILITY OF THE INSPECTOR GENERAL OF POLICE

CONTENTS

1.0 INTRODUCTION

As we already know, the Nigeria Police is employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged. The force is under the command of the Inspector-General of Police. The command implies supreme authority and control in the operational use of the Police Force across the country. It is the paramount duty of the Inspector-General of Police to enforce the law of the land so that law-abiding citizens may go about their business peacefully.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- discuss the functions of inspector-general of police
- explain the unfettered powers of the inspector-general of police in the enforcement of the law protection of the citizens.

3.0 MAIN CONTENT

3.1 Functions of the Inspector General of Police

The functions of the Inspector-General of Police in maintaining public order and ensuring the safety of the citizenry are sacrosanct. Some of the functions are:

i) The Inspector-General of Police must decide whether or not suspected persons are to be arrested and prosecuted, and if need be, prefer charges against the suspect. It should be noted that the Inspector-General is not the servant of any one, except of the law itself.

ii) The Inspector-General of Police has the ultimate responsibility of enforcing the law; this is so because he is answerable to the law and to the law alone. It is for the Inspector-General of Police to decide in particular case whether inquiries should be pursued, or whether an arrest should be made. It is for the Inspector-General to decide on the disposition of his

force and concentration of his resources on any particular area of crime. This point was illustrated in State vs. Commissioner of Police, Mr. Bishop Eyitene Exparte Governor of Anambra (1981/2) suits NO E/65M/81 OF 29/5/82 High Court of Enugu. In this case, the governor had directed the Police Commissioner to post a given number of named police officers on security duty at Government House. The police commissioner declined, adding, "The posting of police officers to the government house or any other place requiring strict security is within the exclusive prerogative of the Commissioner of Police of each state". The court upheld his submission.

3.2 Extent of the Powers of the Inspector-General of Police

By virtue of Section 215(1) of the Constitution of the Federal Republic of Nigeria, 1999, the office of the Inspector-General of Police (IGP) is created and is endowed with the central control of the Police Force, which is firmly within the province of the federal government. The contingents of the Nigeria Police Force stationed in each State of the Federation shall, subject to the authority of the Inspector-General of Police (IGP) be under the command of the Commissioner of Police of that State. Both administratively and operationally, the respective State Commissioners of Police are directly under the Inspector-general. While the Inspector-General is placed directly under the authority of the President, by whom he is appointed. No doubt, the aim of this provision is to ensure that the Police is centrally controlled perhaps, for the unity of the country and peaceful administration of the country. Whether this objective has actually been achieved is arguable, considering the implicated role of the Police in the political history of Nigeria, particularly, in this present democratic era.

It must be stated that it is the duty of the Inspector-General to enforce the law of the land so as to ensure that peace and order that can guarantee the safety and protection of citizens, and maintaining existing democratic norms is assured. In carrying out his duties, the Inspector-General is subject to orders of the President as may be issued as it relates to maintaining and securing public safety and order. Hence, the President of the country can call on the Inspector-General of Police to give a report or issue him lawful directions with respect to the maintenance and security of public safety and order as may be necessary. Alternatively, the order may be given in behalf of the President by a duly authorised /appointed Minister of the Government of the Federation, in this case, the Minister of Police Affairs. This ensures that the ultimate control of the Police remains with the federal government and has been a source of dissatisfaction with some governors who feet also have responsibility for law and order in their respective States as Chief Security Officers, and would expect that their instructions to their state Commissioner of Police should not be interfered with by the Federal Government through the Inspector-General of Police. The governor may legitimately give lawful directions to the Police Commissioner in his State, but for such orders to be complied with, authorization from the Inspector-General of Police is required. As stated in the Police Act, Sections 9 and 10, that the President shall be charged with operational control of the Force. More so, the Inspector-General shall be charged with the command of the Police subject to the directive of the President. In fact, as provided by both the Constitution and the Police Act, that the Commissioner of a State shall comply with directives of the Governor of the State with regard to maintaining and securing public safety and public order within the State as long as it is referred to the President via the IGP. Ultimately, it is the directive of the President through the Inspector-General that is final and

cannot be challenged. Generally, the foregoing depicts the lack of operational autonomy of the Police due to interference, which, several instances have not been immuned from partisan interest. In addition, by virtue of Section 216(1) of the 1999 Constitution the Police Council may delegate any of its power to the Inspector-General. The Inspector-General in performing his duty of detecting and preventing crime may order the arrest and detention, and decide whether a suspect is to be prosecuted or not.

3.3 Checking the Powers of the Inspector-General

The Inspector-General is considered to be the servant of none, save of the law itself. The responsibility for Law enforcement lies with him and he is accountable for any shortcoming that is experienced in the process. However, the exercise of his/her power is subject to the provision of the law, which in this sense is construed conta-proferentis vis-a-vis the provision of the constitution. Thus, in the case of Agbaje vs. Commissioner of Police (1969) I NMLR 137(High Court) 1969 I NMLR 176 (C. A.), it was held that the power based on the order of the Inspector-General of Police must be exercised lawfully, where it is not exercised lawfully, such detention will be declared unlawful as was done in this case.

SELF ASSESSMENT EXERCISE

Discuss some of the functions of the Inspector-General of Police.

4.0 CONCLUSION

As seen above, responsibility of the Inspector-General is enormous and is power is wide. The Inspector-General in performing his duty of detecting and preventing crime may order the arrest and detention, and decide whether a suspect is to be prosecuted or not, is guided by the Law as he has the ultimate responsibility of enforcing the law.

5.0 SUMMARY

In this unit, we have looked at the enormous functions of the Inspector -General, the extent of his power, checks and balances on his/her power, and the overall responsibility of the Inspector-General in policing the country. The nature vis-a- vis the order of the President or the Minister of Police Affairs and the delegation of functions and duties by the Police Service Commission to the Inspector -General of Police.

6.0 TUTOR-MARKED ASSIGNMENT

Examine critically the power of the Inspector-General of Police vis-à-vis the provisions of the Constitution.

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UNIT 5: THE DEBATE FOR STATE POLICE

CONTENTS

1.0 INTRODUCTION

The present federal structure of the Nigeria police has since the inception of present democratic governance in 1999, come under increasing attacks by state police advocates. They blame the rising spade of insecurity across the country to the structural inefficiency of the police. Therefore, these proponents of state police have called for the immediate establishment of state police in each state with full control management transferred to state governors. On the other hand, antagonists of state police have argued that state police may not suit present socio-political context, which may allow for indiscriminate abuse and interference to the detriment of professionalism.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- to understand the ongoing debate on the status of the Nigeria Police Force

3.0 MAIN CONTENT

3.1 Demand for State Police

The police are the primary institution recognized and responsible for internal security of a country. It is for this reason that in Nigeria, the constitution clearly states it in Section 214 that there shall be a police force in Nigeria, and no other police force shall be established for the Federation or any part of it. The point must be made here that while the constitution bars the establishment of any other police force apart from the federally operated one, nonetheless, in terms of policing role, other complementary bodies such as sister security agencies like the Department of State Security, Nigeria Security Civil and Defence Corps (NCSDC), Nigeria Drug Law and Eradication Agency (NDLEA) among others, states or communities founded security vigilante groups, etc. Conceptual clarity between police and policing is important to make at this point. In this regard, Alemika (2018) states that police as an institution of government is established for the primary responsibility to enforce laws and prevent crimes. While policing involves the range of measures or activities employed

to ensure compliance with norms, values and laws of a society. Therefore, policing encompasses a range of measures collaboration with sister agencies and other non-state actors such as local vigilante groups used to ensure and maintain public order. Hence, the engagement of vigilante groups by states or communities in Nigeria do not in any way violate the stated provision of the Constitutuion. Worthy of note is that these security outfits do not have prosecutorial nor investigatory powers.

Having made that point, however, one major point that has elicited discussions and debates around the Nigeria police is whether its present status and capacity is able to meet with rising security challenges across the country? With the rise of insurgency, Fulani-Herders conflicts, rural banditry, ethno-religious crises, communal clashes among others, undoubtably, have overwhelmed the police force. More pronounced is that Nigerians are increasingly becoming dissatisfied with the quality of service they get from the police. These issues among others have brought to the fore the argument that centrally controlled police would be unable to cope with contemporary insecurity challenges confronting Nigeria.

Major advocates of state police blame the inefficiency and ineffectiveness of the federal police on the centralized structure currently in place. According to this view, decentralizing the police will help to tackle some of the security issues presently facing the country on the one hand, and on the other, will help meet with standard global practice of federalism. Those who share this view are quick to point to other federal states with decentralized system of policing. For instance, the United States operates a multi-layer police system with federal, state, countyand local police, with each operating within a clearly defined jurisdiction. In Canada, there are the federal, municipal and provincial levels of police. While in Australia, two levels of policing are being operated comprising of the federal and state respectively. However, this position of comparison has been criticized for its superficiality, and may not necessarily enhance the capacity of the police. Alemika (2018) argued that faulty comparison may not be able to address the root problems confronting the police. Rather, he advocated that the needs and concerns of the citizens as well as the imperatives of national development, security and development should be used as the necessary parameters in proffering solutions to the enormous problems facing the Nigeria police. In this regard, he states thus,

> Debates about devolution should therefore avoid the unreflective impulse to import, transplant, or promote foreign models tht grew out of the struggles and power relations in those countries. Proposals should be noted in Nigeria's social, political and economic structures, capabilities and dysfunctions.

This notwithstanding, the proponents of state police have continued to make their case for a dencentrailsed police. Apart from the need to ensure federal practice, the state police advocates hinged another strand of their argument on the need to have a local formed and controlled police (community policing), which, will be able to relate very well with locals, provide effective response to communities, and thereby, controlling crimes (Owen, 2018). According to the proponents, the present system of taking orders from above to respond to the needs of the people naturally detaches police from the reality on ground, since it may

not take into consideration the peoples' desires for directives to be given and implemented. For them, it is a reminiscence of colonial heritage that must be done away with; which has mainly made the police unaccountable to the people. Hence, the synergy that could be built through cooperation between the police and citizens to tackle the rising rate of crimes and criminality is absence. In another vein, the proponents are quick to assert that state governments are increasingly responsible for the adequate equipping of the Nigeria police in their respective state commands. There is a rising belief among proponents of state police that the feceral government cannot afford to adequately equip the police. Rather, it is only able to meet its obligation of paying salaries, while police formations across the country increasingly depend on state government to provide for them the necessary equipment and logistics to perform their responsibilities. And, without state governments' intervention, the poice will be large handicapped. More noticeable of such state intervention, is the Lagos Rapid Response Squad (RRS), which has attracted sufficient funding and provision of operational vehicles, helicopters, patrol boats, hundreds of motorcycles, Armoured Personnel Carriers (APC), uniforms and kits among others to the state police command. Also, in varying degrees across the country, state governments have been noted to occasionally make donations to the police force either for renovating dilapidated barracks, stations, or logistical equipments available.

3.2 Criticisms against State Police

Although critics of state police acknowledge that by virtue of the size of Nigeria, with over 180 million citizens, the devolution of police functions is important; more so as a federatimg state. It seems for some critics, that state police proponents have seemed to over-exaggerate the correlation netween federalism and police efficiency and accountability. In this regard, Alemika (2018) has argued that what accounts for police efficiency, legitimacy and accountability is not whether the state operates a centralized or decentralized system of policing, rather, it is the political, social and economic context the police operates that shapes its character. Even though he did not mention any example, he maintained that there are some centralized structures of police that are efficient, responsive and accountable. For him, even the prototype model of other federating states like the United States of America, Nigeria is urged to follow, is besieged with problems which are undemocratic in nature. Hence, he advocates for countries like Nigeria to take into consideration their specific peculiarities to either enhance or produce a veritable police force that meets their needs and values.

In another vein, critics maintain that the demand for state police is obviously against the provisions of the 1999 Constitution (as amended). According to them, Sections 214-216 makes provision for only a federal police force and confers operational control on the federal government. Thus, demanding for state police is in all intent against the provisions of the constitution. More still, they argue that allowing state police in a heterogenous society like Nigeria will encourage discrimination against ethnic monorioties within the state. It also inferred that state police will encourage political interference and abuse because governors and politicians might not be disciplined or constrained enough with the exercise of power. Hence, critics are quick to point to the immediate post-independence period which favoured decentralized police structure, with the Native Authority police forces, operated by local governments in both then Northern and Western regions up until

1970 when it was abolished. The establishment of the Native Authority police in local areas was successfully impactful in maintaining public order and peace, as well as the effective control of crimes. The Native Authority was able to maintain direct contact with local communities because it was mainly staffed by indigenes of the areas. Also, the system was in sync with the prevailing socio-political system at that time. Unfortunately, the frequent meddling by some Native Authority officers in the North created avenues for undue interference by both traditional and political figures. In the West, the regional government's quest to assert increased control, gave room for political interferences too. Within this period, the Native Authority became a political tool in the hands of politicians to harass and intimidate their opponents, partly blamed for the eventual collapse of the First Republic in Nigeria.

It is against this unpleasant antecedence that critics are skeptical about the capacity of state governors to ensure judicious control of an independent state police. To further buttress their point, examples of how state governments have emasculated their various Houses of Assembly and State Electoral Commissions, are indication of what might become of state police if eventually established. In another vein, critics argue that despite the fact state governments substantially provide for police in their respective state commands, such gesture is quite different from funding a full-fledged police force. First, not all states in Nigeria are solvent enough to fund an independent sate police, even as some of these states are struggling to pay salaries of civli servants. Moreover, some assistance provided for state police commands by governors vary in degrees, which may likely be relevant mainly due to the publicity associated with it. Also, there is the fear that recruiting only indigenes in state police in order to encourage community policing may create public trust problem. Given the unsettled citizenship-indigeneship dichotomy, non-indigenes may be disadvantaged and prone to indiscriminate or organized oppression within the state of residence.

4.0 CONCLUSION

Having looked at the existing debate whether to grant state police or not, the crux of the matter may appear to be in case of future adjustment, will it be satisfactory to all parties? Already the reforms thus far implemented by various administrations have be blamed of tackling the fundamental issues confronting the Nigeria police. Nevertheless, it will further take political will to tackle the enormous problems in the Nigeria police identified in this study.

5.0 SUMMARY

In this unit, we have looked at the views of those pushing for state police in Nigeria, and those arguing against it. Perhaps, while the debate lingers, a middle ground may be found for a workable alternative to the present system.

6.0 TUTOR-MARKED ASSIGNMENT

Discuss the reasons put forward by proponents of state police in Nigeria.

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MODULE 5: PUBLIC COMPLAINTS COMMISSION/OMBUDSMAN

INTRODUCTION

Globally, Ombudsman has become an important guarantor of human rights and democracy to a large extent in countries where they are sufficiently empowered to function. Interestingly, the operation of ombudsman differs from one country to another. While some are encouraged to perform their function with provision of adequate funds, institutional independence and guaranteed terms of appointment, in other countries, the reverse is thecase. Amazingly, in Nigeria, Public Complaints Commission (known as ombudsman) was established by a military regime to tackle rising concerns of administrative abuses and injustice. While some have commended for helping in tackling workers' injustice, other criticize it for underperformance. In this module, we look at Public Complaints Commission and other remedies available to citizens:

UNIT 1: PUBLIC COMPLAINTS COMMISSION/OMBUDSMAN

CONTENTS

1.0 INTRODUCTION

The Public Complaints Commission as it is known in Nigeria is better known as the ombudsman all over the world. The institution started as a d e v i c e to meet a situation of emergency but later developed into an internationally acceptable political institution for the redress of grievances. An ombudsman (or Public Complaints Commission) is an independent and non-partisan public agency that receives and investigates complaints from members of the public and makes contacts with the alleged wrongdoer to peacefully resolve and obtain remedy for the complaint. An ombudsman remedy system is usually in form of arbitration, which is an alternative to court action.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- examine the essence and importance of the Public Complaints Commission.

3.0 MAIN CONTENT

3.1 Evolution of Ombudsman

The Public Complaints Commission (PCC) originates from the Ombudsman as it is widely knownaround the world. In Britain, though the Ombudsman is called Parliamentary Commissioner for Administration attached to the Parliament, there is exist other industry specific ones also. In the United State, there is no unified system of Ombudsman; rather they exist in each department to handle complaints that may be brought by aggrieved citizens or workers. Modern Ombudsman system evolved from Sweden in 1809, when the King appointed a *justitie ombudsman* to handle the complaints of citizens' report brought to the parliament. The institution started as a device to meet a situation of emergency but later

developed into an internationally acceptable political institution for the redress of grievances. Early in the Twentieth century, it began to attract attention from other other countries particularly, the Scandinavian countries whose success in reducing incidences of maladministration and repression in the public sector. In the 60s, several countries around the world began to adopt it with the aim of dealing with administrative and civil service injustices melted to citizens. It is worthy of note to state that because of differences that exist among countires in terms of constitutional provisions for the office of Ombudsman, it, therefore means that each country adopts the mbudsman institution based on their peculiar circumstances. In this sense, one would not expect an Ombudsman in a democratic society with unconstrained liberty to perform its functions as those in an authoritarian political system. That not withstanding, an ombudsman (or Public Complaints Commission) is an independent and non-partisan public agency that receives and investigates complaints from members of the public against government, administrative bodies as well as private individuals or establishment in order to peacefully resolve and obtain remedy for the complaint. An ombudsman remedy system is usually in form of arbitration, which is an alternative to court action. Broadly, its functions are complemantry to those of the judiciary, administrative tribunals, and other commission of inquiries. Some scholars view the Ombudsman as not only providing viable option to citizens seeking for redress, the institution act as change agent in that its recommendations may try to change polices, rules, laws, or organizational structure.

However, lluyomade & Eka alluded to the fact that ombudsman is by no means a super-administrator empowered to overturn every error and to produce correct answers to all the difficult questions that confront modern government. Ombudsman is more or less a supervisor who ensures the observance of the law and the avoidance of legalistic brigandage. He exists to protect the ordinary citizen from undue influence, negligence or maladministration by government officials and staff of parastatals or other public corporations. The essence is to make public servants accountable to the citizens and to spur government's response to their needs. The implication is that Ombudsman aid to strengthen democratic institutions and values. As Aina (2012) notes, Ombudsman was initially established to check on the executive even though it developed withn the executive. But at the turn of the twentieth century, the reconfiguration of the Ombudsman to insulate it from executive domination saw it moved to the parliament as its primary mechanism to control and monitor the executive. Again, with the incease in government activities and the need for an impartial intermediary between administration and the citizens, the autonomy of the Ombudsman became imperative so that no branch of government could control or direct the performance of its functions. Hence, the Ombudsman is accorded relative autonomy, which, has subsequently made to be the citizens' instrument for the protection and guarantee of their rights against arbitrary bureaucratic abuse and injustices. Aina further notes that "posing as the defender of civil rights against the arbitrariness of bureaucracy, it is no longer confined to the horizontal relationship between authorities but is also part of the vertical control of the stte by citizens. It is not surprising therefore to see the proliferation of Ombudsman in various spheres of citizens' engagement with the state or other private entities.

3.2 The Reason for Establishing an Ombudsman

One of the major jusitifications for establishing the Ombudsman is because it provides the

government a more dependable and efficient means of feedback mechanism on the reaction of aggrieved citizens after an impartial consideration and intervention to put right whatever may have gone wrong. In fact, it serves as a veritable feedback system of the conduct and activities of government officials, impact of policies on the citizenry, as well as the mode of administration. The Public Complaints Commission is an ombudsman remedy mechanism adopted worldwide for a number of othee reasons, namely:

i) Abuse of power by public authorities and private bodies and the inadequate control of these bodies especially in specific cases.
ii) The inadequacy of the remedies put in place by the three arms of government, to wit, the legislature, the executive and the judiciary.
iii) The need to make persons or body who are aggrieved by official conduct to be aware that a commission is on ground to receive complaint.
iv) The obvious inadequacies of available internal administrative remedy system or check devices to handle and fairly deal with complaints of aggrieved parties.
v) The general belief that litigation is often slow, complex, costly and strange to the ordinary man.
vi) The essence of a specialised court system, where minor claims and relatively insignificant issues and grievances can be heard and speedily determined between parties.
vii) The fact that the Public Complaints Commission remedy system affords a cheaper and easier method of getting issues sorted out between parties without the expense of legal proceedings.
viii) The essential need to ensure the full protection of the civil rights and liberties of the people as enshrined in the constitution.

All these factors combine to complicate the situation and work hardship on members of the public, thereby giving the establishment of an efficient public complaints commission remedy system a necessity in a modern society.

3.3 Establishment of Ombudsman in Nigeria

The spread of Ombudsman around the world was borne out of meeting at least with some basic requirements in guaranteeing and protecting the rights of citizens. Surprisingly, the estblishment of Ombudsman in some Africa states, was during the reign of military dictatorship. Perhaps, this was done in order to pacify the populace and to stir feelings of loyalty to the regime, deliberate effort was made to cautiously guarantee the right of citizens. Perhaps, this might have accounted for the establishment of Ombudsman in Nigeria under a military regime. More importantly, there exsited justifiable reason which imay have nformed the military government to initiate this step. The post-independence administration in Nigeria was characterized with corruption, ethnicity, nepotism, etc. in particular, these manifestations began to creep into the civil service, which was administratively the engine room of government. The civil service with the onerous task of translating government polices in meeting with the needs of society, exercised tremendous influence over administration because of their technocratic and bureaucratic competences. Sadly, the military rule in the immediate post-independence period in Nigeria, was faced with raising cases of administrative abuses and injustices. This included marginalization, administrative misconduct, delayed

promotion, unlawful dismissal, victimization, etc. It became imperative for drastic measures be put in place to remedy for any wrong done to workers and citizens, in order to forestall the degeneration of moral standard in Nigeria's public sector. Folloing the recommendation of the Public Survive Review Road which was mandated to look into the conditions of service of public workers across the country, it came up with the recommendation that an institution of a public Ombudsman be established in Nigeria. Consequently, then military head of state, General Murtala Mohammed instituted the Public Complaints Commission following the recommendation of Udoji Public Service Review Commission report of 1974. The Public Complaints Commission was established under Decree 31 of 1975, which, was later amended by Decree 21 of 1979. In this later Public Complaints Commission (Amendment) Decree 21 of 1979, several amendments were made to the Public Complaints Commission Decree 31 of 1975. Among other things, it conferred immunity from legal process on the Public Complaints Commissioners in the performance of their official duties. The law (Decree 21, 1979) is presently incorporated into the laws of the Federal Republic of Nigeria as the Public Complaints Act Cap 377.

SELF ASSESSMENT EXERCISE

Discuss some justifiable reasons that led to the establishment of Public Complaints Commission in Nigeria.

4.0 CONCLUSION

An attempt has been made to trace the history of ombudsman with reference to the Public Complaints Commission. The main objectives of the commission include keeping a balance between the citizen and the government official and staff or parastatals and, to ensure justice among ordinary citizens. It is also noteworthy that the Public Complaints Commission is an advisory body. It will make citizens grow conscious of their rights and will be able to seek to protect these rights as citizens do in more developed countries. By so doing, the commission is an expression of democratic practice and the rule of law in Nigeria being a special institution assigned with the task to control and ensure that administrative organs of the society respect the rights of the citizens, regardless of the social standing. Anybody in the society has a right to complain against the society and get his/her complaint investigated and tried even if the highest official in the society is involved. All these are without costs to the complaining party.

5.0 SUMMARY

The unit discussed the evolution of Ombudsman is an independent and non- partisan public agency that receives and investigates complaints among members of the public, in order to resolve the controversy peacefully and obtain remedy for the aggrieved party as appropriate. Its emergence in Nigeria became important in order to maintain public morality and administrative efficiency.

6.0 TUTOR-MARKED ASSIGNMENT

Discuss what you understand by the Public Complaints Commission?

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UNIT 2: POWERS AND FUNCTIONS OF THE PUBLIC COMPLAINTS COMMISSION

CONTENTS

1.0 INTRODUCTION

The Public Complaints Commission is a statutory body set up to help redress any administrative abuse or injustice perpetrated by public officials. In reality, the Commission is to a large extent constrained by provisions in its establishing Act, that make it somewhat undermined in its capacity. In this unit, we shall examine the powers and functions of the Public Complaints Commission as well as the factors contraining it.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- explain the power and functions of Public Complaints Commission
- discuss both the structural and administrative constrains facing the PCC

3.0 MAIN CONTENT

3.1 Powers and Functions of the Public Complaints Commission

As the institution put in place to handle every form of administrative excesses, such as the non-complaince with official procedures or abuse of law, the Public Complaints Commission plays a critical intermediatory role between the state and individuals on the one hand, while, on the other, with private entities. the Mandate of the Commission is explicitly stated in its Act. It declares thus "An Act to establish the Public Complaints Commission with wide powers to inquire into complaints by members of the public concerning the administrative actions of any public authority and companies or their officials, and other matters ancillary thereto". Consequently, the Commission states that:

> ...the Commission is empowered to initiate or inquire into a wide variety of complaints lodged before it by members of the public pertaining to any inappropriate and misdirected administrative or other actions taken by the Federal, State or Local government, Public Institutions and Companies incorporated under or pursuant to the Companies and Allied Matters Act, (whether in the Public or Private Sectors) or any officer or servant of any of the aforementioned bodies.

Therefore, the Public Complaints Commission is meant to conduct an impartial investigation on behalf of the complainants who feel aggrieved by the action or inaction of a federal, state or local government, public institutions or private companies. in doing this, the Commission receives complaints from an aggrieved person, investigates it and redress it by making recommendations.

The Public Complaints Commission is headed by a Chief Commissioner who co-ordinates the activities of other Commissioners and, are collectively responsible to the National Assembly. The power to investigate is conferred on a Commissioner either on his own initiative or based on compalints lodged before the Commision by any aggrieved individual who may have suffered any administrative action taken by:

(i) Any department or ministry of the federation or state government;
(ii) Any Department of any local government authority (howsoever designated) set up in state in the federation;
(iii) Any statutory corporation or public institution set up by any Government in Nigeria;
(iv) Any Company incorporated under or pursuant to the Companies and Allied Matters Act whether owned by any government aforesaid or by private individuals in Nigeria or otherwise howsoever; or
(v) Any officer or servant of any of the aforementioned bodies.

It is important to note that the scope of power the Commission exercises is restrained within the above mentioned reamls. Thus, any matter that is beyond the above stated terms of reference cannot be entertained by the Commission. In line with the provision of the law, the Commission cannot cause to be investigated any issue or complain before the National Assembly, the Council of State or the President of the Federation. Also, any matter pending before a court fo law in Nigeria, or in any matter related to the the Nigeria Police force or the Armed Forces. The argument for restricting the Commission from investigating any matter purported done by any member of the Armed Forces or Police is hinged mainly on the imperative of national security concerns.

Section 7 of the PCC Act states that it shall be the duty of any body or person required by a Commissioner to furnish information not more thirty days of receiving the request. Hence, for the purpose of investigation, the Commission has unfettered access to any information related to any matter lodged before any Commissioner. Therefore, to access this information, the Commission may extend an invitation to any individual connected for interview or request information from anybody affected. And, where it may be necessary to visit and inspect premises belonging to the person or organization connected to any case under investigation, the Commission is granted such power and function. To this end, the Commission is empowered to investigate any administrative act which appears to be:

i) Contrary to any law or regulation;
ii) Mistaken in law or arbitrary in the ascertainment of fact;
iii) Unreasonable, unfair, oppressive or inconsistent with the general functions of administrative organs;
iv) Improper in motivation or based on irrelevant considerations;
v) Unclear or inadequately explained; or

vi) Otherwise objectionable.

3.2 Structural and Administrative Problems Confronting the Public Complaints Commission (PCC)

The performance of the Public Complaints Commission thus far is quite commendable, with thousands of several cases received and settled. however, from the statistical display by the Commission of cases pending, there is almost an equal number with cases settled. despite its seeming impressive recod, this high number of pending cases raises issues about the Commission's efffort in addressing these matters. For instance, in 2016, 54,697 cases were recieved by the Commission. While 21,741 cases were resolved, 32,956 cases were pending (http://pcc.gov.ng/statistics-of-complaints-from-1975-2017/) High margin of pending cases could by seen in previous years. This points to the fact that some structural and administrative issues seem to be limiting the effectiveness of the Commission. While the Commission has wide powers to inquire into complaints by members of the public concerning the administrative actions of any public authority and companies or their officials, and other matters ancillary, it issomewhat contrained by the same Act. in Section 6 (1), it is stated that a Commissioner shall not investigate any matter:

- that is clearly outside his terms of reference;
- that is pending before the National Assembly, the Council of State or the President;
- that is pending before any court of law in Nigeria;
- relating to anything done or purported to be done in respect of any member of the armed forces in Nigeria or the Nigeria Police Force under the Armed Forces Act, or the Police Act, as the case may be;
- in which the complainant has not, in the opinion of the Commissioner, exhausted all available legal or administrative procedures;
- relating to any act or thing done before 29 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;
- in which the complainant has no personal interest.

In the above provisions, criticisms have been made for the ambiguity of embedded in it. for instance, the kind of matter that cannot be incestigated by the Commission was not explicitly stated. In this regard, Aina (2012) argued what becomes of a matter with public interest not taken to the National Assembly, Council of State or the President? Also, a lot of criticisms have been made against section 6(1)(c) restraining the Commission from instituting an investigation into a matter involving members of Armed Forces or the Police. It is said that human rights abuse are mostly perpetrated by members of the Armed Forces and Police. Cases of extrajudicial killings, illegal detention, torture, harassments among others are some of the atricities that have been committed by members of the armed forces and the police they point out. According to critics, retsraining the PCC would increase injustice and allowing perpetrators go unpunished.

Again, the Commission is retrained by section 6(1)(e) from investigated any matter unless

it has exhausted all available legal or administrative procedures. Furthermore, Aina (2012) observed that the available and administrative procedures may include seeking the intervention of the National Assembly, Council of State or the President. in such a situation where any of these take a decision on the matter, could the aggrieved person still petition the Commission for redress? The Act is silent on the salient issue. Furthermore, the Commissioner is not expected to intervene in any case pending before any court of law in Nigeria, however, it can investigate administrative procedure of any court of law in any Nigeria. Even though some arguments have brewed up concerning what constitute administrative ptocedures of a court (Aina, 2012). However, it is clear that it does not any way imply that the proceedings of court are subjected to assessment even though it maybe unsatisfactory to any party to the case before a court. As was noted by Aina (2012) administrative procedures have to do with the laid down procedure of the courts in the administration of justice or the judicial system.

Interesting, Section 6(1)(g) clearly introduced the doctrine of *locus standi*, which is defined as the right of a party to appear and be heard on the question before any court or tribunal. In other words, a party who seeks a remedy before the Public Complaint Commission must show that he or she is directly affected by that act, or omission in controversy before he can be heard; a general interest common to all members of the public cannot be complained of per se and cannot accord any standing before the Public Complaints Commission.

There must be an assertion of right by such a party personal to him and that right must have been infringed. The strict application of the doctrine of *locus standi* under Public Complaint Commission will occasion grave lacuna in our system of public law. If a pressure group or even a single public spirited tax payer were prevented by technical rules of *locus standi* from bringing any matter before the Public Complaint Commission to vindicate the rule of law and get an unlawful administrative conduct corrected. In Senator Adesanya vs. The President & ORS (1981) 2 NCLR 358**,** the appellant brought this action against the president of Nigeria for a declaration that the appointment of the second defendant/respondent as Chairman of the Federal Electoral Commission (FEDECO) was unconstitutional as he was at the time of his appointment the Chief Judge of Bendel State and his therefore disqualified from being appointed a member of the Federal Electoral Commission and for an injunction restraining the president from swearing in the 2nd defendant/respondent as the chairman and also restraining him from acting or purporting to act as member or chairman. The Supreme Court held that the appellant had no sufficient interest or *locus standi* in the matter of appointment of second defendant/respondent as the Chairman of the Federal Electoral Commission. To succeed, appellant has to establish personal injury or likelihood of it.

4.0 CONCLUSION

The PCC has since its establishment achieved commendable results in ensuring that the rights of citizens are guaranteed. It is interesting to note that citizens are increasingly resorting to the PCC for help in redressing administrative wrongs. It is therefore imcumbent that some amendments be effected on the Commission's Act for better performance. For instance, giving the Commission the power to persecute culpubla individuals will and removing some of the

restrictions of no-go areas, will undoutably make the Commission function well.

5.0 SUMMARY

In this unit, the powers and the functions of the Public Complaints Commission as provided in its establishing Act. Also, structural and administrative problems confronting the commission were discussed.

6.0 TUTOR-MARKED ASSIGNMENT

Critically discuss the various structural and administrative factors confronting the PCC.

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UNIT 3: ACTIONS AND PROCEEDINGS AGAINST GOVERNMENT

CONTENTS

1.0 INTRODUCTION

The Constitution of Federal Republic of Nigeria now empowers the courts to hear and determine all matters between persons, or between government or authority and any person in Nigeria involving the existence or extent of a legal right, power, duty liability, privilege, interests' obligation or claim. The Petition of Rights Act has become unconstitutional as it deprived the aggrieved persons access to court for a redress of the wrongs done by the government or its officials. It is now settled law that government can be sued or sue going by the authoritative statement of the Supreme Court in Attorney General of Bendel State vs. Attorney General of the Federation & Ors. (1981) ALL NLR 85. In that case, the whole seven justices of the Supreme Court came to the unanimous conclusion that a government is just as amenable to legal proceedings as an individual person under our constitution.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- discuss the probability of bringing an action against the government for acts committed by public officers of the state.
- explain President and the Governors immunity from prosecution

3.0 MAIN CONTENT

3.1. Bringing Actions against Government

The present Constitution (1999, as amended) has made the civil liability of the government similar to that of any citizen. The government may be sued in every area of law and many cases have been brought against the government over the years. In Attorney General Bendel State vs. Aideyan (1989) 4 NWLR pt. 118 p. 646, the Bendel State Government purportedly acquired the plaintiff/respondent's building and he sued the state government. On appeal, the Supreme Court held that the respondent was entitled to his building and

declared that the purported act of acquisition of the property of the respondent by the state government in a manner not authorised by any law was a complete nullity. E.g In the Governor of Lagos State vs. Ojukwu (1986) 1 NWLR (Pt.18) p. 621 where the title of a building was contested by the parties in court. Pending its determination and against an order of interim injunction stopping the ejections of the plaintiff/respondent, the defendants/appellants who were the Lagos State Government and the Commissioner of Police, without an order of court for possession of the house forcefully ejected the respondent from the property in dispute. The Supreme Court held in favour of the respondent and dismissed the appeal of the appellants saying that no one is entitled to take possession of premises by a strong hand, with a multitude of people. From the above case, it is clear that a citizen can sue the government as long as it is a justiciable case. However, the 1999 Constitution (as amended) accepts some persons from from both civil and criminal proceedings while they still remain in office. It is these set of persons we shall now examine.

3.2. Immunity of President and Governors from Legal Actions

Immunity is the exemption of a person or body from legal proceedings, or liability. From time immemorial, the King or Queen was the first common law judge, and the monarch was immune from legal action. This was expressed in Latin maxim *rex non potest peccare* meaning "The King can do no wrong." Just like that, the English doctrine of sovereign immunity is rooted in antiquity. This theory of sovereign immunity is translated to today constitutional immunity. Thus, immunity does not cover proceedings against any of the public officers as nominal parties. They may be sued in the official capacity or joined as nominal party. From origin or early time, the doctrine of sovereign immunity has been in operation. It implied that the state cannot do wrong and the government could not be sued in its own courts without its consent or fiat by way of petition of rights. The above position was nullified by the 1979 Constitution, which provides that the Petition of Rights Acts is unconstitutional as it was hindering access of aggrieved persons to court for the redress of wrongs done by the State or government. In view of this, by virtue of the Nigerian Constitution, there is free access to sue the state; government or any public office or authority without the need toobtain consent. However, no civil or criminal liability proceeding shall be instituted or continued against the president, vice-president, governor and deputy governor during their tenure in office. However, where such officer commits any breach, Legal proceedings will be withheld until such officer vacates his office and no longer enjoys the immunity provided by section 308 of the 1999 Constitution.

The immunity clause contained in Section 308 (1) (a-c) (2-3)1999 Constitution of the

Federal Republic of Nigeria provides immunity from legal action against the president and vice president of the federation, and for the governor and the deputy governor of a state respectively, during their period of office. They can neither be arrested nor be imprisoned while in office in pursuance of the process of any court or otherwise. While they hold office, no process of any court requiring or compelling their appearance shall be applied for or issued. This does not imply that they are not liable for any civil or criminal act or omission in their personal capacity while in office. It only means that such actions cannot be taken against them at that material time. For instance, where any suit is pending against the President or the Governor of a State, the suit cannot continue during his term of office. Such suit is either adjourned without a fixed date (sine die) or settled amicably by both parties.

There have been arguments amomg scholars, analyst and commentators whether to remove or retent the immunity clause in Nigeria. Some maintain that removing the immunity clause will endanger effective governance in the country as chief executives will be largely distracted. The Supreme Court held in the case between Bola Tinubu vs IMB Securities Plc (2001), that:

> The immunity clause is meant 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 woul distract him from the serious business of governance.

The above statement has always been the strong point of those supporting the retention of the clause. This is further buttress by the argument thta Nigeria politics is too toxic and primordial to subject the president or governor to its vagaries. For them, both the president and governor has been insulated from the distractions that may inhibit them from delivering their eletion promises. On the other hand, critics have argued for the removal of immunity clause for executive. While some critics support the total removal of the immunity clause, others want the president and governor to be excluded fro civil liability but subjected to any criminal proceedings. The critics hinged their argument on the fact that occupants of executive office since 1999 have been main culprits of corruption in Nigeria. There have been several indictments of these individual. For them, it is being democratic if the president and governor can face criminal charges as an accountable measure against inpunity. Moreover, they maintain that immunity clause is against the principles of natural justice and equity meaning that all men are equal before the law.

3.3. The Liability of other Public Officers

The immunity protecting the president and the governors of various states does not extend

to the officers, servants or agents of government. A servant or agent who committed a wrong on behalf of the government is personally liable. Public officials, no matter their position may be personally liable for any damage caused by their act or omission, unless he/she has a legal authority, or enjoys statutory protection. For instance, the Public Complaints Commission Act states "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 of this Act". On the other hand, it is settled law that an aggrieved party can sue the particular public officer who is responsible for the injury complained of. Public officers are generally liable in civil and criminal proceedings, unless they are protected. Public Officers Protection Act and its equivalent laws in the various states offer some measure of protection to public officers by limiting the time, within which action could be brought against a public officer but they are not immune to legal action.

SELF ASSESSMENT EXERCISE

Discuss the import of Section 308 of 1999 Constitution in respect of action filed against a governor in Nigeria.

4.0. CONCLUSION

The position as regards the liability of other public officers is not the same as state immunity does not extend to its servants or agents. A servant or agent who commits a wrong on behalf of the state may be personally liable. The Public Officers' Protections Law /Act, where a suit may be statute barred under prescribed circumstances does not apply to criminal proceedings (See the case of Tagbugbe vs. COP (1992) 4 NWLR pt 234.P.152). The government is vicariously liable for the tort of public officer's committed in the course of employment but where such public official or agent goes beyond his scope of employment to commit a wrong, he would be personally liable for his torts. On the other hand, the 1999 Constitution provides immunity from instituting civil or criminal proceedings against the Pesident, Vice-President, Governor and Deputy-Governor.

5.0 SUMMARY

In this unit, effort has been expended to examine immunity protecting the president and the governors of various states. Also examined is the probability of bringing an action against the government for acts committed by public officers of the state.

6.0 TUTOR-MARKED ASSIGNMENT

Examine the circumstances in which the constitution exempts the president, vice president, governor and deputy governor from litigations.

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UNIT 4: PREROGATIVE REMEDIES IN NIGERIA

CONTENTS

1.0. INTRODUCTION

The administrative and prerogative remedies are generally safeguards for the protection of an aggrieved person. In Burma vs. Usman Sarki (1962) ALL NLR 62, Justice Udo-Udoma (as he then was) said in "the absence of a procedure for attacking the exercise of powers by a minister, the normal civil processes and the principles of general law, including the prerogative orders are, of course, available to be invoked to advantage by any aggrieved person whose rights have been infringed." Historically, these prerogative remedies were formally known in England from where they were imported into Nigeria as "Prerogative Writs". These prerogative writs obviously belong entirely to administrative law, it is only the writ of *Habeas Corpus* that still subsists and is the most renowned contribution of the English common law to the protection of human liberty. It has been observed that statutes usually provide procedure for questioning the exercise of executive power or the constitutionality of an Act of National Assembly, but where there is no such legislative procedure for securing appropriate remedies then the alternative remedies of *Habeas Corpus*, prohibition, mandamus and/or certiorari may be called in to play.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- define the meaning of these four remedies i.e. habeas corpus, prohibition, mandamus and certiorari
- explain some of the problems associated with the prerogative remedies.

3.0 MAIN CONTENT

3.1. Types of Prerogatie Remedies in Nigerian Legal System

When the activity of public authorities began to impinge upon private rights and interests, the courts at once started to use the prerogative writs in order to keep them within their jurisdiction and to compel them to observe certain standards of conduct. The various

forms of prerogative remedies are as follows:

i) ***Habeas Corpus***

This is one of the prerogative remedies and it is the procedure for challenging in court the legality of the detention of a person. It has been classified as an extraordinary remedy, which is issued upon cause shown in cases where the ordinary legal remedies are inapplicable or inadequate. The writ of *habeas corpus* is a remedy available in the High Court in all cases of wrongful detention under the 1999 Constitution. The purpose or essence of *habeas corpus* is not to determine whether the detainee is guilty or innocent. The only question a writ of *habeas corpus* presents for determination is whether the detainee is being detained according to the due process of law. It is essentially issued to challenge the detention of a person in official custody, or in private hand; for the custodians to show cause why the prisoner should not be released. However, this writ may be issued for several other purposes, for instance, to review or determine the regularity of extradition process, the right to bail or the amount of bail, or the jurisdiction of a court impose a criminal sanction.

ii) Prohibition

This is one of the prerogative remedies available to an applicant. It is an order of court restraining an inferior court, tribunal, public or administrative authority from exercising its judicial or quasi- judicial powers. The party or body to be restrained need not be in court in the strict sense. Prohibition is in the nature of an injunction, but there are two discernable differences between the two. The scope of a prohibition is limited to persons or bodies enjoined to act judicially. Prohibition will not lie against persons performing purely administrative or executive act. An order of prohibition is an order to prevent the exercise, or continuation of the exercise of judicial or quasi-judicial powers, which is likely to affect the applicant's right. It is preventive in nature, rather than corrective. An order of prohibition does not lie (that is not available) to stop a judicial act or determination that has been completed. An order of prohibition is only available in the following two instances.

i) To stop the commencement or
ii) To stop the continuation of a judicial determination

An applicant for prohibition must act in time and not wait.

iii) Mandamus

This is an order of court commanding the performance of a public duty which a person or body is bound to perform. The order of mandamus is simply a device for securing judicial enforcement of public duties. Where an applicant has fulfilled the legal requirements for performance, a court will issue an order of mandamus to compel its performance. Mandamus is a discretionary power given to the courts, which the courts will grant only in suitable cases. It was introduced to prevent disorder from a failure of justice, and defect of the police. Essentially, mandamus is an order generally sought by to ascertain public duty. Before an applicant can succeed in bringing it about, there must be an imperative public

duty incumbent on someone and not just a discretionary power to act. It is paramount that the applicant must have made a request for the performance of the duty and this must have been refused. In addition, the applicant must have a substantial personal interest in the performance of the duty concerned. The order will not issue when there is an alternative specific remedy at law, which is equally convenient, beneficial and effective.

iv) Certiorari

This is one of the prerogative remedies by which an act, which is *ultra vires* may be challenged. It assumes the form of an order issued by the High Court to an inferior court or tribunal to bring to the High Court decisions of that inferior court or tribunal in order that their legality maybe investigated. The order of certiorari enables the court issuing the order to inspect the record and determine whether there has been any irregularity or injustice. It is a discretionary device to review a matter where necessary and do justice in it. An application for an order or certiorari is based on grounds of incompetence or other grounds of injustice and it is to enable the superior court determines the legality of the decision in issue. It is a corrctive order and usually a proper remedy to be granted for actions, which have already been completed. It is an essential characteristic of certiorari that it is issued not because of any personal injury to applicant, but because of the need to control the machinery of justice in the general public interest.

3.2 Some of the Problems Associated with the Prerogative Remedies

In the Nigeria legal system, the prerogative remedies form an important prerogative process of securing the liberty of the citizen by affording an effective means of immediate release of persons or suspects from unlawful detention. By restraining inferior courts, tribunals or administrative authorities, the prerogative borders ensure they do not exceed theirs judicial or quasi-judicial powers. By commanding the performance of a public duty, which a person is bound to perform, organs of government and their agents and public officers are guided towards effectiveness. The jurisdiction of the state High Court to issue a writ of *habeas corpus* is limited to the geographical area of the state and the court will not issue the writ where the person detained and the person to whom it is directed are outside the state. In this way, a person holding an applicant in his custody could perpetually oust the jurisdiction of the appropriate court by removing him away from a particular State before issues are joined in the state High Court. An order of certiorari: simply quashes a judicial determination but takes no further step to suggest what should follow unless an ancillary relief accompanies the order.

4.0 CONCLUSION

"*Ubi jus ibi remedium*": Where there is a wrong, there is remedy. In the area of administrative and judicial acts, remedies abound to any individual who claims that his/her rights have been invaded or violated depending on the nature of the act complained of. Reactions to unfair administrative acts vary from one quarter to another, while one may merely shrug his shoulder, another may not, hence various remedies abound. The crux of the matter is for administrative/judicial authority to ensure that the rule of law prevails in the society and performance of administrative act should be performing with credibility, openness and accountability.

5.0 SUMMARY

In this unit, we have looked at the various means of safeguarding the rights of the governed against oppression or unpopular action by the government. In doing so, you learnt about the administrative and prerogative remedies, types of prerogative remedies as well as non-judicial or extra judicial remedies against wrangling actions of administrative body. In whole, the essence of this exercise is to x-ray the possible means of safeguarding and ensuring that government and its administrative agencies abide within the ambit of their authority and the law.

6.0 TUTOR-MARKED ASSIGNMENT

Assess various means of seeking remedies against administrative or judicial actions.

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UNIT 5: Non-Judicial Remedies for Administrative Acts

CONTENTS

1.0 INTRODUCTION

These are extra-judicial remedies available outside the court room, though with the help of the court sometimes. An example is resort to alternative dispute resolution systems monitored by the court. Other extra-judicial remedies available for making the authorities to change, abandon or review its policies, actions and decision are resorted to by persons who may have decided not to approach the courts or may actually have exhausted judicial process without commesirate satisfaction.

2.0 OBJECTIVES

At the end of this Unit, you should be able to:

- understand the various means of non-judicial remedies.

3.0 MAIN CONTENT

3.1 Various Non-Judicial Remedies

There are remedies that are sought outside the judicial process which are sufficient enough in certain cases. It is important to note that these non-judicial remedies have varying degrees of active response that is, extract response for request. The following are some of the means of judicial remedies:

i) Peaceful rally or protest

This is a collective non-violent action to protest against any unpopular or unfair policies of government, unfair laws or any other politcal, economic or social issues that generally endanger the well-being or welfare of the public. The essence of peaceful rall or protest is to register dissatisfaction on an issue and to call for immediate actoon to remedy the situation. Interestingly, this is line with constitutional guarantee of the rights of freedom of expression and assembly. Therefore, protesters should not be subjected to any molestation,

injured, intimidated, unjustiably detained or killed by the state or its representatives.

ii) Public Opinion Poll

Occassionally, the media, think tanks, research centres and polling organisations carry out survey on a particular issue or series of issues to determine the pulse of the people and weigh their desires on proposed governmet's policies. It could be governmet's policy, reforms, politcal, economic, social, religious issues, electoral prediction etc. It is sometimes used to rate government, political performance, political candidates. The results of public polls are generally accepted because there are mainly based on scientific, objective and balanced procedures.

iii) Media-Coverage and Publicity

One of the ways to force change ofpolicy is to beam public searchlight on it. It is a medium of giving issues extentive and intensive conscientization. It creates avenue for public scrutiny of government's policy, programme or particular institution. The aim is to ensure transparency, fairness and accountability as well as to put pressure on authority to concede to popular demand of dissent.

iv) Lobby

These are attempts of individual or interest groups to inform, pressure, persuade or influence the decision ofadministration through the supply of adequate and sufficient information, analysis and opinion to government officials such as: legislators, cabinet members or the president, to concince them why particular decision should be made on a matter. It has been recognised in both developed and developng democracies that lobbying in a great way enhance the quality of democratic process. In most advanced democracies, legislators largely depend on the input of lobbyists to enhance the legislative process with well-informed and researched analysis in making legislation for the governance of the ountry. Some of the decisions that lobbyists seek to influence include: making or amending a law, formulation or change to a government policy, the process of award of government's contracts, budgetary allocation to ministries, departments or projects, political appointments, etc.

v) Referendum

This is the direct vote of all eligible voters sanctioned by a legal framework or request by either the executive or parlaiment on a significant national political issue. The aim is to either lead to the adoption or rejection of a political proposal such as amendment to the

constitution, or to join or leave an international organisation. Also, referendum is used to determine the status of a state when there is a segment seeking to secede. This might be the reason for instance that the refenendum is not incorporated into the Nigerian constitution.

vi) Petition

It is a formal writtten requent of an aggrieved person who may have suffered some wrong perpetrated by a public official. Therefore, the petitioner appeals to higher authority to seek redress on the wrong done him. It is expected that the petitioner is able to prove how his right or interest has been violated or infringed upon. On the other hand, a group ofpeople with common grievance may decide to collectively petition the authority. Although internal mechanisms may be appealed to, for redress, however, petitioners (s) have the right to seek external intervention for redress. This includes petitioning the Public Complaints Commission (PCC), the Consumer Protection Commission (CPC), Code of Conduct Bureau (CCB), Independence Corrupt Practices and other Related Offences Commission (ICPC), Economic and Financial Crimes Commission (EFCC), the Nigeria Police Force (NPF), Department of State Security (DSS), the National Assembly and the President respectively.

vii) Strike/industrial action

This is the collective refusal of employees to work due to grievance in pay or condition of service in order to exert pressure on government or employer to accede to their demands. It is a readily available tool of Trade Union for the defence and promotion of the rights and interests of members. Strike or industrial action helps to uphold the dignity of workers. It also enables workers to assert their bargaining power in industrial relations. The term strike is extentively defined in Section 47 of the Trade Disputes Act as:

> ...the cessation of work by a body of persons employed acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any persons or body of persons employed, to accept or not to accept terms of employment and physical conditions of work; and in this defi nition:- (a) “cessation of work” includes deliberately working at less than usual speed or with less than usual effi ciency; and (b) “refusal to continue to work” includes a refusal to work at usual speed or with usual effi ciency.”(cited in Okene, 2007, p. 31).

From the above, some salient points could be drawn out. As noted earlier, strike or industrial action is a collective action involving employed people. The action by these employed people is as a result of dispute with their employer conecrning terms of

employment and physical conditions of work. As a result, such grievance or dispute leads to the cessation of work. The right to strike either tacitly or explicitly is recognised by national, regional and international legal framework. Some of these national legal frameworks that recognise the right of workers to strike include the Nigeria Trade Disputes Act, the Ghanaian Labour Act 2003, the Kenya Trade Disputes Act 2003, the Natinal Labour Relations Act, 1995, of the United States. While regional and international instruments such as the African Charter of Human and Peoples Rights (1986) and the International Covenant on Economic, Social and Cultural Rights (1996) are notable. Albeit, in Nigeria, some elaborated procedures to voluntary or compulsorily resolve labour matters in order to aviod strike has been put in place. In this regard, Okene (2007) notes that before workers embark on strike action, they are required to have fully exhausted the elaborate statutory procedure for settlement of trade disputes. For instance, workers are expected to exhaust internal means to settle disputes before any further action. Where internal dispute mecahnism fails, parties may involve in mediation through a jointly approved mediator. If they fail to reach an agreement, then the Minister of Labour and Productivity appoints a conciliator to handle the matter. But if this intervention is again unssuccessful, then, the Minister is obliged to submit the matter to the Industrial Arbitration Panel. Again, if the Industrial Arbitration Panel is unable to resolve the dispute, the Minister refer matter to the National Industrial Court, whose decision is binding on parties involved. However, no legal action be it civil or criminal liabilities can be brought against any worker or trade union that engages in strike action in Nigeria.

xx) Arbitration, Mediation, or Conciliation

Generally, disputes could be resolved by using the judicial process, negotiation, violence, or any other means that proves effective to parties. However, in saner societies, the judicial process is mainly resorted to in resolving disputes. But the regular courts have been observed to be very slow and rather expensive. Therefore, some Alternative Dispute Resolution mechanisms have been found to be advantageous in that, it is less expensive, expeditious and, may enhance relationships between parties that might have been affected by adversarial judicial process. The term Alternative Dispute Resolution is used to describe the various methods or approaches used by parties in resolving their legal or political disputes. These methods include: Arbitration, Mediation and Conciliation.

Arbitration is an Alternative Disput Resolution (ADR) procedure in which parties agree to bring their matter to an arbitrator or panle of arbitrators who in turn, give a binding decision on the case. Interestingly, the decisional power of the arbitrator is based on the agreement of the parties. It means therefore, that parties in dispute can exercise

considerable influence on the arbitrator's scope of authority, and occasionally, arbitration proceedings, however, at the discretion of the arbitrator. Nonetheless, the decision of the arbitrator is binding on all parties because it is based on law, and/or the principle of equity. Hence, it is the evidence that each party provides that the arbitrator is able to deduce from, based on applicable rules of law to give his award.

Mediation is an ADR mechanism involving a neutral and impartial third party accepted by the disputing parties, who help to faciltate and assist the parties in a dispute to reach a mutually agreed end. The mediator in helping the parties reach a negotiated agreement makes suggestion in a voluntary, non-binding and confidential manner, so as to reflect the interests and needs of the parties. Then mediator does not seek to find out who is wrong or not. The mediator cannot impose any decision on any party in the diispute. Mediation is major tool in peaceful resolution of disputes and conflicts at individual, corporate, national, regional and international levels.

Conciliation is also an effective dispute resolution tool employed by parties in dispute. It is the use of an impartial, neutral and objective third party as conciliator, by parties in the dispute with the aim at resolving collectively the contention at hand. The essence is to reduce tension, improve communications, interpret issues, provide technical assistance, and provide potential solutions which may eventually lead to a negotiated resolution of the contention. The conciliator is flexible enough to guide the proces in order to accommodate the various interests and concerns of the prties involved. Therefore, the proposals for settlement of the conciliator are merely suggestions and not binding on the parties.

xxi) **Rebellion, Succession, War etc.**

Rebellion, succession and war are some of the extreme measures that could be taken by a party in political dispute against a particular government when other efforts have failed. In Nigeria, there are some instances where groups have resorted to full-blown war with the state due to failure to peaceful resolution of the matter. These include: the case of Isaac Adaka Boro and others V. the republic of Nigeria (1996) All NLR 2635; Fasehun V. A.G. Federation (2006) 6 NWLR pt 957; Dokubo Asari V. Federal Republic ofNigeria (2007) 12 NWLR pt 1048, p.320.

4.0 CONCLUSION

Most aggrieve persons or groups have in certain circumstances opted to use the non-judicial remedies available to them to register their dissatisfaction. These means however, have varying degrees of effectiveness. What determines the use of any of the above-mentioned remedies is a function of the context.

5.0 SUMMARY

In this unit, we have been able to go through some available non-judicial remedies otherwise, called Alternative Dispute Resolution mecahnism. These are very effective ways in resolving disputes/conflicts.

6.0 TUTOR-MARKED ASSIGNMENT

Examine the reasons that inform might a party to seek relief through a non-judicial means.

7.0 REFERENCES/FURTHER READING

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BLURB OF THE WORK

Principles of Administrative Law provides among other things, a comprehensive definition of Administrative Law from the general introduction to textbooks needed for further reading in each of the topics. This course is divided into five modules. Module 1 covers the definition, nature and scope of Administrative Law, Module 2 explained the Local Government and its functions and Module 3 covers extensively the Administrative Panels and Tribunals of Enquiries. Module 4 treats the Nigeria Police Force, its legal status and responsibility among others, and Module 5 treats Public Complaints Commission, doctrine of Locus Standi under Public Complaints Commission and Administrative remedies.