

**NATIONAL OPEN UNIVERSITY OF NIGERIA**

**FACULTY OF MANAGEMENT SCIENCES**

**COURSE TITLE: ADMINISTRATIVE LAW**

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## **MODULE 1 INTRODUCTION**

### **UNIT 1 PUBLIC ADMINISTRATION AND LAW**

#### **CONTENTS**

1.0 Introduction

2.0 Objectives

3.0 Main Content

3.1 Public Administration and Law

3.1.1 Public Administration

3.1.2 Law

3.2 Origin of Administrative Law

3.3 Definition of Administrative Law

3.4 Sources of Nigerian Administrative Law

3.5 Functions of Law in Society

**3.6 Administrative Law and Constitutional Law compared (their Similarities and Differences)**

4.0 Conclusion

5.0 Summary

6.0 Tutor Marked Assignments

7.0 References/Further Readings

#### **1.0 INTRODUCTION**

This is an introductory Unit which will focus on the Definition and Origin of Administrative Law, Functions of Law in Society and Sources of Nigerian Administrative Law. It is necessary for the student to understand these concepts in order to place in perspective the duties and functions of administrative agencies in Nigeria.

## 2.0 OBJECTIVES

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

Define Administrative Law:

□□ Explain the Sources of Nigerian Law: □ Itemize the functions of Law in society.

## 3.0 MAIN CONTENT

### 3.1 PUBLIC ADMINISTRATION AND LAW

#### 3.1.1 Public Administration

This course is titled ‘Administrative Law’. It is instructive therefore to examine the concepts of ‘Public Administration’ and ‘Law’ from the beginning for the understanding of these terms. Marx defines administration as **‘determined action taken in pursuit of a conscious purpose. It is the systematic ordering of affairs and the calculated use of resources aimed at making those happen which one wants to happen. Frederick Lane defines administration as organizing and maintaining human and fiscal resources to attain a group’s goals.**

**A complete definition for public administration however is difficult to arrive at due to the sheer number of tasks that fall under it. Some academicians argue that all the government related work falls into this category while other choose to argue that only the executive aspect of government functioning comprises of public administration.**

**We can also see how different authors have defined public administration:**

**According to L D White, Public administration consists of all those operations having for their purpose the fulfilment or enforcement of public policy. On the other hand according to Woodrow Wilson, public administration is a detailed and systematic application of law. One can easily suggest that public administration is nothing but the policies, practices, rules and regulation etc, in action.**

**Now, can public administration be divorced from social and political systems? Certainly not. F A Negro argued that public administration is essentially a cooperative group effort in public setting. Secondly, it covers all the three branches of government machinery, the executive, the legislative and the judicial. He added that since public administration plays a crucial role in formulation of policies, it is a part of the political process as well (for e.g. Bills and Acts). Negro also said that public administration is different from private administration in numerous ways and that it interacts with various private groups and individuals in providing services to the community.**

**Also, on the nature of public administration there have been two popular views, one being the Integral view and the other one is the Managerial view. The Integral view is all encompassing and consists of the sum total of all managerial, clerical, technical and manual activities and employees from all levels. This view was endorsed by L.D White and Dimock. It may differ from one agency to another depending on their sphere of work.**

**On the other hand, the Managerial view, as the name suggests says that public administration involves only the managerial activities. This view is supported by Simon, Smithburg, Thompson and Luther Gulick.**

Public Administration is a process of organizing and executing functions effectively and efficiently in order to achieve the objectives of a nation.

It all began from traditional communities where local chiefs, Igwes and Obas were saddled with administrative responsibilities of maintenance of law and order and control of local infrastructures. For example, the traditional ruler with the aid of his council members provided welfare activities to his people, administered justice and adjudicated in dispute settlement at his palace.

At state and national levels, Public Administration became a science of administration in which elected government officials maintained law and order nation-wide and administered infrastructures on behalf of the public. The function of Public Administration assumed higher dimensions to include Executive, Legislative and Judiciary. While the Executive arm manages the economy and maintains law and order, the Legislative arm enacts laws for good order and peace of the nation. The Judiciary dispenses justice and upholds constitutional provisions relating to all aspects of national life including fundamental human rights of all citizens.

It can be said therefore that Public Administration began as activities of traditional community leaders to manage the general affairs of their respective communities, changed with the advent of modernization, where communities developed to states and nations with sovereign status, to adopt the toga of general management of the activities and affairs of a nation economically, socially and militarily as we have it today in Nigeria.

**Public administration is the single most important aspect of bureaucracies across the world; be it a democratic, socialist or a capitalist state, more so in a socialist state, as all aspects of the citizen life are influenced and decided by the government.**

**There has been considerable shift in the way public administration was carried out in ancient and medieval times when the initiatives were nothing more than sporadic administrative functions like maintaining law and order and collecting revenues with little or no welfare activities. The people who carried out those activities were selected by the monarchs and were no better than their personal servants.**

**With changing times, the objective of public administration also underwent a change and by the nineteenth century; an organized approach to public servants and public administration was adopted. This approach was based on an exhaustive legal framework replacing the patriarchal and hereditary function with bureaucracy.**

**The advent of this new approach to public administration happened due to many reasons. The foremost being the Industrial revolution. With Industrial Revolution, the Government forayed into trade and commerce; which was followed by Imperialism, Nationalism and Internationalism which added on to the widening avenues of Government duties and responsibilities.**

**The times today are again vastly different from what existed a century ago and once again the scope of public administration has also undergone a shift, it's difficult to decide whether it is paradigm or not. However, the increasing awareness amongst people especially in the developing countries [for e.g. The Right to Information Act or RTI act in India] and an acquired knowledge of rights, privileges and laws amongst the people of developed countries[for e.g. the debates on The Health Care and Education Reconciliation Act of 2010] have thrown new challenges for the public administrators and policy makers.**

**The demand for unified national services, the conflicting interests between the various economic sections of the society and with global migration and subsequently, globalization; the protection of the interests of the multi-ethnic groups of the society have kept the public administrators occupied.**

**Administration matters so much because it is not enough to make policies and laws on paper. The interpretation and translation of those policies and laws into actions and carrying them out is the difficult part. The public administrators therefore have to play an important role in running the government as machinery. Bureaucracy has often been sneered and ridiculed**

**at but if the administrative work is stopped, nothing really would be happening.**

**In almost all nations, the number of people employed in public administrative work is appalling. For example in USA, the figure roughly stands at 2, 036, 000 civilians excluding the employees of Congress and Federal courts. In England, the figure runs into several thousands. The various important roles that public administration plays, the most important one are implementing laws and policies and acting as their adjudicators. It is therefore important that the reader approaches the study of public administration with an open mind and without prejudices to appreciate the full nature, role, importance and relevance of the bureaucracy.**

### 3.1.2 Law

Law in its simple meaning refers to a system of rules and regulations that members of society have to obey and apply in their private and public lives in the interest of peace, good governance and recognition of individual rights.

Every society recognizes the need for law. The law reflects the values of a given society. No Nation can function properly unless its citizens conform to the laws of the land and respect them. Such a nation is said to be based on the “rule of law” in which every citizen is protected by law and is equal before the law.

Administrative Law therefore refers to the body of rules and regulations that relate to the administration of a state or nation. Administrative Law deals with issues of powers and duties of administrative functionaries, charged with the responsibilities of state governance. Administrative Law embodies regulations which relate to the exercise of powers and spells out remedies for aggrieved citizens who feel abused by the exercise of administrative powers by public authorities.

Public Administration relates to the management, duties and rights of managers who are charged with administration of executive duties of a government. In other words, the practical management activities of the Executive Department and its agencies are covered in the realm of Public Administration.

“Public” therefore refers to the understanding that those who are charged with the administration of government are accountable to the public. They apply law in service to the people.

In other words, Administrative Law is the law of society that is managed by the Executive functionaries who are accountable to the public. It comprises all operations executed by elected or appointed executives who manage human and material resources of a nation in order to achieve pre-determined objectives. Government policies and programmes within the three-tiers of government are executed on behalf of the public who is the repository of power delegated to public functionaries.

Administrative Law is therefore the law that governs the administration of a country by elected representatives of the country who act in elected capacities.

### 3.2 ORIGIN OF ADMINISTRATIVE LAW

A review of one of the definitions of Administrative Law proffered by Sir Ivor Jennings indicates that the subject deals with the organization, powers and duties of administrative authorities. It follows from the foregoing that the origin of

Administrative Law can be traced to our traditional past when society was governed by local chiefs or obas and their functionaries. The council of chiefs or obas was regulated by community approved rules of conduct recognized by all. Although the traditional authority embodied the law of the people, the system also provided procedures for individuals to seek redress where traditional functionaries acted wrongly or above their powers.

In the early 18th Century when British colonists visited Nigeria, and enthroned the British style of administration in which Her Majesty was the ultimate authority while other arms were lieutenants to the Queen, Administrative Law became scientific. The various Governors -General (beginning from Lord Lugard through Lord Macpherson up to 1960 when Nigeria obtained independence) governed through various constitutions and organs of government. In the post- independence era, when Nigeria assumed full sovereignty with a constitution that guarded the interest of all citizens, Administrative Law assumed a new dimension from the erstwhile traditional government where people were governed by chiefs and obas. Government was then saddled with the responsibility of providing governance, infrastructure and economic development. Nigerian nationals in the class of civil servants, government officials, judges, lawyers, doctors etc, became agents of administration. Their conduct had since then been governed by rules, regulations and principles of administration which provided safeguards for aggrieved Nigerians to seek redress or remedies in the courts of law or tribunals as the case may be.

In providing welfare services, serving public interest and managing the Nigerian economy, government functionaries could inadvertently or deliberately commit wrongful acts to Nigerian citizens. This is where Administrative Law sets in to provide hope for the wronged and the oppressed in following constitutional and scientific provisions to right the wrongs that state officials commit in the execution

of their duties. In other words, Administrative Law emerged as a body of administrative provisions for aggrieved citizens to understand the functions of functions of government functionaries, separation of powers within the government and ways to remedy the administrative wrongs committed by government functionaries in the discharge of their constitutional duties to the nation. The techniques of Administrative Law are beneficial to all citizens.

### 3.3 DEFINITION OF ADMINISTRATIVE LAW

We would begin by examining the nature of the words that comprise Administrative Law. We will examine the concepts ‘public’, ‘administrative’ and ‘law’. We shall discuss this topic from the viewpoint of informed writers on the subject.

The term ‘public’ ordinarily suggests something which belongs to the domain of a community, state or nation. It connotes openness and availability for all to see and participate in. In the context of Administrative Law, ‘public’ would refer to the affairs of a nation e.g. Nigeria. ‘Administration’ as a concept is an adjective qualifying law. It suggests the act of managing or executing the principles and practices of state functions governed by law. ‘Law’ in the tripartite phrase ‘Public Administrative Law’ would refer to Rules and Regulations that are stable, made by the Legislative, executed by the Executive arm or government, enforced by the Judiciary in the regulation and conduct of public agents or government. It is a truism that every society whether developing or developed, governs itself within the framework of established rules and regulations. In managing government affairs, rules and regulations exist which the term Administrative Law covers in the subject matter.

Administrative law is in itself in public domain.

Like most concepts in the Humanities or social sciences, there is no one universally acclaimed definition of Administrative Law. However, this course will outline some well researched definitions espoused by informed writers on the subject.

8

Sir Ivor Jennings (1959) defines Administrative Law as:

*“the law relating to administration. It determines the Organizations, powers and duties of administrative Authorities.”*

According to Oluyede, P.A. (1988), *“Administrative law means that branch of our law which vests powers in administrative agencies, imposes certain requirements on the agencies in the exercise of the powers and provides remedies against wrongful administrative acts.”*

According to Wade and Bradley (1985), *“Administrative law is a branch of the public law which is concerned with the composition, powers, duties, rights and liabilities of the various organs of government which are encouraged in administration. Or more concisely, the law relating to public administration”.*

Egwummuo (2000) defines Administrative Law as *“that branch of public law which aims at indicating the rights of the citizen against attacks (intentionally or inadvertently) emanating from government or its agencies”.* (Page 1)

From the foregoing, it is evident that Administrative law regulates the functions, powers and conduct of all government business by public functionaries charged with the administration of state affairs. The subject also makes room for remedies for administrative wrongs committed by such functionaries.

### 3.4 SOURCES OF NIGERIAN ADMINISTRATIVE LAW

As has been stated already, Administrative Law deals with issues that relate to public administration of any nation or a geographical territory that has acquired a sovereign status. It spells out the organization of public management, powers and duties of public managers in the branches of government (Executive, Legislative and Judiciary).

The sources of Administrative Law therefore are:

(a) The Constitution of the relevant country. In Nigeria, the Nigerian Constitution 1999 as amended is the principal source of Nigerian Administrative Law. It is the *grund norm* (mother of all laws) which must be obeyed in Nigeria.

(b) All laws that are passed by the Legislative of the respective country. In Nigeria, this can be statutes passed by the national and state legislative.

(c) Ordinances, Resolutions and Orders adopted by administrative authorities for effective governance.

(d) Customs and conventions of the nation.

(e) Judicial decisions of all properly constituted courts.

### 3.5 FUNCTIONS OF LAW IN SOCIETY

It is appropriate to give a brief definition of the concept of Law before stating its functions in a society. Law consists of rules that regulate the conduct of individuals, businesses and other organizations within the society. Laws of a given society are promulgated in order to protect and sustain that society's values. Law therefore protects citizens and their property against unwanted interference from others. It prescribes penalties for citizens or persons who engage in undesirable activities. Every society is governed by laws because no system of government can function effectively without laws. Governance of any nation is based on the "rule of law" which means that no person in society, no matter how highly placed, is above the law of the land. In other words, the President, all members of the Executive, the Judiciary and Legislative branches of Government, must obey the laws of the land and support its legal system. Laws are therefore promulgated for the good order and governance of society.

The primary function served by law in every society including Nigeria, are:

(a) Maintenance of peace, which gives rise to individuals to operate freely in a congenial atmosphere in pursuit of their hearts' desires while at the same time

prescribing punishment for those who tilt the balance of equilibrium by committing crime.

(b) Promotion of worthwhile moral standards. For example, prescription of punishment for drug and alcohol abuse by the relevant agencies including (in Nigeria) the National Drug Law Enforcement Agency (NDLEA).

(c) Law promotes and encourages social justice in any nation.

(d) Law establishes order. For example, the legislature enacts laws which are enshrined in the Constitution that prohibits discrimination in all its forms including discrimination in employment, discrimination as to state of origin, discrimination as a result of tribe, etc.

(e) Law promotes orderly change. In other words, it prescribes procedures for orderly change of government as against forceful overthrow.

(f) Law provides the basis for law suits to be settled prior to trial, thereby forging compromise among litigants.

(g) Law promotes and sustains individual freedom and fundamental human rights. For example, Chapter 4 of the Nigerian Constitution 1979 espouses fundamental rights of every Nigerian citizen. These rights include the Right to Life, the Right to Dignity of the Human Person, the Right to Personal Liberty, the Right to Fair Hearing, the Right to Private and Family Life, the Right to Freedom of Thought, Conscience and Religion, the Right to Freedom of Expression and the Press, the Right to Peaceful Assembly and Association, the Right to Freedom of Movement, the Right to Freedom from Discrimination, the Right to Acquire and own a Movable Property anywhere in Nigeria and the Right to Legal Aid, among others.

### **Administrative Law and Constitutional Law Compared (their Similarities and Differences)**

**The dividing line between Administrative Law and Constitutional Law is very thin. This is so because both are greatly related and the bulk of issues, functions, powers, rights, duties, subject matters they deal with are basically the same. The two subjects are twin courses. Therefore, there is often the problem of differentiating administrative law from Constitutional Law. As a result, it is sometimes argued that administrative law is a branch of constitutional law.**

### **SIMILARITIES**

**Administrative law and constitutional law are closely related and their similarities include the use of similar:**

- a. Principles, rules and maxims**
- b. Case law (Judicial Precedents)**
- c. Statutes; and**
- d. Remedies**
- e. Both Administrative Law and Constitutional Law have to do with the application of Constitutional law and powers and the administration thereof; and**
- f. The implementation of both administrative and constitutional laws involves the use of the same governmental and administrative structures.**

### **DIFFERENCES**

- Administrative law is the law which regulates administration. It is concerned with the organization, powers and Conduct of government and administrative authorities.**

- **Constitutional Law, on the other hand, is the law of the Constitution. Constitutional law regulates the exercise of powers given by the Constitution. And administrative laws are indeed subject to the provisions of the Constitution. Hence, by virtue of Section 1 (3) of the Constitution 1999 where a provision of laws regulating administration contravenes an extant provisions of the Constitution, that particular provision is rendered null and void to the extent of its inconsistency to the Constitution.**
- **Administrative Law delves into the day to day administration of Government parastatals, bodies and organizations. It regulates the organization and management of the affairs of a given unit of people. In other words, administrative law governs the exercise of administrative powers, and prescribes remedies for the breach of the law.**
- **Constitutional law is the law of the Constitution. The Constitution is the supreme law of a country or State which stipulates its system of government, prescribes the powers of the State and public officers, sets out the rights and obligations of the citizens and provides the remedies for breaches of their duties.**
- **For the purpose of emphasis, a vivid example of these differences could be evident from the operations of the various organs of government in Nigeria. The Constitution provides basic laws by which these organs function. Administrative Law, on the other hand, defines the administrative processes and conduct of these organs. It deals with their day to day administration, the procedure, the organization and remedies for administrative acts.**

**In the case of NAFIU RABIU VS STATE (1981) 2 NCLR 293 at 326, the Supreme Court, per Udo Udoma JSC, explained the functions of a Constitution thus:**

*“The function of the Constitution is to establish a framework and principles of government, broad and general in terms, intended to apply to the varying conditions which the development of our several communities must involve.”*

- **While the Constitution derives its authority from the people, that is autochthonous; administrative laws are made by the establishing authority.**

**The students are to make further studies into other differences between Constitutional law and administrative law.**

- **4.0 CONCLUSION**

In this Unit, the Definition and Origin of Administrative Law were discussed. The usefulness of law to a society and the sources of Nigerian Administrative Law were also discussed. Administrative Law was presented as the law that governs the duties and functions of elected or appointed representatives of the nation. They manage public policy in the interest of the nation. They are therefore charged with governance, protection of law and order and the duty to maintain peace throughout the territory called Nigeria.

## 5.0 SUMMARY

As Managers who act in trust for all Nigerians, their activities are open to public examination at all times. That is how Public Administration derived its name (administration that is open to public scrutiny).

## 6.0 TUTOR MARKED ASSIGNMENTS

1. Define the concept of Administrative Law and itemize the functions of law in society.

2. Describe the Sources of Nigerian Administrative Law and state the Fundamental Human Rights enshrined in chapter 4 of the Nigerian Constitution 1999.

#### 7.0 REFERENCES/FURTHER READING

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

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## UNIT 2:

### CONTENTS

1.0 Introduction

2.0 Objectives

### SOURCES AND KINDS OF ADMINISTRATIVE POWERS

3.0 Main Content

3.1 Definition of Power

3.2 Sources of Administrative Powers

3.3 Kinds of Administrative Powers

3.3.1 Legislative Power

3.3.2 Executive Power

3.3.3 Judicial Power

3.4 Separation of Powers

3.5 Examples of Actions Reflecting Separation of Powers in Nigeria

4.0 Conclusion

5.0 Summary

6.0 Tutor Marked Assignments

7.0 References/Further Reading

### 1. INTRODUCTION

Before the advent of modern Public Administration, the various communities in Nigeria were governed by traditional rulers, village heads, elders and appointed leaders of kindreds. They derived their powers from tradition, common agreements and values based on common good. The kings and village heads wielded power and were recognized by the communities they led. The leaders had courtiers who assisted rulers to evolve procedures for dispensing justice to all concerned in the interest of common good and well-being of the people. In Public Administration, power to regulate and manage the human and material resources of the nation is

vested in public officials who are either elected or appointed or appointed by prescribed authorities.

Whereas the functions and powers of traditional leaders derive from the customs and way of life of the respective traditional communities, the functions and powers of public officers and administrative authorities, derive from the Constitution of the Federal Republic of Nigeria, on the one hand and other statutes on the other hand. In other words, the Federal, State and Local Government Councils and Public Agencies are administrative authorities and have the power to make and execute government policies and to carry out government business.

In this Unit, you will be introduced to the Sources and Kinds of Administrative Powers exercised by Public Administrators.

## 2. OBJECTIVES

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

- \*Define the concept of Power
- \*Classify Kinds of Administrative Powers □
- \*Name the Sources of Administrative Powers

## 3.0 MAIN CONTENT

### 3.1 DEFINITION OF POWER

The word ‘power’ like most concepts in Social Science does not enjoy the luxury of a universally acceptable definition. However, the following three definitions are presented for ease of showing that ‘power’ has a basic connotation.

(a) The Oxford Advanced Learners Dictionary defines power as

“the ability to control people or things” (p. 910)

(b) Black’s Law Dictionary defines power as

(i) “The ability to act or not to act”

(ii) “Dominance, control or influence over another”

(iii) “The legal right or authorization to act or not to act; the

ability conferred on a person by the law to alter, by an act of will, the rights, duties, liabilities or other legal relations either of that person or another” (p.1189)

(c) Robbins and Judge (2007) opine that

“Power refers to a capacity that A has to influence the behaviour of B, so that B acts in accordance with A’s wishes” (p.470)

The words ‘control’, ‘potential’ to act or not to act, and ‘influence’

resonate from above definitions. They naturally originate the question, where does power come from?

### 3.2 SOURCES OF ADMINISTRATIVE POWERS

Administrative powers may be classified into three and have their respective sources as follows: Express Power, as enshrined in the Constitution, Incidental Powers; and

Implied Powers.

#### (a) **EXPRESS POWER**

Express power refer to authority to perform duties or functions specifically authorized by an enabling statute, like the Nigerian Constitution, an act of Parliament or a subsidiary Legislation which may be made by a public corporation/agency or authority.

#### (b) **INCIDENTAL POWERS**

These are powers which are not specifically given as express powers are, but which may be necessary in order to carry out an express power. For example, the Constitution empowers the National Assembly (made up of the Senate as the Upper Chamber and the House of Representatives, as the Lower Chamber) to make laws for the good order and governance of Nigeria. Appropriately, the National Assembly through its Joint Committee may undertake trips abroad to study, select public institutions or processes of enacting certain laws. That act of incurring travelling expenses, which is not expressly written in the Constitution, can be

justified under Incidental Powers. That is power that is exercised as necessary or incidental to the duty imposed on the National Assembly by the Constitution. 18

In *Ekemode v. Alausa*, where the plaintiff instituted an action for the loss of his canoe, damaged after it was seized, the High Court held that the destruction of the canoe cannot be viewed “as either necessary or incidental to the duty imposed on the defendant by his employer for the purpose of exercising its authority to clear the foreshore and landing route. In the absence of evidence to the contrary, the result is that the defendant’s wrongful act could not be regarded as apparently having been done in any of the circumstances entitling him to protection under the statute”.

### **(c) IMPLIED POWERS**

These are powers that an administrator feels is so close to his express powers that he assumes are derived from express powers. This often times turns out to be a fallacy of assumption, where an administrator feels he has authority to execute an action when truly he does not possess such powers. Any power that is not expressly given by statute or incidental to it, is void and of no effect.

### **3.3 KINDS OF ADMINISTRATIVE POWERS**

The functions of Public Administration which are carried out by various organs of government and functionaries include:

- (a) Planning
- (b) Organizing
- (c) Staffing
- (d) Directing
- (e) Coordinating
- (f) Reporting and
- (g) Budgeting

In order to ensure the effective and efficient execution and functioning of the business of Government, administrative powers have been classified mainly as comprising Legislative Power, Executive Power, and Judicial Power.

### **3.3.1 Legislative Power**

Chapter 1, Part II, of the 1999 Constitution of the Federal Republic of Nigeria, lists the powers of the Federal Republic of Nigeria. Section 4(1) specifically states

“The Legislative Powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives”.

Section (2) specifically charges the National Assembly with the duty to make laws for the “peace, order and good government of the Federation...”

Similarly, Section 6, states that “the Legislative Powers of a State of the Federation shall be vested in the House of Assembly of the State.”

Both the National and State Assemblies operate through Committees in the discharge of their statutory functions.

### **3.3.2 Executive Power**

Section 5 of the Constitution of the Federal Republic of Nigeria, vests Executive powers in the President and Commander-in-Chief of the Federal Republic of Nigeria. The President may exercise his powers directly or through his Vice President or through his Ministers or relevant officers in the public service of the Federation. Similarly, the Executive Powers of a State are vested in the Governor of that State (Section 5(2) 1999 Constitution).

In Administrative terms, Executive Power is power to perform designated duties, put plans into action or to perform a piece of work. The President of Nigeria and the various State Governors are the Chief Executive Officers of Nigeria and the various states respectively. The President may exercise his constitutional rights to manage the affairs of Nigeria, directly or indirectly through his Vice-President, Ministers, or through Officers in the Public Service of Nigeria. The President may delegate duties, but remains responsible for the actions of delegates.

### **3.3.3 Judicial Power**

Judicial powers are provided for in Section 6(1) of the 1999 Constitution of the Federal Republic of Nigeria. The Section specifically states that “The Judicial powers of the Federation shall be vested in the courts to which this Section relates, being courts established for the Federation.”

Section 6(2) vests Judicial Powers of a State in the courts of that State. Chapter VII of the 1999 Constitution, specifically in Section 230, creates courts that may exercise judicial powers, including the Supreme Court which is the apex court in Nigeria. Section 5 of the 1999 Constitution specifically lists the courts it recognizes as

(a) “The Supreme Court of Nigeria

- (b) The Court of Appeal
- (c) The Federal High Court
- (d) The High Court of the Federal Capital Territory, Abuja
- (e) A High Court of a State
- (f) The Sharia Court of Appeal of the Federal Capital Territory, Abuja
- (g) A Sharia Court of Appeal of a State
- (h) The Customary Court of Appeal of the Federal Capital Territory, Abuja
- (i) A Customary Court of Appeal of a State
- (j) Such other Courts as may be authorized by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws; and
- (k) Such other Courts as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House of Assembly may make laws.”

It must be noted that although the 1999 Constitution provides that the courts may exercise judicial powers in actions brought before them, Section 6(6) (c) and (d) limits the power of the courts to exercise powers on any “issue or question as to whether any act or omission by any judicial decision is conformity with the fundamental objectives and directive principles of state policy set out in Chapter II of this Constitution”. (Section 6(6)).

Section 6(6) (d), The Courts “shall not, as from the date when this Section comes into force, extend to any action or proceedings relating to any existing law made on or after 15 January 1966 for determining any issue or question as to the competence of any authority or person to make any such law”.

In exercising judicial powers, the courts must entertain disputes between parties whose evidence must be received and considered as espoused by the maxim ‘*audi alteram partem*’. The courts must entertain presentation of arguments by counsels to both parties on disputed issues of law. The courts may exhaust their procedures in investigation and interrogation of parties to disputes.

### 3.4 SEPARATION OF POWERS

The theory of Separation of Powers is anchored on the notion that in order to avoid arbitrariness, high handedness and excessive executive action, it is necessary to distribute government powers among the organs of government in such a manner as to ensure fairness, rule of law and objectivity.

The organs of government, to which Separation of Powers applies are: The Executive, the Legislature and the Judiciary. Each branch of Government has its duties and functions spelt out in Sections 4, 5 and 6 respectively of the 1999 Constitution of the Federal Republic of Nigeria.

The doctrine of Separation of Powers, though it is not directly enshrined in the Nigerian Constitution, became necessary in order to avoid what would be excesses of elected members of the National Assembly, a domineering executive and a

toothless judiciary. All three organs of government have separate and distinct powers, which when operated properly make the operators accountable for their actions. These powers as captured in Sections 4-6 of the 1999 Constitution, serve as checks on the powers of the organs of government. The organs of government are expected to work in harmony and cooperation with each other.

### 3.5 EXAMPLES OF ACTIONS REFLECTING SEPARATION OF POWERS IN NIGERIA

(a) The National Assembly generates bills which become Acts only when the President assents to them in line with Section 58(1) of the 1999 Constitution. In some circumstances the National Assembly may dispense with Presidential assent to bills.

(b) The President appoints Ministers which list will be sent to the National Assembly for confirmation.

(c) The Supreme Court of Nigeria rules on appeals sent to it without consultation with the Executive Arm of Government.

(d) Although the President may appoint the Chief Justice of the Federation with recommendation from the Judicial Council, he is not bound to pick the first name out of the three names sent to him for appointment.

#### 4.0 CONCLUSION

In conclusion, Administrative Powers enure to all the three branches of Government in order to ensure smooth management of Government business. The powers, though mutually exclusive, are expected to be executed in harmony and collaboration without any organ forcing the other to tow its views. The 1999 Constitution which is the nation's *grundnorm* respects and recognises the interdependence of the three organs of government.

#### 5.0 SUMMARY

The task of managing Government business in Nigeria is performed by the three organs of Government namely the Executive Branch, the Legislative Branch and the Judicial Branch. In pre-independence period, various communities were governed by monarchs, chiefs and tribal leaders whose sources of administrative powers derived from customs and consent of the people. In post-independence period however, sources of administrative power for Government business derived from express powers authorized by enabling statutes e.g. the Nigerian Constitution and Acts of Parliament or subsidiary legislation.

In the Nigerian Presidential System of Government, power is shared between the three branches of Government. The theory of Separation of Powers is encouraged in order to avoid dominance of one organ of Government over the other. The main

advantage of the tradition of Separation of Powers is that it prevents arbitrariness and excessive show of power by any organ of government.

## 6.0 TUTOR MARKED ASSIGNMENT

1. Define the concept of Power and discuss the classification of Administrative Power under the 1999 Constitution.

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## **MODULE 2 - ADMINISTRATIVE AUTHORITIES & FUNCTIONS**

### **UNIT 1: THE PRESIDENT/GOVERNORS**

#### **CONTENTS**

1.0 Introduction

2.0 Objective

3.0 Main Content

3.1 The President of the Federal Republic of Nigeria

3.2 The President as Controller of Material & Human Resources of the Nation

3.3 Governors

4.0 Conclusion

5.0 Summary

6.0 Tutor Marked Assignment

7.0 References/Further Reading

#### **1. INTRODUCTION**

According to Eneanya, A.N. (2009)

“Administrative Law is the law relating to Administration. It determines the organization, powers and duties of administrative authorities and indicates to the individual, the remedies for the violation of his rights.”

In this Module, we will consider the functions of some administrative authorities whose duties are enshrined in the 1979 Constitution of the Federal Republic of Nigeria. Public Service administrators operate within the confines of administrative law and Constitutional law. Their purpose is to seek the most effective ways of providing service to the good people who comprise the territory referred to as Nigeria.

In the following four Units of Module 2, we will consider designated administrative functions.

## 2. OBJECTIVE

The objective of this Unit is to examine the creation of the Office of President of the Federal Republic of Nigeria and Governors for the states. Their functions vis-à-vis the Constitution will also be examined. It is expected that students will at the end of this Unit, learn that the Office of the President and Governors are a creation of the Constitution.

### 3.0 MAIN CONTENT

#### 3.1 THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA

The Office of President of the Federal Republic of Nigeria is a creation of the Constitution. Section 130(1) of the 1999 Constitution states that “there shall be for the Federation a President”.

Section 131 states that “a person shall be qualified for election to the Office of President if:

- (a) He is a citizen of Nigeria by birth
  - (b) He has attained the age of forty years
  - (c) He is a member of a political party and is sponsored by that political party; and
  - (d) He has been educated up to at least School Certificate level or its equivalent”.
- (See page LL76 of the 1999 Constitution).

Section 135(2) of the Constitution states that the tenure of the Office of President is four years. The President may however, seek re-election at the expiry of the first term for another term.

As President of the Federal Republic of Nigeria, the incumbent is the Number One citizen of Nigeria and Head of the Executive Branch of Government. He appoints Ministers and Chairmen and members of certain Federal Executive Bodies including

- (a) Code of Conduct Bureau
- (b) Council of State

- (c) Federal Character Commission
- (d) Federal Civil Service Commission
- (e) Federal Judicial Service Commission
- (f) Independent National Electoral Commission
- (g) National Defence Council
- (h) National Economic Council
- (i) National Judicial Council
- (j) National Population Commission
- (k) National Security Council
- (l) Nigerian Police Council
- (m) Police Service Commission, and
- (n) Revenue Mobilization Allocation and Fiscal Commission” (see Section 153(1) of the 1999 Constitution.

Sections 143 and 144 of the 1999 Constitution stipulate the procedures for removal of the President from office.

### 3.2 THE PRESIDENT AS CONTROLLER OF MATERIAL AND HUMAN RESOURCES OF THE NATION

As already stated, Section 130(1) of the 1999 Constitution creates the Office of the President of the Federation. By that fact the President is the Head of State, chief Executive Officer of Nigeria and the Commander-in-Chief of the Nigerian Armed Forces. The Executive power to administer Nigeria is vested in the President by virtue of Section 5 of the 1999 Constitution of the Federal Republic of Nigeria.

To assist the President in his duties the Constitution created the Office of Vice President in Section 141 which inter alia states “there shall be for the Federation, a Vice-President”. The President therefore is empowered by the constitution to use

his discretion to assign responsibilities to the VicePresident and the Ministers, who together are some of the members of the Federal Executive Council.

As stated in Unit 2 of this course material, Executive powers of any public functionary including the President, are limited by Administrative law, because any executive act that does not have a legal source is *ultra vires*, that is, above the law and above the incumbent's power. This means that Executive powers are statutory.

As the Chief Executive and Head of the Executive Branch of Government, the President of the Federal Republic of Nigeria is the Controller of Material and Human Resources of Nigeria.

The Constitution recognises that the President alone cannot perform all the functions of the Executive Branch. That is why it created the offices of Vice President, Ministers, Heads of Service and Statutory Corporations. These functionaries assist the President to carry out Executive functions required of him by the Nigerian Constitution.

It is pertinent to note that in carrying out his functions, the Constitution has a protection for the President. That is why it provides that the President cannot be sued in a private capacity while discharging his duties as President.

### 3.3 GOVERNORS

Section 176 of the 1999 Constitution provides for the creation of the Office of Governor of a State. Specifically, Section 176(1) of the 1999 Constitution states "there shall be for each state of the Federation, a Governor". As the Executive functions of the President is in a Federal setting, so are the Executive responsibilities of a Governor in the state.

According to Oluyede (1988) "The Governor in a state is to a State what the President is to the whole Federation" (p. 99). In executing his functions in a State,

the Governor like the President is assisted by a Deputy Governor, Commissioners, Special Advisers, Heads and Chairmen of State Parastatals etc.

#### 4.0 CONCLUSION

From the foregoing, it is clear that the Offices of President and Governor are a creations of the Constitution. They are the first citizens of Nigeria in the case of President and of the 36 States of the Federation in the case of Governors respectively. The 1999 Constitution states the responsibilities and the same Constitution provides for the President and Governors, Vice- President, Deputy Governors, Ministers, Commissioners and a host of other officers who help the President and Governors in the discharge of their functions.

#### 5.0 SUMMARY

In this Unit, you have learnt that the President, whose office is a creation of the Constitution, is the Head of the Executive Branch of Government. In that capacity he is the Controller of the Material and Human Resources of the Federal Republic of Nigeria. The Governors of the 36 States which comprise Nigeria perform at state level what the President performs at the national level, in the Presidential system of Government.

As Chief Executives of the nation and their states respectively,, the President and Governors are the accounting officers within the limit of administrative powers. They may delegate functions to Ministers in the case of President and State Commissioners in the case of Governors but they cannot abdicate responsibility for managing the country and the states respectively.

#### 6.0 TUTOR MARKED ASSIGNMENT

- 1 (a) Is the creation of the Offices of President and Governors justifiable?
- (b) List and comment on certain Federal Executive Bodies that are meant to give support service to the President of the Federal Republic of Nigeria.

## 7.0 REFERENCES/FURTHER READING

1. Eneanya, A.N. (2009): *Public Administration in Nigeria: Principles, Techniques and Application*,  
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2. Oluyede, P.A. (1988). *Nigerian Administrative Law*. (5th Ed.) University Press, PLC. Ibadan.
3. The 1999 Constitution of the Federal Republic of Nigeria

## UNIT 2: MINISTERS/COMMISSIONERS/SPECIAL ADVISERS

### CONTENTS

1.0 Introduction

2.0 Objectives

3.0 Main Content

3.1 Ministers

3.2 Ministerial Responsibilities in a Presidential System of Government

3.3 Commissioners

3.4 Special Advisers

4.0 Conclusion

5.0 Summary

6.0 Tutor marked Assignment

7.0 References/Further Reading

### 1.0 INTRODUCTION

In this Unit, the student will be exposed to literature on Ministers, Commissioners and Special Advisers. These functionaries are lieutenants to the President, and they ensure that the right advice and assistance are given to the President in the discharge of his Executive functions, Ministers in the case of the Federal Executive Council, Commissioners in the case of State Executive Council and Special Advisers are a creation of the Constitution. They hold office at the pleasure of the President and the Governor of a State respectively.

### 2.0 OBJECTIVE

The objective of this Unit is to expose the student to the relevant parts of the Constitution which create the Offices of Ministers, Commissioners and Special Advisers respectively.

### 3.0 MAIN CONTENT

#### 3.1 MINISTERS

Section 148(1) of the 1999 Constitution states:

“The President may, in his discretion, assign to the Vice-President or any Minister of the Government of the Federation responsibility for any business of the Government of the Federation, including the administration of any department of government”.

The Office of Minister is therefore a creation of the Constitution. When the President nominates persons of integrity to be Ministers, following the doctrine of Separation of Powers, he forwards their nomination to the Senate (Legislature) for ratification. A person may only be sworn in as a Minister after he has been cleared and ratified by the Senate. The Senate is the Upper Chamber of the National Assembly. Persons who are sworn in as Ministers by the President become Members of the Federal Executive Council.

Section 148(2) of the 1999 Constitution states the duties of Ministers:

“The President shall hold regular meetings with the Vice-President and all the Ministers of the Government of the Federation for the purposes of:

- (a) determining the general direction of domestic and foreign policies of the Government of the Federation;
- (b) coordinating the activities of the President, the vice-President and the Ministers of the Government of the Federation and the discharge of their executive responsibilities; and
- (c) advising the President General in the discharge of his

executive functions other than those functions with respect to which he is required by this Constitution to seek the advice or act on the recommendation of any other person or body.” (see

p.LL85)

At present, following the Udoji Public Service Commission Report of 1974, Ministers are the accounting officers of the ministries in which they serve. As an aid to the President, the Minister at all times must be available to consult with the President on issues of state importance.

The President practices the principle of character in the appointment of Ministers. In other words, at least one Minister is appointed from each state of the Federation. A Minister is appointed to a Ministry where he coordinates the efforts of professional and administrative staff in order to attain the objectives of the Ministry which he is assigned to in accordance with the Civil Service Reform. Ministers attend the monthly Executive meetings presided over by the President at which they give official report of the activities of their respective ministries.

### 3.2 MINISTERIAL RESPONSIBILITIES IN A PRESIDENTIAL SYSTEM OF GOVERNMENT

**Ministerial responsibility is the responsibility of the entire cabinet, first to the parliament and ultimately to the people, for the policies and conduct of the executive arm of government during their term of office. The Constitutional doctrine of ministerial responsibility means that every member of the cabinet or executive who does not resign is collectively responsible for all that is decided at cabinet or executive meetings and for the actions of government during their tenure in office. In other words, the ministers are collectively responsible to Parliament, and then to the people. The ministers are collectively responsible to 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 of office, whichever is later.**

**The individual minister is also responsible for all the acts of his own ministry. If the doctrine of ministerial responsibility does not exist, then everyone in the executive, including the head of the government would disclaim responsibility, and no one would be responsible for the acts of government. The essence of the doctrine of ministerial responsibility is to promote responsibility, accountability, morality and good conduct in government. The doctrine of ministerial responsibility therefore means:**

- 1. Collective responsibility of all cabinet ministers or the executive for the decisions and actions of government; and**
- 2. Individual responsibility of each minister for the policies and actions of his ministry.**

Ministers are political functionaries of government who in Nigeria are appointed according to various geopolitical zones comprising the Federal Republic of Nigeria. In a Presidential system of government, Ministers are appointed by the President and recommended to the National Assembly for confirmation. The confirmation process takes the form of interview and background check to determine whether the persons so appointed are fit and proper to be members of the Federal Cabinet. They are sworn in as Ministers by the President after the National Assembly has confirmed their nomination. The same process obtains in the various States where the Governor appoints Commissioners and sends their list to the State House of Assembly for ratification.

As members of the Federal Executive Council or State Executive Council as the case may be, Ministers and Commissioners have a duty or loyalty to the President

or Governor who act as chairman of the Federal Executive Council or State Executive Council as the case may be.

According to Oluyede (1988): “although the President or Governor may assign to Ministers/Commissioners responsibilities for any Business of the government including the administration of any department or ministry of government, in reality the responsibility of the Minister/ Commissioner is no more than mere advice”. (p.57)

Although the Minister or Commissioner advises the President or Governor, they are not bound to take the advice or the Ministers or commissioners.

However, Section 148(1) of the 1999 Constitution previously quoted in this Unit under item 3.1, specifically documents Executive responsibilities of Ministers. It states:

“The President shall hold regular meetings with the Vice-President and all the Ministers of the Government of the Federation for the purposes of:

a. determining the general direction of domestic and foreign policies of the Government of the Federation;

b. coordinating the activities of the President, the Vice- President and the Ministers of the Government

of the Federation and the discharge of their executive responsibilities; and

c. advising the President General in the discharge of his executive functions other than those functions

with respect to which he is required by this Constitution to seek the advice or act on the recommendation of any other person or body.” (see p.LL85)

Section 149 of the 1999 Constitution provides that a minister of the government of the Federation shall not enter upon the duty of his office until he has declared his assets and liabilities as prescribed in the Constitution and has subsequently taken

and subscribed the Oath of Allegiance and the oath for the due execution of the duty of his office as prescribed in the 7th Schedule of the 1999 Constitution.

The Minister's primary responsibility as provided by the Constitution is advisory. They provide advice to the President who has the responsibility for determining the general direction of the domestic and foreign policies of the government of the Federation and in the discharge of presidential executive functions as prescribed in the Constitution.

In his advisory role, the Minister has the responsibility of attending the weekly executive meetings which are presided over by the President. He is supposed to work in harmony with members of his Ministry or department so that the objectives set for his ministry or department may be achieved. As a member of the Federal Executive Council, the Minister has a collective responsibility for the actions of the Executive. In other words, he cannot dissociate himself from any decisions of the Federal Executive Council of which he is a member. In the post-Udoji commission era, Ministers are now accounting heads of the ministries that are assigned to them. They make decisions and seek advice from the Permanent Secretaries attached to their Ministries who in most cases are career officers and are conversant with Government policies for ease of continuity and unity of purpose.

### 3.3 COMMISSIONERS

Commissioners are as to Governor and a State as Ministers are to the President and the Federal Republic of Nigeria. In other words, Commissioners as Ministers are a creation of the Constitution. They are

basically “helpers” to the State Governor in the administration of the state. Like Ministers, they are nominated by the governor and sent to the House of Assembly for ratification. A Commissioner may only be sworn in after the State House of Assembly has ratified his nomination. This again reflects the separation of power between the Executive and the Legislative.

In line with the tradition for a Governor to reflect all geographical areas of a state in his appointment, he must appoint commissioners from all the geo-political zones of the state. Like Ministers, Commissioners are assistants to the Governor. They are Heads of the Ministries which are assigned to them. In that capacity, Commissioners are accounting officers and they coordinate the efforts of the administrative and professional staff of their Ministry. They attend monthly Executive meetings presided over by the State Governor at which time they give official report about their respective ministries.

### 3.4 SPECIAL ADVISERS

Section 151(1) of the 1999 Constitution creates the Office of Special Advisers. Specifically, the Section states

“the President may appoint any person as a Special Adviser to assist him in the performances of his functions”.

Section 151(2) provides that the remuneration of Special Advisers shall be “as prescribed by law or by resolution of the National Assembly.”

It is important to note that the nomination of Special Advisers need not be sent to the Senate for ratification in the case of President or to the House of Assembly in the case of Governor. A Special Adviser holds office at the pleasure of the President or Governor as the case may be.

In the case of Governor of a State, Section 196(1) of the 1999 Constitution provides for the Governor to appoint any person as Special Adviser “to assist him in the performance of his functions”. A Special Adviser,

It is important to note however, the provisions of Section 196(2) of the 1999 Constitution which empowers the House of Assembly of a State to agree with the Governor on the number of Advisers prior to their appointment. Specifically, that Section states

“the number of such Advisers and their remuneration and allowances shall be as prescribed by law or by resolution of the House of Assembly of the State.”

It is wise to assume that as in the case of Commissioners, the Governor will appoint the agreed number of Advisers from the geo-political zones of the entire state.

#### 4.0 CONCLUSION

From the foregoing, it is evident that Ministers, commissioners and Special Advisers are a creation of the Nigerian Constitution. The President and Governors as the case may be appoint these functionaries to assist him or her in the discharge of Executive functions. A degree of

honesty and dedication of duty is expected by persons appointed as Ministers, Commissioners and Special Advisers.

It is important to note that Ministers, commissioners and Special Advisers hold office at the pleasure of the President or Governor as the case may be. In other words, if the President or Governor leaves office, their tenure is deemed to end.

## 5.0 SUMMARY

As Chief Executive Officer of Public Administration in Nigeria, and Chief Executive Officer of the respective States of the Federation, the President and Governors respectively are empowered by the Nigerian Constitution to appoint Ministers or commissioners and Special Advisers to help them in the discharge of their executive functions.

As we have noted previously, the Constitution recognises the concept of separation of powers. That is why nomination of Ministers and Commissioners respectively must be sent to the Senate in the case of President or House of Assembly in the case of Governors for ratification. It is only after the Senate (in the case of President) and House of Assembly (in the case of Governors) have confirmed the nomination of Special Advisers sent to them, that the Advisers may be sworn in. The Special Advisers however are exempt from ratification by Senate or State House of Assembly as the case may be.

## 6.0 TUTOR MARKED ASSIGNMENT

1. Describe the functions of Ministers. Are there special occasions when a Minister may be appointed and sworn into office without ratification by the Senate?
2. Has a Governor who appoints a Special Adviser without reference to the State House of Assembly contravened any law?

## 7.0 REFERENCES

1. Egwummuo, J.N. (2000). *Modern Trends in Administrative Law*. Academic Publishing Company, Enugu.
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## UNIT 3: THE CIVIL SERVICE

### CONTENT

1.0 Introduction

2.0 Objective

3.0 Main Content

3.1 The Civil Service

3.2 Characteristics of the Civil Service

3.3 Office of the Head of the Civil Service

3.4 Permanent Secretary

3.5 Security of Employment in the Civil Service

4.0 Conclusion

5.0 Summary

6.0 Tutor marked Assignment

7.0 References/Further Reading

### 1.0 INTRODUCTION

This Unit will deal with literature on the Civil Service. A clear distinction will be made between Public Service and Civil Service. The characteristics or features of Civil Service job will be outlined and the Office of Head of Service and that of the Permanent Secretary will be discussed. Literature on security of employment in the Civil Service will be discussed in order to draw a contrast between the old Civil Service and modern Civil Service where tenure of service has become a political issue.

### 2.0 OBJECTIVE

The objective of this Unit is to introduce the student to the Public Service and the Civil Service respectively and to discuss the duties of the principal functionaries in

the system namely Office of the Head of the Civil Service and Permanent Secretary.

### 3.0 MAIN CONTENT

#### 3.1 THE CIVIL SERVICE

**The civil service means every branch, arm, department, authority, agency, or institution of government and the people who work for them. The civil service is the administrative arm of government. The civil service manages the affairs of government, exercises the powers, carries out the duties, functions, business and activities of government and implements the policies, objectives and programmes of government.**

**According to Malemi, the civil service is also known as the public service. The civil service or public service means government and all government agencies and the people who work for them. The 1999 Constitution like any other Constitution before it, provides for and establishes civil service for the Federal, State and Local Government areas. The Code of Conduct Bureau and Tribunal Act which is a part of the 1999 Constitution defines who is a civil servant, public servant or government worker, in the Second Schedule to the 1999 Constitution, under the title: Public Officers for the purposes of the Code of Conduct.**

#### **Establishment of Civil Service of the Federation**

Section 169 of the 1999 Constitution creates the Civil Service of the Federation. The Section states that “there shall be a Civil Service of the Federation”. Just as the Office of President, Governors, Ministers or commissioners are a creation of the Constitution, so is the Civil Service.

Similarly, Section 206 of the 1999 Constitution provides for the establishment of a Civil Service of a State. Consequently, the Section states “there shall be for each State of the Federation, a Civil Service”. In other words, the Constitution provides for each of the 36 states which comprise the Federal Republic of Nigeria to have its own civil service.

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

According to Malemi:

“Generally, the Civil Service is the body of workers excluding who work for any branch, or department of government, or any agency, authority, body, institution or establishment owned by government, and are usually paid out of money voted or budget passed by parliament.”(p. 382)

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

The remuneration of public servants is based on salary and conditions of service approved for civil servants. As a subset of public service, the Civil Service which is constituted in the above paragraph is a creation of the Constitution. Ministries, local government councils, public service commission and other service organizations as funded by the government, comprise the Civil Service and those that work in the civil service referred to as civil servants.

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

## 3.2 CHARACTERISTICS OF THE SERVICE

Although elected officers who are politicians work with civil servants in their tenure, civil servants are not politicians. They survive the tenure of politicians whom they have to work with in the interest of good order and governance.

In that regard, the Civil Service has the following characteristics:

### **(a) Permanency**

The Civil Service has a permanent structure. The tenure of civil servants is permanent and succeeds all governments. He does not belong to any political party and they survive the tenure of politicians. The tenure of public servants is not affected by changes in the administration which they serve. In other words, if there is a change in government which sweep all the political office holders, civil servants as career officers remain in their post in readiness to serve the next administration by proffering advice, engaging in policy formulation, programme planning and budget preparation as the case may be.

### **(b) Neutrality**

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

### **(c) Impartiality**

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

### **(d) Anonymity**

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

(e) **Expertise**

The civil service is made up of people of varied professional background. They are expected to provide expertise in their areas of specialization freely without discrimination to anyone.

(f) **Bureaucracy**

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

### 3.3 OFFICE OF THE HEAD OF THE CIVIL SERVICE

As we have noted, the civil Service comprises all government agencies and the human resources who work for the agencies. Section 170 of the 1999 Constitution provides for the President to appoint persons to the position of Head of the Civil Service of the Federation. Specifically, Section 171(2) empowers the President to appoint suitable persons to the following positions:

“(a) Secretary to the Government of the Federation

(b) Head of the civil Service of the Federation

(c) Ambassador, High Commissioner or other Principal Representative of Nigeria abroad

(d) Permanent Secretary in any Ministry or Head of any Extra- Ministerial Department of the Government of the Federation howsoever designated; and

(e) Any office on the personal staff of the President”.

The Head of the Civil Service is one of these positions.

However. Section 171(3) makes it mandatory for the President of the Federal Republic of Nigeria to appoint a person to the Office of the Head of the Civil Service of the Federation from among Permanent Secretaries or equivalent rank in

the civil Service of the Federation or of a State. This means that the Constitution places integrity on the office of the Head of the Civil Service. That is why it states that a person to be appointed to office must be from among serving Permanent Secretaries. This emphasizes the fact that the appointee must be a civil servant who is knowledgeable in civil service rules and procedures and not a politician. As Head of the Civil Service the appointee is the chief Administrative Officer of the civil Service. He should be able to enjoy the respect and loyalty of other Permanent Secretaries on the one hand and other civil servants on the other.

Similarly, Section 208 of the 1999 constitution empowers a State Governor to appoint persons to the position of

- (a) Secretary to the Government
- (b) Head of Service of a State
- (c) Permanent Secretary
- (d) Personal staff to the Governor

The same conditions that apply to the Office of the Head of the Civil Service at the Federal level apply to the Head of the Civil Service of a State government.

### 3.4 PERMANENT SECRETARY

Section 171(2) of the 1999 Constitution vests the appoint of Permanent Secretary in the President. The Permanent Secretary in a Federal Ministry used to be the administrative head of the Ministry and the accounting officer before the acceptance of the Udoji Commission which made Ministers the administrative head of Ministries and the accounting officers of their respective ministries. Similarly, in the State Section 208(1) vests the power to appoint a Permanent Secretary in the State Governor.

The office of the Permanent Secretary is a creation of the constitution. He should be a senior career civil servant who is knowledgeable in the rules and regulations

of the civil service. The office of Permanent Secretary is a tenured position and when the incumbent retires from service he retires with his terminal salary.

### 3.5 SECURITY OF EMPLOYMENT IN THE CIVIL SERVICE

The civil service as we have it today is a modified form of the civil service that Nigeria inherited at independence. In pre-independence era, civil servants held their appointment at the pleasure of the Crown as confirmed in a leading case of *Dunn v. The Queen* (1896) 1 QB. 116). In post-independent period, civil servants no longer held their appointment at the pleasure of state. They may no longer be dismissed or removed from office indiscriminately. This was achieved because of a Supreme Court decision in the case of *Bashir Alade Shitta-Bey v. Federal Public Service Commission* (1981) 1 SC. 40. The federal and state governments as employers of labour now follow labour laws and procedures in dispensing with the service of civil servants.

Civil servants may now seek redress in court if the tenure of their service is disrupted by unjustified infringement of their fundamental human right. In the case of *Dr. O.G. Sofekun v. Chief N.O.A. Akinyemi and others* (1981) 1 NCLR 135 (see pages 140 and 146), The Supreme Court held that the purported dismissal of Dr. Sofekun was illegal, null and void and of no effect.

In the current dispensation, civil servants can seek redress in a court of law for acts of dismissal or other excessive disciplinary action if they believe that their fundamental human rights have been infringed. Security of tenure for civil servants is now the same as for any employment in the other sectors of the economy where an employee is given all necessary training and tools of work in order to give of his best to the organization. This is without prejudice to genuine disciplinary actions of staff that include possible dismissal or termination of appointment for gross misconduct, after all due processes have been followed. As it stands today, tenure in the civil service is guaranteed and severance (retirement) from service for a civil

servant with a good record is to be at 30 years of continuous service or attainment of age 60.

#### 4.0 CONCLUSION

The Federal Civil Service on the one hand and the State Civil Service on the other hand, comprises of men and women who assist the President or Governor and state agencies in public administration. The career advancement and discipline of civil servants is carried out by the Civil Service Commission. Civil servants by rotation are supposed to exemplify the characteristics of the Civil Service which include permanency, neutrality, impartiality, anonymity etc.

#### 5.0 SUMMARY

The civil service comprises workers and political appointees who assist the President and the Governors as the case may be in the many functions of public administration. While the political appointees enjoy tenure of office at the pleasure of the President or Governor, the civil servants are career officers who exemplify the characteristics of the Civil Service. They are professionals and dedicated persons whose tenure of office survives political administration which they serve from time to time.

The Nigerian Civil Service Commission disciplines and promotes federal civil servants while the state Civil Service Commission disciplines and promotes civil servants in the state. Nigeria comprises 36 states, so there are 36 Civil Service Commissions across Nigeria while there is one Federal Civil Service Commission at Abuja.

#### 6.0 TUTOR MARKED ASSIGNMENT

- 1 (a) List and comment on the characteristics of the Civil Service
- (b) Do modern day civil servants exemplify these characteristics?

## 7.0 REFERENCES/FURTHER READING

1. Eneanya, A.N. (2009). *Public Administration in Nigeria: Principles, Techniques and Application*,  
Concept Publishers Ltd, Lagos
2. Malemi, E. (1999). *Administrative Law* (3rd Ed), Princeton Publishing Co,  
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## UNIT 4: THE CIVIL SERVICE COMMISSION

### CONTENT

1.0 Introduction

2.0 Objective

3.0 Main Content

3.1 Establishment of the Civil Service Commission

3.2 Duties of the Civil Service Commission

4.0 Conclusion

5.0 Summary

6.0 Tutor marked Assignment

7.0 References/Further Reading

### 1.0 INTRODUCTION

The Federal Civil Service Commission is a body of appointed men of integrity who have mostly retired from their career positions in the public and private sectors of the economy, under the umbrella of a commission known and referred to as the Federal Civil Service Commission. They are appointed and constituted by the President in the case of Federal level while the Governor of a state may appoint and constitute the same commission as applicable to a state. The commission has a Chairman who is a retired career officer and a Secretary who is a serving administrative officer in the civil service recommended by the Head of Service to provide administrative support to the commission.

The most important duty of the commission is the general control, administration and discipline of civil servants working in the federal civil service and in the case of state, their duties will be the same i.e. the general control, administration, discipline and promotion of civil servants working in the state civil service. The Federal Civil Service Commission is responsible to the Federal Executive Council.

## 2.0 OBJECTIVE

In this Unit, we will be exposed to an independent body recognized by the Nigerian Constitution whose membership is appointed by the President to carry out defined human resources functions including promotion and discipline of certain grade of civil servants. The Federal Civil Service Commission works in collaboration with the Federal Ministry of Establishment at the national level and the State Civil Service commission which works in collaboration with the Ministry of Establishment in the state performs at state level the same functions that the Federal Civil Service Commission performs at the federal level.

## 3.0 MAIN CONTENT

### 3.1 ESTABLISHMENT OF THE CIVIL SERVICE COMMISSION

The existence of the federal Civil Service Commission is recognized by Section 170 of the 1999 Constitution. The Section empowers the Commission to delegate functions to its members as approved by the President. Specifically, it states that “Subject to the provisions of this Constitution, the Federal Civil Service Commission may, with the approval of the President and subject to such conditions as it may deem fit, delegate any of the powers conferred upon it by this constitution, to any of its members or to any officer in the civil service of the federation.”

The Federal Civil Service Commission is an independent body from the Civil Service which is appointed by the President to perform certain designated functions affecting the Civil Service. In other words, the Commission is not a political body. Rather it is a body made up of men and women of integrity and sound education, some of whom may have been top civil servants in their career days or captains of industry in the private sector as the case may be.

The commission has a full time chairman and commissioners. At the federal level, the chairman of the Federal Civil Service Commission is appointed by the

President and Commander-in-Chief of the Armed Forces while at the state level, the chairman of the state Civil Service Commission is appointed by the Executive governor of the state. The duties and operations of the Federal Civil Service Commission cover senior officers from grade level 07 and above while the Ministry of

Establishment takes charge of the affairs of junior employees from grade level 01 to grade level 06. Similarly, in the state, a state Civil Service Commission takes charge of the affairs of senior civil servants from grade level 07 and above while the state Ministry of Establishment takes charge of the affairs of junior civil servants from grade level 01 to grade level 06.

### 3.2 DUTIES OF THE CIVIL SERVICE COMMISSION

The duties of the Civil Service Commission include

1. The commission performs human resources functions of recruitment and selection of senior civil servants from grade level 07 and above into the civil service. Their consideration for recruitment includes vacancy, educational qualification and filling of positions in the civil service based on federal character representation. The mode of recruitment and selection is competitive which could take the form of oral interviews and/or written examination.
2. The commission supervises the promotion of competent senior officers from one grade level to another based on performance appraisal recommendation of supervising officers,
3. Subject to availability of vacancy and the need to balance manpower in the civil service, the commission is empowered to effect the transfer of civil servants from one department to another as the need arises.
4. The commission exercises disciplinary powers within the Federal civil service. Such disciplinary powers may include power to suspend delinquent officers from duty and power to effect severance within the civil service including possible

termination of appointment and dismissal from service in case of established and proven gross misconduct.

5. The commission has power to effect the retirement of senior civil servants following laid down Civil service procedures and to accept notices of resignation of senior civil servants.

6. It is the place of the commission to advise on payment of pensions and other entitlements to retired civil servants. These same functions are correspondingly performed by state Civil Service Commissions who have been appointed by the state Governor.

#### 4.0 CONCLUSION

The Federal Civil Service Commission has the recognition of the Nigerian Constitution. Although a serving President appoints the Chairman of the Federal Civil Service Commission as the Governor does in the case of a State, the members of the commission are not partisan. They are men and women of integrity and knowledgeable background who are committed to sanitizing the civil service and promoting competent and deserving civil servants from grade to grade. They are empowered to take disciplinary procedures against erring civil servants while effecting the promotion of personal within the service.

#### 5.0 SUMMARY

The Civil Service and the Civil Service Commission are a creation of the Nigerian Constitution. The functions of the Civil Service Commission are distinct and the members carry out those functions impartially and without fear or favour. They sanitize the civil service, protecting the dignity of labour and approving sanctions in case of erring civil servants and processing the promotion and career advancement of competent civil servants.

#### 6.0 TUTOR MARKED ASSIGNMENT

1. (a) State and comment on the functions of the Civil Service Commission.
- (b) Is it possible to be impartial as a civil service commissioner? Give reasons for your answer.

#### 7.0 REFERENCES/FURTHER READING

1. Egwummuo, J.N. (2000). *Modern Trends in Administrative Law*. Academic Publishing Company, Enugu.
2. Eneanya, A.N. (2009). *Public Administration in Nigeria: Principles, Techniques and Application*, Concept Publishers Ltd, Lagos
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## UNIT 5: NIGERIA LOCAL GOVERNMENT ADMINISTRATION

### CONTENT

1.0 Introduction

2.0 Objective

3.0 Main Content

3.1 Creation of Local Governments

3.2 Meaning and Reasons for Establishing Local Government

3.3 Functions of Local Government

3.3 Sources of Local Government Revenue

3.4 Problems Confronting Local Governments

3.5 Control of Local Governments

3.6 Local Government Reforms

4.0 Conclusion

5.0 Summary

6.0 Tutor Marked Assignment

7.0 References/Further Reading.

### 1.0 INTRODUCTION

The local government system as we have it today in Nigeria, is guaranteed by Section 7(1) of the 1999 Constitution of the Federal Republic of Nigeria. In a democratic system, it is the National Assembly through an act that creates the local government areas. Section 8(3) makes it

abundantly clear that

“A bill for a Law of the House of Assembly for the purpose of creating a new local government area shall only be passed if:-

(a) A request supported by at least two-thirds majority of members (representing the area demanding the creation of the new local government area) in each of the following; namely:

- (i) The House of Assembly in respect of the area, and
- (ii) The local government councils in respect of the area is received by the House of Assembly;
- (b) A proposal for the creation of the local government area is thereafter approved in a referendum by at least two-thirds majority of the people of the local government area where the demand for the proposed local government area originated;
- (c) The result of the referendum is then approved by a simple majority of the members in such local government council in a majority of all the local government councils in the State; and
- (d) The result of the referendum is approved by a resolution passed by two-thirds majority of members of the House of Assembly.”

At the end of Indirect Rule system of the colonial administration, local communities in Nigeria were governed through collaboration by family heads with village heads who met in the public square of town centres to discuss their problems and form a consensus on actions towards self development. Since then, the management of the affairs of people at the grassroots has passed through several changes with successive governments in Nigeria.

After the Nigerian civil war ended in 1970, serious plans were made to rehabilitate local governments. Today local government council areas form the third tier of government. The first tier is the Federal Government while the second tier is the State government. In local government administration, local authorities directly buy the people in the grassroots, attempting to improve the social, economic levels of their people through provision of social services (better life) for the inhabitants of their local government areas. As already noted, Sections 7 and 8 of the 1999 Constitution guaranteed independent existence of local government areas.

## 2.0 OBJECTIVE

At the end of this Unit, the student will know the reasons for establishing local government areas, their main functions, sources of local government revenue and problems confronting local government areas. An understanding of these concepts will increase the students' appreciation for the independent grassroots body whose primary duty is to provide an enabling environment for the people of local government to manage their own affairs as their needs and customary way of life permit.

## 3.0 MAIN CONTENT

### 3.1 CREATION OF LOCAL GOVERNMENT AREAS

According to Section 7(1) of the 1999 Constitution:

“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.”

In a modern state, the local government as the third tier of government is the lowest level of government where the people in the grassroots elect from among themselves (inhabitants of the area), people of integrity to manage their affairs. Today Nigeria has 774 local government areas. The number has increased steadily from 299 in 1970 and 301 in 1979. The administration of each local government area consists of a Chairman who is the chief Executive of the local government and a designated number of elected members who are called Councilors. They are democratically elected by the people of the local government area, one of the

qualifications for election being residency in the area. Each local government area is further divided into wards for ease of administration.

## 3.2 MEANING AND REASONS FOR THE ESTABLISHMENT OF LOCAL

### GOVERNMENT

#### 3.2.1 **Meaning**

The local government administration means an administration that is powered by local government people, charged with the responsibility of conducting business for the local communities in the designated area. Although a local government area is inferior to the Federal and State governments, it however has independence to administer its resources and to make decisions affecting the people in the local government area. It is legally distinct from the Federal and State governments.

#### 3.2.2 **Reasons**

- (a) Local government areas were established to provide designated local communities the legal authority to conduct their own affairs in line with their traditions and customs.
- (b) The local government provides an avenue for mobilizing local communities to support community and social development i.e. enforcing community and social development.
- (c) It provides for the people of the local government area, a voice for the purpose of communication with the State and Federal Governments. Their elected representatives represent them at all meetings at federal and state government levels.

(d) Local government system affords the people the opportunity of participating in government they themselves have elected democratically i.e. a local government administration elected by the people of the local government for the local government.

### 3.4 FUNCTIONS OF LOCAL GOVERNMENT COUNCILS

The functions of local government councils are set out in the first schedule of the Nigerian Constitution. According to Egwummuo:

“the main functions of a local government council are as follows

The consideration and the making of recommendations to a state commission on economic planning or similar body on: (i) the economic development of the state, particularly so far as the areas of authority of the council and of the state are affected, and

- (ii) Proposals made by the said commission or body.
- (b) Collection of rates, 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 lighting, 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 houses
- (h) Provision and maintenance of public conveniences, 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:

Out-door advertising and boarding

Movement and keeping of pets of all descriptions □□Shops and kiosks

Restaurants, bakeries and other places for sale of food to the public

Laundries, and

Licensing, regulation and control of the sale of liquor.”

### 3.5 SOURCES OF LOCAL GOVERNMENT REVENUE

In order to discharge its responsibilities to the relevant local government, the local government council derives its revenue from the following sources:

#### (a) **Government Statutory Revenue Allocation**

Government statutory revenue allocation from the federation account is shared to each local government area of the federation. 23% is shared from the federation account to each local government area. The disbursement from the federation account is sent direct to the local government through the respective state governments.

#### (b) **Local Rate**

Local government councils add to their revenue by collecting rates which include radio and television licenses, poll tax and rates on property including lands, buildings and related property.

#### (c) **General Tax**

The general tax which the local government depend on include

(i) Community tax which is the tax that is levied on every adult

male within the community. Usually village heads or *baales* expedite this collection because they know their able-bodied adult males in the villages or quarters.

(ii) Cattle Tax which is prevalent in the Northern states where the tax is called *jangali*. The rank and file of cattle owners is known to village heads and the chairmen of cattle owners association collects this tax from their members for submission to the local government through the Village heads.

#### **(d) Grant from State Government**

In addition to allocation from the federation account which the Federal government makes to the local government, State governments also give to the local government about 10% of internal revenue generated from the state.

(e) Various local government councils are regarded as having “legal personalities”. They have the capacity to borrow money to finance

their major projects. With the approval of the relevant state government, local government councils can raise loans from financial institutions.

#### **(f) Other Sources of Revenue**

Local government councils may also generate revenue for their operations from:

- Hospitals Car parks Hotels
- Bicycle licenses Tricycle licenses
- Commercial motorcycles Land registration
- Forest receipts.
- Slaughter houses, marriage licenses etc
- Court fees arising from divorce proceedings, fines, levy on inheritance and fees from civil suits.

### **3.5 PROBLEMS CONFRONTING LOCAL GOVERNMENTS**

It is a consensus of opinion nationwide that local government councils suffer from the following problems:

#### **(i) Corruption**

There is a basic assumption that elected officials into a local government council administration exercise the freedom of decision making which observers have noted as almost operating without supervision. They have accusations of diversion of money meant to support public programmes to serve private interests. Embezzlement of misappropriation is the bane of local government administration. This is believed to be rampant in most local government administrations in Nigeria.

#### **(ii) Ineffective Leadership**

It is assumed that the leadership of most local government areas in the country is inept. As soon as the elected officials are sworn in, they begin scheming for re-election in order to prolong their tenure. As a result of this, the chairman of council

plays it safe in coordinating a working relationship with his departmental heads. In the process of buying time and remaining in the good books of local government workers, traditional rulers and heads of wards. The chairman condones lapses from all concerned resulting in a rudderless leadership.

### **(iii) Poverty**

All local government councils are not endowed with natural resources in the same way. What is common to all local government councils is the revenue they are allocated from the federation account by the federal government. Beyond that, some local government areas generate more revenue than others depending on the natural resources in their areas of operation. So, while some local government areas have a lot of internally generated revenue to support their projects and overheads, others have not. In other words, some local governments are viable and others are not. The criterion for determining this depends on the amount of money the council generates from internal funds.

### **(iv) Dearth of Skilled Manpower**

It is well known that it is the skilled manpower of an organization that leads it to actualize its objectives but in the case of local government areas, evidence abounds that there is dearth of skilled manpower. Political leaning and consideration to some extent influences staff acquisition. There do not appear to be highly skilled personnel (technically, financially and administratively) to offer professional advice to the administrative hierarchy of local government areas.

### **(v) Poor Interface with State Government**

It is now well known that local governments whose chairman belongs to different political parties from the state governor appear to be confrontational and uncooperative with the state governor. Some Governors have taken draconian measures to cow stubborn local government chairmen into submission. One of

such measures is the erosion of the areas of influence of the local government by taking over the services hitherto provided by local government councils. The result is forcefully removing part of the money accruing to local government councils from the federation account

purportedly to pay for the services which the state government has allocated to itself.

Other problems exist which deter the local government councils from achieving their objectives but this presenter believes that healthy human relations and transparency will reduce the conflict between local government councils and the state government.

### 3.6 CONTROL OF LOCAL GOVERNMENTS

There is a need to control the activities of local government councils in Nigeria. If they are left unchecked, the possibility is that they will abuse the freedom to operate without checks and balances. The following are ways of controlling local government councils in Nigeria.

#### (a) **Ministry of Local Government and Chieftaincy Affairs**

Every state in the federation has a ministry of local government. The ministry should step up its responsibilities in supervision of local government activities and laws. It should constantly determine new ways of improving their relationship with local government in order to create the desired spirit of cooperation in which sound advice and constructive criticism as regards policy formulation and implementation can be generated to the local government councils.

#### (b) **Inspection of Local Government Establishments**

It is the responsibility of state government to inspect periodically some services which local government councils render to their local communities e.g. school inspection, roads and health institutions within the local government area. If local government councils know that the state government through its agency will insist on standards through periodic inspection of certain facilities within the local government area, they will be more committed to doing the right things.

#### (c) **Intervention by the Commissioner for Local Government**

The commissioners for Local Government in the various states have the right, upon consultation with the state government to dissolve erring local governments. This is a rare occurrence but the powers are there for Commissioners for Local Government to dissolve a local government that is reckless financially and corrupt in its operations. However, some courageous Commissioners for Local Government have exercised this power in selecting local government in the past. In such circumstances corrupt and inept local government councils were dissolved and Care-taker Committees were installed on an interim administration basis before by-elections were held. According to Nwabueze (1983), excesses abound where elected local government councils were “being capriciously dissolved and replaced by appointed agents of the State government, the so-called caretaker committees or management boards or sole administrators” (p. 128).

#### **(d) Strict Disciplinary Measures Against Defaulting Officials of Local Government Councils**

The State Governments are empowered to appoint and to dismiss stubborn local government officials for gross misconduct through the unified local government services board which has responsibility to the state government civil service commission.

The above are various control measures which can be exploited by state governments and officers to whom the state government may delegate to control local government councils. It is recommended that state governments would take the control of local government areas as sacred duties because as the third tier of government, local government councils are capable of stalling state government activities at the grassroots if their services are poorly rendered and local government finances embezzled or misappropriated.

### **3.7 LOCAL GOVERNMENT REFORMS**

The word reform which could be used as a noun or a verb depending on the sentence construction is very dear to politicians in Nigeria. They use it to describe in their view, recommended changes to the composition of any system or practice which they have not executed properly. So it is common to hear of several civil service reforms, local government reforms, immigration reforms, customs and excise reforms etc. The Oxford Advanced Learners Dictionary defines the word 'reform' as

“to improve a system, an organization, a law, etc by making changes to it.”  
(p.1223)

In Nigerian public life, many reforms have been undertaken. We have experienced constitutional reforms, civil service reforms and local government reforms among others. Local government Reforms have been fairly purposeful in their nature. In

1972, local government system was one of the institutions listed for consideration by the then popular Udoji Public Service commission Reform. The Udoji Commission submitted its report in 1974 and government felt that the recommendations of the Udoji Commission were far-reaching enough. Government White paper following the submission of Udoji report accepted most of its recommendation. For example, the Commission recommended a uniform structure for Local Governments which prevented traditional rulers' direct rules in the running of local government council areas. That exercise embellished the functions already assigned to local government areas in the Nigerian Constitution and re-emphasized the functions that local government areas are a third tier of government.

However, with the introduction of the Presidential system of government in Nigeria in 1979, most of the changes recommended by the Udoji Commission were incorporated into the 1979 Constitution. The 1976 Local Government Reforms elevated local government administration to a higher level. Local government councils adopted an executive system where the Chairman was the chief Executive Officer of the area, responsible to the local government electorate having a capacity to receive federal grant from the federation account through the state government. Previously Councillorship was introduced, each councilor taking charge of a department in the local government council.

There was the Dasuki Local Government Review Committee of 1984. This committee saw state ministries of local government as clogs in the wheel of progress. They slowed down the development of local government areas from their bureaucratic maneuvering. So the Dasuki Committee scrapped states ministries of local government in 1988 and recommended direct disbursement of statutory allocation by the federation account straight to the local government councils as a quick response platform for local government development.

In 1988, there was another local government review commission and the federal government in a white paper abolished state ministries of local government and replaced them with a supervisory department in the Governor's office. The Federal government began by-passing state governments in statutory allocation direct to the local government. The federal government increased the statutory allocation to local governments from the federation account from 10% to 23%. Local governments were empowered in 1988 to prepare and approve their own budgets independently of state governments. That government action created the Office of Director of Local Government Edict and transferred primary education and primary health care to local government councils for administrative and supervisory purposes. In order to ensure that the interest of the grassroots communities is protected, traditional rulers were again officially involved in local government affairs.

The last local government reform was in 2004. The review was headed by the late Etsu Nupe, Alhaji Umaru Sanda Ndayako who was later replaced by Alhaji Liman Chiroma. The Report of the Local Government Review of 2004 was speedily accepted by the Federal Government which issued a White Paper as soon as the report was submitted.

Eneanya (2009) dramatically captured the contents of the 2004 Report as follows:

- (a) It retained the existing 774 local government councils
- (b) All local government councils must submit their annual budgets to their state houses of assembly for approval
- (c) Governments must ensure that whatever is due to local governments is made available to them, including 10 per cent of the monthly generated revenue or whatever portion of money that comes from the federal to the states that is meant for local governments

(d) That local government councils should fund their various services and agencies, including paying salaries of paramount traditional rulers and primary school teachers.

(e) Administration of local governments is purely the responsibility of state houses of assembly, which will make appropriate legislation to that effect; and

(f) Establishment of inspectorate departments to enforce compliance with the local government budget as approved by the planning and legal units of local government councils.

(See p. 132).

In order to make local government councils more purposeful in their administration and development of their communities, the National Assembly in 2005 enacted a law which among other things re-emphasized the following:

(a) That local government allocation be paid directly to them, thus divorcing local government channel of collection of allocation from state-local government joint account.

(b) Statutory allocation for local government was increased to 23%.

(c) The 2005 provisions mandated local governments to provide training to local government staff at all levels to make them more responsive in performing their functions. It can be said therefore that although there have been many local government reforms in the past, the 2005 law enacted by the National Assembly fundamentally changed the trajectory for local government administration from a near rudderless administrative capacity to a more purposeful administrative organ that in modern times has become the bastion of grassroots democracy,

#### 4.0 CONCLUSION

One of the ideas that motivated the introduction of organized local government system of administration is to bring administration close to the grassroots so that local communities will have a say in the governance of their geographical areas.

This was why successive federal administrations have always ensured the survival of local government councils in their tenure. In addition to revenue allocation to local government councils from the federation account, local government councils are empowered to raise revenue within the council areas from fees and rates on market stalls, registration of births, deaths, marriages, liquor licenses and motor park charges.

Local government councils can make life pleasant to the communities in their council areas if they execute their functions dedicatedly. If they eschew corruption, misappropriation and embezzlement of local government funds as has been observed in recent past, local government councils will bequeath enduring legacies of development to their local communities.

## 5.0 SUMMARY

In this Unit, we have seen the transformation of the process of administration of local community affairs by village heads, chiefs and clan heads to a scientific process of local government administration recognized by the constitution of the Federal Republic of Nigeria. The Constitution assigns functions and authority to local government council areas and empowers local government chairmen and their councilors with allocation from the federation account to develop their areas and encourage their citizens to participate actively in the democratic process by electing their chairmen and councilors.

Corruption and inability to account properly for monthly allocations have bedeviled local government councils. This is why many attempts have been made at reforming local government systems in the country. In a recent speech on 10th November 2009 to members of the Senate at their annual retreat at Nike Lake Hotel, Enugu, President Musa Yar'Adua lamented the present state of affairs in all the 774 local government

councils of Nigeria. He advised re-dedication of local government administrators in order to make local government administration more purposeful in the interest of local government communities.

If the dividends of the 2005 provisions as enacted into law by the National Assembly are dedicatedly pursued, local government would remain as is desired by the National Assembly on the one hand and indeed all Nigerians on the other hand, a veritable vanguard of democracy in Nigeria and a platform for grassroots development.

## 6.0 TUTOR MAKRED ASSIGNMENT

1.(a) Outline 5 functions assigned by the Nigerian Constitution to Local Government council areas.

(b) State two recommendations you would want the National Assembly to adopt, in order to make Local Government administration more purposeful to grassroots development.

## 7.0 REFERENCES/FURTHER READING

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## **MODULE 3 - CONSTITUTIONAL REMEDIES TO REDRESS**

### **ADMINISTRATIVE WRONGS**

UNIT 1: RULE OF LAW, ORIGIN OF THE DOCTRINE OF THE RULE OF LAW, NECESSARY CONDITIONS FOR THE RULE OF LAW TO THRIVE IN ANY SOCIETY

#### CONTENT

1.0 Introduction

2.0 Objective

3.0 Main Content

3.1 Rule of Law

3.2 Origin of the Doctrine of the Rule of Law

3.3 Necessary Conditions for the rule of Law to Thrive in any Society

4.0 Conclusion

5.0 Summary

6.0 Tutor Marked Assignment

7.0 References/Further Reading

## 1.0 INTRODUCTION

In this Unit we will examine the concept of Public Authorities in Litigation, the Origin of the Doctrine of the Rule of Law and Constitutional Remedies to Redress Administrative Wrongs. As is well known, officials in charge of public administration have rights, duties and privileges in the course of executing their job schedules. They also commit administrative wrongs in the course of their duties. Do the beneficiaries of the services of administrative personnel have any remedies to redress the wrongs of their officials? We will pursue this concept and advise on remedies to redress such administrative wrongs, some of which may be inadvertently committed by public officials. At the end of this Unit the student will know the origin of the concept of the rule of Law and Right of Action against the State.

## 2.0 OBJECTIVE

The objective of this Unit is to introduce the student to the subject of the Rule of Law. The student will see that in the discharge of their functions, public administrators do commit some wrongs which the recipients of such administrative actions have a right to redress administratively. Members of the society have a right of action against the state.

## 3.0 MAIN CONTENT

### 3.1 RULE OF LAW

**Rule of law or supremacy of the law is the observance and supremacy of civil laws, that is, laws which are reasonably justifiable in a democratic society. It is the application and respect of civil or regular laws in a country. Rule of law means that a country is governed by civil law or regular law, that is, laws**

**which are reasonably justifiable in a democratic society, as opposed to draconian, oppressive and arbitrary laws. Rule of law means government based on civil laws or laws which are reasonably justifiable in a democratic society and the exclusion of arbitrary laws or arbitrary exercise of powers by government.**

**Rule of law is rule of right and not rule of might. Thus, rule of law as a concept of law means the observance and supremacy of civil or civilized law. It means the absence of arbitrary laws and arbitrary action. The opposite of rule of law is rule by force, arbitrariness, despotism, dictatorship, tyranny and ultimately anarchy and chaos.**

**The concept of rule of law has been emphasized to mean the following:**

- 1. The Supremacy of law**
- 2. Equality before the law**
- 3. Independence of the Judiciary**
- 4. Respect and Protection of Fundamental Human Rights**
- 5. Respect and practice of Democracy**
- 6. Practice and respect of the doctrine of Separation of Powers**
- 7. A Free and independent Press**

### **3.2 ORIGIN OF THE DOCTRINE OF THE RULE OF LAW**

Philosophers and sages in history have always espoused that the constitution of the land is supreme and superior to the sometime arbitrary actions of rulers and government officials. This means that the laws of the land take precedence over the powers of public officials in government administration. Power and privileges therefore ought to be exercised within the boundaries prescribed by the constitution of the land. Any action of a public official which does not conform with the law and privileges to his position as enshrined in the constitution, is an action for which an affected citizen may seek redress i.e. the right of the citizen to bring an action

against the state. Socrates and Aristotle in ancient Greece engaged in philosophical dialogue with the Greeks of their time and speculated that the universe was governed by intelligible laws from which it was possible to derive rational laws a positively governing human conduct as individuals in the society. From natural laws the society adopted laws for the good order of society which may be referred to as the constitution evolved by the people to guide the relationship between man and man and society. An application of any other action which does not conform with what has been publicly acclaimed as acceptable to the people is arbitrary and must be appealed against.

In modern times, every nation has a well articulated constitution known to guide government administrators' actions and conduct of citizens in the respective countries. So government administrative actions that do not conform to the provisions of the constitution are arbitrary and the citizens to whom such actions refer have the right to appeal against such actions following the doctrine of the rule of law. The ancient philosophers emphasized the importance of regular law as superior to the arbitrary power of rulers and administrators which do not conform to regular law.

The 1999 Constitution made it abundantly clear in Chapter 1 Section 1(1) that “This Constitution is supreme and its provisions shall have binding force on all authorities of persons throughout the Federal Republic of Nigeria”.

Section 1(3) emphasized further the supremacy of the constitution: “If any 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.”

It is clear therefore that the concept of the rule of law is based on compliance with the regular laws of the land. Any action therefore of any administrative functionary which is in conflict with the regular law of the land to that extent is void and

arbitrary and any citizen who suffers from such administrative action has a legal right to seek redress in Nigeria's legal system.

Although many philosophers and sages commented on the rule of law and advised the citizenry to seek redress in cases where public officials have acted arbitrarily as opposed to the constitutional laws of the land, it was Albert Dicey, a Professor at Oxford University, England who brought the doctrine of the rule of law to the fore. In 1885, Dicey, commenting on the rule of law observed as follows:

“it means the absolute supremacy or predominance of regular law 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. English men are ruled by the law, and by the law alone; a man may with us be punished for a breach of the law, but he can be punished for nothing else.”

(See p. 202).

It is clear from the above quotation that government administrative actions are subject to constitutional law and that citizens or public beneficiaries of the exercise of government officials will not or ought not to be exposed to the arbitrariness of the powers of public officials. Therefore, any action of a public official which is not incongruent with the constitutional law regarding that action is arbitrary and an affected citizen may seek redress in law. The law therefore will restore him to the position he was before the arbitrary action of a government official.

In *Stroud v. Bradbury*, an English local authority entered the premises of a landlady with a view to effect repairs to her faulty drainage system under the Public Health Act, 1936. A sanitary inspector with his men entered the premises and the husband of the landlady obstructed the sanitary inspectors from carrying out the repairs. An action was brought against him for obstructing the sanitary inspector from performing his lawful duty. While the lower court held in favour of the sanitary inspector, the appeal court set aside the decision of the lower court

because the letter from the sanitary inspector to the landlady did not comply with the 24 hours notice of the planned entry as stipulated in the Public Health Act of 1936. The sanitary inspector's act was therefore arbitrary and the appeal of the plaintiff which constitutes an action against the state was upheld.

In *FCDA v. Sule*, the FCDA terminated the appointment of Sule. Sule went to court because the letter of terminated did not communicate that it was approved by the Minister as it was required by law. Sule challenged the authenticity of the letter of termination because as he believed, the process of termination did not follow the laid down procedure specified by law which is that the decision to terminate a public officer's appointment would be taken by the Minister. Sule had no evidence that the Minister authorized his termination. He believed therefore that the action to terminate his appointment was arbitrary. He went to court and the Supreme Court held in support of the lower court that Sule's purported termination disregarded the principles of natural justice. The termination was held to be illegal, null and void and of no effect. Sule was therefore reinstated to his former position and his salary and full benefits and privileges were full restored.

From the foregoing, it is evident that the regular laws of a country are superior to acts of administrators which are not congruent with it and beneficiaries who suffer from the arbitrary action of administrative officials under the rule of law have civil grounds to bring an action against the state. The courts which are the best interpreters of the law usually examine the merits and demerits of alleged actions or arbitrariness. Evidence abound that the courts in this regard has always exercised their judicial powers fairly and fearlessly.

From the above, it can be said that the concept of the rule of law exists to check the excesses of public administrators and government officials who inadvertently in the discharge of their duties, tend to be arbitrary and oppressive in negation of the laws of the land as enshrined in the constitution which ought to govern their

operations. The sufferers of the actions of despotic government officials have a right under the rule of law to seek redress; the courts have been very fair and objective in ruling in such cases.

### 3.3 NECESSARY CONDITIONS FOR THE RULE OF LAW TO THRIVE IN ANY SOCIETY

A discussion on the rule of law naturally leads to a discussion on human rights. The rule of law exists to protect human beings in society against arbitrariness of actions by public administrators or officials of government against citizens whose rights and privileges they are supposed to protect and to serve. Human rights are privileges which enure to a human being by virtue of his nationality. This means that every human being at birth acquires some rights. Human rights are rights, obligations and

responsibilities which characterize the existence of all human beings all over the world. According to Malemi (2008)

“they are the basic requirements of meaningful life every civilized state is expected to ensure for its citizens” (p. 107).

The 1999 Constitution devoted the whole of chapter 4 for the treatment of fundamental rights. Section 33 to Section 43 of the 1999 constitution specifically treats Right to Life, Right to Dignity of the Human person, Right to Personal Liberty, Right to Fair Hearing, Right to Family and Private Life, right to Freedom of Thought, Conscience and Religion, right to Freedom of Expression and the Press, right to Peaceful Assembly and Association, Right to Freedom of Movement, Right to Freedom from Discrimination, Right to Acquire and own Immovable Property anywhere in Nigeria, compulsory Acquisition of Property, Restriction and Derogation from Fundamental rights, Special Jurisdiction of High Court and Legal Aid. Most constitutions of the world embody provisions on fundamental rights. These provisions are binding on government and local authorities and members of society. The courts which are custodians and protectors of human rights are adept in constitution interpretation of human rights. However,

in any society, certain conditions must be present in order for the rule of law to thrive. These conditions are ably described by Male (1999) as follows:

1. A written and democratic constitution, setting out the powers and functions of government and the rights and duties of individuals
2. A constitutional and democratic system of government
3. A disciplined, selfless, patriotic, progressive and visionary leadership
4. Good, responsible, accountable and open government at all tiers of government
5. Mass education and enlightenment of the people
6. Sustainable economic growth of the country and prosperity of the people
7. A culture of fairness by the people and a shared value of mutual respect for individual rights
8. A culture of love for one's neighbour and being a protector and keeper of one's neighbour, instead of a culture of selfishness and love of oneself.
9. The right to fair hearing or due process of law and the public hearing in open court of legal proceedings whether civil or criminal
10. Existence of the right of appeal up to the Supreme court in all legal matters
11. Curtailment, proper and adequate supervision of delegation of powers and delegated legislation
12. The existence of peace and public order
13. The stipulation of human rights in a statutory form, such as a Bill of rights or a Fundamental Rights Chapter as in the Nigerian Constitution.
14. The practice of separation of powers in government
15. Acceptance that governance should be according to civil or regular law instead of decrees, emergency, martial or other arbitrary laws.

16. An independent and upright judiciary and public confidence in it.
17. Early access to court for persons to get justice
18. An expanded or a comprehensive public legal aid scheme to assist indigent persons to assert or defend their rights.
19. An expansive interpretation and application of the doctrine of *locus standi*, especially with respect to public interest litigation, with a view to defend the constitution, people and the public interest,” (p. 112)

In view of the importance of the rule of law to the orderliness in society, it is mandatory for any legitimate government to ensure that the factors that promote the rule of law are existent in the political set up of the country. It must be emphasized that peace and public order must be present in any political system of a country to provide the platform for the take-off of conditions that promote the rule of law. It is praise-worthy that the 1999 Constitution of the Federal Republic of Nigeria recognizes in Section 33 to 43, the sanctity of fundamental human rights.

#### 4.0 CONCLUSION

The rule of law is based on the need to protect the rights and freedom of the individual in society from arbitrary actions of government and public officials. The courts in any country are custodians of rights because it is their duty to interpret the constitution and to determine whether the rights of individuals have been infringed. There are necessary conditions that must be present before the rule of law can thrive in any society. It is the responsibility of a government in power to ensure that those conditions are present in order to sustain the rule of law.

#### 5.0 SUMMARY

The rule of law is a political state in the affairs of any country where both government functionaries and citizens know their rights and obligations and are

committed to respecting them. While the citizens know their rights and are prepared to defend them when they are infringed, government officials know their rights and obligations and execute their functions within the limits of the law of the land. Necessary conditions that must be present before the rule of law could be said to be effective include a constitution which is the “mother of all laws of the land”. It must be in place and must be respected and recognized by all and sundry. Other conditions exist as treated in this Unit.

#### 6.0 TUTOR MARKED ASSIGNMENT

1. Define the concept of the rule of law and state conditions necessary for the rule of law to thrive.

#### 7.0 REFERENCES/FURTHER READING

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## UNIT 2: SOVEREIGN IMMUNITY AND RIGHT OF ACTION AGAINST THE STATE

### CONTENT

- 1.0 Introduction
- 2.0 Objective
- 3.0 Main Content
  - 3.1 Sovereign Immunity
  - 3.2 Right of Action against the State
  - 3.3 Public Complaints Commission
  - 3.4 The Powers and Duties of the Commission
  - 3.5 Offences and Penalties
  - 3.6 Achievements of the Commission
- 4 Conclusion
- 5 Summary
- 6 Tutor marked Assignment 7 References/Further Reading

### 1.0 INTRODUCTION

**From early times, the doctrine of sovereign immunity had operated. The doctrine of sovereign immunity means that the King or Queen, and by extension later on, the state or government could not be sued in its own courts. For example, LORD THANKERTON explained the immunity of State in respect of tort action in ADAMS V NAYLOR (1946) 2 ALL E.R. 241 at P.244 thus:**

**“It is beyond doubt that no claim in tort will lie against the Crown in respect of a wrongful act done by its servants in the performance, or supposed performance of their duty; the only remedy, if any, must be against the person who actually committed the wrongful act, as personally liable therefor.”**

Similarly, in **MACKENZIE-KENNEDY V AIR COUNCIL (1927) 2 KB 531**, **ATKIN LJ** stated thus:

**“It is clearly established that no proceedings to enforce a remedy for tort will lie against the Crown, or against any servant of the Crown as representing in the proceedings the Crown, unless the Crown consents to such proceeding. The Crown itself can do no wrong, and the public revenues cannot be made liable without the Crown’s consent, to remedy wrongs committed by the servants of the Crown.”**

However, with the increase in government activities, and increase in the wrongs done to people, there was an increase in the number of petitions written to the king for relief, and consequently the need arose to grant relief in deserving cases. The process of writing petitions to the king for relief was formalized by the enactment of the **Petition of Rights Act** in England. This English common law and statute was received into Nigeria, and it regulated the position in Nigeria to the effect 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, except in certain well defined areas. The position continued until the **Petition of Rights Act** was eventually nullified by the **1979 Constitution** for the reason that the provisions of the **Petition of Rights Act** were unconstitutional as it was hindering access of aggrieved persons to court for the redress of wrongs done by the state or government.

Today, there is free access by virtue of the Nigerian Constitution to sue the state, government or any public officer or authority without the need to obtain consent. The only likely defences a government, or public authority may raise are non-justiciability of the matter, ouster clause in the constitution, immunity from judicial process, statute bar and other general defences under the law.

The combined effects of the provisions of the 1999 Constitution, just like other Nigerian Constitutions before it, is that the principle of Sovereign or State immunity and the petition of rights procedure and no more applicable in Nigeria since they were abolished by the 1979 Constitution. Under the 1999 Constitution the civil liability of Government is similar to that of any citizen, individual or person. The Government can now be sued in every area of law, civil or criminal. Therefore Government may be sued in contract, tort, and so forth. As a result the courts have readily held the government liable where its action has injured any person. In line with the present position, many cases have been brought against the government over the years. A typical case to accentuate this is the case of **OBEYA MEMORIAL HOSPITAL V A.G FEDERATION & ORS (1987) 3 NWLR PT. 60, P.325 SC**, the Government of Benue State with the aid of armed forces personnel forcefully ejected the staff of the applicant hospital, and took possession of the premises and remained in possession. After instituting action, the Plaintiff/Appellant then applied to the court for orders of injunction to restrain the Defendants/Respondents *inter alia* from preventing the plaintiff from obtaining access thereto and occupying the premises. The Supreme Court held: allowing the appeal of the Plaintiffs/Appellants, and granted the injunctions against the Defendants/Respondents.

### **The Doctrine of Sovereign Immunity**

**Immunity is the exemption of a person or body from legal proceedings, or liability.** Sovereignty as a word belongs to the domain of constitutional law. The word relates to a state of being independent. It reflects a situation of independence and ability to exercise independent power to govern a territory which itself is politically independent. In other words, a sovereign state is referred to as a country

which is independent, having the ability to make its laws, executive those laws and administer the territory where the sovereign resides. The word refers to the political independence of a ruler, king, queen or an executive President of a country. Under international law, a sovereign is a ruler, king or queen or President. The Number One Citizen of a state where he presides with rights and privileges which include immunity from prosecution while in power and the right to appoint ambassadors and representatives to other sovereign states in the world.

## 2.0 OBJECTIVE

The objective of this Unit is to expose the student to concepts of sovereign immunity where a sovereign would be protected from prosecution in court while in power. The right of individual citizens to institute an action against the state for violation of their rights would be discussed. The functions of the Public Complaints Commission which is set up to protect the rights of individual citizens would be examined. At the end of the Unit, the student will know his own rights and obligations and how the Public Complaints Commission can be of assistance to him in the defense of his rights as a citizen.

## 3.0 MAIN CONTENT

### 3.1 SOVEREIGN IMMUNITY

The sovereign may be a traditional ruler of a defined territory under him in the case of traditional life or a President who personifies sovereign authority in a country. The term is most relevant in political situations where there is an absolute monarch who has power and authority in a defined territory e.g. Oba of Lagos, Rilwanu Lukman, the traditional sovereign of Lagos. The President and Commander-in-Chief of the

Nigerian Armed forces personify the sovereign leader within the Federal Republic of Nigeria. The Queen of England, Queen Elizabeth II is the sovereign in the United Kingdom. Therefore a sovereign is a person who has the highest level of power and authority in a given territory.

A difference must be made between an absolute monarch and a constitutional monarch. An absolute monarch is the Chief Executive Officer of the state where he presides. In modern times however, few absolute monarchs exist. Most sovereign nations now share power constitutionally with monarchs remaining constitutional monarchs and sharing power as it were with a Prime Minister and legislative and judicial organs of government. This is the example in the United Kingdom where Her Majesty the Queen is the constitutional monarch while the Prime Ministry and the House of Lords and House of Commons respectively wield different levels of power. Nigeria is not ruled by a monarch. The country operates a presidential form of government with separation of powers between the Executive Branch, Legislative Branch and the Judicial Branch. However, sovereign kings and obas exist in the system and command the highest respect in traditional life and government.

In Nigeria, sovereignty belongs to the people. In other words, supreme powers in Nigeria are conferred by the Nigerian Constitution on the people. The President as Commander-in-chief of the Nigerian Armed is the chief Executive of Nigeria and wields enormous powers on behalf of the good citizens of Nigeria. As enshrined in Section 14(2) of the 1999 constitution, "Sovereignty belongs to the people of Nigeria from whom government through this constitution derives all its powers and authority."

Sovereignty, as has been seen, belongs to the people of Nigeria who exercise sovereignty through their elected leaders. This view suggests that the highest authority in Nigeria is vested in the people and the President of the Federal

Republic of Nigeria, the legislature, and the judiciary derive their authority from the sovereign power of the people.

Just as the African culture regards the king or oba as supreme embodiment of traditional law and by that fact is exempt from prosecution, so the Constitution protects the President, Governors and other designated officials from prosecution in respect of their actions and decisions while in power. These functionaries therefore benefit from the concept of sovereign immunity. They may however be prosecuted in a law court at the expiry of their tenure as government officials. In African tradition, the king or Oba does no wrong and no action can be brought to his court against him as the presiding officer of that court. In the political setting, government functionaries cannot be sued or be held liable for their wrongful acts while in office like a private person. Public functionaries have the gap of immunity for their actions in office.

According to Iluyomade and Eka (1989), “in Nigeria, there is no doubt that the doctrine of sovereign immunity applies in practice since the state cannot generally be sued in damages for the wrongful acts of its agents unless it has consented. Examples of such consent may be seen in some statutory provisions such as the Petition of Right Act, Cap. 149, the Law Reform (Torts) Act, 1961 etc. The doctrine of sovereign

immunity may not cover independent statutory bodies such as the Nigerian Railways Corporation, the Federal Radio Corporation, National Electric Power Authority, etc. In such case, the relevant Act of Parliament which established the body concerned needs to be examined in order to find out whether the liability has been excluded.”

### 3.2 RIGHT OF ACTION AGAINST THE STATE

As we have noted, the doctrine of sovereign immunity protects a state, government and their officials from being sued in courts in their individual capacities for wrongful acts while in government. But in recent times and considering the increase in the volume of government business, there has been an increase in the administrative wrongs committed by government functionaries against people. Government was therefore saddled with the need to grant some relief for wrongful actions of its functionaries. They inherited the English common law enactment of the Petition of Rights Act by which the merits and demerits of petition for wrongful actions of government officials was considered and approved. The Petition of Rights Act has now been nullified by the 1979 Constitution because the Act obstructed aggrieved citizens from going to court to seek redress for wrongs done by the state or government against their freedom.

The 1979 Constitution made it possible for any aggrieved person to seek redress in court for wrongs done against him by the state or government officials. The state, government or public officials may now be sued notwithstanding general defenses which avail to the state under the law.

As we have discussed, the 1979 Constitution of the Federal Republic of Nigeria abolished the Petition of Rights Act. The inherited Petition of Rights Act violated Section 33(1), Section 42(1) and Section 6(6) (B) of the 1979 Constitution. All Nigerian constitutions since then maintained the abolition of the Petition of Rights Act in Nigeria.

Section 36(1) of the 1999 Constitution for example states”

“In the determination of his civil rights and obligations, including any questions 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.”

(p. LL37)

Section 46(1) also states that

“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.”

Section 6(B) of the 1999 Constitution sums it up and states as follows”

“The judicial powers vested in accordance with the foregoing provisions of this section; 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 the determination of any question as to the civil rights and obligations of that person.” (p. LL20)

From the foregoing, and particularly Section 46(1) of the 1999 constitution empowers every Nigerian with a right to action against the state in circumstances where the aggrieved citizen feels that any of his rights have either been infringed by state or government or in extreme cases completely trampled upon.

**In GOVERNOR OF LAGOS V. OJUKWU (1986) 1 NWLR PT 18, P.621 SC, the title of a building was being constested by the parties in court. Pending the determination of the suit and against an order of interim injunction stopping the ejectment of the Plaintiff/Respondent, the Defendant/Appellant Government and the Commissioner of Police, Lagos State 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, that no one is entitled to take possession of premises by a strong hand, or with a multitude of people. They must apply to court for possession and act only on the authority of the court in the form of an order for ejection.

Also, in **A.G BENDEL STATE V AIDEYAN (1989) 4 NWLR PT. 118, P.646 SC**, the Bendel State Government purportedly acquired the Plaintiff/Respondent's building. Not being satisfied, the respondent sued the State Government. On appeal, the Supreme Court held that the respondent was entitled to his building. The purported act of acquisition of the property of the property of the respondent by the State Government in a manner not authorized by any law, was a complete nullity. The wresting of possession of the said property from him in a manner not provided for under law is a tortuous trespass.

### 3.3 PUBLIC COMPLAINTS COMMISSION

There are different means of reaching government and administrative authorities and obtaining remedy for administrative acts. In a democratic state, the remedies for administrative acts include:

1. Legislative remedies
2. Executive remedies
3. Judicial remedies, by way of judicial review
4. Other non judicial remedies including the ombudsman- The Public Complaints Commission.

An ombudsman is an independent and non-partisan public agency that receives 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 complainant.**

**An ombudsman remedy system is a type of arbitration and is an official body to which people may come with grievances against government, administrative authorities, private persons or bodies, for it to peacefully resolve it and obtain remedy for them. The duty of ombudsman is to stand between and represent the complainant before the government, authority, person or body against which complaint has been made and reconcile their differences with a view to finding a solution. When the ombudsman remedy system fails, parties are free to resort to court action to resolve their differences.**

**An ombudsman is a body which gives citizens safeguards against maladministration by investigating and pursuing genuine claims of an aggrieved party with the public or administrative authority, body, or person, whether it be a public or private body with a view to finding solutions to the issues raised.**

**In carrying out its functions of peacefully and harmoniously resolving disputes between parties, the ombudsman relies heavily and makes use of alternative dispute resolution skills, such as arbitration, mediation, and conciliation skills and so forth to effect settlement.**

The popular Udoji Commission to reform the civil service submitted its report to government in 1974. Government accepted a majority of the recommendations of the commission. One of such recommendations was the establishment of Ombudsman in Nigeria. The ombudsman which is a synonym for Public Complaints Commission was established in Nigeria on 16th October 1975 vide Decree 31 of the then Federal Military

Government of Nigeria. The Commission comprised a Chief Commissioner and 12 other Commissioners appointed by and responsible to the then Supreme Military Council. The Public Complaints

Commission is an independent and objective body that receives and investigates complaints sent to it by members of the public seeking to obtain remedy for perceived wrongs done to them by alleged wrong doers. Their aim is to peacefully resolve the crisis and obtain remedy for the complainant. It is an irony that it was set up in Nigeria under the military regime which naturally does not respect the rights of individual citizens to make complaints against its style of administration.

The commission employs the age-long system of arbitration where solution is reached by dialogue with the persons involved in the complaint. They are meant to reconcile their differences and forge a solution. However, if the commission fails to forge a solution by reconciling the differences of persons in a given crisis, the complainant is at liberty to

seek further redress in a court of law. State governments set up similar bodies for identical purposes under their respective Ministries of Justice.

In all cases, the aims are the same - to find solutions to complaints through negotiation and dialogue with persons involved in a complaint. They could be administrative authorities, corporate bodies or persons. The main weapon of the Commission is exploration of an alternative dispute resolution. They employ the skills of arbitration, mediation and conciliation in finding solutions to problems.

### 3.4 POWERS AND DUTIES OF THE PUBLIC

#### COMPLAINTS COMMISSION

Before stating the powers and duties of the Public Complaints Commission, it is pertinent to state the reasons for establishing the Commission. These include:

#### **REASONS FOR ESTABLISHING AN OMBUDSMAN**

**The ombudsman or Public Complaints Commission remedy system has been necessitated world-wide by a number of reasons which include:**

- 1. The need to make persons who are aggrieved by official conduct to know that someone cares.**
- 2. Inadequacies of the remedies put in place by the legislature, the executive and the judiciary, where they exist.**
- 3. Abuse of power by public authorities and private bodies and inadequate control of these bodies, especially in peculiar cases.**
- 4. Lack of financial ability of a party to undertake the effort and expense of legal prosecution of a matter in court.**
- 5. Absence of a specialized, or small claims court system where minor claims and relatively less significant issues and grievances, can be heard and timeously determined between parties, within a few minutes, or within a day, and so forth, in an atmosphere that is devoid of many**

**formalities of a regular court. For instance, in these courts, the parties appear for themselves instead of engaging lawyers.**

- 6. Litigation is often slow, cumbersome, complex, costly and frightening to the average person.**
- 7. The fact that certain issues and grievances are better settled and resolved amicably than by long drawn legal action or uncertainties of political action by the executive or change of the law by the legislature.**
- 8. The need to ensure the full protection of the civil rights and liberties of the people.**
9. The need to provide an avenue for aggrieved citizens who are aggrieved by the conduct of administrative officials, institutions or corporations to seek redress in a non judicial means.

10.To curtail abuse of power by public authorities and private bodies by exposing their weaknesses and wrongs and award remedies to the complainants.The need to reduce the volume of cases in litigation and the need to reduce the cost spent on litigation by average persons in an attempt to seek redress in courts. The need to guarantee full protection on civil rights and liberty guaranteed by the |constitution to the people.To reduce the insolence and haughtiness of public administrators who often make nonsense of the complaints of members of the public and who do not attach necessary weight to them.

According to D.C. Rowat of the Ombudsman of New Zealand: “Too close-fisted approach towards minor claims and a disposition to apply predetermined rules of practice rather than exercise their discretion on the merit of each case”. (Malemi: p. 142)

The powers and duties of the Public Complaints Commission are as spelt out in the Public Complaints Commission Decree of 1975. Specifically, Section 10(3) of the Decree states:

“For the avoidance of doubt, the powers granted to a Commissioner under this Decree may be exercised by him notwithstanding the provisions of other laws which declare the finality of any administrative act”.

A catalogue of the duties and powers of the Commission as set out in the Public Complaints Commission Decree of 1975. Section 4(2) of the Decree states that

“A Commissioner shall have power to investigate either on his own initiative or following complaints lodged before him by any other person, any administrative actions taken by:

- (a) Any Department or Ministry of the Federal or any state government
- (b) Any Department or any local government

authority (howsoever designated) set up in any State in the federation.

(c) Any statutory corporation or public institution set by any government in Nigeria;

(d) Any company incorporated under or pursuant to the Companies Decree 1968 whether owned by any government aforesaid or by private individuals in Nigeria or otherwise howsoever; or

(e) Any officer or servant of any of the aforementioned bodies”. (See Iluyomade & Eka p. 457)

### 3.5 OFFENCES AND PENALTIES

The provisions of Section 7 of the Public Complaints Commission Decree 1975 state offences and penalties as follows:

“(a) Any complaint lodged before the commission shall not be made public by any person except a commissioner and any person who contravenes the provisions of this subsection shall be guilty of an offence and shall be liable on conviction to a fine of N500 or imprisonment for six months or to both such fine and imprisonment.

(b) If any person required to furnish information under this Decree fails to do so or in purported compliance with such requirement to furnish information knowingly or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence and liable on conviction to a fine of N500 or imprisonment for six months or to both such fine and imprisonment.

(c) Any person who willfully obstructs, interferes with, assaults or resists any Commissioner or any other officer or servant of the Commission in the execution of his duty under this Decree or who aids, invites, induces or abets any other person to obstruct, interfere with, assault or resist any such Commissioner, officer or servant shall be guilty of an offence and liable on

conviction to a fine of N500 or imprisonment for six months or to both such fine and imprisonment.” (Iluyomade & Eka, p. 458).

From the foregoing, it is clear that the Decree spells out penalties of fines for any person who either makes public a complaints that has been lodged with the commission or anyone who wilfully obstructs the work of the commission or refuses to volunteer needed information when called upon, has committed an offence and appropriate fine of N500 in each case has been stipulated for payment. As laudable as Section 7 that spells out offences and penalties is, Section 5(1) appears to limit the powers of the Commission as follows: “A Commissioner shall not investigate any matter:

(a) that is clearly outside his terms of reference

(b) that is pending before the Supreme Military Council of States or the Federal Executive Council

(c) that is pending before any court of law in Nigeria

(d) relating to anything done or purported to be done in respect of any member of the Armed Forces in Nigeria or the Nigeria Police Force under the Nigerian Army Act, 1960, the Navy Act, 1964, the Air Force Act, 1964, or the Police Act, as the case may be.

(e) in which the complainant has not, in the opinion of the Commissioner, exhausted all available legal or administrative procedures.

(f) relating to any act or thing done before 29th July, 1975, or in respect of which the complaint is lodged later than twelve months after the date of the act or thing done from which the complaint arose.

(g) in which the complainant has no personal interest”. (Iluyomade & Eka, p. 458)

### 3.6 ACHIEVEMENTS OF THE COMMISSION

As observed by Iluyomade and Eka (2007), within a few years of the establishment of the Public Complaints Commission, the Commission received the following

complaints from members of the public and attempted to investigate and seek remedies in cases where the complaints were correct as presented

- i. Non-payment of gratuities and pensions
- ii. Compulsory acquisition of lands and houses without adequate or delayed compensations
- iii. Illegal termination of appointments both by public and private employers
- iv. Unpaid and delayed wages
- v. Delay of action by the police and alleged collusion and contributory negligence on the part of the police
- vi. Illegal demolition of buildings
- vii. Delay in the approval of building plans by the town planning authorities
- viii. Delay of examination results and late delivery of certificates by WAEC
- ix. Loss of registered parcels through the P & T
- x. Chieftaincy matters
- xi. Non-payment of insurance claims
- xii. Refusal to pay debts owed for services rendered
- xiii. Delayed payment of professional fees
- xiv. Denial of retirement benefits
- xv. Rents on private properties
- xvi. Threat to individual lives
- xvii. Refusal to grant study leave with or without pay
- xviii. Refusal to grant transfer of service". (See p. 459).

Most complainants lodged complaints against corporate bodies, some of which were Nigerian Railway Corporation, National Electric Power Authority (now Power Holding), Government Ministries, West African Examinations Council, corporations, parastatals, state governments, school boards, Police and the National Assembly, to mention a few. A cursory look at the activities of the Public Complaints Commission indicate that the Commission made success of many

complaints especially in cases that had to do with illegal termination of appointment, dismissal, refusal to follow appropriate disciplinary procedures, deprivation of leave bonus payable to workers etc.

Given the limitations in which the Commission operated in the 1990s and given the fact that it was a novel commission whose work was not clearly understood by citizens, it is fair to say that the Public Complaints Commission 1975 has recorded a lot of success in Nigeria and was able to sanitize Nigerians and orientate them towards non-violent ways of seeking redress for wrongs done to them by institutions and state governments in Nigeria. The Commission has remained the last hope of aggrieved persons in Nigeria.

#### 4.0 CONCLUSION

It is curious to observe that it was a Military Government that set up the Public Complaints Commission. The Commission was given an onerous duty by the provisions of the Decree that set it up to investigate complaints brought to it by aggrieved Nigerians. Most of the complaints entertained bordered on issues of refusal, neglect, inaction, oppression, injustice meted by public officials, state governments or parastatals against citizens. The Commission sought redress for complaints and convinced Nigerians that it was independent and committed to investigating objectively and thoroughly all complaints brought to it. The Federal Military Government that promulgated the Public Complaints Commission Decree of 1975 had a strategic approach to creating a better society where any one oppressed and better still creating an avenue for Nigerians to seek redress legitimately. The Public Complaints Commission has become the hope of aggrieved persons and a check on the arbitrariness of public administrators and all persons in authority.

#### 5.0 SUMMARY

In this Unit, the issues of sovereign immunity were discussed and the rights of individuals to bring action against the state were explained. The powers and duties of the Public Complaints Commission set up by a Military Decree in 1975 were espoused. The Commission has become the hope of aggrieved persons and the bane of those who trample on other people's rights in the exercise of their powers and authority.

#### 6.0 TUTOR MARKED ASSIGNMENT

1. (a) Where does the Public Complaints Commission derive its Powers from?

(b) State the powers and duties of the Public Complaints Commission.

#### 7.0 REFERENCES/FURTHER READING

1. Eneanya, A.N. (2009). *Public Administration in Nigeria: Principles, Techniques and Application*,

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## UNIT 3: REMEDIES FOR ADMINISTRATIVE ACTS

### CONTENT

1.0 Introduction

2.0 Objective

3.0 Main Content

3.1 Non Judicial Remedies for Administrative Acts

3.2 Petition

3.3 Appeals and Dialogue

3.4 Alternate Dispute Resolution

**3.5 Referendum**

**3.6 Lobby**

**3.7 Public Opinion Poll**

**3.8 Civil Disobedience**

3.9 Judicial Remedies for Administrative Acts

3.10 Limitations to Judicial Remedies

4.0 Conclusion

5.0 Summary

6.0 Tutor marked Assignment

7.0 References/Further Reading

### 1.0 INTRODUCTION

In the discharge of their duties government officials and public administrators often commit unconstitutional acts. When such officials commit unconstitutional acts or wrongs against citizens or persons, the aggrieved persons have rights under the constitution to seek redress for the wrongs done against them. The remedies they seek can be categorized into Non-Judicial Remedies and Judicial Remedies.

Non Judicial Remedies include

Petition from aggrieved persons,  Appeals

□ Dialogue

□ Peaceful Protest, and

108

□ Alternative dispute methods of Persuasion, Mediation and Conciliation

Judicial Remedies on the other hand refers to powers of the courts to examine in legal processes the rights that have been violated and remedies for such violation.

## 2.0 OBJECTIVE

The objective of this Unit is to expose the student to Judicial and Non Judicial means of seeking redress for administrative wrongs done by government officials, public administrators and those in authority. The Nigerian Constitution guarantees respective freedoms for every citizen and encourages aggrieved persons to seek remedies for unconstitutional acts committed against them. At the end of the Unit, the student will understanding the differences in the course of action in using Judicial and Non Judicial ways of seeking remedies for wrongful administrative acts.

## 3.0 MAIN CONTENT

### 3.1 NON JUDICIAL REMEDIES FOR ADMINISTRATIVE ACTS

Public officers are liable for actions done in the course of performing their duties without legal justification. To that extent it is possible for an injured party to seek redress and seek Judicial or Non Judicial remedies. Non Judicial remedies are remedies that an injured party seeks outside the court process. They do not arise from court rulings. They include Petition, Appeals for a Rethink and Remedy, dialogue, Peaceful Rally and Peaceful Protest, Public Opinion Poll, Media Coverage, Lobbying, Referendum, alternative Dispute Resolution, Pressure, Civil disobedience and Strike, Boycott and Picketing. However, the following concepts would be discussed in order to shed light on the topic.

### 3.2 PETITION

Ordinarily, a petition is a written request made by an aggrieved person to believes that his rights has been infringed by an official in a position of authority and seeks

redress for the wrong committed. A petitioner who has made complaints must be ready to substantiate his claims when called upon. He should be able to also explain his personal interest in the complaint showing to appropriate authority how his rights have been infringed. The petition under reference may be sent to the authority in charge of the function which the alleged wrong doer was executing.

In modern times, a petition may also be sent to an independent commission like the Public Complaints Commission, Code of Conduct Bureau, Economic and Financial Crimes Commission, Independent Corrupt Practices and other related Offences Commission, the Police, Governor, President, National Assembly etc. the important point to note is that the petitioner has the right to seek redress for an administrative wrong done to him and he could do this by directing attention to the wrong through a written complaint sent to any of the above institutions or government organizations.

When the relevant authorities receive a complainant's petition, they are expected to institute processes for determining the veracity of the petition.

They could follow internal administrative laid down procedures. This type of petition may be distinguished from election petitions, divorce petition or petition to Corporate Affairs Commission for the purpose of winding up a company. The difference here relates to the fact that the later form of petition mentioned invariably leads to judicial action as the case may be as opposed to the petition sent by an aggrieved person seeking redress for wrong done to him which may not necessarily lead to judicial action.

### 3.3 APPEALS AND DIALOGUE

The Longman Dictionary of Contemporary English defines the word ‘appeal’ as “an urgent request for something important” (p. 58). An appeal is therefore a request to persons in authority or relevant administrative authority complaining about a wrong done and seeking apology or redress for the wrong. The subject matter of an appeal may vary from reconsideration for a position made or request for leniency in case of administrative acts or request to restore a given situation to the status quo as the case may be. The important thing to note here is that when an aggrieved person writes a petition seeking redress, he is exercising his right to make known the wrong done to him with a view to asking a higher authority to make amends to the situation. It is a non judicial way of pressing for redress.

In human relations, a dialogue relates to a conversation or communication between two or more persons in which one party makes a formal complaint against an action or something that has infringed upon his right with a view to seeking apology or redress from the listening party.

A dialogue may take the form of a face to face complaint or a written complaint in which both parties exchange mails on the issue under reference. It could take the form of an organized discussion either in a conference format or in an informal format. Dialogue may also take the form of negotiation in which both parties shift away from their original positions and make concessions in order to reach an

amicable settlement. This is the approach employed by disputing countries in case of boundary adjustments and a veritable means of settling conflicts. For example, it is on record that Nelson Mandela of South Africa and former President Frederick De Clerk of South Africa engaged in dialogue to enthrone modalities of achieving black majority rule in South Africa in 1995. In Nigeria, there is a current method through dialogue by small parties to merge under agreed modalities to form a mega party that will present serious opposition to the ruling Peoples Democratic Party. The consensus which the small parties will achieve in their bid will be through dialogue.

### 3.4 ALTERNATE DISPUTE RESOLUTION

Another non judicial remedy for unconstitutional acts is the use of alternative dispute resolution. This is a non judicial process where complaints or disputes are registered, seeking redress from an institution or establishment following laid down processes where persons of integrity intervene with the parties in dispute, following the processes of arbitration, mediation and conciliation.

In Arbitration the arbitrator follows the principle of fair hearing, equity and objectivity in settling the dispute under reference. The arbitrator after consideration of the submission of disputing parties makes an award or suggests remedies to be adopted and signed by both parties. Where the arbitrator fails to settle the dispute, the dispute process goes to the next phase called mediation. Mediation is a process of settling disputes between two or more persons or groups by a person of high standing respected and acknowledged by the disputing parties. This is a major tool used in settlement in international relations in the case of disputes between countries. The United Nations Organization (UNO) uses this form in dispute settlement throughout the world.

Conciliation comes handy in the settlement of disputes between trade unions and employers. In conciliation, a neutral party respect and acceptable to the disputing parties attempts to bring the disputing parties to a communication table with a view to resolving amicably in a non judicial process, the issue at stake. While the outcome of conciliation is an agreed proposal for settlement, it is not a court judgment or an award but is binding on the parties who are signatories to the outcome of conciliation.

Non Judicial Remedies for administrative acts do not carry the force of law but they are media for settling disputes and seeking redress for wrongful acts committed against individuals and establishments. The methods are peaceful and civil and the outcome of such methods is binding on all those who subscribe to them.

### **3.5 Referendum**

**A referendum is a vote by the people to decide an issue. Thus, a referendum is asking a people to decide an issue by voting for or against it. The outcome or result of the vote becomes the decision of the government on the matter. In a**

modern society or democracy, a referendum can be used to decide many appropriate issues.

### **3.6 Lobby**

In the ordinary context, the word “lobby” means to persuade, convince or influence someone or a group of persons, such as, parliament to act in a particular way, to do something, or to enact a law, for instance, by presenting information, facts and figures, reasons or a superior argument why they should do so. In the negative context, to lobby means to influence someone with cash, or kind to make him or them do something which should not be done in the circumstances.

### **3.7 Public Opinion Poll**

The media or other interest group may conduct a public opinion poll on an issue, to show what the people want, or to show to the government that its popularity rating has gone down among the people, and this may make government or a public authority to take action to resolve the issues at hand and improve its popularity.

### **3.8 Civil Disobedience**

Civil disobedience is non-violent breach of a law done deliberately as a protest against an unjust law, measure of government or other social situation, or hardship perpetuated by government. By employing civil disobedience, violating the law and submitting to sanction the members of the group hope to set a moral example that will bring the change they desire. The principle of civil disobedience was formulated by Mahatma Gandhi, the foremost nationalist and father of India and used by his followers to attain equal rights, freedom and independence for India. Civil disobedience has been used by

**national movements, civil rights groups, anti war movements and similar groups.**

### 3.9 JUDICIAL REMEDIES FOR ADMINISTRATIVE ACTS

As in Non Judicial Remedies for administrative acts where other forms of remedy listed, Judicial Remedies for Administrative acts are also many and varied. These include Legislative, Executive, and Judiciary, Public Complaints commission, powered by the Public Complaints Commission Act of 1975.

The need for judicial remedies for administrative acts arose from the fact that it is slow and winding to depend on non judicial means for seeking redress. An aggrieved party who seeks remedy for administrative wrong which he suffered through non judicial means i.e. by petition or complaints stands the risk of being overturned by the Minister or Political Head who makes the decision regarding the wrong done to him. This is why most citizens prefer judicial remedies to non judicial remedies. The result is that when the citizens seek redress in courts of law, the courts are empowered to review administrative wrongs on grounds of unconstitutionality, illegality of action or for arbitrariness in the execution of assignments. In cases where the administrative action perceived to be wrong by an aggrieved party is constitutional, the court will declare it constitutional and therefore properly done but in cases where the said administrative wrong is committed unconstitutionally or illegally, the court may award a remedy that fits the circumstances for the administrative wrong. This is because Section 46(1) of the 1999 Constitution makes it abundantly clear that an aggrieved person may seek redress in a higher court in the state where the wrong was done. Section

46(2) confers original jurisdiction to hear and determine any petition made to it in pursuance of the position of the Section.

In exercising the judicial remedies, the court is mindful of their power under Section 46(2) of the 1999 Constitution which grants original jurisdiction to the high court of a state to entertain request for a remedy. In that process, the courts undertake a judicial review of the wrong. Judicial Review is the power of the courts to examine the power of government, public administrative authorities and procedure rules governing actions of Government, Ministers, public officials etc with a view to determining that the arm of government involved in an administrative wrong has acted legally or constitutionally. In other words, the purpose of judicial review is for the courts to ascertain that administrative authorities have not acted beyond their scope or limits on statutory powers which they exercise.

According to Malemi (2008)

“the courts in controlling or reviewing the conduct of Public authorities may grant any or more of the Following remedies to an aggrieved party:

- Declaration of rights or Declaratory judgment   Order of Mandamus
- Order of Certiorari   Order of Prohibition   Order of Injunction

□□ Writ of Habeas Corpus □□ Award of Damages □□ Offer of Apology, and  
□□ It may set aside, reduce or sustain any penalty that was imposed and or makes  
such order or other orders, as it may deem necessary in the circumstances.”

We shall consider the above in order to throw light on the concept.

**(a) Declaration of Rights or Declaratory Judgment**

**A declaration of rights, also known as a declaratory judgment is the declaration is the declaration by a court of the legal rights and obligations of the parties in a suit with or without making any consequential order. It is the declaration of the legal rights and obligations or the relationship of the parties in a matter, with or without making any consequential order. In a declaratory judgment, the Court is called upon to make a determination as to which of the parties in the suit has the right, and is right, and which of the parties is wrong. Hence, it is a relief sought for the purpose of declaring a legal right of a party, and may be made with or without any consequential relief being granted in the circumstances of the case.**

As the title reflects declaration of rights or declaratory judgment is a declaration by a competent court of law after applying the law to the facts available to it, that one part is right and the other party is wrong. That means that one party has a right and the other party owes an obligation. Following principle of fair hearing, the court would have entertained arguments from parties involved in a dispute before making its declaration. It is not certain that an aggrieved party who brings an action to court will have the declaration of the court in his favour because he may have brought the action in ignorance or the party alleged to have committed an administrative wrong may have exercised the due power of his office legally.

In a court of law in some cases, it is the plaintiff or applicant who asks the court for declaratory right. This is done because it is when the court affirms the right of the applicant that the door opens for him to seek remedy. When a declaratory

settlement is made by the court affirming or stating that an administrative wrong has been committed against the plaintiff, he then asks for a remedy. Government obeys declaratory judgments of court. It does that in order to set a good example that the judgments of courts must be respected in the interest of peace and good governance. It also obeys declaratory judgments in order to show that government obeys the rule of law and that public authorities or institutions and private individuals must be regulated by the rule of law and obedience to the constitution. The remedies awarded by the court vary and they are usually in line with the nature of the wrong that has been committed.

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

“every person born in Nigeria before the date of independence either of whose parents or any of whose grandparents belongs or belonged to a community indigenous to Nigeria.”

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

Similarly, in **Adeniyi v. Governing Council, Yaba College of Technology** (1993) 6 NWLR Pt. 300, 426 SC. Mr. Adeniyi was the plaintiff applicant. He brought an action seeking a declaration of right because he perceived that the Yaba College of Technology committed an administrative wrong against him by illegally retiring him from service. The Governing Council of Yaba College of Technology retired Mr. Adeniyi as a result of some allegations made against him and he was not allowed to defend himself, thus violating the principle of fair hearing. The Supreme Court held that the action of Yaba College of Technology was contrary to the rules of natural justice and it lacked fair hearing. Accordingly, the Supreme Court declared that the said retirement of Mr. Adeniyi was null and void and of no effect whatsoever. Mr. Adeniyi was reinstated to service.

(b) **Order of Mandamus**

The word ‘mandamus’ is a Latin word which means ‘we command’. In Nigeria legal system, when a plaintiff applicant seeks the order of mandamus, he is praying the court to issue an order commanding the performance of a public duty which an official or authority is supposed to perform. In using the order of mandamus the court is declaring that a person or an authority must perform a public duty which is his place to perform. In other words, the person or authority is bound to perform a duty which he has not performed. The court by such declaration compels the performance of the public duty which has not been performed.

For example, in **The Director, SSS v. Agbakoba** (1999)3 NWLR Pt. 595 p. 314 SC, the State Security Service (SSS) impounded the international passport of Mr. Agbakoba. He sought a judicial action because he felt that his fundamental human right as enshrined in Section 41 of the 1999 Constitution which gave him right to freedom of movement has been infringed upon. He therefore sought an order of mandamus for the return of his international passport, a document which enables him to enjoy his right to freedom of movement. The supreme court of Nigeria held

that the seizure of Mr. Agbakoba's international passport was null and void. The Supreme Court issued an order of mandamus for the appellant (SSS) through its Director to release Mr. Agbakoba's international passport.

### **(c) Order of Certiorari**

**Certiorari is a latin word which means "to be informed of". A certiorari is an order directing a lower court, public or administrative authority to forward its record of proceedings to a higher court for that court to inquire into the legality of its discretion and review it as may be necessary. It is an order made by a superior court to an inferior court or tribunal mandating it to produce a certified record of a particular matter or proceedings, for its information, so that the superior court may determine whether there has been any defect in procedure or decision. An order of certiorari is therefore commonly used to refer cases, decisions or matters to a higher court, which uses the order as a discretionary device to review the matter where necessary and do substantial justice in it.**

**An order of certiorari is available against government and public authorities but not against private persons and bodies. It is a corrective order, and therefore would not be issued unless something has been done which a superior court can quash, for instance, on ground of:**

- 1. Ultra vires**
- 2. Lack of jurisdiction, or excess of jurisdiction**
- 3. Breach of the rules of natural justice, or lack of fair hearing**
- 4. Error of law on the face of the record**
- 5. Error of fact on the face of the record or misdirection of self on fact**
- 6. Irrelevant considerations**
- 7. Uncertainty and vagueness**
- 8. Unreasonableness**

An example of a classical case where the order of certiorari was made was in the case of **DENLOYE V MEDICAL AND DENTAL PRACTITIONERS DISCIPLINARY TRIBUNAL (1968) 1 ALL NLR 298 AT 304**, wherein an order of the tribunal striking out the name of the appellant off the Medical Register was quashed and set aside for breach of the rules of natural justice. In this case, **ADEMOLA CJN**, stated thus:

*“In effect, where the unprofessional conduct of a practitioner amounts to a crime, it is a matter for the courts to deal with, and once the court has found a practitioner guilty of an offence, if it comes within the types of cases...then the tribunal may proceed to deal with him under the Act.”*

**(d) Order of Prohibition**

A prohibition is an order of Court restraining an inferior court, tribunal, public or administrative authority from exercising its judicial or quasi-judicial powers. An order of prohibition may be preemptory to stop a judicial body from commencing its proceedings at all, or a temporary prohibition until certain conditions are fulfilled at which time the order will be discharged, or it may be a limited or partial prohibition which operates to prohibit only that part of the proceedings which is in excess of the jurisdiction of the inferior court or body, whilst allowing it to continue with the residue. Thus, an order of prohibition prevents, or forbids unlawful assumption of jurisdiction.

By making an application before a superior court for an order of prohibition, the applicant prays the superior court to prevent a lower court, tribunal, or public or administrative authority:

1. From exceeding its jurisdiction in a matter on which it has power, and thereby confine it to its proper jurisdiction; or

2. From hearing or determining a matter which is not within its jurisdiction; or
3. From sitting due to improper constitution of the court; or
4. From acting contrary to the rules of natural justice or fair hearing.

Unlike an order of certiorari which is corrective in nature, an order of prohibition has a preventive nature.

**(e) Order of Interlocutory injunction**

An order of interlocutory injunction is usually made upon the hearing of a motion of notice filed by the applicant, supported by affidavit showing facts upon which the application is sought. An interlocutory injunction has the nature of preserving the *res* pending the determination of the substantive suit. It is to maintain the status quo until the final determination of the case or matter. Usually, an interlocutory injunction is granted after hearing both parties. And it is a temporary relief granted after a defendant has received notice and has been heard, to maintain the status quo and prevent irreparable damage from occurring until the court finally determines the matter, at which time the court may vacate the interlocutory injunction and make a perpetual injunction as may be necessary. See the decided cases of *Governor of Lagos State V Ojukwu* (1986) 1 NWLR pt. 18, 621 SC; *Shugaba V Minister of Internal Affairs & Ors* (1981) 1 NCLR 25; *Obeya Memorial Hospital V A.G Federation & Ors* (1987) 3 NWLR pt. 60, 325 SC

**(f) Writ of Habeas Corpus**

The Latin term *habeas corpus* means “You have the body”. A habeas corpus is a writ for securing the liberty or immediate release of a person from unlawful custody or other unjustifiable detention. The writ is usually directed at the detaining person or authority with a sharp command that the detained person be produced before court for it to determine the legality or otherwise of the

detention, and where detention is lawfully effected under an enabling statute, order that the person be returned to prison, but where the detention or its process is unlawful, make an order for the immediate release of the detained person. A *habeas corpus* is a writ for determining the legality of the detention of a person who is in custody, whether of an official body or private hands.

The purpose of the writ 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 been detained according to the due process of law. It is essentially issued to challenge the detention of a person in official custody, or even in private hands, for the custodians to show cause why the prisoner should not be released.

The writ of habeas corpus has been used successfully in many cases to set detainees free, such as in *Agbaje V COP*; *Tai Solarin V IGP*, though the same failed in *Mallam Balarabe & Anor V IGP (1986) CLR Const 319 CA*. In the case of *FAWEHINMI V ABACHA (1996) 9 NWLR PT 475, P. 710 at 742 CA*, the Court held, per *MUSTAPHER JCA* thus:

*“Where the freedom of an individual is curtailed or abridged, it must be shown that such act is brought within the confines of the law.”*

### 3.10 LIMITATION TO JUDICIAL REMEDIES

As has been explained in Judicial Review is the process whereby a competent court of law reviews the action of an arm of government, public authority or individuals with a view to determining if those actions constitute wrongful administrative acts against the plaintiff applicants as they claim. Although every citizen is at liberty to institute an action in a court of law, the court sometimes is limited in the process of entertaining actions for wrongful administrative acts. Some of the limitations encountered by the court system in ascertaining that wrongful acts have been committed include:

- (a) Failure to first try available administrative remedies
- (b) Lack of *locus standi*
- (c) Non Justiceability of the matter
- (d) Absence or limitation of right of appeal etc.

**(a) Failure to First Try Available Administrative Remedies**

An aggrieved party has a right to bring an action in a competent court of law. However, there are clear available internal processes of registering complaints and seeking remedies for wrongs committed. Such internal processes may be cheaper and faster administratively than the tortuous process of court proceedings. The court in such circumstances may counsel the aggrieved parties to seek first the internal processes of seeking remedies before recourse to court because it may turn out that going to court hurriedly may make the matter unripe for court to handle.

**(b) Lack of *Locus Standi***

The phrase ‘locus standi’ originates from the Latin language which literally in English refers to the centre of something or place where something exists. In judicial matters, it refers particularly to the principle that a party who brings a case to court must establish that the issue that he complains against directly affects him or violates his right. When such a plaintiff cannot establish his claim with the issue he has brought and show how that issue denigrates him or his right, he is said to have no *locus standi*. In seeking judicial remedies, a party who applies for a relief and cannot justify that an administrative act has been wrongfully committed against him, will fail in his endeavour because he has no *locus standi*.

**(c) Non Justiceability of the Matter**

In order to grant remedy for wrongful administrative act, the court will first seek to know whether the matter is justiceable. In other words, the court will attempt to

establish that the applicant is seeking a request for something that is fair, right and constitutional and deserving fair treatment and that the remedy being sought is deserved. In a situation where a matter or action brought to court is not justiciable or not in alignment with the provisions of the Nigerian Constitution or any other relevant law, the court will not entertain the matter nor will the aggrieved person obtain any remedy. This has become a limitation on administrative remedies. In such circumstances, the aggrieved person may have to engage the non judicial process of lobbying the relevant authority for some considerations.

#### 4.0 CONCLUSION

When a person believes that an administrative wrong has been committed against him, he is at liberty to seek redress in form of remedies judicially or non-judicially. If the aggrieved person decides to pursue judicial remedies he will go through the route of petition, appeals, dialogue or alternative dispute resolution among others. An aggrieved person who seeks judicial remedies is prepared to engage the court system to examine the wrong that is done against him with a view to seeking a declaration that the wrong has indeed been committed followed by a judicial remedy. The courts are firm in Nigeria in awarding remedies in the cases of established wrongful acts by public authorities. **Shugaba v. Minister of Internal Affairs, Adeniyi v. Governing Council, Yaba College of Technology and The Director, SS v. Agbakoba** are some of those cases where the court affirmed that wrongful acts have been committed against plaintiff applicants.

#### 5.0 SUMMARY

The constitution is the *grundnorm* and mother of all laws in Nigeria. Citizens who feel that administrative wrongs have been committed against them are at liberty to employ judicial or non judicial means to settle the wrong of the wrongful party or

making restitution. Cases abound in Nigeria legal system where the courts which are the principle actors in declaring judicial remedies for wrongful administrative acts have been firm where the wrongful acts clearly violates the provisions of the Nigerian Constitution and the rights of the plaintiff applicants. Examples of such declarations include **Shugaba v. Minister of Internal Affairs, Adeniyi v. Governing Council, Yaba College of Technology and The Director, SS v. Agbakoba.**

## **6.0 TUTOR MARKED ASSIGNMENT**

1. (a) Distinguish between Non Judicial Remedies and Judicial Remedies for administrative acts.

(b) Are there reasons why aggrieved persons may prefer one to the Other?

## **7.0 REFERENCES/FURTHER READING**

1. Iluyomade B.O. & Eka B.U. (1992). *Cases and Materials on Administrative Law in Nigeria* (2nd Ed.) Obafemi Awolowo University Press, Ile Ife.

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## **MODULE 4 ADMINISTRATIVE ADJUDICATION**

### **UNIT 1: ADMINISTRATIVE TRIBUNALS AND TRIBUNALS OF INQUIRY**

#### **CONTENT**

1.0 Introduction

2.0 Objective

3.0 Main Content

3.1 Need for Administrative Adjudication

3.2 Classes of Adjudicatory Bodies

3.3 Definition of Administrative Tribunals

3.4 Tribunals of Inquiry

3.5 Argument for Administrative Adjudication

3.6 Criticism of Administrative Adjudication

4 Conclusion

5 Summary

6 Tutor marked Assignment 7 References/Further Reading

#### **1.0 INTRODUCTION**

In simple terms adjudication refers to the process of determining who is right in a dispute. In the Federal Republic of Nigeria, that power is vested in the courts. Section 6 of the 1999 Constitution makes it abundantly clear that judicial powers are vested in the courts. Section 6(B) states that the courts judicial powers

“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 the determination of any question as to the civil rights and obligations of that person”.

In addition Section 36 of the 1999 Constitution ascribes some authority to tribunals and other administrative machinery set up for the purpose of adjudication. The Section inter alia states:

“a person shall be entitled to a fair hearing within a reasonable time by a court of other tribunal established by law and constituted in such manner as to secure its independence and impartiality”

The constitution therefore recognized tribunals and other non judicial bodies set up for the purpose of adjudication if their independence and impartiality can be guaranteed.

In administrative adjudication the courts entertain parties involved in disputes and make decisions in cases where it is proven that legal rights and duties of parties are involved. **Blachly v Oatman** (1954) describes courts and administrative tribunals as

“authorities outside the ordinary court system which interpret and apply the laws when acts of public administration are attacked in formal suits or by other established methods” (Eneanya p. 529)

While it is true that the process of adjudication belongs squarely to courts of law as Section 6 of the 1999 Constitution notes, administrative bodies like tribunals may perform the same duties as the court if it is certain that their impartiality in adjudication will be guaranteed as noted in Section 36 of the 1999 Constitution. All that is desired in the process of adjudication is to determine the issues in dispute between parties and applying the law to the facts in issues. The citizen does not mind whether the issues are determined in the court or at the tribunals. All that

he is interested in is that his rights (if they are violated) are protected, recognized and appropriate remedies are given to him.

## 2.0 OBJECTIVE

In this Unit, the student will be introduced to the process of administrative adjudication. It will be clear to the student at the end of the unit that while the 1999 Constitution ascribes the function of adjudication to the courts (Section 6) the same Constitution in Section 36 recognizes that tribunals or other administrative bodies set up by law may adjudicate if only their freedom and impartiality can be guaranteed. The student will also be introduced to administrative tribunals, why they are necessary, criticisms of administrative tribunals and the classes of adjudicating bodies that exist.

## 3.0 MAIN CONTENT

### 3.1 NEED FOR ADMINISTRATIVE ADJUDICATION

Ordinarily the courts in Nigeria have responsibility for adjudicating in disputes between government and government agencies, government and citizens and citizens with citizens. However as a result of the backlog of cases in courts and the need to decongest the court system in the interest of speedy resolution of disputes, the need has arisen to appoint people of integrity to serve on tribunals as provided for in Section 36 of the

Constitution. Groups that now perform judicial functions are called tribunals, panels, commissions, boards of inquiry etc. these bodies when properly constituted adjudicate on matters referred to them and they perform such functions as may be assigned.

Governments all over the world are known to set up extra judicial bodies to perform the job of administrative adjudication. These administrative bodies are not courts and they do not belong to the hierarchy of regular courts. When the need arises the administrative bodies are empowered under specific legislation that charge them with investigating, hearing and decision in matters that are in dispute which according to Malemi (2008)

“includes matters arising from:

(a) Public administration

(b) Controversies which require specialized knowledge or experience for instance assessment of compensation for land acquired by government for public purposes.

(c) Disputes which are thought unsuitable for the regular courts to adjudicate” (p. 182)

Government takes interest in administrative adjudication because it desires to satisfy members of the public that proper investigation is done to issues of national concern or issues that affect the public directly by special bodies charged with speedy resolution of such disputes outside the traditional confines of the court whose legal processes take time.

### 3.2 CLASSES OF ADJUDICATING BODIES

As has been noted, governments all over the world have cause to make use of administrative adjudicating bodies from time to time in the interest of speedy disposal of disputes. Classes of administrative agencies that have been set up to deal with disputes of national importance include Administrative Tribunals, Administrative Courts, Public Complaints Commission, Rent Tribunals, Election Tribunals, Miscellaneous Offences Tribunals, Recovery of Public Property Tribunals, Armed Robbery and Firearms Tribunals, National Industrial Court and Industrial Arbitration Panel, to name a few.

For the purpose of administrative law, tribunals can be classified as follows

- (a) Tribunals with criminal jurisdiction. These tribunals deal with issues concerning miscellaneous offences including armed robbery etc.
- (b) Tribunals with civil jurisdiction which deal with issues like Rent Tribunals, land tribunals, industrial disputes etc.
- (c) Election Tribunals which deal with election petitions including qualifications and other improprieties concerning elections.

### 3.3 DEFINITION OF AN ADMINISTRATIVE TRIBUNAL

A tribunal is an administrative body which has the force of law and which is set up to investigate and adjudicate in disputes referred to it. In the process it may make claims where necessary while recommending solutions to solving the problems. In adjudication, members of an administrative body make judicial decisions by applying the law to the facts of the dispute. Its operation is less formal than the court system. The difference between the court system and the administrative tribunal (a quasi-judicial organ) is that in the judicial system, there is a nag for details following rules of evidence where no discretion is allowed. In the tribunal system, members are allowed some form of discretion as long as it will not compromise the fairness and impartiality that is required of the process.

From the foregoing a tribunal may strictly be described as an administrative body set up with definite terms of reference which possesses the attribute of a court of law in its bid to consider evidence in order to settle the disputes referred to it. It applies legal rules laid down by statute to the facts in issue presented to it for adjudication.

### 3.4 TRIBUNALS OF INQUIRY

Egwummuo (2000) defines Inquiries as follows:

“Inquiries are investigation into matters concerning Government policy and administration or allegations of impropriety or negligence in public life, with a view to finding out facts in relation thereto, for the purpose of determining the appropriate policy that would be adopted by the appropriate authority”. (p. 283)

In specific terms, it is generally believed that there is no main difference between an administrative tribunal and tribunals of inquiry. They are both constituted by government whose power to do so is derived from the Tribunals and Inquiries Act of 1960 and the relevant laws of the different states. An apparent difference if any is in their functions. For example, an administrative tribunal which operates like the court system applies the relevant law to the facts in dispute and makes a determination as a court would do without reference to either the authority that set it up or any other extraneous body.

In the case of **Alakija v. Medical Disciplinary Committee** (1959)4 F.S.C.38, the administrative tribunal made a decision as if it is a court of law without reference or recommendations to any head of state, governor, minister or commissioner. But in a typical tribunal of inquiry, the tribunal entertains evidence and examines the facts but makes the final recommendation to another party which may be either the Head of State/President, governor or Minister as the case may be, who will act on all the findings and recommendations or set some aside as he deems fit. An example is the Udoji commission of 1973 in which government accepted many of the recommendations and set aside some.

### 3.5 ARGUMENTS FOR ADMINISTRATIVE ADJUDICATION

As has been noted, administrative adjudication refers to a process where government sets up an administrative organ which functions as a court in solving disputes through admission of evidence and application of rules to facts. The arguments advanced for this quasi-judicial organ are as follows:

- (a) Tribunals are cheaper and Cost Effective.

(b) Administrative adjudication process is cheaper and cost effective both from the point of view of the litigants and government or administrative party that set up the tribunal. The main argument is that an administrative tribunal comprises ad-hoc members which constitutes when the need arises and disbands when the process is over. This is unlike the court process which is tortuous and involves a never-ending process of legal dialectics which often end up in adjournments.

(b) Speed in Hearing Matters

An administrative tribunal works with speed and accuracy in entertaining disputes. Issues are expeditiously disposed of. There are no long adjournments and some tribunals like the election tribunals have a fixed period of sitting and a fixed period for disposing of election cases.

(c) In administrative tribunals, matters are heard by appropriate experts while a magistrate or judge or lawyer heads a tribunal of inquiry and other members are respected and knowledgeable people in the issues under reference, so constituted for ease of hearing the matter.

(d) Informality of Procedure

An adjudicating administrative process is informal. Members sit without regards to the paraphernalia or robbing, wigs and gowns etc.

### 3.5 CRITICISMS OF ADMINISTRATIVE ADJUDICATION

While an administrative adjudication process is simple and cost effective, the process is often criticized for the following reasons”

(a) Inadequacy of legal Knowledge

Although some members of an administrative adjudication process have legal minds, other members lack legal training and scientific factfinding techniques.

This drawback beclouds the assumption that an administrative tribunal possesses the quality of fairness.

(b) Assumed Loyalty to Government

Whereas the court system does not display loyalty to any persons or organs, there is fear that administrative tribunals may nurse some loyalty to the authority that set them up. In other words, they may seek the mind of government or minister or state governor that set up the specific tribunal with a view to ‘dancing’ towards the intention of government. It is common knowledge that in a judicial process the courts have their allegiance only to the Constitution of the Federal Republic of Nigeria and the specific laws that relates to the issues in dispute.

For example, in **FCSC v. Laoye** the Supreme Court stated its displeasure at the frequent use of tribunals instead of courts of law for trial of persons. In the case, the now famous statement of OPUTA, JSC is replicated here in order to drive home this point:

“The jurisdiction of the ordinary courts to try any allegation of crime is a radical and fundamental tenet of the rule of law and the cornerstone of democracy. If the executive branch is allowed to operate through Tribunals and executive investigation panels, that Surely will be a very dangerous development. This Court cannot be party to such dangerous innovation. It is only when one is on the receiving end that he Can fully appreciate.”(1989)2 NWLR pt. 106 p. 265

(c) Inadequate Opportunity for Self Defense

The right to fair hearing which is enshrined in Section 36 of the 1999 Constitution involves the opportunity to present self defense and arguments in a litigation process. It is believed that in some cases that the process of administrative adjudication lacks enough Opportunity for self defense. Self defense is sacrificed as some believe, in the altar of speed and expeditious disposal of disputes by administrative tribunals.

#### (d) Secrecy of Sittings

Some administrative tribunals sometimes sit in camera, to the exclusion of journalists and other citizens who may want to watch the tribunal's proceedings. It is assumed that the secret nature of some tribunals is a smoke screen for short-cutting the due process of law as regards a right to counsel of one's choice or fair hearing or application of rules of natural justice.

From the foregoing it is evident that the process of administrative adjudication has its merits and demerits. It would appear however that the merits far outweigh the demerits.

#### 4.0 CONCLUSION

The process of administrative adjudication is known to the constitution. When Section 6 and Section 36 of the 1999 Constitution are read together, it would be clear that the Constitution recognizes administrative adjudication. Adjudicatory process as seen in administrative tribunals is decongesting the court in hearing and disposing of disputes. However, there are arguments and criticisms for administrative adjudication. It would appear that the benefits of adjudication processes far outweigh its draw-backs.

#### 5.0 SUMMARY

The process of administrative adjudication is known to law. Section 36 of the 1999 constitution affirms that tribunals may be used in addition to regular court procedures in the hearing and disposal of disputes. Administrative adjudication has its merits and demerits. While one of the merits include cost effective and speedy disposal of disputes among others, one of the draw-backs is that functionaries in the process do not all have adequate legal knowledge to apply the law to the facts in issue.

#### 6.0 TUTOR MARKED ASSIGNMENT

1. (a) Define the concept of Administrative Adjudication

(c) Freely comment on three arguments for Administrative Adjudication and three points of criticism of Administrative Adjudication.

#### 7.0 REFERENCES/FURTHER READING

1. Blachly, F.F. and Oatman, M.E. (Eds). (1954): “Administrative Adjudication”. In *Encyclopedia of the Social Sciences*, Vol.III
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## UNIT 2: MEMBERSHIP OF TRIBUNALS & INDEPENDENCE OF TRIBUNALS

### CONTENT

1.0 Introduction

2.0 Objective

3.0 Main Content

3.1 Origin of Tribunals

3.2 Classification of Tribunals

3.3 Membership of Tribunals

3.4 Independence of Tribunals

3.5 Comparison of Tribunals and Enquiry

4.0 Conclusion

5.0 Summary

6.0 Tutor marked Assignment

7.0 References/Further Reading

### 1.0 INTRODUCTION

As observed in Unit 1, there are circumstances where judicial authority is given to a body of citizens of good standing to perform judicial functions in a committee known as tribunal. There is evidence to suggest that the origin of tribunals can be traced to the year 1660 when in the United Kingdom judicial powers were given to men of the Customs and Excise to perform specific functions in Commerce Department. Powers were also given in 1799 to Land Tax Commissioners. Upon independence in 1960, the aspects of the English legal system became received laws in Nigeria and the idea of using tribunals to solve specific disputes and issues was inherited by the government of Nigeria. That is why a year later in 1961, government promulgated the Commission and Tribunals of Enquiry Act, 1961 which gave authority to the Prime Minister, the then Chief Executive in the

Parliamentary System, to appoint Commissioners whenever he thought he had to set up tribunals for any purpose. It has also been noted that Section 3(1) of the Constitution recognizes the idea of giving judicial powers to a tribunal. Tribunals therefore have come to stay in Nigerian politics and the Commissioner of such Tribunals share judicial powers with Nigeria courts.

## 2.0 OBJECTIVE

At the end of this Unit, students will learn that membership of tribunals is made up of men and women of integrity who possess certain qualifications in order to work as tribunal commissioners, it would be realized that tribunals are relatively independent of the authorities that set them up. Some comparison would be made between administrative tribunals and tribunals of enquiry.

## 3.0 MAIN CONTENT

### 3.1 ORIGIN OF TRIBUNALS

It would be appropriate to define the concept of a tribunal before tracing its origin. Malemi (2008) defines a tribunal as

“A special court usually established by government outside the hierarchy of the regular court system to hear and determine matters of a particular kind.” (p. 179)

As observed by Egwummuo (2000)

“As an aspect of administrative law, its origin is traceable to the British origin of our legal system and the focus is on commission of Customs and Excise, who were given judicial powers by English Statutes dating back to 1660”. (p. 268).

As is well known, the English legal system became part of Nigerian law upon independence in 1960. The concept of tribunal thus was inherited in Nigeria and in 1961, a year after independence, government promulgated the Commission and Tribunals of Enquiry Act which gave authority to the Prime Minister to appoint Commissioners to tribunals whenever the need arises. The Act empowered Commissioners so elected to enquire into any matter or thing within or affecting

the general welfare of Nigeria or into any matter or thing within federal competence anywhere within the federation. The 1961 Act was replaced by Section 22 of the Tribunals of Enquiry Act 1966.

### 3.2 CLASSIFICATION OF TRIBUNALS

Tribunals are classified based on the group of issues they deal with specifically as follows:

#### (a) Tribunals with Criminal Jurisdiction

These are tribunals that deal specifically with trial of criminal offences in different zones of the federation. A good example would be the Counterfeit Currency Tribunal set up following the Counterfeit of currency Decree 1984. Another example would be the Code of Conduct Tribunal and the Armed Robbery and Firearms Tribunal.

#### (b) Tribunals with Civil Jurisdiction

These are tribunals that deal with civil offences e.g. rent tribunals, land tribunals, industrial relations tribunals etc.

#### (c) Election Tribunals

These are tribunals that are charged with the responsibility of enquiry into election issues including disputes about results and eligibility issues among others.

While it has been observed that there is a proliferation of tribunals, most of which exercise judicial functions, it is obvious that the congestion in courts and the snail speed with which the courts exercise their judicial powers may have necessitated the need for tribunals in order that justice would be seen to have been done to litigants without delay.

### 3.3 MEMBERSHIP OF TRIBUNALS

Membership of tribunals varies from one to the other depending on the substantial issues that the tribunal has to deal with. It is so because authorities who set up tribunals always desire that those who have been appointed to commissioners

should have broad based education some of which must be related to the nature of the dispute that they have to deal with. For example, a tribunal that deals with miscellaneous offences of criminal nature must have commissioners with legal mind on the tribunal.

Be this as it may, from Nigeria's contemporary experience, tribunals which exercise judicial powers have always been chaired by retired or serving Judges and about three other members of good moral background. It would be emphasized that irrespective of the number of that constitutes a tribunal (and the number is already determined by the authority that set it up) a consideration is always given - that the commissioners must be people of proven integrity. A tribunal is guided by objectivity and the principle of fair hearing and they are reminded to be independent of the authority that set them up.

Membership of a tribunal is carefully selected to reflect the men who are in good moral standing in society and who have no criminal background. Although there is no fixed number of persons to be appointed into a tribunal, the extent of the issues in dispute usually determines the membership. One thing that is certain is that the chairman of a tribunal is usually a serving or retired judge and two or three more members one of whom has a legal mind while the other has a broad based knowledge of issues in dispute. In addition a lawyer or legal practitioner either from service or the private sector is usually appointed as a lawyer to the tribunal. The duty of the lawyer is to ensure that parties are well represented and that the rules of fair hearing and evidence are adopted by the tribunal in their proceedings. Usually a Secretary from the civil service is appointed to the tribunal. While other members of the tribunal are paid sitting fees, the chairman as a serving judge is not paid additional fees. The Secretary from service explains administrative matters to the tribunal. The Secretary as an administrative guide to the panel is not entitled to vote in the process of decision making.

### 3.4 INDEPENDENCE OF TRIBUNALS

Following the principle of separation of powers, no branch of government wants to directly interfere with the duties and functions of the other. The Executive branch is distinct from the Judicial Branch and the judicial branch is different from the Legislative branch. Functionaries of the three branches of government are therefore strictly speaking, independent from each other. Ordinarily, tribunals which share judicial functions with the courts under the judicial branch would be independent from the Executive branch.

According to Oluyede (1988)

“tribunals make their decisions independently and are supposed to be free from political influence”. (p. 223)

In certain circumstances, the authority that set up a tribunal determines the officers to whom appeal lies. For example when an enabling statute provides that appeal lies to a Minister or Commissioner, any case constituting an appeal in the dispute enquired into by that tribunal lies in the Minister or Commissioner as required by the enabling statute. This procedure is however different from any attempt by politicians who may try to buy the conscience of tribunal members by chasing them around with bags of money. The Chief Justice of Nigeria, Fatai Williams is reported to have claimed that politicians in Nigeria made several attempts during the election petition trials of September to October 1983 to influence the judiciary with money. Although the veracity of this claim has not been fully established, it was made by the Number One Judicial Officer in Nigeria at the time.

In conclusion, it would be noted that tribunals in their procedures must follow constitutional provisions. They must be fair, objective and legal. They must hear the other side following the principle of *audi alteram partem*.

### 3.5 COMPARISON OF TRIBUNALS AND ENQUIRY

(a) The main difference between tribunals and enquiry lies in the fact that tribunals share in the judicial power of Nigerian courts. They entertain petitions and disputes and make decisions including awards or remedies to aggrieved parties independent or without reference to the authorities that set them up e.g. the election tribunal which makes decisions and are able to reverse election results on grounds of impropriety, falsification or irregularities committed in the elections. A case in point would be the 2008 reversal of Prof. Osunbor, Governor of Edo State under the platform of the Peoples Democratic Party (PDP). Although Prof. Osunbor had been sworn in and actually acted as Governor of Edo State for over six months, a special election tribunal holding in Benin reversed the election result in favour of Comrade Adams Oshiomhonle who the election tribunal said was the valid winner of the 2007 election to the Office of Governor of Edo State. Comrade Oshiomhonle then became Governor of Edo State on the platform of the Action Congress (AC) party.

(b) An Enquiry is selected in the same way as a tribunal but most enquiries perform fact-finding functions after which they report back to the authority that set them up or to government or any other authority as the case may be. They are basically information seekers and submit same to the prescribed authority for purposes of decision making. Their functions often cover administrative policies, land matters, chieftaincy title matters, financial impropriety, education, banking etc.

(c) Tribunals are more permanent in nature than enquiries. While tribunals are set up by enabling statutes giving them force of law, enquiries are set up by government or relevant authority with definite terms of reference. In most cases they send their report to the official designated to make decision on the matter.

(d) Decisions of tribunals are in most cases final. Enquiries do not make decisions that stand alone. Their decisions are intended to be recommendations which another authority has liberty to implement or not.

(e) A common attribute of tribunal is that their decisions often affect rights and obligations of persons/citizens.

(f) The two bodies are expected to be guided in their deliberations by the principles of law including rules of natural justice, fair hearing and fundamental human rights as enshrined in Section 33 to 43 of the 1999 Constitution.

(g) While the procedures in some tribunals are formal and legalistic as regular courts, the procedures in enquiries are usually less formal. In some deliberations, legal representative may be required at tribunals but at enquiries persons may appear in the company of their legal practitioners who may advise on legal issues if the need arises. See the case of **Ekpo v. Calabar Local Government Council** (1993)3 NWLR pt. 281 p. 324. In this case, the plaintiff appellant was the Chairman of Calabar Local Government council. 18 councilors signed notice of misconduct against him. They passed a resolution that the chairman had a case of misconduct to answer and the allegation must be investigated. The chairman went to court and sought leave of the court to prevail on the councilors. The court of appeal dismissed the chairman's application and held that the appellant had not established any condition that should warrant the court in interfering with the steps taken by the councilors. The court cited the provisions of the Local Government Basic Constitution and Transition Provisions Decree of 1969 where Section 11 provides among other things, that it was the councilors' responsibility to decide what amounts to gross misconduct.

#### 4.0 CONCLUSION

This Unit shed light on membership of tribunals and independence of tribunals. It was observed that membership of tribunals comprises men of proven integrity some of whom should have legal backgrounds in order to dispense justice fairly, objectively and independently. While the chairman of most tribunals are serving or retired judges, the Secretary are serving administrative officers from the civil service who serve to advise the tribunals on administrative issues. Tribunals are largely independent of the authority that set them up. They make decisions without further reference to the authority that set them up. A good example would be that of election tribunals which make far-reaching decisions based on the facts before them including nullification of election results.

## 5.0 SUMMARY

The history of tribunals date back to the legal system of the United Kingdom which was imported into Nigeria as received law upon our independence in 1960. The purpose of using the method of tribunals in Nigerian legal system is to decongest matters in the courts and to speedily hear disputes and cases in less costly ways. Tribunals serve as alternative judicial bodies and are more legalistic and formal in their approach to solving disputes than Bodies of Enquiries. Tribunal decisions are not subject to further review while decisions of Enquiries are subject to further review by the officers to whom appeal lie.

## 6.0 TUTOR MARKED ASSIGNMENT

1. Are there any differences between Tribunals and Enquiries? If any, state such differences.

## 7.0 REFERENCES/FURTHER READING

1. Egwummuo, J.N. (2000). *Modern Trends in Administrative Law*. Academic Publishing Company, Enugu.

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## UNIT 3: RIGHTS OF APPEAL UNDER TRIBUNALS

### CONTENT

1.0 Introduction

2.0 Objective

3.0 Main Content

3.1 Rights of Appeal under Tribunals

3.2 Problems of Tribunals: Contempt of Decisions

4.0 Conclusion

5.0 Summary

6.0 Tutor marked Assignment

7.0 References/Further Reading

### 1.0 INTRODUCTION

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

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

An appeal arises where a decision in a case or dispute adjudicated upon by the court or tribunal does not go well with any of the litigants in the dispute. The party

that appeals to a higher authority is referred to as the plaintiff appellant. He requests the higher authority to set aside the decision of a lower body which in most cases is not in his favour. If the higher authority or court believes that his appeal has merit, it would be upheld. If however the appeal does not have merit, it would be thrown out and the decision of the lower authority or court would be sustained. Evidence abounds in legal proceedings in Nigeria where the appeal courts and appeal bodies have overturned decisions of lower courts. There is evidence exist also where appeal courts or bodies have upheld decisions of lower bodies. It is pertinent to observe that appeal courts follow the principle of fair hearing, equity and natural justice in consideration of appeals.

In the case Nigerian courts, appeal lines from the High Court to the Federal Appeal Court and from the Federal Appeal Court to the Supreme Court. But in the case of tribunals, appeal lies to a higher body stipulated in the statute that gave authority to the tribunal to sit. Any tribunal that processes appeal where the statute does not advise one has acted above its powers (*ultra vires*).

## 2.0 OBJECTIVE

The objective of this Unit is to introduce the student to an important process in the dispensation of justice in Nigerian legal system. The student will observe that appeal lines lies from a lower judicial body to a higher judicial body. In the case of courts, an appeal lies from the High Court to the Appeal court and from the Appeal Court to the Supreme Court. In the case of tribunals, appeals may only lie to a higher authority if the statute establishing the tribunal so prescribed. Where the enabling statute does not recognize an appeal process, the tribunal of enquiry will have no power of introducing an appeal process.

## 3.0 MAIN CONTENT

### 3.1 RIGHT OF APPEAL UNDER TRIBUNALS

In simple terms, an appeal is a request or wish expressed to a court by an appellant who wishes a decision to be changed. In a normal court system, it is usual for a litigant who is not pleased with the decision of a lower court to appeal to a higher court for a re-examination of the litigation process with a view to changing the decision of the lower court. It is pertinent to observe that in the case of tribunals there is no right of appeal except it is explicitly stated by statute.

Oluyede (1988) states:

“Although there are numerous ways of appeals from various tribunals in this country, the general principle still applies to each and every one of them. It should also be noted that an appeal may lie from a tribunal to a Minister or Commissioner, from a tribunal to a court of law, from minister or Commissioner to a court of law, from a tribunal to the Head of State or Governor by way of confirmation or no appeal may lie at all. An appeal may be on the question of fact, law or both, or on question of law only.” (229)

In some cases an appeal may lie from the tribunal to the court if it is established that there is a fundamental breach in the tribunal's process of decision making or if the process employed by the tribunal is contrary to the principles of natural justice. In that case, the appeal from tribunal to the court only holds if the enabling statute of the tribunal allows for appeal. This is what happened in **Denloye v. Medical And Dental Practitioners Disciplinary Tribunal (1968)** Suit No. SC 91/1968 of November 22, 1968. As already stated, the provisions of the enabling statute that sets up a tribunal states the authority of persons to whom appeal lies as per the decisions of the tribunal. In most cases, the enabling statute will state that appeal lies to a designated Minister of the Federal Republic of Nigeria or with a Commissioner with respect to State Government as the case may be. An appeal

may lay from one tribunal to a higher tribunal which may not be a court in the real sense. A good example will be seen in administrative adjudication process where appeal lays from the decision of the Industrial Arbitration Panel to the National Industrial Court.

A right of appeal is a second tier process in the quest for justice. An appellant is motivated to seek a reconsideration of his matter by a superior body in the hope that he will find justice because of his displeasure at the way his matter was handled by a lower authority. But the judicial process entertains appeals through the court system because the Constitution's belief that it is a fundamental human right for a litigant to be given a fair hearing and it is traditionally believed that tortuous as the process of adjudication may be, it better to set one offender free than convicting an innocent man who may not have been given a fair trial. Fair trial is therefore the cornerstone of any legal system.

### 3.2 PROBLEMS OF TRIBUNAL: CONTEMPT OF DECISIONS

Tribunals have become part of the process of dispensing justice in this country. It is fair to observe that most governments of Nigeria from independence to date have made good use of tribunals indicating that they have trust in the tribunal process of dispensing justice. There is no doubt that tribunals have assisted in clearing congestion of cases at the conventional courts of law. The speed at which tribunals decide matters and the cost effective nature of their claims have been assets to the use of tribunals. As Wade (1977) noted, on the issue of frequent use of tribunals "it was based on attitude and positive hostility to the courts of law". (p. 753).

In support of the above statement by Wade, it can be added that delay in concluding cases in this country has been a major draw-back in legal proceedings and that explains why successive military regimes in Nigeria have had cause to use

tribunals in dispensation of justice. As is well known, military regimes suspend the constitution and operate through decrees in the interest of peace and stability. Although successive governments in Nigeria are eager to see results and improvements in the judicial process which prompted them to employ the use of tribunals in the dispensation of justice, tribunals are not meant to replace regular courts which are recognized and listed in the Constitution. It is expected that with great advancement in modern technology, the process of deciding cases in the regular courts would be spade up. If the Bench is equipped with state-of-the-art voice recording equipment and laptops for quick referrals, delays in the court system would be virtually eliminated.

One problem that tribunals appear to have is that of contempt of some of their decisions. In the regular court system, if court orders are disobeyed, there are appropriate sanctions for contempt but tribunals do not have appropriate sanctions for contempt of their orders. Section 26 of the Trade Dispute Act 1976 empowers tribunals to deal severely with contempt of their orders by referring such contempt to a high court or to summarily deal with such cases. The tribunals have been slow in summarily dealing with cases of contempt because they are aware that they are strictly speaking not courts. Instead they make use of referral of cases of contempt of their orders to other superior courts for prosecution. This problem has led members of the public to believe that the tribunals lack the power of strong enforcement of their orders. An exemplary case which drives home this position is in the celebrated case of **Union Bank of Nigeria Ltd v. National Union of Banks, Insurance and Financial Institution Employees (NUBIFIE)**. On May 10, 1983, the National Industrial Court which is a tribunal issued an order requiring striking works to go back to work and they treated the order with contempt by refusing to obey. The Union Bank of Nigeria Limited brought an application requiring the striking workers to explain why they should not be punished under Section 26 of

the Trade Dispute Act 1976. The National Industrial Court did not summarily deal with the contempt case. The striking workers or their leaders were not imprisoned or sanctioned. They returned to work later. The general tradition is that tribunal after giving its verdict, does not reconsider or re-open the case. In some cases however, aggrieved parties in decided matters at tribunals have pleaded with tribunals to re-open their cases. Tribunals have been cautious in this area because they are mindful of the fact that even the high court has power in extreme circumstances to quash decisions of tribunals.

Another problem of tribunals is the excessive personal immunity enjoyed by parties and witnesses who appear before them, unlike regular courts where the immunity of parties and witnesses are limited.

From their functions, tribunals can be said to be part of the judicial system in Nigeria. They speedily deal with matters brought before them and they have to a large extent disposed of matters in accordance with the principle of fairness, equity and natural justice. They need to be strengthened by enabling them to provide tough sanctions for contempt of their orders.

**Other problems of administrative adjudication include:**

- a. There is inadequate legal knowledge: One reason for this is that not all the members of the panels have legal knowledge or legal training, but assessors though the Chairman of the panel is usually a judge or lawyer.**
- b. There is loyalty to Government: the members of these adjudicatory bodies are appointed by the administration, and they are often loyal to the administration or the relevant administrative authority setting it up, and they lack the independence and impartiality required for natural justice and fair hearing under the fair hearing provisions of the Nigerian Constitution.**

- c. Inadequate Observance of Legal Procedure: they are not bound by judicial precedent and are flexible in reaching decision and sometimes without sufficient grounds for its decision.**
- d. Inadequate explanation of reason for Judgment: They may not give detailed reasons for the decision reached, unlike the practice in the regular courts.**
- e. Lack of fair hearing and non-observance of rules of natural justice: the due observance of the rules of natural justice and fair hearing, which are the most for any person or body who performs a judicial or quasi-judicial function, may mean little or nothing to an administrative adjudicatory body which may just want to “get on with the job”. Therefore, miscarriage of justice is common.**

#### 4.0 CONCLUSION

Government's fate in tribunals as administrative judicial organs for speedy disposition of cases and as machineries to enquire into social problems appears very strong. In a normal court system, the right of appeal is a freedom which dissatisfied litigants have. It is a process whereby a party who is dissatisfied with the decision of a lower court makes an appeal to a superior court usually a High Court or the Court of Appeal, to re-examine the decision of the lower court with a view to changing it in their favour. Evidence abound that in cases where superior legal arguments are made, buttressed by evidence which the lower courts may have ignored, superior courts have reversed decisions of lower courts. In the specific case of tribunals, appeal does not lay to them except the enabling statute that set up the tribunal specifically states the right of appeal. However, tribunals have had to refer cases requiring appeal to the High Court for hearing.

## 5.0 SUMMARY

There are many forms of tribunals set up by statute and by government to investigate disputes, hear cases and make decisions or to inquire into social problems. Tribunals have proven themselves to be fast, adept in investigation and they are the hope of litigants who seek speedy decision on their cases or disputes. However tribunals are not regular courts. Their decisions and orders though respected have in some cases been treated with contempt and disobedience. People who recourse to tribunals for adjudication have had justice dispensed fairly and objectively with respect to their fundamental human rights. In all cases, tribunals have been

guided by the need to apply with the principles of natural justice, equity and fair hearing.

#### 6.0 TUTOR MARKED ASSIGNMENT

1. Discuss two ways in which application of modern technology would be a great resource to tribunals in the dispensation of justice.

#### 7.0 REFERENCES/FURTHER READING

1. Oluyede, P.A. (1988). *Nigerian Administrative Law*. (5th Ed.) University Press, PLC. Ibadan.
2. The 1999 Constitution of the Federal Republic of Nigeria
3. Wade, H.W.R. (1982). *Administrative Law*. (5th Ed.). Clarendon Press, Oxford

## UNIT 4: FUNDAMENTAL RIGHTS UNDER THE 1999 CONSTITUTION

### CONTENT

1.0 Introduction

2.0 Objective

3.0 Main Content

3.1 What is a Fundamental Right

3.2 Right to Life

3.3 Right to Dignity of the Human Person

3.4 Right to Personal Liberty

3.5 Right to Fair Hearing

3.6 Right to Private and Family Life

3.7 Right to Freedom of Thought, Conscience and Religion

3.8 Right to Freedom of Expression and the Press

3.9 Right to Peaceful Assembly and Association

3.10 Right to Freedom of Movement

3.11 Right to Freedom from Discrimination

3.12 Right to Acquire and Own Immovable Property anywhere in Nigeria

3.13 Right to Freedom from Compulsory Acquisition of Own Property without  
Due Process

4.0 Conclusion

5.0 Summary

6.0 Tutor Marked Assignment

7.0 References/Further Reading

155

## 1.0 INTRODUCTION

In this Unit, we are focusing on Fundamental Human Rights under the 1999 Constitution. These rights are documented in chapter 4, Section 33 to 44 of the 1999 Constitution. These rights include Right to Life, Right to Dignity of the Human Person, right to Personal Liberty, Right to Fair Hearing, Right to Private and Family Life, Right to Freedom of thought, Conscience and Religion, Right to Freedom of Expression and the Press, Right to Peaceful Assembly and Association, right to Freedom of Movement, Right to Freedom from Discrimination, Right to Acquire and own Immovable Property anywhere in Nigeria and Right to Freedom from compulsory Acquisition of own Property without Due Process.

## 2.0 OBJECTIVE

The objective of this Unit is to introduce the student to fundamental human rights as enshrined in the 1999 Constitution of the Federal Republic of Nigeria. These are rights that governments all over the world respect as related to human beings because they are rational and they have body soul and mind. In Nigeria the rights are enshrined in chapter 4, Section 33 to 44 of the Nigerian Constitution. Knowledge of these rights will instill in the students the dignity of the human person and a secured awareness that anywhere they travel to under the globe, their basic fundamental rights as human beings will travel with them and are recognized by any government in any country which they sojourn.

## 3.0 MAIN CONTENT

### 3.1 WHAT IS FUNDAMENTAL HUMAN RIGHT

Fundamental human rights are basic rights that *enure* to the nature of man as a rational human being and the rights are in alignment with the principles of natural

law. In Nigeria, these rights are enshrined in chapter 4, Sections 33 to 44 of the 1999 Constitution of the Federal Republic of Nigeria and they include Right to Life, Right to Dignity of the Human Person, right to Personal Liberty, Right to Fair Hearing, Right to Private and Family Life, Right to Freedom of thought, Conscience and Religion, Right to Freedom of Expression and the Press, Right to Peaceful Assembly and Association, right to Freedom of Movement, Right to Freedom from Discrimination, Right to Acquire and own Immovable Property anywhere in Nigeria and Right to Freedom from compulsory Acquisition of own Property without Due Process.

Most countries of the world have enshrined human right provisions in their constitution. A one time Chief Justice of Japan is reported to have said, while describing fundamental human right that:

“Fundamental human rights were not created by the state but are external and universal institutions common to all mankind and antedating to the state and founded upon natural laws” (1972) 16

J.A.L. No. 2, p. 131.)

The above submission explains that fundamental human rights are not ascribed to human beings at the pleasure of the state or constitution. They are what human beings are entitled to by the fact that they are human beings who are rational and who are endowed with body, soul and mind. Every government all over the world respects these rights and international organizations have enacted orders and prohibitions for violation of these rights.

### 3.2 RIGHT TO LIFE

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

“Every person has a right to life, and no one shall

be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal Offence of which he has been found guilty in Nigeria.”

The court however makes a difference with taking a human being’s life as a result of either punishment for a crime that has been committed or as a reprisal for the offence of murder. Section 33(2) however explains that a person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary. In other words, if a person is condemned for the offence of armed robbery in Nigeria and he is sentenced to death by firing squad, if he is executed, such a person cannot be regarded as having been deprived of his life in contravention of Section 33 of the 1999 Constitution.

### 3.3 RIGHT TO DIGNITY OF THE HUMAN PERSON

This Right is embedded in Section 34(1) of the 1999 Constitution which states that: “Every individual is entitled to respect for the dignity of his person, and accordingly

- (a) No person shall be subjected to torture or to inhuman or degrading treatment.
- (b) No person shall be held in slavery or servitude
- (c) No person shall be required to perform forced or Compulsory labour.”

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

In a recent decision in **Alhaja Abibatu Mogagi and Others v. Board of Customs and Excise and Another**(1982)3 NCLR 552 p. 562 where market women brought

an action against men of the Customs and Excise for horse whipping and tear gassing market women whose shops they raided with the suspicion that they were selling prohibited goods, the court held that the action by the Customs officials and their aids violated the fundamental human rights of the market women as enshrined in the Constitution. The actions of the men of Customs and Excise aided by policemen were seen to be barbaric and *ultra vires*.

### 3.4 RIGHT TO PERSONAL LIBERTY

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

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

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

### 3.5 RIGHT TO FAIR HEARING

Right to fair hearing is the mother of all rights because it is the core of justice. In simple terms, fair hearing is the act of listening to the person or persons and giving them equal opportunities to state their positions on an issue before adjudicating. In **Akoh v. Abuh** (1988) NWLR pt. 85, p. 696. SC., the Supreme Court explained that “to hear” in the process of justice means to hear and determine the cause or matter. In other words, the matter here relates to the process of hearing a suit from

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

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

The right to fair hearing cannot be ousted by law because the Nigerian Constitution is superior to any law. There is no contradiction that the Nigerian Constitution is supreme. Fair hearing is the cornerstone of any judgment process.

In **LPDC v. Fawehinmi** (1985) 2 NWLR pt. 7, p. 300 at 370 SC, the Legal Practitioners Disciplinary Committee (LPDC) was to examine the alleged misconduct of Mr. Gani Fawehinmi, a legal practitioner at that time over his publication in a West Africa Magazine of 23rd March 1985 and requested him to show cause why disciplinary measure should not be taken against him for the publication which they regarded as a professional misconduct. The case was brought to the LPDC by the Attorney-General of the Federation. Gani Fawehinmi went to court to file an application for an order of prohibition under the fundamental human right alleging that his fundamental human right to fair hearing under the Nigerian Constitution was likely to be contravened by the LPDC because the Attorney-General of the Federation who brought or filed the cause with the Legal Practitioners Disciplinary Committee was also a member of the Disciplinary Committee. Ganiyu Fawehinmi reasonably thought them that the right to fair hearing would be violated because the Attorney-General who is the accuser will also be a member of the Disciplinary Committee that will judge. So the maxim

nemo judex in casua suam i.e. no one can be a judge in his own case was advocated. The plaintiff respondent's complaint was serious enough to persuade the High Court to grant the respondent's application and made an order of prohibition to stop the Committee from trying Gani Fawehinmi. The Disciplinary Committee appealed to the Supreme Court and the Supreme Court held that the Legal Practitioners Disciplinary Committee's appeal failed and upheld the judgment of the High Court in favour of the plaintiff respondent.

Justice Karibi-Whyte, Justice of the Supreme Court state that

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

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

### 3.6 RIGHT TO PRIVIATE AND FAMILY LIFE

Section 37 of the 1999 Constitution states that

"the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected".

This right is often abused by authorities and some government officials with modern advancement in technology. There are situations where the homes of citizens have been bogged or wire-tapped which are clear violations of this section of the Constitution. The privacy of citizens as referring to their homes, correspondence, telephone conversation and telegraphic communication should be off limit to prying eyes as far as this Section is concerned.

In Nigeria many cases of violation of this right are not reported. However in the United States of America, evidence abound of violation of Right to Private and Family Life.

For example, in **Olmstead v. U.S.** a home was raided by the police even though their owners were not at home. The court regarded this as a violation of a right to private and family life. In this case, the Supreme Court held that the evidence obtained by wire-tapping of a family telephone in a criminal prosecution can be admissible as proof of violation of the right to private and family life.

### 3.7 RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

This right is guaranteed by Section 38 of the 1999 Constitution which States that “Every person shall be entitled to freedom of thought, Conscience and religion including freedom to change his religion or belief and freedom (either alone or in Community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.”

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

“In so far as freedom of religion is concerned, many Nigerians have developed grave doubts if this Freedom is not being carried so far as to amount to an Abuse in

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

### 3.8 RIGHT TO FREEDOM OF EXPRESSION AND THE PRESS

Section 39 of the 1999 Constitution documents the Right to Freedom of Expression and the Press as follows:

“Every person shall be entitled to freedom of expression including freedom to hold opinions and to reason and impart ideas and information without interference.”

Journalists, newspaper publishers, writers and leaders of thought have always taken solace in this Section implying that they have a right to practice as journalists, to express their ideas and to hold opinions freely. Journalists are free to express their ideas in so far as such expression does not impinge on the right of others. Section 39(2) of the 1999 Constitution guarantees the right of persons to own, establish and operate any medium for the dissemination of information, ideas and opinions.

Journalists have also taken refuge in the Section for criticizing the activities of government because they claim that it is unconstitutional to muzzle them when they freely express themselves in form of criticism of government activities. A case in point here is **Olushola Oyegbemi and Others v. A.G. of the Federation** (1982) 3 NCLR p. 895.

In this case, Olushola Oyegbemi and others refused to disclose the source of the news item they published because they claimed they had freedom of expression. The police arrested them and charged them with the offence of conspiracy to

commit felony. The court held that non-disclosure of the source of a news item is not contempt of court. The court further held that in a criminal proceeding, an accused person need not wait for a determination of his case before applying to a High Court to enforce his fundamental human right of freedom of expression. The court noted further that while journalists may exercise their right to freedom of expression and to withhold information, the right to withhold information is not absolute.

### 3.9 RIGHT TO PEACEFUL ASSEMBLY AND ASSOCIATION

Section 40 of the 1999 Constitution guarantees the Right to Peaceful Assembly and Association as follows:

“Every person shall be entitled to assemble freely and associate with other persons and in particular, he may form or belong to any political party, trade union or any other association for the protection of his interest” (p. LL40)

This section guarantees the right of Nigerian citizens to belong to any political party, trade union or any association where their rights and interests would be protected. It is worthy of note that many Nigerian citizens have always resorted to force to enforce this right which they believe is often violated especially in military regimes.

### 3.10 RIGHT TO FREEDOM OF MOVEMENT

Section 41 of the 1999 Constitution guarantees the right to freedom of movement. It states:

“Every citizen of Nigeria is entitled to move freely through- out Nigeria and to reside in any part thereof and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom”. (p. LL41)

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

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

3.11 RIGHT TO FREEDOM FROM DISCRIMINATION Section 42(1) of the 1999 Constitution states that

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

(a) Be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic

groups, places of origin, sex, religions or political opinions are not made subject;  
or

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

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

### 3.12 RIGHT TO ACQUIRE AND OWN IMMOVABLE PROPERTY ANYWHERE IN NIGERIA

Section 43 of the 1999 Constitution states that

“Every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.” (p. LL42).

This means that a Nigerian citizen from the South-West can acquire immovable property in North-Central or North-East region of Nigeria. Irrespective of the state of origin, the court confers on every Nigerian citizen the right to live anywhere in the Federation and acquire immovable property such as houses, estate etc without fear of victimization because he is not from the state where the immovable property is situated.

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

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

“No immovable property or any interest in immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be

acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law...”

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

### 4.0 CONCLUSION

The Nigerian Constitution as the mother of all laws in Nigeria guarantees

fundamental human rights to every citizen in Chapter 4, Section 33 through 43 of the 1999 Constitution. These rights are said to be fundamental because they belong to the nature of man as rational beings. Justice Kutigi stated in **Badejo v. Federal Ministry of Education** (1996)8 NWLR pt. 464 p. 15 at 41 SC)

“that fundamental human right is certainly a right which stands above the ordinary laws of the land, However, no fundamental right should stand above the country, State or the people.”

## 5.0 SUMMARY

The 1999 Constitution of the Federal Republic of Nigeria guarantees fundamental human rights. These rights are expressed in Section 33 through 43 and they include Right to Life, Right to Dignity of the Human Person, etc. The courts are the protectors of fundamental human rights. As interpreters of the law, court judges protect the rights of citizens that are violated. All citizens irrespective of the state in which they live, qualify for fundamental human rights. Every successive government in Nigeria has attempted to uphold human rights which are said to be universal, equal and inalienable rights of human beings. Democracy cannot thrive in any country if there is fragrant violation of the citizens’ fundamental human rights. The law courts as protectors of human rights have been strict in awarding costs to citizens whose rights were violated.

## 6.0 TUTOR MARKED ASSIGNMENT

1. In one of his judgments, Kayode Eso, Justice of the Supreme Court is reported to have stated that “there is no justification for the existence of the judiciary except in its existence for the defense of the citizen to put his view across with all potency for him to vent his feelings, and his success in the public, for him to feel and breathe the air of freedom around him.”

Explain the view that courts of law in Nigeria are the protectors of human rights.

#### 7.0 REFERENCES/FURTHER READING

1. Aguda T.A. (1983). *The Judiciary in the Government of Nigeria*. New Horn Press, Ibadan, Nigeria.
2. Malemi, E. (1999). *Administrative Law* (3rd Ed), Princeton Publishing Co, Lagos.
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4. The 1999 Constitution of the Federal Republic of Nigeria.

## UNIT 5: PUBLIC OFFICERS PROTECTION

### CONTENT

1.0 Introduction

2.0 Objective

3.0 Main Content

3.1 Definition of a Public Officer

3.2 List of Public Officers for the Purpose of the Code of Conduct

3.3 Public Officers Protection - When is a Public Officer Protected

3.4 Liability of Public Officers

3.5 Code of Conduct Bureau

3.6 Code of Conduct Tribunal

4.0 Conclusion

5.0 Summary

6.0 Tutor marked Assignment

7.0 References/Further Reading

### 1.0 INTRODUCTION

In any country, citizens work in the public and private sectors of the economy respectively. While the business of the private sector organizations are many and varied, public sector organizations deal largely with the affairs of government in the process of providing services to the state or nation. It is generally referred to as

government business which must be conducted in the interest of the citizenry and the economy. The personnel involved in government service are called civil servants and it is the Executive Branch of Government that has the administrative responsibility to employ, deploy and sanction erring civil servants.

## 2.0 OBJECTIVE

The objective of this Unit is to lead the student in an excursion on public officers' protection. The Unit will attempt to define who a public officer is, when the public officer is protected and his liability under the law. An attempt would be made to list categories of public officers for the purpose of the Code of Conduct which spells out government expectations on behavior of public officers.

## 3.0 MAIN CONTENT

### 3.1 DEFINITION OF A PUBLIC OFFICER

The Oxford Advanced learners Dictionary defines the word 'public' as "connected with ordinary people in society in general" (p.942)

As defined in Section 19 of the 5th Schedule to the 1999 Constitution Part 1 Code of Conduct for Public Officers, a public officer means

"a person holding any of the offices specified in Part 2 of this Schedule and 'public office' shall not include the chairmanship or membership of adhoc tribunals, Commissions or committees".

According to Malemi (2008), "a public officer is a civil servant irrespective of his position or rank. Thus a public officer is any person who is directly employed in government, public service, civil service or any public agency" (p. 440)

A public officer would therefore be a worker of any rank who deals with issues and questions as specified in his schedule of duties about government business that relate to social, economic, political or legal business activities that affect citizens within the 36 state structure of the Federal Republic of Nigeria.

The 5th Schedule of the 1999 Constitution specifies the Code of Conduct for public officers some of which are:

“a public officer shall not put himself in a position where his personal interest conflicts with his duties and responsibilities”

The same Schedule prohibits public officers from maintaining accounts in foreign banks, among others.

### 3.2 LIST OF PUBLIC OFFICERS FOR THE PURPOSE OF THE CODE OF CONDUCT

The 5th Schedule of the 1999 Constitution Part 2 lists the titles of public officers for the purpose of the Code of Conduct. These are as follows:

1. The President of the Federation
2. The Vice-President of the Federation
3. The President and Deputy President of the Senate, Speaker and Deputy Speaker of the House of Representatives and Speakers and Deputy Speakers of House of Assembly of States, and all members and staff of legislative houses.
4. Governors and Deputy Governors of States
5. Chief Justice of Nigeria, Justices of the Supreme Court, President and Justices of the Court of Appeal, all other judicial officers and all staff of court of law.
6. Attorney-General of the Federation and Attorney-General of each State
7. Ministers of the Government of the Federation and Commissioners of the Governments of the States
8. Chief of Defence Staff, Chief of Army Staff, Chief of Naval Staff, Chief of Air Staff and all members of the armed forces of the Federation.

9. Inspector-General of Police, Deputy Inspector-General of Police and all members of the Nigeria Police Force and other government security agencies established by law.
10. Secretary to the Government of the Federation, Head of the Civil Service, Permanent Secretaries, Directors-General and all other persons in the civil service of the Federation or of the State
11. Ambassadors, High Commissioners and other officers of Nigerian Missions abroad.
12. Chairmen, members and staff of the Code of Conduct Bureau and Code of Conduct Tribunal
13. Chairman and members and staff of local government councils
14. Chairman and members of the Boards or other governing bodies and staff of statutory corporations and of companies which the Federal or State Governments has controlling interest.
15. All staff of universities, colleges and institutions owned and financed by the Federal and State Governments or Local Government councils.
16. Chairman, members and staff of permanent commissions or councils appointed on full time basis.

### 3.3 PUBLIC OFFICERS PROTECTION -

#### WHEN IS A PUBLIC OFFICER PROTECTED?

The primary duty of a public officer is to render support service to the Executive Branch of Government that is charged with the administration of government business irrespective of rank or position. In his capacity, a public officer may be involved in contract action, law enforcement, contract negotiation or public administration. The question is, when is a public officer protected? In other words, does the employer take responsibility for the action of his agent? In this case,

Government will be the principal to the public officer who is an agent working for the principal. It is generally believed in common law that the state can do no wrong. But government officials may be liable in the course of their ordinary duties to commit tort, false imprisonment, illegal detention etc. When under protection can government exonerate or be responsible for the tort of his agents (public officers).

According to Malemi (2008)

“in order that a party may be protected by the Public Officers Protection Act or law, it has to be established That the party against whom the action is or was brought was:

- (i) a public officer or a public body; and
- (ii) (ii) that the act or wrong was done by the public officer or public authority in the course of duty in the execution of law or public duty”. (p. 438)

In practice, the general rule of law is that public officers are protected and not responsible or are not personally liable for contracts or other tort action which arise in the performance of their duties if they acted on behalf of government. This general rule applies to all categories of public officers including the President, State Governors, Ministers, Commissioners and other public officers.

This blanket protection for public officers does not include the tort actions committed by public officers when they are negligent, fraudulent or when they compromise their position which case appropriate disciplinary measures are taken against them by relevant authorities which may include suspension, termination of appointment, dismissal from service and/or retirement depending on the severity of the infringement.

In the case where a public officer acts in his capacity as an agent to the state, government is liable to execute the terms of that act and thereafter take appropriate

disciplinary measures against the officer who has acted on behalf of government. Government acts may be that of compensation to the party involved in the contract arrangement, revocation, rescheduling or other necessary actions provided that the other party who contracted with the public officer is not seriously disadvantaged.

A leading case on protection of a public officer is that of **Alfotrin Ltd v.**

**A.G. Federation and Another** (1996)9 NWLR pt. 475 p. 634 SC. In this case, a public officer acting on behalf of government entered into a contract for bagged cement to be imported from Barcelona, Spain by the plaintiff appellant. The ship carrying the bagged cement arrived on time at the Lagos port but could not discharge its contents because of port congestion. The Ports authority ordered the ship to proceed to Takoradi Port in Ghana. In the process, the ship incurred demurrage for 292 days. The plaintiff brought an action against government to pay the demurrage for the period the ship was in Ghana. The Supreme Court allowed the appeal under the grounds that the appellant was entitled to recover damages from government because the public officer who entered into the contract acted in his capacity as an agent to the government.

In **G.O.C. and Others v. Fakoyode** (1994)2 NWLR pt. 329 p. 744 C.A. the plaintiff respondent brought an action against the General Officer Commanding (GOC) 42nd Mechanized Engineers, Chief of Army Staff, Attorney-General of the Federation and others for damages for the illegal destruction of a building and the boys quarters attached to it by the defendants respondents, their servants, subordinates or agents. The court held that government was responsible for the action of its agents. The agents were protected and government bore the liability as principle on behalf of its agents. Specifically, Salami Justice of the Court of Appeal said:

“the Attorney-General can be sued in his official and Nominal or representative capacity for the tort Committed government or any government Department”.  
(p.760)

From the foregoing, it is established that when acting in his capacity as a public officer which means that the public officer is an agent acting for his principal which is the government or the authority of the public agency that the civil servant is working for, government as the principal in the agency transaction is liable for the action of contract or contract entered into by the public officer.

### 3.4 LIABILITY OF A PUBLIC OFFICER

The Public Officers Protection Act Chapter 160, Laws of the Federation of Nigeria and Lagos 1958 provides support for public officers who commit infringement or tort in the course of their official duties. The general rule, as cited previously, is that public officers from the rank of President and Governors and other public officers are granted immunity from legal actions in their personal capacity when the action in question or tort was carried out or committed in the course of their official functions. Section 308(1) of the 1999 Constitution places restriction on legal proceedings against public officers. It states that:

“Notwithstanding anything to the contrary

in this Constitution, but subject to subsection (2) of this section:

- a. No civil or criminal proceedings shall be instituted or continued against a person to whom this Section applies during his period of office;
- b. A person to whom this section applies shall not be arrested or imprisoned during that period either on pursuance of the process of any court or otherwise, and
- c. No process of any court requiring or compelling the appearance of a person to whom this section applies, shall be applied for or issued;

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

Section 308(3) indicates that Section 308(1) applies to a person holding the office of President or Vice President, Governor or Deputy Governor and the reference in this Section to ‘period of office’ is a reference to the period during which the person holding such office is required to perform the functions of his office. In other words, when an incumbent President or any public officer of any rank acts in his official capacity, he cannot be sued because he is performing the functions of his office. Such public officers can be sued in their official capacity but not in their private capacity.

A difference must be made between suing a public officer like the President in his official capacity and the actions e.g. of the National Assembly in impeaching the President in his official capacity. A President may be impeached and removed from office for illegal actions committed in his official capacity which grossly violate the Constitution. Section 143 of the 1999 Constitution provides for the impeachment of the President by the National Assembly. Similarly, Section 188 of the 1999 Constitution provides for the impeachment of the State Governor or his Deputy by the State House of Assembly for illegal or wrongful acts which violate the constitution of the Federal Republic of Nigeria. The immunity granted public officers as discussed above do not include immunity from election petitions. A distinction between civil proceedings and election petitions against a serving public officer like the President, Governors etc was made in Section 272(1) and Section 285 of the 1999 Constitution respectively. While the President or Governor as the case may be cannot be sued in his private capacity for actions committed in the course of executing his functions, he may be sued in his personal capacity in an election petition. Examples abound of serving Governors whose elections were

nullified after they had been sworn into office for over six months period by election tribunals that rules against them in cases where manifest injustice and election fraud prevailed. For example, Prof. Osunbor, Governor of Edo State had his election nullified by an election tribunal almost one year after he had been sworn into office as Governor of Edo State of Nigeria. Comrade Adams Oshiomhonle of the Action Congress Party was declared by the election tribunal to have been validly elected as *de jure* Governor of Edo State. He took over from Prof. Osunbor. The same process of election nullification by the election tribunal took place in Anambra and Ekiti states respectively.

### 3.5 CODE OF CONDUCT BUREAU

Public officers act as agents of government in the management of government business in the interest of citizens. In the achievement of the sacred duty of managing government business, government desires that its agents are men of integrity who separate personal interest from administrative justice. Government also desires high morale standards from its agents. It therefore requires its agents to conform to the 5th Schedule, Part 1 of the 1999 Constitution which provides a Code of Conduct for public officers. Section 1 of the Code of Conduct for public officers deals with the conflict of personal interest with official duty. Section 3 prohibits public officers from maintaining or operating a bank account in any country outside Nigeria. Sections 8 and 9 prohibits bribe for public officers or gifts or benefits that will obstruct the course of justice. Section 9 warns public officers not to abuse their office. Section 11(1) desires every public officer to declare his assets upon accepting government job and at the end of his tenure. The Code or rules of Conduct for public officers is monitored by the Code of Conduct Tribunal.

### 3.6 CODE OF CONDUCT TRIBUNAL

Section 15(1) of the Code of Conduct for Public Officers provides for a Code of Conduct Tribunal:

“there shall be established a tribunal to be known as Code of Conduct Tribunal which shall consist of a Chairman and two other persons.”

Section 18(1) specifies the powers of the Code of Conduct Tribunal as follows:

“(1) Where the Code of Conduct Tribunal finds a public officer guilty of contravention of any of the provisions of this Code, it shall impose upon that officer any of the punishments specified under sub-paragraph (2) of this paragraph and such other punishment as may be prescribed by the National Assembly.

(2) The punishment which the code of Conduct Tribunal may impose shall include any of the following:

- (a) vacation of office or seat in any legislative house, as the case may be,
- (b) Disqualification from membership of a legislative house and from the holding of any public office for a period not exceeding ten years; and
- (c) Seizure and forfeiture to the State of any property Acquired in abuse or corruption of office.

(3) The sanctions mentioned in sub-paragraph (2) hereof Shall be without prejudice to the penalties that may be Imposed by any law where the conduct is also a Criminal offence.”

The 5th Schedule of the 1999 Constitution empowers the Code of Conduct Tribunal to impose sanctions on a public officer who in their opinion contravenes the Code of conduct for public officers. These sanctions include vacation of office, disqualification from membership of the legislative house, seizure or forfeiture to the State of any property acquired in abuse or corruption of office. But following the principle of natural justice where the other side must be heard, Section 18(4) gives the right of appeal to any public officer that has been found guilty by the

Code of Conduct Tribunal, to the Court of Appeal. Specifically Section 18(4) states:

“where the Code of Conduct Tribunal gives a decision as to whether or not a person is guilty of a contravention of any of the provisions of this code, an appeal shall lie as of right from such decision or from any punishment imposed on such person to the court of appeal at the instance of any party to the proceedings.”

It is reassuring that government in recognition of the fact that its agents may commit wrongs in the course of their functions, set out a code of behavior to guide them so that injustice will not be perpetrated by public officers. The Code of Conduct Tribunal serves as a check on abuse of power, excessive use of power and selfish use of power by public functionaries. Citizens are reassured that if the Code of Conduct Tribunal does its jobs effectively, their rights under the 1999 Constitution would be protected and their entitlements to efficient and effective public service would be guaranteed.

#### 4.0 CONCLUSION

The 5th Schedule to the 1999 Constitution Part 1, defines a public officer as any person holding any of the offices specified in Part 2 of the 5th Schedule. These offices include Office of the President of the Federation, Vice-President, etc as contained in Part 2 Section 1 to 16 under the 5th Schedule to the 1999 Constitution. Public officers act as agents of government in executing government functions of economic, social and legal duties to Nigerian citizens. Public officers have their rights and privileges in the execution of their duties. In the course of their official functions, public officers may not be held liable in their capacity as agents. Government however as principal to its agents, vicariously is responsible for the tort of its agents except when those torts are committed under negligent or fraudulent purposes. The constitution in the 5th Schedule provides for a Code of

Conduct Tribunal which is empowered to investigate and make decisions on the conduct of public officers. Where the Code of Conduct Tribunal finds an officer guilty of an alleged misconduct, the constitution empowers the tribunal to take disciplinary measures against convicted public officers which may include the sanctions mentioned in Section 18 of the 5th Schedule to the Constitution which may include vacation of office or seat in a legislative house, disqualification from membership of a legislative house, seizure or forfeiture to the State of any property acquired in abuse or corruption of office. The constitution provides that officers who are found guilty, have a right of appeal to the Court of Appeal.

## 5.0 SUMMARY

The Constitution of the Federal Republic of Nigeria as the mother of all laws in the Federation recognized that public officers are agents of government who hold office as specified in the 5th Schedule Part 2 of the Constitution for the purpose of the Code of Conduct. Public officers assist government in executing its functions in the interest of public good. These functions include economic, social, political and legal functions for the good order of society. In the execution of their functions, public officers may not be sued in their personal capacity. In their official capacity, public officers may be sued and if it is proven that they executive their duties in good faith on behalf of government which in this case acts as principle, government may vicariously be held responsible for the tort of its agents where the wrongs are not committed under negligent or fraudulent intentions. However, in the interest of justice and fair play, the Constitution provides a code of Conduct for public officers and it empowers the Code of Conduct Tribunal to try public officers who breach the Code of Conduct. Sanctions which include vacation

of office or vacation of seat in the case of legislators and/or seizure or forfeiture to the state of any property illegally acquired through corruption or abuse of office. Convicted public officers have a right to appeal to the Court of Appeal after the Tribunal has made its judgment on their conduct.

#### 6.0 TUTOR MARKED ASSIGNMENT

1. List titles of public officers for the purpose of the Code of Conduct as enshrined in the 5th Schedule to the 1999 Constitution.

#### 7.0 REFERENCES/FURTHER READING

1. Iluyomade B.O. & Eka B.U.(1992). *Cases and Materials on Administrative Law in Nigeria*. (2nd Ed.) Obafemi Awolowo University Press, Ile Ife.
2. Malemi, E (1999). *Administrative Law* (3rd Ed), Princeton Publishing Co, Lagos.
3. Public Officers Protection Act, Laws of the Federation of Nigeria and Lagos, 1958.
4. The 1999 Constitution of the Federal Republic of Nigeria