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SCHOOL OF ARTS AND SOCIAL SCIENCES

COURSE CODE: POL 327

COURSE TITLE: PRINCIPLES OF ADMINISTRATIVE  
LAW



**POL 327**  
**PRINCIPLES OF ADMINISTRATIVE LAW**

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## INTRODUCTION

### *Welcome to POL 327: Principles of Administrative Law*

This course is a three-credit unit course for undergraduate students of political science. The materials have been developed to meet global standards. This Course Guide gives you an overview of the course. It also provides you with relevant information on the organisation and requirements of the course.

## COURSE AIMS

The aims are to help you understand basic principles and concepts in administrative law. The broad aims are to:

- introduce you to administrative law, its definition, nature, scope, as well as the sources or powers of the administrative law as it relates to constitutional law and its principles
- equip you with basic topics in administrative law such as local government system, functions and delegated legislation, its control, its occupiers in any administrative system, and how its use or mis-use can affect the workings of a governmental administrative system
- examine the administrative Panels and Tribunals of enquiries in countries, the extent of their independence and the rights of appeal from the tribunals as well as judicial review applicable in the systems.
- expose you to the functions of the Nigeria Police Force, its legal status, responsibilities and control of the police force as well as the responsibility of Inspector General of Police and how the police and the public relates under the military and civilian regimes.
- expose you to the work of Public Complaints Commission/ Ombudsman, actions and proceedings against government, the doctrine of locus standi and administrative and prerogative remedies available to citizens.

## OBJECTIVES

To achieve the aims set out above, POL 327 has broad objectives. In addition, each unit also has specific objectives. The unit objectives are at the beginning of each unit. I advise that you read them before you start working through the unit. You may refer to them in the course of the unit to personally monitor your progress.

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

- define administrative law, its nature, scope and approaches, and how it works in a system and remedies available against the government on infringement by it against the citizenry.
- discuss the concepts of the local government, functions and finances and sources and powers of administration with relevant constitutional principles
- discuss the meanings of major concepts in Administrative Law Principles, their usage and how they can be applied in administrative system
- discuss the meanings and differences between locus standi and proceedings against government
- the intrinsic merits of delegated legislation as an inevitable means in administrative system for smooth running of a responsible government
- explain how remedies can be sought against the government through the court against the government.

## **WORKING THROUGH THIS COURSE**

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

## **COURSE MATERIALS**

The major materials you will need for this course are:

- Course Guide
- Study Units
- Assignment File

Relevant textbooks including the ones listed under each unit. You may also need to listen to programme and news on the radio and television, local and foreign. As a beginner, you need to read newspapers, magazines, journals and if possible log on to the internet.

## STUDY UNITS

There are 21 units in this course. They are listed below.

### **Module 1 The Definition, Nature, and Scope of Administrative Law**

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

### **Module 2 The Local Government System**

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

### **Module 3 Administrative Panels and Tribunals of Enquiries**

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

### **Module 4 The Nigeria Police Force**

- Unit 1 The Nigeria Police Force
- Unit 2 Legal status, Responsibility and Control of the Police Force
- Unit 3 Responsibility of Inspector General of Police
- Unit 4 The Police and the Public under the Military and Civilian Regime

### **Module 5 Public Complaints Commission/Ombudsman**

- Unit 1 Public Complaints Commission/Ombudsman
- Unit 2 Actions and Proceedings against Government

- Unit 3      Doctrine of Locus Standi under Public Complaints  
                 Commission and the  
                 1999 Constitution
- Unit 4      Administrative and Prerogative Remedies

## **TEXT BOOKS AND REFERENCES**

Some textbooks have been recommended in this course. You will have to supplement them by reading from library, or purchase them.

## **ASSIGNMENT FILE**

An assessment file and a course-marking scheme will be made available to you. In the assessment file, you will find details of the works you must submit to your tutor for marking. There are two aspects of the assessment of this course: the TMA and the written examination. The marks you obtain in these two areas will make up your final marks. The assignment must be submitted to your tutor for formal assessment in accordance with the deadline stated in the presentation schedules and the assignment file. The work you submit to your tutor for assessment will account for 30 per cent of your total score.

## **TUTOR-MARKED ASSIGNMENT**

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

## **FINAL EXAMINATION AND GRADING**

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

## COURSE MARKING SCHEME

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

Assessment	Marks
Assignments out of four marked	30%
Final examination	70%
Total	100%

## PRESENTATION SCHEDULE

The dates for submission of all assignment will be communicated to you. You will also be told the date of completing the study units and dates for examinations.

## COURSE OVERVIEW AND PRESENTATION SCHEDULE

Unit	Title of work	Week	Activity
Module 1	<b>SCOPE AND NATURE OF</b>		
	<b>ADMINISTRATIVE LAW</b>		
Unit 1	The Definition, nature and Scope of Administrative Law	Week 1	Assignment 1
Unit 2	The Functions and Powers of Administration	Week 1	Assignment 2
Unit 3	Sources and Kinds of Administrative Powers	Week 2	Assignment 3
Unit 4	Administrative and Constitutional Law	Week 2	Assignment 3
Unit 5	Relevant Constitutional Principles	Week 3	Assignment 4
Module 2	<b>LOCAL GOVERNMENT SYSTEM</b>		
Unit 1	The Local Government System	Week 3	Assignment 1
Unit 2	Functions and Finances of Local Government	Week 3	Assignment 2
Unit 3	Delegated Legislation	Week 4	Assignment 3
Unit 4	Control of Delegated Legislation	Week 5	Assignment 5
Module 3	<b>ADMINISTRATIVE PANELS AND TRIBUNALS OF ENQUIRIES</b>		
Unit 1	Administrative Panels and Tribunals of Enquiries	Week 6	Assignment 1
Unit 2	Independence of Tribunals	Week 7	Assignment 2
Unit 3	Rights of Appeal from Tribunals	Week 7	Assignment 3
Unit 4	Judicial Review	Week 8	Assignment 4
Module 4	<b>THE NIGERIA POLICE FORCE</b>		
Unit 1	The Nigeria Police Force	Week 9	Assignment 1
Unit 2	Legal Status, Responsibility and Control of the Police Force	Week 10	Assignment 2
Unit 3	Responsibility of Inspector General of Police	Week 11	Assignment 3
Unit 4	The Police and the Public under the Military and Civilian Regime	Week 12	Assignment 4
Module 5	<b>PUBLIC COMPLAINTS COMMISSION/ OMBUDSMAN</b>		
Unit 1	Public Complaints Commission/ Ombudsman	Week 13	Assignment 1
Unit 2	Actions and Proceedings against Government	Week 14	Assignment 1

Unit 3	Doctrine of Locus Standi under Public Complaints Commission and the 1999 Constitution	Week 14	Assignment 2
Unit 3	Administrative and Prerogative Remedies	Week 15	Assignment 3
	<b>REVISION</b>	1	
	Examination	1	
	<b>Total</b>	17	

## HOW TO GET THE MOST FROM THIS COURSE

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

Each of the study units follows a common format. The first item is an introduction to the subject matter of the unit, and how a particular unit is integrated with the other units and the course as a whole. Next to this is a set of learning objectives. These objectives let you know what you should be able to do by the time you have completed the unit. These learning objectives are meant to guide your study. The main body of the unit guides you through the required reading from other sources. This will usually be either from your set books or from a reading section. The following is a practical strategy for working through the course.

1. Read this Course Guide thoroughly, it is your first assignment.
2. Organise a study schedule. Design a “course overview” to guide you through the Course, Note the time you are expected to spend on each unit and how the assignments relate to the units. Whatever method you choose, you should decide on and write in your own dates and schedule of work for each unit.
3. Once you have created your own study schedule, do everything to stay faithful to it. The major reason why students fail is that they get behind with their course work. If you get into difficulties with your schedule, please, let your tutor know before it is too late to help.
4. Turn to unit one and read the introduction and the objectives for the unit.

5. Assemble the study materials. You will need your set books and the unit you are studying at any point in time. As you work through the unit, you will know what sources to consult for further information.
6. Keep in touch with your study center. Up-to-date course information will be continuously available there.
7. Well before the relevant due dates (about four weeks before due dates), keep in mind that you will learn a lot by doing the assignment carefully. They have been designed to help you meet the objectives of the course and, therefore, will help you pass the examination. Submit all assignments not later than the due date.
8. Review the objectives for each study unit to confirm that you have achieved them, if you feel unsure about any of the objectives, review the study materials or consult your tutor.
9. When you are confident that you have achieved a unit's objectives, you can start on the next unit. Proceed unit by unit through the course and try to pace your study so that you keep yourself on schedule.
10. When you have submitted an assignment to your tutor's comments, both on the tutor-marked assignment form and also the written comments on the ordinary assignments.
11. After completing the last unit, review the course and prepare yourself for the final examination. Check that you have achieved the unit objectives (listed at the beginning of each unit) and the course objectives (listed in the Course Guide)

## **TUTORS AND TUTORIALS**

Information relating to the tutorials will be provided at the appropriate time. Your tutor will mark and comment on your assignments, keep a close watch on your progress and on any difficulties you might encounter and provide assistance to you during the course. You must take your tutor-marked assignments to the study center well before the due date (at least two working days are required). They will be marked by your tutor and returned to you as soon as possible.

Do not hesitate to contact your tutor if you need help. Contact your tutor if you do not understand any part of the study units or the assigned readings.

- You have difficulty with the exercises
- You have a question or problem with an assignment or with your tutor's comments on an assignment or with the grading of an assignment.
- You should try your best to attend the tutorials. This is the only chance to have face-to-face contact with your tutor and ask

questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefit from course tutorials, prepare a question list before attending them. You will learn a lot from participating in discussion actively.

## **SUMMARY**

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

**MAIN  
COURSE**

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## **Module 1 The Definition, Nature, and Scope of Administrative Law**

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

## **UNIT 1 THE DEFINITION, NATURE AND SCOPE OF ADMINISTRATIVE LAW**

### **CONTENTS**

1.0	Introduction
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	3.2 The Scope of Administrative Law
4.0	Conclusion
5.0	Summary
6.0	Tutor-Marked Assignment
7.0	References/Further Reading

### **1.0 INTRODUCTION**

All aspects of human endeavour must be administered well for a successful outcome. Likewise, the affairs of the society generally and sectionally must be administered well to record an economic and political achievement. The section that is responsible for this is the executive arm of government of the country. To curb the arbitrary use of power of this highly essential part of the system, there is the need for a law to define its role, the limitation of its powers, the action, remedies against the arbitrary use of its powers, and so on. This law is called administrative law. Thus, in this unit, we shall try to define what administrative law is.

### **2.0 OBJECTIVES**

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

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

### **3.0 MAIN CONTENT**

#### **3.1 Definition and Nature of Administrative Law**

There is no universally accepted method of defining administrative law. Different authors have propounded different definitions to the term “administrative law.” According to Osborn’s law Dictionary (quoting Dicey) “administrative law is the law relating to the organisation, powers and duties of administrative authorities.” H. W. R. Wade in his book “Administrative Law,” eighth edition, argued that administrative law is concerned with the operation and control of the power of administrative authorities with emphasis on functions rather than structure. He went further, stating that: “Administrative law is the law relating to the control of governmental powers.”

In the words of Sir Ivor Jennings: “Administrative law is the law relating to administration. It determines the organisation, powers and duties of administrative authorities on their own side.” Administrative law, according to B. O. Iluyomade and B. U. Eka in their book “Cases and Material on Administrative Law” is “that body of rules, which aim at reducing the areas of conflict between the administrative agencies of the State and the individual.” To P. A. Oluyede, administrative law means that branch of the law, which vests powers in administrative agencies, imposes certain requirement on the agencies in the exercise of the powers and provides remedies against unlawful administrative acts.” According to Peter Leyland and Gordon Anthony:

It is regarded as the area of governmental powers, which originate in primary legislation or in the prerogative .It embodies general principles which can be applied to the exercise of the powers and duties of authorities in order to ensure that the myriad of rules and discretionary powers available to the executive conform to basic standards of legality and, fairness.

These definitions by different authors confirm the fact that there is no single definition of the subject; all definition depends on the semantic, background and personal idiosyncrasies of the writers. Generally, notwithstanding the problem associated with finding a single definition of the subject, it is a branch of law that aims at keeping the powers of government within the citizen against their abuse, and where abused, to provide remedy to the aggrieved citizen.

### 3.2 The Scope of Administrative Law

By the term “scope of administrative law”, we mean the coverage of administrative law. What area does it cover? What does it entail etc? Administrative law covers a variety of issues amongst which are:

#### i) The Civil Service of the Federal, and Local Government

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

#### ii) Administrative decision and rule making procedures

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

#### iii) The control of administrative power

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

#### iv) Delegated legislation and delegation of powers

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

**v) Judicial remedies**

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

**1. Statutory remedies**

These are an amount stipulated within the statute rather than calculated based on the degree of harm to the plaintiff. Lawmakers will provide for statutory damages for acts in which it is difficult to determine the value of the harm to the victim. Mere violation of the law can entitle the victim to a statutory award, even if no actual injury occurred.

**2. Common law remedies**

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

**3. Equitable remedies**

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

**4. Prerogative remedies**

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

England is known as "quashing orders," "mandatory orders" and "prohibiting orders" respectively.

#### **4.0 CONCLUSION**

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

#### **5.0 SUMMARY**

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

#### **6.0 TUTOR-MARKED ASSIGNMENT**

- i. Define what you understand by "administrative law."
- ii. Explain in detail four provinces of administrative law.
- iii. Examine the things, which an administrator must consider when making a decision or rule.

#### **7.0 REFERENCES/FURTHER READING**

Bone, S. (2001). *Osborn's Concise Law Dictionary*. (9th ed.). London: Sweet and Maxwell.

Leyland P. & Gordon, A. (2005). *Administrative Law*. (5th ed.). Oxford University Press.

Malemi, E. (2008). *Administrative Law*. (3rd ed.). Ikeja: Princeton Publishing Co.

Wade, H. W. & Forsyth, C.F. (2000). *Administrative Law*. (8th ed.) Oxford University Press.

## **UNIT 2 THE FUNCTIONS OF ADMINISTRATIVE LAW AND POWERS OF ADMINISTRATION**

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  - 3.1 Functions and Characteristics of Administrative Law
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  - 3.3 The Power of Administrative Authorities
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

Administrative law regulates government or administration such that the agencies do not arbitrarily exercise their powers or exceed them. This means that the laws play vital roles in administration. The functions entrusted to administrative bodies, that is, public officers and administrative authorities are many. Their powers are often great.

### **2.0 OBJECTIVES**

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

- explain the functions of administrative law
- discuss the functions of administration or government
- explain the powers of administration or government
- analyse the principles of natural justice in administrative law
- explain the principles of justice and fairness.

### **3.0 MAIN CONTENT**

#### **3.1 Functions and Characteristics of Administrative Law**

Administrative law encompasses a number of defined powers and responsibilities held by administrative agencies of government. Administrative law encompasses a number of statutes and cases, which define the extent of the powers and responsibilities held by administrative agencies of the government. The executive, legislative, and judicial branches of the government cannot always directly perform their constitutional responsibilities. Powers are therefore delegated to an

agency, board, or commission. These administrative governmental bodies oversee and monitor activities in complex areas, such as commercial aviation, medical device manufacturing, and securities markets. Administrative law must therefore observe the rule of natural justice.

Natural justice is divine justice or justice according to God. There is no universally, or generally accepted definition of natural justice. However, concisely natural justice means: The inherent right of a person to a fair and just treatment in the hand of rulers, their agents and other persons. Administrative law plays a vital role in the realm of administration and society, some of which are:

- (i) Administrative law acts as a check in respect of the unlawful exercise or abuse of governmental administrative power. In *Bello vs Lagos Executive Development Board (LEDB)* (unreported Supreme Court 1970), a piece of land acquired under Lagos Town Planning Act purportedly acquired for public purpose but in actual fact sold to a religious organisation was held *ultra vires*.
- (ii) It embodies principles that facilitate good administrative practice. For instance, the two rules of natural justice that a man cannot sit on his own case (*Nemo Judex in Causa Sua*) and that no man can be condemned unheard (*Audi Alterem Partem*). In *Cinnamond vs. British Airports Authority* (1980) 1 WLR 582, it was held that a taxi driver cannot be deprived of his licence to operate at an Airport because of an alleged misconduct without first being given a chance to put his side of the case.
- (iii) It provides remedy for grievances occasioned at the hand of public authorities. In *Shugaba Vs Ministry of Internal Affairs & Ors* (NCLR1981), the applicant, a member of Great Nigeria Peoples Party (GNNP) and the majority leader in Borno State House of Assembly was deported by the Federal Authority and its agents from Nigeria. An application was filed on his behalf under the fundamental human right for redress for violation of his right. The court held that the infringement of fundamental human right of Nigeria citizen must attract compensation, damages and in some cases ought to invent exemplary damages.
- (iv) It commands public bodies to perform their statutory duties under the statute (including the exercise of discretion (See *Merchants Bank of Nigeria. vs. Federal Ministry of Finance* (1961) ANLR 568). This is termed a “Command Function.” In *Queen vs. Chief Ozogula II Exparte Ekpenga* (1962) 1 ANLR, 265, the respondent obtained an order of mandamus in the High Court to compel the

applicant to perform certain traditional ceremonies which by Ibo customary law, it was his duty to perform on the death of a certain class of Ibo Chiefs to which class the respondent's deceased father belonged.

- (v) It aids accountability and transparency, including participation by interested individuals and parties in the process of governance. For instance, through membership of a pressure group.
- vi) It allows the administrative agencies to be observed on when not to commit an error of law i.e. an action or decision that is in conflict with the statute. Lord Goddard CJ in *Powell V. May* 1946 1K B. 330 at 338 held as follows:

In our opinion, it is beyond the powers of a county council to enact a bye-law, which prohibit...that which the general statute enables to do...

### **3.2 The Functions and Powers of Administration or Administrative Authorities**

The functions and powers vested on administrative authorities and public officers are conferred on them by the constitution and statutes. These functions are many with varying powers depending on the establishment or institution. For instance, Section 2 of the Petroleum Act, Cap. P.10, Laws of the Federation of Nigeria, 2004 vests power on the minister of petroleum to grant licences known as oil exploration license, oil prospecting license and a lease to be known as oil mining lease. He or she has many functions, which he or she can delegate to his or her subordinates for the proper and effective discharge of his function. One of his key tasks is the implementation of government policies on petroleum resources. In the health sector, the functions include promoting of public health, conduct of medical research, funding of health institutions throughout the country depending on whether the health sector is that of the federal or state.

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

### 3.3 The Powers of Administrative Authorities

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

By and large, the powers of administrative authorities include:

- (i) The power to hear and determine disputes, investigate objections and to examine issues on practical, economic and social aspects of life and submit report and probably make recommendation to the government for instance, the power of industrial arbitration panel to investigate and determine industrial disputes and make recommendation to the government.
- (ii) The power to grant or refuse the issuance of licence or lease or permission to execute a business or any activity. For instance, the power endowed on the minister of petroleum to grant or refuse permission in relation to petroleum exploration in Nigeria (see Section 2 of Petroleum Act).
- (iii) The powers to investigate and make enquiry, gather information and facts from people, organization or society. An example is a committee set up to look into a land crisis between or among settlers of a domain bothering on the ownership of the land. The committee has the right to request information, materials and facts from all the factions so as to determine the real ownership of the said property.
- (iv) The administrative authority has the power to direct a body or individual or community to do or refrain from doing an act. A town planning section of the local government can refuse someone from building a house where such will contravene the town planning law. From the above, it is clear that the

administrative authorities are wrapped with powers to enable them discharge their various functions.

#### **4.0 CONCLUSION**

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

#### **5.0 SUMMARY**

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

#### **6.0 TUTOR-MARKED ASSIGNMENT**

- i. Examine with the aid of judicial authorities, the characteristics of administrative law.
- ii. Enumerate, with the aid of various examples, the powers of administrative bodies.
- iii. Discuss the functions of various administrative authorities.

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## **UNIT 3 SOURCES AND KINDS OF ADMINISTRATIVE POWERS**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Sources of administration Powers
  - 3.2 Classification of Governmental Powers
  - 3.3 Essence of Classifying Governmental Powers
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

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

### **2.0 OBJECTIVES**

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

- explain the three types of administrative powers
- examine the classification of administrative/ governmental powers
- analyse whether the implied power is a dangerous form of administrative power.

### 3.0 MAIN CONTENT

#### 3.1 Sources of Administrative Powers

Administrative powers may be express power, implied or incidental powers.

##### **i. Express powers**

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

- a) The constitution: This is the supreme law of the land and any provision of any other law, which is inconsistent with its provision, shall to the extent of the inconsistency, be void (Section 1(1) and (3) of 1999 Constitution of the Federal Republic of Nigeria, 1999. By virtue of Section 4 (1), the legislative powers of the Federal Republic of Nigeria are vested in the National Assembly of the Federation. Section 5 vests executive powers on the president while section 6 confers judicial powers on the judiciary.
- b) By an act of parliament, state laws or charter establishing such public authority, body agency or corporation. For instance, the law establishing the Lagos State Development and Property Corporation is an example of law conferring express power. Also, the Nigerian National Petroleum Corporation Act (NNPC), 2004 Law of the Federation of Nigeria, vests express power on the board for the proper administration of their duties.
- c) A subsidiary legislation or delegated legislation made pursuant to the Act of parliament, thus conferring the said power. However, in a country with an unwritten constitution, such as Great Britain, some government functions or power may be based on constitutional conventions, practice or even judicial precedents.

##### **ii. Incidental power**

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

### iii. Implied powers

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

## 3.2 Classification of Governmental Powers

Governmental powers may be classified as follows:

### i) Legislative powers

This refers to powers by the legislature, which is the body responsible for law making.

### ii) Executive powers

These powers exercisable by the executive organ of government in performing particular act or giving particular order or making decisions generally in relation to particular statutory duties within their competence.

### iii) Judicial powers

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

- a) The presentation (not necessarily orally) of their case by the parties;
- b) The ascertainment of any disputed facts by evidence adduced by the parties, often with the assistance of argument on that evidence
- c) The submission of argument on any disputed question of law, and
- d) A decision which disposes of the whole matter by a findings on the disputed facts and an application of the law to the facts so found including where required a ruling upon any disputed question of law.

### iv) Quasi-Judicial powers

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

**v) Administrative decision**

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

### **3.3 Essence of Classifying Governmental Powers**

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

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

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

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

as a rule. However, such administrative agent must act fairly. See *R.V. Liverpool Corporation Ex Parte Liverpool Taxi owner Association*, 1972 2 Q.B. 299 AT 307.

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

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

#### **4.0 CONCLUSION**

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

#### **5.0 SUMMARY**

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

#### **6.0 TUTOR-MARKED ASSIGNMENT**

- i. Discuss the types of administrative powers.
- ii. Discuss the various ways into which a governmental power may be classified.
- iii. State the difference(s) between:
  - a) Judicial and quasi-judicial powers and
  - b) Judicial and administrative decisions.

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## **UNIT 4 ADMINISTRATIVE LAW AND CONSTITUTIONAL LAW**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Features of Administrative Law
  - 3.2 Features of Constitution Law
  - 3.3 Similarities between Constitution and Administrative Law
  - 3.4 Dissimilarities between Constitution and Administrative Law
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/ Further Reading

### **1.0 INTRODUCTION**

According to A. V. Dicey, constitutional law means all rules, which directly or indirectly affect the distribution or exercise of sovereign power. Ese Malemi defines a constitutional law as the law, which regulates the exercise of powers given by the constitution. This constitution is the supreme law of a country. The Osborn's concise Law Dictionary, ninth edition states that administrative law is a subordinate branch of constitutional law consisting of the body of rules, which govern the detailed exercise of executive functions by the officers or public authorities to whom they are entrusted by the constitution. Administrative law determines the modes in which sovereign power is exercised, while constitutional law merely determines what persons or class of persons bore such as sovereign powers.

According to Sir Ivor Jennings, administrative law is that law which is concerned with any aspect of the administration of a country, and in particular, the law governing the relationship between the state and the individual. Recently, Professor H.W. Wade proffered two definitions of the subject.

- (i) Administrative law is the law relating to the control of governmental powers; and
- (ii) It is a body of general principles, which govern the exercise of powers and duties by public authorities.

To conclude the definition exercise, one would appreciate that administrative law is the law relating to administration. It

determines the organisation, powers and duties of administrative authorities.

## **2.0 OBJECTIVES**

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

- define constitutional law
- describe the constitution has supremacy over all other laws of a country
- discuss the features of constitutional law
- explain the features of administrative law
- discuss similarities and differences between constitutional law and administrative law.

## **3.0 MAIN CONTENT**

### **3.1 Features of Administrative Law**

Administrative law is the body of law that governs the activities of administrative agencies of government. Government agency action can include rule making, adjudication, or the enforcement of a specific regulatory agenda. Administrative law is considered a branch of public law. As a body of law, administrative law deals with the decision-making of administrative units of government (for example, tribunals, boards or commissions) that are part of a national regulatory scheme in such areas as police law, international trade, manufacturing, the environmental, taxation, broadcasting, immigration and transport. Administrative law expanded greatly during the twentieth century, as legislative bodies worldwide created more governmental agencies to regulate the increasingly complex social, economic and political spheres of human interaction.

The following are some of the features of administrative law.

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

### **3.2 Features of Constitutional Law**

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

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

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

### **3.3 Similarities between Constitutional and Administrative Laws**

There are similarities between both subjects some of which are:

- They both deal with the application of constitutional law and powers and their administration
- The same set of principles, rules and maxims apply to both of them.
- They both provide remedies for breach of rights of an aggrieved person.
- They both make use of judicial precedents or case law.

### **3.4 Dissimilarities between Constitutional Law and Administrative Law**

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

- i. Constitutional law is wider in scope than administrative law. The former covers such matters as citizenship, distribution of powers among the organs of government that is, the executive, the judiciary and the legislature, which administrative law is not so much concerned with.
- ii. The sources of constitutional law are to be found in the constitution and conventions while the sources of administrative laws include delegated legislation, letters of instructions, treasury circulars, decisions of administrative bodies, and so on.
- iii. Constitutional law deals with the structure of the government while administrative law is concerned with the functions and exercise of powers by administrative authorities.
- iv. Administrative law is concerned with how to confine administrative bodies to their legal role and limit.

### **4.0 CONCLUSION**

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

### **5.0 SUMMARY**

Constitutional law is the law, which regulates the application, enforcements and interpretation of the constitution, which is the supreme law of the land. On the other hand, administrative law is law for administration, guiding the conduct of the administrative authorities to avoid arbitrary use of power. Although, both subjects are interrelated, they are however different, each of them having peculiar nature, similarities and dissimilarities.

## 6.0 TUTOR-MARKED ASSIGNMENT

- i. Explain the key features of the constitution of the Federal Republic of Nigeria, 1999.
- ii. Compare and contrast administrative law and constitutional law.
- iii. Discuss the dissimilarities between administrative and constitutional law.

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## **UNIT 5 RELEVANT CONSTITUTIONAL PRINCIPLES**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main content
  - 3.1 Parliamentary Supremacy
  - 3.2 Constitutional Supremacy
  - 3.3 The Rule of Law
  - 3.4 Separation of Powers
  - 3.5 Ministerial Responsibility
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

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

### **3.0 OBJECTIVES**

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

- describe what parliamentary supremacy is all about
- analyse what constitutional supremacy entails
- assess constitutional supremacy
- discuss the concept of the rule of law
- explain those powers shared among the legislature, executive and judiciary.

## 3.0 MAIN CONTENT

### 3.1 Parliamentary Supremacy

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

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

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

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

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

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

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

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

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

In addition, the parliament is supreme and can do no wrong, it however believes in being guided in law making and exercise of its discretion by reason and the best interest of the country.

Finally, since ultimate power resides with the people - the electorate. Parliament is inhibited by the attitude of the electorate and the desire to continue in office from doing anything unreasonable or inexpedient. In the word of Alexander Hamilton:

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

### **3.2 Constitutional Supremacy**

In a country like Nigeria with a written constitution, constitutional supremacy must be distinguished from parliamentary supremacy as herein stated. The Nigerian constitution is supreme to all other laws, and its provisions have binding effect on all persons and authorities within its jurisdiction.

For instance, under the Constitution of the Federal Republic of Nigeria 1999, Section 1 (1) provides that, the constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. Section 1(3) further provides that if any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void.

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

Other examples include:

- i) *A. G. Bendel State vs. A. G. Federation & 22 others* (1981) ALL, N LR. 85 S.C. In this case, a bill titled “Allocation of Revenue (Federal Allocation)” setting out a new formula for the distribution of the amount standing to the credit of federation account among federal, states and the local government council but was irregularly passed and was assented to by the president. Dissatisfied with the mode and manner the National Assembly had exercised its legislative power in respect of the bill; the government of Bendel State challenged the constitutionality of the act. The Supreme Court held in favour of the plaintiff that the bill did not comply with the prescribed legislative procedure.
- ii) *National Assembly vs. President* (2003) 9 NWLR PT. 824, P. 104 CA
- iii) *Williams vs. Majekodunmi* (1962) ALL NLR 418  
The above situation under Constitutional Supremacy cannot be said to be true under a military regime. The reason is that decrees are supreme under the military era. For instance, immediately the army took over in 1966 and in subsequent years, the first thing the military did was to promulgate constitution (suspension and

modification), decree (for example Decree No.1 of 1966).

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

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

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

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

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

### **3.3 The Rule of Law**

The concept of rule of law is founded upon the theories of early Greek philosophers whose notion of law was that it is a primary means of subjecting governmental powers to control. According to Aristotle: “The rule of law is preferable to that of an individual . . .” In 13th Century, Bracton adopted the theory and went ahead to say that, “The world is governed by law, human or divine . . . . The king ought not to be subject to man, but subject to God and to the law, because the law makes him

king.” The modern notion of the concept has been popularised by A. V. Dicey, adopted and modified by other writers and commentators.

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

- 1) It means the absolute supremacy or predominance of laws as opposed to the influence of arbitrary powers and excludes the existence or arbitrariness of prerogative or even wide discretionary authority on the part of the government. He further asserts the importance of rule of law by stating that “Englishmen are ruled by the law and by the law alone, a man may with us be punished for breach of the law, but he can be punished by nothing else.” This means that powers of whatever description must be exercised in accordance with the ordinary law of the land, nothing more.
- 2) The second aspect of the concept is “equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts”. The rule excludes the idea of any exemption of officials from the duty of obedience to the law, which governs other citizens or from the jurisdiction of the ordinary tribunals. Thus, law is no respecter of persons and any person, irrespective of his rank or status in life, is subject to the ordinary laws of the land. It needs be noted however that there are various laws, which confer special privileges and immunities on some classes of persons. For instance, immunities granted to the state governors, heads of government, judges, and so on.
- 3) Rule of law may be used as a formula for expressing the fact that with us the law of the constitution, the rule which in foreign countries naturally form part of a constitutional code, are not the source but the consequence of the rights of individuals as defined and enforced by the courts. The above postulation implies that the liberties of the citizen among others as enshrined in the Constitution are the result of judicial decisions on particular cases; that the constitution is judge-made. It should be noted however that in Nigeria, rights are identifiable even before disputes arise since they are enshrined into the constitution.

All the above criticism on Dicey’s postulation exists as an academic gymnastic as there is no absolute rule without any leak as soon as it is launched. There have been various developments on the concept of rule of law after Dicey. Several conferences were held to uphold the rule,

some of which are the Athens Conference of 1955, 1959. Conference held in New Delhi, India and the Lagos conference of January 1961.

### 3.4 Separation of Powers

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

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

Simply put, Montesquieu proposition means that:

No one organs of government should control or exercise power over the other;

No one person belonging to an arm of government should belong to another and one arm of government should not perform the function of the other arm of government.

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

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

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

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

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

See the following cases:

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

### **3.5 Ministerial Responsibility**

A minister in the constitutional concept is a person at the head of a ministry or department of state and a member of the cabinet. He is a political appointee and remains in office at the pleasure of his appointor who may be a president, prime minister and so forth. Every act of government is done through ministers and their ministries, departments, offices and so forth under a minister.

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

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

government is in power or during his personal tenure in office whichever is later.

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

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

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

#### **4.0 CONCLUSION**

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

#### **5.0 SUMMARY**

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

#### **6.0 TUTOR-MARKED ASSIGNMENT**

- i. a. Examine critically, the concept of rule of law as postulated by A. V. Dicey.
- b. Discuss the exceptions to the supremacy of parliament.
- ii. a. Analyse parliamentary and constitutional supremacy.
- b. Explain legislative supremacy in civil and military dispensation.
- iii. Discuss the hierarchy of legislative authority under the military

regime.

## **7.0 REFERENCES/FURTHER READING**

Iluyomade, B. O. & Eka, B. U. (1977). *Cases and Materials on Administrative Law in Nigeria*. (2nd ed.). Ile-Ife: Obafemi Awolowo University Press Limited.

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## **Module 2 The Local Government System**

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

### **UNIT 1 THE LOCAL GOVERNMENT SYSTEM**

#### **CONTENTS**

1.0	Introduction
2.0	Objectives
3.0	Main Content
3.1	The Local Government System
3.2	Autonomy of the Local Government
4.0	Conclusion
5.0	Summary
6.0	Tutor-Marked Assignment
7.0	References/Further Reading

#### **1.0 INTRODUCTION**

The local government council is the closest government to the people in a democratically elected government. Local government is the third tier in the hierarchy of government aside from state and federal governments.

Before the local government reforms of the 1970s, there were destructive frictions between local governments throughout the federation and the regional (now state) governments; and in consequence, the local government of that era made minimal contribution to the progress and development of the Nigeria nation. That it still exists today is attributable to the efforts of the federal military administrations of 1970s, and wither it goes, rests with the federal and state governments.

The cradle of local government development in Nigeria is the system of indirect rule. As pointed out by B.O. Nwabueze, customary law was all-important at the time of its formation, particularly in relation to the local government of the Nigerian territories. In the famous case of *Eshugbayi Eleko vs Government of Nigeria* (1931) A.C. 662, the Privy Council rejected a claim by a colonial governor of an inherent power (power without a legislative authority) to appoint, depose and deport a local chief contrary to customary law. A local chief at the time was the pivot

of local administration. In *Laoye vs Oyetunde* (1944) A.C.170, the court set aside an appointment of a chief which was made by government contrary to customary law. By custom, the power of government rested in the chiefs within these territories.

With the introduction of British rule, the power of government was subjected to the supervisory powers of British authorities. In the territories now known as Northern States, the first British governor, Sir Frederick Lugard (later Lord Lugard) guided partly by political wisdom and partly by practical necessity occasioned by dearth of qualified staff, lack of funds and communication facilities retained the traditional political system for purpose of local government administration. By the system of indirect rule, the traditional authorities were allowed to conduct domestic government of their territories (in respect of all the matters, which were to them the most important attributes of the rule).

## **2.0 OBJECTIVES**

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

- analyse the guarantees provided by the 1999 Constitution for the existence of local government
- examine the area of autonomy of local government.

## **3.0 MAIN CONTENT**

### **3.1 The Local Government System**

The local government is the third tier of the administrative structure in Nigeria. There are 774 local government areas (LGAs) in Nigeria under the 1999 Constitution. It is the tier of government closest to the people and considered the most important facilitator of economic and social development at the grassroots. Each local government area is administered by a local government council comprising of the chairman who is the chief executive of the local government area, the vice chairman and other elected members who are referred to as councilors.

The chairman is normally elected, but can under special circumstances be appointed by the governor of the state as provided by the state law pending an election as caretaker chairman as confirmed by the State House of Assembly. He presides over all meetings of the council and supervises the activities of the local government. The Constitution of the Federal Republic of Nigeria, 1999 guarantees the existence of the local government under a law, which makes provision for their establishment, finance, structure, composition and finance.

Section 7(1) of the constitution provides:

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

It further provide in Section 7 (2) that:

The person authorised by law to prescribe the area over which a local government council may exercise authority shall:

- a) Define such area as clearly as practicable; and
- b) Ensure, to the extent to which it may be reasonably justifiable, that in defining such area regard is paid to:
  - i) the common interest of the community in the area
  - ii) traditional association of the community, and
  - iii) administrative convenience.

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

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

The relevance of local government councils is borne out of the fact that they represent government at the grassroots and thus must be carried along in all endeavours of the government whether state or federal. Section 7 (4) of the 1999 Constitution provides thus:

The government of a state shall ensure that every person who is entitled to vote or be voted for at an election to a House of Assembly shall have the right to vote or be voted for at an election to a Local Government.

### 3.2 The Autonomy of the Local Government

The following are some of the areas in which local government councils exercise autonomy according to the 1999 Constitutional provision.

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

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

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

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

c) Statutory allocation of funds: Section 7 (6) (a) makes constitutional provision for statutory allocation of public revenue to the local government councils in the federation and Section 7(6)(b) enjoins

the House of Assembly of a state also to make provisions for statutory allocation of public revenue to local government councils within the state.

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

#### **4.0 CONCLUSION**

Local government council is the closest of all the three tiers of government to the common citizen; they exist at the grass root level. For it to perform its duties, Section 7 of the 1999 Constitution guaranteed each local government council separate existence, local government character and the main functions. The constitutional guaranteed nature of the local government shows the importance of that tier of government.

#### **5.0 SUMMARY**

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

#### **6.0 TUTOR MARKED ASSIGNMENT**

- i. Explain briefly the local government system existing in your area of residence.
- ii. Explain with the use of constitution provisions how local government is guaranteed.

#### **7.0 REFERENCES/FURTHER READING**

Constitution of the Federal Republic of Nigeria, 1999.

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

Yakubu, J.A. (2003). *Constitutional Law- in Nigeria*. Ibadan: Demyaxs Law Books.

## **UNIT 2 FUNCTIONS AND FINANCES OF LOCAL GOVERNMENT**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Functions of the Local Government Councils
  - 3.2 Finances of the local Government
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

Local government councils perform several functions conferred on them by the constitution. To carry out those functions, they need funds. In this unit, you shall learn about the functions of local governments and sources of revenue open to them.

### **2.0 OBJECTIVES**

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

- examine functions of the local government councils
- explain sources of the local government finances
- analyse the functions and funding of local government councils.

### **3.0 MAIN CONTENT**

#### **3.1 Functions of the Local government Council**

The main functions of the local government councils are as enshrined in the fourth schedule to the 1999 Constitution. Section 7(5) provides that “the functions to be conferred by law upon local government councils shall include those set out in the fourth schedule to this constitution.”

The functions of the local governments as spelt out in the fourth schedule to the constitution are as follows.

Exclusive functions of local government include the following.

- (a) The consideration and the making of recommendations to a state commission on economic planning or any other similar body on:
  - i. The economic development of the state, particularly in so far as the area of authority of the council and of the state are affected, and
  - ii. Proposal made by the said commission or body;
- b) Collection of taxes, radio and television licenses;
- c) Establishment and maintenance of cemeteries, burial grounds and homes for the destitute or infirm.
- d) Licensing of bicycles, trucks (other than mechanically propelled trucks), canoes, wheel barrows and carts;
- e) Establishment, maintenance and regulation of slaughterhouses, slaughter slabs, markets, motor parks and public convenience;
- f) The constitution 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 of 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
  - i) Outdoor advertising and hoarding,
  - ii) Movement and keeping of pets of all description,
  - iii) Shops and kiosks,
  - iv) Restaurants, bakeries and other places for sale of food to the public,
  - v) Laundries, and
  - vi) Licensing, regulation and control of the sale of liquor.

Concurrent functions of local governments:

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

2. Participation in the government of a state in respects of the following matters, namely:
  - a) The provision and maintenance of primary, adult and vocational education;
  - b) The development of agriculture and natural resources, other than the exploitation of minerals;
  - c) The provision and maintenance of health services; and
  - d) Such other functions as may be conferred on a local government council by the House of Assembly of the state.

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

### **3.2 Finances of the Local Governments**

The local governments derive their funds from statutory allocation.

- a) Section 7 (6) of the 1999 Constitution provides, “subject to the provisions of this Constitution the National Assembly shall make provisions for statutory allocation of public revenue to the local government councils in the federation; and the House of Assembly of a state shall make provisions for statutory allocation of public revenue to local government councils within the state.” The essence of the above provisions is that firstly, the local government have direct share of the federally collected revenue. It is the duty of the federal government to fix the amount and terms of apportioning it among all the local governments in the various states. The share is paid to the local government through the state government acting in capacity as trustee.
- b) The constitution imposes a duty on each state government to make grants, which is to be a proportion to its total revenue, to local government councils within its area of jurisdiction as may be prescribed by the federal legislation.
- c) The third source of revenue of local government is derived from their functions as specified under the fourth schedule to the constitution. They collect rates on radios, televisions etc., and also impose fees for the

use of public cemeteries, burial grounds, markets, motor parks etc. this third source of revenue is independent of either the federal or state statutory allocations.

#### **4.0 CONCLUSION**

Local government councils throughout the country have functions, which they perform exclusively and those they perform concurrently with the state government. To discharge their functions effectively, they derive their funds from the state government, federal government and through the internally generated fund made possible by the functions they perform.

#### **5.0 SUMMARY**

This unit covered the functions of local government councils as enshrined in the 1999 Constitution and the finances of local government. The House of Assembly of a state shall determine the terms and manner in which the amount standing to the credit of local government council of a state shall be distributed among the councils. Of all the ills of local government in the country, its greatest setback in the past had been its finances. Its revival today is basically hinged on the improved financial support of the federal government.

#### **6.0 TUTOR-MARKED ASSIGNMENT**

- i. Explain 10 functions exclusively performed by the local government council.
- ii. Examine four functions performed by the local government's council in conjunction with the state government.
- iii. Analyse the sources of funds or finance for local government areas.

#### **7.0 REFERENCES/FURTHER READING**

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## **UNIT 3 DELEGATED LEGISLATION**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Methods of Delegation
  - 3.2 Powers that cannot be Delegated
  - 3.3 Merits of Delegated Legislations
  - 3.4 Criticism against Delegated legislation
  - 3.5 Sub-Delegation
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

There are three main organs of the government-the legislature, the executive and the judiciary. The legislature has legislative powers to make laws for the country while the executive has powers to formulate policies, implements and enforce the law; the judiciary interprets the laws and adjudicates over matters brought before it. In the olden days, government was only interested in few matters such as raising tax, raising army for defence of the country and maintenance of security of the state. However, modern system of government has imposed on governments social, cultural economic, agricultural and other matters of human endeavour; legislation in these areas is so enormous that it is virtually impossible for the legislature to cope or legislate on matters main to its functions all alone. As a result of this, the legislature gives powers to other persons or bodies to make necessary laws as applicable. These laws made by the administrative bodies, agency or authority in exercise of the powers given or delegated to them by the constitution or enabling statutes, which is referred to as delegated legislation. Examples of these are byelaws, orders, regulations by local governments, departments, corporations and agencies.

### **2.0 OBJECTIVES**

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

- explain delegated legislation
- discuss methods of delegating powers
- advance argument for or against delegated legislation

- distinguish between sub-delegation of authority and sub-sub-delegation of authority
- differentiate the powers that cannot be delegated.

### **3.0 MAIN CONTENT**

#### **3.1 Methods of Delegating Powers**

The power to make delegated legislation may be conferred on subordinates. This may be general or specific as explained under.

##### **a) General delegation**

The general or simple delegation of powers to make subordinate legislation comprise a delegation to a donee of wide powers to make laws or act in his or her discretion within the limits which may have been set for him. For instance, Section 7 of The Federal Environmental Protection Agency Act, Cap. F 10, Laws of the Federation of Nigeria, 2004 provides that, "...the president may give to the agency, directions of a general nature or relating generally to particular matters ..."

##### **b) Specific delegation**

Specific delegation enumerates the subject matters on which the regulations may be made. The donee of such power is restricted to taking action only in respect of the specified matters. For instance SECTION 10(2)(a)–(c) of the Nigerian National Petroleum Corporation Act, Cap. N123, Laws of the Federation of Nigeria, 2004 empowers the minister to "delegate to the alternate chairman ( where one is appointed or the chief executive of the inspectorate such powers as are conferred upon him under the Oil Pipe lines Act, the Petroleum Act or any other enactment as he may deem necessary and in particular - - - for the following matters:

- Issuing permits and licenses for all activities connected with petroleum exploration and exploitation.
- Acting as the agency for the enforcement of the provisions of the said Acts.
- Carrying out such other functions as the minister may direct from time to time.

##### **Requirements of a delegated legislation:**

- Publicity:** Delegation to make regulations must be published for public notice. See Section 10 (2) of the Nigerian Citizenship Act.
- Approval by legislature:** Delegation to make regulations may be required to be laid before the legislature for necessary approval. See Section 10 (3) of the Nigerian Citizenship Act.
- Confirmation:** Delegation to make regulations may be subjected

to the requirement for confirmation or approval or by consultation with the minister or other persons See Section 15 (2) of the Legal Practitioner Act.

### 3.2 Powers that cannot be Delegated

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

- i) The judicial powers of the regular courts
- ii) The parliamentary powers of the legislature such as:
  - a) Its legislative functions other than power to make subsidiary legislation, (that is delegated legislation under the relevant enabling laws already made by the parliament).
  - b) Power to declare war;
  - c) Power to impeach; and
  - d) Power to create new States

In addition, generally, the following functions cannot be delegated:
- iii) Duty which must be performed personally; and
- iv) Duty which involves exercise of discretion.

Thus, for a power or function to be delegated, it must be that which another person can perform and no provision against it have expressly been made.

In *A. G. Bendel State vs. A. G. Federation & 22 Others* (1981) ALL NLR 85, the Government of Bendel State brought an action challenging the passage of the allocation of revenue (federal account) bill into law by joint finance committee of both houses of the National Assembly. The Supreme Court held *inter alia*, setting aside the allocation of revenue (federal account) Act 1981 as null and void, that neither the senate nor the House of Representatives of the National Assembly has power to delegate its legislative functions to a committee. Consequently, the joint finance committee has no power to decide whether a bill shall be passed into law as it is incompetent to take over the legislative powers of the National Assembly (See also: *Tende & ORS vs. A. G. Federation* (1988) I NWLR pt.71 P. 506 C.A.)

### 3.3 Justification for Delegated Legislation

Many reasons have been canvassed for the practice of delegated legislation, namely:

- i). It reduces parliamentary workload: Parliament as a matter of fact, does not have all the time and capacity required to deal with the volume of legislations required by a modern government or state.
- ii). It enables experts to legislate on technical and specialised matters on which many of the members of parliament may lack the requisite knowledge that may be required to legislate in detail. Buttressing this point, the British Committee on Ministers Powers in 1932 said, “The truth is that if parliament were not willing to delegate law making power, parliament would be unable to pass the kind and quality of legislation which modern public opinion requires.”
- iii). It creates room for the legislation of laws which conform to local needs: When the power of delegated legislation is properly exercised and not abused, the administrative authority located in the local community can be reached by the people. The administrative authority can see the local situation for himself and thus properly use delegated legislation to make laws or rule that conform to the needs of the local community.
- iv). It affords quick response to a state of emergency: Parliament may not be able to sit and deliberate due to their cumbersome procedures to be able to respond to situations at hand as they unfold. Delegation of powers is desirable to address urgent situation.

### 3.4 Criticism against Delegated Legislation

The arguments against the practice of delegated legislation include:

- i). Delegated legislation is a usurpation of the powers of the parliament to make laws for the nation. It waters down the doctrine of parliamentary supremacy.
- ii). It is a negation of the concept of rule of law as the usual procedures for the making of laws are not always observed.
- iii). The control of delegated legislation is inadequate: Parliament has no time, opportunity or the special expertise that may be required to keep close surveillance and make needed objections to administrative legislations.

- iv). Administrative lawmakers sometimes have too much power and discretions. For instance, the delegation of legislative power to ministers, head of departments and so forth, is often done in phrases such as “As the Hon. Minister deems fit”, “In the opinion of the Hon. Minister and so on.” These subjectively worded phrases may lead to arbitrary use of delegated power.

### 3.5 The Rule against Sub-Delegation

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

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

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

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

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

### 4.0 CONCLUSION

Delegated legislation is the law made by a delegated authority in exercise of powers to make the laws, which have been conferred by the constitution or other enabling laws. It is essential in a modern society for various reasons. Delegated legislation has its usefulness and disadvantages. You also noted that there are some powers which cannot and must not be delegated or sub – delegated.

## **5.0 SUMMARY**

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

## **6.0 TUTOR-MARKED ASSIGNMENT**

- i. Discuss what you understand by the term “delegated legislation.”
- ii. Examine arguments for and against the doctrine of delegated legislation.
- iii. Discuss the modes through which delegated legislation may be created with the aid of statutory provisions.

## **7.0 REFERENCES/FURTHER READING**

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## **UNIT 4 CONTROL OF DELEGATED LEGISLATION**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 The Legislative Control
  - 3.2 The Executive Control
  - 3.3 The Judicial Control
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

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

### **2.0 OBJECTIVES**

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

- describe various ways through which the administrative activities of delegated legislation can be effectively controlled
- explain reasons powers are delegated by the legislature.

### **3.0 MAIN CONTENT**

#### **3.1 The Legislative Control**

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

But delegations do not imply a denudation of power and authority. The word ‘delegation’ implies that the powers are committed to another person or body, which are as a rule, always subject to resumption by the power delegating (it) and many examples of this might be given. Unless,

therefore, it is controlled by statute, the delegating power can at anytime resume its authority.

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

### **3.2 The Executive Control**

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

### **3.3 Judicial Control**

Section 6 of the 1999 Constitution of the Federal Republic of Nigeria provides, among other things, that the judicial powers of the federation shall be vested in the courts established for the Federation and shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for determination of any question as to the civil rights and obligations of that person. The truth about delegated legislation is that every subsidiary legislation is at the mercy of the courts, which apply settled principles for the interpretation of statutes. This is sometimes called judicial review. In *Okogie & ORS vs. AG. Lagos State* (1981) 1 NCLR 218 HC, Justice Agoro of the Lagos High Court held while setting aside the Lagos State Government Circular

titled “Abolition of Private Primary Education in Lagos State” dated 26th March, 1980 and which was to take effect and operate in the State from 1<sup>st</sup> September, 1980. His lordship said that it was not necessary for the plaintiffs to await the happening of the event before applying to the court for redress. The right to commence action in the court could be exercised by the plaintiff as soon as there exists a threat or likelihood of their fundamental right being infringed or contravened. Thus, the application made by the plaintiff was not premature.

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

#### **4.0 CONCLUSION**

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

#### **5.0 SUMMARY**

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

#### **6.0 TUTOR MARKED ASSIGNMENT**

- i. Explain various ways through which the three arms of government have succeeded in controlling or acting as a check on the administrative law makers over powers conferred on the latter.

- ii. Discuss with the aids of decided cases, what you understand by judicial control of delegated legislation.

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## **MODULE 3 ADMINISTRATIVE PANELS AND TRIBUNALS OF ENQUIRIES**

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

### **UNIT 1 ADMINISTRATIVE PANELS AND TRIBUNALS OF INQUIRIES**

#### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Types of Tribunals of Enquiries
  - 3.2 Classes of Administrative panel and Tribunals
  - 3.3 Scope and Powers of Tribunals of Enquiries
  - 3.4 Nature of Independence of Administrative Tribunals
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

#### **1.0 INTRODUCTION**

Administrative panels and tribunals of enquiries are bodies that find fact in respect of specific cases referred to them and decide them by applying legal rules laid down by statutes and regulation. The origin of administrative panel and tribunal is traceable to the colonial legal system. At independence in 1960, the government of Nigeria aligned herself closely with the British legislations on administrative adjudication. In 1961, the government promulgated the Commissions and Tribunals of Enquiries Act, which empowered the prime minister to appoint commissioners wherever he deemed desirable to do so.

A multitude of tribunals has since independence become an important feature of governmental machinery. Such tribunals are creatures of one statute or the other and they are intended by the administration for various purposes. A tribunal in the strict sense is a special court usually established by government outside the hierarchy of the regular court system to hear and determine matters of a particular kind. It is a special court consisting of a person or a panel of persons who are officially

appointed by government to look into a specific problem or perform such judicial or quasi-judicial functions as may be assigned to them.

## 2.0 OBJECTIVES

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

- discuss various types of tribunal of enquiries
- discuss various classes of tribunal of enquiries.

## 3.0 MAIN CONTENT

### 3.1 Types of Tribunals of Enquiries

The Nigerian jurisprudence had only recognised the ordinary and conventional courts as bodies charged with the sole responsibility for adjudication both in criminal and civil matters. Tribunals are of recent development in our judicial system; they perform such functions as ordinary courts do. We have Judicial Tribunals; Public Officers Tribunals; Land and Rent Tribunals; Industrial Relations Tribunals and Election Petition Tribunals.

**Judicial Tribunals:** They perform such functions as the conventional courts, by virtue of the fact that they determine disputes and try offences as the courts.

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

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

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

**Election Petition Tribunals:** These are set up to deal with issues arising from elections in 1962, but the government was taken over by the military and for several years, issues of elections and consequential petitions were shelved. When there were prospects of a return to civilian rule, another electoral Act was promulgated.

### 3.2 Classes of Administrative Panels and Tribunals

These are classified in to three groups: statutory tribunals; autonomous bodies and other bodies.

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

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

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

In *Imade vs. Inspector-General of Police* (1993) in WLR PT 271 Pg. 608. The matter was dealt with in an orderly room proceeding by the police authorities. He was found innocent of the charges; the appropriate

authority after considering the report instead dismissed the appellant. The appellant brought an action for wrongful dismissal and for reinstatement, payment of his salaries and entitlements. The court of appeal granted all the appellant's prayers held that where a police officer disobeys a police regulation or directive which amount to an allegation of crime, such officer like any other person, must first be tried in a court of law or criminal tribunal before any disciplinary action can be taken against him, in any orderly room proceedings.

### 3.3 Scope and Powers of Tribunals of Enquiries

At the early stage, only the ordinary courts are charged with the duty of adjudication both in criminal and civil matters. However, judicial tribunals are now saddled with such functions as ordinary courts do and there has been proliferation of tribunal activities in the successive military regime in Nigeria between 1966 and 1999. The powers, jurisdiction and composition of tribunals of enquiries are usually specified in the statutes creating them. For instance, Section 285 of the 1999 Constitution provides for the establishment and jurisdiction of election tribunals. Administrative tribunals normally have defined jurisdictions under their statutes, which must be strictly adhered to, or else the doctrine of *ultra vires* may be invoked by the court against them. For instance, a statute creating professional tribunals regulates guidelines for the proceeding of such tribunals. Some statutes even provide that the rule of court should apply. It is pertinent to note that administrative tribunals of enquiries are bound by the principles of natural justice: "*Audi alteram Partem* and *Nemo iudex in causa sua*." Where they take decisions in disregard of these maxims, such decisions are regarded as null. Most decisions of administrative tribunals of enquiries, which have been nullified are based on the ground of non-conformity with principles of natural justice. See the submission of Justice Kayode Eso JSC in *LPDC vs. Fawehinmi* (1985) 2 in WLR (pt7) 300 at P. 347:

It is not easy to place a tribunal in the compartment of purely administering predominantly administrative, or one with judicial or quasi-judicial functions. In my view, a purely administrative tribunal may turn judicial, once it embarks on judicial or quasi adventure. The test to my mind should be the function the tribunal performs at a particular time. During the period of in-course into judicial or quasi functions, an administrative body must be bound in process thereof to observe the principles that govern exercise of judicial functions. Even God himself did not pass sentence upon Adam before he was called upon to make his defence. Merely to describe a statutory function

as administrative, judicial or quasi-judicial is not by itself sufficient to settle the requirements of natural justice. This certainly leaves it open for the court to go into the substance of the very act of the tribunal than the form of description.

### **3.4 Nature of Independence of Administrative Tribunals**

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

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

#### **1. Relationship between Independence and Accountability**

Tribunals of enquiries are set up mostly as a matter of exigency and prompt dispensation of justice. The regular course is arguably slow and cumbersome in the dispensation of justice. Hence, tribunals should be accorded adjudicative independence such as are necessary to enable it function effectively. However, being substantially independent does not mean the tribunal must be completely independent in an administrative sense of the department with which it is associated; thus, the need for making them (tribunals of enquiries) accountable.

Since tribunals are part of the government, accountability of these tribunals as administrative establishments is to sway public confidence in the perceived integrity of decision making of tribunals on matters where there are winners and losers and government/ authorities do not

wish to be seen at taking sides. More so, to de-politicise decision making in areas of potential public controversy. In relation to the independence of tribunals of enquiries accountability measures is necessary because tribunals must be administered according to public standards of transparency, probity and efficiency as well as non-negotiation of natural justice principles. To this extent, administrative adjudication may be held accountable for different reasons. Inadequate legal knowledge, loyalty to the appointing government, , inadequate observance of legal procedure, application of draconian laws, violation of natural justice principles, secrecy of sitting, and so on.

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

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

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

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

#### **4.0 CONCLUSION**

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

#### **5.0 SUMMARY**

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

#### **6.0 TUTOR- MARKED ASSIGNMENT**

- i. Describe and explain the various types of tribunals.
- ii. Examine the classification of tribunals. Discuss why the classification is not sacrosanct as some tribunals may come under more than one classification.

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## UNIT 2 PROBLEMS OF TRIBUNALS

### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Basic Problems of Tribunals
  - 3.2 The Council of Tribunals
  - 3.3 Control of Tribunals
- 4.0 Conclusion
- 5.0 Summary
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- 7.0 References/Further Reading

### 1.0 INTRODUCTION

Tribunals is a body with either administrative or judicial (or quasi-judicial) functions usually set up by government under statute outside the regular court system to investigate matters of public importance or to hear and determine matters between parties. The tribunals are also faced with some problems like every other organisation. In *FCSC vs. Laoye* (1989) 2NWLJ Pt 106 at 652, the Supreme Court unanimously frowned at the use of tribunals instead of courts for the trial of persons, in that case, Oputa JSC said:

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 papers, that surely will be a very dangerous development. This court cannot be a party to such dangerous innovation. It is only when one is on the receiving end that he can fully appreciate.

### 2.0 OBJECTIVES

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

- discuss the basic problems of tribunals in contradiction to the regular courts
- explain various ways of controlling the tribunals
- discuss the import of the council on tribunals.

### **3.0 MAIN CONTENT**

#### **3.1 Basic problems of Tribunals**

The basic problems of tribunals are essentially as follows.

- a) **Inadequate of legal knowledge and non-observance of legal procedure:** The members sitting at a tribunal may lack legal training and reasoning. Where the members of a tribunal or panel are not legal practitioners, arriving at a just and fair decision according to law could be difficult, because the rules of natural justice and rule of law must be fully complied with.
- b) **Loyalty to government:** The executive usually appoints the members adjudicating at the tribunals and they are often loyal to the authority setting up the tribunal. This leads to lack of independence and impartiality as required for natural justice and fair hearing principles.
- c) **There is secrecy of sittings:** some tribunals usually sit in camera and without allowing members of the public watch the proceedings. This secrecy usually creates the atmosphere to deny the accused the due process of law and justice.
- d) **Inadequate rationale for judgment:** The tribunals in most cases do not give detailed reasons for the decision reached, unlike the conventional practice in the regular courts. The rationale behind the judgment delivered by the tribunal are also not published for the general public to read, unlike the regular courts where the proceeding of a case are published in various law reports for sale to the general public for its information.
- e) **Fettering of the right to counsel of one's choice:** the tribunal before which an accused is standing trial in most instances have constrained a party to choose specified counsel provided by the tribunal, contrary to the provisions of the Constitution of the Federal Republic of Nigeria which provides that a person is entitled to defend himself by legal practitioners of his own choice. The choice of counsel is entirely the business of the person standing trial and not that of the tribunal.
- f) **To legalise government hidden agenda:** a tribunal in its strict sense is a mere rubber stamp to justify and legalise the predetermined results and create a legal basis for government to deal with and get rid of preserved opposition of the government. The tribunals are often a tool to enable the authority frame any person for misconduct, carry out a kangaroo trial, and return a guilty verdict, all with the aim to provide legal cover to enable the authority get rid of the person. For instance,

trial and execution of Ken Sarowiwa and the Ogoni during the military government of General Sanni Abacha.

### 3.2 The Council on Tribunals

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

- a). Tribunals are administered according to public service standards of transparency, probity and efficiency.
  - b). Tribunals should be staffed by public servants who are selected and employed according to public service standards of fairness, transparency, professionalism and non partisanship.
  - c). Tribunals have an obligation to work effectively, and often closely, with government departments and their ministers.  
The establishment of a council on tribunals has some of the following advantages.
    - i) The council will have a duty to constitute fewer and strong tribunals by grouping the existing tribunals according to their functions, thereby preventing proliferation of tribunals.
    - ii) The council will ensure that no tribunal is pre disposed against any person appearing before it by ensuring that the procedure employed by the tribunal should be adversary and not inquisitorial.
    - iii) In essence, a council on tribunals if established will scrutinise such procedural rules and promote intelligible and consistent ones on issues such as publicity of hearing, right of cross-examination.
- 2) It will ensure that no rules are introduced that are against the rules of natural justice.
  - 3) Members of the public should feel free to lodge complaints about tribunals with the council with a view to improving the administration of tribunals.

### **3.3 Control of Tribunals**

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

#### **Executive Control**

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

#### **Legislative Control**

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

### **4.0 CONCLUSION**

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

### **5.0 SUMMARY**

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

## 6.0 TUTOR-MARKED ASSIGNMENT

- i. Discuss basic problems facing election tribunals in Nigeria.
- ii. Examine the essence of judicial control of administration tribunals with the aid of legal authorities.

## 7.0 REFERENCES/FURTHER READING

Adediran, M. O. (2004). *Essay on Tribunals and Inquiries*. Ibadan: University Press Plc.

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## **UNIT 3 RIGHTS OF APPEAL UNDER TRIBUNALS**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Various Ways of Appeal under Tribunals
  - 3.2 Factors/Grounds of Appeals under Tribunals
  - 3.3 Principle of Natural Justice
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

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

### **2.0 OBJECTIVES**

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

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

### **3.0 MAIN CONTENT**

#### **3.1 Various Ways of Appeal under Tribunals**

a) Tribunals to the court: This is a situation where an appeal goes from tribunals to the court on the ground that the enquiries were conducted in a manner contrary to the principles of natural justice. In

*Alakija vs. Medical Disciplinary Committee* (1959) 4 FSC, 38 the appellant appealed from a decision of the Medical Disciplinary Committee, which had ordered that the appellant's name be removed from the register of medical practitioners for the period of two years. The appellant averred that the inquiry was conducted in a manner contrary to principles of natural justice, who was in fact the prosecutor took part in the Disciplinary Committee's deliberations. The Supreme Court held that the decision of the Disciplinary Committee could not stand and was quashed.

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

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

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

## 3.2 Grounds of Appeal under Tribunals

The grounds or basis of appeal from a decision of a tribunal may be one or any of the following.

1. **Ultra vires** : This refers to lack of or excessive use of authorised powers. Any act in excess of powers conferred is regarded as being outside jurisdiction or *ultra vires*. Thus, a tribunal is only restricted to do what the law setting it up permits it to do. Where a tribunal exceeds its sphere of authority, a Court of Law will entertain appeals from its (tribunals) findings.
2. **Excess/lack of jurisdiction**: Where the tribunal entertains a matter without having jurisdiction, appeal will lie to the law Court that may set aside the whole judgment or part of it. Jurisdiction might be exceeded if a tribunal is wrongly constituted, where the tribunal tries a case outside its area of competence, by committing procedural errors made an order outside its competence, for instance imposition of a fine when it was empowered to impose compensation. Lack of jurisdiction robs the tribunal of its powers. The concept of jurisdiction is well laid out in *Madukolu vs. Nkemdilim* (1962) 1 A NLR 587 at 589.
3. **Error of law on the face of the record**: Where, upon the face of the order of a tribunal, anything is shown to be erroneous, the decision of the tribunal will be subject to appeal.
4. **Fraud or Collusion**: Where the decision of a tribunal is obtained through fraud or collusion, such decision will be quashed by the law court on appeal. In *State vs Senior Magistrate (S. A. Akaeke, Senior Magistrate Court II or the Successor) Ex parte; Alhaji Maru* (1976) 6 E. C. S. L R. 221, it was held that an order of certiorari will be granted to quash proceedings tainted with fraud - - - provided the applicant was not guilty of delay and the fraud had not become irretrievable.
5. **Locus standi**: Parties in a tribunal must have the *locus standi* to be able to file for an appeal before the court of law. *Locus standi* means right is the right to sue or defend a claim in law court. It is the right of a party to appear in a court, tribunal or other judicial proceedings and be heard on matter before it. Mohammed Bello JSC, as he then was in *Senator Abraham Adesanya vs. President of Nigeria* (1981) 2 NCLR 358 at 380 defined *locus standi* as: "The right of a party to appear and be heard on the question before the court or tribunal" (See also the case of *Owodunni V. Regd. Trustees of C. C. C.* (2000) 10 NWLR pt 675, p. 293 S.C.)

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

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

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

### 3.3 Principles of Natural Justice

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

#### ***Audi Alteram Partem***

This means that a person shall not be condemned unheard. It is a Latin expression, which means, "Hear the other party". This principle is now established by chain of authorities. In the case of *Mayor of Westminster vs London & North Western Railway Co.* (1905) A C 426 at 430, Lord Macnaghten said, "A public body invested with statutory power must take care to exceed or abuse its power. It must keep within limits of the authority committed to it. It must act in good faith, and it must act reasonably." Similarly, Eso JSC in *Adigun vs. A.G. Oyo State & Anr*

(1987) 18 N.S.C.C. (pt 1) 346 put it this way: “Natural justice demands that a party must be heard before the case against him is determined. Even God gave Adam an oral hearing on his nakedness, before the case against his continued stay in the Garden of Eden was determined against him” Other decision on this includes, *Wilson vs. A. G. Bendel State* (1982) 2 NWLR pt 106, p.265 SC.

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

This is the second leg of the principle of natural justice meaning, “no one should be a judge in his own cause.” In essence, no one should be both the accuser and the judge, in a matter in which he has interest or is a party, it is a rule of impartiality or likelihood of bias. Where a matter is before a tribunal, the person who has interest in such matter must not take part in the deliberations, or else, such decision will be invalid for likelihood of bias. See *Mohammed vs. Kano N. A.* (1968) 1 All NLR 424, *Fawehinmi vs. LPDC* (1983) 3NCLR 719. *Alakija vs. Medical Disciplinary Committee* (1959) 4 F. S. C. 38. See also, the dictum of Blackburn J. in *R V. Rand* (1866) L R I CP 230 at 232.

#### **4.0 CONCLUSION**

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

#### **5.0 SUMMARY**

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

#### **6.0 TUTOR-MARKED ASSIGNMENT**

- i. Examine the right of appeals from decisions of tribunals in Nigeria.
- ii. Discuss the jurisprudential basis of the principles of natural justice as laid down by the Supreme Court in Nigeria in the dispensation of administrative adjudication.

## 7.0 REFERENCES/FURTHER READING

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## **UNIT 4 JUDICIAL REVIEW**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Meaning and Scope of Judicial Review
  - 3.2 Remedies under Judicial Review
  - 3.3 Contents of the Application for Judicial Review
- 4.0 Conclusion
- 5.0 Summary
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### **1.0 INTRODUCTION**

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

### **2.0 OBJECTIVES**

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

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

### **3.0 MAIN CONTENT**

#### **3.1 Meaning and Scope of Judicial Review**

Judicial review is the control by the ordinary courts of the exercise of power by government, or administrative authorities. In *Abdulkarim vs. Car Nigeria Ltd* (1992) 7 NWLR Pt. 251 p. 1, the issue of judicial review was examined by the Supreme Court, and *Nnaemeka-Agu JSC*

took time to explain the role of the court in judicial review as follows. In Nigeria, which has a written presidential constitution, judicial review entails three different processes, namely:

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

The purpose of judicial review of the acts of public or administrative authorities is to ensure that the scope and limit of statutory powers are not exceeded by such authorities.

### **3.2 Remedies under Judicial Review**

The court in reviewing the conduct of public authorities may grant remedy as it deems fit in every circumstance. We shall consider some of the remedies available to an aggrieved party:

#### **i) Declaration of Rights**

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

#### **ii) Order of Mandamus**

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

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

### **iii) Order of Certiorari**

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

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

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

### **iv) Order of Prohibition**

An order of prohibition restrains a public administrative authority from exercising its judicial or quasi-judicial powers. It is an order to prevent the performance of administrative action, which must be judicial in nature. While certiorari looks to the past, prohibition looks to the future.

As such, prohibition lies where an administrative tribunal has not yet reached its decisions while certiorari is the remedy for an action already completed. It is usually granted to restrain a person or body from doing an act on the ground that it is unwarranted, unlawful, unconstitutional, baseless, directed at the wrong persons and so forth. It has the following effects when granted.

- i) Absolutely prohibiting an inferior authority from exercising its jurisdiction

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

iii) Temporarily prohibits an action until a particular act or condition is fulfilled thereby automatically discharging the order. It does not lie where the decision is a final decision. Consider the case of *Shugaba vs. Minister of Internal Affairs & Ors* (1981) 1 NCLR 25; *LPDC v. Fawehinmi* (1985) 2 NWLR pt 7, p.300 SC.

iv) Order of Injunction: A court order, which is equitable in nature and usually to prohibit a person or tribunal from doing a specified thing. As decided in *American Cyanide Company Ltd vs. Ethicon Ltd* (1975) 1 ALL E R 504 HL. It must be used judicially and according to settled principles of law. There are two types of injunctions namely: prohibitive injunction directs a person not to do or continue with a wrongful act; and mandatory injunction directs the doing of an act. In essence, where there is an allegation that a tribunal or public authority intends to take an action, which will result in injury to an individual, an injunction may be granted to stop the threatened action. This was the decision in *Shugaba vs. Federal Minister of Internal Affairs & ORS* (Supra); see also *Williams vs. Majekodunmi* (1962) ANLR 413.

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

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

Injunction can be classified as follows.

- a) Mareva injunction, which prevents a person from removing property from one jurisdiction to another pending the hearing of a suit. See *Mareva Compagiria Nanera vs. International Bulk Carriers Ltd* (1980), All ER 213.
- b) Interim injunction is usually granted to maintain *status quo ante* for a short period. It is usually *ex parte* and granted in cases of real urgency. However, in granting interim injunctions, the applicant must give a satisfactory undertaking as to damages. See *Kotoye vs. C.B.N* (1989) INWLR pt 98, 419 at 456 SC.
- c) Interlocutory injunction is usually granted to maintain the *status quo* until the determination of the substantive suit. Usually on notice to the other party, it is granted to preserve the matter in dispute or maintain the status quo pending the full determination

of the substantive suit. See *Governor of Lagos State vs. Ojukwu* (1989) INWLR pt 18, 621 SC; *Obeya Memorial Hospital vs. A.G Federation & ORS.* (1987) 3 NWLR pt 60, 325 SC.

- d) Perpetual injunction is granted after the final determination of a case to prohibit, in perpetuity, the doing of the thing specified in the order.
- e) Quick time injunction is an interim injunction, which is pre-emptive or preventive. It seeks to prevent the commencement of a threatened act.

An order of injunction is not granted for an act, which is past or completed. Per Mohammed JSC in *Badejo vs. Federal Ministry of Education and ORS.*(1996) 8 NWLR (pt 464),p. 15 at 43 SC; An injunction is not a remedy for” an act which has already been carried out”.

- (vi) **Quo Warranto:** This means “By what authority or warrant?” It was incorporated into the Nigerian system of administrative law through the common law of England and statutes of general application; but later superseded by injunction in the nature of quo warranto. It has been abolished in England and in the Northern region. It is a common law writ issued to inquire into the authority by which a public office is held or franchise is claimed. It seeks to inquire into whether authority existed to justify or authorize certain acts of a public officer, character or interest.
- (vii) **Habeas Corpus:** It is a writ for achieving the liberty or immediate release of a person from unlawful custody or unjustifiable detention. In *Agbaje vs. Commissioner of Police* (1969) NMLR 137 the applicant, a legal practitioner was held in custody by the Police and was later transferred to Ijebu Ode Prison. The court held that his detention was unlawful. It obtains as of right of the highest constitutional importance in line with section 35 of 1999 Constitution. It is used for determining the legality of the detention of a person who is in official custody or private hands. See *Agbaje vs. COP* (Supra), *Tai Solarin vs. IGP* (unreported) suit No. M/55/84 H C; *R V. Jackson* (1981) 1 QB 671.

The purpose of the writ of *habeas corpus* is not to decide whether the detention is according to due process of law. Where it is certain the detention is illegal, a writ is usually issued to command the custodian of the prisoner to bring the detainee to court and justify the detention, where he cannot, the detainee is released forthwith. It is usually by motion ex- parte, supported by an affidavit, stating the circumstances of the detention. The basis of the writ of *habeas corpus* is founded on the principle that no person ought to be subject to unlawful detention in contravention of the fundamental rights to personal liberty of the person

involved (See the Dictum of Lord James Atkin in *Liversidge vs. Anderson* (1942) AC 2006 HL, also the dictum of Lord Denning MR in *DPP vs. Head* (1959) AC 83 at 106).

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

### 3.3 Content of the Application for Judicial Review

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

### 4.0 CONCLUSION

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

### 5.0 SUMMARY

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

## 6.0 TUTOR-MARKED ASSIGNMENT

- i. Explain various factors that affect judicial review of administrative acts.
- ii. Examine the limit of actions of writ of *habeas corpus* as a remedy under judicial review of administrative/ tribunal action.
- iii. Discuss under what circumstances can judicial review be employed.

## 7.0 REFERENCE/FURTHER READING

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## **Module 4 The Nigeria Police Force**

- Unit 1 The Nigeria Police Force
- Unit 2 Legal Status, Responsibility and Control of the Police Force
- Unit 3 Responsibility of Inspector General of Police
- Unit 4 The Police and the Public under the Military and Civilian Regime

### **UNIT 1 THE NIGERIA POLICE FORCE**

#### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
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  - 3.2 The Nigeria Police Council
  - 3.3 The Nigeria Police Service Commission
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#### **1.0 INTRODUCTION**

The police organisation is known throughout the world as a security outfit. The Black's Law Dictionary defines it as "the governmental department charged with the preservation of public order, the promotion of public safety, and the prevention and detection of crime." The origin of the Nigeria Police dates back to the pre-colonial era, then people performed police duties on a part-time basis. The essential quality required for police officers of those days was physical fitness; and the police personnel must of necessity speak the language and in fact the dialect of the community. A contingent of the Nigeria Police Force is located in each state and is under the command of the commissioner of police, who is answerable to the inspector general of police. The inspector general of police, in turn, is answerable to the president or a duly authorised federal minister in relation to public safety and public order.

## **2.0 OBJECTIVES**

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

- explain why the police is responsible for preservation of public order and tranquility, safety, detection of crimes and enforcement of punishment
- discuss the administrative and appointment of police personnel
- examine the responsibilities of Police Council/ Police Service Commission.

## **3.0 MAIN CONTENT**

### **3.1 The Administration and Appointment**

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

The uniformity empowers the inspector general of police to give orders directly to any members of the force in any part of the country. The police commissioners under the existing hierarchy and composition do not seem to have any measure of independence whatsoever. The appointment, disciplinary control and or dismissal of police personnel rest with the Police Service Commission. Under the 1999 Constitution, the inspector-general of police is appointed and removable by the president acting in consonance though with the Police Service Commission.

### **3.2 The Nigeria Police Council and the Police Service Commission**

The Nigeria Police Council was established by Section 9 (1) of the Police Act Cap 359 L. F. N. 1990. It is charged with the duty of policy formulation, administration of matters relating to the appointment, promotion and discipline of members of the force. The Council is made up of the president as the chairman. The chief of general staff, the

minister of internal affairs and the inspector-general of the police. The council is responsible for advising the president on the appointment of the inspector general of police. The body with the approval of the president and subject to such conditions as it may think fit, delegate any of the power conferred upon it by the constitution to any of its members or to the inspector-general of police or any other member of the Nigeria Police Force. See Section 126 (1) of the 1999 Constitution.

### **3.3 Police Service Commission**

The Police Service Commission is another body created which is also concerned with the administration and organisation of the Nigeria Police. The Police Service Commission performs important executive functions. According to P. A. Oluyede, it is to the members of the police force what the Public Service Commission is to the civil servants of the Federal Civil Service. As the only body established by the constitution, it is concerned with the administration of police force. The commission may delegate any of its powers to any of its members or the inspector general of police or any other member of the force. According to Section 215(6) of the 1999 Constitution, the Police Service Commission shall appoint the commissioner of police for each state of the federation. Most importantly, the president must consult the commission before the appointment or removal of the inspector-general. The commission is also responsible for the promotion and training of members of the force.

### **4.0 CONCLUSION**

The Nigeria Police Force is under the operational control of the inspector-general of police and exercises the power to give orders directly to any arm of the force in any part of the country. The commissioner of police in each state is responsible to the inspector-general who in turn is responsible to the executive president or head of states in the country. It has been argued that the centralisation of the police structure is likely to endanger liberty and may not safeguard against abuse or the evil of a police State. Hence, the suggestion that the appointment of the inspector - general should not be the sole prerogative of the president, but should rather be based on the recommendation and final approval by the National Assembly.

### **5.0 SUMMARY**

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

## **6.0 TUTOR-MARKED ASSIGNMENT**

- i. Examine the role of the police force in the political dispensation.
- ii. Explain the structure of the police force under the present political dispensation.
- iii. Analyse the role of the Police Council and the Police Service Commission.

## **7.0 REFERENCES/FURTHER READING**

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## **UNIT 2    LEGAL STATUS, RESPONSIBILITY AND CONTROL OF THE POLICE FORCE**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Various Statues Establishing the Police Force
  - 3.2 Duties of the Force
  - 3.3 Police Responsibility and Crime Control
- 4.0 Conclusion
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- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

The police force under the 1999 Constitution, take orders from the central government, even though in practice, orders is also taken from the state government. The truth is that at common law a police officer holds a public office that of a peace officer, in which he owes obedience to no executive power outside the police force. The chain of command should terminate with a police chief, and not a politician, who is an independent authority, and must act free from all political influence whether national or local. Despite all the regulatory powers, which the federal government may have, it is submitted that the responsibility for deciding whether the police shall arrest or prosecute some particular persons cannot rest upon any one but the police themselves. In the words of Griffith C. J. in the Australian case of *Enever vs. the King* 1906 3CLR 969 cited with approval in *Fisher vs. Oldham Corporation* (1930) 2 KB 364:

The powers of a constable qua peace officer, whether conferred by common or statute law, are exercised by him by virtue of his office and cannot be exercised on the responsibility of any person but himself.

Thus, as long as Section 214 of the 1999 Constitution subsists, it will be correct that the inspector -general of police is answerable to the law and the law alone.

## **2.0 OBJECTIVES**

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

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

## **3.0 MAIN CONTENT**

### **3.1 Various Statutes Establishing the Police Force**

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

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

### 3.2 Duties of the Police

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

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

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

### 3.3 Police Responsibility and Crime Control

An important responsibility of the police force is the detection and prevention of crime. In doing this, the police may make arrest with or without warrant based on the circumstances at hand. The power to arrest without warrant is guaranteed by Sections 24, 25 of the Police Act, Section 10 of the Criminal Procedure Act and Section 26 of the Criminal

Procedure Code. The provisions contain different circumstances when police may make an arrest with or within warrant. However, the power to arrest without warrants is limited to the confine of the state or within a state, though exception abounds (See the case of Jackson vs. Omorokuna (1981) 1N.C.R 283).

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

#### **4.0 CONCLUSION**

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

#### **5.0 SUMMARY**

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

#### **6.0 TUTOR MARKED ASSIGNMENT**

- i. Examine the statutes establishing the police force in Nigeria.
- ii. Discuss the police responsibilities and crime control under the Nigeria law.
- iii. Examine the duties of the police.

## **7.0 REFERENCE/FURTHER READING**

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Police Act, LFN Cap 359, 1990.

## **UNIT 3     RESPONSIBILITY OF THE INSPECTOR GENERAL OF POLICE**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Functions of the Inspector-General of Police
  - 3.2 Extent of the Inspector-General of Police
  - 3.3 Checking of the Inspector-General of Police
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

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

### **2.0 OBJECTIVES**

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

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

### **3.0 MAIN CONTENT**

#### **3.1 Functions of the Inspector General of Police**

The functions of the inspector-general of police in maintaining public order and ensuring the safety of the citizenry are sacrosanct. Some of the functions are:

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

ii) The inspector-general of police has the ultimate responsibility of enforcing the law; this is so because he is answerable to the law and to the law alone. It is for the inspector-general of police to decide in particular case whether inquiries should be pursued, or whether an arrest should be made. It is for the inspector-general to decide on the disposition of his force and concentration of his resources on any particular area of crime. This point was illustrated in *State vs. Commissioner of Police, Mr. Bishop Eytene Exparte Governor of Anambra* (1981/2) suits NO E/65M/81 OF 29/5/82 High Court of Enugu. In this case, the governor had directed the police commissioner to post a given number of named police officers on security duty at government house. The police commissioner declined, adding, "The posting of police officers to the government house or any other place requiring strict security is within the exclusive prerogative of the commissioner of police of each state". The court upheld his submission.

### **3.2 Extent of the Power of the Inspector-General of Police**

By virtue of Section 215(1) of the Constitution of the Federal Republic of Nigeria, 1999, the office of the inspector-general is created and is endowed with the central control of the police force, which is firmly within the province of the federal government. The contingents of the Nigeria Police Force stationed in each state of the federation shall, subject to the authority of the inspector-general of police be under the command of the commissioner of police of that state. The state commissioners are under the inspector-general while the inspector-general is placed directly under the authority of the president, by whom he is appointed. The aim of this provision is to insulate the police force as much as possible from undue political influence. Whether this has actually happened is arguable, considering the role of the police in the political history of Nigeria.

It must be stated that it is the duty of the inspector-general to enforce the law of the land and in doing this, he is not subject to orders of the president or a governor, save under the Police Act, and under the constitution. However, the president can call on him to give a report or give him lawful direction with respect to the maintenance and security of public safety and order as may be necessary. The order may be given by a duly authorised /appointed minister of police affairs. This ensures that the ultimate control of the police remains with the federal government and has been a source of dissatisfaction with some

governors who feel also have responsibility for law and order in their states and would instruct their state commissioner of police.

The governor may legitimately give lawful directions to the police commissioner and the latter must comply. However, where he has doubts, the commissioner of police must refer the matter to the inspector-general of police and ultimately to the president whose directive on the matter is final and cannot be challenged. In addition, by virtue of Section 216(1) of the 1999 Constitution the Police Council may delegate any of its power to the inspector-general. The inspector-general in performing his duty of detecting and preventing crime may order the arrest and detention, and decide whether a suspect is to be prosecuted or not.

### **3.3 Checking the Power of the Inspector-General**

The inspector-general is considered to be the servant of none, save of the law itself. No minister or president can tell him he must or must not arrest or prosecute this man or that man, nor can any police authority that is, the Police Service Commission tell him so. The responsibility for law enforcement lies with him and he is accountable to law alone. However, the exercise of his/her the power is subject to the provision of the law, which in this sense is construed contra-proferentis vis-a-vis the provision of the constitution. Thus, in the case of *Agbaje vs. Commissioner of Police* (1969) 1 NMLR 137(High Court) 1969 1 NMLR 176 (C. A.), it was held that the power based on the order of the inspector-general of police must be exercised lawfully, where it is not exercised lawfully, such detention will be declared unlawful as was done in this case.

### **4.0 CONCLUSION**

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

## 5.0 SUMMARY

In this unit, we have looked at the enormous functions of the inspector - general, the extent of his power, checks and balances on his/her power, and the overall responsibility of the inspector general on policing. The nature vis-a- vis the order of the president or the minister of police affairs and the delegation of functions and duties by the Police Service Commission and the Police Council to the inspector -general of police.

## 6.0 TUTOR-MARKED ASSIGNMENT

- i. Examine critically the power of the inspector-general vis-à-vis the provision of the constitution.
- ii. Analyse the extent of the power of the inspector-general of police under the 1999 Constitution.
- iii. Explain with the aids of the constitutional provision(s), how the power of the inspector-general can be checked.

## 7.0 REFERENCES/FURTHER READING

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## **UNIT 4 THE POLICE AND THE PUBLIC UNDER THE MILITARY AND CIVILIAN REGIME**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Complaints against the Police by the Public
  - 3.2 Police under the Civilian Rule
  - 3.3 Police under the Military Regime
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

The police force is comprised of men and women whose duty is to protect people and property, make everyone obey the law, arrest criminals and to prosecute suspects if necessary. The Nigerian people want to live in a peaceful atmosphere where no one takes the law into his/her hands by resorting to mob action against suspected offenders like thieves or armed robbers in the society. In this wise, policing alone, no matter how effective, will not suffice, as police can achieve nothing without the co-operation and support of the people. The seed of discord was sown between the police force and the public many years back and this led to the thorny problem of police-public relations. The poor relations, which have persisted, seem to be eroding the mutual confidence between the public and the police force.

### **2.0 OBJECTIVES**

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

- assess the relationship between the police and the public
- explain the state of the Nigeria police both under the military and civilian governments.

### **3.0 MAIN CONTENT**

#### **3.1 Some Complaints against Police by the Public**

Every country has its own problems with its own brand of police force. The relations of our Police with the public are not as cordial as it ought

to be. The nature and failure of the police to meditate in time of crises and do justice to matter of urgent attention have contributed to the ugly situation, which led to the military intervention in government. The police have protected the government against the opposition, during the colonial rule especially against the educated elites who kicked opposed colonial administration. When the British left the political scene in 1960, no effort was made to give new orientation to the post-colonial police force. The public has accused the police of extra-judicial killing that is, killing of innocent citizens by strayed bullets or 'accidental discharge'. This calls for changes in their training, their structure and organisation. Another complaint is mounting of illegal checkpoint on the express road, thereby causing unwarranted hold up. This causes many road accidents and loss of lives and property and incessant outcry of the public.

### **3.2 Police under the Civilian Regime**

The police under the civilian regime and immediately after independence faced allegations of being used by politician in the country, especially against the opposition party. It was alleged at a time that many high-ranking police officers in the discharge of their duties took up a party card. This allegation was pronounce in 1979-83 when the partnership of the police became so deep and blatant that the Nigerian public came to view them as uniformed political party themselves. The level of accusations against the police had taken an upward swing since the 1983 electioneering campaign began, although the police had persistently denied such partnership on partisanship.

### **3.3 The Nigeria Police under the Military Regime**

The military regime has, to some extent, stabilised and redeemed the Nigeria Police Force. The local or native authority police forces in the country were abrogated by the military. The 1979 Constitution firmly established the Nigeria Police Force as the single police force in the country. It sought to entrench a common, uniform, neutral and non-partisan role in the maintenance and enforcement of law and order for the Nigeria Police Force. Rear Admiral Aikhomu, the Chief of General staff (Retired) announced on October 4, 1986, the reorganisation of the Nigeria Police Force to meet the challenges of the present day. This arose out of the need for speedy decision-making and better response to matters of law and order. Under the new arrangement the police force now has five directorates each headed by a deputy inspector-general of police. The country also been split into Seven Area Commands each headed by an assistant inspector-general of police for effective police operations.

## **4.0 CONCLUSION**

The police force in Nigeria does not enjoy a solid support and popularity of the populace, following allegations of brutality, corruption, extortion, extra-judicial killings and inconsistency on the other hand public criticism of official is a feature of developing Societies. It is a less surprise. Hence, it has been suggested that the entire Police force should be over hauled reestablished in line with modern global policing policy.

## **5.0 SUMMARY**

In this unit, effort has been expended to examine the performance of the police and its level of relationship with the populace under the military and the civilian regimes. You learnt of complaints against the police by the public, and the efforts made at reorganising the police force.

## **6.0 TUTOR-MARKED ASSIGNMENT**

- i. Analyse a critique of police relation and suggest reforms to improve the current standard.
- ii. Describe the police system in Nigeria under a civilian government.
- iii. Examine the role on the role of the police force in the political development of Nigeria as a nation.

## **7.0 REFERENCES/FURTHER READING**

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## **MODULE 5      PUBLIC COMPLAINTS COMMISSION/OMBUDSMAN**

Unit 1	Public Complaints Commission/ Ombudsman
Unit 2	Actions and Proceedings against Government
Unit 3	Doctrine of Locus Standi under Public complaints Commission and the 1999 Constitution
Unit 4	Administrative and Prerogative Remedies

### **UNIT 1      PUBLIC COMPLAINTS COMMISSION/OMBUDSMAN**

#### **CONTENTS**

1.0	Introduction
2.0	Objectives
3.0	Main Content
3.1	Reasons for Establishing an Ombudsman
3.2	Establishing of Ombudsman in Nigeria under a Military Administration
4.0	Conclusion
5.0	Summary
6.0	Tutor- Marked Assignment
7.0	References/Further Reading

#### **1.0      INTRODUCTION**

The Public Complaints Commission as it is known in Nigeria is better known as the ombudsman all over the world. The institution started as a device to meet a situation of emergency but later developed into an internationally acceptable political institution for the redress of grievances.

An ombudsman (or Public Complaints Commission) is an independent and non-partisan public agency that receives and investigates complaints from members of the public and makes contacts with the alleged wrongdoer to peacefully resolve and obtain remedy for the complaint. An ombudsman remedy system is usually in form of arbitration, which is an alternative to court action.

## **2.0 OBJECTIVES**

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

- examine the essence and importance of the Public Complaints Commission
- describe the responsibilities and duties of the Public Complaints Commission.

## **3.0 MAIN CONTENT**

### **3.1 The Reason for Establishing an Ombudsman**

The Public Complaints Commission is an ombudsman remedy mechanism adopted worldwide for a number of reasons, namely:

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

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

### **3.2 The Establishment of Ombudsman in Nigeria under a Military Administration**

The duty of an ombudsman is to investigate and report to the legislature, the complaint by the citizens against the government or officers of the state. The ombudsman is by no means a super-administrator empowered to overturn every error and to produce correct answers to all the difficult questions that confront modern government. He exists to protect the ordinary citizen from undue influence, negligence or maladministration by government officials and staff of parastatals organisation. According to the Public Complaints Commission Decree 31, 1975, on 16th October 1975, the Public Complaint Commission consists of a chief commissioner and 12 other commissioners invested with power to investigate either on its own initiative or on complaint from administrative action by federal or state agencies, statutory corporations, local government authorities and public institution, and companies whether in the public or private sector. In 1979, Public Complaints Commission (Amendment) Decree 21 was promulgated, it made several amendments to the Public Complaints Commission Decree 31 of 1975. Among other things, it conferred immunity from legal process on the public complaints commissioners in the performance of their official duties.

### **4.0 CONCLUSION**

An attempt has been made to trace the history of ombudsman with reference to the Public Complaints Commission. The main objectives of the commission include keeping a balance between the citizen and the government official and staff or parastatals and, to ensure justice among ordinary citizens. It is also noteworthy that the Public Complaints Commission is an advisory body. It will make citizens grow conscious of their rights and will be able to ask for them as citizens do in more developed countries.

Another point to note is that indiscipline is the main cause of almost all the ills in Nigeria society. Indiscipline breeds inefficiency, corruption and maladministration. In addition, the commission is to cure indiscipline in the society. The commission is an expression of democratic practice and the rule of law in Nigeria being a special institution assigned with the task to control and ensure that administrative organs of the society respect the rights of the citizens, regardless of zonal standing. Anybody in the society has a right to complain against the society and get his/her complaint investigated and tried even if the highest official in the society is involved. All these are without costs to the complaining party.

## 5.0 SUMMARY

An ombudsman is an independent and non-partisan public agency that receives and investigates complaints among members of the public, attempts to resolve the controversy peacefully and obtain remedy for the aggrieved party as appropriate. An ombudsman remedy systems is a type of arbitration and is an alternative to court action. The Public Complaints Commission is the official ombudsman in Nigeria. You also saw that an ombudsman uses alternative dispute resolution skills such as arbitration, mediation and conciliation skills to effect settlement and result. The Public Complaint Commission was established by the Public Complaint Commission Act, 1975. The Constitution of the Federal Republic of Nigeria, 1999, Section 315(5) provides that this Act shall not be altered or repealed except in accordance with provisions of Section 9(2) of the constitution. The Public Complaint Commission Act is one of the enactments so protected. A reason for the establishment of the Public Complaint Commission was discussed. So also were its duties and powers.

## 6.0 TUTOR-MARKED ASSIGNMENT

- i. Discuss what you understand by the Public Complaint Commission.
- ii. Analyse the activities of the Public Complaint Commission under the military administration.

## 7.0 REFERENCES/FURTHER READING

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## **UNIT 2    ACTIONS AND PROCEEDINGS AGAINST GOVERNMENT**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Bringing Actions against Government
  - 3.2 Immunity of President and Governors from Legal Actions
  - 3.3 The Liability of Other Public Officials
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

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

### **2.0 OBJECTIVES**

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

- explain the immunity protecting the president and the governors of various states
- explain the punishment for a servant or agent who committed a wrong on behalf of the government
- explain the punishment for public officials
- discuss the probability of bringing an action against the government for acts committed by public officers of the state.

### **3.0 MAIN CONTENT**

#### **3.1 Bringing Actions against Government**

The present constitution has made the civil liability of the government similar to that of any citizen. The government may be sued in every area of law and many cases have been brought against the government over the years. In *Attorney General Bendel State vs. Aideyan* (1989) 4 NWLR pt. 118 p. 646, the Bendel State Government purportedly acquired the plaintiff/respondent's building and he sued the state government. On appeal, the Supreme Court held that the respondent was entitled to his building and declared that the purported act of acquisition of the property of the respondent by the state government in a manner not authorised by any law was a complete nullity.

In the *Governor of Lagos State vs. Ojukwu* (1986) 1 NWLR (Pt.18) p. 621 where the title of a building was contested by the parties in court. Pending its determination and against an order of interim injunction stopping the ejections of the plaintiff/respondent, the defendants/appellants who were the Lagos State Government and the commissioner of police, without an order of court for possession of the house forcefully ejected the respondent from the property in dispute. The Supreme Court held in favour of the respondent and dismissed the appeal of the appellants saying that no one is entitled to take possession of premises by a strong hand, with a multitude of people.

Section 308 of the 1999 Constitution of Federal Republic of Nigeria provides for immunity from legal action against the president and vice president of the federation, and for the governor and the deputy-governor of a state respectively, during their period of office. They can neither be arrested nor be imprisoned while in office in pursuance of the process of any court or otherwise. While they hold office, no process of any court requiring or compelling their appearance shall be applied for or issued. This does not imply that they are not liable for any civil or criminal act or omission in their personal capacity while in office. It only means that such actions cannot be taken against them at that material time. For instance, where any suit is pending against the President or the Governor of a State, the suit cannot continued during his term of office. Such suit is either adjourned without a fixed date (*sine die*) or settled amicably by both parties.

#### **3.2 The Liability of other Public Officers**

The immunity protecting the president and the governors of various states does not extend to the officers, servants or agents of government. A servant or agent who committed a wrong on behalf of the government

is personally liable. Public officials, no matter their position may be personally liable for any damage caused by their act or omission, unless he/she has a legal authority, or enjoys statutory protection. It is settled law that an aggrieved party can sue the particular public officer who is responsible for the injury complained of. Public officers are generally liable in civil and criminal proceedings, unless they are protected. Public Officers Protection Act and its equivalent laws in the various states offer some measure of protection to public officers by limiting the time, within which action could be brought against a public officer but they are not immune to legal action.

#### 4.0 CONCLUSION

Immunity is the exemption of a person or body from legal proceedings, or liability. From the time immemorial, the King or Queen was the first common law judge, and the monarch was immune from legal action. This was expressed in Latin maxim *rex non potest peccare* meaning “The King can do no wrong.” Just like that, the English doctrine of sovereign immunity is rooted in antiquity. This theory of sovereign immunity is was translated to today constitutional immunity. Thus, immunity does not cover proceedings against any of the public officers as nominal parties. They may be sued in the official capacity or joined as nominal party.

From origin or early time, the doctrine of sovereign immunity has been in operation. It implied that is the state cannot do wrong and the government could not be sued in its own courts without its consent or fiat by way of petition of rights. The above position was nullified by the 1979 Constitution, which provides that the Petition of Rights Acts is unconstitutional as it was hindering access of aggrieved persons to court for the redress of wrongs done by the State or government. In view of this, by virtue of the Nigerian Constitution, there is free access to sue the state; government or any public office or authority without the need to obtain consent. However, no civil or criminal liability proceeding shall be instituted or continued against the president, vice-president, governor and deputy governor during their tenure in office. However, where such officer commits any breach, Legal proceedings will be withheld until such officer vacates his office and no longer enjoys the immunity provided by section 308 of the 1999 Constitution. The position as regards the liability of other public officers is not the same as the state immunity does not extend to its servants or agents. A servant or agent who commits a wrong on behalf of the state may be personally liable. The Public Officers’ Protections Law /Act, where a suit may be statute barred under prescribed circumstances does not apply to criminal proceedings. (See the case of Tagbugbe vs. C O P. (1992) 4 NWLR pt 234.P.152). The government is vicariously liable for the tort of public

officer's .committed in the course of employment but where such public official or agent goes beyond his scope of employment to commit a wrong, he would be personally liable for his torts.

## **5.0 SUMMARY**

In this unit, effort has been expended to examine immunity protecting the president and the governors of various states. You also learnt of complaints against the police by the public, and the efforts made at reorganising the police force and the probability of bringing an action against the government for acts committed by public officers of the state.

## **6.0 TUTOR-MARKED ASSIGNMENT**

- i. Examine the circumstances in which the constitution exempts the president, vice president, governor and deputy governor from litigations.
- ii. Explain those instances where a public officer is protected by Public Protection Act on action filed against him/her.
- iii. Discuss the import of Section 308 of 1999 Constitution in respect of action filed against a governor in Nigeria.

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## UNIT 3 DOCTRINE OF *LOCUS STANDI* UNDER PUBLIC COMPLAINTS COMMISSION AND 1999 CONSTITUTION

### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Doctrine of *Locus Standi* under Public Complaints Commission
  - 3.2 Doctrine of *Locus Standi* under the 1999 Constitution
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### 1.0 INTRODUCTION

The doctrine of *locus standi* simply means ‘rights standing’ in law, which gives a party in a matter the right to sue. *Locus standi* is the right to sue or defend a claim in court. It is generally the right of a party to appear in a court of law, tribunal or other judicial proceedings and be heard on the matter pending before it. In *Senator Adesanya vs. The President & Ors* (1981) 2 NCLR 358, Fatayi-Williams, CJN (as he then was) said “the term *locus standi* denotes legal capacity to institute proceeding in a court of law.” In its strict application, *locus standi* is a rule of substantive law by which a person with little or no interests at all is debarred from bringing an action against any person, the government or any of its agencies. The sole object of the rule is to prevent professional litigants from fishing in troubled waters.

The application of the doctrine of *locus standi* in law extinguishes completely the claim of the complainant and shut the door finally against him or her. Section 46 (1) of the Constitution of the Federal Republic of Nigeria, 1999, defines a person who has *locus standi* as “any person who alleges that any of the provisions of this chapter has been, is being, or likely to be contravened in any State in relation to him may apply to a High Court in that state for redress.” A person who seeks redress in a court of law against a wrongful act must show that he is directly affected by such act before he can be heard. The right must have been infringed, but a general interest common to all members of the public is not a litigable interest and it is not *locus standi* in a court of law.

## 2.0 OBJECTIVES

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

- explain the meaning of *locus standi* under our law and how it operates
- discuss when a person lacks the legal capacity to institute an action
- examine the doctrine of *locus standi* under Public Complaint Commission.

## 3.0 MAIN CONTENT

### 3.1 Doctrine of *Locus Standi* under Public Complaint Commission

The doctrine of *locus standi* has its liberal or expansive application. Its aim generally is to promote human rights and better dispense justice. Section 5 (1) (g) of the Public Complaint Act has clearly introduced the doctrine of *locus standi*, which is defined as the right of a party to appear and be heard on the question before any court or tribunal. One fundamental aspect of the *locus standi* is that it focuses on the party seeking to get his complaint before a tribunal and not on the issues he wishes to have adjudicated upon. In other words, a party who seeks a remedy before the Public Complaint Commission must show that he or she is directly affected by that act, or omission in controversy before he can be heard; a general interest common to all members of the public cannot be complained of per se and cannot accord any standing before the Public Complaint Commission.

There must be an assertion of right by such a party personal to him and that right must have been infringed. The strict application of the doctrine of *locus standi* under Public Complaint Commission will occasion grave lacuna in our system of public law. If a pressure group or even a single public spirited tax payer were prevented by technical rules of *locus standi* from bringing any matter before the Public Complaint Commission to vindicate the rule of law and get an unlawful administrative conduct corrected. In *Senator Adesanya vs. The President & ORS* (1981) 2 NCLR 358, the appellant brought this action against the president of Nigeria for a declaration that the appointment of the second defendant/respondent as Chairman of the Federal Electoral Commission (FEDECO) was unconstitutional as he was at the time of his appointment the Chief Judge of Bendel State and his therefore disqualified from being appointed a member of the Federal Electoral Commission and for an injunction restraining the president from

swearing in the 2nd defendant/respondent as the chairman and also restraining him from acting or purporting to act as member or chairman. The Supreme Court held that the appellant had no sufficient interest or *locus standi* in the matter of appointment of second defendant/respondent as the Chairman of the Federal Electoral Commission. To succeed, appellant has to establish personal injury or likelihood of it.

### **3.2 Doctrine of *Locus Standi* under the 1999 Constitution**

The legal and constitutional basis of the doctrine of *locus standi* in Nigeria is the Nigerian Constitution. In view of the provision of Section 46(1) of the 1999 Constitution, a person who has *locus standi* is “any person whose right has been, is being, or likely to be contravened”. Where a party who has no interest in a case institutes an action in court, the court will legally have no jurisdiction to hear such a case. In *Re Ijelu* (1992) 9 NWLR Pt 266 p. 414, the Supreme Court in refusing the applicants prayer, said that for a person to have *locus standi*, either to institute an action or to prosecute the matter, he has to show that he has personal interest. The personal interest must be a special interest and must not be vague or intangible and it should not be an interest shared with other members of society generally. However, it is paramount that the party instituting an action must show that such personal interest has been adversely affected otherwise the suit will be incompetent.

## **4.0 CONCLUSION**

The concept of *locus standi* means right of standing in law. The person must therefore establish that he has some personal interest, which has been breached or is in imminent danger of being breached to have *locus standi* to sustain a claim. The duty of the court is only to redress wrongs. Therefore, where no wrong is done or imminent, there will be nothing to redress.

## **5.0 SUMMARY**

In this unit, you learnt about the doctrine of *locus standi* both under the Public Complaint Commission and under the 1999 Constitution of the Federal Republic of Nigeria. A person who has *locus standi* and can sue is someone who has a legal right, or whose rights has been breached or has suffered detriment personal to him or herself.

## 6.0 TUTOR MARKED ASSIGNMENT

- i. Discuss the problem that section 5(1) (g) of the Public Complaint Commission can pose in future.
- ii. Discuss with the aids of legal authorities, doctrine of *locus standi*.
- iii. Explain the doctrine of *locus standi* under Public Complaint Commission.

## 7.0 REFERENCES/FURTHER READING

Constitution of the Federal Republic of Nigeria, 1999.

Egwummuo, J. N. (2006). *Modern Trends in Administrative Law*, (2nd ed.). Enugu: Academic Publishing Company.

Malemi, E. (2008). *Administrative Law*. (3rd ed.). Ikeja: Princeton Publishers.

Oluyede, P. A. (2007). *Nigerian Administrative Law*. Ibadan: University Press Plc.

## **UNIT 4 ADMINISTRATIVE AND PREROGATIVE REMEDIES**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Types of Prerogative Remedies in Nigerian Legal System
  - 3.2 Some of the Problem Associated with the Prerogative Remedies
  - 3.3 Non- Judicial Remedies for Administrative Acts
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Reading

### **1.0 INTRODUCTION**

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

## 2.0 OBJECTIVES

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

- explain the meaning of these four remedies i.e. habeas corpus, prohibition, mandamus and certiorari
- explain some of the problems associated with the prerogative remedies
- discuss the application of these remedies by the courts in Nigeria.

## 3.0 MAIN CONTENT

### 3.1 Types of Prerogative Remedies in Nigerian Legal System

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

#### i) *Habeas Corpus*

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

#### ii) **Prohibition**

This is one of the prerogative remedies available to an applicant. It is an order of court restraining an inferior court, tribunal, public or administrative authority from exercising its judicial or quasi-judicial powers. The party or body to be restrained need not be in court in the strict sense. Prohibition is in the nature of an injunction, but there are two discernable differences between the two. The scope of a prohibition

is limited to persons or bodies enjoined to act judicially. Prohibition will not lie against persons performing purely administrative or executive act. An order of prohibition is an order to prevent the exercise, or continuation of the exercise of judicial or quasi-judicial powers, which is likely to affect the applicant's right. It is preventive in nature, rather than corrective. An order of prohibition does not lie (that is not available) to stop a judicial act or determination that has been completed. An order of prohibition is only available in the following two instances.

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

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

### **iii) Mandamus**

This is an order of court commanding the performance of a public duty which a person or body is bound to perform. The order of mandamus is simply a device for securing judicial enforcement of public duties. Where an applicant has fulfilled the legal requirements for performance, a court will issue an order of mandamus to compel its performance. Mandamus is a discretionary power given to the courts, which the courts will grant only in suitable cases. It was introduced to prevent disorder from a failure of justice, and defect of the police. Essentially, mandamus is an order generally sought by to ascertain public duty. Before an applicant can succeed in bringing it about, there must be an imperative public duty incumbent on someone and not just a discretionary power to act. It is paramount that the applicant must have made a request for the performance of the duty and this must have been refused. In addition, the applicant must have a substantial personal interest in the performance of the duty concerned. The order will not issue when there is an alternative specific remedy at law, which is equally convenient, beneficial and effective.

### **iv) Certiorari**

This is one of the prerogative remedies by which an act, which is *ultra vires* may be challenged. It assumes the form of an order issued by the High Court to an inferior court or tribunal to bring to the High Court decisions of that inferior court or tribunal in order that their legality may be investigated. The order of certiorari enables the court issuing the order to inspect the record and determine whether there has been any irregularity or injustice. It is a discretionary device to review a matter where necessary and do justice in it. An application for an order or certiorari is based on grounds of incompetence or other grounds of injustice and it is to enable the superior court determines the legality of the decision in issue. It is a corrective order and usually a proper remedy to be granted for actions, which have already been completed. It is an

essential characteristic of certiorari that it is issued not because of any personal injury to applicant, but because of the need to control the machinery of justice in the general public interest.

### **3.2 Some of the Problems Associated with the Prerogative Remedies**

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

### **3.3 Non-Judicial Remedies for Administrative Acts**

These are extra-judicial remedies available outside the court room, though with the help of the court sometimes. An example is resort to alternative dispute resolution systems monitored by the court. Other extra-judicial remedies available for making the authorities to change, abandon or review its policies, actions and decision includes the following.

- i) Peaceful rally or protest
- ii) Dialogue
- iii) Public opinion poll
- iv) Media coverage and publicity
- v) Lobby to persuade or influence the administration to act in a particular way
- vi) Referendum
- vii) Pressure (internal and external)
- viii) Appeals for a rethink and remedy
- ix) Petition
- x) Internal remedial administrative mechanism

- xi) Civil disobedience
- xii) Inco-operation
- xiii) Strike/industrial action, boycott, picketing
- xiv) Sanctions (economic and otherwise)
- xv) Election vote, recall, removal through impeachment,
- xvi) Code of conduct Bureau
- xvii) Public Complaints Commission: Ombudsman
- xviii) Legislative control and executive control
- xix) Pardon and amnesty
- xx) Arbitration, mediation, or conciliation
- xxi) Rebellion, succession, war etc in extreme cases only when all other efforts (peaceful) have failed. For better understanding see the case of Isaac Adaka Boro and others V. the republic of Nigeria (1996) All NLR 2635; Fasehun V. A.G. Federation (2006) 6 NWLR pt 957; Dokubo Asari V. Federal Republic of Nigeria (2007) 12 NWLR pt 1048, p.320.

#### 4.0 CONCLUSION

*“Ubi jus ibi remedium”*: Where there is a wrong, there is remedy.

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

#### 5.0 SUMMARY

In this unit, we have looked at the various means of safeguarding the rights of the governed against oppression or unpopular action by the government. In doing so, you learnt about the administrative and prerogative remedies, types of prerogative remedies as well as non-judicial or extra judicial remedies against wrangling actions of administrative body.

In whole, the essence of this exercise is to x-ray the possible means of safeguarding and ensuring that government and its administrative agencies abide within the ambit of their authority and the law.

## 6.0 TUTOR-MARKED ASSIGNMENT

- i. Examine the writ of *Habeas Corpus* as a judicial remedy vis a-vis the provision of Chapter IV of the 1999 Constitution.
- ii. Assess various means of seeking remedies against administrative or judicial actions.

## 7.0 REFERENCES/FURTHER READING

Egwummuo, J. N. (2006). *Modern Trends in Administrative Law*. (2nd ed.). Enugu: Academic Publishing Company.

Emiola, A. (1998). *Remedies in Administrative Law*. Ogbomoso: Emiola Publishers Limited.

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## **BLURB OF THE WORK**

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