THE ROLE OF THE PUBLIC COMPLAINTS COMMISSION IN PROTECTING WORKER'S RIGHTS AGAINST ADMINISTRATIVE INJUSTICE AND MALADMINISTRATION IN NIGERIA

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DECLARATION

I hereby declare that this thesis has been written by me, under the supervision of Dr (Mrs) J.A.M. Audi and that it is a record of my own research work. To the best of my knowledge and belief, it has not been previously presented in any form whatsoever in any application for LL.M thesis.

_____ _____

Ishaq Mohammed SANI Date

CERTIFICATION

This thesis titled: "The Role of the Public Complaints Commission in Protecting Worker's Rights Against Administrative Injustice and Maladministration in Nigeria" meets the regulations governing the award of the degree of Master of Laws – LLM of Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

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TABLE OF CONTENTS

Declaration……. i
Certification…… ii
Acknowledgements…….. iii
Table of Contents…… v
Table of Cases…… viii
Table of Tables…….. ix
Table of Statutes…… x
Abstract…….. xi

CHAPTER ONE: GENERAL INTRODUCTION

1.1 Background..…… 1
1.2 Statement of problem……. 2
1.3 Objectives of the research……. 3
1.4 Scope of the research work……. 3
1.5 Significance of the study…….. 4
1.6 Methodology…… 4
1.7 Literature Review…… 5
1.8 Structural Organization of the Research…… 8

CHAPTER TWO: HISTORICAL BACKGROUND OF THE PUBLIC COMPLAINTS COMMISSION

2.1 Introduction…….. 10
2.2 Clarification of Key Concepts……. 17
2.3 Spread of Idea of Ombudsman……. 21
2.4 History and Origin of Public Complaints Commission..... 26
2.5 Objectives of the Public Complaints Commission Under the Law in Nigeria..... 28
2.6 Nature and Characteristics of Public Complaints: A Comparative Study..... 31
2.7 Functions of Public Complaints Commission in Nigeria…… 33
2.8 Emerging Trends…….. 42

CHAPTER THREE: STRUCTURE, PRACTICE AND PROCEDURE OF THE PUBLIC COMPLAINTS COMMISSION UNDER THE ACT IN NIGERIA

3.1 The Structure of the Commission..... 44
3.1.1 Headquarters and States Branches..... 44
3.1.2 Appointment..... 48
3.1.3 Jurisdiction……. 49
3.1.4 Establishment 50
3.2 Practice and Procedures for the Commission…….. 54
3.2.1 Procedures for Lodging Complaints and Investigation:……. 55
3.2.2 Practice, Offences and Penalties..... 57
3.2.3 Treating of Complaints……. 60
3.2.4 Recommendations and Implementation of Decision…….. 61
3.2.5 Procedure and Anatomy of Cases…… 61
3.2.6 Timeliness……. 62
3.3 Chief Commissioner, State Commissioners and Others…….. 63
3.3.1 Tenure …….. 64
3.3.2 Composition…….. 65
3.3.3 Salaries…….. 65
3.3.4 Appeals…….. 66

CHAPTER FOUR: SUBJECT MATTERS DECIDED BY THE PUBLIC COMPLAINTS COMMISSION

4.1 Introduction ……. 67
4.2 Examination of some Cases Decided by the Public Complaints Commission…….. 67
4.2.1 Federal Cases…… 67
4.2.2 State Cases…… 70
4.2.3 Cases against Local Government Authority…… 74
4.2.4 Public Corporation Cases…….. 76
4.2.5 Private Organizations…… 77
4.2.6 Cases against Individual…… 80
4.3 Strengths and Weaknesses of the Public Complaints Commission Act……. 82
4.3.1 Strengths……. 82
4.3.2 Weaknesses…… 87
4.3.3 Success and Problems of Public Complaints Commission in Achieving its Goals…… 89
4.3.4 The Role of Public Complaints Commission and the Regular Courts…… 94

CHAPTER FIVE: OVERVIEW OF OMBUDSMAN INSTITUTIONS IN SOME JURISDICTIONS

5.1 Introduction……..... 102
5.2 Functions/Duties of the Ombudsman……..... 102
5.2.1 Operation of Ombudsman ……..... 103
5.3 An Overview of Ombudsman Institution in Other Jurisdictions..... 104
5.3.1 Australia……..... 105
5.3.2 New Zealand……..... 107
5.3.3 Ombudsman in Bangladesh……..... 108
5.3.4 South Africa ……..... 109
5.3.5 Tanzania ……..... 112
5.4 Effect of Jurisdictional Limitation on Performance of The Commission in Nigeria……..... 112

CHAPTER SIX: CONCLUSION AND RECOMMENDATIONS

6.1 Conclusion……..... 115
6.2 Observations ……..... 117
6.3 Recommendations……..... 121
6.3.1 Amendment of some problem sections……..... 121
6.3.2 Power to Enforcement…..……..... 122
6.3.3 To Improve Financial Allocation……..... 122
6.3.4 Provision of modern equipments and e-complaint devices..... 123
6.3.5 Re-visiting Qualification of the Commissioners……..... 123
6.3.6 Establishment of Public Complaints Commission in all Government Establishment……..... 124
6.3.7 Enhancement of condition of service……..... 124
6.3.8 Maintenance of good working relationship with similar Agencies..... 124
6.3.9 Need for periodic review of strategic plan of action……..... 125
Bibliography……..... 126

TABLE OF CASES

OLUGBOBIRI, TEBIDABA AND IGBOMOTARU AGAINST THE NIGERIA AGIP OIL COMPANY (2008) (Ref: 20th Annual Report, Public Complaint Commission……..……..... 14

EL-RUFAI AGAINST HOUSE OF REPRESENTATIVE (2006). Ref: Journal of the Committee on Public Petitions, House of Representatives Vol.I, No.1 pg 6……..... 15

DR. OSAYANDE V.E. VS FEDERAL MEDICAL CENTRE ASABA. Ref: Journal of the Committee on Public Petitions, House of Representatives Vol.1, No.1 pg.8……..... 16

MR. ADEBANJO A.O. AGAINST NIPOST (2004). Ref: 27th Annual Report, 2002 pg 63 Public Complaint Commission……..... 68

MR. AUWALU UMAR AGAINST NIGERIAN PRISON SERVICE (2005), Ref: (1989) KD/C.8909/Vl.1(2003)……..... 69

EX-INSPECTOR DUNIYA AGAINST THE NIGERIA POLICE (2004 c.9704). Ref: (1989) KD/C.8909/Vol.1 (2003)…….....….. 69

UMARU ALIYU AGAINST KADUNA STATE MINISTRY OF FINANCE (2003 c.8903). Ref: (1989) KD/C.8909/Vol.1(2003) 70

COSSETTEE AGAINST THE OMBUDSMAN (1980). Ref: 27th Annual Report, 2002 pg 54, Public Complaint Commission…..... 71

MR. OLANIYI O. AGAINST GENERAL MANAGER ONDO STATE SPORTS COUNCIL (2003) Ref: Ref: 27th Annual Report, 2002 pg 77, Public Complaint Commission …….....… 71

MOHAMMED MAHMUD KAKA AGAINST UPPER AREA COURT KUKAWA (2003) Ref: (1989) KD/C.8725/25/Vol.I (2000)..... 73

MOHAMMED AHMED AGAINST AREA COURT 3 (200 c.8725) Ref: 20th Annual Report, (2002) Public Complaint Commission .....…. 73

GLENISTER v. DILLON (1979) Ref: 2(1976) V.R. 434 (2006) Annual Report ……..... 74

MR. FEMI ADEOLA AGAINST LOCAL GOVERNMENT SERVICE COMMISSION (2001) Ref: 2(1976) V.R. 434 (2006) …..... 74

MR. NDUKA O.V. AGAINST NITEL (1989) Ref: 27th Annual Report, 2002 pg 45 Public Complaint Commission……..... 76

REV. VICTOR ONEBEINAI DAVID AGAINST BERGER NIGERIA LIMITED (2001) Ref: 25th Annual Report 2002 pg 21, Public Complaint Commission ……..... 77

ALIYU ABDULLAHI & OTHERS AGAINST DISTRICT HEAD OF SOBA (1998 c.7738) Ref: (1989) KD/C/.8725/Vol.I (2002) …..... 80

ILIYA B. SALAE AGAINST AL ISA & OTHERS (2003 c.9816) Ref: KD/C.8909 (2003)……..... 81

CHIEF NKWOCHA VS GOVERNMENT OF ANAMBRA STATE S.C.N.LC pg 634……..... 82

LIST OF TABLES

Table I: showing time frame for resolving complaints…….. 62

Table II: showing cases decided by Public Petition Committee of National Assembly…….. 99

TABLE OF STATUTES

Constitution of Federal Republic of Nigeria 2011 (Amended)
FGN: Public Complaints Commission (Degree No.31, 1975)
Cap p.37 LFN 1990

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ABSTRACT

This research project is titled "The Role of the Public Complaints Commission in Protecting Worker's Rights against Administrative Injustice and Maladministration in Nigeria". The research work has been prompted by the observation made on the decline in the discharge of its roles in some state offices of the Commission, despite overall achievement of organizational target. The main purpose of this research therefore was to find out what must have been responsible for the decline. To achieve this, data were collected and interview conducted. In the data collected, simple descriptive presentations in Annual reports were consulted. In the course of this research, findings revealed that limitations of the Act have made a negative impact on the performance of Commission's staff, but that the staff encounters problems while carrying out their respective jobs. Responses also revealed that the Commission needs to continually conduct training programmes especially on investigation, as that will boost staff performance. Finally, the argument in this work is that, although the PCC has recorded some achievements regarding the discharge of its mandate from the time of its inception to date, it might not be rated high on its score board. In this regard, (the researcher/study) have made recommendations that will have far reaching significance and they are sure to make the commission more focused, more robust and more dynamic, if they are judiciously implemented.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 BACKGROUND

Hon. Chief Justice J.V. Milvain of the trial division of the Supreme court of Albarat, Canada delivering judgement on 6th January 1990 in the case of "Feldbrugge V. Netherland A/100/1986 where the complainant was refused the payment of his social benefit after he fell sick and was retired as a result of ill health – held that the right to continue to receive benefit after sickness is valid under the law of insurance and should apply. In the Court of Human Right, UK Parliamentary ombudsman **Re: Ombudsman Act** Canada captured the basic purpose for the establishment of the ombudsman when he said... the basic purpose of an ombudsman is the provision of a watchdog designed to look into the entire working of administrative laws..." [1]

Therefore, the worldwide popularity of the Ombudsman Institution as a significant part of contemporary governance is certain without question. A research conducted by Dr. V. Ayeni of the Commonwealth Secretariat revealed that at the end of 1999, at least 102 countries had established the office at governmental level worldwide. Within the commonwealth, 38 of its 54 members now have an Ombudsman office including its four developed countries and 22 of the 32 so-called small states including Botswana. Presently, 29 of Africa's 54 countries have governmental Ombudsman offices[2].

[1](1970) 10 ADR (3RD) 47
[2] Ayeni S. K... Public Protector Ombudsman in Botswana, Commonwealth Secretariat, London (2000) P. 1

From the above premise *vis-a-vis* the goal of ombudsman, the decision to establish it in Nigeria cannot be overemphasized. It was established in 1975 with specific power and limitations. The journey so far (i.e. 1975 to 2011) is it worth the trouble and the resources invested. Has the limitation of its jurisdiction militated against its effective performance? What areas need to be addressed in the commission's Act for achievement of better results? These and other unraised issues is what the whole of this project addresses.

1.2 STATEMENT OF THE PROBLEM

The ombudsman is one of the most effective Alternative Dispute Resolution institutions in the country, charged with the specialized task of redressing administrative injustices. Like all other institutions the commission is expected to operate within a specified statutory "locus" called jurisdiction as provided by section 5 and limited by section 6 of the Public Complaints Commission's Act.[3] Has the jurisdictional provision covered adequately the whole field of administration where injustices are on daily basis meted to the citizenry? Is the limitation on jurisdiction so wide that the effective performance of the commission can hardly be achieved?

Lastly, could it be that the effective performance of the Commission does not hinged on adequate funding alone but in addition, depends on adequate, qualified, trained and motivated manpower who are engaged on

[3] Public Complaints Commission Act Cap 37 Laws of the Federation of Nigeria, 2004.

research, monitoring and evaluation of the overall performance of the Commission?

1.3 OBJECTIVES OF THE RESEARCH

The objectives of the research work are an attempt to:

1. Examine the law in the Public Complaints Commission Act and other relevant laws.
2. Examine the application of the Public Complaints Commission Act for protection of worker's rights against maladministration in Nigeria.
3. Highlight some factors militating against the effectiveness of the Public Complaints Commission.
4. Provide recommendations, amendments and better ways of protecting worker's rights.

1.4 SCOPE OF THE RESEARCH WORK

This research work is intended to cover the objectives, structure and characteristics of the ombudsman. The work covers also the strengths and weaknesses as well as some decided cases by the commission in performing its duties and historical overview of the ombudsman institution in Nigeria and other jurisdictions to compare the roles of Public Complaints Commission, the court, the National Assembly, Public Petition Committee and make recommendation where necessary.

1.5 SIGNIFICANCE OF THE STUDY

The research is significant in the sense that it will:

1. Promote social justice for individual citizen without which there can hardly be genuine peace and stability in Nigeria.
2. Educate and enlighten the general public on the viable options available for redressing grievances against administrative injustice arising from bureaucratic errors, omission or abuse by officials of government or limited liability companies in Nigeria.
3. Improve administration of the Public Complaints Commission by pointing out some weaknesses observed in its law, procedures, practices, rules and regulation for standards of behaviour for officials.

1.6 METHODOLOGY

In collecting the information leading to this research work, combinations of methods were used. Both primary data obtained from respondent via interviews and secondary data via Arm chair research i.e. use of library. However, one must place on record that majority of the data used were obtained from secondary sources.

The empirical and doctrinal research methods. Interviews were conducted and questionnaires were administered. Reference will be made to journals, annual reports, newsletters, magazines and textbooks.

1.7 LITERATURE REVIEW

The major thrust of literature review for my research is to highlight and evaluate relevant literature or studies relating to my study. The central theme of this study is to examine the role of the Public Complaints Commission in Protecting Worker's Rights against Administrative Injustice and Maladministration in Nigeria. Scholars and practitioners have made contributions on the Ombudsman Institutions in many parts of the world.

The Wikipedia (2011) transmitted that an indigenous Danish Norwegian, and Swedish term, Ombudsman is etymologically rooted in the old word, essentially meaning "representative". An Ombudsman is an official usually appointed by the government or parliament, who is charged with representing the interests of the public by investigating and addressing complaints reported by individual citizens.[4]

The Wikipedia, 2011 further showed that the major advantage of an Ombudsman is that he or she examines complaints from outside the offending state institution, thus avoiding the conflicts of interests inherent in self-policing.[5] That the Ombudsman Institutions are established the world over to promote social justice thereby curbing the menace of administrative injustice and maladministration of government officials. As relevant as this work is to the present study it is not specific on Nigeria ombudsman and maladministration which is the main thrust of my scope of research.

[4] The Wikipedia, free encyclopedia www.wiki.com/http:ombudsman.u.2, 2011 p.1
[5] Ibid.

Bowless opined that the role of Public Complaints Commission in most countries is justified as thus:

> A number of cases have established principles of general importance... A greater number has concerned matters which, while no great public moments, were nevertheless of very real importance to the individuals concerned. In its concern for the latter, the office of Ombudsman is fulfilling one of its important and basic functions.[6]

From Bowless point of view, Ombudsman Institutions have solved quite a number of cases in dispensing justice and have over the years been able to fulfil one of its important basic functions which is to promote harmony and peaceful coexistence. Like wikipedia's work above, Bowless work is not specific on the rights of workers which is the concern of my study.

Odunsi, Bennett in his book "The Role of the Ombudsman in Nigeria; redress of Grievances" reviews the Nigerian legal tradition before and after the advent of the British Colonial Administration. Odunsi argues that after gaining independence from British Colonial Rule, the Nigerian government did not deviate from the established practice of the colonial administration in relation to the protection of the rights of the citizens. He further asserts that the only available channel for citizens to challenge arbitrary and capricious action of administrative officials is the ordinary Courts of Law. Justice in administrative areas under this arrangement often seems slow and wanting. Therefore, the military government instituted a commission of enquiry to analyse and find ways to improve the situation of the Ombudsman in 1975, the Murtala Military

[6] "The Nigerian Ombudsman, in the Public Complaints Commission" in Federal Civil Service Bulletin, Service Wide Publication Vol.1 No.3, 2009, p.20.

Administration established the Public Complaints Commission (PCC) as a supplement to the Court system to correct flagrant disregard of basic standards of human rights by administrative officials.[7]

Odunsi submitted that during the 8 years of its existence, the Public Complaints Commission has resolved an average of 1526 cases annually, and a comparative analysis of the activities of the Ombudsman in other countries suggests that the Nigerian Public Complaints Commission has resolved at least a respectable number of cases. Furthermore, a review of testimony by citizens also indicates that some sections of the population have come to recognise the activities of Public Complaints Commission. On the whole, the Public Complaints Commission appears to have achieved some degree of success. This work has been found very related to my study although it is neither specific on the rights of Nigerian workers nor is it on examination of the recent situation in Nigeria with respect to maladministration.

The book "Nigeria Administrative Law" by Oluyede is another important source of literature. The author had extensively dealt with the institution of ombudsman tracing its history and evolution while showing the relevance of the institution considering its powers, jurisdictions and functions. He has painstakingly examined the success and achievements of the institution from inception and had thus concluded that although the success story of ombudsman in Nigeria is encouraging a lot more is needed to strengthen its capacity to achieve its mandate as promoter and defender of social justice.

[7] The Role of the Ombudsman in Nigeria; Redress of Grievances by Bennett Odunsi, 2007 in Wikipedia, 2011, p.

While Oluyede's book is of tremendous significance to this study its limitation lies in the fact that it did not consider contemporary emerging issues and specifically the rights of Nigerian worker.

From the foregoing, we have seen that empirical studies on the role of Public Complaints Commission are numerous as there are several scholars and professionals from diverse fields of human endeavours who contributed towards enhancing the performance of the Ombudsman institutions. However, very few writers among them laid much emphasis on Public Complaints Commission and maladministration. On this note, most literatures including the works of Heidenheimer Arnold, Le vine Victor and Robert Price have tend to fuse the concept of maladministration with that of corruption. Arnold for example, in his book "Political Corruption" has this to say:

> A public official is corrupt if he accept money's worth for doing something that he is under duty to do anyway, that he is under duty no to do or exercise a legitimate discretion for improper reason. Hence the concept of corruption and maladministration therefore differs but many scholars have misunderstood them" [8]

1.8 STRUCTURAL ORGANISATION OF THE RESEARCH

The structural organisation of this research is divided into five chapters. Chapter one deals with the general introduction of the essay, while the sub-chapters deal with the aims and objectives and the scope of research work. Under same chapter, the work discussed the methodology of the research elucidating on the type of sources and nature of the research materials.

[8] A book of reading of Nigerian Ombudsman (Public Complaints Commission), P. 44

Literature on the idea, concept and dynamism of the ombudsman were highlighted. The chapter was concluded by a narration on the structural organisation of the research work.

Chapter two deals with background analysis of the Public Complaints Commission. It started by conceptualising and giving meaning to the phrase "Public Complaints Commission" its organ and legal basis, its nature, practice, salary and appeals. Chapter four is the assessment of the performance of the commission in the area of receiving and disposal of complaints in the face of legal limitations that face it and jurisdictional subject matter and its roles. Chapter five deals with an overview of "ombudsman institution." Chapter six is the recommendation and conclusion of the research work towards an effective complaint handling and resolution for the attainment of social justice.

CHAPTER TWO

HISTORICAL BACKGROUND OF THE PUBLIC COMPLAINTS COMMISSION

2.1 INTRODUCTION

Worried by public outcry, the Federal Government thought of borrowing the idea of setting up a Commission for listening, receiving and resolving public outcry concerning bureaucratic injustice, a sort of corrective institution. The government wanted an organ that could curtail abuses of all due process and privileges by bureaucrats. It thus set up a panel known as Udoji Public Service Review Panel[1] which went into action. Accepting the Udoji Public Service Review Panel's recommendation, the Federal Military Government promulgated the commission's enabling law, the **Decree NO. 31 of 1975[2].**

The Decree was further amended by another Decree NO. 21 of 1979[3], before handing over power to the civilian in that year. The commission's enabling law was entrenched in section 273 (5) of the 1979 Constitution of the federal Republic of Nigeria.[4] The same provision was also retained in the 1999 Constitution (as existing law) under section 315 (5) (b). It is also incorporated in the 1990 laws of the Federation as Public Complaints Commission Act CAP P.37 and in the current Law of the Federation, 2004.

Broadly, the Act provides for the establishment of the Public Complaints Commission at the federal level and "such number of branches of

[1] Manual for Public Complaints Commission, Community Action for Popular Participation, University Press Zaria (2000) P. 7
[2] Public Complaints Commission Act, Vol. 14 P. 22LFN 2004 (amended)
[3] Section 4 (1) & 5 (7) of the Act.
[4] The first Executive Presidential Constitution in Nigeria

the Commission in the states of the federation as the National Assembly may from time to time determine[5] that the appointment of the Chief Commissioner and other commissioners shall be by the National Assembly[6]. They shall be men of proven integrity who shall hold office for a term of three years in the first instance and shall be eligible for re-appointment for the second term of three years and shall vacate office at the expiration of the period of six years.[7] The Act also made it clear that a commissioner (including the Chief Commissioner) may at any time be removed from his office or appointment by the National Assembly.[8]

The Commission is also to function via career civil servants[9] in three separate departments viz:

a. Investigation Department (Core Service)

b. Administration Department (Support Service)

c. Finance & Supply (Support Service)

Government of any country do rely for the execution of most of its policies on the civil service. The Civil Service as one of the executive arms of government is responsible for the translation of the "decision" of the government into reality.[10] It translates policies into concrete realities via action. Thus it has, and functions via professional technocrats and bureaucrats called the civil servants. This class of persons dominated helm of affairs

5 section 1(2) Public Complaints Commission Act Cap P. 37 LFN 2004

6 section 1(1) ibid

7 section 2(2) ibid

8 section 2(3) ibid

14 section 3(1) ibid

15 Civil Service Handbook Federal Government Printers, Lagos. (2003) P. 14

during the colonial and post colonial era. They welded so much influence particularly during General Gowon era (1967-75) that they particularly (Super Permanent Secretaries) decided what policy becomes real. Yet, within it there were series of squabbles and denial resulting into series of unprinted bureaucratic injustices particularly among the lower cadre of the service. There were growing cases of administrative injustices. The civil service (s) have become amorphous. Rules and regulations were not respected as soldiers rule with their whims and caprices. There were many cases of arbitrary retirement and terminations. Morale was low in the service. These led to the setting up of the Udoji panel to inquire into the conditions of the civil service in the country. Outraged by what it saw, the Udoji Panel, among other things, recommended the establishment of the Public Complaints Commission as a specialised body to handle such cases.[11]

In the process of carrying out normal administration whether in private or public sectors, one of the major problems faced by employees vis-a-vis those who manage the affairs of government is bureaucratic red tape in exercising such authority. Government and management of authority is saddled with bureaucracy, administrative excesses, abuse of office and violation of lawfully laid down rules and regulations which often led to arbitrary dismissals, termination, retirement, administrative action or inaction of government ministries and department, local government and incorporated companies of any nation and in Nigeria. The ordinary Nigerian workers have been made to

11 Civil Service Handbook Federal Government Printers, Lagos. (2003) P. 12

suffer the brunt of these illegalities without check by the ministry of labour in the implementation of law which enormously empowers them to even close down factories operating against the set down standard for operation wherein excesses are committed.

These excesses can be very gross and traumatic especially for subordinate and the less privileged and down-trodden people of the society. It is in the light of the above, that this research work is undertaken in order to examine the role of Public Complaints Commission (the Nigerian type of Ombudsman) which is seen as a watchdog against injustice by ensuring that employees are treated fairly, respectfully and promptly by bureaucrats. In protecting workers' right against administrative inequality and maladministration, the Public Complaints Commission is saddled with the responsibility of strictly ensuring that the rule of law implemented in protecting workers right as spelt out in Section 36 of the 1999 Constitution (fair hearing)[12], in the omnibus provisions in Cap P.37 Laws of the Federation, (2004) as the general objective and mandate of the Commission,[13] the laws and regulation governing the operation of private/public sectors in the country. It is worthy to note that the legislature is also empowered with similar powers of the Public Complaints Commission under Section 88 (1) & (2) of the 1999 Constitution to investigate, in order to prevent or expose corruption, inefficiency, waste in the execution or administration of law within its legislative competence and in the disbursement or administration of funds

12 Section 36 1999 constitution

13 Cap 37 Laws Of the Federation 2004

appropriated by it. With respect to state, similar powers were given to the House of Assembly in Section 128 of the 1999 Constitution.[14] In the performance of its statutory functions, the Commission uses investigating standing ad-hoc Committee and various other Committees to collect and analyse information concerning administrative action and inaction of government, almost any part of government activities may come under legislative examination.

In order to protect workers' right against maladministration and administrative injustices to citizens the possibility of legislative investigation has contributed to administrative responsibility and rectitude. The house committee on Public Petition in 2008 investigated the petition of **Mr. Nelson Okugie** of the Nigerian Postal Service (NIPOST) over arbitrary dismissal. After investigation, the House recommended that the petitioner be recalled to the service of the Nigerian Postal Service (NIPOST) as no case of fraud or embezzlement was established against him[15].

The House also considered a complaint by **Olugbobiri Tebidaba and Igbomotaru communities** of Bayelsa state against the Nigerian Agip Oil Company (NAOC) in 2008.[16] After investigation, the House directed that as part of its corporate social responsibility, the Nigeria Agip oil Company and its contractors Daewoo Engineering and Construction Company should take measures to implement "local Content Contract" by involving the indigenes at

[14] Section 128 1999 Constitution
[15] 20th Annual report, Public Complaints Commission P. 4
[16] 20th Annual report, Public Complaints Commission P. 2

least 40% on the pipeline project at Tebida community as nominated by Agon Trust Limited as its representative.

The most recent exercise of the investigative powers of the National Assembly was the petition by 47 disengaged staff of the National Orthopaedic Hospital, Enugu from the Bureau of public service reform for being dismissed from the service without compliance with due process. After investigation, the House directed that the 47 disengaged staff be recalled to the service and were recalled accordingly.

The Senate Committee on Public Account in 2001 investigated the Nigeria National Petroleum Corporation (NNPC), Central Bank of Nigeria (CBN), and Power Holding Company of Nigeria (PHCN) which raised a lot of controversies on the activities of the administrative bodies. It is however very important to note that the efficiency of the investigation conducted by the National Assembly is overshadowed by S.88 (2) (a) of 1999 constitution which provides that investigation pursuant to "oversight function" under S. 88 can only lead to ameliorating existing law in whatever scope covered.

The ineffective power of Section 88 of investigations, reports and or pronouncement by the National Assembly was depicted in the case of **El-Rufai v. House of Representative**[17] which was decided in 2006 wherein the Federal High Court sitting in Abuja held that the (Endoscope) purported sanctioned by the FCT Minster do not have any legal binding effect and was null and void *ab-initio* and of no effect.

17 2006 Annual Report

Since the investigative pronouncement of the legislature do not have any legally binding effect it is merely advisory to government agencies concerning administrative action and inaction, it gives a genuine concern that both the Public Complaints Commission and the National Assembly lack requisite authority to protect the workers' right due to the non-enforceability of their decision and recommendations. The workers are therefore left to the mercy of their employers to implement the directive so given.

Also in the approved case of **Dr. Osanyande V. E. v. Federal Medical Centre Asaba** on 6th September, 2007 where the complainant complained of premature and unconstitutional retirement from work. The petition committee of the National House of Assembly, after investigation, the House resolved that Dr. Osanyande be demoted by one grade and not automatic dismissal.[18]

Another petition was also submitted on the 12th of December, 2007 by Odioma Community of Bayelsa state against the Joint Task Force of the Nigerian Armed Forces over an alleged murder of 12 persons. They demanded the Federal Government as relevant authority responsible for the actions of the Joint Task Force (Defence Headquarters) to pay the sum of One Billion Naira (N1,000,000,000.00) as assessed by Judicial Commission of Inquiry to the Odioma Community as compensation for the destruction of houses, property and death of the persons in the community. This was approved by the National Assembly Public Petition Committee after investigation.[19]

[18] Journal of the Committee on Public Petitions, House of representatives Vol.1 No. 1 P. 6
[19] Journal of the committee on public Petitions House of Representatives Vol. 1 No. 1 P. 7

2.2 CLARIFICATION OF KEY CONCEPTS

The intention here is to give a brief conceptual clarification of the key terms of this research. These key terms are, ombudsman, rights and workers.

Rights of Workers

This segment of the research discusses rights of workers in relation to the role of the Public Complaints Commission which is mandated to protect workers right against administrative injustice and maladministration in Nigeria. The role of the Commission cannot be well appreciated unless the rights of the workers that form the cornerstone of its mandate are known. The endeavour here is to examine the nature of the rights and the prospects they hold for Nigerian worker.

Concept of Right

Right means an interest recognized and protected by the law, respect for which is a duty, and disregard of which is wrong. Right could be moral or legal and, it is therefore governed by distinct set of rules that may be in the nature of political rights, social rights, civil rights or economic rights. Right as opposed to privilege pre-supposes and imposed duty or obligation the disregard of which may open the door of enforcement through legal action.

Rights in Nigeria are mostly governed by the provisions of the constitution under chapter II and IV of 1999 Constitution. The rights guaranteed under these chapters are in relation to all Nigerians both the working and the non-working class. However, the laws that further complement the above constitutional guarantees, in relation to Nigerian worker

are the Nigerian Labour Act and the Trade Unions (Amendments) Act No. 17 of 2005.

Under Chapter II the Constitution declares that the state social order is founded on ideals of freedom, equality and justice and in furtherance of the social order, the state shall guarantee to every citizen equal rights, obligations and opportunities before the law.[20] The state is further enjoined to ensure equality of rights to all citizens, maintain the sanctity and dignity of human person, not to be exploitative and above all to secure and provide for easy accessibility to the courts while maintaining their integrity and impartiality.[21]

Above all, the state is obliged to direct its policies towards ensuring that:

(a) All citizens without discrimination on any ground whatsoever have opportunities to secure adequate means of livelihood as well as adequate opportunities to secure suitable employment.

(b) Conditions of work are just and humane and that there are adequate facilities for leisure, and for social, religious and cultural life.

(c) The health, safety and welfare of all person in employment are safeguarded and not endangered or abused.

(d) There are adequate medical and health care facilities for all persons.

(e) There is equal pay for equal work without discrimination on account of sex, or any other ground whatsoever.

Furthermore, the state has inherent duty to provide "suitable and adequate shelter, food, water supply, reasonable national minimum wage, old

[20] Sec 17 (1) 1999 Constitution
[21] Sec 17 (2) ibid.

age care and pensions, unemployment and sick benefit and welfare for all the disabled are provided for all citizens.[22] On the other hand, looking more closely at the labour Act and the Trade Unions Act, the following are considered to be the rights of workers in Nigeria:

(a) Right to associate freely (unionisation Rights)

(b) Right to strike (you have to be a member of a union to enjoy this right);

(c) Right to collective bargaining;

(d) Right not to be discriminated against especially right not to be discriminated against on grounds of trade union membership;

(e) Right to a written statement of terms and conditions of employment;

(f) Right to maternity leave;

(g) Right to wages – minimum wages;

(h) Right to equal pay;

(i) Right to fair working time;

- Hours
- Holidays

(j) Right against unfair dismissal especially statutory employees;

(k) Right to redundancy payments;

(l) Right to fair hearing in cases of disciplinary or grievance hearing.

The above rights contained under chapters ii and iv of the constitution and the labour and trade union Acts are in the main, similar or the same as the rights guaranteed under the international covenant on economic and cultural rights,

[22] Sections 16 and 17 of the 1999 constitution.

which is a multilateral treaty adopted by the United Nations General Assembly on December 16, 1966 and came into force on January 3, 1976. Part 3 Articles 6-15 lists some of these rights to include:

(a) Right to work under just and favourable conditions with the right to form and join trade unions.

(b) Right to social security including social insurance.

(c) Right to adequate standard of living, including adequate food, clothing and housing, and the continuous improvement of living conditions.

Having considered the rights of worker, the next thing to ask is who is a worker or who is an employee. The first important thing to understand is the difference between an employee and a worker. In simple term, an employee is a slightly posh term for a worker, but in law they are quite different concepts. Employees have many more rights than workers. To understand the difference, we need to understand the nature of the contract between a worker or an employee and his/her employer.

If for example, your employer provides work for you on a regular basis, says when and where it is to be done, supplies the tools or other equipment and pays tax and National Insurance on your behalf then you are almost certainly an employee.

If on the other hand, you decide when you will work, make your own sickness and holiday arrangements and pay your own tax and National Insurance you are probably a self-employed person contracted to provide a service to the employer. This means you are a worker, not an employee. To

introduce some more legal terms, the relationship you have with your employer is "a contract for services" rather than a 'contract of employment'.[23]

2.3 SPREAD OF IDEA OF OMBUDSMAN

The idea of Ombudsman started as an expression of independence from the King in Sweden.[24] The Swedish Parliament appointed an Ombudsman in 1809 to receive complaints from the public about alleged bureaucratic mistakes, abuse or incompetence.[25] One hundred and ten years later, the Finish Parliament took similar action by adopting most of the famous powers and structural arrangements of its **Swedish Neighbours**[26]. These Ombudsmen were ultimately responsible to the Parliament. They were appointed for relatively very long terms of office and available to any citizen. Although they were given the powers to prosecute bureaucrats and judges in cases of alleged criminal violations, they seldom used these powers for selfish end.[27] The Swedish and Finish ombudsman rely much more frequently upon the power of recommendation and persuasion.

The Scandinavian ombudsman borrowed the idea to join the scene when Denmark also established ombudsman in the same year followed by Norway. Also in the same year, 1962, the first non-Scandinavian Ombudsman came into being by its birth in New Zealand.[28] All the three nevertheless shared the

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[23] Your Rights at Work 2nd Edition a TUC guide, p.9 worksmart www.worksmart.org.uk.
[24] Allan, J. W. Executive Ombudsman in the United States. University of California, berkely (1973) P.6
[25] ibid
[26] ibid P. 12 (6) Id
[27] Fread, J. The Sociology of Max Weber, Allen Lane, London 1986
[28] Ibid P. 639

legislative creation common to the earlier Swedish versions with some minor variation. Another characteristic they shared was the "formal investigative powers". It was on record that upon receipt of a complaint or on their own discretion, the ombudsman may investigate all pertinent aspects of a case, including examination of all relevant documents, and in conclusion may recommend new bureaucratic procedures, regulations or the applicable law in the process of deciding upon the merit of the instant case. The Ombudsman's recommendations are usually followed/accepted despite his inability to force compliance. Other nations in Europe, Africa, Latin America and Asia all have adopted the idea with variation from the Scandinavian Model. For instance, the Great Britain's Parliamentary Commission for Administration shared a lot in common with the other ombudsman, except that all citizens' complaints must be submitted via a member of the Parliament.[29] **Israel's State Controller** is a legislative officer auditor, who sees his task as basically encouraging citizens to originate complaints against administrative agencies.[30]

In 1967, the Canadian Provinces of Alberta and New Brunswick became the first sub-National Units of government to adopt the classical Scandinavian model of ombudsman. The following year in 1968, in the United States, the Hawaiian state also became one of the countries that borrowed the idea of ombudsman; hence the institution was first established in the United States when Hawaiian state legislature established an Ombudsman. In 1969, three American states established Ombudsman modelled after the Scandinavian

[29] John, E. M. Study of Hawaii's Ombudsman. ARDE HWAII (1995) p. 11
[30] Allan J. W. Op. Cit.

version in Nebraska, Iowa, and the Office of the Seattle-king County amongst other around the world[31].

In Nigeria, the then North Central State Government promulgated Edit No. 4 of 1974 to give birth to the first Ombudsman office in Nigeria. The Federal Government cherished the idea and in 1975, promulgated Decree No. 31 to establish what today is called Public Complaints Commission.

In review of the distinctions made by writers, the Classical and the Contemporary (Executive Ombudsman) is hereby explained. The Scandinavian model as earlier explained are what writers termed Classical Ombudsman. Writers are of the view that most of those ombudsmen have failed as they did not achieved in any significant way, the basic objectives which they were formed i.e. effective redressing of complaints brought before them. In fact, in some texts, there has been a firm conviction that the classical Scandinavian model did not work because of its inherent weaknesses as a result of its limited jurisdiction.

An Executive ombudsman (contemporary) is a centralised complaint handling officer who has been appointed to serve at the pleasure of an elected or appointed Chief Executive. The word "Centralised" in this definition is crucial in distinguishing the Executive Ombudsman from other forms of complaints handling mechanisms. For instance, in the United States, states and local government Agencies usually have procedures on how grievances against agency's action or inaction can be lodged and investigated. They are also part

[31] Ibid. No, 21 of 1979.

and parcel of the same government/agencies. The executive ombudsman however, is not part of any particular agency, but assumes jurisdiction over all, or most administrative agencies[32]. Although, under this arrangement, the executive Ombudsman is appointed by the leader by the executive, he is usually separated from the Chief Personal Office, and has a staff under his own direction.

In Nigeria, the Ombudsman is appointed by the National Assembly but paradoxically classified under the executive for both its budgetary provisions and rendition of its Annual Performance Reports. In sum, therefore, appointment of the ombudsman by the Chief Executive stands as the most prominent difference between the executive ombudsman and the classical model. The potential disadvantage of this type of appointment process is the executive ombudsman's allegiance to the person who appointed him as that may prevent him from assuming an impartial attitude when investigating complaints that may prove damaging to the Chief executive. On the other hand, a potential advantage is the executive Ombudsman's to draw upon the power and prestige of the Chief Executive to facilitate his work. For instance, the mere fact that on the letterhead of the Public Complaints Commission in Nigeria is printed in bold letters at the apex "THE PRESIDENCY"[33] gives psychological force for urgent response to the commission's inquiries.

Finding ways for citizen to voice complaints against government has been a common endeavour of most modern democracy and at times military

[32] Cap P.37 LFN 2004
[33] The inscription is visible in most of the States Offices Letter Head Papers

dictatorships since the beginning of the centuries. Current expressions of concern over the bureaucratised government activities characterised most third world countries, Nigeria inclusive. Nevertheless, for the reader to appreciate adequately, there is need to go back a little into the world history concerning the development of the "Ombudsman" with a brief historical elucidation to highlight some contemporary efforts towards the development of adequate complaints handling mechanism.

According to Victor Ayeni, investigation is the backbone of complaints handling by Ombudsman. It includes inquiry (asking question), inspection (viewing places and things), and testing the result by hearing with two basic assumptions:

1. To solve problems
2. Respect for the principles of natural justice.

The above view seemed to have been supported by Kauser Barnes who sees the main function of the Commission as to receive complaints from aggrieved citizens and assess them through investigation which is an attempt to seek redress for complaints.

Kauser Barne further stressed that Ombudsman received complaints about injustice and maladministration from aggrieved person; he has power to investigate citizen, criticise, recommend corrective measures and generally operates with objectivity, competence, efficiency and fairness through persuasion and publicity.

Ngu S. M. in Ombudsman in Theory and Practice, examined the functions of the Public Complaints Commission as it relates to government to provide economic and social services to citizenry but that bureaucracy has lowered its achievement. Hence the ombudsman system is one of the other several means to control or curb administrative malpractices. For him, this is the role of the Public Complaints Commission, although, he did not mention the constraints as relates to the limitations of the Commission as just serving as an advisory body to the government.[34] He did not discuss the ills or bad administration of the commission. He did not explain the concept of maladministration for understanding of readers.

2.4 HISTORY AND ORIGIN OF PUBLIC COMPLAINTS COMMISSION

The concept of Ombudsman is not new. It means "officer". It's origin can be attributed to the Scandinavian counties such as Sweden (1809) Finland (1889), Denmark (1953) and Norway (1958), where it was considered as a matter of necessity to establish machinery to safeguard the citizenry's right against civil servants' abuses. Emulating the Scandinavian countries, various countries have established the ombudsman system which has assumed different names in different countries. In Britain and India, for example, the ombudsman is called Parliamentary Commissioner for administration, in Tanzania "Parliament Commissioner for Ensuring", and in Nigeria it is called the "Public

[34] Ngu, S. M. The Ombudsman in Theory and practice (ABU) Zaria Press

Complaints Commissioner"[35]. On the whole, whatever may be the name; there are similarities in purpose and functions.

After gaining independence from the British Colonial rule, the Nigerian government did not deviate from the established practice of the colonial administration in relation to the protection of the right of the citizens. The only available channel for citizens to challenge arbitrary and capricious actions of administrative officials is the ordinary court of law. Justice in the administrative areas under this arrangement often seems slow and wanting. By the mid-seventies, military rule in Nigeria even though an aberration, has become well entrenched in our polity. Arising from the flagrant disregard of lawfully laid down rules, regulation and administrative excesses and abuse of the office morale among the civil servants had declined ever before the democratic government. The seeming need to conceal its dictatorial excesses and operate same from beneath led to the setting up of the Udoji Commission, by the then Military government of Murtala Mohammed in 1975 to review the system and make recommendations.[36]

However, outraged by an inept and moribund civil service system, the Commission recommended among others, the setting up of an Ombudsman institution in Nigeria. Arising from the recommendation of the Udoji Commission, the Public Complaints Commission was set up as an independent arbiter by the then Federal Military Government. It was established by Decree No. 31 of 16th October, 1975 and amended by Decree No. 21 of 31st may 1979

[35] Public Complaints Commission 25th Annual Report 1st January, 31st December, 2000 P. 1

[36] Public Complaints Commission (Decree No. 31, 1975) Cap P37 LFN 2004.

of the same year; the Public Complaints Commission was enshrined in the Constitution of the Federal Republic of Nigeria, under section 274, during General Obasanjo's regime before handing over to Shagari's era or the Second Republic. During General Babangida's regime, there was a National Assembly or what was known as the Third Republic which in 1990 encoded, all important and relevant military decrees into Act of National Assembly which was codified by Cap P37 LFN 2004 this law now also forms part of the 1999 Constitution of the Federal Republic of Nigeria section. 315, (5) (b).[37]

Cap P.37 Laws of the Federation of Nigeria, 2004, consist of 12 sections. Section one deals with the establishment of Public Complaints Commission, section 2 is concerned with the appointment and tenure of office of the Chief and other commissioners. Section 3 is on appointment and tenure of other staff, section 4 is the application of Pension Act while section 5 spells out the powers and duties of the Commission.[38] Restriction, recommendation after investigation, officers and penalties, power to summon person's immunity from legal process, interpretations and short tittles are treated in section 6, 7, 8, 9, 10, 11 and 12 respectively.

2.5 OBJECTIVES OF THE PUBLIC COMPLAINTS COMMISSION UNDER THE LAW IN NIGERIA

The objective of this thesis is to examine the purpose in some countries that have adopted the ombudsman method of solving administrative problems relating to both public and private organisations and it success in Nigeria. It is

[37] Section 315 (5) (b).1999 constitution FRN.
[38] Federal Republic of Nigeria Cap P.37 LFN 2004

along this line that this thesis set out to highlight some strategies or procedures aimed at contributing to effective results in Nigeria. Therefore, this research will proceed with an attempt to provide an overview of the role of Public Complaints Commission, the nature and its limitations in Nigeria.

Besides, the Commission assists the aggrieved individual citizens or persons resident in Nigeria not only in securing redress for any wrong done, but also by listening patiently to their expression of anger which, without the intervention of the commission, could lead to mental or emotional problems. This could ultimately destroy the individual concerned as well as those he is taking care of. Also, importantly, in resolving complaints, the Commission attempts to establish some cordial relationship between the complaints and the authority complained against so that at the end of it all, there is genuine reconciliation. This helps build a sound and peaceful society. The following are some of the objectives of the commission:

a) The primary aims and objectives of the Public Complaints Commission under section 5 of the Public Complaints Commission Act are to promote social justice for the individual citizen without which there can hardly be genuine peace and stability in the country due to the increased bureaucratic excesses that occur. It is therefore the responsibility of the Commission to help individuals who cannot help themselves to get redress for the injustice they suffered arising from the administrative action or inaction of government ministries or agencies and incorporated companies in the country.

b) Besides, the Commission in its objectives assists the aggrieved individual citizen in no small measures, not only in securing redress for any wrong done but also by listening patiently to their expression of anger which, could lead to mental or emotional problems which may ultimately destroy the individual concerned as well as those he is taking care of.

c) The Commission is independent of government bureaucracy and at the same time, it is given extensive powers regarding disclosures and access to all government information including the production of documents, which aid the Commission's investigation. The Commission is empowered to enforce compliance in order to obtain the necessary information.

d) This power is vital to the Commission in facilitating impartial investigation in order to arrive at a fair and equitable decision.

e) Investigation of complaints is provided at no cost to the citizens as well as to non citizen resident in Nigeria and they are treated with confidentiality they deserve.

The Commission ensure accountability of public administration, check maladministration by ensuring that workers' right are not trampled upon or violated without recourse to justice. In the performance of its official assignment, it has the powers to summon persons and apply various penalties.

2.6 NATURE AND CHARACTERISTICS OF PUBLIC COMPLAINTS: A COMPARATIVE STUDY

The ombudsman institution has been adopted by many countries and it's known by different names as we had already stated. However, the policy will yield the desired objectives only if, the country that adopt it remain and retain the institution in accordance with the fundamental features.[39] The main fundamental features are:

(a) **Independence**: For the institution of ombudsman to function properly and effectively and to meet the needs for its establishment, some fundamental pre-requisite and requisites Provision must be guaranteed. These include the fact that the office of the ombudsman must be established in such a way, that its independence is guaranteed as provided under section 5 (6) of the Public Complaints Commission Act in Nigeria. In Sweden where the institution officially originated, the ombudsman was elected by parliament as practiced and copied by many countries that introduced the institution. The office of ombudsman must be demonstratively seen to be independent of the political authority or otherwise, public confidence in the institution would be seriously eroded. In Nigeria, the Chief Commissioner and other Commissioners are all appointed by National Assembly.[40] It is further provided that: "In the exercise of the powers conferred upon a Commissioner the Commissioner, shall not be subject to the direction or control of any

[39] Op.cit Obiagba, NC,P.204.
[40] Federal Republic of Nigeria PCC Act Cap. P.37 S. 5 (5)

other person or authority[41]. Furthermore, the commissioner is immune for any acts or omission done by him pursuant to the Act.[42]

(b) **Confidentiality**: All contacts, conversation and information exchanged with an ombudsman are confidential and will not be disclosed without the consent of the parties involved on the Ombudsman. In Nigeria, the Public Complaints Commission Act directs that all commissioners and all staff of the Commission shall maintain secrecy in maters so designated by reason or content.[43]

(c) **Impartiality**: An ombudsman does not take side on an issue nor represents as advocates on behalf of any party, rather, it is the role of the ombudsman to consider the facts, right, interest, and safety of all parties involved in a search for fair resolution to a problem. An ombudsman advocates for fairness and justice.

(d) **Informality**: Consultations are conducted off the record and do not constitute notice to any authority. No information is retained or used for subsequent formal proceedings. An ombudsman will not serve as a witness nor offer testimony in any formal proceedings, unless required by law. Unnecessary protocol is removed and investigation of complaints is provided at no cost to the complainants.

(e) **Ease of Access**: Ombudsman ensured that all manners of aggrieved persons or group have easy access to and ready reception, at least to have someone to complain to and be heard. An illiterate complainant

[41] Ibid S. 5.
[42] Ibid 5100.
[43] Public Complaint Commission Act Cap P.37 S. 5 (5)

will have his complaints taken down in writing by an investigator who would have it read to him and if he confirms and adopts it, the complaint is then processed. And ombudsman is not compelled to admit and investigate all and every complaints but must at least explain why.[44] If the complaints is delayed for too long, and the complainant does not have enough Personal interest or the complaints is being made in bad faith or vexatious, or frivolous etc., the ombudsman is free in his absolute discretion to turn them down.

2.7 FUNCTIONS OF PUBLIC COMPLAINTS COMMISSION IN NIGERIA

The core business of the Public Complaints Commission as provided in Section 5 (2) of Public Complaints Commission Act in Nigeria remain receiving, investigating and redressing of people's complaints relating to maladministration of government agencies or their functionaries. An interesting duty of the Ombudsman Institution is that it does not compete with courts, or act as a further body to which those unsuccessful in court can appeal. The primary function of the ombudsman is generally to provide impartial investigation on behalf of the citizen who feels they have suffered injustice and maladministration to the action of government ministries, their agencies, local government, private organisations and their officials. Most often, decisions are made by organisations, (government or private) which affect the life of citizen

[44] S.5(5) Public Complaints Commission Act Cap.P37 Laws of the Federation of Nigeria.

of our country.[45] The majority of the decision and action of government official may be just and reasonable but error sometimes do occur and it is the duty of the Commission to identify, address and recommend the rectification of this mistake amicably.

Other functions of the Public Complaints Commission under section 5 (2) of the Public Complaints Commission Act include the following; [46]

1. To provide remedy for inadequacy of existing judicial control over administration.
2. To increase efficiency and stem the tide of corruption in civil service. However, with the establishment of Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and other related offences Commission (ICPC), it could be argued that the Public Complaints Commission has not been able to stem the tide of corruption in the civil service. There is therefore the need for collaborative effort with the two organisations to fight the monster called "corruption".
3. To provide some control and directions in order to correct the wide spread but erroneous belief that the civil service is too powerful remote and tardy.
4. To provide mechanism to check whether regulations made for the implementation of delegated legislation were actually carried out in accordance with the spirit of the original enabling Act or Legislation. It is important to note that the Commission is independent of government

[45] Federal Republic of Nigeria, Public Complaints Commission, General Information P. 3
[46] Section 5 (2) of the PCC Act.

bureaucracy, and at the same time, it is given wide powers regarding disclosures and access to all government information including the production of documents which aid the Commission in its investigation.[47] The Commission is also given powers to enforce compliance in order to obtain the necessary information.[48] This power is vital to the commissioner in facilitating impartial investigations in order to arrive at a fair and equitable decision.

In carrying out its function of investigating complaints of mal-administration, the Commission provides this service at no cost to its citizen as well as non citizens resident in the country and they are treated with confidentiality[49].

Looking at the above functions of the Commission and in particular, function number 2 which aims at increasing efficiency and stemming the tide of corruption in civil society, it may be observed that inspite of some achievements recorded by the Commission in this regard, there is need for improvement and a more formidable effort is necessary to address the problem of corruption in civil society. It is not in doubt that the Public Complaints Commission alone cannot stem the tide of corruption in Nigeria and particularly in the civil service; the Commission needs the support of other similar organisations so that they will serve as complementing partners in the fight against this menace, hence the relevance of EFCC, ICPC and similar agencies.

[47] Federal Republic of Nigeria, General Information P. 3
[48] Section 5 (2) of the PCC Act.
[49] Public Complaints Commission General Information P. 7

In order to effectively carry out its functions, the Commission has offices in all states of the Federation and Abuja as provided under section 1 (2). Added to this is the existence of five Zonal Offices located in each local government Areas in each state of the Federation. Furthermore, complaints boxes are placed in strategic locations in the local government Area throughout the Federation, which provides easy access to the Commission.[50]

By virtue of section 5 of the Public Complaints Commission Act, all commissioners (including the Chief Commissioner) are responsible to the National Assembly, but the Chief Commissioner coordinates the work of all state commissioners[51]. The power to investigate on their own initiative or following complaints lodged before him by any person, any administrative action taken by:[52]

i) Any department or ministry of the federation or state government or any local government authority set up in state of the federation.

ii) Any statutory corporation or public institution set up by any Company incorporated under or pursuant to the Companies and Allied Matters Act whether owned by a government or by private individual in Nigeria or otherwise, howsoever or.

[50] Public Complaints Commission, (PCC) General information:- Section 1 (2) PCC Act, Cap P37 LFN 2004
[51] Ibid S. 5 (5)
[52] PCC General Information P. 2

iii) Any officer or servant of any aforementioned bodies. Furthermore, pursuant to sub section (2) (a) to (e) of section 5 of the Act, the Commissioners have the following powers:[53]

a) The chief commissioner has power to determine the manner by which complaints are to be lodged.

b) Any Commissioner may decide in his absolute discretion whether or not and if so in what manner he should notify the public of his action or intended action in any particular case.

c) Any commissioner shall have access to all information necessary for the efficient performance of his duties and for this purpose may visit and inspect any premises belonging to any person or body mentioned in sub-section (2) above. Though laudable and good, the powers invested on a Commissioner of Public Complaints under Sec 5 (2) (c) above must be exercised with some caution otherwise such powers may violate individual's right to privacy guaranteed in the Constitution. However, in order to safeguard the action of the Commissioner and render the powers under Sec 5 (2) (c) more constitutional, a warrant secured or obtained from a court of competent jurisdiction enabling such inspection of a person's premises will be needed. That is to say such warrant might be issued by a competent court on the application of the Commissioner.

[53] PCC Act Opp. Cit S. (5)

d) Every Commissioner shall ensure that administrative action by any person or body mentioned in sub-section 2 above will not result in the commitment of any act of injustice against any citizen of Nigeria or any other person resident in Nigeria and for that purpose, he shall investigate with special care administrative acts which are or appear to be:

i) Contrary to any law or regulations.

ii) Mistakes in law or arbitrary in the ascertainment of fact.

iii) Unreasonable, Unfair, oppressive or inconsistent with the general functions of administrative organs.

iv) Improper in motivation or based on irrelevant considerations.

v) Unclear or inadequately explained; or

vi) Otherwise objectionable and

e) A Commissioner shall be competent to investigate administrative procedures of any court of law in Nigeria. Where concurrent complaints are lodged with more than one commissioner, the Chief Commissioner shall decide which commissioner shall deal with the matter and his decision thereon shall be final.[54]

Maintenance of secrecy is the watch word of the Commissioners and all of the Commission in respect of matters so designated by reason of sources or content.[55] It shall be the duty of any person required by a Commissioner to

[54] S.7 Public Complaints Commission Act, Cap.P.37 LFN 2004.
[55] PCC Act. Opp Cit. S. 5 (2)

furnish information pursuant to sub-section (3) of section 5 of the Act to comply with such requirement not later than thirty days from receipt thereof.[56] When the Commissioner completes investigation of complaints under section 5 of the Act, he may recommend to the appropriate person or responsible administrative agency:[57]

(a) That a further consideration of the matter be made.

(b) That a modification or cancellation of the offending administrative or other act be effected.

(c) That an alteration of a regulation or ruling be effected in particular.

(d) That full reason behind a particular administrative or other act be given.

(2) Where appropriate, a Commissioner may refer cases where he feels that existing law or administrative regulations or procedures are inadequate to the National Assembly or the appropriate Governor or any other appropriate person or body.

(3) In every case where a commissioner discovers that a crime may have been committed by any person, he shall report his findings to the appropriate authority or recommend that the person be prosecuted.

(4) In every case where a commissioner is of the opinion that the conduct of any person is such that disciplinary action against such person be taken, he shall make a report in regard to the appropriate authority which shall take such further actions as may be necessary in the circumstances.

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[57] Section 7(8) Public Complaints Commission Act Cit p. 5 (5)

Complaints lodged before the Commissioners shall not be disclosed by any person except to a commissioner otherwise any person in contravention of the provision shall be guilty of an offence and liable on conviction to a fine or terms of imprisonment or both.[58] So also, if any person required to furnish information under the Public Complaints Commission(PCC) Act, fails to do so or comply, knowingly or recklessly makes any statement which is false, he shall be guilty of an offence and liable to conviction to a fine or imprisonment or both.[58]

Furthermore, any person who wilfully obstructs, interferes with or assaults or resists any commissioner or any other officer or servant of the Commission in the execution of his duty under this Act or who aids any other person to do shall be guilty of an offence and liable on conviction to a fine or imprisonment or both.[59]

Section 5 (2) (a) (e) sets out a list of persons or bodies over which the Commission has power of investigation. Like any other formal organisation, the ombudsman institution in Nigeria is no different from others in other parts of the world. The emerging group trends and new directions in the processing of Public Complaints in other part of the world is the development of dedicated Public Complaints Commission "ombudsman" to extensively handle public complaints. The commissions all over the world have laid down structures as part of their characteristics with many departments and unit, such as Administration, Finance, etc. positioned well to enable the Public Complaints

[58] Ibid S. 7(8)(2)
[59] Ibid S.7(8)(2)

Commission to strive at a constructive positive results by means of thorough examination of public complaints, investigate and make recommendation for the good of the complainants such complaints, when reported to the ombudsman institution, easily become veritable instrument for re-assuring the public of the social justice concern of the Commission for the welfare of the people.

Wherever the Public Complaints Commission is established, the nature and characteristics are almost nearly the same. For instance, it is persuasive and fearful. These are the more general and basic characteristics of the commission. The ethical demand of the Ombudsman staff requires:

(i) Discipline; (ii) good human conduct; (iii) Honesty;(iv) Courage (v) Courteous; (vi) Helpfulness (vii) Tactical (viii) Avoidance of bureaucratic tendencies (ix)Fairness and justice to all; (x) Patriotic and (xi) Projection of good image of the ombudsman institution.

In Britain, India, Tanzania, and Norway for example the nature and characteristics are the same. This may be due to its adaptation from the Scandinavian model. It could be called different names irrespective of the countries and places in Britain. It is called "the Parliament commissioner" in India, it is called "the parliament commissioner of Inquiry." The ombudsman is called different names and treated in variety of ways. Broadly considered, however, the ways and means or the process and procedures for handling public complaints are all the same.

2.8 EMERGING TRENDS

Electronic complaints have now been introduced in Scotland, Germany, Queensland and Tanzania. This is a reflection of social change and modern information communication technologies.[60]

E-complaints have not generally gained grounds and acceptance in the Nigerian system of ombudsman. It must be noted also that the principle of electronic complaints is the same in all the countries where it has been introduced. The contemporary traditional and administrative process is cumbersome in which people cannot easily make complaints. Nigeria is supposed to lead Africa in the e-complaints direction.[61]

In this regard Public Complaints Commission in Nigeria should begin to think about introducing changes in the process of lodging complaint in order to keep pace with this age of information and communications technology. By introducing lodging complaints through electronic process, the Public Complaints Commission will make itself more accessible and more efficient in handling complaints of people who suffer from one kind of abuse or the other. However, in view of the logistic and operational problems associated with e-means of lodging complaints, the Commission should introduce it not as an alternative but as complement to the traditional means of lodging complaint. This is especially so, when we consider the fact that accessibility to internet is still difficult to a large number of Nigerians, where even some citadels of learning are not yet e-compliant institutions.

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[60] PCC Act, S. 8 (1)
[61] Ibid S. 8 (4)

CHAPTER THREE

STRUCTURE, PRACTICE AND PROCEDURE OF THE PUBLIC COMPLAINTS COMMISSION UNDER THE ACT IN NIGERIA

This chapter seeks to examine the structure of the Commission and to assess its ability to function effectively as office of the ombudsman. At a meeting of the International Ombudsman Institution held in Buenos Aires, Argentina in October, 1996 about 121 ombudsperson representing 18 countries from around the world adopted the definition below for the concept of "ombudsman".

An ombudsman is an experienced, high level public official who is appointed by the head of state or legislature in terms of the constitution or appropriate law to receive and investigate complaints from aggrieved persons against government agencies, statutory corporations or officials and employees of such agencies statutory corporation or officials and employees of such agencies and organisations. Such an officer functions independently of any authority and issues reports to parliament or Head of state.[1]

In Nigeria, the ombudsman Institution implies reference to the commissioners of Public Complaints Commission. Section 315 (5) (b) of the 1999 Constitution retains the Public Complaints Commission as an "existing law". It is indeed an existing law because it was reflected in the 1990 Law Reform Act as Cap P.37 LFN 2004.

[1] Meeting of International Ombudsman Institution held in Buenos Aires.

3.1 THE STRUCTURE OF THE COMMISSION

3.1.1 Headquarters and States Branches

The Public Complaints Commission is an institution with its head office in Abuja the federal capital territory. It also has thirty-six states branches in all the states of the federation and Zonal offices in local government areas of each state. In every state there are five zonal offices. The thirty-six (36) Offices performed their duties and report to the headquarters in Abuja. The Commission is under the executive office of the President, supervised by the Vice President of the Federal Republic of Nigeria.

According to the provision of Section 5 (1) of Public Complaints Commission Act, the state branches function differently from the headquarters of the organisation while the Chief Commissioner of Public Complaints Commission from the headquarters coordinates the activities of the branches through:-

a) Annual conference or meeting which the Chief Commissioner presides

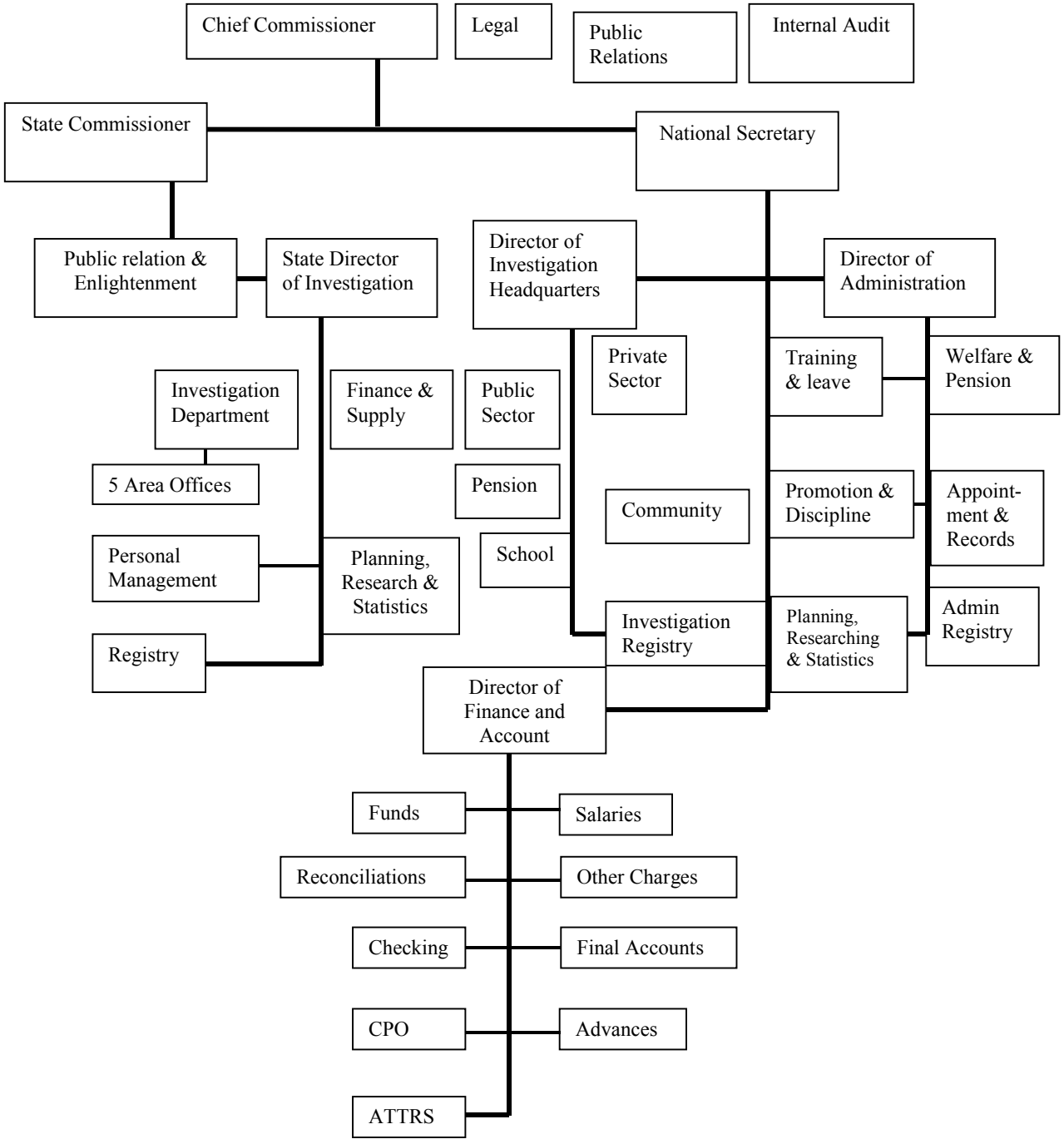
b) National visits to state branches

c) Annual report by the state branches

The Chief Commissioner is assisted by the Director General (National Secretary) and other Directors in charge of the Departments of the commission. The Departments comprises of the Investigation, Personal Administration, Finance and Supply. Diagram below shows the structure (organogram) of the Public Complaints Commission offices nationwide i.e. Headquarters, State

Offices and Area Offices, while diagram B shows the organisational structure vis-a-vis the composition of staff of the Public Complaints Commission.

Organisational Structure of Public Complaints Commission[2]



[2] Public Complaints Commission Annual Report 2010
www.publiccomplaintscommissionnigeria (download) 19th Sept. 2011

The primary duties of the Public Complaints Commission under section 5 (2) is to provide impartial investigation on behalf of the citizen who feel they have suffered injustice through the actions or inaction of Government Ministries, Local Governments, Incorporated Companies in Nigeria and officials of these bodies which affects the lives of the citizens[3]. Some of the decision and action may be just and reasonable. Others may be fraught with errors, injustice and arbitrariness and when these happen it is the duty of the Commission to identify address and recommend redress for them amicably.

The Commission is independent of government bureaucracy because of the way the Commission is authorised to operate in investigation of matters with extensive powers regarding disclosure and access to all government including the production of documents which aid the Commission in its investigation. The Commission is empowered to enforce compliance in order to obtain the necessary information. This power is vital and helps to arrive at a fair and equitable decision[4]. Investigation of complaints is provided at no cost to the citizens as well as non-citizen resident in the country. All complaints are treated with confidentiality. The Commission makes it a duty to be easily accessible to the general public. Toward this, it has established thirty-six (36) states' office structure with administration, investigation, finance, and legal department or unit and one at the Federal Capital Territory (FCT) to facilitate complaint received investigation and resolution. In addition, there are between 2-5 zonal offices created at local government level in each of the states of the

[3] Section 5 (2) PCC Act
[4] Section 8(2) PCC Act

federation and FCT. The Commission's efficacy in the use of its powers to perform its main function is what the next sub-heading address.

3.1.2 Appointment

Section 2(1) of the Act empowers the National Assembly to appoint Chief Commissioner and other Commissioners who shall be persons of proven integrity and shall possess such other qualification that may be required by the National assembly. However, the President has the power to appoint or remove the chief Commissioner, Director General, state Commissioner, etc. from office at any point in time, if so desired before the expiration of tenure.[5]

Given the nature of our political set up this section may be open to abuse – to the extent that it will impair the chief commissioner and states commissioner's impartiality in the discharge of their duties - knowing that their appointments and tenure of office are tied to the pleasure of the President who may remove them anytime he so desires. This is likely to affect their independence and impartiality.

There are zonal officers who are appointed to head the area offices in the local government areas as designated. The appointment of the Area Officers rest on the Chief Commissioner. The area officers must either be retired civil servants or a retired area court judge or retired public officers. The area officers have staff for the purpose of investigation and administrative work of the area offices.

[5]Section 2(3) PCC Act.

An important thing to note is like most feature of the ombudsman elsewhere. Structural organisation of the system in Nigeria contains some features of Scandinavia and Commonwealth countries like Britain and India. An important feature of it is in its nature of development of power to ensure a wider coverage of the entire population in strategic areas or places in the country. The desire is that the Public Complaints Commission will ensure that the faintest voice is heard and legitimate rights and interest of all are protected against administrative works of both the private and public sectors of the country.

3.1.3 Jurisdiction

An effective national institution will not only posses in the legislation a clearly defined jurisdiction; but should set out its limitations[6]. These two important issues are usually found in its founding law. In most cases, jurisdictions are as ascertained, at least partially, from functions' whereas restrictions can be seen from the no-go-areas. A good example of this arrangement can be seen in the Public Complaints Commission Act Cap P.37 LFN 2004[7].

Nevertheless, while the above assertions are generally indicated in most Acts, it will be possible to ascertain the nature of an institution's subject matter solely from an examination of its functions[8]. Jurisdiction also under

[6] Manual for the Public Complaints Commission, Community Action for Popular Participation, university press Zaria (2000) P. 36
[7] Section 5 & 6 PCC Act. Cap P37 LFN
[8] Manual for Public Complaints Ibid P. 37 (4) Id

consideration of specific functions, and institution may, for example, restrict the discharge of its function only in so far as its activities can be related to right protected in the constitution, or as in the case of the Public Complaints Commission on issue of maladministration.

3.1.4 Establishment

Cap P.37 Laws of the Federation of Nigeria 2004 Section 1 (1) reads: There shall be established a Commission to be known as the Public Complaints Commission (hereinafter in this Act referred to as "the Commission) which shall consist of a Chief Commissioner and such number of other Commissioners as the National Assembly may from time to time determine[9].

The quest for the establishment of the Public Complaints Commission in Nigeria dates back to the early 1970s. This was because the period of Military rule and civil war witnessed a tremendous growth in the influence and power of the bureaucracy for several reasons.

Firstly, owing to lack of experience in civil administration, the military leaders fell back on the experience and expertise of civilian bureaucrats. Secondly, the increased revenue that accrued from oil between 1970 and 1974 led to a general expansion of government activities. This further increased the prominence of civilian bureaucracy. Thirdly, since the system of check and balance in the democratic setting were absent during the military regimes, the opportunities for unresponsive bureaucratic behaviour characterised by rash

[9] Section 1 (1) 360 Act

decisions taken with military force that propelled the establishment of the Commission was the recommendation made by the Public Service Review Panel, popularly known as Udoji Panel. While submitting its report to the Federal Government in 1974, the panel had observed among other things, "...in the course of our enquiry a number of persons complained that they had suffered one form of injustice or another in the hand of public officers". The panel concluded by saying "we are convinced that unless there is a provision for ample opportunity for the impartial investigation of such complaints, the integrity of government could be seriously undermined and public confidence adversely affected..." The panel then recommended the establishment of the Public Complaints Commission.

The Federal Government in its wisdom accepted the recommendation. This culminated in the establishment of a nationwide network of Public Complaints Commission under decree No. 31 of 16th October 1975. The establishment of the Commission represents a unique effort by the government to restore some balance and confidence in government versus individual inter relationships.

So also Decree No. 31 was amended by Decree No. 21 of 31st may, 1979. Before handing over to the civilian government of President Shehu Shagari in the 2nd Republic, the Commission's enabling Law was entrenched in section 273 (5) of the 1979 Constitution of the Federal Republic of Nigeria. The same provision was retained in the 1999 constitution as an existing law under section 315 (5) (b).

Cap P.37 LFN 2004 consists of 12 sections. Section one of the Public Complaints Commission deals with the establishment of the Commission. Section two deals with appointment and tenure of the Chief Commissioner by the National Assembly.[10] Section 3 is concerned with the appointment and tenure of officers and Federal Civil Service Commission. Section 4 makes provision for pension rights for officers of the Commission excluding the Commissioners[11] that is the law.

Powers of the commissioners are contained in section 5 of the Act. Subsection (1) of section 5 states that the Chief Commissioner and Commissioners are answerable to the National assembly under the coordination of the Chief Commissioner. Subsection 2 gives the Commissioner power to investigate either on his own initiative or following complaints lodged before him by any person, any administrative action taken by:[12]

1) Any department or ministry of the federal or state government
2) Any department of any local government in any state of the federation.
3) Any statutory corporation or public institution set up by any government in Nigeria.
4) Any Company incorporated under or pursuant to the Companies and Allied Matters Act whether owned by any government or private individuals in Nigeria, any officer or servant of any of the above mentioned corporate bodies.

[10] Section 1 PCC Act Cap P.37 LFN 2004
[11] Section 4 PCC Act Cap P.37 LFN 2004
[12] Section 5 PCC Act Cap P.37 LFN

Under section 5 (3) of the same Act Commissioners are vested with the powers to.[13]

(a) Determine the way and manner by which complaints are to be lodged.

(b) Based on the provision of the Act, any commissioner has absolute discretion whether or not and in what manner to notify the public of his action or intended action in any particular case.

(c) In any complaint, the commissioner shall have access to all information necessary for the efficient performance of his duties and for this purpose may visit and inspect any premises belonging to any person or body mentioned in subsection 5.

(d) Subsection 3 (d) of section 5 provides that every Commissioner shall ensure that administrative action by any person mentioned in subsection 2 of section 5 will not result in the commitment of any act of injustice against any citizen of Nigeria or any other person resident in Nigeria and for that purpose he shall investigate with special care administrative act which are or appear to be:

    (i) Contrary to any law or regulation

    (ii) Mistaken in law or arbitrary in the ascertainment of fact; unreasonable, unfair, oppressive or inconsistent with general function of administrative organs.

    (iii) Improper in motivation or based on irrelevant considerations

    (iv) Unclear or inadequately explained

[13] Ibid S.5.

(e) A commissioner shall be competent to make investigation pursuant to subsection 4 of section 5 which empowers the Chief Commissioner to deal with matters that are concurrently lodged with more than commissioner. Subsection 5 of section 5 provides that all commissioners and staff are enjoined to maintain secrecy of all matters handled by them except if a commissioner decides that disclosure will establish grounds for his conclusions of recommendations. By section subsection 6, a commissioner is not subject to the control of any person or authority in the exercise of his powers. Subsection 7 requires anybody or person to feed the commissioner with information (as required by subsection 3 (c) of (5) within 30 days from the date of receipt of the request.

3.2 PRACTICE AND PROCEDURES FOR THE COMMISSION

Practice of the Commission is regulated by the Act establishing it. It provides the mode of practice in addressing administrative injustices in Nigeria through an amicable settlement rather than the practice in regular courts of law whereas the procedure is in the manner in which the Commission is approached, listens to the parties, make recommendations, implementation of its decision for redress or settlement.

3.2.1 Procedures for Lodging Complaints and Investigation:

Complaints are lodged in writing and signed by the Complainants free of charge absolutely. If the complainant is illiterate, his verbal complaint is received and reduced into a written form for him by the official of the commission. The written complaint is read to him/her in the language she/he understands. This is done in the presence of a witness. All the three must append their signatures or right thumb impressions. Complaints can be sent to the Commission in person or by post or it could be slotted into the government boxes provided in some of the local government areas in the country. Complaints letters are properly addressed, dated and accompanied by all relevant documents to facilitate easy and speedy resolution via investigation. The Chief Commissioner and other commissioners are vested with the powers, pursuant to subsection 2 (a) – (d) of the Act, to:

(a) Determine the way and manner by which complaints are to be lodged.

(b) Based on the provision of the Act, any commissioner has absolute discretion whether or not, and in what manner, to notify the public of his action or intended action in any particular case[14].

(c) In any complaint, the Commission shall have access to all information necessary for the efficient performance of his duties and for this purpose may visit and inspect any premises belonging to any person or body mentioned in subsection 2 of section 5.[15]

[14]Section 2 (3) PCC Act.
[15] Ibid 3 (c)

(d) Every commissioner should ensure that administrative action by any person mentioned in subsection (2) of section 5 will not result in the commitment in any act of injustice against any citizen of Nigeria and for that purpose, he shall investigate with special care, administrative acts which are or appear to be:[16]

i. Contrary to any law or regulation

ii. Mistaken in law or arbitrary in the ascertainment of fact.

iii. Unreasonable, unfair, oppressive or inconsistent with the general functions of the administrative organs.

iv. Improper in motivation or based on irrelevant considerations.

v. Unclear or inadequately explained; or

vi. Otherwise objectionable.

A commissioner shall be competent to investigate administrative procedures of any court of law in Nigeria. The Act requires that where concurrent complaints are lodged to more than one commissioner, the chief commissioner shall deal with the matter and his decision therein shall be final.[17] Also, all commissioners and staff of the Commission shall maintain secrecy in respect of matters so designated by reason of source of content; however, a commissioner may in any report made by him, disclose in order to establish ground for his conclusion or recommendations.[18] Considering the previous objectives of the Public Complaints Commission in promoting social justice and fairness, the Commission does so by the exercise of its powers

[16] Ibid 3 (d)
[17] Ibid (3) (c)
[18] Ibid (3)

derived from section 5 (1) of the Act, to receive complaints from the complainants against any public or private organisation, investigate and make recommendations to the appropriate authorities for sanctions.

A complaints or petition is "is a written document signed by a person or large number of people asking somebody or statutory authority like Public Complaints Commission to do or change something". It is also an official document asking court to take a particular course of action through formal prayers[19].

The authority referred to in this study is Public Complaints Commission and its practice. Hornby A.S. (2006) put it succinctly: as an act of requesting any relevant agency empowered by law to enquire into an issue, crime, event, occurrence, etc either formally by writing a petition or orally. It may be by individual(s), corporate organisation, countries, etc. praying for a particular redress. In other words, complaints in form of petition or protest against an act of individual, groups, organisations or countries with a view to effecting necessary corrections or imposing sanctions where necessary[20]. This spirit is imbibed in section 5 (2) of the Public Complaints Commission Act.[21]

3.2.2 Practice, Offences and Penalties

Subsection (2) provides that any person who fails to furnish the Commission with information shall be fined the sum of ₦500 or six months imprisonment or both. In view of the changing economic circumstances and

[19] NASS PPC Report Vol. 1 P. 3
[20] Hornby, A. S. The Oxford Advanced Learners' Dictionary Oxford University Press 2006
[21] Section 5 (2) PCC Act Cap P.37 LFN, 2004

recent inflationary trends the sum of N500 fine as provided by subsection 2 is no longer realistic. There is need to review the figure upward by fixing a more reasonable sum. Subsection (3) provides against assault or resistance to the Commission's staff while on official duties. Subsection 4 provides that any complainant who makes a false statement to the Commission shall on conviction be jailed for one year without the option of a fine[22].

Component of a Case

The cases that are referred from sister offices and headquarters may require more time to resolve because of distance and problems of communication. Whereas some cases from within the state can be lodged within week and cleared particularly if "on the spot investigation" technique is employed.

Inquiries

On the receipt of complaints, they are reviewed by the chief commissioner who directs appropriately their communication to the right office for investigations such as to banks, companies, public service departments, and pension, office, individual and organizations.

Investigation

Section 6 of the Public Complaints Commission's Act barred commissioner and of course the Chief Commissioner from investigating any matter:

a) That is clearly outside his terms of reference

[22] Section 8(5) PCC Act

b) That is pending before the National Assembly, the National Council of State or National Council of Ministers.

c) That is pending before any Court of law in Nigeria

d) Relating to anything done or purported to be done in respect of any member of the armed forces in Nigeria or the Nigeria Police under the Nigerian Army Act, or the Navy Act, the Air Force Act, of the Police Act, as the case may be.

e) In which the complaint has not in the opinion of the Commissioner, exhausted all available legal or administrative procedures,

f) Relating to any act or thing done before 29th July 1975, or in respect of which complaint is lodged later than 12 months after the date of the act or thing done from which the complaint arose.

g) In which the complainant has no personal interest.

It should be noted that for avoidance of doubt and purposes of clarity, the Act elucidated that with regards to the tendency of a complaint before the National Assembly, it is the requirement of the law that "a notice signed by the Secretary to the Federal Government and addressed to the commissioner certifying that any matter is pending before any of the bodies mentioned in that paragraph shall be conclusive as to the pendency of the matter".[23] Also, where a commissioner or Chief Commissioner … "decides not to investigate a complaint he shall state the reasons thereof".[24]

[23] Section 6(2)
[24] Section 6 (2)

Investigation commences by summoning the person or organization against whom complaints is laid under s. 9(1) which must be treated with utmost confidentiality as provided by S. 9 and 5(1) of the Act. To ensure fair hearing, in compliance with S. 36 (6) of 1999 constitution and equitable principle of "*Audi alteram partem*" all parties are to be called to be heard with all their witnesses and evidence if any.[25]

Once a complaint is received, it is registered and an acknowledgement letter is sent to the complainant. If the complaint is such that can be better handled by another body it is directed appropriately. If however, the complaint falls within the commission's jurisdiction, the respondent (organization complained against) is given the chance to comment on the matter. If within 30 days, a comment is not forthcoming from the respondent, a follow up action is taken to resolve the complaint. Where necessary, investigation team visits the organization to examine relevant records, files and documents etc.

3.2.3 Treating of Complaints

The complaints received are examined; document and evidence of both parties are reviewed out of which a report is made. The Commission may then recommend to appropriate respondent or its supervising agency any of the following steps that:

- Further consideration of the matter be made;

[25] Section 9 PCC Act

- Modification or correction of the offending Administrative or other act be effected;
- Alteration of a regulation or ruling be effected;
- Full reason behind a particular administrative or other act be given;

The Commission may recommend to the National Assembly the executive or any other appropriate body that administrative regulations or procedures be reviewed or amended. Where the Commission discovers that crime has been committed by any person, its finding shall be reported to the appropriate authority and recommend that such person be prosecuted.

3.2.4 Recommendations and Implementation of Decision

By virtue of S. 7 (1) (2) (3), and 4 in every case where the Commissioner is of the opinion that the conduct of a person need disciplinary action he makes his recommendation to the appropriate authority in the circumstances. If it deals with criminal offence, the offender is arrested by the police or the National Assembly or authority concern may deem fit and be prosecuted accordingly.

3.2.5 Procedure and Anatomy of Cases

The objective here is to examine simple characteristic of a case. The Commission by procedure, allocate time limit for the handling of each of the case components. From there, it enables the Commission to know with statistical accuracy how time is required to receive and disposed of a simple

case. In this light a case is highlighted below. When a complaint is lodged within the term of reference of the Commission by citizen or person resident in Nigeria and is duly accepted or allotted to it.

3.2.6 Timeliness

Time taken to resolve a complaint varies, depending on factors, such as availability of relevant documents, etc. Some complaints are resolved within a day, a week, or months and some may take longer time depending on the nature and complexities of each case in any given circumstances.

Table 1: Showing time frame for resolving complaints (adapted pg 45 annual lecture, 2008):

	STAGE	TIMEFRAME
1.	**DOCUMENTATION** This is the receiving, filing and allocation to schedule officer	24hrs (2 days)
II	**PROCESSING** Through study of the subject of complaint by schedule officer vis-à-vis the ordinary Report (TOR) of the commissioner and (to the other requirements of the Act Such as writing the first letter to respondent) 30days S.5 (7) of PCC Act	36hrs (3days)
III.	**INVESTIGATION** If case conference was held, minutes must be analyzed vis-à-vis the complaint subject and all the bellow issue highlighted issues (a) Agreements (b) Disagreements & (c) Unattended	24hrs (2days)
V.	**CLOSURE** When agreement is reached by parties submission must be promptly made	24hrs (2days)
TOTAL LIFE OF A CASE		**46 DAYS**

It may be noted that, while 46 days appears reasonable as lifespan of a case/complaint lodged before the Public Complaints Commission, it may not be in the best interest of the complainant or even in the interest of the Public Complaints Commission, regard being had to the objective of setting up the Commission, to terminate a case only on ground that it was not concluded within such period. However, it will better serve the interest of both the complainant and the Commission, if the Commission shall treat each case on its own merit on whether it shall continue with the case beyond 46 days. Therefore, it is the computation of this important item called case that gives rise to the monthly statistics of cases submitted by each state office and FCT to the Headquarters[26].

3.3 CHIEF COMMISSIONER, STATE COMMISSIONERS AND OTHERS

As provided under section 2 (1) of the Public Complaints Commission Act, the appointment of the Chief Commissioner is done by the President with the approval of the Nation Assembly, whereas the Chief Commissioner in turn appoints the State Commissioners and others[27]. The appointed state commissioners head the state officers. Note however, that only the Chief

Public Complaint Commissioner works at Abuja Head office with the Director General, the Directors and other key administrative staffs. The Chief Commissioner and the commissioners are expected to spend three years in office for the first term and subject to renewal of the three years for the second

[26] Section 3 (a) PPC Act CAP P.37 LFN, 2004
[27] Ibid P. 3

term[28]. The Chief Commissioner and commissioners are entitled to a salary and allowances which is fixed by the government. The Director General is also appointed by the President. The Director General assists the chief commissioner in the daily affairs of the Commission at Abuja.

3.3.1 Tenure

Section 2 (3) of the Act, provides thus: A Chief Commissioner shall hold office for a term of three years in the first instance and shall be eligible for re-appointment for a second term of three years and shall vacate office at the expiration of three years[29].

The enabling law of the Public Complaints Commission empowers all commissioners (including the Chief Commissioner) and vested in them the powers to investigate either on their own initiative following complaints lodged by any person against any administrative action taken by[30].

(a) Any Department or Ministry of the Federal or any State Government.

(b) Any Department of any local authority set-up in any state of the Federation.

(c) Any Statutory Corporation or Public Institution set up by any government in Nigeria.

(d) Any Company incorporated under the company an Allied Matters Act whether owned by any Government or by private Individuals in Nigeria, or

[28] Section 2 (2) PCC Act
[29] Sect 2(3) PCC Act P.4
[30] Section 2(3) PCC Act

(e) Any officer or servant of any of these bodies mentioned above while the tenure lasted.

3.3.2 Composition

The composition is regulated by section 2 (1) and 3 (1) of the Act.[31] Whereas the Chief Commissioner is the head of the Commission assisted by additional officers, for example, Lawyers in legal department, Accountant in the finance department, Administration officers, Investigation officers, clerks etc, as such: Numbers may be determined to compose the members of the Commission in other to assist the Chief Commissioner and other commissioners in the discharge of their duties under the Act. The composition is done in accordance with the Federal Civil Service rules with Particular reference to section 3 of the Public Complaints Commission Act.

3.3.3 Salaries

The salary structure is the same as those of other ministries and parastatals in the civil service in Nigeria. However, according to section 2 (4) of the Act, there shall be paid to the Chief Commissioner and other Commissioners such salaries and allowances as the President may from time to time determine and direct. Section 6 provides that the amounts payable under this section shall be charged upon and paid out of the consolidated Revenue

[31] Ibid

Fund of the Federation. S. 7 bars a commissioner from other emolument while holding office.

3.3.4 Appeals

Ordinarily, the mode of operation of the Commission differs from that of the regular court. It is persuasive rather than adversarial mode in the practice of regular court and hereto complainants or respondents who are not satisfied with the decision and service of the Commission can report to the office of the Honorable Commissioner in the state or the Honorable Chief Commissioner at the Headquarters stating their area of disagreements and prayers sought. The chief commissioner or the Honorable commissioner as the case may be, may deem it fit to set up a special body of enquires headed by him to review the substance of the case.

At this point, if any of the parties is still dissatisfied he is left with the right or an option to exercise (i.e.) to choose the option of going to institute a legal action in the regular court where the option of appeals avail up till Supreme Court. At the end, respondents are statutorily bound to reply or address any inquiry made by a commissioner not later than thirty (30) days from the date of the receipt of the request(s).

CHAPTER FOUR

SUBJECT MATTER FOR DECISIONS AT THE PUBLIC COMPLAINTS COMMISSION

4.1 INTRODUCTION

A clearly defined jurisdiction on subject-matters of laid down complaints serves a number of purposes. The examination of such cases could be useful to the government and the general public. Secondly, the possibility of straying from its central purpose or of being persuaded to take less important tasks will always be greater or the institution which lacks a clearly defined mandate.[1]

4.2 EXAMINATION OF SOME CASES DECIDED BY THE PUBLIC COMPLAINTS COMMISSION[2]

This chapter will examine cases decided and these cases will be categorized into (i) Federal Cases (ii) Cases under State (iii) Cases under Local Government (iv) Private organization Cases (v) Cases against Individual. The Public Complaints Commission has decided many cases as follows:

4.2.1 Federal Cases

The Ombudsman investigated a number of complaints related to public service institutions at Federal level. The nature of some of the reported and investigated cases is always published in the Commission's Annual Report. The hardships faced by victims for redress by government are due to the laxity

[1] Public Complaints Act, Section 6 (2)
[2] Cases rejected by the Commission for being in conflict with section 6 of the Act.

and lack of timely actions by government machinery found in cases of unreasonable delays in making payments of terminal benefits to employees, after completing their contracts; inordinate delays in acknowledging receipt of letters. The significance of the role of the Public Complaints Commission as mediator was demonstrated by the numerous reported cases regarding payments of workman compensation, etc. It is worthy to cite a case that was investigated and closed on 31st January, 2004[3] in the cases herein studied:

(i) The Public Complaints Commission demonstrated the constitutional powers conferred on it to redress mal-administration such as when Mr. A. O. Adebanjo took his petition to it on 12th March 1993 alleging that his employer NIPOST had suspended him from office on 30th August, 1990 and later on interdicted him on half salary for alleged involvement in a case of embezzlement of government funds at General post Office Makurdi to the tune of sixty –one thousand naira (61,000) Only. The Commission sought for comment from the Respondent who confirmed that the issue had been referred to NIPOST Head Office, Lagos. That the complaint letter along with all the necessary attachments and his comments were forwarded to NIPOST Headquarters. As follow up, the Commission referred the cases to the Public Complaints Commission, Lagos Office, due to its proximity to the NIPOST Headquarters. Following persistent pressure from the Commission in Lagos State Office, the respondent (NIPOST) requested the complainant to apply for the arrears of his salary. In January 2002 the complainant informed the

[3] The case was handled and disposed from the Commission's State Office Makurdi, Benue State, Nigeria.

Commission the matter had been redressed and handled financially. He thanked the Commission very seriously."

(ii) Ex-Inspector Duniya Complaint Against The Nigeria Police[4]

The Ex-Inspector lodged a complaint alleging wrongful dismissal from service after having served 31 years of meritorious service with the Nigeria Police Force. He was enlisted in 1963 as Constable and rose to the rank of Police Inspector. He alleged that he was wrongfully dismissed in 1994. According to him, the problem started in 1993 when he obtained leave from his Divisional Police Office to visit his mother. At the expiration of the granted "pass days", he received another message that his two sons had died in Yola as a result of motor accident on their way to school. He proceeded to Yola in a confused state without requesting an extension of the expired "pass days." On return from Yola, he was sent to orderly Room Trial, which found him guilty of abscondment which led to his dismissal.

Investigation conducted by the Commission showed that the complainant's dismissal was based on the provision of the Police Act of 1964 .... Because of this the Commission was barred from entertaining the complaint under section 6 (1) of the Commission's Act.

(iii) There was complaint of illegal retention of detainees items by Mr. Auwalu Umar against Nigeria prison service [5] who was sometimes detained in prison custody somewhere in Nasarawa local government in Nasarawa State. He alleged that as at the time of his detention, he was searched by the prison

[4] PCC/KD/C.9704/Vol. I (2004)
[5] 27th Annual Report, 2002 Pg 63. PCC, Nasarawa State Office Lafia, Nigeria.

officials and the sum of one thousand, four hundred naira (N1,400.00) and a wrist watch were found in his possession. The record officer of the prison collected them from him and retained them for safekeeping. After his release they refused to return these items to him. He tried all he could to collect them but failed. He therefore came to the Commission for redress.

On receipt of the complaint, an Investigation Officer was assigned to go for on-the sport investigation to the prison service to inquire into the allegation. This was found to be true. Based on the above findings, the Commission requested the prison officer to release the items to the complainant immediately otherwise the Commission would not hesitate to take further action. The prison authority did not waste any time to hand over the items to the complainant but also apologized to the complainant and the Commission for their action and claimed it was mistake in the records. The complainant appreciated the efforts of the commission.

4.2.2 State Cases

(i) Umaru Aliyu Complained Against Kaduna State Ministry Of Finance.[6]

The complainants appealed for commission's intervention to enable him obtain the payment of his duly and satisfactorily executed contract with the Kaduna State Ministry of Finance, Kaduna. He alleged that having obtained Local purchase order Nos. 558634 and 541403 of 21st April, 1989 for the supply of 100 yards of curtain materials at N60, 000,000 values, and

[6] (1979) KD/C.8909/Vol. I (2003)

satisfactorily executed the contract as evident in the attestation on the received voucher; he argued that he is entitled to be paid his benefits. After necessary investigation, the Commission has a clear demonstration of the need to jettison the requirement of 12 months limitation period within which the complainant can lodge a complaint. The dispute was said to have taken place in 1989 but was lodged 2003. Similarly, in the case of **Re: Cossette v. The Ombudsman**[7]**,** it was held in favour of the Ombudsman that no action lay against the defendant as a matter of fact that the action was not commenced within the limitation period set out in subsection (1) of the Public Authority's Protection Act and the action was therefore dismissed.

Similarly, at the state levels, the Ombudsman is very active in receiving, investigating and redressing complaints either brought to it or which commenced on its own initiative (*Suo-moto).* The nature of the complaints cover various aspects of social life including non-payment of land compensation, terminal benefits, NSITF benefits, bureaucratic victimization, breach of contract etc.

(ii) The cases of Mr. Ola Oluwale Armstrong[8] for alleged breach of contract of employment. He lodged complaint against the General Manager of Ondo State Sports Council. The complainants alleged that his company was awarded a contract to cover the photographic aspect of a ceremony and to produce a colour album of it for the council. On satisfactory conclusion of the job, he presented a bill of a sum of Twenty Thousand Naira (₦20,000.00) to

[7] Unreported case judgment delivered March 10, 1980 at Ontario, Canada applying the Public Authorities Protection Act, R.S.O. 1974 C. 374.
[8] 27th Annual Report, 2002 Pg. 77 PCC Ondo State Office, Nigeria.

the respondent for settlement. The respondent accepted to settle the bill but failed to honour his promise despite repeated demands, which spanned a period of one and a half years. The breach of contract agreement caused the complainant financial embarrassment to his company. When it became obvious that the complainant would not be able to get his money from the respondent, he turned to the Commission which immediately swung into action. After a 'prima facie" investigation, series of letters were subsequently written to the respondent on the matter. When there was no response, the Commission visited the respondents which made the respondent apologize to the Commission for failure to respond to their letters.

Commenting on this complaint, he admitted that he owed the complainant the stated sum and promised to settle same within weeks. He subsequently sent two post dated cheques for the sum of six thousand Naira each, for onward delivery to the complainant. Thereafter, he sent to the Commission a letter of appreciation.

Since most of the population of the country resides in the rural area local government and traditional councils are therefore the first government contacts of the rural populace. Most complaints coming from these people are mostly on land matters particularly concerning confiscations, conversion non-payment of compensation, on farmlands. There are also complaints on mal-administration but relatively very few. The case of alleged wrongful suspension and threat of termination of appointment received by the Commission on 6th March, 2011.[9]

[9] 27th Annual Report, Pg. 35 PCC, Ekiti State Office, Ado Ekiti, Nigeria.

(iii) There was a complaint against Upper Area Court Judge, Kukawa.[10]

The complaint was by Mahmud Mohammed Kaka of Kukawa local government area, which was addressed to the Chief Judge and copied to the Commission for information and necessary action. The petition revealed that the complainant was not generally happy with the conduct of the Upper Area Court judge which led to miscarriage of justice against him. Also, the complainant claimed that there were cases he filed and the case was outside its terms of reference. A copy of the petition was forwarded to the Inspector of Area Courts Division for their perusal and intervention.

The comment of the Presiding Judge was obtained, studied and action was taken on the matter. The complainant was advised to either continue the case in the court or to be transferred before another judge. He chose to remain and continue with the case in the same court in view of the assurance he got for expeditious trial of the matter.

(iv) Mohammed Ahmed Complaint Against Area Court 3 (2000C. 8725)[11]

The subject matter of the case was on matrimonial issue which the Area Court 3 Sabon Gari Zaria was handling at the time the complaint was reported. From the content of the complaint letter, the complainant was obviously not happy with the pace at which his case was attended to. He alleged that there was an unnecessary delay and adjournments of the matter. The complainant also informed the Hon. Commissioner of the great psychological tortures he was undergoing as a result of not receiving the necessary, prompt and just trial.

[10] 27th Annual Report, 2002 Pg.54 PCC, Borno State office Maiduguri, Nigeria
[11] PCC/KD/C.8725 Vol. I (2000)

Having studied the petition of the complainant, and having agreed with the fact that the complainant was going through mental stress, the Commission nonetheless was not empowered to entertain the case under section 6 (1) (c) of the Act.[12] But under section 5 (3) (e), the judge was advised to "speed up" hearing in the matter in the interest of justice. In other words, the manner of taking action by the court of law in the case was frowned at. In a similar case of **Boot V. Dillon[13] in Victoria, Australia,** where judgment was delivered as to what constitutes "administrative action of a court of law", the view expressed was same as above.

4.2.3 Cases against Local Government Authority

(i) On 6th March, 2001 Mr**. Femi Adeola O.** went to the Commission with a letter. He alleged that he was being unnecessary victimized by the head and that administrative injustice meted to him by his employer, being a Local Government Service Commission. The complainant claimed that he was technically thrown out of employment by refusing to give him his last pay certificate after he was transferred to a new local government as a unified local government staff.

He did not mention in his complaint whether he had ever committed an offence in his previous station. He went further to inform the Commission that he had written several letters to the Ekiti State Local Government Service Commission Ado Ekiti for his reimbursement but all efforts were to no avail.

[12] That a commissioner shall not investigate any matter which is pending before any court of law in Nigeria.
[13] 2 (1976) V. R. 434.

Upon receipt of this complaint, it was acknowledged and the Commission invited the management of the Ikole Local Government where he served last to a meeting. In the meeting, the Director of Administration made it known that Mr. Femi Adeola O. was alleged to have stolen a computer set from the Ikole Local Government. According to him the computer was found inside the complainant's house during investigation conducted by the police.

Further investigation necessitated the call for the complainant's secret and open files from Ikole Local Government for study and observations. Going through the complainant's files, it was discovered that neither the old Ondo State nor the Ekiti State Local government Service Commission was informed about the case formally. There was no disciplinary committee set up on the case to give the complainant fair hearing. Consequent upon these observations, the Commission sent its findings and recommendations to the Local Government Service Commission that" the complainant be reinstated to his job because he had not been given fair hearing and the Local Government had failed to follow the administrative procedures before reaching the decision. He was consequently reinstated to his job without any break of service.

(ii) Another complaint letter was received from Mallam Sule Dauda titled "Vehicle No. LG/09/NSW is a death trap" against a Local Government Transport Authority, popularly known as Nasarawa on the road from operating the above-mentioned vehicle on the road. The vehicle has been operating local running between Nasarawa and Keffi town while the vehicle has been using an open petrol tank (in form of an engine oil gallon) kept behind the driver's seat

while the gallon supplied petrol directly to the engine and is kept in front of the passengers.

The Commission immediately intervened and ordered the Local Government Authority to rectify the situation. An officer from the Commission was still detailed to find out if the repairs had been affected despite the letters received from the authority. The officer confirmed that the repairs had been effected and the vehicle became road worthy. The case was then laid to rest.

4.2.4 Public Corporation Cases

There are also complaints against Public Corporation where a complaint was made to recover Nitel Line by **Mr. Nduka Ogbu.**[14]

(i) Mr. Nduka Ogbu lodged a complaint with the Commission in a letter dated 22nd March, 2000 against the Nigeria Telecommunication Limited (NITEL). He alleged that since 16th January 1989 when he paid his last bill, he had not received any further bill from NITEL despite his regular visits to NITEL. Subsequently, his line went off and he complained to Chief Maintenance Officer of NITEL who told him that there was a general fault which will be rectified in no distant time. Up till the time of writing this complaint to the Commission, nothing had been done to rectify the fault.

Consequently, the Commission quickly requested for the reaction of the Respondent, NITEL. The Respondent replied the Commission that the line was recovered from the petitioner in September, 1992 due to indebtedness.

[14] 27th Annual Report, Pg. 45, 2002 PCC, Lagos State Office, Lagos, Nigeria.

The complainant disputed this and a meeting was arranged and conducted, it was explained that the conditions for the restoration of the line depended on:

i) Payment of his genuine debt;

ii) Completion of the telephone application form 1 (TAFI) and other necessary forms; and

iii) Payment of the necessary rental and installation fees when due. Complainant's Telephone line was later restored after the fulfilment of all agreed conditions.

(ii) The petitioner Mr. Achibong Udoh served the Nigeria Railway Corporation for fourteen years before his appointment was terminated in 1994. He was not comfortable with the word "Termination" because he thought that would not earn him some benefits. Therefore, he sought to change the word "Termination" to "retirement" with several appeals to the Railway Corporation but failed. He therefore forwarded his petition to Public Complaints Commission where his case was taken up. The Commission approached the Nigeria Railway Corporation Headquarters in Lagos for explanation and was further directed to pay the complainant his entitlement and finally in December, 2002 the complainant got his benefits paid and the case file was closed.

4.2.5 Private Organizations

(i) There was the case of **Rev. Onebeinai David V. Julius Berger Nig. Ltd**[15] in which the complaint was "Demand for peaceful negotiation and

[15] 25th Annual Report Pg. 51, 2002 PCC, Bayelsa State Office, Yenogua Nigeria.

compensation". The fact was that Rev. Onebeinai David lodged a complaint on behalf of a group referred to as claimants or "accident victims" explaining that on the 15th October 2001 a vehicle No. XB 357 RBC owned by Julius Berger Nigeria Plc, operating in Bayelsa State while tipping sand damaged a transformer located at Egbide close, Amarata which caused a blowout. The accident led to the destruction of property especially electronics and electrical appliances worth several millions of Naira belonging to some people in the area of the accident. Consequently, a team of representatives of the victim confronted the management of Julius Berger Plc for peaceful negotiation but to no avail. Hence they complained to the Commission.

The Commission acknowledged the receipt of the complaint and wrote to the personnel Manager of the Company for his comments in respect of the complaint. The complainants were invited to the Commission for an interview during which the Commission emphasized on the need for tolerance and settlement of the matter. The company made arrangement for negotiation with the complainants.

Finally, all the people that incurred loss arising from the accident were paid a total of ₦3,980.00 and a balance of ₦77, 800.00 accruing for four persons who were not present were returned to Julius Berger (Nig) Plc. Also, a comprehensive report and payment chart were sent to the company for clarification. It was indeed a successful negotiation and all the parties involved in the matter were happy with the role of the commission.

(ii) The Ombudsman is always ready to answer distress calls and this it did when Mrs. Caroline Yeyinde approached the commission, seeking its intervention to get her reinstated to her job. She had alleged wrongful dismissal from service.

According to her, she had been with Lion Bank since 1988 where she claimed to have had exemplary service. Things however, went sour in 1999 when a new Manager came on board. She was allegedly dismissed for an offence which she felt should have been over-looked since she was not the only one involved (that offence was customary in that Bank).

On the contrary, the new Manager lived up to the ethics of the profession and refused to close his eyes when he saw some officers including the complainant were appropriating customer's deposits for personal use as I.O.U: As expected he notified the authorities, which set up a committee to investigate the matter.

While investigation was going, Mrs. Caroline Yeyinde bagged an award. However, she was found guilty at the end of the investigation and was therefore dismissed from service. The Commission has no option than to accept her dismissal since there was no merit in her petition. On that note the file was closed.

4.2.6 Cases against Individual

(i) Aliyu Abdullahi & Others Complaint Against District Head of Soba.[16]

This was a complaint that was initially accepted, investigated and later closed because "*ab initio*", it was outside the commission's terms of reference as clearly specified in section 6(1) (a) and (c) of the Act. It was in fact a case of implementing Court order which only the Nigeria Police Authority is competent to enforce. It was alleged by the complainant that the issue was a clear case against the District Head of Soba who bluntly refused to comply with both the Court's order and the Zazzau Emirate Council's directives to handover a farmland to the identified appropriate owners (i.e. the complainants).

On receipt of the complaint (15/10/98), intensive Investigation was made and it was discovered that even the Police have stepped into the matter and the Area Court 1 Zaria City had made series of interventions. The Commission also held series of case conferences at the site of the subject matter and the palace of the District Head of Soba.

The Commission subsequently considered the evidence obtained during the physical inspection of the subject matter, statements of all affected persons. It thereby gave decision based on the following reasons:

a) The case is pending before a court of law.[17]

b) The fact that for decades, complainants have failed to justify physical possession of the land or any evidence of "galla" payments, and

[16] 2998C.7738, PCC/KD/C/9704/Vol. 9 (2002).
[17] Based on the provision of S.6 (1) (c) of the Act.

c) Above all, that the dispute took place even before the birth of the commission, Section 6(1) (f) of the Act did not empower the Commission to entertain such case.

(ii) Iliya B. Sale's Complaint Against Alh. Isa Kwakwa & 5 Others[18]

The Complainant, a Lecturer in Ahmadu Bello University Zaria copied to the Commission a very serious complaint he had written to His Excellency, the Executive Governor of Kaduna State alleging, kidnapping, torturing, drugging and compulsory marriage of female school aged children at Dutsen Wai, Kubau Local Government of Kaduna State by one Alhaji Isa Kwakwa and five others. The complaint listed the names of 10 victims, to buttress his claims. The Commission carried an on-the-spot investigation and held-in-depth discussions with the complainant. It finally held that in view of the nature of the subject matter of complaint being a crime, and the fact that it was against individuals, it falls outside the commission's area of jurisdiction. Nevertheless, the Commission wrote formally introducing the complainant to the Women's Right Advancement and Protection Alternative (WRAPA) for necessary action. But the Ombudsman's jurisdiction was not ousted in a similar Austria case of **Glenister V. Dillon**[19] where complaints against individual were investigated. Being a criminal case of abduction and rape, the Commission arrived at an appropriate decision to recommend the trial and prosecution of the offender to the appropriate authority.

[18] KD/C.8909 (2003)
[19] (1997) V. R. 15

4.3 STRENGTHS AND WEAKNESSES OF THE PUBLIC COMPLAINTS COMMISSION ACT

Perfection is attainable by God (Allah) alone hence any human being or product of human will definitely have its strengths and weaknesses. The Public Complaints Commission Act is no exception to this rule. Though the Act is not bulky, as it contains only twelve (12) sections, we shall attempt in this segment to consider its strengths and weaknesses.

4.3.1 Strengths

The first strength of the Public Complaint Commission Act lies in the fact that it is a Federal legislation and where any other state law is inconsistent with this Act shall be void to the extent of its inconsistency. Section 315 (5) of the 1999 Constitution lends credence to the above in providing that "nothing in this constitution shall invalidate the following enactments.

a. The National Youth Service Corps Decree 1973

b. The Public Complaints Acts;

c. The National Security Agencies Act;

d. The Land Use Act.[20]

And the provisions of these enactments shall continue to apply and have full effect in accordance with their tenor as any other provision forming part of this constitution and shall not be altered or repealed except in accordance with the provisions of section 9(2) of this constitution. Section 315(5) of the Constitution secures the Public Complaints Commission Act against easy

[20] Section 315 (5) 1999 Constitution.

manipulation without compliance with the procedures of repealing or amending of any of its enactment laid down in the constitution. Although, it would appear that the Supreme Court in the case of **Chief R .O .Nkwocha v. Governor of Anambra State (1984) 1, S.C.N.L.R. p.634**, has held that the statutes enumerated in S.315 (5) 1999 constitution are merely entrenched in, but not part of the constitution. However, they enjoy special protection of the constitution.

Another strength of the Public Complaints Commission Act relates to its investigatory power, where the Act makes its clear in section 5(2) that a commissioner shall have power to investigate either on his own initiative or following complaint lodged before him by any person any administrative action… this provision is commendable for enabling a wider power for investigation.[21] The watch word in this section is "his own initiative", which means that a commissioner need not wait until the Commission could embark on its investigation.

Also of note in the section are the areas the investigation can cover. It's impressive that its scope is not limited to government department and Allied Matters Act as most of them carry out wrongful terminations of appointment and wrongful dismissal.

It is interesting to note also as one of the strengths of the Public Complaints Commission Act that it provides in section 8(4) that any person who in respect of any complaint lodged by him knowingly makes to the

[21] Section 5(2) PCC Act.

Commission any statement whether or not in writing that is false in any material particular shall be guilty of offence and shall on conviction be sentenced to imprisonment for one year without the option of fine.[22] This is paramount, as it serves as a warning to persons who may want to use the Commission to witch-hunt others or even against an institution which has refused to compromise its standard to the whims and caprices of a dishonourable complainant. The absence of an option of fine for the offence of making a false complaint show how serious the Act frowns at such an offence.

The same Section 8 further provides for penalty against any person who fails as required to furnish information or gave information knowingly or recklessly which is false in any material particular. It also says that, any person who wilfully obstructs, interferes with, assaults or resists any order of the commissioner or any other officer or servant of the Commission in the execution of his duty under the Act or who aids, invites induces or abets any other person to obstruct, interfere with, assaults or resist any such order of the commissioner, officer or servant shall be guilty of an offence. There is merit in this provision of the PCC Act and this lies in the fact that it enhances the ability of the Commission to perform effectively in order to curb injustice in administration of employment and governance.

(i) **Power to Summon**

The Public Complaints Commission Act empowers a commissioner in discharge of his duties under the Act specifically S.9(1)(2) with the power to

[22] Section 8 PCC Act.

summon in writing any person before him, to give evidence in the matter, and any person who fails to appear when required to shall be guilty of an offence. This provision forms one of the pillars of a successful investigation because where Commission summons a person and it is at the discretion of the person to come or not, it will make a mockery of the investigation process if at all it doesn't stultify it.

In order to ensure that a commissioner goes about his job without fear, the Act has guaranteed immunity for him against legal proceedings. This can be likened to section 308 of the 1999 constitution that protects the President, Vice President, a Governor and his deputy from legal proceedings.[23] The Act in section 10 provides that "No commissioner shall be liable to be sued in any court of law for any act done in the due exercise of his duties under or pursuant to this Act.

(ii) **Immunity from Legal Process**

All Public Complaints Commissioners and their staff enjoy legal protection while in the cause of their duties and therefore cannot be sued or prosecuted in any court of Law. This can be likened to section 308 of the 1999 Amended Constitution of the Federal Public of Nigeria.

Constitution that protects the President, Vice President a Governor and his Deputy from legal proceedings.[24] Subsection (1) of section 10 provides further that any record of meeting, investigation, communication or proceedings are privileged information and its production cannot be compelled

[23] Section 308 1999 Constitution
[24] S.308 1999 Constitution of theFederal Republic of Nigeria.

in any court unless the Attorney-General of the Federation feels that it is in public interest to do so.

Investigation is defined as a search for the truth in the interest of fairness and equity. Over the years some critics have stated that the Commission is a toothless bulldog since it lacks coercive power to enforce its recommendations. We urge all Investigation officers and other lovers of this noble institution not to despair. One fact we should note is that lack of coercive powers in the enabling law is neither an oversight nor peculiar to the Public Complaints Commission. It is a general attribute of the Public Complaints Commission or Ombudsman Institution worldwide. The Ombudsman does not command, he persuades. The aim of the Ombudsman is not to sue officials in both public and private sectors but to encourage them to internalize fairness and justice and accept them as legitimate values that compliment effectiveness and efficiency. Some of the factors which elicit responses to our enquiries and which also induce respondents to honour our recommendations include the use of reasoned judgment and decisions (but not always) veiled threats. You cannot coerce Public Officers to be fair or to accept your recommendations. In any case, the provisions in sections 5, 7, 8, and 9 gives us sufficient latitude to operate effectively. Above all, coercive powers are left out so as not to blur the distinction between the Public Complaints Commission and Law Court.

There is positive correlation ship between the number of cases resolved and proximity to the achievement of the set goal. Obviously the higher the number of cases resolved (vis-à-vis receipt) the nearer one is to his goal.

4.3.2 Weaknesses

Having considered some of the strengths of the Public Complaints Commission under the Acts we will now highlight some weaknesses of the Act. Foremost, when a complaint is brought before the commission, the best it can do is to investigate and make recommendation under section 7 of the Act (a) to (d) to appropriate persons or responsible administrative agencies that:

- A further consideration of the matter be made
- That a modification or cancellation of offending administrative or other act be effected.
- That an alteration of a regulation or ruling be effected.
- That full reason behind a particular administrative or other act be given.

(i) **Lack of Power to Prosecute Offenders Under the Act**

The Weakness in this provision is that the power of the Commission is limited to investigation after which recommendations can be made to the same offending organization or legal institution like the judiciary which may or may not appreciate the extent of the complaint. Since such organizations are not answerable to the Public Complaints Commission, they treat the recommendation with laxity and nothing can be done.

It is our contention that the Commission would have been empowered by its Act to go beyond investigating administrative actions only and be empowered to prosecute offenders; otherwise it will remain a toothless bulldog that can only bark but cannot bite.

(ii) **Restriction on the Powers of the Commission to Investigate Certain Matters**

Another weakness of the Public Complaints Commission Act is in section 6 dealing with the restriction on a Commissioner's power to investigate certain matters. Section 6(1) (d) of the Act provides that a Commissioner shall not investigate any matter relating to anything done in respect of any member of the Armed Forces in Nigeria i.e. the Nigerian Police, The Nigerian Army, The Nigerian Navy, the Air Force, Customs, Immigration and Prisons. These institutions are potential places where the right of an individual could be breached such as wrongful dismissal and non payment of benefits. Since the Public Complaints Commission can investigate administrative procedures of any court of law then these institutions should not be an exception. Section 6(1)(e) of the Act provides that with reference to section 6(1) a Commissioner shall not investigate any matter in which the complainant has not, in the opinion of the Commissioner, exhausted all available legal or administrative procedures.

This sub-section makes the Public Complaints Commission only a lender of last resort. The implication of this is that a Complainant cannot rush to the Commission as soon as there is an administrative injustice done to him unless and until he has gone through the rigors of the court process which is regrettably slow. Where a Complaint comes to the Commissioner with a Complaint and he is told to first of all exhaust all available legal or administrative procedures, there is a likelihood that he won't come back.

The last but not the least of the weaknesses of the Public Complaints Commission under the Act that we shall now consider are the punishments provided in section 8(2) and (3) of the Act. Previously in this paper, reference was made to these subsections which show the seriousness attached to testimonies of persons who go before the Commission and wilfully obstructs, interferes or assaults any officer of the Commission in the execution of their duties under the Act. However, there is weakness in making an offender liable on conviction to a fine of N500.00 only or imprisonment for 6 months. It is our humble opinion that the law would have done away with the option of fine especially when Naira has lost its value making the fine to be but a paltry sum. Alternatively, the amount payable as fine would have been increased to a higher sum.

4.3.3 Success and Problems of Public Complaints Commission in Achieving its Goals

In measuring success of the Public Complaints Commission, the only parameter is using the statistical information available as it accounts for the good results achieved in a number of cases received, investigated and concluded logically. In no small measure, the variety of cases discussed under the sub-heading "subject matters" of cases are just not analytical but accounts for its success. The limitations placed on the Public Complaints Commission under the Act in Section 6(1) may likely lead to some failures coupled with some other societal factors as we shall see below:

(A) Success of the Commission

In spite of all the constraints and limitations surrounding the Act and the Commission's activities, it has made tremendous achievements or success in the following areas:

(i) **Educating and Enlightening The Public**

Although, the Public Complaints Commission like its counterparts all over the world is advisory and not executive by nature. It is still very useful in Nigeria in its functions such as educating and sensitizing the citizens and residents by making them conscious of their rights. The resolution of disputes by the Commission is certainly an expression of a real democracy. Through its functions the Commission has been able to keep watchful eyes to exert control and ensure that administrative organs of the society perform according to law. It has investigated many cases and thereby gave the needed advice towards resolution of disputes on many subject matters.

(ii) **Investigation**

Fortunately, since its creation, the Commission can be said to have several pass mark in its investigative abilities. Irrespective of its defective powers it had intervened in many cases and succeeded in leading to settlements.

(iii) **Defender of Rights**

As part of its social roles, Public Complaints Commission provides social defence for citizens. It provides psychological security to the complainants when at times all he need is just to be heard by authority

concerned in the matter even if he does not succeed in his case. This is a success because such avenue is not available where the respondent is confronted, as seen from the cases handled by the Commission and in the cases cited in this research.

(iv) **Decongestion of Court**

The Commission is also important in the processes of reducing congestion of the courts. This is simply done by settling cases that would have been ordinarily taken to court. The Commission has also made success in reducing social political tensions in the polity. Though its role is advisory, it helps in contributing to legislative amendments of existing laws. Instances abound where as a result of the complaint, lacuna found in existing laws, recommendations to take cognizance of such lacuna for any action deemed necessary were made for example in 1977 the Commission made recommendations about rules and regulations of higher institutions. In a petition dated 17th June, 1977, the petitioner complained of academic victimization on the principal and Bursar of his institution which resulted in the non release of his examination result. On receipt of the petition, the Commission advised the authorities to set up a board of inquiry which found the bursar culpable and disciplined him accordingly. The Commission made the following recommendations about rules and regulations of higher institutions generally:

One can safely conclude that student discipline and revolt is a matter of cause and effect and that any genuine efforts at eliminating revolts and

indiscipline in our institution should primarily be directed to removing the causes of such unrest and indiscipline. In this regard, it is worthwhile to involve the students as much as possible in taking policy decisions that affect them directly or indirectly. They need to be actively involved in the government and administration of their institutions. This will remove the impression in the students that the administration of their schools and colleges is secretive, bureaucratic and antagonistic to their interests. There should also be a lubricated channel of communication between the authorities of the institutions and their students. Apart from this being one way by which the authorities could show respect for their students as human beings, it provides a method of probing the mind of the students on any issue correcting their misconceptions and forestalling any suspected revolt.[25]

Looking at the success story of the Public Complaints Commission particularly in terms of the impact it has made in the way and manner our institutions of higher learning are being run, it could be said that it is to the credit of the Commission that those institutions are now better placed for learning and research. The recommendation given by the Commission on the rules and regulations governing higher institutions had helped greatly in bringing about security and stabilisation in the governance of higher institutions in Nigeria. As a result of such recommendations, students in higher institutions are part and parcel of decision making through their elective representatives. They are represented on various committees of higher

[25] P.A. Oluyede, Nigerian Administrative Law (1988), p.400 The above quotation reflects the practice in the university of Dar-Salam which was suggested at the University of Ife in 1974 by the above writer.

institutions, thus greatly minimizing complaint of marginalisation and highhandedness.

(v) **Check Against Jungle Justice**

The Commission contributes towards reducing the possibilities of recourse to self help by people in taking their matters to it such as in the cases they entertained. By so doing the Commission contributes to peace and harmony in the country while making the Chief Executive or organizations to take into consideration established rules and regulations concerning employment matters and some societal service issues.

(vi) **Quick, Cheap, and Easier Justice**

The Commission is accessible to all, particularly the poor that cannot afford court filing fees. The Commission provides an avenue or opportunity for quick disposal of cases arising between individuals, organizations, Multi-national Corporation and communities.

(B) Problems of the Commission

(i) **Lack of Finance**

The major hindrance the Commission has is that of inadequate finance to run its affairs sensitizing and advocating the idea of public accountability and educating the public about the existence of the Commission and its functions. It is observed that not many people are aware of the function, work and achievement of the Public Complaints Commission due to lack of adequate publicity. It could be concluded here that despite the constraints the

Commission has performed well and recorded a number of successes within the limitations provided by the Act.

(ii) **Lack of Maintaining Proper Records**

The research shows that there are a number of problems associated with recording system such as:

(a) Inaccurate, incomplete and incorrect documentation

(b) Explosive volume of records which are due to creation or over-generation of data and duplication, such that most of the records were not needed, as it expends more resources on information service than are necessary.

(c) Lack of safeguards on the confidentiality of the records

(d) Poor and inadequate storage facilities is manifested in accommodation and equipment infrastructure;

(e) Increasing retention of useless and undated records

(f) Uncontrollable access, misplacement and loss of vital document.

It is recommended that there should be proper recording of investigations and proceedings.

4.3.4 The Role of Public Complaints Commission and The Regular Courts

The primary function of the Public Complaints Commission is to provide impartial investigation for the citizens who feel aggrieved over the injustice they have suffered through the actions or inactions of government ministries, local governments, incorporated companies through the officials of

these bodies. Majority of the actions or inactions of the officers of these bodies are just and reasonable. However, with the existence of bureaucracy and deliberate exercise of power, error or injustice is done. It is true the duty of the Commission is to identify, address and recommend the rectification of such actions or inactions. Most often, they do this through mediation between the parties. The Commission in every jurisdiction is a creation of statute. It is set up by the government as a potent and effective office that undertakes investigations and is empowered to make recommendations for an expeditious resolution of the complaint without any expenses by the complainant.

(i) Comparing The Ombudsman and The Courts

The differences and similarities in the function of the Public Complaints Commission and the regular court cannot be overemphasized. In comparing their functions, we have to look at the provisions of S.6 and section 315(5)(b) of 1999 Constitution which gave birth to the courts and the Public Complaints Commission as well as provided for its powers.

The Public Complaints Commission is given wide powers to inquire into complaints by members of the public concerning the administration of any public authority and companies or their officials and other matters thereto. The Commission is a veritable tool for promoting peace, Justice and administrative transparency in any democratic system. The tradition and culture of the world have the Village Chief or Paramount ruler who listen to the complaints of the aggrieved in order to improve co-existence, harmony and understanding amongst family members, units and neighbourhood. He is a neutral person

who mediates and reconciles warring parties without taking sides. That is, his actions are devoid of technicalities of court system and its service is free unlike the court.

Similarly, the Public Complaints Commission (Ombudsman) is a neutral arbitrator that brings security to troubled minds, by giving hope to the warring parties in order to strengthen their bond of friendship beyond troubled times. Whereas, the court system is based on preponderance of evidence using the scale of justice, the Public Complaints Commission does not award costs for damages or sentencing as judgment as it is the common feature of the regular courts in practice. The Public Complaints Commission partners with other sister organizations to bring justice to the aggrieved, e.g. A complaint was once lodged with United States of America against an Indian National alleged to have involved himself in child-trafficking. The Public Complaints Commission collaborated with the Inspector General of police, the Interpol, the NAPTIP and the Indian High Commission in Nigeria to prove the innocence or otherwise of the accused person. The Commission in like vein receives petitions from the Economic and Financial Crimes Commission (EFCC) the ICPC, the Human Rights Office, and similar agencies in relation to administrative injustice against certain persons.

In spite of the limited jurisdiction of the Commission, it received over 15,371 complaints in 2007 alone and resolved 11,227 and 4,101 forwarded to 2009. The Commission is therefore for people who really desire to settle their complaints through the commissions' type of Alternative Dispute Resolution

(ADR) Mechanism without necessarily going through the strenuous court's processes.

(ii) Public Complaints Commission and Public Petition Committee on National Assembly

The House of Representatives by virtue of the provisions of section 62 of 1999 Constitution has set up the Public Petitions Committee among other committees. The Pubic Petitions Committee under Section 62(1) of the Constitution provides that: "The Senate or the House of Representatives may appoint a committee of its members for such special or general purpose as it thinks fit".

The Public Petition Committee has similar roles to those of the Public Complaints Commission. By virtue of section 88 and 89 of the 1999 Constitution, the Public Petition Committee has powers to invite petitioners before the committee, subject to any matter or thing with respect to which it has power to make Law; and the conduct of affairs of any person, authority, government department or other private organizations charged with certain administrative responsibilities.

Section 39(1) of the Constitution of the Federal Republic of Nigeria 1999 states that, for the purpose of any investigation under section 88 of constitution and subject to the provisions thereof, Senate or House of Representatives or a committee appointed in accordance with section 62 of this constitution shall have powers to:

(a) Procure all such evidence, written or oral, direct, circumstantial, as it may think necessary or desirable, and examine all persons as witnesses whose evidence may be material or relevant to the subject matter.

(b) Require such evidence to be given an Oath;

(c) Summon any person in Nigeria to give evidence at any place or produce, any document or other thing in his possession or under his control, and examine him to produce any document subject to all just exceptions; and

(d) Issue warrant to compel the attendance of any person who, after having been summoned to attend, fails, refuse or neglect to do so and does not excuse such failure, refusal or neglect to the satisfaction of the House or the committee in question and order him to pay all cost which may have been occasioned in compelling his attendance or by reason of his failure, refusal or neglect to obey the summons, and also to impose such fines as may be prescribed for any such failure, refusal or neglect, and any fine so imposed shall be recoverable in the same manner to a fine imposed by a court of law. This is a radical difference from the Public Complaints Commission which is persuasive and cannot apply such force.

Furthermore, a summons or warrant issued under Sections 62, 8, 89 of the 1999 Constitution respectively as exercised by the Public Petition Committee of the National Assembly may be served or executed by any members of the Nigeria Police Force or any person authorized in that behalf by

the president of the Senate or Speaker of the House of Representatives as the case may require.

The House has positively impacted on the lives of Nigerians by the work it has done in resolving disputes involving private citizen, government agencies, Multinational organizations and communities. In conclusion, it will suffice to present few of its treated cases, facts of the subject matters, findings, recommendations and resolution made by the Public Petition Committee of the National Assembly for perusal.

Table 2: Showing cases decided by Pubic Petition Committee of National Assembly

S/No	Petitioner	Date Presented	Subject matter	Committee's Recommendation	House Resolution
1	B. O. Ummezinwa on behalf of the Ezeobi, Okeke and Okpagu families of Nise, Anambra State	17 Oct, 2007	Alleged Murder of (4) innocent villagers by policemen	1 The following members of the Nise Vigilante team involved in the initial shooting of Afam Ezeobi be immediately tried for murder. They are Chief Augustine Amah; Mr. Felix A. Okoye, Mr. Boniface Okafor, Mr. Ernest Abu, Mr. Michael Duru, and Mr. Amandi Okafor Josephat 2 Superintendent of Police S.P. Dang and Assistant Superintend of Police Lateef Alabi who were directly involved in the extra-judicial killings be dismissed from service and immediately tried for the murder of the four deceased. 3 The Inspector-general of Police to caution officers and men of the Nigeria Police to	Approved

				desist from resorting to extra-judicial killings of suspected criminals.	
2	Mr. G.E.A. Okhavhe	27 Nov, 2007	Alleged premature retirement by NIPOST	That Mr. G.E.A. Okhavhe be reinstated as due process was not followed in his disengagement from the service of NIPOST.	Approved
3	Mr. C. O. Agbikimi	13 Sep, 2007	Alleging victimization by PHCN	1 That the petitioner should be reinstated and all his entitlement paid to him. 2 That the committee gave the petitioners benefit of doubt, as the petitioner's guilt was not conclusively proven since other operational staff of PHCN at Aba Computer Centre had access to the Computer Programme.	Approved
4	Mr. Ochayi Oji Edwin	14 Nov, 2007	Alleged wrongful termination of appointment by NIPSS	The committee recommends that the parties resolve their dispute in court	Approved
5	Orient Properties Development Company Limited	19 Feb, 2008	In respect of the concession granted the Bank of Industry for the re-development of the Transit Camp Village, Victoria Island Lagos by the Federal Government	The right of Orient Properties Development Company as the preferred bidder for the redevelopment of the Transit Village in Victoria Island, Lagos be restored, as due process was not followed in the grant of the concession to the Bank of Industry as the second preferred bidder. The Bank if Industry did not participate in the bidding process conducted by the Federal Ministry of Environment, Housing and Urban Development.	Approved

Source: Journal of the Committee on Public Petitions House of Representative Vol1, No.

From the foregoing therefore, it is very clear that the Act which gives the Commission the power to investigate "administrative injustice" has placed serious limitations/restrictions on the type of complaints, nature of action, and range of authorities open to investigation and even time limit for lodging of complaint. One may therefore say without mincing words that the powers granted the commissions by the right hand has been taken away by the restrictions of the left hand.

The Public Petition Committee of the National Assembly and Public Complaints Commission has a distinct role to play and there is no duplication. They complement each other, the Public Complaints Commission has the wherewithal (investigation officers) who sometime carry an "on the spot investigation" and make recommendations, the procedure of the National Assembly takes longer time. The Public Complaints Commission has officers spread throughout the 36 states of the federation with 5 zonal officers in each local government they are therefore closer to the masses at the grass-root.

From the above analysis it should be noted that the Public Complaints Commission and Public Petition Committee of the National Assembly plays complementary role to each other, whereas the Public Petition Committee of the National Assembly has wider jurisdiction compared with the limited jurisdiction of the Public Complaints Commission.

CHAPTER FIVE

OVERVIEW OF OMBUDSMAN INSTITUTIONS IN SOME JURISDICTIONS

5.1 INTRODUCTION

Ombudsman is defined as a government official whose job is to examine and report on complaints made by ordinary people about the government or public authorities.'[1] It is also defined as an official of government institution who hears and investigates complaints by private citizens against others while the legal definition of Ombudsman is a person whose occupation consists of investigating customers' complaints against individual, governmental agencies or corporate organizations.[2]

The Encyclopaedia of American Law defines Ombudsman as a man who investigates complaints and mediates fair settlements, special between individual and government or corporate bodies.[3] From the foregoing definition, Ombudsman is taken to mean an impartial official who acts as an Independent referee between individuals with other individual and or with government agencies or corporate bodies by treating complaints and bringing out solutions.

5.2 FUNCTIONS/DUTIES OF THE OMBUDSMAN

The Ombudsman works as an impartial and independent fact finder in reviewing and resolving complaints related to the department of either family service in child welfare cases or in cases related to individual and government

[1] Oxford Advance Learners Dictionary 6th Edition
[2] www.yourdictionary.com/ombudsman
[3] Encyclopaedia of American Law

agencies or corporate bodies in finding a lasting redress to the individual problem. This is carried out in a systematic and professional way which includes but not limited to the use of investigating the problems of parties and finding enduring solutions which both parties will be pleased with.

5.2.1 Operation of Ombudsman

There are certain basic principles which every Ombudsman use in carrying out his work. These principles includes: Independence, Impartiality and Confidence.

(i) **Impartiality**: The Ombudsman is a neutral fact finder when reviewing and resolving complaints. The ombudsman is not an advocate, complaints are reported to commission, and issues in the complaints are resolved in a neutral and impartial manner without taking sides in making decisions.

(ii) **Independence**: the Ombudsman usually works independently without relating to any department while carrying out his responsibility, he should be resolute in the resolve of citizens' issues and complaints and should have total independence without any influence in reporting his decision as determine by his conscious based on his investigations.

(iii) **Confidentiality**: the ombudsman does not disclose the identity and other personal information of persons who have filed a complaint without their permission.

(iv) The ombudsman keeps all information and documents shared by complainants confidential.

It is therefore of importance to find the relationship of the ombudsman office and that of the Public Complaints Commission in addressing administrative issues which hinges on the abuse of right and privilege of workers in their line of duties. This will create avenue to protecting workers rights against administrative injustice and maladministration in Nigeria. It is also expected of the ombudsman office to investigate complaints relating to maladministration. These complaints include but are not limited to bias, neglect, inattention, delay, incompetence, adversity. They can also be taken to mean, rudeness, unwillingness to treat petition regarding abuse of right, the show of bias because of colour, tribe sex or any ground. The Public Complaints Commission which has a similar function with that of an Ombudsman office partakes in matters that are outside its statutory functions so long as the issues complained about is likely to promote peace, unity and stability in a reported working environment. In this case, the complaints and the cases in question are redirected to appropriate agencies for effective handling. Examples of such cases are those of drugs abuse which are often tendered over to the appropriate agency whose primary responsibility has to do with drug abuse is the National Drugs Law Enforcement Agency (NDLEA).

5.3 AN OVERVIEW OF OMBUDSMAN INSTITUTION IN OTHER JURISDICTIONS

A critical overview of the performance of Ombudsman office in some countries of the world and Africa show that there are still a lot of flaws in matters of human rights, accountability and good governance, largely as a result of over centralization of government and its bureaucratic character and its unwillingness to become truly democratic.[4] The resultant effect has been that many persons cannot meaningfully seek redress against maladministration nor can they complain about poor governance and service delivery.[5]

In order to address the problem of human right abuse, lack of accountability and the absence of good governance countries of the world most especially African countries, have to establish the office of Ombudsman as an instrument of public defender that would thus prevent unethical practices in public service.[6] In other words, office of the Ombudsman has helped to enthrone a self check that would enforce accountability, prevent corruption and guide against maladministration.

In some countries of the world where the Ombudsman office exists, the offices were made to function in Ministries and Departments of the central government in states provinces or local government and private organization. Example of some of these countries from the Western world are the countries in Scandinavian enclave, Canada, Australia, the United Kingdom, Bangladesh,

[4] Mukoro A. Ombudsman in Africa State public Service (2005) p22
[5] Ibid. p22-23
[6] Ayeni, V. Sharman, K.C. Public Protector Ombudsman in Botsman Commonwealth Secretariat (2001) p78

New Zealand etc. as for the continent of Africa there are few examples: like South Africa, Ghana, Senegal, Nigeria, Tanzania, Algeria etc.

5.3.1 Australia

One of the fundamental features of Australian Democracy is that the people have the right to complain about government agencies to an independent Ombudsman, without hindrance and to have their complaint resolved on its merit. This helped in ensuring that government agencies are accountable and its assist agencies to improve on their administration.

In Australia, there exist an independent Ombudsman office at the National level and each of the states territories. They handle complaints from the public against all government activities[7] including policing and defence. They also have a number of Ombudsman offices to handle matters that borders on banking and telecommunication industries. The office of Ombudsman was established by the Ombudsman Acts 1976. The office was created as part of a comprehensive reform of Australia administrative law. The ombudsman plays its role alongside with courts and administrative action and the protection of the public.

The Australian Ombudsman has three major statutory roles directed at safeguarding the community in their leading with Australian government agencies. The first role under the Ombudsmen Act is to investigate complaints from individuals groups, or organization the administrative action of Australian

[7] Mukoro, A. Phenomenon in Africa State Public Service (2005) p89

Government officials and agencies. The second role is to undertake investigation of Administrative action on its own motion, recommend remedial action to be taken by an agency, either specifically in an individual case or generally by change to legislation or administrative procedure.[8]

The third role is to inspect the records of the Australian Federal Police and other Law Enforcement Bodies to ensure compliance with legislative requirement such as telecommunication interception.[9] Reports from these inspections are forwarded to the Parliament. This compliance of auditing function is an effective way of maintaining regular oversight of legal compliance in the use of coercive and intrusive government powers. The Ombudsman Act also confers a number of specialist roles on the Ombudsman such as the following:

- **Defence**: this handle complaint by serving officers and men and by retiring officers of the Australian defence force relating to their service.
- **Immigration**: this handles complaints about immigration administration.
- **Law Enforcement**: handling of complaints about the conduct and practices of the Australian federal police and its members.
- **Post Industry**: handling complaints about Australian post and private postal operators registration with the postal industry Ombudsman scheme.
- **Taxation**: handles complaints about Australian taxation office.

The Ombudsman is empowered to investigate the administrative actions of most Australian Government Departments and agencies. Matters

[8] Ombudsman Western Australia, Wikipedia 2011 p.3-5
[9] Ibid p.19

investigated can include policy, development, commercial conduct, the excuse of statutory responsibility law enforcement activities, and decision on applications for benefits or concession. He can also investigate Australian Government service provider that is a contractor who provides goods or services to the public on behalf of an Australian Government agency.[128]

The Ombudsman does not have the jurisdiction to review the decision of courts or any tribunal. Similarly, the Ombudsman cannot investigate the actions and decision of members of the parliament, senators or ministries. Nevertheless the Ombudsman can examine the quality or advice given by an agency to minister and whether the minister's decision is faithfully implemented by an agency to independence.[10]

The Australian Ombudsman is an independent agency which is essentially the creation of the law. The Ombudsman is appointed and can only be removed by the parliament, the ombudsman has strong coercive powers to obtain, access, examine documents and also examine witnesses and extend protection and immunity to the witnesses.

5.3.2 New Zealand

The Ombudsman office was established in 1962. The appointment of the Ombudsman is by the Governor General of New Zealand on the recommendation of the House of Representatives to oversee investigation of complaints against government departments and report with recommendations

[10] Ombudsman Western Australia, Wikipedia 2011- p. 32-35

to parliament. 'The decision of the courts, administrative tribunals as well as matters of national policy is outside the jurisdiction of the Ombudsman.'[11]

The Ombudsman may investigate a matter on written complaint on his own accord. A parliament committee may also refer petition to him or report for proper action. The Ombudsman cannot investigate a ministers' decision directly but, may investigate a department's recommendation to its minister.[12]

The Ombudsman conducts its investigation secretly. He is authorized to enter government premises, examine files and papers and obtain information on documents which may be withheld only in exceptional cases.

5.3.3 Ombudsman in Bangladesh

Ombudsman in Bangladesh was created as one of the outside government controls. It is an independent body saddled with the responsibility to receive a probe into citizen complaints and institutions and recommends officials and institutions and recommends corrective measures. The Ombudsman has the authority to investigate allegations of maladministration but has no similar power with the court of law. Recommendations of ombudsman had mandating implications for reserving any government decision.[13]

Article 17 of the Constitutions of Bangladesh provides that parliament may by law provide for the establishment of the office of ombudsman in order to remedy injustice or correct administrative actions. The 1980 Ombudsman

[11] Public Complaints Commission Service Charter, p8
[12] Public Complaints Commission Service Charter, p9-11
[13] James, B. (2004) Ombudsman for Good Governance in Bangladesh, why now and how, p2

Act stipulates the appointment of the ombudsman by the president on the recommendation of parliament.

- **Appointments**: The Ombudsman may be appointed by the President following the recommendation of a search committee to include:
    1. Chief Justice or his nominee
    2. One retired cabinet secretary/secretary to high integrity and credibility nominated by the chief executive.
- **Qualification**: the Ombudsman must have proven record of being non partisan individual of high integrity credibility and profession experience reputed for commendable contribution in public life.[14]
- **Jurisdiction**: under the 1980 Act Ministries, Statutory Public Authorities and Public Officers all fall within the jurisdiction of the ombudsman that is to say, complaints or petition of maladministration can be investigated by the ombudsman.[15]

It is worthy to note that, the Act which established the ombudsman made no provision for finances for it to have total independence in terms of Budget to carter for its expenditure.

5.3.4 South Africa

South Africa has seventy comprehensive legislative and legal frameworks for the Public Service in Africa. In South Africa, the office of the Public Protector is the same as the ombudsman office which operates at the

[14] James, O. & Akpomvire M. Public Complaints Annual Report (2001) p5
[15] Ibid (2001) p5

central provisional, municipal and local government levels. Section182 of the South Africa Constitution backed up the Public Protector of the Ombudsman's power.

The first South Africa ombudsman was appointed in 1979 in terms of the Advocate General Act 118 of 1979 as amended by Advocate General Amendment Act 55 of 1983. It was known as the Advocate General.[16] The need for this office was apparent after the facts about the information scandal had come to light. The office of the Advocate General could only be compared to that of the special prosecutor of the United States, which was also instituted in similar fashion in the wake of the Watergate scandal. The primary reason for the creation of the office of the Advocate General was to maintain honest public administration and orderly government. This office was replaced by the ombudsman in 1983 after amending the Advocate General Act by the Ombudsman Act of 1983. Then in 1994, the Constitution Act 108 of 1996 repealed the interim Constitution Act 200 of 1993 and paved the way for promulgation of the Public Protector Act 23 of 1994 which made provision for the establishment of the office and the governing principles of the public protector. In view of the above brief explanation, this article seek to unravel evolution of the ombudsman in South Africa, the challenges affecting the function of the public protector including the 'independence' of the office as well as the duplication of function with other agencies.[17]

[16] Sarr, J.O Current Situation and the Challenges of the Office of the Protector Ombudsman in South Africa Workshop (2009) p35

[17] Sarr, J.O Current Situation and the Challenges of the Office of the Protector Ombudsman in South Africa Workshop (2009) p89-92

(a) Reasons for the Creation of the Public Protector in South Africa

South Africa ombudsman services provide an opportunity for informal discussion of problems and complaints outside formal channels that is outside the court or arbitrary panels. The South Africa ombudsman listens, discuss, answer questions, provides information and identifies options and strategies for resolving a conflict situation. As a neutral and confidential moderator, the South Africa Ombudsman serves as a dispute resolution advocate and peace keeper diplomat.[18]

The office of the Ombudsman or Public Protector as the case may be exists in order to guide:

1. Against discrimination: In the absence of government institution to protect the poor, the public protection is there for the people.
2. Against ignorance of basic human right of the people by individual or government, the public protector make the rural citizen become aware of his right.
3. Against abuse of power; abuse of power and maladministration practiced by the apartheid regime to the rural black majority.
4. For constitutional democracy, that there is the need to maintain and sustain constitutional democracy.

From the above reasons, it is clear that the office of the Public Protector is created to make people aware of their rights in their communities and steps are

[18] Ibid p35

taken to protect and sustain them. Also, the government is to observe and respect basic human rights as well as bring closer governance to the people.[19]

5.3.5 Tanzania

Tanzania is the first to establish the office of ombudsman in sub-Saharan Africa. Tanzania established an ombudsman as early as 1967. The Commission is saddled with the responsibility to embark on regular outreach activities, conducting regional and district tours, conducting public meetings and holding talks, the Commission also carries out public hearings and inquiries into specific human right violations in governance. The office of ombudsman in Tanzania plays a multi functional role. The Commission functions as National Human Right Institution as well as office of the ombudsman, the Commission is an independent of government department. [20]

5.4 EFFECT OF JURISDICTIONAL LIMITATION ON PERFORMANCE OF THE COMMISSION IN NIGERIA

The limitation imposed by the Act at Section 6 of Cap. P37 LFN 2004 of the Public Complaints Commission Act is wide to an extent that the commissioner has enormous restrictions in exercising his function or as a defender of the less privileged.

Restricting the Commission from carrying out investigation that boarders, particularly on Armed Forces who are sometimes seen to be violators

[19] Sarr. J.O Current Situation and the Challenges by the Office of the Protector Ombudsman in South Africa Workshop (2009) p35
[20] Mukoro, A. Ombudsman Phenomenon in Africa State Service (2002) p134-135

of human right is preposterous. The institution and others as contained in the section constitute greater danger where justice is not seen to be done when it comes to matters affecting the right of staff in the discharge of their responsibility. In other words, there is gross maladministration and abuse of Human Right.

The problem will be that a large segment of the society is not aware of the benefit of the services the Commission is set to render and most people are not even aware of the existence of the Commission not to talk of the services and its 'modus operandi. There are two major problems. One is the limitation in the commissions' jurisdiction and the other is the lack of adequate publicity and awareness about the Commission and its function. Therefore the resultant effects of the limitation and restriction is the denial of justice to so many victims who would have had solace if the Commission will be allowed to function effectively.

There is no gainsaying that the Nigerian Public Complaints Commission has recorded many successes since its inception in 1975. It's greatest success is not only on the number of cases it received and disposed of, but also the psychological impact it made on the minds of many bureaucrats and technocrats who would deliberately act by the dictate of their conscience not by the dictate of work ethics. With its establishment, victims have a place to take their complaints to and be redressed. Though the restrictions placed on it by the Act enable some Selected Institutions act or refuse to take actions on matters that borders on the rights of a worker. These restrictions are mostly a creation

of decrees and enactment during the military era. However, the Commission can be said to have achieved tremendous success in the protection of the right of so many individuals who have fallen victims of mal-administration and other form of administrative injustices.

From the foregoing exposition of the comparative study of other country's ombudsman activities which are synonymous to the Nigerian Public Complaint Commission, it becomes apparent that adequate publicity and awareness should be given to the general public on the functions and services rendered by the commission. It is also of importance for government to give the Commission enough power to carry out its responsibilities independently without any interference this can only be done when adequate funds will be provided for the Commission in terms of its budget so that the Commission assume it neutrality and impartiality when taking decision after its investigation.

Nigeria should also borrow a leaf from other countries such as South Africa and Australia whose Public Protection Office is not restricted to investigating Armed Forces and other Para-military outfits, now that we are in a democratic dispensation and to also sponsor bills at the National Assembly to harness more powers that will enable a full protection of individual rights at work places.

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6.1 CONCLUSION

The aim of this chapter is to conclude what has been discussed in the previous chapters, make some observations and finally offer some recommendations with a view to improving the activities/functions of the Public Complaints Commission in relation to protecting workers rights in Nigeria and guarding against maladministration.

There is no doubt that the draftmanship of the Public Complaints Commission Act, set out to achieve certain objectives germane to the general theme of justice and fairness. One of the most active judicial icons during the making of the Act was Hon. Justice Mohammed Bello who later became the Chief Justice of Nigeria. At a conference for appellate judges in Abuja in 1992, the learned Justice provided an insight into the meaning of 'justice' when he said: "Judges should excel by giving essence to justice which is to give a person what is lawfully due to him; to compel him to do what the law obliges him to do".

Earlier than 1992, various philosophers have spoken about 'the rule of law as opposed to rule of man. Hence, the concept of legal justice became prominent. But the dynamism of the society brought with it the concept of 'substantial justice' which is larger than 'legal justice'. The Alternative Dispute Resolution (ADR) mechanism is consequently gaining prominence. Abraham Lincoln, one of the greatest presidents of the United States of America once

spoke in favour of out-of-court settlement of disputes as a means of achieving justice. "...discourage litigation, persuade your neighbours to compromise whenever you can point out to them how nominal winner is often a real life loser in fees, expense and waste of time..."

Therefore to the extent that the Public Complaints Commission is vested with the powers to inquire into complaints by members of the public concerning administrative action or in action of the public authorities and companies and their officials, it can be said that its main objective is to achieve justice outside the corridors of the courts of law.

Like any other formal organization, the Ombudsman institution in Nigeria is not different from other parts of the world except that areas of coverage and level of advancement of Ombudspersons may differ significantly. However, the Nigerian Public Complaints Commission has made its impact known in Nigeria by relatively showing its usefulness to a section of the populace, who have patronized its services. The Commission has afforded the ordinary citizen and resident easy access to justice, and at very minimal or low cost. The Commission also uses simple methods in resolving disputes as opposed to the technical ways being observed by the court of law.

The Commission all over the world have laid down structures with many departments and units, such as Administration, Finance, Investigation and Account units are positioned well so as to enable it strive as a constructive means of thorough examination of Public Complaints, investigate and make recommendations for the good of the citizens, such that the ombudsman

institution becomes a veritable instrument for re-assuring the public of the social justice and concern of the government for the welfare of the people. Therefore, the establishment of the Public Complaints Commission by the government is an objective germane to the general theme of justice and fairness outside the corridors of the courts of law.

6.2 OBSERVATIONS

In the foregoing chapters of this research and in the course of the study we came across some important issues that need further consideration. Some of these issues are hereby presented in the nature of observations.

(a) That the jurisdiction of the Commission has been limited by section 6 of the Public Complaint Commission Act and is seen as serious clog in the wheel of the Commission's effort to perform and consolidate the gains of its achievements. Restricting the Commission's power to investigate actions done or purported to be done by members of the Armed Forces or the Police constitute big affront to attainment of social justice. It is a serious derogation to limit the powers of the Commission and to shut its search light concerning matters affecting the right of staff in the discharge of their responsibility, particularly where there is glaring gross maladministration and abuse of human rights.

The situation in Nigeria is quite contrary to what obtains in other advanced democracies like the United Kingdom and the United States of America where such limitation is not placed on the institution of ombudsman.

However, it is impressive to note that, notwithstanding the limitation, the Nigerian ombudsman had been very brave and forthcoming in the sense that, on a number of cases, it had cause to handle cases affecting members of the police or the armed forces. For instance, the 1980 Annual report of Public Complaint Commission, Ondo State indicated that in that year alone, the Commission handled 14 cases affecting the Nigerian Police, 8 cases affecting Nigerian Army and 1 case affecting Air force.[1]

(b) Secondly, the powers and functions of Public Complaints Commission are impeded by the fact that, the Commission lacks the coercive power to enforce its decision or to make its recommendations binding. A situation where the Commission's recommendations are enforced or complied with at the wishes of the parties is to say the least, is reducing the Commission to the status of a toothless bull dog. Once it cannot make its recommendations binding on the parties, then it is certain that the Commission will be failing in the discharge of its primary function of providing impartial investigations through actions or inactions of ministries, companies or other similar agencies.

(c) It has been observed in the course of this research that one of the major challenges and or problems facing the Public Complaint Commission is lack of sufficient funds for the execution of its statutory duties. The fund being allocated to the Commission is inadequate considering the onerous duties it is expected to perform. Infact, insufficient funding will always be a major cause

[1] Ondo State Annual Report (1980) p.12

of setback in the effective and efficient performance of the Commission's mandate.

(d) In this age of information and communications technology (ICT) there is no gainsaying that any government agency or organisation that is not e-compliant will not be able to keep pace with the growing modern challenges. The challenges being posed by modern technology are too important to be ignored. Therefore, for the Public Complaint Commission to squarely handle its mandate well, it is time to move away from the traditional means of lodging complaint and dispensing cases brought to it and imbibe the changes brought by modern technology. In the absence of electronic devices and ICT facilities, how can the Commission effectively handle its function of enlightening the public, investigating cases and other issues associated with its own mandate.

(e) Considering the role of the Public Complaint Commission as a defender of rights and maintaining social justice as well as its position/status as a quasi-judicial institution, it is not healthy to liberalise or allow for membership or appointment of public commissioner without due regard to the nature of the commissions mandate. In fact, there seems to be no minimum qualification fixed by the Public Complaints Commission Act on the person who to shall be appointed a public Complaint commissioner. This, in my opinion is a serious lapse on the part of the Act. Section 2(1) of the Act only provides for persons of proven integrity or such other qualification as the National Assembly may determine.

(f) It has been observed in the course of this research that the conditions of service of both the commissioners and other staff of the Public Complaint Commission need serious improvement. The general working conditions of the staff of the Commission is not commensurate with the kind of duty being expected of them. Actually, nothing significant will be achieved where a staff is working under difficult working conditions and economic hardship.

(g) From the records of Public Complaint Commission's handling of cases, there is apparent lack of proper collaboration and harmonious working relationship with agencies having mandate similar to that of the Commission. Agencies like Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices and other Related Offences Commission (ICPC), Code of Conduct Bureau (CCB) are supposed to be partners in progress with Public Complaint Commission (PCC) as well as complementing bodies in the fight against corruption and other similar vices.

(h) It has been observed that the Public Complaint Commission has no plan of action in the nature of strategic plan of action which will guide the operations of the Commissions for the future. In this time of diverse opportunities and challenges posed by globalisation, it is necessary that an institution such as the Public Complaint Commission should have a strategic plan that will help it review at reasonable intervals, its areas of strength, weaknesses, opportunities and plans for the future.

6.3 RECOMMENDATIONS

The above observations provide a clear picture of some important issues in relation to the entire work, to the extent that, recommendations are necessary in order to help in addressing them. To achieve the objective of addressing such important issues for an enhanced performance by the Public Complaint Commission, the following recommendations are hereby made:

6.3.1 Amendment of some problem sections

In order to allow for a better appreciation of the role of Public Complaint Commission and a more effective performance, section 6 (1) (2) & (3) of the Public Complaints Commission Act should be amended to remove all unnecessary restrictions placed by the section on the powers of the Commission. This recommendation is more pronounced in relation to section 6 (d) & (e) which oust the competence of the Commission to investigate any matter relating to anything done or purported to be done by officers of the armed forces and the police or that a complainant must have exhausted all available legal and administrative procedure before his complaint is entertained by the Commission. These sub-sections i.e. 6 (d & e) are sure to stand as obstacles in the wheel of the Public Complaint Commission's smooth operation.

6.3.2 Power to Enforcement

In order not to render the Public Complaint Commission as a toothless bull dog that can only bark but can't bite, it is hereby recommended that its decisions should be made enforceable and binding on the parties. The fact that the Commission is a watch dog for social justice and promoter of peaceful conduct of state affairs, it is necessary to equip it with the necessary administrative wherewithal to be able to make its decisions binding. It shall be given the power to prosecute and follow its cases to logical conclusions before some designated high courts similar to the law and practice governing the conduct of Economic and Financial Crimes Commission (EFCC). This will further make the Commission achieve its vision statement of ensuring the protection of the vulnerable individuals against administrative injustice which it is irrevocably committed to. Presently, a great many Nigerians have continued to show more interest and confidence in the work of the Commission and if given the necessary support and cooperation, it will achieve its goal.

6.3.3 To Improve Financial Allocation

Lack of sufficient funds allocation by the Federal Government to the Commission has no doubt constituted a cog in the wheel of the Commission's work and progress due to for example lack of adequate operational vehicles to move round the country for investigation. This has also affected the training of its personnel especially investigating officers who need to update their skills and knowledge for optimal performance. It is therefore recommended that

government should improve on the financial allocation to the Commission for optimal performance of the commission.

6.3.4 Provision of modern equipments and e-complaint devices

Manual complaints requiring signature and thumb print of the complainants should continued. But with development and advancement in the current electronic trends and other equipments, the electronic means of lodging complaints though the internet and other related devices should be accepted and given due consideration among other things. This is an idea for future consideration knowing that the Commission is established by law with structure and wherewithal to investigate and address grievances of the people. It should therefore be enabled properly with modern equipment to reach out to the people it is aimed to serve.

6.3.5 Re-visiting Qualification of the Commissioners

In view of the onerous and unique duties of the Commission particularly its role of protecting the vulnerable individuals against administrative injustice, it is expedient and preferable that the minimum qualification for appointment as commissioner of Public Complaint Commission shall be retired judicial officer or a person of equivalent rank in the armed forces, police or para-military, provided that the chief commissioner shall always be a retired justice of the Court of Appeal or Supreme Court.

6.3.6 Establishment of Public Complaints Commission in all Government Establishments

There should also be Public Complaints Commission workers in all the service compact units (**Servicom**) in government establishments including public hospitals where patient's complaints would equally be entertained. Also as practiced in Australia, the Nigerian Public Complaints Commission should see the police as one major collaborative unit where criminal offences would be closely monitored thereby ensuring that appropriate measures are being taken.

6.3.7 Enhancement of condition of service

The Commissioners and the staff of the public Complaints Commission should be paid better salaries to avoid temptation and ensure that the staff work in environment devoid of hardship.

6.3.8 Maintenance of good working relationship with similar Agencies

It is important for the Public Complaints Commission to maintain cordial and good working relationship with other organizations like the Independent Corrupt Practices and other Related Offences Commission (ICPC), Economic and Financial Crimes Commission (EFCC) and Code of Conduct Bureau. This partnership will impact positively on the Commission especially in the fight against corruption which has done a lot of harm to the National Economy.

6.3.9 Need for periodic review of strategic plan of action

Finally, it is hereby recommended that the Public Complaints Commission should also make concerted efforts towards designing new strategic plan for specific period of time say 2011 – 2013 which will guide the direction of its activities for the next three years and beyond and to ensure a review after every 3 years so as to ensure improvement in timeliness of complaint handling processes are sustained.

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