

NOTES ON
ADMINISTRATIVE LAW

By

Usman Bappi

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THE CONCEPT OF ADMINISTRATIVE LAW

INTRODUCTION

Administrative law is that branch of the law that developed in response to the socio-economic functions of the State and the increased powers of the government. As the State developed, the relationship between inter-governmental agencies became complex; there was therefore the need to regulate the relationship as their complexity increased – a law that would regulate the relationship of the different agencies as well as act as checks on the exercise of powers of these governmental agencies; and also to defend the rights of citizens from governmental. Furthermore Administrative law is a branch of public law. Public law is the branch of law regulating the relationship between the citizen and the State. Administrative law is a public law category in the sense that it deals with the intercourse between governmental institutions on the one hand and private individuals or corporations on the other. Because of the involvement of the modern State in activities hitherto the exclusive domain of non-governmental actors, there has been the need for governments to establish many agencies that is, ministries, parastatals, bureaus, departments, etc. for the actualization and implementation of governmental projects and programmes. It is also a study of governance; congress or parliament creates authority, the President enforces that authority and the courts confine or discipline the exercise of that authority. Thus, the starting point for many administrative law cases is an act of parliament that allows the agency to function.

Overview of Administrative Law

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

Definition and Nature of Administrative Law

It is indeed difficult to evolve a scientific, precise and satisfactory definition of administrative law. Many jurists have made attempts to define it, but none of the definitions has completely demarcated the nature, scope and content of the subject. Either the definitions are too broad, and include much more than necessary or they are too narrow and do not include all the essential ingredients. Like many legal terms, 'administrative law' does not possess a universally acceptable definition. Therefore,

each definition reflects the orientation of the definer. Nonetheless, several attempts have been made to define or, at least, describe the term. It is our intention to consider the various definitions that have been offered by scholars with a view to our abstracting the features common to them. Ivor Jennings defines administrative law as: Administrative law is the law relating to the administration. It determines the organization, powers and duties of administrative authorities. According to Osborn's law Dictionary (quoting Dicey) "administrative law is the law relating to the organisation, powers and duties of administrative authorities." H. W. R. Wade in his book "Administrative Law," eighth edition, argued that administrative law is concerned with the operation and control of the power of administrative authorities with emphasis on functions rather than structure. He went further, stating that: "Administrative law is the law relating to the control of governmental powers." In the words of Sir Ivor Jennings: "Administrative law is the law relating to administration. It determines the organisation, powers and duties of administrative authorities on their own side." Administrative law, according to B. O. Iluyomade and B. U. Eka in their book "Cases and Material on Administrative Law" is "that body of rules, which aim at reducing the areas of conflict between the administrative agencies of the State and the individual." To P. A. Oluyede, administrative law means that branch of the law, which vests powers in administrative agencies, imposes certain requirement on the agencies in the exercise of the powers and provides remedies against unlawful administrative acts." According to Peter Leyland and Gordon Anthony: It is regarded as the area of governmental powers, which originate in primary legislation or in the prerogative .It embodies general principles which can be applied to the exercise of the powers and duties of authorities in order to ensure that the myriad of rules and discretionary powers available to the executive conform to basic standards of legality and, fairness. These definitions by different authors confirm the fact that there is no single definition of the subject; all definition depends on the semantic, background and personal idiosyncrasies of the writers. Generally, notwithstanding the problem associated with finding a single definition of the subject, it is a branch of law that aims at keeping the powers of government within the citizen against their abuse, and where abused, to provide remedy to the aggrieved citizen.

Criticisms of the definition

Even though this is perhaps, the most widely accepted definition of administrative law, it is not without its attendant criticism. According to Griffith and Street, there are some difficulties associated with this definition. Firstly, it does not distinguish administrative law from constitutional law; secondly, the definition is seen as too wide. For the law which determines the powers and functions of administrative authorities may also deal with substantive aspect of such powers. For example, legislation relating to public

health services, houses, town and country planning. But these are not included within the scope and ambit of administrative law. And thirdly, it does not include the remedies available to an aggrieved person when his rights are adversely affected by the administration. Kenneth Culp Davis defines administrative law as follows: "Administrative law is the law concerning the powers and procedure of administrative agencies, including, especially, the law governing judicial review of administrative action". According to Davis, an administrative agency is a governmental authority, other than a court and a legislature which affects the rights of private parties either through adjudication or rule-making. This definition, though in one respect is proper as it puts emphasis on procedure followed by administrative agencies in exercise of their power, but it does not include the substantive laws made by these agencies. It has also been criticized on the ground that it does not include many non-adjudicative and yet administrative functions of administration which cannot be characterized as legislative or quasi-judicial. Also, is the fact that it puts an emphasis on the control of the administrative functions by the judiciary, but does not study other equally important controls, e.g. parliamentary control of delegated legislation, control through administrative appeals or revisions, and the like, Administrative law is the law relating to the control of governmental power, other than the power of Parliament, and the body of general principles relating to the functioning (as opposed to structure) of public authorities: Wade & Forsyth. Its primary purpose is, therefore, to keep the powers of government within their legal bounds so as to protect the citizen against their abuse: Wade & Forsyth A first approximation to a definition of administrative law is to say that it is the law relating to the control of governmental power. A second approximation to a definition is: Administrative law may be said to be the body of general principles which governs the exercise of powers and duties by public authorities.

The primary purpose of administrative law, therefore, is to keep the powers of government within their legal bounds, so as to protect the citizen against their abuse. Professor P.A. Oluyede sees administrative law as that branch of our law which vests powers in administrative agencies, imposes certain requirements on the agencies in the exercise of the powers and provides remedies against unlawful administrative acts. In the view of David Scott and Alexandra Felix, administrative law is broadly defined as the law which regulates the exercise of power conferred under the law upon governmental bodies. In this definition, the grant of power is not expressed but implied. One area that the above definition ignore, like Davis' definition is that the remedies invocable by persons who may be adversely affected by administrative acts. Thus, Bernard Schwartz definition of administrative law as that branch of law which controls the administrative operations of government, setting forth the powers which may be exercised by administrative agencies, laying down the principles governing the exercise of those

powers, and providing legal remedies to those aggrieved by administrative actions. It is crystal clear from the various definitions above, and as earlier pointed out, that there is no comprehensive definition of administrative law, and that it only depends on the view point of the definer.

The Scope of Administrative Law

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

The Civil Service of the Federal, and Local Government

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

Administrative decision and rule making procedures

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

The control of administrative power

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

Delegated legislation and delegation of powers

Under civilian regimes, the laws made by the federal legislature are called acts, (for instance, the Petroleum Act, the Matrimonial Causes Act, and so on) while the ones made by the states are called laws of the State, (for instance, the Wills Law of Lagos State, Lagos State Environmental Protection Agency Law, and so on). However, under

military regimes, federal laws are made by Decrees. Edicts are Laws promulgated by the state while the laws made at the local government are called bye-laws. The laws passed by the law making bodies are called legislation. Where legislation provides that a constituted authority responsible for administering the law can make further laws or regulations to enable him carry out his or her function, this latter law is called delegated legislation.

Judicial remedies

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

Functions of administrative law

- a. A major function of administrative law is that it enables the task of government to be performed. This is made possible with the creation of administrative agencies by law, equipped with powers to carry out public policies as approved by parliament. Government makes policies and for these policies to be put into practical effect agencies are therefore created for its full implementation.
- b. The second function of administrative law is that it governs the relations between an administrative agency and those individuals or private bodies over whose affairs the agency is entrusted with power. It is a means of control upon administrative power because it grants the individual power to challenge the action of an agency which is contrary to law or beyond the powers of the agency or which has adversely affected the individual.
- c. A third function of administrative law is that it governs the relations between various administrative agencies. Finally, administrative law exist to ensure that public authorities take their decision in line or accordance with the law and it equally serve as a means of promoting accountability of public authorities.

The Functions and Powers of Administrative Authorities

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

government policies on petroleum resources. In the health sector, the functions include promoting of public health, conduct of medical research, funding of health institutions throughout the country depending on whether the health sector is that of the federal or state. In the education sector, their responsibility includes but is not limited to the implementation of policies on education. In the area of communication, the main functions are the implementation of policy on communication and promotion of the knowledge and use of information and communication technology. The maintenance, equipment, funding and general welfare of the Nigeria Police is the total function of the police affairs. The aforementioned functions point to the fact that functions to be performed by the administration will depend on the organisation, body or authority.

The Powers of Administrative Authorities

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

By and large, the powers of administrative authorities include:

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

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

(iii) The powers to investigate and make enquiry, gather information and facts from people, organization or society. An example is a committee set up to look into a land

crisis between or among settlers of a domain bothering on the ownership of the land. The committee has the right to request information, materials and facts from all the factions so as to determine the real ownership of the said property.

(iv) The administrative authority has the power to direct a body or individual or community to do or refrain from doing an act. A town planning section of the local government can refuse someone from building a house where such will contravene the town planning law. From the above, it is clear that the

Constitutional Supremacy is closely related to the rule of law. The latter is general while the latter is particular. Constitutional supremacy is a concept that rejects the rule of man but prefers the management of the affairs of men and things by institutions established in accordance with law. It seeks to avoid a situation where the whim and caprice of man would determine the nature or character of benefits or burdens available before any person or groups of persons. In the CFRN, the concept is alive and well especially when we look at the detailed provisions of Chapter IV which provides for the fundamental human rights of the citizens. We must recall that these provisions are to be read or understood in the light of judicial interpretation. The concept is particularly significant for Nigeria in so far as it seeks to assure everyone including the minority groups of equal protection as can be deciphered through provisions on human rights and on Federal Character

STRUCTURE AND ORGANIZATION OF GOVERNMENT

Under the 1999 constitution of the Federal Republic of Nigeria, separation of power is a fundamental constitutional principle. Relevant sections of the constitution place each of the basic powers of government in a separate branch. Section 4 deals with the legislative powers; section 5 deals with executive powers and section 6 is concerned with the judicial powers.

The Executive

This is the arm of government vested with the authority to implement execute and enforce laws made by the legislature. The executive is the Centre of government who initiates and executes policies and supervises the day-to-day administration of a state.

Functions of the executive

1. The executive formulates policies.
2. The executive maintains law and order.
3. It Implements the laws made by the legislature.

4. Military function
5. Making of budget
6. Pardoning of convicts
7. Maintenance of external relationship
8. General administration
9. It executes initiates bills and recommends them to the legislature for consideration.
10. The executive negotiates for international treaties under the approval of the parliament.

Types of Executives

1. Single executive (Nigeria, USA).
2. Dual executive (Belgium, UK).

The Legislature; Parliamentary Supremacy Parliamentary supremacy means the independent and unlimited power of the parliament to make, amend or repeal any law on any matter whatsoever in the country. This concept is a legacy of the British Parliamentary democracy, which is now being adopted in many countries of the world. Under an unwritten constitution, it refers to the capacity of the parliament to :i) Pass any law on any matter in the country **and** ii) Amend or repeal any law in the same way as ordinary legislation, no matter how fundamental the laws to be amended are. This means that the parliament has a transcendental and absolute power, which cannot be limited or confined. As rightly put by Dicey, "Parliament can do anything except make man a woman or woman a man." It is arguable that Parliament can do so but it would not, because it would be unreasonable. William Blackstone commenting on the parliamentary supremacy of the British parliament said: It had sovereign and uncontrollable authority in making, confirming, enlarging, restraining, abrogating, repealing, reviving and expounding laws concerning matters of all possible denominations This supremacy of the parliament is absolute and no court can invalidate any law made by the parliament according to law. In addition, the powers to make and unmake laws cannot be confined or limited. As rightly put by Lord Edward Coke, CJ thus: "of power and jurisdiction of parliament for making of law and proceeding by bill, it is so transcendent and absolute that it cannot be confined for causes or person within any bounds." This is the first arm of government vested with the power and authority to make laws. It defines the right duties and obligation of the citizens.

The legislature is given different names in different countries like national/state assembly (Nigeria). Parliament in Britain, congress in US, NASS in Nigeria etc. The legislature can also be one or two houses depending on the constitution of the country.

Functions

1. Makes laws.
2. Maintains strict surveillance over the actions of the executive.
3. Acts as a check on the excesses of the executive.
4. Sees to the amendment of the constitution.
5. Controls national finances through budget approval.
6. Approves all major policies of the executive.
7. Plays active role in regulating and ratifying international treaties.
8. Approves appointments
9. Probes functions and removal of the president
10. As a platform expression of public opinion

Types of Legislature

1. Unicameral
2. bicameral

Bicameral Legislature

This is the legislature arm that consists of two houses or chambers; i.e. the upper and lower house. Examples of countries with bicameral legislature are Nigeria and UK.

Advantages

1. It accommodates different interest groups in either the upper or lower house.
2. It ensures the success of a true federalism.
3. It ensures that bills and legislations are exhaustively discussed.
4. It prevents arbitrary and whimsical imposition of law on the people by a single house.
5. It also promotes individual liberties.
6. It fights and protects the interest of the minorities.

Disadvantages

1. It leads to unnecessary delay in making laws and passing of bills.
2. It is very exorbitant to operate.
3. It can lead to unhealthy rivalry between the two houses.
4. It leads to duplication of functions, which results to waste of human and financial resources.

Unicameral legislature: This is the legislative arm that consists of only one house/chamber.

Advantages

1. It averts unnecessary duplication delays and possible deadlock in passing bills.
2. It is relatively cheap to operate.
3. It fastens easy passage of bills.
4. It is good in times of emergency.

Disadvantages

1. It is not good for the federal system government.
2. It leads to the oppression of the minorities.
3. It may lead to bad and ill-divest legislations.
4. It makes nonsense of democracy.
5. It promotes hasty passage of bills into law.
6. It may become dictatorial or tyrannical.

Bills: - A bill is a written suggestion for a new law that is presented to a country's parliament so that its members can discuss on it before passing it into law.

Types of bills

1. Appropriation bill
2. Money bill
3. Private members bill
4. Public bill

The stages of passing a Bill into law

1. First reading: this is a stage when the proposed law is drafted and presented to the clerk of the house by a minister or at the parliament.
2. Second reading: this is a stage when the person that brought the bill to the house tries to explain the purpose of the bill to the house.
3. Committee stage: this is a stage when the bill is referred to a committee depending on the relevance of the bill. At this stage, the bill is considered section by section and amendments proposed and voted for.
4. Report stage: this is the stage when all the findings of the standing committee or that of the house is reported to the entire house after amendments have been made.
5. Third reading: this is the final stage of the bill. At this stage, a thorough and careful examination of the bill is taken to ascertain its credibility before the bill is finally taken to the president or head of state for assent.

The Judiciary:

This is the third arm of government vested with the authority to interpret and apply the laws of the land in a given state when they are broken or violated. They also adjudicate in disputes between the executive and the legislature and between government and the citizens and organization or between people. The judiciary acts as watchdog of the law by making sure that laws made are obeyed and those who refused to obey (offenders) are punished. .

Functions of the Judiciary

1. It interprets law to avoid ambiguity.
2. Administers punishment to offenders of the law.
3. Interprets the constitution.
4. It is the Guardian of the constitution
5. It determines election petition
6. It protects the right of citizens
7. It has law-making function
8. Safeguards the rights and liberties of citizens.
9. Adjudicates civil disputes between citizens, individuals, institutions and government.
10. Checks the excesses of both the executive and legislature through Its powers of judicial review.

Note: the judiciary is said to be independent when it has the ability to interpret the laws freely and pass judgment impartially without fear or favour.

Essential characteristics of the judiciary

1. Impartiality: the judiciary should be free and impartial in passing judgment of any kind.
2. Permanence: the judiciary stays while legislature and executive comes and goes.
3. Political neutrality: the judiciary should be neutral in politics. The judges can vote but should not engage in partisan politics.
4. Reconciliation: the judiciary reconciles disagreement between the other two arms of government wherever there is problem.
5. Longevity of judicial offices: there should be security of tenure for the judges.
6. Independence; the judiciary should be independent from the absolute control of either the executive or the legislature.

Problems on the independence of the Judiciary

1. Inadequate court facilities such as stationary, light, water, verbatim reporting machine.
2. Political interference by the government in power.
3. Political appointments: the executive arm often influences the appointment of judges.
4. Insufficient personnel.
5. High level of bribery and corruption.
6. Poor working conditions and disobedience to court orders.

Judicial independence and its importance to a nation

1. It helps to defend the rights and liberty of citizens.
2. It helps to fight against improper use of power.
3. It helps to ensure fair play in the adjudication of cases.
4. It promotes the appointment of qualified judges based on merit and not on political consideration.
5. It helps to protect the constitution of a nation by objectively interpreting it when the need arises.

The Military

The military government of Nigeria is mainly divided into two levels of the federal military government and the state military government with the following organs and structures.

The Head of State/the President

The head of state sometimes called the president is the Commander in Chief of the Nigerian Armed forces. As the head of state he presides over the meeting of the AFRC, the council of state and the council of ministers. It is his duty to appoint and dismiss ministers, ambassadors, high commissioners, chief justice, judges of the Supreme Court High Court judges etc. all subject to the approval by the AFRC.

Armed Forces Ruling Council (AFRC)/Supreme Military Council (SMC)

The SMS with the new nomenclature of the AFRC is the highest legislative organ of the military government in Nigeria. It is composed of the Head of State/the President and Commander in Chief of the Armed Forces who is the chairman, the chief or general staff, the chief and chairman joint chief of staff, the Commandants of the army, navy and the air force popularly called the service chiefs, the IG of police, Justice Minister,

Secretary of the Federal Military Government (SFMG/SGF) and the high ranking military officers.

The Council of State

This organ advises the head of state that is the president. It is made up of the Head of State/President as chairman, the Chief of General Staff former Head of State and all state military administrators or governors.

National Council of Ministers

This is the organ that implements the decision and policies made by the AFRC. It is headed by the Head of State/President and assisted by the Chief of General Staff with all Federal Ministers as members.

The State Military Administrator/Governor

The state military administrator/governor is the chief executive and the head of the state military government and the representative of the head of state in the state. He is responsible to the head of the federal military government and the Commander in Chief of the Armed Forces. The military governor performs both the executive and the legislative functions. He is the chairman of the state executive council. He appoints the state commissioners and other state officials.

The State Executive Council

This organ is responsible for the formulation and execution of the state military government, in decision and policies as well as maintenances of law and order in the state. It is headed by the military governor with the commander of the army unit in the state, the state commissioner of police, the secretary to the state military government (SSG), and state commissioners etc. as members.

DELEGATED LEGISLATION

It is very difficult to give any precise definition of the expression 'delegated legislation.' It is equally difficult to state with certainty the scope of such delegated legislation. Mukherjea, J. rightly says: '**Delegated legislation is an expression which covers a multitude of confusion. It is an excuse for the legislators, a shield for the administrators and a provocation to the constitutional jurists...**'

According to Salmond, legislation is either supreme or subordinate. Whereas the former proceeds from sovereign or supreme power, the latter flow from any authority other than the sovereign power, and is, therefore, dependent for its existence and continuance on superior or supreme authority. Delegated legislation, thus, is a

legislation made by a body or person other than the Sovereign in Parliament by virtue of powers conferred by such sovereign under the statute. A simple meaning of the expression 'delegated legislation' may be given as: 'When the function of legislation is entrusted to organs other than the legislature by the legislature itself, the legislation made by such organs is called delegated legislation.'

Legislation itself has been defined as:

"A law passed by Parliament or other law maker such as decree or edict or a military government." "legislation is the process of passing a law. Many laws made by parliament may contain a provision, empowering the authority that will administer the law to make further laws or regulations to enable it carry out its functions. The laws made by parliament is known as the primary or parent law, while the rules and regulations made by the administrative authority under the power to make law delegated by parliament is known as subsidiary legislation or delegated legislation"

It has also been defined as: *"The rules and regulations made by any person or body authorized to do so by an Act of the legislature."*

All acts of delegated legislation are made under the authority and with reference to the conditions laid down in the parent Act. The court emphasized this point in the case of **Williams v. Dr. M.A. Majekodunmi** (1962) W.R.N.L.R 174 at p. 178 when it held that: *"the fact is that the laws of Nigeria begin with the primary laws passed by the legislature itself, and then go to give the subsidiary legislation made by persons or bodies authorized by the legislature to supplement its enactment"*

Delegated legislation is law made by an administrative agency. Such subsidiary legislation comes in the form of rules, regulations, byelaws, policy decisions, directives, etc. It is important to note that the concept of 'subordinate legislation' implies the existence of the beneficiary and the benefactor of the power or authority to make subordinate legislation. This is another way of saying that the beneficiary of the power to make delegated legislation occupies a position lower than that of the benefactor. Thus, the benefactor is the repository or embodiment of power, part of which power he donates or cedes to the beneficiary.

Delegated legislation in Nigeria

Law making in Nigeria is constitutionally the function of the legislature, and the law-making powers of the legislature derives from the Constitution as a grant of authority direct from the people by whom the constitution is framed. Section 4 of the 1979 and 1999 Constitutions vests the legislative powers of the Federal Republic of Nigeria in the

National Assembly, and the legislative powers of each state in the House of Assembly of that state. Apart from these constitutionally established legislative bodies, no other person or body can validly make or unmake any law in the country.

Law making involves the determination and declaration of policies in the form of legislative enactments, whereas executive functions call for the application or implementation of the policies contained in the laws made by the legislature.

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

Methods of Delegating Powers

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

a) General delegation

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

b) Specific delegation

Specific delegation enumerates the subject matters on which the regulations may be made. The donee of such power is restricted to taking action only in respect of the specified matters. For instance SECTION 10(2) (a)–(c) of the Nigerian National

Petroleum Corporation Act, Cap. N123, Laws of the Federation of Nigeria, 2004 empowers the minister to "delegate to the alternate chairman (where one is appointed or the chief executive of the inspectorate such powers as are conferred upon him under the Oil Pipe lines Act, the Petroleum Act or any other enactment as he may deem necessary and in particular - - - for the following matters:

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

Requirements of a delegated legislation:

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

Powers that cannot be delegated

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

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

In addition, generally, the following functions cannot be delegated:

- iii) Duty which must be performed personally; and iv) Duty which involves exercise of discretion. Thus, for a power or function to be delegated, it must be that which another person can perform and no provision against it have expressly been made. In *A. G. Bendel State vs. A. G. Federation & 22 Others* (1981) ALL NLR 85, the Government of Bendel State brought an action challenging the passage of the allocation of revenue (federal account) bill into law by joint finance committee of both houses of the National

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

Justification for Delegated Legislation

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

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

ii). It enables experts to legislate on technical and specialised matters on which many of the members of parliament may lack the requisite knowledge that may be required to legislate in detail. Buttressing this point, the British Committee on Ministers Powers in 1932 said, "The truth is that if parliament were not willing to delegate law making power, parliament would be unable to pass the kind and quality of legislation which modern public opinion requires."

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

iv). It affords quick response to a state of emergency: Parliament may not be able to sit and deliberate due to their cumbersome procedures to be able to respond to situations at hand as they unfold. Delegation of powers is desirable to address urgent situation.

Criticism against Delegated Legislation

The arguments against the practice of delegated legislation include:

i). Delegated legislation is a usurpation of the powers of the parliament to make laws for the nation. It waters down the doctrine of parliamentary supremacy.

ii). It is a negation of the concept of rule of law as the usual procedures for the making of laws are not always observed.

iii). The control of delegated legislation is inadequate: Parliament has no time, opportunity or the special expertise that may be required to keep close surveillance and make needed objections to administrative legislations.

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

The Rule against Sub-Delegation

As a general rule, a delegate may not sub-delegate his/her authority, power or functions to another person, authority, body or agency. This rule is couched in the maxim "*Delegatus non potest delegare*". In *A. G. (Bendel State) vs. A.G. (Federation)* (Supra), the Supreme Court held inter alia that, two houses of the National Assembly cannot delegate its law-making functions to a committee of the House. However, statute may provide for sub-delegation to certain persons and under certain condition. For instance, Section 10(2) of the NNPC Act, Cap NI23, LFN 2004 empowers the minister of petroleum to delegate to the alternate chairman or the chief executive of the petroleum inspectorate such powers as conferred upon him. Generally speaking, a delegate may sub- delegate duties that do not involve exercise of discretion such as:

1. Ministerial powers, which include the signing of letters, memorandum and instruction on behalf of the person delegating the power.
2. Executive or administrative powers, which involve issuing of license, permits, institution of legal proceedings, and so on. However, a delegate cannot sub-delegate the following functions or powers:

CONCLUSION

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

CONTROL OF DELEGATED LEGISLATION

The Legislative Control

The legislature may delegate powers to the executive to perform certain legislative functions. In the same vein, it possesses the power to control its exercise. The word 'delegation' implies that the powers are committed to another person or body, which are as a rule, always subject to resumption by the power delegating (it) and many

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

The Executive Control

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

Judicial Control

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

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

ADMINISTRATIVE PANELS AND TRIBUNALS OF ENQUIRIES

Tribunals is a body with either administrative or judicial (or quasijudicial) functions usually set up by government under statute outside the regular court system to investigate matters of public importance or to hear and determine matters between parties. The tribunals are also faced with some problems like every other organisation. In *FCSC vs. Laoye* (1989) 2NWLR Pt 106 at 652, the Supreme Court unanimously frowned at the use of tribunals instead of courts for the trial of persons, in that case, *Opota JSC* said: The jurisdiction of the ordinary courts to try any allegation of crime is a radical and fundamental tenet of the Rule of law and the cornerstone of democracy. If the Executive branch is allowed to operate through tribunals and executive investigation papers, that surely will be a very dangerous development. This court cannot be a party to such dangerous innovation. It is only when one is on the receiving end that he can fully appreciate.

Adjudication

When the agency exercises its judicial function by engaging in what is sometimes called formal adjudication, it uses a process that is very much like a civil bench trial in court. These proceedings—while subject to some variation depending on whether the agency is at the federal or state level and on the precise identity of the agency and the matter being adjudicated—typically permit an oral hearing with direct—and cross—examination, testimony under oath, the development of a complete and exclusive record on which the decision is to be based, and the presence of a neutral presiding officer (known on the federal level as an *administrative law judge*). However, court and agency

procedures are not identical. Unlike civil courts, most agencies do not use formal rules of evidence or permit the comprehensive discovery allowed under, for example, the Federal Rules of Civil Procedure. Elaborate pre-trial and post-trial procedures are rare, and juries are unheard of. Nonetheless, the similarities between agency adjudication and civil litigation are still far greater than the differences.

Types of Tribunals of Enquiries

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

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

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

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

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

Classes of Administrative Panels and Tribunals

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

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

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

iii) **Other Bodies** which perform adjudicatory role comprise administrative authorities, which make policies, and decisions, which affect people one way or the other. These administrative authorities include the president of the Federal Republic of Nigeria; state governors; ministers of the federation; commissioners of the state; director general of parastatals and so forth. The functions of these public officers as provided by statute are mainly administrative. The decision taken by a public officer may affect someone who may challenge the decision, for the court to determine whether such decision was properly made in accordance with the law. In *Imade vs. Inspector-General of Police* (1993) in WLR PT 271 Pg. 608. The matter was dealt with in an orderly room proceeding by the police authorities. He was found innocent of the charges; the appropriate authority after considering the report instead dismissed the appellant. The appellant brought an action for wrongful dismissal and for reinstatement, payment of his salaries and entitlements. The court of appeal granted all the appellant's prayers held that where a police officer disobeys a police regulation or directive which amount to an allegation of crime, such officer like any other person, must first be tried in a court of law or criminal tribunal before any disciplinary action can be taken against him, in any orderly room proceedings.

Right to Fair Hearing

In connection with the right to fair hearing, S. 36(1) provides: In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence or impartiality. Fair hearing comprises so many ingredients. First, it contains the Latin maxims – *audi alteram partem* and *nemo iudex*

in causa sua. Audi alteram partem means that the other side must be heard. In other words, a court, tribunal or arbitral body must not determine a matter upon hearing only one side to the dispute. Any decision produced by that approach or process is a nullity. Nemo judex in causa sua means no judge can be a judge in his matter. It is a rule against bias, a rule that disqualifies a person occupying an adjudicatory office from seating in judgement over a matter in respect of which he has an interest. See the case of **Alakija v. Medical Disciplinary Committee [1959] 4 F.S.C. 38**. Here, a medical practitioner alleged that the Medical Disciplinary Committee (MDC) did not conduct the enquiry in compliance with the rules of natural justice in the sense that the Registrar who was actually the prosecutor participated in the Committee deliberations that convicted him. The Supreme Court accepted the contention of the appellant to the effect that the decision of the Committee was unconstitutional for violating the rule against bias. Under *S. 36(5) (c)*, a person charged with a criminal offence is entitled to defend himself in person or through the agency of a legal practitioner of his choice. This provision came up for consideration in the case of **Awolowo v. Minister of Internal Affairs [1962] L.L.R. 177**. The issue was whether the legal practitioner contemplated by this provision could be one from any jurisdiction. In what one may suggest to be an act of judicial legislation, the Supreme Court held that the chosen legal practitioner must be the one who is qualified or competent to practice in Nigeria as of right.

Scope and Powers of Tribunals of Enquiries

At the early stage, only the ordinary courts are charged with the duty of adjudication both in criminal and civil matters. However, judicial tribunals are now saddled with such functions as ordinary courts do and there has been proliferation of tribunal activities in the successive military regime in Nigeria between 1966 and 1999. The powers, jurisdiction and composition of tribunals of enquiries are usually specified in the statutes creating them. For instance, Section 285 of the 1999 Constitution provides for the establishment and jurisdiction of election tribunals. Administrative tribunals normally have defined jurisdictions under their statutes, which must be strictly adhered to, or else the doctrine of *ultra vires* may be invoked by the court against them. For instance, a statute creating professional tribunals regulates guidelines for the proceeding of such tribunals. Some statutes even provide that the rule of court should apply. It is pertinent to note that administrative tribunals of enquiries are bound by the principles of natural justice: "*Audi alteram Partem* and *Nemo judex in causa sua*." Where they take decisions in disregard of these maxims, such decisions are regarded as null. Most decisions of administrative tribunals of enquiries, which have been nullified, are based on the ground of nonconformity with principles of natural justice. See the submission of Justice Kayode Eso JSC in *LPDC vs. Fawehinmi* (1985) 2 in WLR (pt7) 300 at P. 347: It is not easy to place a tribunal in the compartment of purely administering predominantly

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

Nature of Independence of Administrative Tribunals

Independence of administrative tribunals simply connotes that tribunals make their decisions independently and are ultimately expected to be free from political influence. Judicial independence is recognised to be a significant factor in maintaining the credibility and legitimacy of international tribunal system and administration. One major reason for this is the unsteady political atmosphere in the country, which accounts for unsteady policies and the resultant confusion. It is a common feature for new governments to dismantle bodies set up by the previous regime on the ground of improvement, but to end by setting up other untidy bodies, that may later be equally dismantled by a secondary government. The first general observation of independence of tribunal is that it is a means to an end rather than an end itself. The goal of judicial independence is to provide objective guarantees to litigants that tribunal judges will adjudicate upon their disputes in a fair and impartial manner. Judicial characteristic and mode of conduct links tribunal independence with the process of adjudication itself rather than of the person who is doing the adjudication. There is, however, a second time of thinking in Nigeria in which tribunal independence is viewed as the foundation for a set of governance relationships that are needed to enable tribunal to carry out their statutory mandates. The purpose of independence series is to ensure that the tribunal is able to carry out its statutory mandate in a manner that has integrity.

Relationship between Independence and Accountability

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

government, accountability of these tribunals as administrative establishments is to sway public confidence in the perceived integrity of decision making of tribunals on matters where there are winners and losers and government/ authorities do not wish to be seen at taking sides. More so, to de-politicise decision making in areas of potential public controversy. In relation to the independence of tribunals of enquiries accountability measures is necessary because tribunals must be administered according to public standards of transparency, probity and efficiency as well as non-negotiation of natural justice principles. To this extent, administrative adjudication may be held accountable for different reasons. Inadequate legal knowledge, loyalty to the appointing government, , inadequate observance of legal procedure, application of draconian laws, violation of natural justice principles, secrecy of sitting, and so on. Accountability measure pre-supposes legislative control and executive control of administrative adjudication. Above all these is judicial control or review. This is because the tribunal of enquiries may have been set up by the legislature or the executive, and it may not want to upset the tribunal's findings so that through the tribunals finding, it will be able to achieve its set objective policy (for public good government hidden selfish agenda). Judicial control and review is the commonest and most favoured accountability measure/control of administrative adjudication for several obvious reasons such as *locus standi*, right of appeal, lack of jurisdiction, acting *ultra vires*, breach of fair hearing rules and so on. From the mode of creation, there are three types of administrative tribunals-statutory, authorised and single-officer tribunals. These are administrative tribunals created by statutes. In creating such, they provide for their establishment, composition, duties, powers and procedure. Since they are created by statutes the provision of the statutes must be strictly adhered to, otherwise such tribunals would be illegally constituted. Where specific persons are mentioned to belong to such bodies, the statute must be complied with. The minister cannot alter their duties, powers and procedures, if any.

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

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

Basic problems of Tribunals

The basic problems of tribunals are essentially as follows.

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

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

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

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

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

f) To legalise government hidden agenda: a tribunal in its strict sense is a mere rubber stamp to justify and legalise the predetermined results and create a legal basis for government to deal with and get rid of preserved opposition of the government. The tribunals are often a tool to enable the authority frame any person for misconduct, carry out a kangaroo trial, and return a guilty verdict, all with the aim to provide legal

cover to enable the authority get rid of the person. For instance, trial and execution of Ken Sarowiwa and the Ogoni during the military government of General Sanni Abacha.

Control of Tribunals

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

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

JUDICIAL REVIEW: Judicial review is a procedure where court can review administrative actions and decision in order to ensure that the executive complies with the provisions of the law or to ensure that justice is done. For example, the court could review a decision of the tribunal on the grounds of abuse of principles of natural justice. It is assumed that the rules of natural justice are known to almost all the systems of law and should at all times guide those who are saddled with the responsibility to discharge judicial functions. Statute authorising the exercise of certain types of powers is deemed to intend that those powers should be exercised in conformity with the rules of natural justice. The purpose of judicial review of the acts of public or administrative authorities is to ensure that the scope and limit of statutory powers are not exceeded by such authorities.

RIGHTS OF APPEAL UNDER TRIBUNALS

It is imperative that a tribunal is set up to investigate matters of public importance, to hear and determine such cases under specific statute enacted for that purpose. In most cases, the judgment of the tribunals lack rationale, and such aggrieved persons will want to seek for justice by way of appeal. There must be a right of appeal from the decision of the tribunal. Although there are numerous ways of appeals from various tribunals, the general principle still applies to every one of them. It should be noted that

an appeal may lie from a tribunal to a minister or commissioner, from a tribunal to a court of law, from a tribunal to the head of state or governor by way of confirmation of the decision or no appeal may lie at all.

Various Ways of Appeal under Tribunals

a) Tribunals to the court: This is a situation where an appeal goes from tribunals to the court on the ground that the enquiries were conducted in a manner contrary to the principles of natural justice. In *Alakija vs. Medical Disciplinary Committee* (1959) 4 FSC, 38 the appellant appealed from a decision of the Medical Disciplinary Committee, which had ordered that the appellant's name be removed from the register of medical practitioners for the period of two years. The appellant averred that the inquiry was conducted in a manner contrary to principles of natural justice, who was in fact the prosecutor took part in the Disciplinary Committee's deliberations. The Supreme Court held that the decision of the Disciplinary Committee could not stand and was quashed.

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

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

d) Tribunal to the head of state: this is a situation where the tribunal's decision shall not be treated as a sentence of the tribunal until confirmed by the Head of State. This

Tribunal and its kind do not provide for rights of appeal, it make it difficult for any aggrieved party to seek remedy by way of appeal.

Grounds of Appeal under Tribunals

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

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

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

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

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

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

6. **Breach of the rules of fair hearing:** The provision of section 36 of the 1999 Constitution on fair hearing is sacrosanct for anybody acting judicially or quasi-

judicially. If the tribunal fails to adhere to the rules of fair hearing, the decision of such tribunal can be subjected to an appeal in the law courts.

7. Non-observance of the principles of natural justice: This can be summed up as minimum standards of fair decision making imposed by law on tribunals. It is necessary for anybody acting judicially or quasi judicially. Strict adherence must be placed on principle of natural justice or else the decision of such tribunal will be set aside on appeal. The decisions of most tribunal are nullified based on the ground of nonobservance of principles of natural justice. Consider the dictum of Kayode Eso, JSC in Legal Practitioners Disciplinary Tribunal vs. Chief Gani Fawehinmi (1985) 2 NWLR (pt.7) 30 at p. 347: It is not easy to place a tribunal in the compartments of purely administering predominantly administering or one with judicial or quasi-judicial function. In my view, a purely administrative tribunal may turn judicial once it embarks on judicial or quasi-judicial adventure. The test to my mind should be the function the tribunal performs at a particular time. During the period in-course into judicial or quasi-judicial function, an administrative body must be bound in process thereof to observe the principles that govern exercise of judicial function...

Principles of Natural Justice

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

Audi Alteram Partem

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

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

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

PUBLIC COMPLAINTS

COMMISSION/OMBUDSMAN

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

The Reason for Establishing an Ombudsman

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

- i) Abuse of power by public authorities and private bodies and the inadequate control of these bodies especially in specific cases.
- ii) The inadequacy of the remedies put in place by the three arms of government, to wit, the legislature, the executive and the judiciary.
- iii) The need to make persons or body who are aggrieved by official conduct to be aware that a commission is on ground to receive complaint.
- iv) The obvious inadequacies of available internal administrative remedy system or check devices to handle and fairly deal with complaints of aggrieved parties.
- v) The general belief that litigation is often slow, complex, costly and strange to the ordinary man.
- vi) The essence of a specialised court system, where minor claims and relatively insignificant issues and grievances can be heard and speedily determined between parties.

vii) The fact that the Public Complaints Commission remedy system affords a cheaper and easier method of getting issues sorted out between parties without the expense of legal proceedings.

viii) The essential need to ensure the full protection of the civil rights and liberties of the people as enshrined in the constitution.

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

The Establishment of Ombudsman in Nigeria under a Military Administration

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

CONCLUSION

An attempt has been made to trace the history of ombudsman with reference to the Public Complaints Commission. The main objectives of the commission include keeping a balance between the citizen and the government official and staff or parastatals and, to ensure justice among ordinary citizens. It is also noteworthy that the Public Complaints Commission is an advisory body. It will make citizens grow conscious of their rights and will be able to ask for them as citizens do in more developed countries. Another point to note is that indiscipline is the main cause of almost all the ills in Nigeria society. Indiscipline breeds inefficiency, corruption and maladministration. In addition, the commission is to cure indiscipline in the society. The commission is an expression of democratic practice and the rule of law in Nigeria being a special

institution assigned with the task to control and ensure that administrative organs of the society respect the rights of the citizens, regardless of zonal standing. Anybody in the society has a right to complain against the society and get his/her complaint investigated and tried even if the highest official in the society is involved. All these are without costs to the complaining party.

SUMMARY

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

References.

- Adediran, M. O. (2004). *Essay on Tribunals and Inquiries*. Ibadan: University Press Plc.
- Akande, J. (2000) *Introduction to Constitution of the Federal Republic of Nigeria*. Lagos: MIJ Publishers.
Constitution of the Federal Republic of Nigeria, 1999.
- Oluyede, P.A. (2001.). *Constitutional Law Nigeria*. Ibadan: Evans Bros. 96
- Oluyede, P. A. 2007). *Nigerian Administrative Law*. Ibadan: University Press Plc.
- Iluyomade, B. O. & Eka, B.U. (1997). *Cases and Materials on Administrative Law in Nigeria*.(2nd ed.). Ile Ife: Obafemi Awolowo University Press Limited.
- Osamor, B. (2004). *Fundamentals of Criminal Procedure Law in Nigeria*. Lagos: Dee-Sage Nigeria Limited
- Egwummuo, J. N. (2006). *Modern Trends in Administrative Law*. (2nd ed.). Enugu: Academic Publishing Company.
- Emiola, A. (1998). *Remedies in Administrative Law*. Ogbomosho: Emiola Publishers Limited.
- Malemi, E. *Administrative Law*. (2008). (3rd ed.). Ikeja: Princeton Publishers.
- Egwummuo, J.N. (2000). *Modern Trends in Administrative Law*. Enugu: Academic Publishing Company.
- Momodu, K. M. & Olaide, A. (2011). *Constitutional Law & General Principles of Law for Professional Examinations* Edited by M.
- Yakubu, J.A. (2003). *Constitutional Law- in Nigeria*. Ibadan: Demyaxs Law Books. Hood, P. (2001), *Constitutional and Administrative Law*. (7th ed.). London: Sweet & Maxwell.
- Nigerian National Petroleum Corporation Act, Cap. N123, Laws of the Federation of Nigeria, 2004
- The Federal Environmental Protection Agency Act, Cap. F10, Laws of the Federation of Nigeria, 2004.
- Wade & Bradley. (1985), *Constitutional and Administrative Law*, (10th ed.). London: Longman.
- Mitchel, J. R. (2005). "Relationship between Tribunals and the Executive: A Government Perspective." Being a paper submitted to the Annual Conference of Canadian Council of Administrative Tribunals (CCAT).
- Oluyede, P. A. (2007). *Nigerian Administrative Law*. Ibadan University Press Plc.110
Constitution of the Federal Republic of Nigeria, 1999.
- Stephen, H. L. (1998). "Refugees, Administrative Tribunals and Real Independence: Dangers Ahead for Australia." *Washington University Law Quarterly*.