

The Relevance of Public Complaints Commission to Nigeria's Democratic Development

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ABSTRACT

The paper critically examines the statutory provisions on the Public Complaint Commission (hereinafter called the Commission), and make appropriate suggestions for reform. The Public Complaints Commission is a statutory creation with wide powers of inquiry and investigation: it has wide powers to receive complaints from members of the public against maladministration and misuse of administrative machinery by any public authority and companies or their officials. In Nigeria like other developing countries, the use of administrative power by officers of government and their institutions to oppress, victimize and discriminate against the citizenry is quite common and rampant. The use of administrative powers to flagrantly abuse the citizen's human rights and freedom is also a common occurrence. Thus, there is the need for government to intervene and take definite action to stem this problem that is gradually embarrassing the government, which led to the promulgation of the Public Complaints Commission Decree 31¹ (now ACT)² of 1975.

Keywords: Public Complaint Commission, Act, Ombudsman

INTRODUCTION

The Public Complaints Commission is better known all over the world as Ombudsman. The Ombudsman is known and performed by various agencies all over the world³. In United Kingdom they are known as "Parliamentary Commissioner for Administration (PCA). The Ombudsman in U.K is attached to the Parliament while there are also various other Ombudsman services in the United Kingdom⁴ which are specific for each industry or areas of influence. The history can be divided into three main periods. First around 1809 in an era of authoritarian monarchy. It developed as a check on executive power and incidentally it developed within the executive itself. The kings of Sweden had established it to ensure that their administration would vigorously respect and implement their laws. Ombudsmen are therefore public officers set up to straighten the authority of the executive over the other powers. Secondly, the regimes became more parliamentary, the office was towards the second half of nineteenth century, redesigned and moved away from the sphere of the executive and became the instruments of the parliament to monitor and control the executive. Today, it is still an essential element in the Swedish theory of "constitutional" control. Thirdly, by the twentieth century, it acquired its relative autonomy and has now evolved into the citizens instrument. Posing as the 'defender of civil rights against the arbitrariness of bureaucracy, it is no longer confined to the horizontal relationship between authorities but is also part of the vertical control of the state by citizens. As such, it combines the two basic dimensions of accountability in democratic systems⁵. The institution of the

Ombudsman spread in the second half of the twentieth century well beyond Sweden⁶. The Swedish model was copied in Norway⁷, Finland⁸, Denmark⁹, and by the common wealth countries in the early 1960s. Over the years, the institution of the Ombudsman has grown and become more specialized and politicized. While being appointed by the parliament, they still try to maintain their independence, and their very easy access, point and theoretical history ears without necessary bureaucratic controls has endowed the Ombudsman to the ordinary man.

In Nigeria, pursuant to the report of the Public Survive Review Road which was set up by the federal military government to walk into the conditions of service of public workers in the federation¹⁰. There are recommendations for the institution of a public Ombudsman in Nigeria. Upon the assumption of office as military head of state General Mohammed in 1975 constituted a team to study the institution of Ombudsman in other countries with a view to setting up a peculiar Ombudsman system in Nigeria. The team's report led to the promulgation of the Public Complaints Commission Decree (now Act)¹¹. The Commission consists of a Chief Commissioner and twelve other Commissioners¹² appointed by the supreme military council, and also responsible to the council. The Commission has power to initiate investigation on its own or upon complaint on administrative action by federal or state agencies, statutory corporations, local government authorities and public institutions and companies whether in the public or private sector and officials therefore. The law was amended in 1979, by virtue of Public Complaints Commission (Amendment) Decree 21, it made some amendments to the Public Complaints Commission Decree 31 of 1975, and it *inter alia* conferred immunity from legal process on the Public Complaints Commissions in the performance of their official duties. Rationale for the Establishment of Ombudsman in Nigeria include:

1. Generally, the Ombudsman is a state official appointed to provide a check on government activity in the interests of the citizens and to oversee the investigation of complaints of improper government activity in the interests of the citizen. There is an acknowledgement that Nigerian citizens were once generally oppressed and victimized by the administrative powers of the government. There is a need for intervention by a supposedly neutral voice or "history ears" for the benefit of the citizens who may have a complaint against the government.
2. Secondly, the overzealous officers of government are known for exceeding their powers and flagrant use of their administrative power for their own personal gains. Corruption and nepotism are the order of the day, the misuse of the institutions of government are also the order of the day. There is therefore a need for an intervention backed by law to protect arbitrariness injurious to the common man.
3. A very important reason for the establishment of the Commission is the cost of access to the courts. The common man may not be so endowed to finance court process and payment of legal fee. The Commission therefore is a formidable window to complaints against human rights abuses and other administration, maladministration and oppression.
4. Apart from the cost of litigation, it is quite obvious that not all oppressive acts or

abuse of office may be actionable. A lot of malfunctions are quite trivial in nature, and yet an irritation of a great dimension that the citizens concerned only need a higher authority to intervene and direct the anomaly and the issue is rectified. Some need an immediate and quick intervention than resort to the waste of time, energy and resources involved in litigation.

5. Lastly, the Ombudsman¹³ is a very important institution for government to receive feedback from the public on the activities of its officers and general polices and mode of administration of the government. The easy access to the Commission will also encourage the citizen to approach the office whenever there is a special need to do so¹⁴.

Having secured some of the reasons for the establishment of the Public Complaints Commission, we now turn our attention to the establishment of the Commission and a critical assessment of the law.

Appointment of the Commissioners: The Public Complaints Commission Act made provisions for the appointment of the Chief Commissioner by the National Assembly and the National Assembly is to determine the qualification for the office. The only statutory provision is that they must be of proven integrity. The law while giving the National Assembly the power to appoint the Chief Commissioner and the Commissioners fails to give the requisite qualifications for the Commissioners. This is a serious defect in the law as the role and duties of commissioners are a specialize kind. The National Assembly should be guided in their appointment by a legally and statutorily backed provision on the appropriate qualifications. The National Assembly must therefore look for a person not only of proven integrity, but must also consider the functions of the Commission and determine the qualification required, which must also include adequate experience in the public service of the federation, state or local government or in the private sector. The Commissioner must also possess adequate exposure in terms of dealing with the public and a good knowledge of the law¹⁵.

The law while providing for the appointment of the Commissioner also fails to specify who the Chief Commissioner report to. Though the Chief Commissioner and other Commissioners' emoluments are as directed by the president of the federation, the salary of the commissioners are to be paid out of the Consolidated Revenue Fund of the federation¹⁶. Payment of emoluments from the consolidated fund is to ensure that the commissioners are not easily influenced by the executive through the manipulation of their salary. While the salary of the commissioners are charged to the federation account, the salary of the other officers of the commission are determined by the Chief Commissioner's further consultation with the Federal Civil Service Commission¹⁷. The Federal Civil Service Officers of the Commission are pensionable officers under the Pension Act¹⁸. Furthermore, the reference to persons employed by the Commission does not include the Commissioners. The implications is that while the staff of the Commission are subject to general civil service rules and regulations as well as their terms of employment, that of the commissioners are not. There is no regulation on the appointment of Commissioners in Public Complaints Commission except probably to be made by the National Assembly. While this has not

been done, their salaries are simply to be charged to the Federation¹⁹ Consolidation Account. In some other jurisdictions, in the European Union and United Kingdom, the Ombudsman is responsible to the parliament²⁰. The European Ombudsman is appointed by the European parliament, but the Ombudsman may only be removed by the court of justice if "he no longer fulfills the conditions required for the performance of his duties or if he is guilty of serious misconduct²¹". In Nigeria, the appointment and removal²² of the Commissioners are done by the National Assembly²³. It is right therefore for the law to make them responsible to the National Assembly and they ought to make their report directly to the National Assembly²⁴.

The practical effect of the above is quite clear, following the traditions of the Nordic states having the role is clearly spelled out without being tied to the executive to help individuals in their dealings with the administration and promoting on his own initiative, the principle of transparency and accountability which are inherent in the concept of good administrative practices. The ability to propose solutions concerning instances of maladministration, with an objective of not only redressing precise problems but also to contribute to the "consolidation of an open, democratic and accountable administration".

Powers and Duties of Commissioners: The Chief Commissioner coordinates the activities of all the Commissioners and they are all responsible to the National Assembly. A commissioner shall have the power to investigate either on his own initiative or following complaints lodged before him by any other person. Only administrative action taken by:

- a. Any department or ministry of the federal or any state government
- b. Any department of any local government authority
- c. Any statutory corporation or public institution set up by any government in Nigeria.
- d. Any private or public company in Nigeria.
- e. Any officer or servant of any of the aforementioned bodies²⁵.

We must note that the sphere of influence of the Commissioner is only limited to the above listed areas. The Commissioner unfortunately may not investigate complaints about the legislative both at national and state levels. The Commissioner is also barred from investigating or relieving complaints about individual actions. Though the commissioner is allowed to investigate administrative procedures of only court of law in Nigeria²⁶. This study is in total support of Oloyede²⁷, who suggests that the jurisdiction of the Commission be extended to include individuals, especially professionals like lawyers, doctors, engineers and other associated individuals. The advantage is that such common men may have some basic protection from the negligence and mistakes of the professionals. The exclusion of judicial functions from being investigated is laudable and rational. Whoever has approached the court, in case of complaint about judicial operation and machinery should utilize the well established procedures within the judicial system. The secretary to the Nigerian Public Complaints Commission, Nyoung Vincent Yaro, whilst explaining the duties of the Commission said, "we deal mostly with maladministration, where somebody has suffered one form of injustice or another, either by the local, state or federal government or any limited liability company in Nigeria. Someone's appointment was wrongfully terminated or he was dismissed. He has not being paid his retirement benefits. He has been aggrieved by

any company registered in Nigeria, injustice has been meted to him. He can come to me²⁸". One may wonder how the Commission operates or how it determines which cases to pursue as the Commission is likely to be inundated with complaints from all over the country, where the users highlighted are basically rampant and general²⁹. For the purpose of its duties, the Commission is empowered to devise the proper manner by which complaints are to be lodged with it. Currently, the only way complaints are lodged with the Commission is by way of writing petition to the Commission or the Chief Commissioner and attach all relevant documents. In some other jurisdictions, the aggrieved person may choose the Ombudsman by simply filling some forms on-line and/or submitting the complaints by e-mail and immediately there is an acknowledgement of the complaint³⁰. The European Union Ombudsman may be contacted by all means of communication, by mail, telephone, fax, e-mail and their website. In Malaysia, not only may the Ombudsman better known as public complaints bureau appeal from the normal mode of writing or accessing through their website³¹, the forms are in all languages spoken in Malaysia³². In Malaysia, PCB had developed an electronic online complaint management system (i-Admin) to enable complaints to be managed more effectively. Through this system, the desk officer and also the complainant can check the status of the case from anywhere because all the details of the case and its development will be documented on the website. The PCB also introduced a local counter in the local areas, where aggrieved members of the public may walk in and lodge complaints verbally which can then be documented for proper action. They also introduced what is known as Mobile Complaints Centre (MCC) and Integrated Mobile Complaints Centre³³. The Nigerian Commission may learn some lessons here. The rural areas and large numbers of the population in Nigerians living in rural areas, remote villages, illiterates, and others may never have opportunity of accessing the Commission's services. The Commission is also empowered in the furtherance to their duties to visit³⁴ any premises and invite people affected for any interview or request for information from anybody affected and such information must be furnished within thirty days³⁵. Specifically, the Commission must investigate with 'special core' administrative acts which are or appear to be:

- (i) Contrary to any law or regulation
- (ii) Mistaken in law or arbitrary in the ascertainment of fact,
- (iii) Unreasonable, unfair, oppressive or inconsistent with the general functions of administrative organs.
- (iv) Improper in motivation or based on irrelevant considerations,
- (v) Uncheer or inadequately explained or
- (vi) Otherwise objectionable³⁶

The Commission is also empowered to investigate administrative procedure of any court in Nigeria³⁷. What this means may not be too clear. But the Secretary to the Commission Mr. Yaro had explained as follows: "We are the only Board that has power to go to the courts and investigate. If there is an administrative procedure which you feel is wrong. If you come to lodge your complain, we can go to the court to investigate. We would ask the registrar, "why all these adjournments? And then we hasten up the case. We have such powers."³⁸

Legal Restraint to Public Complaints Commission

S. 6 of the Act states that the Commissioner shall not investigate any matter -

- a) That is clearly outside his terms of references
- b) That is pending before the National Assembly, the Council of State or the President.
- c) That is pending before any court of law
- d) Relating to anything done or purported to be done in respect of any member of the armed forces in Nigeria or the Nigerian Police Force under the Armed Forces Act, or the Police Act as the case may be;
- e) In which the complainant has not, in the opinion of the Commissioner exhausted all available legal or administrative procedures;
- f) Relating to any act or thing done before 29th July 1975 or in respect of which the complaint is lodged later than twelve months after the date of the act or thing done from which the complaints arose.
- g) In which the complainant has no personal interest.

Some aspects of the section are quite objectionable and contradictory. In section 6(1)(b), the Commissioner is not allowed to investigate any matter that is currently pending before the National Assembly, the Council of State and the President. The section does not specify what type of matter, so we should assume that any matter whatsoever. There is also no provision as to who had submitted such a matter before the bodies referred to in the section. If the matter was not submitted by the aggrieved complainant, that is, if the matter was of a general nature affecting a cross section of the society, and is pending before these bodies or it is a matter of general concern that is obviously noticeable, then there will be no use in initiating an investigation into it, the ultimate result would have been of no use, due to its nature. But where the matter is of peculiar nature affecting an individual or small group, the prospect of such a matter coming before the National Assembly, Council of State or the President without being initiated by the aggrieved persons is unlikely.

Furthermore, paragraph (e) provided that the 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 latter provision is submitted in conflict with and irreconcilable with the paragraph (b) of the section. The exhaustion of all available legal and administrative process may certainly involve a petition to the President, Council of State or the National Assembly. The aggrieved person is expected to have exhausted all legal and administrative procedures in pursuing his matter and this connotes the appeal to the very highest authorities in the land. This follows that he must wait until the National Assembly, Council of States or President decides on the matter before he can appeal to or petition the Commission. The word used in the Act is "pending". Could the aggrieved person petition the Commission after a decision is reached by the National Assembly for instance? The Act is silent on what happens after these bodies had reached a decision especially when the decision is not favorable to the aggrieved person.

Clearly where a matter is pending before a court of law in Nigeria nobody is allowed to investigate or even make any comment on such matter because the matter is subjudice. The matter would have been left as it is. However, Section 5(e) of the Act

makes the Commission a competent authority to investigate administrative procedures of any Court of law in Nigeria; and the Secretary to the Commission has explained that the Commission even has the power to inquire why there has been adjournments in a matter³⁹. The statement cannot represent the true position of the law. The provision of the law is contradictory and unexplainable. The competency to investigate administrative procedures of the court certainly involves matters that are pending before the court. If the matter is not pending there is no basis for the Commission's intervention. Matters can only be adjourned or delayed while they are pending in Court. The legislature seems to have realized the conflict introduced in the section when it limited the investigative powers of the Commission in respect of the courts to "administrative procedures". The pertinent question is, what is administrative procedures? Is it administrative procedures involving the administration of the Courts including its staff excluding the magistrates and judges or general judicial activities?

Where a member of staff or former member of staff petitions the Commission on any matter if it is not a matter pending before the court, but if it is not exactly an administrative procedure in the Court. We submit that administrative procedure can only be interpreted to mean, laid down procedure of the Courts in the administration of justice or the judicial system. The procedure followed in the determination of a matter, from the moment a matter is filed in the Court until judgement, is the administrative procedure of the Court. The Commission do not have such powers and cannot investigate or intervene in any administrative process adopted by the Court of law and in most matters before the Court. There are two or more parties, on whose side will the Commission be seen to be intervening. In any case, as the matters before a Court are subjudice there is no basis for any intervention or comment by the Commission.

The law is totally silent on what happens after the matter has been pronounced upon by the Court or the National Assembly. The Commission may not intervene during the pendency of a matter before these bodies⁴⁰. Could the Commission investigate the matter after it has been resolved by these bodies? Though the Act do not specify what type of action the Commission could adopt, yet such matter stands resolved and the Commission should act as an adviser to the aggrieved person and also counsel him on the matter. The aggrieved person is expected to have exhausted all available legal or administrative procedures. This provision is also contradictory to the very essence and purpose of the Commission which is specifically for the purpose of inquiry into complaints by members of the public about administrative actions of Government and individual officers of the Government and Companies.

Exhaustion of all administrative and legal procedures will include ultimately filing matters before a court to restrain, stop, or order a proper course of administrative process and reliefs. Administrative procedure could involve ultimately petitioning the President who is the head of the executive arm of Government or the National Assembly (the legislature). The problem is that when this is done, the door is shut against such person, as the Commission may no longer intervene. The use of the term exhaustion of all legal or administrative procedure here is obviously unwarranted and contradictory. All over the world the aggrieved person need only to have complained formally by writing a letter or

otherwise to the body in question and no positive response is received, then he can immediately resort to the Ombudsman for assistance. The inclusion of this restriction will be a very debilitating and discouraging factor in that it will limit the powers and influence of the Commission in achieving its statutory duties. The law also disallows the Commission from investigating any matter in which the petitioner does not have a personal interest. This provision is obviously remarkably backward and uncivilized and should be amended immediately. All over the world there is no such restriction on the powers of the Ombudsman. These days, Non Governmental Organizations, and other groups are allowed to fight for people's rights in the fight for justice and fair play; to check such interventions is a great limitations on the powers of the Commission.

Oloyede⁴¹ has argued that this provision introduced the doctrine of *locus standi* into this area of the law. He goes on to explain that before a man can approach the Commission he must show (i) that he is directly affected by that act or error before he can be heard (ii) a general interest common to all members of the public is not *per se* complainable interest to accord standing before the Commission and (iii) there must be an assertion of a right by such person personal to him and that right must have been infringed or that there is a threat of such infringement. We agree with Oloyede entirely, that this provision is totally contrary to S. 5 (3) (d)⁴². We submit that this section be deleted outrightly. Essentially, the doctrine of *locus standi* has been discredited and even abandoned by the court, and is not a doctrine that should be applicable to a body like the Commission with specific statutory duty to prevent unfair, oppressive and unreasonable administrative errors by organs of government.

Post Investigations Procedures

The law makes it mandatory for any person or body required by the Commission to furnish information pursuant to its investigatory powers to comply with such request within thirty days of the request⁴³. Failure to comply is an offence punishable upon conviction to a fine of five hundred naira or imprisonment for a term of six months or to both fine and imprisonment⁴⁴. This provision will no doubt enhance the efficiency of the investigations being carried out by the Commissioner. Why thirty days period? Nobody knows, as it is not spelled out in the Act. While answering to the request of the Commission, if the person makes a reckless statement that is false in any material particular, such person is also guilty of an offense under the same section⁴⁵. The Commissioner and his staff must maintain secrecy in all matters so designated by reason of source or content⁴⁶. Section 8 of the Act went further to state that any complaint lodged before the Commission shall not be made public by any person except a Commissioner, and any person who contravenes the provision is guilty of an offense. In one breath, the law makes it mandatory that the Commissioners and the staff of the Commission are to maintain total secrecy in respect of "matters so designated" there is no provision or definition of this phrase.

However, the law exempt a Commissioner who discloses to the public a complaint lodged with the Commission from any criminal liability. We submit that a complaint lodged with the Commission and consequent investigations and resultant resolutions or discoveries are "matters so designated" that the law prohibits from being disclosed to the public by any

person whatsoever. Since the law exempts only the Commissioner from criminal liability, it follows that even the complainant is also barred from disclosing the contents of his complaint publicly. How this works or will work in practice is not clear. The same law says the complainant ought to have exhausted all legal and administrative procedures. Also, there is nothing in the law that bars the complaint from pursuing all other remedies available to him, for example reporting to the police where the matter involves a crime. The provisions are quite confusing and contradictory and will remain unworkable in practice. Upon completion of investigations, the Commission may recommend to the appropriate person or responsible administrative agency, the following steps:

- (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.
- (d) That full reasons behind a particular administrative or other act be given⁴⁷.

Where the Commissioner is of the view that the existing laws or regulations or procedures are inadequate, the Commissioner may refer the case to the National or State Assembly or any other appropriate person or authority⁴⁸. The purpose of this reference is not clear, probably to show that the Commission is handicapped in their investigations due to the existing law or procedures. It may mean that the appropriate body or authority may take steps to effect a change in the law as it works injustice. This provision works as a form of feedback mechanisms to the Legislature to check the effectiveness of the laws and opportunity to amend such laws. In appropriate cases, the Commissioner may refer a matter to the Police for prosecution where it is discovered that a crime has been committed⁴⁹. Also, where the conduct of any person is such that disciplinary action be taken against such person, he shall make a report in that regard to the appropriate authority who may take such further action as may be necessary in the circumstances⁵⁰. The investigations carried out are terminated with the report or recommendations made to the appropriate body or authority whether the authority or body takes further action or not on the report or recommendation are inconsequential to the Commissioner.

Lessons From Other Jurisdictions: This part of the paper shall look at similar provisions in other jurisdictions and draw some lessons for reforms in the law.

Botswana: In Botswana, the Ombudsman Act, 1995 was basically tailored after the British Parliamentary Commissioner for Administrative Act 1967. The Botswana Ombudsman Act is an abridged replica of the British Act like most African countries, the Ombudsman in Africa has been described as a study import⁵¹, having been adopted by regimes that have little resemblances to liberal democracies with which the institution, in its classic form, is usually associated. The Nigerian Public Complaints Commission Decree (Now Act) was first promulgated under a military regime. The person responsible for carrying out the functions of the body is simply referred to as the Ombudsman (following the practice in many advanced countries), though it could be argued that the nomenclature does not adequately represent the role in Africa and a more descriptive nomenclature

would have been preferable. The South African law used 'public protector', and the Nigerian and Tanzania's use of Public Complaints Commissioner is preferable. It helps for better understanding of their role and duties and easily identifiable for the large populations that are widely illiterates. The Ombudsman⁵² is appointed by the President in consultation with the leaders of the opposition in the National Assembly.

Similar to the Nigerian position, the salary and administrative expenses of the Ombudsman is to be paid out of the Consolidated Fund⁵³. The difference is that in the Nigerian provisions, only the salary of the Commissioner is paid from the Consolidated Fund, the law is silent as to other administrative expenses, but in practice, the budgets of the Commission is done by the Executives and paid from the normal budgetary allocation. S. 3 (1) of the Botswana Acts provides that Ombudsman may investigate any action taken by or on behalf of a government or other authority to which the Act applies. However in S. 3 (2) thereof, the Act makes S. 3 (1) subject to S. 3 (2) and excludes his jurisdiction from any matter in which the aggrieved person either has or had in the words of paragraph (a) a right of appeal, reference, or review to or before a tribunal constituted by or under any law in force in Botswana, or (b) a remedy by way of proceedings in any court of law.

However, S. 3 confers discretion on the Ombudsman to conduct investigations in matters covered by S. 3 (2). The provisions have been criticized as being too narrow and uncertain a basis for jurisdiction creates a fertile source for divergent interpretations by successive Ombudsman⁵⁴. The essential attribute of the Ombudsman is the ease of access in laying complaint. The Botswana Act is commendable in making definite provisions as to the manner in which the aggrieved member of the public may submit a complaint before the Ombudsman. As a general rule, complaints may be made in writing⁵⁵, but the Ombudsman is allowed to use his discretions to receive complaints that are not in written form. The law also allows the members of a deceased person to file a complaint, or where the aggrieved person is unable to make the complaint personally. This therefore forms an exception to personal complaints under S. 3 (a)⁵⁶. There is also a provision for the President or National Assembly or minister to forward a request to the Ombudsman for investigation into particular matters provided the aggrieved person consents therefore⁵⁷ like the Nigerian provisions, there are very serious limitations to the investigation that may be carried out by the Ombudsman in Botswana⁵⁸. In all, the Botswana Act makes some provisions that may be useful to Nigeria, there is room for improvements.

Tanzania: The enabling law setting up the Ombudsman was first made in March 1966 (Act No 25 of 1966) and known as the Permanent Commission of Enquiry (PCE). The PCE is composed of a Chairman and two commissioners who are to function as a single body⁵⁹. Like the Botswana Act, the PCE members are appointed and are accountable to the President, which is totally different from the position in Nigeria and many other Countries, where the appointing power is the National Assembly or Parliament in terms of jurisdiction. The PCE is delimited with respect to both who and what may be investigated. All persons in the service of the national or local governments are TAWU office holders, and all members of certain specified corporations, boards, unions etc.⁶⁰ The military is excluded. The law

specifically provides that no administrative decision is final and therefore subject to the Commission's review. Only judicial verdicts are exempted. Investigations may be initiated by an aggrieved person by writing or application made to the Commission, or it may be initiated by the President or the Commission itself. This is an improvement on the Nigerian provision which limits complaint to the aggrieved person only. The PCE exercises no executive powers. The results of their investigation with the recommendations and conclusions are forwarded to the President for necessary action⁶¹.

European Union: The European Ombudsman was established under the Maastricht Treaty. Certainly drawing from the experience of the member States of the Union, the establishment of the European Ombudsman represents an important institution for subjecting all the Union's institutions to standard sets of rules and procedures, or scrutiny by agents who are dedicated to a single task but applying it across the entire European Union Institutional System⁶². The Ombudsman is a Parliamentary institution and is responsible to the EU's Parliament, though quite independent from the EUP, and separate from it, and not under its control, it represents a classic logic in parliamentary accountability. In its operation, it operates in most cases like a Court of law, in the words of Magnette-Paul, it is one of the organs designed to guarantee the respect of the rule of law⁶³. The EU Ombudsman investigates complaint against the institutions and bodies of the European Union. The EU Ombudsman do not have jurisdiction to investigate complaints against national, regional or local administration in the member states even where the complaint is about EU matters.

The EU Ombudsman may investigate complaint about administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal of information and unnecessary delay in the handling of matters⁶⁴. The procedures adopted by the EU Ombudsman are so simple and widely advertised both on its websites and with use of publications are easily and widely accessible⁶⁵. The EU complaints may be forwarded to the Ombudsman, either by writing, fax, telephone, or on the internet and on receipt of the complaint, an acknowledgement is sent to the complainant, a registration number and the legal officer who is dealing with the case is also stated in the acknowledgement. The next step is that the Ombudsman determines whether the complaint is within his mandate and if so, whether it is admissible. The Ombudsman may still request for further information or documentation before the complaint is investigated.

Pursuant to its powers of investigation and subject to the conditions laid down on its Statute, may request information from the appropriate relevant body and may ask for documents (not confidential) to be supplied within three months. The Ombudsman may also invite officers of the concerned institution to come for interview or give evidence to it. The Ombudsman may also conduct on the spot investigation or commission a team of experts to look into the complaint and report to it, where he considers necessary. The Ombudsman must first adopt a friendly solution to the problems and where this is possible, he makes his comment and close the file, but where this is not possible or unsuccessful, he may close the file with a critical remark. The Ombudsman will make his report and recommendation to the institution concerned and also copy the complainant. The institution

concerned, must within three months, reply and give a detailed opinion on whether it accepts the Ombudsman recommendations and state measures, adopted to rectify the situation. Where this is not satisfactory to the Ombudsman, he may now prepare a detailed report and submit to the EUP. The EU's Ombudsman submits an annual report to the EU parliament on his activities as a whole. The annual and special report of the Ombudsman contains such recommendations as he thinks appropriate to fulfill his responsibilities under the treaties and statute. The complainant has the right of access to the file always. Also, the public is allowed access to documents held by the Ombudsman. This does not include, evidence given in confidence before the Ombudsman, or documents which have been marked confidential⁶⁶. The European Ombudsman is required to publish in the official Journal announcement concerning the adoption and special reports, making public access to the full text of the documents. The complaint may be submitted in any of the treaty languages⁶⁷.

CONCLUSION AND SUGGESTIONS FOR REFORMS

From the above study, it is advised that the law setting up Public Complaints Commission is quite inhibiting and does not allow the Commission enough power to exercise its statutory duties. There is need to amend the law. The Commission is an expression of real democracy and the rule of law and it is important the nation keep a special institution with the task of controlling and ensuring that almost all administrative organs of the society respect the rights of the citizens and that anybody be Nigerian or not, at no cost, gets his complaints and grievance investigated and attended to. The Nigerian Public Complaints Commission (NPCC) must be ready to learn and improve using some of the examples of other countries discussed all over the world. The world is now a global village; NPCC can draw many examples and lessons from other jurisdiction, in order to improve on its service delivery. The law setting up the Commission needs to be amended in order to strengthen the Commission's activities and to empower the Commission to be more alive to its duties and statutory functions in line with the criticisms made in this paper. There is need for massive enlightenment and publicity of the duties of the Commission and its relevance to the public.

There should be frequent radio and television talks dealing with the duties and responsibilities of the Commission. There should also be publications of pamphlets and bulletins, journals and reports widely circulated through the ministries and public companies on the role of the Commission. Such publicity should be in the different local languages and in English and circulated in all the local government councils within Nigeria. Access to the Commission must also be simplified and expanded. The use of other means apart from written letters should be adopted, the law regarding who may "petition" must be reviewed urgently and permit others apart from the person concerned to petition the Commission. The annual reports must be made public and allow for public participation and debates on the reports. The office of the Commissioner in each state must have a Legal Officer and the Commissioners must be lawyers of not less than twenty years standing with bias for Public Law, this will help in a deeper understanding of the legal issues, and a deeper and better understanding of the role of the Commissioner.

NOTES

- ¹ The Federal Military Government of Nigeria promulgated the Public Complaints Commission Degree 31 on the 16th October, 1975
- ² Public Complaints Commission Act. Cap. 37, Laws of the Federation 2004.
- ³ Ombudsman. Wikipedia. Accessed on 1st October 2010
- ⁴ For example, there are Estate Agents Ombudsman, Financial Ombudsman Service, Health Service Ombudsman Housing Ombudsman Service, Legal Services Ombudsman, Local Government Ombudsman, Northern Island Ombudsman, Police Ombudsman for Northern Island, Parliamentary Ombudsman, pensions Ombudsman Prisons and Probation Ombudsman, Public Services Ombudsman for Wales, Removals Industry Ombudsman Scheme, Scottish Legal Services Ombudsman, Scottish Public Services Ombudsman, Telecommunications Ombudsman.
- ⁵ Przewouski, A. Stakes, S.C. and Monin, B (Eds) (1999) *Democracy, Accountability and Representation*, Cambridge/New York, Cambridge University Press.
- ⁶ See, <http://eureparl.ev.int/Ombudsman/home/en/accessible> on 1st October, 2010
- ⁷ 1963
- ⁸ 1919
- ⁹ 1955
- ¹⁰ Better known as Udoji Report 1974
- ¹¹ Supra
- ¹² Each state of the federation then, has one commissioner each.
- ¹³ Roy W, Davies; quasi – Judicial Review: The European Ombudsman An Alternative to the European courts; (2000) I web JCLI
- ¹⁴ Compbell, K (1997), “Access to European community official information” *internationals and comparatively law quarterly* 174
- ¹⁵ S2 of the public commissions Act L.F.N. 2004
- ¹⁶ S2 (6) of the public commissions Act L.F.N. 2004
- ¹⁷ S3 (2) of the public commissions Act L.F.N. 2004
- ¹⁸ Persion Act
- ¹⁹ S.4 (5) Public Complaints Commission Act, cop 37 LFN 2004
- ²⁰ The European Ombudsman was established by the Maastricht Treaty (see Article 228 of the treaty on the functions of the EU)
- ²¹ The European Ombudsman was established by the Maastricht Treaty (see Article 228 of the treaty on the functions of the EU)
- ²² S 2 (3) Public Complaints Commission Act cop 37 LFN.
- ²³ *European Ombudsman* 1995:24
- ²⁴ S. 5 (1) cap 37 LFN 2004
- ²⁵ S.5 (2) cap 37 LFN 2004
- ²⁶ S. 5 (3) (2).
- ²⁷ Oluyede, *Nigerian Administrative Law*.
- ²⁸ Oluyede, *Public Complaints Commission in a presidential systems with particular reference to Nigeria*, 1983, N.I.A.L.S. Lagos, Nigeria.
- ²⁹ He went on to say that in year 2004, 14, 873 cases were reported, and only 9,730 was resolved and 5,143 were left pending, see 2 Nyang Vincent Yaro, lawyers literate and you pay, we mediate and its free “in sun news publishing of Saturday, July 22, 2006.
- ³⁰ The European Ombudsman, could HE HELP YOU? The complaints guide form.
- ³¹ <http://www.peb.gov.my>
- ³² English Bahasa Malaysia, Mandurin and Tamul

- ³³ Malaysia racks sheet. Pdf this web first introduced in 1985 known as circuit in accordance with the public, public service development administrative service circular No 4 of 1992. The focus had been rural areas/remote locations.
- ³⁴ S 5(2) (c) Cop 37 LFN 2004
- ³⁵ S 5 (7) Cop 37 LFN 2004
- ³⁶ S 5 (2) (d) Cop 37 LFN 2004 .
- ³⁷ S 5 (2) (e) Cop 37 LFN 2004
- ³⁸ Nyang Vincent Yaro, Sun News publishing, supra.
- ³⁹ Sun News publishing of Saturday, July 22, 2006. Op cit
- ⁴⁰ Courts, National Assembly, Council of States and President.
- ⁴¹ Oluyede op cit.
- ⁴² Quoted and explained above.
- ⁴³ S 5 (7) cap 37, LFN 2004
- ⁴⁴ S 8 (2) cap 37, LFN 2004
- ⁴⁵ S 8 (2) cap 37, LFN 2004
- ⁴⁶ S 5 (5) cap 37, LFNs 2004
- ⁴⁷ S 7 (1) cap 37, LFNs 2004
- ⁴⁸ S 7 (1) cap 37, LFNs 2004
- ⁴⁹ S 7 (2)
- ⁵⁰ S 7 (2)
- ⁵¹ P. Norton, "The Tanzanian Ombudsman" (1993) *International and Comparative law quarterly*, 22
- ⁵² S 2(2), Ombudsman Act 1995
- ⁵³ S 13 Ombudsman Act 1995
- ⁵⁴ Charles Manga Fonibad, "The Enhancement of good assessment of the Ombudsman Act, 1995" (2001) *Journal of southern African Studies*, vol. 27, No. 1 p. 57.
- ⁵⁵ S 3(1) (a) Ombudsman Act 1995
- ⁵⁶ S 3(a) Ombudsman Act 1995
- ⁵⁷ S 3(1) (b) Ombudsman Act 1995
- ⁵⁸ S 4. The Ombudsman Act excludes the jurisdiction of the Ombudsman in ten specified areas. While these includes all the areas mentioned in the Nigerian provisions, many others have been included. e.g. S 10 excludes actions taken with respect to orders or directions to the Botswana Police force or Defense force or member thereof.
- ⁵⁹ The collegiate system has been criticized, see McAustan and Ghai, "Constitutional Innovation and Political Stability in Tanzanian- a Preliminary Assessments (1966) 4 *journal of modern African studies* 504.
- ⁶⁰ See Act No. 25 of 1966, the first schedule, for list of organizations include.
- ⁶¹ Particle M. Nortan, "The Tanzanian Ombudsman" (1973) *The international and corporative law quarterly*, vol. 22, No. p.603. may be read in <http://www.jster.org/stable/757658>(accessed on 05/10/2010).
- ⁶² Peterson, J and Shakeleton, M. (eds) *The Institution of the European Union*, (2002), Oxford University press.
- ⁶³ Paul Megnette, op.cits. p. 2
- ⁶⁴ <http://www.Ombudsman.europa.eu/resources/statute/faces>. (accessed on 10/10/10)
- ⁶⁵ <http://www.Ombudsman.europa.eu> (accessed on 10/10/10)
- ⁶⁶ See regulation (EC) NO104/2001 for public access to European parliament, council and commission documents el 30 May, 2001.
- ⁶⁷ <http://www.Ombudsman.europa.eu/>