

PROTECTING CITIZENS AGAINST BUREAUCRATIC ABUSE AND MALADMINISTRATION: WHY IS NIGERIA'S OMBUDSMAN INSTITUTION NOT WORKING WELL?

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Abstract: In 1975, with Decree No. 31, the Federal Military Government of Nigeria established the Public Complaints Commission as the country's ombudsman institution. Charging it with the responsibility for protecting the citizen's rights in the administration, Decree No. 31 was an enabling law to the 1974 report of the Public Service Review Panel instituted by the Military Government in 1974 to appraise and revamp the country's public service. Following Nigeria's return to democratic rule in 1999, the Commission's establishment law became known as the Public Complaints Commission Act, CAP P37 of Laws of the Federation of Nigeria 2004, which sustains its existence and operation in the present Fourth Republic. Notwithstanding, the Commission's performance has largely remained unsatisfactory for being unable to effectively deliver on its statutory mandate. This conceptual study, therefore, investigates the main factors accounting for the ineffectiveness of the Nigerian ombudsman institution. The study relies on qualitative data generated from secondary sources, which was analyzed using the thematic analysis technique of qualitative data analysis. The work finds that, among other issues, the lack of independence and legal capacity to punish offenders, are the key impediments to the effectiveness of the Commission. The study thus recommends, among other things, the amendment of the Commission's establishment Act to grant the institution independence from the executive and legislative arms of the Nigerian Federal Government and confer on it punitive powers, as workable measures for repositioning the nation's ombudsman institution for improved performance.

Keywords: Bureaucratic abuse, citizenry, maladministration, Public Complaints Commission, Ombudsman Institution.

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1. INTRODUCTION

Governments function and administer basic services to the citizens through their various institutions. These institutions and/or their officials, while discharging their statutory responsibilities to the public, sometimes indulge in certain illegitimate acts.

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This both contradicts the very essence of their existence and undermines the rights and interests of the citizenry they are intended to serve. Given the primary role of the state to guarantee the protection of the citizens' rights, most governments across the world have instituted an authority at various levels through which the citizens can lodge complaints against public entities or their officials, and seek redress regarding any issues of corruption or abuse of office or power (Hayes, 2022). This authority is dubbed the "ombudsman", which refers to a state official saddled with the responsibility for exercising checks on the activities of governmental organizations with the aim of protecting the citizens' rights, and it has the powers to conduct investigation in an effort to resolve complaints by private individuals pertaining to any abuses or improper activities by government agencies (Aina, 2012; Hayes, 2022). Therefore, the ombudsman system exemplifies government's commitment to its important obligation of protecting the rights of the citizenry, by guarding them against possible administrative brutalities and malfeasances by public agencies or officials.

The ombudsman is known by various specific appellations in different contexts, including, for example, public advocate or national defender (Hayes, 2022), however, its primary purpose and usefulness remains the same. Nigeria's own national ombudsman body is the Public Complaints Commission (PCC), established in 1975. In tandem with the generic rationale the ombudsman institution, the Public Complaints Commission is responsible for handling citizens' "complaints of injustice, corruption, unfair treatment and abuse of office by public officers" (Abasiokong & Uzoma, 2019, p. 2). However, the performance of the PCC has over the years left very little than deserved in terms of its effectiveness in redressing issues of administrative corruption and misuse of office in the Nigerian public service (Osegbue & Madubueze, 2017; Afegbua & Adejuwon, 2015; Osakede & Ijimakinwa, 2014; Awopeju & Oyewole, 2011), prompting a deep feeling of dissatisfaction among majority of Nigerians. This paper is specifically concerned with probing the underlying issues responsible for the debility of the Nigerian ombudsman institution under the current democratic era, with the aim of proffering solutions to the Nigerian ombudsman's presumed weakness in the discharge of its statutory duties. Conceptual interrogation of this topical issue is of high significance, mostly as it creates a window of opportunity for the present Muhammadu Buhari-led federal government to evaluate the usefulness of this "all-important" institution in line with the administration's popular standpoints of "zero-tolerance for corruption" and "good and inclusive government" in Nigeria.

2. LITERATURE REVIEW

In the wake of the widely observed ineffectiveness of the traditional institutions and practices for counterbalancing or curbing arbitrariness of public officials, ombudsman, which became a vital component of public sector reformation in the twentieth century, surfaced as a new structure to uphold scrupulous behaviours in public service (Afegbua & Adejuwon, 2015). Consequent upon this, "ombudsman institutions (OIs) have become a common feature of most countries' institutional framework" (Organisation for Economic Co-operation and Development [OECD], 2018, p. 4). As it has been observed, the demand to revolutionize and simplify governmental policy administration procedures requires a

professional and receptive public service and apposite accountability frameworks (Bukhari & Asif, 2013). The ombudsman hence exists commonly to improve public administration, by identifying weaknesses in the laws, processes, conventions, principles, and guidelines for official behaviours (Ebiziem & Amadi, 2015).

That said, “over the decades, ombudsman is considered as an essential element of the democratic system of the state” (Batalli, 2015, p. 232). According to Osakede and Ijimakinwa (2014), ombudsman in every state serves as the “ears” of the people, in that it provides the apparatus for resolving citizens’ discontentment in a democracy. Apparently, with the progression of countries towards strengthening democratic practices and the defence of human rights, ombudsman institutions have abruptly proliferated all over the globe (OECD, 2018). In the Swedish context where the idea and practice originated, “ombudsman” is English translation of the Swedish word “ombuds”, meaning “representative” and “man”, implying “person” (Sander, 2013). The ombudsman concept became integrated into the Swedish constitution in the nineteenth (19th) century to provide the Parliament with the required machinery to superintend over the execution of government administration and that of the judiciary (OECD, 2018). The expanded complexities in the environment within which public administration functions in the contemporary times and the innate subsisting deficiencies in the public sector sphere have provided substantial grounds for general acknowledgement, consensus and incorporation of ombudsman in public administration. Further aggravating these complexities are the financial repressions being faced by majority of governments and the declining standards of public service delivery (Bukhari & Asif, 2013), which is felt mostly by the ordinary citizens.

Besides, governance itself is a complex activity and its direct effect on the citizens’ lives necessitates the existence of a guardian that would ensure that government conducts its daily responsibilities without infringing on the basic rights of the citizenry, while guaranteeing that public officials maintain ethical guidelines (Fajonyomi, 2012). Tonwe (2013) states that the extension in recent times of the spheres of responsibilities of government into different aspects of human life that were not formerly under its purview brings with it rising propensities for disputes between the citizenry and the states, especially with reference to basic human rights and liberties. The broadening of government’s functions and the attendant possibilities for incessant frictions with citizen’s interests and yearnings necessitated the formalization of mechanism through which the citizens can have their grievances resolved in the various states across the globe (Fajonyomi, 2012). It is for this reason that the influence of the ombudsman institution has continued to increase daily in the present time (Batalli, 2015). The presence of an ombudsman enables the citizens to seek redress when there is a deviation from the expected ethical conduct on the part of government officials (Afegbua & Adejuwon, 2015), and organizations in the course of delivering services to the citizens.

With its autonomy, neutral posture, and wide investigative powers, ombudsman essentially operates effectively in most polities (Batalli, 2015). Agreeably, the ombudsman everywhere in the world enjoys the powers to carry-out fact-finding exercise on issues that fall under its jurisdiction, as well as in relation to concerns

tabled before it by disgruntled citizens. This power of the ombudsman to institute probe is undisputedly confirmed to have been effective in reducing disputes to related subjugation and corruption or maladministration, even as witnessed in Scandinavian countries (Osakede & Ijimakinwa, 2014). Thus, as an independent, high-ranking authority, ombudsman assists the citizens in addressing their concerns with the administration, and it qualifies as an extra defensive instrument with validity for both the citizens and the administration (Sander, 2013). In consolidating this viewpoint, Batalli (2015, p. 232) opines that, “ombudsman presents a new type of guarantee for the rights and fundamental freedoms of individuals and organizations”. This assertion finds credence from the observed inherent capability of the ombudsman institution to both reposition public organizations to serve the citizens better and the ability of the citizens to demand restitution should their right, for example, to standardize services be trampled upon.

The uniqueness of the ombudsman lies in the fact that, it “...deals with unfair administrative measures which are not suitable for judicial review as for instance when the official concerned cannot be sued or where the facts of the case cannot be proved in the courts but may be uncovered through a non-judicial investigation” (Osegbue & Madubueze, 2017, p. 43). By this, the ombudsman system also functions as a veritable instrument for enhancing openness and accountability in public administration. Batalli (2015, p. 235) avers that, “the Ombudsman as an institution presents a dedication to the consolidation of the democracy and an instrument of control, transparency and accountability, to protect citizens’ rights and freedom and to fight maladministration”. In Latin America, where most of the ombudsman organizations were instituted in the 1990s, the region was undergoing radical institutional transformations directed towards enhancing and strengthening accountability and democratic governance, among other goals (OECD, 2018). The OECD (2016) explains that the task of the ombudsman institution as the guardian of public interest and its understanding and ability to mediate in problems encountered by citizens in the course of interfacing with the public administration puts it on a suitable footing to advance open government policies and programmes in all jurisdictions. Along the same line of thought, Osegbue and Madubueze (2017, p. 40) state that, “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 systems”. Overall, the relevance of the ombudsman institution in a state is multifaceted.

3. METHODOLOGY

This conceptual and qualitative study examines the issues accounting for the ineffectiveness of the ombudsman institution in Nigeria with the view to suggesting workable measures for addressing them. The data for the study were obtained from secondary sources, including journals articles, books, government publications, publications of Nigerian ombudsman organization – the Public Complaints Commission, such as its annual reports, newspapers, and websites. The data were analyzed using the thematic method of qualitative data analysis, to achieve the objective of the study.

4. THEORETICAL FRAMEWORK

This study adopts the utilitarian theory to advance the substance of its argument concerning the subject matter of the current research. The utilitarian theory epitomizes one of the many prominent and authoritative methods in normative ethical or moral philosophy. The most notable exponents of the utilitarian theory are Jeremy Bentham and John Stuart Mill (Tardi, 2021). The theory surfaced in the 19th century, and is of various versions but all the utilitarian theorists hold the common notion that an action is adjudged morally correct if it elicits the greatest measure of good or happiness (Driver, 2014). The main thrust of the theory is that every human being as a matter of rule seeks happiness, and pleasure solely is good, but it is only the actions which engender the most happiness for the highest number of the largest number of people in society that are morally right (Mukherejee & Ramaswamy, 2006). Therefore, as an ethical theory, utilitarianism espouses conducts or activities that promote happiness or pleasures and opposes deeds that bring about sadness or misery (Tardi, 2021). The utilitarian theory is thus a variant of consequentialism, which is a doctrine in ethics that bases the rightness or wrongness of actions on the results or outcomes they produce (Duignan, n. d.).

The classical theorists of utilitarianism, Bentham and Mill, related the good with pleasures. They also argue that every individual should maximize the general good, that is, regard the good of others along with his or her own good (Driver, 2014). In the view of Quinton (1989, p. xi), “ordinarily utilitarianism, along with some other moral theories and a lot of religiously inspired moral stock responses, is utopianly altruistic. It implies that in every situation in which actions is possible one should choose that possibility which augments the general welfare”. For example, the utilitarians would recommend that every individual obeys the laws that guarantee equilibrium between his or her good and that of society in entirety (Rhodes, 1986), not for the person alone. By this, utilitarianism differs from other theories of consequentialism, particularly egoism, which advocates that every individual ought to seek after his or her personal interest alone, regardless of whether that would jeopardize the good of other people, and other moral theories that do not consider the rightness or wrongness of an action on the basis of the outcomes (Duignan, n. d.). A silent implication of utilitarianism’s position is that, the theoretical tradition shuns individualism and calls for habitual selfless sacrifices, as a way of increasing the general level of happiness and lessening misery in the world.

The three main maxims upon which classical utilitarianism rests include, “the maximization of happiness; the definition of happiness as pleasure and absence of pain; and impartiality between individuals in the calculation of happiness” (Hayry, 2020, p. 346). This means that utilitarianism aims to attain the betterment of “all” as against the betterment of “one”. Clark (2000) explains that the weakness of the utilitarianism is that the theory does not as a singular postulation offer examination of the morality of human conducts, but its strength lies in the fact that it does provide an overly crucial rationale for utility. In Singer’s (2006) opinion, a major shortcoming of the theory is that it is too demanding, while one of its huge benefits in public life is its impartial posture. Vance and Trani (2008) confirm that the inclusivity of utilitarianism is its critical feature; it

considers all. Singer (2006) also states that utilitarianism requires that, at the minimum, all ought to be considered. It is this utilitarianism's precondition of comprehensiveness that differentiates it from the most prevalent variety of teleological rationalization, "the ends justify the means" (Vance & Trani, 2008). It is not only that utilitarianism concerns itself with the ends as against the means of realizing these ends, it also brings into consideration the whole immediate and impending gains and griefs that any individual bears or may bear for being impacted by the act (Schumann, 2001). This thinking or concern ordinarily influences every public decision, both on the multinational and national fronts, even though normative and moral ethics are regarded as fragments of the ethical philosophy (Singer, 2006). It is the above-identified strengths of the utilitarianism that provide the justification for the suitability and adoption of the utilitarian theory in this study.

Tardi (2021, para. 1) posits that, "when directed toward making social, economic, or political decisions, a utilitarian philosophy would aim for the betterment of society as a whole". In light of Tardi's position and the central supposition of the utilitarian theory, which places premium on actions that produce the most happiness for the highest number of people in society, it follows that in public administration, governments, in their choices of policies and institutions, should favour only those that can alleviate the sufferings of the generality of citizens and improve their wellbeing substantially. Likewise, the reformation or strengthening of existing but weak government policies and institutions with the aim of increasing their functional effectiveness in the interest of the citizens would generally be considered as an action in the right direction. The Public Complaints Commission, Nigeria's ombudsman institution was established to protect and promote the good of the entire citizens of the country, by shielding them from maladministration and wrongdoing by government organizations and officials, as well as redressing their grievances where there is any. The Commission has, however, not lived up to the expectation of the majority of Nigerians, as it is not effectively discharging its functional mandate of protecting their rights against administrative perversion, thereby causing unhappiness or suffering among the citizens.

5. A BRIEF EVOLUTIONARY HISTORY OF NIGERIAN OMBUDSMAN

The Public Complaint Commission was set up by Federal Military Government after the country's Civil War, precisely in 1975, following the recommendation of the Public Service Review Panel, popularly nick-named the Udoji Panel or Commission, after its head, now Late Chief Jerome Udoji (Ohaegbu, 2015). The inauguration of the Public Service Review Panel itself was precipitated by the observed manifest inadequacies of the Nigerian public/civil service in the post-independence era, depicted by its gross inefficiency, poor service delivery and systemic corruption, which were all rooted in its colonial antecedents. In the wake of Nigeria's independence, the country inherited and retained the structures and practices of the British colonial administration's model of public service (Nebo & Nnamani, 2015; Afegbua & Adejuwon, 2015). Originally, the colonial public service "was structured in a way that colonial masters extracted the much coveted financial and materials resources needed to control metropolitan powers" (Nebo & Nnamani, 2015, p. 1). In other words, the British colonial public service machinery in Nigeria was primarily fashioned to serve Britain's interest, and not rather to serve the most critical developmental needs of the colony they controlled and exploited.

As an after effect, when Nigerians assumed full political and administrative control of the country at independence in 1960, the bureaucrats that took over leadership positions or offices within the public service system had ingested the colonialists' attitude of acquiring riches or material goods for self-satisfaction and superiority (Tagowa, 1999). Hence, there was high level of ostentatious abuse of public office among the Nigerian bureaucrats. As Nebo and Nnamani (2015, p. 1) recount, "instead of improving the lot of Nigerians, they [Nigerian bureaucrats] were colonial masters in black man skin". The implication of this is that, like the colonial public service was to the colonizers, privileged Nigerian public officials turned the post-colonial public service into an instrument for personal aggrandizement at the expense of the majority of the ordinary fellow citizens. Especially, "government officials in position of authority wielded so much power and influence to the detriments of their junior officers and members of the public. Several atrocities were being committed on daily basis with impunity. The morale of the public servants was at its lowest ebb" (Ohaegbu, 2015, para. 1). More so, the citizens who were at the receiving end of the deficiencies and unscrupulous activities that had permeated the entire administrative system had their rights not properly protected. According to Afegbua and Adejuwon (2015), the citizens were merely left with the option of challenging arbitrariness and ill-considered acts of administrative officials through the regular law courts, and this system does not facilitate speedy and efficient dispensation of justice.

The military institution took over political power in 1966, and by the middle seventies, military rule had become firmly rooted in Nigeria (Afegbua & Adejuwon, 2015), and the military government gave important attention to the bureaucracy. The undesirable state of affairs with respect to the overall conduct of the Nigerian public service provoked the widespread insistent uproar for reforms (Nebo & Nnamani, 2015). Thereupon, the then Federal Military Government under the leadership of General Yakubu Gowon was prompted to constitute and institute the Udoji-led Public Service Review Commission in 1974, which immediately started carrying-out its responsibility (Afegbua & Adejuwon, 2015; Anazodo et al, 2012). The task allotted to the Udoji Commission by the military government was to appraise and revamp the public service as a whole with the view to repositioning it for optimal efficient and effective performance geared towards the attainment of the nation's development aspirations (Anazodo et al, 2012). To borrow the words of Nebo and Nnamani (2015, p. 4-5):

The major thrust of the [Udoji] commission is[was] to carry out holistic reform of the civil service in terms of organization, structure and management of the public service; investigate and evaluate methods of recruitment and conditions of employment; examine all legislation relating to pension, as regarding all post; establish scale of salaries corresponding to each grade as a result of job evaluation.

Accordingly, the Udoji panel was also "charged with the responsibility to recommend to the government, the solution to the near collapse of the public service sector in Nigeria" (Ohaegbu, 2015, para. 2). In the end of its assessment of the public service, the panel recommended in its 1974 report, among several other things, the

establishment of Public Complaint Commission to be Nigeria's ombudsman body, which the federal military government approved (Ohaegbu, 2015; Osakede & Ijimakinwa, 2014).

Afterwards, the military government then went on to promulgate the enabling law to the report of the Udoji Public Service Review Panel, the Public Complaints Commission Decree No. 31 of 1975 (now Act), which sets up the Commission in October that same year (Aina, 2012; Awopeju & Oyewole, 2011). As recommended by the Udoji Panel, the Nigeria Ombudsman was instituted to check and control administrative procedures in government agencies with the aim of ensuring that existing rules and regulations are not flagrantly violated (Ohaegbu, 2015). As such, it is purposed "to act as an institutionalized check on the excesses of government functionaries and any abuse of executive power" (Mojolaoluwa, n. d., p. 2). Put in a slightly different but similar way, "it was established as a way to curb the activities of those in power then. They wielded so much power which was harmful to their subordinates and the citizens of the country" (Public Complaint Commission, n. d., para. 2). In terms of composition, as of 1975, the Commission was made up of a Chief Commissioner and other twelve Commissioners who were selected by the then Supreme Military Council (SMC) to which the Commission itself was responsible (Osegbue & Madubueze, 2017). The power of the Commission is overarching in effect. As Aina (2012, p. 2) states: "The Commission has power to initiative 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".

In 1979, following the Public Complaints Commission (Amendment) Decree 21, amendments were made to the Public Complaints Commission Decree 31 of 1975 by the military government. The rationale was to immunize the Commission against legalistic measures in the execution of its legitimate undertakings (Osegbue & Madubueze, 2017). Mojolaoluwa (n. d., p. 2-3) similarly attests that the action by the military government was intended, "...to guarantee its [the Commission's] continued existence, mode of operation and sufficient independence from the legislative and executive arms to ensure unimpeded performance". Furthermore, the status of the Commission was raised higher by the 1989 Constitution, which in its Section 151 re-established it as a federal body to be constituted and be made operational by the President within one year of assumption of office. The 1989 Constitution redefined the Commission's composition and powers under Part 1 of the Third Schedule (Mojolaoluwa, n. d.). However, with the re-introduction of democratic rule in Nigeria in 1999, the legal framework for the Public Complaints Commission has changed. In its Section 315, the 1999 Constitution of the Federal Republic of Nigeria provides for the adoption of laws that were in existence before it (1999 Constitution) took effect, and by virtue of this, the Commission's extant law is now known as the Public Complaints Commission Act, CAP P37 of Laws of the Federation of Nigeria 2004 (Onibokun, 2018). Hence, the Commission has remained in existence up until the ongoing Fourth Republic in Nigeria.

6. ESTABLISHMENT LEGISLATION AND COMPOSITION OF NIGERIAN PUBLIC COMPLAINTS COMMISSION

As earlier mentioned, the reinstatement of democracy in Nigeria in 1999 has transformed the law establishing Nigeria's PCC from a military Decree to an Act of the National Assembly of the country now called the Public Complaints Commission Act. The Act establishes the PCC under section 1(1) as a federal government body and refers to it as "the Commission". The Commission's headquarters is domiciled in Abuja, Nigeria's Federal Capital Territory (FCT) and it has branches in every of the states that make up the Nigerian federation. The National Assembly is vested with powers to superintend over the Commission. As stipulated by section 1(1) and (2) of the Act, the Commission comprises of a Chief Commissioner and a number of other Commissioners as may be determined occasionally by the National Assembly. By virtue of section 1(2), it is also within the powers of the National Assembly to determine the number of branches that the Commission may establish across the states of the country. While the Chief Commissioner is under the supervision of the National Assembly, the Chief Commissioner coordinates the activities of all the Commissioners of the state branches of the Commission.

7. APPOINTMENT OF COMMISSIONERS OF THE COMMISSION

In accordance with section 2(1) of the Act, the National Assembly appoints the Chief Commissioner and other Commissioners of the PCC, in line with the requirements of the Act. A Commissioner has a tenure of three years initially and can be re-appointed for another three-year term at the end of the first tenure, but must leave office after serving in this capacity for six years. Therefore, the maximum tenure of office for Commissioners of the PCC is six years. The National Assembly enjoys the power to remove a Commissioner at will and whenever it pleases. In view of section 2(4) and (5) of the Act, the salaries and allowances of the Chief Commissioner and other Commissioners are paid based on the directive of the President. At retirement, the gratuities paid to the Commissioners are also calculated as the President directs.

8. POWERS AND DUTIES OF THE COMMISSIONERS

Section 5(2) of the PCC Act empowers every Commissioner to initiate investigation in his or her own discretion or in view of any complaints presented to him or her by any individuals related to an administrative activity by the following entities:

- (a) a department or ministry of the federal or state government;
- (b) a department of a local government authority;
- (c) a legitimate company or public organization established by any government in Nigeria;
- (d) a firm founded under or following the Company and Allied Matters Act owned either by any government or private persons in Nigeria or otherwise;
- (e) a personnel and employee of any of the forenamed organizations.

Under section 5(3), the Act provides that:

- (a) the power resides with the Chief Commissioner to establish how complaints are presented;
- (b) a Commissioner is empowered to determine, based on his or her preference, whether or not to inform the public about his actions or planned actions with reference to any specific case, and by what means it does that;
- (c) a Commissioner has power to request for any information deemed imperative for executing his functions efficiently and thus can visit and examine the facility or surroundings of an individual or public or private organizations.

A Commissioner, according to section 5(3)(d) of the Act, retains the power to probe with exceptional attention any administrative acts that are:

- (i) inconsistent with any statute or injunction;
- (ii) erroneous in law or unreasonable in the determination of truth;
- (iii) irrational, discriminatory, repressive or opposed to the regular duties of administrative structures;
- (iv) inept in encouragement or contingent on inappropriate conceptions;
- (v) ambiguous or improperly explicated, and then unacceptable;

In section 5(3)(e), the Act requires every Commissioner to possess the capacity to interrogate administrative processes of any courts of law in the country.

Following the provision in section 5(4 - 6), if any particular complaints are brought before two or more Commissioners at the same time, the power rests with the Chief Commissioner to choose the Commissioner that would handle the issue and his verdicts would be final. All Commissioners and staff are required to observe high-level of confidentiality in handling all cases brought before the Commission, such that the source or content is not publicly disclosed, but a Commissioner can, however, divulge such cases if he in his opinion, deems the action necessary in providing justifications for his findings and proposition. While exercising the powers bestowed on him or her by the Act, a Commissioner is not responsive to the command or dominance of any other individual or authority.

9. STATUTORY LIMITATIONS TO EXERCISE OF POWERS BY THE COMMISSIONERS

In section 6(1), the Act restrains a Commissioner from investigating any cases:

- (a) that are overtly exterior to his scope of concern;
- (b) that are undecided by the National Assembly, the Council of State or the President;
- (c) that are ongoing at any court of law in Nigeria;
- (d) that are concerning whatever is done or presumed to be done by any member of the armed forces of Nigeria or the Nigeria Police Force under the Armed Forces Act, or the Police Act;

- (e) where the complainant is, in the view of the Commissioner, yet to exhaust all possible legal and administrative processes;
- (f) involving any act or thing done prior to 29 July 1975 or regarding which the complaint is brought after more than twelve months from the date of the act or thing done from which the complaint emanated;
- (g) where the complainant does not have any individualized interest.

Section 6(3), specifies that a Commissioner is bound by the law to declare the reasons for deciding not to conduct investigation on a complaint brought before him or her, if he or she determines to do so, that is, if a Commissioner decides not to probe a complaint.

10. IMPEDIMENTS TO THE EFFECTIVENESS OF NIGERIAN PUBLIC COMPLAINTS COMMISSION

Despite the enormous powers granted to Nigeria's ombudsman body by the establishment Act, Akpa et al (2020) maintains that Nigerians have continued to suffer administrative corruption and brutality in an increasing rate even while the Commission exists. This is, for example, evident in the steady rise in the number of reported administrative cases in Nigeria from 41,889 in 2015 to 54,655 in 2017 and 58,504 in 2018 (PCC, 2015, 2017, 2018). The reason for this appalling situation is that, certain issues constitute major obstacles to the effectiveness of the Commission in performing its crucial responsibilities in the interest of the citizens in the subsisting democratic space. The most prominent among these issues are themed and discussed below.

11. LACK OF INDEPENDENCE

Although section 5(6) states that, the Commission and/or Commissioners should not be subject to the control of any other persons or authorities in the course of discharging their duties, this is not the case as both the National Assembly and the Presidency influence the affairs of the Nigerian ombudsman. By law, the Commission's staff are appointees of the government of the day (Osegbue & Madubueze, 2017). On the one hand, the fact that the Act empowers the National Assembly to appoint and remove all the Commissioners of the institution at any time does speak volume about how insecure or prone the office of a Commissioner within the Nigerian ombudsman body is to control by the legislature (Igwenyi et al., 2020). The various segments of Nigerian population have persistently clamoured that, "this leaves the fate of Commissioners in the hands of the Federal Law Makers, who can remove them even in bad faith and will equally make a Commissioner vulnerable" (Igwenyi et al., 2020, p. 35). Indeed, to avoid being removed from office, the Commissioners are ordinarily compelled to do the bidding of the National Assembly. This is the more so that the appointment of the Commissioners of the Commission is based on political patronage (Alemika, 2015), rather than on merits.

On the other hand, the monthly salaries and retirement benefits of PCC's Commissioners are paid to them in line with instructions of the President. In consistency

with the maxim, “he who pays the piper dictates the tune”, “this implies or shows that the Commissioners are under the executive arm of government and are responsible to the presidency” (Obodo & Anigbata, 2017, p. 58). Commissioners cannot act outside the instructions of the presidency in matters that are of particular interests to the President. This propels Abasiokong and Uzoma (2019) to state unequivocally that, the government influences and controls the affairs of the ombudsman in Nigeria a great deal, adding that it is usually difficult for the institution to objectively stage investigations against the government, and this often results in the abandonment of cases that directly affects the government in a negative sense. The undue influences of the National Assembly and the President over the activities of the PCC denies this critical institution the requisite measure of operational autonomy and freedom necessary for it to protect Nigerian citizens’ rights optimally in the public administration.

12. LACK OF LEGAL PUNITIVE CAPACITY

Perhaps, one of the gravest barriers to the workings of the Nigerian ombudsman is its statutory inability to punish offenders after investigation. In Nigeria, “the Ombudsman only investigates a case and cannot carry out justice against offenders” (Abasiokong & Uzoma, 2019, p. 6). The provisions in section 7(3) and (4) of the PCC Act are directly inimical to the effectiveness of the institution, in this regard. Section 7(3) instructs the Commission to, after carrying-out investigations and establishing that an individual has committed an offence, refer the case to an appropriate authority or simply prescribe that the individual should be arraigned before a court of law. Similarly, section 7(4) of the Act specifies that, where the PPC has confirmed that a person’s action warrants the administration of corrective measures to such person, the Commission should report the case to an appropriate authority that would take the actions. The inability of the Commission to enforce its decisions in terms of pushing erring officials is a big problem as it reduces the institution to more or less an advisory body than an authentic broker of administrative justice (Osegbue & Madubueze, 2017). This lapse is not only described as a deadly blow on the institution (Igwenyi et al., 2020), it has also resulted in the Commission being regarded as a Dog that merely barks without biting (Abasiokong & Uzoma, 2019; Igwenyi et al., 2020). This partly explains why many Nigerians do not repose absolute faith and confidence in the nation’s ombudsman body, but rather hold it at a very low esteem.

13. INSUFFICIENT FUNDING

Regardless of the huge responsibilities saddled on the Nigerian ombudsman, the Federal Government poorly funds the Commission. This is another cogent explanation for the unsatisfactory performance of the institution in the country, and this problem has persisted over the years as successive Chief Commissioners of the Commission have repeatedly complained of not having enough financial resources to fund their activities. A former Chief Commissioner of the Public Complaints Commission, Mr. Funsho Olukoga, for example, confirms that the Federal Government is not adequately funding the Commission, and this makes it difficult for the agency to carrying-out its operations with utmost vigour and effectiveness. Olukoga was even spurred by the situation to poignantly assert that the Federal Government of Nigeria should either

increase funding to the ombudsman body or scrap it completely (Ojoye & Folarin, 2017). His immediate successor, Mr. Chille Igbawua, also publicly declared that inadequate funding of the Commission hinders investigation and resolution of complaints brought to it (Olukomaiya, 2018). He notes that the institution's funding has been handicapped over the years (Suleiman, 2018).

Paucity of funds creates numerous logistics challenges in the Commission's effort to execute its duties (PCC, 2018, 2015). As Mr. Igbawua stated when he was still in office, "we are currently faced with difficulty in mobility, due to lack of vehicles, because our job requires officers to go round and carry out investigations" (Olukomaiya, 2018, para. 4). A direct consequence of this is that the Commission's Commissioners and staff are often forced to use their private vehicles to execute investigations, and this has blighted smooth investigation exercises by the Commission (PCC, 2018, 2017, 2015). In 2019, while advocating for better funding of the Nigerian ombudsman, the Parliamentary Staff Association of Nigeria (PASAN) disgruntledly divulged that the Commission was only able to resolve as little as 41 percent of all the cases brought to it in four (4) years, precisely between 2015 and 2018 (Asadu, 2019). As in preceding years, the Commission only received from the executive arm of government the sum of N4.2 billion in 2018 out of the 7.4 billion budgetary allocation to it (PCC, 2018; Asadu, 2019). In 2016, the Federal Government had approved only N2 billion for the PCC in the budget, and the salaries of PCC staff were equally slashed the same year, and this prompted protests by the aggrieved workers (Ayodele, 2016).

In 2015, the Commission was given only N4 billion to run its activities (PCC, 2015). The current Chief Commissioner of the PCC, Mr. Abimbola Ayo-Yusuf, who was appointed in May 2021, has also reacted to the lingering problem of inadequate funding. After N8.6 billion was proposed for the Commission in the 2022 budget (Akpan, 2021), he summoned the courage and presented a new budgetary proposal of N23 billion to the National Assembly to enable the Commission discharge its duties effectively (Aborisade, 2021). The continuing trend of gross underfunding of the country's ombudsman institution renders it unable to perform up to the anticipation of Nigerians, thereby worsening the plight of most of the citizens whose fates are left unguaranteed (Asadu, 2019). What is undisputedly clear about government disposition in relation to the Nigerian ombudsman, following from the poor funding of the Commission, is that the Federal Government attaches little or no importance to the institution vis-à-vis the protection of the rights of the generality of the citizens.

14. INADEQUATE PUBLICITY

Lack of adequate publicity and public awareness of the PCC is a major bane of the institution (PCC, 2018). The Nigerian Ombudsman has been in existence since 1975, but quite a large number of Nigerians are unaware of the existence of the institution, not to talk of leveraging on it to pursue redress of improper administrative treatments done to them by government agencies. The situation is worse off in relation to Nigerians living in the rural areas (PCC, 2015). Mr. Chille Igbawu, the former Chief Commissioner of the Commission validates this fact in an interview in 2020 as he states that the issue

of visibility is one of the greatest problems of the Commission (Suleiman, 2018). He explains, that the overall level of awareness among Nigerians about the Commission, which has existed for more than 40 years, is low compared with the level of publicity being enjoyed by other agencies that were established many years after it, adding that the fact that the Commission receives less than 10 million petitions yearly in a country with almost 200 million people, is a proof to this effect (Suleiman, 2018). The situation creates a special concern, in that the awareness of the institution even among the Nigerian public servants is also very low because of the small amount of cases it resolves yearly (Abasiokong & Uzoma, 2019). The problem of limited popularity of the PCC is also tied to the issue of paucity of funds as reasonable amounts of financial resources are required in the modern era to proactively utilize both the traditional and social media to prosecute robust publicity campaigns to significantly raise the level of knowledge about the Commission and its activities in the country (PCC, 2018, 2017, 2015). The persistence of this problem, therefore, is consolidated by the general incongruous disposition of the government of the day towards the country's ombudsman.

15. ILLITERACY AND IGNORANCE

Literacy is an invaluable tool for the protection of human rights. Expatriating this fact, Olomajobi and Osah (2019) hold that, literacy occupies a central place in the course of promoting and protecting human rights, in that it positions individuals to be well-informed about their rights and how to defend them. Literacy, apart from being a human right in itself (Eze, 2016; Crompton & Dunkerly-Bean, 2016), is also an instrument for the advancement of other rights (Eze, 2016). Similarly, Crompton and Dunkerly-Bean (2016, p. 1) believe that, "literacy is a tool of personal empowerment through expression, as well as a means to social, cultural and human development". As far back as 1968, the United Nations Educational, Scientific and Cultural Organization (UNESCO), in a piece titled "Illiteracy and Human Rights", published on the occasion of the international year for human rights, recognized that "illiteracy is a major obstacle to the effective enjoyment of human rights" (UNESCOS, 1968, p. 8). The organization further explains as follows:

An illiterate is unaware of the law which could protect him, for example, of the guarantees provided for in the Universal Declaration in matters relating to policing and justice, marriage, work, participation in and supervision of the management of public affairs. He is completely at the mercy of others...For those who cannot read, modern society constitutes a world as incomprehensible as was the world of nature to our earliest ancestor, cowering in their caves, and the helplessness is about the same in both cases (UNESCO, 1968, p. 7).

Hence, in the absence of good education, individuals would be bereft of the necessary knowledge about their inherent rights and duties in society (Olomajobi & Osah (2019). This implies that literacy is a key factor in the realization of human rights; the more informed or conscious one is about his or her rights the better he or she would leverage all available acceptable means to defend and/or realize them. Apeh and Onoja

(2018, p. 19) rightly observe that, "...though human rights are applicable to all citizens, many of them cannot assert their rights due to ignorance or illiteracy".

The foregoing statement, typifies the situation on Nigeria where a sizable proportion of Nigerian citizens are, unfortunately, illiterates. Ultimately, there is high rate of illiteracy in Nigeria, and this unprecedentedly affects the rights of the citizens (Eze, 2016; Dada, 2012; Okogbule, 2005). In September 2021, Nigeria's Ministry of Education released statistical evidence of the gloomy situation of adult literacy in the country. The data reveals that as much as 38 percent of the estimated Nigeria's 200 million population, which makes-up more than 76 million adult citizens of the country, are illiterates (Onyedinefu, 2022). It, thus, becomes apparent why most Nigerians do not demand for redress when their rights are infringed in the context of public administration. Okogbule (2005, p. 106) believes that: "An educated man will easily adapt to the realities of the situation and have the intellectual capacity to insist on the enforcement of his rights, quite unlike the illiterate. Education thus empowers him to maximize the opportunities and resources available in his environment". In the same vein, where a population is largely literate, they are able to read and understand government policies and positively contribute to boosting good governance. They are also able to recognize their rights, and know are abused, as well as the relevant medium through which to fight to defend the rights (Eze, 2016).

In Nigeria, the reverse is clearly the case. Many Nigerians are wallowing in irremediable ignorance despite the Jomtiem Declaration of Education for All by the year 200 (Dada, 2012). Because of the lack of education and ignorance, a vast majority of the citizens of Nigeria cannot access social justice and are estranged from the nation's political and economic fabrics (Okogbule (2005). Consequently, with the estimated 76 million adult non-literate Nigerians, coupled with many others who are ignorant of their rights under the PCC Act, a substantial number of the citizens do not also know how and where to pursue administrative justice in the event of any infringements on their rights. However, the point must be made that it is the socio-economic situation of the Nigerian society that has made education inaccessible to majority of the country's average citizens, due to high costs. As Dada (2012, p. 18) correctly states, "many Nigerians live in want, abject poverty and penury...". Hence, education in Nigeria has almost completely become an exclusive commodity for the rich and privileged citizens, who can afford the cost. In the whole, the high rate of illiteracy and ignorance among Nigerians contribute to the ineffectiveness of the country's ombudsman institution, as the citizens do not demand their rights when government's organizations and their officials infringe upon them.

16. DEFICIENCY IN THE ESTABLISHMENT ACT

The Public Complaints Commission Act that establishes the ombudsman institution in Nigeria embodies a major deficit that negatively affects the efficacy, public perception, and the realization of the goal of the Commission. This specifically bothers on the provisions in section 8(1), (2) and (3) of the Act regarding sanctions meted-out on violators of the stipulations of the law. The punishments are too light that they cannot deter people from offending the law (Igwenyi et al., 2020, p. 35; Suleiman, 2018). Under the aforementioned subsections of section 8, the Act specifies the payment of a fine of just

N500 or maximum of six months in prison as the punishments borne by anyone other than the Commissioner, who discloses any complaints brought to the Commission; refuses to provide the Commission information when asked to do so or gives fallacious information in writing deliberately or carelessly; and purposely impedes, halts, physically attacks or prevents a Commission or other officers and staff of the Commission from executing their duties, or who prompts an individual to do the same, respectively.

Considering that the PCC Act gives legal backing to the Commission in pursuit of such important goal as the protection of Nigerian citizens from administrative injustices, the fine of a meagre N500 and six months imprisonment are frivolous, and it makes caricature of the whole essence of the law and the institution. Of course, “the punishment or sanction for any breach under the Act is so ridiculous that one may choose to breach the law as many times as he desires” (Igwenyi et al., 2020, p. 35). The former Chief Commission of the PCC, Chille Igbawau, describes the sanctions as “loose” and “irrelevant”, arguing that some persons can offend up to twenty (20) times and without apprehension pay the fine (Suleiman, 2018). These sanctions themselves can be said to be categorically negating to the purpose of the ombudsman system in Nigeria, because they can hardly frighten and demotivate persons from breaching the law.

17. SOLUTIONS TO THE PROBLEMS

It is highly imperative that Nigeria takes necessary steps to address the above problems blighting the effectiveness of the Public Complaints Commission, to reposition the institution for improved performance in protecting the country’s citizens against administrative cruelty and corruption by government officials and organizations. In light of this, this present study suggests the following applicable measures:

The Public Complaints Commission Act that sets-up the Nigerian ombudsman should be amended to accord the institution independence like other critical institutions in the country, such as the Nigerian Independence National Electoral Commission (INEC). By the amendment, the relevant sections empowering the National Assembly and the presidency to interfere in the activities of the Commission by virtue of being in-charge of the appointment, removal and payment of salaries and retirement benefits of the Commissioners and staff of the institution, should be repealed. This would put the Commission off the “legal hooks” wielded against it by the legislature and executive arms of government and grant it the required measure of autonomy and freedom to engender the expected level of impact in stemming the tide of continuing administrative abuses in the present democratic dispensation in Nigeria.

Through the amendment of its establishment Act, the Commission should be legally reinvigorated by imbuing it with powers to investigate, prosecute as well as punish offenders, instead of referring the cases to other authorities after investigation, as it is under the current Act. This is highly important, as it would give the Commission teeth to “bite” rather than just “barking”. Wielding punitive powers would also change the perception of governmental officials, agencies and the citizenry about the Commission, in that it would make the Commission to command better institutional respect and prestige, whereby

mere mention of its name alone would send shivers down the spines of unscrupulous bureaucrats and organizations, just like the Economic and Financial Crimes Commission (EFCC), a major Nigerian anti-corruption agency.

The Federal Government must, without hesitation, change its attitude towards the Commission with respect to the issue of funding. Given the essentiality and enormity of its responsibilities, adequate funding should consistently be allocated to the Commission in annual budgets henceforth. Also, the executive arm of the federal government must refrain from the illegitimate and debilitating act of releasing to the Commission amounts below the approved budgetary allocation to it, as has been witnessed over the years even up till the present moment. Making considerable amounts of financial resources available to the Commission would certainly increase its efficiency and effectiveness in executing its statutory functions for the good of the citizens and the country as a whole. This step, if taken, would also portray the image of the government in a good light as it would be regarded by Nigerians as a strong demonstration of government's genuine commitment and political will to guarantee proper protection of the rights of the country's citizens in the public administration, thereby strengthening government's support base within the population.

There is the need for a vibrant collaborative effort between the Nigerian Federal Government, the PCC itself and the various anti-corruption and human rights-focused civil society organizations (CSOs) in Nigeria to improve the visibility of the Commission within the country's population through purposeful vigorous nationwide enlightenment and sensitization campaigns about the existence and activities of the body. The intensive mass enlightenment campaigns should be implemented through various mediums, including physical seminars and symposia (for government workers), social and traditional media platforms to create adequate awareness of the existence and workings of the institution among the citizenry. The relevance and utility of the ombudsman institution in Nigeria would definitely increase with an increased knowledge of its existence and proper understanding of its purpose by the masses of Nigerian citizens.

Government at all levels in Nigeria - federal, state, and local government, should prioritize education and bring it to the front burner of their development policies. If not made completely free, education should be highly subsidized, sustainably, in all public schools across all levels - primary, secondary and tertiary. This would provide opportunity to/for the poverty-stricken segment of the Nigerian population, which constitute the majority, to access education on equal basis with their affluent counterpart citizens, thereby increasing the literacy level in the country and diminishing ignorance. Also, a well-thought-out and organized national adult literacy programme should be designed and rolled-out by the Nigerian Federal Government to offer all interested adult Nigerians an opportunity to acquire basic education that would bequeath to them the essential skills of reading and writing. To encourage greater participation, this adult literacy programme should likewise be free or subsidized to the barest possible minimum. These measures would, to a very large extent, immensely empower Nigerians by raising the level of knowledge and awareness about human rights among them, and thus reducing their vulnerability to abuses in all fronts, including in the sphere of public administration.

Through the proposed amendment to the PCC Act, the provision under section 8 that deals with punishments apportioned to offenders under the current law should be revisited. The N500 and six months sanctions should be completely jettisoned, and be replaced with heavier and more deterring sanctions, if government officials and the citizens must take the Act, the Commission, and its mandate seriously. In the opinion of this paper, raising the fine to the minimum of one million N1, 000,000, and the prison term to a minimum of 36 months would, to a large extent, stimulate a high sense of caution among all and sundry and deter people from flagrantly contravening the provisions of the Act, as the case is under the extant legislation.

18. CONCLUSION

The Public Complaints Commission, Nigeria's ombudsman organization, is a federal institution established in 1975 by the Federal Military Government of General Yakubu Gowon, and saddled with the duty to protect the citizens' against administrative corruption and abuses. The establishment of the Commission followed the promulgation of the Public Complaints Commission Decree No. 31 by the then Military Government to authorize the 1974 report of the Public Service Review Panel inaugurated by the regime in 1974 to evaluate and suggest ways of revolutionizing Nigeria's overall public service machinery for greater efficiency and effectiveness. As democracy was reintroduced in Nigeria in 1999, the Commission has continued to exist and function in by virtue of the Public Complaints Commission Act, CAP P37 of Laws of the Federation of Nigeria 2004. However, the Nigerian ombudsman institution has not been as active as expected in discharging its duties in the prevailing democratic dispensation in the country.

As the study reveals, certain issues account for the unimpressive performance of the ombudsman in Nigeria. These include but not limited to its lack of independence from the legislature and executive arms of Nigerian Federal Government; lack of legal powers to punish offenders; insufficiency of financial resources; inadequate awareness about the existence and activities of the institution; illiteracy and ignorance; and the inherent weaknesses of the Act establishing the institution, especially with respect to the gravity of sanctions administered to offenders under the existing law. Consequence upon this, the study suggests the following solutions to the problem: amendment of the Commission's establishment Act; conferment of punitive powers to the institution; increased budgetary allocation to it; promoting the visibility of the agency and its activities, through aggressive mass enlightenment and sensitization campaigns; making education accessible to all Nigerians and the institutionalization of a country-wide adult literacy programme; and imposition of heavier sanctions against offenders in the proposed amended Act. In the conviction of the study, these are the most possible ways of strengthening the Nigerian ombudsman to better discharge its statutory responsibilities in the interest of the citizens and the nation.

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