

NATIONAL OPEN UNIVERSITY OF NIGERIA

MPA 844



Public Administrative Law Module 2

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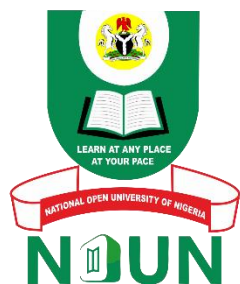
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Unit I The President/Governors

1.0 Introduction

According to Eneanya, A.N. (2009), “Administrative law is the law relating to administration. It determines the organisation, powers and duties of administrative authorities and indicates to the individual, the remedies for the violation of his rights.”

In this module, you will be exposed to the functions of some administrative authorities which duties are enshrined in the 1979 Constitution of the Federal Republic of Nigeria. Public service administrators operate within the confines of administrative law and constitutional law. Their purpose is to seek the most effective ways of providing service to the good people who comprise the territory referred to as Nigeria.

In the following four units of module 2, you will learn about the designated administrative functions.

2.0 Objectives

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

- explain why the President’ office is created
- discuss about the creation of the state governor’s office
- state the functions of the President and also those of the state governors
- explain the governance using the Nigerian Constitution
- discuss the President as the chief controller of material and human resources.

3.0 Main Content

3.1 The President of the Federal Republic of Nigeria

The office of the President of the Federal Republic of Nigeria is a creation of the constitution. Section 130(1) of the 1999 Constitution states that, “there shall be for the federation a President”.

Section 131 states that “a person shall be qualified for election to the office of the President if he/she meets the following requirements.

- He is a citizen of Nigeria by birth
- He has attained the age of 40 years
- He is a member of a political party and is sponsored by that political party; and
- He has been educated up to at least school certificate level or its equivalent” (See page 1176 of the 1999 Constitution).

Look at section 135(2) of the Constitution that states, that the tenure of the office of the president is 4 years. The president may, however, seek re-election at the expiry of the first term for another term.

As President of the Federal Republic of Nigeria, the incumbent is the number one citizen of Nigeria and head of the executive branch of government. He appoints ministers and chairmen and members of certain federal executive bodies including the following:

- Code of Conduct Bureau
- Council of State
- Federal Character Commission
- Federal Civil Service Commission
- Federal Judicial Service Commission
- Independent National Electoral Commission
- National Defence Council
- National Economic Council
- National Judicial Council
- National Population Commission
- National Security Council
- Nigerian Police Council
- (m) Police Service Commission
- Revenue Mobilisation Allocation and Fiscal Commission” (see section 153(1) of the 1999 Constitution).

Sections 143 and 144 of the 1999 Constitution stipulate the procedures for removal of the President from office.

3.2 The President as Controller of Material and Human Resources of the Nation

As already stated, section 130(1) of the 1999 Constitution creates the office of the President of the Federation. By that fact, the President is the head of state, chief executive officer of Nigeria and the Commander-in-Chief of the Nigerian armed forces. The executive power to administer Nigeria is vested in the President by virtue of section 5 of the 1999 Constitution of the Federal Republic of Nigeria.

To assist the president in his duties the constitution created the office of Vice-president in section 141 which inter alia states “there shall be for the federation, a vice-president”. The President therefore is empowered by the constitution to use his discretion to assign responsibilities to the Vice-president and the ministers, who together are some of the members of the Federal Executive Council (FEC).

As stated in unit 2 of this course, executive powers of any public functionary including the President, are limited by administrative law, because any executive act that does not have a legal source is *ultra vires* i.e. above the law and above the incumbent’s power. This means that executive powers are statutory.

As the chief executive and head of the executive branch of government, the President of the Federal Republic of Nigeria is the controller of material and human resources of Nigeria.

The constitution recognises that the President alone cannot perform all the functions of the executive branch. That is why it created the offices of vice president, ministers, heads of service and statutory corporations. These functionaries assist the president to carry out executive functions required of him by the Nigerian constitution.

It is pertinent to note that in carrying out his functions, the constitution has a protection for the President. That is why it provides that the President cannot be sued in a private capacity while discharging his duties as the President.

3.3 Governors

Section 176 of the 1999 Constitution provides for the creation of the office of the governor of a state. Specifically, section 176 (1) of the 1999 Constitution states that “there shall be for each state of the federation, a governor”. As the executive functions of the president is in a federal setting, so are the executive responsibilities of a governor in the state.

According to Oluyede (1988), “the governor in a state is to a state what the president is to the whole federation” (p. 99). In executing his functions in a state, the governor, like the president is assisted by a deputy governor, commissioners, special advisers, heads and chairmen of state parastatals etc.

4.0 Conclusion

From the foregoing, it is clear that the offices of president and governor are a creation of the constitution. They are the first citizens of Nigeria in the case of president and of the 36 states of the federation in the case of governors respectively. The 1999 Constitution states the responsibilities and the same constitution provides for the president and governors, vice-president, deputy governors, ministers, commissioners and a host of other officers who help the president and governors in the discharge of their functions.

5.0 Summary

In this unit, you have learnt that the president, whose office is a creation of the constitution, is the head of the executive branch of government. In that capacity, he is the controller of the material and human resources of the Federal Republic of Nigeria. The governors of the 36 states of Nigeria perform at state level what the president performs at the national level, in the presidential system of government.

You also learnt that, as chief executives of Nigeria, the president and governors are the accounting officers within the limit of administrative powers. They may delegate functions to ministers in the case of president and state commissioners in the case of governors but they cannot abdicate responsibility for managing the country and the states respectively.

6.0 Self- Assessment Exercise

1. Justify the creation of the offices of president and governors.
2. List and comment on certain federal executive bodies that are meant to give support service to the president of the Federal Republic of Nigeria.

7.0 References/Further Reading

Eneanya, A. N. (2009). *Public Administration in Nigeria. Principles, Techniques and Application*. Lagos: Concept Publishers Ltd.

Oluyede, P.A. (1988). *Nigerian Administrative Law*. (5th ed.) Ibadan: University Press, PLC.

The 1999 Constitution of the Federal Republic of Nigeria.

Unit 2 Ministers/Commissioners/Special Advisers

1.0 Introduction

In this unit, you will be exposed to the literature on ministers, commissioners and special advisers. These functionaries are lieutenants to the president, and they ensure that the right advice and assistance are given to the president in the discharge of his executive functions. Ministers in the case of the federal executive council, commissioners in the case of state executive council and special advisers are a creation of the constitution. They hold offices at the pleasure of the president and the governor of a state respectively.

2.0 Objective

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

- analyse the selection and duties of the ministers, commissioners, and the special advisers.

3.0 Main Content

3.1 Ministers

Section 148(1) of the 1999 Constitution states that: "...the president may, in his discretion, assign to the vice-president or any minister of the government of the federation responsibility for any business of the government of the federation, including the administration of any department of government."

The office of minister is therefore a creation of the constitution. When the president nominates persons of integrity to be ministers following the doctrine of separation of powers, he forwards their nominations to the senate (legislative) for ratification. A person may only be sworn in as a minister after he has been cleared and ratified by the senate. The senate is the upper chamber of the national assembly. Persons who are sworn in as ministers by the president become members of the federal executive council.

Section 148(2) of the 1999 Constitution states the duties of the ministers.

"...the president shall hold regular meetings with the vice-president and all the ministers of the government of the federation for the purposes of:

- determining the general direction of domestic and foreign policies of the government of the federation
- coordinating the activities of the president, the vice-president and the ministers of the government of the federation and the discharge of their executive responsibilities; and
- advising the president in the general discharge of his executive functions other than those functions with respect to which he is required by this constitution to seek the advice or act on the recommendations of any other person or body" (see p.LL85).

At present, following the Udoji Public Service Commission Report of 1974, ministers are the accounting officers of the ministries in which they serve. As an aid to the president, the minister at all times must be available to consult with the president on issues of state importance.

The president practices the principle of federal character in the appointment of ministers. In other words, at least one minister is appointed from each state of the federation. A minister is appointed to a ministry where he coordinates the efforts of professional and administrative staff in order to attain the objectives of the ministry which he is assigned to in accordance with the civil service reform. Ministers attend the monthly executive meetings presided over by the president at which they give official report of the activities of their respective ministries.

3.2 Ministerial Responsibilities in a Presidential System of Government

Ministers are political functionaries of government who in Nigeria are appointed according to various geopolitical zones comprising the Federal Republic of Nigeria. In a presidential system of government, ministers are appointed by the president and recommended to the national assembly for confirmation. The confirmation process takes the form of interview and background check to determine whether the persons so appointed are fit and proper to be members of the federal cabinet. They are sworn in as ministers by the president after the national assembly has confirmed their nominations. The same process obtains in the various states where the governor appoints commissioners and sends their list to the state house of assembly for ratification.

As members of the Federal Executive Council (FEC) or State Executive Council (SEC) as the case may be, ministers and commissioners have a duty or loyalty to the president or governor who act as chairman of the FEC or SEC as the case may be. According to Oluyede (1988) "...although the president or governor may assign to ministers/commissioners responsibilities for any business of the government including the administration of any department or ministry of government, in reality the responsibility of the minister/commissioner is no more than mere advice" (p.57).

Although the minister or commissioner advises the president or governor, they are not bound to take the advice or the ministers or commissioners.

However, section 148(1) of the 1999 Constitution previously quoted in this unit under item 3.1, specifically documents executive responsibilities of ministers. It states that: "...the president shall hold regular meetings with the vice-president and all the ministers of the government of the federation for the purposes of:

- determining the general direction of domestic and foreign policies of the government of the federation
- coordinating the activities of the president, the vice - president and the ministers of the government of the federation and the discharge of their executive responsibilities; and
- advising the president in the general discharge of his executive functions other than those functions with respect to which he is required by this constitution to seek the advice or act on the recommendation of any other person or body" (See p.LL85).

Section 149 of the 1999 Constitution provides that a minister of the government of the federation shall not enter upon the duty of his office until he has declared his assets and liabilities as prescribed in the constitution and has subsequently taken and subscribed the oath of allegiance and the oath for the due execution of the duty of his office as prescribed in the 7th schedule of the 1999 Constitution.

The minister's primary responsibility as provided by the constitution is advisory. He/she should provide advice to the president who has the responsibility for determining the general direction of the domestic and foreign policies of the government of the federation and in the discharge of presidential executive functions as prescribed in the constitution.

In his advisory role, the minister has the responsibility of attending the weekly executive meetings which are presided over by the president. He is supposed to work in harmony with members of his ministry or department so that the objectives set for his ministry or department may be achieved. As a member of the federal executive council, the minister has a collective responsibility for the actions of the executive. In other words, he cannot dissociate himself from any decisions of the federal executive council of which he is a member. In the Post-Udoji commission era, ministers are now accounting heads of the ministries that are assigned to them. They make decisions and seek advice from the permanent secretaries attached to their ministries who in most cases are career officers and are conversant with government policies for ease of continuity and unity of purpose.

3.3 Commissioners

Commissioners are to the governor and a state as ministers are to the president and the Federal Republic of Nigeria. In other words, commissioners as ministers are a creation of the constitution. They are basically "helpers" to the state governor in the administration of the state. Like ministers, they are nominated by the governor and sent to the house of assembly for ratification. A commissioner may only be sworn in after the state house of assembly has ratified his nomination. This again reflects the separation of power between the executive and the legislative.

In line with the tradition for a governor to reflect all geographical areas of a state in his appointment, he must appoint commissioners from all the geo-political zones of the state. Like ministers, commissioners are assistants to the governor. They are heads of the ministries which are assigned to them. In that capacity, commissioners are accounting officers and they coordinate the efforts of the administrative and professional staff of their ministry. They attend monthly executive meetings presided over by the state governor at which time they give official report about their respective ministries.

3.4 Special Advisers

Section 151(1) of the 1999 Constitution creates the office of special advisers. Specifically, the section states that: "...the president may appoint any person as a special adviser to assist him in the performances of his functions."

Section 151(2) provides that the remuneration of special advisers shall be "as prescribed by law or by resolution of the national assembly."

It is important to note that the nomination of special advisers need not be sent to the senate for ratification in the case of president or to the house of assembly in the case of

governor. A special adviser holds office at the pleasure of the president or governor as the case may be.

In the case of the governor of a state, section 196(1) of the 1999 Constitution provides for the governor to appoint any person as special adviser “to assist him in the performance of his functions.”

It is important to note however, the provisions of section 196(2) of the 1999 Constitution which empowers the house of assembly of a state to agree with the governor on the number of advisers prior to their appointment. Specifically, that section states that: “...the number of such advisers and their remuneration and allowances shall be as prescribed by law or by resolution of the house of assembly of the state.”

It is wise to assume that as in the case of commissioners, the governor will appoint the agreed number of advisers from the geo-political zones of the entire state.

4.0 Conclusion

From the foregoing, it is evident that ministers, commissioners and special advisers are a creation of the Nigerian Constitution. The president and governors as the case may be appoint these functionaries to assist him or her in the discharge of executive functions. A degree of honesty and dedication of duty is expected by persons appointed as ministers, commissioners and special advisers.

It is important to note that ministers, commissioners and special advisers hold office at the pleasure of the president or governor as the case may be. In other words, if the president or governor leaves office, their tenure is deemed to end.

5.0 Summary

As chief executive officer of public administration in Nigeria, and chief executive officer of the respective states of the federation, the president and governors respectively are empowered by the Nigerian constitution to appoint ministers or commissioners and special advisers to help them in the discharge of their executive functions.

As you have noted previously, the constitution recognises separation of powers. That is why nomination of ministers and commissioners respectively must be sent to the Senate in the case of President or House of assembly in the case of governors for ratification. It is only after the Senate (in the case of president) and house of assembly (in the case of governors) have confirmed the nomination of special advisers sent to them, that the advisers may be sworn in. The special advisers however are exempted from ratification by the Senate or state house of assembly as the case may be.

6.0 Self -Assessment Exercise

1. Describe the functions of ministers. Are there special occasions when a minister may be appointed and sworn into office without ratification by the senate?
2. Has a governor who appoints a special adviser without reference to the state house of assembly contravened any law?

7.0 References/Further Reading

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

Eneanya, A. N. (2009). *Public Administration in Nigeria: Principles, Techniques and Application*, Lagos: Concept Publishers Ltd.

Iluyomade, B. O. & Eka, B. U. (1992). *Cases and Materials on Administrative Law in Nigeria*. (2nd ed.) Ile Ife: Obafemi Awolowo University Press.

Oluyede, P. A. (1988). *Nigerian Administrative Law*. (5th ed.) Ibadan: University Press, PLC.
The 1999 Constitution of the Federal Republic of Nigeria.

Unit 3 The Civil Service

1.0 Introduction

In this unit, you are going to learn about literature on the civil service. A clear distinction will be made between public service and civil service. The characteristics or features of civil service job will be outlined and the office of head of service and that of the permanent secretary will be discussed. Literature on security of employment in the civil service will be discussed in order to draw a contrast between the old civil service and modern civil service where tenure of service has become a political issue.

2.0 Objectives

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

- analyse the public and civil service
- state the duties of head of civil services and the permanent secretary

3.0 Main Content

3.1 The Civil Service

Section 169(2) of the 1979 Constitution creates the civil service of the federation. The section states that “there shall be a civil service of the federation”. Just as the office of president, governors, ministers or commissioners are a creation of the constitution, so is the civil service.

Similarly, section 206 of the 1999 Constitution provides for the establishment of a civil service of a state. Consequently, the section states that “there shall be for each state of the federation, a civil service”. In other words, the constitution provides for each of the 36 states which comprise the Federal Republic of Nigeria to have its own civil service.

The president or governor alone cannot execute all the functions allocated to them by the constitution. Therefore, they delegate some of their functions to a body of public organisations which implement government policies.

According to Malemi: “...generally, the civil service is the body of workers who work for any branch, or department of government, or any agency, authority, body, institution or establishment owned by government, and are usually paid out of money voted or budget passed by parliament” (p. 382).

Public service may be defined as a section of the government charged with the principal duties of implementing government policies and decisions. Those who work in the public service are called public servants. Their work is guided by rules and procedures and they serve successive governments in a complete order of tenure separate from the elected officials who they serve. The units of government under this category include institutions established by government, public corporations, commissions, agencies and ministerial departments.

The remuneration of public servants is based on salary and conditions of service approved for civil servants. As a subset of public service, the civil service, which is constituted in the above paragraph, is a creation of the constitution. Ministries, local government councils, public service commission and other service organisations as funded by the government, comprise the civil service and those that work in the civil service referred to as civil servants.

Discipline and promotion of civil servants of all grades including clerical, secretarial, professional and administrative staff in the various services are carried out by the civil service commission. The commission comprised of men and women of integrity and of various professional backgrounds appointed by the president in the case of the Federal Civil Service Commission. In the case of state civil service commission the governor effects the appointment.

3.2 Characteristics of the Service

Although elected officers, who are politicians, work with civil servants in their tenure, civil servants are not politicians. They survive the tenure of politicians whom they have to work with in the interest of good order and governance.

In that regard, the civil service has the following characteristics.

Permanency

The civil service has a permanent structure. The tenure of civil servants is permanent and succeeds all governments. He does not belong to any political party and they survive the tenure of politicians. The tenure of public servants is not affected by changes in the administration which they serve. In other words, if there is a change in government which sweep all the political office holders, civil servants as career officers remain in their post in readiness to serve the next administration by proffering advice, engaging in policy formulation, programme planning and budget preparation as the case may be.

Neutrality

Civil servants are required to be neutral as public servants. They are not aligned with any political party; and they are not agents of any political party in power. Neutrality is an essential characteristic of the civil service.

Impartiality

Civil servants render their support service to government without prejudice to the political party in power or irrespective of the religion, class, gender or ethnic origin of members of the public who they serve.

Anonymity

Civil servants are expected to discharge their functions to the best of their ability. They are expected to serve every successive government professionally and to take exception that they are anonymous and cannot be held responsible for the failure of any administration.

Expertise

The civil service is made up of people of varied professional background. They are expected to provide expertise in their areas of specialisation freely without discrimination to anyone.

Bureaucracy

The civil service is governed by bureaucracy. This is a reference to a structured order or system of official roles as prescribed by general orders. It has been said that this structured way of doing things causes delays and diminishes the creative and innovative nature of the civil servants.

3.3 Office of the Head of the Civil Service

As we have noted, the civil service comprises all government agencies and the human resources who work for the agencies. Section 170 of the 1999 Constitution provides for the president to appoint persons to the position of head of the civil service of the federation. Specifically, section 171(2) empowers the president to appoint suitable persons to the following positions.

- Secretary to the government of the federation
- Head of the civil service of the federation
- Ambassador, high commissioner or other principal representative of Nigeria abroad
- Permanent secretary in any ministry or head of any extra-ministerial department of the government of the federation how so ever designated; and
- Appointment of personal staff to any office of the president.

However, section 171(3) makes it mandatory for the president of the Federal Republic of Nigeria to appoint a person to the office of the head of the civil service of the federation from among permanent secretaries or equivalent rank in the civil service of the federation or of a state. This means that the constitution places integrity on the office of the head of the civil service. That is why it states that a person to be appointed to the office must be from among serving permanent secretaries. This emphasises the fact that the appointee must be a civil servant who is knowledgeable in civil service rules and procedures and not a politician. As head of the civil service, the appointee is the chief administrative officer of the civil service. He should be able to enjoy the respect and loyalty of other permanent secretaries on one hand and other civil servants on the other.

Similarly, section 208 of the 1999 Constitution empowers a state governor to appoint persons to the position of

- Secretary to the state government
- Head of service of a state
- Permanent secretary
- Personal staff to the governor.

The same conditions that apply to the office of the head of the civil service at the federal level apply to the head of the civil service of a state government.

3.4 Permanent Secretary

Section 171(2) of the 1999 Constitution vests the appointment of permanent secretary in the presidency. The permanent secretary in a federal ministry used to be the administrative head of the ministry and the accounting officer before the acceptance of the Udoji Commission which made ministers the administrative head of ministries and the accounting officers of their respective ministries. Similarly, in the state section 208(1) vests the power to appoint a permanent secretary by the state governor.

The office of the permanent secretary is a creation of the constitution. He should be a senior career civil servant who is knowledgeable in the rules and regulations of the civil service. The office of permanent secretary is a tenured position and when the incumbent retires from service he retires with his terminal salary.

3.5 Security of Employment in the Civil Service

The civil service as we have it today is a modified form of the civil service that Nigeria inherited at independence. In pre-independence era, civil servants held their appointment at the pleasure of the crown as confirmed in a leading case of *Dunn v The Queen 1896 1 QB 116*. In post-independent period, civil servants no longer held their appointment at the pleasure of state. They may no longer be dismissed or removed from office indiscriminately. This was achieved because of a supreme court decision in the case of *Bashir Alade Shitta-Bey v. Federal Public Service Commission (1981) 1 SC. 40*. The federal and state governments as employers of labour now follow labour laws and procedures in dispensing with the service of civil servants.

Civil servants may now seek redress in court if the tenure of their service is disrupted by unjustified infringement of their fundamental human right. In the case of *Dr. O G. Sofekun v. Chief N O A. Akinyemi and others (1981) 1 NCLR 135* (pages 140 and 146) the Supreme Court held that the purported dismissal of Dr. Sofekun was illegal, null and void and of no effect.

In the current dispensation, civil servants can seek redress in a court of law for acts of dismissal or other excessive disciplinary action if they believe that their fundamental human rights have been infringed. Security of tenure for civil servants is now the same as for any employment in the other sectors of the economy. There, an employee is given all necessary training and tools of work in order to give his best to the organisation. This is without prejudice to genuine disciplinary actions of staff that include possible dismissal or termination of appointment for gross misconduct, after all due processes have been followed. As it stands today, tenure in the civil service is guaranteed and severance (retirement) from service for a civil servant with a good record is to be at 35 years of continuous service or attainment of age 60.

4.0 Conclusion

The federal civil service on one hand and the state civil service on the other hand, comprise of men and women who assist the president or governor and state agencies in public administration. The career advancement and discipline of civil servants are carried out by the civil service commission. Civil servants by rotation are supposed to exemplify the

characteristics of the civil service which include permanency, neutrality, impartiality, anonymity etc.

5.0 Summary

In summary, you have learnt that, the civil service comprises workers and political appointees who assist the president and the governors as the case may be, in the many functions of public administration. While the political appointees enjoy tenure of office at the pleasure of the president or governor, the civil servants are career officers who exemplify the characteristics of the civil service. They are professionals and dedicated persons whose tenure of office survives political administration which they serve from time to time.

The Nigerian Civil Service Commission disciplines and promotes federal civil servants while the State Civil Service Commission disciplines and promotes civil servants in the state. Nigeria comprises 36 states, so there are 36 civil service commissions across Nigeria while there is one Federal Civil Service Commission at Abuja.

6.0 Self -Assessment Exercise

1. List and comment on the characteristics of the civil service.
2. Compare and contrast the political office holders and the civil servants

7.0 References/Further Reading

- Eneanya, A. N. (2009). *Public Administration in Nigeria: Principles, Techniques and Application*, Lagos: Concept Publishers Ltd.
- Malemi, E. (1999). *Administrative Law* (3rd Edn.) Lagos: Princeton Publishing Co.
- Oluyede, P. A. (1988). *Nigerian Administrative Law*. (5th Edn.) Ibadan: University Press Plc.
- The 1999 Constitution of the Federal Republic of Nigeria.

Unit 4 The Civil Service Commission

1.0 Introduction

The Federal Civil Service Commission is a body of appointed men of integrity, who have mostly retired from their career positions in the public and private sectors of the economy, and appointed under the umbrella of a commission referred to as the Federal Civil Service Commission. They are appointed and constituted by the president in the case of federal level while the governor of a state may appoint and constitute the same commission as applicable to a state. The commission has a chairman who is a retired career officer and a secretary who is a serving administrative officer in the civil service recommended by the head of service to provide administrative support to the commission.

The most important duty of the commission is the general control, administration and discipline of civil servants working in the federal civil service and in the state civil service, their duties will be the same i.e. the general control, administration, discipline and promotion of civil servants working in the state civil service. The Federal Civil Service Commission is responsible to the Federal Executive Council.

2.0 Objectives

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

- identify the independent body recognised by the Nigerian constitution
- explain promotion and discipline of civil servants
- discuss the collaboration of the Federal Civil Service Commission and the federal ministry of establishment
- discuss the collaboration of the state civil service commission and the state ministry of establishment
- state the functions of the Federal Civil Service Commission.

3.0 Main Content

3.1 Establishment of the Civil Service Commission

The existence of the Federal Civil Service Commission is recognised by section 170 of the 1999 Constitution. The section empowers the commission to delegate functions to its members as approved by the president. Specifically, it states that:

“...subject to the provisions of this constitution, the federal civil service commission may, with the approval of the president and subject to such conditions as it may deem fit, delegate any of the powers conferred upon it by this constitution, to any of its members or to any officer in the civil service of the federation.”

The Federal Civil Service Commission is an independent body from the civil service which is appointed by the president to perform certain designated functions affecting the civil service. In other words, the commission is not a political body. Rather it is a body made up of men

and women of integrity and sound education, some of whom may have been top civil servants in their career days or captains of industry in the private sector as the case may be. The commission has a full time chairman and commissioners. At the federal level, the chairman of the Federal Civil Service Commission is appointed by the president and commander-in-chief of the armed forces while at the state level, the chairman of the state civil service commission is appointed by the executive governor of the state. The duties and operations of the Federal Civil Service Commission covers senior officers from grade level 07 and above while the ministry of establishment takes charge of the affairs of junior employees from grade level 01 to grade level 06. Similarly, in the state, a state civil service commission takes charge of the affairs of senior civil servants from grade level 07 and above while the state ministry of establishment takes charge of the affairs of junior civil servants from grade level 01 to grade level 06.

3.2 Duties of the Civil Service Commission

The duties of the civil service commission include the following:

- The commission performs human resources functions of recruitment and selection of senior civil servants from grade level 07 and above into the civil service. Their consideration for recruitment includes vacancy, educational qualification and filling of positions in the civil service based on federal character representation. The mode of recruitment and selection is competitive which could take the form of oral interviews and/or written examination.
- The commission supervises the promotion of competent senior officers from one grade level to another based on performance, appraisal recommendation of supervising officers,
- Subject to availability of vacancy and the need to balance manpower in the civil service, the commission is empowered to effect the transfer of civil servants from one department to another as the need arises.
- The commission exercises disciplinary powers within the federal civil service. such disciplinary powers may include power to suspend delinquent officers from duty and power to effect severance within the civil service including possible termination of appointment and dismissal from service in case of established and proven gross misconduct.
- The commission has power to effect the retirement of senior civil servants following laid down civil service procedures and to accept notices of resignation of senior civil servants.
- It is the place of the commission to advise on payment of pensions and other entitlements to retired civil servants. These same functions are correspondingly performed by state civil service commissions who have been appointed by the state governor.

4.0 Conclusion

The Federal Civil Service Commission has the recognition of the Nigerian constitution. Although a serving president appoints the chairman of the Federal Civil Service Commission as the governor does in the case of a state, the members of the commission are not partisan politicians. They are men and women of integrity and knowledgeable background who are committed to sanitising the civil service and promoting competent and deserving civil servants from grade to grade. They are empowered to take disciplinary procedures against erring civil servants while effecting the promotion of officers within the service.

5.0 Summary

The civil service and the civil service commission are a creation of the Nigerian constitution. The functions of the civil service commission are distinct and the members carry out those functions impartially and without fear or favour. They sanitise the civil service, protecting the dignity of labour and approving sanctions in case of erring civil servants and processing the promotion and career advancement of competent civil servants.

6.0 Self-Assessment Exercise

1. State and comment on the functions of the civil service commission.
2. Is it possible to be impartial as a civil service commissioner? Give reasons for your answer.

7.0 References/Further Reading

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

Eneanya, A. N. (2009). *Public Administration in Nigeria. Principles, Techniques and Application*. Lagos: Concept Publishers Ltd.

Malemi, E. (1999). *Administrative Law* (3rd Edn.) Lagos: Princeton Publishing Co.
The 1999 Constitution of the Federal Republic of Nigeria.

Unit 5 Nigeria Local Government Administration

1.0 Introduction

The local government system today in Nigeria, is guaranteed by section 7(1) of the 1999 Constitution of the Federal Republic of Nigeria. In a democratic system, it is the national assembly, through an act, that creates the local government areas. Section 8(3) makes it abundantly clear that “A bill for a law of the house of assembly for the purpose of creating a new local government area shall only be passed if:

- a request supported by at least two-thirds majority of members (representing the area demanding the creation of the new local government area) in each of the following; namely:
 - the house of assembly in respect of the area, and
 - the local government councils in respect of the area is received by the house of assembly
- a proposal for the creation of the local government area is thereafter approved in a referendum by at least two-thirds majority of the people of the local government area where the demand for the proposed local government area originated;
- the result of the referendum is then approved by a simple majority of the members in such local government council in a majority of all the local government councils in the state; and
- the result of the referendum is approved by a resolution passed by two-thirds majority of members of the house of assembly.”

At the end of indirect rule system of the colonial administration, local communities in Nigeria were governed through collaboration by family heads with village heads who met in the public square of town centres to discuss their problems and form a consensus on actions towards self-development. Since then, the management of the affairs of the people at the grassroots has passed through several changes with successive governments in Nigeria.

After the Nigerian civil war ended in 1970, serious plans were made to rehabilitate local governments. Today local government council areas form the third tier of government. The first tier is the federal government while the second tier is the state government. In local government administration, local authorities directly support the people in the grassroots. They try to improve the social and economic levels of their people through the provision of social services. This is reflected in sections 7 and 8 of the 1999 Constitution, which guaranteed independent existence of local government areas.

2.0 Objectives

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

- state the meaning and reasons for establishing local government area
- state the functions of the local government councils
- list the sources of the local government revenue
- discuss problems confronting local government councils
- explain the control of local government council
- analyse the local government reforms.

3.0 Main Content

3.1 Creation of Local Government Areas

Section 7(1) of the 1999 Constitution states that:

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

In a modern state, the local government as the third tier of government is the lowest level of government where the people in the grassroots elect from among themselves, people of integrity to manage their affairs. Today, Nigeria has 774 local government areas. The number has increased steadily from 299 in 1970 and 301 in 1979. The administration of each local government area consists of a chairman who is the chief executive of the local government and a designated number of elected members who are called councilors. They are democratically elected by the people of the local government area, one of the qualifications for election being residency in the area. Each local government area is further divided into wards for ease of administration.

3.2 Meaning and Reasons for the Establishment of Local Government

3.2.1 Meaning

The local government administration means an administration that is powered by local government people, charged with the responsibility of conducting business for the local communities in the designated area.

Although a local government area is inferior to the federal and state governments, it however has independence to administer its resources and to make decisions affecting the people in the local government area.

It is legally distinct from the federal and state governments.

3.2.2 Reasons

- Local government areas were established to provide designated local communities the legal authority to conduct their own affairs in line with their traditions and customs.
- The local government provides an avenue for mobilising local communities to support community and social development i.e. enforcing community and social development.
- It provides for the people of the local government area, a voice for the purpose of communication with the state and federal governments. Their elected representatives represent them at all meetings at federal and state government levels.
- Local government system affords the people the opportunity of participating in government they themselves have elected democratically i.e. a local government administration elected by the people of the local government for the local government.

3.3 Functions of Local Government Councils

The functions of local government councils are set out in the first schedule of the Nigerian Constitution. According to Egwummuo:

“...the main functions of a local government council are as follows.

- (a) The consideration and the making of recommendations to a state commission on economic planning or similar body on:
 - (i) the economic development of the state, particularly so far as the areas of authority of the council and of the state are affected, and
 - (ii) proposals made by the said commission or body.
- (b) Collection of rates, radio and television licenses
- (c) Establishment and maintenance of cemeteries, burial grounds and homes for the destitute or infirm
- (d) Licensing of bicycles, trucks (other than mechanically propelled trucks) canoes, wheel barrows and carts
- (e) Establishment, maintenance and regulation of slaughter houses, slaughter slabs, markets, motor parks and public conveniences
- (f) Construction and maintenance of roads, streets, street lighting, drains and other public highways, parks, gardens, open spaces or such public facilities as may be prescribed from time to time by the house of assembly of a state.
- (g) Naming of roads and streets and numbering houses
- (h) Provision and maintenance of public conveniences, sewage and refuse disposal
- (i) Registration of all births, deaths and marriages
- (j) Assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the house of assembly of a state, and
- (k) Control and regulation of:
 - out-door advertising and boarding
 - movement and keeping of pets of all descriptions

- shops and kiosks
- restaurants, bakeries and other places for sale of food to the public
- laundries, and
- licensing, regulation and control of the sale of liquor.

3.2 Sources of Local Government Revenue

In order to discharge its responsibilities to the relevant local government, the local government council derives its revenue from the following sources.

Government statutory revenue allocation

Government statutory revenue allocation from the federation account is shared to each local government area of the federation. 23% is shared from the federation account to each local government area. The disbursement from the federation account is sent directly to the local government through the respective state governments.

Local rate

Local government councils add to their revenue by collecting rates which include ratio and television licenses, poll tax and rates on property including lands, buildings and related property.

General tax

The general tax which the local government depend on include:

- (i) community tax which is the tax that is levied on every adult male within the community. Usually village heads expedite this collection because they know their able-bodied adult males in the villages or quarters.
- (ii) cattle tax which is prevalent in the northern states where the tax is called *jangali*. The ordinary cattle owners are known to village heads and the chairmen of cattle owners association collect this tax from their members for submission to the local government through the village heads.

Grant from state government

In addition to allocation from the federation account which the federal government makes to the local government, state governments also give to the local government about 10% of internal revenue generated from the state.

- Various local government councils are regarded as having “legal personalities”. They have the capacity to borrow money to finance their major projects. With the approval of the relevant state government, local government councils can raise loans from financial institutions.

Other sources of revenue

Local government councils may also generate revenue for their operations from the following sources.

- Hospitals
- Car parks
- Hotels

- Bicycle licenses
- Tricycle licenses
- Commercial motorcycles
- Land registration
- Forest receipts.
- Slaughter houses, marriage licenses etc
- Court fees arising from divorce proceedings, fines, levy on inheritance and fees from civil suits.

3.5 Problems Confronting Local Governments

It is a consensus of opinion nationwide that local government councils suffer from the following problems.

Corruption

There is a basic assumption that elected officials into a local government council administration exercise the freedom of decision-making which observers have noted as almost operating without supervision. They have accusations of diversion of money meant to support public programmes to serve private interests. There are also allegations of embezzlement and misappropriation of funds against local government functionaries.

Ineffective leadership

It is assumed that the leadership of most local government areas in the country is inept. As soon as the elected officials are sworn in, they begin scheming for re-election in order to prolong their tenure. As a result of this, the chairman of council plays it safe in coordinating a working relationship with his departmental heads. In the process of buying time and remaining in the good books of local government workers, traditional rulers and heads of wards, the chairman condones lapses from all concerned resulting in a rudderless leadership.

Poverty

All local government councils are not endowed with natural resources in the same way. What is common to all local government councils is the revenue allocated to them by the federal government. Beyond that, some local government areas generate more revenue than others depending on the resources in their areas of operation. So, while some local government areas have a lot of internally generated revenue to support their projects and overheads, others have not. In other words, some local governments are viable and others are not. The criterion for determining this is the amount of money the council generates from internal funds.

Dearth of skilled manpower

It is well known that it is the skilled manpower of an organisation that leads it to actualise its objectives but in the case of local government areas, evidence abounds that there is dearth of skilled manpower. Political leaning and consideration to some extent influence staff acquisition. It appears that there are not many highly skilled personnel e.g. technically, financially and administratively to offer professional advice to the administrative hierarchy of local government areas.

Poor interface with state government

It is now well known that local governments, whose chairman belongs to different political parties from the state governor, appear to be confrontational and uncooperative with the state governor. Some governors have taken draconian measures to cow stubborn local government chairmen into submission. One of such measures is the erosion of the areas of influence of the local government by taking over the services hitherto provided by local

government councils. The result is forcefully removing part of the money accruing to local government councils from the federation account purportedly to pay for the services which the state government has allocated to itself.

Other problems exist which deter the local government councils from achieving their objectives but this writer believes that healthy human relations and transparency will reduce the conflict between local government councils and the state government.

3.6 Control of Local Governments

There is a need to control the activities of local government councils in Nigeria. If they are left unchecked, the possibility is that they will abuse the freedom to operate without checks and balances. The following are ways of controlling local government councils in Nigeria.

Ministry of local government and chieftaincy affairs

Every state in the federation has a ministry of local government. The ministry should step up its responsibilities in supervision of local government activities and laws. It should constantly determine new ways of improving their relationship with local government in order to create the desired spirit of cooperation in which sound advice and constructive criticism as regards policy formulation and implementation can be generated to the local government councils.

Inspection of local government establishments

It is the responsibility of state government to inspect periodically some services which local government councils render to their local communities e.g. school inspection, roads and health institutions within the local government area. If local government councils know that the state government, through its agency, will insist on standards through periodic inspection of certain facilities within the local government area, they will be more committed to doing the right things.

Intervention by the commissioner for local government

The commissioners for local government in the various states have the right, upon consultation with the state government to dissolve erring local governments. This is a rare occurrence but the powers are there for commissioners for local government to dissolve a local government that is reckless financially and corrupt in its operations. However, some courageous commissioners for local government have exercised this power in selected local government in the past. In such circumstances, corrupt and inept local government councils were dissolved and care-taker committees were installed on an interim administration basis before by-elections were held. According to Nwabueze (1983), excesses abound where elected local government councils were "...being capriciously dissolved and replaced by appointed agents of the state government- the so-called caretaker committees or management boards or sole administrators" (p. 128).

Strict disciplinary measures against defaulting officials of local government councils

The state governments are empowered to appoint and to dismiss stubborn local government officials for gross misconduct through the unified local government services board which has responsibility to the state government civil service commission.

The above are various control measures which can be exploited by state governments and officers to whom the state government may delegate to control local government councils. It is recommended that state governments would take the control of local government areas as sacred duties because as the third tier of government, local government councils are capable of stalling state government activities at the grassroots if their services are poorly rendered and local government finances embezzled or misappropriated.

3.7 Local Government Reforms

The word reform which could be used as a noun or a verb depending on the sentence construction is very dear to politicians in Nigeria. They use it to describe in their view, recommended changes to the composition of any system or practice which they have not executed properly. So it is common to hear of several civil service reforms, local government reforms, immigration reforms, customs and excise reforms etc. The *Oxford Advanced Learners Dictionary* defines the word 'reform' as: "to improve a system, an organisation, a law, etc by making changes to it." (p.1223)

In Nigerian public life, many reforms have been undertaken. We have experienced constitutional reforms, civil service reforms and local government reforms among others. Local government reforms have been fairly purposeful in their nature. In 1972, local government system was one of the institutions listed for consideration by the then popular Udoji Public Service Commission Reform. The Udoji Commission submitted its report in 1974 and government felt that the recommendations of the Udoji commission were far-reaching enough.

Government white paper following the submission of Udoji report accepted most of its recommendations. For example, the commission recommended a uniform structure for local governments which prevented traditional rulers' direct rules in the running of local government council areas. That exercise embellished the functions already assigned to local government areas in the Nigerian constitution and re-emphasised the functions that local government areas are a third tier of government.

However, with the introduction of the presidential system of government in Nigeria in 1979, most of the changes recommended by the Udoji Commission were incorporated into the 1979 constitution. The 1976 local government reforms elevated local government administration to a higher level. Local government councils adopted an executive system where the chairman was the chief executive officer of the area, responsible to the local government electorate. It has the capacity to receive federal grant from the federation account through the state government. Previously, councillorship was introduced, each councilor taking charge of a department in the local government council.

There was the Dasuki Local Government Review Committee of 1984. This committee saw state ministries of local government as clogs in the wheel of progress. They slowed down the development of local government areas from their bureaucratic manoeuvring. So, the Dasuki Committee scrapped states ministries of local government in 1988 and recommended direct disbursement of statutory allocation by the federation account. This

now goes straight to the local government councils as a quick response platform for local government development.

In 1988, there was another local government review commission and the federal government, in a white paper, abolished state ministries of local government and replaced them with a supervisory department in the governor's office. The federal government began by-passing state governments in statutory allocation direct to the local government. The federal government increased the statutory allocation to local governments from the federation account from 10% to 23%. Local governments were empowered in 1988 to prepare and approve their own budgets independently of state governments. That government action created the office of director of local government edict and transferred primary education and primary health care to local government councils for administrative and supervisory purposes. In order to ensure that the interest of the grassroots communities is protected, traditional rulers were again officially involved in local government affairs.

The last local government reform was in 2004. The review was headed by the late Etsu Nupe, Alhaji Umaru Sanda Ndayako who was later replaced by Alhaji Liman Ciroma. The report of the local government review of 2004 was speedily accepted by the federal government which issued a white paper as soon as the report was submitted.

Eneanya (2009) dramatically captured the contents of the 2004 report as follows:

- It retained the existing 774 local government councils
- All local government councils must submit their annual budgets to their state houses of assembly for approval
- Governments must ensure that whatever is due to local governments is made available to them, including 10 per cent of the monthly generated revenue or whatever portion of money that comes from the federal to the states that is meant for local governments.
- That local government council should fund their various services and agencies, including paying salaries of paramount traditional rulers and primary school teachers.
- Administration of local governments is purely the responsibility of state houses of assembly, which will make appropriate legislation to that effect;
- Establishment of inspectorate departments to enforce compliance with the local government budget as approved by the planning and legal units of local government councils.
- (See p. 132).

In order to make local government councils more purposeful in their administration and development of their communities, the national assembly in 2005 enacted a law which among other things re-emphasised the following:

- That local government allocation should be paid directly to them, thus divorcing local government channel of collection of allocation from state-local government joint account.
- Statutory allocation for local government was increased to 23%.
- The 2005 provisions mandated local governments to provide training to local government staff at all levels to make them more responsive in performing their functions. It can be said therefore that although there have been many local government

reforms in the past, the 2005 law enacted by the national assembly fundamentally changed the trajectory for local government administration from a near rudderless administrative capacity to a more purposeful administrative organ that in modern times has become the bastion of grassroots democracy.

4.0 Conclusion

One of the ideas that motivated the introduction of organised local government system of administration is to bring administration close to the grassroots so that local communities will have a say in the governance of their geographical areas. This was why successive federal administrations have always ensured the survival of local government councils in their tenure. In addition to revenue allocation to local government councils from the federation account, local government councils are empowered to raise revenue within the council areas from fees and rates on market stalls, registration of births, deaths, marriages, liquor licenses and motor park charges.

Local government councils can make life pleasant to the communities in their council areas if they execute their functions dedicatedly. If they eschew corruption, misappropriation and embezzlement of local government funds as has been observed in recent past, local government councils will bequeath enduring legacies of development to their local communities.

5.0 Summary

In this unit, you have seen the transformation of the process of administration of local community affairs by village heads, chiefs and clan heads to a scientific process of local government administration recognised by the constitution of the Federal Republic of Nigeria. The constitution assigns functions and authority to local government council areas. It assigns and empowers local government chairmen and their councilors with allocation from the federation account to develop their areas and encourage their citizens to participate actively in the democratic process by electing their chairmen and councilors.

Corruption and inability to account properly for monthly allocations have bedeviled local government councils. This is why many attempts have been made at reforming local government systems in the country. In a speech on 10th November 2009 to members of the senate at their annual retreat at Nike Lake Hotel, Enugu, President Musa Yar'adua lamented the present state of affairs in all the 774 local government councils of Nigeria. He advised re-dedication of local government administrators in order to make local government administration more purposeful in the interest of local government communities.

If the dividends of the 2005 provisions, as enacted into law by the national assembly, are dedicatedly pursued, local government would remain as is desired by the national assembly on the one hand and indeed all Nigerians on the other hand, a veritable vanguard of democracy in Nigeria and a platform for grassroots development.

6.0 Self-Assessment Exercise

1. Outline 5 functions assigned by the Nigerian constitution to local government council areas.

2. State two recommendations you would want the national assembly to adopt, in order to make local government administration more purposeful to grassroots development.

7.0 References/Further Reading

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

Eneanya, A. N. (2009). *Public Administration in Nigeria. Principles, Techniques and Application*. Lagos: Concept Publishers Ltd,

Nwabueze, (1983). *Federalism in Nigeria under the Presidential Constitution*.

Oluyede, P. A. (1988). *Nigerian Administrative Law*. (5th ed.) Ibadan: University Press, PLC.

The 1999 Constitution of the Federal Republic of Nigeria

Wehmeier, S. (2000). *Oxford Advanced Learner's Dictionary of Current English*. Oxford: Oxford University Press.