

ISSN: 2315-7844

Website: www.arabianjbm.com/RPAM_index.php

Publisher: Department of Public Administration Nnamdi Azikiwe University, Awka, Nigeria and Zainab Arabian Research Society for Multidisciplinary Issues Dubai, UAE

THE ROLE OF OMBUDSMAN AS A MEANS OF CITIZEN REDRESS IN NIGERIA

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Abstract

Ombudsman institution serves as a mechanism of addressing injustice against the abuse of administrative power. The paper examines the impact of ombudsman as means of citizen redress in Nigeria. Making use of both primary and secondary data as methodology in this paper, using correlation co-efficient technique to analysis the cases of reported between 2008-2013 of the Public Complaints Commission (PCC) in Lagos State, Nigeria. The paper reveals that there is no significant relationship between the cases disposed and indisposed within the stated period. PCC in Nigeria lack power to punch order revision of any decision. Also with the use of in-depth interview, it has been observed that government intervenes in the affairs of the commission to some extent. This shows no total independence of government control. The paper concludes that ombudsman have added more meaning to the idea of democracy to checkmate either unethical conduct or misuse of administrative power when dealing with the public. The paper suggests the need to take steps to revisit the power and spheres of ouster of jurisdiction of the ombudsman to ensure public confidence and operational effectiveness.

Keyword: Public Complaint Commission, Redress, Citizen, Administrative Injustice, Institution

Introduction

The word ombudsman has Swedish means an officer or spokesman or representative according to Morris (2008) cited by Onu (2009:96) is Swedish in origin and means 'representative' but in English Language, the term is often modified as 'ombudsperson' or 'ombuds' office. In a state, ombudsman constitutes the ears of the people. The institution is the 'ears' of the people because it serves as a mechanism of redressing the grievances of citizens in a democratic system.

The ombudsman system was introduced in Tanzania in 1965. It is noteworthy that only the ombudsman institution has been widely adopted by a significant number of African states as an instrument for making government responsible to the governed. By the mid-1980s, ombudsman like institutions had been established in three other Sub-Saharan African (SSA) countries and by 2005, the number of countries that adopt it had climbed to twenty-six and they spread across central, Eastern, Southern and Western Africa (Adamolekun, 2006:6)

The ombudsman world wide is empowered to initiate investigations on matters within its competence, in addition to cases brought to it by aggrieved citizens. The power to initiate investigations has proved very effective in curbing cases of repression and maladministration, as the experiences in the Scandinavian countries tend to suggest (Ayo & Anthony, 2011).

In Nigeria, the recommendation of the Udoji Public Service Review to examine the organization, structure and management of Public services and recommend reforms where desirable brought out the establishment of Public Complaints Commission (PCC) in 1972 which the Federal military Government accepted. The enabling decree number 31 established the Public complaints Commission in October, 1975. The decree has been incorporated in the 1990 laws of the Federation of Nigeria as public Complaints Commission Act Cap 377 (PCC General Information), Section 273 (5) of the 1999 constitution of the Federal Republic of Nigeria.

The ombudsman institution is one of the most essential institution for any democratic society where constitutionalism exist the complex nature of government and its continued grip on the lives of the citizens inform the need for a watchman that will guarantee that government in carry out its day-day functions does not trample on the fundamental right of its citizens (Ayo and Anthony, 2011).

According to Daniel (2013) the expansion of government's functional preview into many areas of human existence which were traditionally outside its scope has brought about the increasing possibilities of clashes between the citizens and the state particularly in the areas of fundamental human rights and freedom. The expansion and its accompanying possible clash with the interest and aspirations of the citizens led to the institutionalization of the means of citizen's redress within many polities of the world (Fajonyomi, 2012).

Conceptual and Theoretical Issues

One fascinating and universally accepted institution for the redress of grievances is the ombudsman. The uniqueness of the ombudsman institution emanates from the fact that it holds so much appeal to diverse systems of government with conflicting ideological backgrounds. In the context of the problematic character of governance, ensuring harmonious government-citizen's relations is critical. All over the world, the ombudsman institutions has been largely used to ease tensions arising from maladministration. The ombudsman had not only always played a complementary role alongside the traditional mechanisms of legal protection of citizens, but has proved to be means for citizen redress (Daniel, 2013).

Rowat (1986) defines ombudsman as an independent and politically neutral officer of the legislature who receives and investigates complaints from the public against administrative

action and who has the power to criticize and publicize but not the reverse such action. Sultana (2007) sees ombudsman as an institution established under the constitution or by the legislature that receives and investigates complaints reported by individual citizens against any government and institution and recommend corrective actions, an ombudsman is an office provided for by the constitution or by an action of the legislature or parliament and headed by an independent, high-level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against government agencies, officials, an employer or who acts on his motion, and who has the power to investigate, recommend corrective action and issue reports (Haller, 1998; Sapers & Zinger, 2010).

Chijioke (2009) argue that ombudsman is a novel institution of the government which is vested with the responsibility to defend and uphold the rights of the citizens in the light of how they have been treated by government officials, to investigate these complaints and, where it finds them justified, propose remedial action (Birkinshaw, 1994). When remedial action is not implemented by the concerned establishment, it can publicize the case and report on it to parliament. Basically, ombudsmen are inquisitorial, not adversarial. Ombudsman can examine and interview witness and use professional experts where appropriate. The procedure for investigations can be tailored to the circumstances of the cases (British & Irish ombudsman Association, 2009).

From the above conceptualization, it is evident that ombudsman have dual roles. On one hand, they provide redress for individual grievances, while on the other hand they are concerned with the improvement of service delivery standard. In effect, an ombudsman is not just an agent of redress, but also has a quality-control function. By investigating individual cases, ombudsman may highlight weaknesses in practices, rules and attitudes. Unearthing these weaknesses is of advantage to both complainants and those who have not complained. This is because the resultant improvement in the system benefits all. It is instructive to note that these two roles do not conflict and as such need not be separated (Emiola, 2002). Any institutions that receives and investigates complaints is only doing half its job if its casework experience is not used to provide comprehensive feedback to the organization investigated. Such feedback could help improve the way internal complaints are dealt with. This may reduce the number of complaints that would get to the ombudsman. Feedback could also lead to improvements when investigations reveal systemic problems or failures. While the ombudsman is no doubt a novel institution, it must be stated that, it is by no means a super-administrator, vested with the power to overturn every wrong action and to provide correct answers to all the difficult questions that confront modern government (Daniel, 2013).

This paper adopts the utilitarian theory in explaining the role of the ombudsman in modern society. The existence and application law is the hallmark of every civilized society. Order in society largely presupposes equality before the law. Law theoretical presupposes equality not subjection. Law is the peaceful means of settling conflicting interests of person who are treated as being on an equal basis or footing, however much they may be unequal in fact. In the ideal situation or the ultimate perfect society, individual interests will not conflict for there will be unity of purpose. When the perfect society is achieved, there will be no need for law. So to the Marxist, law rests on socialist property, annihilation of exploitation and social inequality, distribution in proportion to labour, a guarantee to each member of the society of the complete and manifold development of all his creative forces and true human freedom and personal independence (Dias, 1976).

Relating the utilitarian theory to ombudsman (PCC) as an agent of citizen redress, it is pertinent to note that PCC stands as an agent or institution of government that takes cognizance of human being injustice. The pleasure of the citizens will be seen in terms of the institution capable of dealing with injustice in the state. The happiness of the citizens who brought cases to the commission will be seen by the PCC right action in dealing with injustice in the state or the PCC will be fulfilling the needs of the citizens willing where and when necessary.

The Structure of Ombudsman in Africa

The first African country to adopt the system is Tanzania which, under its interim constitution of 1965, provided for the basic framework of the institution. It was called the Permanent Commission of enquiry (PCE) (Emiola, 2001). Since Tanzania blazed the trail in establishing the ombudsman institution in Africa in 1965, several African countries have introduced and maintained ombudsman institutions with varying degrees of success (Formbad, 2011). The ombudsman in Africa has been adopted by regimes that have little resemblance to the liberal democracies with which the institution, in its classic form, is usually associated. Thus, the Tanzania PCE, like Zambia's Commission for Investigation (CFI), operated under a one-party system, while Nigeria's Public Complaints Commission (PCC) was conceived and operated within a military dictatorship for the period it lasted, and in Mauritania and Zimbabwe, similar institutions were introduced with great vigour. In many respects, the introduction of this institution within the essentially closed and authoritarian African regimes of the past was a contradiction in terms. Under the apartheid system, South Africa sought to sue the institution to mask the inherently anti-democratic and inhumane nature of the regime (Fombad, 2011). The ombudsman institution is now widely accepted as one of the key components of the democratic transition in Africa. The first generation of ombudsman institutions is a clear reflection of a more open and liberal atmosphere on the continent.

Basically, there are three forms of ombudsman. On the basis of mode of appointment, the first is the ombudsman who is appointed by parliament and responsible to it. The second is the ombudsman appointed and removable by the executive. This kind of ombudsman spans both the democratic western world and Eastern Europe. The third is the type of ombudsman who is appointed jointly by the executive and the legislature and controlled by both. The mode of appointment, control and removal is not necessarily inconsistent with the effective discharge of the functions of an ombudsman (Daniel, 2013).

In terms of the powers/functions assigned to the ombudsman, Swedish has two distinct types. The first, which is the classic model, is based on the Swedish and Finnish ombudsman. It grants enormous powers and a very broad mandate to the ombudsman. Most importantly, the conduct of the judiciary is included in the institutions jurisdiction. The second is the Danish model which concentrates on the control of administrative activities of the executive branch of government. There is also what may be called a mixed model. For example, the Slovenian model is a combination of both. In addition to powers over state bodies, the Slovenian ombudsman is vested with some limited jurisdiction over judicial procedure (Ayo & Anthony 2011). The Slovenian model is also both reactive and proactive; as the ombudsman can investigate the matter concern at his own initiative.

Methodology

The instrument used to gather the primary data in this research work is through a structured interview. A top officer of the PCC in Lagos state was interviewed. The secondary data relies on the use of textbooks, journals, and government publications. We had an interview with the

Assistant Chief investigation Officer of the commission. The PCC annual report of Lagos state was used.

Results & Discussion

The comparative table illustrating the used of cases received, disposed and in disposal cases under investigation from 2008-2013 are shown below:

Year	No of cases received (a)	No of cases disposed (b)	No of cases indisposed (c)	b-c
2008	135(7.33%)	46(5.3%)	89(9.1%)	-43
2009	315(17.09%)	65(7.5%)	205(25.6%)	-96
2010	464(25.17%)	372(42.9%)	92(9.4%)	280
2011	300(16.28%)	65(7.5%)	250(25.6%)	-96
2012	324(15.82%)	102(11.55%)	222(19.56%)	-120
2013	510(27.6%)	233(26.8%)	277(28.4%)	-44
Total	=2048(100%)	883(100%)	1135(100%)	-119

Source: Lagos State PCC Annual Report 2008-2013

From the table 1: The total complaints cases received by the commission between year 2008-2013 is 2,048, number of disposal cases 883 while under investigation is 1135. The commission had the highest number of cases disposed in the year 2010 with 372 cases representing 42.9%. This is followed by 233(26.8%), 102(11.55%), 65(7.5%), 65(7.5%) and 46(5.3%) for the year 2013, 2012, 2009 & 2011 respectively.

In the year 2010 was the time commission recorded positive when comparing the cases of disposed and indisposed. This indicates that PCC had been responding positively to the citizen seeking redress in Lagos state. The year 2008, 2009, 2011, 2012 and 2013 recorded negative impacts on the cases disposed and cases under investigation. It is important to note that cases pending are usually brought forward to the subsequent year. Most cases are pending if the complaints loses interest, if he dies, if there is no follow up from the commission, complaint changes his/her address or if the cases are out of reference.

Data Analysis

In analyzing the data, quantitative techniques were used. Correlation technique would be used to test the significance association of the variable identified of the study. The first research hypothesis would be tested by using correlation technique to test the relationship between the cases disposed and indisposed cases by the PCC from 2008-2013.

Hypothesis 1

Ho: PCC is not effective means in disposing cases reported to the commission

Hi: PCC is effective means in disposing cases reported to the commission

Year	Disposed cases	Indisposed cases	Total
2008	46(34.1%)	89(65.9%)	135(100%)
2009	65(20.6%)	250(79.4%)	315(100%)
2010	372(80.2%)	92(19.8%)	464(100%)
2011	102(34%)	198(66%)	33(100%)
2012	55(42.02%)	69(57.98%)	119(100%)
2013	233(45.7%)	277(54.3%)	510(100%)
Total	883	1135	2048

Based on the fact gathered from the PCC in Lagos state, it is not expected that the PCC should be able to dispose of 100% of all the cases brought to it during a particular period, it is reasonable to assume that to be worthy of the confidence placed by the public expenses to keep it running, it

should be able to dispose at least 50% of all the cases brought to it in a period of 12 month (a year). Based on the report PCC has been able to dispose of not less than 505 of all cases brought to it in a year.

Hypothesis II

Ho: There is no significant relationship between the cases disposal and under investigation

Hi: There is significant relationship between the cases disposed and under investigation

Year	Cases disposed X	Under investigation Y	X-X	Y-Y	(x-x) ²	(Y-Y) ²	(x-x) (Y-Y)
2008	46	89	-94.7	-93.5	8968.1	8742.3	8854.5
2009	65	205	-98.7	-73.5	9741.7	540.3	7254.5
2010	372	92	227.3	-70.5	51665.3	4970.3	-16024.7
2011	65	250	-42.7	53.3	1823.3	2840.9	-2276.0
2012	102	222	-79.7	87.5	6352.1	7656.3	-6973.8
2013	233	277	883	114.5	7796.9	42722.2	10110.4
Total	1135				86347.3	42722.2	944.94

$$\text{Mean} = \frac{\sum fx}{\sum f}$$

$$\bar{X} = \frac{883}{6} = 147.2$$

$$\bar{Y} = \frac{1135}{6} = 189.2$$

$$r = \frac{\sum(X-\bar{X})(Y-\bar{Y})}{\sqrt{\sum(X-\bar{X})^2 \sum(Y-\bar{Y})^2}}$$

$$r = \frac{944.94}{(863474)(42722.2)}$$

$$r = \frac{944.94}{60736.7}$$

$$r = \frac{0.0156}{0.02}$$

$$r = 0.02$$

Df (degree of freedom)

$$n-2 = 6-2 = 4$$

$$= 0.02$$

$$CV = 0.374$$

Interpretation $r < CV$, therefore accept Ho, reject Hi.

Conclusion. There is no significant relationship between the cases disposed and under investigation by PCC.

Findings

The statement of the assistant chief investigation officer implies that PCC activities are not totally independent of government interference. This indicates that government interference has degree in the activities of the commission. The implication of this leads us to accept alternative hypothesis (Hi) and reject the null hypothesis (Ho)

Historical Background of Ombudsman

The first ombudsman system was established in Sweden in 1809; Finland in 1919, Norway for the Armed services in 1952; Denmark between 1953 and 1954 (Khan, 1972) in 1957 West

Germany established a similar system for her armed forces while New Zealand adopted the system in 1962 the same year it was extended to the civil affairs in Norway (Kernaghan, 2001). In a nutshell, the ombudsman system was a Scandinavian phenomenon in the 19th and early 20th centuries. The name ombudsman was derived from the Sweden language, “justitieombudsman” meaning a representative or agent of the people or a group of people, or procurator for civil affairs” (Fajonyomi, 2012:103).

Today, with the expansion of every society and its government, ombudsman are found in the Scandinavian countries, Great Britain, New Zealand, West Germany, Canada and so on. In addition, similar agencies like the ombudsman system exist in France, the United States Army, the USSR, Tanzania, Nigeria, Japan, china, Zambia etc. (Daniel, 2013). The power of the ombudsman varies from country to country. This variation is applicable to their scope of investigation and antecedents. This explains Scott’s (1979) position that:

The origin of the office is underdeveloped countries may well be a response to political problems facing the country rather than a particular concern with citizen’s rights

Scott’s position is not far from the truth looking at the reasons which antecede the establishment of the ombudsman system and its power in Zambia, Guyana, Tanzania and china. In these countries, it (i.e. ombudsman was still generally believed to be an effective system of combating corruption, racial discriminations, colonial mentality and bureaucratic misdemeanor that may threaten the interest of the executive (Fajonyomi, 2012). Even, despite the fact that the “ombudsman institutions in Sweden and Finland have a number of unusual feature which in combination make them unique among grievance-handling, appeal and investigation bodies (Kernaghan, 1972), variation still exists among the Scandinavian countries with regards to the ombudsman system, in their arrangements for protecting the citizens against arbitrary authority.

The Roles/Functions of the Ombudsman

Fajonyomi (2012) noted that ombudsman’s functions regardless of which country it may be: (a) To protect the rights of the citizens; (b) to act as an indirect check on the misuse of powers by the administrators or any government official; (c) to investigate, publicize abuses of bureaucratic power and in some cases to initiate legal action much as a private citizen would. This is certainly not a definitive list but it does point out the most important functions. The functions as they apply to Nigeria are contained in decree 31 of 1975 that established the Public Complaints commission and the relevant portions of the 1999 Nigerian Constitution. Since its (PCC) establishment in Nigeria it has successfully performed its functions in various parts of the country.

In spite of the importance of the ombudsman system and the role it performs within the polity as demonstrated with the Nigerian examples in this paper, there are many barriers to the performance of these roles vis-à-vis citizens’ redress against administrative encroachments.

Barriers to the Effectiveness of the Ombudsman (PCC) in Nigeria

With the exception of Sweden where the ombudsman can initiate court proceedings against Civil Servants (Ayo and Anthony, 2011), the ombudsman system is incapacitated in the performance of its role by the following barriers:

- (a) The ombudsman lacks the punitive power of enforcement of its decisions. This is particularly so in Nigeria of the third schedule of the 1999 constitution which confer in the PCC the power to compel the attendance of any person brought before it. This is a serious problem in the sense that the administrators could not be punished by the

ombudsman. This makes the ombudsman more of an adviser than a buffer to administrative injustice.

- (b) Lack of total independence from the government, to a larger extent can be a barrier. The fact that they are appointed by the government (e.g. in Nigeria) is a shortcoming which can indirectly make them vulnerable to the wishes of the government that select them.
- (c) The ombudsman cannot order a decision to be quashed. This to a certain extent negates the effectiveness of the system, because it makes the ombudsman decision vulnerable to the wishes of the bureaucrats affected, whether the bureaucrats' fear or respect the ombudsman's office.
- (d) Illiteracy is another barrier to the effectiveness of the ombudsman (PCC) in the developing nations (e.g. Nigeria). Unless there are thorough and effective enlightenment programmes, this system can hardly claim to be a defender of the illiterate citizens.

The potency of this barrier to the PCC in Nigeria, and the need to avoid it has led to series of press briefings in English Language and vernacular by the PCC in different parts of the country. The import of the enlightenment programme is to make sure that the PCC or Ombudsman does not fail in its paramount function of educating the people (particularly the poor) of their rights and how they could safeguard them. The foregoing can be summed up as the weakness of the ombudsman system over which it must prevail if the system is to be more effective in the nearest future, particularly within the Nigerian polity.

Concluding Remarks

The law setting up Public complaints Commission is quite inhibiting and does not allow the Commission enough power to exercise its statutory duties. There is need to amend the law. The commission is an expression of real democracy and the rule of law and it is important the nation keep a special institution with the task of controlling and ensuring that almost all administrative organs of the society respect the rights of the citizens and that anybody be Nigerian or not, at no cost, gets his complaints and grievance investigated and attended to. The law setting up the Commission needs to be amended in order to strengthen the Commission's activities and to empower the Commission to be more alive to its duties and statutory functions. There is need for massive enlightenment and publicity of the duties of the Commission and its relevance to the public.

The importance and benefits of ombudsman system have been clearly delineated. And, in spite of the shortcoming of the commission it has a reasonable degree been successful in reducing the misuse of power which is characteristic of modern administrative. In a nutshell, the commission has added more meaning to the idea of democracy. Thus, it is our contentions that as far as the ombudsman system continue to exist in our society, any government or administrative official will think twice before resorting to either unethical conduct of his duties, or misuse of administrative or bureaucratic power when dealing with the public.

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