



Comparative Focus of the Nigeria Public Complaint Commission, the British Ombudsman and the Soviet Prosecutor-General

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ABSTRACT

Social scientists have for several decades recognized complaining as a major form of political participation. Whichever way it is perceived, citizens' complaints and redress of their grievances evidently have a critical impact on modern day government. The ever increasing size, activities, and the danger of unresponsiveness of modern government, call for a balancing force to protect the individual rights and maintain the citizens' control over their government. This is the whole essence of the institution of the Ombudsman which has become a feature and standard of the modern democratic State. Headed by a high level public official with integrity and presumable independent authority to oversee complaints arising from public administration, the institution stands as a check against abuse of the public offices and protection of the citizens' rights. The objective of this paper therefore, is to do a comparative analysis of the institution in Nigeria, United Kingdom and the Soviet Union (Russia). We adopted the doctrinal method of legal research in this work, wherein the laws of these countries under study were used as our primary sources of data, and opinions of authors on the subject matter expressed in text books and journal articles, as our secondary sources of data. Applying the Utilitarian theory, the Ombudsman promotes peace and happiness when it makes the right recommendations and produces the reverse to happiness when it makes the wrong recommendations. It is our finding that there is reasonable similarity in traditional role of the institution among these countries, with a handful of differences. It is also our finding that some of the challenges bedeviling the institution are influenced by the political authorities in these countries and non-enforcement of the decision of the Ombudsman. In the light of the above, it was recommended, among other things, that in order not to render the institution as a toothless bull dog that can only bark but cannot bite, its decisions should be made enforceable and binding on the parties. We also emphasized that in a State where the Ombudsman is functional with total independence, the institution will play a major role in curbing corruption, safeguarding human rights and assisting citizens to get redress in cases of maladministration by government officials.

KEY WORDS: Complaints, Ombudsman, Citizens, Government, Official, Rights, Institution, Nigeria,

1. Introduction

In the words of John Milton,

For this is not the liberty which we can hope, that no grievance should ever arise in the commonwealth, that let no man in this world expect; but when complaints are freely heard, deeply considered and speedily reformed, then is the utmost bound of civil liberty attained, that wise men look for.¹

A larger problem was however expressed in the following manner by Donald Rowat who, although expressing a Canadian viewpoint, stated that:

It is quite possible nowadays for a citizen's right to be accidentally crushed by the vast juggernaut of the government's administrative machine. In this age of the welfare state, thousands of administrative decisions are made each year by governments or their agencies, many of them by lowly officials; and if some of these decisions are arbitrary or unjustified, there is no way for the ordinary citizen to gain redress.²

These and many more led to the institutionalization of redress mechanism, known as the Ombudsman. There are several types of ombudsman. Generally speaking, however, an ombudsman is an independent official appointed to receive, investigate and address complaints about unfairness in the administration of public services. An ombudsman works on behalf of the public and usually has the authority to launch investigations on its own initiative.

Narrowing it down, the Ombudsman, as it is better known all over the world, is called Public Complaints Commission in Nigeria. In United Kingdom it is known as "Parliamentary Commissioner for Administration" (PCA).³ In the defunct Soviet Union, it was regarded as the "Prosecutor-General". In

¹ John Milton, *Areopagitica and Other Writings*, (London: Penguin Classics, 2014), p. 98.

² Donald Rowat, "An Ombudsman Scheme for Canada" *Canadian Journal of Economic and Political Science*, Vol. 28, No 4, (1962), p. 253.

³ Kunle Aina, "The Relevance of Public Complaints Commission to Nigeria's Democratic Development", *International Journal of Advanced Legal Studies and Governance*, Vol. 3, No. 3, (2012), p. 1.

U. K. particularly, the Ombudsman is attached to the Parliament while there are also various other Ombudsman services in the United Kingdom, which are specific for each industry or areas of influence.⁴ In Nigeria, it is a Commission established by an Act of the National Assembly, and it is sometimes referred to as ‘‘the Public Defender’’.

In the Court of Human Right, UK Parliamentary ombudsman *Re: Ombudsman Act Canada*,⁵ captured the basic purpose for the establishment of the ombudsman when he said that ‘‘the basic purpose of an ombudsman is the provision of a watchdog designed to look into the entire working of administrative laws...’’ This is the worldview traditional philosophy behind the establishment of Ombudsman. According to G. Hogan and D. Morgan, the task of the Ombudsman is to secure redress when a person suffers harm or loss, through some act of governmental maladministration.⁶ For administrative convenience, the structure of law on the judicial review of administrative action in many countries is, perhaps inevitably, so designed as to exclude from its scope, many cases of injustice arising from maladministration. Moreover, the Court system is highly expensive and nearly inaccessible.

According to S. I. Afegbua and K. D. Adejuwon, in almost every country in the world, public administration has significantly expanded in the past century.⁷ With this expansion and the changing nature of the role of government, the number of complaints about governmental performance has grown. As a result, governments around the world are experiencing a widening gulf between themselves and the people they serve. Kersbergen and Van Waarden argued that this is because the traditional institutions of checks and balances on power and accountability of public officials have become less effective due to the shifts.⁸ Hence, as a reaction to these developments, modern democracies of the world now resort to establishing the Ombudsman as new control mechanism institution to sustain ethical conduct in the public service. Ombudsman is an integral part of public sector transformation in the twentieth century. It has become a feature, and a standard of modern democratic State. 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 is carrying out its day-to-day functions and does not trample on the fundamental rights of its citizens and as well, ensure maintenance of ethical principles by public officials. Without the presence of an Ombudsman, the chances of the citizens seeking redress when abuse of office occurs will be narrow, in the light of exigencies and demanding nature of the existing mechanisms like the courts, legislatures, executive and other agencies, charged with redressing such complaints.

Notably, the importance of the Ombudsman was aptly captured by Pearce thus:

... undoubtedly the most valuable institution from the viewpoint of both the citizen and bureaucrat that has evolved during this century....there has been broad public demand for the establishment of an Ombudsman to resolve problems in a very large number of countries and institutions. This astonishing growth of an institution is not and has not been emulated by any other body. Contrast the many centuries that it took Parliament and the Courts to establish their roles...⁹

Hence, the office of the ombudsman, it is hoped, would help the State public service to enthrone a self-check that would enforce accountability, prevent corruption and guide against maladministration. Therefore, the objective of this paper is to do a comparative study of this institution in Nigeria, Britain and the Soviet Union (Russia) and see how it has lived up to this dream, as well as make appropriate recommendations.

1.1 Historical development of the Public Compliant Commission in Nigeria

The origin of the Public Compliant Commission dates back to the Military regime in Nigeria. Prior to the report of the Public Service Review of 1974, which was set up by the Federal Military Government to look into the conditions of service of public workers in the federation, there were recommendations for the institution of the Ombudsman in Nigeria. As a result of the recommendation of the Udoji Public Service Review Commission of 1974, the General Murtala Mohammed Administration established the Public Complaints Commission in 1975 under Decree 31 of 1975. It was later amended by Decree 21 of 1979.¹⁰ The Commission consisted of a Chief Commissioner and twelve other Commissioners appointed by the Supreme Military Council, and also responsible to the Council. The Commission has power to initiate investigation on its own or upon complaint on administrative action by federal or state agencies, statutory corporations, local government authorities and public institutions and companies whether in the public or private sector and officials thereof. The law was amended in 1979, by virtue of Public Complaints Commission (Amendment) Decree 21, which made some amendments to the Public Complaints Commission Decree 31 of 1975, and it, among other things, conferred immunity from legal process on the Public Complaints Commissions in the performance of their official duties.

The Commission’s enabling law was entrenched in section 273 (5) of the 1979 Constitution of the Federal Republic of Nigeria. The same provision was also retained in the 1999 Constitution (as existing law) under section 315 (5) (b). Kunle Aina posits that there was a conceived idea that Nigerian citizens were once generally oppressed and victimized by the administrative powers of the government. Therefore, there was need for intervention by a

⁴ C. Osegbue, and H. C. M. Madubueze, ‘‘The Ombudsman and Administration of Justice in Nigeria; a Study of Anambra State; 2010-2015’’, *Journal Of Humanities And Social Science*, Volume 22, Issue 4, Ver. 5 (2017), p. 40

⁵ (1970) 10 ADR (3RD) 47.

⁶ G. Hogan and D. Morgan, *Admin Law in Ireland*, 2nd ed. (London: Sweet & Maxwell, 1991), P. 279.

⁷ S. I. Afegbua and K. D. Adejuwon, ‘‘Ombudsman and Ethical Dilemma in Nigerian Public Administration: From Rising Expectations to Dashed Hopes’’, *Review of Public Administration and Management*, Vol. 3, No. 7, (2015), p. 99.

⁸ K. Kersbergen and F. Van Waarden, ‘‘Governance as a Bridge Between Disciplines: Cross-Disciplinary Inspiration Regarding Shifts in Governance and Problems of Governability, Accountability and Legitimacy’’, *European Journal of Political Research*, Vol. 43, Issue 143, (2004), p. 171.

⁹ D. Pearce, ‘‘The Ombudsman: Review and Preview, the Importance of Being Different’’, *The Ombudsman Journal*. Vol. 11, (1993), p. 23.

¹⁰ Now incorporated into the Laws of the Federal Republic of Nigeria as Public Complaints Act CAP P. 37 LFN 2010.

supposedly neutral voice or ‘‘history ears’ for the benefit of the citizens who may have a complaint against the government.¹¹ Accordingly, the current understanding of the Commissioner is that he is a state official appointed to provide a check on government activity in the interests of the citizens and to oversee the investigation of complaints of improper government activity in the interests of the citizen.

1.2 Historical Development of the Ombudsman

According to M. Ikejiani-Clark, the word ombudsman, in Swedish etymology, means an officer or spokesman or representative.¹² C. Osegbue, and H. C M.Madubueze, posit that the history of the Ombudsman can thus, be divided into three main periods.¹³ They continued that the first period was around 1809 in an era of authoritarian monarchy, when it developed as a check on executive power and incidentally it developed within the executive itself. The kings of Sweden had established it to ensure that their administrators would vigorously respect and implement their laws. Ombudsmen are therefore public officers set up to strengthen the authority of the executive over the other powers. Secondly, as the regimes became more parliamentary, the office was, towards the second half of nineteenth century, redesigned and moved away from the sphere of the executive and became the instruments of the parliament to monitor and control the executive. Today, it is still an essential element in the Swedish theory of ‘‘constitutional’’ control. Thirdly, by the twentieth century, it acquired its relative autonomy and has now evolved into the citizen’s instrument. Posing as the defender of civil rights against the arbitrariness of bureaucracy, it is no longer confined to the horizontal relationship between authorities but is also part of the vertical control of the State by citizens. As such, it combines the two basic dimensions of accountability in democratic systems. The institution of the Ombudsman spread in the second half of the twentieth century well beyond Sweden.

Over the years, the institution of the Ombudsman has grown and become more specialized and politicized. According to Ishaq, while being appointed by the parliament, they still try to maintain their independence, and their very easy access, ‘‘point and theoretical history ears’’ without necessary bureaucratic controls has endeared the Ombudsman to the ordinary man.¹⁴

2. THEORETICAL AND CONCEPTUAL DISCOURSE

2.1 Theoretical Discourse

According to Udentia, a theory is a set of reasoned ideas intended to explain facts or events.¹⁵ It is a statement of relationships between units observed or approximated in the empirical world. It generally helps for the understanding of certain phenomena about a subject.¹⁶ It is the theory that determines what we can observe. Therefore, for the purpose of this paper, we shall consider basically one theory which is Utilitarian theory as the most relevant theory to the subject matter of this research work.

- i. **Utilitarian Theory:** This theory is derived from the works of John Staurt Mill¹⁷ and Jeremy Benthan. According to the duo, in normative ethics, an action is right if it tends to promote happiness, and wrong if it tends to produce not only the reverse of happiness of the performer of the action, but also that of everyone affected by it. E. J. Ebiziem and C. J. Amadi, agreeing with them, stated that in the notion of consequences, the utilitarian includes all of the good and bad produced by the act, whether arising after the act has been performed or during its performance.¹⁸ However, acts should be classified as morally right or wrong only if the consequences are of such significance that a person would wish to see the agent compelled, not merely persuaded and exhorted, to act in the preferred manner.¹⁹ To this end, the ombudsman constitutes the ears of the people, and it serves as a mechanism of redressing the grievances of citizen in a democratic system. Its activities are *in tandem* with the postulations of the utilitarian theory because it seeks to address what is morally right or wrong. With this theory, the level of justice, morals and injustice carried out by its operators in the administrative system can be assessed. Thus, ombudsman promotes peace and happiness when it makes the right recommendations and produces the reverse to happiness when it makes the wrong recommendations.

¹¹ Kunle Aina, *Op. Cit.* p. 2.

¹² M. Ikejiani-Clark (ed). ‘Peace Studies and Conflict Resolution in Nigeria: A Reader’, in K. O. Osakede and S. O. Ijimakinwa, ‘‘The Role of Ombudsman as a Means of Citizen Redress in Nigeria’’, *Review of Public Administration and Management*, Vol. 3, No. 6, (2014), p. 121.

¹³ C. Osegbue, and H. C M.Madubueze, *Op. Cit.* p. 40.

¹⁴ M. S. Ishaq, ‘‘The Role of the Public Complaints Commission in Protecting Worker’s (2011), in C. Osegbue, and H. C M.Madubueze, *Ibid.* p. 41.

¹⁵ J. O. Udentia, *An appraisal of Nigerian Local government system*, (Aba: Grace Ventures, 2009), p. 56.

¹⁶ J. G. Wacker, ‘‘A Definition of Theory: Research Guidelines for Different Theory-Building Research Methods in Operations Management’’, *Journal of Operations Management*, Vol. 16 (1998), p. 364.

¹⁷ John Staut Mill, *Principles of Political Economy with Some of Their Applications to Social Philosophy*, Stephen Nathanson, Ed. (Indianapolis/Cambridge: Hackett Publishing Company, Inc., 2004), p. 19.

¹⁸E. J. Ebiziem and C. J. Amadi, ‘‘Appraisal of Ombudsman in Nigeria; Operations, Benefits and Challenges’’, *International Journal of Advanced Academic Research - Social Sciences and Education*, Vol. 1, Issue 2, (2015), p. 61.

¹⁹*Ibid.* p. 61.

2.2 Conceptual Discourse

2.2.1 The Concept of Ombudsman

E. J. Ebiziem and C. J. Amadi posits that Ombudsman is a political device for the protection of the citizen from the arbitrary, repressive and oppressive application of the executive powers of government.²⁰ To Nigro and Nigro, an Ombudsman is an officer of parliament who investigates complaints from citizen's that they have been unfairly dealt with by government department, and who if he finds that the complaints is justified seeks a remedy.²¹

Ezeani, quoting Andren, posits that;

The ombudsman is a law officer, appointed by a national parliament for the task of supervising the activities of certain categories of public service and of public authorities. His main concern is with the rights and liberties of the citizens. The supervision of the activities under his control has, on the whole, the observance of the laws as its primary objective, not the general suitability of decisions.²²

According to Anand Satyanand, the term Ombudsman means something in the nature of "grievance representative" or "entrusted person."²³ According to him, the Ombudsman Committee of the International Bar Association defines the term Ombudsman as follows:

An Office provided for by the Constitution or by 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 and employees, or who acts on [his] own motion and who has the power to investigate, recommend corrective action and issue reports.²⁴

On the other hand, Sultana is of the view that the Ombudsman is an institution established under a constitution or by the legislature that receives and investigates complaints reported by individual citizens, against any government and institution, and recommends corrective actions.²⁵

On his part, D. C. Rowat 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 to reverse such action.²⁶

According to Birkinshaw, Ombudsman, in effect, 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.²⁷ D. A. Tonwe added that when remedial action recommended by the institution is not implemented by the concerned establishment, it can publicize the case and report on it to parliament. He further stated that the Ombudsmen are basically inquisitorial, not adversarial in nature, as such, can examine and interview witnesses and use professional experts where appropriate.²⁸

From the foregoing, there seems to be a consensus of opinion that the institution of the Ombudsman is a neutral institution in the nature of spokesman for the oppressed citizens, 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 of his own motion, and who has the power to investigate, recommend corrective action and issue reports. However, what these writers did not clarify so far is the effectiveness of this institution as to the implementation of its corrective recommendations.

2.2.2 The Concept of Administration of Justice

According to Robin Creyke, the concept of 'administrative justice' is a relatively new one.²⁹ Although, the early practitioners in administrative law system used the expression, it went into abeyance in the late 1980s and did not re-emerge until the turn of this century.³⁰ With its re-emergence, however, it is timely to explore its meaning, especially for the purpose of this paper. Despite its relative novelty as expressed above, the importance of the concept has been widely appreciated. As Sir Anthony Mason put it, 'administrative justice is now as important to the citizen as traditional justice at the hands of the orthodox court system.'³¹ However, there appears to be no agreement in experts' discourse as to its meaning. The observation by Sir Anthony underlines another justification for exploring this concept. Bradley posits that a heightened consciousness of human rights today has triggered a growing interest in identifying the extent to which individual elements of administrative law might be developing into some form

²⁰ E. J. Ebiziem and C. J. Amadi, "Appraisal of Ombudsman in Nigeria; Operations, Benefits and Challenges", *International Journal of Advanced Academic Research - Social Sciences and Education*, Vol. 1 Issue 2, (2015), p. 59.

²¹ L. G. Nigro and F. A. Nigro, *Modern Public Administration*, (Mahattan U.S.A.: Harper & Row Limited, 1973), p. 22.

²² Ezeani, E. O. "Public Complaints Commission and Administrative Responsibility: An Appraisal", in C. Osegbue, and H. C. M. Madubueze, Op. Cit. p. 42.

²³ Anand Satyanand, "The Ombudsman Concept and Human Rights Protection", *Victoria University of Wellington Law Review*, Vol. 29 (1999), p. 20.

²⁴ *Ibid.* p. 21.

²⁵ R. Sultana, *The Ombudsman Question*, (Lucknow: Universal Press, 2007), p. 37.

²⁶ D. C. Rowat, *The Ombudsman, Citizen's Defender*, (London: George Allen and Unwin, 1986), p. 71.

²⁷ P. Birkinshaw, *Grievances, Remedies and the State*, (London: Sweet and Maxwell, 1994), p. 81.

²⁸ Daniel Adetoritse Tonwe, "A Review of the Powers and Jurisdictional Remit of the Ombudsman Institution in Botswana", *Mediterranean Journal of Social Sciences*, Vol. 4 No. 13, (2013), p. 12.

²⁹ Ronin Creyke, "Administrative Justice - Towards Integrity in Government", *Melbourne University Law Review* Vol. 31, (2007), p. 706.

³⁰ *Ibid.* p. 706.

³¹ Anthony Mason, "Administrative Review: The Experience of the First Twelve Years", *Federal Law Review* Vol. 18, Issue 122, (1989), p. 130.

of human rights.³² And at the same time, as stated by Galligan, there is recognition of a competing goal, such as the consciousness to maximize the common good as expressed sometimes through statutory frameworks affecting citizens.³³ Hence, this clarification becomes necessary because, Ombudsman is brainchild of administrative injustice against the citizens.

C. Osegbue, and H. C. M. Madubueze posit that scholars have not been able to articulate the actual meaning or conceptualization of administrative justice, and see the concept from the prism of that which administrative justice is not. Hence, they define it as arbitrary application of justice against the employees of the government.³⁴ Obiagba went straight to say that the Ombudsman 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 maybe uncovered through a non-judicial investigation.³⁵

In clear terms, section 5(3)(d) of the Public Complaints Commission Act, 1975, while specifying the powers of the Commission, attempts to define maladministration or at least, gives idea of what constitutes maladministration by specifying that:

every Commissioner shall ensure that administrative action by any person or body mentioned in subsection (2) will not result in the commitment of any act of injustice against any citizen of Nigeria or any other person resident in Nigeria and for that purpose, he shall investigate with special care administrative acts which are or appear to be: 1. Contrary to any law or regulation, 2. Mistaken in law or arbitrary in the ascertainment of facts. 3. Unreasonable, unfair, oppressive or inconsistent with the general functions of administrative organs. 4. Improper in motivation or based on irrelevant consideration; 5. Unclear or inadequately explained; or 6. Otherwise objectionable...

3. THE FOCUS OF THE PUBLIC COMPLAINT COMMISSION

In Nigeria, the public service sector has been experiencing myriad of problems ranging from lack of discipline among the civil service workers, misappropriation of public funds, laziness at work, corrupt practices and their cold and non-chalant attitude towards their job, colleagues and moral values of the community. S. I. Afegbua, and K. D. Adejuwon, posits that since independence in 1960, Nigeria has battled integrity, transparency and accountability problems within its public service.³⁶ It is against this backdrop that the Public Complaint Commission was established by the then Federal Military Government *via* Decree No. 31 of 1975. Upon coming into democracy, the said law retained in our constitution as one of the existing laws and currently, is contained in section 315 (5)(b) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

However, from the Act, the primary aims and objectives of the Public Complaints Commission under section 5 of the Public Complaints Commission Act are to promote social justice for the individual citizen, without which there can hardly be genuine peace and stability due to the increased bureaucratic excesses in Nigeria. In this line, it is therefore the responsibility of the Commission to help individuals to get redress for the injustice they suffered arising from the administrative actions or inactions and unethical behaviours of government ministries or agencies and incorporated companies in the country.

The recent developments of the Whistle-blowing³⁷ saga calls for serious attention. Few years ago, the Federal Ministry of Finance initiated whistleblowing programme, which was designed to encourage anyone with information about a violation of financial regulations, mismanagement of public funds and assets, financial malpractice, fraud and theft to report same to appropriate authorities. This programme was later translated into a bill which is yet to be passed into law. However, the programme has been ongoing and has, of recent led to the recovery of millions of dollars in Nigeria. The provision of the Bill is that a person may make disclosure of information where that person has reasonable cause to believe that the information tends to, among other things, show that an economic crime has been committed, or is about to be committed or is likely to be committed.³⁸

In return, a Whistleblower responsible for providing the Government with information that directly leads to the voluntary return of stolen or concealed public funds or assets may be entitled to anywhere between 2.5% - 5.0% of amount recovered under the programme.³⁹

This has led to the betrayal of trust and confidence by relatives and associates and victimization by employer and the suspects. Sadly, the government has always failed to fulfil their parts in this deal, leading to breach of the law, to which the attention of the Public Complaint Commission should be called. Even though section 12 of the Whistleblowers Protection Bill makes provisions for the protection of the whistleblower, and sections 14 and 15 provide for means of redress in terms of victimization of a whistleblower,⁴⁰ the Bill made no provision for claims in the event of failure to fulfil the incidental

³² A. W. Bradley, "Administrative Justice: A Developing Human Right", *European Public Law*, Vol. 1, (1995), p. 347;

³³ D. J. Galligan, *Due Process and Fair Procedures: A Study of Administrative Procedures*, (Oxford: Clarendon Press Publication, 1996), p. 237.

³⁴ C. Osegbue, and H. C. M. Madubueze, *Op. Cit.* p. 43.

³⁵ N. C. Obiagba, "Why the Ombudsman Institution in the Emergent African States", Being a Paper Presented in the Third African Regional Conference of Ombudsman Titled "Search for Social Justice and Fair Play", held in Abuja between 20th – 27th October, (1993), in C. Osegbue, and H. C. M. Madubueze, *Ibid.* p. 43.

³⁶ S. I. Afegbua, and K. D. Adejuwon, "Ombudsman And Ethical Dilemma In Nigerian Public Administration: From Rising Expectations To Dashed Hopes", *Review of Public Administration and Management*, Vol. 3, No. 7, (2015), p. 108.

³⁷ Whistle Blowing is the reporting of a wrongdoing that needs to be corrected or terminated in order to protect public interest.

³⁸ See section 1(1-3) of the Whistleblower Protection Bill, 2008.

³⁹ In order to qualify for the reward, the Whistleblower must provide the Government with information it does not already have and could not otherwise obtain from any other publicly available source to the Government. The actual recovery must also be on account of the information provided by the Whistleblower.

⁴⁰ As well as the Public Complaint Commission

promise for whistleblowing. This the point of our dissatisfaction with the whole programme. It is more pathetic that the Public Complaint Commission cannot even help the situation because of its inherent weakness arising from its non-independence. It is therefore our opinion that in order to make the programme highly proficient, attention should be paid to the issue of claims of the reward for whistleblowing. In the event of failure, the Public Complaint Commission should be involved in this remedy procedure.

By the tenor of the establishing Act, the Commission is independent of government control and bureaucracy.⁴¹ It is given extensive powers regarding disclosures and access to all government information including the production of documents, which can aid the Commission's investigation.⁴² The Commission is empowered to enforce compliance in order to obtain the necessary information. This power is fundamental in facilitating impartial investigation in order to arrive at a fair and equitable decision.⁴³

Under section 5(2) of the Act, a Commissioner shall have power to investigate either on his own initiative or following complaints lodged before him by any other person, any administrative action taken by:

- a) Any Department or Ministry of the Federal or any State Government;
- b) Any Department of any Local Government Authority (howsoever designated) set up in any State in the Federation;
- c) Any statutory corporation or public institution set up by any Government in Nigeria;
- d) Any company incorporated under or pursuant to the Companies and Allied Matters Act, whether owned by any Government aforesaid or by private individuals in Nigeria or otherwise howsoever; or
- e) Any officer or servant of any of the aforementioned bodies.

In addition to the above, subsection 3(e) of the said section 5 provides that a Commissioner shall be competent to investigate administrative procedures of any court of law in Nigeria. It must be stated that this oversight function of the Commission is capable of leading to usurpation of and interference to the functions and activities of this third arm of government. The problem here is that since the administration of the court is clearly governed by law, including statutes and rules of court made by virtue of the Constitution, it becomes difficult to draw the line between purely "Administrative"⁴⁴ and "Judicial" matters in the contest of the courts administration. It is therefore our opinion that this function of the Commission should be removed so as to preserve that sanctity of our judicial system.

The Commission ensures accountability of public administration, checks maladministration by ensuring that workers' right are not trampled upon or violated without recourse to justice. In the performance of its official assignment, it has the powers to summon persons and apply various penalties in cases of default therefrom.⁴⁵

The extent of independence of the Commission shall be commented on at this juncture. Accordingly, while writing on the role of Ombudsman as means of citizen redress in Nigeria, Osakede stated that the Commission activities are not totally independent of government interference. This indicates that government interference has degree in the activities of the commission, which in turn affects the performance of the system.⁴⁶ The Commission seems to have been sidelined since the inception of the present day government. This accounts for their failure so far. This lack of independence of the Commission can come in varied means. Hence, the non-punitive nature of the Commission is one of the very ways where the Commission lacks independence. For the Commission to reduce, if not eliminate inefficiency and administrative injustice in the public and private sectors, and also to help provide adequate relief to the aggrieved citizens, there has to be an effective power base for the Commission by expanding its functions to include sanction power which undeniably has been the bane for its little success so far.

One the worrisome provisions of the Act establishing the Commission is section 10 of the Act which gives undeserved immunity to the Commissioners. The said section provides that in carrying out his investigation, no Commissioner shall be liable to be sued in any court of law for any act done or omitted to be done in the due exercise of his duties under or pursuant to this Act.⁴⁷ It is unarguably unpalatable that the activities of the same body created by law to investigate administrative defects cannot be questioned or be challenged by any person or authority, not even by way of judicial review or be compelled by the court to perform their legal duties by order of Mandamus. This is a fundamental set back to the latitude of ventilation of the citizens' grievances and it accounts for the reason why there has been paucity of decided authorities patterning to the Commission. This is actually one the reasons for the failure of the Commission, even though there has been handful of successes attained by the Commission in meeting up with citizens' complaint. Thus, E. J. Ebiziem and J.C. Amadi recorded that from April 2014 to March 2015, the Commission received a total of 952 complaints and enquiries, on appointment related cases, it reviewed only 1 complaint in September 2014, on conduct related cases, it received 640 complaints and finally, it received 311 enquires.⁴⁸ 70% of these complaints were attended to though in varying degrees of success. Going by the

⁴¹ See section 5(6) of the Act.

⁴² See section 5(3)© of the Act.

⁴³ Notably, investigation of complaints is carried out at no cost to the complainants.

⁴⁴ Which is within the purview of the Public Complaint Commission.

⁴⁵ See section 9 of the Act.

⁴⁶ K.O. Osakede, and S. O. Ijimakinwa, "The Role of Ombudsman as a means of Citizen Redress in Nigeria", *Review of Public Administration and Management*, Vol. 3, No. 6, (2014), p. 47.

⁴⁷ See section 10(1) of the Act.

⁴⁸ E. J. Ebiziem and J.C. Amadi, "Appraisal of Ombudsman in Nigeria; Operations, Benefits and Challenges", *International Journal of Advanced Academic Research, Social Sciences and Education*, Vol.1, Issue 2, (2015), p. 66.

incessant interfere of agencies of government by the executive arm under this current administration, it is doubtful whether the Commission has performed any better.

4. COMPARATIVE ANALYSIS OF THE FOCUS OF THE COMMISSION IN NIGERIA, BRITISH OMBUDSMAN AND THE SOVIET UNION PROSECUTOR-GENERAL

4.1 Russia

We have stated at the onset that while the institution is called Public Complaints Commission in Nigeria, it is regarded as "Parliamentary Commissioner for Administration" in the United Kingdom (PCA),⁴⁹ and in the defunct Soviet Union, it was regarded as the "Prosecutor-General." Russia has retained and continued to use the name to describe the institution and in addition, it has created the Office of the Human Rights Ombudsman. In this segment, we shall do a comparison of the role of this institution in the countries above mentioned.

According to Smallbone, until the mid-nineteenth century, the main purpose of the Prosecutor-General was to supervise the execution of the laws of the Central Government.⁵⁰ Wasserman and Wachbroit, agreed with him and added that the office was responsible mainly for checkmating the excesses and arbitrariness of the actors in the execution of these laws.⁵¹ This is the main distinctive historical feature of Russian prosecutors. The main purpose of this organ in Russia is the supervision of correct and uniform application of laws throughout the state. Commenting on this, Perry posits that this constitutes its essence, identity, historical mission, and has a deep meaning, and taking into account the traditions and characteristics of the Russian State, it is important and inevitably relevant up to the present day.⁵²

Prosecutor is involved in court proceedings. In this regard, the Prosecutor acts as a public Prosecutor. According to the new Code of Criminal Procedure of Russian Federation,⁵³ the obligatory participation of the Prosecutor is established in judicial proceedings on public and partially-public prosecution. In civil proceedings the Prosecutor is entitled to appeal to court with the statement in protection of State and municipal interests, as well as an indefinite number of persons; to join in the process and to give its opinion in cases stipulated by part 3 of article 45 of SPC (State Procedural Code) of the Russian Federation; to apply for the protection of the rights of the citizen and his interests protected by law if he, for valid reasons, cannot go to court.⁵⁴

When setting up the Ombudsman, Russia looked to Poland and Slovenia, but adopted one that fit her own environment. Under the Soviet Union, a system existed to make complaints against public officials and agencies. This system was called the *Prokuratura*, a branch of the executive. According to Gilligan, a Procurator-General of the USSR was established under the Soviet Constitution, who was a supervisory official. The office was made in response to several post-Soviet problems; the most prominent among them was the biased court system.⁵⁵ The office conducts general supervision over state agencies to ensure that all acts of the agencies and officials were in accordance with the law and it also supervises the administration of criminal justice, since it works as both the "guardian of the State and protector of individual right."

However, S. Remington stated that a transition to the use of the name Ombudsman in Russia began in 1990 during the "Congress of People's Duties", when a proposal was made to establish a Human Right Committee in Russia.⁵⁶ He continued that a well-respected Committee was set up to that effect. It was under this Committee that the office of the Human Rights Ombudsman was created in Russia. The powers that the Committee entrusted on the Ombudsman were within the traditional role of the Ombudsman, to wit: to receive complaints and help address any human right violations; put pressure on State institution to install more human right legislation; and to serve as a force for educating the public on the field of human right and remedies available to them should they experience any violations. The Committee drafted a Declaration of the Rights and Liberties of the Human Being and the Citizen, which passed through Parliament in 1991.⁵⁷ Article 40 of the Declaration states that the Ombudsman would have parliamentary control over the "observance of human rights and civic freedoms in Russia.

The legal role of the Human Right Ombudsman can be found in the Federal Constitution Law on the Commissioner for Human Right in the Russian Federation.⁵⁸ Article I of the Constitution establishes the duty of the Russian Human Right Ombudsman. Accordingly, they shall "facilitate the restoration of violated right, the improvement of Legislation of the Russian Federation on human and citizens' right and the bringing of it into accordance with universally recognized principles and norms of international law, development of international co-operation in the field of human

⁴⁹ Kunle Aina, "The Relevance of Public Complaints Commission to Nigeria's Democratic Development", *International Journal of Advanced Legal Studies and Governance*, Vol. 3, No. 3, (2012), p. 1.

⁵⁰ S. W. Smallbone, and L. Milne, "Associations Between Trait Anger and Aggression Used in the Commission of Sexual Offenses", *International Journal of Offender Therapy and Comparative Criminology*, Vol. 5, (2000), p. 342-356.

⁵¹ D. Wasserman, and R. Wachbroit, *Genetics and Criminal Behavior*, (Cambridge, UK: Cambridge University Press, 2001), p. 335.

⁵² B. Perry, *Beyond Black and White: Ethnoviolence Between Oppressed Groups*, (New York: Elsevier Science, (2000), p. 323.

⁵³ Criminal Procedural Code of the Russian Federation No. 174-FZ OF DECEMBER 18, 2001

⁵⁴ See the Civil Procedural Code Of The Russian Federation No. 138-Fz Of November 14, 2002.

⁵⁵ E. Gilligan, 'The Human Right Ombudsman in Russia: the Evolution of Horizontal Accountability', *Human Right Quarterly*, 32 (2010).

⁵⁶ S. Remington, *The Russian Parliament Institutional Evolution in a Transitional Regime, 1989-1999*, 1st Edition, (New Haven, Connecticut: Yale University Press: 2001), p. 101.

⁵⁷ Ibid. p. 102.

⁵⁸ Russian Federation Constitution Law on the Commissioner for Human Right in the Russian Federation <http://www.anticorruption.bg/ombudsman/eg/readnews.php?id=6085&lanaccessed> 29 November 2013

rights, legal education on questions of human right and freedoms, and the forms and methods of defending them". In that sense, the role of the Ombudsman entails a multitude of functions, such as research, recommendations, implementation, and governance.

Article 2 established his independence. Article 3 articulates that the office of the Ombudsman does not take away from other institutions that are already in place to protect people's rights, like courts for example, instead the office works to complement those other organs.

Article 9 creates the oath for the Ombudsman under which he will swear to defend the right and freedoms of man and the citizen, to fulfill conscientiously his duties, governed by the Constitution of the Russian Federation, the legislation of the Russian Federation, to fulfill the course of justice and be the voice of conscience. The notion of being 'the voice of conscience' for his country is thus integral to the general role of the Ombudsman. Article 11 states that the Ombudsman cannot be a politician nor a part of the government nor can he be engaged in any paid or unpaid work other than "teaching, scientific, or other creative activity" which does limit his role to a more academic rather than legal one. This provision is a corollary to the provision for the independence of the Ombudsman. Article 15 puts under the Ombudsman's jurisdiction not just Russian citizens but also foreign citizens living in Russian.

The law requires that the Ombudsman must be a person knowledgeable in the area of human rights. Gilligan has argued that the requirement of "knowledge in the field of human and citizens' rights protections" is extremely broad and open to almost any interpretation. He posits that these criteria can easily lead to politicization of the office or even to the election of incompetent Ombudsman, with no provision of the law to prevent this. Although, the appointment and dismissal of the Commissioner for Human Rights, the Ombudsman, is done by the Duma,⁵⁹ the candidates can be proposed not by the Duma members or the Council of Federation but also by the President. This provision can seriously compromise the separation of powers, since the President can influence the election process and try to get his "yes-man" into office.⁶⁰ Though he cannot initiate legislation process, the Human Right Ombudsman can propose amendments to the legislation and he can also appeal to the Constitutional Court.⁶¹

4.2 British

There are many institutions of Ombudsman in the United Kingdom. However, the Parliamentary Commissioner for Administration is the basic model from which derive all the other ombudsman figures. It was propelled worldwide by the basic similarity of parliamentary forms between Scandinavia and the Commonwealth pattern. In the opinion of MariteuwChimèreDiaw, there is an obvious correlation between the ombudsman's public profile and its constitutional insertion.⁶² The learned author continued that in the U.K. Parliamentary System of Government, the Legislature holds supreme power. The executive and the legislature are elected through the same poles, have the same electoral constituency, and are fused into a unified system of accountability. The Prime Minister and other cabinet members are members of Parliament and are directly accountable to that body. As a public officer appointed by constitutional or legislative provision to monitor the administrative activities of government, the ombudsman had also, logically, to report to the legislature.⁶³

According to Giddings, in the U.K. Westminster System, which is considered as one of the strongest forms of parliamentarianism, public access to the ombudsman is even restricted to Members of Parliament, "the so-called MP filter, which made explicit the notion that the British Ombudsman was intended to be an instrument in the hands of Parliament and its Members."⁶⁴ To bring the point home, the Ombudsman was titled Parliamentary Commissioner for Administration, from which variants of Commonwealth countries, such as the Nigeria's Public Complaint Commission were adopted. The Parliamentary Ombudsman is generally referred to as the Classical Ombudsman Model, and this is the logical starting point for describing the basic characteristics of an ombudsman. In reality, there is, within the parliamentary model itself, an earlier distinction between a "classic model", which is Swedish and Finish, and the version that spread later from Denmark to become the general blueprint for Parliamentary Ombudsmen.

In Sweden and Finland, the Ombudsman has very broad supervisory mandate over State and municipal public administrations and over the courts' procedures and administration. It has also the power to seek prosecution of civil servants before a court of law for criminal offences. By contrast, the general "Danish model" concentrates "only on public administration, leaving out the judiciary from its mandate."⁶⁵ In like manner, the British Ombudsman acts independently to investigate and handle complaints of maladministration about governmental ministries, boards, agencies, and commissions, but only on behalf of parliament. It is also a place of last resort, an impartial agent that can intervene when complaints directed to the agency involved have not been adequately addressed or that procedures have not been properly followed. An Ombudsman assists elected representatives in ensuring responsible government but it is neither an elected representative nor a parallel authority to governmental agencies. It

⁵⁹ See Article 103(f) of the Russian Constitution, 1993. The "Duma Assembly" in Russian was an elected semi-representative body in Russia from 1906 to 1917. It was created by the then leader of the ruling, Tsar Nicholas II in 1905 when the government was desperate to divide the opposition during an uprising. This group of men tried to run Russia in conjunction with the Soviets while a Constitution was drawn up, but all that was washed away in the Russian Revolution.

⁶⁰ E. Gilligan, "The Human Rights Ombudsman in Russia: the Evolution of horizontal Accountability", *Human Right Quarterly*, 32 (2010)

⁶¹ E. Gilligan, *Ibid.*

⁶² MariteuwChimèreDiaw, "The Ombudsman Story: A Case Study in Public Oversight, Natural Justice and State Transformation", p. 11, https://www.researchgate.net/profile/Mariteuw_Diaw/publication/312341186_The_Ombudsman_story_A_case_study_in_public_oversight_natural_justice_and_State_transformation/links/587b95a408aed3826ae8d1de/The-Ombudsman-story-A-case-study-in-public-oversight-natural-justice-and-State-transformation.pdf, accessed on 8th Dec. 2018.

⁶³ *Ibid.* p. 11

⁶⁴ P. Giddings, "Whither the Ombudsman" *Public Policy and Administration*, Vol. 16, Issue 2 (2001), 1-16.

⁶⁵ Donald Rowat, *Comparative Reviews of Ombudsmen in the Ombudsman: Citizen's Defender*, (London: Allen & Unwin, 1965), p. 347.

reports to Parliament and to the public but does not have the power to force an agency to comply with a recommendation. It is not a substitute or duplication of appeal rights to courts or administrative tribunals and cannot make binding orders. For these reasons, however, ombudsmen can address issues that are outside the scope of an appeal. They can proceed with less formality and without the adversarial hearings and costs associated with court cases.

In classical parliamentary schemes, there are, in fact, many things that an ombudsman is not or is not allowed to do. The Ombudsman's role is not particularly, to assign blame or penalty as final decision arising out of its investigation, but to resolve complaints in a fair, just and practical manner. The Ombudsman complements the work of administrative tribunals both by dealing with cases that are not appropriate for a tribunal, and by dealing with complaints about the administration of tribunals themselves. However, some ombudsmen can investigate tribunals while others can't. Thus, in its most basic form, the ombudsman conducts its investigations in a way that is informal, non-threatening, independent, and impartial. He is an expert in government who is universally accessible and empowered only to recommend and publicize. It has the power to investigate, discover the facts of a case and determine an appropriate resolution. It can criticize and publicize administrative actions but can't reverse them. It is not an advocate for complainants; often the results of an investigation will find no grounds to support a complaint. This underlines the critical importance of independence, so that complainants will trust that they have been heard and fairly treated even when the outcome does not support their case

4.3 Nigeria

Just like in the U.K., the Public Complaint Act of Nigeria provides that "all Commissioners shall be responsible to the National Assembly but the Chief Commissioner shall be responsible for co-coordinating the work of all other Commissioners."⁶⁶ Thus, though there is a difference in nomenclatures, the Nigerian Ombudsman is patterned after the British Parliamentary Commissioner for Administration.

Commenting on the focus of the Ombudsman M. C. Okany, posits that the institution of Ombudsman is usually aimed at checking bureaucratic mistakes and abuse of office. Therefore, an Ombudsman cannot function except where there is bureaucracy, and is expected to function within the framework of laws and regulations. Furthermore, he posits that there is need for such a bureaucracy to exist in a situation where there is generally accepted standard of fair and efficient administration. The function of Ombudsman in such a situation will be to insist on the officials complying with established standards, such as legal and moral rules and codes binding on the bureaucrats, that is, the society wishing to import the institution of Ombudsman must have a standard or pattern of behavior imposed on officials so that where an official fails to comply, he may be accused of unfair exercise of power and required to make amends.⁶⁷ However, while we agree with the learned professor of law, we beg to defer from his opinion that the society must have a standard or pattern of behaviour imposed on the official. Our reason is that the Agencies the institution of Ombudsman is expected to investigate are creations of law. Therefore, it will be enough that the institution of the Ombudsman is invoked on ground that the agencies have violated the law creating them in their dealing with the citizen, for anything more than this, will mean that where there is moral decadence, the jurisdiction of the institution of the Ombudsman will be questioned.

We have taken time to compare the focus of the institution within the geographical limit of this paper. Traditionally, the role of the institution of Ombudsman is to serve as a check to the excesses of the bureaucrats in the exercise of their function in office. This primary role cuts across all the institutions in the countries under study. However, while in Russia, the Prosecutor is involved in court proceedings, acting as a public Prosecutor, in Nigeria and the U.K., such thing does not obtain.

The U.K. Parliamentary Commissioner for Administration is accountable to the Parliament. He reports to the legislatures directly. In fact, public access to the ombudsman is even restricted to Members of Parliament. Also, in Nigeria, section 2(1) of the establishing Act provides that the Chief Commissioner shall be appointed by the National Assembly. Section 2(3) makes the office of the Commissioner highly dependent by providing that a Commissioner may at any time be removed from his office of appointment by the National Assembly. This position does not guarantee independence of the institution of Ombudsman in Nigeria and the United Kingdom. In Russia, although, the appointment and dismissal of the Commissioner for Human Rights, the Ombudsman, is done by the Duma, the candidates can be proposed not by the Duma members or the Council of Federation but by the President. The second limb of the section emphasizes that the Commissioner shall act according to Federal Constitutional Law. It is our opinion that this provision will guarantee fairness and independence of the Ombudsman in Russia more than in Nigeria and the U. K.

Due to diversification and improvement on alternative means of dispute resolution in Russia, the institution of the Ombudsman seems currently to be more concerned in human right abuses, some of which may not be primarily from abuse of administrative office. However, in Nigeria, the jurisdiction of the institution is well spelt out, to be strictly concerned in complaints arising from misuse of powers of government agencies, though, some may be touching on human rights.

5.0 THE CHALLENGES TO THE INSTITUTION OF THE OMBUDSMAN

The institution of Ombudsman has over the years been plagued by a number of problems which continue to adversely affect its role as an instrument for checking unethical practices in the public service. Ayo and Anthony posits that with the exception of Sweden where the ombudsman can initiate court proceedings against civil servants, the ombudsman system is generally incapacitated in the performance of its role by the following barriers:⁶⁸

⁶⁶ See section 5(1) of the Act.

⁶⁷ M. C. Okany, *Nigerian Administrative Law*, (Onitsha: Africana First Publishers Ltd. 2007), P. 406.

⁶⁸ A. Ayo, and O. Anthony, "An Assessment of the Cases of Ombudsman as a Tool for Accountability in Nigeria", *Journal of Sustainable Development in Africa*, Vol. 13, Issue 4, (2011), p. 64.

5.1 Non-Enforcement of its Decision:

One of the general problems of the institution of the Ombudsman is non-enforcement of its decision. This is a serious barrier to the institution in the performance of its duty. The institution spends its time, financial and material resources, energy, expertise and intellectual resources on a good complaint, to find its decision being dumped in the file without implementation. In this consideration, we can say that the institution could be described as a toothless bulldog that can bark but not bite. Also, in practice, 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. Except in Russia, Ombudsman does not have powers to take its decisions to court for enforcement. This has been restricted to recommendations and using soft powers of persuasion and mediation. In Nigeria, the law does not expressly impose a duty on public agencies to comply with the decisions of the Ombudsman. In addition, the weakness in the law has made public agencies to interpret their duty to co-operate with the Ombudsman to mean cooperation during investigations, but not in the enforcement of its decisions. This is made worse by the lack of clear strategy to enforce decisions of the Ombudsman, making it to only rely on other arrangements for enforcement. 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.

5.2 Lack of Total Independence from the Government:

This, to a larger extent, can be a barrier. In Nigeria and the U.K., the Ombudsman can be removed from office at the whim and caprice of the national assemble and the parliament respectively. The fact that they are appointed by the government is a shortcoming, which can indirectly make them vulnerable to the wishes of the government that select them.

5.3 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, and make the bureaucrats to disrespect the ombudsman's office.

5.4 Inadequate Publicity:

Actually, the challenge of poor and inadequate publicity affects ombudsman's operations. The people for whom the Public Complaints Commission was established are not fully aware of the free and quick services of the Commission. As Hill pointed out, the major work of the ombudsman is to serve as an agent for redress against arbitrary governments or administrative actions.⁶⁹ However, this could only be achieved if the public is fully aware of the activities of ombudsman. Presently, the ombudsman is important in Nigerian public service. But then, illiteracy is another barrier to the effectiveness of the institution of the Ombudsman in the developing nations like Nigeria. Unless there are thorough and effective enlightenment programs, this system can hardly claim to be a defender of the citizens.

5.5 Commissioner's Jurisdiction:

Extended jurisdiction has also proved to be a problem. According to Ugbe,⁷⁰ it is observed that the extension of a Commissioner's jurisdiction to administrative procedure of a court in Nigeria is a rather dangerous innovation as difficulties may sometimes arise as to where to draw the line between purely "Administrative" and "Judicial" matters in the contest of the courts administration. He further stated that what may be regarded as "Administrative" procedure of courts, for example the filing and serving of court processes and the execution of judicial judgment are all governed by statutes and rules of court made by virtue of the Constitution. And this may amount to jurisdictional interlocking. Equally, another challenge is that an ombudsman may exercise his power over an issue or issues, the provisions of other law may declare the finality of the administrative Act on the issue.

In relation to this, section 6(1 & 2) of the Act establishing the Commission in Nigeria restricts it from entertaining and investigating any complaint on the following matters:

- a) Matters which are pending before the National Council of States or the Executive Council.
- b) Matters that are before the National Assembly.
- c) All matters that are before the House Committee on Public Petitions.
- d) Cases that are pending in any Court of Law in Nigeria
- e) Matters that are relating to anything done or purported to have been done by any member of the Armed Forces in Nigeria and the Police Force under the Nigeria Army Act of 1960, the Navy Act of 1964, the Air Force Act of 1964 or the Police Act, as the case may be.
- f) Cases in which the complainant has not, in the opinion of the Commission exhausted all available legal and administrative procedures.
- g) Cases relating to any act or thing done before the establishment of the commission in July, 1975.

⁶⁹ L. B. Hill, "The Ombudsman Revisited; Thirty Years of Hawaiian Experience", *Public Administration Review*, Vol. 24, (2002), p. 17.

⁷⁰ R. O. Ugbe, *Perspectives on Nigerian Administrative Law*, (Calabar: Freneoh Publishers Nig Ltd., 2004), p. 28.

This provision is similar in all the jurisdictions under study. It is therefore imperative to state that all the agencies/bodies above listed are the highest place of abuse of administrative powers.

6. Recommendations

In the light of the foregoing challenges, we therefore recommend as follows:

- a) Recalibrating the laws establishing ombudsman to enable it carry out its functions effectively, efficiently and independently. In Nigeria, attention of the law makers is brought to section 2(3) of the Public Complaint Act, providing for the removal of the Commissioners, since the said section works against the independence of the institution.
- b) There should be adequate publicity and public enlightenment programme of the functions, powers, and jurisdiction of the Commission to enable the people know the existence of the Ombudsman and its scope of operations.
- c) In order to allow for a better appreciation of the role and a more effective performance of the institution of Ombudsman in these jurisdictions under study, the law creating the office should be amended to remove all unnecessary restrictions placed on the powers of the institution. This recommendation is more pronounced in relation to section 6 (1) (d) & (e) of the Public Complaints Commission Act of Nigeria, which oust the competence of the Commission to investigate any matter relating to anything done or purported to be done by officers of the armed forces and the police or that a complainant must have exhausted all available legal and administrative procedure before his complaint is entertained by the Commission. These sub-sections are sure to stand as obstacles in the wheel of the Public Complaint Commission's smooth operation.
- d) In order not to render the institution a toothless bull dog that can only bark but cannot bite, it is hereby recommended that its decisions should be made enforceable and binding on the parties.

7. Conclusion

There is no doubt that the Ombudsman movement is clearly part of a broader move of contemporary societies to institute transparency, ethics, administrative justice and respect for human rights in the everyday practice of government. It could never be understood as a standalone advocate of justice. It is a building block in a broader program of checks and balance, to which traditional State institutions as well as constitutional Courts are part of. This is in no way free of contradictions and setbacks. However, it must be stressed that in a State where the Ombudsman is functional with total independence, the institution will play a major role in curbing corruption, safeguarding human rights and assisting citizens to get redress in cases of maladministration by government officials.

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