

The Ombudsman, Bureaucratic Dictatorship and Democratic Rule in Nigeria

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Abstract

This paper examines the need for any civilian government to guarantee and safeguard individual rights and liberties of its citizenry against arbitrary abuse of bureaucratic power of public servants in the course of carrying out their official duties. The paper therefore assesses the role of the Ombudsman in the control of administrative excesses of public servants through the redress of complaints lodged by aggrieved citizens against administrative injustice on the part of public servants. The paper concludes that the various government agencies and control mechanisms of the Ombudsman in Nigeria have failed to perform this role effectively over the years as a result of the absence of an enabling and effective legal framework. The paper recommends that the Ombudsman should be given the needed “legal teeth” to be able to play its important role as required under civil rule. This paper adopts the qualitative method of analysis using mainly secondary source of data.

Keywords

Ombudsman, SERVICOM, complaints and redress-mechanism, public relations, safeguard of rights

Introduction

After about twenty-eight years of military rule, Nigerians joyfully welcomed the country’s return to civil rule in 1999, thus marking the beginning of the country’s fourth Republic. The long-awaited return to civil rule no doubt raised the level of the legitimate expectations of Nigerians very high for the much desired “dividends of democracy”. The entire theory and practice of democratic politics rests on the workability of the notion of an active citizen involvement in the holding and sharing of power and responsibilities of government and public office. More than ever before, in modern times, it has become important for scholars of public administration to be concerned about the problem of responsiveness of the democratic state to the demands of democratic procedures. This is necessary for government to safeguard individual rights and liberties against bureaucratic or arbitrary abuse of power

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by the public servants (Basu, 2012). Consequently, a civilian government needs to make its administration sensitive to public needs, sentiments and public opinions and thus give the regime a human face through effective public relations.

Public relations generally signify all relations between the government of a country and the citizenry. In contemporary democracy, public relations have become an integral part of successful public administration. This is because an important aspect of public relations ensures satisfactory contact between public servants and the public which it is designed to serve. This satisfactory contact could be in form of service delivery and the proper conduct of government officials in the course of performing their official duties of implementing public policies. An independent government institution which can ensure public accountability and ventilation of public grievances is needed to facilitate this important link.

Therefore, in order to make civil rule relevant and beneficial to the people, the country's public service must necessarily be made more civil under civil rule. Because the public service and civil rule are both designed to serve public interest, the relationship between them is very strong. This government institution or agency is the 'Ombudsman' established to serve as the machinery for the control and redress of administrative excesses or abuse of law by public servants in the course of performing their official duties. This is because of the fact that one of the major underpinning principles of civil rule is that the citizens of a country should be able to have effective institutional opportunities to checkmate the possible abuse of office or administrative excesses of public servants.

In the light of the above, this paper examines the role of the "Ombudsman" in Nigeria under civil rule. To do so, the paper is divided into three sections. The first section discusses the concept of Ombudsman and theoretical framework. The second section offers a critical analysis of the role of the Ombudsman under civil rule while the third section is the concluding remarks. The methodology adopted in the paper is the qualitative method which utilizes secondary source of data.

The Concept of the Ombudsman

All over the world, governments and their agencies are designed to serve public interests. However, there is hardly any government agency that can ensure complete customer contentment. Even a well-managed agency creates occasional injustice which then creates some dissatisfaction on the part of its customers. Therefore, any public agency of significant size requires a formal and expeditious way of receiving and processing complaints. Government departments and other public bodies now have public information offices which deal with inquiries and complaints (Naidu, 2012).

This government agency charged with the responsibility of receiving and processing of grievances or complaints from members of the public against public servants for administrative excesses, abuse of law, non-adherence to procedures and administrative injustice is known as the Ombudsman. The Ombudsman is a Swedish word which stands for an independent, non-partisan and institutionalised officer dealing with citizens' complaints against administrative action, inaction, abuse or injustice (Naidu 2012). He is also known as public advocate who is charged with representing the interests of the public by investigating and addressing complaints of maladministration or a violation of rights.

The idea of Ombudsman started as an expression of independence from the King in Sweden (Allen, 1973). The Swedish Parliament appointed an Ombudsman in 1809 to receive complaints from the public about alleged bureaucratic mistakes, abuse or incompetence. One hundred and ten years later, the Finish Parliament took similar action by adopting most of the famous powers and structural arrangements of its Swedish Neighbours. The Scandinavian ombudsman borrowed the idea to join the scene when Denmark also established ombudsman in the same year followed by Norway.

Also in the same year, 1962, the first non-Scandinavian Ombudsman came into being in New Zealand. Other nations in Europe, Africa, Latin America and Asia all have adopted the idea with variation from the Scandinavian Model. For instance, the Great Britain's Parliamentary Commission for Administration shared a lot in common with the other ombudsman, except that all citizens' complaints must be submitted via a member of the Parliament. Israel's State Controller is a legislative officer auditor, who sees his task as basically encouraging citizens to originate complaints against administrative agencies.

In 1967, the Canadian Provinces of Alberta and New Brunswick became the first sub-National Units of government to adopt the classical Scandinavian model of ombudsman. The following year in 1968, in the United States, the Hawaiian state also became one of the countries that borrowed the idea of ombudsman; hence the institution was first established in the United States when Hawaiian state legislature established an Ombudsman. In 1969, three American states established Ombudsman modelled after the Scandinavian version in Nebraska, Iowa, and the Office of the Seattle-king County amongst other around the world.

The role of the Ombudsman goes beyond the horizontal relationship between authorities; it 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 (Przwonski *et al.*, 1999). The Ombudsman therefore represents and protects the interest of the citizens against violation of their rights by public servants.

According to Naidu (2012), a good complaint handling system can benefit an administrative agency in many ways. It can:

- (a) Provide discontented clients with a means of registering their grievances and, if found justified, of having them redressed.
- (b) Build clientele support for the agency activities.
- (c) Provide the agency with valuable information about its operations and the functioning of its employees.
- (d) Aid in exercising internal control; and
- (e) Assist the agency in evaluating present operations and in planning future ones.

In Nigeria, the Ombudsman or the Public Complaints Commission is the machinery for the control of administrative excesses (non-adherence to procedures or abuse of law). It is an organ of the government set up to redress complaints lodged by aggrieved citizens or residents in Nigeria against administrative injustice. Therefore the Commission aims at promoting social justice for the individual citizen.

In Nigeria, the Ombudsman is appointed by the National Assembly but paradoxically classified under the executive for both its budgetary provisions and rendition of its Annual Performance Reports. In sum, therefore, appointment of the ombudsman by the Chief Executive stands as the most prominent difference between the executive ombudsman and the classical model. The potential disadvantage of this type of appointment process is the executive ombudsman's allegiance to the person who appointed him as that may prevent him from assuming an impartial attitude when investigating complaints that may prove damaging to the Chief executive. On the other hand, a potential advantage is the executive Ombudsman's to draw upon the power and prestige of the Chief Executive to facilitate his work. This is evident in the fact that on the letterhead of the Public Complaints Commission in Nigeria is printed in bold letters at the apex "THE PRESIDENCY". This gives a psychological force for urgent response to the commission's inquiries.

Theoretical Framework

In view of the important role of the Nigerian public service as the major machinery of government designed for the formulation and implementation of public policies for the good of the citizens, it is imperative for government, particularly under civil rule to ensure public accountability and ventilation of public grievances with a view to checking administrative recklessness of public officials in order to protect the rights of citizens, maintain social justice, prompt and efficient social service delivery to the citizens of the country.

The theoretical framework adopted in this paper is the theory of public choice. Public choice theory is a theory developed by James Buchanan and Gordon Tullock to try to explain how public decisions are made. It involves the interaction of the voting public, the politicians, the bureaucracy and political

action committees. The public choice theory is concerned with how to assess the efficiency of a political, economy or social system for providing public services in which the individual citizen, viewed as a consumer of public goods and services, regards society as a collection of consumers who are rational and egoistic, whose aim is to increase their individual satisfactions at minimum cost (Birch, 1993). In other words, public interest connotes the maximisation of individual satisfaction. In a similar view, scholars have called for a distinction to be made between the public as consumer and citizen so as to concede the exercise of wider citizenship. For instance, Peter (2004) argues that:

Citizens have rights that differ from those of customers. They do not merely have the right to vote but also have the rights to know, the right to be listened to, and the right to be involved.

Public choice theory argues that economic self-interest is the driving force of politics. According to public choice theory, people will vote for the candidate that they believe is going to give them the greatest access to more money (Buchanan and Tullock, 1986). He also proposed a fascinating distinction between two levels of public choice: The initial level at which a constitution is written and agreed upon by the founders of a country; The post-constitutional level, where voters can influence policy and politicians jostle for their votes. The first level, Buchanan argued, is like setting the rules of a game, while the second is like playing the game within the rules. In 1986, Buchanan was awarded a Nobel Prize in economics for these insights.

As Buchanan famously remarked, public choice is “politics without romance.” People, he argued, vote in their best economic interest, period. Under public choice theory, for example, a person working for a local government — whether in the school system, or on the police force — will be more likely vote for a government that increases taxes, because the voter expects some of that increased tax revenue to come his or her way in the form of higher wages or more work.

Politicians and bureaucrats are supposed to be agents of the general public and act in its interest. This is but a special case of what is called the Principal-Agent problem i.e., agents unless it is in their self-interest may not act in the interests of their principal. The key is to find some incentive scheme for the agents so that in pursuing their self-interest the interest of the principal is enhanced. In business this is achieved by such schemes as compensating corporate managers with call options for the stock in the company so that managers in maximising the value of the options automatically have to maximize the value of the stock thus benefiting the shareholders.

It is not so easy to find solutions to the principal-agent problem for governments. For a long time economic theory presumed that if there was a task that needed to be done by the government that all that was required was to set up some government organization with responsibility for achieving that task.

After the development of Public Choice Theory, this is seen to be the ultimate in naiveté. There is abundant evidence that governments throughout history and throughout the world do not do what they are supposed to do. In some cases the government employees do not do anything useful. In others they will not do their job unless they are paid specifically to do a task. The English language calls this payment a “bribe” but this is a misnomer in that the word *bribe* is also used to designate a payment made to a government employee to do something illegal. The payment that is mentioned above is one made to get the government employee to do something that is not only legal but is also his or her job.

The Ombudsman in Nigerian Context: Constitutional Foundation and Intendment

The public compliant commission which is Nigerian version of ombudsman is a Scandinavian invention. It is a creation 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 and now incorporated into the laws of the Federal Republic of Nigeria as public complaints Act Cap 377. It is given a constitutional status by its establishment by the 1979 constitution section 274 (5) (6) and still by the 1999 constitution of the Federal Republic of Nigeria as amended.

The commission which commenced work on 16th October 1975 is headed by chief commissioner and other state commissioners, directors and other supporting staff. Equally, there are additional (5) five area offices in each state and Abuja offices nationwide. The constitution further provided the age and qualification for the chief commissioner and commissioners. It is important to stress that the ombudsman institution is veritable for any operational democratic society because it will enhance in protecting the fundamental rights of the citizens from arbitrary intimidation, harassment and justice.

The ombudsman have the role of improving public administration in general, by pointing out witnesses observed in the laws, procedures, practices, rules and regulations and standard behavior of officials. These are provided for in the Act Cap 37 LFN 2004. Accordingly, it has its National Headquarters. It also has 5 area offices in each state of the federation. The area offices facilitate easy and quick submission of compliances. At all local government Headquarter, complaint boxes are kept for those who may not find it easy to travel to area offices or state offices to lay their complaints.

Structurally, it was also documented by Ogunna (1999: 470) that the commission is set to investigate the complaints lodged before it or entered through its own initiative, against government actions or inactions which deprives the citizens their right and make them suffer from injustices. The

commission is empowered to investigate into such actions taken by (public commission's publication).

- a) Any officer, department ministry of the federal government.
- b) Any officer, department or ministry of the state government
- c) Any officer, department authority of the local government
- d) Any company incorporated under or pursuant to companies and Allied Matters Act whether owned by any government or aforesaid or by private individuals in Nigeria or otherwise.
- e) Any statutory corporation or public institution set up by any government in the federation.
- f) Specifically, the cases which the commission is empowered to investigate are as follows:
 - i. Administrative acts which are or appear to violate any law or regulation of any government of the federation (federal, state or local) these cases include wrongful dismissal of officer's non-payment of salaries and allowances, and so on.
 - ii. Administrative actions which are mistaken in law or arbitrary in the ascertainment of fact, cases of this nature include hasty dismissal or termination in which the officers concerned are not given the opportunity to defend themselves, resulting in non-compliance with the procedure or error in getting the necessary fact of their offence.
 - iii. Administrative actions which are unreasonable, unfair, oppressive or inconsistent with the general functions of the administrative organ. Examples of this case are denial of official benefits, withholding of retirement benefits.
 - iv. Administrative actions which are improper in motivation or irrelevant in consideration. All cases of injustices arising from selfish, sectional, partisan nor religious consideration belong to this category.
 - v. Administrative actions which suffer from ambiguity and cannot be explained.
 - vi. Administrative inaction.

The work of the ombudsman in this respect is to mediate, persuade, cajole and otherwise seek to bring about a reasonable solution to an administration problem. The Act, CAP 37 LFN (2004) makes the ombudsman's aim at promoting social justice for the individual citizen. It is also to provide a viable option for Nigerians or anyone resident in Nigeria seeking redress against injustice arising from administrative bureaucratic errors, omission or abuse by officials of government, or limited liability companies in Nigeria.

The Role of the Ombudsman under Civil Rule in Nigeria

Public services are those services provided by all tiers of government, that is, local, state and federal, to the public. In a developing country like Nigeria, such services include: education, security, health, transportation, consolidation of national integration, national security and economic development among others (Oyedele and Aluko, 2018). Public service delivery therefore has to do with the implementation of those services to reach the citizenry of a country.

The Nigerian public service has been influenced by three major political dispensations since its inception. These are the colonial, military and civil rule. Under the colonial and military regimes, the Nigerian citizens did not enjoy any reasonable level of safeguard of individual rights and liberties against arbitrary abuse of power by public servants in the discharge of their official duties. There were no serious government agencies which could ensure public accountability and ventilation of public grievances. A reasonable level of good governance therefore eluded the citizens of the country. This can be traced to the large extent of favoritism, nepotism and ethnicity notions that characterized the recruitment of many civil servants under the guises of federal character.

One of the characteristics of underdeveloped countries is usually the inability to establish good governance for the good of the people. Now that the country has returned to civil rule and has experienced some years of uninterrupted democratic rule since 1999, the legitimate expectations of the citizenry under this type of political dispensation is good governance through the efficiency and effectiveness of the country's public service. This is because the public service is the major machinery of government designed to accomplish the policies and programmes of the government. However, what happens in most cases is that public officials in Nigeria enjoy much power and freedom of action. As noted by Fred Riggs in his writing on prismatic society, Riggs observed that, in developing countries like Nigeria and India characterized by pluralist societies, the bureaucrats enjoy enormous influence, power and prestige and make money (Riggs, 1964).

To a large extent therefore, the Nigerian public servants are usually involved in arbitrary actions in the course of performing their official functions whereas the citizens do not have any effective mechanism through which they can control and possibly stop these arbitrary actions. Such actions include the following; selling of materials (clothes, foodstuff, and kitchen utensils among others) in the work place, therefore they will not be in their duty post as at when required. Others include the collection of extra judicial money from the members of the public before their lawful duties are performed. Others include the diversion of funds meant to service a public good into their personal or group usage. It is therefore impossible for citizens to lodge complaints against such unwanted actions or receive prompt and effective redress required to

guarantee their fundamental human rights and have control over the public servants who are employed to serve public interest.

The role of the government in the management of public affairs, particularly under civil rule has increased in modern times than ever before. Today, government administrative machinery influences virtually every aspect of human life. Therefore, the dependence of the citizens on the administrative machinery of the government has increased greatly, leading to some problems of inefficiency. This is why Sharma *et al.* (2012) explained the need for the Ombudsman thus:

Administrative inefficiency like delays, red-tapism, lethargy etc. are common. Corruption in public life has increased enormously. The scope of arbitrariness in the administration has become wider. It was found that the traditional complaint handling arrangements through higher administrative bodies, administrative and judicial tribunals, parliament and its committees were either not available or inadequate, too formal, too costly and time-consuming. It was felt necessary that there should be a machinery which will be less costly, less formal and quicker. It should be effective, impartial and inspire confidence among the people.

Over the years, the Nigerian government established some agencies charged with the responsibility of controlling administrative excesses of public servants in the discharge of their official responsibilities. One of such agencies is the Public Complaints Commission which is the Nigeria Ombudsman designed as the machinery for the control of administrative recklessness or non-adherence to procedures or abuse of law. It is an organ of the government set up to redress complaints lodged by aggrieved citizens or residents in Nigeria against administrative injustice.

The commission aims at promoting social justice for the individual citizen. It is also to provide a viable option for Nigerians or anyone resident in Nigeria seeking redress against injustice arising from administrative/bureaucratic errors, omission or abuse by officials of government or limited liability companies in Nigeria. The Commission also has the role of improving public administration in the laws, procedures, practices, rules and regulations and standard behavior of public officials. These are provided for in the ACT CAP 37 LFN 2004. The primary function of the Commission is therefore to provide impartial investigation into allegations of administrative recklessness of public servants with the vision of ensuring just administrative practices for the promotion of social justice in the country.

In addition to the Public Complaints Commission, former Nigerian President Olusegun Obasanjo introduced some public sector reforms during his two term presidency between 1999 and 2007. These reforms include “Due

Process” policy in award of government contracts; the strengthening of management information system and public sector accounting capacity; payroll of workers which, in the past, accounted for inflated corruption-induced wage bill; Contributory Pension Scheme; National Health Insurance Scheme; the Monetization of Fringe Benefits; National Economic Empowerment and Development Strategy (NEEDS) with its state and local government variants, that is the State Economic Empowerment and Development Strategy (SEEDS) and the Local Economic Empowerment and Development Strategy (LEEDS), (Obasanjo Civil Service Renewal Programme 1999-2007). Other public sector reforms initiated by the Obasanjo presidency include privatization programme, public procurement law, SERVICOM, consolidation of bank reform as well as public-private partnership initiative.

These reform efforts were formulated in response to the woeful and dismal failure of public service delivery over the years in the country and to reverse the ugly trend and achieve a functional and effective public service for the country in accordance with the demands of civil rule. An important aspect of the reform was the introduction of SERVICE COMPACT WITH ALL NIGERIANS. By its design, SERVICOM involves a social contract between the government and the citizens of the country. According to the terms of the social contract, the government declared that:

We dedicate ourselves to providing the basic services to which each citizen is entitled, in a timely, fair, honest, effective and transparent manner (SERVICOM, 2004). This implies that efficient and effective public service delivery is at the center of the social contract binding successive political office holders to the Nigerian citizens. An important aspect of the SERVICOM Charter is the Complaint-and-Redress Mechanism, also known as “Grievances Ventilation Mechanism”. These are external compliance mechanisms within the SERVICOM framework, approximating Modal Citizens Charter for African Public Services developed by the United Nations Economic Commission for Africa (UNECA) in 1996.

The mechanisms consist of:

- (a) The institution of Ombudsman which serves as the “citizens’ defender”, enabling citizens to seek redress against misadministration.
- (b) Customer Care Centers, fully equipped with contact phone numbers, which are to be provided at all service levels. These centers are also charged with imposing sanctions on erring staff identified as engaging in anti-customer practices and behavior (Okon, 2008).

The Public Complaints Commission and the Complaint-and-Redress Mechanism aspect of SERVICOM also known as Grievances Ventilation Mechanism, are avenues that are available to citizens who need to seek redress

against injustice arising from administrative errors or allegations of administrative recklessness of public servants in addition to the conventional law courts in the country. However, because the conventional law courts are usually congested with all sorts of civil litigations, it is more appropriate and indeed expedient to saddle these complain and Redress mechanisms with handling of issues of administrative misbehavior on the part of public servants in the course of discharging their official responsibilities.

Conclusion Remarks

This paper has examined the need for a civilian government to be concerned about its responsiveness to democratic norms. This is important because government must safeguard the rights and liberties of the citizens of the country from the arbitrary and reckless behavior of public servants. Over the years, two major grievances ventilation mechanisms have been put in place in addition to the conventional law courts.

One of them, the Public Complaints Commission has been involved in the investigation and resolution of complaints of administrative injustice in the country over the years. However, this agency has not been effective enough to make any reasonable impact in this direction. This is because the Commission can only investigate complaints from the citizens; it cannot prosecute the public officials found guilty of such offences. The commission lacks the power and legal or constitutional authority to prosecute anybody. It cannot also impose any form of sanction on any public official. Public officials therefore enjoy a lot of freedom of action in their relationship with the citizens. In many respects, this type of unchecked freedom often infringes on the freedom of the citizens which is against the principle of civil rule. In order to make the commission more effective as the citizens defender under civil rule it is suggested that the National Assembly should give more legal teeth to the commission to prosecute and sentence public officials found guilty of abuse of office and administrative recklessness. If this is done, the public officials will be conscious of the need for them to respect and safeguard the rights of citizens against maladministration. By this, the citizens will enjoy satisfactory contact with government officials. This will also ensure effective and efficient public service delivery.

On the other hand, the Complaint- and Redress Mechanism of the SERVICOM which serves as the “citizens defender” should be strengthened and given the needed legal teeth to make it function effectively as another form of Ombudsman in the country to deal with complaints of a misadministration on the part of public servants. Moreover, the SERVICOM charter should be extended to all tiers of government rather than limiting it to the Federal Public Service as is the case now. Unfortunately however, the governments that came to power after President Obasanjo left office in 2007 have not shown any serious commitment to the sustenance of this promising mechanism to check maladministration and ensure effective service delivery in the greater interest

of the Nigerian citizen. Again, as the case with the Public Complaints Commission, SERVICOM lacks the legal teeth to prosecute any public official found guilty of not keeping to the faith of the social contract which SERVICOM stands for. Public servants who contravene the principle of SERVICOM should be sanctioned under the law by a law court. The National Assembly should enact a law in this regard. This is necessary because as at today, there is no report of any civil servant who have been punished for non-compliance with the provisions of SERVICOM (Oyedele, 2015).

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