TITLE PAGE

PROTECTION OF THE RIGHTS OF CITIZENS FROM ADMINISTRATIVE ABUSE THROUGH ADMINISTRATIVE LAW: A CRITICAL APPRAISAL

BY

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BEING THE THESIS SUBMITTED TO THE FACULTY OF LAW, NASARAWA STATE UNIVERSITY, KEFFI, SCHOOL OF POST GRADUATE STUDIES IN PARTIAL FULFILMENT OF THE AWARD OF MASTERS DEGREE (LLM)

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DECLARATION PAGE

I, ABUBAKAR MAIMUNA AHMED hereby certify that apart from references made to other people's work which has been duly credited, this long essay: An Appraisal of protection of the Rights of Citizen Through Administrative Law is essentially the product of my research and that this essay has neither in whole nor in part been presented for another degree elsewhere

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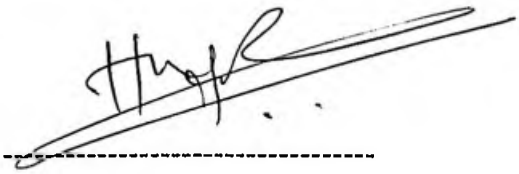
Date

APPROVAL PAGE

This Long Essay has been read and approved as meeting the requirement of the Department of Civil Law, Faculty of Law, Nasarawa State University, Keffi, Nigeria for the award of Masters of Laws, LL.M (Hons).



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DEDICATION

This work is dedicated to God Almighty for his divine protection and grace towards my life and for seeing me through. He is indeed a faithful God.

This work is also dedicated to the memory of my Late father ABUBAKAR AHMED and my loving Mother Hajiya MARYAM ABUBAKAR who taught us how to be hardworking and whose blessings and prayers kept my family on the right track. I pray that God rest his gentle soul.

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And my beloved husband Alhaji Mohammed Ibrahim Zanwa you are not forgotten my best friend, thank you for your advice, help both financial and others and for being there for me at my trial moment.

My special regards goes to my children Musa, Dunama and Amina for understanding with me during the period of my studies.

To all my brothers and sisters you are not forgotten may God bless you.

For this research work, I owe a debt of gratitude to my supervisor, Barr. Hussein Shat a humble person and father to all both academic and moral life. I am ever-grateful sir, for your kind-hearted support throughout the process, especially for your humble understanding and advice throughout the course of this work, but for you this work would not have assumed its present shape, I count myself privileged to have been supervised by you. May God continue to lift you up and bless your every endeavor Amen.

To Prof. Muhammad Abubakar Sadiq Alkafawy (Dean of Law), Dr. Abdulkarim A. Kana, Mr. Mammud Yusuf Esq, Bar. Alex EPu, Bar. Habiba M. and all lecturers of the Faculty of Law, NSUK; I lack fitting words with which to thank you for your time, expert advice and all the materials. You were not just lecturers but my friends. I am grateful for this act of love.

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TABLE OF ABBREVIATION

AC	=	Appeal Court
ACHPR	=	African Commission on Human and Peoples Rights
ALL ER	=	All England Report
ALR	=	Africa Law Report
A.G	=	Attorney General
ALL NLR	=	All Nigeria Law Report
CA	=	Court of Appeal
CAP	=	Chapter
DPP	=	Director of Public Prosecution
FMG	=	Federal Military Government
FSC	=	Federal Supreme Court
ICCPR	=	International Covenant on Civil and Political rights
ICERD	=	International Convention on the Elimination of all forms of Racial Discrimination

JCA	=	Justice of Court of Appeal
JSC	=	Justice of the Supreme Court
KB	=	King's Bench
LFN	=	Laws of the Federation of Nigeria
NWLR	=	Nigeria Weekly Law Report
NCLR	=	Nigeria Constitutional Law Report
NSCQR	=	Nigeria Supreme Quarterly Law Report
NSCQR	=	Nigeria Supreme Court Quarterly report
NMLR	=	Nigeria Monthly Law Report
Pt.	=	Part
QB	=	Queen's Bench
U.S	=	United State
S.C	=	Supreme Court
SCNJ	=	Supreme Court of Nigeria Judgment
WLR	=	Weekly Law Report
WACA	=	West Africa Court of Appeal

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ABSTRACT

This work discuses the various means by which the rights of citizens can be protected through administrative law. Administrative law is, however, particularly vulnerable to the permeation of human rights claims, since, like human rights law, it primarily constrains the exercise of public power, often in controversial areas of public policy, with a shared focus on the fairness of procedure and an emphasis on the effectiveness of remedies. The work gives background information into the scope of administrative law and its line of correlation in the protection of the rights of citizens. In this regard, administrative law has been conceived as a branch of public law that governs the relationship of the state and its citizens. Specifically, it regulates the manner of exercising of power by the executive branch of government and administrative agencies so as to ensure its legal limits, by controlling power, it provides protection to the citizens against ultra vires acts, abuse of power and arbitrariness. The work also unravels the meaning of the term "human rights" and the various categories of human rights that all human beings are entitled to. It considers the various duties the state owes it citizens on the various human right provisions. The work further discusses the meaning and nature of agency of administrative adjudication, the forms of agency adjudication, the merits and demerits of agency adjudication. In light of the above, the work appraises the various remedies available to a citizen against any form of administrative abuse. Which will be basically discussed into three parts and these are: Judicial Review, Natural Justice and Public and Private Law Remedies. The appreciation of each part as a remedy in the protection of Human rights against

any administrative abuse of power will be critically appraised here.

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

Administrative law evolved as a means of controlling the ever-expanding powers of government, i.e to regulate and ensure the exercising of power within proper bounds and legal limits. Controlling the exercise and excesses of power is the essence of and main aim of administrative law. In other words as, Massey has put it; administrative law is the by-product of an intensive form of government[1].

In light of the above, essence of Administrative law in this research work will be discussed in the various means by which the rights of citizens of any nation can be violated and how Administrative law can protect such rights. It is trite law that ignorance of the law is not an excuse for the violation of the law, thus this study will assist in the acceleration of the awareness of the public with regards to their rights and the statutory provisions for their protections.

1.2 STATEMENT OF PROBLEM

This research work is based on the major problems of Administrative abuse, particularly the abuse of the rights of citizens. The problems has over time been in an increase, where by administrative powers are exercised beyond proper bounds and legal limits, there by leading to the abuse of the rights of citizens.

The above issue gave room for the development to regulate such abuse and protect the rights of citizens who are exposed to such abuse of Administrative powers.

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[111] Abraham Yohannes & Desta G/Michael "Administrative Law Teaching Material 2009" Chilot. Files Wordpress.Com/2011administrative-Law.pdf Justice and Legal System Research Institute. Accessed 1st July, 2012

Administrative law was basically instigated by political and economic realities; it was created as an instrument to control the ever-expanding governmental powers. With reference to the abuse of rights of citizens, the above law (Administrative law) is a response to protect the abuse of the rights of citizens. Unfortunately, the incidence of Administrative abuse in Nigeria is still in an alarming rate.

This problem brings to fore the following questions, which will be answered in this research work; the questions are as follows:

i. What is Administrative abuse of power?

ii. What law is available to address such abuse Administrative power?

iii. How are the rights of citizens abused through Administrative abuse?

iv. What are the problems besetting the effective realization of the rights of citizens affected by Administrative abuse?

v. What are the controlling mechanisms of government powers?

vi. How do judicial powers and Administrative agencies protect the rights of citizens?

vii. What are the available Administrative law remedies available in the protection of the rights of citizens?

1.3 THE RESEARCH PROBLEM

Generally, citizens of a nation, are inevitably prone to abuse of their rights and at such will require their rights to be protected by laws of the federation or various legislations. It is therefore expected that the result of this research work, will be to discuss the various means by which the rights of citizens can be protected by Administrative law and to examine the protective means which are deeply rooted in Administrative law. It is also trite law that ignorance of the law is no an excuse, thus in order to address such ignorance, this research work is aimed at assisting in the acceleration of the awareness

of the public with regards to Administrative abuse of power, how such abuse affects rights of citizens and the relevant laws for their protection.

Also, this research work is a thought, poling into extensive judicial interpretation of the statutory provision of fundamental rights of citizens, to ensure that administrative actions based on the enabling Act are in consonant with fairness, reasonability and the principles of natural justice. This research work will educate the general public on the various methods of seeking redress for remedies whether their rights are abused.

1.4 SCOPE OF THE STUDY

This research work will be centered majorly on the area of Administrative law. The research work will intensively look into judicial interpretations of the statutory provisions of rights of citizens which can be affected by abuse of Administrative powers, this is to ensure that Administrative actions based on the enabling Act are in consistent with fairness, reasonability and general principles of natural justice. In view of the above, this researches will cut across both primary and secondary sources of law which includes the Constitution. Textbooks, dictionaries, Articles, Journals, Internet source Materials, Lecture Notes and other relevant materials like judicial precedents by reviewing cases from law reports in relation to statutory provisions and important decisions on this topic were recourse to, in this work.

1.5 LIMITTATION OF THE STUDY

This research work will be limited to the description and context of English Administrative law and will also discuss the extent to which the Administrative law in Nigeria and other common law countries are subjected to the control of the law. The

long essay will also limit itself to the body of general principles, which govern the exercise of powers and duties by public authorities.

In view of the above, this researchers will be limited to both primary and secondary sources of law which includes the Constitution, Textbooks, Dictionaries, Articles, Journals, Internet Source Materials, Lecture Notes and other relevant materials like Judicial precedents by reviewing cases from law report in relation to statutory provisions and important decisions on this topic were recourse to, in this work.

1.6 SIGNIFICANCE OF THE STUDY

The significance of this study is centered on the response of Administrative law to the problems of abuse of Administrative power, stressing the need to ensure that power is exercised within proper bounds and legal limits controlling the exercise and excesses of powers is the essence of Administrative law, thus, this research work will reflect that.

In accordance with the above significance of the study, this research work will discuss the various means by which rights of citizens can be protected by Administrative law and to examine this protection means, which are deeply rooted in Administrative law. The research work will significantly assist in acceleration of the awareness of the public with regards to their rights and the relevant legislations for the protection, redress and remedies.

1.7 RESEARCH METHODOLOGY

This work adopts the doctrine method of research. It noted and analyzed the available and extent laws and procedure for the settlement of trade disputes in Nigeria. the doctrine research is an approach, which is concerned with the analysis of legal doctrines, legal principles and legal rules. In this study, extensive research, analytical

study and wide range of intellectual material were employed in order that an accurate and sensible paper will be presented at the end of this work.

In view of this, both primary and secondary sources of law which includes the Constitution, Textbooks, Dictionaries, Articles, Journals, Internet Source materials, lecture Notes and other relevant materials like judicial precedents by reviewing cases from law reports in relations to statutory provisions and important decisions on this topic were recourse to, in this work.

1.8 LITERATURE REVIEW

There are a handful of Nigerian and Foreign textbooks and articles on Administrative law. Most of these textbooks were published to aid in the guiding and controlling the ever-expanding powers of government, i.e to regulate and ensure the exercising of power within bounds and legal limits.

However, these textbooks and scholarly articles, which intensively deliberated on this topic, will be used in furtherance of this research work.

They are as follows:-

1. **ESE MALEMI** in his Book "Administrative law in Nigeria", discussed vividly the concept and nature of Administrative law, where in his book he defined Administrative law as a branch of public law, which governs the relationship of the state and its citizens, specifically in the regulation of the manner of exercising power by executive branch of the government and administrative agencies so as to ensure its legal limits[2]. In the course of this research work, this definition will be an appropriate background to discuss the research work. In his book, he states that

[2] Malemi Ese, Administrative Law, 3rd Edition Lagos: Princeton, 2008. Page 5

Administrative law ultimately controls power, it provides protection to the citizens against ultra vires acts, abuse of power and arbitrariness. This will also lay the basis for discussing the various Administrative Adjudications.

2. **P.A. OLUYEDE** in his book "Nigerian Administrative Law" gives a wider and working definition of Administrative law, where he states that the law vests powers in the administrative agencies, and imposes certain requirements on the agencies in the exercise of the powers[3]. The book also discussed remedies against unlawful administrative abuse, which is an area that will also be vividly discussed in the course of this research work, with reference to the textbook.
3. **D.C.M YARDLEY** in his book "Principle of Administrative Law" states that 'the law is employed not just to disqualify unlawful exercise of power but also to compel the performance of legal duties which have been neglected[4]'. In the course of this research work, this book will be instrumental when addressing the control mechanism available for citizens against Administrative abuse.
4. **PETER LEYLAND AND TERRY WOODS**, in their book on Administrative Law, discussed the purpose of Administrative Law and this will be reflected where Administrative law will be handy in the protection of rights of citizens. This purpose of Administrative law provides for remedies and facilitates mechanisms for citizens against Administrative abuse.
5. **CLAUDE R.P**, In his article 'The Classical Model of human Rights Development, noted that human rights are that are fundamental to the stability and development of countries all around the world. However, the efficacy of the mechanism in place

[3] P.A Oluyede, Nigeria Administrative Law, 1988 pp. 1-2
[4] DCM Yardley, principle of Administrative law, 1981 P.14

today, for their operation has been questioned in the right of blatant human rights violations and disregard for basic human rights in nearly all countries in one form or the order[5]. This will be discussed in this research work with reference to the above article, to show how these rights of citizens can be abused.

6. **S. AUGENDER** in his publication 'questioning the universality of human rights' pointed out that a human right is a universal moral right, something which all men everywhere ought to have; something which is owing to every human simply because he is human. This will be used to discuss the definition and the universal existence of human rights in the course of this research work.
7. **Dr. TODD LANMAN** in his article, "The scope of human rights', discussed various categories of human rights, these categories of human rights will be vividly discussed in this research work with reference to this article.
8. **PROFF. NWABUEZE B.O** in his book 'judicialism in Common Wealth Africa' discussed problems besetting effective realization of human rights. This will aid in discussing this problems with Nigeria as a case study, where the various problems will be discussed in this research work.
9. **STEVEN J. CANN** in his book "Administrative Law" discussed on adjudication process in Administrative Law, in the course of this research, this book will be handy when discussing judicial power of Administrative agencies and its operation in the protection of rights of citizens, where administrative adjudication and its various types, advantages/disadvantages will be discussed in this research work.

[5] Claude, R.P (1976) "The Classical Model of Human rights Development: Johnson Hopkins

10. **JONES GARNER** in his textbook "Administrative Law" vividly explained the meaning of tribunals, where he highlighted various hallmarks of tribunals. This will be applied when discussing in the course of this research work.

    In further discussing, administrative adjudication, the advantages and disadvantages will be discussed where P.P CRAIG in his textbook ADMINISTRATIVE LAW' highlighted some advantages and disadvantages of Administrative adjudication.

11. **WADE H.W.R and FORSYTH** C.F in their book "ADMINISTRATIVE LAW" stated that the primary purpose of judicial review is to keep government authorities within the bounds of their power". This statement will be critically examined and discussed while discussing the Administrative law. Remedies available for the protection of rights of citizens, where judicial review as a remedy and their various forms will be discussed.

12. **CANE PETER**, in his book "An introduction to Administrative Law', discussed public and private law remedies available for the protection of the rights of citizens[6]. In the course of this research work, these public and private law remedies will be vividly discussed; it will cut across certiorari, prohibition, mandamus, habeas corpus, declaration, injunction and damages.

Importantly, handouts, lecture notes, paper presentations, publications, case law and Nigerian statutes are also available for reference in the course of this research work.

[6] Cane, Peter, An Introduction to Administrative law (3rd ed, Oxford University Press, 1966). P. 133

1.9 CHAPTER ANALYSIS

The purpose of this work is to discuss the various means by which the right of citizens of any nation can be protected by administrative law. Administrative law is however, particularly vulnerable to the permeation of human rights claims, since, like human rights law, it primarily constraints the exercise of public power, often in controversial areas of public policy, with a shard focus on the fairness of procedure and an emphasis on the effectiveness of remedies.

The **FIRST CHAPTER** of this research work follows a particular structure. Thus, Chapter one which is the introduction, deals with the Background of the Study; Definition of Concepts; Objectives of the study; Scope and Limitations of the study; Significance of the study; Research methodology; and structure of the work. This chapter offers a useful insight into the main body of the work.

The SECOND CHAPTER of this research work begins by giving background information into the scope Administrative Law and its line of correlation conceived as a branch of public law that governs the relationship of the state and its citizens. Specifically, it regulates the manner of exercising of power by the executive branch of government and administrative agencies so as to ensure its legal limits.

The second chapter further unravels the meaning of the term 'human rights and the various categories of human rights that all human beings are entitled to. The chapter also considers the various duties the state owes it citizens on the various human rights provisions and the various factors besetting effective actualization of human right provisions. The second part of this chapter is dedicated to discussing the term administrative abuse and factors responsible for this abuse. The chapter further

provides in-depth discussion on the various legal and institutional mechanisms that may be devised to control the powers of administrative agencies in various circumstances.

The THIRD CHAPTER of this work will be discussing the meaning and nature of agency of administrative adjudication, the forms of agency adjudication, the merits and demerits of agency adjudication.

CHAPTER FOUR of this work appraises the various remedies available to a citizen against any form of administrative abuse. The chapter is basically divided into three parts and these are: Judicial review, Natural Justice and Public and Private Law Remedies. The appreciation of each part as a remedy in the protection of human rights against any administrative abuse of power is critically apprised here.

CHAPTER FIVE is the summary, observations, recommendations, my contribution to knowledge and conclusion of the work.

CHAPTER TWO

DEFINITION OF ADMINISTRATIVE LAW, MEANING OF RIGHTS, SCOPE, ABUSE, AND CONTROL MECHANISM AVAILABLE FOR CITIZENS AGAINST ADMINISTRATIVE ABUSE

2.1 INTRODUCTION

The evolution and development of administrative law was basically influenced and developed as a result of political and economical activities and realities. Administrative law was created as an instrument to control the ever-expanding governmental powers of Government. As Lord Acton said "power corrupts and absolute power corrupts absolutely[7]" Concentration of power in the hands of public officials, unless regulated and controlled properly and effectively, always posses a potential danger to the rights, freedom and liberty of individuals. As an instrument of control, Administrative law has articulated various control measures of controlling this ever-expanding government power against abuse. In other words as, Messey has put it; administrative law is the by-product of an intensive of government[8].

Administrative Law is the response to the problem of power abuse. It unequivocally accepts the need or necessity of power, simultaneously stressing the need to ensure the exercising of such power within proper bounds and lawful limits. Controlling the exercise and excesses of power is the essence and mission of the Administrative Law.

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[7] Lord Action, in a letter to Bishop Mandell Creighton, April, 3 1887

[8] Aberham Yohannes & DestaG/Michael "Administrative Law Teaching Material 2009" Chilot files, wordspress.com/2011/06administrative-law-pdf Justice and Legal System Research Institute. Accessed 1st July, 2012 Web

In the light of the above, this chapter will discuss the various means by which the rights of citizens of any nation can be protected by administrative law and to examine this protection means which are deeply rooted in administrative law. It is trite law that ignorance of the law is not an excuse for the violation of the law, so this essay will assist in the acceleration of the awareness of the public with regards to their rights and the statutory provisions for their protections.

Also, this chapter will discuss extensive judicial interpretation of the statutory provisions of fundamental right of citizens, to ensure that administrative actions based on the enabling Acts are in consonants with fairness, reasonableness or the principle of natural justice.

On a general ground, the chapter will lay a foundation towards educating the general public of the various methods of seeking for remedies whenever their rights are infringed.

2.2 DEFINITIONS AND PURPOSE OF ADMINISTRATIVE LAW

This section presents some highlights of the nature, meaning, scope and sources of Administrative law. Administrative law, as a branch of public law, governs the relationship between the state and its citizens. Specifically, it regulates the manner of exercising power by the executive branch of government and administrative agencies so as to ensure its legal limits. Ultimately, by controlling power, it provides protection to the citizens against ultra vires acts, abuse of power and arbitrariness[9].

[9] Malemi Ese, Administrative Law, 3rd edition Lagos: Princeton, 2008. Page 5

(a). **DEFINITIONS**

There are divergences of opinions regarding the definition of the concept of Administrative law. This is because of the tremendous increase in the administrative process which makes it impossible to attempt any precise and general acceptable definition of Administrative Law, which can cover the entire range of the administrative process. Hence one has to expect differences in scope and emphasis while defining Administrative Law. This is true not only due to the divergence of the administrative process within a given country, but also because of the divergence in the scope of the subject in different jurisdictions.

However, two importance facts are to be taken into account in any attempt to understanding and defining administrative law. Firstly, is the manner of exercising of power by government and second is the function (purpose) of Administrative Law. Bearing in Mind, these two factors, let us now try to analyze some definitions given by scholars and administrative lawyers.

AUSTIN'S definition of Administrative Law as offered by SZPT (Sunita Zalpuri Training Package)[10] is that administrative law is the law that "determines the ends and modes to which the sovereign power shall be exercised. his view, the sovereign power shall be exercised either directly by the monarch or directly by the subordinate political superiors to whom portions of those powers are delegated or committed in trust"

SCHWARTZ has defined administrative law as "the law applicable to those administrative agencies, which possess delegated legislation and adjudicative

[10] A.V Dicey, Introduction to the Study of the Law of the Constitution, 10th ed. (London macmillan, 1959) Web.

authority[11]". This definition is a narrower one. Amongst other things, it is silent as to the control mechanisms and those remedies available to parties aggrieved by an administrative action".

SIR IVOR JENNING has defined Administrative Law as "the law relating to the administration. It determines the organization, powers and duties of administrative authorities"[12]. However, Massey criticizes this definition because it fails to differentiate administrative and constitutional law. It lays entire emphasis on the organization, power and duties to the exclusion of the manner of their exercise. In other words, this definition does not give due regard to the administrative process, i.e the manner of agency decision making including the rules, procedures and principles it should comply with.

DICEY like Jennings without differentiating administrative law from constitutional law defines it in the following way. Firstly, it relates to that portion of a nation's legal system which determines the legal status and liabilities of all state officials. Secondly, it defines the rights and liabilities of private individuals in their dealings with public officials. Thirdly, it specifies the procedures by which those rights and liabilities are enforced[13].

PROF. P.A ALUYEDE gives a wider and working definition of Administrative law in the following way. Administrative law is that branch of our law which vest powers in administrative agencies, imposes certain

[11] Bernard Schwartz Administrative Law, A case Book 2nd ed. 1983 P.3
[12] Sir, Ivor Jennings, The Law and the Constitution 5th edition: London: University of London Press
[1313] A.V Dicey, Introduction to the Study of the Law of the Constriction, 10th edition (London: Macmillan, 1959)

requirements on the agencies in the exercise of the powers and provides remedies against unlawful administrative acts"[14].

YARDLEY said that: "the Kernel of Administrative Law is the control of power within its lawful compass....The law is employed not just to disqualify unlawful exercise of power but also to compel the performance of legal duties which have been neglected[15]".

In light of the above definitions, the term Administrative Law can be defined as a branch of law, which regulates the organization and conduct of governmental and administrative authorities, their relationship with one another and members of the public and provide remedies for breaches of rights as a result of any administrative abuse. It regulates the exercise of government and administrative powers by persons who have been entrusted with powers of public administration. Administrative law is also concerned with the observance of procedure by government and administrative authorities and also with determining and maintaining the balance of power, rights and duties between the State and citizens.

In light of the above definitions we may discern the following as the concerns of administrative law[16];

a. It studies powers of administrative agencies. The nature and extent of such powers is relevant to determine whether any administrative action is ultra vires or there is an abuse of power.

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[14] P.A Oluyede, Nigeria Administrative Law, 1988 pp. 1-2

[15] DCM Yardley, Principle of Administrative Law, 1981, P.14

[1616] Sunita Zalpuri Training Package on Administrative Law: http://www.scribd.com/doc/54220039/administrativelaw-N-DLM at P 14. Accessed 1st July, 2012

b. It studies the rules, procedures and principles of exercising these powers. Parliament, when conferring legislative or adjudicative powers on administrative agencies, usually prescribed specific rules governing the manner of exercising such powers. In some cases, the procedure may be provided as a codified act applicable to all administrative agencies.

c. It also studies rules and principles applicable to the manner of exercising governmental powers such as principles of fairness, reasonableness, rationality and the rules of natural justice.

d. It studies the controlling mechanism of power. Administrative agencies while exercising their powers may abuse their powers or fail to comply with minimum procedural requirements. Administrative Law studies control mechanism like legislative and institutional, control by the courts through judicial reviews.

e. Lastly, it studies remedies available to aggrieved parties whose rights and interest may be affected by unlawful and unjust administrative actions. Administrative law is concerned with effective redress mechanisms to aggrieved parties. Mainly, it is concerned with remedies through judicial review, such as certiorari, mandamus, injunction and habeas corpus.

(b).PURPOSE OF ADMINISTRATIVE LAW

There has never been any serious doubt that administrative law is primarily concerned with the control of power. With the increase in level of state involvement in many aspects of everyday life during the first 80 years of the twentieth century, the need for a coherent and effective body or rules to govern

relationship between individuals and the state became essential. The 20th century saw the rise of the regulatory state and a consequent growth in administrative agencies of various kinds engaged in the delivery of a wide variety of public programs under statutory authority. This means, in effect, that the state nowadays controls and supervises the lives, conduct and business of individuals in so many ways. Hence controlling the manner of exercise of public power so as to ensure rule of law and respect for the right and liberty of individuals may be taken as the key purpose of administrative law.

According to PETER LEYLAND and TERRY WOODS Administrative Law embodies general principles applicable to the exercise of the powers and duties of authorities in order to ensure that the discretionary powers available to the executive conform to basic standards of legality and fairness[17]. The ostensible purpose of these principles is to ensure that there is accountability, transparency and effectiveness in exercising of power in the public domain, as well as the observance of the rule of law[18].

PETER LEYLAND AND TERRY WOODS have identified the following as the underlying purpose of administrative law.

a.It has a control function, acting in a negative sense as a brake or check in respect of the unlawful exercise or abuse of government/administrative power.

b. It can have a command function by making public bodies perform their statutory duties, including the exercises of discretion under a statute.

[17] Peter Leyland and Terry Woods, textbook on Administrative Law, 4th ed. Oxford New York: Oxford University press, 2002 p. 5

[18] Ibid

c. It embodies positive principles to facilitate good administrative practice; for example, in ensuring that the rules of natural justice or fairness are adhered to

d. It operate to provide accountability and transparency, including participation by interested individuals and parties in the process of government.

e. It may provide a remedy for grievances at the hands of public authorities.

In accordance with this, it therefore suffice to say that Administrative Law is a law characterized in the following three main purposes[19].

a. To check abuse of Administrative power

b. To ensure to citizens as an impartial determination of their disputes by officials so as to protect them from unauthorized encroachment on their rights and interest.

c. To make those who exercise public power accountable to the people.

To realize these basic purposes, it is necessary to have a system of administrative law rooted in basic principles of rule of law and good administration.

A comprehensive, advanced and effective system of administrative law is underpinned by the following three broad principles.

[19] Aberham Yohannes & Desta G/Michael "Administrative Law teaching Material 2009" Chilot.files.wordpress.com/2011/06/administrative-law—pdf Justice and Legal system Research Institute. Accessed 1st July, 2012. Web

- **Administrative Justice**: which at its core is a philosophy that in administrative decision-making the rights and interest of individuals should be properly safe guarded.
- **Executive Accountability**: which has the aim of ensuring that those who exercise the executive (and coercive) powers of the state can be called on to explain and justify the way in which they have gone about that task.
- **Good Administration**; Administrative decision and actions should conform to universally accepted standards, such as rationality, fairness, consistency and transparency.

2.3 MEANING AND CLASSIFICATIONS OF HUMAN RIGHT

Human rights are rights that are fundamental to the stability and development of countries all around the world. However, the efficacy of the mechanisms in place today, for their operation has been questioned in the light of blatant human rights violations and disregard for basic human dignity in nearly all countries in one form or the other. (See e.g Claude 1976; Foweraker and Landman 1997:1-45; Freeman 2002b: 14:54; Ishay 2004; Sorell and Landman 2005)[20]

In many cases, those who are to blame cannot be brought to book because of political considerations, power equations etc. when such violations are allowed to go unchecked,

[20] Claude R.P (1976) "The Classical Model of Human rights Development: johns Hopkins University press; Foweraker, J. and Landman, T. (1997) Citizenship Rights and Social Movements: A comparative and statistical Analysis, Oxford: Oxford University Press; Freeman, M. (2002b) Human Rights: An Interdisciplinary Approach, Cambridge: Polity: Ishay, M. (2004) The History of Human Rights; From Ancient Times to the Globalization Era Berkeley: University of California Press; Sorell, T. Landsman, T. (2005) justifying Human Right: the Role of Domain, Audience and Constituency, Article Currently under Review with Human Right Quartly.

they of often increase in frequency and intensity usually because perpetrators feel that they enjoy immunity from punishment.;

DEFINITION OF HUMAN RIGHTS

Human rights are commonly understood as being those rights which are inherent by the mere fact of being human. The following definition expresses clearly the meaning of human rights.

> *" A human rights is a universal moral right, something which all means, everywhere, at all times ought to have, something of which no one may be deprived without a grave affront to justice, something which is owning to every human simply because he is human[21] "*

Human right differs from other rights in two respects. Firstly, they are characterized as being[22].

1. Inherent in all human beings by virtue of their humanity alone (they do not have to purchased or to be granted);
2. Inalienable (within qualified legal boundaries); and
3. Equally applicable to all

Secondly, the main duties deriving from human rights fall on states and their authorizes or agents, and also on individuals. The government among other things has an obligation not only to refrain from violating human rights, but also has a duty to protect the individual from infringement by other individuals. The right to life means that the government must strive to protect people against homicide by their fellow human being. Similarly, Article

[21] S. Augeder, "Questioning the University of Human Rights". 28 (1& 2) Indian Socio Legal Journal (202) at 80
[22] http://www.humanrights.is/human-rights-and-iceland. Accessed 15th July, 2012

17(1) and (2) of the international Covenant on Civil and Political Rights (ICCPR) Obliges governments to protect individuals against unlawful interference with their privacy. Another typical example is the Convention of the Elimination of all forms of Racial Discrimination (CERD), which obliges states to prevent racial discrimination between human beings. State obligations regarding human rights may involved desisting from certain activities (e.g torture) or acting in certain ways (e.g organizing free elections).

Categories of Human Rights

The collection of human rights protected by international law draws on a long tradition of rights from philosophy, history, and normative political theory and now includes three sets, or categories or rights that have become useful shortcuts for talking about human rights amongst scholars and practitioners in the filed, and will be used throughout the remainder of this paper. These three categories are[23]:

- Civil and political rights
- Economic, social and cultural rights, and
- Solidarity rights

It has been typically understood that individuals and certain groups are bearers of human rights, while the state is the prime organ that can protect and/or violate human rights.

Civil and Political Rights: Uphold the sanctity of the individual before the law and guarantee his or her ability to participate freely in civil, economic and political society. Civil rights include such rights as the right to life, liberty and personal security; the right to

[23] Dr. Todd Landsman, "The Scope of Human Rights: From Background Concepts to Indicators Human Rights Center, University, of Essex, 11-13 March, 2005. Accessed 15th July, 2012 Web"

equality before the law; the right of protection from arbitrary arrests; the right to the due process of law; the right to a fair trial; and the right religious freedom and worship. When protected, civil provisions guarantee ones personhood and freedom from state-sanctioned interferences or violence. Political rights include such rights as the right to speech and expression; the rights to assembly and association; and the right to vote and political participation. Political rights thus guarantee individual rights to involvement in public affairs and the affairs of state. In many ways, both historically and theoretically, civil and political rights have been considered fundamental human rights for which all nation state have a duty and responsibility to uphold (see Davidson 1993:39-45; Donnelly 1998:18-35; Forsythe 2000:2852)[24]. They have also been seen as so called "negative" rights since they merely require the absence of their violation in order to be upheld.

Social and Economic Rights include such rights as the right to a family; the right to education; the right to health and well being, the right to work and fair remuneration; the right to form trade unions and free associations; the right to leisure time; and the right to social security. When protected, these rights help promote individual flourishing, social and economic development, and self-esteem.

Cultural Rights, On the other hand include such rights as the right to the benefits of culture; the right to indigenous land, rituals, and shared cultural practices; and the right to speak one's own language and "mother tongue" education. Cultural rights are meant to maintain and promote sub-national Cultural affiliations and collective identities, and protect minority communities against the incursions of national assimilationist and nation

[24] Davidson, S. (1993) Human Rights: Buckingham: Open University Press. Donnelly, J. (1998) International Human Rights, Boulder: Westview. Forsythe, D.P. (2000) Human Rights in International Relations, Cambridge: Cambridge University Press.

protect minority communities against the incursions of national assimilationist and nation building projects. In contrast to the first set of rights, this second set of social, economic and cultural rights are often seen as an aspirational and programmatic set of rights that national governments ought to strive to achieve through progressive implementation. They have thus been considered less fundamental than the first set of rights and are seen as 'positive' rights whose realization depends heavily on the fiscal capacity of states (Davidson, 1993; Harris 1998:9; See also Foweraker and Londman 1997:14-17)[25].

Solidarity Rights, which include rights to public goods such as development and the environment, seek to guarantee that all individuals and groups have the rights to share in the benefits of the earth's natural resources growth, expansion and innovation. Many of these rights are transnational in that they make claims against wealthy nations to redistribute wealth to poor nations, cancel or reduce international debt obligations, pay compensation for past imperial and colonial adventures, reduce environmental degradation, and help promote policies for sustainable development of the three sets of rights, this final set is the newest and most progressive and reflects a certain reaction against the worst effects of globalization, as well as the relative effectiveness of "green" political ideology and social mobilization around concerns for the health of the plannet.

[25] Davidson, S. (1993) Human Rights, Buckingham: Open University Press Harris, D. (1998) 'Regional Protection of Human Rights: the inter-American Achievement Foweraker, L. and Landsman, T. (1997) Citizenship Rights and Social Movements: A comparative and Statistical Analysis, Oxford: Oxford University Press.

2.3.1 Types of State Duties Imposed by All Human Rights Treaties (The Tripartite Typology)

The early 1980s gave rise to a useful definition of the obligations imposed by human rights treaties, which blurred the sharp dichotomy between economic, social and cultural rights, and civil and political rights.

Specifically, in 1980, HENRY SHUE'S[26] proposed that for every basic right (civil, political, economic, social and cultural) there are three types of correlative obligations; to avoid depriving; to protect from deprivation and to aid the deprived.

Since SHUE'S proposal was published, the 'tripartite typology' has evolved and scholars have developed typologies containing more than three levels.

The 'triparite typology presented by SHUE is known today in more concise terms as the obligations to protect and to fulfill[27].

Obligations to Respect: In general, this level of obligations requires the state to refrain from any measures that may deprive individuals of the enjoyment of their rights or of the ability to satisfy those rights by their own efforts.

Obligations to protect: This level of obligation requires the state to prevent violations of human rights by third parties. The obligation to protect is normally taken to be a central function of states, which have to prevent irreparable harm from being inflicted upon members of society. This requires states:

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[26] Henry Shue, Basic Rights: Subsistence, Affluence and U.S Foreign Policy (2nd edition, 1996)52

[27] Asbjorn Eide, UN Special Rapporteur for the Right to Found, The Right to Adequate Food as a Human Right: Final Report Submitted by Asjorn Ede, UN Dor. E/CN.4/sub.2/1987/23 (1987) (67) (69)

a. To prevent violations of rights by any individual or non-state actor;

b. To avoid and eliminate incentives to violate rights by third parties; and

c. To provide access to legal remedies when violations have occurred in order to prevent further deprivations.

Obligations to fulfill: This level of obligation requires the state to take measures to ensure, for persons within its jurisdiction, opportunities to obtain satisfaction of the basic needs as recognized in human rights instruments, which cannot be secured by personal efforts. Although this is the key state obligation in relation to economic, social and cultural rights, the duty to fulfill also arises in respect to civil and political rights. It is clear that enforcing, for instance, the prohibition of torture (which requires, for example, policies training and preventive measures), that right to a fair trial (which requires investments in courts and judges), the right of free and fair elections or the right to legal assistance, entails considerable cost.

Synonymous to the tripartite typology above, is the duty of the State to provide for effective remedies against abuses of human rights provisions. The requirement to provide an "effective remedy" as part of a state's obligations in relation to particular human rights is found in many human rights conventions[28]. For example, under art 2 (2) of the ICCPR, a State Party undertakes to: adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant, and art 2 (3) (a) further provides that states parties to the ICCPR must ensure that people whose

[28] See, e.g ICCPR, above n 1 art 1, art 2(3): International Convention on the Elimination of all Forms of Racial Discrimination, Opened for signature 21 December, 1965. 660 UNITS 195, art 6 (entered into force 4 January 1969) (ICERD); Convention against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, Opened for Signature 4 February 1985, 1465 UNITS 85, art 14 (entered into force 26 June 1987) (CAT) Convention on the

rights are violated have an 'effective remedy' 'Competent judicial; administrative or legislative authorizes" should determine complaints[29], and a remedy, if granted, should be enforced[30].

While certain international tribunals and bodies have the ability to hear complaints regarding breaches of various human rights conventions[31], the primary responsibility for compliance with human rights treaties lies within the domestic legal system of the states parties[32]. For instance, CESCR has stated that international procedures for the pursuit of individual claims are only supplementary to effective national remedies[33].

The above analysis demonstrates that there is little differences in the nature of state obligations in regard to different human rights. The difference levels of obligation encompass both civil and political rights and economic, social and cultural rights, blurring the perceived distinction between them.

2.4 PROBLEMS BESETTING EFFECTIVE REALIZATION OF HUMAN RIGHTS; A CASE STUDY OF NIGERIA

At a period when Nigeria was under the colonial rule, it was not possible to hold that her citizens were a democratic regime. Shortly after independence and particularly between 1960 and 1966, the parliamentary system of government in practice by then could not be said to have actually consolidated the gains of democracy for the people. For a short

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[29] ICCPR, art 2 (3) (b)
[30] Ibid art 2 (3) (c)
[31] See, e.g The HRC in relation to the ICCPR, and the Committee on Torture in relation to the CAT. The Monitoring by International treaty Commiittee is discussed at Chapter 6
[32] The first Optional Protocol to the ICCPR, for example, requires the individuals must have exhausted all domestic covenant on civil and political rights, opened for signature 16 December 1966, 1999 UNITS 302, ART 5. (2) (b) (entered into force 23 March 1976)
[33] CESCR, General Comment 9, above 34, (4)

period of Presidential System of Government between 1979 and 1983, the nature of democracy then, was more in theory than in practice. Painfully too, out of a period of thirty-nine years (till 1999) as an independent nation; Nigeria had experienced agonizing periods of twenty-nine years (till 1999) under various military regimes. The entire political periods of years spent so far by Nigeria as a sovereign independent nation have been characterized by many problems besetting effective realization of international human rights instruments. Among this problem are: bad leadership, military intervention in politics, illiteracy and poverty.

2.4.1 Bad Leadership

Democracy depends on the presence of rulers and persons in authority who can give legitimate commands to others. Such persons in authority must be seen by their followers to be reliable, dependable and impeachable characters that are ready to serve and not be served. In line with democratic principles, political leaders must be tolerant and always ready to give opportunities to others to make their contributions towards the overall development of the nation. Democratic leaders must encourage opposition. They must not consider opposing views of others as undue confrontations aimed at humiliating them out of power.

An ensuring democracy requires just leaders who respect the Rule of Law and Fundamental Rights of citizens. Leaders of a democratic system must not be greedy and corrupt. It is unfortunate that few of the very serious problems confronting effective realization of human rights, democracy and development arise from the negative attitude of bad leaders in Nigeria who have corruptly enriched themselves, violated fundamental

rights of opposing groups, disobeyed court orders, mismanaged national resources and disregarded international human rights norms and democratic principles. As a result of bad leadership, most of the factors of production have either been ignored, under-utilized, or misused. Fertile agricultural lands lie dormant while unemployment and crime rates soar. The windfall during the oil boom was badly misspent, much of it stolen, thus leaving most of our national oil refineries grounded. The resultant effect has been fuel scarcity in the country with its attendant escalation in transport costs and unbearable increase in prices of commodities in the markets. The exchange rate of Naira has greatly fallen, thereby reducing the purchasing rate of industrial materials, which could have been gainfully used to improved the nation's technological development.

2.4.2 Military Intervention in Politics

Nigeria did not start with the military in the process of her political history. When the military first struck on January, 15 1966, part of the reasons given for such an abrupt intervention was to wipe out political profiteers in high and low places that sought bribes and kept the country divided permanently so that they could remain in office[34].

In the same vein, the Mohammad Buhari Military regime that dismissed the Nigerian Second Republic under President Shehu Shagari also gave a catalogue of political errors, which characterized that civilian regime. In fact, the spokesman for GeneralBuhari, Late Sanni Abacha said:

[34] By Justice Chundrahund of India quoted with approval by Akinola Aguda in his paper titled "Law and Human Rights in Democracy" in Farm House Dialogue; Op.cit. p 19

"....we are ready to law out lives for our dear nation, but not for the present irresponsible leadership... I am referring to the harsh, intolerable conditions under which we are living...[35]*"*

It is however, sad to observe that Nigerian experience of military rule has to some extent worsened the situation in the country. This for example, is illustrated in array of cases in the country[36]. **PROF NWABUEZE'S** depiction of this ugly incident is illuminating. According to him, the fact that all the decision during the first republic went in favour of the government deprived much of the decision it legitimating effect and above created an atmosphere of political bias[37]. This situation according to him was more lamentable since most of these decisions affected the individual liberties[38].

According to one of Nigerian newspaper[39], many opposing political leaders and human rights activities have all been held in detention without trials, many have been killed while others have fled to foreign nations for the safety of their lives. Through this process, the country had lost a lot of human resources that would have been employed for her socio-economic, cultural, political, educational and technological development. In every attempt to prevent opposition, military leaders in Nigeria have also formed the habit of promulgating decrees consisting of ouster clauses, which prevent courts of law from exercising jurisdiction to entertain matters often regarded by the military as

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[35] By Justice Chundrahund of India quoted with approval by Akinola Aguda in his paper titled "Law and Human Rights in Democracy" in Farm House Dialogue; Op.cit. p 19

[36] D.P.P vs Chike Obi (1961) 1 ALL NLR 186, Queen vs. Amalgamated Press of Nigeria Ltd and Fatogun (1961) 1 All NLR Awolowo vs. Minister of Internal Affairs (1962) LLR. 177

[37] Nwabueze B.O Judicialism in Commonwealth Africa C. Nurst and Co. London in Association with Nwamife Publishers Enugu and Lagos (1981) 2nd Edition, P. 242

[38] Ibid

[39] See Sunday Times (Nigeria); January 1, 1984, pp. 1 and 34 Http//www.sundaytimesofnigeria.com)

confrontational. By so doing, many citizens have not been able to defend their rights over certain matters that are crucial to the overall development of the nation[40] been employed to disregard human rights and principles of natural justice well recognized by civilized nations[41]. A typical example was the case of FMG VS. KEN SARO-WIWA & 9 ORS[42] which led to the suspension, a lot of privileges and advantages of membership of the commonwealth hitherto enjoyed by Nigerians to promote the nation's development ceased.

Military governments in Nigeria have also not allowed the Judiciary to be truly independent. In the word of the late CHIEF OBADEMI AWOLOWO, 'Military leaders were often the sole hirers of judges and so, they could decide at any time to dismiss any Judge who was not on their side. By gross disobedience to orders to courts, military leaders have rendered the judiciary seriously incompetent in its onerous functions of dispensation of justice[43]. This military era did not pave way for effective growth and development of the nation's legal system.

It is relevant to point out that refusal of some leaders in Nigeria to yield to the advice of international communities for a quick return to a democratic system of government led to the imposition of economic sanctions which had seriously affected the development of the nation in all it ramifications till date.

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[40] Ibid

[41] Abiola Ojo, Fundamental Human Rights in Nigeria; The 1963 and 1979 Constitution provision, Nig. J. Contemp. Law 1977-80. P. 271

[42] Unreported Suit No OCDT/PH/1/95

[43] Owolowo O. Path to Nigeria Greatness 1981, Fourth Dimension Publishers Co. Ltd, p. 118

2.4.3 Poverty and Illiteracy

Many problems that are not in nature such as illiteracy and poverty also hinder the effective realization of human rights, democracy and development in Nigeria Education has been on the decline in Nigeria, both in terms of enrolment as well as physical infrastructure, material and equipment. There has been little advancement in technology. In addition to this is the fact that education in the country has been commercialized to the extent that only a few can secure a better and functional education, among this few are the members of the ruling class and their immediate families. Leaving the masses and majority of the Nigerian people uneducated, uninformed, impoverished and therefore politically and economically manipulable in governance[44].

By statistics, it has been confirmed that Nigeria has a male literacy rate of 54 percent while the female literary rate is 31 percent[45].

Democracy grows from the confidence and faith of a people in their abilities to tap their human and natural resources effectively for national growth and development[46]. It is therefore totally dependent upon educated and informed electorates who have access to ideas. Illiteracy affects the sustenance of human rights provisions because uneducated people can neither make informed political decisions nor participate in government of the day. In order to participate in government, a person must understand the principles

[44] Mbah C.c Government and Politics in Modern Nigeria: the Search for an Orderly Society, Onitsha: Joance educational Publishers, 2001. P. 122

[45] See Cases like F.S Uwaifo vs. A.G Bendel State (1933), 4 NWLR (pt. 135) 688: Abavol vs. Perm. Sec. Civil Service Com. (1991) 2 NWLR (Pt. 183) 693; Ortese vs. Gov. of Benue State (1991) 4 NWLR pt. 184

[46] A.A. idowu. Human Rights, Democracy and Development: The Nigerian Experience, Research Journal of International Studies – Issue 8th Nov. 2008. Accessed 15th July, 2012. Web

of government and the nature of political operations. Poverty also contributes to a litigant's incapacity to meet the cost of litigations in Nigerian courts of law. An action to enforce a person's right includes payment of solicitor's fees, transport costs and other incidental expenses that normally go with the filing of actions in courts[47]. In the words of DR. AGUDA.

> *"The practical actualization of the most of the fundamental rights cannot be achieved in country like ours where millions are living below starvation level...in the circumstances of this nature, fundamental right provisions enshrined in the constitution are nothing but meaningless jargon to all those of our people living below or just at the starvation level..."*[48]

In one of his distinguished lecture, he further commented as follows:-

> *"...To think that every poor person can have a meaningful day in court in the pursuit of his right; real or imaginary, is to live in fools paradise..."*[49]

The effect of all the above statement as depicted by his Lordship, is that poverty often result into the poor persons taking the law into their own hands. A person who is unable to secure three square meals a day, is not likely to go to court for the enforcement of his fundamental rights because of the cost of litigation. Instead, poor persons often take

[47] Ibid
[48] A. Aguda, Judicial Process and Stability in the Third Republic, NATIONAL Concord, Nov, 7, 1988. P.7
[49] Justice T.A Aguda A Perspective in Law and Justice in Nigeria, National Institute for Policy and Strategic Studies, Kuru, Distinguish Lecture Series, Oct. 25, 1986. P 8

laws into their hands thereby increasing the rate of violence in Nigeria, which has been a threat to democracy.

2.5 MEANING OF ADMINISTRATIVE ABUSE

Abuse of official position creates distrust in government, disinterest in politics among the citizenry and even perception of corrupt government[50].

In some countries, the administrative structure of the government has prevented local councils from obtaining truly independent standing. The Georgian legislation for example is ambiguous concerning the roles of different levels of government, allowing for substantial overlaps in authority and functions. In turn, local governments lack the resources and capacity to respond to widely recognized demands and preferences of the local population. This is also true in Nigeria, where the commander in chief is all and all. Translated into political practice as political octopus[51].

Studies have evidenced that corruption undermines the institutional and procedural foundations upon which accountability mechanisms lie, and in many ways governs the informal relationships that currently exist between various institution at the local level interestingly, high tolerance of corruption coupled with a lack of administrative remedies to keep local institutions accountable, transparent and responsive, have generated a strong sense of impunity among government officials.

[50] Ibid
[51] Mbah, Op.cit P 121

DEFINITION OF ADMINISTRATIVE ABUSE

The term "administrative abuse" means[52]:

> *"An act of enforcement, Promulgation of a norm, Taking of a decision, or Denial of a benefit by a State officials, which is: Illegal, as a result of inappropriate exercise of discretion, or which is procedurally improper, irregular and erroneous"*

Furthermore, administrative abuse "within the context of formal and informal rule-making (promulgation of normative acts as well as issuing of less formal guidance) would be define "procedurally proper" to always require a transparent and open process involving public participation[53].

Administrative abuses can include actions which are illegal (such as taking a bribe), violate normal procedures (such as the preferential processing of paperwork) or which involve the inappropriate exercise of discretion (based on, for example, nepotism, cronyism, partisan politics or discrimination)[54]

In addition to the above, is the fact that laws and regulations may excuse the taking of an action where the provision of the law has been breached. The effect of this is often seen in the non-fulfillment of legitimate rights of citizens.

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[52] "Trust Government: Administrative Remedies for Administrative Ilis" " The Local Government Breif", 2003, September, (published quarterly In Budapest, Hungary, by the local Government and Public Service Reform Initiative, Open Society Institute- Budapest).
[53] Ibid
[54] Bayaraa, op.cot

2.6 CONTROL MECHANISMS OF GOVERNMENTAL POWER

According SIR MAURICE LINFORD GWYER power without control is not good. In his word:

> *"An unfettered exercise of power is certainly good for no one, and government departments are no exceptions to this rule"*[55]

In addition to creating various administrative agencies and empowering them with necessary power to carry on specific social, economic and political programs in the interest of the public, administrative law puts appropriate controlling mechanisms that restrain administrative agencies within the scope of the powers entrusted to them.

Two basic reasons account the need for the control of these powers. Firstly, according to the French Political philosopher, **MONTESQUIEU**[56], where the tripartite powers (i.e legislative, executive and adjudicative) are merged in the same person, or in the same body, there can be no liberty as the life and liberty of the subject would be exposed to arbitrary control.

Secondly, is the fact that the principle of separation of power has proved to be an effective mechanism in the checking of Administrative abuse[57]. By ensuring checks and balances the principle operates to expunge despotism and arbitrariness in government and consequently promotes liberty and peaceful co-existence amongst the citizens. As

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[55] "The power of public Department to make Rules Having the Force of Law" 5 Public Administrative. P. 404 PDP VS. INEC (1999) 11 NWLR pt. 626 P. 200 SC. Ude Vs. Nwara (1993) 2 NWLR pt. 278 P. 638 SC Knight Frank & Rutley vs. A,G Kano State (1998) 7 NWLR Pt. 556 P. 1 SC.

[56] Baron de Monstesquieu, Caharles Louis de Secondat (Stanford Encyclopedia of Philosopy)" Plato. Standford.edu.http://plato.standford.edu/entries/Montest

[57] Lord Diplock in Duport Steel vs. Sirs (1980) 1 ALL ER 520, Aberham Yohannes & Desta G/Micheal "Administrative law Teaching material 2009" Chilot.files.wordpress.com.2011/06/administrtaivelaw.pdf Justice and Legal system research Institute. Accessed 1st July 2012 Web

JAMES MADISON noted, the accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny[58].

As the experience of many jurisdiction in the modern democratic world indicates, there are different devices that can be used to control the powers of administrative agencies. Some of the commonly used controlling mechanism are[59]:

- Internal administrative review by superior officias;
- Parliamentary control;
- Political control;
- External Administrative review by tribunals;
- Judicial control

The above control mechanisms have as their object[60].

a. Enable people to test the legality and merits of decisions that affect them;
b. Provide mechanisms for ensuring that the government acts within the lawful powers;
c. Provide mechanism for achieving justice in individual cases and
d. Contribute to the accountability system for government decision-making.

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[58] The Federalist Papers, Np. 47. Also cited by Prof. Ben Nwabueze: The Presidential Constitution of Nigeria, 1981, P. 32 See Abiola Ojo. "Separation of Power in Presidential system of Government". Public Law (1981) P. 105

[59] Aberham Yohannes & Desta G/Michael "Administrative Law Teaching Material 2009 Chilot.files.wordspress.com/2011/06/administrativelaw.pdf Justice and Legal Research Institute. Accessed 1st July 2012 Web

[60] Ibid

2.6.1 Internal Control

The term internal control refers to the type of controlling mechanisms that are set within the organizational structure of the various administrative organs of the government. For administrative convenience, administrative agencies usually have internal structure. Formally or informally, those in the upper hierarchy subject decisions of authorities within the lower structure of the administrative hierarchy, to review. Internal review is the process by which original agency. The internal review system in these areas is created and regulated by legislation, in the same way as other review methods. Even where there is no statutory requirement, it is common for an informal internal review system to be established on the administrative basis within government agencies.

2.6.2 External Control

The term external control in administrative law context refers to the various limitations imposed upon the powers of administrative agencies by other authorized bodies that are found outside the structure of such agencies. These types of controlling mechanisms include executive/political control, parliamentary/legislative control, and control by administrative tribunals, judicial control, control by watchdog institutions and the mass media. Despite the deference in the mode and scope of these controlling mechanisms. all of them have positive contribution in promoting and protecting of the rights of the citizens against abuse.

2.6.3 Parliamentary control

As we repeatedly stated earlier, while appreciating the importance of delegating powers to administrative agencies in promoting efficiency and effectiveness in the administration and implementation of public policies, it is equally important to take note that unless otherwise safeguards are put in place, such power may be abused and used to promote evil motive.

Having appreciated the side effects of delegation of rulemaking powers to administrative agencies, the parliament can put effective checking mechanism in place. First and foremost, the parliament has to make sure that all necessary precautions are taken that the enabling legislation/parent act does not devolve wide delegated powers which may be difficult to control. These include attaching riders to agency appropriation bills, conducting oversight hearings, reducing agency budgets, and amending statutes. Of course, if the legislature is extremely dissatisfied with the performance of a particular agency, it may rewrite the statute that crated the agency in the first instance. By amending the appropriate statute, the legislature may enlarge or contract the agency's jurisdiction as well as the nature and scope of its rulemaking authority.

2.6.4 Executive Control

The executive organ of the government also has the power to oversee the activities of the various government offices in different modalities[61]. As it was discussed somewhere else, there are possibilities whereby some administrative agencies may be

[61] Malemi Ese, Op. Cit. P 176

formed by executive order without the blessing of the parliament. Those agencies or bureaus formed under the executive hierarchy (referred to as executive dependent agencies) are subject to the supervision of the executive organ of the government. So, the concern ministry of the government can put different modalities of control to ensure whether or not the authorities formed under its hierarchy are acting within the bound of the law.

The executive organ of the government may also exercise some direct control over the so-called independent agencies that are accountable to the Legislative organ of the government.

2.6.5 Control by Administrative Tribunals

The decisions of administrative agencies can also be subjected to the supervision of administrative tribunals. As we shall later see, administrative tribunals are the administrative counter part of ordinary courts. Technically speaking, administrative tribunals also referred to as administrative court: courts that are established outside the organizational structure of ordinary/regular courts. In terms of function, administrative tribunals are similar to ordinary courts, as both are entrusted with judicial power.

Despite their differences administrative tribunals undertake merits review over the decision of administrative agencies falling under its jurisdiction. One the leading authorities on control by administrative tribunals is the decision of the full Federal Court in **DRAKE VS. MINISTER FOR IMMIGRATION AND ETHNIC AFFAIRS**[62] **CHIEF JUSTICE BOWEN AND JUSTICE DEAN**, which said that the overall objective of merits review is to ensure that all administrative decisions of

[62] (1979) 24 ALR 577 at 589

government are correct and preferable. It was further said that when the decision is not both correct and preferable, the tribunal could ordinarily substitute it by a new decision.

2.6.6 Judicial Control

As we discussed earlier, the concentration of legislative, executive and judicial powers or any combination of these in the hands of one person or body of persons is the very definition of tyranny and dictatorship[63]. According to the advocates of this principles, tyranny and dictatorship cannot strive where power is divided amongst the three organs, and where there are effective checks and balances. Thus, the purpose of the principle of separation of states powers is not to create three empires, but to create an effective system for checking and balancing among the three organs of the government.

The effectiveness of judicial control as an effective control mechanism will fully be appreciated in chapter four of this work.

2.6.7 Mass Media control

The role of the mass media in controlling maladministration cannot be undermined. A strong media plays vital role in promoting the ideals of democracy and good governance. By bringing administrative malpractices and corrupt behaviours of the agencies to the attention of the public, the media may also exert moral and political pressure on the day-to-day activities of the administration. Media can serve as a forum for mobilizing public opinions concerning governmental activities. Thus, media can be regarded as one of the most effective informal controlling mechanisms of the powers of administrative agencies provided that freedom of the press is well guaranteed.

[63] James Madison: The Federalist Papers: No. 47: January, 30th 1788

CHAPTER THREE

JUDICIAL POWER OF ADMINISTRATIVE AGENCIES AND ITS OPERATION IN THE PROTECTION OF RIGHTS OF CITIZENS

3.1 INTRODUCTION

As it has been discussed previously that an administrative agency may be conferred with the tripartite powers (executive, legislative and adjudicative) of various nature and scope. As a logical sequence of the previous chapters, which dealt with the executive and legislative powers of administrative agencies, this chapter discusses the concept of agency adjudication in details.

3.2 THE MEANING AND NATURE OF ADMINISTRATIVE ADJUDICATION

In Nigeria and as in most countries, there is no rigid application of the doctrine of separation of powers in the constitutional practice or government framework. Administrative adjudication for example, is a crystal clear exception to the doctrine of separation of powers, This notwithstanding, the 1999 Constitution still clearly reflects the separation of power amongst the three arms, i.e Legislative, Executive and Judiciary[64].

The BLACK'S LAW DICTIONARY[65] has defined "administrative adjudication" to mean an "administrative agency proceeding in which evidence is offered for argument or trial". Similarly, MALEMI has conceived the term administrative adjudication to

[64] 1999 Constitution Ss. 4,5, and 6 respectively. (and as also reflected on the following cases): A.G Ogun State & Ors. Vs A.G Fed. & Ors (1982) 3 NCLR 165 SC. House of Assembly Bendel State vs A.G Bendel State (1984) 5 NCLR 161 CA

[65] Bryan A. Garner Black's Law Dictionary 8 Ed

mean when a body established by the government (which can be either judicial or quasi-judicial), but usually existing outside the hierarchy of the regular court[66].

a. Investigate matters of public importance; or
b. Hears and determines cases, matters, or claims of a claims of a particular kind, between parties, whether such parties be persons, bodies or government.

In ONUOHA VS. OKAFOR, OPUTA JSC as he then was, explaining the nature of a tribunal as envisaged under the Nigeria Constitution said:-

> *"The terms, court or tribunal...is usually used to indicate a person or body of persons exercising judicial functions by common law statute, patent, charter, customs, etc whether it be invested with permanent jurisdiction to determine all causes or a class or as and when submitted or to be clothed by the state or the disputants, with merely temporary authority to adjudicate on a particular group of dispute".*[67]

An important question that may be and should be raised here is that related to the meaning of judicial/adjudicatory powers of the administrative agency. What are the peculiar features of an agency's adjudicatory powers vis-à-vis its executive and legislative counter parts? A clear-cut answer cannot be provided to this question. However, some objectives tests have been advanced.

[66] Malemi, op. cit. P. 179
[67] (1985) 6 NCLR 509, Anisminic vs Foreign Compensation Commission (1969) 1 WLR 163, 91969) 1 ALL ER 208, R.V Electricity Commissioners, Ex Parte London Electricity Joint Committee (1923) ALL ER 150 CA

1. **The First of Such Test is related to the Conclusiveness of the Agency's Decision.**

This is to mean that the agency's decision in this regard must have a binding effect on the parties in disputes without any need for confirmation by any other organ. As an authority stated it properly, "...the broad exercising of power which are of a mere advisory, deliberative, investigatory, or conciliatory character or which do not have a legal effect until confirmed by another body, involve only the making of a preliminary decision will not normally be held to be acting in a judicial capacity..." Thus, the decisions that administrative agencies render in their judicial capacities are conclusive in the sense that such decisions are binding on the parties in dispute without awaiting for further confirmation for any other authority, or without checking whether such decisions subject to review collaterally.

2. **The Second Test for Identifying Whether a Certain Agency's Function is Judicial or not relates to the Availability of Some Sort of Procedural Attributes.**

While exercising their adjudicatory powers, administrative agencies normally follow preset procedures. The procedure adopted for this purpose may be formal, which is more or less similar to the ordinary court procedures, or informal, which is a simplified procedure that provides only the minimal procedural safeguards to the persons subject to the decision. thus, administrative agencies may follow formal procedures, which have already been set out to be followed, or they may on their own, act in an informal way, come to conclusion while safeguarding persons subject to their decision.

3. **The third Important test for Identifying Whether or not an Administrative Agency Passes a Decision in its Judicial Capacity is Related to the Presence or Absence of Interpretation and Application of Legal Rules.**

Obviously, interpretation of laws, application of laws to resolve specific factual disputes and declaration of laws are the core functions of the judiciary whether it is a regular court or an administrative body. Hence, in order to determine whether the decision of an administrative agency is judicial or not, it has to be tested whether or not the decision passed is based on pre-existing legal rules or other prescribed standards.

In summary, the judicial act of administrative agencies can be identified by reference to their formal, procedural or substantive characteristics, or a combination of any of them, so judicial act may be differentiated from the rest of other administrative functions in that if the decision has conclusive effect, binding nature, have force of law without confirmation by another body, solve questions of law or fact, the function is treated as judicial[68].

3.3 FORMS OF ADMINISTRATIVE ADJUDICATION

As stated earlier, one of the striking features of adjudication is the existence of predetermined procedures that guide the decision-making process. The decision may be preceded by full-blown formal hearing that are similar to court trials or an informal process, which is just like a summary proceeding where the participation of the parties is very minimal or formal adjudication.

[68] Steven J. Cann Administrative Law: Sage Publications, Inc. 4th Edition (September 2001) at p. 18

3.3.1 Informal Adjudication

Informal adjudication is a broad category of administrative action. A working definition of informal adjudication is that it is a statutory required decision making process that may or may not require a hearing and is neither formal adjudication nor rulemaking[69]. If the process does not involve formal adjudication. **The FEDERAL OVERTON PARK CASE**[70] is the initial source for identifying a number of the characteristics of the informal adjudication. There are vastly more decisions made in informal adjudication. Informal hearing can take any such form as written submissions and interview in forms of oral communications. In all cases, informal administrative adjudication are expected to be guided by certain minimum standard, and these are[71]:

a. The principle of natural justice and fairness; and
b. The principles of due process

Courts in the common law tradition have developed general principles that are expected to ensure fairness in agency adjudication. These principles are known as the rules of natural justice and fairness. In the United Kingdom, there is an established precedent on the application of the rules of natural justice in the following types of situation:

a) Where someone is dismissed from office; or
b) Where someone is deprived of property right or privileges

[69] http://biotech.law.edu/Courses/study-aids/adlaw/glossary/Adjudication,informal.htmi. Accessed 7/20/2012 Web
[70] 401 U.S 402 (1972)
[71] Craig PP. Administrative Law 4the Ed. London: Sweet and Maxwell 2001. P. 407-409

Where the rules of natural justice apply in their entirely, a fair hearing will expects to consists of the following elements[72]:

a. Adequate notice must be given to the person affected
b. The person affected must be informed of the full case against him or her
c. Adequate time must be allowed for that person to prepare his or her own case;
d. The affected person must be allowed the opportunity to put forward his or her own case;
e. The decision maker may be required to give reasons for his or her decision.
f. The affected person may be able to cross-examine witnesses
g. The affected person may be entitled to legal representation.

The due process clauses of the fifth and fourth amendments to the U.S Constitution dictate that neither the federal nor state governments shall deprive of; liberty or property, without due process of law. The notion of due process of law connotes two things:

a. The substantive aspect of the action that the decision of the agency must be backed by lawful authority and
b. The procedural aspect that the process of decision-making must be guided by predetermined procedures. To put it simply, a person cannot be deprived of his entitlements of life, liberty and property except for strong reasons expressly provided under the relevant substantive laws and in accordance with the procedures set under the related laws.

[72] Malemi. Op. Cit. P. 207-208. Oyeyemi vs. Commissioner for Local Government Kwara State & Ors (1993) 6 NWLR Pt. 299 P. 344 SC. Adigun vs. A.G. Oyo State (1987) 1 NWLR Pt. 53 P. 678

In a nutshell, informal adjudication does not involve full-blown trial types of hearing. Unless otherwise statutes or case laws (in common law practice) dictate the agency to follow a full-fledged formal hearing process, agencies are usually at liberty to adopt their own decision making procedures having regard to the minimum requirements of due process of law or natural justice or fairness as such terms may be differently known in different jurisdictions.

3.3.2 Formal Adjudication

As mentioned above, informal administrative adjudication offers only the minimal statutory safeguards of notice and hearing; and hearing in the majority of cases does not involved oral hearing, but written submission of opinions, arguments; data, and so on. But formal adjudication involves an almost full-blown trials types of hearing. Having regards to the magnitude of the individual interest at stake, the enabling legislation (parent act) or other statutes may dictate the concerned administrative agencies to hold a formal hearing before passing decision. formal adjudication, among other things, may provide the following procedural safeguard to the respondents:

a. Notification of charges;
b. Notification of hearing;
c. Representation by an attorney;
d. An impartial tribunal/administrative law judge;
e. Presentation of evidence;
f. Cross-examination of the witness of the agency;

In a formal adjudication, the respondent has the right to confront an agency witnesses. Hence, oral hearing must be always there. Even where the statutory requirements

regarding agency adjudication process appear inadequate to ensure fairness or to protect the fundamental rights of individuals, the US Supreme Court has applied the Due Process Clause of the Fifth and Fourth Amendments that dictate neither the federal nor the state governments shall deprive persons of – life, liberty, or property, without due process of law. Regarding the notion of Administrative due process, authorities are noted as follows:

In administrative due process cases, the Court must make two determination. First, it must decide whether the Due process Clause is applicable. Administrative decisions are constrained by Due Process Clauses only if, they in some meaningful way deprive an individual of life, liberty or property of course, today, those interest are broadly defined.

3.4 TRIBUNALS AND THE TRIBUNALS SYSTEM

It is important to realize that a number of differing types of argument have been used to justify creating tribunals and assigning tasks to them. Three of such arguments can be distinguished here.

First, tribunals are often preferred to courts because they are said to have the advantages of speed, less expensive, informality and expertise. These advantages are of particular importance in areas involving mass administrative justice, such as the distribution of social welfare benefit. The creation of tribunals system can also alleviate problems for the courts, which can become inundated by judicial review applications within a particular area[73].

[73] Sir Harry Woolf, "Judicial Review: A Possible Programme for Reform" (1992) P.L 221, 228

Secondly, a rather different kind of argument was that the ordinary courts might not be sympathetic to the protection of substantive interest contained in some legislation which laid the foundation of the welfare state at the turn of the century, and that therefore, the matter should be assigned to a tribunal instead.

A third and a more radical argument sees the creation of some tribunals as a symbolic means of given the appearance of legality in a particular area in order to render more palatable unpopular changes in the substantive benefits to which individuals were entitled.

These differing reasons may well have force in different context. What is readily apparent is that tribunals have been set up in many areas for and to protect the citizens. There are, for example, tribunal dealing with industrial matters, financial services, mental health, immigration, social security, revenue and child support and to name but a few.

3.4.1 Meaning and Nature of Tribunals

The attempt to provide a uniform applicable single definition of the term tribunals is more than difficult. Even where the subject of discussion is one and the same, different jurisdictions used different terminologies to refer to the term having regard to the social set up of their own systems. Instead of trying to define this fluid concept of tribunal, it seems convenient to state what tribunals usually do and how they proceed. Tribunals are bodies established outside the structure of ordinary courts to adjudicate dispute that involve the government as a party on matters pertaining to governmental functions. The dispute could be between two or more governmental agencies, or between government agencies or between one or more individual parties. Hence, the typical tribunal, like an

ordinary court, finds facts and decides the case by applying legal rules laid down by statute or legislation. In many respects, the tasks performed by tribunals are similar to that of performed by regular courts.

As suggested by GARNER JONES, tribunals have the following five hallmars:

a. Independence from administration;

b. Capacity to reach a binding decision;

c. Decision taken by a panel of members (as opposed to a single Judge);

d. A simpler procedure than that of a court; and

e. A permanent existence[74]

3.5 THE ADVANTAGES AND DISADVANTAGES OF ADMINISTRATIVE ADJUDICATION

Technically speaking, judicial power/function is the primary function of courts. As mentioned somewhere else, the 1999 Constitution of the Federal Republic of Nigeria for example, in Section 6 expressly vested judicial power, both at the federal and State Levels in Courts. This goes in line with the principle of separation of state powers. However, It does not necessarily imply that only regular occurs shall exercise judicial power. Having said this, let us discuss the arguments developed concerning the advantages and disadvantages of delegating judicial power to administrative agencies. To begin with the advantages, judicial powers is usually delegated to administrative agencies/tribunals with the purpose of providing cheap, accessible, informal, speedy and specialized justice[75]. Concerning the paramount advantages of administrative

[74] Jones Garner's Administrative law, (7th edition, London, 1989), 276-277
[75] P.P Craig, Administrative Law, (4th ed. Sweet and Maxwell 1999) page 886

advantages of administrative adjudication over adjudication by ordinary courts. PHILIPS, JACKSON AND LEOPOLD:

> *"....The (administrative tribunals) could offer speeder, cheaper and more accessible justice, essential for the administration of welfare schemes involving large number of small claims.... The process of courts of law is elaborate, slow and costly...it (courts process) is to provide the highest standard of justice; generally speaking, the public want the best possible article and is prepared to pay for it...In administering social justice....the objective is not the best article at any price but the best article that is consistent with the efficient administration. Disputes must be disposed of quickly and cheaply for the benefit of the public purse as well as for that of the claimant".*[76]

As can be inferred from this, the arguments asserted in favour of delegating adjudicatory power to administrative agencies can be summarized as follows:

1. Expediency: Administrative agencies are better than ordinary courts in disposing cases timely.
2.. Administrative adjudication is cheaper than court adjudication
3. Administrative adjudication is more convenient and accessible to individuals compared to ordinary courts.
4. The process of adjudication in administrative agencies is flexible and informal compared to the rigid, stringent and much elaborated ordinary courts procedures.

[76] Philips, Jackson and Leopold, Constitutional and Administrative Law 8th Ed. London: Sweet and Maxwell. P. 886

5. Another justification which is not include in the above suggestion, that is related to the special expertise knowledge administrative tribunals manifest as compared to ordinary courts judges. Administrative can be filled with a panel vested with special skill and expertise related to the complicated dispute they adjudicate. LORD WILBERFROCE speaking in the House of Lords in ANISMINIC VS. FOREIGN COMPENSATION COMMISSION gave the reason for appointment of tribunal thus: **"The Foreign Compensation Commission is one of many tribunals set up to deal with matters of a specialized character, In the interest of economy, speed and expertise".**[77]

Due to the formal adjudication process, liberal standards of evidence in administrative adjudication and the special expertise, administrative tribunals demonstrate the possibility of getting quality justice timely and cheaply is very high. However, administrative/tribunal adjudication is not free of critics. Of the prominent critics are:

1. **Lack of expertise:** the argument here is that, as many of the members of the panel are selected from different walls with no or little legal background, they may lack the requisite legal expertise to adjudicate disputes .
2. **Partiality**: The fear here according to OPUTA JSC is that, as many or all of the member of the administrative tribunals are at the same time employees of the various offices or agencies, they might not be free from bias and partiality towards the agency[78].

[77] (1969) 2 WLR 163 P. 203

[78] FCSC vs. Laoye (1989) 3 NWLR pt. 80 P. 25 at 52. Garba vs. University of Maiduguri (1986) 1 NWLR 550 AT 618 SC.

3. **Violation of the Principle of Separation of Powers and Rule of Law:** Adjudication is the primary business of ordinary courts. So, transferring this power to administrative agencies is argued by some authorities to be a violation to this principles.
4. **There is inadequate opportunity for self Defence:** A Decision which affects the careers, livelihood, reputation and future of individual, or group may be taken without full hearing, or any hearing whatsoever or without the observance of the rules of natural justice of fair hearing[79].

[79] Iffie vs. A.GBendel State(1981) 4 NWLR, P. 972 CA, FMG vs. Ken Saro-Wiwa & Ors. Unrep. Suit No. OCDT/PH/1/95

CHAPTER FOUR

A CRITICAL APPRAISAL OF THE ADMINISTRATIVE LAW REMEDIES AVAILABLE IN THE PROTECTION OF THE RIGHTS OF CITIZENS

4.1 INTRODUCTION

Given the fact that there are so many administrative law remedies available in the protection of the right of the citizens, it is of course deemed necessary at the inception of this work to spell out some of the basic remedies to which this research work will be concerned with. The remedies shall be discussed and will be limited to the following three remedies:-

- Judicial Review
- Natural Justice and
- Public and Private Law Remedies

4.2 THE MEANING AND NATURE OF THE JUDICIAL REVIEW

The judiciary, being the guardian and the ultimate arbiter of justice, can intervene to test the legality of administrative decisions either in its appellate or reviewing capacity. Conceived in this sense, **CLIVE** B. **LEWIS** has defined judicial review as:

> *".....The process by which the court exercises supervisory jurisdiction (or control) over the activities of public authorities...".*[80]

The term "judicial review" has different meaning and scope in different jurisdictions. For example, in the United States, judicial review refers to the power of a court to review the actions of public sector bodies in terms of their lawfulness, or to review the

[80] Lewis, clive B. 2000. Judicial Remedies in Public Law. 2nd ed., London: Sweet & Maxwell, P.7

actions of public sector bodies in terms of their lawfulness, or to review the constitutionality of a statute or treat, or to review an administrative regulation for consistency with a statute, a treaty, or the Constitution itself[81]. But in the United Kingdom's context, the term judicial review refers to the power of the judiciary to supervise the activities of governmental bodies on the basis of rules and principles of public law that defined the grounds of judicial review. It is concerned with the power of judges to check and control the activities and decisions of governmental bodies, tribunals, inferior courts[82]... Judicial review is a procedure in English Administrative Law by which English courts supervise the exercise of public power. A person who feels that an exercise of such power by say, a government minister, the local council or a statutory tribunal, is unlawful, perhaps because it has violated his or her rights, may apply to the Administrative Court (a division of the High Court) for judicial review of the decision.

Irrespective of the above jurisdictional difference the term 'judicial review' simply put, means the power of the court to supervise/control the legality of the powers of administrative agencies. It is the exercise of the court's inherent power to determine whether an agency's action is lawful or not and to award suitable relief. And in the word of WADE & FORSYTH the primary purpose of judicial review is to keep government authorities within the bounds of their powers[83].

[81] http://www.en.wikipedia.ord/wiki/judicialreview The United States. Accessed on 25th July, 2012
[82] Cumper, Peter & With Walters Terry, Constitutional & Administrative Law (Oxford University Press, 2001. P. 291)
[83] Wade H.W.R & Forsyth C.F, Administrative Law, 9th Ed. Oxford University Press, 2004 P. 33-34

4.2.1 Grounds of Judicial Review

As it was earlier discussed, the purpose of judicial review is to test the lawfulness of government's decisions. Worth discussing at this point for this, is related to the determination of the grounds that may render an administrative decision unlawful/illegal. In order to delineate the boundaries in which judicial review may be called into operation, different jurisdictions made their own standards or criteria that may render administrative decisions unlawful or illegal. Australia can be as a good example in this regard. In Australia, an administrative decision is said to be unlawful if it breaks one of the criteria that are defined in Section 5 of the Administrative Decision (Judicial Review) Act 1977 (AD (JR) Act). The grounds of judicial review as outlined in Section 5 of the AD (JR) include the following:

a. A breach of the rules of nature justice;
b. A failure to observed the procedures that were required by law to be observed in connection with the making of the decision;
c. The decision was not authorized by the enactment in pursuance of which it was purported to be made and
d. The making of the decision was an improper exercise of the power conferred by the enactment in pursuance of which it was to be made. An exercise of power may be improper of the relevant conduct involves;
e. Taking an irrelevant consideration into account in the exercise of a power.
f. An exercise of a power that is so unreasonable that no reasonable person could have so exercised the power.
g. Any other exercise of power in any way that constitutes abuse of the power;

h. An error of law;

i. The decision was induced or affected by fraud;

j. The decision was otherwise contrary to law

The grounds of judicial review incorporated under the Australian Administrative Decision (Judicial Review), as listed above; have predominantly common law origin. But some of them are refined and reformed in a manner that fit the Australian situation. It does not mean, however, that these criteria are not used in the continental law world as ground for reviewing administrative decisions. In Nigeria for example, many of these criteria are receiving blessing as bases for reviewing administration decisions.

Having this general information in mind, it will be important to proceed with the details under the subsequent sub-sections.

4.2.2 Simple (Narrow) Ultra Vires

The simple proposition that a public authority may not act outside its powers (utra vires) might be called the central principle of administrative law. The juristic basis of judicial review is the doctrine of ultra vires[84]. In its reviewing capacity, the court is essentially looking at whether a decision making body has acted "ultra vires" or 'intra vires'. The term 'utra vires' measn 'without power' while 'intra vires' means 'within power'. If a decision making body acts ultra vires the reviewing court has the discretion to intervene[85]. The substantive or procedural issues affecting the decision can either instigate the intervention of the court.

A. Substantive Ultra Vires

[84] Wade H.W.R & Forsyth C.F., Administrative Law, 9th ed. Oxford University Press, 2004. P. 35

[85] Cumper, Peter & with Walters Terry, Constitutional & Administrative Law (Oxford university Press, 2001. P 291)

The term substantive ultra vires refers to the substantive defects of the decision as contrasted to the procedural irregularities. The underlining principle behind substantive ultra vires is that every power entrusted in the public interest has its own limit. So when the decision maker renders a decision that exceeds the power conferred upon him, it can be attacked through the forum of judicial review.

B. Procedural Ultra Vires

Even if the decision-maker passes a decision within the scope of the statutory power conferred upon him, still the decision may be rendered ultra vires because of procedural irregularities affecting the decision. the phrase procedural ultra vires refers to a decision passed could be obligatory (need strict compliance) or directory (provide direction to the decision-maker to be followed in at the discretion of the decision-maker in appropriate cases). Where there is a statutory procedure that dictates a course of an administrative action to be taken based on the established mandatory formal requirements, non-observance of these requirements renders the decision procedurally ultra vires.

Procedural illegalities, also known in the broader sense as procedural improprieties apply not only to non-observance of mandatory procedural requirements, but also to situations where the decision-maker fails to observe the rules of natural justice or fail to act fairly.

C. Jurisdictional Error

As a general rule, errors of fact made by the primary decision-maker are not to be corrected by a court. They are accepted as errors within the jurisdiction of the administrative decision-maker, and as such he or she is entitled to make them.

Factual issues are typically issues that go to the merits of a decision, not to its legality. Jurisdiction facts are different. Whether or not a decision-maker does or does not have jurisdiction to make a decision is a question of law and open to judicial review. A decision maker who erroneously interpreted the law as provided that a power that did not exist was said to have made a jurisdictional error of law. An error of fact can also be challenged as if also the error of Jurisdictional. A jurisdictional error of fact occurs where the existence of a particular state of affairs is a condition precedent to a decision-maker actually having jurisdiction[86].

D. Error of Law

As was discussed, judicial review is concerned with testing the legality of the Administrative decisions. This means that courts have more expertise to review errors of law than error of fact. Broadly speaking, error of law can be classified into 'errors going to jurisdiction' (Jurisdictional errors of law) and errors of law 'within jurisdiction'. According to CUMPER. Prior to the case **ANISMINIC LTD VS. FOREIGN COMPENSATION COMMISSION**[87], there was an important distinction between errors of law "going to jurisdiction" (Jurisdiction errors of law) and errors of law within jurisdiction' "(errors of law on the face of the record). As was stated in the preceding sub-section, jurisdictional error of law refers to a decision made without power (ultra vires) due to the wrong interpretation of the law. But an error of law within the jurisdiction is the type of error made by a decision-maker who errs in law whilst exercising powers, which have been conferred on him/her. This type of error will not automatically render decision ultra vires. The courts have discretion to intervene if the error of law appeared on the record of the

[86] Comper. Op. Cit P. 302 303
[87] (1969) 2 AC 14

decision. however, in **ANISMINIC LTD VS. FOREIGN COMPENSATION**[88], the House of Lords decision renders the distinction unnecessary in most cases. Their Lordships decided that errors of law could be treated as going to jurisdiction, even when there has been an error made in the process of exercising power conferred, rather than an error in deciding whether the power had actually existed.

E. Failure to Discharged Statutory Duty

The grounds of judicial review are not limited to ultra vires acts in the positive sense. An agency's failure to discharge a statutory duty towards the designated beneficiaries can also give rise to judicial review. For example, in the area of pension and social security, where the concerned organ of the government persistently fails to provide the benefit to the statutory designated beneficiaries, the latter can invoke judicial review seeking mandamus (compelling court order).

4.2.3 Abuse of power (Broad Ulta Vires)

For the purpose of judicial review, an ultra vires act can be liberally constructed to include not only those decisions of an authority that are rendered with no power, or in excess of power, or contrary to mandatory statutory procedural requirements such as discussed above; but it may also include those administrative decisions, although, falling within the wide discretionary power of the decision-making, may be found to be defective on the grounds of manifest unreasonableness, disproportionality, irrationality and other grounds that shall be appreciated in the subsequent sub-sections in turn.

A. **Unreasonableness**

When it is said that a discretionary has been exercised arbitrarily or unreasonably it means that the purported action is irrational, foolish, unwise, absurd, silly,

[88] Supra

preposterous, senseless, stupid, injunctions, nonsensical.[89] in **PRESCOTT VS. BIRMINGHAM CORP**[90]. A Corporation was given powers to maintain and operate a transport system and to charge such fares as it thought fit. It decided to provide free travelling facilities for women over 65 and men over 70 years. The Court of Appeal held that the action was unreasonable because it was economically stupid. Although, there are critics labeled against conferring discretionary powers to administrative agencies for fear that such agencies may abuse such unrestrained powers, still it remains the hallmark in the science of administration. As **CANE** pointed out, discretion is a feature not only of a policy decision but also decisions on question of fact and law, which often have no 'right answer' but more than one 'reasonable answer' from which the decision maker must choose[91]. Discretion, as to procedure to be followed in making a decision, can also have an important impact on the decision itself.[92]

The very concept of administrative discretion involves a right to choose between more than more possible course of action upon which there is room for reasonable people to hold different opinions as to which is to be preferred[93]. As expounded by .the 19th century jurist DICEY, discretionary power should be controlled; uncontrolled (absolute) discretion is an evil to be avoided in most contexts. Uncontrolled discretion in the words of WADE leaves the citizens at the mercy of the administrator, especially if the letter is not required to tell the citizen the reason why the discretion was exercised in the particular way it was. Discretion also opens

[89] Southern Kensas State lines Co. Vs. PCS (1932) 135 KANS, 657
[90] (1954) 3 ALL E.R 698
[91] Cane, Peter, An Introduction to Administrative Law (3rd ed. Oxford University Press, 1966) P. 133
[92] Ibid
[93] Wade H.W.R & Forsyth C.F, Administrative Law, (9th ed. Oxford university, Press, 2004) P. 365

the way for inconsistent decisions, and demands a much higher level of care and attention on the part of the administrator exercising it[94].

Despite the difficulties to demarcate the line between reasonable decision and its antithesis-unreasonable, there is a consensus in the common law world that when a decision-maker reaches a decision that no reasonable person would have made, it can be well taken as a ground for judicial review. **In R.C GREENWICH LONDON BOROUGH COUNCIL, EX PARTER CEDAR HOLDINGS**[95] it was held that a decision is unreasonable if it is the kind of decision that is so outrageous that no right thinking person would support it.

In **ASSOCIATED PROVINCIAL PICTURE HOUSES LTD VS WENDESBURY CORPORATION,**[96] a case involving a decision to deny access to a movie theatre to youngsters on Sunday, presumably to preserve their moral health, in refusing to interfere with the decision, **LORD GREEN MR.** noted that there was considerable overlap between many of the grounds of review that fell within the rubric of unreasonableness. In words which have been repeated by countless judges on many occasions his Lordship said:

> *"it is true that the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with discretion*

[94] Ibid
[95] (1983) R.A 17
[96] (1948) 1 KB 233 p. 229

must, so to speak, direct himself property in law. He must call his own attention to the matters, which he is bound to consider. He must exclude from his consideration matters, which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said and often is said, to be acting unreasonably...".

Similarly, unreasonableness may be something so absurd, that no sensible person could ever dream that it lay within the power of the authority. **WARRINGTON LI in SHORT VS. POOLE CORPORATION**[97] gave the example of the red-haired teacher dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration an extraneous matter. It is so unreasonable that it may be described as being done in bad faith; and in fact, all these things run into one another.

An authority has listed the following other types of cases where administrative decisions have been set aside for unreasonableness[98]:

a. Where a decision is devoid of plausible justification
b. Where a decision-maker has made an erroneous finding of fact on a point that is fundamentally important in the case;
c. Where the decision-maker has failed to have regard to departmental policy or representation;
d. Where the effect of the decision is unnecessarily harsh

[97] (1923) Ch. 66

[98] Aberham Yohannes & & Desta G/Michael "Administrative Law Teaching Material 2009" Chilot. Filewordpress.com/2011/06administrative-law-pdf justice and Legal System Research Institute. Accessed 1st July, 2012. Web.

e. When the decision-maker has failed to give genuine, proper or realistic consideration to a matter.

f. Where there are demonstrable inconsistencies with other decisions

g. Where there is discrimination without a rational distinction.

B. **Proportionality**

WADE & FORSYTH stated that in the law of a number of European countries there is a 'principle proportionality'. Which ordains that administrative measures must not be more drastic than it is necessary for attaining the desired result[99]. According to these authorities, the principle of reasonableness and proportionality cover a great deal of common grounds. A severe penalty for a small offence may be challenged based on the principle of proportionality or reasonabless

The concept of proportionality has it origin in the civil law of continental Europe. It considers whether:

a. The legislative objective is sufficiently important to justify limiting a fundamental right;

b. The measures designed to meet the legislative objective are rationally connected to it; and

c. The means used to impair the right or freedoms are no more than in necessary to accomplish the objective[100].

[99] Wade H.W.R & Forsyth C.F Administrative Law, 9the ed Oxford University Press, 2004 P. 366

[100] De Freitas vs. Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing (1999) 1 A.C at 80

Proportionality was first adopted in England as an independent ground of judicial review in **R.V HOME SECRETARY: EX PARTE DALY**[101]. It was accepted that while there was considerable overlapping between proportionality and the traditional grounds of judicial review, the test of proportionality led to a – greater intensity of review than the traditional grounds. What this means in practice is that consideration of the substantive merits of a decision plays a much greater role.

As can be inferred from the above, proportionality can be invoked as an independent ground of judicial review in England. In short, the notion of proportionality has received increasing importance in recent years. This requires a certain proportion or balance between the administrative measure to be taken and the end to be achieved. In France, too, disproportionality of the administrative measure may be invoke as a ground for reviewing the decision by administrative courts.

C. **Irrationality**

The distinction between irrationality and unreasonableness is not as such clear, some authorities appears to use both as separate grounds of judicial review, whereas, some use 'unreasobleness' as one of the typologies of 'irrationality'. Examples of such writers are **CUMPER** and **CANE**. **CUMPER** provided a list of the species of irrationality to include:

a. Failure to exercise discretion properly: where the decision-maker either did not exercise discretion sufficiently free from outside influences, or abused the discretion;

[101] (2001) 2 AC 532

b. Acting as though limited by external authorities; where the decision-maker fails to exercise any discretion at all, believing himself or herself to be bound be external rule;

c. An unauthorized delegation

d. Decision-maker applies policy without flexibility: where the decision-maker who is conferred with discretionary powers is expected to consider each case on its own facts and merits but renders a decision rigidly without considering whether the particular case has extenuating factors which would necessitate them making an exception;

e. Abuse of discretion: where the decision-maker uses power for an improper purpose of frustrates the legislative purpose; makes a decision on the basis of irrelevant factors or fails to make account of relevant factors; reaches a decision that is unreasonable in itself; reaches a decision that is unreasobale itself.

f. Uses of power for an improper purpose or to frustrate the legislative purpose;

g. Forming decision on basic of irrelevancies or ignoring relevant factors;

h. And unreasonableness

D. Relevant and Irrelevant Considerations

As provided in the preceding sub-section, reaching at a decision on the basis of irrelevant considerations, or by disregarding relevant considerations is one of the manifestations of irrationality. So, as stated in the case **R. V SECRETARY OF STATE FOR SOCIAL SERVICES, EX PARTE WELLCOM FOUDNATION LTD.**[102] It is a reviewable error either to take account irrelevant considerations or to ignore relevant ones, provided that if the relevant matter has been considered or the

[102] (1987) 1 WLR 1166

irrelevant one is ignored, a different decision or rule might (but not necessarily would) have been made. According to CANE, many errors of law and fact involve ignoring relevant matters or taking in to account of irrelevant ones[103]. Ignoring relevant considerations or taking account of irrelevant ones may make a decision, or rule unreasonable in accordance with statutory policy.

As COOKE J. pointed out in the case of ASHBY VS. MINISTER OF IMMIGRATION,[104] considerations may be obligatory i.e those which the Act expressly or impliedly requires the Minister to take into account and permissible consideration. i.e those which can properly be taken into account, but do not have to be (Cited in Wade & Forsyth, P. 381) where the decision-maker fails to consider those obligatory considerations expressed or implied in the Act, the decision has to be invalidated. Whereas, in the case of permissive considerations, the decision-maker is not required to strictly abide to such considerations. Rather, the decision-maker is left at discretion to take relevant considerations having regard to the particular circumstances of the case by ignoring those irrelevant ones from consideration.

It is suffice to say that where the decision-maker fails to take relevant considerations into account but takes those irrelevant ones, there is high probability that the outcome of the decision may be affected by defects than not. So, the interference of the court to review such kind of decisions seems justifiable.

[103] Cane, Peter, An Introduction to Administrative Law, (3rd ed. Oxford University Press, 1966) P. 116
[104] (1981) 1 NZLR 222 at 224

E. Bad Faith

This means that administrators have a general duty to exercise their powers in good faith to achieve the purpose for which those powers are entrusted to them according to the interest of the public. Although, it is difficult to discern the constituting elements of all decisions rendered in bad faith, one can safety say that it indicates lack of good faith on the part of the decision-maker.

Appreciating the interconnection between the other grounds of judicial review such as unreasonableness, irrationality and the consideration of irrelevant matters or ignoring relevant matters. **WANDE** and **FORSYTH** say:

Bad faith scarcely has an independent existence as a distinct ground of invalidity. Any attempt to discuss it as such would merely lead back over the ground already surveyed but a few examples will illustrate it in its customary conjunction with unreasonableness and improper purposes. If a local authority were to use its power to erect urinals in order to place one "in front of any gentleman's house", then "it would be impossible to hold that to be a bona fied exercise of the powers given by the statute..." if a liquor license is cancelled for political reasons, the minister who brought this about is guilty of "a departure from good faith". Such instances could be multiplied indefinitely. Cases of misfeasance in public office, where the misfeasor knows that he is acting outside his powers, could be added to the collection[105].

The outcome of a decision may be affected due to the existence of bad faith on the part of the decision-maker. The unreasobleness or irrationality of a decision may result from a decision that is induced by bad faith on the part of the decision-maker.

[105] Wade, H.W.R & Forsyth C.F. Administrative Law, 9th ed. Oxford University Press, 2005. P. 216

As discussed earlier, where a decision is found manifestly unreasonable, judicial review will be invoked against such decision.

4.3 NATURAL JUSTICE

The principle of natural justice has featured in decisions by 'Judicial',quasi-judicial and 'administrative bodies' affecting Nigeria citizens. Yet, in view of the high level of illiteracy in Nigeria couples with a general lack of enlightenment regarding the righst of the citizens, nor Nigerians are hardly aware what these rights and the principles behind them entail. This paper is geared towards shedding some light on those rights and principles.

OYEWO[106] quotes **DE SMITH** as submitting as follows:[107]

> *No proposition can be more clearly established than that a man cannot incur the loss of liberty or property until he has had a fair opportunity of answering the case against him.*

OYEWO[108] Further recounts **DE SMITH**[109] as illustrating the tradition of natural justice by reference to scriptural history:

> *Even God did not pass sentence Upon Adam before he was called upon to make this defense. Adam says God, where are Thou? Have thou eaten out of the tree whereof I commanded thee that thou should no eat?*

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[106] Oyewo, A.T Cases and Materials on the Principles of Natural Justice in Nigeria (Ibadan: Jator Publishing Co, 1987) at P. 2

[107] Evans, j. M De Smith's Judicial Review of Administrative Action (London: Stevens & Sons, 4th ed. (1980) at P. 158

[108] Oyewo, n 1 at P. 2

[109] De Smith, in 2 at P. 158

This reasoning, one might add also formed the basis of the decision in the English case of **R.V CAMBRIDGE UNIVERSITY**[110] where the court linked natural justice to the events leading to the expulsion of Adam from the Garden of Eden.

One of the grounds elucidated in the case of **HEAD OF THE FEDERAL MILITARY GOVERNMENT VS. PUBLIC SERVICE COMMISSION & ANOR**[111]. Upon which a decision could be invalidated is when such a decision relates to the infringement of the rules of natural justice[112]. This explains the observation of **ORETUYI**[113] when he said that "the most frequent cause of judicial interference with the exercise of judicial and quasi-judicial powers is a disregard of rule of natural justice".

The expression "natural justice" has been described as one sadly lacking precision because of the various meaning that may attach to the word "Justice". This has however, not dissuaded jurists from attempting a working definition of the concept of natural justice however, inadequate. **ILUYOMADE** and **EKA** have offered that it "connotes an inherent right in man to have a fair and treatment at the hands of the rulers or higher agents"[114]. The rules of natural justice, according to a justifiable effusive OBASEKI, JSC[115] are common law rules "which are of universal application in the civilized world" and have "provided refuge from oppressive laws and action over the ages".

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[110] (1723) 1 Str.557
[111] (1974) 11 SC79
[112] At 125. Uzuda vs. Ebigah (2009) 15 NWLR (pt.1163) 1 SC
[113] Oretuyi S.A, "Discipline of Students: A Vice-Chancellor Must Observe the Rules of Natural Justice" (1981) 12 (1) Nig. L.J. 82
[114] Illuyomade, B.O and Eka B.U, Cases and materials on Administrative law in Nigeria (ille-ife, Nigeria: University of Ife Press, 1980)at P. 313
[115] Aiyetan vs. Nigerian Institute for Oil Palm Research (1987) 6 SCNJ 36, at page 55

What has been espoused in the foreign is the principle of fair hearing, which in civilizations around the world has now been embodied as a requirement of natural justice.

Fair hearing is a hearing in which the authority of the judge has been fairly exercised with deference to all parties in line with the fundamental principles of law and justice.

The courts have made the distinction that a breach of the rules of fair hearing resulted at once in the nullification of the proceedings while failure to consider and decide vital issues placed before it may or may not result in setting aside the decision depending on whether or not a miscarriage of justice had been thereby occasioned[116]. The true test whether a miscarriage of justice has been occasioned is "whether the result of the case would have been the same even if the breach of the principle of fair hearing had not occurred[117]. There the court may hold that the breach had not been fundamental though AYOOLA, JSC did say that "an unfair method cannot produce a fair result".[118]

Thus, the test of "miscarriage of justice" does not come within the contemplation of the time tested principle espoused in the KOTOYE VS. **CENTRAL BANK OF NIGERIA**[119] to wit, once a breach of the principle of fair hearing has been shown, no further damage need be shown and the decision in issue must be set aside.

[116] Uka & Ors vs. Iroko & Ors. (Supra) at Pp. 328-329
[117] Idakwo vs. Ejiga & Anor. (2002) 11 NSCQR 232 at P. 238
[118] Supra
[119] (1989) 2 SCNJ 31, 51

A. The Twin Pillars of Natural Justice

The twin pillar as used here refers to the main the principles that make up the content of natural justice. There are widely acclaimed principles of natural justice which have been hailed as "the twin pillars of the rules of natural justice and indeed the bastion of the rule of law in a civilized and organized society"[120].

A. The Audi Alteram Partem Rule (Hear both sides); and

B. The Nemojudex in CausaSua (no one shall be a judge in His Own Cause rule.

The two principle together entail that a person must be availed a fair hearing[121]. What has become something of a locus classicus in Nigeria is the Supreme Court decision in **GARBA & ORS VS. THE UNIVERSITY OF MAIDUGURI**[122] where many cases dealing with fair hearing was highlighted. In the case, the chairman of an investigating Panel, which tried the Appellants, was a Deputy Vice Chancellor of the University who was a victim of the rampage the students were alleged to have committed. The Supreme Court held that a likelihood of bias is discernible since the Deputy Vice Chancellor was not only a witness in this panel but a Judge at the same time. Supreme Court established that fair hearing in Nigeria is not only a common law requirement, but also a statutory and a constitutional requirement and that when the Vice Chancellor assumed the disciplinary powers, he became not a court but a tribunal established by law acting in a quasi-judicial capacity. Thus, he was bound to act judicially, comply with the constitutional requirements of fair hearing and pass the qualification test to assume judicial functions. The Court went ahead to hold **PER OPUTA JSC:**

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[120] Ajayi vs. Security Exchange Commission (2009) 13 NWLR (pt. 1157) P. 1 CA
[121] Akpakpan vs. Akpakpan (2009) 1 NWLR (pt. 1176) 627 C.A Oloruntolgba-Oju vs. Abdul-Raheem (2009) 13 NWLR (pt. 1157) 83 S.C
[122] (1986) 1 NWLR 550

It is my humble view that fair hearing implies much more than hearing the appellants testifying before the Disciplinary investigation Panel; it complies much than other staff or students testifying before the Panel behind the backs of the appellants; it implies much more than the appellants being given a chance to explain their own side of the story. To constitute a fair hearing whether it be before the regular courts or before Tribunals and Boards of Inquiry, the person accused should know what is alleged against him: he should be present when any evidence against him is tendered and he should be given a fair opportunity to correct or contradict such evidence. How else is this done if it were not cross examination?[123]

Aptly, the 1999 Constitution by its section 36 (1) has imported the two-fold doctrine of fair hearing providing thus:-

"In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to ensure its independence and impartiality"

For those who wonder about disciplinary tribunals, for instance, set up for the trial of erring employees and their independence, there is also a saving clause. Thus under sub-section (2):

"without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power

[123] At P. 618

to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law.

a. *Provides for an opportunity for the person whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person; and*
B. *Contains no provisions making the determination of the administering authority final and conclusive"*

Thus such administrative authorities may vividly conduct their inquiries provided that they do not infringe upon the conditions stated under the sub-section.

It must be emphasized that the consequence of the breach of the right to fair hearing which admits of no excuses is that any decision reached in breach of the rule must be set aside. In the famous case of **KOTOYE VS. CENTRAL BANK OF NIGERIA**[124] the Supreme Court held that:

> *The rule of fair hearing is not a technical doctrine. It is one of the substance. The question is not whether injustice has been done because of a lack of hearing. It is whether a party entitled to be heard before deciding had in fact been given the opportunity of a hearing. Once it is concluded that a party was entitled to be heard before a decision and he was not given that opportunity, the order or judgment thus entered is bound to be set aside.*

[124] Supra

In **ADIGUN VS. A.G OYO STATE & 18 ORS,**[125] the Supreme Cour*t Said:*

> *The Appellants do not have to show injury or prejudice. It is implicit in the very act of denial because the denial is an injury to the right of fair hearing guaranteed by the Constitution and rules of natural justice.*

In further held that if the rules of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principle of justice.

No Authority illustrates this position more than the one of **ADEDEJI VS. POLICE SERVICE COMMISION**[126] where the Supreme Court expressed the following view:-

> *We are therefore not satisfied that when the circumstances of this case are looked into, adequate opportunity was given to the appellant to meet the case or the facts of the case known to the Commission. It is possible that the appellant it corrupt and did commit the offence alleged against him, that is not what we have to consider. Was the case against him sufficiently brought home to him that one can say that the requirements of natural justice were sufficiently observed on the facts and circumstances?....we hereby order that the writ should go and the*

[125] (1987) 3 SCNJ 118
[126] (1968) NMLR 102

letter dismissing the appellant is hereby declared inoperative, void and of no effect.[127]

The above decision follows on the heels of **CEYLON UNIVERSITY VS FERNANDO**[128] in which the privy Council Opined:

What are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly, that they should be given opportunity to state his case; and thirdly, of course, that the tribunal should act in good faith[129].

The true test of fair hearing as it has been severally expounded, is the impression to creates on a reasonable man:

The true test of fair hearing is the impression of a reasonable person who was present at the trial whether from his observation justice has been done in the case. The reasonable man should be a man who keeps his mind reasoning within the bounds of reason and not extreme. And so if in the view of a reasonable man who watched the proceedings, the principle of fair hearing was not breached, an appellate court will not nullify the proceedings[130].

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[127] At Pp. 107-108
[128] (1960) 1 WLR 223
[129] At P. 232
[130] Orugbo & Ors vs. Una & Ors (2002) 11 NSCQR 537 at P. 550

The above dictum accords well with the principle that justice must not only have been done but must be seen to have been done. If the reasonable man cannot see that justice has been done, then invariably justice has not been done.

4.3.1 FAIR HEARING (The Audi Alterem Partern Rule)

This is the doctrine that in coming to a decision, the deciding authority must hear all the parties. The doctrines was formulated with precision in the case of **RIDE VS. RAILWIN**[131] where LORD **HUDSON** said:

> No one, I think, disputes that three features of natural justice stand out: (1) the right to be heard by an unbiased tribunal: (2) the right to have notice of the charge of misconduct; and (3) the right to be heard in answer to those charges.

The rules now seems to have been summarized as follows:-

a. That a person knows what the allegations against him are;
b. That he knows what evidence has been given in support of such allegations;
c. That he knows what statements have made concerning these allegations;
d. That he has a fair opportunity to correct and contradict such evidence; and
e. That the body investigating the charge against such person must not receive evidence behind his back.

Without much ado, the Supreme Court has evolved a set of principles, standards so to say, by which the test of fair hearing should meet and these are not too dissimilar to the above, one of those case is **BABA VS. NIGERIAN CIVIL AVIATION TRAINING CENTRE**[132] where

[131] (1963) 2 ALL Er 63
[132] Baba vs. Nigerian Civil Aviation Training Centre (1991) 7 SCNJ 1

the Supreme Court formulated the following standards for a fair hearing before a judicial or quasi-judicial body. In order to be fair, the hearing must include the right of the person to be affected.[133]

a. To be present all through the proceedings and hear all the evidence against him;
b. To cross examine or otherwise confront or contradict all the witnesses that testify against him;
c. To have read before him all the documents tendered in evidence at the hearing;
d. To have disclosed to him the nature of all relevant material evidence, including documentary and real evidence, prejudicial to the party, save in recognized exceptions;
e. To know the case he has to meet at the hearing and have adequate opportunity to prepare for his defence; and to give evidence by him, call witnesses if he likes, and oral submissions either personally or through a counsel of his choice.

It is imperative to consider each of the requirements of natural justice as set in **THE NIGERIAN CIVIL AVIATION AUTHORITY TRAINING CENTRE CASE**[134] with case law if possible.

1. To be present all through the proceedings and Hear all the Evidence against Him:

   In **DENLONE VS. MEDICAL AND DENTAL PRACTITIONERS DISCIPLINARY TRIBUNAL,**[135] the issue before the court was whether a hearing held by the Medical and Dental Practitioners investigation Panel in which, hearing was held:

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[133] The Supreme Court Decision in Oyeyemi vs. Commissioner for Local Government, Kwara State & Ors. (Supra) Also bears this out.
[134] Baba Vs. Nigeria Civil Aviation training Centre (1991) 7 SCNJ 1
[135] (1968) 1 ALL NLR 306

a. At close doors (i.e without the presence of the appellant and)

b. Which denied him (the appellant) opportunity to defend himself amounted to the infringement of the rules of natural justice?

The court held that the procedure adopted by the Panel was unknown to law and that as such contrary to the principle of natural justice. The court further held that any outcome from such decision is consequently null and void and of no consequence.

2. **To cross-examine or otherwise confront or contradict all the witness that testified against him:**

In JALO GURI & ANOR VS. HADEJIA NATIVE AUTHORITY[136] the Appellants who were convinced under "hiraba" (Highway robbery) law of Maliki were set free by Supreme Court because the lower court adopted not only an inquisitorial procedure but also failed to some extent to observe the principles of natural justice, equity and good conscience. The 'hiraba' law was declared inoperative when the exposition of its application forbids an accused person to be given either an opportunity of defending him self or any change of questioning any of the witnesses for the prosecution.

OPUTA JSC: Unarguably the most erudite and eloquent jurist to have travelled through the Supreme Court put this rule in it proper perspective in his observation in **GARBA VS. THE UNIVERSITY OF MAIDUGURI.**[137]

> *To constitute a fair hearing whether it is before the regular courts or before tribunals and Boards of inquiry the person accused should know what is alleged against him: he should be present when any evidence against him is tendered*

[136] (1959) 4 FSC 44
[137] (1986) 1 NWLR 550

and he should be given a fair opportunity to correct or contradict such evidence. How else is this done if it be not by cross-examination?[138]

3. To have Read Before him all the Documents Tendered in Evidence at the Hearing:

In R.V. DIRECTOR OF AUDIT (WESTERN REGION) & ANOR. EX PARTE OPUNA & ORS[139]. The Director of Audit wrote to the Appellants and certain other councilors calling on them to show cause why they should not be surcharged in respect of a certain sum in accordance with the provisions of a certain law. Many of the councilors failed to reply and those who did reply failed to satisfy the Director that a surcharge should not be made and were accordingly surcharged though given a right of appeal to the Minister. Though the Appellants exercised this right they challenged the Minister's final decision upholding the surcharges by certiorari on the ground that the Minister came to his decision without hearing them or given them a further opportunity to be heard. The trial judge came to the conclusion that a fair inquiry had been held. On appeal, the Federal Supreme Court held that the Appellants petition was forwarded to the Ministry without any intimation that the Appellants wished to supplement the document, and no further submissions were received before the decision of the Minister was communicated to the Appellants. All relevant documents were forwarded to the Minister and there is nothing to show that the Director of Audit made further representations, which required a further explanation from the Appellants.

[138] At P. 618
[139] (1961) ALL NLR 659

4. **To have disclosed to him the nature of all Relevant Material Evidence, Including Documentary and Real Evidence, Prejudicial to the party, Save in Recognized Exceptions:**

In ADEDEJI VS. POLICE SERVICE COMMISSION[140] the appellant, who was an Assistant Superintendent of Police, was served with a letter by the Respondents, he was accused of corruption and contraventions of certain general orders. He was required to make representations why he should not be dismissed for the offences. He wrote a reply but was eventually dismissed. He challenged his dismissal but was confronted at the High Court with a four foolscap page counter affidavit, which contained allegations, which were not in the letter querying the Appellant. The Court dismissed his case. He appealed to the Supreme Court which held that the letter did not sufficiently appraise the Appellant of the case against him giving him sufficient opportunity to state his case in rebuttal in view of the fresh allegations in the counter affidavit and that adequate opportunity was not given to the appellant to meet the case or the facts of the case known to the Commission.

5. **To know the Case he has to meet at the Hearing and have Adequate Opportunity to prepare for his Defence:**

In AIYETAN VS. NIGERIAN INSTITUTE FOR OIL PALM RESEARCH (NIFOR)[141] the appellant, an employee of the Respondent, a statutory corporation was invited before a board of inquiry to testify as a witness to the loss of some money with which a fellow employee absconded. The appellant testified as a witness and gave useful suggestions in regard to how such an occurrence can be avoided in future. The

[140] (1967) NMLR 102
[141] (1987) 6 SCNJ 36

respondent later dismissed the appellant from his employment in the ground that the board found him guilty of negligence. The Supreme Court held his dismissal to be a serious and fatal breach of the rules of natural justice. The decision of the apex court roots from the fact that the appellant was neither informed of the case against his nor was him given an adequate opportunity to defend himself as he had been invited to testify to the loss of money, not to this role in the loss.

Authorities abound too for the other requirements such as that the person to be affected must be availed the right to give evidence by himself, call witnesses if he likes[142] and make oral submissions either personally or through a counsel of his choice[143].

4.3.2 RULE AGAINST BIAS (The Nemo Judex in Causa Sua Rule)

The Latin Maxim nemo Judex in Causa sua is the shorthand expression for the rule against bias and interest. This means that a man must not be a judge in his own cause. The actual bias or the real likelihood of bias, prejudice, partially or unfairness that arises from that anomaly would decimate public confidence in the administration of justice by the courts or tribunals.

It has been defined as follows:

> *Bias in its ordinary meaning is opinion or feeling in favour of one side in a dispute or argument resulting in the likelihood that the judge so influence will be unable to hold an even scale*[144].

In **BAMIGBOYE VS. UNVERSITY OF ILORIN & ANOR.,**[145] **OGUNDARE, JCA** considering the term offered a more illustrative definition where he said that this is when trial or proceedings has been influenced, inter aliar, by corruption or favoritism or by tribunal

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[142] Sadu of Kunya vs. Kadir of Fagge (1956) 1 FSC 39. See also Kano Na Vs. Obiora (1960) NNLR 42

[143] Ogboh & Anor. Vs. The Federal Republic of Nigeria 10 NSCQR at P. 508-509

[144] Kenon & Ors. Vs. Tekam & Ors. (2001) 7 NSCQR 147 at P. 168

[145] CA/K/203/90 Delivered on 14.05.91, P. 44-45

descending into the arena, and thereby discarding the role of an arbiter, and participating in the battle.

Bias has been departmentalized into two:

a. Pecuniary[146] and/or proprietary bias on the one hand and

b. Non-pecuniary bias on the other.

It would appear, following the decision in **METROPOLITAN PROPERTIES CO. F.G.C) LTD VS. LENNON.**[147] That a direct pecuniary interest in a matter automatically disqualified a judge from his role as such. In practice however, the decisions upturned owing to pecuniary bias are not so prevalent in the Nigerian jurisdiction. This is due to the practice in this country where litigants can be petition the National Judicial Council where they are aggrieved in **UMANAH VS. ATTAH & ORS**[148] for instance, the judges against whom the allegation of corruption was made has actually been dismissed from service upon investigation.

In cases of non-pecuniary base, it appears that what is paramount is the propensity of the fact; if in its appearance to the reasonable man, that the judgment of the judicial arbiter is beclouded or tainted with bias[149]. In all forms of non-pecuniary bias, be they policy or bias formed on the basis of personal animosity, family or professional relationship, these will all be measured against the yardstick of its reasonableness[150].

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[146] In Umanah vs. Attah & Ors. SC. 25/5/2005, Judgment Delivered on 29th Sept. 2006. This authority can also be accessed at http://www.nigerian-law-org/Dr%201me%20Sampson%20Uman.htm which was last visited on 07/04/08

[147] (1969) 1 QB 577, 598

[148]. Supra m 41

[149] The Court of Appeal called it "what may raised reasonable doubt as the ability of the Judge to be fair" in Mohammed vs. Nigerian Army (2001) 1 CHR 470 at P. 482

[150] As the Courts have said in Oyelade Vs. Aroaye (1968) NMLR 41 and Kenon & Ors. Vs Tekam & Ors. (Supra an 49 1t 167), once a person has a duty to give a judicial decision, he must approach that duty with an open mind and he ought to presume in advance that a particular decision is the right one. This if it would appear to a

It follows then that a person who is a party to dispute or who acted as counsel for one of the parties may not sit in judgment over the same matter in view of the apparent likelihood that his emotions may tilt. In **UMENWA VS. UMENWA & ANOR,**[151] a lawyer appeared for a party in a case and on becoming a judge also sat to decide the dispute. He was held to have descended into the arena. In such cases, the whole decision of the court is vitiated and the judgment would be void.[152]

Similarly it has been held that foreknowledge of the primary facts of a case is an aspect of bias for "where a Judge has foreknowledge of the facts he does not come to the dispute with an openness of mind that would enable him to hold an even scale. Therein lies the unfairness".[153] There the court however drew the line between that situation and one in which the parties and the subject matter are different and came to the conclusion that that would not amount to a foreknowledge of the facts.[154]

In **OYELADE VS. ARAOYE**[155] The decision in **OBADARA VS. PRESIDENT IBADAN WEST DISTRICT GRADE B CUSTOMARY COURT**[156] in holding that in the rare cases where it could be proved that a decision had actually been affected by the bias of the person making it would no doubt be conclusive but that while suspicion is enough, the courts do not appear to require proof that actual bias operated on the mind of the person making the decision and that a real likelihood of bias may be show. Similarly, **OGUNDERE, JCA**[157] has also

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reasonable man that the fact in issue has the propensity to leave this impression in the mind of the arbiter, the form of non pecuniary bias in issue would vitiate a decision.

[151] (1987) 4 NWLR (pt. 67) 407

[152] Sandy vs. Hotogua (1952) 14 WACA 18

[153] Kenon & Ors. Vs. Tekam & Ors. (Supra, n 39)

[154] Supra at P. 168

[155] (1968) NMLR 41

[156] (1965) NMLR 39

[157] Bamigboye vs. University of Ilorin (Supra, n 40) at P. 45

observed that "bias is always difficult to prove save in proven cases of bribery; and that is why the law stipulates that a mere likelihood of bias sufficies"

The rationale for this is exemplified in the dictum of **BLACBURN, J. in R.V. RAND**[158] that:

> *...it is not only of some importance, but it is of fundamental importance that justice should not only be done, but should be seen to be done.*

Some of the most definitive restatements of the law have been occasioned by the Supreme Court which has held[159] that since the Chairman of the Investigating Panel which tried the appellants was the Deputy Vice Chancellor of the University and was a victim of the rampage, the necessary inference to be drawn was that there was a real likelihood of bias since the Deputy Vice Chancellor was thus a witness and a judge at the same time.

Bias then may be inferred from a number of things and more-a compelling personal animosity of hostility, personal friendship, family or professional relationship.

Proof must be substantial. For in cases involving allegations of bias or the real likelihood of bias:

> *.....There must be cogent and reasonable evidence to satisfy the court that there was in fact such bias or real likelihood of bias as alleged. In this regard, it has been said, and quite rightly too, that the mere vague suspicion of whimsical, capricious and unreasonable people should not be made a standard to constitute proof of such serious complains.*[160]

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[158] (1866) LR 1 QB 230
[159] Garba vs. University of Maiduguri (Supra, n 14)
[160] Ojengbede Vs. Esan & Anor (2001) 8 NSCQR 461 at 471

Thus, the determination whether fair hearing has been complied will depends on the facts of each case[161]. It is said that no two set of facts are the same. Each set must be examined to determine whether fair hearing has been employed or not.

There is a tendency now, arising from the decision in the **CEYLON UNIVERSITY CASE**[162] to include male fides or bad faith on the part of the employer in the genre of interest or bias.

4.4 PUBLIC AND PRIVATE REMEDIES

The term remedy in this context refers to the varieties of awards/relieves that be granted by the reviewing court following an application for judicial review. As a general rule, where any of the grounds justifying judicial review are there, a person complained against the agency decision has to include in his or her application for judicial review the type(s) of order or redress he or she sought from the reviewing court. Thus, the relief that the applicant seeks from the reviewing court is what we call remedy.

For technical and historical reasons, remedies are broadly classified into public law remedies and private law remedies. Those include within the category of public law remedies also known as prerogative orders are certiorari (a quashing order), prohibition (prohibiting order), mandamus (mandamus order), and Habeas Corpus (an unlawful detention release order), whereas private law remedies include injection, declaration and damages. It has to be noted that each of the remedies listed above are not mutually exclusive. Appreciating this fact, Cane write:

> *Leaving damages aside, these remedies perform four main functions: the mandatory function of ordering something to be done is performed by*

[161] Ibid
[162] Supra, n 23

mandamus and the injunction; the prohibiting function of ordering that something not be done is performed by prohibition and the injunction; the quashing function of depriving a decision of legal effect is performed by certiorari; and the declaratory function of stating legal rights or obligations is performed by the declaration. The use of more than one remedy to perform two of these functions involved unnecessary duplication and produces undersirable complications in the law.[163]

Having said this as introductory remark, let us proceed to the detail consideration of these remedies.

4.4.1 ORDER OF CERTIORARI

The writ of certiorari, also referred to as quashing order, is a procedure through the reviewing court investigates the legality of an agency's decision complained of, and will quash or nullify where the decision of question is found to be ultra vires.[164]

According to CANE, In its term, an order of certiorari instructs the person or body whose decision is challenged to deliver the rocord of the decision to the office of the Queen's Bench Division to be quashed (deprived of legal effect)[165] Concerning the theoretical and practice effect of certiorari CANE makes important remark as follows:-

There is a theoretical problem here because a decision, which is illegal in the public law sense, is usually said to be void or a nullity in the sense that the decision is treated as never having

[163] Cane, Peter, An Introduction to Administrative Law (3rd ed. Oxford University press, 1966). P. 62.
[164] Ajayi vs. Securities and Exchange Commission (2009). 13 NWLR (pt. 1157) 1 CA Egbuniwe vs. Federal Government of Nigeria (2010) 2 NWLR (pt. 1178) 348 C.A
[165] Cane, Op. Cit. P. 62

had any legal effect. A decision, which has never had any legal effect, cannot be deprived of legal effect. On this view, when we say the certiorari quashes an illegal decision, what we really means is that the order formally declares that from the moment it was purportedly made (ab initio) the decision had no effect in law. Thus, anything done in execution of it is illegal. This is the declaratory view of certiorari. An alternative view is that an illegal decision is valid until a court decides that it is illegal, at which point it can quash it with retrospective effect. On this view, certiorari has a constitutive effect rather than a purely declaratory effect.[166]

Thus, if a person feels aggrieved because of ultra vires administrative acts affecting his interest, it is advisable for him or her to invoke judicial review within the allowable period of time lest the illegal administrative decision may be turned to legality (or to use CANE'S word maturity) after the expiry of the statutory period fixed for filing application for judicial review. Normally, where certiorari is granted by the reviewing court, the parties have to be returned to their original pre-decision position.

4.4.2 ORDER OF PROHIBITION

The prerogative order or prohibition, as its names implies, performs the function of ordering a body amenable to it to retrain from illegal action. It is an order issued by a higher court to prevent an inferior tribunal or administrative authority from exceeding or from continuing to exceed its authority from behaving ultra virally while dealing on matters that affect the interest of the complainant. The striking contrast between

[166] Cane, Op. Cit. P. 63

certiorari and prohibition is that, while certiorari quashes what has been already done, ultra virally restrains a government body from taking a certain course of ultra vires action. Thus, certiorari has retrospective effect-nullifying an already made illegal or ultra vires act, whereas prohibition has a prospective effect –it stops the continuity of an ongoing course of action or restrains the execution of an already made decision beforehand. Thus, while certiorari has nullifying effect, prohibition has preventive effect.

4.4.3 ORDER OF MANDAMUS

Mandamus (Mandatory order) is the other important public law remedy that deals with agency inaction. According to CANE, certiorari and prohibition are concerned with control of the exercise of discretionary powers, whereas the prerogative order of mandamus is designed to enforce the performance by governmental bodies of their duties, However, as case laws indicate, this comparison does not hold always true. According to CUMPER, Mandamus may also be used to compel the decision – maker to exercise his/her discretion properly. **CUMPER,**[167] cited two important cases to substantiate his opinion as follows:

Thus, it (mandamus) may force a decision-maker to take relevant considerations into account **R.V BIRMINGHAM LICENSING PLANNING COMMITTEE, EX PARTE KENNEDY**[168] and not to abuse power, which has been conferred.

PADFIELD VS. MINISTER OF AGRICULTURE, FISHERIES AND FOOD

Mandamus (a mandatory order is often applied for in conjunction with certiorari (a quashing order). For example, where there has been a breach of the rules of natural

[167] Cumber, Peter & with Walters Terry Constitutional & Administrative Law (Oxford University Press, 2001. P. 320)

[168] (1972) 2 QB 140

justice, certiorari (a quashing order) will quash the decision and mandamus (mandatory order) will compel a rehearing.

Concerning the consequences that breaching statutory duties may entail to the decision maker **CANE**:

Breach of statutory duty can take the form either of non-feasance (i.e failure to perform the duty) or misfeasance (i.e bad performance). In certain circumstances a person who suffers damages as a result of a breach of statutory duty by a public authority can bring an action in tort for damages or an injunction. Public authorities can also be attacked for nonfeasance by being required to perform their duty. Mandamus (or an injunction in lieu) is the remedy for this purpose. Mandamus sometimes issues in conjunction with certiorari to require a body whose decision has been quashed to go through the decision-making process again. In this type of case, the duty which mandamus enforces is often not a statutory one but the common law duty, which every power-holder has, to give proper consideration to the question of whether or not to exercise the power[169].

4.4.4 WRIT OF HABEAS CORPUS

The writ of habeas corpus (produce the body) is used to obtain the release of someone who has been unlawfully detained, e.g wrongful Arrested. It is a procedure through which an illegality detained person applies to the court requesting an order for his physical release. It serve as a modality for securing the liberty of a person by affording an effective means of immediate release from unlawful or unjustified detention.[170]

Habeas corpus referred to as the – Great Writ in common law, has transitionally

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[169] Cane, Peter, An Introduction to Administrative Law (3rd ed. Oxford University, Press, 1966) P. 64

[170] Malemi, Op Cit P. 317

maintained high reputation as a safeguard of personal liberty. Currently, it is an attempt to measure up to the standards of human rights and fundamental freedom which entitle the detainee to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered, if the detention is found to be unlawful.[171]

The writ of Habeas Corpus has received blessing in many jurisdiction, and is being used as a vital instrument for protecting the undamental rights of individuals to their liberty. Currently in Nigeria, too, it has received the blessing of the Constitution. Section 35 of the 1999 Constitution provides for fundamental right to personal liberty, that is, for freedom from unlawful detention, false imprisonment and so forth.

Authorities assert that the public law remedies are privileges that can be granted at the courts discretion. The means that, unlike in the case of appeal, individuals, as of right, cannot invoke judicial review. However, although the Writ of Habeas Corpus falls within the traditional category of public law remedies, it is recognized under our constitution as inalienable right conferred to all persons detained. This right can be denied only on its merit where the detention has justifiable ground; but there is no need for leave for judicial review like the other public law remedies discussed above.

Explaining the power and scope of the writ of habeas corpus in the celebrated case of SIR THOMAS DANIEL'S LOD HYDEC CJ said:

> *Whether the commitment be by the king or others, this court is a place where the king doth sit in person, and we have the power to examine it: and if it appears that any person hath injury or wrong by his imprisonment, we have power to*

[171] Ojo, "Some Views on the Scope of Habeas Corpus in Nigeria" 1 Nig. Journal of Contemporary Law (1977) 33, Jenks "the story of Habeas Corpus" LQR 1949 Heuston. Habeas Corpus Procedure" 66 LQR 1950 79.

deliver and discharge him, if otherwise, he is to be remanded by us to prison again.[172]

Unlawful detention is one of the worst experiences that can be inflicted on a person. It is an instance of a man being a wolf man. Every detention is prima facie unlawful, and it is for the arrestor, making the arrest, or the custodian to justify the detention. Emphasizing on this rule of law, **LORD JAMES ATKIN** in his dissent opinion in **LIVERSIDGE VS. ANDERSON** said:

"it is one of the pillars of liberty in English law that every imprisonment is prima facie unlawful, and that it is for the person directing the imprisonment to justify the fact."[173]

Habeas Corpus is mainly issued to bring a person to court to test the legality or illegality of his detention. However, a writ of habeas corpus may be issued for several other purposes which includes to determine or review: the regularity of tradition process, the right to bail or the amount of bail, or the jurisdiction of a court that has imposed a criminal sanction, and so forth.

4.4.5 ORDER OF INJUNCTION

An injunction in the common law tradition is known as an equitable, which means that it is in the discretion of the court whether or not grant it. It is a court order, which in the majority of cases that orders the party to whom it is addressed not to do a particular act. But broadly speaking, it can be negative (i.e forbidding a decision-maker from doing something). In public law, injunctions tend to be negative in nature, because mandamus will normally be sought in

[172] (1627) 3 state Trial 1.
[173] (1942) AC 206 HL. IRC VS. Reossminister Ltd. (1980) 1 ALL ER 80 HL. Christie vs. Leachinky (1947) 1 ALL ER 567 HL

order to compel a decision-maker to carry out a duty.[174] In a similar vein, CANE, also stated that injunction may be granted in lieu of prohibition (prohibiting order) or mandamus (mandamus order). This remedy found its way into public law partly as a means of enforcing public law .principles, especially the rules of natural justice, against non-governmental regulatory bodies, which derived their powers from contract and so were not amenable to orders of prohibition of mandamus.[175]

4.4.6 DECLARATION

This is simply asking the court to make a ruling on what the law is. It is used in both public and private laws and is available in wider circumstances than the prerogative orders.[176]

Although, it is a private law remedy in its origin, declaration is now widely in use as a remedy in both private and public law cases. Its main purpose is to determine or ascertain what the law says without changing the legal position or rights of the parties. It declares what the law is or says in relation to a certain uncontested fact.

4.4.7 DAMAGES

In legal profession, the term damages is usually interchangeable with the term compensation. The purpose of awarding damages in this context is to repair the pecuniary or non-pecuniary harm inflicted upon the complainant because of administrative wrongs. The worth mentioning pointy here is that damages would not be awarded unless the complainant has suffered some sort of compensable injury due to the act of an administrative body, which is found to be ultra vires in a judicial review.

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[174] Cumper, Op. Cit P. 320-321
[175] Cane, Op. Cit. 66
[176] Blakemore, Timothy & Green Brendan: Law for Legal Executives (7th ed. Oxford University press, 2004) P. 122

Damages are purely a private law remedy that can be claimed by the victim of a wrongful act in accordance with the dicta of private law. In this regard, CANE gave an elaborative remark as follows:[177]

Unlike declaration and injunction, which are private law remedies (remedies for the redress of private law wrongs), which have been extended to redress public law illegality, damages are purely law remedy. In other words, in order to obtained an award of damages it is necessary to show a private law wrong: damages cannot be awarded simple on the basis that a government body has acted illegally. The relevance of the remedy in public law is that public bodies can commit private law wrongs, and so damages are a remedy available against public bodies. For example, damages for breach of contract can be obtained against a government department. Conversely, whereas a declaration or injunction is available to restrain a breach of natural justice or to declare the invalidity of a decision made in breach of the rules of natural justice, damages are not available for breach of natural justice as such, because this is a wrong recognized only in public law. If a breach of natural justice also amounted to a breach of contract, damages might be available for the breach.[178]

As can be inferred from the above-mentioned authorities, a claim for award of damages can be filed before the reviewing court. But the granting of the award depends on whether or not the decision rendered is invalid on the grounds of the public law principles at the same time constitutes a civil wrong in private law such as torts and contract and whether or not the applicant suffers a compensable injury due to such private wrong. So the award of damages in judicial review is a matter of coincidence.

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[177] Cumper, Op. Cit. P. 321
[178] Cane Op-Cit. P. 73

CHAPTER FIVE

CONCLUSION

5.1 SUMMARY OF FINDINGS

Administrative law is the quest for administrative Justice, this is the connecting threat, which runs throughout the course of this work. At every chapter and sub-topics, the question that is answered through various methods is, how can the profession of the law contribute to the improvement and protection of the citizen rights. It is also mentioned in the body of the work that administrative law is rooted on the principle of the rule of law. The typical meaning of the rule of law, as expounded in the body of this work, is the principle of legality or supremacy of law. This means that every act, decision or measures of any public official or administrative agency should be made in accordance with the law.

An action taken in the absence of a valid, legal authority or powers is ultra vires (beyond power), and hence is considered null and void in the eyes of the law. Administrative law by controlling the excesses of power, ensures respect for the rule of law.

Another principle having a great impact on the administrative law as mention in the body of this work, is the principle of judicial review or control of administrative action, judicial review rules are derived from some basic constitutional principle; the rule of law, power of independent judiciary combined, to produce the doctrine of ultra vires which is the main principle of which almost all the court's all the courts intervention in the protection of citizens rights are found. The doctrine merely states that the public authorities must act within the power given to them by

the Act of the legislature. In the attempt to know the validity of an Administrative Act, Courts have laid down important rules for keeping government authorities within the bounds of the law.

This work also discussed the principles of natural justice which is just, fair and reasonableness which can be used to control the substance of administrative decisions. The concept of natural justice has crystallized into two rules: that no man should be a judge in his own case, and that no man should suffer without first being given a fair hearing.

Based on these two rules, the courts have been developing and extending the content of natural justice so as to build up a kind of code of fair administrative procedure, to be obeyed by authorities of all kinds as seen from the decisions of the courts in the body of this work.

In chapter four, we have seen the application of remedies. It is a principle under our legal system that abuse of rights are backed by remedies. Ibi jus ibi remedium'. The maxim operates to ensure that where it is said that a person has right and that right is violated; such person should be entitled to some sort of remedy, sometimes called compensation, for the violation of the right. This chapter distinguished the two categories of remedies; the ordinary private law remedies; such as damages, injunction and declaration; and the public law remedies; mandamus, certiorari and prohibition with their respective applications.

5.2 OBSERVATION

In the same way, the body of this research work has appraised "the ways the rights of the citizens can be protected through administrative law" there are also administrative problems affecting the rights of the citizens. Among these problems are: abuse of administrative powers, bad leadership, illiteracy and poverty.

Abuse of political position create in government, disinterest in politics among the citizenry and even the perception of corrupt government. In some countries, the administrative structure of the government has prevented local councils from obtaining truly independent standing. The effect of this is seen in the fact that local governments lack the resources and capacity to respond to widely recognized demands and preferences of the local population. This is also true in Nigeria, where the commander in chief is all and all. translated into political practice as 'political octopus'.

It is unfortunate to mention that another factor undermining the realization of the full potentials of human rights instrument in the country is the poor attitude of our leaders who have corruptly enriched themselves., violated fundamental rights of opposing groups, disobeyed courts orders, mismanaged national resources and disregarded international human rights norms and democratic principles. As a result of bad leadership, most of the factors of production have either been ignored, under-utilized, or misused. Fertile agricultural lands lie dormant while unemployment and crime rates soar. The windfall during the oil boom was managed, much of it diverted and stolen, thus leaving most of our national oil refineries grounded. The resultant effect has been fuel scarcity in the country with its attendant escalation in

transport costs and unbearable increase in prices of commodities in the markets. The exchange rate of Naira has greatly fallen, thereby reducing the purchasing rate of industrial materials which could have been gainfully used to improved the nation's technological development.

Other problems, which are not legal in nature such as illiteracy and poverty, also hinder the effective realization of human rights, democracy and development in Nigeria. Education has been on the decline in Nigeria, both in terms of enrolment as well as physical infrastructure, material and equipment. In the words of Mba,[179] education in the country has been commercialized to the extent that only a few can secure a better and their immediate families. The effect of this ugly incidence is that the masses and majority of the Nigeria people are left uneducated, uniformed, impoverished and therefore political and economically crippled in military and civil governance.

Democracy grows from the confidence and faith of people in their abilities to tap their human and natural resources effectively for national growth and development. It is therefore totally dependent upon educated and informed electorates who have access to ideas. Illiteracy affects the sustenance of human rights provisions because uneducated people can neither make informed political decisions nor participate in government of the day. In order to participate in government, a person must understand the principles of government and the nature of political operations.

[179] Mba Op. Cit. P. 122

Poverty is another factor. This can either manifest itself in the areas of incapacity to hire a lawyer or to meet the cost of litigations. An action to enforce a person's right includes payment of solicitors fees, transport costs and other incidental expenses that normally go with the filling of actions in courts. DR. AGUDA in one of his distinguished lectures has this to say:

> *"...Most of the rights enshrined in our constitution are nothing more than empty words to millions of our people who are or whose children are suffering and in some cases dying of malnutrition and other preventable diseases associated with the poor.*[180]

5.3 RECOMMENDATIONS

Having carried out a critical assessment of the protection of the rights of citizens through the administrative law and the observations made above, the researcher makes the following recommendations in order to improve the protection of the rights of citizens, through the application Administrative Law.

It is recommended that appropriate controlling mechanism be put in place to restrain administrative agencies to act within the scope of the powers entrusted to them. This is because the absence of such control mechanism will result in abuse of power.

As the experience of many jurisdictions in the modern democratic world indicates, there are different devices that can be control the powers of administrative agencies. Some of the commonly used controlling mechanism recommended here are internal

[180] Ibid,m

administrative review by superior official, external administrative review by tribunals, judicial control.

Apart from the above mentioned control mechanisms for the control of government powers, it is also recommended that a National Institution should be established and such institution should be entrusted with the power and competence to protect the rights of the citizens. The national Institution should also have the following responsibilities:

a. To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

    i. Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures.

ii. Any situation of violation of human rights, which it decides to take up;

iii. The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

iv. Drawing the attention of the government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the government:

b. To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the state is a party, and their effective implementation;

c. To encourage ratification of the above mention instruments or accession to those instruments, and to ensure their implementation;

d. To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights.

e. To assist in the formulation of programmes for the teaching of and research into human rights and to take part in their execution in school, universities and professionals circles;

f. To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination by increasing public awareness, especially though information and education and by making use of all press organs.

It is hoped that the recommendations preferred would be given full consideration for the enhancement of this aspect of the law that touches the vein of every citizen in any state worldwide

5.4 CONTRIBUTION TO KNOWLEDGE

This research work, attempts to examine the protection of the rights of citizens through administrative law. Having carried out a critical research in this area and the observations made thereafter, this research work have contributed to the existing state of knowledge in the following ways, which be discussed forthwith.

The research work, contributed to the existing state of knowledge, through reflecting the recognizing the fact that the rights of citizens are sometimes abuse and it further discuss the means by which this rights of citizens can be protected through Administrative Law and its principles.

In order to reduce the ignorance of the law, this research work will also assist in the acceleration of the awareness of the public or any learned person that might come across this work regards to Administrative abuse of power, it reflects how such abuse affect the rights of citizens, and also provides for the knowledge of the relevant laws for their protection.

Further, this research work, in contributing to existing knowledge, stresses on the need to ensure that power is exercised within bounds and legal limits, controlling the excesses of administrative power is the main purpose for which Administrative Law was made, thus, this research work gives a proper guidance and knowledge on how the excesses of powers can be controlled, through the obedience and strict observance of the rule of law.

In contributing to knowledge, this work appraises the various remedies available to a citizen against any form of administrative abuse.

In accordance with above mentioned contributions, it suffice to say this research work has contributed to knowledge. It gives a broader meaning of Administrative Law, and also how it can be used to protect the rights of citizens, and further discuss the various remedies available where the rights are abused.

5.5 CONCLUSION

While it cannot be said the Nigerian administration has failed, the points still remains that our country still has a long way to go, it's undeniable that Nigeria when compared to other countries of the world like England, Switzerland, Russia, Germany and America that Nigeria is lagging behind in areas of good governance and protection of the right of the citizens. And it is in this light that this research work has as its objectives on two purposes: first is drawing our attention to the various means citizen's rights can be protected and secondly, considering the formalities for offsetting the various factors basetting the enjoyment of fundamental human rights provisions.

It is in light of the above that it is my humble submission that this research work will help in creating awareness and transformation on the life of the good people of Nigeria in the acknowledgement and enforcement of their rights when such rights are abused.

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