

## ASSESSING THE STRENGTH AND WEAKNESSES OF THE NIGERIAN PUBLIC COMPLAINTS COMMISSION (OMBUDSMAN)

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### **Abstract**

*The Nigerian Public Complaints Commission (Ombudsman) has become a national attribute of Nigeria's institutional frameworks. The multifaceted nature of Government and its continued influence on the lives of the citizens inform the need for a watchman (in the form of an ombudsman) that will guarantee that Government performs its daily functions with accountability, protect citizens from administrative injustice and maladministration, and ensure commitment to ethical standards by public officials. In fulfilling its mandate, the Public Complaints Commission (PCC) constitutes an essential and necessary element in the development and maintenance of transparent and accountable democratic governments in Nigeria. This paper*

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*assesses the strengths and weaknesses of Nigerian PCC. The doctrinal research methodology is adopted in this study. This research methodology is library-oriented research by which primary research materials such as statutes and law reports are resorted to. Secondary materials such as textbooks, law journals containing articles related to the study, seminar papers, manuscripts, and newspapers are also used in this research. This paper finds that the strengths of the Nigerian PCC lie in its status as federal legislation, the power to initiate investigation, the power to penalize false complaints, the power to summon or compel attendance, and immunity from the legal process. This paper further finds that the weaknesses of the Nigerian PCC lie in the restriction on the powers of the Commission to investigate particular matters, lack of punitive power to prosecute offenders and enforce its decisions, lack of total independence from the Government, inadequate funding, and lack of publicity. This paper concludes with recommendations on what must be done to make the Nigerian PCC carry out its mandate more effectively.*

**Keywords:** Nigeria, Public Complaints Commission (PCC), Rationale for the establishment of PCC, Strengths of PCC, Weaknesses of PCC.

## **INTRODUCTION**

An ombudsman is an independent and non-partisan public agency that receives and investigates complaints from members of the public and makes contacts with the alleged wrongdoer in order to resolve the issue peacefully.<sup>1</sup> It aims to protect vulnerable individuals against administrative injustices. It provides an opportunity for citizens, principally the less privileged, to seek and get redress for their grievance at no cost and with least delay.<sup>2</sup> An ombudsman is charged with the mandate of protecting the citizens from the oppressive and arbitrary exercise of the executive powers of Government. According to the Ombudsman Committee of the International Bar Association, "ombudsman" is an office provided for by the Constitution or by the action of the Legislature or Parliament and headed by an independent high-level public official, who is responsible to the Legislature or Parliament, who receives complaints from aggrieved persons against government agencies, officials and employees, or who acts on his motion and who has the power to investigate, recommend corrective action and issue reports.<sup>3</sup>

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<sup>1</sup> Principles of Administrative Law, School of Arts and Social Sciences (National Open University of Nigeria, 2012) p. 93 (Hereinafter NOUN) <<https://www.nou.edu.ng/courses/principles-administrative-law>> accessed 30 November 2019; See Okeyim, M.O. and Ejue J.B. and Ekanem, S.A. 'Governance and Corruption in Nigeria: A Philo-Psychological Analysis' [2013](1)(2) *Net Journal of Social Sciences*, 24-32:31.

<sup>2</sup> International Federation for Human Rights, Nigeria: Defending Human Rights: Not Everywhere: Not Every Right: International Fact-Finding Mission Report, April 2010 <<https://www.refworld.org/docid/4bed03412.htm>> accessed 29 November 2019; See UN Document A/HRC/WG.6/4/NGA/1, Human Rights Council Working Group on the Universal Periodic Review National Report Submitted by Nigeria, January 5, 2009 <[http://www.oct.org/files/2010/05/20688/nigeria\\_mission\\_report.pdf](http://www.oct.org/files/2010/05/20688/nigeria_mission_report.pdf)> accessed 5 January 2020.

The ombudsman institution has its origin deep in the past. In 1713, the king of Sweden appointed an ombudsman-like official, called chancellor of justice, to look into Complaints against royal officials.<sup>4</sup> But it was in 1809 that the Swedish Parliament first provided for the office of the ombudsman in its modern form by establishing the position of *Justitie ombudsman* loosely translated as 'citizen's defender' or 'representative of the people', to oversee

<sup>3</sup> Satyanand, J.A. 'The Ombudsman Concept and Human Rights Protection' Occasional Paper No. 68, January 1999 (Contribution to the 17th APOR Conference at Port Vila, Vanuatu, August 24, 1998) p. 4 <[http://ombudsm.aninstitute.com/downloads/d1k7g/IOI%20Canada\\_Occasional%20paper%2068\\_Anand%20Satyanand\\_The%20Ombudsman%20Concept%20and%20Human%20Rights%20Protection\\_1999.pdf](http://ombudsm.aninstitute.com/downloads/d1k7g/IOI%20Canada_Occasional%20paper%2068_Anand%20Satyanand_The%20Ombudsman%20Concept%20and%20Human%20Rights%20Protection_1999.pdf)> accessed 7 January 2020; See Ombuds Institutions-Security Sector Integrity <<https://securitysectorintegrity.com/institutions-and-organisations/ombuds-institutions/>> accessed on 28 November 2019; See B Buckland and W McDermott, *Ombuds Institutions for the Armed Forces: A Handbook* (DCAF 2012); See Chike, O. And Madubueze, M.H.C. 'The Ombudsman and Administration of Justice in Nigeria; A Study of Anambra State 2010-2015' [2017](22)(4) *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)*, 40-57:41; EO Ezeani, 'Public Complaints Commission and Administrative Responsibility: An Appraisal' in E O Ezeani (ed), *Public Accountability in Nigeria: Issues and Perspective* (Academic Publishing Company 2005); AEC Ogunna, *Public Administration in Nigeria; Theory and Practice* (Great Versatile Publishers Ltd 1999).

<sup>4</sup> Abedin, N. 'Conceptual and Functional Diversity of the Ombudsman Institution: A Classification' [2011] (43)(8) *Administration & Society*, 896-929:897; SRudholm, 'The Chancellor of Justice' in DC Rowat (ed), *The Ombudsman: Citizen's Defender* (George Allen & Unwin 1968) pp. 17-21; P Kastari, 'The Chancellor of Justice and the Ombudsman' in DCRowat (ed), *The Ombudsman: Citizen's Defender*(George Allen & Unwin 1968) pp. 58-74; Wennergren, B. 'The Rise and Growth of Swedish Institutions for Defending the Citizen against Official Wrong'[1968] (May) *Annals of the American Academy of Political and Social Science*, 1-9; F Stacey, *Ombudsmen Compared*(Clarendon 1978); See Stuhmcke, A. 'The Evolution of the Classical Ombudsman: A View from the Antipodes' [2012] (2)(1) *Int.*

government administration, that is, to monitor and regulate the administrative activities of the executive branch.<sup>5</sup> Since 1809, both government and private industry settings have adopted the ombudsman in many parts of the world.<sup>6</sup> For example, Finland created the institution of ombudsman in 1919, Denmark in 1955, Norway in 1961, New Zealand in 1962, United Kingdom 1967, Israel 1971, Queensland 1974, and New South Wales in 1975.<sup>7</sup>

The Nigerian ombudsman, known as the Public Complaints Commission, is a federal government quasi judicial regulatory agency established by late General Murtala Mohammed with the promulgation of Decree No. 31 of 16<sup>th</sup> October 1975. The law, which was amended in 1979 by the Public Complaints Commission (Amendment) Decree No. 21 of 31<sup>st</sup> May 1979, made some amendments to the Public Complaints Commission Decree No. 31 of 1975. The changes, among other things, conferred immunity

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*J. Public Law and Policy*, 83-95.

<sup>5</sup> Abedin(n. 4) p. 897; See Hill, L.B. 'The Ombudsman Revisited: Thirty Years of Hawaii's Ombudsman' [2002] (62)*Public Administration Review*, 24-41:24; The History of the Ombudsman-Ombudsman Western Australia <[www.ombudsman.wa.gov.au>About\\_Us/History](http://www.ombudsman.wa.gov.au>About_Us/History)> accessed on 20 November 2019; LC Reif, 'Foreword' in LC Reif (ed), *The International Ombudsman Yearbook*(Vol. 10, MartinusNijhoff 2009) pp. xiii-xiv:xiii.

<sup>6</sup> The History of the Ombudsman, *ibid*.

<sup>7</sup> Ombudsman: Origin, Nature, Power and Functions in Public Administration<[www.yourarticlelibrary.com/public-administration/ombudsman-origin...](http://www.yourarticlelibrary.com/public-administration/ombudsman-origin...)> accessed on 20 November 2019;M Akpomuvire, *The Ombudsman Phenomenon in African States Public Services*(Department of Local Government Studies, Obafemi Awolowo University, Osun State, Nigeria, 2007) pp.1-27:2<<https://fliphtml5.com/bcza/qtmv/basic>> accessed 9 January 2020; See Jagerskiold, S. 'The Swedish Ombudsman' [1961]*University Of Pennsylvania Law Review*, 1077-1099:1077.

from a legal process on the PCC in the performance of their official duties. The Decree has since been incorporated into the Laws of the Federal Republic of Nigeria as the Public Complaints Commission Act Cap.37 LFN, 2004. Also, it is entrenched in the Constitution of the Federal Republic of Nigeria, 1999 (as amended) under section 315(5b).<sup>8</sup>

In Nigeria, the report of the Udoji Public Service Review Commission of 1974, which the federal military Government set up to look into the state of service of public workers in the country, recommended for the establishment of the PCC as an independent, impartial, extra-judicial statutory body to resolve administrative grievances.<sup>9</sup> Paragraph 128 of Chief Udoji's report strongly recommended as follows:

We believe, therefore, that the need exists in Nigeria for the institution of an ombudsman. The concept of the institution is simply that a citizen

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<sup>8</sup> Aina, K. 'The Relevance of Public Complaints Commission to Nigeria's Democratic Development' [2012](3)(3) *International Journal of Advanced Legal Studies and Governance*, 2; See the Public Complaints Commission Act Cap. P 37, LFN, 2004; See A Isiolaotan, *Administrative Law and Ethics in Public Administration* (Spectrum Books Limited 2016) p. 26; See Ozumba, L.N. 'Approaches and Effects of Administrative Law in Nigerian Political and Administrative Setting'[2014]*Journal of Integrative Humanism-Ghana*, 97-105:101; Seelbietan, J. and Joshua, S. 'Ethics In The Nigerian Public Sector: A Discourse'[2013](1)(10) *The Public Administration and Social Policies Review*, 46-59:55.

<sup>9</sup> BT Acheneje, 'A Critical Assessment of the Role of Public Complaints Commission (Ombudsman) in National Development (Nigeria)' Master Thesis, Department of Public Administration and Local Government, Faculty of Social Sciences(University of Nigeria: Nsukka, 2011) p. 34 <<https://oer.unn.edu.ng/read/a-critical-assessment-of-the-role-public-complaints-commission-ombudsman-in-national-development-nigeria>> accessed 5 February 2020.

aggrieved by official action or inaction has an opportunity to state his grievances to an independent person or persons empowered to investigate the Complaints.<sup>10</sup>

The main target of the ombudsman is to give citizens a reasonably quick and cost-free means of resolving Complaints against government bureaucracy. In 1976 Hill outlined seven goals that portray the office of the ombudsman, which have been generally accepted, and used as benchmarks to evaluate how ombudsmen perform. According to Hill, the ombudsman is:

1. A goal-oriented mechanism for ameliorating citizen-bureaucracy relations;
2. Righting specific administrative wrongs;
3. Bringing humanity into bureaucracy;
4. Lessening widespread alienation from the Government;
5. Reforming administration;
6. Acting as a bureaucratic watchdog; and
7. Vindicating civil servants when they are unjustly accused of maladministration.<sup>11</sup>

Professor Donald Rowat produced for the International Ombudsman Institute in 1997 a paper called "A Worldwide Study of Ombudsmen" which described the characteristics of the ombudsman as follows:

1. It is established by the Constitution of a country, law or by-law of the legislative body, to guarantee its

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<sup>10</sup> Ibid.

<sup>11</sup> Aufrecht, S.E. 'The Ombudsman Office' *Public Administration and Public Policy – Vol. II* <<https://www.eols.net/Sample-Chapters>> accessed on 20 November 2019

2. It accepts and investigates complaints from the public against any part of the entire administration at the level of Government in question, although in several schemes it can as well initiate investigations of alleged maladministration on its initiative;
3. It is an appeal body in the sense that as a rule, it will investigate Complaints only after the Complaints made to the agency in question and the complainant is still not satisfied;
4. When it discovers a Complaint to be reasonable, it recommends a remedy to the organization or agency concerned. Where the recommendation is not accepted, it makes its recommendation to the chief executive and in a published report to the legislature-but it does not make binding decisions, and this is what distinguishes it from a court, tribunal, or arbitrator.<sup>12</sup>

Justice, the British Section of the International Commission of Jurists in 1960, initiated an inquiry into the necessity of an ombudsman in modern society. The Jurists Report published in 1961, amongst other things, said:

There appears to be a continuous flow of relatively minor Complaints, not sufficient in themselves to attract public interest, which gives rise to feelings of frustration and resentment because of the

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<sup>12</sup> Satyanand, (n. 3); D Rowat, 'A Worldwide Survey of Ombudsmen' Occasional Paper, No. 60 (International Ombudsman Institute, March 1997) <[https://www.theioi.org/downloads/bbde5/IOI%20Canada\\_Occasional%20Paper%2060\\_Donald%20Rowat\\_Worldwide%20survey%20of%20OM\\_1997.pdf](https://www.theioi.org/downloads/bbde5/IOI%20Canada_Occasional%20Paper%2060_Donald%20Rowat_Worldwide%20survey%20of%20OM_1997.pdf)> accessed 3 February 2020.



inadequacy of the existing means of seeking redress.

The ombudsman fills the gap by seeking redress for such Complaints and others.<sup>13</sup>

The roles of the ombudsman are universally the same. It includes protecting the rights of the citizens, to act as an indirect check on the abuse of powers by the administrators or any government officials, and to investigate, publicize abuses of bureaucratic control and, in some cases, to initiate legal action much as a private citizen would.<sup>14</sup> According to Danang Girindrawardana, Chief Ombudsman of Indonesia, the ombudsman is one of the pillars of democracy to get better the bureaucracy of the Government. Ombudsman plays a crucial part as an instrument for social control via community participation in the form of suggestions and Complaints.<sup>15</sup>

## **REASONS FOR THE ESTABLISHMENT OF THE NIGERIAN PCC**

The primary goal of establishing the Nigerian PCC is to promote social justice for the individual citizen, the absence of which will

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<sup>13</sup> E Malemi, *Administrative Law* (4th edn, Princeton Publishing Co. 2012) p. 316.

<sup>14</sup> Akpomuvire(n. 7) p. 7.

<sup>15</sup> M Mendiburu, *Ombudsman Institutions: Bridging the Citizen-Government Gap* (Global Partnership for Social Accountability, 2014) <<https://gpsaknowledge.org/ombudsman-institutions-bridging-the-citizen-government-gap/>> accessed 9 December 2019; D Girindrawardana, Dduring the Regional Asian Ombudsman Association (AOA) Conference titled “*Ombudsman and the Citizens’ Lives, their Dynamic Relationship*” held at the Korea Press Center, central Seoul, Korea, July 2-3, 2014<<https://gpsaknowledge.org/ombudsman-institutions-bridging-the-citizen-government-gap/>> accessed 9 December 2019.

lead to a lack of genuine peace and stability in the country.<sup>16</sup> As victims of oppression, many Nigerians were deprived of any knowledge of their rights. There is an acknowledgment that Nigerian citizens were once generally oppressed and victimized by the administrative powers of the Government, especially during the decades of the military Government. Thus, the oppression and victimization of Nigerian citizens necessitated the need for intervention by a supposedly unbiased voice for the benefit of the citizens who may have a Complaint against the Government.<sup>17</sup> Since Nigeria became a democratic state, there was a need to maintain and sustain constitutional democracy in Nigeria by all government institutions and other agencies or enterprises attached to the Government.<sup>18</sup>

Secondly, the overzealous government officials are famous for exceeding their powers and blatant use of their administrative power for their gains. There is an abuse of power by public

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<sup>16</sup> IM Sani, 'The Role of the Public Complaints Commission in Protecting Worker's Rights against Administrative Injustice and Maladministration in Nigeria' Masters Thesis(Ahmadu Bello University: Zaria, 2011) p. 29<<http://kubanni.abu.edu.ng/jspui/bitstream/123456789/4904/1/the%20role%20of%20the%20public%20complaints%20commission%20in%20protecting%20worker%e2%80%99s%20rights%20against%20administrative%20injustice%20and%20maladministration%20in%20nigeria.pdf>> accessed 7 March 2020.

Ebiziem, E.J. and Juliet, A.C. 'Appraisal of Ombudsman in Nigeria; Operations, Benefits and Challenges' [2015](1)(2) *International Journal of Advanced Academic Research, Social Sciences and Education*, 59-72:68.

<sup>17</sup> Aina (n. 8) p. 2.

<sup>18</sup> Montesh, M. 'The Functioning of Ombudsman (Public Protector) in South Africa: Redress and Checks and Balances?' [2009] (28) *Transylvanian Review of Administrative Sciences*, 194-208:201; See Akpomuvire (n. 7) p. 13.

authorities and private bodies and inadequate control of these bodies, especially in specific cases.<sup>19</sup>The ombudsman checks the excesses of administrators,<sup>20</sup> scrutinizes the work of the executive, and is primarily a guardian of correct behaviour. His role is to safeguard the interests of citizens by ensuring administration according to law, discovering instances of maladministration, and eliminating defects in administration.<sup>21</sup>

A fundamental reason for the establishment of the Commission is the cost of access to the courts. There is the general belief that litigation is often slow, complicated, costly, and strange to the ordinary man. Court process and payment of legal fees may be complicated for the common man to finance. The PCC remedy system affords a cheaper and more natural method of getting issues sorted out between parties without the expense of legal proceedings. Therefore, the PCC is a formidable window to Complaints against human rights abuses and other administration, maladministration, and oppression.<sup>22</sup>Commenting on the role of the PCC, Commissioner L. Oshunkunle, an official of the PCC, said that the PCC was set up by law for a particular purpose, namely to seek redress, especially for people who would otherwise have been denied justice for their inability to find the means to procure justice in our law courts.<sup>23</sup>

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<sup>19</sup> NOUN (n. 1).

<sup>20</sup> Anigbata, O.N.A. 'Comparison of Ombudsman in Nigeria, the United Kingdom and Australia to Determine Operational Nexus for Global Best Practices' [2017](5)(2) *GOU ni Journal of Management and Social Sciences*, 55-59:55.

<sup>21</sup> The Ombudsman <<https://www.britannica.com>>topic>administrative-law>The-ombudsman> accessed on 20 November 2019.

<sup>22</sup> Ibid; NOUN (n. 1).

Away from the cost of litigation, it is quite evident that not all oppressive acts or abuse of office may be actionable. Many malfunctions are relatively trivial, and nonetheless, an irritation of an immense proportion that the citizens in question only need a superior authority to interfere and direct the irregularity and the issue to be remedied. Some oppressive acts require immediate and quick intervention, then resort to wasting time, energy, and resources involved in litigation.<sup>24</sup>Therefore, the PCC is needed to play the role of a specialized court system to hear and speedily determine minor claims and relatively insignificant issues and grievances between parties.<sup>25</sup>

Also, the need to notify the general public, bodies, or persons that a PCC is in place to receive their Complaints when the conduct of government officials aggrieves them contributed to establishing the PCC.<sup>26</sup> More so, the glaring inadequacies of internal administrative remedy system, or check devices to handle and fairly deal with Complaints of aggrieved parties.<sup>27</sup>

Further, the PCC is a vital institution for the Government to get feedback from the public on the actions and activities of its officers and general policies and method of government administration. The

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<sup>23</sup> Malemi (n. 13) p. 316; See Public Complaints Commission, Commonwealth Governance for Development <[www.commonwealthgovernance.org/partners/public-Complaints-comm...](http://www.commonwealthgovernance.org/partners/public-Complaints-comm...)> accessed on 16 November 2019 (Hereinafter, Public Complaints Commission); S Egede, Promoting Social Justice through Public Complaints Commission, 17 March 2015 <<https://9jalegal.com.ng/ombudsman/promoting-social-justice-through-p...>> accessed on 29 November 2019.

<sup>24</sup> Aina (n. 8) pp. 2-3.

<sup>25</sup> NOUN (n. 1) p. 30.

<sup>26</sup> Ibid, p. 94.

<sup>27</sup> Ibid.

ease of access to the Commission will encourage the citizen to approach the office when there is a particular need to do so.<sup>28</sup> All these factors, which, combined with working a hardship on members of the public, made the establishment of an efficient PCC remedy system a necessity in modern society.<sup>29</sup>

More so, contemporary ombudsmen have argued that the office of the ombudsman is a vehicle for human rights protection in any event. The present Norwegian Parliamentary Ombudsman, Mr. Arne Fliflet, is on record as saying:

The spirit of the ombudsman institution can be deemed to be the same as that enshrined in various international agreements for the protection of the fundamental rights of an individual against 'injustice and arbitrariness by authorities.' The institution of the ombudsman and human rights conventions are based on the same philosophical idea, with each sharing a common goal of protecting citizens against unjust governmental actions.

Frank B., in his book, *The Ombudsman and Human Rights*, outlined the following reasons for the adoption of the ombudsman:

1. The ombudsman, as an autonomous body, helps the legislature in its function of maintaining the activities of government agencies and officials.
2. The ombudsman system has as its primary purpose the protection of the human rights of the citizens.

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<sup>28</sup> Aina (n. 8); See Compbell, K. 'Access to European Community Official Information' [1997](1) *Internationals and Comparatively Law Quarterly*, 174-180.

<sup>29</sup> NOUN (n. 1) p. 30.

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3. The existing mechanisms for adjusting grievances in the modern system are inadequate. In law, court litigation is expensive, tension creating, and protracted. Administrative courts follow court-like procedures. Administrative Complaints handling agencies lack the essential characteristics of independence.
  4. The ombudsman offers the citizens with an expert and impartial agent who acts informally, without delay and the requirement of counsel and recommends corrective action.
  5. The presence of the ombudsman has a psychological value. The citizens develop confidence as there is a watchdog, and it serves as a deterrent to the bureaucracy.<sup>30</sup>

## **STRENGTH OF THE NIGERIAN PUBLIC COMPLAINTS COMMISSION**

### **1. Federal Legislation**

The first strength of the PCC Act lies in the fact that it is federal legislation, and where any other state law is inconsistent with this Act, it shall be void to the extent of its inconsistency. Section 315(5) of the 1999 Constitution lends credence to the above through its provision that nothing in the Constitution shall invalidate the following enactments.

- a. The National Youth Service Corps Decree 1973;
- b. The Public Complaints Acts;
- c. The National Security Agencies Act;

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<sup>30</sup> Afegbua, S.I. and Adejuwon, K.D. 'Ombudsman and Ethical Dilemma in Nigerian Public Administration: From Rising Expectations to Dashed Hopes' [2015](3)(7) *Review of Public Administration and Management*, 98-114: 105-106; B Frank, *The Ombudsman and Human Rights* (Butterworths 2012) p.241.

d. The Land Use Act.

And the provisions of those enactments shall continue to apply and have full effect in accordance with their tenor and to the same extent as any other provisions forming part of this Constitution and shall not be altered or repealed except in accordance with the provisions of section 9(2) of this Constitution.<sup>31</sup>

Subsection 6 explained and emphasized that "Without prejudice to subsection (5) of this section, the enactments mentioned in the said subsection shall hereafter continue to have effect as Federal enactments and as if they related to matters included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution."Section 315(5) of the Constitution secures the PCC Act against easy manipulation without compliance with the procedures of repealing or amending any of its enactment laid down in the Constitution.<sup>32</sup>It takes the same process required to amend the Constitution to amend the PCC Act.

## **2. The Power of a Commissioner to Initiate Investigation**

A notable strength of the PCC Act relates to its investigatory power, where the Act makes it clear in section 5(2) that a commissioner shall have the power to investigate either on his initiative or following complaints lodged before him by any other person, any administrative action taken by:

- a) Any department or ministry of the federal or any state government;

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<sup>31</sup> See the Constitution of the Federal Republic of Nigeria, 1999 as amended, section 315(5) (a-d).

<sup>32</sup> Ibid; Sani (n. 16) pp. 82-83.

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- b) Any department of any local government authority (however designated) set up in any State in the Federation;
  - c) Any statutory corporation or public institution set up by any government in Nigeria;
  - d) Any company incorporated under or pursuant to Companies and Allied Matters Act whether owned by any government or aforesaid or by private individuals in Nigeria or otherwise, however; or
  - e) Any officer or servant of any of the bodies, as mentioned above. This provision is commendable for enabling a more broad power for investigation. The watchword in this section is "his initiative," which means that a commissioner need not wait until the Commission could embark on its investigation.<sup>33</sup>

The PCC operates to protect the public against a corrupt, oppressive exercise of power by public officers. Section 5 (3)(d) of the PCC Act provides that Every Commissioner shall ensure that administrative action by any person or body mentioned in subsection (2) will not result in the commitment of any act of injustice against any citizen of Nigeria or any other person resident in Nigeria and for that purpose, he shall investigate with special care administrative actions which are or appear to be:

- (i) Contrary to any law or regulation;
- (ii) Mistaken in law or arbitrary in the ascertainment of fact;
- (iii) Unreasonable, unfair, oppressive or inconsistent with the general functions of administrative organs;
- (iv) Improper in motivation or based on irrelevant considerations;

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<sup>33</sup> PCC Act, section 5(2) (a-e); SANI *ibid*, p. 83.



- (v) Unclear or inadequately explained; or
- (vi) Otherwise objectionable.<sup>34</sup>

The investigations and recommendations of the PCC can lead to prosecution or other forms of administrative or disciplinary measures against erring officials, especially corrupt public officers.<sup>35</sup> Section 5(3c) of the Act empowers the Commission to visit any premises and have access to files and documents. Also, Section 5(5) says, "All Commissioners and all the staff of the Commission shall maintain secrecy in respect of matters so designated by reason of source or content..."<sup>36</sup> The services provided by the PCC could be of great benefit to victims of corporate human rights abuses, who most often are under-privileged and hence, cannot afford access to judicial remedies. It is also attractive to affluent victims who may not have the patience to

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<sup>34</sup> Ibid, section 5(3) (d); See also Adedunmade Onibokun, Duties and Powers of the Public Complaints Commission <<https://www.legalnaija.com/2018/09/duties-and-powers-of-public-Complaints.html>> accessed on 20 November 2019 (Hereinafter, Duties and Powers of the PCC).

<sup>35</sup> Ikpeze, N. 'Fusion of Anti-Corruption Agencies in Nigeria: A Critical Appraisal' [2013](1)(1) *AfeBabalola University Journal of Sustainable Development Law and Policy*, 148-167:157; EC Ngakwe, 'An Analysis of Jurisdictional Conflicts among Anti-Corruption Laws and Institutions in Nigeria' in DU Enweremadu and EE Okafor (eds), *Anti-Corruption Reforms in Nigeria since 1999: Issues, Challenges and the Way Forward* (Vol 3, IFRA Special Research Issue 2009) p. 8.

<sup>36</sup> Uloko, G.I. 'A Goodwill Address by the Honourable Chief Commissioner of the Public Complaints Commission' Delivered at the Interactive Meeting of the National Assembly Committees on Public Petitions and Civil Society Organizations (CSOS) Working on Governance Issues and Human Rights held at Protea Hotel, Apo Apartments, Abuja on Monday 31<sup>st</sup> March, 2014, pp. 31-32.

endure the frequent adjournments of cases in the Nigerian court system.<sup>37</sup>

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### 3. Penalty for False Complaints

Another strength of the PCC Act is that it provides in section 8(4) that any person who in respect of any complaints lodged by him knowingly makes to the Commission any statement, whether or not in writing, which is false in any material particular, shall be guilty of an offense and shall on conviction be sentenced to imprisonment for one year without the option of fine. This serves as a warning to persons who may want to use the Commission to witch-hunt others or even against an institution that has refused to compromise its standard to the whims and caprices of a dishonourable complainant. The absence of an option of fine for making false complaints shows how serious the Act frowns at such an offense.<sup>38</sup>

Thus, the PCC is, in fact, a double-edged sword. In other words, in some cases, it serves "a double purpose: on the one side, to vindicate the action of the accused official and, on the other, to make clear to the complainant that his suspicion was unfounded."<sup>39</sup> In this light, the PCC is viewed as "a defense against unjustified criticism rather than an enemy" of the administration. A former member of the Trinidad-Tobago Parliament pointed out that the ombudsman should not be considered a "terror for civil servants" but a "valuable shield to the administration."

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<sup>37</sup> See P. Akpochafo, 'More Nigerians Patronise Public Complaints Commission for Redress' *Nigerian Pilot*, (Nigeria, 8 June 2011).

<sup>38</sup> PCC Act, section 8(4); Sani (n. 16) p. 84.

<sup>39</sup> Abedin (n. 4) p. 914; See K Holmgren, 'The Need for an Ombudsman Too' in DC Rowat (ed), *The Ombudsman: Citizen's Defender* (George Allen & Unwin 1968) pp. 225-230:229-230.

Similarly, Justice Rees, the first ombudsman of Trinidad-Tobago, aptly observed as follows:

My office was not introduced solely for the purpose of rendering assistance to those who allege that they have sustained an injustice as a result in administration, but also to see that officers of public departments, local authorities, and government agencies are protected against unjustified criticism.<sup>40</sup>

He further added that "the ombudsman is essential not only as a 'sword' in the service of an aggrieved citizen but also as a 'shield' for government departments and authorities when they have made just and reasonable decisions."<sup>41</sup>

Section 8(2) of the PCC Act provides that if any person required to furnish information under the Act fails to do so or in purported compliance with such requirement to supply information knowingly or recklessly makes any statement which is false in a material particular; he shall be guilty of an offense and liable on conviction to a fine of N500 or imprisonment for a term of six months or both such fine and imprisonment.<sup>42</sup>

#### **4. Power to Summon or Compel Attendance**

Equally, in the performance of its functions, the PCC is vested with the power to summon or compel the attendance of any person so required to give evidence, supply information, or produce documents.<sup>43</sup> Access to public sector information is a crucial pillar of open Government and of utmost importance for transparency,

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<sup>40</sup> Abedin, *ibid.*

<sup>41</sup> *Ibid.*, p. 915.

<sup>42</sup> PCC Act, section 8(2).

integrity, accountability, and stakeholder participation.<sup>44</sup>  
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Recognizing this, the PCC is independent of government bureaucracy. At the same time, it is given extensive powers regarding disclosures and access to every government information, together with the production of documents, which assist the PCC's investigation. The PCC is empowered to enforce compliance to get the needed information.<sup>45</sup> This power is essential to the PCC in facilitating impartial investigation to arrive at a fair and equitable decision.<sup>46</sup>

Failure to comply with the order of the PCC by any person shall amount to contempt of court. And such a person would be tried for the same in a court of law.<sup>47</sup> Section 9(1) of the PCC Act empowers a Commissioner to summon in writing any person who in the opinion of the Commissioner is in the position to testify on any matter before him, to give evidence in the case and failure by any

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<sup>43</sup> Ogunna (n. 3); See Hajdari, E. 'Ombudsman-Historical Views' [2014] (1)*European Scientific Journal*, 515-527:526.

<sup>44</sup> Directorate for Public Governance, *The Role of Ombudsman Institution in Open Government*. OECD Working Paper on Public Governance No. 29 (Organisation for Economic Co-operation and Development and European Ombudsman, 2018) p. 6<<https://www.oecd.org/gov/the-role-of-ombudsman-institutions-in-open-government.pdf>> accessed 19 January 2020; See *Democracy beyond the Ballot Box: Open Government Partnership Global Report* (1st edn, Vol. 1, Open Government Partnership Secretariat 2019) p. 32<[https://www.opengovpartnership.org/wp-content/uploads/2019/09/Global-Report\\_Volume-1.pdf](https://www.opengovpartnership.org/wp-content/uploads/2019/09/Global-Report_Volume-1.pdf)> accessed 19 January 2020.

<sup>45</sup> Sani (n. 16) p. 30; See Public Complaints Commission FCT, Nigeria, Abuja (2019) <<https://www.govserv.org/NG/Abuja/294714143995311/Public-Complaints-Commission-FCT%2CNigeria>> accessed on 19 October 2019.

<sup>46</sup> *Ibid*; See *How The Commission Functions: Public Complaints Commission-The Nigerian Ombudsman* <<https://pcc.gov.ng/how-the-commission-functions/>> accessed on 19 October 2020.

<sup>47</sup> Ogunna (n. 3).

person to appear when required to do so shall amount to an offense under this Act.<sup>48</sup> Section 9(2) of the PCC Act further provides for a fine of N500 or six months terms of imprisonment or to both such fine and imprisonment on conviction for any person guilty of an offense.<sup>49</sup>

## **5. Immunity from Legal Process**

The PCC is vested with immunity from the legal process. In other words, the Commissioners cannot be sued due to Act resulting from the regular exercise of their duties. In this view, section 10(1) of the PCC Act provides that no Commissioner shall be liable to be sued in any court of law for any act done or omitted to, in the due exercise of his duties under or pursuant to this Act.<sup>50</sup>

More so, Commissioners are immune from being compelled to legal proceedings to produce any report, statement, record, or communication of any meeting, investigation, or proceedings which they made in the due exercise of their functions. Section 10(2) of the PCC Act provides that any report, statement or other communication or record of any meeting, investigation or proceedings which a Commissioner, officer or servant of the Commission may make in the due exercise of their functions under this Act, shall be privileged in that its production may not be compelled in any legal proceedings if the Attorney-General of the Federation certifies that such production is not in the public interest.<sup>51</sup>

## **WEAKNESSES OF THE NIGERIAN PUBLIC COMPLAINTS COMMISSION**

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<sup>48</sup> PCC Act, section 9(1).

<sup>49</sup> Ibid, section 9(2).

<sup>50</sup> Ibid, section 10(1).

<sup>51</sup> Ibid, section 10(2).

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## **Restriction on the Powers of the Commission to Investigate Certain Matters**

Section 6 of the PCC Act restricts the Commission from entertaining and investigating any Complaints on the following matters.

- a) Matters that are clearly outside his terms of reference;
- b) Matters that is pending before the National Assembly, the Council of State, or the President;
- c) Matters that are pending before any court of law in Nigeria;
- d) Matters that are relating to anything is done or purported to have been done by any member of the armed forces in Nigeria or the Nigerian Police Force under the Armed Forces Act, or the Police Act, as the case may be. Hence, victims of human rights abuses by the Nigerian Security forces aided or abetted by a corporation may be excluded from the services offered by the Commission.<sup>52</sup>
- e) Matters in which the complainant has not, in the opinion of the Commission, exhausted all available legal or administrative procedures. This means that in many cases of violations, instead of making a complaint directly to the ombudsman to seek a quick and inexpensive resolution, a claimant will first have to take their case through the court or arbitration process. Labour matters may be the exception to this, as the

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<sup>52</sup> Access to Justice: Human Rights Abuses Involving Corporations-Federal Republic of Nigeria, A Project of the International Commission of Jurists (International Commission of Jurists, 2012) p. 41 <<https://www.business-humanrights.org/sites/default/files/media/documents/icj-report-access-to-justice-nigeria-22-feb-2012.pdf>> accessed 15 January 2020.

Public Complaints Commission regularly deals with cases regarding wrongful termination of service.<sup>53</sup>

- f) Matters relating to any act or thing done before 29<sup>th</sup> July 1975 or in respect of which the complaints are lodged later than 12 months after the date of the Act or thing is done from which the Complaints arose.
- g) Matters that the complainant does not have a personal interest.<sup>54</sup>

## **2. Lacks the Punitive Power to Prosecute Offenders and Enforce its Decisions**

In practice, the PCC cannot order a decision to be enforced. This, to a certain extent, negates the effectiveness of the system because it makes the ombudsman decision vulnerable to the wishes of the bureaucrats or government officials affected. The PCC lacks the powers of enforcement of its decisions through the court. Its powers have been restricted to recommendations and the use of soft powers of persuasion and mediation.<sup>55</sup>This limitation as decried by the PCC:

Has posed an ominous stance in the realization of its goal and attributed to its failure to address the issue of unresponsive officials. Often, these officials have had to question the extent to which the Commission

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<sup>53</sup> Ibid; See B. A. Odunsi, *The Role of the Ombudsman in Nigeria* (The Essdwin Mellen Press 2007) p. 97.

<sup>54</sup> PCC Act, section 6(1) (a-g); Ogunna (n. 3); Ebiziem, E.J. and Juliet, A.C. 'Appraisal of Ombudsman in Nigeria; Operations, Benefits and Challenges' [2015](1)(2) *International Journal of Advanced Academic Research, Social Sciences and Education*, 59-72:67.

<sup>55</sup> See PCC Act, section 7.

Section 7(1) of the PCC Act provides that a Commissioner may recommend to the appropriate person or responsible administrative agency, after due investigation of any Complaints, any of the following steps, that is-

- (a) That further consideration of the matter be made;
- (b) That a modification or cancellation of the offending administrative or other acts be effected;
- (c) That alteration of regulation or ruling be effected;
- (d) That full reasons behind a particular administrative or other act be given.<sup>57</sup>

Section 7(2) of the PCC Act provides that where appropriate, a Commissioner may refer cases where he feels that existing laws or administrative regulations or procedures are inadequate to the National Assembly or the appropriate House of Assembly of a State or any other appropriate person or body.<sup>58</sup> According to section 7(3) of the PCC Act, in every case where a Commissioner discovers that any person may have committed a crime, he shall report his findings to the appropriate authority or recommend that the person be prosecuted.<sup>59</sup> Also, section 7(4) of the PCC Act provides that in every case where the Commissioner believes that the conduct of any person is such that disciplinary action against such a person be taken, he shall make a report in that regard to the

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<sup>56</sup> Access to Justice (n. 52).

<sup>57</sup> PCC Act, section 7(1) (a-d).

<sup>58</sup> Ibid, section 7(2).

<sup>59</sup> Ibid, section 7(3).



appropriate authority which shall take such further action as may be necessary in the circumstances.<sup>60</sup>

The PCC expends its time, financial and material resources, energy, expertise, and intellectual resources on a reasonable Complaint, the decision of which is not implemented but dumped in the file. So in this consideration, the PCC could be described as a toothless bulldog that can bark but not bite.<sup>61</sup> Further, there is no express duty imposed on public agencies to comply with the decisions of the PCC. Also, the weakness in the law has made federal agencies to interpret their duty to co-operate with the PCC to connote collaboration for the period of investigations and not in the enforcement of the decisions of PCC. This is made more difficult by the absence of a clear strategy to enforce decisions of the PCC, causing it to only rely on informal arrangements for enforcement.<sup>62</sup>

Also, due to long years of military rule, which has created a culture of violence to the extent of disobedience to court directives by individuals and organizations, the PCC appears to be a toothless bulldog.<sup>63</sup> Thus, the effectiveness of the PCC depends mainly on the

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<sup>60</sup> Ibid, section 7(4).

<sup>61</sup> Ebiziem and Juliet (n. 54) p. 67.

<sup>62</sup> Afegbua and Adejuwon (n. 30) p. 109; See Mekdes, M.M. 'The Challenge of Enforcing Ombudsman Decisions: The Case of Ethiopia' Paper presented at a Conference titled "Repositioning the Ombudsman Challenges and Prospects for African Ombudsman Institutions" organized by Kenya School of Monetary Studies, Ethiopia, 19<sup>th</sup>-21<sup>st</sup> September, 2013, pp. 49-51 (The Commission on Administrative Justice (Office of the Ombudsman, 2014) <<https://www.theioi.org/downloads/32cd1/KenyaOMReportRepositioning%20the%20OM%20Challenges%20and%20ProspectsSep%202013EN.pdf>> accessed 23 January 2020.

<sup>63</sup> Ojo, E.O. 'Human Rights and Sustainable Democracy in Nigeria (1999-2003)' [2006](13)(1) *J. Soc. Sci.*, 15-29:22-23; See L Adamolekun and EL

willing cooperation of government officials since the PCC lacks the power to enforce its recommendations.<sup>64</sup>In other words, the ombudsman can only use the persuasive powers of his personality that are among other things linked with his working relations with the administration and with his acceptance as an independent assessor.<sup>65</sup>But this cooperation is not always forthcoming.<sup>66</sup>

### **3. Lack of Total Independence from the Government**

Independence, the ability to think and act within the realm of a mandate without interference from vested interests, is a theoretical attribute of all ombudsmen. In practice, it is not always the case. The way an ombudsman is appointed, its legal statutes and security of the office, the institutions to which it is accountable, and the possibility to hire staff and control its budget all affect its ability to act impartially and independently.<sup>67</sup>Lack of total independence from the Government to a more significant extent can be a barrier. The same Government appoints members of the institution with the

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Osunkunle, Nigeria's Ombudsman System (Heinemann Educational Books (Nig.) Limited 1982).

<sup>64</sup> EEjere, Promoting Accountability in Public Sector Management in Today's Democratic Nigeria. Tourism and Management Studies International Conference, Algarve, University of the Algarve, Portugal (Vol. 3, Book of Proceedings, 2012) pp. 953-964:960.

<sup>65</sup> Remac, M. 'Standards of Ombudsman Assessment: A New Normative Concept?' [2013] (9)(3) *Utrecht Law Review*, 62-78:62.

<sup>66</sup> Ejere (n. 64).

<sup>67</sup> MC Diaw, The Ombudsman Story: A Case Study in Public Oversight, Natural Justice and State Transformation' Working Paper (Centre for International Forestry Research, CIFOR, August 2007) p. 17<[https://www.researchgate.net/publication/312341186\\_The\\_Ombudsman\\_story\\_A\\_case\\_study\\_in\\_public\\_oversight\\_natural\\_justice\\_and\\_State\\_transformation](https://www.researchgate.net/publication/312341186_The_Ombudsman_story_A_case_study_in_public_oversight_natural_justice_and_State_transformation)> accessed 19 December 2019; See Fombad, C.M. 'The Enhancement of Good Governance in Botswana; A Critical Assessment of the Ombudsman Act of 1995'[2001](27)(1) *Journal of Southern African Studies*, 57-77.

mandate to investigate them. As such, many cases would be abandoned mainly when it directly affects the Government negatively.<sup>68</sup> In other words, the fact that the Government appoints them is weakness that can indirectly make them vulnerable to the wishes of the Government that select them.<sup>69</sup>

According to section 2 of the PCC Act, both the Chief Commissioner and other Commissioners of the PCC are appointed into the office and removed from office by the Government. Thus, there is the fear that they will carry out their functions in a manner that will not offend the Government, knowing that they may be removed any time from their office by the same Government that appointed them. In other words, the appointment and removal provisions can expose the office of the ombudsman to executive or partisan interference.<sup>70</sup> This is because, in most cases, he who pays the piper dictates the tune. Section 2 of the PCC Act provides as follows:

- (1) The Chief Commissioner and other Commissioners shall be appointed by the National Assembly and shall be persons of proven integrity and shall possess such other qualifications as the National Assembly may determine.<sup>71</sup>

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<sup>68</sup> Abasiokong, H.S. and Uzoma, C.C. 'The Ombudsman: An Instrument for Smooth Bureaucracy in Nigeria' [2019](5)(1) *Journal of Humanities and Social Policy*, 1-8:5; M Reddi and D. Barraclough, *An African Journey Towards Good Governance: The History of the African Ombudsman and Mediators Association* (African Ombudsman and Mediators Association & African Ombudsman Research Centre) <<http://aoma.ukzn.ac.za/Libraries/AOMAdocuments/AOMAAORCHistoryBook-FINAL24January2013.sflb.ashx>> accessed 5 January 2020.

<sup>69</sup> Osakede, K.O. and Ijimakinwa, S.O. 'The Role of Ombudsman as a Means of Citizen Redress in Nigeria' [2014](3)(6) *Review of Public Administration and Management*, 120-128:127.

<sup>70</sup> Diaw (n. 67) p. 20.

<sup>71</sup> PCC Act, section 2(1).

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- (2) Subject to subsection (3) of this section, a Commissioner shall hold office for a term of three years in the first instance and shall be eligible for re-appointment for a second term of three years and shall vacate his office at the expiration of a period of six years.<sup>72</sup>
- (3) The Commissioner may, at any time, be removed from his office of appointment by the National Assembly.<sup>73</sup>

The PCC operates as a supervisory body that monitors the executive in the interests of the general public. Thus, the PCC must be independent.<sup>74</sup> A former Nigerian Senate President-David Mark once stressed that for Nigeria to fight corruption and administrative injustices effectively, the PCC must be given absolute professional independence.<sup>75</sup> A 2017 study which focused on the efficiency of the Nigerian PCC in the 2010-2015 periods, particularly in Anambra State, concluded that the Nigerian PCC had failed to adequately address cases of violation of fundamental human rights

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<sup>72</sup> PCC Act, section 2(2).

<sup>73</sup> PCC Act, section 2(3).

<sup>74</sup> Directorate for Public Governance (n. 44), See M Oosting, 'The Independent Ombudsman in a Democracy, Governed by the Rule of Law' Occasional Paper No. 66, September 1998, International Ombudsman Institute: University of Alberta, Canada, 1998 <[http://www.theioi.org/downloads/fls6g/IOI%20Canada\\_Occasional%20paper%2066\\_Marten%20Oosting\\_The%20Independent%20Ombudsman%20in%20a%20Democracy%2C%20governed%20by%20the%20Rule%20of%20Law\\_1998.pdf](http://www.theioi.org/downloads/fls6g/IOI%20Canada_Occasional%20paper%2066_Marten%20Oosting_The%20Independent%20Ombudsman%20in%20a%20Democracy%2C%20governed%20by%20the%20Rule%20of%20Law_1998.pdf)> accessed 20 February 2020.

<sup>75</sup> Abigael Joshua, 'Repositioning Public Complaints Commission for Greater Efficiency' *The Tide News* (Port Harcourt, 10 January 2014)<<http://www.thetidenewsonline.com/2014/01/10/repositioning-public-complaints-commission-for-greater-efficiency/>> accessed 1 December 2019.

of public servants and that the Commission was hampered in its activity by undue government interference.<sup>76</sup>

#### **4. Inadequate Funding**

Another major hindrance to the effectiveness of the PCC in Nigeria is insufficient funding. Inadequate funding poses a severe challenge to the PCC in carrying out its activities, including sensitizing and promoting the idea of public accountability and educating the public about the existence of the PCC and its functions.<sup>77</sup>The staff of the PCC in 2016 went on strike as a result of a slash in their salary. The strike is an expression of dissatisfaction on the part of the staff and could result in their inability to perform their duties.<sup>78</sup>

Recently, Chile Igbawua, the Chief Commissioner of PCC, said that the PCC has the challenge of inadequate funding and that lack of funds hinders active investigation and resolution of cases reported to the Commission. He noted that the work of the PCC was movement intensive because officers needed to go to areas where Complaints come from as often as necessary for proper investigation and resolution.<sup>79</sup>He said the PCC was facing a significant challenge in mobility due to a lack of vehicles.

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<sup>76</sup> Country Policy and Information Note-Nigeria: Actors of Protection, March 2019, p. 24 <[https://assets.publishing.service.gov.uk/uploads/attachment\\_data/file/attachment\\_data/file](https://assets.publishing.service.gov.uk/uploads/attachment_data/file/attachment_data/file)> accessed on 30 November 2019.

<sup>77</sup> Afegbua and Adejuwon (n. 30) p. 110; Radhika, D. 'Ethics in Public Administration' [2012](4)(2) *Journal of Public Administration and Policy Research*, 23-31; The Public Complaints Commission 2017 Annual Report, pp. 192-193<<https://pcc.gov.ng/resources/>> accessed 11 February 2020.

<sup>78</sup> Abasiekong and Uzoma (n. 68).

<sup>79</sup> Chile Igbawua, 'Public Complaints Commission Vows Strict Sanctions Enforcement' *PM News* (Lagos, 6 September 2018) <<https://www.pmnewsnigeria.com/2018/09/06/public-complaints-commission-vows-strict-sanctions-enforcement/>> accessed 15 February 2020.

According to him, Commissioners as well need to go and supervise offices situated in the local government areas of their different states, so lots of mobility is necessary. He noted that currently, there is a gross lack of vehicles, mainly in the states that will aid the functions of Commissioners, and funding is grossly insufficient as money offered to state Commissioners are incredibly inadequate."<sup>80</sup>

Expressing dissatisfaction with the inadequate funding of the PCC, Mr. Funsho Olukoga, a Federal Commissioner of the PCC, requested that the Federal Government either increase funding to the PCC or scrap the PCC. Olukoga, who criticized the Government for not giving importance to the agency in its anti-corruption fight, said the PCC was being denied funds because the Government did not care for the welfare of the public.<sup>81</sup> He noted that the influence of the PCC was being affected due to a lack of funds for its operations. He observed that the PCC is not well funded, and according to him, the most effective way to cripple an organization is to starve it of funds".<sup>82</sup> An under-funded

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<sup>80</sup> Agency Report, 'We've no Money to Work-Public Complaints Commission' *Premium Times* (Abuja, 9 August 2018 <<https://www.premiumtimesng.com/news/more-news/279581-weve-no-money-to-work-public-complaints-commission.html>> accessed 1 February 2020.

<sup>81</sup> Samson Folarin, 'Fund Public Complaints Commission' *Punch Newspaper* (Nigeria, 1 December 2017) <<https://punchng.com/fund-public-complaints-commission/>> accessed 10 January 2020; See BM Abdul, Case Presentations-The Case of Nigeria, Securing the Ombudsman as an Instrument of Governance in Africa, 2<sup>nd</sup> Regional Colloquium of African Ombudsman Institutions convened by the Commission on Administrative Justice (CAJ)-Kenya's Office of the Ombudsman, 19<sup>th</sup>-22<sup>nd</sup> February 2015, Nairobi Kenya, p.19.

<sup>82</sup> Folarin, *ibid.*

ombudsman is an ineffective ombudsman.<sup>83</sup>The PCC must be adequately funded to perform their tasks properly while keeping their independence from the branch of Government that determines their budget, which is the executive by the provisions of section 2(4) of the PCC Act.<sup>84</sup>

## **5. Lack of Publicity**

It is stated that the most significant problem of the PCC is perhaps a lack of publicity. A considerable percentage of the society is not aware of its existence, let alone contacting it for a redress of infringement of human rights.<sup>85</sup>It is observed that several people are not aware of the existence, purpose, function, work, and accomplishment of the PCC due to a lack of adequate publicity.<sup>86</sup>Unless there are thorough and effective enlightenment programmes, that is, vigorous publicity,<sup>87</sup> this system can hardly claim to be a defender of the illiterate citizens. The import of the enlightenment programme is to make sure that the PCC does not fail in its crucial function of educating the people (particularly the poor) of their rights and how they could safeguard them.<sup>88</sup>

## **CONCLUSION AND RECOMMENDATIONS**

The importance and benefits of the Nigerian PCC have been clearly explained. And, despite the shortcomings of the PCC, it has, to a reasonable degree, been successful in reducing the misuse of

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<sup>83</sup> Abdul (n. 81).

<sup>84</sup> Section 2(4) provides that “There shall be paid to the Commission and other Commissioners such salaries and allowances as the President may from time to time direct”; See Directorate for Public Governance (n. 44) p. 8.

<sup>85</sup> Ojo (n. 63) pp. 22-23; See Adamolekun and Osunkunle (n. 63).

<sup>86</sup> Afegbua and Adejuwon (n. 30); Radhika(n. 77).

<sup>87</sup> Osakede and Ijimakinwa (n. 69); See Acheneje (n. 9).

<sup>88</sup> Osakede and Ijimakinwa, *ibid.*

power, which is characteristic of current governmental administration. In a nutshell, the PCC has added more meaning to the idea of democracy and the rule of law. Thus, the authors contend that as far as the ombudsman system continues to exist in our society, any government or administrative official will think twice before resorting to either unethical conduct of his duties or misuse of administrative or bureaucratic power when dealing with the public.<sup>89</sup>

Through the handling of Complaints, investigations on their initiative and the reports the PCC regularly submits to the relevant respective institutions (for example, the National Assembly, House of Assembly of a State, Heads of Federal Government Agencies, Heads of State Government Agencies, etc.), the Commission collect a wealth of information about the functioning or malfunctioning of public administrations administered to the public by government officials. Their recommendations not only aim to solve the specific problem a citizen encounters but also address more systemic issues to improve the public administration of Government and to hold it accountable. Thus, the PCC is a crucial actor for policymaking and public governance reforms. They do these through evidence-based expertise based on their cases and their regular interaction with citizens.<sup>90</sup>

However, it must be noted that the PCC is faced with several challenges that need urgent attention in other to position the Commission for effectiveness. These challenges which had earlier been discussed include but not limited to; lack of punitive power to prosecute offenders and enforce its decisions-which has accorded

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<sup>89</sup> Ibid, p. 127.

<sup>90</sup> Directorate for Public Governance (n. 44) p. 22.



the PCC the status of "a dog which can only bark but cannot bite"; lack of total independence from the Government which is believed to have made the PCC vulnerable to undue government interference, inadequate funding-which has hindered the operations of the PCC, lack of publicity-which has made the PCC unknown to the average Nigerian, and so forth. The challenges facing the PCC have contributed to the gross failure of the Commission in meeting most of the objectives it is set to achieve.

It is the views of the authors that there is a need to overcome the challenges hindering the effectiveness of the PCC in order to position it to fully fulfill the mandate for which it was established. In light of the preceding, the authors recommend that:

1. The law that established the PCC should be amended to give power to the PCC to prosecute offenders and enforce its decisions. Doing so will enable the PCC to effectively address cases of administrative injustice and maladministration by public officials against Nigerian citizens, especially public workers. In other words, the PCC should be given more teeth to bite as we found that the provision of the law establishing the PCC is also a hindrance in the wheel of progress of the PCC. The powers to diligently arrest and prosecute any offender should be given to the PCC.
2. Adequate fund should be made available to the PCC as the mouthpiece of the public to reduce delay and inability to address all cases. For example, the PCC needs funds for the purchase of vehicles since its activities require mobility to reach out to Complainants. Funding is an aspect that is very critical for the success of the PCC; indeed, administrative efficiency could be fully realized when the

agency in charge is not starved of funds for its operations. An underfunded PCC equals an ineffective PCC.

3. There should be adequate publicity campaigns and public enlightenment programmes of the functions, powers, and jurisdiction of the PCC to enable the citizens to know about the existence of the Commission and its scope of operations. The perception of the PCC by Nigerians can change from that of a crippled and comatose agency to a very functional and efficient one through increased awareness campaigns. The PCC can create this awareness through the media and advocacy visits to media organizations, focus groups, and town hall meetings in the States of the Federation. Bringing the PCC to the public notice will help to avoid ignorance of their rights and privileges. The PCC can also engage in massive collaboration with other anti-corruption and good governance agencies.
4. In terms of the provisions of section 2(1) of the PCC Act, "The Chief Commissioner and other Commissioners shall be appointed by the National Assembly and shall be persons of proven integrity and shall possess such other qualifications as the National Assembly may determine." The fact that the Government appoints the Chief Commissioner and other Commissioners portends a weakness that can indirectly make them vulnerable to the wishes of the Government that appointed them. Therefore, it is recommended that a body like the Nigerian National Judicial Council, which is responsible for the identification, appointment, promotion, and discipline of judicial officers, be appointed to scan, screen, interview, and make recommendations to parliament for the

appointment of the Chief Commissioner and other Commissioners of the PCC. Such a body needs to be given powers to challenge the parliament if deviations have been made from the preferred candidate. This recommendation can solve the political deployment of candidates with political leanings, reduce government influence, and increase the independence of the Nigerian PCC.