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DEMOCRATIC GOVERNANCE AND THE PLACE OF TRIBUNAL IN CONTEMPORARY SOCIETY

PROF. FEMI OMOTOSO*

A.M. BABATOLA Ph.D*

ALIYU .M.KOLAWOLE Ph.D**

ABSTRACT

This work examines the relevance of tribunal in policy formulation in order to thrive good governance in any society. In carrying out this task, certain fundamental indices of good governance such as constitutionalism or rule law, popular participation among others were critically assessed .However, The work relies on both primary and secondary sources of information to generate data. The data sources were complemented with oral interview within and among relevant stakeholders and members of the public to elicit more information about the activities of the tribunal in fostering peace co-existence in the society. Data were equally sourced from the internet, governmental organizations and agencies concerned with the impact the tribunal in decision making.

The study raises fundamental question about the place of the tribunal and its responsibility to engender good governance. It noted that the essence of the tribunal is to promote peace in the society, the activities of the tribunal have been perceived otherwise which have propelled untold misconceptions negatively impairing good governance. This has created the rift among various parties in the society..

* **Department Of Political Science, Ekiti State University, Ado-Ekiti, Nigeria.**

** **Department Of Political Science, Obafemi Awolowo University, Ile-Ife,Nigeria.**

The study therefore concludes that for the tribunal to creditably perform well, freedom must be granted such that the tribunal is immumed against public interference. Government must be responsible and responsive to the yearnings and aspirations of the tribunal. There must be concerted efforts on the part of the tribunal's members to be seen as true representatives of the masses by promoting and delivering unbiased decision such that would engender good governance..

Keywords: Democracy, Governance, Tribunal, Decision Making and Decision Implementation.

Introduction

Conceptual Clarification Of Tribunal

According to the Law Dictionary, Tribunal is "the seat of a judge, its place where he administers justice, a judicial court; the bench of judges".A tribunal is generally referred to as any person or institution having the authority to stand in for, judge, solicits, adjudicate on, or determine disputes or claims. Tribunals in the real sense of it, are not courts of normal jurisdiction. For instance, the international criminal Tribunal for Rwanda is a specifically formed body under Great Britain.

Tribunals are of varied types, there could be Employment Tribunals, Election Petition Tribunals, Private judicial bodies are equally called Tribunals. Like in Great Britain, Employment Appeal Tribunal is superior court of record. They (Employment Tribunals) are bodies formed only for the purpose of hearing specifically employment disputes. Moreover, Election Petition Tribunals as constituted in Nigeria, are saddled with the responsibilities of adjudicating the areas of dispute in any election so conducted, for instance, Election Petition Tribunals, are virtually set up in almost all states of the Federation to address the issue of election malpractices e..g. a case study of Osun State Governorship election challenged in the tribunals set up for that purposes. Similarly, a case study of Ondo State between the Peoples Democratic Party (PDP) and the Labour Party (LP). Equally the case between the Action Congress of Nigeria (ACN) and the Peoples Democratic Party (PDP) of Ekiti State and a host of others.

In furtherance, there is Administrative Tribunal also known as Administrative Panel of Enquiry to look into the area of disputes or crisis administratively. A tribunal could be a committee or court that has been convened to address a special issue (Lindar et al, 1990) maintains "Tribunals are not part of the regular legal systems but they are usually established by the government and their results are legally binding".

Variously, tribunals may be constituted for multifarious reasons. The proceeding of such tribunal can be open or closed depending on the sensitivity surrounding the issue at stake. Most often than not, military tribunals are made closed especially in a matter relating to coup d'état. Nevertheless, should any tribunal be made closed, formerly a written declaration abridging the outcomes of such may however be published after all proceedings and decisions must have been concluded.

In the situation of "international interest", that is where the International community wishes to hold hearing relating to War issue. A tribunal may be used to address specifically the event at stake so that the speculations of falaritism, nepotism and manipulation can be avoided. For instance, if there has been a war in Iraq, a tribunal convened in Iraq may be criticized on the ground of manipulation and of hearing towards the side of Iraq whereas with the employment of an Independent tribunal judgment can be made without bias.

Tribunals can further be convened with the sole responsibility of conducting hearings and probing into social issue. Such a tribunal of this nature can be styled "Fact Finders" according to Barrister Olugbade (2008:41). In carrying out social issue under these tribunals, witnesses may be called upon to bear witness and also reading through reports of other fact finders in other to come up with an independent report acceptable, reliable and practicable. For instance, a tribunal might be constituted by the government on the public transportation system in Nigeria. And may be saddled with the responsibility of determining the laxity found in the said transport system, provides suggestions for attaining a more balanced, effective, dependable and accessible public transport system in the country.

. From another dimension; government can decide to constitute a committed to Wade into constant and religious crisis. And in implementing this, certain individuals from the particular religious sects are selected to form such a committee. The main aim and objective might be to look into the immediate and remote reasons for such crisis and provide a panacea of attaining religious integrating that has positive effect on the social political system of the country.

It is important to maintain here that scores of people are usually invited to serve on a tribunal based on their past experience, or professional skills which are considered useful. At times members of general public may be invited to serve in a tribunal all these are done to avoid bias and manipulations and to attain a generally acceptable report for the purpose of the constitution of such a tribunal.

The Distinction Between A Court And Tribunal

Having looked at the definitional perspective of a tribunal, it is important to differentiate between a court and tribunal in order to have clear understanding of the concepts. A court is differentiated from tribunal on the ground of "formality" while a court is more formal, with more elaborate laid rule and procedures about how a case should be determined most often than not, a tribunal provides a straight-jacketed, cheaper and quicker way of trying to resolve a dispute (Kelvin,2009:42)..

It should be stated that tribunal save time by using lawyers less and asking people involved in the case to represent them so the use of lawyers is not strongly emphasized unlike court where the employment of lawyers is almost made compulsory. Although in most cases, both tribunal and court are open to the public (Ibid).

While the courts have their own challenges in the pursuit of consistency, there exist historical features common to Tribunal affecting and shaping its operation and performance in various ways in which Tribunal attempt to achieve consistency. There are a number of significant areas in which Tribunal differ from the courts.

In the area of skill and experience, it can be argued most Tribunal adjudicators of old had no legal training or experience unlike the present dispensation. It therefore follows then that in the old that adjudicators did not bring to the work of adjudication, the same set of consistent and coherent legal skills and experience brought to the work of judging. By extension therefore, not only does this require significant training and guidance while in the job, it equally means that there is no common set of understanding about adjudication that can be relied upon to build the Tribunal processes

However, there are lines of similarity that can be drawn between tribunals and courts. The under-mentioned can be considered the common features of the tribunal and courts:

(i)Just as the courts are separated from the Legislative and Executive arms of government, tribunals are equally characterized by the same features.

(ii) Both tribunals and courts are publicly open to the public in many respects.

(iii) Both tribunal and courts have reasons for transparency in their decisions.

(iv) In tribunals, parties have the right to appeal likewise in the courts of law.

(v) Notable differences exist between tribunal and courts all over the globe. Some of them are highlighted hereunder:

- There is more relaxed approached to the rule of evidence that exists in tribunals than in courts of law.
- Tribunal abets any parties to defend themselves without necessarily requiring the employment of lawyers,however, only in some exceptional cases are lawyers employed.
- The areas of operation in tribunals are so narrow that it is only saddled with the specialization in conflict/dispute resolution. Whereas courts are generally equipped with the power to hear cases on broader perspectives.
- Disputes are easily, quickly and cheaply resolved at a tribunal than in a court of law where litigation is the top priority.

Policy Making Defined

To have an in depth analysis of the topic in question, it will be reasonable to have a clear understanding of what policy and policy making connote.Burch (1979:108) in PEASON'S entitled "POLICTICS UK" seventh edition defined policy "as a set of ideas and proposals for

action culminating in government decision". He maintained further by saying study policy is studying how decisions are formed; that "to study policy therefore is to study how effective decisions are made" (ibid).

According to Merrian– Webster online dictionary, policy is given as "a definite course or method of action selected from among alternatives to guide and determine present and future decisions" Policy can also be defined as making decision affect values and resources allocation.

It should be stated in furtherance that any administrative decision made in the Legislative, Executive or Judicial branches of government that are intended to direct or influence the actions, behaviours and decision of others could be referred to as policy. Also, policy has variously been seen as authoritative decisions and guideline that direct human behaviour towards specific goals either in the private or the public sector. (http://www.occd.Org/puma/citizens/)

What Is Policy Making?

A policy from the New Oxford Dictionary English is seen as "a course or principle of action adopted or proposed by a government party, business or individual.".According to Journal presented by OECD public Management, Policy Brief entitled **"Modernising Government White Paper"** dated March, 1999, Policy-making is considered as "the process by which government translate their political vision into programme and actions to deliver outcomes – desired change in the real word".

It follows therefore that the steps or processes of actualizing intentions, visions, dreams and even actions into expected goals and projects could be described as policy-making. It must be noted that for proper understanding of the concept (i.e. Policy-making), different forms exist that involve various venues like "non-intervention, regulation e.g. making regulation for licensing, or the encouragement of voluntary change, including by grant aid, as well as public service provisions" (ibid)

Examining The Features Of A Good Policy Making

For policy to be practicable and acceptable, there must be some variables that are good about. The intention of this study therefore is to look at the good policy-making. Firstly, a good policy

making must focus on efficiency in service delivery. By this, effectiveness, efficiency, great productivity is attained through the formation of good policy. This corroborates the position of (Nigel Hamitton, 1991:4) while submitting that "… Government reforms in the late 1980s and 1990s in Northern Ireland as elsewhere focused on efficiency in service delivery and reforming management structures how things were done" by extensions therefore policy-making as outlined by Nigel is about setting up what needs to be done, examining the underlying rationale for and effectiveness of policies then working out how to do it by reviewing on an ongoing basis of delivering the desired effects.

Another feature of policy making is the fact that its operation holds in an outrightly complex ecology. This is indicated in the postulation of Hamitton while assessing the functionality of a policy making as an instrument of development "Public policy operates in an extremely wide environment as tools and techniques that can help in the job more effectively" (ibid).

It must be emphasized that a good policy making often requires the administration as a whole to strike a balance among a wide range of competing interests without costing, sight of the desired policy outcome. This is credited to Hennessy, (2008:16).

In furtherance, there is need for good policy-making because the entire globe for where policies are for need to have turned-out to be too dynamic No Wonder (Bovens, 2001:8) asserts;
The world for which policies have to be developed is becoming increasingly complex; uncertain and unpredictable. Citizens are informed, have rising expectations and are making growing demands for services tailored to their individual needs. Key policy issues, such as social need, low educational achievement and poor health are connected and cannot be tackled effectively by departments or agencies acting individually.

Another factor calling for the admirableness of a policy-making process is the fact that the world is increasingly inter-connected and inter-dependent. It should be stated that global cum national trends and events can swiftly become principal issues for a sectional or regional government or administration and communication. For instance, the adoption of new information and communication technology have become highly globalized in nature.

Formulating Policies: The Role Of Tribunals

Tribunals be it administrative or otherwise tend to operate in some "hazy air alongside the system of justice administered by traditional courts and the wider system of public administration that supports any existing executive government"(Simmonds, 2004:1). Tribunals are presently passing through some phases of changes and equally undergoing a period of re-assessment and renewal all over the world mostly in Australia, New Zealand and indeed in Britain.

It is the intention of this study to examine some roles performed by tribunals in ensuring and engendering practicable and workable public policies. These roles are discussed putting into full consideration the postulations, perspectives and submissions of some erudite scholars and professionals in the field of justice.

First and foremost, tribunals ensure equality and x-trays justice for all. This is well expantiated in the presentation of Justice Barker. In his words, Barker opined that "… the new Zealand law Commission in March, 2004 published its report 85, delivering justice for All: a Vision for courts and Tribunals" recommending more unified tribunal system in every country; of the globe …" (Barker, 2005:2).

Another role that reflects public policies formulation is that the decision-making can be implemented effectively, quickly and less expensive supporting this view, Michael and Simmonds write:

The reason or reasons for this move to the generalist tribunals are … partly conceptual, the belief by all concerned that decision-making will be improved, and partly efficiently-related, both in the sense that decisions can be made more quickly and at a reduced cost if we take this forward.

Nevertheless, Gilbert Van (2008:4) argues "for me, I expect more timely decision-making follows the organization and adoption of any administrative tribunals. As it quickly reduces delays and costs for any parties involved in Tribunal decision-making".

Administrative tribunal further displays an acknowledgement of the legitimate and important role it plays in promoting good governance. This is traceable to the position of Professor Dame Hazel Genn while subscribing to Barker's contribution which shows:

My own sense is that this recent, renewed interest in the role and organization of tribunals reflects a country acceptance of administrative tribunals following a long period, and constitutes an acknowledgement of the Legitimate and important part tribunals play or potentially may play in the good governance of society (ibid).

It must be stated that tribunals equally serve as "correcting fluid" to any systematic error committed during the process of decision-making. This forms the presentation of Kelvin Whitaker (2007:16) when he asserts that:

citizens also expect that, to the extent an error in the decision-making process in any case under review before a tribunal is revealed to involve a systematic error, the decision maker will learn from its mistakes and correct its decision-making process to avoid repeating its error in other cases.

He went further to summarize that:

To this extent, I believe citizens see tribunals as an important public policy tool designed not only to help secure their practical participation in public decision-making that affects them personally but also to achieve some practical, independent overview of the broader system of public administration.

Indeed, in the words of Professor Smith (1968:14) in the second edition of his Famous treaties on administrative law in Britain while indicating the essentiality of tribunals, he adds:

Tribunals have not been established in accordance with any preconceived grand design. They have been set up ad-hoc to deal with particular classes of issues which it has been thought undesirable to confide either to the ordinary courts of law or to the organs of central or local government. A tribunal may be preferred to an ordinary court because its member will have (or will soon acquire) specialized knowledge of the subject matter, because it will be more informal in its trappings and procedures because it may be better at finding facts, applying flexible

standards and exercising discretionary powers, and it may be cheaper, more accessible and more expeditions than the High Court. Occasionally dissatisfied with the over-technical and allegedly unsystematic approach of the court towards social welfare legislation has led to a transfer of their functions to special tribunals though the superior courts retain an ultimate supervisory jurisdiction.

In concrete terms, Professor Wade in his fourth edition of Popular text "Administrative Law:" published in 1977 highlighted the vantage position of establishing tribunals in promoting policy-making as he submits thus:

But the social legislation of the 20th century demanded tribunals for purely administrative reasons: they could offer speedier, cheaper and more accessible procedure …

He added more positively that in the hands of public policy makers, important roles have been played by tribunals in ensuring public decision-making where:

The public has demanded administrative justice in relation to a public decision affecting a person's personal financial or proprietary right … and where there has been a degrees of public dissatisfaction with existing means dispute resolution.

In the formulating of policy, it must be mentioned clearly that community expectations are "managed and met" by the Tribunal though what (Whitaker, 2007) calls "formal communication" such as Rules o Practice, Notice to the community, Information Bulletins, Guidelines and information posted on Websites. I furtherance, the community is made to understand how it is that differences of view within are resolved. In doing this, a high degree of transparency is expected or desirable.

For instance, in the case of Election Malpractices as observed in Nigeria, many decisions of the Tribunals are upheld and binding on all the parties involved. Readily comes to mind is of Ondo State Governorship case, Ekiti State, Osun State, Balyesa State to mention a few. It must be

added that the decisions of the Tribunals in those states are of the "full Board" variety or more focused discussions between the Chair and Individual adjudicators.

Lesson to learn here is the fact that the community of ushers should know that all major issues of law, policy and procedure are thoroughly discussed internally as "tribunal' issues but that at the end of the day, each adjudicator decides there questions for themselves in the context of each matter bring dealt with.

Besides, the only manner in which Tribunals can perform more creditably well is by putting into consideration that accessability enhances the role of Tribunals in policies formation and formulation. Thus, Kelvin Fenwick once quoted Sir Andrew Leggatt (2001:12) in his edition of Practice Essentials for Administrative Tribunals (2007:1) as follows:

It should never be forgotten that tribunals exist for users, and not the other way round. No matter how good tribunals may be, they do not fulfill their function unless they are accessible by the people who want to use them and unless the users receive the help they need to prepare and present their cases

It is also of paramount importance that a tribunal member has some responsibilities that usually facilitate practicable decision-making. In the word of Michele Asprey (2003:37), he posited as quoted:

When you join an administrative tribunal, there are a number of responsibilities that came along with the job. Keep in mind that your main responsibility as a tribunal member is to support the work of the tribunal. What includes …. Adjudicating hearings and making decisions … Attending meetings and participating fully and frank in decision … contributing to the ongoing development of tribunal decision policies and procedures…. working effectively with tribunal colleagues and staff.

Equally, for tribunal to form workable policies, the onus is on its members to stay informed. This is done by aligning themselves with the up keep of other cases being or already decided by any

competent tribunal of such nature. This is with a view to reading key decisions that have been made in the past so as to inform their own decision-making.

Be that as it may, governing oneself as a member of tribunal effectively enhances and promotes openness, fairness and unbias decision-making process and of course ensures the credibility of any given tribunal. The credibility of a tribunal is important as Lisa (2001) opines:

A tribunal's credibility is important because it affect; (i) whether tribunal decisions are likely to be accepted by the parties involved; (ii) whether there will be issues relating to the enforcement of the tribunal's decisions. And the number of applications and complainants received by the tribunals.

In order to conduct a fair hearing and to ensure that appropriate decision/policy is made in its functions, every tribunal is expected to have started with ensuring that the parties involved are adequately informed about the hearing process, understand the roles of the various participants and are ready or the hearing (Giwen, 2008).
In order to enhance its role in policies formulation, every tribunal is distinctively characterized with basically various models, but for the purpose of this study, two of such models essential to the promotion of unbias decisions making are explained below: (William, 2002). (i) The Adversarial Model and (ii) the Inquiry-based model.

According to William while explaining the two models, the similarity maintains that:

in an adversarial model parties are set in opposition to one another. The decision–maker depends entirely on this opposition between the parties to reveal information necessary to decide the case. The parties present evidence and argument to the decision-makers who uses it to decide what the outcome should be

In the case of Inquiry-based hearing model, he explained that the decision-makers actively seeks out the evidence to decide the case by questioning parties involved that may have useful information.

It should be borne in mind that in Britain following the Second World War, there was very high intensive social Legislation resulted in strong emphasis on the operation of tribunals. Various complaints about the operation of tribunals led to the setting up of Administrative Tribunals and Enquiries (known as the Franks Committee) (www.irc.justice.wa.gov.au).

The Franks Committee reported that it acknowledged that tribunals should properly be regarded as part of the machinery of administration. This is to argue that the idea of government retaining a close and continuing responsibility for tribunal must be completely rejected. The Committee is hereby quoted as saying:

We consider that tribunals should properly be regarded as machinery provided by parliament for adjudication rather than as part of the machinery of administration. The essential point is that in all cases, parliament has deliberately provide for a decision, outside and independent of the Department concerned … and the intention of parliament to provide for the independence of tribunals is clear and unmistakable (Albert, 2008:8).

In addition, the Franks Committee asserted that to make tribunal conform to the standard the government might be having in mind, there fundamental objectives are desirable: openness, fairness and impartiality. Submitting thus:

In the field of tribunal openness appears to us to require the publicity of proceedings and knowledge of the essential reasoning underlying the decisions, fairness to require the adoption of a clear procedure which enables parties to know their rights, to present their case fully and to know the case which they have to meet; and impartiality to require the freedom of tribunals from the influence, real or apparent of Department concerned with the subject-matter of their decisions (Ibid)

Another distinctive characteristic, making the roles of tribunals essential in policy formulation is the fact that the extent to the tribunals takes the process of being open and accountable to the people nowadays. The truth of the matter is that in Nigeria currently, tribunals formed to look into elections matters affecting have taken up dynamic step of making public accessible to their roles. Their website can be visited by any interested member of the public to find out exactly what the tribunals are doing and have done and to read their decisions as well as to find out

exactly who the members of the tribunals are, how to make an application and gain assistance In making of an application.

This study therefore finds out that tribunals in whatever capacity they have been set up whether as a board to regulate a special area of socio-economic activity or to supervise a particular profession, occupation or as a tribunal to review the policies of public officials, it is therefore seen to be more likely to provide administrative justice that devoid of political direction than other public policy-making.

As written by Gilbert (2008:14) while advising the legal practitioners to manage their multiple roles as "tribunal counsel". He posited that tribunal could often require to review the already drafted decision. This of course enables "non-violating" of legislated regime and ensures that the decision remains within the tribunal's jurisdiction. Hence, he writes "… it can also be a method of ensuring consistency between decisions but care must be taken that each decision is made on its merits and that the panel is not pressured to conform to existing precedents."

Conclusion

From the foregoing, it can be concluded that policy-making as a product of ideal tribunals can and should not be under-estimated. In that, a more resilient process is possibly involved in the formulation of policies. The key to improving policy-making as contained in this study is to construct resilient process that can handle challenges and pressures from the ecological forces and the society at large.

It is made known in the study that principal four steps are essential in any administrative tribunal to function effectively. According to (Kelvin, 2009:59): They are

(i) clarifying the issues you decide;
(ii) making findings of fact based on the evidence;
(iii) determining the relevant policy and law; and
(iv) applying the relevant policy and law to the facts to reach your conclusion"

He stresses further by saying "This is generally a straightforward process when facts and policies are clear and the law is settled and can be difficult process if the facts, policies or law are unclear". All these, as observed in this study promote quick, cheap and fair, dependable and practicable policies as formed by any administrative tribunal.

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