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CHAPTER 6

ADMINISTRATIVE LAW

A Law to make provisions for the codification of the common Law and consolidation of enactments relating to subsidiary legislation and judicial control of administrative act of judicial or quasi-judicial nature

[27th August 1991]

PART I - GENERAL

1. This Law^r may be cited as the Administrative Law

Short title

2. In this Law. —

"agency" means a public agency, and includes an agency, "authority" means ^{Interpretations} authority, and includes an authority; "competent legislative authority" means any person or body of persons having power under Constitution to make laws for or having force in the State.

"Constitution" means the Constitution of the Federal Republic of Nigeria in force

"law" includes bye-laws, orders, proclamations regulations directions and rules having the force of law;

"officer" means a public officer.

"person" includes institution and body corporate or unincorporated; "public authority" means body charged with public or statutory duties and which performs its duties and carries out its activities for the benefit of the public and whose profits, if any, accrue to the public and not to individuals.

"public officer" has the meaning assigned to it by the Constitution.

"State" means Enugu State of Nigeria

"tribunal" includes any person or body of persons duly appointed to investigate any allegation or Other matter of public interest, but does not include a court of law .

3. (1) No public officer. authority or agency shall have power to make any law having force i ^{Legislative powers}
the State or any part thereof except in exercise of —

- (a) powers conferred upon him or it by the Constitution or any other written law in force in the State, or
- (b) powers duly delegated to him or it by a person having and exercising power to make such delegation under a written law made by a competent legislative authority.

(2) Every delegation of legislative power shall clearly define the agency, authority or person to which the power is delegated, the exercise of the power shall take, the procedure by which the power shall be exercised and the circumstances in which the power shall be exercised.

(3) The power to tax, to make retroactive laws or to sub-delegate legislative power, if not expressly conferred, shall never be presumed or inferred from the circumstances in which the power shall be exercised.

(4) Where expressly authorized so to do, an officer, authority or agency may sub-delegate a legislative power

Provided that it clearly specifies —

- (a) the person to whom the power is being sub- delegated;
 - (b) the scope of the power sub-delegated and the procedure by which the power shall be exercised; and
 - (c) the condition under which the power sub-delegated shall be exercised.
- (5) Any law made in breach of the provisions of this section shall be void.

4. A person exercising legislative power duly delegated to him as in this Law provided shall, subject to this Law and to the terms on which such delegation is made, be deemed for all purposes to have the same legislative competence as had the person who made such delegation, and any law made by such person shall have full force and effect as if made by the person who delegated the power to him.

Process
exercising
delegated
legislative
powers

Procedural
requirements

5.(1) A subsidiary law is made when it is signed by the person or authority vested with the power to make it; and where that authority concerned is a statutory body; the signing shall be properly done if done by the Secretary to that body.

(2) Every subsidiary law shall be made strictly in accordance with the procedures prescribed by this Law, its enabling statute and any other applicable law, and where there is any conflict between the provisions of the enabling statute and the provisions of any other law, including this Law. the provisions of the enabling statute shall prevail and the provisions of that other law shall,

to the extent of the inconsistency, not apply

(3) The fulfilment of every procedural requirement prescribed by this Law or the relevant enabling statute shall be a condition precedent to the making of any subsidiary law, and any subsidiary law made without the necessary procedural requirements being fulfilled shall not take effect until they shall have been fulfilled

6. (1) Subject to the provisions of the enabling statute, a subsidiary law which is likely to div Notice to interested persons
any persons or groups of their property or vested rights shall not be valid unless —
notice of the intention to make the subsidiary law is first published in the State
Gazette and in such other manner as the enabling statute may provide or as is
sufficient to inform those likely to be affected of the plan to make the subsidiary law and of the
probable effect of that law;

(4) The procedure prescribed in this section shall not apply where it may be against public
interest LO give the required notice or hold a public hearing. In particular, it shall not apply to
regulations or rules which deal with the internal affairs of an agency and its staff.

7. (1) Where a subsidiary law authorized to be made is not likely to affect th Opinions where no interested parties may be invited ed
rights of individuals or interest groups, the responsible administrative agency may at its
discretion invite from die members of the public arguments, opinions or suggestions on a
proposed enactment and arrange for a public or private hearing of the objections, view's,
suggestions and arguments it has received from the members of the public.

(2) If the agency decides to invite objections, views, suggestions and arguments, it shall
first publish a notice thereof in the official *Gazette* of the State Government or in any other
convenient manner, giving—

- (a) the place and time the subsidiary law is to be made;
- (b) the official or authority competent to make the subsidiary law and the legal
authority under which he is to act;
- (c) a gist or text of the proposed enactment or such amount or details of the proposed
enactment as would enable the members of die public to form their opinions thereon:
- (d) information about the class of people from whom opinions or objections are

- invited and the nature of the views or objections expected from them;
- (e) the name or designation of the official to whom written opinions, arguments, suggestions or objections are to be submitted as well as the place, days and hours when they can be submitted to him. Where applicable, the place and time of public or private hearing shall also be given.

8.(I) Where section 4 applies and a hearing is considered necessary, the hearing shall be before a committee composed of such number of persons as is considered appropriate by the Commissioner charged with the task of making the subsidiary law or with responsibility for the control of the agency which has the power to make the subsidiary Hearing of representation

(2) The Commissioner shall appoint both the Chairman and other members of the committee so however that the Chairman or one of the other members shall be a legally qualified person.

(3) Every committee appointed under this section shall have the power—

- (a) To regulate its own proceedings;
- (b) to act notwithstanding any vacancy in its membership: Provided that the Chairman and at least one other member are present at a hearing;
- (c) to administer oaths and affirmations;
- (d) to compel the attendance of a witness at a hearing, if necessary;
- (e) to rule on the relevance and weight of evidence, and
- (f) to make recommendations based on the evidence adduced before it.

No duty to accept committee's recommendations
The agency responsible for the making of the subsidiary law shall not in any case be bound to accept or act in accordance with the recommendations of a committee set up under section 8 above, but shall make the required subsidiary law accordingly to its own judgment.

consultations where prescribed
10. (I) Where consultation with individuals or interest groups is prescribed as a preliminary to the making of a subsidiary law, the consultation shall be held with a cross-section of the people or groups required to be consulted, if consultation with all of them is impracticable or unnecessary. If the number of the people or groups to be consulted is small, effort shall be made to consult all

(2) Where consultation is prescribed, a subsidiary law shall not take effect unless such consultation is held.

11.(1) Where a subsidiary law is required to be laid before a legislature or executive council, the law shall not be made or if made shall not take effect until it is laid as required. Where law to be laid before legislature, etc

(2) Wherever a subsidiary law is required to be laid before a legislature or executive council, the period of laying, in the absence of any provision in the enabling statute to the contrary, shall be thirty days during which the legislature is not in recess, in the case of a legislature, or forty consecutive days in the case of the executive council.

12. (1) Subject to any provision of the enabling statute to the contrary, a subsidiary law shall not take effect until it has been published in the State *Gazette* or in such other manner as the enabling statute may prescribe. Publications in Gazette

(2) All subsidiary laws shall have the force of law upon the publication thereof or from the date specified therein if the latter comes after the date of publication.

(3) A subsidiary law published and in force shall remain in force until repealed by the agency that made it or by the appropriate legislature.

13.(1) Any subsidiary law may at any time be amended, varied, rescinded or otherwise repealed by the authority and in the same manner Amendment, repeal, etc

by and in which it was made:

Provided that where such authority has been replaced wholly or partially by another authority, the power conferred herein upon the original authority may be exercised by the replacing authority concerning all matters or things within its jurisdiction as if it were the original authority.

(2) Until revoked or amended or varied in the manner prescribed in subsection (1) of this section, a subsidiary law validly made shall remain in force

(3) When an enabling statute or a part of it is repealed, all the subsidiary laws made thereunder shall remain in force, so far as they are not inconsistent with the repealing statute, and, unless the contrary intention appears, until they shall have been replaced in the manner prescribed by the repealing statute.

ural
ments to be
tive

14. Every procedural requirement prescribed by this Law or the enabling statute or any other applicable law shall be deemed to be imperative unless the enabling statute provides otherwise. Accordingly, any subsidiary law made in disregard of any such requirement shall be void and of no effect and the courts shall have jurisdiction to grant a declaration of its invalidity, and to grant any other or further relief appropriate for the case.

The Scope or Substance of Subsidiary Lines

Law to be confined
within jurisdiction

Subsidiary- law made in pursuance of the provisions of a statute shall deal only with such matters or things and be confined in its operation to such areas or periods of time as are within the jurisdiction or powers of the authority constituted under the enabling statute. Accordingly, it shall not bind persons, matters or things outside the jurisdiction of that authority or have effect outside the areas or periods of time subject to the jurisdiction of that authority.

Agency may
prescribed penalty
for breach

16. Where by or under any statute power is given to an agency to make a subsidiary law, then, unless the contrary intention appears, the agency shall also have the power —

- (a) to prescribe for a breach of any subsidiary law (not being a rule of court) a penalty not exceeding one hundred naira, or such imprisonment not exceeding six months, or both, as the agency may think fit;
- (b) to annex to any breach of a rule of court such penalty not exceeding three months as the agency may think fit

Fees etc, may be
prescribed, reduced
or

17. (1) Where a statute confers power on any agency to make subsidiary laws and to make provisions therein in respect of fees or charges, such authority may provide in the subsidiary laws—

- (a) specified fees or charges;
- (b) maximum or minimum fees or charges;
- (c) maximum and minimum fees or charges;
- (d) for the payment of fees or charges either generally or under specified conditions; and
- (e) for the reduction, waiver or refund in whole or in part of any such fees or charges either upon the happening of certain events or in the discretion of any person.

(2) Where any reduction, waiver or refund in whole or in part of any fee or charge is provided, such

reduction, waiver or refund may be made to apply either generally or specifically —

- (a) in respect of certain matters or class of matters;
- (b) in respect of certain documents or class of documents;
- (e) where any event happens or ceases to happen;
- (d) in respect of certain persons or class of persons
- (c) in respect of any combination of such matters, persons, documents or events, and may be made to apply subject to such conditions as may be set out in the subsidiary law or in the discretion of any specified person.

(3) Where an administrative agency with power to make, subsidiary law is required to provide services or do some acts for which fees or charges are to be paid, the agency may by subsidiary laws provide that the services shall not be rendered or acts done until the required payments are made. Where the precise amount of the payments to be made cannot be ascertained until the services are rendered or things done, the agency may provide in the subsidiary laws that the services shall not be rendered or acts done until there is paid such an amount as the agency or its representative or nominee shall estimate to be the correct amount payable.

[4] Subject to the provisions of this section, an administrative agency shall not have power to impose any fees, charges or any form of tax on the members of the public except under powers so to do expressly, conferred upon it by an enabling statute

18. (1) No subsidiary law shall be inconsistent with any provisions of the Constitution, and my subsidiary- law which is inconsistent with any provisions of the Constitution shall be null and void to the extent of the inconsistency.

(2) No subsidiary law shall be inconsistent with the provisions of any statute in force in the State unless the enabling statute otherwise provides.

(3) Subject to any express provision of any statute in force in the State, where power is given to the to the Head of State or to the Governor of the State to make subsidiary laws which would have the force of law in the State, any subsidiary law made by him shall take precedence over any other subsidiary law made by any other agency to take effect in the State. Accordingly, where any other subsidiary law conflicts with any subsidiary law made by the Head of State or

the Governor of this State, the subsidiary law made by the Head of State or the Governor as the case may be, shall prevail.

law ultra vires 19. Any subsidiary law the substance or contents of which go beyond the limits permitted to it by the enabling statute or by the Constitution or by any other applicable law shall be ultra vires and therefore void to the extent that it exceeds the permitted limits.

Judicial review of Subsidiary Laws

Court to determine validity of law Subject to the provisions of the Constitution –

(a) any court in the State, subject to the limits of its jurisdiction and powers, may determine the validity of any subsidiary law in a declaratory or coercive action and, in appropriate cases, may grant a declaratory judgement or such other reliefs as the justice of the case demands.

(b) the jurisdiction of the courts to review subsidiary laws shall not be ousted or curtailed except by express and clear provisions of a statute:

Provided that nothing in this section shall be construed to confer jurisdiction to grant declaratory judgements on any court which otherwise would not have such jurisdiction.

(c) where the jurisdiction of the courts to inquire into the provisions of subsidiary legislation is ousted or curtailed by express provisions of a statute, it shall nevertheless be competent for the courts to inquire and determine whether or not the subsidiary law under review is one of the type permitted by its enabling statute to be made. If the courts find dial substantively or procedurally, the subsidiary law in question is outside the scope of the enabling statute, it shall be competent for the courts to pronounce it *ultra vires* and void.

(d) where a subsidiary law is required to take effect as if enacted in the enabling statute the subsidiary law when made shall not take effect as if enacted in the enabling statute unless procedurally and substantively it has complied with the requirements of the enabling statute.

21.(1} The production of a copy of the State *Gazelle* containing any subsidiary law or a copy of any Gazette copy to be
any such law purporting to be printed by the state Government printer shall be *prima facie* evidence ... prima face evidence

courts and for all purposes whatsoever of the due making and tenor of such subsidiary law.

(2) Where a subsidiary law is required by the enabling statute to be published in a specified manner other than the publication in the State *Gazette*, then a copy of the subsidiary law certified by an administrative officer in charge of the area concerned as made and published in the prescribed manner shall be admitted in evidence in any court without further proof thereof.

Breach to be tried summarily Subject to any provisions of the enabling statute to the contrary, Breach of any provisions of a subsidiary law made or published in the prescribed manner shall be tried in a summary manner.

PART II—ADMINISTRATIVE AND ADJUDICATORY POWERS

Administrative Powers

Executive powers to be within legal limits

1) Any person or authority vested with executive powers shall act strictly within the limits of powers conferred upon him.

(2) Any executive action taken by any person or authority outside the limits of the powers conferred upon him or in violation of any constitutional provision for the time being in force shall be null and void.

(3) Any person injured as a result of an exercise of executive power without legal justification shall have free access to the court having jurisdiction in the area where the injury occurred, and the court shall have jurisdiction to award to that person a declaratory judgment, damages, *mandamus* or any other appropriate remedy.

(4) Every executive power conferred by law shall be exercised reasonably and in good faith so as to achieve the purposes for which the power is granted. Any exercise of such power for the primary purpose of achieving a purpose other than that for which the power is granted shall be illegal and void.

Adjudicatory Powers

No, adjudication without statutory power

24. (1) An administrative officer or tribunal shall not adjudicate or determine any disputed issues of law or fact or any issue affecting a person's civil rights or obligations, except when permitted so to do by a written law.

(2) When determining a person's civil rights or obligations, an administrative officer or tribunal shall act strictly within the limits of the jurisdiction conferred upon it by law. Any award made by it without or in excess of its jurisdiction is void and shall not take effect or bind any party to the proceedings.

(3) An adjudicatory power exercised in violation of any provision of the Constitution shall be *ultra vires* and void.

25. (1) A person shall be disqualified from hearing and determining an issue if he is a party to it or is so related to one or some of the parties that by virtue of that relationship he is or is likely to have some personal bias or prejudice in favour or against one or other of the parties.

(2) A person who has some interest in the ultimate outcome of a case in the sense that he stands to gain or lose by the decision one way or the other is by virtue of that interest disqualified from hearing and deciding the case.

(3) A person who, without being related to either of the parties to a case and without having interest in the outcome of the case, has personal prejudice towards one or other of the parties in the sense that he is personally predisposed to favour or antagonize any of the parties shall be disqualified from hearing and determining the case.

(3) A person disqualified under this section may nevertheless hear and decide a case if it is absolutely necessary that he should do so, and it will be deemed necessary for him to do so if he is specifically required by law to hear and determine the case or if no other person or panel of adjudicators can validly hear and decide the case.

(4) Where a person otherwise disqualified under this section is bound by necessity to hear and determine a case, he shall first declare his interest in the open before proceeding to hear and determine the case.

(5) An agency or department of State shall not be disqualified from hearing and deciding a case merely because it is a party to the case or has some interest in the outcome of the case if a written law requires the hearing and determining of the issue to be undertaken by the agency or the department

(6) A reviewing court shall set aside any decision given under subsection (4) or (6) of this section on the ground of bias if the degree of prejudice or animosity actually displayed is such that the course of justice is likely to have been thereby interfered with.

(7) Any member of a tribunal may at any time withdraw from the proceedings if satisfied that he is disqualified; and upon the filing in good faith of a reasonable objection or affidavit alleging personal bias or disqualification of any member of a tribunal. The tribunal itself shall determine the question. A person not satisfied with such a determination may appeal against it to the High Court having jurisdiction in the area where the question has arisen and from the decision of the High Court further appeals may lie ultimately to the Supreme Court.

26. (I) Every deciding officer or member of a tribunal shall, before entering upon his duties, make and subscribe to an oath that he will faithfully and impartially and to the best of his ability discharge the duties devolving upon him under the inquiry, and if the inquiry is not to be held in public, that he will not divulge the proceedings or the vote or opinion of the members or any other matter relevant to the inquiry.

(2) Such oath may be taken under the Oaths Law, and in this provision, “oath” includes affirmation and declaration.

27.(I) Parties to any proceeding before a tribunal or a deciding officer shall be—

- (a) the complainant;
- (b) the respondent; and
- (C) any other person required by the tribunal to be joined by leave of the tribunal.

(2) Any person likely to be bound or whose rights or interests are likely to be bound or affected by the decision of a deciding officer or tribunal shall be allowed to intervene in a proceeding as a

party and shall on being so allowed be entitled to the rights and privileges accorded to the parties thereto, including the right to receive notices, make submissions or examine witnesses.

28. (1) Except where public policy or public interest demands otherwise ^{Parties to be given notice opportunity} any issue of law or fact shall be heard or decided by any administrative officer or tribunal unless the parties thereto and those likely to be affected or bound by the decision are first given notice of the proceedings and afforded opportunity to present their own side of the case, argument, allegation or claim.

(2) Each party shall be served early with notice of —

- (a) the time, place and date of the proceedings;
- (b) the legal authority and jurisdiction under which the proceedings are being conducted, and
- (c) the nature of the proceedings, including a detailed and clear statement of the charges, claims or allegations made against him

(3) Such a notice shall be accompanied by all documents considered by the deciding officer or tribunal to be relevant to the issues in dispute, which the officer or the tribunal has so far received.

(4) It shall be a sufficient service of notice if any document or process required to be served is handed to the party concerned or affected personally or is sent by registered post to the last known place of residence or abode of the party.

(5) Every charge claim or allegation made against a party to a proceeding shall be spelt out in detail and in plain and clear language so as to afford the party against whom it is made an opportunity to understand and prepare his answers to it.

(6) Charges, claims or allegations filed against, and served upon, a party to a proceeding may in the course of that proceeding be amended at any stage:

Provided that—

- (a) the party against whom the amendment operates is promptly notified of the amendment and given sufficient time and opportunity to supplement or otherwise amend his answers to

the original charges, claims, or allegations;

(b) the amendment, if different from or unconnected with the original charges, claims or allegations, shall be treated as a fresh charge, claim or allegation and shall be subject to all conditions governing the filing of charges, claims or allegations, including any statutory stipulations as to the time limit within which any charge, claim or allegation may validly be filed.

29. (1) Provided that a party has been duly served with notice of an adjudicatory proceeding, a deciding officer or tribunal may hear and determine a case in the absence of that party

(2) Any party to the proceedings before a deciding officer or tribunal who fails to appear or be represented may apply, within thirty days of the date of the pronouncement of the findings and directions of the deciding officer or tribunal, for a rehearing on the ground of want of notice or other good and sufficient reason; and the tribunal may, in appropriate cases, grant the application upon such terms as to costs or otherwise as it thinks fit

30. A deciding officer or tribunal shall have power -

- (a) to procure all such evidence, written or oral, and to examine all such persons as witnesses as the officer or tribunal may think it necessary or desirable to procure or examine;
- (b) to require the evidence (whether written or oral) of any witness to be made on oath, affirmation or declaration such affirmation, or declaration to be that which could be required of the witness if he were giving evidence in a Magistrate's Court.
- (c) to summon any person in Nigeria to attend any session of the officer or tribunal to give evidence or produce any document or other thing in his possession and to examine him as a witness or require him to produce any document or other thing in his possession;
- (d) to issue a warrant to compel the attendance of any person who, after having been summoned to attend, fails to do so, and does not excuse such failure to the satisfaction of the deciding officer or members of the tribunal, and to order him to pay all costs which may have been occasioned in compelling his attendance or by reason of his refusal to

obey the summons, and also to fine such person a sum not exceeding ten naira, such fine to be recoverable in the same manner as a fine imposed by a Magistrate's Court.

- (e) to admit any evidence, whether written or oral, which might be admissible in civil or criminal proceedings;
- (f) to admit or exclude the public or any member of the public from any session of the officer or tribunal;
- (g) to admit or exclude the press from any session or meeting of the tribunal;
- (h) to award any person who has attended any session of the officer or tribunal, including any interpreter appointed to serve the officer or tribunal, such sum or sums as in the opinion of the officer or tribunal may have been reasonably expended by him by reason of such attendance;
to enter upon any land, whether State land, communal land, land at the disposal of any local government, land occupied by any person or community or unoccupied land for the purpose of obtaining evidence or information required by, or which may be of assistance to, the tribunal, and for safeguarding any such document or property which in the opinion of the officer or tribunal ought to be safeguarded for purposes of the inquiry.

- (2) Notwithstanding the provisions of subsection (1) of this section, the tribunal shall withhold the exercise of any power under this section if the Federal or State chief executive shall certify to them that the exercise of such power would in his opinion encroach unduly upon the territorial or other jurisdiction of the Government of the Federation or of the State.

31, (1) Summons to witnesses may be as in Form A in the Schedule and shall be served by the police, or by such person as the tribunal may direct.

(2) A warrant to arrest a person who has failed to obey summons to attend as a witness may be as in Form B in the Schedule and may be executed by any member of the police force. Where the person to be arrested is subject to the jurisdiction of a local government such arrest may be made by any person authorized by any written law relating to local government to effect arrest.

32. (I) When dealing with the civil rights and obligations of an individual, an

administrative tribunal shall hold its proceedings (including the announcement of its decisions) in public.;

Provided that —

- (a) such a tribunal may exclude from its proceedings persons other than the parties thereto in the interest of national defence, public safety, public order, public morality, the welfare of persons who have not attained the age of twenty-one years, the protection of private lives of the parties or to such extent as it may consider necessary by reason of the special circumstances of the case, especially where publicity would not further but obstruct the course of justice; and
- (b) if in any such proceedings a Minister of the Government of the Federation or a Commissioner of the Government of the State certifies that it would not be in the public interest for any matter to be publicly disclosed, the tribunal shall make arrangements for evidence relating to the matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.

(2) Every such adjudicatory proceeding or inquiry, if not private, shall be held at such places and such times as are reasonably open and convenient to the people to attend, and notice of such proceedings shall be given to the general public so that those of them wishing to attend may do so.

33. Any person whose conduct is the subject of inquiry under this Law or who is in any way implicated or concerned in the matter under inquiry shall be entitled to be represented by counsel at the whole of the inquiry and any other person who may consider it desirable that he should be so represented may by leave of the commission or tribunal be represented in manner aforesaid.

Legal
representation

34. (I) Every tribunal shall afford to interested parties reasonable time and opportunity to receive and consider all submissions, offers and proposals, made by their opponents, to cross-examine their adversaries and comment upon views

Parties to be given
opportunity to
prepare and present
own cases

When
proceeding
s to be in
public

adverse to them, and to prepare and submit their own side of the case, including views adverse to others and those favorable to themselves.

(2) Subject to the provisions of subsection (1) of this section, every inquiry' or proceeding shall be conducted and concluded with reasonable dispatch by avoiding unnecessary delays.

Proceedings to
be informal

35. (1) Proceedings before a tribunal shall be informal and, accordingly, no hearing shall be invalidated by reason only of its informality.

(2) Every' tribunal shall have the power to make such rules for the conduct of the proceedings, the time and place of meeting and of adjournment as it may think fit, subject to the terms of the commission under which it functions.

(3) Where the tribunal is composed of more members than one, if the members shall, in any case, be equally divided on any question that arises during the proceedings, the Chairman of the tribunal shall have a second or casting vote.

Interpreters and
translators may be
appointed and
sworn

36. (1) Every tribunal shall have the power to appoint any person, whether in the public service or not, to act as interpreter in any matter brought before it and to translate any books, papers or writings produced to it.

(2) Any interpreter appointed under this section shall take and subscribe to the following oath, or, as the case may be, make and subscribe before the tribunal the following affirmation or declaration—

“I-----do swear (or solemnly affirm or declare) that I will faithfully perform the duties of interpreter, and will truly translate or explain all documents entrusted to me for such purpose to the best of my ability, and that I will not except as authorized by the commissioners directly or indirectly reveal the contents of such documents as may be entrusted to me, nor the evidence given by witnesses which may' have been interpreted by me”

Party to be
notified of his
wrongful act.

37. (I) No person shall be condemned or made to suffer in person or property by a tribunal without first being told what conduct on his part justifies such a measure and

given an opportunity to explain his conduct or otherwise defend himself.

(2) The decision of a tribunal shall stand notwithstanding that the party against whom it is given has not been heard, provided that the party in question has been properly served with notice of the proceedings and given an opportunity to defend himself as required by section 6 of this Law.

(3) Except where a statute provides otherwise or where public health, public safety or public interest requires prompt actions, no license or lease granted by or on behalf of the State shall be withdrawn, revoked, suspended or varied to the prejudice of the license or lessee unless such licensee or lessee is first—

(a) informed in writing of the fact of his conduct or action which warrants or justifies, the withdrawal, revocation, suspension or variation of the licence or lease; and

(b) afforded an opportunity to explain or defend himself and to comply or attempt to comply with any lawful requirements.

(4) In deciding whether or not to grant initial licences to individuals, administrative agencies may depend and act solely or partly on facts or evidence submitted by the applicants in written form without necessarily interviewing or hearing the applicants.

38. (1) Except where a statute provides otherwise, any issue required to be determined after an inquiry or investigation shall be decided or determined on the basis of the oral and written testimony of the parties and their witnesses together with such other relevant facts as might have been brought to the notice of the tribunal and the parties.

Post-inquiry
decisions to accord
with evidence

39. A person or official required to make a determination after some inquiry shall personally hear the testimony of the parties and their witnesses or, if there be no hearing, read any written submissions by the parties and their witnesses before making the determination, except where he is authorized to delegate to other people the function of hearing the parties and receiving evidence from them.

Evidence to be
taken personally

40. Where the tribunal making the determination can validly delegate the function of hearing and receiving evidence, it need not personally hear the parties and their witnesses nor need it read all or some portions of the transcripts of the evidence received, and the reports and recommendations of the delegate who interviewed the parties and received evidence from them.

Taking evidence
to be delegated

Discretionary issues

41. Where a person is empowered to make a determination in his discretion, he may appoint a person or a body of persons to investigate the issues involved by receiving and considering oral and written evidence from those concerned and making and submitting reports and recommendations. He is not bound personally to hear the parties or to read and weigh all or some portions of the transcripts of evidence received, but may act on the basis of any information at his disposal, including any oral and written reports and recommendations of the investigators and subordinate officials involved in the investigation.

Where powers to
decide to be vested in
agency

42. Where the power to decide or determine an issue is vested in an agency or institution, the person or official whose function it is to speak or act for the agency or institution in that regard need not personally hear or interview the parties and their witnesses, but may base his decision or action on the transcripts of the evidence received, the summaries of such evidence made and the report and recommendations of any body or committee appointed to conduct the investigation.

Decision after
inquiry

43. Where an issue is required to be decided after some inquiry, any decision given or determination made in disregard of relevant considerations or on the basis of irrelevant factors is voidable and may be proclaimed void by the courts at the instance of any interested party thereto.

No persons to
be agent for
both party and
tribunal

44. A person shall not serve as the agent or adviser of both the parties or witnesses and the commission or tribunal with respect to a given case, and no members of a commission or tribunal shall consult any person or party on any fact in issue except upon notice and opportunity for all parties to participate.

45. No officer, employee or agent engaged to assist the commission or tribunal in the conduct

Adjudicators not to
control assistants

of an investigation or inquiry shall, in that or a factually related case, participate or advise the commission or tribunal in framing or arriving at a decision or recommendation

46. No member of a tribunal or commission and no person who assists the tribunal or commission framing or reaching its decision shall be responsible to or subject to the supervision or direction of any person engaged in the conduct of the investigation or prosecution.

Assistants
excluded in taking
decisions

47. Evidence taken by a tribunal during an inquiry or investigation shall not be admissible against any person in any civil or criminal proceedings whatever, except in the case of a person charged with giving false evidence before the commission or tribunal.

Evidence before
tribunal
inadmissible in
other proceedings

48. Any person who threatens, insults or injures any person for having given evidence, or account of the evidence which he has given before a tribunal, shall be guilty of an offence and shall be liable upon summary conviction to imprisonment for two years.

Threat, etc, to
witness

49. Any person who hinders or attempts to hinder any person from giving evidence before a tribunal or by threats deters or attempts to deter any person from giving such evidence, shall be guilty of an offence and shall be liable upon summary conviction to imprisonment for two years.

Hindering witness
from giving
evidence

50. Any person who, being appointed by a tribunal to act as interpreter in any matter brought before them or to translate any documents produced to them, and having taken the oath or made the affirmation or declaration prescribed in section 36 (2) of if this Law, shall wilfully give false interpretation of any evidence or make an untrue translation of any such document, shall be guilty of an offence and liable upon summary conviction to imprisonment for two years.

False interpretation

51. Any person who being summoned to attend as a witness or produce a book, document or any other thing refuses or neglects to do so or to answer any question put to him by or in the concurrence of a tribunal shall be liable—

Failure to attend or
testify

- (a) to a fine of ten naira to be imposed by the tribunal and recoverable in the same manner as a fine imposed by a Magistrate's Court; or
- (b) on summary conviction to a fine of one hundred naira:

Provided that no person shall be bound to incriminate himself, and every witness shall, in

respect of any evidence written by him or given by him before the tribunal be entitled to the same privileges to which he would have been entitled if giving evidence before a court of justice, and no person shall be punished under both paragraph (a) and paragraph (b) of this section in respect of the same offence.

Failure to take
Oath or produce
document or
answer questions

52. Any person who, being in attendance as a witness, refuses to take an oath lawfully required by a tribunal to be taken or to produce any document in his power to control lawfully required by the tribunal to be produced by him, or to answer any question to which the tribunal may lawfully require an answer shall be liable—

(a) on summary conviction before a court of competent jurisdiction to a fine of one hundred naira; or

(b) on the order of the tribunal to a fine ten naira

Contempt of
tribunal

53. (1) Any person who commits an act of contempt, whether the act is or is not committed in the presence of the members of the tribunal sitting in an inquiry, shall be liable—

(a) on summary conviction before a court of competent jurisdiction to a fine of two hundred naira or to imprisonment for a term of three months; or

(b) on the order of the tribunal to a fine of twenty naira which shall be recoverable in the same manner as a fine imposed by a Magistrate:

Provided that no fine shall be imposed by a commission or tribunal under this provision until the tribunal shall have heard the offender in his defense.

(2) An appeal shall lie on any point of law or fact to the High Court within whose area of jurisdiction the act concerned was committed, against any order made by a tribunal under subsection (1) (b) of this section as if such order were a decision of a Magistrate against which an appeal lay.

54. (1) Where an act of contempt is alleged to have been committed but not in the presence of the members of a tribunal sitting in an inquiry, the commission or tribunal may summon the offender to appear before it at any time and place to be specified in such summons, there to show cause why he should not be judged to have committed an act of

Summons to
show cause
where contempt
is alleged

contempt and be dealt with accordingly.

(2) If any person who has been summoned in accordance with subsection (1) of this section fails to attend at the time and place specified in the summons, the tribunal may issue a warrant to compel the attendance of such person, to pay all costs which may have been occasioned in compelling his attendance and may also fine such person a sum of ten naira, such fine to be recoverable in the same manner as a fine imposed by a Magistrate's Court.

(3) The summons under subsection (1) and the warrant issued under subsection (2) of this Section may respectively be as in Form C and D in the Schedule

(4) The summons issued under subsection (1) of this section shall be served by the police or by such person as the tribunal may direct.

55. For purposes of sections 53 and 54 of this Law, the following he deemed to be an act of contempt ----

(a) any act of disrespect and any insult or threat offered to a tribunal or to any member thereof while sitting in an inquiry;

(b) any act of disrespect and any insult or threat offered to any member of a tribunal at any other time and place on account of his actions or speeches as a member of the tribunal during the proceedings of an inquiry;

56. (1) Witness and other person, not being interpreters attending at the request of or upon summons by a tribunal shall subject to any order made by the tribunal, be entitled to like expenses as if summoned to attend the High Court in a criminal trial.

(2) Interpreters shall receive such remunerations as the tribunal may direct

(3) The payment to witnesses, interpreters and other persons shall be made out of the public revenue.

57. A tribunal shall make and furnish to the proper authority full report in writing of its proceedings, findings and recommendations and record an opinion and reasons leading to its

“Contempt
defined”

tribunal to
furnish returns of
proceeding

tribunal to furnish
returns of
proceedings

conclusions. Any member dissenting from the conclusion or any part thereof, shall note his reasons for such dissent in writing.

58. For purposes of this Part of this Law—

Interpretation

“Court” means the High Court of Justice of the State;

“Judge” means a judge of the said court;

“State” means Enugu State of Nigeria;

"subordinate authority" means a person or body of persons or authority or tribunal or a court of law not being a superior court of record, having legal authority to determine questions of fact or law affecting the rights or interests of individuals and having a duty to act judicially or fairly to all government, ministers, commissioners, government departments, public officers, administrative tribunals, and individuals, where authorized or acting under any law to make determinations or take decisions affecting the rights, duties or interests of individuals.

PART III—ORDERS OF *MANDAMUS*, *CERTIORARI*

AND PROHIBITION

59. The court shall have power to issue an order of mandamus commanding a subordinate authority to exercise its public duty.

High Court may
issue mandamus

60. (1) The duty to be enforced must be of a public nature, created and vested in the subordinate authority by law, custom or contract

Duty to be public

(2) The duty must be imperative or obligatory in character and not merely permissive.

(3) The duty must be recognized by law and must not be merely a moral duty.

(4) Provided that the duty is imperative or obligatory in character, it does not matter whether it is defined in positive or negative terms.

61. (1) *Mandamus* shall not lie to compel a power to be exercised in a particular manner or direction or so as to indicate a preference by the court for one or other of a number of

Manner or direction
not to be dictated
by *mandamus*

alternative choices open to the donee of the power where the donee has a discretion in that regard.

(2) Where, however, a discretion or choice which constitutes or forms part of a public duty has not been exercised or made by the donee of the power, an order of *mandamus* may issue to compel the discretion to be exercised or choice to be made, provided that the court in issuing the order does not by itself directly or indirectly exercise the discretion or make the choice on behalf of the donee.

(3) Where a discretionary power is exercised in disregard of essential preliminaries or relevant consideration, or where the exercise of such a power is influenced either by an improper motive or by irrelevant extraneous considerations, the court shall be entitled to assume that the power has not been validly exercised and may, therefore, issue an order of mandamus to compel the exercise of the power according to law.

(4) In awarding an order of mandamus to an applicant the court shall not exercise a discretion or make a choice for and on behalf of the donee of the power, but shall be entitled to indicate clearly which factors are relevant and which factors are irrelevant to the exercise of the power.

(5) An error of law or fact committed in the course of exercising a discretionary power shall not justify the award of mandamus, except where such an error operates to destroy the jurisdiction or authority of the donee of the power or is so patent or manifest that it justifies the assumption that the power has not been exercised.

62. (I) For an applicant to maintain an action for an order of mandamus, he must satisfy the court that he is aggrieved by the non- performance of the duty he seeks to enforce or that he has a real and immediate personal interest in the performance of that duty, and is therefore entitled to insist on its performance

(2) Where the right to enforce a duty or the interest in the performance of the duty belongs not to the applicant personally but to the public or a community, the applicant

Applicant must
have interest

must show that his interest in the performance or enforcement of the duty is both substantial and greater than the interest he ordinarily shares in common with other members of the public or community

(3) A duty owed by a local government body to those Subject to its jurisdiction may be enforced by any rate payer or any taxpayer ordinarily resident within the locality without showing that he has any special interest or right in the performance of the duty.

(4) As a general rule, mandamus shall not issue at the instance of an applicant to enforce a duty owed by a party to a third party, but the court may in its discretion allow any member of the public, to sue for mandamus even where such an applicant has not suffered and cannot show that he has suffered any special damage by the non-performance of the duty in question.

(2) A duty owed to the State, the government or the general public by any person, body or authority may be enforced by the Attorney-General or by any department of State, agency official expressly or impliedly authorized by law to do so, No person shall sue in his private capacity to enforce such a duty unless he satisfies the court that he has special interest in the performance of the duty or that he stands to suffer peculiar damage by the non-performance of die duty.

63. (1) An applicant for the order of mandamus must prove that the right or duty he seeks to enforce is of a public nature, that the discharge of the duty is imperative or obligatory, that he has the necessary locus standi and that a distinct demand for performance has been made.

Duty must be public and obligatory

(2) Notwithstanding the provisions of subsection (1) above, the fact that demand for performance has not been made by an applicant shall not serve as a ground for denying him mandamus if the lime for performance has passed and the person against whom the application is made is in fact vested with the duty, and he cannot in the circumstances be heard to say that he does not know of the existence of the duty and the proper time for its performance or that he still honestly intends to discharge the duty

(3) An order of mandamus shall not lie for nothing and, accordingly, shall not issue where it will be futile and serve no useful purpose or where it will not be effectively enforced. In particular, it will not issue to compel the doing of the impossible or the violation of the law or the exercise of power without lawful authority or the filling of a position that is not vacant,

(4) An order of mandamus shall not compel any party to exercise a power or duty beyond that which he is legally bound to exercise,

Order is
discretionary

64. (1) Whether or not an order of mandamus shall be granted in each case is a matter which lies completely within the discretion of the court which may refuse to grant the order both on merits and on the special circumstances of the case.

(2) Mandamus shall not be granted as of right or as a matter of course, and the court is entitled to take into consideration all relevant factors, including whether or not the applicant has acted in good faith or is guilty of unwarrantable delay.

(3) Mandamus shall not lie where an alternative remedy is available to an applicant, provided the alternative remedy is not less convenient less beneficial, less effectual or less satisfactory. But where the alternative remedy is an indictment, mandamus shall in addition lie to enforce the rights of the applicant.

Where wrong exists
but not remedy

65. Where there is wrong without a specific remedy and because of the absence of such specific remedy justice cannot be done unless mandamus issues, then mandamus shall issue

66. (I) The court shall have power to issue an order of certiorari commanding a subordinate authority to bring to the court its records and decisions or determinations to be reviewed and if necessary quashed by the court.

(2) An order of certiorari shall lie to a subordinate authority notwithstanding that it has completed its judicial functions and has only a purely executive or ministerial function to perform, provided that the executive or ministerial function in question is connected with the judicial function already completed

(3) An order of certiorari shall not lie in respect of any proceeding adopted or decision reached by a usurper who, without any colour of legal authority purports to exercise a power or jurisdiction he does not possess; nor where the decision impugned is void because the body that gave it had acted without any real or apparent authority; provided that where the court considers it necessary in the interest of clarity or for the purpose of removing uncertainty, it may without requiring a formal application to be made to declaratory judgment, grant a declaration proclaiming such exercise of power or jurisdiction to be void and of no effect.

67. (i) Certiorari may be applied for on the ground that the subordinate authority whose decision or action is impugned has acted—

Grounds for application

(a) without, in excess, or in abuse of its jurisdiction or authority; or

(b) in breach of the rules of natural justice, or

(c) in error of law, which error is manifest on the face of the records of the subordinate authority; or

(d) under the influence of fraud or perjured evidence, and the fraud or perjury was instrumental to the decision or action taking the form it took.

(2) Without prejudice to the provisions of subsection (1) of this section, a subordinate authority shall not be deemed to have acted without or in excess or in abuse of its jurisdiction, powers or discretion merely because it has reached a wrong decision or taken a wrong action or because it has committed an error of law or fact in the course of reaching the decision or taking the action, except where the error touches upon a collateral or preliminary matter upon which the jurisdiction, power or discretion depends or where the decision or action impugned is based on the application of a wrong legal test or rule or the admission of irrelevant or extraneous considerations or the exclusion or disregard of relevant considerations.

68. (1) Application for certiorari to quash a given decision or determination may be made by any of those aggrieved by that decision or determination, including those whose legal

Who may apply for certiorari

rights have been infringed and those who have some interest in the application or non-application of the decision:

Provided that the court shall, in exercise of its discretion, refuse an application if the conduct of the applicant has been such as to disentitle him to relief.

(2) Persons aggrieved by a given decision shall include those who have special grievance or who have suffered some special damage over and above the grievance or damage they suffer in common with the rest of the public, and for this purpose any member of a local community shall have a right to apply for certiorari if he has a special grievance of his own against a given decision or determination which affects such community.

(3) Persons other than those aggrieved by a given decision or determination may also for sufficient reason apply for certiorari to quash that decision:

Provided that—

(a) the court shall be entitled to reject such an application where it is not satisfied with the reasons given by such applicants for seeking to intervene in the absence of any personal interest of their own.

(b) if a stranger satisfies the court with his reasons for seeking to intervene in the matter, the court may in its discretion allow him to maintain the action and shall allow the action where it is the only means of seeking that justice is done and that order is enforced in the administration of law.

(C) without prejudice to the generality of subsection (3) of this section, where a subordinate authority acts under a defective jurisdiction and the defect in its jurisdiction is patent or manifest on the face of its proceedings, any person, including a complete stranger to the proceedings, shall be entitled as of right to apply. But where the defect of authority or jurisdiction is latent and not apparent or patent only the person aggrieved may see.

(d) where the general public or a community is aggrieved by a decision, order or action, the proper person to apply for the remedies of certiorari shall be the Attorney-General or any other person or official authorized to do so by the Attorney General or a Law:

provided that—

(i) in such a case, any person who has special grievance or who has suffered some special damage over and above the grievance or damage he suffers in common with the rest of the public or community shall be entitled to sue for the remedies without joining the Attorney-General or waiting for him to sue on his behalf, and:

(ii) that where the grievance or damage is suffered by a local community exclusively, any member of that community shall be entitled to sue for the remedies as if he had suffered a special grievance or damage over and above that which he suffers in common with other members of the community.

69. (1) Certiorari shall not issue to quash a given decision unless the court is satisfied that the decision is judicial or quasi-judicial in nature

Decision to be
judicial or quasi-
judicial not
administrative

(2) For purposes of subsection (1) of this section, a decision shall be deemed to be judicial or quasi-judicial if it creates, varies or extinguishes, or purports to create, vary or extinguish, legal rights or interests or if it concerns issues which, having regard to the circumstances, ought to be decided fairly.

(3) A decision shall be deemed to be judicial or quasi-judicial notwithstanding that it does not finally or conclusively dispose of matters in dispute or that it is a finding which is subject to the approval or confirmation of another body or authority.

(4) Certiorari shall not lie in respect of any decision or determination which is purely administrative in the sense that it has been reached by a person, body or authority acting in a purely ministerial or executive capacity

70. (1) A duty to act judicially shall be deemed to exist wherever there is an issue in dispute between parties or where in the absence of an issue in dispute, a question is required to be decided or determined on the basis of fairness to all concerned solely on the facts of the case or on the evidence adduced without excluding relevant considerations or taking into account irrelevant or extraneous considerations.

When duty to act
judicially exists

(2) Whether or not the duty to act judicially exists is a question of law for the court to decide having regard to the circumstances of the case and to any relevant statutory provisions.

(3) The duty to act judicially may exist notwithstanding that questions of policy mid expediency may come up and be disposed of as a purely ministerial or executive function at some stage of the proceedings.

Conditions for
issue of
certiorari

71. (1) The court shall not issue *certiorari* unless it is satisfied that the decision or determination impugned has been reached by the subordinate authority without or in excess of jurisdiction or in breach of the rules of natural justice, or that the decision or determination was procured by fraud or perjury or contains some error of law which is manifest on the face of the record.

(2) Want or excess of jurisdiction shall be deemed to exist where the said authority has no jurisdiction over the subject-matter of the inquiry, or if it is improperly appointed or constituted, or if it has failed to observe conditions precedent to assumption of jurisdiction, or if some necessary preliminary proceedings are absent, or if jurisdiction properly assumed is subsequently ousted by other factors or events which occurred in the course of the proceedings

(3) An error of law or fact committed by a subordinate authority in the course of reaching a decision shall not operate to deprive it of its jurisdiction, unless the error relates to some preliminary or collateral facts upon the existence or non-existence of which its jurisdiction depends.

(4) A subordinate authority goes outside its jurisdiction if it commits an error by asking and answering wrong questions or by applying wrong legal tests or by admitting irrelevant consideration or excluding relevant considerations or by acting without reasonable grounds where it is required to act when reasonable grounds exists.

72. The court shall have power to issue an order of prohibition, where appropriate, directed to a subordinate authority commanding it to desist from continuing to handle or

High Court issue
may prohibition or
certiorari

conduct any proceedings pending before it in the absence or in excess of jurisdiction or in contravention of the laws of the land

73. Subsections (2) and (3) of section 66, sections 67,68,69 and 70 of this Law shall apply, mutatis mutandis, to orders for prohibition.

74. (1) Certiorari and prohibition are discretionary remedies and as such, in deciding whether or not to award either of them to an applicant, the court is entitled to take into account the conduct of the applicant and special circumstances of the case, including whether an applicant has waived his right to object or has acquiesced in a given irregularity or defect or is guilty of unreasonable delay in bringing the application.

(2) The existence of an alternative remedy shall not be a ground for refusing certiorari or prohibition to an applicant except where the available alternative remedy is by law made exclusive of other remedies, but deciding whether or not to exercise its discretion in favour of an applicant, the court shall take into account all the circumstances of the case, including the existence of such an alternative remedy, its adequacy and convenience, the applicant's reason for not taking advantage of such an alternative and the conduct of the applicant generally.

(3) An applicant for certiorari or prohibition is not bound to exhaust all available administrative remedies and rights of appeal to the courts before lodging his application except where those alternative remedies are by law made exclusive of other remedies.

(4) That the matter in dispute is small, that an appeal against the decision impugned is pending, that such an appeal has already been heard and dismissed, or that proceedings under consideration were initiated by the applicant himself shall not be a ground for denying the remedies to the applicant.

(5) An applicant for prohibition or certiorari must act in good faith and disclose all relevant facts in his possession.

(6) Prohibition shall not lie where it will serve no useful purpose, as where no benefit could arise from awarding the remedy or where such an order cannot be implemented or

Order for
prohibition

Certiorari
and
prohibition
discretionary

where the decision impugned has been so executed that setting it aside would not operate to bring back the state of affairs that hitherto existed or where the tribunal or authority concerned has completed action and cannot be stopped by prohibition from doing anything further.

PART IV,—DECLARATION

75. (I) No action or proceeding shall be open to objection on the ground that only a *Bare declaration* may be made declaratory judgment or order is sought thereby, and no court shall refuse to make a binding declaration of right or duty on the ground that no consequential relief is or could be claimed or awarded.

- (2) In entertaining declaratory actions, every court shall keep within the limits of its jurisdiction and shall not render a declaratory judgment in respect of issues or matters which are outside its jurisdiction or in respect of which it is not competent to award any executory judgment,

*Where
declaration may
be made*

declarator judgement may be awarded by the High Court to determine—

- the existence, scope and validity of rules, claims, rights, duties, power or authority under any customary or enacted law;
- (b) the validity or legality of the exercise or threatened exercise of any legal right, duty, power or authority;
- the validity of any judicial decision or administrative finding or determination;
- (b) the exercise of any legislative or executive power or of any administrative discretion

*Declaration must
be within
jurisdiction*

⁷⁷ (1) A court will not award a declaration unless the parties to the dispute, the subject-matter of the controversy and the monetary value of the claims or interest involved are property within the limits of its jurisdiction.

(2) An action for a declaration will not be entertained by a court if its jurisdiction over the issue is ousted by a validly made law, but such an ouster of jurisdiction will never be implied unless it is clear and unambiguous

(3) The jurisdiction of the courts is not ousted by the mere existence of a special

administrative remedy or by the mere existence of an administrative tribunal or court with power to hear and determine such disputes, except where the remedy provided or the jurisdiction of the tribunal or court is statutorily made exclusive.

(4) Where the administrative remedy or jurisdiction is made exclusive, the High Court in exercise of its supervisory jurisdiction still has the power to pronounce and can legitimately pronounce upon the legality and validity of the decision given by the tribunal or inferior court

78. (1) A declaration shall not be awarded in respect of a controversy that is not real, justiciable or ripe for adjudication. Controversy must be real and justiciable

(2) A dispute is not real and cannot sustain an action for a declaration if it is moot, academic or hypothetical

(3) No declaration shall be granted in respect of any claim, right or duty that is not recognized or protected by law.

(4) A dispute is neither justiciable nor ripe nor fully developed for adjudication if some legally recognized or protected right or duty is not violated or exposed to some real and immediate threat of violation

79. (1) A declaration shall not be made in favour of a party who has not *lo standi* in a controversy. Personal interest or damage essential

(2) A party has no *locus standi* in a controversy if he does not have sufficient personal interest in the subject-matter or the outcome of the controversy or if he has not suffered or does not stand to suffer some injury either by the enforcement or threatened exercise of some power, authority or right.

(3) Where a dispute concerns interest of a public nature, only the Attorney-General as the custodian of public rights can sue to have the right or duty about it declared, and he may sue *ex officio* or at the instance of a party.

(4) A party may sue in his private capacity to have a public right or duty declared only where the threat or interference with such right or duty also constitutes a threat or interference with his private right, or where the interference with such right or duty inflicts upon him a special damage over and above that suffered by the general public.

(5) A statutory body with clear and definite statutory functions may sue and be sued in respect of its functions without joining the Attorney-General if the action is necessary as a means of checking or stopping an injustice.

80.(1) A declaratory action can be entertained and declaratory' judgment awarded only against a proper defendant, and for this purpose a proper defendant is person or body whose rights, obligations, power or authority will be bound or affected by a declaration made in the proceeding.

(2) A declaration may not be awarded in a proceeding unless all necessary defendants or persons interested in the subject-matter or outcome of the action are joined and made to be bound by any decision to be given.

(3) An action for a declaration any be maintained against may person, authority or body with definite legal duty or function, provided that the declaration is sought in respect of that duty or function.

(4) An action against a government of the country shall be instituted against the Attorney-General of that Government, provided that where a statutory duty or function is specifically imposed on a named official or body, an action for declaration may be instituted against such official or body without necessarily joining lite Attorney-General in respect of any exercise or threatened exercise of the duty or function by the official or the body.

81. (1) Declaration is a discretionary remedy and so may be refused to a party even where he has proved his case, but the court shall exercise the discretion judicially and must have a reasonable cause for refusing the remedy to a party

All power
defendants to be
sued

Declaration is
discretionary

who has established sufficient grounds for it to be awarded.

(2) A declaration may not be granted where it will be unjust or inequitable to grant it or where it will not effectively terminate a dispute or where it will serve no useful purpose.

(3) The existence of an alternative remedy will not bar a court from either entertaining an action for a declaration or exercising its discretion in favour of a party by awarding the remedy to him.

(2) Where a statutory remedy is available and made exclusive, the court may still grant a declaration if the statutory remedy no longer exists or is statute-barred or where a party will go without a remedy for an injury or injustice if the declaration is not made.

(3) Where an applicant deliberately avoids exhausting administrative remedies or simply by-passes such remedies and applies for a declaration, the court may refuse to exercise its discretion in his favour.

PART V—INJUNCTION

82. (1) A court may grant an injunction in relation to any matter within its jurisdiction ordering a party to a proceeding before it to do or refrain from doing a specified act

Court may grant interim or perpetual injunction.

(2) The injunction may be interlocutory or interim in which case it will issue before or in the course of a proceeding ordering a party thereto to do or refrain from doing an act so as to prevent any change in the position, rights or obligations of the parties where the change if allowed would cause irreparable injury or damage to the applicant before the main claims are determined and the proceedings ended.

(3) The injunction may be perpetual in which case it will issue at the end of a proceeding to compel the doing or the forbearing from doing an act for a specified or an indefinite length of time so as to protect or enforce the rights or obligations determined or declared by the court in the case.

(4) A party at whose instance an interlocutory injunction is granted may be required to give an undertaking to indemnify the other party. Such order is made for any loss he might suffer if the injunction turns out to have been wrongly awarded.

84. (1) Injunction is an equitable and discretionary remedy, but the discretion shall be exercised judicially in accordance with established principles.

(2) As an equitable remedy, an injunction may be defeated by acquiescence, laches or waiver on the part of an applicant

(3) The existence of an alternative remedy does not operate to bar the award of an injunction, but it is a factor to be considered by the court.

(4) An injunction may not be awarded if it is aimed at an injury which is trivial or has ceased to exist and may not recur or if the party against whom it is sought has given satisfactory undertaking not to continue or repeat the act or omission complained of or if it is an indirect way of ordering specific performance of a contract or if its award would be oppressive on a party

(5) The exercise of the court's discretion will not be affected by the difficulty, the expense or the inconvenience of complying with the order made by the court.

(6) The court may at its discretion award a declaration in *lieu* of an injunction or suspend the enforcement of an injunction for a specified length of time if the party against whom it is sought or awarded gives a satisfactory undertaking to see to it that the conduct complained of is not repeated or continued.

85. (1) An injunction will not be granted to a party who has no *locus standi* in a controversy.

(2) A party has no *locus standi* in a controversy if he does not have sufficient personal interest in the subject-matter or the outcome of the dispute and does not stand in danger of suffering some loss or injury if an injunction is not awarded in his favour.

(3) Where a controversy relates to an invasion of a public right or interest and the injury or loss involved, if not prevented, is or will be suffered by the public at large, only the Attorney-General can sue for an injunction to protect the public.

Applicant must
have personal
interest

Injunction is
equitable and
discretionary

(4) A private party can sue in his private capacity to protect a public right or interest or to stop an excess or wrongful assumption of statutory power only when joined by the Attorney-General or when permitted by the Attorney-General to do so.

(5) A private party can sue in his private capacity to restrain an invasion of public right or interest without joining or obtaining the permission of the Attorney-General only where injury to, or interference with, a public right or interest either constitutes an invasion of his own private right or interest or inflicts or threatens to inflict upon him a special damage over and above that inflicted or likely to be inflicted on the public in general.

(6) A local inhabitant can sue in his private capacity without joining or obtaining the permission of the Attorney-General to restrain an injury to a local community or to stop the local authority from spending money without lawful authority.

(7) A statutory body or corporation may, without joining or obtaining the permission of the Attorney-General sue for and obtain an injunction to restrain any invasion of its sphere of activities

(8) A private party who sues in his private capacity with the permission of the Attorney-General cannot, without a similar permission, amend or withdraw his claims but the Attorney-General can in his discretion at any time withdraw the claim and stop the proceedings

(9) A local authority cannot without the permission of the Attorney General sue to restrain breaches of its own bye-laws, but the Attorney-General can at any time sue to restrain such breaches even where such breaches of the law will cause no public injury or where, if a criminal sanction is provided for, criminal sanction has proved to be inadequate.

Injunction to lie
against party under
duty to act or
refrain from acting

86.(1) An injunction will lie against a party whose duty it is to do or not to do what is required to be done or not to be done and who is in a position to carry out the order.

(2) An injunction may be awarded against a government or against departments, servants or agents of a government:

Provided that—

- (a) the duty to be enforced is specifically cast upon them by bye-laws;
- (b) failure by them to comply with an order shall not be deemed to be a contempt of the court punishable by attachment of any property belonging to the government concerned; and
- (c) that the court may take into account public interest involved and award a declaration in lieu of an injunction in appropriated cases.

(3) An injunction may be awarded against a corporate body in which case it may be enforced against the corporation or its members

(4) An injunction will not be awarded unless the things and conduct to be affected are precisely defined and the party to be bound clearly identified and joined in the action

87. Failure by any party to comply with an order of injunction will be deemed to be a contempt of the court and punished by imprisonment or attachment of property, Failure to comply is contempt of court provided that no property belonging to a government will be attached on account of any failure by that government or its servants or agents to comply with such an order.

PART VI.—HABEAS CORPUS

88. In this Part— Definition.

"court" means, the High Court;

"Judge" means a Judge of the Court:

"session" means any session during which the court is open for the transaction of legal business;

"vacation" means any period during which any vacation is observed by the court.

89. (1) No person shall be deprived of his personal liberty save in circumstances and upon conditions prescribed by the Constitution of the Federal Republic of Nigeria No deprivation of liberty except under the Constitution

(2) Any person who alleges that his liberty has been unlawfully restrained may apply to the court or a Judge of the court for a writ of habeas corpus, and the court or Judge may on hearing the application, issue a writ commanding the person who restrained the applicant or who authorized him to be detained to produce the prisoner before the court or Judge and show cause why the

prisoner should not be released to have his liberty.

(3) The writ may issue to any person or official who has actual custody of the detainee or prisoner or on whose authority the detainee is being held and may be released, but the writ will not issue if the detainee has in reality been released or if the purpose is to punish the detainee

Application to be by
or with consent of
detainee

90. (1) An application for a writ of *habeas corpus* shall be made by or with the concurrence of the detainee, provided that if the detainee is held incommunicado or lacks capacity to institute or authorize the institution of the proceedings another person may make the application on his behalf.

(2) An application for a writ of *habeas corpus* shall be accompanied by an affidavit sworn to by the applicant and shall specify the person detained or restrained, the nature of the detention or restraint the person by whom or on whose order the detention or restraint is effected and, where possible, the place where the prisoner is being physically detained or restrained.

(3) Unless it appears to the Judge before whom the prisoner is brought that the prisoner is detained upon legal process, order or warrant issued out of some court of competent jurisdiction in criminal matters, or by some warrant signed by a Judge, Magistrate or Justice of the Peace, for some matter or offence for which by law the prisoner, is not bailable, the Judge shall, within two days after the prisoner is brought before him, discharge the prisoner from his imprisonment upon his entering into a recognizance with one or more surety or sureties in any sum which the Judge shall think sufficient conditioned for his appearance before the court at the next session or at the next assizes in the place where the warrant of commitment was issued or where the offence was committed or at such other court wherein the offence is properly cognizable and shall then certify the said writ, with the return thereof and the said recognizance, to the court where such appearance is to be made:

Provided that: if any prisoner has wilfully neglected for the space of two whole sessions after his imprisonment to apply for a writ of *habeas corpus* for his release, such prisoner shall not have any such writ awarded to him in vacation in pursuance of this section.

91. Upon the issue of any writ *of habeas corpus* directed to any person to produce the body of any prisoner in his custody for any criminal or supposed criminal matter (other than for treason or felony plainly and specially expressed in the warrant of commitment) and the said writ being served in accordance with the provisions of this Law, the person to whom the writ is directed shall, within three days after the service of the writ, make return thereto or bring or cause to be brought the body of the prisoner before the court by which the writ was issued or before any Judge before whom the writ is made returnable and shall then certify the true cause of the prisoner's commitment and detention:

Provided that—

(a) the person to whom the writ is directed shall not be required so to produce the body of the prisoner save upon payment or tender of the charges of bringing him before such court or Judge (to be determined by the Judge by whom the writ is issued and endorsed upon the writ, but not exceeding six kobo per kilometre) and upon security given by bond to pay the charges of carrying back the prisoner if he is remanded by the court or Judge before whom he is brought in pursuance of this Law and that he will not make any escape by the way.

(b) where the place in which the prisoner is in custody is more than thirty-two kilometres but not more than one hundred and sixty kilometres from the court or place to which he is to be brought, return to the writ may be made within ten days from the service thereof, and, if more than one hundred and sixty kilometres then within twenty days from such service.

Judge issue writ
of habeas corpus
against
application

92. If any prisoner is committed or in custody as aforesaid during a vacation, he or any person on his behalf may apply to any Judge, who shall, upon production of a copy of the warrant of commitment, or an affidavit that a copy thereof was refused to be given to the applicant by the person by whom the prisoner is detained. and upon a request in writing by the applicant attested and subscribed by two witnesses present at the making thereof, issue a writ of Habeas corpus under the seal of the court, directed to the officer or person in whose custody the prisoner is detained.

93. The writ shall be returnable before the Judge issuing the same, and upon service

Return of the writ

thereof in the manner prescribed by this Law the person to whom it is directed shall within the times prescribed by this Law bring such prisoner before the Judge to whom the writ is returnable or, in the case of his absence, before any Judge of the court, with the return to such writ and the true cause of the prisoner's commitment and detention.

94, (1) If any person to whom a writ of habeas corpus is directed or his servant or agent neglects or refuses to make due return to the writ of habeas corpus or to bring the body of the prisoner according to the demand thereof within the time prescribed by this Law or upon demand made by the prisoner or any person on his behalf refuses to deliver to the person so demanding a true copy of the warrant of commitment of such prisoner, every such person in whose custody the prisoner is detained shall for the first neglect or refusal be liable to the prisoner or person aggrieved the sum of two hundred naira and for the second occurrence the sum of four hundred naira.

(2) The penalties prescribed by the foregoing subsection may be recovered by the prisoner or person aggrieved, his executors or administrators, against the offender his executors or administrators, by an action as for debt in any court of competent jurisdiction, wherein no stay of prosecution by *non vult ulterius prosecute* or otherwise or any more than one imparlance shall be admitted or allowed.

(3) Any recovery of judgment at the suit of the prisoner or person aggrieved shall be a sufficient evidence for the first occurrence aforesaid and any recovery of judgment thereafter at the suit of any person aggrieved for any occurrence after first judgment shall be a sufficient evidence to bring the offender within the penalty aforesaid for the second occurrence of refusal or neglect.

95. No prisoner delivered or set at large upon any writ of habeas corpus shall at any time be again committed or imprisoned for the same offence by any person whatsoever other than by the legal order and process of such court wherein he may be bound by recognizance to appear or other court having jurisdiction in the cause, and if any person shall, contrary to this Law, knowingly recommit or imprison or knowingly procure or cause to be recommitted or imprisoned for the same offence or pretended offence any prisoner delivered or set at large as aforesaid, or knowingly aid or assist therein, he shall

Detained not to be removed from prison in certain circumstances

forfeit to the prisoner or person aggrieved, notwithstanding any colourable pretence on variation in the warrant of commitment, the sum of one thousand naira to be recovered by an action as for debt in any court of competent jurisdiction

96. After due notice has been given of the day upon which assizes will be opened in the district within which the prisoner is detained he shall not within the two weeks preceding such day be removed from the prison in which he is in custody upon any writ of habeas corpus issued in pursuance of this Law but upon any such writ he shall be brought before the Judge of assizes in open court who shall thereupon do what to justice shall appertain:

Provided that after: after the assizes were ended any person detained may be granted a writ of *habeas corpus* in accordance with the provisions of this Law.

Writ may be
issued in
vacation

97. Where any person is in custody or restrained of his liberty (otherwise than for some criminal or supposed criminal matter or by process in any civil suit) a Judge shall, upon complaint made to him by or on behalf of the person so in custody or so restrained, and if it shall appear by affidavit that there is probable and reasonable ground for such complaint issue in vacation time a writ of habeas corpus under the seal of the court directed to the person in whose custody or power the person so complaining shall the returnable before the judge issuing the writ of habeas corpus or before any other Judge.

Writ issued during
vacation may be
returnable at next
session and vice
versa

. (1) If any writ of habeas corpus is issued, in accordance with the provisions of this Law, so e in the vacation that in the opinion of the Judge it cannot be conveniently obeyed during such vacation, the writ may, at his discretion be made returnable in the court upon a day certain in the next session and the court may proceed thereon in like manner as if the writ had originally been issued by the court.

(2) If such writ is issued in session but so late that, in the judgement of the court it cannot be conveniently obeyed during such session, the writ may, at the discretion of the court, be made returnable upon a day in the next vacation before any Judge, who shall proceed thereon in such manner as by this Law is proved concerning writs issued in and made returnable during vacation.

Service of writ,
how effected

Every writ of habeas corpus issued in accordance with the provisions of this Law shall be served either by actual delivery to the person to whom such writ is directed or by leaving the same with any servant or agent of such person, at the place where the prisoner is confined or restrained.

Penalty for neglect or
refusal to obey writ

100. (1) If any person to whom a writ of habeas corpus is directed, upon service of such writ in accordance with the provisions of this Law, wilfully neglects or refuses to make a return to or obey such a writ, he shall be deemed guilty of contempt of the court.

(2) In any such case it shall be lawful for the Judge before whom such writ is returnable, upon proof by affidavit of wilful disobedience of the said writ to issue a warrant under his hand and the seal of the court for apprehending and bringing before him or some other Judge the person so wilfully disobeying the said writ in order that he may enter into a recognizance with two sufficient sureties in such sum as shall be expressed in the warrant, conditioned for his appearance in the court at a day in the ensuing session to be mentioned in the said warrant to answer the matter of contempt with which he is charged.

(3) If any person so apprehended neglects or refuses to enter into such recognizance the Judge before whom he is brought may commit him to prison, there to remain until he enters into such recognizance or is discharged by order of the court in session or by a Judge in vacation.

(2) Any recognizance entered into in accordance with the provisions of this section shall be entered and filed in the court and shall continue in force until the matter of such contempt as aforesaid has been heard and determined, unless ordered by the court to be discharged.

101. (1) In all cases provided for by this Law although the return to the writ is good and sufficient in law, it shall be lawful for the Judge before whom such writ is returnable to proceed to inquire into the truth of the facts set forth in such return by affidavit and to do therein what justice shall demand.

Judge may examine facts
contained in returns and
may grant bail

(2) Where any such writ is returned before a Judge and it appears doubtful to him on such examination as aforesaid whether the material facts set forth in the said return, or any of them, be true or not, in such case it shall be lawful for the said Judge to admit to bail the person confined or restrained upon his entering into a recognizance with one or more sureties, or in case of infancy or other disability upon security by recognizance, in a reasonable sum, conditioned for his appearance in court before the said Judge or some other Judge upon a day certain in the ensuing session and so from day to day as the court shall require and to abide by such order as the court may make in and concerning the premises.

(3) In any such case the Judge shall transmit to the court the said writ and return, together with such recognizance and affidavits, and thereupon it shall be lawful for the court to proceed to examine into the truth of the facts set forth in the return in a summary way by affidavit and to make such order as it may think fit touching the discharging, bailing or remanding of the person on whose behalf the writ of *habeas corpus* has been issued.

(4) The like proceeding may be had in the court for controverting the truth of the return to any such writ of *habeas corpus*, notwithstanding that such writ has been awarded by the court itself or

Appeal to lie
to the Court
of Appeal is returnable therein.

102. (1) Subject to the provisions of this Law, where a Judge of the appropriate High Court has refused application for a writ of *habeas corpus ad subjiciendum* by or on behalf of any person confined or restrained of his liberty made on the grounds that the confinement or restraint is unlawful, or has ordered the release of a person confined or restrained of his liberty, an appeal shall be to the Court Appeal from the refusal to make, or the making of the order, as the case may be.

(2) Nothing in this section shall authorize the making of an appeal in a criminal case against release of a person confined or restrained of his liberty.

(3) "The appropriate High Court" referred to in subsection (1) means the court having jurisdiction over either the person who is confined or restrained or over the person confining or restraining any other person

