

LEGAL FRAMEWORK FOR A UNIFORM TENURE FOR CHIEF EXECUTIVES OF FEDERAL GOVERNMENT PARASTATALS AND AGENCIES

By

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Introduction

Precisely, on Thursday, 18th August 2011, President Jonathan inaugurated a Committee on Restructuring and Rationalization of Federal Government Parastatals and Agencies. The Committee is to undertake the restructuring and rationalization of over 400 Parastatals and Agencies belonging to the Federal Government to avoid overlapping of functions among them in order to make them function more effectively and efficiently. Most importantly, the Committee is to study the various statutes setting up these Parastatals and Agencies in order to determine whether some of them can be merged or wound up where they have already completed the specific function for which they were established. Coincidentally, this research was already in progress when the President inaugurated the Committee hence this seems to be an appropriate and auspicious occasion to discuss part of the legal framework for these Parastatals and Agencies.

General Observations

Although this contribution deals specifically with the tenure of the Chief Executives, it is important to place on record some general observations regarding equally important aspects of the appointment of the Chief Executives from the statutes of over fifty Parastatals and Agencies studied in this research. These Chief Executives include Director-General, Executive Secretary, Executive Director, Director, Registrar, Chief Medical Director, Governor (Central Bank of Nigeria), Secretary, Managing Director, Commissioner (National Insurance Commission) etc. depending on the nature of Parastatals or Agencies in which they are engaged. Specifically, the provisions of the various statutes on the appointment, tenure and removal of the Chief Executives appear to be far from satisfactory as they lack in coherence, elegance and uniformity.

- A number of statutes provide for the appointment of these Chief Executives by the President on the recommendation of the supervising Minister while a greater number do not provide for the recommendation of the Minister.
- Some require the Chief Executive to be appointed on the nomination of the Agencies or Parastatals.
- Only two statutes contain provisions for the removal of any Chief Executive on “grounds of misconduct or inability to perform the functions of his office”. It would appear that the law-makers assumed that the Chief Executive, once appointed, can do no wrong for which he may be removed!
- Some Chief Executives are required to be appointed by the Minister subject to the approval of the President.
- Qualifications for the appointment of the Chief Executives are hardly specific or specified. Some statutes merely require the Chief Executive to possess “appropriate qualifications”.
- Indeed, a particular statute provides for the qualification of a Director-General without provision for his appointment, tenure and the appointor!

Tenure Of Chief Executives

A particularly disturbing feature of these statutes is that the provisions on tenure are quite inconsistent and lack uniformity even in respect of Agencies/Parastatals with similar functions. An examination of the Laws of the Federation of Nigeria 2004 readily reveals that a number of variegated inconsistent, irreconcilable and seemingly thoughtless formulae were adopted to create indefinite, indeterminate and indeterminable terms. This may be excused since most of these statutes were promulgated during the Military Regimes with no opportunity of debating the bills before passing them into laws. Secondly, it appeared that whenever a law was being drafted for a new Agency or Parastatal, no reference was made to the provision of a former statute on similar Agency or Parastatals for guidance, hence these variations and inconsistencies in the terms and conditions enacted. A few examples may be cited

1. Some statutes do not specify any tenure for the Chief Executive whose tenure is thus indefinite and interminable by implication.

2. Others specify the tenure of a Chief Executive in ambiguous and somewhat imprecise terms such as a provision that a Chief Executive shall hold office -

- “for such terms and conditions as the President may determine” or
- “for a term of five years (or four years) in the first instance which may be renewed for “such further terms of five years (or four years) “as the President may, from time to time determine”, or
- “in the first instance for a period of four years and shall be eligible for re-appointment “for one further term of years or such terms as the President may, from time to time determine”, or
- “on such terms and conditions as may be specified in his letter of appointment and on such other terms as may be determined from time to time, by the President”, or
- “on such terms and conditions as the (Agency) after consultation with the Federal Civil Service, determine”, or
- “on such terms and conditions as may be specified in his letter of appointment or as may be determined from time to time by the President or the Federal Government” or
- “at the pleasure of the President”, or
- “for a period of four years in the first instance and eligible for re-appointment for such further terms as the Minister may determine”, or
- “on such terms and conditions as may be specified in his letter of appointment and such other terms and conditions as may be determined from time to time (by the Agency) with the concurrence of the President or the Federal Government”.

3. Unfortunately, only very few statutes provide in definite terms for a single term or two terms but in respect of the latter, it is surprising that even in respect of Agencies with similar functions (e.g. NECO and NABTEB) there had to be variation in tenure namely, while one Chief Executive is to be appointed for a term of four years and renewable for another term of four years, the other is for a term of five years which may be renewed for another term of three years. The reason for the variation in the breakdown of the years of each term is not clear.

4. Where a statute provides for a second term, very unfortunately no conditions are specified for eligibility for re-appointment, thus giving the impression that it is automatic. However, only two statutes contain the provision “subject to satisfactory performance” though there is no provision on who, (Minister, the Agency or the President) should determine “satisfactory performance” of the Chief Executive in the first term.

However, as the opportunity now presents itself, care must be taken to ensure that these terms and conditions are streamlined and harmonized as much as possible to remedy these defects and

achieve uniformity especially in respect of tenure of the Chief Executive. There is no palpable reason for the differences in tenure. Given the functions specified by each statutes, the challenges for these Chief Executives are not fundamentally different to warrant such variation in their tenures.

Suggested Tenure For Chief Executives

It is therefore suggested that a uniform single term tenure of five years should be adopted for all Chief Executives of Federal Government Parastatals and Agencies. The advantages of a single term tenure cannot be over-emphasized; they are too obvious to require any further elaboration here. A single term tenure is therefore in the best interest of the nation. Those who oppose it in any area of our public life are doing so mischievously for their selfish interests. They ought to realize that public office cannot be the subject of inheritance. Undoubtedly, this country is blessed with abundant qualified human resources to guarantee succession with better, more effective and efficient performance for the benefit of the Parastatals and Agencies. Accordingly, care must be taken to avoid raising “Ben Alis, Mubaraks and Gaddafis” in our Parastatals and Agencies with its attendant disastrous consequences.

Indeed, the Federal Government has already experimented and is now reaping the benefits of single term tenure in respect of Vice-Chancellors of Federal Universities. It is submitted that a single term tenure can also succeed in the Parastatals and Agencies. At the risk of sounding immodest, with due respect, I am not sure that the challenges facing the Chief Executives being discussed are more than those of the Vice-Chancellors.

We do not require many statutes to achieve uniformity of tenure. Once it is agreed to effect this change, then a **Federal Government Parastatals and Agencies (Tenure of Chief Executives etc.) Act** may be enacted as follows:

“1. Notwithstanding anything to the contrary in any law, the provisions of this Act shall apply to any Parastatal or Agency controlled by the Government of the Federation and listed in the Schedule to this Act.

2 (1) As from the commencement of this Act, the Chief Executive of a Federal Government Parastatal or Agency, by whatever name called, shall hold office for a single term of five years only on such terms and conditions as may be specified in his letter of appointment.

(2) For the avoidance of doubt, the provisions of sub-section (1) of this section shall not confer on a person serving a first term of office as a Chief Executive before the commencement of this Act, any right to the renewal of his appointment for a second term or any further term”.

The list of Federal Government Parastatals and Agencies in the Schedule to the Act will leave no doubt as to the institutions affected. The term “by whatever name called” in section 2(1) cover the different titles of Chief Executives – Director -General, Executive Director, Executive Secretary, Managing Director etc.

Section 2(2) guards against any unjustifiable claim to a second term or any further term by any person who was serving his first term as a Chief Executive before the commencement of this Act. Of course, renewal has never been automatic even under the existing law but was merely discretionary on the part of the appointing authority.

However, those who are already in their second or last term before the commencement of the Act, would be allowed to complete their term.