AUTONOMY AND MANAGEMENT OF FEDERAL UNIVERSITIES UNDER THE UNIVERSITIES AUTONOMY ACT

By Professor P. Ehi Oshio,
Visiting Professor of Law,
National Universities Commission
E-mail: Profehioshio@yahoo.com.

Introduction

The **Universities (Miscellaneous Provisions) (Amendment) Act 2003 (**otherwise called the **Universities Autonomy Act No. 1, 2007)** was enacted by the National Assembly and signed into law on 10th July 2003. It was later gazetted by the Federal Republic of Nigerian Official Gazette No. 10, Volume 94 of 12th January 2007 as Act No. 1 of 2000.

The Act is the third and latest amendment to the **Universities (Miscellaneous Provisions) Act No. 11 of 1993** (hereinafter referred to as **the Principal Act**) which was earlier amended by the **Universities (Miscellaneous Provisions)(Amendment) Act No. 55 of 1993** and the **Universities (Miscellaneous Provisions)(Amendment) Act No. 25 of 1996** respectively. Like the Principal Act, this amendment Act also applies only to Federal Universities.

This contribution examines the provisions of the **Universities Autonomy Act,** the latest amendment, on the autonomy and management of Federal Universities.

Autonomy of Universities

Right from the outset the preamble to this amendment Act proclaims the autonomy of Universities as the main object of the Act. Accordingly, it is *"An Act to Amend the Universities (Miscellaneous Provisions) Act No. 11 of 1993 and Provide for the Autonomy of Universities and other related matters"*.

However, two new Sections introduced by this Act clearly assert the autonomy or independence of the Universities as follows:

"2AA. The powers of the Council shall be exercised, as in the Law and Statutes of each University and to this extent establishment circulars that are inconsistent with the Laws and Statutes of the University shall not apply to the Universities." and

"2AAA -The Governing Council of a University shall be free in the discharge of its functions and exercise of its responsibilities for the good management, growth and development of the university."

The purpose of these provisions is to liberate the Universities from the bureaucracy of the Civil Service and to enable the Council exercise its powers and perform its functions without undue external interference or influence. All other provisions of this amendment Act to be discussed presently are directly or indirectly aimed at fulfilling these objectives.

However, Government retains the **ultimate power of control** over the Universities through dissolution of Council, Visitation, the final appeal to the Visitor by a removed Vice-Chancellor and the power of legislation. Thus, it may be argued that autonomy under this Act is not absolute but qualified. For example, notwithstanding this autonomy, section 2AAA (2) provides that the Council of a University in the discharge of its functions shall ensure that disbursement of funds of the University complies with the approved budgetary ratio as specified by Government in the subsection. The Act is however silent on the issue of the

Internally Generated Revenue of each University. This must mean that the Universities, as part of this autonomy, are free to disburse this revenue which they generated from various sources without interference or control from Government.

Composition of Governing Councils

The composition of each Governing Council of Federal Universities under this Amendment Act, 2003 reverts to the position as was originally enacted under section 2 of the Principal Act, No. 11 of 1993 before it was amended by Act No. 25 of 1996 to increase external membership of Council from four to nine. Under Section 2 of this amendment Act, the Governing Council of a Federal University shall consist of:

a) The Pro-Chancellor;
b) The Vice-Chancellor;
c) The Deputy Vice-Chancellors;
d) One person from the Federal Ministry responsible for Education;
e) Four persons representing a variety of interests and broadly representative of the whole Federation to be appointed by the National Council of Ministers;
f) Four persons appointed by the Senate from among its members;
g) Two persons appointed by the Congregation from among its members; and
h) One person appointed by Convocation from among its members

However, the amendment Act contains a new provision of subsection (2) which spells out the qualifications of Council members. The subsection provides:

"Persons to be appointed to the Council shall be of proven integrity, knowledgeable and familiar with the affairs and tradition of the University"

Thus, to qualify as a member of the Governing Council the person must:

(a) be of proven integrity and
(b) be knowledgeable and familiar with the affairs and tradition of the University.

Apart from the moral qualification in (a) above, the Act does not expressly specify any educational qualification for membership of the Council. However, the necessary implication to be gleaned from (b) above is that, for a person to be knowledgeable and familiar with the affairs and tradition of the University, he must at least have gone through the University system. In other words, it can safely be implied from this provision that a member of the Governing Council should be at least a degree holder from any recognized University.

Tenure of Governing Councils

Section 2A brought into the Principal Act by Section 2(3) of the Amendment Act is a very significant new provision. It provides:

"The Council so constituted shall have a tenure of four years from the date of its inauguration provided that where a Council is found to be incompetent and corrupt it shall be dissolved by the Visitor and a new Council shall be immediately constituted for the effective functioning of the University"

While the single fixed tenure of four years of the Council is not entirely new, the express provision for the ground for dissolution of any Council and the provision for immediate constitution of a new Council to replace the dissolved one have important legal implications for the University system. Both provisions are couched in the legal imperative *"shall"* Accordingly, it is submitted that:

1. There is only one ground for dissolution of a Council under this Act, that is, where the Council is found to be incompetent and corrupt. The Visitor cannot dissolve any Council without this requirement being first fulfilled and, if he does, a suit may lie at the instance of aggrieved Council members to challenge the dissolution.

2. The phrase *"shall be immediately constituted"* leaves no room for delay; the law commands the government to reconstitute a dissolved Council within the shortest time possible. Indeed, it is recommended that Government should be ready with a list of members of the new Council before announcing the dissolution. In this way, the dissolution and reconstitution could be announced the same day. **This is the best meaningful way to fully enforce or implement the provision of Section 5(12) of this Act which is against Sole Administration in the Universities.**

This provision for dissolution of a Council on ground of incompetence and corruption inevitably raises some pertinent questions for further critical examination, especially as corruption is a criminal offence. Should a member of a Council dissolved for incompetence and corruption be eligible for re-appointment into a reconstituted Council or another Council of another University? Or, should there be any discrimination in the application of this law as between ex-officio and non-ex-officio members or as between External and Internal members of the Council?

Arguably, where a Council is dissolved on the ground of incompetence and corruption, on the principle of collective responsibility, all the members of the Council must accept responsibility for this state of affairs. Admittedly however, not all the members of the Council so dissolved may be incompetent and corrupt and to apply this provision to all the members would be unfair to those members not involved, whether external or internal. The difficulty of distinguishing between those who are incompetent and corrupt and those who are not, may apparently militate against full and strict application of this provision in the interest of substantial justice.

Vacation of Seat in Council

External members of the Governing Council would normally vacate their seats upon dissolution of the Council or by effluxion of time after the expiration of their four years tenure. However, internal members of Council who are usually appointed by a body to represent it in Council (e.g. Senate, Congregation and Convocation) have their tenure regulated by virtue of the statute of the University concerned. This is normally a term of two years for such a representative subject to re-appointment for another further term of two years. Such a representative is usually selected through the process of election in Senate, Congregation or Convocation. They normally assume office as Council members from the date of their respective elections. Accordingly, where they are yet to complete their terms before dissolution of the Council, they would automatically become members of the reconstituted Council until they complete their terms as prescribed under the University statute.

However, a member of Council may vacate office as such a member, if, being a representative of one body in Council (e.g. Senate, Congregation or Convocation), he is appointed as Vice-Chancellor, Acting Vice-Chancellor or Deputy Vice-Chancellor. In any of these cases, the seat of that body being represented in Council becomes vacant automatically by operation of Law. This is because, by virtue of his office as Vice-Chancellor or Acting Vice-Chancellor or Deputy Vice-Chancellor, he becomes automatically an ex-officio member of the Council and the law does not permit him to maintain two seats in Council as ex-officio and non-ex-officio member at the same time. Neither is he eligible to cast two votes, one as ex-officio member and the other as non-ex-officio member in Council. Accordingly, the enabling Law of each University has given the body formerly being represented by such ex-officio member in Council power to appoint another representative for the unexpired residue of his term otherwise, such a body would have lost a voice and a vote in Council. The provision is contained in the University Statute. (see for instance, the Third Schedule of the University of Calabar Act, Statutes No.1, Article 1 (4).

It is submitted that this position is sound legally as there is no reservation of seat in Council for any member who has taken up appointment which is executive in nature. The duration of such appointment will not matter in law. Once the member has taken up appointment which is inconsistent with his right to effectively represent such body in Council either by voice or by vote, the law is that he must vacate that seat for good. This case is similar to the position of a Legislator who becomes a member of the Executive under the 1999 Constitution (see sections 68(1)(d) and 109(1)(d) thereof.)

A member of Council other than an ex-officio member may also vacate his seat by resignation and also by operation of law upon death. These are generally not contentious cases.

Appointment and Removal of Vice-Chancellor

Section 3 of the Universities (Miscellaneous Provisions)(Amendment) Act No. 25 of 1996 had amended Section 3 of the Principal Act No. 11 of 1993 by prescribing a single term of five years for the Vice-Chancellor. This Amendment Act has not altered that position. The procedure for the appointment of a Vice-Chancellor also remains the same except that under Section 4 of the amendment Act the power to appoint the Vice-Chancellor now vests in the Governing Council, provided that the latter informs the Visitor after the appointment has been made. Similarly, the section vests in the Governing Council power to remove the Vice-Chancellor from office after due process, on grounds of gross misconduct or inability to discharge the functions of his office as a result of infirmity of body or mind.

Section 5 of the Amendment Act contains a new provision of section 3(9)-(11) specifying the procedure for the removal to ensure fair-hearing for the Vice-Chancellor. Upon receipt of a proposal for the removal at the initiative of the Council, Senate or the Congregation, the Council shall constitute a five-member Joint Committee of Council and Senate (which must include the Chairman of Council) to investigate the allegations made against the Vice-Chancellor and to report its findings to the Council. Where the allegations are proved, the Council may remove the Vice-Chancellor or apply any other disciplinary action as it deems fit and notify the Visitor accordingly. However, the Vice-Chancellor who is removed has a right of appeal to the Visitor. It is not clear whether or not the Visitor's decision is meant to be final. It is submitted that this cannot be final. A dissatisfied Vice-Chancellor should have recourse to the courts as guaranteed under our Constitution.

It is to be noted that Section 6 of the Amendment Act also empowers the Council on the recommendations of the Vice-Chancellor and Senate to remove a Deputy Vice-Chancellor on the same grounds as those for which the Vice-Chancellor may be removed.

Appointment of Acting Vice-Chancellor

Section 5 (13) of the Act provides*:*

"In any case of a vacancy in the office of the Vice-Chancellor, the Council shall appoint an Acting Vice-Chancellor on recommendation of the Senate "

Under this provision the Governing Council cannot appoint an Acting Vice-Chancellor unilaterally without the recommendation of Senate. The recommendation of Senate is thus a condition precedent for the appointment of an Acting Vice-Chancellor by the Council. However, the Council is not obliged to appoint any person recommended by Senate if such a person is not fully qualified for the post or where he is subject to any legal disability. For instance, if the Senate should recommend an incumbent Acting Vice-Chancellor for re-appointment for a second term of six months, the Council can lawfully decline to appoint such a person. This is because section 5 (14) does not make provision for re-appointment and a legally constituted Council cannot support such illegality: (*Awolowo v. Minister for Internal Affairs (1962) L. L. R. 117.)*

Vacation of Office

Section 5 (14) of the Act provides:

"An Acting Vice-Chancellor <u>in all circumstances</u> shall not be in office for more than 6 months".

The History of this provision must be carefully considered in order to discover the mischief which the provision was introduced to remedy. The provision was introduced because of the damnable practice of some Acting Vice-Chancellors who through various unscrupulous and mischievous methods, try to elongate their tenure in office while enjoying the perquisites of office and exercising the powers of the office of a substantive Vice-Chancellor indefinitely.

Accordingly, this subsection makes express provision for a single fixed term of 6 months only for an Acting Vice-Chancellor without providing for re-appointment or elongation of his tenure howsoever.

The subsection:

a) **limits** in absolute terms the tenure of the Acting Vice-Chancellor to a single term of six months only.

b) **prohibits** the incumbent Acting Vice-Chancellor from holding that office after six months from the date of his appointment. This prohibits any direct or indirect tenure elongation in favour of the incumbent by way of re-appointment, re-election or in any other manner howsoever.

c) **commands** the incumbent to **leave** or **vacate** the office or **"step aside"** after six months from the date of his appointment. He is not eligible for re-appointment.

The subsection even envisages a situation whereby a substantive Vice-Chancellor may not be appointed within 6 months and nevertheless commands the incumbent to vacate the office even in such circumstances. The expression *"<u>in all circumstances shall not be in office.....</u>"* is particularly instructive.

Properly interpreted the subsection means –

1) Whatever happens, the Acting Vice-Chancellor must vacate the office after six months.
2) Whatever happens, he must not be in office as Acting Vice-Chancellor for more than six months.
3) By all means, he must vacate the office and step aside after six months for another person whether or not a substantive Vice-Chancellor was appointed.
4) Under no circumstance should he continue in office as Acting Vice-Chancellor after six months.
5) After six months, he shall by no means be in office as Acting Vice Chancellor either by re-appointment, elongation, direct or indirect method whatsoever.
6) Under no condition whatsoever should the incumbent be in office as Acting Vice-Chancellor for more than six months.
7) After six months the incumbent cannot hold office as Acting Vice-Chancellor under any guise whatsoever.

The provision is mandatory and its effect is far-reaching in consequence: the effect is to **"expel"** the Acting Vice-Chancellor from office after six months – he must vacate, leave office and step aside for another person after six months. **He is not eligible for re-appointment.**

Composition and Powers of Senate

Section 7 of the Amendment Act introduced a new composition of Senate as Section 7A of the Principal Act consisting of –

a) Vice-Chancellor;

b) The Deputy Vice-Chancellor;
c) All Professors of the University;
d) All Deans, Provosts and Directors of academic units of the University;
e) All Heads of Academic Departments, units and research institutes of the University;
f) The University Librarian; and
g) Academic members of the Congregation who are not professors as specified in the Laws of each University.

This has amended the existing composition of Senate in the enabling Law of each University. For the avoidance of doubts, this amendment has swept away the power of the Vice-Chancellor to appoint some members of academic staff to Senate as **"Vice-Chancellor's Representatives"** in the Senate. Some Vice-Chancellors had taken undue advantage of that provision under the old law (now amended) to appoint their cronies and sycophants who often supported their positions at all costs on the floor of Senate, in some cases, even in very embarrassing situations.

Visitor and Visitation

Section 7AA of the Amendment Act provides for a Visitor for each University and empowers him to cause a visitation to each University when necessary, at least every five years. These provisions are not entirely new as they are also contained in the enabling Laws of the Universities. The President, Commander-in-Chief of the Armed Forces is the Visitor of each University.

However, the provision of subsection 3 of this section is new. It requires the Visitor to make the Report of the Visitations and White Paper thereon available to the Council and mandates the latter to implement the Report. This is commendable as a Visitation Report normally serves as a mirror of the past, a lesson for the present and a guide for the future.

Students Participation

Section 7AAA is a new and encouraging provision on Students Welfare. Under it, Students shall: –

a) Be represented in the University's Students Welfare Board and other Committees that deal with the affairs of students;
b) Participate in various aspects of curriculum development;
c) Participate in the process of assessing academic staff in respect of teaching; and
d) Be encouraged to be more self-assured as part of the national development process.

This provision is an express enactment of the recognition of students as major stakeholders in the University system. A proper implementation of the provision will enhance students' welfare, boost their morale and ensure fair-hearing for students which will lead to greater cooperation from them with the attendant harmony in the Universities.

Conclusion

The **Universities Autonomy Act No. 1, 2007** a laudable piece of legislation. Giving the objectives of the Act which are well captured in its provisions, it is another milestone I n the search for equilibrium and harmony in the University system. However, the realization of the objectives will largely depend on the will of the stakeholders to fully implement the provisions of the Act.

Regrettably, the Act applies only to Federal Universities. Accordingly, it is recommended that stakeholders in the University system assist in persuading the State and Private Universities to adapt and adopt these provisions in their own enabling Laws in order to ensure uniformity in the system.