

**COMPOSITION AND TENURE OF GOVERNING COUNCILS OF
FEDERAL UNIVERSITIES UNDER NIGERIAN LAWS
BY PROFESSOR EHI OSHIO, DEAN, FACULTY OF LAW
UNIVERSITY OF BENIN**

Introduction

The Universities (Miscellaneous Provisions) (Amendment) Act 2003, otherwise called the Universities Autonomy Act, is, indeed, a very interesting piece of Legislation. Coincidentally, it is both old and new. Enacted by the National Assembly and signed into law on 10th July 2003 by President Olusegun Obasanjo, it apparently vanished into oblivion immediately. Quite curiously too, even when 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 2007, it also appeared to have escaped the notice of all stakeholders and the general public until it was recently discovered to exist and powerful enough to resist the first attempt by the Federal Government to constitute Councils with excessive membership contrary to the provisions of the Act.

Thanks to the vigilance and effective research prowess of the Academic Staff Union of Nigerian Universities, ASUU and its ever vibrant and versatile Attorney, Mr Femi Falana, who dramatically retrieved the Act from limbo and made a copy available to the utter consternation of the Federal Ministry of Education and its agency, the National Universities Commission but to the delightful relief of the University system in Nigeria.

The attraction of this legal assessment is the examination of the provisions of this Act on the composition and tenure of the Governing Councils established by the Act which applies only to the Federal Universities in Nigeria.

Composition of Councils

The composition of each Governing Council of Federal Universities under the Universities (Miscellaneous Provisions) (Amendment) Act, 2003 remains the same as in the Principal Act, Decree No.11 of 1993. The only insignificant difference is in respect of the opening phrase in the Principal Act: *“The Council of any University shall consist of”* which is now changed under the Amendment Act to *“There shall be a Council for each of the Universities consisting of”*. The implication of this appears to be that whereas the Principal Act assumed the continuous existence of the Councils and provided only for their composition, the Amendment Act created the Councils before providing for their composition with the same clause. Under both Acts 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

This membership may be classified in two different ways as follows:

- i. Ex-officio members and non-ex-officio members; and
- ii. External members and Internal members.

The ex-officio members consist of the Vice-Chancellor, Deputy Vice-Chancellors and one person from the Federal Ministry of Education. These are all members of the Council by virtue of their offices. All other members are non-ex-officio members.

On the other hand, External members of Council consist of the Pro-Chancellor, the Representative of the Federal Ministry of Education and the four other members representing a variety of interests appointed by the National Council of Ministers. All other members of Council, including the Vice-Chancellor and Deputy Vice-Chancellors, are normally referred to as internal members of Council. These are members and representatives of the University Community in Council.

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 graduate from any recognized University.

Unfortunately, the Federal Government would appear to have failed to grasp the full import of this provision when it first constituted the Councils earlier by including non-graduates

in their composition. It is noteworthy that this anomaly was later corrected by the Federal Government at the instance of the Academic Staff Union of Nigerian Universities, ASUU, with the re-constitution of the Councils.

Tenure of 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 termed 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**
- 2) The Visitor cannot dissolve any Council without this requirement being first fulfilled and, if he does, a suit can lie at the instance of aggrieved Council members to challenge the dissolution.
- 3) This provision is out to forestall or put an end to the practice of a new President (Visitor) dissolving all the Federal Universities Councils on assumption of office at will for no just cause other than merely to provide jobs for his Party-men in the Councils when reconstituted.
- 4) 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 clear intendment of the provision.

The full import of the provision for dissolution of a Council on ground of incompetence and corruption obviously calls for further critical examination. What are the implications? 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? These may be difficult questions which beg for answers!

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.

The present attitude of the Government redeploying some members of a dissolved Council to another one, which is part of the practice before this provision came into force, may have been informed by this thinking. All that may be proffered meanwhile is that the effect of this provision is yet unsettled. We may have to await a clear pronouncement by a court on the true import of incompetence and corruption as contained in this provision.

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. For instance, the statute of the University of Benin prescribes 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. Incidentally, their elections do not always coincide with the commencement of a Council's four years tenure. 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. Indeed, not only the law but equity frowns at double portions.

Accordingly, the law has given the body formerly being represented by such ex-officio member in Council 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. For instance, the Third Schedule of the University of Calabar Act, Statutes No.1, Article1 (4) provides:

“Where a member of the Council...vacates office before the expiration of the period aforesaid, the body or person by whom he was appointed may appoint a successor to hold office for the residue of the term of his predecessor”

A similar provision is contained in the University of Benin Act and those of other Federal Universities in the country. 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 under the 1999 Constitution for which section 68(1)(d) provides:

“A member of the Senate or of the House of Representatives shall vacate his seat in the House of which he is a member if he becomes President, Vice-President, Governor, Deputy Governor or a Minister of the Government of the Federation or a Commissioner of the Government of a State or a Special Adviser.”

(see similar provision in section 109(1)(d) in respect of a State Legislator).

The duration of the appointment is immaterial and irrelevant for the operation of this provision. Such legislator who accepted appointment as aforesaid vacates his seat in the House for good. For instance, if he was appointed Minister and the Cabinet is later dissolved within a short time after vacating his seat, he cannot return to that seat since it was not reserved for him.

Thus, the position of a non-ex-officio member of Council who takes up appointment as a Vice-Chancellor or Acting Vice-Chancellor may be likened to that of a legislator in the foregoing paragraph. The Council is the highest policy-making body in a University with quasi legislative function, including power to make statutes. On the other hand, the position of the Vice-Chancellor or Acting Vice-Chancellor etc, is executive when comparing Management which he heads with Council, just like that of a Minister or Commissioner, in relation to the Legislature. As the exercise of a legislator’s right in the House would be inconsistent with his appointment as a Minister or Commissioner, so also the exercise of a non-ex-officio member’s right in Council inconsistent with his position as Vice-Chancellor or Acting Vice-Chancellor being an ex-officio member of Council. As Vice-Chancellor or Acting Vice-Chancellor, he represents Management in Council and not any other body. Besides, he cannot exercise or cast two votes in Council just as it is against the law of nature for him to speak with two voices. Indeed, put into divine language, he cannot serve God and mammon:

“No man can serve two masters: for either he will hate the one, and love the other, or else he will hold to the one, and despise the other. Ye cannot serve God and Mammon” (Matt.6:24, The Holy Bible, King James Version).

The above principles of law will also apply to a situation where, for instance, a non-ex-officio member of Council takes up appointment as Registrar or Acting Registrar of the University. As a Registrar, he becomes a member of Management and an ex-officio Secretary to Council. Under Section 5(2) of the Principal Act (Decree No.11, 1993):

“The person holding the office of Registrar shall by virtue of that office be Secretary to Council, the Senate, Congregation and Convocation”

It is submitted that in such a position, being “the chief administrative officer of the University, the Registrar is representing Management and although this position does not confer on him any voting right, it nevertheless, is inconsistent with his right to represent another body at the same time in Council as a non-ex-officio member. He cannot represent the Management and another body in Council at the same time. Hence, upon appointment as Registrar, he vacates his seat as a non-ex-officio member by operation of law. In this connection, the body whom he was representing in Council shall appoint another representative for the unexpired residue of his term in accordance with the provision of the relevant statute of the University. This is good law.

However, some may consider the position just canvassed as novel because, to them, it may not have happened or been experienced before. Let me remind them of the dictum of *Oguntade, J.S.C. in Amaechi v. INEC* (popularly called *Amaechi v. Omehia*) (2008) 5 N.W.L.R.(pt.1080) 227 at page 315 adopting Denning M.R. in *Packer v .Packer* (1954) as follows:

“What is the argument on the other side? Only this, that no case has been found in which it had been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before we shall never get anywhere...”

Also, in *Attorney-General of the Federation v. Abubakar* (2007) 10 N.W.L.R. (pt.1041) 1,@171-171, Aderemi, J.S.C. also declared on this score:

“It has been said in one of the briefs before us that the case at hand is, by every standard, a novel one. I entirely agree... I have not come across any judicial decision relating to the peculiar facts of this case. But, no legal problem or issue must defy legal solution. Were this not to be so, the society, as usual, will continue to move ahead, law, God forbid, will then remain stagnant and consequently become useless to mankind...a Judge, whenever faced with a new situation which has not been considered before, by his ingenuity regulated by law, must say what the law is on that new situation: after all, law has a very wide tentacle and must find solution to all man-made problems”

Accordingly, it behoves any non-ex-officio member of Council seeking any executive appointment in the University Management to give it very serious consideration and weigh the options critically before making a choice. He cannot eat his cake and have it.

“For which of you intending to build a tower, sitteth not down first, and counteth the cost, whether he have sufficient to finish it? (Lk.14:28, The Holy Bible, King James Version)”

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.