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Constitutional and Administrative Law in Nigeria: Are They Instruments of Governance?

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Abstract: Are constitutional and administrative laws in operation in the institutions and agencies of government in Nigeria? How effective are these laws at regulating the activities of the government in the country? Has the law enhanced the quality of services delivered by the government? What are the factors influencing the practice of public administration in Nigeria? Are these factors in consonance with administrative law? These are germane questions to which this study attempted to provide answers. It relies on secondary data, which were subjected to content analysis. The study argues that the 1999 Constitution of Nigeria, prepared by the government without legitimacy (the military), and handed over to the civilian administration some twenty-three years ago, with little or minor amendment to date, made the legitimacy of the government of Nigeria's Fourth Republic questionable. And, apart from the faulty preparation of the constitution and some amendments made to it by the National Assembly, the elite, who appear to be above the law, do not allow the constitution to work. These elite are mainly among the legislature, the judiciary and the executive; they are all guilty of stemming and whittling down the power of the constitution, and the law of administration by their flagrant disregard for the rule of law and the constitution in their various capacities. This study therefore, concludes that, until Nigeria's constitution is redrafted, and constitutional law and administrative law properly applied, quality or good governance will continue to elude the country.

Keywords: constitutional law, administrative law, governance, legitimacy, constitutionality, constitutional government and rule of law, human rights

1. Introduction

The place of law in regulating all forms of human activities and endeavours cannot be overemphasised. The importance of law can be seen in the areas of specifying what is and what is not accepted in society. A better way to understand the importance of law is by imagining the likely state society would be without it (Cronus Law, 2019). Suffice to say, without law within society there will be chaos, confusion and conflicts. In essence, the essentiality of law in society includes the maintenance of law and order; safeguarding the fundamental rights of citizens; controlling and regulating the political system;

regulating economic activities; and ordering human relations, as well as international relations, among others (Shrivastava, 2022).

Several countries across the world have a suitable constitution that provided for government structure, as well as defining the relationships between/among various governmental units, and specified how these units will be interrelated, and how the government was formed or set up, as well as the form of the country's constitution, will determine how the public administration of such a country will operate, and how its operation will affect other areas of the government's activities. Since public administration is considered part of the executive arm of government, with a modicum of independence in discharging its multiple functions, there is a tendency for public agencies to overstep their boundaries (Prunty, 2018). It is, therefore, through constitutional means that public administration can be regulated vis-à-vis agencies and institutions of government, hence the need for constitutional and administrative law.

Constitutional and administrative law is the branch of public law established to regulate the activities of government and its institutions in a given state. In essence, constitutional and administrative law are concerned with the distribution and exercise of power within the state. Constitutional and administrative law also covers the power to make legal rules, as well as to demand accountability on the part of those charged with the responsibilities of legislating, applying and enforcing the law. Constitutional and administrative law thus control and regulate the dealings and relationships between the state and the individual (Nottingham Law School, 2020).

Although it appears somewhat difficult to distinguish between constitutional and administrative law, simply because both are components of public law, which has to do with regulating the functions and activities of the government in modern society (Dhyani, 2022). Be as it may, constitutional law can be seen as the body of law defining the powers as well as structure of different entities of a state vis-à-vis the executive, the legislature and the judiciary, alongside the basic rights of citizens, and the relationship between the government at the centre with those of the state and local levels (Strictly Legal, 2022). Constitutional law derives from the constitution and, as such, is related to, or interpretive of a constitution; the term is therefore synonymous with the constitution, since it "connotes the constitution as interpreted and applied by the organs of government" (Encyclopedia.com, 2018, para. 1).

On the other hand, administrative law, otherwise referred to as the law of public administration, is that body of law governing the activities of administrative agencies of government. Their activities include, but are not limited to, rule-making, adjudication and the enforcement of a specific regulatory agenda (Robson & Page, 2023). Administrative law is also concerned with the decision-making of administrative entities or units of government. The key difference between constitutional law and administrative law is, therefore, that the former governs the legislative and executive branches, while the latter governs their operations. Constitutional law is derived from the constitution, while administrative law is derived from legislation, vis-à-vis administrative regulations, executive decrees, circulars, letters of instruction and conventions, among other sources (Dhyani, 2022).

Since governance is how a state's resources are being managed for effective services delivery, the welfare of its citizens and national development, among others, and agencies or institutions of government are in charge of translating government policies and program into reality, such agencies and institutions of government must therefore be well regulated in order to give utmost performance. Administrative law has, for that reason, become indispensable in regulating the activities of agencies and institutions of government in order to bring regularity, orderliness and certainty to them, as well as to control any misuse of powers vested in those agencies and institutions.

In essence, concerning the practice of public administration, administrative law plays a key role, especially in monitoring and remedying administrative blunders, including ineffectiveness, inaction, indiscipline and other unethical behaviour by public administrators. Furthermore, administrative law enhances accountability and probity in the conduct of government business. In other words, in order to promote quality governance, administrative law confines public administrators' powers and authorities within their legal borders to prevent them from abusing their offices.

It is against this background that the study analyses the place of constitutional and administrative law in the governance process in Nigeria. This is with a view to determining the factors that influence the practice of public administration in Nigeria and those that hinder the proper application of administrative law into the country's public offices.

2. The constitutionality of constitutional government in Nigeria

The essentiality of the constitution as a legal framework in the governance of any political entity cannot be overemphasised. This is because it remains a reference point for ensuring quality or good governance (Adegbami & Uche, 2016). It is for that reason that a constitutional government became desirable. Constitutional government, in essence, is one which operates within a set of legal and institutional constraints. Under a constitutional government, the activities of government are regulated by a set of rules. These rules spell out the powers and functions of government; in other words, "the institutional autonomy". The rules equally define the relationship between state and the individual, namely "individual autonomy" (Keman, 2000). Thus, constitutional government depends on the existence of a constitution that serves as a legal instrument, or a set of fixed rules generally accepted as the fundamental law of the polity; applied to control the exercise of political power. It covers the distribution of powers among levels of government and several other governmental units, in such a way that the component units of government shall cooperate to formulate the will of the state (Britannica, s. a.). The centrality of constitutional government is to run governmental affairs and businesses in line with the constitution of the land, which is considered supreme over individuals or groups. Similarly, all powers of exercising governmental functions by the supposed authorities and personalities must be derived from the constitution and, as such, the rule of law, or set of "basic laws" that connects public officeholders and the citizenry in a given country must be respected by government operators in line with the constitution.

The governmental system of Nigeria is based on a written constitution, although the country has intermittently had its constitution suspended through military incursion into its governance and administrative activities. The country, however, in the last 23 years, has witnessed unbroken democratic governance and operates under a written constitution that perhaps developed from the various military decrees. In other words, the so-called 1999 Constitution of Nigeria was handed over to the civilian administration by the military government some 23 years ago, with little or minor amendment by the current civilian administration. Although it could be said that Nigeria currently operates with a constitutional government with a written constitution, there have however been steady discussions, arguments and counter-arguments in various quarters as to whether the country is running or operating a constitutional government, and whether the country truly has a genuine constitution. While it is true that the military may seize power from the legitimate government for legitimate reasons, especially when the official government fails to exercise its functions as spelt out in the constitution. In Nigeria, for instance, the first military coup of January 1966 was attributed to the civilian rulers' corruption and misgovernance of the country. Excerpts from the coup speech delivered by the major actor in the first *coup d'état*, Major Nzeogwu revealed this. According to him:

Our enemies are the political profiteers, the swindlers, the men in high and low places that seek bribes and demand 10 per cent [...] those that make the country look big for nothing before international circles, those that have corrupted our society and put the Nigerian political calendar back by their words and deeds (Nzeogwu, cited in Obasanjo, 1987, p. 99).

Ever since the 1966 *coup d'état*, the military persistently dominated the governance and administration of the country. The military was in charge of the country's administration between 15 January 1966, and 30 September 1979. On 1 October 1979, the civilian administration was ushered in, and by 31 December 1983, the military had come back to power again and stayed in power until 23 August 1993, when an Interim National Government (ING) was put in place after the annulment of the general election of 12 June 1993. By 17 November 1993, the military had suppressed the Interim National Government, came to power once again and ruled until 29 May 1999. In essence, for a long period, Nigeria's political history was of governments without constitutions, but decrees, and it was the government without a constitution that made a constitution for constitutional government. What an aberration! As such, it is not surprising that the 1999 Constitution of the Federal Republic of Nigeria suffers from many defects, which can be attributed to the process by which the constitution emanated. As pointed out by Ogboye & Yekini:

One fundamental defect in this constitution, which one may rightly argue as robbing it of constitutionalism, is the fact that it did not emanate from the will of the people. In other words, it failed to meet one of the fundamental values of a constitution. The 1999 constitution (as amended) is a military decree and the preamble to the constitution is nothing but false. Be that as it may, we have generally regarded the document as the constitution of the country. Despite the fact that at the face value, the constitution proclaims constitutionalism,

the actions and inactions of the government and its machinery more often than not are not in accordance with the constitution (Ogboye & Yekini, 2014, p. 125).

It is not surprising, therefore, that the so-called constitutional government in operation in Nigeria is full of defiance of court orders; disregard for fundamental human rights; faulty electoral process; poor accountability; and poor welfare and delivery of services, among others. While concerned Nigerians are calling for the review or further amendment of the Constitution, some stakeholders call for total annulment of the constitution to give way to a new people's oriented constitution. This set of stakeholders believes that the defectiveness inherent in the 1999 Constitution of Nigeria will be difficult, if not impossible to rectify through constitutional amendment by Nigeria's National Assembly. For instance, Babalola¹ argues that:

It is common knowledge that the 1999 Constitution was made by the military, which, in its wisdom, claimed that it was made by the people. The constitution says among other things that "We the people of the Federal Republic of Nigeria, having firmly and solemnly resolved [...] do hereby make and give to ourselves the following" [...] Of course, this claim is false. The truth is that there is no way the National Assembly can amend the 1999 Constitution to cure the inherent defects. First, you cannot cure fraud. Second, it is impossible, by way of amendment, to take away the military system of government under the 1999 Constitution or the power and control of public funds by the President. Or can we, by way of amendment, change the judicial powers of the President under the 1999 Constitution? Why then is the National Assembly afraid of calling a national constitutional conference to fashion out a new true federal constitution (Babalola cited in Afolabi, 2021, para. 6–9).

In a similar vein, Hassan in her position paper entitled "Nigeria's Constitutional Review: The Continuing Quest for a Legitimate Grundnorm" stated:

Many of Nigeria's ethnic nationalities and interest groups believe that the content and character of the 1999 Constitution have been stifling their growth and development. As a result, the current Constitution has been openly rejected by socio-cultural groups, especially those representing various ethnic groups, civil society, and professional groups within the Nigerian polity. Importantly, too, anger remains in the polity over the historic lie told in the preamble of the 1999 Constitution that "we the people" of Nigeria came together to deliberate upon and collectively approve the nation's constitution when such debates and genuine public input did not occur at anything like a national level (Hassan, 2021, para. 6).

It is widely believed that the outlook of a country is determined by its constitution, how the constitution is made or allowed to work, as well as the respect that the constitution arouses, from the rulers and the ruled. Apart from the fact that the preparation of the

¹ Afe Babalola is a Senior Advocate of Nigeria (SAN); he holds the titles of the Officer of the Order of the Federal Republic (OFR), and Commander of the Order of the Niger (CON). He was a former Pro-Chancellor and Chairman of the Governing Council of the University of Lagos, Nigeria; and a former Chairman of the Committee of Pro-Chancellors of Nigerian Universities.

current Constitution of Nigeria is faulty; the constitution is not able or allowed to work. This is because some categories of Nigerian citizens, or the so-called elite, appear to be above the law. Beyond this, the executive arm of the government of Nigeria did not help matters, because the executive only obeys selected court orders, especially those that favours them, and disobeys others. To this extent, the so-called Nigerian Constitution on several occasions did not arouse any respect from Nigeria's citizens, especially from the political class/officeholders. In a country where the constitution is not supreme, where the rule of law is not upheld, and the rulers rule with impunity, the legitimacy of such a government is in doubt, hence the constitutionality of Nigeria's government is contestable.

3. Administrative law and institutions of government in Nigeria

The fact remains that the government of any given country cannot carry out all its functions and responsibilities, regarding implementing or transforming the policies and programs of government into reality all by itself. There is, therefore, a need for the government to involve bureaucrats to assist in implementing these policies and programs for the benefit of the citizenry. The government can achieve this through delegating some of its functions and responsibilities to the institutions of government, namely Ministries, Departments and Agencies and other government units across the different levels of government. For these institutions to function well and be able to carry out their given assignments, they need to be well-regulated and coordinated, hence the necessity of administrative law.

Administrative law also covers regulatory law, public law or the law of public administration, stemming from the executive branch of government, for the purpose of monitoring and regulating the responsibilities delegated to the institutions and agencies of government. Administrative law regulates government institutions and agencies to ensure effective delivery of services, by carrying out the government's business in a professional manner. Therefore, it can be thus deduced that administrative law is concerned with the protection of the interests of the public in relation to government. In other words, administrative law oversees the core activities and operations of government agencies, by laying down the guiding principles of how the business and activities of government should be handled to bring about the desired result. As such, public servants, the administrative machinery through which governmental activities are being delivered, are expected to operate under civil service rules and regulations for the effective delivery of civil services activities.

At this juncture, the pertinent questions are: is administrative law being applied to the operations of the institutions of government in Nigeria? How effective is administrative law at regulating the activities of these institutions in Nigeria? Has the law enhanced the quality delivery of services by the institutions? What are the factors influencing the practice of public administration in Nigeria? Are these factors in consonance with the contents of administrative law?

The knowledge of the ecology of administration has provided needed opportunity to understand some of the factors that influence the practice of public administration in a particular society. This has made it clear that there is no way public administration can be practiced in isolation without reference to the peculiarities of society. Suffice to say that the norms of that society and people's attitudes, as well as their orientation, determine its administrative system to a large extent. Several civil service rules and regulations, codes of conduct and of work ethics are available for various institutions of government, yet the administrative practices are designed to favour the political officeholders and their career official counterparts (Omolaja, 2009), and these unethical practices within the institutions of government are inimical to the interests of the majority of society. In Nigeria, for instance, political officeholders and their career official counterparts have used their offices to accumulate the "commonwealth" of the people on several occasions. The fact that career officials in Nigeria are poorly remunerated when compared with their colleagues in some other countries across the globe perhaps explains their unethical practices in their respective public offices. Besides, huge salaries are being paid to their political officeholders' counterparts. According to Sunday:²

The gap between civil servants and political officeholders in terms of emoluments is too wide, because if on becoming a councilor or commissioner or minister you suddenly have multiples of what a director or permanent secretary would get, then some civil servants would feel, 'well, this is an unfair deal' and they would devise means to rock the system (Sunday cited in Aramide, 2020, para. 2).

In addition to this, the fear of the unknown about life after retirement makes some career officials use unethical practices. This is also buttressed by Sunday. According to him:³

If the system guarantees that at the end of your service years you have packages to fall back on in terms of gratuity or pension or regular contributory pension scheme then the temptation to save or embezzle money to be used at the time of retirement would be reduced (Sunday, cited in Aramide, 2020, para. 6).

Politicians, on the other hand, given the pattern and nature of their ascension to public offices, through manipulation, vote-buying and faulty electoral process among other most crooked ways, have come to see political office as a business in which it is worth investing. To this extent, political office seekers did go the extra mile to get money and find ways of buying themselves through to offices, after which they convert public funds to theirs as a gain on their political investments. As career officials are looking for a way of amassing wealth through their offices, so are political officeholders. It has even been argued that it is the career officials in Nigeria who teach and support the political

² Edgar Amos Sunday is the Head of Service (HoS), Adamawa State, Nigeria.

³ Edgar Amos Sunday.

officeholders in better ways of amassing public wealth. Supporting the assertion is Fayose.⁴ According to him:

No governor, minister or top political officeholders can steal a penny from the treasury without the cooperation of the civil servants. We don't write papers as politicians, but we only approve whatever the civil servants came up with (Fayose cited in Oluwole, 2015, para. 4).

Apart from the above-mentioned issues faced by career officials is the fact that political officeholders wield all the power, and in their hands are sledgehammers that can be used to knock out any career official who may want to obstruct their making money from public offices; as a result, career officers do not have an option but to cooperate. The result of the unholy cooperation of the duo of political officeholders and career officials is the precarious economic and developmental condition in which the country finds itself.

In essence, administrative law as far as Nigeria is concerned has not been able to curtail unethical practices in governmental institutions properly and, as such, has not enhanced the quality delivery of services in Nigeria, although the government of Nigeria has also established various regulatory agencies in addition to civil service rules and regulations and code of conduct, among other measures. It is believed that a good and effective regulatory agency will go a long way to foster the economic and welfare development of the country. To some extent, some regulatory agencies proved to be effective and enhanced economic growth and development, increased investment, and provided a better quality of service delivery. The feat achieved by these agencies has since been defeated by the constant corruption, bribery and extortion, and poor orientation of services, as well as the anti-business mentality that characterised many of these regulatory agencies. According to Osinbajo:⁵

If the environment on account of regulatory authorities is so difficult or expensive, such that people are discouraged or it doesn't make sense for people to do business, then we are shooting ourselves in the foot in a manner we can only blame ourselves. These are human issues and we must do something very serious about these issues. I am in full support of holding our CEOs to account because they, in turn, must hold their staff to account. If there is systemic corruption, bribery and extortion, and nobody is held to account, there is a problem (Osinbajo cited in Adegboyega, 2021, para. 8–9).

As a result of the poor operations of the regulatory agency, Nigerians have continued to be exposed to a variety of threats, including unsafe food and drugs, environmental pollution, toxic waste, a risky civil aviation sector, and dangerous building designs, among others, while the so-called regulatory agencies appear incapable of controlling the menaces. Hence, these controllable challenges testify to the fact that administrative

⁴ Ayodele Fayose is a former Governor of Ekiti State, from 29 May 2003, to 16 October 2006, and from 16 October 2014, to 15 October 2018.

⁵ Oluyemi Oluleke Osinbajo is Grand Commander of the Order of the Niger (GCON); a lawyer, Professor and the Vice President of Nigeria since 29 May 2015.

law or the law of public administration has had, to a large extent, insignificant effect on the governance and administrative activities of Nigeria.

4. Challenges of constitutional and administrative law in Nigeria: Implications for governance

There is no doubting the fact that administrative law remains indispensable in propelling government toward providing quality governance. As such, if governance is a function of government and the body saddled with the responsibility of carrying out the function is public administration, the instrument that can adequately enhance public administration in order to carry out the function effectively is administrative law. Hence, proper application of administrative law to the administrative activities of a given country is *sine qua non* to good governance (Oikhala, 2020). However, there are some challenges militating against the proper application of administrative law to governmental activities in Nigeria. These include:

Societal factors: These are one of the factors that hinder the proper application and enforcement of administrative law in many governmental institutions in Nigeria. These can be viewed from different angles or perspectives. For instance, society's indifference to, instead of condemnation of corrupt practices in the country has continued to weaken the proper application of administrative law in the country. Nigerian society has been segregated, especially along ethnic and religious divides. As such, members of the society always fail to call a spade a spade, when any member of their ethnic group or religious affiliation is involved in unethical practices in public office. To defend corrupt officials with which they have an affiliation with, members of society have gone to the extent of intimidating law enforcement agents. On some occasions, members of the society have caused chaos and crisis that resulted in lawlessness in order to protect their kinsmen or enable co-religionists to evade justice. This practice has limited administrative law from taking effect in Nigeria.

From another angle, Nigerian society encourages wasteful and excessive spending; from the career officials to political officeholders, and individuals within the country, all are in the habit of living an ostentatious life. People prefer foreign clothes, jewellery, shoes, bags, drinks, wigs and hair attachments, as well as household goods (Omolaja, 2009), and of course, in recent times, they have even started importing soups, jollof rice and tooth-picks from abroad. Some parts of the country set off flares for all kinds of ceremonies, especially funerals. The environment permits people to spend their life savings on ceremonies, and even go the extra mile, again and again, to borrow from banks and people around them. The consequence of these wasteful activities is the looting of public resources, as a means of augmenting funds wasted on ceremonies, and the only available and sure solution is to dip hands into the public purse, and when the law is about to take its toll, they always find ways to circumvent or pervert justice, especially through stirring ethnic and religious sentiments.

Social factors can also be viewed from an extreme taste for fashion; public officials in recent times have had an unquenchable taste for fashion. They love luxurious goods and

trendy materials. They crave different types and models of cars and big mansions. Public officials who are men marry many wives and have concubines, and end up building extended families. All these social practices need a lot of money for maintenance, and when there are not enough legal sources of generating income to cover their huge and accumulated expenses, public officials turn to stealing public funds.

Another angle from which one can look at societal factors affecting the proper implementation of administrative law is societal attachment to wealth. In times past, society frowned on sudden and questionable wealth, no matter who was involved. Society abhorred people with an unknown or dubious source of wealth like the plague. However, society today has lost the value of a good name and integrity, and, as such, people with a dubious source of wealth are highly celebrated and respected, to the extent that they are awarded or conferred with chieftaincy titles: religious sects, both Christians and Muslims alike, are not left out of being given religious titles (Ademu, 2013). For this reason, the pursuit of making money, by any and all means, has made public officials, career officials and political officeholders alike involved in corrupt practices while holding public office.

Poor conditions of service and welfare packages for the law enforcement agents: The law enforcement agencies, which are saddled with enforcing the law of administration, are not well-motivated. According to the study by Ipadeola (2016), agents are subjected to poor conditions of service and poor welfare packages. This has continued to limit their performance and also accounts for the high level of corruption even within the various law enforcement agencies. As such, it will be difficult for those law enforcers who are hungry to handle the law of administration as expected.

Delay in judicial process: Another impediment to the proper application and enforcement of administrative law in Nigeria is the problem of delays in dispensing justice on unethical behaviour. Justice delayed is believed to be justice denied; it is on record that the judicial process against unlawful activities being perpetrated in public offices takes a long time. To this extent, according to Ipadeola (2016), the anti-corruption agencies in Nigeria, particularly the Economic and Financial Crimes Commission (EFCC) have continued to demand a strong commitment from the executive arm of the government of Nigeria to intervene in the matter of delaying the judicial process of unethical practices in public office and encourage the judiciary and the Nigeria Bar Association to expedite action in handling unethical cases in Nigerian public institutions always. The unduly drawn-out nature of legal proceedings has continued to frustrate the performance of anti-corruption agencies.

Low or no punishment for corrupt public officials: Another factor that constitutes a blockage to the proper application of administrative law in Nigeria is the problem of meting minor or no punishments to public officials involved in unethical practices. The fact that the government has no political will to allow administrative law to take its course has contributed to this. The government has, on several occasions, provided a soft landing for corrupt officials. Many political officials who were found to be involved in corruption and misappropriation of public funds were not adequately punished. Some of them were allowed to settle their cases through a plea bargain. The corrupt public official in question is then asked to return the stolen money to public coffers. Most of the time, a certain percentage of the stolen money is returned. The leniency accorded to corrupt public

officials in this regard has continued to whittle down the efforts of anti-corruption agencies in Nigeria. Similarly, because corruption is deeply rooted in Nigerian society, corrupt officials always have a network of connections with different anti-corruption agencies. This also explains why the law of public administration is less impactful in the country. There is no way the battle against corruption can be won as long as corrupt officials have friends, family, kinsmen or people of the same religious faith within the agencies that are fighting corruption. As such, there must be a way to handle this issue; moreover, there is a need for stiffer punishments to be meted out to corrupt public officials to make administrative law function effectively.

Politicisation and political interference in the activities of administrative institutions: The improper implementation of administrative law in Nigeria can also be attributed to undue political interference in the administrative policies and practices of some administrative institutions. Most of the administrative policies in Nigeria are driven by politics rather than objectivity. The government did play politics with the judicial process on many occasions, and when it came to the prosecution of a public official accused of unethical practices. A statement such as “I have been ordered from above”, and “the presidency is interested in the case”, among other clichés, are in use whenever politics takes precedence and is made to override objectivity in public administration. Public officeholders hide under this undue advantage to involve themselves in unethical practices in their various offices. They use their advantage to accumulate public wealth, since they know that there is always a godfather to call upon at any time an issue is raised regarding their unethical practices. For that reason, institutions that are supposed to bring these public officials to justice are being castigated and compromised and have thus become toothless bulldogs that cannot bite.

Weak institutions for enforcing administrative law: One of the metrics for evaluating the government’s effectiveness in terms of quality governance lies in its ability to have developed institutions or agencies that can adequately deliver social services and general development in the country. However, institutions and agencies in Nigeria appear weak, and unable to handle government business effectively. A weak institution can be seen in terms of a steady decline in the power of government agencies of a country, when such agencies can no longer discharge their assigned duties effectively (Usman et al., 2015). Due to the weaknesses in the powers of government agencies in Nigeria, they are unable to enforce administrative law adequately in their various offices.

Some of the causes of the weakness in the powers of government institutions and agencies in Nigeria have been mentioned under this sub-heading, which include societal factors; poor remuneration and poor conditions of service of law enforcement agents; delays in the judicial process; low or no punishment for corrupt public officials; weak institutions for enforcing administrative law; politicisation and political interference in the activities of administrative institutions, among others. What then are the implications of those challenges to administrative practices and governance of Nigeria?

Of course, the implications of the challenges are many. The fact that administrative law or the law of public administration is put in place by the constitutional government to regulate and keep the powers of public administration within the legal framework; protect the citizens against abuse of powers; make administrative law indispensable. The

indispensability of the law lies in the fact that it checks excesses, abuse or misuse of powers by public officials in their various offices and, by that, enhances good governance. The importance of administrative law for good governance notwithstanding, it is not accorded a special place in Nigeria's governance and administrative activities. It is not surprising that all the arms of government, the legislature, the judiciary and the executive are culpable for stemming and whittling down the power of the law of administration by their flagrant disobedience to the rule of law and the constitution in their various capacities.

Concerning the legislative arm of government, they do not normally sit for a stipulated number of plenary sessions. For instance, in 2021, the Senate, which is the highest law-making body in Nigeria, broke its rules and also undermined the country's constitution, which it swore to uphold, by not having the required number of plenary seasons as stipulated by the Constitution. Section 63 of the 1999 Nigerian Constitution (as amended), states unequivocally that "the Senate and the House of Representatives shall each sit for a period of not less than one hundred and eighty-one days in a year" (Federal Republic of Nigeria, 1999). Contrary to this stipulation, the Senate in the year 2021 sat for 66 days only, thereby, breaking the Constitution (Iroanusi, 2022). Besides, the legislative arm of government is also found to have abandoned or jettisoned some of its oversight functions. Legislative oversight is the responsibility of overseeing or supervising the executive arm of government to ascertain whether it duly implements the projects over which the National Assembly has approved funds. It also involves the National Assembly conducting investigations into governance matters by monitoring the performance of Ministries, Departments and Agencies, for the benefit of the citizenry (Policy and Legal Advocacy Centre, 2016). These powers of the legislative arm are provided for in Section 88 of the 1999 Nigerian Constitution (as amended) (Federal Republic of Nigeria, 1999). On several occasions the legislators could not perform their duties, simply because they had been bought by the executive. It was to this extent that Obaro states that the oversight of the legislature has been exchanged and substituted for pecuniary gains from the executive arm of government, to the detriment of the masses (Obaro, 2015 cited in Tobi & Adegbami, 2020). Commenting further on the defectiveness of the Senate in performing its responsibilities under the Buhari Administration, Adetayo states:

The ninth National Assembly, unlike its predecessor, has become the pliant arm of an ever-more authoritarian executive. On January 23, 2019, Buhari ordered the removal of Nigeria's chief justice on allegations of corruption in an unprecedented judicial intervention. There was no constitutional basis for this. The State Security Service, the country's intelligence unit, has grown all-powerful by flaunting court orders, arresting journalists, and operating outside the law (Adetayo, 2021, para. 10).

Further commenting on the ineptitudes of the legislative arm of the government is Sayuti. According to him:

The National Assembly has a yearly ritual of accusing the federal government of failure to fully implement the budget of the preceding fiscal year. However, such accusations have been observed as amounting to the National Assembly indicting itself as weak and [with an]

inability to oversight and hold the executive to account. Budget defense by Federal Ministries, Parastatals and agencies has been reduced to a yearly “parley” where various legislative committees and members of the executive negotiate sharing of the “national cake” with no interest to the Nigerian people. Their power of oversight has been slaughtered on the altar of corruption and weakened by their craving to amass wealth at the expense of the masses (Sayuti, 2016, p. 15).

On the part of the judiciary, it has been revealed how the actions and inactions of the judiciary cause delays to the courts’ process. The timely administration of justice is a key requirement for the peace and stability of human society. Administration or dispensation of justice is a basic responsibility of the judiciary, just as it is widely believed that the judiciary is the last hope for the common man. This assertion portrays the significance of the judiciary as one of the major arms of government. The importance of the role of the judiciary notwithstanding, the body is often berated for causing delays in the judicial process. Delays in the judicial process have tended to make people lose confidence in the courts, especially since justice delayed is taken to be justice denied. This has continued to bring the legal profession into disrepute.

There is no doubt that the justice system in Nigeria is fraught with challenges, and this has made court proceedings to be seen as time-consuming activities. On many occasions, “by the time the case brought before the court is determined, the litigants possibly would have lost interest or the case would have lost the supposed economic value” (Monye et al., 2020). Judicial and legal officials have been found to use different means of delaying the judicial process, including but not limited to raising preliminary objections to challenge the jurisdiction of the trial court, and raising the irregularity or the validity of a charge brought against the accused based on some noticed or perceived defects. In addition, the counsel may use an appeal, either a substantive or interlocutory appeal, just to delay proceedings. While all these are parts of the judicial or court process, the judiciary normally uses them as tactics to frustrate the entire judicial process. In many instances, these antics and tactics have made the efforts of administrative law’s regulatory and enforcement agents futile, and consequently constitute a hindrance to the proper application of the law of administration to public offices in Nigeria. In addition, the judiciary has also been accused of dispensing justice to favour the highest bidder. According to Daudu,⁶ “there is a growing perception, backed up by empirical evidence that justice is purchasable and has been purchased on several occasions in Nigeria” (Daudu, cited in Nnochiri, 2011, para. 4).

The executive arm of government in Nigeria, on the other hand, is alleged to have disobeyed court judgments on several occasions. Some concerned advocators of the rule of law have continued to decry recurring disobedience of court orders by the executive arm of the government of Nigeria. According to Falana:⁷

⁶ Joseph Bodurin Daudu is a Nigerian Jurist, Bencher, Senior Advocate of Nigeria (SAN), and former President of the Nigerian Bar Association.

⁷ Femi Falana is a lawyer, a Senior Advocate of Nigeria (SAN), and a human rights advocate.

I've compiled about 32 court orders being flagrantly disobeyed by the government of Nigeria, which are not in line with the rule of law. It doesn't lie in the mouth of an attorney general or the president of a country to pick and choose which orders of the court to obey. When you do that, you are reducing the status of the country to a banana republic. And that is why the bar has to rise now and take its rightful place (Falana, on Channels Television, 2019, August 27).

In a similar vein, Fasusi⁸ while commenting on the need to obey court judgments, and the effects of disregarding court's decisions states:

It is crystal clear that the orders of the court are valid and ought to be enforced and complied with by all persons because there is a duty on everyone and every constituted authority to do so. Refusal to obey a court judgment/decision/order could lead to severe consequences. However, in recent times, it appears the executive arm of government has been paying lip service to this sacred duty (Fasusi, in Onyekwere, 2021, para. 3–4).

Similarly, a report by the Socio-Economic Rights and Accountability Project, (SERAP), showed that the administration under President Muhammadu Buhari has flouted many court judgments since its inauguration in 2015. In its recent public presentation, SERAP listed some of the court judgments that it had secured against the Federal Government of Nigeria but which the government flagrantly disobeyed. According to the SERAP spokesperson, Oludare:⁹

The first of such judgments is the judgment by Justice Hadiza Shagari delivered on July 5, 2017, ordering the federal government to tell Nigerians about the stolen assets it allegedly recovered, with details of the amounts recovered. The second judgment, by Justice Mohammed Idris, on February 26, 2016, ordered the federal government to publish details on the spending of stolen funds recovered by successive governments since the return of democracy in 1999. The third judgment, by Justice Oluremi Oguntoyinbo on November 26, 2019, ordered the federal government to challenge the legality of states' pension laws permitting former governors now serving as ministers and members of the National Assembly to collect such pensions and to recover pensions already collected by them. The fourth judgment, by Justice Mohammed Idris on May 28, 2018, ordered the federal government to prosecute senior lawmakers suspected of padding and stealing N481 billion from the 2016 budget; and to widely publish the report of investigations into the alleged padding of the 2016 budget. The fifth judgment, by Justice Chuka Obiozor on July 4, 2019, ordered the federal government to publish the names of companies and contractors who have collected public funds since 1999 but failed to execute any electricity projects. *These judgments and many others by the courts have remained unchallenged till date and the federal government has refused to obey them* (emphasis added are ours) (Oludare cited in Ojelu & Dania, 2022, para. 3–6).

⁸ Deji Fasusi is a lawyer and litigation partner.

⁹ Kolawole Oludare is a Deputy Director of the Socio-Economic Rights and Accountability Project, (SERAP).

Besides this is the undue interference in the judicial process by the executive. The judges are not decisionally independent in all the cases they handled. According to West-Idahosa:¹⁰

There is a fair presence of decisional independence amongst Nigerian judges in respect of civil cases founded on common law and general criminal litigation. The area of concern has to do with the conduct of political matters, whether pre-election or post-election ones. While it has been generally acknowledged that election matters are *sui generis* (one of its kind), many believe that some of the decisions given were largely influenced by political, religious, tribal and social actors. I must point out that a number of judges are also influenced by corruption, greed and avarice in the discharge of their duties. It is this notion that has given rise to such concepts as “black market” orders, “cash and carry” judgments and a host of uncomplimentary theories surrounding the nature of some of the judgments delivered in Nigeria. The danger is that a negative perception of this nature erodes the three basic elements of the independence of the judiciary (West-Idahosa, 2021, para. 8).

This development has continued to cause crises in governance, thereby questioning the legitimacy of the government of Nigeria. The snowball effect of this is the weak condition of governance, where the government appears unwilling and incapable of carrying out its responsibilities effectively. Whenever a government fails to preserve the rule of law and uphold human rights, among others, it is structurally out of order (OECD, 2005), and faulty political structures and weak institutions make a country susceptible to organised crime (Henkel, 2013). Therefore, the series of governance challenges in the country can be seen as the mounting effects of jettisoning the proper application of constitutional and administrative law to the governance and administrative practices of Nigeria.

5. Conclusion

The place of the constitution in the governance of any political entity cannot be overemphasised, because, it remains a reference point in ensuring quality or good governance and, for that reason, a constitutional government became desirable. The activities of government are believed to be well regulated under a constitutional government, via the constitution and administrative law. This is because administrative law remains indispensable in propelling government toward providing quality governance. In Nigeria however, the legislature, the judiciary and the executive are guilty of restricting the power of the law of administration by their deliberate disobedience of the rule of law and the Constitution in their various capacities. Other challenges militating against the proper application of administrative law to governmental activities in Nigeria include societal factors, poor remuneration and poor conditions of service for law enforcement agents, delays in court proceedings, lenient or no punishment for corrupt public

¹⁰ Ehiogie West-Idahosa is a former member of the House of Representatives of Nigeria from 1999 to 2011.

officials, weak institutions for enforcing administrative law, and politicisation and political interference in the activities of administrative institutions, among others.

The implication of these challenges is the abuse of power by public officials in their various offices. This development has continued to cause crises in governance and put a question mark on the legitimacy of the government of Nigeria. The effect of this is the weak condition of governance, which has made the country susceptible to organised crime that has continued to torment the country. The study, therefore, concludes that until Nigeria's Constitution is redrafted, and constitutional law and administrative law properly applied, quality or good governance will continue to elude the country.

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