



## **Administrative Law as the Bedrock of Administrative Agencies and Procedure in Nigeria**

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### **ABSTRACT**

This paper as titled emphasizes the role of Administrative Law in the proper conduct of affairs and duties of Nigeria Administrative Agencies. It defines the concept of *Administrative Law*, discusses the history of Administrative Law in Nigeria, which Law we adopted from the British Legal System. Administrative Law has definitely come to stay in Nigeria, as it plays a critical role in every society for purposes of governance. Reference is made to the 1999 Constitution of the Federal Republic of Nigeria as the establishment of Administrative Agencies are backed by it, directly or indirectly. Sources of Administrative Law and its functions were discussed briefly. Every Organized Society must have its leaders at the different levels of Government – Federal, State and Local Governments if its impact must be felt positively by its citizens in every nook and cranny of its jurisdiction. The duties and functions of the Government cannot be concentrated entirely in the centre, hence the need for the establishment of Federal Ministries, Departments and Agencies of the Government commonly referred to as MDAs. Part of the justification for the establishment of MDAs lies in the fact that Nigeria is a heavily populated country, and the people need to feel the impact of the Government, or else, anarchy becomes irresistible. Division of powers is a necessity in every democratic country. Administrative Agencies and Administrative Procedure were discussed in broad details towards the end of this Paper.

**Keywords:** Administrative Law, History of Administrative Law, Administrative Agencies, Administrative Procedure, 1999 Constitution of Federal Republic of Nigeria, Administration

### **INTRODUCTION**

#### **Brief History of Administrative Law<sup>1</sup>**

By virtue of Nigeria's relationship with the United Kingdom (UK), it is a Common Law Jurisdiction. One of the laws we adopted is the British Administrative Law. For a long time, and until the 20<sup>th</sup> Century, the British Legal System was perceived to lack Administrative Law. This was despite the fact that Governmental powers were already placed in the hands of Authorities other than those wielding legislative, executive and judicial powers.

According to *Professor H.W.R Wade*, 'as far back as 1888, **Maitland** had percipiently remarked that about half the cases in the *Queen's Bench Reports* had to do with Rules of Administrative law, but the Rules were not studied. Instead, Lawyers were brought up in the fashionable fallacy that Administrative Law was repugnant to the British Constitution'.<sup>2</sup> The perception of Administrative Law's repugnancy to the British Constitution is attributed to Prof. A.V. Dicey's misreading of the UK legal system. Dicey did a comparative study of the English legal System and those of Continental law countries. In the UK, ordinary Courts enforce both public and private law without any discrimination on the basis, for example, of the status of the parties to the dispute or Suit. However, in France which is a Civil jurisdiction,

<sup>1</sup>*SIMEON IGBINEDION – COURSE GUIDE ON ADMINISTRATIVE LAW(NATIONAL OPEN UNIVERSITY)*, pp 11 -13

<sup>2</sup>*H.W.R WADE – Administrative Law* , 3<sup>rd</sup> Edition (1971), Clarendon Press, Oxford @ pp 10-11

Administrative Law (*droit administratif*) is administered by Special Courts while private matters are handled by Ordinary Courts. Because the French Administrative Law peculiarity was not reflected in the UK system, Dicey declared the latter system as lacking in Administrative Law. In *THE LAW OF THE CONSTITUTION* written by Dicey, Dicey said that Administrative Law was foreign to the British Constitution and that it was incompatible with the Common Law and Constitutional liberty.

According to *Igbinedion*, this conclusion was erroneous because Administrative Law existed long before the concept ever came into common usage, the problem being that the UK and the USA failed to recognise it since the English Writers did not classify it<sup>3</sup>. The verdict of Dicey was so influential that as late as 1963, Lord Reid in *Ridge v. Baldwin*<sup>4</sup> said that we do not have a developed system of Administrative Law. However, Lord Denning in *Breen v. Amalgamated Engineering Union*<sup>5</sup> later asserted the contrary.

However, it is to be noted that in the USA, the first decisive step in the development of modern Administrative Law was the growth of Administrative Regulation of Private economic activity in the latter half of the 19<sup>th</sup> century. For example, the limitation of State Regulation of Inter State Railroad operations led to the establishment in 1887 of the first great Federal Regulatory Agency, the Interstate Commerce Administrative Law & Regulatory Policy Commission<sup>6</sup>.

### **ADMINISTRATIVE LAW IN NIGERIA<sup>7</sup>**

In its reception of English Laws, Nigeria adopted the English Jurisprudence of Administrative Law into its domestic legal system at Independence in 1960. Desirous of fast tracking the socio-economic and political development of various societal sectors, the national leadership of the newly Independent Nigeria adopted State – Centred Economy by which the country assumed responsibilities previously performed by private persons and Corporations. The By-product of this was the necessity of creating myriad of Governmental agencies such as the Railway Corporation, Marketing Boards, e.t.c.

Over and above the capacity of civilian Governments, successive Military Regimes have had a field day churning out series of Agencies and Tribunals. Such capacity was understandably fuelled by the fact that the *modus operandi* of Military Regimes is to act with dispatch. At present, there are hundreds of Governmental Agencies charged with different functions, including the delivery of Goods and Services and the enforcement of certain Rules and Regulations. Some examples in present day Nigeria are NAFDAC, NHIS, CBN, NPA, FIRS, TETFUND, NCC (National Communications Commission), NCC (Nigeria Copyright Commission) and FAAN.

The principal organ driving the machinery of Administrative law is the *Executive* arm of Government. Section 5 (1) (a) of the 1999 Constitution of the Federal Republic of Nigeria says that *the executive powers of the Federation shall be vested in the President, and may subject as aforesaid, and to the provisions of any law made by the National Assembly, be exercised by him either directly or through the Vice President and Ministers of the Government of the Federation or Officers in the Public Service of the Federation*. Section 5 (2)(a) says that *the Executive powers of a State shall be vested in the Governor of that State, and may subject to the provisions of any law made by a State House of Assembly, be exercised by him either directly or through the Deputy Governor and Commissioners of the Government of that State or Officers in the Public Service of the State*.

### **ADMINISTRATIVE LAW DEFINED**

There is no generally accepted definition of Administrative Law. However, some Law Text Writers have come up with various definitions of their understanding of the subject. *Sir Ivor Jennings* says that *Administrative Law is the law relating to administration. It determines the organisation, powers, and*

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<sup>3</sup>*Simeon Igbinedion* supra @ p.11

<sup>4</sup> (1964) AC 40

<sup>5</sup> (1971) 2 QB 175 @p.189

<sup>6</sup>*Stephen Bryer & Richard Stewart: Administrative Law & Regulatory Policy* (Little, Brown & Company, Toronto) 1979

<sup>7</sup>*Simeon Igbinedion* supra @ pp. 12-13

*duties of Administrative Authorities*<sup>8</sup>. Professors E.C.S Wade & A.W Bradley<sup>9</sup> defined Administrative law as a branch of Public Law which is concerned with the composition, powers, duties, rights and liabilities of the various Organs of Government which are engaged in Administration or more concisely, the law relating to Public Administration.

Professor H. W. R Wade said ‘Administrative law is the law relating to the control of Governmental powers. This is the heart of the subject. All powers are subject to legal limitations; there is no such thing as absolute or unfettered administrative power. It is always possible for any power to be abused... And the Court will invalidate it .... if it infringes the limits which Parliament has ordained. The primary purpose of Administrative Law therefore, is to keep the powers of Government within their legal bounds so as to protect the citizen against their abuse. The powerful engine of authority must be prevented from running amok. As well as power, there is duty. It is also the concern of Administrative Law to see that public Authorities can be compelled to perform their duties if they make default... Administrative law might be said to be the Body of general principles which govern the exercise of powers and duties by Public Authorities’<sup>10</sup>.

According to Iluyomade & Eka<sup>11</sup>, ‘Administrative law is that body of Rules which aims at reducing the areas of conflict between the Administrative Agencies of the State and Individuals’.

Olujede defines Administrative Law as ‘that branch of our law which vests powers in Administrative Agencies, imposes certain requirements on the Agencies in the exercise of the powers and provides remedies against unlawful administrative acts’.<sup>12</sup>

All over the world, the Administration rules and directs. It implements, executes, controls the affairs, operations of things and people. It governs and manages. The Administration is the Management. It is the Executive arm of Government of any unit of a people, business Organization or Body. It is definitely indispensable for any Organization for the purposes of Management and achievement of goals expected. Without it, there will be disorganisation, lawlessness, anarchy. Even commercial and business activities would grind to a halt.

Generally speaking, Administrative Law is the law that regulates Administration. It regulates the *powers* and *duties* of Government and Administrative Authorities, and provides *remedies* for mal-administration and other administrative wrongs. Administrative Law is therefore primarily concerned with the following:

1. The organisation, functions, powers and procedures of Government and administrative Authorities/Agencies
2. The relationship between or among various levels of Governments, Administrative Authorities and Agencies; and
3. The Rights and Remedies of persons affected by Administrative powers and conduct (e.g damages, declaration – which involves the prerogative Orders of prohibition, certiorari and mandamus)

## SOURCES OF ADMINISTRATIVE LAW

There are four main sources of Administrative Law as follows:

1. **The Constitution** – this is the creator of various Administrative Bodies and Agencies.
2. **Acts & Statutes** – Acts and Statutes passed by the legislature are important sources of Administrative law because they elaborate in details the powers, functions and modes of control of several Administrative Bodies.
3. **Ordinances, Notifications & Circulars, e.t.c** – according to Wikipedia, Ordinances are issued by the President (at Union /Federal level) and are valid for a particular period of time. These

<sup>8</sup>*The Law & The Constitution* (5<sup>th</sup> Edition); **Malemi – Administrative Law**(2012) 4<sup>th</sup> Edition, Princeton Publishing Company, Ikeja, Lagos

<sup>9</sup>*Constitutional Law* (10<sup>th</sup> Edition), 1985 @ p.593 ; **Malemi** supra @p.2

<sup>10</sup>*Administrative Law* (1982) 5<sup>th</sup> Edition, p.4; **Malemi** supra @pp2-3

<sup>11</sup>*Cases & Materials on Administrative Law in Nigeria* (1992) 2<sup>nd</sup> Edition, OAU Press, Ile-Ife

<sup>12</sup>*Nigerian Administrative Law* (1988)@pp 1-2; **Malemi** supra @p.3

Ordinances give additional powers to Administrators in order to meet urgent needs. Administrative Directions, Notifications and Circulars provide additional powers by a higher Authority to a lower Authority. In some cases, they control the powers.

4. **Judicial Decisions** – Judicial decisions or Judge – Made Laws have been responsible for several laid down principles related to administrative actions<sup>13</sup>.

## **FUNCTIONS & POWERS OF ADMINISTRATION**

These functions which are usually derived from the Constitution include powers to formulate and carry out Government Policies and business at the various tiers of Government, Ministries, Departments and Agencies of Government, etc.

## **ADMINISTRATIVE AGENCIES AND ADMINISTRATIVE PROCEDURES**

**Definition** – According to the US Federal Administrative Procedure Act 1946, an Administrative Agency means ‘each Authority ... of the Government of the United States other than the Congress, the Courts’.<sup>14</sup> In other words, an Administrative Agency is constituted by the executive arm of Government. *Kenneth Culp Davis* defined an Administrative Agency as ‘a Governmental Authority other than a Court and a Legislative Body which affects the rights of private parties through their adjudication, Rule Making, investigating, prosecuting, negotiating, settling or informally acting.’<sup>15</sup>

An Administrative Agency may be a Commission, Board, Authority (e.g Nigerian Ports Authority), Bureau, Office, Department, Corporation, Division or Agency. Agencies that are expressly created by the Constitution have their powers and functions codified in the Constitution. The powers and functions of Statutory Agencies are to be found in Enabling Acts. Some Administrative Agencies are found almost everywhere – at the Federal, State and Local Government levels. They do the work of the legislature as they are authorised to make certain Rules and Regulations, judicial work – by being empowered to determine whether or not the law has been violated and to impose penalty as appropriate. They also do executive jobs like conferring privileges on persons or Institutions they deem worthy.

### **Few Examples of Constitutionalized Administrative Agencies**

S. 153 (1) CFRN 1999 directly creates the following Bodies namely:

- a. Code of Conduct Bureau
- b. Federal Character Commission
- c. Federal Civil Service Commission
- d. Independent National Electoral Commission
- e. National Defence Council
- f. National Economic Council
- g. National Judicial Council
- h. National Population Commission
- i. National Security Council
- j. Police Service Commission
- k. Revenue Mobilization, Allocation & Fiscal Commission

It talks about their powers and Procedure in s. 160 (1) & (2). I shall discuss just three examples – The Code of Conduct Bureau, The National population Commission & The Federal Civil Service Commission.

1. **Code of Conduct Bureau** – this consists of a Chairman and nine other members. It is empowered in the Constitution to
  - i. Receive asset declarations by Public Officers
  - ii. Examine the declarations in accordance with the code of conduct or any law

<sup>13</sup> See [www.lawnotes.in/sources](http://www.lawnotes.in/sources) of Administrative Law

<sup>14</sup> S. 2 (a), USC s. 551; *SIMEON IGBINEDION: COURSE GUIDE ON ADMINISTRATIVE LAW* (NATIONAL OPEN UNIVERSITY) @p.27

<sup>15</sup> *SIMEON IGBINEDION* supra @pp27-28

- iii. Retain custody of such declarations and make them available for inspection by any citizen of Nigeria on such terms and conditions as the national assembly may prescribe;
  - iv. Ensure compliance with, and where appropriate, enforce the code of conduct or any law relating thereto;
  - v. Receive complaints about non-compliance with or breach of the provisions of the code of conduct or any law in relation thereto, investigate the complaint and where appropriate, refer such Matters to the Code of Conduct Tribunal;
  - vi. Appoint, promote, dismiss and exercise disciplinary control over the Staff of the Code of Conduct Bureau in accordance with the provisions of an Act of the National Assembly enacted in that behalf; and
  - vii. Carry out such other functions as may be conferred upon it by the National Assembly. This Bureau is charged with the prevention and control of corruption among Public Officers. Any violation is forwarded to the Code of Conduct Tribunal for necessary action.
2. **The National Population Commission** – this has the power under section 158 (20) of the 1999 CFRN to
- i. Appoint, train or arrange for training of enumerators or other Staff of the Commission to assist in the conduct of any population census;
  - ii. Decide whether or not to accept or revise the return of any Officer of the said Commission concerning the population census in any area or part of the Federation
  - iii. Carry out the operation of conducting the census
  - iv. Compile its Report on the National Census for publication.
3. **The Federal Civil Service Commission** – under the Constitution, the FCSC has the power to
- i. Appoint persons to the Offices in the Federal Civil Service
  - ii. Dismiss and exercise disciplinary control over persons holding such offices.

## **STATUTORY AGENCIES**

The National Assembly of Nigeria in its capacity as the Law Making arm of the Government has enacted some Statutes which authorised the establishment of Administrative Agencies. Examples are the Economic Financial Crimes Commission (EFCC) Act 2004, Independent Corrupt practices Commission (ICPC) Act 2000 (though efforts are being made by the current Dispensation to merge the EFCC & the ICPC), and the National Drug Law Enforcement Agency (NDLEA) Act of 1989. These Statutes respectively established the EFCC, ICPC and NDLEA. For instance, the NDLEA has the functions under s. 3 NDLEA Act 1989 to (a) adopt measures to eradicate illicit cultivation of narcotic plants, and (b) adopt measures to identify, trace, freeze, confiscate or seize proceeds derived from drug-related offences or property whose value corresponds with such proceeds.

## **WHY ADMINISTRATIVE AGENCIES ARE CREATED**

Administrative Agencies are created for the following reasons:

1. To provide certain Goods/Products - e.g The Liquefied Natural Gas (LNG), NNPC, Nigerian Coal Corporation, Nigeria Tin Mining Corporation
2. To render a certain service – e.g The Nigeria Fire Service, Water Corporation.
3. To manage Public Assets or Resources – e.g FAAN, Nigeria Tourism Development Corporation
4. To implement a Law e.g CBN Rules on Lending must be followed by Banks, NAFDAC (for conditions as to quality of products to be consumed)
5. To regulate a certain Sector – e.g CBN for banks, Standards Organisation of Nigeria (SON), FRSC, NAFDAC, CAC (for registration and incorporation of businesses, NGOs, etc)
6. To advise the Federal or State Government through relevant Federal or State Ministries.

### ADMINISTRATIVE PROCESS/PROCEDURE

Administration/Administrative Process or Procedure is a part of all the three branches of Government. In view of this, it is often argued that Administration is more or less a fourth arm of Government, which combines the characteristics of the three Organs of Government. Administrative Procedures are carried out independently by Administrative Agencies because they are the sole Bodies appointed to carry out certain functions on behalf of the Government. The only thing is that in Nigeria, one can safely conclude that some Administrative Agencies are not really desired because they duplicate the functions of some other Agencies existing before they were created. For instance, the Nigeria Security & Civil Defence Corps appears to be duplicating the duties of the Nigeria Police Force. Same applies to the creation of the EFCC and the ICPC. Nigerians only know these Agencies to be doing the work of the Police. The Federal Road Safety Commission (FRSC) appears to be doing the same thing too. The National Examinations Council (NECO) duplicated the functions of the West Africa Examinations Council (WAEC). The NABTEB seems to be doing so, even though it may claim to be handling examinations for only Technical subjects. The truth is that the WAEC already sets examinations in these fields as well. The only justification that can be tendered for the proliferation of these Agencies is that those originally empowered to perform those duties before new ones were created do not perform their duties and specified roles very well. For instance, Nigerians believed that there was not adequate policing and arrest of criminals as armed robbers, assassins always had their way in most cases and were hardly caught. Therefore, inefficiency is a name tag that has always been used to identify most Staff of the Nigeria Police Force. Would I say that this is partly due to the large population size of the country? I might just be right, but incidence of corruption has to be reduced in the Nigeria Police Force. In The case of the NECO, justification may be found for its creation because of the simple fact that the WAEC serves other West African Countries, and not Nigeria alone. However, one truth is that the WAEC has always been able to adequately cater for the increase in demand of those writing its examinations.

Therefore, in effectively performing its duties, an Administrative Agency usually combines and exercises all the functions of the three branches of Government which are –

- a. **Legislative** – it may make Rules by virtue of power delegated to it under Statute. For example, NAFDAC is created under Statute to give steps to be taken before certain products produced can be approved for sale and human consumption. NAFDAC gives criteria for quality of drugs, canned foods, water, body or hair cream and so many other products before releasing its number to the manufacturer who will then go and sell in the market.
- b. **Executive** – it may carry out purely administrative duties or execute its own Rules.
- c. **Judicial** – it may perform judicial or quasi – judicial functions, including exercise of the powers of investigation, inspection, arrest, interrogation, seizure, subpoena, Recovery, sanction, etc. The NAFDAC can get the Police to arrest a person caught selling contraband, poisonous or substandard goods to the Public. The EFCC can use the Police to arrest somebody reported for fraud or money laundering. The Nigeria Customs and Excise can arrest an Importer of contraband goods or a person who fails to pay his customs and Excise Duties. The FIRS can use the Police to arrest and detain a Tax Evader, etc.

When considered from the context of its functions, *Justice R.H Jackson* in the case of *F.T.C v. Ruberoid*<sup>16</sup> observed that ‘*these Agencies have become a veritable branch of the Government, which has deranged our three branch legal theories much as the concept of a fourth dimension unsettles our three dimensional thinking*’. *Courts have differed in assigning a place to these seemingly necessary Bodies in our Constitutional System. Administrative Agencies have been called quasi-legislative, quasi-executive, quasi-judicial as the occasion required, in order to validate their functions.... The mere retreat to the qualifying ‘quasi’ is implicit with the*

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<sup>16</sup> (1952) 343 US 470

*confession that all recognised classifications have broken down and 'quasi' is a smooth cover which we draw over our confusion as we might use a counter pane to cover a disordered bed*<sup>17</sup>.

Administration is very important for every unit of people, for the management, promotion and success of every good human endeavour. Administrative Law enhances administrative Process and performance<sup>18</sup>.

### ADMINISTRATIVE POWERS DEFINED

Administrative Powers are defined as discretionary powers of an executive nature that are conferred by Legislation on Government Ministers, Public and Local Authorities, other Bodies and persons for the purpose of giving detailed effect to broadly defined policy like powers to acquire land compulsorily, to grant or refuse licences or consent and to determine the precise nature and extent of services to be provided. They are simply exercised by Administrative Agencies.

#### Sources of Administrative Powers

The powers exercised by Government and administrative Agencies may be classified into three namely:

- a. **Express Powers** – given by the *Constitution, Statute or Subsidiary legislation*, e.g Sections 4-6 1999 CFRN which give powers to the legislature, executive and judiciary.
- b. **Incidental Powers** – this is a power which is not expressly granted, but which is necessary for the accomplishment of expressly granted powers. It is a power to do things which are auxiliary, related, subordinate, incidental to or providing support to express duties, functions. For example, a small agency established to grant soft loans to individuals has a duty (even though not expressly empowered by Statute) to demand and receive collaterals for loans given. Any act done by a Public authority which is not express or incidental power is usually held to be ultra vires, null and void and of no effect by the Court. See *Ekemode v. Alausa* (1961) 1 All NLR 143.
- c. **Implied Powers** – this is a power which a person assumes rightly or wrongly. Many times, implied power is usually ultra vires. Implied powers depend on imagination which may be stretched too far. Therefore, it is always better for power to be expressly granted or incidental to an express power.

Lastly, the following are types of Administrative Powers: **Legislative, Executive, Judicial, Quasi – Judicial and Administrative Decisions**. In terms of the last, the Authority can act by its discretion. It is not required to employ any of the Court processes of hearing evidence and arguments.

In conclusion, Administrative Agencies are established directly or indirectly by the 1999 Constitution of the Federal Republic of Nigeria, especially in its Section 4 which gives the Legislature the powers to make Laws, as this includes Laws establishing Agencies. There are also Constitutionalized Agencies which are expressly created by the Constitution as discussed earlier in this Paper. Administrative powers are decentralized and shared at different levels of every democratic Government in order for the Government to effectively and efficiently carry out its duties to the citizens, for there is no way only one or two persons can effectively govern any country, especially where the population is in millions, without having chaos. Power has to be shared to Ministries, Department and Agencies of Government with specific assignments and functions given to them, and that also makes separation of powers desirable in every democratic setting. We have the NAFDAC, CAC (Corporate Affairs Commission), SON (Standards Organization of Nigeria), CBN, FIRS, etc, each assigned with different and very important functions, all in a bid to ensure that the society keeps moving. Hence, no Parastatal / Agency of Government is over-burdened with duties beyond its capabilities.

Lastly, Administrative Law has played the key role of keeping all Administrative Agencies in check with regards to their limit of powers and scope of duties, ensuring that no Agency, Ministry or Department of

<sup>17</sup>*FTC v. Ruberoid* supra @ pp487-488

<sup>18</sup> See generally [www.administrativelaw.uslegal.com/Administrative](http://www.administrativelaw.uslegal.com/Administrative) Agencies; [www.lardbucket.org](http://www.lardbucket.org); [www.delmarlearning.com/companions/content](http://www.delmarlearning.com/companions/content), [www.loc.gov](http://www.loc.gov)

Government abuses its powers and functions by exceeding their defined limits. Administrative Procedure sets out the Rules to be followed by all MDAs in effectively performing their duties, even though we are cognisant of the fact that they are all vested with powers that make them perform the legislative, executive and judicial functions in discharge of their duties. The Issue is that while exercising all the three functions, there are defined limits, or their powers become ultra vires, null, void which makes their actions to have no effect in Law and in Fact. The essence of the establishment of these MDAs is simply to ensure that all Nigerian Citizens enjoy the dividends of Democracy and the Rule of Law!

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