

## CONDUCT OF LEGISLATIVE OVERSIGHT BY THE NATIONAL ASSEMBLY

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### ABSTRACT

*The National Assembly is constitutionally established as the legislative arm of government. As a critical limb of the democratic tripod, the National Assembly performs important roles, which includes lawmaking and oversight function. One of the fundamental tasks or responsibilities of the National Assembly is to conduct oversight functions by overseeing the Executive arm of government in the implementation of projects which the National Assembly has approved funds for. The business of the National assembly also includes investigation through the instrumentality of the Committees that are mandated to review and appraise the performance of the various Ministries, Departments and Agencies of Government. The National Assembly has been criticised for not living up to expectation with regards to its legislative oversight responsibility. As such, it has been blamed for the high level of corruption prevailing in the public sector and in governance generally. Using the doctrinal research methodology, the paper examines the conduct of legislative oversight in Nigeria with reference to the challenges or bottleneck that militate against the effective function of the National Assembly in carrying out this constitutional responsibility. The paper identified some of the problems and made recommendations.*

**Keywords:** Budget, Legislative Oversight, Legislature, National Assembly, Public Finance

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## 1.1 Introduction

The 1999 Constitution of the Federal Republic of Nigeria (CFRN) provides for a presidential system of government based on the principle of separation of powers between the legislative, executive and judiciary<sup>143</sup>. Legislative power rests with the National Assembly, which consists of a Senate and a House of Representatives, whereas executive powers reside with the President, who may exercise them directly or indirectly through the Vice President, the ministers of his government and other federal civil servants<sup>144</sup>. Judicial powers rest with the courts established for the Federation<sup>145</sup>.

The main feature of democracy that distinguishes it from other systems of government is the presence of the legislative arm. It arose out of dissatisfaction with the monarchy, a one-man government in which the king presumes to be God or subject only to God. The struggle between monarch and Parliament ended in England in 1869 with the passage of the Bill of Rights<sup>146</sup>. It established the powers of the legislature to make laws and formulate policies. The United States of America (USA) borrowed the principles of the Bill of Rights to create the Constitution, the main strength of which is the separation of powers between the three branches of government. The U.S. Congress sets government policy or approves Executive Branch policy, while the Executive Branch and the President implement approved government policy. To ensure that the people control US

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<sup>143</sup> Chapters V, VI and VII Constitution of the Federal Republic of Nigeria 1999; Yakubu J.A.

*Constitutional Law in Nigeria* (Demyaxs Law Books, 2003) P. 92

<sup>144</sup> Section 4 (i) and 5 Constitution of the Federal Republic of Nigeria, 1999 9 Section 5 (i)

<sup>145</sup> Section 6 (i), Ibid

<sup>146</sup> John D. Fair 'Walter Bagehot, Royal Mediation, and the Modern British Constitution, 1869-1931' (1980) (42) (1) *The Historian*, pp. 36-54

affairs, the Constitution gives Congress many powers. These include power over the deployment of the armed forces and the treasury<sup>147</sup>.

Similarly, the Nigerian constitutions gave the National Assembly near-absolute powers over the National Assembly with regards to finance, law enforcement, and affairs of war with another country among other powers. In fact, the National Assembly regulates the functioning of the President. This is the very essence of democracy, which is perceived by and for the people as the rule of the people<sup>148</sup>. The Nigerian Constitution of 1999 is supreme in law and binding on all. It is the basic norm from which all state bodies derive their powers and authority<sup>149</sup>.

Section 4(1) of the Constitution defines the powers and duties of the legislature. The characteristics of the legislature provided by the Constitution include bicameral legislation. In other words, the legislative power conferred on the National Assembly is exercised by two bodies, consisting of the Senate and the House of Representatives<sup>150</sup>. The legislature, as the representative of the people, is to monitor its legislation for compliance and integrity, hence the supervisory function, which provides the legislature with the necessary information to change, strengthen or even repeal laws. The Nigerian Constitution generally gives the legislature the power to legislate<sup>151</sup>, although this responsibility is not limited to simplifying laws, as the legislature has been given a host of additional responsibilities, including oversight.

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<sup>147</sup> "Law making process and oversight functions of the National Assembly", Op.cit

<sup>148</sup> *ibid*

<sup>149</sup> *Ibid: INEC v Musa* [2002] 10 WRN 1 at 40-41

<sup>150</sup> Section 4, Constitution of the Federal Republic of Nigeria, 1999

<sup>151</sup> *ibid*

Legislative control of the executive branch has been a contentious issue since the early days of the House of Commons of the United Kingdom (UK) at the end of the 14th century. As the financial needs of heads of state increased, so did the need to raise taxes, eventually leading to the Parliament demanding the right to scrutinise activities on which taxpayers' money is spent<sup>152</sup>. The importance of legislative oversight as a tool to monitor government activities was underscored when Woodrow Wilson, President of the United States of America wrote in 1885, to the effect that there is infinite benefit when all matters of administration are brought under the constant scrutiny of the legislature<sup>153</sup>. Oversight of the executive and administrative powers rests on the legislature making the laws that can create administrative agencies, which in turn are assigned functions and responsibilities by the enabling laws. The legislature can decide to change legislative or administrative policy, because the legislature may have recognized the difficulties imposed on the public. Moreover, the self-interest of the legislature requires that it oversees the administration for the fulfilment of the executive branch and its organs legislative intent<sup>154</sup>.

Oversight function serves a variety of purposes including to hold the executive branch accountable, and to promote rationality and efficiency in the formulation and administration of public policy, etcetera. The oversight functions of the legislature plays a vital legislative role in the practice of separation of powers and serves as a tool for nation-building. Oversight functions not only uncover the corrupt practices of the

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<sup>152</sup>Parliamentary Oversight of Finance and the Budgetary Process - The Report of a Commonwealth Parliamentary Association Workshop, Nairobi, Kenya, 10th - 14th December, 2001. see <http://www.cpahq.org/uploadedfiles/information>.

<sup>153</sup>Grace Ayodele Arowolo, 'Oversight Functions of the Legislature: An Instrument for Nation Building' (2010) *African Journal Online*.

<sup>154</sup>Wilson W. quoted in EGPA Study Group On 'Legislative Oversight' (Glasgow, Caledonian University, Glasgow (UK) 2000) 1

administration, but also control excesses of the executive branch in running and managing the country's resources<sup>155</sup>.

The subject of legislative oversight is wide ranging. Its scope covers important issues from power over public funds to ratification of treaties, deployment of armed forces, confirmation of appointment, alteration of the constitution, removal of president and vice president from office, conduct of investigations, as well as financial control among other oversight functions. The chapter discusses some of these functions and the procedures for their performance. It also appraised the role of the National Assembly oversight function on corruption in Nigeria's public service, and also examined the factors militating against legislative oversight performance in Nigeria.

## **1.2 Power Over Public Funds**

The management of public finances is at the centre of the economic and social development of every modern society. Oversight function by the legislature plays a prominent role over public funds as it fosters accountability and national development. The legislature's role as custodian of public finances is part of its oversight functions over the executive branch in the management of Nigeria's resources to ensure good governance, accountability and probity for a sustainable democracy and a strong nation. The Constitution empowers the National Assembly to control the President in all expenses of the Consolidated Revenue Fund, giving the legislature the opportunity to rigorously debate and rationalise the budget<sup>156</sup>.

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<sup>155</sup> Almond G.A and Coleman J.S. (eds) *The Politics of the Developing Areas* (Princeton: Princeton University Press, 1960)

<sup>156</sup> Sections 80 and 81, Constitution of the Federal Republic of Nigeria, 1999.

The powers of the National Assembly also extend to scrutinising public accounts by the Auditor General and conducting inquiries into government spending habits<sup>157</sup>. Auditing is a recognised method of being prudent in the use of funds of the government or the way the nation's funds have been spent. Section 85 of the Constitution provides for the appointment of the Auditor-General of the Federation to audit the public accounts of the Federation and all offices and courts of the Federation.

The audit report is to be submitted to the National Assembly. In this regard, Section 80(3) of the 1999 Constitution provides thus:

*No money shall be withdrawn from any public fund other than the Consolidated Revenue Fund of the Federation, unless the issue of those monies has been authorised by an Act of the National Assembly.*

In furtherance of the foregoing power of the NASS over public fund, Section 80(4) provides thus:

*No money shall be withdrawn from the consolidated Revenue Fund or any other public fund of the federation, except in the manner prescribed by the National Assembly.*

The National Assembly has the power to allocate funds to government projects and programs by reducing, increasing, or approving the executive branch's budget proposal. The National Assembly can do this by an Appropriation Bill detailing proposed government programs and projects by ministries, departments and agencies, eventually becoming an Act of Parliament. These ministries are required by law to comply with

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<sup>157</sup>Section 85, Constitution of the Federal Republic of Nigeria, 1999.

requests from the National Assembly to defend the budget before their respective jurisdiction committees and ultimately in the appropriations Committee.

This section will discuss the power of the National over public funds with reference to budget and sundry issues.

### 1.2.1 Budget Approval and Scrutiny

The budget is the primary tool for economic governance as it is an annual financial and economic plan for mobilising and allocating resources and the instrument for achieving government policy objectives<sup>158</sup>. Democratically elected officials and legislators not only legislate and represent their political parties and constituencies, but also make critical contributions to the budgetary process (planning, allocation, execution, evaluation) and, as part of its supervisory function, ensures that the results of the budget process are in line with the intended objectives. Input from lawmakers brings ownership and accountability to the process because they remain accountable to their local constituents as guardians of the nation's Commonwealth and are constitutionally bound to ensure the prudent utilisation of available resources at minimal cost. The budget is an important tool for socio-economic development. The budget is a vital policy document of the government that prioritises its annual and multi-annual objectives. Besides financing new and existing programs, the budget is the main instrument for implementing fiscal policy, which then influences the economy as a whole<sup>159</sup>. Hence,

<sup>158</sup> Christopher Ochanja Ngara and Habila Kawo Dasat, 'The Role of the National Assembly in Budget Process in Nigeria (2020) (1) (1) *NILDS Journal of Democratic Studies*.

<sup>159</sup> Abu Idris, Timothy Nmadu, Isah Adamu, and Abdulmalik Yakubu 'Budget Governance and National Development: The Nigerian Perspective' (2021) (2) (2) *Zamfara Journal of Politics and Development*.

understanding the challenges to its effective implementation is paramount in order to perfect the entire budgeting process<sup>160</sup>.

In the Nigerian context, this study aims to deepen our understanding of the role of the legislature in the budgetary process in view of its actual practice and experience. Of particular interest is how lawmakers can enable better budgeting, implementation and oversight. Nigeria returned to democratic rule in May 1999. The country had experienced a long period of military rule, which was marred by the absence of critical democratic institutions (such as a legislative government) and the suspension of the Constitution. During this period, the entire budgetary process in Nigeria was in the hands of specific agencies reporting directly to the ruling military councils. Budget decisions were primarily made by the military junta, and there was a lack of both legislative and public input and participation. These bodies included the Federal Ministry of Finance (FMF), the National Planning Commission (NPC), National Intelligence Committee (NEIC), the Office of the Accountant General of the Federation (OAGF) and the Office of the Auditor General of the Federation (OAGF)<sup>161</sup>.

However, the return of constitutional democracy in 1999 saw important changes in the dynamics of the budgetary process in creating an appropriate legal framework that also outlined the budgetary responsibilities of the National Assembly and Civil Society Organisations (CSOs). Constitutional Democracy also led to the creation of new budgetary institutions such as the Fiscal Responsibility Commission (FRC) and the National Assembly Budget Research Office (NABRO). The legal framework created roles for the National Assembly at every stage of the budgetary process. Therefore,

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<sup>160</sup> Sabastine Akongwale, *The Role of the Legislature in the Budget Process* (CABRI Secretariat: South Africa) 2020 <<https://www.cabri-sbo.org/uploads/files/Documents/CABRI-Legislature-CS-Nigeria-ENG-WEB-Final.pdf>> accessed 17 May 2021.

<sup>161</sup> *Ibid*



instead of a military junta, a deliberative and participatory budgetary process was introduced, albeit more slowly<sup>162</sup>.

Nigeria currently operates a US-style presidential system of government with an executive branch President and an independent legislature. Despite the fact that the ruling party in Nigeria has always had control of the executive and legislative branches of government from 1999 to the present, the budget process has always witnessed a contentious relationship between these two bodies. This conflicting relationship has often resulted in deadlocks that delay budget approval and execution, resulting in unrealistic budget assumptions and forecasts that can hamper the efficient delivery of services in critical sectors such as health, education and security<sup>163</sup>.

In recent times, the role of the legislature in the budgetary process has often been misunderstood and subsequently ignored. However, the budget process constitutes a fundamental function of the legislature. Her powers are conferred on her by the 1999 Constitution<sup>164</sup>. Both the 1999 Constitution and Fiscal Responsibility Act (FRA) 2007 do not impose any restrictions on the National Assembly power to amend the annual budget law. In principle, the National Assembly can change the proposed budget, even if it involves a higher level of total projected expenditure, a lower level of total projected revenue, an increase in the income or an increase in the deficit. In particular, Section 80(4) of the 1999 Constitution states that no money shall be withdrawn from the Consolidated Revenue Fund or any other public fund of the Federation except in the manner prescribed by the National Assembly<sup>165</sup>.

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<sup>162</sup> *Ibid*

<sup>163</sup> *Ibid*

<sup>164</sup> 1999 Constitution Sections 80-84 and FRA 2007

<sup>165</sup> *Ibid* Section 80(4)

Moreover, Section 81(1) of the Nigerian Constitution establishes the timeframe for the submission of the budget proposal by the executive arm, for consideration by the legislature. Sections 80 to 84 of the 1999 Constitution confer on legislature powers of appropriation and its responsibilities on expenditures. Formulation and planning powers are provided by the FRA 2007. The Act clearly states that the medium-term expenditure framework should be the basis for preparing revenue and expenditure estimates in the national budget. In both cases, the Senate and the House of Representatives must approve the same version of the budget or medium-term expenditure framework to qualify for Presidential approval<sup>166</sup>.

In the event of disagreement between the two houses of the National Assembly, the Joint Appropriations Committee will forward both versions of the budget approved bills to the conference committee for harmonisation and approval. This committee is usually composed of an equal number of Senators and members of the House of Representatives. Therefore, the 1999 Constitution sets out the roles and responsibilities related to the submission, adoption and approval of the Budget Act.

The National Assembly must submit the bill to the President for approval within 30 days, otherwise the National Assembly can reject the bill. Section 82 of the 1999 Constitution authorises the Consolidated Revenue Fund's expenditure for up to six months in the new year, subject to budget approval.

### ***1.2.2 Budget Oversight***

Within the framework of statutory budgetary oversight in Nigeria, the main powers and responsibilities for budgetary oversight derive from Sections 88 and 89 of the 1999

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<sup>166</sup> FRA 2007, Section 1

Constitution and Section 30(1) of the FRA 2007. In particular, Section 88(1) of the Constitution provides that, subject to any other provision of the 1999 Constitution, each House of the National Assembly shall have the power, by resolution, to make or cause to be made an inquiry into any matter or matters in respect of which it has power to legislate and in which implementation of affairs of any person, agency, ministry or department of government entrusted or allegedly entrusted with the duty or responsibility of carrying out or administering the laws made by the National Assembly and disbursing or administering funds allotted or to be allocated by the National Assembly<sup>167</sup>.

The 1999 Constitution provides that the powers conferred on the National Assembly under the provisions of the Constitution may be exercised solely for the purpose of enabling it to expose corruption, inefficiency or waste enforcing or administering any law within its legislative jurisdiction and disbursing or administering the funds it allocates<sup>168</sup>. In addition, Section 30 of FRA 2007 mandates the exercise of oversight over the Budget Office of the Federation (BOF) and the evaluation of the execution of the annual budget, assessment of the achievement of budget targets and quarterly reports to the Financial Reporting Council (FRC) and the Joint Finance Committee of the National Assembly.

The report is to be submitted to the FRC published quarterly and within 30 days of the following quarter in mass and electronic media and on the Ministry of Finance (MF) website. A consolidated budget implementation report must be submitted for compilation and dissemination to the public within six months of the end of the

<sup>167</sup> 1999 Constitution Section 88(1)

<sup>168</sup> Ibid Section 88(2)(b)

financial year<sup>169</sup>. The Minister of Finance must prepare and publish within 30 days a schedule of disbursements of funds showing the annual cash plan for the execution of the state budget. In addition, the funds granted will only be used for the purposes specified in the Grants Act<sup>170</sup>.

### *1.2.3 Audit and Evaluation*

The power of the National Assembly over audit and evaluation is derived from Sections 85 and 86 of the Constitution. These powers are strengthened by Section 49 of the FRA 2007, which requires the federal government to publish its audited financial statements no later than six months after the end of the financial year. The Office of Auditor-General of the Federation operates under the Pre-Independence Audit Act 1958. The Office was established by Section 85(1) of the 1999 Constitution, which obliges the OAGF to audit the public accounts of all federal offices and courts, with the exception of the accounts of public corporations, commissions, agencies, etcetera.

The Auditor General must submit his report to the National Assembly. Articles 85 and 86 confer public accountability powers on the Public Accounts Committee (PAC) of the National Assembly. In particular, Section 85(2) of the 1999 Constitution empowers the Auditor General to examine and report on the public accounts of all federal offices and courts, except for the accounts of juridical bodies, commissions, agencies, etcetera<sup>171</sup>. Section 85(5) requires the Auditor General to submit his reports on the government

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<sup>169</sup> FRA 2007 Section 50

<sup>170</sup> Ibid Section 26

<sup>171</sup> 1999 Constitution Section 85(2)

accounts to each House of Government National Assembly within 90 days of receipt of the Auditor General's financial report<sup>172</sup>.

This requirement for submission of audit reports to the National Assembly is an important oversight measure that seeks to curb corruption in government. However, whether this report being submitted is accurate remains another big issue to be resolved, going by the recent corruption scandal rocking the Office of the Auditor General of the Federation as widely reported in the news<sup>173</sup>. This calls for the need for a more effective oversight by the National Assembly with a view to auditing both the offices of the Auditor General, as well as the Office of Accountant General of the Federation. Such a measure will help to keep these public office holders in check and thereby help to curb the tendency for corrupt practices.

### **1.3 Power to Conduct Investigations**

Among the most significant constitutional innovations introduced into constitutionalism in the country, is the empowerment of the legislature to call the executive to order and to promote good governance through the power of investigation. The minister and civil servants under the presidential system of government, are only responsible to the President. The Constitution empowers the legislature to carry out investigation into government business as a way of ensuring that government is operated in accordance to

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<sup>172</sup>Ndoma-Egba V., 'Legislative Oversight and Public Accountability', (2012) *Cross River Watch*

<sup>173</sup>Kunle Sani 'Accountant-General of the Federation, Ahmed Idris, Arrested' (Premium Times, 16 May 2022) <<https://www.premiumtimesng.com/news/headlines/530277-breaking-accountant-general-of-the-federation-ahmed-idris-arrested.html?tztc=1>> accessed 27 December 2022

law and in the interest of national development, rather than for selfish, political, sectional or personal aggrandisement by government officials<sup>174</sup>.

The National and State Assemblies have the powers to investigate the conduct of any person and Ministries, Departments and Agencies of government on matters wherein the legislature has competence to legislate on. The National Assembly's constitutional empowerment to conduct inquiries into government affairs includes<sup>175</sup>:

- (a) Any matter or matter in respect of which it has power to legislate; and
- (b) The conduct of the affairs of any person, agency or governmental department entrusted or to be entrusted with the responsibility to:
  - (i) execute and administer the laws enacted by the National Assembly
  - (ii) disburse or administer the funds allocated or to be allocated by the National Assembly<sup>176</sup>.

It is important to note that the purpose of the powers conferred on the National Assembly under the relevant provisions of the Constitution are exercisable only to -

- (a) Make laws with respect to any matter within its legislative competence and correct any defects in existing laws; and
- (b) Expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it<sup>177</sup>.

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<sup>174</sup> Aduba J.N. and Oguiche, S. *Key Issues in Nigerian Constitutional Law* (Saarbrücken, Lambert Academic Publishing, 2014) 285

<sup>175</sup> 1999 Constitution Section 88

<sup>176</sup> *Ibid*

<sup>177</sup> *Ibid* Section 88 (2)

Thus, by providing for the legislative powers of the National and State Assemblies under Section 4, the Constitution thus also provides for matters over which they can conduct investigations. Some authors expressed the view that investigation is a constitutional power which each chamber of the National Assembly can exercise independently of the other<sup>178</sup>. This is because it constitutes a control mechanism aimed at enhancing the effectiveness of the House in its oversight functions, rather than a legislative function which requires the joint effort by both Chambers<sup>179</sup>.

As regards investigations over matters on which the legislature has power to make laws, it is important to note that this power is express and automatic. The power can also be exercised over any person or authority charged with the responsibility of executing any law made by the National Assembly or any person or authority responsible for disbursing or administering appropriated or yet to be appropriated fund by the National Assembly<sup>180</sup>. This provision may however raise the question as to whether this authority can be exercised only on government officials in the performance of their public duties. It is opined that this power is all encompassing and can be exercised on any private citizen so long as it relates to any matter over which the National Assembly has power to make law or for the purpose of exposing corruption.

There are numerous probes and investigations carried out by the National Assembly in recent times across various MDAs leading to the discovery of secret bank accounts and funds. For example, in 2012, the House of Representatives inquiry uncovered N2

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<sup>178</sup> See Emmanuel Okon and Ngozi, 'Developing an Effective Strategy for the Enforcement of the Constitutional Mandate of the Senate Committee on Ethics, Code of Conduct and Public Petitions' (2021) (4) (2) *Economics, Law and Policy*

<sup>179</sup> Aduba J.N. and Oguche (n 34)

<sup>180</sup> *ibid*

trillion in fraud in the executive branch after an investigation into revenue generation and remittances by 60 MDAs showed that top ministerial directors generate revenue from their services amount to trillions of naira but understate such revenues while being diverted the rest for other purposes<sup>181</sup>. In 2013, a House of Representatives Committee inquiry into alleged illegal land grants and extortion in the Federal Capital Territory of Abuja found serious inconsistencies and corruption by senior FCT officials; alleged illegal sale of various government properties to members of the public; Nigerian Security and Civil Protection Corps (NSCDC) officers' involvement in illegal land sales and that the government has failed to deliver on its promise to compensate 854, FCT tribal communities after 37 years of appropriation of their land<sup>182</sup>.

The list of investigations and discoveries till date are endless<sup>183</sup>. However, reports often end up in documents that never see the light of day. It is understandable that the NASS does not have constitutional authority to implement its recommendations, but it can pursue them and seek executive action. The legislators are also occasionally found to have been compromised in performing this very important oversight role to the point of engaging in corruption themselves, demanding bribes from the agencies and the people they oversee. For instance, in the recent scandal involving Maina over diversion and misappropriation of pension funds, he alleged that Aloysius Etuk, representing the State

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<sup>181</sup> Samuel Ogundipe, 'Documents Expose Nigerian Lawmakers' Massive Budget Fraud' (Premium Times, 25 July 2016) <<https://www.premiumtimesng.com/news/headlines/207473-documents-expose-nigerian-lawmakers-massive-budget-fraud.html?tztc=1>> accessed 12 December 2023

<sup>182</sup> Nobert Chijioke Abah and Andrew O. Obiajulu, 'Relevance of Legislative Oversight in the Fight Against Corruption in Nigeria' (2017) (1) (2) *Socialscientia Journal of the Social Sciences and Humanities*

<sup>183</sup> Sunday Isuwa, 'Senate Investigates 252 MDAs Over N5trn Service Wide Votes', Leadership Newspaper, 12 October 2022



of Akwa Ibom, demanded a \$100,000 bribe from him<sup>184</sup>. A former director of pension at the Office of the Head of Service, Sani Shuaibu Teidi, who was charged along with 31 others, also claimed that he was billed a N3 billion bribe by Mr Etuk and other members of the committee. Although the Senate appeared enraged by these allegations it took no decisive action to investigate them<sup>185</sup>.

Also in the police pension fund fraud, five people including former head of the Police Pension Fund Esai Dangabar have been charged with embezzling N32.8 billion from the Police Pension Fund. Mr Dangabar accused some members of the Senate committee of profiting from the loot. The Senate dismissed the allegation without ordering an investigation<sup>186</sup>.

A member of the House of Representatives, Farouk Lawan, was also caught collecting \$620,000 from a \$3 million bribe he solicited while his committee was investigating the 2012 fuel subsidy fraud. He was spotted collecting the money from oil tycoon Femi Otedola<sup>187</sup>. The House of Representatives referred the bribery allegation to its Ethics Committee. But no report has been issued to date. Thus, the NASS's image has been badly tarnished by allegations such as these, and many Nigerians today do not see them as truly representing their interests and aspirations as they should in a true democracy<sup>188</sup>.

<sup>184</sup> Christiana Esebonu, 'Nigeria: Pension Scam - Pressure On Senate to Dump Etuk's Report' (Leadership Newspaper, 14 October 2013) <<https://allafrica.com/stories/201310140562.html>> accessed 26 January 2022

<sup>185</sup> Nobert Chijioke Abah and Andrew O. Obiajulu (n 37)

<sup>186</sup> Ibid

<sup>187</sup> Ogbewere Bankole Ijewereme, 'Anatomy of Corruption in the Nigerian Public Sector: Theoretical Perspectives and Some Empirical Explanations' (2015) (1) (6) Sage Publications

<sup>188</sup> Nobert Chijioke Abah and Andrew O. Obiajulu (n 37)

The Committee has the power to summon any person in Nigeria to give evidence at any place or produce any document or other thing in his possession or under his control. In addition to examining such an individual as a witness, it can require him to produce any document or other thing in his possession or under his control, subject to all legal exceptions<sup>189</sup>.

#### **1.4 Procedure for Legislative Oversight**

The methodology adopted in carrying out an oversight generally depends on the type of oversight being contemplated. As a general practice, the procedure involves certain activities indicated by the Committee after its resolution to conduct oversight. These activities are required before, during and after the conduct of the exercise. For the purpose of clarity, the procedure is presented below as contained in the *Guide to Legislative Oversight in the National Assembly*.

##### **1.4.1 Pre-Oversight**

Pre-oversight modalities include the following<sup>190</sup>:

- (a) Development of agenda for oversight as discussed and approved at committee meetings before the exercise.
- (b) Committee meetings to consider agenda (subject) of oversight, logistics required, date, information or records/documents needed and any other issue that will facilitate a successful conduct of the exercise.
- (c) Internal official communications to the President/Speaker and Clerk of the House.

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<sup>189</sup> Aduba J.N. and Oguiche (n 34), 284-287

<sup>190</sup> PLAC, *Guide to Legislative Oversight in the National Assembly* (Abuja: Policy and Legal Advocacy Centre 2016)

- (d) Communication to the MDAs to be oversighted. Any document or information needed should be reflected in this communication with a clear timeline for submission of such documents.
- (e) Security arrangements depending on types, nature, location and time of oversight.

#### *1.4.2 During Oversight*

The procedure adopted during the oversight function are<sup>191</sup>:

- (a) Arrival, check-in and preparation for the first meeting.
- (b) Formal meeting to introduce committee members, MDAs management team and the subject of oversight.
- (c) Inspection, visit, record checking, interactive session.
- (d) Closing remarks

#### *1.4.3 Post Oversight*

The procedure adopted after the oversight function includes<sup>192</sup>.

- (a) Development of report by committee secretariat.
- (b) Committee meetings to consider, deliberate and make further recommendations in the report.
- (c) Presentation and laying of reports on the table.
- (d) Deliberation by the House and resolutions which may include investigative hearing, interactive session or any other legislative activity that the House may order.
- (e) Follow up actions by committee.

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<sup>191</sup> Ibid

<sup>192</sup> Ibid

#### **1.4.4 Public/Investigative Hearings**

This Public or investigative hearing is a major legislative activity carried out by a standing committee of the legislature based on a referral order. It may be done as a result of a resolution on a motion, public petition report, oversight report or a consideration of Bill as the case may be<sup>193</sup>.

### **1.5 Appraising the Role of the National Assembly Oversight Function on Corruption in Nigeria's Public Service**

The National Assembly demonstrated its supervisory powers to expose corrupt practices and abuse of power in the executive branch<sup>194</sup>. For example, the investigation by former President Obasanjo and his deputy Alhaji Atiku Abubakar into the mismanagement of the Petroleum Technology Development Funds (PTDF) and energy sector spending between 1999 and 2007 are some examples of successful investigations conducted by the National Assembly to address the abuses uncover the power in the executive branch<sup>195</sup>.

While the above suggests that legislatures could effectively uncover and implicitly reduce corruption in government, the tendency to compromise has often eroded the ability of the National Assembly to serve as a safeguard against corrupt practices in

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<sup>193</sup> Ibid

<sup>194</sup> Ibid

<sup>195</sup> Oluwole Josiah and John Alechenu, 'PTDF Investigation: N20bn PTDF Fund Missing: President Obasanjo Took N10bn PTDF Money for 3rd Term, Says VP Atiku' (Punch Newspaper 19 Dec 2006) <<https://punchng.com/Article.aspx?theartic=Art200612195531576>> accessed 26 August 2022

governmental institutions<sup>196</sup>. The National Assembly has largely been adjudged as being unable to carry out its oversight duties effectively due to corruption in the legislative arm of government itself<sup>197</sup>. Added to this is the lack of interest on the part of the legislature in examining the Federal Government's audited annual financial statements in the chamber's plenary session since 1999<sup>198</sup>. For example, the audit committees of the two chambers have failed to understand that every audited report of the Federation's balance sheet between 1999 and 2007, while President Obasanjo was in power, is worth submitting to the central legislature. Until 2008, when it was mentioned, nothing came of it<sup>199</sup>.

The National Assembly has been the scene of a series of scandals that bordered on financial impropriety and other corrupt tendencies<sup>200</sup>. The series of scandals in the National Assembly led to the removal of at least three Senate Speakers and two House Speakers from office between 1999 and 2009<sup>201</sup>. These scandals emanating from the National Assembly have paralyzed its fight against corruption and reduced the scope that the legislature would have had in the fight against the hydra headed monster.

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<sup>196</sup>Diamond L. 'Building a System of Comprehensive Accountability to Control Corruption,' in Nigeria's Struggle for Democracy and Good Governance: a Festschrift for Oyeleye Oyediran, ed. Adigun Agbaje. Larry Diamond and Ebere Onwudiwe (Ibadan: Ibadan University Press, 2004) p. 238.

<sup>197</sup> Fashagba Joseph, 'Legislative Oversight under the Nigerian Presidential System' (2009) (15) *Journal of Legislative Studies*

<sup>198</sup> Amusa, K. O. , 'Legislative function in Nigeria: Odyssey of Hunters Becoming Hunted,' (2013) (9) (2) *Acta Universitatis Danubius; Juridica*, 79 -95.

<sup>199</sup> See Davies J. 'Parliamentarians and Corruption in Africa: The Challenge of Leadership and the Practice of Politics,' the Parliamentary Centre, Ottawa, 2009.

<sup>200</sup> Ejikeme, J. N. 'Legislative Oversight in Nigeria: a Watchdog or a Hunting Dog?' (2014) (22) (16) *Journal of Law, Policy and Globalisation*, 15-24

<sup>201</sup> Bello-Imam I. B. *The War Against Corruption in Nigeria: Problems and Prospects* (Ibadan, College Press & Publishers, 2005)

One of the most significant functional tasks of the state is to fight corruption. Section 15(5) of the 1999 Constitution states that the state shall abolish all corrupt practices and abuses of power. A strong and effective legislature at all levels of government is a crucial factor in this regard. The crusade against corruption is such a herculean task and requires a consistent, coherent, broad-based approach and a long-term perspective. The first important step for the legislature is to prevent corruption in parliament itself by deterring all manifestations of corruption in the National Assembly. It must play an essential leadership role in the fight against corruption, including legislative oversight and the financial role representing the people<sup>202</sup>.

### **1.6 Factors Militating against Legislative Oversight Performance in Nigeria**

Legislative oversight has become an acceptable and recognized tool worldwide to ensure oversight mechanisms, control over the use of funds, accountability and citizen participation in governance<sup>203</sup>. It can be argued that the effectiveness of oversight activities depends directly on capacity and resources, as well as some policy considerations. The Executives will ordinarily not be accountable unless legislators have the political will to put parliamentary questions, proposed legislative amendments and challenge ministers to justify how they spend public money and run their ministries<sup>204</sup>.

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<sup>202</sup> Ibid

<sup>203</sup> 'The Quality of Legislative Oversight of Defence in 82 Countries' Defence and Security Programme, Transparency International UK September, 2013.

<sup>204</sup> Ejumudo, K. B. O., and Ikenga, F. A. 'The Problematic of Legislative Oversight in Nigeria: A Study of Delta State', (2021) *The Indonesian Journal of International Clinical Legal Education*, 3(2), 125-138. <<https://doi.org/10.15294/ijicle.v3i2.45572>> accessed 23 September 2022

However, the effectiveness of statutory oversight seems to have diminished over the years severely due to several factors. Some of the factors affecting legislative oversight performance are highlighted in the subsections below.

### *1.6.1 Political Culture of Trade-Off and Pay-off*

A study by Ejumudo and Ikenga showed that there is a significant relationship between trade-offs and compensation practices between the Legislature and Executive when it comes to legislative oversight function. This is evident from the fact that the institution lacks an administrative unit to carry out plans to implement oversight and accountability. Moreover, the legislature in Nigeria lacks electronic or manual systems for oversight functions to ensure accountability through effective evaluation of executive branch activities<sup>205</sup>.

The finding simply confirms the well-known fact that the legislature is grossly ineffective in guaranteeing good governance, accountability and transparency in the Nigerian democratic setting due to insufficient autonomy and the Executive's usurpation of the legislature<sup>206</sup>.

### *1.6.2 Subordination of Legislature to Executive Arm of Government*

There is a significant nexus and connection between the perceived subordination of the legislature to the executive branch and legislative oversight. Fashagba articulated that the Nigerian legislature was unable to effectively exercise its oversight function due to

<sup>205</sup> Ibid

<sup>206</sup> Akomolede, I. and Bosede, A. 'Legislation as a tool for good governance in Nigeria: Legal Matters Arising' (2012) (1) (6) European Journal of Business and Social Sciences 61- 68.

limitations such as executive interference, crippling internal conflicts, inexperience and high membership turnover<sup>207</sup>.

The subordination of the legislature to the executive in African presidential systems, is a pattern of electoral fraud and rigging that limits legislators' independence and increases their dependence on the political executive to control the election-rigging machinery.

### *1.6.3 Absence of Constitutional Provisions to Enforce Resolutions of the Legislature*

Hundreds of resolutions are passed on the floor of the House of Representatives and the Senate every year, which end up as mere rhetoric and trashed in the dustbin of the Executive arm. From this, it appears that the resolutions of the National Assembly do not have the force of law. The constitution that creates the National Assembly also defines the powers of the National Assembly and the limits of those powers. The powers of investigation are enshrined in Article 88 of the Constitution. And it empowers the lawmakers to uncover corruption, uncover loopholes to strengthen the system and reduce corruption, inefficiency or waste. Therefore, their constitutional duty ends in exposing corruption. Once they have established it, responsibility for implementation rests with the executive branch. Then the responsibility ends with uncovering corruption, inefficiency or waste. This is the constitutional limit of the legislature's responsibility<sup>208</sup>.

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<sup>207</sup> Fashagba Y. J., 'Legislative Oversight under the Nigerian Presidential System', (2017) *Journal of Legislative Studies*, 15 (4), 439-459

<sup>208</sup> 'N/Assembly's Resolutions Lack Force of Law – Sen. Ndoma Egba, SAN' (Vanguard Newspaper Online 2 August 2012) <<https://www.vanguardngr.com/2012/08/nassemblys-resolutions-lack-force-of-law-sen-ndoma-egba-san/>> accessed 23 October 2022



### 1.7 Conclusion

Over the years, the National Assembly has considered and passed legislation to ensure accountability and transparency in all areas of government, and had demonstrated and acted consistently to checkmate Executive excesses and corruption in the Federal Public Service. However the daunting challenges of corruption, personal interest of legislators and the inability of the National Assembly to enforce sanctions had drifted oversight functions of the National Assembly through the examined probes investigations to be at its lowest ebb in the National Assembly over the years, since the beginning of the current democratic dispensation in 1999. These constraints constituted challenges that greatly hampered the constitutional mandate of the National Assembly, thus making a mockery of the democratic process of legislative oversight. Given that there is a significant correlation between corruption culture and statutory oversight functions, the study argues that the ingrained corruption culture among lawmakers has negatively impacted statutory oversight functions in the National Assembly. Moreover, low commitment to oversight functions on the part of legislators has undermined statutory oversight functions in the Country. In conclusion, given that there is a significant correlation between perceived compliance with the law and executive branch and legislative oversight, it is instructive to note that perceived compliance with the law by Nigerian lawmakers has limited legislative oversight capabilities.

### 1.8 Recommendations

In the light of the challenges and the findings of this paper, the following recommendations have been suggested as measures towards enhancing the performance of Oversight Functions in the Nigerian public service delivery sector:

1. The legislative arm of government in Nigeria should be truly independent rather than operate and be seen as the submissive extension of the government's executive branch.
2. Committees should be armed with requisite administrative/research support or appropriate consultancy services to enable them perform their oversight duties more effectively and efficiently, since the ability of the Committee to access required information to establish corruption or otherwise is dependent on its managerial and technical capacity.
3. There is a need for the National Assembly to strengthen civil society participation in all legislative processes to enhance its transparency and accountability.
4. The National Assembly should mandate Federal Public Servants to justify their actions/inactions publicly through public hearings, budget hearings, investigations, and so on.
5. The National Assembly should strengthen the effectiveness of its control mechanism and frequently put anti graft agencies and the judiciary under pressure to facilitate sanctioning of those found wanting in corrupt practices. The National Assembly should also engage internal mechanisms that will check and sanction legislators involved in corrupt practices.  
Oversight committees should be provided with adequate funds in the legislative budget to enable them carry out their duties more effectively without having to resort to the MDAs they oversight for funding.
6. Legislators should rise above political considerations in the discharge of their legislative and oversight responsibilities in the national interest.
7. There should be a periodical review of measures and recommendations by the National Assembly on oversight discoveries towards ensuring their implementation by the Executive arm of government.