

OVERSIGHT FUNCTIONS OF THE LEGISLATURE: AN INSTRUMENT FOR NATION BUILDING*

Abstract

The legislature is an institution which represents the common and collective interests of the citizens through the enactment of laws and the exercise of oversight functions on the activities of the executive arm of government. The legislature in a democracy exists as an independent institution which deepens democracy and ultimately strengthens the polity.¹ Nation building that will be likely to contribute to stable and sustainable international peace requires building the society, economy and polity so as to meet the basic needs of the people. It means not only producing the formal institutions of democracy but building a common identity for the people. It means development of education, human rights, (political, civil, economic, social and the rule of law). It allows participation of the civil society in developing democratic state institutions that promote welfare.¹ In the quest for nation building in a democratic set up like Nigeria, the exercise of effective legislative oversight function remains crucial. Its purpose is to provide a powerful check on the executive authority, enhancing accountability where a dominant executive branch might operate with impunity². It also aims at ensuring that all relevant societal groups are included in and benefit from the nation building and development exercise and that government policies and budgets are implemented in an effective, efficient, transparent and accountable manner.³ The power of oversight is conferred on the Nigerian legislature by the Constitution⁴ to enable the National Assembly to expose corruption, inefficiency, or waste in the execution or administration of laws within its legislative competence and in the disbursement and administration of funds appropriated by the Acts.⁵ Nigeria, being a developing country, the legislature's capacity to carry out its oversight functions remains weak because legislative role and culture is at its infancy⁶ and therefore often confronted by many challenges. The focus of this paper is to examine the important role that oversight play towards nation building and make recommendations on how the capacity of oversight can be strengthened so as to curtail the impediments.

Introduction

The 1999 Constitution of the Federal Republic of Nigeria provides for a presidential system of government based on the principle of separation of powers between the legislature, the executive and the judiciary.⁷ The legislative powers are vested in the National Assembly comprising a Senate and a House of Representatives⁸, and the executive powers are vested in the president who may exercise such powers directly or indirectly through the vice-president, ministers of his government and other officers in the public service of the Federation⁹, while

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¹ **Law Making Process and Oversight Functions of Nigeria National Assembly**. Paper presented at Capacity Building Retreat for Forum for Democracy and Good Governance, at Confluence Hotel, Lokoja, Kogi State; 5th -6th, September, 2004. see rshawulu@gmail.com.

¹ Stephenson, C, “**Nation Building**”, beyond intractability. eds. Guy Burgess and Heidi Burgess. Conflict Research Consortium, University of Colorado, Boulder. Jan. 2005.

<<http://www.beyondintractability.org/essay/nationbuilding>>

² **Legislative oversight**: The executive arm at a cross road by Oghogho Obayuwana, www.nigerdeltacongress.com/karticles/legislative-oversight-htm.

³ **The crucial contribution of parliaments to Post - conflict economic recovery** (including PRSP and MDGS) Timor - Leste as case study by Marcia Mange. www.paricp.undp.org/docs/conference/mange.pdf

⁴ See sections 80(i) - (4) and 88 (1-(2) (b), 1999 Constitution of the Federal Republic of Nigeria.

⁵ Promoting Positive change: Legislative oversight functions and the management of public expenditures. Sanusidaggash.org
Oyewo, O. “Constitutionalism and the oversight functions of the legislature in Nigeria”. being a paper presented at the African Network of Constitutional Law Conference on fostering constitutionalism in African in April 2007 at Nairobi, Kenya.

⁷ See generally the provisions of Chapters v, vi and vii of the Constitution of the Federal Republic of Nigeria, 1999; see also Yakubu, J.A, **Constitutional Law in Nigeria**, Demyaxs Law Books, 2003, P. 92.

⁸ Section 4 (i), Constitution of the Federal Republic of Nigeria, 1999

⁹ Section 5 (i), *Ibid*

judicial powers are vested in the Courts established for the Federation¹⁰ The major distinguishing feature of democracy which sets it apart from other systems of governance is the presence of a legislature. It arose from dissatisfaction with monarchy which is a one-man rule in which the king presumes to be God or answers to God only. The struggle between the monarch and parliament came to an end in 1869 in England when the Bill of Rights was passed. It established the powers of the legislature to make laws and formulate policies.¹¹

The United States of America (U.S.A) borrowed the principles of the Bill of Rights to create the Constitution whose main strength is the separation of powers between the three branches (executive, the congress¹² and the Judiciary) of government. The Congress in the USA lays down the policies of government or approves policies from the executive branch while the executive branch and the president implements approved policies of government. In order to ensure that the people control the affairs of USA, the Constitution gives a lot of powers to Congress. These include power over the use of armed forces and the National Treasury.

In the same way both Constitutions of Nigeria gave the National Assembly almost absolute powers over the National Treasury and matters of prosecution of war with another country. As a matter of fact, the National Assembly regulates how the President functions. This is the very essence of democracy which is perceived as the government of the people by the people and for the people.¹³

The 1999 Constitution of Nigeria is legally supreme and binding. It is the *grundnorm (fontis et origo)* from which all organs of government derive their powers and authorities¹⁴. Section 4 (1) of the Constitution sets out the powers and functions of the legislature. Some of the basic features of the legislature provided by the Constitution are: (i) Bicameral legislature. That is, the legislative powers vested in the National Assembly are to be exercised by two bodies made up of Senate and House of Representatives.¹⁵ The Constitution provides for a single legislative house, that is, unicameral legislature for the States;¹⁶ Legislative Committees.¹⁷ They undertake most of the detailed work of legislation. They embark on investigative or fact finding tours, public hearings among others; exercise of general legislative power through the passage of bills by both the Senate and House of Representatives, assented to by the president except where he withholds his assent and the bill is again passed by two third majority of each House when it becomes law and the president's assent is not required¹⁸; exercise of legislative power over money bills.

That is the appropriation or supplementary appropriation bill including any other bill for the payment, issue or withdrawal from the Consolidated Revenue Fund or any other public fund of the Federation¹⁹. The legislature as the representative of the people is expected to follow up its legislations to make sure that they are obeyed and flawless, hence the oversight function which gives the legislature the needed information to amend or strengthen or even abolish laws.²⁰

¹⁰ Section 6 (i), *Ibid*

¹¹ "Law making process and oversight functions of Nigeria National Assembly", *Op.cit* at no . 1.

¹² The word "Legislature" in the context of this paper is used interchangeably as the "Congress" and "Parliament".

¹³ "Law making process and oversight functions of the National Assembly", *Op.cit* at no . 1

¹⁴ Section 1 (3) *op. cit* at no. 9 see also **INEC V Musa** [2002] 10 WRN 1 at 40-41

¹⁵ Section 4, Constitution of the Federal Republic of Nigeria, 1999.

¹⁶ *Ibid*

¹⁷ Section 62, *Ibid*

¹⁸ Section 58, *Ibid*

¹⁹ Section 59, *Ibid*

²⁰ "Law making process and oversight functions of the Legislature". *Op cit* at no. 1

The 1999 constitution of Nigeria generally vests the legislature with the power to make laws²¹, although this responsibility is not limited to making laws *simpliciter* as a lot of additional responsibility including that of oversight which will be revealed in the course of this presentation has been placed upon the legislature.

Legislative oversight of the executive has been a contentious matter since the earliest days of the United Kingdom (U.K) House of Commons in the late 14th century. As the Head of States financial needs increase, so was the need to raise taxation which eventually led to the Parliament in U.K demanding the right to oversee the activities on which tax payers money was spent²².

The importance of legislative oversight as a tool in monitoring government activities was underscored when Woodrow Wilson, President of the United States of America (U.S.A) wrote in 1885:

There is some scandals and discomfort but infinite advantage in having every affair of administration subjected to the test of constant examination on the part of the assembly... Quite important as legislation is the vigilante of administration.²³

Oversight or surveillance of the executive and the administration is premised on the ground that the legislature enact the laws that can create administrative agencies and these in turn are assigned functions and responsibilities by such enabling laws. The legislature may decide to change statutory or administrative policy because legislators may have learnt of hardships that have been imposed on the public and if for no other reason, the legislature's self-interest demands that it oversees administration to learn whether the executive and its agencies are complying with legislative intent.²⁴ The oversight functions thus overlaps, shades into and involves the discharge of the legislative functions and even constituency responsibilities that is, its representative role.²⁵ The principle behind legislative oversight is that legislative function does not cease with the passage of a bill. It is only by monitoring the implementation process that members of the legislature uncover any defects and act to correct misinterpretation and maladministration. In this sense, the concept of oversight exists as an essential corollary to the law making process.²⁶

Oversight functions serve a variety of purposes: to keep the executive establishment responsible and accountable, to promote rationality and efficiency in the formulation and administration of public policy, to reap party advantage and to advance the causes of individual legislators interest groups and other stakeholders in the polity²⁷. It involves the responsibility of legislative committees to review, study and evaluate on a continual basis;

²¹ Section 4, 1999 Constitution of the Federal Republic of Nigeria.

²² "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](http://www.cpahq.org/uploadedfiles/information).

²³ Wilson, W. quoted in EGPA study Group on "Legislative Oversight" (Glasgow, Caledonian University, Glasgow (UK) 2000 . 1) cited in, *ibid*.

²⁴ Keefe, W.J **State Legislatures in American Politics** (Prentice Hall) 1966 pp. 44 - 47

²⁵ Goubadia, D.A, "The Legislature and Good Governance under the 1999 Constitution" in Nigeria: Issues in the 1999 Constitution (NIALS Publication.) 43 at 45 – 7.

²⁶ "Parliamentary Oversight of finance and the Budgetary Process", *op cit* at no. 23

²⁷ Oyewo, O. *op cit* at no. 7

- i) the application and effectiveness of laws, and whether they are being carried out in accordance with the intent of the legislature,
- ii) the administration and execution of federal agencies and entities having responsibilities for programs including the use of government funds;
- ii) conditions or circumstances that may indicate the necessity or desirability of new or additional legislation.

The necessity for the performance of oversight functions of the legislature as an essential legislative role in the practice of separation of powers and as an instrument for building the Nigeria nation is evidently understandable against the background of the absence of effective checks and limitations on the exercise of executive powers. Oversight functions not only expose corrupt practices of the administration but also control the excesses of the executive in governance and management of the nation's resources. These are positive steps towards building a strong and virile Nigeria nation. This paper examines the topic under the following headings:

- i. Understanding the concept of nation building
- ii. Oversight functions and nation building
- iii. Barriers to oversight functions
- iv. Strengthening oversight functions
- v. Recommendation and Conclusion

Understanding the Concept of Nation Building

Nation building is a normative concept that means different things to different people. The latest conceptualization is essentially that nation building programmes are those in which dysfunctional or unstable or failed states or economies are given assistance in the development of governmental infrastructure, civil society, dispute resolution mechanisms as well as economic assistance, in order to increase stability. Nation building generally assumes that someone or something is doing the building intentionally²⁸.

Association of First Nations National, Chief Matthew Coon²⁹ defined Nation-building as; Equipping First Nations with the institutional foundation necessary to increase their capacity to effectively assert self-governing powers on behalf of their own economic, social and cultural objectives.

The study identified four core elements of a nation - building model as; genuine self-rule (First Nations making decisions about resource strategy), creating effective governing institutions (non politicized dispute resolution mechanisms and getting rid of corruption), cultural match (giving first nations institutions legitimacy in the eyes of their citizens and the need for a strategic orientation (long term planning).

The term nation - building is often used simultaneously with state building, democratization, modernization, political development, post - conflict reconstruction and peace building³⁰. Almond and Coleman argued for the functional approach to understand and compare the political systems of developing countries³¹. They argued for the interdependence and multi-

²⁸ Stephenson, C. "Nation Building". *Op. cit* at no. 2

²⁹ Association of First Nations National Chief Matthew Coon cited in the Harvard Project on American, Indian Economic Development (released in 2001 by the Kennedy School of Government at Harvard). See <http://www.ksg.harvard.edu/hpaied/resmain.htm>.

³⁰ Stephenson C. *op cit* at no. 2

³¹ Almond G.A and Coleman J.S. (eds) **The Politics of the Developing Areas**. Princeton:

functionality of political structures, and argued specially that the input functions of political systems could help to distinguish stages of political development. They defined input functions as; political socialization and recruitment, interest articulation, interest aggregation and political communication. Output functions were defined as; rule making, rule application and rule adjudication. Most nation-building after the end of the cold war seems to focus more on the output functions.

Lucian Pye³² identified multiple meanings of political development, among them are: as prerequisite to economic development, as politics typical of industrial societies, as political modernization, as administrative and legal development, as mass mobilization and participation, as the building of democracy and as stability and orderly change.

Dudly Seers, in his presidential address to the Society for International Development in 1969, Presaged what has become the concept of human development. He said; The question to ask about a country's development are therefore; what has been happening to unemployment? What has been happening to inequality? If all these have declined from high levels, then beyond doubt this has been a period of development³³.

In the 1990's the United Nations Development Programme brought the Human Development Report and the Human Development Index to focus on those aspects of development other than economic, including in the index both health and education.

Almond and Verba in 1963 introduced the concept of the civic culture to the development literature. The civic culture which combines tradition and modernity is one of the process that sustain democracy. They defined as part of this civic culture the obligation to participate and the sense of civic competence and cooperation. They also noted the importance of education in the development of a civic culture³⁴. If nation building is to be successful, it may want to return to look at some of its early theorists. The importance of democratic values, the civic culture and civil society that develop and sustain them, the importance of increasing social, political and economic equality and of human development are key in any successful strategy for long term democratic nation-building³⁵

Oversight Functions and Nation Building

The constituent representative nature of the legislature under a presidential system as a check and counter balance to the executive constitutes a veritable mechanism for the limitation and accountability of executive powers, although this is often not well appreciated³⁶. Democracy as a form of governance emphasizes the logic and rationality of dialogue, debate, choice and consensus in the pursuit of the fulfillment of the needs of the citizenry and the primary functions of meeting the needs of the public. Legislative oversight is an important legislative duty in the promotion of public interest³⁷ by developing and sustaining democratic values, promoting equality and human development which are theories of nation building.

Princeton University Press, 1960 cited in Stephenson C. *Ibid.*

³² Pye, L.W. **Aspects of Political Development** Boston: Little, Brown and Company, 1966 cited in Stephenson C., *Ibid.*

³³ Seers, D. "The meaning of development" in Uphoff, Norman T and Warren F Ilch man

(eds) **The Political Economy of Development**. Berkley: University of California Press, 1972, P. 124.

³⁴ Almond, G and Verba, S. **The Civic Culture** Boston, Little, Brown and Company, 1963 pp. 315 - 324

³⁵ Stephenson, C. *Op.cit* at no. 2

³⁶ Oyovbaire, S. "Legislating for Good Governance" Ethical and Political Consideration", in **NIALS Publication** (2001) Ayua I.A and Goubadia, O.A. (eds) P. 15 at 16 - 17.

³⁷ Oyewo, O. *op cit* at no 7.

Oversight functions of the legislature is a very important instrument for nation building in that it assures that the nation's resources in addition to state revenue and expenditure are properly considered and fiscally sound, that government programmes address the people's relevant needs and are executed in a timely and proper manner. Through an effective exercise of oversight functions, the legislature can exercise adequate checks and balances, transparency and political legitimacy and better enforce financial regulations and policies and ensure wide participation, ownership and sustainable democracy. The legislature can create a responsible and accountable environment that facilitates the achievement of development goals.

Oversight functions consist essentially among others the examination of the activities of government agency or department in its entirety to ascertain whether it has achieved the goals set for it. That is, the examination of the effectiveness, efficiency and adequacy of the administration of the department or agency. It also seeks to study the process within such an organization to ascertain whether due process of the law has been followed.

In Nigeria, the oversight functions which attempts to make the executive behave and conform to the political order exists. The 1999 Constitution diffuses and entrenches these oversight functions in the legislative role³⁸ of law making, watch- dog of public finance, investigative functions and even constituency responsibilities and so on. This constitutional legislative role which embraces oversight functions will now be examined as follows:

i. Law Making

The law making powers and procedures of the National Assembly as contained in sections 4, 58 and 59 of the 1999 Constitution and section 100 for state Houses of Assembly can be used steadily to control the administration and its units, especially as executive policies and programmes must have legislative backing before they are implemented³⁹.

The consideration of executive/administrative bills affords legislative committees the chance to inquire into the work of the agencies⁴⁰. The constitutional and legislative procedures employed by the National Assembly and the State Houses of Assembly which involves several readings, public hearings, legislative committees and sub-committees, deliberations and publicity, principles of limitations and checks, enhance transparency and accountability in the exercise of governmental powers that accords with constitutionalism⁴¹ and promotes nation building.

ii. Watchdog of Public Finance

The management of public finance is the centre of economic and social development of every modern society. Public finance and fiscal policies in particular play crucial roles in government intervention to promote development and people's welfare as well as facilitates, private sector contribution, and development⁴² towards nation building. The role of the legislature as the watchdog over public finance is part of its oversight functions over the executive in the management of the capital resources of the Nigerian State in order to ensure good governance, accountability and probity for a sustainable democracy and strong nation. By virtue of sections

³⁸ *Ibid*

³⁹ See Sections 4, 58, 59 and 199 of 1999 Constitution of the Federal Republic of Nigeria *op cit* at no 23 see also **Fawehimi V Babangida** [2003] 12 WRN (SC)

⁴⁰ Oyewo, O. *Op. cit* at no. 7

⁴¹ *Ibid*

⁴² "Promoting Positive Change: Legislative Oversight Functions and the Management of Public expenditures" Sanusidaggash.org.

80 and 81 of the Constitution⁴³ it is the National Assembly that gives authorization to the President for all expenditure from the Consolidated Revenue Fund, thus affording the representative body an opportunity to rigorously debate and rationalize the budget.

The National Assembly's power also extends to auditing of public accounts by the Auditor General and the conduct of investigations into the expenditure patterns of the government⁴⁴. Auditing of account is a recognized method of showing prudence in the spending of the funds of government or the manners in which the funds of the nation has been spent. Section 85 of the Constitution provides for the appointment of the Auditor-General for the Federation for the purpose of auditing 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. For example, on January 10, 2003, the Audit Report, 2001 was submitted to the National Assembly and the revealing information contained therein about the expenditure pattern of the executive/administration, demonstrated the usefulness of the Audit Report as an effective instrument for legislative oversight over the executive's dealings with public finance. Although the action of the Auditor General was unacceptable to the government and his appointment was not renewed or confirmed by the president who claimed that the Auditor General (Mr. Azie) was functioning in an acting capacity and failed in his duties⁴⁵.

iii. Power to Conduct Investigations

Section 88 of the Constitution empowers each House of the National Assembly to conduct investigations into the affairs of government. This power covers (a) any matter or thing with respect to which it has power to make laws; and (b) the conduct of affairs of any person, authority or Government Department charged, or intended to be charged with the duty or responsibility for (i) executing and administering laws enacted by the National Assembly (ii) disbursing or administering moneys appropriated or to be appropriated by the National Assembly⁴⁶. In exercising its powers to conduct investigations the legislature uses investigating Committees like appropriation committee, standing committees, adhoc committees, Audit committee and various other committees set up by the legislature to analyze information concerning the administration of state programmes and implementation of governmental policies as almost any aspect of governmental policies may come under legislative examination. The possibility of legislative investigation doubtless contributes to administrative responsibility and rectitude⁴⁷, for example the Committee on Public Accounts in 2001 investigated the Nigerian National Petroleum Corporation (NNPC), Central Bank of Nigeria (CBN) and the National Electric Power Authority (NEPA) and raised a lot of controversies on the activities of the administrative bodies⁴⁸

Through such intervention, the Senate discovered that some public officials had kept public funds in undisclosed bank accounts. The works of Senate were held up as a result of the undisclosed illegal accounts held by ministries, departments and agencies of the Federal Government in the Central Bank of Nigeria. The then Chairman of the Senate Committee on Media and Communications, Senator Ayogu Eze had after the defense of the 2008 Appropriation Bill by Ministries and heads of parastatals at the National Assembly, disclosed that several ministries, parastatals and agencies had kept between 200bn and 300bn in such

⁴³ Sections 80 and 81, Constitution of the Federal Republic of Nigeria, 1999.

⁴⁴ Section 85, *Ibid.* Covers the audit of Public accounts.

⁴⁵ Oyewo, O. *Op.cit* at no. 7

⁴⁶ Sections 88 and 89, Constitution of the Federal Republic of Nigeria, 1999.

⁴⁷ Oyewo, O. *Op. cit* at no. 7

⁴⁸ Newswatch Magazine, April 23, 2001, p. 12

illegal accounts in the past four years⁴⁹. According to the Senate, these accounts had been made up of unspent funds from the preceding budgets which were then introduced to the financial system the following year even though they were not captured in the budget. Subsequent reports also revealed that this criminal practice had prevented government projects from being implemented as and when they should have been. It also enabled the perpetrators to keep public funds in interest - yielding bank accounts to line their own pockets⁵⁰.

In situations as above, each House of the National Assembly has the power under Section 67 of the Constitution to summon and question the minister in charge or whose Ministry has responsibility for the government agency concerned. This was the case when the then minister of Aviation, Dr (Mrs) Kema Chikwe and the then Director General of the Bureau for Public Enterprise (BPE) were summoned to appear before the Committee of the National Assembly on the Privatization of the Nigerian Airways Limited (NAL) and the establishment of new national Airlines. The secret deals of the Ministry were exposed and the plans to purchase the assets of NAL under shrouded circumstances were scuttled.⁵¹

In year 2007, the House Committees on National Drug Law Enforcement Agency (NDLEA) and the Economic and Financial Crimes Commission (EFCC) summoned the authorities of the two agencies to tender their accounts and budgets in the past four years. According to the report of the Nigerian Tribune,⁵² the essence of the probe of the two agencies was to ensure proper accountability as they (the agencies) had been receiving foreign grants and allocations from the Federal Government.

A Committee of the House of Representatives on an inspection visit to Kwara State in November 2006, ordered the Federal Ministry of Works to carry out work on erosion in four local government areas of the State⁵³.

On January 23, 2008, the House of Representatives passed a resolution authorizing its committee on Marine Transport to conduct a thorough investigation into the degree of underutilization of the facilities at Koko Port in Sapele.⁵⁴

The most notorious exercise of the investigative powers of the National Assembly was the investigation into the Petroleum Trust Development Fund (PTDF) Saga. The Senate Review Committee Reports on the PTDF concluded that both President Olusegun Obasanjo and Vice President Atiku Abubakar were guilty of breaching the laws setting up the fund and misapplying its ample funds. It therefore recommended that the duo be disciplined by the Code of Conduct Tribunal for breach of trust and abuse of office⁵⁵. Although attempts by the Attorney General of the Federation to prosecute them was held to be constitutionally impossible due to the immunity clause in section 308 of the Constitution that protects both persons from criminal prosecution or civil proceedings while in office.⁵⁶

⁴⁹ Punch Newspapers, January 4, 2008, p. 17

⁵⁰ Aguda, O.O. "Legislatures Unconstitutional oversight functions." <http://www.hg.org/article.asp?id=5072>.

⁵¹ Oyewo, O. *op cit* at no. 7

⁵² Nigerian Tribune, December 3, 2007, P. 7

⁵³ Radio Nigeria, November 10, 2006

⁵⁴ Radio Nigeria, January 24, 2008

⁵⁵ The Daily Trust, Editorial, March 30, 2007

⁵⁶ See **Atiku Abubakar V A. G. Federation** [2003] 3 NWLR (Pt. 1022) 601 at 646 and 648. See also **A.G. Federation and Ors V Atiku Abubakar**, [2007] 8 NWLR (1035) 117 at 155

The foregoing indicates that from 1999 till date, the legislature at the Federal level demonstrated the importance of oversight functions of the legislature in not only exposing corrupt practices of the administration but in controlling the excesses of the executive in governance and the management of the nations resources. The exercise of this power however must be to the extent prescribed by the Constitution.⁵⁷

iv. Approval of Executive Appointees

In addition to the oversight functions of the legislature enumerated above, the Senate is also empowered by the Constitution to screen certain appointees of the president such as judges, ministers, ambassadors,⁵⁸ chairmen and members of certain executive bodies listed in section 153 of the Constitution for confirmation as provided by section 154. A State House of Assembly has similar confirmatory role in certain appointments made by the State Governor.⁵⁹

v. Power of Removal of Chief Executive

The legislature is empowered to remove the President, Vice President, Governor or Deputy Governor through the process of impeachment⁶⁰. The provisions for the removal provided by 1999 Constitution for gross misconduct are arguably meant to be used sparingly by the National Assembly or State House of Assembly. The flagrant use of impeachment powers by the State legislatures to settle Political scores against the Chief Executive of the State, has been severally subjected to judicial review by the courts. The Supreme Court in **Adeleke & Ors V. Oyo State House of Assembly**,⁶¹ took Nigerian practice of constitutionalism to a new height by declaring the exercise of the impeachment powers in breach of the Constitution null and void, consequently resulting in the restoration to office of a Governor who were purportedly impeached by the legislature, may have chilled the inclination of the legislature to resort to their impeachment powers to score political points.⁶²

What is important however is that the legislature in the proper exercise of this power can remove from office, a Chief Executive who has been conducting the affairs of State in an oppressive manner. It is a good means of curbing the excesses of the executives in Nigeria if exercised in compliance with the provisions of the Constitution.

Barriers to Oversight Functions

Inspite of the important role that oversight functions play in nation building, there are various factors that contribute to diminish the legislature's capacity to engage in steady and resourceful oversight of the executive. They include;

i. Lack of Democratic Culture

The presence of amateur legislators in great number and the shortage of staff aides due to the lack of continuity in legislative membership accounts for the lapses of the legislature in the

⁵⁷ See Section 88, 1999 Constitution of the Federal Republic of Nigeria. It provides for the scope of legislative power of investigation. See also **El-Rafai V House of Representatives** [2003] 2 WRN 1 SC and **Tony Momoh V Senate** (1981) NCLR, 105

⁵⁸ See Sections 147, 171 (4) 154 (1), 231, 238, 250 of the 1999 Constitution of the Federal Republic of Nigeria.

⁵⁹ See Sections 192 and 198, Ibid.

⁶⁰ See Sections 148 and 188 of the Constitution, for details on procedure for impeachment proceedings both at the state and the Federal level.

⁶¹ <http://www.nigeria-law.org>.

⁶² Governors Alamesiegha of Bayelsa State, Ladoja of Oyo State, Dariye of Plateau State and Fayose of Ekiti State were impeached by their State Houses of Assembly but the Supreme Court invalidated these impeachment proceedings of the State Legislatures for non-compliance with the Constitutional provisions though it was not possible for Governors Alamesiegha and Fayose to return to office. See Oyewo, O. *op. cit* at no. 7.

discharge of its functions⁶³. The vast majority of new democracies lack a democratic culture, dialogue, tolerance and respect for each other's opinion. These are relatively new concepts. This constitutes a serious handicap for the development of parliamentary democracy which is founded on the virtues of robust debate and compromise on major issues of national interest.

ii. Constitutional History

Nigeria's constitutional history has shown that the representative legislature is usually abolished by successful military coupists, whenever they subsequently establish their military regime whilst the executive and administrative structure of the military government gets more expanded in the absence of any legislative body to oversight and check the exercise of the powers of the military administrations.

In Nigeria, these past military leaders dominate the political parties during transition to democracies after periods of military rule. For example, former President Obasanjo who was also former military head of state was rightly accused of overbearing posture in the style of the military and could scarcely suffer the intrigues and politicking that goes with democratic practices.⁶⁴

iii. Personal Ambition, Interest and Agenda of Legislators.

The leadership of the National Assembly or State Houses of Assembly often demonstrate propensity for confrontation with the executive without reflecting on the negative impact on the national or public interest.

iv. Corruption

The National Assembly in Nigeria was plagued with allegations of corruption and the resultant compromise of their independence in the past. For example, members were bribed during the threatened impeachment of former President Obasanjo in order to dissuade them from supporting the impeachment. The executive was also alleged to have given money to legislators to compromise their integrity in the discharge of their functions.⁶⁵

v. Adverse Legislative Environment

The large number of legislators in the House of Representatives or the state Houses of Assembly tend to induce the members into compromising stands in order to be noticed or to get the projects for their constituency noticed by the executives.⁶⁶

vi. Undermining Legislative Oversight Functions by the Executive.

Senator Anyim Pius Anyim, the then Senate President has argued that the National Assembly's attempts at fulfilling its constitutional roles including the oversight functions were undermined by the executive on several occasions⁶⁷.

Other barriers to effective exercise of oversight functions especially in Nigeria can be summarized as follows; the politically charged environment of conflicting interests, antagonism between the majority and opposition parties often resulting in a stalemate; antagonism between the legislature and the government with the latter often reluctant to

⁶³ Oyewo, O. *op cit* at no. 7

⁶⁴ *Ibid*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ Newswatch Magazine, February 1, 2003, pp. 45 – 46.

accommodate a robust parliament that can hold it to account; and lack of adequate information, human and material resources.

Strengthening the Oversight Functions of the Legislature for Nation Building

Presently in Nigeria there appears to be evidence of greater legislative activism but it cannot still be said to emulate best practices as indicated by the aforementioned challenges. So what is the most essential building blocks to put in place for efficient exercise of legislative oversight that could build the nation?

The framework for effective legislative scrutiny (oversight) must take into account two important issues. First, there must be the establishment of specific oversight mechanisms to effectively hold the executive to account for their activities. Second, there is need for a bi-partisan approach in parliament when overseeing executive activities. This would assist the capacity of the legislature to fulfill its oversight functions. The oversight mechanism chosen must seek to address the interplay of the inalienable rights of the governing party to be able and be seen to govern, while at the same time, the members of opposition parties must be able to ventilate, criticize and put across alternative positions and policies within the modus operandi of the set mechanisms. There must be a truly participatory parliament especially for members of opposition parties in the House aimed at having a minimum commonly accepted standard for specific oversight mechanisms which would pass the public's approbation test⁶⁸.

There are several mechanisms that can be adopted but the underlisted are hereby recommended for efficient legislative oversight;

i. The System of Committees

Taking into account the different mechanisms available for ensuring accountability, the system of committees is highly recommended to strengthen the performance of legislative oversight. In the commonwealth, committees are used to refer to the formation or constitution of a group of members of parliament who are specially named to address a specified mandate whose terms of reference and limit are spelt out. Although the committee system already exists in Nigeria but they must be given the capacity to function effectively. They must be given the independent research capacity so as to obtain quality and timely information to pursue its objectives and enhance legislative oversight.

A committee is expected to operate according to the procedure of a particular parliament. Such a committee is distinct from the Committee of the whole House and any extra parliamentary bodies including party caucuses or inter and intra party formations. Committees have been noted to be flexible means of accomplishing a wide variety of different purposes. Committees may be given different powers to meet difficult circumstances. They may be created ad-hoc to meet a particular requirement or be re-appointed from session to session or from parliament to parliament to carry out a more continuous function⁶⁹. Examples are; Public Accounts Committee, Budget Committees, Committees on Judiciary, Education, Health and so on.

The idea that it should be in part through Committees that the House should play an active part in informed criticism and scrutiny of the aims and actions of the executives is one which is central to any parliamentary committee system. What is true is that Committees are part and parcel of the operational mechanisms devised by parliaments over the years to enable them discharge their expanding role and increasing functions of oversight with efficiency and

⁶⁸ Parliamentary Oversight of Finance and Budgetary Process, *op. cit* at no.23.

⁶⁹ *Ibid.*

effectiveness⁷⁰. Parliamentary committees are essential tools to enforce accountability and members of parliament as representatives of the people must fight without fear or favour in their committee meetings for a strong public financial accountability culture necessary to develop capabilities for legislative oversight.

ii. Training of Members of Legislature

Since parliamentarians have different backgrounds, training and supporting members to ensure that they acquire knowledge on policy formulation, budgets and budgetary processes should be undertaken by parliament themselves, given the intricacies involved in formulating policies and debating the budget, such training should be in collaboration with specialized international organizations such as the World Bank Institute and the International Monetary Fund (IMF).⁷¹

iii. Legislature and the Auditor General

The relationship between Parliament and Auditor General should be maintained pursuant to the statutes under which they were created and appointed. In South Africa for example, the relationship was considered as a partnership based on mutual and reciprocal functions notwithstanding that the legislature is 'first among equals' in this arrangement. In Canada, and the United Kingdom, the independence of the Auditor General's office is secured by it being statutorily independent - it cannot be subject to direction by the Government or the organization that it audits. In Uganda, the constitutional provisions for the separation of powers has brought about forensic audits, giving the audit office a range of powers to obtain information that allows it to properly discharge its duties including the power of attorney. In Kenya and Tanzania, the audit office is free to report what they see the need for and when and how to do this⁷².

The relationship between the legislature and the Auditor General should be balanced so that their roles and independence remain clearly defined and separate. The role of the Auditor General is to assist the legislature to ensure that there is proper use of public resources by auditing government and those quasi - government institutions which receive public funding. The provision of fair and impartial audit reports and information to parliament through the Public Accounts Committee and the presence of the Auditor General during its deliberations on the audited accounts of the public and any other bodies which received public funding are important measures necessary to assure the taxpayer that there exists a body to investigate accountability on behalf of parliament.

A close working relationship between the Auditor General and Parliament enhances public confidence that resources are used with due regard to the efficient and effective running of the economy. To sustain this confidence and uphold the highest audit standards possible, there must be sound constitutional arrangements based on the principles of accountability, good governance and independent public auditing.⁷³

iv. Budgetary Cycle and Budgetary Process

On the subject of the budgetary cycle and the budgetary process and their implications for oversight, a constant point of reference is that budgets details government's priorities within the context of fiscal pressures and economic forecasts. In the commonwealth, budgets underscore interplay between the Executive and the Legislature in providing the public with

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

(a) information on the Appropriation Bills, (b) reports on accounting, financial control and government performance; (c) coherent laws and regulations that govern financial transactions and (d) comprehensive reports on public audit and legislative scrutiny.

Since budgets are accompanied by different or standard requirements which highlight the executive policy focus, there is need to implore institutional capability, that is the willingness of parliament, committees and public auditors to carry out their respective functions by being provided with sufficient resources, training and access to expertise that they may require in the budgetary process, timely, accurate, quality and useful information on budget implementation is critical to help parliament improve the quality and effectiveness of expenditure.⁷⁴

v. The Legislature, Media and Civil Society

Parliaments should be open to the media and civil society as a fundamental way of ensuring effective parliamentary oversight. Parliamentary reports in New Zealand are open to the media and the recommendations of the Public Accounts Committee in Jamaica have widely been circulated leading to the successful prosecution of individuals. The public exposure of corruption and waste allows stakeholders to demand action and explanations on the part of the Government or executing authority. To engage in this battle, parliament will need all the allies, that is, the civil society institutions, the media and the Auditor General. A strong coalition or partnership between these institutions is an important way to build arguments and skills to counter the tradition of executive dominance.⁷⁵

In the process of enhancing oversight, parliament will over time build allies within the executive branch that are also set on improving the allocation and management of public resources. The beginning of the battle will be rough but the goal is a central element in democracy and nation building, that is, how to align the nation's scarce resources with human development (the real needs of its citizens).

Recommendations

The oversight functions of the legislature are vested in the legislature as a fundamental principle of the separation of powers and on account of the legislature being an institution of the people's representatives. As supreme bodies they are assumed to possess all the powers necessary to meet their needs and so should be urged to ensure oversight of government in accordance with their constitutional mandate. The right of citizens to participate in the functioning of government is a fundamental principle and eventual requirement of democracy. Civil society and the media should therefore be encouraged to become actively involved in ensuring the accountability of government. Their roles should be recognized and further enhanced through appropriate modalities and mechanisms.

Tackling abuse and lack of accountability extends beyond the role of media and other civil society components and require consideration of broader economic, social, cultural and historical dimensions for which broader strategies may have to be devised as appropriate to a particular situation. Strengthening the roles of Public Account Committees and the Auditor - General would be better achieved where they co-exist with civil society. For this to be accomplished, adequate public access to information must be ensured through effective freedom of information, legislation and appointment of information commissioners.⁷⁶

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

In order to correct the barriers which work against ensuring accountability, the committee system assumes great importance (since parliaments in its corporate nature cannot have complete oversight over the government and all its activities) with reliance on the Auditor – General’s output. To make both effective, the legislature should ensure that committee reforms are simultaneously pursued with appropriate legislation for independent Auditor - General’s offices.⁷⁷

Conclusion

The exercise of legislative oversight has become imperative in Nigeria in view of the substantial contribution it makes to democracy, governance and nation building. The legislature is the central institution of representative democracy and therefore is the key to the system of division and balance of powers that characterizes democracy. The process of change and transition in our countries and unequal institutional and democratic development in them make it necessary to strengthen legislative oversight as an essential condition for fighting corruption and promoting human development in Nigeria.

The soundness, legitimacy and viability of a legislature’s proposal to attack corruption and mismanagement of public funds depend generally on its ability to carry out effectively its primary functions of adequately representing the various interests of citizens, legislating in a transparent, rigorous and efficient manner and effectively overseeing the other branches of government. Stakeholders must be sensitized to know that legislative functions go beyond legislation and it includes checking government activities that is, oversight functions. It serve as instrument to nation building and must be well enhanced and well-articulated under a constitutional democracy so as to advance human development, the rule of law, accountability and good governance required for building a strong and virile Nigerian nation.

⁷⁷ *Ibid.*