

LEGALITY OF LEGISLATIVE OVERSIGHT TOOLS AND ILLEGALITY OF EXECUTIVE NONCOMPLIANCE: A PLUS OR MINUS FOR DEMOCRATIC SENSITIVITY IN NIGERIA

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Abstract

Modern state administration and governmental structure allows for application of legislative oversight in dissecting how government powers are exercised, how public funds are expended, how the public officials reciprocate the regulatory rules on policy implementation, and thereby deliver on their mandates. The system recognizes the primacy of legislature based on the powers conferred on it by law; hence, the tools available for exercise of the powers are indispensable. Since the return to democratic government in Nigeria in 1999, the role of legislature has speedily blossomed and correspondingly receiving wider acceptance despite some inherent challenges. Thus, the public perceives oversight as the most critical instrument that subject executive activities to legislative scrutiny. It observes approved methods, with tools that measure how the system responds or adapts to institutional and behavioural requirements in every governance process, amidst noncompliance. This study, therefore, discusses the legality of oversight tools and demonstrates the extent that they feature in legislative supervisory roles in Nigeria. Furthermore, the study is secondary research, focusing on content analysis and adopts Role Theory, as theoretical framework. The findings show that legislators make use of oversight tools in Nigeria but political patronage hinder their effective use to monitor executive activities. It thus recommends de-politicization of oversight tools to enhance their efficiency in facilitating prudent leadership and accountability of public officials in policy implementation.

Keywords: Legality, Oversight Tools, Illegality, Executive Noncompliance, Plus or Minus

INTRODUCTION

The legislature as a branch of government entrusted with lawmaking and oversight functions performs these functions with the aid of tools. Firstly, lawmaking recognizes the importance of bills, and the 1999 constitution of Nigeria (as amended) declares that the powers of National Assembly (Section 58) as well as State Houses of Assembly (Section 100) to make laws shall be exercised by bills. Therefore, a bill is an essential tool with which the legislature makes laws and without which it makes no law. Secondly, beyond lawmaking function, the legislature exercises oversight powers over the activities of the executive branch. Since the historic departure from system of absolutism, the evolution of democratic system of government has heralded the expectation that oversight should help in determining how government implements its policies, systematize how it expends public funds and how it exercises the powers vested in it by the constitution, to protect the terms of social contract.

Ideally, government and to a large extent, the modern democratic system, finds the essence of its current meaning, not only in terms of the powers vested in it to administer over the affairs of the state but majorly, in making the participation of the people the centrepiece of the whole process. It is in this sense that legislature, which is most representative of the diverse views of people and

symbolizes the expression of their collective will, stands out as vital organ conferred with the powers of oversight functions. In performing the function, the legislature, both in old democracies and newly inducted emerging nations that have embraced democratic system as mode of governance, conventionally apply certain tool embossed in legislative institution. They are not entirely new developments and mention can be made of the familiar typologies such as budget defence, oversight visits to project sites and the MDAs, oversight reports, investigation, and motion, etc. Each tool helps the legislatures to exert influence over the activities of the executive and thus secure compliance with its authority.

However, the legislatures of most developing countries usually classified as weak institution in their governance architecture scarcely appreciate the essences of these oversight tools based on the glaring negligence, improper use, frequent abuses and clear evidence of lack of political will to make effective use of them to get government policies and programmes working well. On this score, there is prevailing notions that third world legislatures manifest attributes of a fledgling institution, a branch of government that suffers from colonial hangover. Aside that, internally, they confront challenges that border on the application of the aforesaid oversight tools in the performance of their legislative functions. It necessitates the focus of this study on the expanse of oversight powers and the ancillary oversight tools that aid in legislative functions in developing political systems. The study cites random cases in Nigeria and occasionally Enugu State, for purposes of illustrating few references.

THE LEGAL ROOTS OF LEGISLATIVE OVERSIGHT POWERS IN GOVERNANCE

Scholars have made research enquiry into the etymological perspective of oversight. This enquiry, no doubt, is not without its own contradictions and two conflicting accounts suffice for mention. Firstly, Noble, et-al (1994) posit that the popular struggle against the near absolute authority of English Kings in Fourteenth Century England, culminated in the promulgation of Ordinances of 1311, through which the Kings forcibly relinquished some of their powers to the Barons. It transferred a greatly expanded role to the Parliament, and especially the Baronage sitting in Parliament. The ordinances provide that, *“the king could no longer wage war, leave the realm, grant lands or castles or appoint chief justices and chancellors without the approvals of the barons in Parliament. It ordered all special taxes or subsidies to be paid to the public Exchequer rather than into the king’s private household treasury”*. It also designated a commission in Parliament to hear complaints of abuses by royal officials. Secondly, Friedberg and Hazan (2012) traced the origin of legislative oversight of the executive to ancient Greece centuries before the forming of first European Parliaments. In their view, Aristotle was the first to highlight the necessity of protecting public funds from embezzlement, the obligation to disclose all financial activity to the citizens of the city and the commitment to deposit copies of expense accounts where the public could view them”. Not concerned about the accuracy of the records, the both viewpoints gave illuminating insight into the historic migration out of autocracy.

According to Nwagwu (2014), “The end of absolute executive power was affirmed by giving to the legislature, and to it alone, the right or power to make laws. Thus, arbitrary government was replaced by a formal procedure for law making”. It was thenceforth that the role of legislature in checkmating exercise of governmental powers by the executive branch popularly referred today as oversight or checks and balances, gained prominence in law and has today become common feature in most functional constitutions and other legal documents adopted by a country or political system. It ended the era of monolithic power held by the executive by transferring lawmaking and oversight powers to the legislature. Accordingly, Jaja (2016) contends that the authority of Congress to perform oversight functions derives from its “implied” powers in the constitution, public laws, and House and Senate rules. For example, the 1999 Constitution of Nigeria, as amended and the Standing Rules/Orders of the House serve as legal framework that direct the conducts, operation and activities of the legislature.

However, Nwagwu (2014) in a declaration attests that, in every democratic political system such as Nigeria or US, *the legislature has the constitutional responsibility to supervise and regulate the activities of the executive arm of government of the federation. The essences being to eschew waste and ensure fiscal discipline, observance of the rule of law and strict compliance in implementing laws as passed by the legislature, and execution of development programmes and policies.* Akomolede and Bosede, (2012) further posit that some provisions in the constitution, particularly Section 88, Sub-sections 1(a-b) and 2(a-b), imply legislative oversight and in those provisions lay the legal roots of their oversight activities in Nigeria. The same legal authority is also applicable to the State House of Assembly, in Sections 128 & 129 of the 1999 Constitution. Orluwene, (2014) in another study opines that Sections 80-84 and 120-124 of the aforesaid 1999 Constitution largely assigned the powers and control over public funds to the legislature (both the National Assembly and State Houses of Assembly) to oversee and regulate the executive on public spending respectively.

According to Dogara (2016), the House oversight activities leverage on the constitutionally mandated power of investigation under Sections 88 and 89 of the constitution to expose corruption, inefficiency and waste in the conduct of government business. In addition, Onwe, Ibeogu and Nkwede (2015) lend credence to the constitutionality of legislative oversight functions and posit that the law empowers the legislature to ensure effective management of public fund. They contend that legislature also exhibits great influence (monitoring and supervision) over the borrowing powers of the state; and these are to ensure prudent management of public fund and promotion of good governance. Consequently, Okanya (2009) argues that the legislature has oversight powers defined by the constitution. Accordingly and focusing on Nigeria, the National Assembly (Reps and the Senate), for example,

Consider Appropriation Bills; receipt of Ministries' Statutory Annual Reports; examine accounts on allocations to meet public expenditure together with the Auditor's Report thereon; conduct investigation and finally, owe an obligation by each committee in the National Assembly to submit Annual Report of its activities to each respective chamber.

The dominant view, therefore, is that the legislature has powers of oversight, derived from and supported by legal provisions. Such provisions serve as safeguard to abuse of power and in furtherance, entrench transparency and conformity of state institutions and the personnel with the prevalent democratic ethos. In that regard, the legislature is required to enforce these constitutional powers through the instrumentality of legislative oversight tools available to its committee system.

CONCEPTUALIZING OVERSIGHT TOOLS

The legislature conducts oversight with tools. What are the tools? The legislative oversight tools comprise of the instruments that the legislators use in the conduct of their watchdog roles over executive planned actions. They include budget defence, oversight visits to project sites and the ministries, departments and agencies (MDAs), reports of oversight visits, investigation/public hearing, invitation, summon for questioning, motions, orders and resolutions. The listed tools are mechanisms by which the Committees of the House discharge their various duties relating to oversight over the activities of the executive. For instance, the 1999 Constitution (as amended) provides in Section 103 (1) that a House of Assembly may appoint a committee of its members for any special or general purpose as in its opinion would be better regulated and managed by means of such a committee. It also states that, by resolution, regulation or otherwise as it thinks fit, the House may delegate any functions exercisable by it to any such committee. The numbers of the committees vary, but usually reflect the numbers of government ministries, departments and agencies whose functions are subject to legislative oversight.

The Standing Orders of the Enugu State House of Assembly (2012), for example, categorizes the committee into two types - **Special Committees** (Sections 53 to 57) and **Standing and Select Committees** (Sections 60 & 61). Also defined by law are their membership, powers, functions and types, which consist of the following:

A: Special Committees Comprise:

Committee of Selection (Section 53)

Standing Orders Committee (Section 54)

House Committee (Section 55)

Business Committee (Section 56)

Public Petition Committee (Section 57)

B: Standing and Select Committees

Standing Committee (Section 60)

Select Committee (Section 61)

Whereas the Special Committees, with the exception of Public Petition Committee are basically committed to addressing the internal affairs of the House, the Standing and Select Committees, essentially focus on consideration of bills and such other matters that may be referred to them (Standing Orders, Section 60:1). On the issues of investigation, which the House may be conducting, any Select Committee for that purpose or other roles for which it is assigned, has power to send for persons, papers and records and shall have leave to report its opinion and observations, together with the minutes of evidence taken before it, to the House. The Standing Orders, in Section 61:9 provide further that the Clerk of the Committee shall summon any person required by a select committee to appear before it as a witness. This is termed “**power of summon**”, which makes both the government officials and members of the public liable to the legislature for oversight of their actions, any moment.

THEORETICAL FRAMEWORK

The study adopts role theory to explain the nexus of position and role expectation. Many scholars are associated with the development of role theory and mention can be made of Georg Simmel (1920), George Herbert Mead (1934), Jacob Moreno (1934) and Ralph Linton (1936), etc. Despite the inherent differences in the ways they used role terms, the differences have persist in current literature and will not engage this study in any academic controversy. Even at that, it is worthy of note that whereas some authors use the term role to refer to characteristic behaviours (Biddle, 1979, Burt 1982), others use it to designate social parts to be played, (Winship & Mandel 1983), and still others offer definitions that focus on scripts for social conduct, (Bates & Harvey 1975, Zurcher, 1983).

In the context of this study, the role theory emphasizes the behaviours and actions of legislators toward role expectations in the area of making effective use of oversight tools to condition government behaviours on public policy matters. The inference finds expressions in this theoretical analysis. This is because “political behaviour...is always a conduct in the performance of political role, (Eulau, 1963:40). The theory, therefore, assumes that political actors are greatly influenced by the positions they fill. A similar perspective posits that there are certain expectations (both “outside” and “within”) that structures how someone in a particular position is supposed to behave. In other words, each role is a set of rights, duties, expectations, norms and behaviors that a person has to face and fulfill (Coser, 1975). Generally, role theory begins with the basic assumption that political actors find themselves in various positions, with certain behaviour patterns associated with them. It further assumes that the individual located within a social context best captures his/her role in political processes and phenomena. Eulau (1963:41) illustrates the scenario with legislative position and role.

A legislature is “colleague” to his fellow legislators, “representative” to his constituents, “friend” (or enemy) to lobbyists, and “follower” to his party leaders... Whatever role is taken, simultaneously or seriatim, what emerges is a very intricate structure of relations in which one role is implicated in several other roles.

Nevertheless, there are certain expectations about how some who are in a particular position is supposed to behave. These expectations are what we label as role or roles, (Eulau, 1963:41). Some of the norms applying to a given position govern general conduct, but others govern only relationships between a focal position and a specific, counter position and among the latter, "roles" are those that apply to the accomplishment of specific functions, (Bates & Harvey, 1975). It infersthat the essence of occupying political position is to play the consequent role or roles and accomplish specific duties.

THE RELATEDNESS OF THE THEORY TO THE STUDY

The expectation in every state administration is that the legislature performs the role of oversight. Observable variations in role performance fundamentally reflect the circumstances in which persons who occupy positions find themselves. It is much more decisive in developing political systems where economic pressure and surrounding environmental factors influence how position occupants play their roles. What becomes commonplace in the arena of role specificity is that some individuals who are so involved exhibit behaviours that contradict the expectations of their roles. For example, the executive branch of government formulates policies; implements them with public funds and renders accounts. Similarly, the legislature is statutorily required to scrutinize the activities of executive with the aid of oversight tools and ensure prudence and fidelity in the manners that the executive exercises governmental powers. The various positions determine the different roles ascribed to the occupants and the form of expectations that the public place on each position.

However, amidst the role relationship with position, there are some intervening variables, either classified or typified as personal goals of the role players, the influence that environmental factors exert on the position and the influence that political party that sponsors candidates during election exert on the position occupants. Others include the nature of relationship among the role players, and the extent that ethnicity and religious inclination permit positions to play a part in general administration. Obviously, these factors account for role conflict, thereby resulting in legitimate roles sacrificed while attempting to satisfy other contingent or counter roles. Nevertheless, the dynamics of role expectations and consequences of their outcomes invariably exert so much influence on how a system fulfils its mandates or betrays it. A situation where the legislature, for instance, does not apply oversight tools to checkmate executive actions will naturally dovetail into commission of corruption, mismanagement of public funds, abuse of power/office, and eventually, tyranny. Meanwhile, the legislature may have benefitted from the

negligence of thorough oversight by satisfying personal needs, constituent interests, party directives, religious obligations and ethnic or sectional demands.

Furthermore, lack of knowledge of role requirements in a position is also another critical factor. There are several instances where a mismatch of position in relation to roles has brought about avoidable abuse of both position and the attendant roles. Most elective and appointive positions in Nigeria lack in the knowledge of the consequent roles or the prerequisite capacity but necessitated by quest for power and economic empowerments. It thus deemphasizes the primacy of role efficiency as preconditions for goal attainment, which facilitates system's stability, role fulfillment and satisfaction with role players. This is where the essence of applying role theory for this discourse is appropriate.

LITERATURE REVIEW

Miyo, et-al (2015), argue that in democracies, Congress (Latin America) or Parliament (Africa) exercises the role of monitoring and providing control on the Executive branch. By taking into account the opacity of power, it seeks to reduce uncertainties that come from it, limit arbitrariness and prevent or even remedy abuses, maintaining power within certain predetermined rules. The assertion conforms to the views of Kaiser (2001) that, Congress oversight includes the review, monitoring, and supervision of federal agencies, programs, activities, and policy implementation. It occurs in a wide range of variety of congressional activities and contexts, which include authorization, appropriations, investigative, and legislative hearings by standing committees; specialized investigations by select committees; and reviews and studies by congressional support agencies and staff.

Nonetheless, Oyelowo (2007) states that oversight is inclusive functions that involves, “the exercise of constitutional powers by the other arms of government, and more specifically to check or control the exercise of executive powers or to make the executive accountable and responsible to the electorates through their representatives in the legislature, in between elections”. Buttressing the foregoing viewpoints further, Salami (2016) cites Ndoma-Egba (2008) who contends that the oversight functions encompass the powers of the legislature to review, monitor and supervise the programmes of government agencies, their activities and the policy implementation strategies of the executive arms of government. This is to ensure that the executive sustains the principle of good governance, remains responsive, transparent and accountable to the electorate. According to him, the National Assembly of Nigeria (as applicable in the States) executes the oversight function through supervision and watchfulness, to curtail excesses. Similarly, the National Institute for Legislative Studies in its publication (NILS, 2010) further highlights the omnibus perspective of oversight while analysing the composite functions of the legislature, which when narrowed to specificities include to:

- Facilitate the responsibility of committees to review, scrutinize and evaluate the work of the executive on a continuing basis;

- Facilitate the application and effectiveness of laws, so as to ascertain whether they are being carried out in accordance with the intent of the legislature;
- Ensure the administration and execution of programs created by law, in order to confirm whether they should be continued, curtailed or eliminated;
- Ensure smooth organization and operation of federal agencies and entities having responsibilities for the execution of laws and administration of programs including use of government funds;
- Examine the conditions or circumstances that may indicate the necessity or desirability of new or additional legislations;
- Review administrative rules, offer advises and consents to executive nominees.

Similarly, Dogara (2016) submits that oversight over executive activities can be performed ex-ante i.e. during the design and implementation of a program or policy and ex-post, after its implementation. It can also apply in investigative hearing or oversight and thus possesses restraining influence over government actions that tend to siphon resources and serve selfish interest. Many scholars who identify several other oversight tools reaffirm them as legitimized mechanisms for control of the executive. Pelizzo and Stapenhurst (2004) note that oversight tools vary but include:

Committees' hearings, hearing in the plenary sessions of the parliament, committees of inquiry, questions, question time, interpellations, reports, summoning of ministers, nomination processes of executive authorities, as well as an oversight or public accounts committee, an ombudsman, high auditing courts, and congressional research services that address information asymmetry.

In a study entitled "Guide to Legislative Oversight in the National Assembly", published by the Policy and Legal Advocacy Centre (PLAC, 2016), it asserts that effective application of the oversight tools ensures that the activities of the executive or government and its agencies are kept under constant surveillances and scrutiny by the legislature. It puts public officers on their toes, as persons who deal directly with public funds and government policy are made to become aware that their conduct could be examined or called into question by an alert legislature desirous of public good. Furthermore, Okoosi (2010) contends that the leading role for the legislature has always been adjudged an essential defence against executive tyranny; the legislature monitors, reassess and censures executive activities, and activities of government agencies (such as ministries, departments, parastatals, etc) to ensure good governance and accountability.

According to Corder, Jagwanth and Soltau (1999), oversight traverses a far wider range of activity than does the concept of accountability, which strictly speaking is a reciprocal action

from the executive branch and inclusive of other arms of government. Thus, oversight refers to the crucial role of legislatures in monitoring and reviewing the actions of the executive organs of government. Therefore, oversight relates to the expanse of legislative activities in governance process that the executive is the focal point. In this vein, Uyi&Aminu (2013) agree with Corder, Jagwanth and Soltau (1999) on the conceptual stance of legislative oversight and state that, “

Legislative oversight refers to the review, monitoring, and supervision of the executive arm of government, including the numerous Federal Ministries, Departments and Agencies (MDAs) programs, activities, and policy implementation, (Uyi&Aminu, 2013:6-7).

The legislature exercises these powers largely through its legislative committee system. In essence, the committee system serves as the central enforcement organ of the legislature. The National Institute for Legislative Studies in its publication (NILS, 2014) views the roles of legislative committee as the major instruments for effective and efficient legislative function. In the case of Nigeria National Assembly, it constitutes three types of committees - **Standing Committees, Sub-Committees, and Special Committees (Ad-hoc Committees)**. The Committees play key roles in supervising executive activities in the ministries, departments and agencies (MDAs) where they conduct oversight. Nyemutu (2002) and Egwu (2005) assert that the common functions usually performed by most Standing Committees include, to:

- ❖ Conduct oversight on executive agencies under their jurisdiction.
- ❖ Conduct hearings on bills and other matters assigned to them, thereby allowing for expression of opinions by individuals on matters of public interest.
- ❖ Examine measures and bills assigned to them in a detailed manner.
- ❖ Consider annual budget estimates of the executive agencies under their jurisdiction.
- ❖ Simplify the complexity and technical details of legislative proposals referred to them, in order to make the work of the plenary House less cumbersome during the final stage of decision-making on legislative proposals, and
- ❖ Play a vital role in the creation of standards and allotment of roles to legislators and a host of others.

On the other hand, Dunmoye, Njoku and Alubo, (2007) posit that the “Committee of the Whole House” when it completes action on a bill or measure, rises and reports its recommendations to the House. It may be that the bill be passed (or rejected) or that the report on measure or investigation be adopted (with whatever amendments the Committee has authorised) or rejected. All these activities are to ensure vigilance and mitigate incidences of power abuse. Accordingly, Oleszek (2010) concurs that the fundamental objective of congressional oversight is to hold executive officials accountable for the implementation of delegated authority. This objective is especially important due to the huge expansion of executive influence in the modern era, with its

domineering powers. Nonetheless, despite the glaring differences among political systems and administrative mechanism, he argues that,

Given today's large federal establishment, congressional oversight is more important than ever in ensuring that the federal government functions economically, efficiently, and effectively (Oleszek, 2010:10).

In furtherance, Salami, (2016) cites Ndoma-Egba (2008) who also argues that oversight promotes checks and balances; it instils fiscal discipline, good governance, accountability and transparency in public offices. The prime submission is that oversight aims at improving efficiency in government activities and reduces tendencies for poor administration, waste, abuse, arbitrary and capricious behaviour or illegal and unconstitutional conducts. It informs the public, ensures administrative compliance with legislative intent, and prevents executive encroachment on legislative authority and prerogatives. Nevertheless, in a study entitled, "Parliamentary Functions of Oversight", Agora (2015) posits that the objectives of parliamentary oversight in a political system include, to:

- i. Ensure transparency and openness of executive activities. Parliament shed light on the operations of government by providing a public arena in which the policies and actions of government are debated, scrutinized and subjected to public opinion;
- ii. Hold the executive branch accountable. Parliamentary oversight scrutinizes whether the government's policies have been implemented and whether they are having the desired impact;
- iii. Provide financial accountability. Parliament approves and scrutinizes government spending by highlighting waste within publicly funded services. Their aim is to improve the economy, efficiency and effectiveness of government expenditure;
- iv. Uphold the rule of law. Parliament protects the rights of citizens by monitoring policies and examining potential abuses of power, arbitrary behaviour and illegal or unconstitutional conduct by government, (www.agora-parl.org/oversight).

Okanya (2009) corroborates Agora (2015) and states that oversight primarily covers such areas as policy, appropriation and accounts, instances of poor administration and noncompliance with legislative intent and protection of individual rights and liberties. As a result, it would be dangerous for such important areas of national concern, to experience dereliction. Theletsane (2013), reiterates this viewpoint, insisting that "financial management in the public service, if not addressed holistically, may hamper, rather than assist, government departments with the speedy delivery of services". Abati (2010) extrapolates the argument that legislative oversight is such important that at a 2005 UN Summit, the speakers of parliament resolved that parliament is the central institution through which the people express their will, laws passed, and government held to account.

Essentially, “oversight generally is an integral part of the Nigerian system of checks and balances” (Uyi&Aminu, 2013) and the legislature play critical roles in overseeing the effective performance of roles assigned to organs of government in a state. Nevertheless, research studies have shown that aside the National Assembly which has gained some measures of independence from the executive to perform oversight functions (however loose or inadequate in efficacy), the State Assemblies have not been such effective and practically dependent on the executive. It is apparent that the inability of the legislators in the State Assemblies to enforce watertight oversight and solidify the sanctity of the legislative institution draw from socio-economic and political factors, already highlighted or implied in the foregoing analyses. The executive sabotages oversight by noncompliance with legislative acts.

In that regard, Onwe, Ibeogu and Nkwede (2015) emphasize the imperatives of legislative oversight as a tool for ensuring good governance and argue that the function requires that the legislature is proactive in preventing tendencies towards executive tyranny and disservice to the citizens. It is the responsibility of the legislature to ensure that government (the executive) performs her statutory responsibility of catering for the welfare of the people. In consonance, the National Institute for Legislative Studies (NILS, 2010) identifies that the concept of oversight constitutes many aspects that include political, administrative, financial, ethical, legal and strategic elements. Each aspect elicits or engages legislative oversight and the primary purpose of oversight functions is to ensure executive compliance with Legislative Laws/Act in such manners that guarantee good governance.

The establishment of every legislative institution, particularly the National Assembly and State Houses of Assembly is to perform the functions of lawmaking, representation and oversight. Oversight singularly involves facilitating executive accountability in policy implementation and general administration of laws passed by the House. The powers to perform these functions evolve from existing legal frameworks, embodied in the Constitution and Standing Orders and therefore, a legitimate exercise of authority by the legislature over the executive. Legislature in different political systems practices oversight over executive activities but this appears a difficult task in Nigeria and thus creates doubts about how legislatures (National and State Assemblies) make effective uses of oversight tools to monitor budget implementation and thereupon, ensure executive accountability.

THE POWERS INHERENT IN LEGISLATIVE OVERSIGHT TOOLS

The legislature through its committee system apply the various oversight tools aforementioned, to control executive actions. They include budget defence, oversight visits, and reports on oversight, investigation/public hearing, and invitation/summon for questioning, motions and resolutions. It is apt to discuss the powers that the laws confer on the legislature to use the tools and monitor the executive.

Budget Defence

The executive presents budget to the legislature as Appropriation Bill and it is a legal requirement. As a result, Sections 81 and 121 of 1999 Constitution (as amended), specify that at each financial year, the duties of federal and state executives shall include but not limited to the following, i.e. to:

1. Prepare the estimates of the revenues and expenditure of the Federation or State for the next following financial year and lay same before the National Assembly or the House of Assembly at any time before the commencement of each financial year.
2. The estimates are contained in a bill, known as an Appropriation Bill, providing for the issue from the Consolidated Revenue Fund of the Federation or State of the sums necessary to meet federal or state expenditure and the appropriation of the sums for the purposes specified.
4. To prepare and lay before the National Assembly or the House of Assembly, a Supplementary Appropriation Bill, comprising supplementary estimate, the heads of any such expenditure and the sums required. These happen if in respect of any financial year; the amount appropriated by the Appropriation Act or Law for any purpose is insufficient; or a need arose for expenditure for a purpose for which the Act or Law appropriated no amount.

The Appropriation Bill, therefore, embodies the projects and programmes proposed for implementation in a particular fiscal year by all the branches of government. The executive, comprising Ministries, Departments and Agencies (MDAs), whose budget proposals form part of the overall budget estimates presented to the legislature, is liable to defend their budgets before the appropriate House Committees that oversight their activities. The 1999 Constitution (as amended), from Sections 80 to 87 (for National Assembly) and 120 to 124 (for State Assembly), vest powers and control over Public Funds in the legislature, in terms of approval of Bills relating thereto, and Appropriation of funds. The related subject matters and sections that provide for them include:

- ❖ Establishment of Consolidated Revenue (Sections 80:1-4 and 120:1-4)
- ❖ Authorization of Expenditure from Consolidated Revenue Fund (Sections 81:1-4 and 121:1-4)
- ❖ Authorization of Expenditure in Default of Appropriation (Sections 82 and 122)
- ❖ Contingencies Fund (Sections 83:1-2 and 123: 1-2)
- ❖ Remuneration, etc, of the Governor and certain other Officers (Sections 84:1-5 and 124:1-5)

The Appropriation Bill undergoes first reading, second reading, committal to appropriate committee, public hearing, consideration of the reports by Committee of the Whole or Supply,

the passage and lastly, third reading in Plenary (Standing Orders, Sections 64 & 65) before the final passage and executive assent to transform it into Appropriation Act/Law. Worthy of mention is the fact that there is no withdrawal from the revenue of the Federation or State without following these procedures. Generally, the 1999 Constitution in Sections 80 and 120, subsections 1 to 4 respectively, state that,

1. All revenues or other moneys raised or received by the Federal or State shall be paid into and form one Consolidated Revenue Fund of the Federation or the State (except stated otherwise).
2. All withdrawals from the Consolidated Revenue Fund of the Federation or a State shall be to meet expenditure charged upon the Fund and authorised by an Appropriation Law, Supplementary Appropriation Law or Law passed in pursuance of sections 81 or 121.
3. All withdrawals from any public fund of the Federation or a State, other than the Consolidated Revenue Fund are prohibited, unless the issue of those moneys has been authorised by a Law made by the National Assembly or of the House of Assembly of the State.
4. All withdrawals from the Consolidated Revenue Fund of the Federation or a State or any other public fund of the federation or a State must be in the manner prescribed by the National Assembly or the House of Assembly.

These provisions indicate how the legislature exercises the power of Authorization of Expenditure from Consolidated Revenue Fund, including the allied obligations or responsibility of the executive branch in the management of public funds. In other words, what the powers of the legislature over public funds entail are that they determine when and how the executive branch withdraws from the federal or state accounts, ensure fiscal discipline, proper husbanding of resources and provide a safeguard against the tendency to misappropriate public funds through unregulated withdrawals. The only caveat or exceptions that the legislature seriously guard against their abuses are contained in Sections 82 and 122 of the 1999 constitution (as amended). The sections permit the President and Governor to authorise the withdrawal of moneys from the Consolidated Revenue Fund of the Federation or State for the purpose of meeting expenditure necessary to carry on the services of the government for a period not exceeding six months or until the coming into operation of the Law, whichever is the earlier. This happens if the Appropriation Bill in respect of any financial year was not passed into Law by the beginning of the financial year. This provision is a snag; it gives room for unnecessary delays in both budget presentation and the passage by the legislature and often abused.

The budget is an embodiment of money bills. In the same vein, an Appropriation Bill contains the estimated financial requirements for the expenditure on revenue account on all the services of the government for the succeeding financial year. The details of these financial requirements are contained in the estimates, which are presented at the same time (Standing Orders, 64:1). After

presentation of the Annual Budget Estimates (Appropriation Bill) for each financial year, the Standing Orders of the State House of Assembly for example, provides that the legislature:

- Debate the Appropriation Bill, focusing at inception on the financial and economic state of Enugu State and the Government's financial policy (Section 64:3).
- Deliberate on the bill in the public when the bill is committed to the Committee of the Whole House, called the "Committee of Supply" (Section 64:5).
- Move an amendment to reduce or increase the sum to be allotted for any Head of Expenditure or in respect of any such sub-head included in the Head or of any item included in the sub-head (Section 64:10).

The Standing Orders, Section 64, subsections 11-19, further list other rules governing the procedures for such increase or decrease. Consequently, the Public Accounts Committee plays oversight roles on how the executive complies with Appropriation Law passed by the legislature and have the powers to:

- Examine the accounts showing the appropriation of the sums granted by the House to meet the public expenditure, together with the auditor's reports thereon. For the purpose, the committee has power to send for persons, papers, and records, to report from time to time to the House and to sit notwithstanding any adjournment of the House (Standing Orders, 66:1).
- Examine any accounts or reports of statutory corporations and boards after they have been laid on the Table of the House, and to report thereon from time to time, to the House and to sit notwithstanding any adjournment of the House (Standing Orders, 66:2).

Based on the foregoing, the Standing Orders additionally empower the House to modify or amend the budget as presented by the executive. Apart from that, the constitution also provides that by two-third majority votes of its members, it override the veto of the Governor, in any events of disagreement or stalemate on decisions. Similar provisions apply to the federal legislature. By subjecting every line item in the budget document to thorough scrutiny, the legislature gets to understand the entire budget proposal in a fiscal year, the comparative advantage of the projects listed for implementation, the cost implications, and the overall economic values to the society.

For this purpose, budget constitutes two sharply contrasted components – the recurrent and capital budgets and every budget defense conducted by the House committees focuses on both components. The recurrent budget items comprise emoluments, service charges, administrative costs, bills on training/manpower development, etc. On the other hand, capital budget components encompass physical infrastructure projects like roads, housing development,

transportation facilities, education facilities, health facilities, water facilities, electrification facilities, and agricultural equipments, etc.

Each MDA is obligated to defend its budget estimates before the different supervising House Committees and to respond to some questions and provide necessary clarifications to guide the decisions of the committee on fund allocation. The questions usually posed by the House committee members to the executive during budget defence, simply aim at ascertaining the performance level of the previous budget in relation to funds appropriated and expended on project implementation and how the new budget estimates will be funded. The essence has always been to know which project was completed or not completed, and underscore the level of outstanding projects marked for carryover to the next budget circle. The evaluation of the previous budget places the components of each current budget estimates and the funding in proper perspective for legislative consideration.

Through budget defense, both the executive and the bureaucracy explains their budget estimates and the implementation guidelines that guarantee prudent management of public funds when allocated for the listed projects. It further serves as a medium by which the legislators identify key government budget thrusts, and unveils incidences of project duplication in the budget. It also helps to spot where there is fraudulent allocation of funds to fictitious projects, identify which area of the budgets that is prone to corruption and other criminal tendencies. These become possible with effective budget defence conducted for the MDAs by the House Committees.

Against the foregoing backdrop, it is the responsibility of the legislators to use budget defence to place the priorities of the Federation or State accordingly, detect reckless budgetary provisions, prevent waste of public funds by the executive and live above board during oversight of the budget implementation. The exercise of this power involves interplay of personnel from varied backgrounds, exposure and experience; therefore, the House makes significant input when the legislators are experienced and knowledgeable to understand the intricacies of accounting principles, usually espoused in the budget documents. Unfortunately, the common practice in Nigeria is situations whereby a compromise between the legislature and executive reduces budget defense to mere ritual, without attaching deserving attention to the process because of personal gains. The reluctance of MDA's officials to honour invitation by House committees for the defense of their proposed budget summarizes the gross failure of the legislature to invoke their powers and bring the culprits to book.

Oversight Visits to Project Sites and MDAs

The role of legislature is to approve the budget and monitor the implementation. It entails visiting the project sites and MDAs, to inspect ongoing works and certify that the executive is implementing the budget as contained in the Appropriation Act/Law. The various House

Committees by law is required to do oversight visits. The visit usually intends to certify projects awarded by government to contractors and thereafter, the committees verify the level of the project implementation. It is only by oversight visits that the House ascertains whether there is compliance with the provisions of the Appropriation Law or not and whether the executive implements the budget and provides the projects and services in the quality and quantity approved by the legislature.

Generally, it ensures that there is no mismanagement of projects approved for implementation in the budget and cash backed. The executive predicates the implementation of every budget on the existing law and guidelines. In the case of Enugu State for example, the Enugu State House of Assembly passed the Public Procurement Bill into law (PPL) in 2010, to provide the bases for regulating procurement process and ensure best international practices in quality and prices. The federal government also observes the same tradition and the whole essence is to enable the legislature detects non-compliance with the budget laws by the executive when it maintains regular oversight visits to project sites and the MDAs.

However, there is abysmal failure in oversight visits to project sites by many House committees, otherwise, the level of infrastructural decay and delivery of poor quality projects by contractors would not be too common in the country. It is a common knowledge that suppliers deliver poor quality or refurbished equipments or materials in the places of new ones specified in the "Purchase Order Papers". Failure of oversight visits either by complicity of the House committees or negligence on accounts of lack of experience on the fundamentals of project implementation mechanism or incapacity associated with personal deficiency to cope in the task, pave way for shortcuts to project implementation. Other times, it manifests in huge connivance among the executive, legislature and concerned contractor. In this regard, many oversight reports are scarcely found, even when the status of the project elicits public condemnation and outrage. Therefore, the legislature has lent itself to executive manipulation that crystallizes in corruption in which both lose confidence of the public.

Reports on Oversight Visits by the House Committees

The report on oversight visits is a detailed written record of the House committee on the project sites or MDAs visited. The Clerk of each House Committee constitutes part of the oversight team and provides secretarial services to the committee. The clerk is responsible for developing a report from the records taken at the oversight visits. The Committee Chairman or any member so designated subsequently presents the reports to the House. An ideal oversight reports should contain the name of specific area visited (whether project site or MDAs), the name of the contractor handling the project site or head of the MDAs visited, and the level of funds released so far to the contractor or MDAs compared to the level of work done since commencement of the budget circle. It should further provides information about the opinion of the contractor or MDAs on project funding, the challenges confronting project implementation, the views of the

committee on the statuses of project sites or MDAs visited, the interim decisions it took, and the recommendations to be submitted to the Committee of the Whole.

The foregoing elements form a composite report, which committees present to the House for consideration and deposit copies with the Clerk. In developed political systems, the House has standard and measurable format for writing reports on oversight visits, which the Clerks of the committee adopts. Such report format helps to avoid omission of facts that can guide the legislature in taking decision on important matters. The office of the Clerk of the House keeps every report of oversight visits presented, debated and adopted by the House as a working paper. In the case of Enugu State, the Standing Orders of the State House (2012:5), Section 7, subsection 6, provides that:

The Clerk shall be responsible for the custody of the votes, records, bills and other documents laid before the House, which shall be open to inspection by Members of the House and other persons under such arrangements as may be sanctioned by Mr. Speaker.

Either the constitution or the Standing Orders does not permit the House committee to withhold reports on oversight visits or other official documents, which denies the House access to information on the conduct of oversight at any material time. In all ramifications, the House treats the reports as official documents and not personal property of a legislator. Nigerian legislatures haphazardly observe these basic rules. Most of the State legislatures do not keep good records of their activities on oversight. They embark on oversight for economic reasons, to lure contractors to pay tithes and have their project spared from any indictment or inciting reports. It is a big minus for legislative efficiency.

Investigation/Public Hearing

Sections 88 & 89, and 128 & 129 of the 1999 constitution (as amended) and the Standing Orders, section 46 empowers the National and State Assemblies to conduct investigation and public hearing through its committees on a range of issues (i.e. Proposed Bills and Public Petitions). They also empower “any committee to which a bill is committed to invite members of the public to testify and entertain representations from any interested parties”. The aim is to get information about a subject matter or issues brought to enforce an individual, group or public interests. In this respect, the legislature has not fared better and it has shown damning consequences.

Many reports of investigations and public hearing, both at the federal and state levels have remained concealed without any disclosure of the findings. Some critical stakeholders in Nigerian projects seem to be blaming the worsening crisis in Nigeria on the lacklustre attitude of either the executive or House committees to release reports of certain investigations or public hearing conducted on some national issues. The power sector investigation as well as several

public hearings on insecurity, constitution review, restructuring dilemma and human rights abuses, etc, has never seen the light of the day. The incidences of such widespread failure because of vested personal or group interests, is a big minus for legislative efficiency.

Invitation/Summon for Questioning

Question period is the most common oversight tool and found in parliamentary and semi-presidential but not in presidential systems (Estafania et al, 2016). Legislators can ask questions orally or present it in writing. Written questions not debated in parliament require written answers. In question period, the executive is questioned by a Member of Parliament on facts such as the correctness of information received by government in taking a decision, whether the government plans to share this information with legislature, and whether the government has undertaken or is willing to undertake a specific course of action. In recent times, it includes to obtain information on reasons and motivations behind a particular government decision. During the question period, oral questions asked to the government and deemed 'urgent', require a speedy government response.

This technique or tool is commonly used but there are several occasions where the executive rebuffs such invitation by the legislature and in some instances, turn to invite even legislators for questioning. This was a frequent occurrence between the National Assembly and the Nigerian Police. Many MDAs officials rarely honour summons, even at threats point and some of those who honour such invitation or summon pose as though they owe the legislature no explanation about their actions and or inactions in office. The uncompromising attitudes find expression in a cult-like big boy's politics that characterize the mentality of Nigeria governing elite class. Even at that, it remains a big minus for legislative efficiency and ridicules the notion of its independence and oversight powers over the executive arm.

Motions and Resolutions

Legislatures employ two types of motions during legislative sessions, (Estafania et al, 2016):

1. **Motions for debate** – Legislators use motions for debate to scrutinize implementation of government policies and activities.
2. **Motions of censure** – Legislators use motions of censure, to censure the government as a whole or the head of the government. They can have a wide range of consequences. Some presidential countries such as Burundi used motions of censure only for record without any substantive consequence. In other countries, such as Liberia, they can lead to the dismissal of the head of government. In Nigeria, censure does not easily influence the mindset of the government, if understood as a ploy to cast aspersion on the executive by the opposition.
3. **Resolution**– It is a part of oversight tools, made in the Parliament and represents unanimous decisions taken on an issue after conducting public hearing or debate on a

motion moved on the floor of the House. The House makes a resolution as its position. The intendment is usually to ensure the enforcement or compliance with the resolution or order. It is obligatory on the institution and whomever in whose instance the resolution emanates, to obey the desired action, plans and programme.

However, motions and resolution appear as mere rhetoric in Nigeria especially in the relationship between the legislature and executive. It makes little impact on the executive actions or inactions and the outcome has always ended in noisy debates on the floor of the House or in the pages of newspapers. No legal proceeding has ever been initiated to challenge noncompliance with the subjects of such motions or the consequent resolutions, and it spells doom for legislative efficiency in Nigeria.

WEAKNESS OF OVERSIGHT TOOLS TO ENFORCE EXECUTIVE ACCOUNTABILITY

The foregoing discussions suggest something in the negative. Aligning with this negativity is the opinion canvassed by Pelizzo and Stapenhurst (2004) in a study entitled, “Tools for Legislative Oversight: An Empirical Investigation”. It argue that despite the availability of the necessary tools for legislative oversight (as highlighted and x-rayed above), applying the techniques have remained serious challenge to developing political systems as the executive branch disregard their enforcement. Thus, in several instances, the belligerent attitudes of the executive often open frontiers for unwarranted confrontation between it and the legislature. Stapenhurst, Kerry & Oladeji (2016) use a case of the Nigerian National Assembly to allude to the foregoing assumptions, thus contending that:

The Nigerian National Assembly possesses the tools and constitutional powers to undertake oversight; what it lacks so far is the political will of National Assembly representatives and senators to use these tools and powers effectively.

The lack of political will emanates from a number of factors that connect intrinsically to the nature of politics played in this country. It recognizes the importance of political patronage, materialism, ethno-religious sentiment, party loyalty and the thieving culture among public officials. The call to national duty appears insignificant when these factors offer alternative platform for consideration. It remains lopsided power relationship between the legislature and executive, providing fertile grounds for executive to flout legislative enactments and behaves as if it does not matter. Contrarily, legislative oversight ought to mitigate the syndrome if applied in conformity with constitutional prescriptions.

The operation of government is better understood from the lenses of legislative oversight tools and of course, the way it is effectively applied, within the confines of legal provisions and norms of customary practice, to ensure full control over government activities and thereby safeguard

public interests. Experience of most legislatures in developing countries suggests that the use of these mechanisms to achieve the ultimate goal of good governance has been an uphill task. The question is, “In what ways do the use of oversight tools affect executive policies and programmes? The answers to the question, which tacitly embedded or implied in the foregoing discussions of the respective tools, clearly buttress their significance in a democratic government and in furtherance, demonstrate the consequences of their dysfunctions or inability to use them effectively for the purposes intended. These important roles, which are incumbent on legislative institution in a democratic system, are feasible when the legislature apply oversight tools effectively. It is by so doing that the executive becomes conscious of its limitations, play by the rules and purge itself of any form of corrupt tendency, associated with failure to account for its actions and inactions in the course of governance.

CONCLUSION AND RECOMMENDATIONS

Firstly, the essence of oversight tools for the use of the House committee is to ensure effective supervision of executive activities, particularly in the areas of policy implementation, which budget is inclusive. It is clear that lack of adequate knowledge about the application of the oversight tools remains a big challenge. In other words, the legislature appears not to have sufficient time to scrutinize the budget document presented by the executive. Fair knowledge of the budget components provides the necessary insight, which the House needed to effect allocation of funds to the MDAs and thereafter monitor the implementation through effective oversight. This is because the oversight of policy implementation is the most crucial area that requires the attention of the legislators, to keep the executive in proper checks, prevent power abuse and mismanagement of public funds.

On that note, there is need for effective training and retraining of legislators to develop the requisite human capital and skills needed to undertake effective application of oversight tools in monitoring executive activities. Many of the legislators do not know the intricacies of the budget process and it thus means that the training should primarily focus on imparting in them the necessary skills that promote proper understanding of budget technicalities for easy follow up actions during implementation. The emphasis of the training programme should dwell on legislative matters to facilitate adequate manpower development and augment the capacity of the legislative institution in the performance of the emergent functions vested on it by constitutional democracy. With requisite skill and knowledge on the application of oversight tools, the legislature will cease to be rubberstamp.

The training will facilitate career prospects for the legislators and reduce the circulation of mediocre in the legislative chamber that play second fiddle in the House when elected. It will also expose the legislators to competition for mastery of legislative skills and the use of oversight tools to engender corresponding benefits to the society. The training could take the forms of exchange programme where legislators from Nigeria go to legislative assembly of other

countries practicing similar systems of government to learn oversight process and the omnibus functions of the legislature. It enhances exchange of ideas and steady increase in the capacity, exposure and productivity of the legislators.

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