



AN EXAMINATION OF LEGISLATIVE POWERS UNDER 1999 CONSTITUTION

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Abstract

This paper reviews the powers of the legislature under the 1999 Constitution of the Federal Republic of Nigeria. It discusses the scope of the legislative powers and the composition of the National Assembly. It examines the specific functions of the Legislature under the Constitution as well as their limitations. This paper concludes with a recommendation that the 1999 Constitution should be amended to transfer some of the items under the exclusive legislative list to the concurrent legislative list to enable the State Houses of Assembly to legislate on those matters which affect their people directly instead of waiting for the National Assembly to do so. The research methodology applied was purely doctrinal in nature because it involved the use of primary and secondary sources of information.

Keywords: Law, National Assembly, Legislature, legislative council, Federalism, legislative powers, Division of power Legislature, Constitution, Democracy, House of Senate, and House of Representatives.

1.0 Introduction

Law can be defined as the act of parliament at the State house of assembly National assembly. It is the body of rules and regulations made by the legislative body in assembly to govern the modus operandi of the people living in a state for peaceful co-existence¹. According to Oliver Wendell Holmes, law is what the judges in Massachusetts say in the Court room and nothing more pretentious is what the law is. In consonance to John Austin, law is a command which is made by the sovereign been for an inferior being which must be obeyed, and it is always backed by sanctions². There are three arms of government based on the principle of separation of power, namely: Legislature, Executive and Judiciary. In law making process, legislative arm of government is the body at the elms of the affairs.

The term 'legislative powers' can be defined as the law-making powers of a legislative body, whose functions include the powers to make, alter, amend and repeal laws. Legislation means the formulation of law by the appropriate organ of the State; in such a manner that the actual words used are part of the law: the words not only contain the law, but in a sense, they constitute the law. In essence, the legislature has the powers to make laws and such powers is reposed exclusively in such body though it may delegate rules making and regulatory powers to departments in the executive branch. It may not however, delegate its law-making powers. According to *Maxwell Gidado*, the legislature by its functions is the bulwark of modern-day government. This is because the working of the other organs of

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¹ C C Wigwe, *Jurisprudence and Legal Theory* (Readwise Publishers Accra Ghana, 2011)3.

² n1.



government, i.e., the Judiciary and the executive and the activities of the other entities in the state are moderated and even controlled by the legislature.

2.0 The Legislative Council

The root of this council can be traced to the British Settlement Act of 1843 which enabled the British government to establish a crown colony system of government in Nigeria. The resultant administrative structure, which was referred to as “the Settlement of Lagos” was headed by a governor, who was aided by ten men advisory council.

Those ten men advisory body was later renamed the “legislative council” and commissioned in March 1862. Hence, the legislative council became the first semblance of a modern legislature in Nigeria or the forerunner to our official law-making bodies.

Lagos Colony possessed a distinguished number of educated Africans and Nigerians who could understand public policy and in turn, contribute their quota towards good governance. In appreciation of this situation, African unofficial representation was introduced for the first time in the Lagos Legislative Council in 1872.

The amalgamation of 1906 and 1914 were administered under the legislative competence and jurisdiction of the Legislative Council until the emergence of the Nigerian Council in 1914.

3.0 The Scope of Legislative Powers Under The 1999 Constitution

According to section 47 of Constitution Federal Republic of Nigeria which stated thus, “The legislative powers of the Federal Republic of Nigeria is vested in the National Assembly, which consists of the Senate and House of Representatives,³ while the legislative powers of a State of the federation is vested in the House of Assembly of the State. The constitution provides that the National assembly shall have powers to make laws for peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in part 1 of the Second Schedule to this constitution⁴. Exclusive legislative list covers matters over which only the National Assembly can legislate upon while both the National and State assemblies can legislate on items on the concurrent list. These matters includes accounts of the government of the Federation; Arms, ammunition and explosives; aviation including airports, safety of aircraft and carriage of passengers and goods by air; Banks, banking, bills of exchange and Promissory notes, customs and excise Duties, diplomatic, consular and Trade representation, Exchange control, external affairs, Insurance, Maritime, shipping and Navigation, Patents, trademarks, Railways Stamp duties and any matter incidental or supplementary to any matter mentioned in the list. The State House of Assembly cannot legislate on any matter contained in the Exclusive legislative list, if it does, the law will be declared null and void and of no effect whatsoever⁵ The Constitution clearly reserves the Exclusive Legislative list to the National Assembly⁶ The National Assembly is also empowered to legislate on matters contained in the Concurrent Legislative list set out in the 1st column of Part II of the 2nd Schedule to the Constitution

³ CFRN 1999 as Amended s 47.

⁴ CFRN 1999 as Amended s 4(2).

⁵ Amucheazi and Moneke, *Constitutional and Administrative Law* (. 26

⁶ CFRN 1999 as Amended s 4(3).

to the extent prescribed in the 2nd column opposite thereto, or any other matter with respect to which it is empowered to make laws in accordance with the provisions of the constitution⁷. The Concurrent legislative list contains a list of thirty items stating the extent of Federal and State legislative powers.

Under the doctrine of '*covering the field*', where a matter contained in the Concurrent legislative list has been legislated upon by the National Assembly, and a legislation by a state house of Assembly is inconsistent with the legislation of the National Assembly, such legislation by the House of Assembly will to the extent of its inconsistency with that of the National Assembly be void.⁸ According to Fatai Williams, JSC, in *AG Ogun State v AG Federation*⁹: It is of course, settled law, based on the doctrine of covering the field... that Parliament enacts a law in respect of any matter in which both Parliament and a regional legislature are empowered to make laws, and a Regional legislature enacts an identical law on the same subject matter, the law made by the Parliament shall prevail. That made by the regional legislature shall become irrelevant and therefore impliedly repealed.

3.0 Composition of The National Assembly

The legislative powers of the Federal government is vested in a bicameral legislature: the National Assembly made up of the Senate and the House of Representatives. Section 47 of the 1999 constitution establishes the National Assembly thus: There shall be a National Assembly for the Federation, which shall consist of a Senate and a House of Representatives.

a. The Senate

The Senate is the upper house of the legislature. It is composed of three senators from each state of the Federation and one from the Federal Capital Territory¹⁰. Representation of the States in the Senate is based on the principle of equality of the states¹¹. Thus, each of the ¹² states have three Senators each representing it in the Senate. These Senators are elected by popular vote and usually stay in office for 4 years.¹³ In respect of representation in the Senate, section 48 of the 1999 constitution provides thus: There shall be three Senators from each state and one from the Federal Capital territory, Abuja. The Senate is headed by a President and a Deputy President who are elected by members of the Senate from among themselves.¹⁴ To become a member of the Senate, a person must be a citizen of Nigeria and must have attained the age of thirty-five years. He must have a minimum educational qualification of secondary school certificate or its equivalent and must be a member of a registered political party and is sponsored by that party.¹⁵

b. The House of Representatives

The House of Representatives is the Lower House of the National Assembly¹⁶. The House of Representatives has 360 members representing constituencies of almost equal numbers or population

⁷ CFRN 1999 as Amended s 4(4) (a) and (b).

⁸ CFRN 1999 as Amended s 4(5).

⁹ (1982) 1-2, SC 13: (1982) 3, NCNR 166: *Adamolekun v the Council of the University of Ibadan* (1968) NMLR 253.

¹⁰ CFRN 1999 as Amended s 48.

¹¹ E Maleni, *The Nigerian Constitutional Law*, (3rd Lagos, Princeton Publishing co, 2015) 192.

¹² CFRN 1999 as Amended s 64(1).

¹³ CFRN 1999 as Amended s 50(1).

¹⁴ CFRN 1999 as Amended s 65 (1).

¹⁵ CFRN 1999 as Amended s 65(2) (a) and (b).

¹⁶ (n11).

as far as possible¹⁷ each member is elected for a four-year term of office. Each member is elected to represent one of the three sixty Federal constituencies into which Nigeria is presently divided. A constituency must not fall within more than one state. Section 49 of the 1949 constitution provides that: The House of Representatives shall consist of three hundred- and sixty-members representing constituencies of nearly equal population as far as possible, provided that no constituency shall fall within more than one state. The House of Representatives is headed by a Speaker and Deputy Speaker who are elected by members of the House from among themselves¹⁸. To become a member of the House of Representatives, a person must be a citizen of Nigeria and has attained the age of thirty years¹⁹. The person must have a minimum education of secondary school certificate or its equivalent. He must be a member of a political party and is sponsored by that party²⁰.

4.0 Constitutional Legislative Powers Under 1999 Constitution

The constitution confers the legislative powers of the federation on the National Assembly. The legislative powers of the component states are vested on the state houses of assembly.

In the performance of these roles, the National Assembly and the state houses of assembly perform these constitutional duties.

Collectively, the functions of any legislature are dependent on the system of separation of powers adopted and the specific powers allocated by the constitution to the legislature. Under the 1999 Constitution, there are about one hundred and fourteen (114) functions exercisable by the legislature in Nigeria. Some of the functions of the legislature²¹ includes but not limited to the followings:

- (a) Law making Function/power
- (b) Ratification of executive appointments by the president is through section 147(2)
- (c) Approval of public spending
- (d) Impeachment check on the chief executive
- (e) Impeachment/removal function
- (f) Check against principal judicial officers
- (g) Adoption and ratification of treaties
- (h) Power to amend the constitution
- (i) Representative and electoral role
- (j) Authorizes taxation and fiscal policies
- (k) Passing of budget
- (l) The use of armed forces and the declaration of state of emergency
- (m) Oversight supervision and the administrative control
- (n) Oversight of the executive
- (o) Approval and removal function
- (p) Power to conduct investigations

¹⁷K M Mowoe, *Constitutional Law in Nigeria*, (Lagos, Malt house Press Limited, 2008) 93.

¹⁸CFRN 1999 as Amended s 50(1)(b).

¹⁹CFRN 1999 as Amended s 65(1)(b).

²⁰ CFRN 1999 as Amended s 65(2)(a) and (b).

²¹ G O. Arishe, *Developing Effective Legislature: The country specific approach to accessing legislative power*, (Benin, Paclered Press Limited, 2017) 178.

- (q) Representation
- (r) Deliberative functions
- (s) Custodian of National Finance
- (t) Control over Executives
- (u) Constituent Functions
- (v) Judicial functions
- (w) Ventilation of grievances
- (x) Miscellaneous functions
- (y) Some more specific functions of the Nigeria National assembly.
- (z) Power over public funds.

The legislative powers will be discussed into details one after the other as follows:

a. Lawmaking Function/Power

Legislative or Law-Making Functions: The first and foremost function of a legislature is to legislate i.e. To make laws. In ancient times, laws used to be either derived from customs, traditions, and religious scriptures, or were issued by the kings as their commands. However, in the contemporary era of democracy, legislature is the chief source of law. It is the legislature which formulates the will of the state into laws and gives it a legal character. Legislature transforms the demands of the people into authoritative laws/statutes.

The primary function of the National Assembly and one from which it takes its distinctive character in governmental structure is lawmaking. The National Assembly is the repository of the entire legislative powers of the Federal government²². The National Assembly has powers under the Constitution to make laws for peace, order and good government of the country, or state, or any part thereof with respect to any matter within its legislative competence as stipulated in the legislative list in the Constitution *AG Bendel v AG of Federation*²³. Thus section 4(2) of the Constitution provides that: The National Assembly shall have power to make law for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the exclusive legislative list set out in Part I of the Second schedule to this Constitution. Therefore, in the exercise of its powers to make laws in relation to the sixty-eight matters specified under the exclusive legislative list, the National Assembly must be motivated by the desire for peace, order and good government of Nigeria²⁴.

The National Assembly has powers to make laws for the federation; however, the Court has the power to strike down any of the laws that, in its opinion, conflicts with the Constitution. Known as “judicial review”, this is the power of a court to examine the acts of other branches of government, lower courts, public or administrative authorities and uphold them or invalidate them as may be necessary. 109 Under Section 4(8) of the Constitution the legislature; the National Assembly or the State House of Assembly, is subject to the jurisdiction of the Courts and judicial tribunals established by law. As such, the legislature must not enact any law that directly or indirectly purports to *oust* the jurisdiction of a court, or a tribunal established by law. In *Adikwu v Federal House of Representatives*, the Court noted that

²²CFRN 1999 as Amended s 4.

²³*AG Bendel v AG Federation & 22 Ors.* (1982) All NLR 85 SC.

²⁴(n17) 5 p 103.

section 4(8) provides for the control of the legislative powers by the Courts. Therefore, the courts can declare a law passed by the legislature invalid if it, in its opinion, conflicts with the constitution.

b. Ratification of Executive Appointments by the President is through section 147 (2).

The above provision provides that:

Any appointment to the office of minister of the government of the federation shall, if the nomination of any person to such office is confirmed by the senate, be made by the president.

This power, as conferred by section 154 (1)²⁵ of the constitution, also extends to the appointment of chairman and members (except ex-officio) of federal commissions and councils and other bodies (enumerated in section 153(1). Confirmation of an ambassadorial appointment is contained in section 171(4)²⁶. Equally, the appointments of the Chief justice of Nigeria and the justices of the Supreme Court, are subject to confirmation by the Senate (section 231(1)-(2))²⁷.

The Senate must also confirm the appointment of the president of Court of Appeal (section 238(1))²⁸ and that of the chief judge of the Federal High Court (section 250(1))²⁹. The appointment of these judicial officers shall be made by the president on the recommendation of the National Judicial Council. Likewise, each state house of assembly is vested with the power to confirm the governor's appointees for the posts of commissioner (section 192(2))³⁰. By virtue of section 198 of the constitution, the state houses of assembly also confirm the appointments of chairmen and members of bodies or commission listed in section 197 (1)³¹.

About the judiciary, the state house of assembly is empowered to confirm the appointment of the chief judge of a state (section 271 (1))³² and the president of the Customary Court of Appeal (section 281(1))³³. These judicial appointments are also made by the state governor on the recommendation of the National Judicial Council.

b. Approval Of Public Spending

Nigeria subscribes to the general democratic principle that public monies cannot be raised or spent without legislative (representative) approval.

Hence, section 80(3)-(4)³⁴ of the constitution clearly states that:

²⁵CFRN 1999 as Amended s 154(1).

²⁶ CFRN 1999 as Amended s 171(4).

²⁷ CFRN 1999 as Amended s 231(1)(2).

²⁸CFRN 1999 as Amended s 238(1).

²⁹CFRN 1999 as Amended s 250(1).

³⁰ CFRN 1999 as Amended s 192(2).

³¹ CFRN 1999 as Amended s 197(1).

³² CFRN 1999 as Amended s 271(1).

³³ CFRN 1999 as Amended s 281(1).

³⁴ CFRN 1999 as Amended s 80(3)(4).

(3) Non money shall be withdrawn from any public fund of the federation, other than the consolidated revenue fund of the federation, unless the issue of this money has been authorized by an Act of the National Assembly.

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

The state houses of assembly derive their jurisdiction on expenditure similar to that of the National Assembly, by provisions of section 120(3)- (4)³⁵.

The enviable legislative powers in this sphere also known as the “power of the purse”, also extends to the approval of Appropriation Bill (annual budget) and supplementary as ordained by section 81(1) – (2)³⁶ for the National assembly and 121(1)-(2)³⁷ for the state houses of assembly.

4. Impeachment Check on The Chief Executive

The 1999 Constitution provides formidable checks and balances to the actions of the executive arm of government through the impeachment instrument to be used by its legislature.

The National Assembly derives this power to remove the president or the vice-president from section 143³⁸ of the 1999 Constitution. A state house of assembly can exercise this power against the governor or the deputy governor of the state by virtue of section 188³⁹.

5. Impeachment/Removal Function

The Constitution empowers the National Assembly to impeach⁴⁰ elected officers of both the Executive and legislative arms of government, such as the President and Vice President of Nigeria, Senate President, speaker of the House of Representative, and other elected officers of the National Assembly, Governor and Deputy Governor of a State, elected officers of the state House of Assembly, and also elected executive and legislative officers of a local government Council⁴¹. Section 143 of the 1999 Constitution provides for the impeachment of the President or Vice president from office, while section 188 of the Constitution provides for the removal of the Governor or Deputy Governor of a state from office, and so forth *Inakoju v Adeleke*⁴². The legislature’s power of impeachment is one of the constitutionally guaranteed ways of controlling executive excesses.

6. Checks Against Principal Judicial Officers

By virtue of section 292(1) (a) (i)-(ii)⁴³ of the 1999 Constitution, the Senate and the state house of assembly play a vital role in the removal of principle judicial officers from office.

³⁵ CFRN 1999 as Amended s 120(3)(4).

³⁶ CFRN 1999 as Amended s 81(1)(2).

³⁷ CFRN 1999 as Amended s 121(1)(2).

³⁸ CFRN 1999 as Amended s 143.

³⁹ CFRN 1999 as Amended s 188.

⁴⁰ (n21)5 p 226.

⁴¹ (n16)4 P 284.

⁴² *Inakoju v Adeleke* (2007) 4 NWLR (pt. 1025) 423.

⁴³ CFRN 1999 as Amended s 292(1)(a)(i)(ii).



At the federal level, the president acts based on two-thirds majority votes of the Senate to affect the removal of such officers. At the state level, a governor equally requires a two-thirds majority vote of the house of assembly to affect such removal. This provision only applies to the heads of the various cadres of courts. The other categories of judicial officers are subject to the recommendation of the National Judicial Council (NJC) to the effect their removal as ordained by section 292(1) (ii) (b)⁴⁴.

7. Adoption and Ratification Of Treaties

The National Assembly shares a constitutional responsibility with the president of the country in the actualization of international treaties or conventions entered by Nigeria with other foreign states or international organizations. Nigeria operates the international law principle of incorporation of treaties. International agreements must therefore be domesticated or enacted as local laws before they can be enforceable and binding. The provision of section 12(1) of the Constitution highlights this principle. No treaty between the federations any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly⁴⁵.

8. Power to Amend the Constitution

Section 9 of the Constitution gives the National Assembly the power to alter any part of the 1999 Constitution. This however requires the support, by way of resolution, of the House of Assembly of two-third of all States of the Federation⁴⁶.

9. Representative and Electoral Role

The elected representatives of the people who constitute the assembly, legislature, or parliament, mirror an important index of democratic government. Hence, the popular slogan that “power belongs to the people”. The direct election and franchise provision of section 177(1)-(2)⁴⁷ and section 117(1)-(2)⁴⁸ of the constitution bear testimony to this point.

Furthermore, a simple majority of a joint session of the National Assembly, as required by section 136(1)⁴⁹, can approve the appointment of the vice-president as president, in a situation where the president dies or is unable to be sworn into office.

In this situation, the vice-president-elect assumes the offices of the president. However, the consequent nominee for the vice-presidency must be subjected to the vote of a joint session of the National Assembly. In the state, a similar provision in section 181(1)⁵⁰ takes care of the deputy governor’s assumption of the governorship position under the same circumstances.

10. Authorizes Taxation and Fiscal Policies

The Constitution vide section 163 enjoins the National Assembly to ensure equitable distribution of the national wealth through taxation policy.

⁴⁴CFRN 1999 as Amended s 292(1)(ii)(b).

⁴⁵ CFRN 1999 as Amended s 12(1).

⁴⁶ CFRN 1999 as Amended s 9.

⁴⁷ CFRN 1999 as Amended s 117(1)(2).

⁴⁸ CFRN 1999 as Amended s 117(1)(2).

⁴⁹ CFRN 1999 as Amended s 136(1).

⁵⁰ CFRN 1999 as Amended s 181(1).

This provision is aimed at the well-being of the citizenry from their mandate to collect taxes and distribute their tax revenue equitably. The National Assembly by the implication of the provision under item of the Exclusive List and item 7 of the Concurrent List can prescribe terms under which state governments are empowered to raise money through taxes.

11. Passing of Budget

This is the passing of the annual and supplementary budgets to finance the programs and activities of government. The passing of annual and supplementary budget is a function of legislature, as public funds cannot be spent without approval by the legislature. However, budget proposals for the spending of public money must come from the executive, which usually accommodates inputs from the other arms of government⁵¹.

12. The Use of The Armed Forces And The Declaration Of A State Of Emergency

In the spirit of collective responsibility, the constitution charges the National Assembly with maintaining and equipping the armed forces through its legislation. The constitutional authority for this power in section 217 (2)⁵². The 1999 Constitution also strictly subjects the power of the presidency to seek the consent of the National Assembly when deploying the armed forces domestically section 217(2) (c)⁵³.

Meanwhile, the president needs the support of both chambers of the National Assembly for the declaration of war between the federation and another country. In short, no member of the armed forces shall be deployed in combat duty outside the country without a prior approval of the Senate (section 5(4) (a)-(b)⁵⁴. Similarly, the consent of the National Assembly is a necessary condition for the president's declaration of a state of emergency (section 305)⁵⁵.

13. Oversight Supervision and the Administrative Control

Oversight Functions: The Legislature's oversight powers are contained in Sections 82-89⁵⁶ of the Nigerian constitution with regard to the National Assembly, and 120-128⁵⁷ with regard to the state Houses of Assembly, i.e., supervising the other arms of government to ensure that they implement government policies and programmes as contained in the Nigerian Annual Appropriation Act/Law of Government.

The legislature as society's watchdog plays a salient role in the supervision and control of the general administration of government. The legislature applies the method of committee hearing and investigation into the executives' branch operations. The legislature is invested with the power to conduct investigations into any matter over which it has the power to make laws; and also over the conduct of affairs of any person, authority, ministry or government department charged or intended to be charged with the responsibility for executing or administering laws enacted by the legislature, and

⁵¹n41(9) p.201

⁵² CFRN 1999 as Amended s 217(2).

⁵³ CFRN 1999 as Amended s 217(2)(c).

⁵⁴ CFRN 1999 as Amended s 5(4)(a)(b).

⁵⁵ CFRN 1999 as Amended s 305.

⁵⁶ CFRN 1999 as Amended s 82-89.

⁵⁷ CFRN 1999 as Amended s 120-128.

those disbursing or administering money appropriated by the legislature. This power for the National Assembly is vested in section 88 and that of the state house of assembly through section 128⁵⁸. The purpose of the legislative power of investigation or inquiry as stated in section 88(2) (b)⁵⁹ of the constitution is to expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.

14. Oversight of the Executive

Legislative oversight is defined as “the review, monitoring and supervision of government and public agencies, including the implementation of policy and legislation.”⁶⁰ Oversight function of the National Assembly is provided for under section 88 of the 1999 Constitution which empowers the legislature to carry out investigations within its competence to prevent and expose corruption, inefficiency or waste in the execution or administration of laws⁶¹.

Thus, from the wording of the Constitution, the National Assembly has independent powers to inquire into the workings of the government because with or without the cooperation of the executive arm of government because of the prominence given to the oversight responsibility of the National Assembly. For instance, Section 67(2) of the CFRN provides that:” A minister of the government of the federation shall attend either House of the National Assembly if invited to explain to the House the conduct of his ministry, and in particular when the affairs of that ministry are under discussion⁶².” Legislatures exercise oversight of the executive branch to ensure that policies agreed upon at the time they are passed into law are in fact implemented by the state. According to Gabriel O. Arishe: Oversight is an essential function for any democratic legislature because it ensures horizontal accountability of all other agencies of government to the one branch whose primary function is representation⁶³. To ensure effective discharge of its oversight functions, the National Assembly sets up committees to check government agencies with respect to applying the law to expenditure, disbursement of funds or as it may have to do with the rights and privileges of individuals and Acts passed by the National Assembly. There are no fewer than eighty-four committees in the House of Representatives while the Senate has at least fifty-seven committees carrying on this investigation. Each committee in either House consists of many members with each Senator or Member of the House of Representatives belonging to several committees at the same time.

15. Approval and Removal Functions

Approval or confirmation of appointments made by the President into important executive⁶⁴, judicial⁶⁵, Ambassadorial positions⁶⁶, and other public offices⁶⁷ and so forth is a function of the legislature⁶⁸. Confirmation of appointment is by the Senate at the Federal level, and by a State House of

⁵⁸ CFRN 1999 as Amended s 128.

⁵⁹ CFRN 1999 as Amended s 88(2)(b).

⁶⁰ Hironori Yamamoto, *Tools for Parliamentary Oversight* (Geneva: Inter-Parliamentary Union, 2007) p 9.

⁶¹ n59.

⁶² CFRN 1999 as Amended s 67(2).

⁶³ (n40)9 p.211.

⁶⁴ CFRN 1999 as Amended s 147(2).

⁶⁵ CFRN 1999 as Amended Ss 231, 238, 250, 256 and 261.

⁶⁶ CFRN 1999 as Amended s 171(4).

⁶⁷ CFRN 1999 as Amended s 154.

⁶⁸ (n51)12p.201.

Assembly at the State level. This is to prevent the President or Governor, from lopsidedness, mediocrity, favoritism, nepotism, tribalism, bribery, corruption, and so forth in making appointment into government or public offices. Lack of confirmation by the Senate nullifies appointment. The approval of legislature is also required by the executive for proclamation of a state of emergency⁶⁹, or declaration of war, deployment of the armed forces for combat⁷⁰ and so forth. In relation to removal of some public officers of the federation, such as the auditor-general, members of the various commissions, and heads of the various levels of courts at the federal level⁷¹, the president may remove them, acting on an address supported by two-thirds majority of the Senate requesting for removal for reasons of inability to perform the function of their office or misconduct, and in relation to the heads of court, also for contravention of the code of conduct⁷². Therefore, the input of the Legislature here is to act as a check and balance on the powers of the president.

16. Power to Conduct Investigations

The 1999 Constitution⁷³ confers on the National Assembly and the State Houses of Assembly the power to pass resolutions to direct or cause to be directed an investigation into : (a) Any matter or thing with respect to which it has power to make laws, (b) The conduct of affairs of any person, authority, ministry or government department charged, or intended to be charged with the duty of or responsibility for disbursing or administering moneys appropriated or to be appropriated by the National Assembly/House of Assembly. Therefore, under subsection (a) above, the National Assembly can direct investigation into any of the matters listed in the exclusive and concurrent legislative lists with respect to which it has the authority to make laws. This is so whether a law has already been made in relation to it⁷⁴. Generally, under this section, the legislature can investigate the affairs of members of the executive in relation to duties or responsibilities vested or intended to be vested on them under laws made or to be made by the National Assembly. According to Guobadia, “investigations can serve as a potent source of control over public funds by the legislature and properly used, can make all persons who deal directly with public funds aware that their conduct could be called into question at any time,” However, the power of legislative investigations is circumscribed to the extent permitted by section 88 (2), paragraph (b) of the CFRN1999 as amended which provides that, the powers are exercisable only for the purpose of enabling the National Assembly or House of Assembly to:

Make laws with respect to any matter within its legislative competence and correct any defects in existing laws; and expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it. The implication of the above provisions is that the National Assembly cannot conduct investigations into any matter outside the ambit of the provisions of section 88; otherwise, such conduct will be declared *ultra vires* the powers of the Assembly⁷⁵. In *Senate of the National Assembly & Ors. v. Tony Momoh*, while construing a similar section in the 1979 Constitution, the Court of Appeal held that section 82 of the 1979 constitution was not designed to enable the legislature usurp the general

⁶⁹CFRN 1999 as Amended s 305(2) and (6).

⁷⁰ CFRN 1999 as Amended s 5(5).

⁷¹ (n24)7 p.106

⁷² CFRN 1999 as Amended Ss 87, 157 and 292.

⁷³ CFRN 1999 as Amended Ss 88 and 128.

⁷⁴ n71 p 111.

⁷⁵N A Inegbedion & J O Odion. *Constitutional Law in Nigeria*, (2nd Edition. Benin Ambik Press: 2011) 186.



investigating functions of the executive nor the adjudicative functions of the judiciary. Any invitation by the legislature to any person outside the purpose defined by section 82 (2) of the Constitution was invalid. The Court went further to say that the legislative Houses can only invite members of the public when they want to gather facts for the purpose of enabling them make laws or amend existing laws in respect of any matter within their legislative competence or as witnesses in a properly constituted inquiry under section 82 (1)(b)⁷⁶.

17. Representation

Representation is one of the major functions of a democratic legislature. Indeed, it forms the fulcrum of other legislative functions. This means that each member of the legislature is representing the people of his constituency, while the Legislature as a body is representing the people of the country as a whole by watching over, upholding and protecting the welfare and interests of the people⁷⁷. According to Arishe, “the representative character of the National Assembly imbues her with the capacity to manage conflict and integrate the polity- since different shades of opinions and groups within the country make up the two chambers.⁷⁸” Thus, the Constitution provides that: The Senate shall consist of three senators from each state and one from the Federal Capital Territory, Abuja. Subject to the provisions of this constitution, the House of Representatives shall consist of three hundred- and sixty-members representing constituencies of nearly equal population as far as possible that no constituency shall fall within more than one state. While Senators represent electoral districts, members of the House of Representatives represent constituencies. Apart from catering to the interest of constituents, the legislator is also expected to be guardian of his constituency. Effective legislatures connect people to their government by giving them a place where their needs can be articulated. However, the members of the National Assembly must be accountable to their various constituencies; a failure on the part of a member of the National Assembly in this regard could lead to the invocation of the provision of the constitution on recall⁷⁹.

18. Power Over Public Funds

The National Assembly has power to make laws in relation to taxation of incomes, profits, and capital gains under item 59 of the exclusive legislative list, and authority to determine the spending of the public funds. Generally, all revenue or moneys raised or received by the federal government (except where it is for specific purpose) must be paid into a consolidated revenue fund of the federation. The Legislature plays a role as a watchdog over the expenditure of public funds. This is an aspect of checks and balances. According to Amucheazi and Moneke, if the Executive arm of government is left unchecked in the way and manner public funds are expended, chances are high that such funds will be misused, misappropriated, or out rightly siphoned. Section 80 of the 1999 constitution establishes the way public funds are to be expended. Sub-section (2) provides that: No moneys shall be withdrawn from the Consolidated Revenue Fund of the Federation except to meet expenditure that is charged upon the fund by this Constitution or where the issue of those money has been authorized by an appropriation Act, Supplementary Appropriation Act or an act passed in pursuance of S.81 of this Constitution. This

⁷⁶ CFRN s 82(1)(b).

⁷⁷(n68)14 p 200.

⁷⁸ (n63)14 p 201.

⁷⁹CFRN 1999 as Amended s 69.



means that every expenditure from the Consolidated Revenue fund must be sanctioned by an Act of the National Assembly.

The power of the National Assembly to control expenditure from the Consolidated Revenue fund is exercised to ensure prudent spending of public funds by the executive arm of government. Thus Section 80(3) of the constitution provides that: No moneys shall be withdrawn from any public fund of the Federation, other than the Consolidated Revenue fund of the Federation, unless the issue of those moneys has been authorized by an Act of the National Assembly. Additionally, “no money shall be withdrawn from the Consolidated Revenue Fund or any other public fund of the Federation except in the manner prescribed by the National Assembly.”

19. Deliberative Functions

To deliberate upon matters of national importance, public issues, problems and needs is an important function of a modern legislature. Through this function, the legislature reflects the public opinion over various issues. The debates held in the legislature have a great educative value for the people.

20. Custodian of National Finances:

A near universal rule is that “the legislature of the state is the custodian of the national purse.” It holds the purse of the nation and controls the finances. No money can be raised or spent by the executive without the approval of the legislature. Each year the executive has to prepare and get passed from the legislature the budget for the coming financial year. In the budget, the executive must place the account of the actual income and expenditure of the previous year and estimated income and expenditure for the New Year. Not only the legislature passes the budget but also it alone can approve the imposition, or repeal or collection of any tax whatsoever. Further, the legislature maintains a control over all financial transactions and expenditures incurred by the executive.

21. Control Over the Executive:

A modern legislature has the power to exercise control over the executive. In a parliamentary system of government, for all its actions, decisions, and policies, the executive is collectively responsible before the legislature. It is accountable before the legislature. The legislature has the power to remove the executive by passing a vote of no confidence or by rejecting a policy or budget or law of the executive.

The Prime Minister and all other ministers are essentially the members of the legislature. They are bound by the rules and procedures of the Parliament. In a Presidential form of government, like the one which is at work in the USA and in Nigeria currently, the legislature exercises some checks over the executive. It can appoint investigation committees to probe the functioning of government departments. By the use of its power to legislate and pass the budget, the legislature exercises a fair amount of control over the executive. Thus, whether a political system has a parliamentary system or a presidential system, the legislature exercises a control over the executive.

22. Constituent Functions:

In almost every state in many countries, it is the legislature which has the power to amend the constitution. For this purpose, the legislature has to pass special laws, called amendments, in accordance with the procedure laid down in the Constitution. In some states, the requirement is that the legislature must pass the amendment with two-thirds or three-fourths or an absolute majority of votes.



23. Judicial Functions:

It is customary to give some judicial power to the legislature. Usually, the legislature is assigned to act as a court of impeachment i.e., as an investigating court for trying high public officials on charges of treason, misdemeanor and high crimes and remove them from office. It also has the power to pass a resolution for the removal of Judges of the Supreme Court and of the High Court's on the ground of misbehavior or incapacity.

24. Ventilation of Grievances:

A legislature acts as the highest forum for ventilation of public grievances against the executive. Besides representing every interest and shade of opinion, the legislature acts as the national forum for expressing public opinion, public grievances and public aspirations. Parliamentary or house debates and discussions throw a flood light over various issues of public importance. Representation is the function of protecting the interest of the constituents or people represented by being their eyes, ears and voice in governance.

See the case of Earl of Oxford case where there was a controversy between the court of chancery and the court of common law where the case was resolved by the court of equity in favour of the plaintiff and which brought another grievances that the court of equity was usurping the power of the court of common law and the parliament resolved that whenever there is controversy between the court of chancery and the court of common law, the rule of equity will prevail and in a situation where the rule of equity cannot resolve the issue, hence both the court of chancery, common law court and the court of equity will refer the issue back to the parliament. Hence, in any jurisdiction there are four chambers even in England where the common law was originated, the four chambers include court of chancery, court of common law, court of equity and the parliament where the issue will be analyzed and finally the possible solution.

25. Miscellaneous Functions:

Some legislatures are assigned specific executive tasks. For example, the US Senate (Upper House of US Legislature) has the power to confirm or reject the major appointments made by the US President. Likewise, it enjoys the power to ratify or reject treaties made by the US President. Legislatures also perform the function of approving or rejecting or amending all the policies and plans made by the executive. In the US Constitution, the Congress (Legislature) enjoys the power to declare war. Thus, the legislative organs of the government play a very important and active role in the exercise of the sovereign power of the state. In fact, legislature is the legal sovereign in the State. It has the power to transform any decision of the state into a law. Legislature is the chief source of law. It is the mirror of national public opinion and the symbol of the power of the people.

26. Additional functions of the Nigerian National Assembly.

The Nigerian National Assembly has broad oversight functions as stated above and is empowered to establish committees of its members to scrutinize bills and the conduct of government officials. Since the restoration of democratic rule in 1999, the Assembly has been said to be a "learning process" that has witnessed the election and removal of several Presidents of the Senate, allegations of corruption, slow passage of private member's bills and the creation of ineffective committees to satisfy numerous interests.



National Assembly Complex despite a more than two-thirds majority control of the Assembly by the then ruling People's Democratic Party (PDP), the PDP government led by Dr. Goodluck Ebele Jonathan and the Assembly have been known more for their disagreements than for their cooperation. The Former President Goodluck Ebele Jonathan has been accused of been slow to implement policy. While the National Assembly has made strong and often popular efforts to assert its authority and independence against the executive, it is still viewed generally in a negative light by the media and many of the Nigerian people. The Assembly sits for a period of at most four years, after which time the President is required to dissolve it and call a new Assembly into session.

The Senate has the unique power to impeach judges and other high officials of the executive including the Federal Auditor-General and the members of the electoral and revenue commissions. This power is, however, subject to prior request by the President. The Senate also confirms the President's nomination of senior diplomats, members of the federal cabinet, federal judicial appointments, and independent federal commissions. Before any bill may become law, it must be agreed to by both the House representative and the Senate and receive the President's assent. Should the President delay or refuse assent (veto) the bill, the Assembly may pass the law by two-thirds of both chambers and overrule the veto and the President's consent will not be required. The present Assembly has not hidden its preparedness to overrule the executive where they disagree.

Constitutional Limitations on Legislative Power

Despite all the powers vested to the legislative arm of government as stated above, the constitution also expressly limits these powers, which as stated below.

(1) The power of legislative oversight over public funds with a view to exposing corruption is limited to where public funds are involved and does not extend to private enterprises or where the subject of the probe is outside its legislative competence or is not with a view to exposing corruption. Some scholars identify some other constitutional limitations on legislative oversight of the National Assembly. These include prohibition of inquiries into the private and personal life of an individual just to "expose for the sake of exposure", or acting outside its terms of reference as contained in the resolution published in Government Gazette or asking questions that are irrelevant to the subject-matter of investigation which has been described as "jurisdictional concept of pertinence" or convert itself into a "roving commission."

2. The President' vast power of patronage affects the relevance of the Legislature. The ability to reward friends and foes alike with state largess, including appointments to important and not so important (but still lucrative) public offices is a presidential prerogative. Nearly all open constitutional and statutory offices, including directorship and management posts in state owned corporations and agencies are filled by presidential appointment. While the approval of the legislature is usually required in the case of few offices, the President has ample patronage resources with which to secure legislative support for most of his nominations as well as legislative proposals.

3. The Constitutional allocation of authority to the President to modify an existing law 'as may be necessary to bring it into conformity with the provisions of this constitution' limits the lawmaking power of the Legislature. For instance, relying on this provision, President Olusegun Obasanjo repealed

the law setting up the Petroleum Trust Fund (PTF) and consequently, the Fund ceased to exist. The Senate kicked against this move by the president because no effort was made to follow the proper procedure for the repeal of that piece of legislation. Similarly, in furtherance of his Constitutional power, President Obasanjo enacted the Allocation of Revenue Modification Order 2002 on May 8, 2002.

4 The Constitution allows the president access to funds for running the government in default of appropriation for a period of six months or until legislative approval is given to the appropriation. The rationale for this provision is to cushion the effect of deadlock over the budget and avoid a possible government shutdown.

This provision *de facto* neutralizes legislative obstruction and significantly diminishes the legislatures bargaining power over the executive's budget proposal. Arishe notes that, "the practical effect of section 82 of the Constitution on the legislatures power over budget comes to the fore on every annual budget amended by the legislature since 1999 till date." This has consistently frustrated the legislature's work on the budget. While the face-off over the budget is on-going, the President continues withdrawals from the Consolidated Revenue Fund to meet government expenditures that are non-capital in nature. At the end of it, the National Assembly must amend the vetoed budget to suit the presidential wish.

5. Legislators face a limitation based on the need to run for re-election every four years. The possibility of losing an election can prevent members of the legislature from taking political stances at odds with public opinion or the executive branch. Therefore, the real fear of not being re-elected or the fear of being sanctioned by the party if legislators take positions that are diametrically opposed to that of the Executive, which in most cases is in alliance with the party, have tended to erode the ability of the legislature to perform its oversight functions.

6. The Constitution provides for the recall of nonperforming legislators by the electorate. This is a check on the legislators to ensure that at all times they exercise their powers for the benefit and welfare of those who elected them to office. For example, Senator Dino Melaye, representing Kogi West Senatorial District, is currently battling a recall process instituted by some of his constituents who filed a petition for his removal from the Senate.

Conclusion

Although the Senate, like all institutions, has changed greatly since the Constitution came into effect in 1999, it still performs the functions envisaged by the framers of the Constitution ensuring that laws are supported by a majority, properly representative of the country, and ensuring that ministers are accountable for their conducts in government services.

In this article, I have analyzed the scope of legislative powers under the 1999 Constitution of the Federal Republic of Nigeria to make laws for the peace, order and good government of the federation and the limitations on the exercise of the powers. The article also notes that the Constitution makes ample provision for the separation of powers between the executive, legislature and the judiciary. Therefore, the principles of checks and balances guide the relations between the three arms of government.



Recommendations

(i) There is need for members of the National Assembly to participate in international parliamentary Institutions (IPIs) at both regional and global levels. This will enable them develop capacity and gain experience from interaction with other legislators.

In so far as democracy is a global phenomenon, the legislature as a democratic institution cannot be divorced from the global democratic movement. IPIs provide the forum for the sharing of ideas, proffering solutions to problems encountered in member's countries, and may by any large, act as pressure groups for the enhancement for the powers and status of national legislatures.

(ii) While there are several justifications for legislative oversight, certain constitutional limitations exist against the exercise of oversight functions. For a more effective oversight of the executive, there is need to shift focus to the results of spending, on the basis of 'value for money' or performance audits instead of the current system of focusing on spending regularity and compliance with actual budgeted figures.

(iii) There should be a balance between the exercise of oversight powers for the purpose of ensuring good governance and the need to preserve the doctrine of separation of powers in order to prevent its abuse or whittle down executive powers.

(iv) Law makers must embrace home grown constitution (Autochthonous) which will benefit all and sundry rather than foreign constitution which is alien to our culture and custom which is in consonance to sociological school of jurisprudence.

(v) Legislators to be voted into political offices must be Lawyers and Barristers who knows the mighty gritty of the law rather selecting novice who have no knowledge of the law talkess of how to make laws.

(vi) Laws to be formulated must be electorates/masses driven rather than embarking on projects which is met to enrich the law makers themselves.

(vii) Sponsoring of bills in the National and State houses of Assembly with exorbitant amount of money which is a true picture of high level of bribery and corruption in our country must be properly checked.

(viii) Some political offices must be on part time and not full time basis, such as law making and others so as to reduce the cost of governance which is one of the major causes of poverty, penury, low level of economy in this country.

(ix) There must be drastic reduction in the political office holders such as Ministers, Personal Assistants, and Commissioners so as to reduce the high cost of governance in this country. Imagine somebody who has brought untold hardship to the whole country electing 48 ministers, for what? Only for them to come and share from the so-called national cake.

(x) There must be prompt, regular, adequate feedback from the political office holders to their various political units for proper accountability and transparency.

(xi) Political office tenure must not exceed one term of four years so as for politicians not to see politics as do or die affairs. The issues of reelection must be cancelled, and nobody can serves in any political



capacity once and move to another political office as this will totally reduce the high level of politician's greediness of do or die ideology.

(xii)Laws, constitutions and other statutory instruments governing democracy and election must be amended. Such as educational qualification must be shifted from ordinary level to first degree certificates as this will reduce miscreants from coming into politics.

(xiii)Electronic voting and electronics collation of election results must be encouraged so as to reduce frauds, electoral malpractices in election matters.

(xiv)Benefits attached to political offices must be reduced to the barest minimum so as to make political offices less attractive to money monger politicians.