

Public Law



**Legislative Oversight Functions in Nigeria
– Odyssey of Hunters Becoming the Hunted**

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Abstract: Objectives: The trust of this research is to locate the legislative oversight functions as a key element in promoting accountability and transparency in Africa, view through Nigeria perspective. **Prior work:** The paper is anchored on the concept of separation of powers as it addresses an essential legislative role in ensuring checks and limitations on the exercise of executive powers. **Approach:** The research is basically observation, analytical and comparative. **Results:** The research shows that since 1999, the legislative body in Nigeria has been wobbling from one sleaze to another because of misuse of oversight functions, thus undermines democratic governance. **Implication:** This study contains useful information on the practice of legislative oversight which can stimulate academics and researchers to undertake further comparative research on this topic. **Value:** The work made several suggestions which include the need to overhaul democratization process in Nigeria as there is nexus between the failure of the legislature to dutifully discharge its oversight functions and inherent incapacity of those elected into office.

Keywords: accountability; good governance; legislative oversight; congressional investigations; corruption, transparency

1. Introduction

No issue dominates Nigerian political space and legal discourse in recent time than deluge of probes instituted by the legislative arm of government at Federal level on activities of Ministries, departments and agencies of government in the exercise of its constitutional oversight functions.² Curiously, rather than attract commendation, the practice of oversight functions by the legislature has brought opprobrium, ridicule and generally blot the image of legislative arm of government in Nigeria.

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²Section 88 of the Constitution of Federal Republic of Nigeria 1999.

Since the return of democracy to Nigeria in 1999, the legislative body has prominently put into use its legislative oversight functions.

Administrative accountability and transparency is at its low ebb in Nigeria. Civil servants deliberately distort government policy in application where it does not favour them or they apply laws unfavorable to their interests in a manner which undermines good governance. (Owasanoye, 2001)

Corruption thrives in Nigeria because of active connivance of administrative officers and corporate executives to undermine social progress by diverting public funds for their personal use. The net effect is that the state has been converted to personal estate of some people. They disburse financial resources with little or no restriction or obligations of accountability and with utter disregard of laid down financial regulations or budgetary controls, breeding in the process utter indiscipline in the expenditure of public funds and of course corruption. Admittedly, the legislative body had set up several probes through its various committees to check this trend, but in most cases, its ability to oversight the activities of executive arm of government have been call to question. The thrust of this paper is to assess the implications of the legislature's failure to establish an effective oversight function on the executive arm of government in Nigeria. The paper will examine how crucial the oversight function of the legislature can be used to halt corruption and rot in the executive arm of government, with a view to grow and deepen democracy in Nigeria. The paper is divided into six parts Part One is introductory while Part Two examines the theoretical framework underpinning the work. In Part Three, the nature of legislative oversight function was discussed, Part Four examines the various probes instituted by Federal legislators in Nigeria in the exercise of its oversight power and in Part Five, reviews experiences from United States which has similar legislative oversight functions. The paper was concluded in Part Six.

2. Theoretical Perspective

Consideration of the constitutional structure shows that legislative oversight function naturally flows from the manner in which the constitution allocates and separates power among the three branches of government. The Constitution of Nigeria 1999 is anchored on the principle of separation of powers, which provides for division of government powers among three institutions, to wit; legislature¹, Executive², and the Judiciary. (Ezeoke & Makarfi, 1982, p. 663, p. 609)

¹Sec. 4 of the Constitution of the Federal Republic of Nigeria 1999.

²Sec. 5 *ibid.*

A number of theoretical positions have been thrown up for the purpose of constructing the principle of separation of powers.¹ But the first modern articulation of the principle is derived from Montesquieu, whose understanding of it was based on a study of Locke's Writing.² Locke had argued it may be too great a temptation to human frailty, apt to grab at power, for the same persons who have the power of making laws, to have also in their hands the power to execute them, whereby they may exempt themselves from obedience to the laws they made, and suit the law, both in its making and execution, to their own private advantage. (Wade & Bradley, 1970, p. 45)

Montesquieu (1949, pp. 3-6) espoused the principle thus *"political liberty is to be found only when there is no abuse of power. But constant experience has shown us that every man invested with power is liable to abuse it, and carry his authority as far as it will go. To prevent this abuse, it is necessary from the nature of things that one power should be a check on another - when the legislative and Executive Powers are united in the same person or body - there can be no liberty - Again there is no liberty if the judicial power is not separated from the legislative and executive. There would be an end of everything if the same person or body, whether of the nobles or of the people were to exercise all three powers."*

The main objective of separation of powers is to leave no doubt as to the limitation of the boundaries of powers, in order to obviate any claim of one organ to share powers of other organs.

However, complete separation of powers is neither practicable nor desirable for effective government. Therefore the constitution of Nigeria does not clearly establish a pure separation of powers in which each branch of government is isolated from the others. We can see this from the manner in which the separation of powers dictates the interaction of the executive, legislative and judicial branches. For example, the constitution grants the President a veto power over legislation³ and creating a role for the Senate in the approval of treaties and the appointment of ministers⁴, while the Judiciary may decide cases or controversies.⁵ Therefore, separation of powers should not be equated with parallel lines whose

¹ For details, compare Calabresi, Steven G. & Prakash, Saikrishna (1994). "The President's Power to Execute the Laws", 104 Yale L. J. 541 (arguing that the Framers intended to create a unitary executive), with Flaberry, Martin S. (1996). "The Most Dangerous Branch" 105 Yale L. J. 1723 (advocating a functional approach to separation of powers questions); Lessig, Lawrence & Sunstein, Cass R. (1994). "The President and the Administration" 94 Colum L. Rev 1,2 (challenging the historical basis of the unitary executive as "just plain myth). This division in the literature between formalism and functionalism is mirrored in the case law. See *Morrison v. Olson* 487 US 654, 689-93 (1988).

² Second Treatise on Civil Government.

³ Section 58(4) of the Constitution of Nigeria 1999.

⁴ Sections 12 and 147(2) of the Constitution of Nigeria (1999).

⁵ Section 6 (6)(b) of the Constitution of Nigeria (1999).

beginning and end cannot meet. Rather, there is interdependence of functions among the three organs of government.

Thus, the three arms of government may be separate in functions but united in goals, through the system of checks and balances. The system of checks and balances allows each of the arms of government to defend its position in the constitutional framework of government. As Madison wrote in Federalist 51 “*the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department, the necessary constitutional means and personal motives to resist encroachments of the others.*”¹ Thus, the separation of powers functions not merely by creating separate and distinct branches of government with their own distinct responsibilities, but by ensuring that each branch has the constitutional power to frustrate attempts by the other branches to expand their authority in an unwarranted manner. (Prakasht, 2003, p. 924)

It is from this structure that legislative constitutional oversight functions emerge. Oversight function is a surveillance mechanism by the legislature on the activities of the executive in the spirit of doctrine of separation of powers. It seems apposite at this juncture to lay bare the character and nature of legislative oversight function in Nigeria by examining its multifarious dimension.

3. Nature and Character of Legislative Oversight Function in Nigeria

Nigeria operates a bicameral legislature known as the National Assembly wherein the legislative powers are vested in the Senate and House of Representatives.² The core legislative power of the National Assembly consists of the power to make laws 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 1 of the Second Schedule to the Constitution; and any other matter with respect to which it is empowered to make laws in accordance with the provisions of the Constitution.³ The phrase “peace, order and good government” has been described as a legal formula for expressing the widest plenitude of legislative power exercisable by a sovereign legislature. (Nwabueze, 1993, p. 29)

In addition to law making, the functions of the legislature includes the following watchdog over public funds, which implies the legislative powers and duties with

¹Federalist 51 (Madison) in Jacob E. Cooke ed. “*The Federalist* (Wesleyan 1981) p. 349.

² Section 4(1) of the Constitution of Federal Republic of Nigeria 1999

³ Section 4(2) and (4)(b) *ibid*.

respect to public finance;¹ approval² and Ratification;³ constitutional amendment;⁴ oversight function.⁵

It need be stated from the onset that the term “oversight functions” is not expressly employed in our constitutional lexicon, neither is it defined or described by the 1999 constitution, although the concept is sufficiently adopted by the constitution. Oversight has been defined as the exercise of constitutional powers by the legislature to check or control 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. (Oyelowo, 2007, p. 8)

Oversight or surveillance of the executive and the administration is premised on the grounds that the legislature enact the laws, that can create administrative agencies, and these in turn are assigned functions and responsibilities by such enabling laws. The legislature may decide to change statutory or administrative policy, because, among other things, legislators may have learned of hardships that have been imposed on the public. And if for no other reasons, the legislature’s self-interest demands that it oversees administration to learn whether the executive and its agencies are complying with the legislative intent, or the constitutional objectives and principles (Keefe cited by Oyelowo, 1966, p. 8). The objectives of Parliamentary oversight can be sum up as follows:

1. 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;
2. Hold the executive branch accountable. Parliamentary oversight scrutinizes whether the government’s policies have been implemented and whether they are having the desired impact;
3. Provide financial accountability. Parliament approves and scrutinizes government spending by highlighting waste within publicly funded services.

¹ “Sections 80-82 (authorization of expenditure from the Consolidated Revenue Fund); Section 85 (power To receive annual audited report of public accounts of the federation.

²Section 147((2) (which deals with confirmation of chairmen and members of federal commissions and Councils); Section 171(4) (confirmation of appointment to the office of Ambassador, High Commissioner Or other Principal Representative of Nigeria abroad.

³ Section 12 (power to ratify treaty by enacting it into law) Section 5(4) (power to ratify deployment of armed forces on combat duty outside Nigeria within seven days of actual combat); Section 305(2) (power to ratify proclamation of a state of emergency declared by the President in the federation or any part thereof).

⁴Sections 8 and9 of the Constitution *ibid*.

⁵Sections 88 and 89 of the Constitution *ibid*.

Their aim is to improve the economy, efficiency and effectiveness of government expenditure;

4. Uphold the rule of law. Parliament should protect the rights of citizens by monitoring policies and examining potential abuses of power, arbitrary behaviour and illegal or unconstitutional conduct by government.¹

Accordingly section 88(1) of the 1999 Constitution of Nigeria empowers the National Assembly to investigate or direct an investigation be conducted into:

- (a) any matter or thing with respect to which it has power to make laws; and
- (b) the conduct of affairs of any person, authority, Ministry or government department charged, or intended to be charged, with the duty of or responsibility for-
 - (i) executing or administering laws enacted by the National Assembly, and
 - (ii) disbursing or administering moneys appropriated by the National Assembly.

The *raison d'être* for giving this power² to the National Assembly is to enable it to

- (a) make laws with respect to any matter within its legislative competence and correct any defects in existing laws, and
- (b) expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.

The legislative oversight functions serves a variety of purpose: to keep the executive establishment responsible and accountable, to promote rationality and efficiency in the formulation and administration of public policy, to reap party advantage, and to advance the causes of individual legislators interest groups, and other stakeholders in the polity. (Oyelowo, 2007, p. 9)

3.1. Constitutional and Parliamentary Procedures on Legislative Oversight Functions

A. Investigating Committees:-Investigatory power of the legislature is the power to establish a fact or set of facts by way of inquiry. The legislature uses investigating committees – appropriation committee, standing committees, ad hoc committees and various other committees – to collect and analyse information concerning the administration of state programmes and implementation of governmental policies,

¹ www.agora-parl.org/oversight.

² Section 88(2)(a) and (b) of the Constitution *ibid*.

with a view to expose corruption or rot in the system or raise public awareness about a particular issue.

One noticeable feature of committee system in the National Assembly is the establishment of committees to reflect ministerial portfolios in the country. Hence, there are house committees on Education, Health, Power and Energy and so on. The review of activities of specific agencies and programmes by committees are made easy because most of the committees reflect the structure of Ministries and Agencies of government. For effective operations, Section 3 of the Legislative Houses (Powers and Privileges) Act¹ grants immunity from civil or criminal suits in respect of words spoken before the House or a Committee thereof in respect of report to the House or to any of its committee. But can this section be used as a shield by the House or any of its Committee to exceed its constitutional limitations? The answer is in the negative. In *El-Rufai v. House of Representatives, National Assembly of Nigeria*², the appellant appeared before the House Committee investigating the privatization of Nigeria Telecommunication (NITEL) and circulated documents considered by the House as defamatory. The House later resolved to refer the matter to its Ethics and privileges Committee for alleged breached of privileges. The latter committee invited the appellant, who consequently challenged the invitation in court, but the respondent contended that the court had no jurisdiction, in view of section 3 cited above. The court in rejecting the submission of the respondent held the immunity from suit granted under section 3 above can only be invoked when the 1st defendant or any of its members is acting within the provisions of the Constitution. The crucial question that follows is this; when the 1st defendant sent the letter of 20/3/02 to the plaintiff to appear before its Ethics and Privileges Committee, was it engaged in the making of a law within its legislative competence or to expose corruption and inefficiency in a public department? Clearly the answer is in the negative.”

The fact is irresistible that the legislature cannot turn oversight responsibility as a universal “Ombudsman” inviting member of the public over a matter not covered by section 88 or to exceed the bounds stated in the constitution. No power is vested in the legislature to conduct general investigation or use oversight function for aggrandisement of the house.

B. Procedure for Evidence: - The legislative Assembly or its appropriate committee has the power to procure all such evidence, written or oral, direct or circumstantial as it may think necessary.³ It may require such evidence to be given on oath.⁴ It may equally summon any person within Nigeria to give evidence or produce any document and may issue a warrant to compel attendance of witness or witnesses as

¹ Cap. 208 LFN 1990 Act, Cap L 12 LFN 2004.

² (2003) Vol. 46 WRN 70 at pp. 93-97.

³ Section 89(1)(a) of the Constitution of Nigeria 1999.

⁴ Section 89(1)(b) *ibid.* ; Section 7 of the Legislative Houses (Powers and Privileges) Act (supra).

it may think necessary, if such evidence would be material or relevant to the subject matter under investigation.¹ In the absence of statutory provision or special circumstances to the contrary, the legislative committee performing oversight duty may opt for written type of hearing. Oral hearing is not an automatic feature of natural justice.² However, there must be right to confront and cross-examine the opponent. In *Kanada v. Government of Malaya*,³ If the right to be heard is to be a real right which is worth anything, it must carry with it the right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them.

The legislative committee not being a judicial body is not bound by the rules of evidence. It must not do cloistered justice by conducting hearing in camera when investigation of its member is in issue. This is the scenario that played out when Mr. Femi Otedola refused to give evidence in private when he appeared before the Ethics and Privileges Committee of House of Representatives investigating allegation of bribe taking by Hon Faruk Lawan. The term fair hearing signifies a trial which is conducted according to legal principles and rules formulated to ensure that justice is done to all the parties in a course or matter.⁴

C. Recommendation of the Committee – The Committee is expected to submit its report to the House after detailed and dispassionate consideration of available evidence before it. The entire legislative Assembly must signify its acceptance or rejection of the Committee's report through its resolution. The report of a committee not, backed parliamentary resolution cannot be the decision of a whole House.⁵ The Executive may act on the report of House Committee and resolution of the legislature on same to remove a political office holder, if it considers it desirable. But where the indicted person is a career officer in Ministries, Agencies or departments of government, then machinery must be set in motion under the appropriate Civil Service Rules to discipline him. It is no gainsaying that the report of House Committee on oversight function may be forwarded after its acceptance by the House to the Police or Anti-Corruption Agencies like Economic and Financial Crimes Commission (EFCC) for further investigation and possible prosecution, if it discloses the commission of crime. The House Committee report is a mere fact finding which can only be the fulcrum of a criminal investigation by the police.

¹ Section 89(1)(c) & (d) of the Constitution *ibid*, Sections 4, 5 and 6 of the Legislative Houses (Powers and Privileges) Act *supra*.

² *Sokwo v. Kpongbo* (2002) 31 WRN 83; *Olatunbosun v. NISER* (1988) 3 NWLR pt 80. P. 25.

³ (1962) AC 332 at 337; *Eperokun v. University of Lagos* (1986) 4 NWLR pt. 34 p. 162.

⁴ *Agunbiade v. Oke* (2011) 3 WRN 147 at 173.

⁵ *Attorney-General of Bendel State v. Attorney-General of the Federation & ors.* (1981) 10 SC 1.

In *Atiku Abubakar v. Attorney-General of the Federation*¹, attempt by the Independent National Electoral Commission (INEC) to disqualify Vice President from standing for Presidential election based on the report of Administrative Panel on Fraud at Petroleum Development Training Fund (PTDF), was rejected by the Supreme Court on the ground that it was usurpation of jurisdiction of court for a panel to determine allegation of crime.

4. Deluge of Probes and Legislative Oversight Functions in Nigeria

As part of its oversight functions, the National Assembly received the Audit Report 2001 in respect of account of the Federation on January 10, 2003 from the Auditor-General, Mr. Azie. The report revealed mind boggling corruption, lack of due process and profligacy in the expenditure pattern of the Executive. This was made possible through the legislative committee hearings on the report. Irked by the adverse publicity and hostile comments of the public on the report, the Auditor-General Azie's tenure was not renewed or confirmed by the President on the grounds that he was functioning in acting capacity and failed in his duties.² The Executive had earlier protested that the Auditor-General did not seek its approval before sending the report to the National Assembly. The pertinent question is, would the Executive allow the Auditor General send Audit report to the Legislature, if it is unfavourable to the Executive? The Constitution is silent on whether or not the consent of the Executive is required before Audit report of its account can be send to the legislature.³

It is noteworthy that ever since this incident, no audit report of Executive has been sent to the National Assembly, ostensibly to avoid humiliation like the one meted to Mr. Azie and this underscore the need for the National Assembly to make laws to protect Auditor-General in the performance of his constitutional role.

The Senate Committee on Public Accounts in 2001⁴ investigated the Nigerian National Petroleum (NNPC), Central Bank of Nigeria (CBN) and National Electric Power Authority (NEPA). This public hearing revealed a lot of misdeeds by these administrative bodies, ranging from diversion of public funds to private accounts, inflation of contract sum and so on.⁴ Also, the Nigerian Senate investigated the National Identity Card Scheme in 2001. Evidence was presented indicating that the Scheme was riddled with bribery, corruption, sleaze and graft. But in the two years following the Senate bribe, little or nothing of value happened in terms of pursuing the investigation and prosecution to their local conclusion. For all practical purposes, the issue has been "buried". Yet, the same senate set up Idris Kuta

¹(2007) MJSCI; (2007) 3 NWLR pt. 1022 p. 601.

² Tell Magazine, February 17, 2003 p. 55.

³ See Section 85 of the Constitution of Nigeria 1999.

⁴ Newswatch Magazine, April 23, 2001 p. 12.

Committee to investigate corruption within the senate itself. The report implicated many senators in criminal abuse of office. The Federal Executive was accused of bribing members of the legislature, and bags of money were presented as evidence. That too has been buried with no further action. Nobody in the legislature or the executive was investigated. (Naijama, 2003)¹

In 2007, the Nigerian Senate conducted investigations into the Presidency handling of the Petroleum Trust Development Fund (PTDF). The Senate Review Committee Report chaired by Senator Umaru Tsauni in its report concluded that both President Olusegun Obasanjo and Vice President Atiku Abubakar were guilty of breaching the laws setting up the Fund and misapplying its ample funds.²

Following continue erratic supply in Nigeria in spite of \$16 billion allegedly spent on the sector, the House of Representatives set up Hon. Ndudi Elumelu led Committee to probe the Independent Power Project (IPP). The Committee allegedly unearthed monumental corruption as most of the contractors were discovered to have collected billions of naira without doing any work. Some of the contractors were also said to have been guilty of over invoicing and breach of due process. The committee recommended that those found culpable be investigated by the appropriate agencies of government for economic sabotage to the country.³ But the committee was soon embroiled in controversy. The same House Committee on power chaired by Elumelu and its senate counterpart chaired by Nicholas Ugbane were implicated in a #5. 2 billion contract scam at the Rural Electrification Agency and are currently standing trial in court in Nigeria.

The recent stock market probe by the House of Representatives equally underscored the sleaze in the exercise of oversight function. The House had directed that its committee on Capital Market chaired by Hon. Herman Hembe to probe the activities of security and Exchange Commission (SEC) in the crash of Nigerian Capital Market. At a public hearing conducted on March 14, 2012, the Director General of SEC, Ms Aruma Otteh was queried by the Committee Chairman for staying in a hotel for eight months at a cost of #30 million⁴ and for spending #850,000⁵ daily on food at the hotel. But the probe assumed a dramatic twist when Ms Otteh accused the House Committee on Capital Market of

¹Posted on December 24, 2003, <http://www.zcommunications.org/nigerias-fight-against-corruption-by-ike-naijama>.

² See the following Newspaper reports on PTDF scandal; The Punch September 14, 2006 p. 2; Daily Trust, Editorial March 30, 2007, "Nigeria: On that PTDF Report @<http://allafrica.com/stories/20070330056.html>; Vanguard Newspaper reports of March 26, 2007 titled "Nigeria: PTDF: Group urges National Assembly to Impeach Obasanjo, Atiku.

³The Nation, June 23, 2012 p. 50.

⁴ About 260,000 US dollars.

⁵About 5,667 US dollars.

demanding #44 million from SEC. She alleged that the Committee demanded the money as the Agency contribution towards funding the public hearing.¹

She further alleged that the chairman of the Committee had on October 20, 2011 collected money and a business class ticket from SEC to travel to the Dominican Republic for a conference but he neither made the trip nor returned the money.² The House Committee Chairman and members were forced to resign their appointment and are currently facing criminal trial in Nigeria.³

The latest bribery scandal involved ad hoc committee set up by House of Representatives on Fuel Subsidy Management. It was chaired by Hon Farouk Lawan. The Committee was set up on January 8, 2012 to probe the payment of over #2.1 trillion in subsidy payments in 2011 in excess of #240 billion appropriated in Appropriation Act 2011. The report of the Committee established sharp practices in the disbursement of oil subsidy money. Some oil marketers were paid billions of Naira merely by presenting crooked paper work on supposed fuel imports most of which never got to Nigerian shores.⁴

Ironically, the chairman of the ad hoc committee, Hon Lawan was alleged to have collected the sum of \$620,000 as part payment of a \$3 million bribe to remove Zenon Oil from the list of indicted firms. Hon Lawan however owned up to the receipt of \$500,000 from Mr. Otedola, the owner of Zenon Oil, but that it was intended as an exhibit.⁵ The matter is reported to be under police investigation, more than six months after the revelation.

This Chronicled of events shows how abyss the legislative conduct of investigations has taken in Nigeria. But what lessons can be drawn from other clime?, this is the next object of inquiry.

5. Lessons from the United States

Unlike Nigeria, congressional authority to conduct investigations, and in the process to compel testimony, is not explicitly recognized by the U.S. constitution. But the Supreme Court has held the investigatory power to be “an essential and appropriate to auxiliary to the legislative function.”⁶

The tenor of Congressional oversight functions is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in social, economic or political

¹ The Nation March 20, 2012 p. 1; Tell Magazine, June 25, 2012 p. 23.

²The Nation *ibid*.

³The Nation, March 23, 2012 p. 4.

⁴ See The Nation, July 9, 2012 p. 19.

⁵ See The Nation, June 23, 2012 pp. 50-51; Tell magazine, June 25, 2012 p. 21.

⁶*McGrain v. Daugherty* 273 US 130, 174 (1927).

system for the purpose of enabling the congress to remedy them. It also comprehends probes into departments of the Federal Government to expose corruption, inefficiency, or waste.¹ The power of inquiry is as penetrating and far-reaching as the potential power to enact law and appropriate funds under the constitution.²

The trend of judicial review of Congressional investigations reflects the court's concern for congressional abuse. Ordinarily, it is only when individuals refuse to cooperate with congressional investigators, and the investigators subsequently seek to use judicial processes to punish the refusal as contempt, that courts are in a position to review the validity of congressional investigatory action. (Tribe, 1988, pp. 375-376) In *Marshall v. Gordon*³, it was held that public statement criticizing congressional committee could not be punished by congress as contempt. The court in *McGrain v. Daugherty*⁴ upheld the power of Congress to authorize its agents to arrest and bring before Congress a witness who refused to comply with Congressional subpoena. In *United States v House of Representatives*⁵, a Congressional Committee with responsibility for oversight of the Environmental Protection Agency's Superfund Program for dealing with toxic wastes sought documents relating to the administration of the superfund; the investigators were interested in whether the EPA was properly and vigorously enforcing the law by all available means, including the institution of lawsuits to recover the costs of cleaning up abandoned toxic waste dumps. The EPA refused to comply fully with the Committee's subpoena, claiming that the documents were protected by the doctrine of executive privilege. The full House of Representatives cited the Administrator of EPA for contempt and duly referred the matter to the United States Attorney for prosecution under the criminal contempt statute. Instead of presenting the matter to a grand jury, as required by law, the Justice Department and the House in federal court, seeking injunctive and declaratory relief against enforcement of the subpoena. The action was dismissed and the executive branch was told to seek resolution of its claim of privilege in the orderly course of the criminal contempt proceedings.

Although only loosely restricting the substantive scope of Congressional investigations, the Supreme Court has required Congress to adopt important *procedural* safeguards in the conduct of its investigations.⁶ Thus, Congressional investigators must respect the fifth amendment privilege against self-incrimination⁷, the fourth amendment prohibition of unreasonable searches and

¹*Watkins v. United States* 354 U. S 178 (1957).

²*Barenblatt v. United States* 360 U. S. 109, 111 (1959).

³243 U. S. 521,545 (1917).

⁴*Supra*.

⁵555 F. Supp. 150, 151 (D. D. C. 1983).

⁶Tribe *supra* note 53 at p. 377.

⁷*Quinn v. United States* 349 U. S 155, 161 (1955).

seizures¹ and the requirement of due process that, if government actors promulgate rules limiting their own conduct, they must comply with such rules.²

Perhaps, more significantly, the court has held that due process and the formally limited character of congressional power (1) require Congress, in delegating its investigatory authority to particular committees, to state clearly the scope of a given committee's authority³; and (2) require an investigating committee, if the pertinence of its inquiry is challenged by a witness, and if the subject-matter of the investigation has not previously been made to appear with indisputable clarity, to state for the record the subject matter under inquiry and the manner in which the propounded questions are pertinent thereto.⁴

Unlike Nigeria where the legislators uses probes as avenue to personally enriched themselves, in the old US case of *Anderson v. Dunn*, attempted bribery of a member of Congress was viewed as contempt and the court validated the power of Congress to imprison persons found to be in contempt of Congress. Thus in the U.S., there is dearth or lack of reported case of abuse of office by legislators performing oversight function or any judicial determination on it. Rather, judicial review of oversight function centered on the need to streamline the procedure and safeguard the liberties of people appearing before committees of the Congress.

6. Observations and Recommendations

There is need for a total overhaul of the way and manner legislature oversight the activities of Ministries, Departments and Agencies of government in Nigeria, if we wish to be ridden of corruption and install transparency in governance. Properly used, legislative oversight could be an effective instrument for ensuring integrity in governance. In the light of this, the following suggestions are preferred.

A system where the Executive funds the functions of various committees of the National Assembly must be discouraged. By the self-accounting rules of the National Assembly, money is appropriated for all committee activates. It smack of graft for the legislators to require Ministries and Departments of the Executive to provide them with estacodes or money for their official duties. It also undermines their independence as a separate arm of government.

The calibre of members elected into the National Assembly also accounts for some of the lapses in their functions. The electoral system should be reformed in such a way that only men of probity, experience and track record of performance in both

¹*Mc Phaul v. United States* 364 U. S 372, 382-283 (1960).

²*Gojack v. United States* 384 U. S. 702 (1966); *Yellin v. United States* 374, U. S 109 (1963); *Flaxer v. United States*, 358 U. S. 147 (1959).

³*Watkins v. United States* (supra) note 51.

⁴Tribe *supra* note 53 at pp. 377-8.

private and public sector should be elected into the legislature. Added to this, is the need for continuing training in form of seminars and workshops for the legislature, to keep them within the bounds of their constitutional powers and improve their performance. Sometimes the Assembly members exceed their constitutional limitations. For example in 2006, the Chairman of House of Representatives Committee on Capital Market instructed the Security and Exchange Commission (SEC) to stop the Annual general meeting of Afribank PLC from holding pending the conclusion of an investigation of a petition received by the committee from the former managing director of the bank.¹ One wonders from where the House derives this power. Similarly, in February 2008, the Senate Committee on the Environment paid an unscheduled visit to the premises of the Nigerian Breweries PLC and gave the company two weeks within which to improve its sanitation and industrial safety.² But, section 88 of the Constitution did not place private companies or private person among the class of persons the legislature can oversight their functions! Hence there is need for continuing education of the legislature.

When a committee on oversight function is constituted by the Senate or House of Representatives, the terms of reference must be clearly stated. We submit that if oversight function is to be free from abuse, the purpose of investigation, its composition and terms of reference should be clear from the proceedings of the house which authorizes it and be seen to be within the four corners of the constitutional power. It is not enough that the matter for investigation be within the legislative competence of the house. A proper and lawful investigation must have been constituted.

There is proliferation of committees in the Nigerian federal legislature. While the Senate has 56 senate committees, the House of Representatives has 85 Committees.³ The splitting of committees sometimes leads to overlapping of functions and increase the cost of governance because each committee is appropriated money by the National Assembly. Curiously, the legislators fights to head or be members of committees considers “juicy”. They should imbibe the committee system in the U. S., in which the Senate has only sixteen standing committees.⁴ In Britain there is select committee for each department examining three aspects: spending, policies and administration. The departmental committees have a minimum of 11 members who decide upon the line of inquiry and then gather written or oral evidence. The total number of select committees is 35 for the House of Commons, while the House of Lords has 5 major committees. Nigerian

¹The Nation Nov. 16 2006 p. 7.

²The Punch, February 5, 2008 p. 7.

³ Status and Role of the Legislature in a Democracy in *Nigerianobservernews.com/02022012/featuresHtm*.

⁴*Ibid.*

legislature need to take a cue from these and reduce the number of its committees and streamline their activities to avoid duplication of activities.¹

Legislators are subject to constitutional checks through the mechanism of *RECALL*. The mode of recalling a legislator as stated in sections 69 and 110 of the Constitution is for electorates to bring up a petition signed by more than half of the people registered to vote in a member's constituency informing the electoral body that they have lost confidence in that legislative member. If the petition, which is subject to a referendum by electoral body within 90 days of its receipt, is approved by a simple majority of the registered voters, in the affected legislator's constituency, he will be formally recalled as a member of the house. A by-election will then be conducted to fill the vacancy. It is on record that since 1999 till date, no legislative member has been recalled by the electorates in Nigeria. The trend is that once a legislator is indicted for corruption, he is removed from that Committee but he continues to seat in the house until he finishes his term. The reticence and lethargy of electorates in not using recall system has allowed corruption to thrive in the legislature. Without the requisite public spiritedness and popular awareness by the electorates, the constitution would remain paper tigers and dead letters.

An oversight and Advisory Unit ought to be created in the National Assembly, comprising of members outside the legislature. This body will monitor and track issues between legislature and the Executive and other matters within the legislature's broader mandate. Its main functions will be to provide advice, technical support, coordination and tracking and monitoring mechanisms on issues from oversight and accountability activities of members of legislature and the committees to which they belong. The work of this unit should also include the achieving of relevant information to facilitate the retention of institutional memory.

7. Conclusion

In a manner reminiscent of a hunter becoming the hunted, the federal legislative bodies in Nigeria, through its committees have themselves been turned to object of probes because of corrupt activities of some of the legislative members. The National Assembly in Nigeria has ironically turned itself into "Achilles heel" of democracy since 1999, wobbling from one sleaze to another and underscoring the instability in the system. Oversight function which ought to be a mechanism of galvanising crusade against corruption has been turned a systemic pattern of corruption by the legislature. The fact that profiles of corrupt public office holders in Ministries, Departments and Agencies of government have not suffered any diminution, only confirms the worst fears about hypocrisy of Federal legislature on the issue of oversight function in Nigeria. Corruption in the running of government

¹*ibid*

in Nigeria today would significantly reduce if the law makers do their work properly. This will no doubt ensure that projects are executed according to specifications, thereby forestalling cases of abandoned projects which have become the norm of successive governments in Nigeria. Effective oversight by law makers should ensure commitment and compliance to budget provisions. The Nigerian legislature need to reinvent itself as a credible organ of democracy by following globally accepted standards, norms, nuances and ethos of legislative practices. It is by so doing that we can foster good governance and build a new Nigeria.

8. References

- Owasanoye, B. (2001). Transparency, Accountability and Good Governance under the 1999 Constitution in *Nigeria: Issues in the 1999 Constitution*. NIALS.
- Calabresi, Steven G. & Prakash, Saikrishna (1994). The President's Power to Execute the Laws. 104 *Yale L. J.* 541.
- Flaberry, Martin S. (1996). The Most Dangerous Branch. 105 *Yale L. J.* 1723.
- Lessing, Lawrence & Sunstein, Cass R. (1994). *The President and the Administration*.
- Wade, E. C. S & Bradley, A. W. Phillips (1970). *Constitutional and Administrative Law*. 9th ed. Longman.
- Montesquieu (1949). *L'Esprit des Loix/The spirit of the law*. Chap XI. The translation by Thomas Nugent. New York: Hafner.
- Federalist 51 (Madison) in Jacob E. Cooke ed. "The Federalist (Wesleyan 1981) p. 349.
- Prakasht, SaiKrishna B. (2003). The Origins of Judicial Review. *The University of Chicago Law Rev.* Vol. 70 No. 3 p. 924.
- Nwabueze, B. O. (1993). *Ideas and Facts in Constitution Making* Spectrum Books Ltd.
- Oyelowo, Oyewo (2007). *Constitutionalism and the Oversight functions of the Legislature in Nigeria*, a paper Presented at African Network Constitutional Law Conference on Fostering Constitutionalism in Africa, Nairobi, Kenya, April 2007.
- Keefe W. I. (1966). *State Legislatures in American Politics* (Prentice-Hall) pp. 44-47, cited by Oyelowo, Oyewo (2007) at p. 8.
- Naijaman, Ike (2003). Nigeria's Fight Against Corruption" posted on December 24 at <http://www.zcommunications.org/nigerias-fight-against-corruption-by-ike-naijaman>.
- L. H. Tribe (1988). *American Constitution Law* 2nd ed. Foundation Press at pp. 375-376.
- Agunbiade v. Oke* (2011) 3 WRN 147 at 173.
- Attorney-General of Bendel State v. Attorney-General of the Federation & ors.* (1981) 10 SC 1.
- Barenblatt v. United States* 360 U. S. 109, 111 (1959).
- Eperokun v. University of Lagos* (1986) 4 NWLR pt. 34 p. 162.
- Ezeoke v. Makarfi* (1982) 3 NCLR 663 at 609.

- Gojack v. United States* 384 U. S. 702 (1966)
- Mc Phaul v. United States* 364 U. S 372, 382-283 (1960).
- McGrain v. Daugherty* 273 US 130, 174 (1927).
- MJSCI; (2007) 3 NWLR pt. 1022 p. 601.
- Morrison v. Olson* 487 US 654, 689-93 (1988).
- Olatunbosun v. NISER* (1988) 3 NWLR pt 80. P. 25.
- Quinn v. United States* 349 U. S 155, 161 (1955).
- Sokwo v. Kpongbo* (2002) 31 WRN 83
- Watkins v. United States* 354 U. S 178 (1957).
- Yellin v. United States* 374, U. S 109 (1963). *Flaxer v.*
- *** (2001). Newswatch Magazine, April 23.
- *** (2003). Tell Magazine, February 17, June 25, p. 21.
- *** (2006). The Nation Nov. p. 7.
- *** (2008). The Punch February 5, p. 7.
- *** (2012). Tell Magazine
- *** (2012). The Nation, June 23, pp. 50-51.
- *** The Constitution of Federal Republic of Nigeria (1999).
- *** Vanguard Newspaper reports of March 26,2007 titled "Nigeria: PTDF: Group urges National Assembly to Impeach Obasanjo, Atiku.
- *** <http://allafrica.com/stories/20070330056.html>.
- *** Status and Role of the Legislature in a Democracy in *nigerianobservernews.com/02022012/features*