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EDITORIAL

It feels highly gratifying for me to have the privilege of writing an Editorial for the Volume 11 Issue 1, 2022 edition of the International Journal of Legislative Drafting and Law Reform. My article was featured in a previous edition of this prestigious Journal some years back, and since then I have looked forward to another call for papers. However, it never crossed my mind that one would be appointed the Guest Editor.

Since its inception in the year 2012, Dr. Tonye Clinton Jaja, has served as its Editor-in-chief. The original ISSN of this law journal was issued by the British Library and it is indexed by HEINONLINE, USA the world's largest database of law journals with over 1,600 titles.

This edition would have been published before now, however there was a little bit of delay in the submission of articles by contributors. This is most likely due to the current industrial strike action by the Nigerian universities union, which has dampened the morale of potential authors.

It is heartwarming to mention that the Canadian Legal Information Institute (CANLII) has just agreed to publish online the International Journal of Legislative Drafting and Law Reform from now onward.

This current edition of the journal is full of highly enriching papers and reviews from seasoned contributors on the subject matter of legislative drafting and sundry issues. Also featured is an interview by the Editor-in-Chief, Dr Tonye Clinton Jaja.

Dr. King James Nkum
Guest Editor

CONTENT

LEGISLATIVE OVERSIGHT FUNCTION OF THE NATIONAL ASSEMBLY: NIGERIA'S EXPERIENCE IN ABUSE OF PROCESS AND ULTRA VIRES PRACTICES

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1.1 Introduction

Since the advent of the current democratic dispensation in 1999, Nigerians have yearned for good governance from those they elected govern them at all levels of government[3]. However, this aspiration has remained a pipedream due to misgovernance. This quagmire of retrogression raises fundamental questions regarding the critical role of the National Assembly in the quest towards the goal of achieving good governance, since the legislature represents the most notable symbol of democracy. As a representative government, it consists of elected officials or a constituent assembly of people whose function is to make, revise and repeal laws for the good and welfare of society, as well as serving as a watchdog over government activities. Good government depends on the kinds of laws that are made by the legislature. Any obstruction to the functions and powers of the legislature directly affects good governance. The legislature is known as the Parliament in the UK, the Congress in the United States, and the National Assembly in Nigeria. Whatever the nomenclature, it is safe to say that all functioning legislatures in democratic nations have representative, legislative, and supervisory functions[4].

Legislative oversight is a device utilised by the legislature in carrying out its cardinal role of checks and balances in a democracy under the doctrine of separation of powers as constitutionally provided[5]. Legislative oversight consequently refers back to the legislature's

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[3] N.C. Ewuim, D.O. Nnamani and O.M. Eberinwa, "Legislative Oversight and Good Governance in Nigeria National Assembly: An Analysis of Obasanjo and Jonathan's Administration', (2014) (3) (6) *Review of Public Administration and Management*.
[4] Yakubu Dogara, 'Legislative Oversight as a Critical Component of Good Governance', Being a Convocation Lecture Delivered by Dogara Yakubu, Speaker, House of Representatives, at the Fourth Convocation of Achievers University, Owo, Ondo State on April 9, 2016.
[5] See Sections 4,5 and 6 Constitutions of the Federal Republic of Nigeria 1999

evaluation and assessment of the activities and programmes of the executive arm of government. After creating a law, the legislature's principal responsibility is to *inter alia*, investigate whether or not the legislations are effectively implemented by the executive, on whom lies the onus on executing or enforcing the laws[6].

House of Representative Speaker of the 8th Assembly, Yakubu Dogara decried the fact that:

> *Legislative and executive programmes, policies and laws made by the National Assembly are often not efficiently or effectively implemented by the executive branch. Further legislative intervention therefore becomes necessary in order to implement laws passed by the National Assembly and detect and correct problems when they arise. Consequently, oversight of executive programmes and activities has become very critical to effective performance of the Executive and good governance in Nigeria*[7]…

The whole essence in overseeing the executive is to ensure good governance, accountability and transparency in the affairs of state. In a federal arrangement like Nigeria where there is a democratic system of government, there are fundamental principles that enshrine good governance. As alluded to earlier, the institutional arrangement is reflected in the distribution of governmental powers among the three arms of government: executive, legislative and judiciary. The principles guiding the operations of these three arms include autonomy, separation of powers, and checks and balances. Thus, good governance is evaluated and determined based on performance and the interaction of these indices by the government[8].

This Chapter seeks to provide a conceptual background to the procedure and outcomes of legislative oversight. It additionally highlights its legality withinside the context of applicable constitutional provisions which empowers the National Assembly to perform this cardinal role. Equally examined are the realities and demanding situations surrounding the overall performance of oversight and checks of its powers in Nigeria's current democratic dispensation. For the purpose of this study, the focus will be on the federal legislature, for ease of convenience.

[6] See O. Oyewo, 'Constitutionalism and the Oversight Functions of the Legislature in Nigeria', Draft paper presented at African Network of Constitutional Law conference on Fostering Constitutionalism in Africa Nairobi April 2007.
[7] Ibid
[8] Ibid

Furthermore, the Chapter examines certain constitutional provisions and the principles of separation of powers, the principles guiding oversight powers of parliament and checks and balances. Concrete illustrations from the Nigerian democratic experience and jurisprudence will also be explored.

1.2 Meaning and Nature of Legislative Oversight

Legislative oversight is a device deployed by the legislature to carry out its function of checks and balances in a democracy. Legislative oversight consequently refers back to the legislature's monitoring and evaluation of executive activities. After creating a law, the legislature's foremost function is to ensure its effective implementation in accordance with the letter and spirit of the drafters. Therefore, oversight is intended for the purpose of influencing and compelling compliance with the rule of law. Oversight is one of the key functions of the National Assembly, which aims to identify and prevent inefficiency and waste, determine government effectiveness, and fulfil legislative intentions. It is also a real anti-corruption tool and a constitutional tool to hold the government accountable to the people.

The use of the term 'oversight' is credited to Professor Woodrow Wilson, which he described as the responsibility of the legislative arm to diligently investigate every governmental activities or affairs and to deliberate on its findings. As a representative body, the legislature is expected to serve as the eyes and the voice and to embody the will and wisdom of its constituents[9].

In his submission, Madue argues that oversight can be performed ex-ante, that is, during the design and implementation of a programme or policy, as well as ex-post, after its implementation[10]. He therefore defined oversight by stating that it has to do with *the* "informal and formal, watchful, strategic and structured scrutiny exercised by legislatures" in respect of the implementation of policies and enforcement of laws, the application of the budget, as well as the strict observance of statutes and the constitution[11].

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[9] Woodrow Wilson, *Congressional Government* (Boston: Houghton Mifflin, 1885); W. Woodrow, *Congressional Government: A Study in American Politics* (Baltimore: John Hopkins University Press, 1981)

[10] S.M. Madue, 'Complexities of the Oversight Role of Legislatures' (2012) (47) (2) *Journal of Public Administration* pp. 431-442.

[11] Ibid; Onyekpere Eze, 'Opinion: Legislative Oversight and the Budget' 2012 <http:omojuwa.com/2012/11/opinion-legislative-oversight-and-the-budget> accessed 13 March 2022; S.A. Danwanka, 'Budget, 1999 Constitution and Fiscal Responsibility Commission Act, 2007', A paper presented at a

On his part, Oyewo posits that oversight is:

> *...the exercise of constitutional powers by the legislature to check or control the exercise of constitutional powers of 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 electorate*[12].

According to Ndoma-Egba, legislative oversight refers to the power of the legislature to review, monitor, and monitor government agencies, programs, activities, and strategies to implement executive branch policies. This is to ensure that the arm holds the principles of good governance, remains responsive, transparent and accountable to the electorates or citizens[13].

The National Assembly's committee structure (House of Representatives and Senate) is used to perform oversight functions through oversight, monitoring or reducing excesses, review of policies, and executive activities. Oversight functions ensure that the activities of the executive branch and its agencies are constantly monitored and audited by the legislature. The legislature has always been given leadership as a key defence against executive tyranny. The legislature oversees, advises, and censors (if necessary) the activities of the executive branch, the activities of government agencies[14] to ensure good governance and accountability[15]. John Locke pointed out that it may be too tempting for human frailty to wrest power from the very people who have the power to make laws, in order to have the power to to execute them for what can be absolved from obedience to the laws they make. When the legislature and executive are united in the same person or body of organ, there can be no liberty, for fears might arise that the same monarch or senate is making tyrannical laws and tyrannically executing them[16].

2-day workshop on Budget Analysis: Papers presented at a training workshop on the Drafting of Motions, Lead Debate/Brief of Arguments, Bill Scrutiny and Analysis for staff of National and State Houses of Assembly, 29th – 31st October, 2014.

[12] O. Oyewo (n 3)

[13] V. Ndoma-Egba, "Legislative Oversight and Public Accountability" (Cross River Watch, October 27, 2012) < http://crossriverwatch.com/2012/10/legislative-oversight-and-public-accountability/> acessed 18 June 2022

[14] such as departments, agencies, semi-governmental bodies, etcetera

[15] J. Onuoha, *Legislative Process and Lobbying Techniques* (Enugu: AICON Communication Limited, 2009)

[16] Cited in J.C. Johari, *Principles of Modern Political Science* (New Delhi: Sterling Publishers Private Ltd, 1989)

Essentially, oversight entails the review, monitoring and supervision of government and public agencies, as well as the implementation of policies and legislations. It involves overseeing the activities of government agencies, particularly the executive branch, on behalf of the Nigerian people. This process lets the public know what the executive branch is doing and gives voters a chance to determine whether or not politicians actually serve their common interests. Legislative oversight, therefore, refers to the power of the Legislature to review, control, and oversee government agencies, programmes, activities, and strategies to implement the policies of the executive arm. This is to ensure that the arm adheres to the principles of good governance, remains responsive, transparent and accountable to the citizens. The committee structure of the National Assembly is used for the purpose of conducting oversight functions and ensuring that the activities of the executive branch of government and its agencies are under the constant supervision and scrutiny of the legislature.

The National Assembly function in this regard is based on the investigative powers bestowed by the Constitution under Sections 88 and 89 of the Constitution to uncover corruption, inefficiency and waste in the conduct of government business towards efficiency. This function requires the political will and ability to maintain close oversight of the executive branch as this promotes accountability and reduces incompetence, misuse of government funds and abuse of power. In some cases, establishing a system to involve CSOs, citizen watchdogs and the media in project oversight, monitoring and evaluation is also necessary. In conducting its investigative hearings and oversight activities, the legislature is expected to ensure that its powers are not abused or misused by members or committees[17].

To this end, there is no gainsaying the need to strengthen its processes, rules and internal structures to support its oversight and investigative hearing activities and to ensure full access to all government financial information. Equally imperative is the need to develop mechanisms to sanction those who do not cooperate in their oversight or investigative activities or refuse to implement legislative requests or resolutions. Indeed, the legislature ought to leave no stone

[17] V. Ndoma-Egba (n 10)

unturned in ensuring that the full breadth of its constitutional powers, financial, human and political resources are employed to carry out its investigative or supervisory activities[18].

It should be borne in mind however, that the power of oversight is not without limitation. Chief Justice Earl Warren, American Jurist and Politician captured the limits on the power of Legislative oversight when he stated thus:

> *The power of the congress to conduct investigation is inherent in the legislative process. The power 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 our social, economic or political system for the purpose of enabling congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency and waste. But broad as this power of inquiry is, it is not unlimited. There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the congress… nor is the congress a law enforcement or trial agency. There are functions of the executive and judicial departments of government. No enquiry is an end in itself; it must be related to, and in furtherance of the legislative task of congress. Investigation conducted solely for the personal aggrandisement of the investigators or to "punish" those investigated is indefensible…*[19]

Corroborating the foregoing submission, Heywood observed that the legislative and representative role of assemblies has declined over the years, as more emphasis is placed on the ability to limit or control executive power. According to him, legislatures the world over, have increasingly become oversight bodies whose primary function is to establish responsible or accountable government. In China's National People's Congress, for example, controlled by a monopoly party, party loyalty has turned the Congress into a mere propaganda weapon, with government policies almost always unanimously approved[20]. This means that party discipline also limits parliamentary control. Essentially, the main function of the parliament in this context

[18] Ibid
[19] Yakubu Dogara (n 3)
[20] Heywood, *Politics* (New York: PalGrave 1997); Heywood, *Implications and Complications of Legislative Oversight Function in Nigeria* (MacMillan 1997)

is to defend and support government policies and activities, since the majority of MPs belong to the ruling party. The ideology and interests of the ruling political party outweigh the national interest in preserving, maintaining and consolidating political power. The same story is replicated in Nigeria, where the National Assembly has been turned into an assemblage of self-serving rubber stamp politicians, whose functions has been ruduced to bootlicking the Executive arm and its agencies for gratification, even in the course of carrying out oversight.

Thus, legislative oversight, a critical aspect of the legislature's non-legislative functions, has been severely compromised and often abused to serve self-interest of the Executive arm of government and its agencies, thus failing to curb wasteful governance, corruption and absolutism in the exercise of political power. The end of absolute executive power is affirmed by giving the legislature, and it alone, the right or power to legislate, and Arbitrary government is replaced by a formal legislative process. It is therefore of paramount importance to revisit the purpose for which oversight is intended, with a view to appreciating its significance.

1.3 Purpose and Significance of Oversight

Most often, the public is not aware of what the government is actually doing due to lack of effective communication. As such, the legislature ought to be aware of the activities of government as representative of the citizens. Emphasising the importance of oversight in a democratic setting, former US President Woodrow Wilson made the following statement:

> *It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. Unless Congress have and use every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served and unless Congress both scrutinise these things and sift them by every form of discussion, the country must remain in embarrassing, crippling ignorance of the very affairs which it is most important that it should understand and direct. The informing function of Congress should be preferred even to its legislative function. The argument is not only that discussed and interrogated administration is the only pure and efficient*

administration, but, more than that, that the only really self-governing people is that people which discusses and interrogates its administration[21].

The legislature ensures that existing programmes are implemented and administered efficiently, effectively, and in accordance with the law. For example, the budget oversight process involves many different aspects as the National Assembly must weigh the overall value of a programme against the value of other projects competing for funding from limited government funds. It offers lawmakers an opportunity to assert their independence and also provides a way to improve their ability to play a more active role in the policy-making process. According to the Commonwealth Parliamentary Association, the principle of legislative oversight is to ensure that public policy is administered in accordance with legislative intent[22].

Legislative oversight can also be seen as a powerful weapon of the legislature to curb executive branch inclinations towards dictatorship. Therefore, the legislature oversees the affairs of the government and consequently holds the government accountable for its acts or omissions. The proper oversight function is of tremendous benefit to the political system and has promoted international cooperation between different countries to strengthen the legislature as a means of improving democracy in developing countries.

Legislative oversight promotes checks and balances, enshrines fiscal discipline, good governance, accountability and transparency in public offices, as well as efficiency and cost-effectiveness in designing the people-centric policies and programmes needed to address the many challenges facing governments at all levels. Legislative oversight occurs when the National Assembly continually reviews the effectiveness of the executive branch in carrying out the mandates of the legislature through monitoring and evaluation of executive branch actions and activities. This helps the National Assembly to ask questions and address problem areas to make any necessary improvements or changes to create an effective process. This legislative process draws the public's attention to what the executive branch is doing and gives voters a

[21] Quoted in Ejikeme Jombo Nwagwu 'Legislative Oversight in Nigeria: a Watchdog or a Hunting Dog?' (2014)22 J*ournal of Law, Policy and Globalisation*
[22] Ibid

chance to see what public office holders are really doing when they truly serve their collective interest or not.

Legislative oversight promotes checks and balances, creates fiscal discipline, good governance, accountability and transparency in public offices. The *Guide to Legislative Oversight in the National Assembly* summarised the significance and objectives of oversight by enumerating them thus[23]:

(a) To protect the rights and liberties of citizens by curbing the excesses of the government.
(b) To detect waste within the machinery of the government and public agencies, improve efficiency, economy and effectiveness of government operations by making the government accountable to the people.
(c) To improve the transparency of government operations and enhance public trust in the government.
(d) To ensure that policies announced by the government and authorised by the legislature are actually delivered.
(e) Determine the extent of compliance with constitutional, statutory and legislative directives.
(f) Determine whether the right calibre of parties are in charge of administering programmes or policies of government.
(g) Evaluate the impact of programmes on target and spillover groups.
(h) Generate information to develop new legislative proposals or amend existing statutes.
(i) Determine the impact of policies, programmes, laws on the society and life of the people to create opportunities for legislative intervention.
(j) Increase knowledge and understanding of government priorities.
(k) Inform the general public and ensure that executive policies reflect the public interest.
(l) Prevent executive encroachment on legislative authority and prerogatives.
(m) Facilitate good governance through practicalisation of separation of powers.
(n) Provide opportunity for informed legislative decision that is evidenced based.
(o) Promote the observance of one process, transparency and accountability in public expenditure management.

[23] *Guide to Legislative Oversight in the National Assembly* (Abuja: Policy and Legal Advocacy Centre, 2016)

Oversight by the legislature also fulfils other goals and purposes, such as:

(a) Improving the efficiency, economy and effectiveness of government operations;
(b) Benchmark for assessing of programmes and performance;
(c) Identifying and preventing mismanagement, waste, abuse, arbitrary and unpredictable conduct, or illegal and unconstitutional conduct;
(d) Informing the general public and ensuring that executive policies reflect the public interest;
(e) Gathering information to develop new legislative proposals or to change existing laws; and
(f) ensuring administrative compliance with legislative intent.

1.4 Nexus between Oversight and Separation of Powers/Checks and Balances

The doctrine of separation of powers implies that the three governing bodies must be separated in the interests of individual liberty, and is a perfect system created for the common good of citizens. The tasks of the government must be differentiated and carried out by different organs consisting of different personal bodies, so that each department is limited to its respective sphere of activity and cannot overlap the independence and jurisdiction of another.

The main function of the executive branch is to execute laws, orders, rules, ordinances and decrees, prevent violations of the law, provide a range of welfare services and punish criminals in order to maintain peace and good government in accordance with its constitutional mandate as spelt out in Section 5 of the Constitution[24].

On the other hand, the legislature, despite its primary function of making laws, amending or repealing existing laws, serves a number of overlapping goals and purposes including exercising the functions of overseeing the acts or omissions and other activities of the executive branch and its agencies. This enables the legislative arm to monitor, scrutinise, assess and evaluate the overall performance of the executive or its agencies on a routine basis to ensure effectiveness, efficiency and good overall performance. In this way the three governing bodies must be

[24] Section 5 of the Constitution op cit

separated from each other in the interests of individual liberty, and is a perfect system created for the general benefit of citizens[25].

Under the 1999 Nigerian Constitution, legislation, enforcement and adjudication of disputes are separate and vested in different bodies which are fundamentally independent in existence and personnel. This is a key feature of the presidential system of government. In Mallam Nasir Ahmed *El-Rufai v House of Representatives, National Assembly of the Federal Republic of Nigeria*[26], the Court of Appeal observed that it is also a cardinal principle of the Constitution that operates in a system of controls and balances. Each department has been given powers by the Constitution in certain cases to confirm or review the exercise of the powers of other departments. It is also the duty of each department to support the other department in fulfilling its constitutional duties. The Nigerian legislature jealously guards its independence but is patriotic enough to recognize that government is necessarily one, and that cooperation rather than confrontation with the other branches, particularly the executive, leads to a viable governance framework. The Nigerian Constitution is designed so that the legislature controls and balances the executive and vice versa. This helps protect liberty and avoid authoritarianism and dictatorship[27].

Indeed, as stated by Justice Brandeis of the United States Supreme Court:

> *The doctrine of the separation of power, was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was, not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy. Ambition must be made to counteract ambition" argued James Madison in the Federalist. That is why the president is given the power of veto of legislation, and the legislature is given the power of oversight over Executive action. The Constitution vests federal legislative power in the National Assembly (Section 4) thereby separating it from executive power which it separately vests in the President (Section 5). John Locke has*

[25] J.C. Johari (n 13)
[26] CA/A/154/2002 p. 956, paragraphs 25-30
[27] Ibid

noted that 'it may be too great a temptation to human frailty, apt to grasp 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 make and suit the law both in its making and execution to their own private advantage'[28].

It is therefore safe to conclude that legislative oversight is an offshoot of the doctrine of separation of powers and checks and balances, for without the former, the latter will not be feasible.

1.5 Tools for Oversight

There are a good number of tools that can be used in conducting legislative oversight. Some of these are derived from the constitution and others from practice. These are meant to ensure the simple and efficient fulfilment of oversight functions for the benefit of the nation and the advancement of democracy. Thus, Section 89 of the 1999 Constitution provides a list of guidelines and powers intended to assist the legislature in performing this function. This includes issuing subpoenas, warrants, and fines when their orders, as authorised by the Constitution[29]. These are veritable tools for effective oversight functions. In more drastic cases, the legislature has constitutional authority to recommend the removal of officers whose appointments the legislature has the power to confirm when the officer is deemed to be in actual non-compliance with his or her constitutional or statutory duties[30].

Other tools or ways the legislature can conduct oversight as outlined by the *Guide to Legislative Oversight in the National Assembly* include the following:

(a) The legislature can simply ask the government for information.
(b) The legislature can ask the government for public clarification of policy
(c) The legislature can obtain information from sources outside the government.

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[28] Ibid
[29] Section 89 Constitution of the Federal Republic of Nigeria 1999
[30] Pelizzo Riccardo, and Rick Stapenhurst, 'Tools for Legislative Oversight: An Empirical Investigation', World Bank Policy Research Working Paper 3388 (2004). <http://siteresources.worldbank.org/PSGLP/Resources/ToolsforLegislativeOversight.pdf> accessed 2 May 2022; Yamamoto Hironori, 'Tools for Parliamentary Oversight: A Comparative Study of 88 National Parliaments', (2007) *Inter-Parliamentary Union* <http://www.ipu.org/PDF/publications/oversight08-e.pdf> accseed 8 June 2022

(d) The legislature can express its view to the government and the public.
(e) The legislature can undertake informal meetings with executive officials.

The most common oversight tools are oversight visits for inquiry, committee hearings, hearings in plenary sessions of parliament, the establishment of commissions of inquiry, questions, audit committees, auditors, ombudsman and etcetera. Legislators have also created special and standing committees to evaluate agency operations and performance. The committees are responsible for continuous reviewing the work of the MDAs in their subject areas. In addition, the National Assembly can review the rules and regulations developed by the Executive arm[31].

The personal qualities of competent and capable members of the legislature are of paramount importance in fulfilling their legislative oversight duties. Without competent personnel, legal supervision will fail. Therefore, it is imperative that members of the legislature receive regular training to equip them with the tools they need to carry out this duty effectively. Committee hearings are opportunities for citizens to participate in the parliamentary affairs of legislative oversight. Experts can be consulted or become advisors; Committees can invite interested parties to hearings or invite members through public hearings and discuss all aspects of government policy.

1.6 The Nigerian Experience in Abuse and Ultra Vires Oversight

The oversight function of the legislature in Nigeria finds legislative significance in Section 88, Subsections 1(a)-(b) and 2(a)-(b) of the 1999 Constitution of the Federal Republic of Nigeria, which provides that each House of Representatives of the National Assembly shall have the power, by a resolution published in its gazette or the Official Gazette of the Government of the Federation, to order an investigation into:

(a) any matter or matter in respect of which it has the power to dictate laws; and
(b) the conduct of the affairs of any person, agency, ministry or governmental department entrusted or to be charged with the duty or responsibility of
(i) performing orto administer the laws enacted by the National Assembly and

[31] Ibid

(ii) to disburse or administer the relevant funds or which are allocated by the National Assembly.

Sub-section 2(a)-(b) provides that the powers conferred upon the National Assembly pursuant to section the may be exercised solely for the purpose of enabling it to:

(a) legislate in relation to any matter falling within its legislative competence fall, and correct any deficiencies in existing legislations; and
(b) expose corruption, inefficiency or waste in the execution or administration of the laws of its legislative power and in the disbursement or administration of the funds it allocates, testify and require that such testimony be made under oath through the examination of witnesses.

The National Assembly has the power to summon persons to obtain additional documents or oral evidence and (if necessary) to issue an order to compel the presence of any required person, subject to penalty for failure to appear. The legislature has a constitutional responsibility to oversee and regulate the activities of the executive branch of government to avoid waste and to ensure fiscal discipline, compliance with the rule of law and strict adherence to the implementation of legislation approved by the legislature and the implementation of development programmes and policies. When the National Assembly loses confidence in an agency, it can respond in a number of ways to put things in perspective. For example, the legislature may pass legislation to overrule agency decisions and/or limit agency jurisdiction. It can use its funding authority to restrict funding from the agency. It may also limit the agency's regulatory powers[32].

Ezeani observed that despite the importance of legislative oversight in contemporary democratic governance, it in all its implications on the political stage has been contested and remains the main source of executive-legislative conflict in Nigeria[33]. Corroborating, Oluwadare Aguda argued that oversight functions as performed by the legislature was often unconstitutional and violated the principle of separation of powers, which is fundamental to democratic government.

[32] Ibid
[33] E.O. Ezeani 'Integrity Issues in Legislative Oversight in Nigeria' (2010) (3) (1) *Nigerian Journal of Politics and Administration*.

According to the former Attorney General and Minister of Justice of the Federation, the legislature in Nigeria is systematically usurping both executive and judicial functions, and warned that this usurpation has the tendency to affect socio-political stability and economic development of the country[34].

Therefore, the central thesis of the critique of legislative control is its integrity, which was the goal questioned by critics who claim that oversight has become a political tool to harass and blackmail members of the executive branch who are perceived as enemies or political rivals. Aguda was reported to have ordered some of his fellow ministers to ignore calls from the National Assembly because he had second thoughts such political aberrations as undue interference, illegal acts and ungodly ways for corruption and extortion of resources from ministers. However, the legislature, with its robust legal instruments, is the symbolic arm of government that decides whether or not democratic governance is effective[35].

As stated earlier, the primary aim of the legislature, more generally, is to make laws, and to exercise the supervisory and investigative function. it is not absolute as it has some legal obstacles. This was judicially pronounced by the court in *Tony Momoh v Senate of the National Assembly*[36]. In this case, the Court of Appeal found unequivocally that Section 82 of the 1979 Constitution (similar to Section 88 of the 1999 Constitution) is not designed to allow the legislature to address the general investigative functions of the executive nor the judicial functions of the judiciary. It held further that any invitation by the Legislature to any person outside of the purpose defined in Section 82(2), now 88(2) of the 1999 Constitution is void.

Thus, the prosecution of persons guilty of corrupt practices or gross inadequacy or misconduct in the exercise of public office is left to the executive branch. This only restores the doctrine of separation of powers between the different branches of government. The oversight functions of the legislature inevitably end at examining corruption, misconduct of officials, waste of resources or inefficiency in service, scrutiny of government actions and activities for good

[34] O. Aguda 'National Assembly's Oversight Functions and Fair Hearing' (The Nation Newspaper, 21 March 2012) p.2 <http://www.thenationonlineng.net/2011/index/php/politics/48492-national-assembly.html> accessed 5 May 2022
[35] Ibid
[36] (1982) NCLR 105.

governance, etcetera , and their conclusions are conveyed to the relevant arm of government for any further action needed to resolve the issues raised in the same inadequate and acceptable procedures[37].

The oversight functions, or investigative powers, of the legislature have drawn a degree of criticism against their apparent misuse of this parliamentary mechanism since the beginning of the current democratic dispensation of the principle of good governance. Any legal investigation means a safe path to enrich the legislators involved in the exercise, and gives them political relevance in the system, as they seem to attribute quasi-judicial demigods to the public servants under investigation. Legislators often employ unethical strategies or unduly influence the leadership of the National Assembly to secure the nomination to chair one juicy committee or another, and are also appointed as members of many other legislative committees. Once they have secured the chair of these bodies, the next item on their policy agenda is the oversight functions, leading to a preliminary assessment. Fact-finding trips to parastatal and government agencies under his supervision, followed by public hearings (a mock parliamentary session, exercise in public entertainment). In most cases, orchestrated committees abandon the substance in question to chase the shadows, to humiliate and intimidate their prey into bowing to pressure and agreeing to negotiate an unholy deal. In the end, it is all about materialism as against serving humanity[38].

Unfortunately, the average Nigerian member of parliament has lost their sense of decency and dignity. They are in the National Assembly to feed their selfish and gluttonous nest at the expense of their constituents. Some are so kleptomaniac that legislative functions are subordinate to them, and they would prefer not to attend meetings or sessions of the National Assembly that do not involve paying out loot. This is an act of misrepresenting the people whose mandate is exercised by the legislature. Akomolede and Bosede affirmed thus:

> *The legislature is truly not independent of the executive and therefore, is often incapacitated from acting as the watchdog of executive activities. Thus, the inordinate*

[37] Ejikeme Jombo Nwagwu (n 18)
[38] Ibid

ambition of members and leadership of the legislative houses often sees them hob-nobbing with the executive such that valuable time for law-making is lost in the process of lobbying for juicy leadership positions and committees in the legislative houses. It is common knowledge that a good number of members of the legislative houses pursue pure selfish interests that often inhibit them from combating the challenges of lawmaking. Members pursue contracts from the leadership of the houses and even from the executive such that they easily compromise when it comes to contributing meaningfully to debates on the floor of the house. At times, some members resort to absenteeism from the floor of the house and do not participate at all in the proceedings. Again, many of the legislators have ambitions to contest for leadership positions in the house or membership and chairman of juicy committees. A lot of valuable legislative time is wasted while pursuing these ambitions[39].

In support of the unscrupulous ambitions and dishonourable activities of some members of the Legislature, it can be inferred from this scenario that at a public hearing by a House Committee, Ms. Aruma Oteh, Director-General of the Securities and Exchange Commission (SEC) recently made specific charges of corruption against the Chairman of the House of Representatives Committee (Herrman Hembe), which raised fundamental questions about Nigeria's system of government. The report revealed that the House Committee on Capital Markets and Institutions, in its statutory oversight functions, has investigated the apparent cause of the near collapse of the capital market for two consecutive years. The use of an intimidation strategy was adopted to bring the Director General of the Securities and Exchange Commission to her knees. It was alleged that the Speaker of the House of Representatives had accessed unprotected reports about the accused stating that she was incompetent to regulate the sector. The committee's chairman allegedly accused Ms Oteh of waste, alleging that she had spent money like it was going out of style since she took office a year ago by living in a hotel for eight months and spent over N30 million, thus the collapse of the capital market[40].

[39] I.T. Akomolede, A.O. and Bosede 'Legislation as a Tool for Good Governance in Nigeria: Legal Matters Arising'. (2012) (1) (6) *European Journal of Business and Social Sciences*, pp. 61-68
[40] O. Aguda (n 29)

The SEC DG was stunned because she couldn't immediately defend herself. Rather, she questioned the chairman's credibility in leading the investigation, alleging that the committee's chairman (Mr. Hembe) cashed a cheque to travel to the Dominican Republic to attend a conference. He neither attended the conference nor returned the money. She accused him of undermining his ability to carry out his duties as Chairman of the House Committee by asking the Securities and Exchange Commission to contribute N39 million to the public hearing and demanding that she pay N5 million from her pocket. SEC DG questioned why the chairman received information from the SEC and made a judgement based on face value without consulting the commission to verify the accuracy of the information[41].

Aguda pointed out that while bribery and corruption can seriously undermine any system of government, they do not do as fundamentally harming a system of government as violating the principle of the separation of powers or failing to respect fairness hearing as shown above. He referred to the traditional procedure for conducting judicial or quasi-judicial proceedings, well established by the courts in all common law countries, including Nigeria. The correct procedure is that anyone adversely affected by any such allegation or statement made must be given clear and full notice of such allegation or statement before any trial or investigation involving the accused

Therefore, the principles of legal procedure demands thus:

> *before any accused person is required to make his or her defence or counter any statements adversely affecting him or his interest, the following requirements must be complied with. First, the accused must be given the details of all allegations or statements made against him; then he must be afforded reasonable time and opportunity to prepare his defence effectively to all the matters at issue; he must be able to confront and challenge his accuser or accusers at his trial or during any investigation. These requirements apply in all situations and to all proceedings involving any form of trial or investigation no matter who conducts the trial or carries out the investigation and for whatever purpose*[42].

[41] Ibid (The Nation Newspaper, March 21, 2012) p. 2
[42] Ibid

Aguda found that in fulfilling the supervisory function required by law, if the Chairman of the Committee had complied with the prescribed court requirement to inform the defendant in advance of the charges she would face in court, as the defendant later. The defence could have indicated that they had plausible explanations for the allegations made against them by the Speaker of the House of Representatives. The main issue at stake, however, is not whether the allegations by the chairman of the House Committee against the DG of the SEC are true or whether the truth is within the realm of the defendant. The main points of contention are that the Legislative Committee violated the principle of the separation of powers by conducting judicial or quasi-judicial proceedings, thereby seriously violating the most fundamental rule of due process. For example, the investigative committee allegedly obtained information from the SEC without giving the commission or Ms. Oteh (the commission's DG) an opportunity to know in advance the charges she would face during the committee's investigation, or giving her the opportunity to give comment on the allegations before using them to obtain a trial, or identify the source or sources of the allegations made against her[43]. Apparently, it was clear from media reports that the Speaker of the House of Representatives was both prosecutor, executor and judge during the investigation. The apparent prejudice arose as a courageous struggle to cover up illegalities in all trials. The scenario automatically takes on fiddle roles by supporting and abetting crimes in public office[44].

The legislative oversight process in Nigeria shows that the legislature has not lived up to the expectations of Nigerians in passing laws that ensure good governance for the benefit of all. Legislators have not shown sufficient patriotism to support Nigeria's fledgling democracy. Most parliamentarians are motivated more by a selfish desire to accumulate wealth than by a patriotic desire to leave posterity a lasting legislative legacy to etch their names in the sands of history[45].

The legislature has reduced all of these important constitutional responsibilities to a mere alarm mechanism used to blackmail or witch-hunt political opponents, extort money from MDAs under their supervision for selfish or personal gain. For example, the "Honourable" Farouk

[43] Ibid
[44] Ibid
[45] I.T. Akomolede, A.O. and Bosede (n 34)

Lawan, chairman of the House Ad Hoc Committee on Fuel Subsidy oversight scandal is said to have been involved in a $620,000 bribery scam. It has been alleged that the "Honourable" Speaker of the House allegedly received a $500,000 bribe from the President of Zenon Oil in the course of exercising the statutory oversight role in the investigation into the $1.3 trillion fuel subsidies from Mr. Femi Otedola to facilitate the removal of the Zenon Oil and Gas company name from the list of oil traders who purchased foreign exchange of the Central Bank of Nigeria (CBN) without the import of petroleum products. The security report revealed that the defendant first denied accepting bribes from the prosecutor, then claimed he accepted the bribe to use as evidence against Mr Femi Otedola. The chairman of the House Ad Hoc Committee requested $3 million but took a $500,000 bribe as the first instalment for the purpose described above. Subsequently, the "distinguished member" was suspended by the House of Representatives while the legislative inquiry into the matter continues. Ad hoc committee of Mr Boniface Emenalo, who was also implicated in the bribery scandal, had also been suspended from the House for overseeing fuel subsidies. The "Honourable" Emenalo allegedly took a $120,000 bribe from Adetola, for a total bribe of $620,000. These incidents are incredibly horrific, shameful, embarrassing and egregious legislative failures of the 21st century in a developing country[46].

The Speaker of the House of Representatives, Honourable Aminu Waziri Tambuwal, in a swift and subtle reaction to the unfortunate and quite embarrassing development, reprimanded his fellow parliamentarians (a tactful caveat) thus:

> *When we elected to pursue the entrenchment of probity, accountability and transparency in the conduct of government business as a cardinal legislative agenda, we advised ourselves never to expect that it will be an easy task. Accordingly, I have had cause to occasionally sound a note of warning and reminder that our constitutional task is inescapably hazardous requiring total commitment, diligence, transparency, determination and sacrifice … we shall not hesitate to sanction anyone who in the course of these investigations overreached himself or uses the process to intimidate anyone or engages in corruption. Legislators must continue to adhere to their legislative agenda*

[46] Ibid; D. Iriekpen and Y. Akinsuyi 'ICPC on Standby to Prosecute Lawan' <http://thisday-staging.portal.dmflex.net/articles/icpc-on-standby> accessed 17 May 2022

and remain not only sensitive to the yearnings and aspirations of Nigerians but also proactive on all matters of urgent national importance[47].

Meanwhile, it was reported that President Goodluck Jonathan has ordered the report of the police investigation into the matter forwarded to the Economic and Financial Crimes Commission (EFCC) for further action to be taken to demonstrate his government's commitment to get to the bottom of the widespread monstrous fraud that has wiped out the administration of the fuel subsidy system. The bribery allegation was a complete abuse of legislative oversight function, particularly in its determination to ensure probity, accountability and transparency in the conduct of executive business. The precarious situation in Nigerian politics has caused most Nigerians to lose faith in the supposedly good intentions of the government[48].

Jaja noted that Nigerians are seeking an end to the scourge of corruption. In the public sector, legislators are expected to be proactive rather than reactionary in exercising their oversight functions. They are expected to identify and prevent waste, inefficiency and corruption before they occur. Unfortunately, this was not the case. Hearings and regulatory investigations without official reports on some of these investigations have been conducted at all levels of government since the new political dispensation began. It is unfortunate when the legislature compromises the very element that protects democracy and good governance[49]. Schlesinger and Roger succinctly corroborated this view thus:

The principle behind legislative oversight of the executive activity is to ensure that public policy is administered in accordance with the legislation … the legislative function does not cease with the passage of the bill. It is, therefore, only by monitoring the implementation process that members of the legislature uncover any defects and act to

[47] Ibid; See E.O. Ezeani, 'Integrity Issues in Legislative Oversight in Nigeria', (2010) (2) (2) *Nigerian Journal Politics and Administration*

[48] Ibid

[49] Jaja, T. G. Legislative Oversight and Public Accountability in Nigeria: A Study of Rivers State House of Assembly, 1999 – 2011 (A Ph.D Thesis, University of Nigeria, Nsukka 2012); R. Odinga, 'Parliamentarians and Corruption and Human Rights' in AFL Summary Report of Seminar Organized by African Leadership Forum in Entebbe, Uganda December 12-14, 1994, 119-124.

correct misappropriation and maladministration. In this sense the concept of oversight exists as an essential corollary to the law making process[50].

Corrupt legislative oversight has been institutionalised as the basis of governance at all levels of government in Nigeria. Institutional decay is unprecedented as scarce resources are diverted and opportunities for good governance are derailed and degraded, while laws, rules and regulations are compromised by vested interests. These shortcomings have not only hampered the effective performance of the legislature, but also served as a catalyst for corruption in the country. The deficiencies in legislative oversight functions in Nigeria's current system of government have surfaced explicitly in the immediate conflicts of interest between the executive and legislative branches[51].

Usurping the constitutional functions of the executive and judiciary branches of government is another manifestation of this incidence of high handed abuse and ultra vires oversight in the country. For example, the House Aviation Committee, chaired by the Deputy Speaker of the House, allegedly fined some foreign airlines accused of charging Nigerian travelers discriminatory airfares. The Aviation Committee held a public hearing where British Airways, Virgin Atlantic, Air France, Emirates and eight other foreign airlines were allegedly found guilty in the payment order from the House Aviation Committee investigating the matter. In addition to alleged tax evasion, the airlines have also been accused of arbitrary fare setting and collusion as aviation officials misled Nigerian air travellers. The investigative committee is said to have arbitrarily ordered airlines to refund N230 billion to the Nigerian Civil Aviation Authority (NCAA) and directed airlines to make the refund or risk the necessary penalty. In addition, the committee directed the NCAA to review the British Airways Service Agreement (BASA) with British Airways. It was reported that the committee was very upset with the foreign airlines and might reconvene them for another round of talks in the near future[52].

[50] Quoted in ibid

[51] A. Kadir Abdul-Azeez 'Legislative Oversight Failure, Catalyst for Corruption' <http://www.gamji.com/article8000/NEWS8636.htm> accessed 6 March 2022; See also M.A. Olujinmi Alabi and J.Y. Fashagba, 'The Legislature and Anti-corruption Crusade under the Fourth Republic of Nigeria: Constitutional Imperatives and Practical Realities', (2010) (1) (1) (QII) *International Journal of Politics and Good Governance*

[52] Channel Television 'House of Rep Threatens to Sanction British Airways over High Fares' 3 April 2012; Premium TImes Newspaper 'Senate Orders British Airways, Virgin Atlantic Probe' 28 March 2012

In this proceeding, the House of Representatives again usurped the role of the judiciary in its oversight function. The legislature derives its powers from the Constitution to direct or cause to be directed an investigation by the executive branch of government into alleged mismanagement of public funds or any similar case. The relevant Committee forwarded the report with its findings and recommendations to the main body [the House of Representatives] and asked the House of Representatives for a judicial review that the Executive established a panel to fully study the issues raised therein. It is the constitutional responsibility of the executive branch [not the legislature] to establish a judicial commission of inquiry into the matter, as that is outside the purview of legislative role and responsibility for prosecution and imposition or threat of punishment. Lawmakers also reportedly imposed jail terms on those accused or convicted of the crimes, or ordered flight crews to be held in custody pending a repeat of the case at a later date. It is not the proper function of a legislative house in a democracy where obedience to the rule of law is respected, protected and upheld[53].

3.7 Conclusion and Recommendation

Unless the principle of separation of powers is strictly respected and upheld, and the doctrine of fair hearing is unequivocally adopted in all kinds of legislative inquiries, this area will long remain the main source of conflict between the executive and the legislature in governance. A deviation from this legal and constitutional process in governance would occasion a perversion of justice. In most cases, as observed by Aguda, such perversion of the law in our system was the result of so-called "control functions" exercised without regulation by the legislative arm of government[54].

Meanwhile, the grund norm gives the National Assembly only the power to direct or cause to be directed that such investigation should be carried out into matters perceived to be anomalous in nature. The various matters enumerated in subsection (1) of section 88 and that they are exercisable only for the purpose of enabling the legislature to make laws with respect to certain specified matters; and to expose corruption, inefficiency and waste. The power is required to be exercised by resolution published in its journal or in the Official Gazette of the Government of

[53] Ibid; <http://www.thenationonlineng.net/2011/index.php/politics/48492-national-assembly> accessed 7 March 2022

[54] O. Aguda (n 29)

the Federation. The legislature does not seem to be observing the boundaries between it and other arms of government in its oversight functions. There is a need for committed coordination and streamlining of government functions to harness the dividend of democracy and good governance.

REVIEW OF PROCEEDS OF CRIME RECOVERY AND MANAGEMENT BILL, 2020

HON. JUSTICE NGOZIKA R. OJI[55]

1.1. INTRODUCTION

[55] High Court of Enugu State, Nigeria.

The Proceeds of Crime Recovery and Management Bill which was presented to the National Assembly by Mr. President as an Executive Bill in 2020[56], seeks to ensure the recovery and proper management of funds and assets reasonably suspected to be the proceeds of economic crimes or other forms of corrupt practices. Since the Bill also seeks to establish an Agency to be known as the Proceeds of Crime Recovery and Management Agency, in view of the existence of other Anti-corruption agencies, there is need to justify the existence of such an agency, in order to avoid duplication of roles. This Bill also seeks to domesticate the provisions of the United Nations Convention Against Corruption, 2003, an International treaty which Nigeria ratified on 24th December 2004[57]. The author must agree therefore, that it ought to apply the tried-and-tested method of legislative drafting, namely: incorporation of the Treaty as a schedule to the Bill, so that no relevant part of the Treaty is missing for the purpose of its implementation within the territory of Nigeria.

1.2 BACKGROUND

The Nigerian government has over the years, declared its commitment to fighting corruption in all its ramifications. However, the Country continues to rank very high in terms of perception of corruption[58]. The negative impact of corruption on the development of nations has been globally recognized, and this is worse for developing economies as World Bank estimates suggest that USD 1 Trillion is paid annually in bribes, about USD 1 to 1.6 trillion is lost to criminal activities, corruption and tax evasion per year, while corrupt leaders from developing countries loot USD 20 to 40 billion per year in bribes, misappropriation of funds, and other corrupt practices.[59]

In 2017, the Nigerian government unveiled the National Action Plan of the Open Government Partnership with major commitments to strengthen asset recovery legislations by initiating the Proceeds of Crime Bill in a bid to enable transparent management of recovered assets and

[56] See REVIEW OF PROCEEDS OF CRIME RECOVERY AND MANAGEMENT BILL, 2020: NEED FOR RE-FOCUSING OF LEGISLATIVE FRAMEWORK; NILDS Policy Brief, February 2022.

[57]https://www.unodc.org/nigeria/en/fast-tracking-the-effective-implementation-of-the-united-nations-convention-against-corruption-in-support-of-the-sustainable-development-goals.html#:~:text=Nigeria%20signed%20the%20Convention%20on,it%20on%2024%20October%202004.&text=UNCAC%20has%20been%20ratified%20by,guiding%20the%20fight%20against%20corruption. Last visited on 6.4.22. See NILDS Policy Brief, February 2022. *Ibid.*

[58] https://www.transparency.org/en/cpi/2020. Last visited on 6.4.22. See NILDS Policy Brief. *Ibid.*

[59]Mat Tromme: Waging War against Corruption in Developing Countries: How Asset Recovery Can be Compliant with the Rule of Law. *Duke Journal of Comparative & International Law* [Vol. 29:140 (2019); Also available at https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1540&context=djcil . visited on 11.6.2020.

non-conviction-based approach to asset recovery[60]. It appears however that this Bill which was passed by the 8th National Assembly and presented to the President for assent[61], did not receive the expected assent due to recommendations of anti-corruption agencies (ACAs) expressing concerns that the Bill is a duplication of the functions performed by the said ACAs and would reduce or limit their powers on seizure and management of recovered assets.[62] There also seems to be some concerns that section 126 of the proposed bill is a violation of the Presumption of Innocence (PoI) of accused persons guaranteed by section 36(5) of the 1999 Constitution of the Federal Republic of Nigeria. These issues shall be addressed hereafter, taking the Constitutional issue first.

1.3 KEY ISSUES

1.3.1 Conflict between section 126 of the Proposed Bill and the PoI

Section 36(5) of the 1999 Constitution of the FRN provides thus:

> *Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty.*

Indeed, this provision has often posed serious challenges in the prosecution of financial and economic crimes and other corrupt practices, and the enforcement of existing anti-corruption laws, because due to the nature of these offences, it is usually difficult for the Prosecution to prove some of the mental elements of these offences beyond a reasonable doubt as required by law. Thus, in a lot of anti-corruption laws, reverse burden clauses are embedded with regard to those mental elements of the offence which it would be easier for the defence to disprove than for the prosecution to prove. For instance, the Corrupt Practices and other related offences Act[63] creates the offence of *accepting gratification*, and at section 8(2), it provides that once the Prosecution has proved the threshold facts in (a), (b), and (c), "…*the property, benefit or promise shall, unless the contrary is proved, be presumed to have been received corruptly on account of*

[60] https://www.opengovpartnership.org/members/Nigeria/commitments/NG0008/. Accessed on 11/02/2022. See NILDS Policy Brief. Ibid.

[61] https://orderpaper.ng/buhari-declines-assent-to-proceeds-of-crime-bill-17-others/. Accessed on 11/02/2022. See NILDS Policy Brief. Ibid.

[62] https://www.premiumtimesng.com/news/more-news/415190-strengthen-icpc-efcc-instead-nigerians-react-to-establishment-of-new-anti-corruption-agency.html Accessed on 11/02/2022. See NILDS Policy Brief. Ibid.

[63] CPA, 2002.

such a past or future act, omission, favour or disfavour as is mentioned in subsection (1) (a) or (b)".(underlining mine).

Such reverse burden presumptions, which seek to balance the need for the protection of the constitutional rights of accused persons to presumption of innocence (PoI) against the need to effectively prosecute such high crimes as corruption in view of the nature of such crimes, have come under serious criticisms in the past, but continue to appear in several laws due to their utilitarian value in balancing the competing interests between the individual rights to a fair trial and the rights of the public to a corruption-free society[64]. Even in Criminal proceedings, the courts, both at the national levels and the international levels, including our own Supreme Court in Nigeria[65], have agreed that such reverse onus presumptions would not be in conflict with the PoI so long as they pass the twin tests of 'Justifiability' and 'Reasonable Proportionality'[66], especially since in the case of Nigeria, s.36(5) of the constitution recognizes the need for such a shift of burden in its proviso, which states thus:

> *...provided that nothing in this Section shall invalidate any law by reason only that the law imposes upon any person the burden of proving particular facts.* [67]

Nations have also adopted various other measures in fighting the intractable menace of corruption, including criminalization of unexplained wealth[68] and adoption of non-conviction

[64] See Roscoe Pound, "A Survey of Social Interests", (1943-44) 57 *Havard Law Review.* 1. See also Ndiva Kofele-Kale (2006), 'Presumed Guilty: Balancing Competing Rights and Interests in Combating Economic Crimes', 40 Int'l Law, at 931-942.

[65] See *Akibu v State* (2019) LPELR-47630(SC)10-11, where the Supreme Court restated this position of the law, per Dauda Bage, JSC. See also *Daudu v FRN* (2018) LPELR-43637(SC), PER AKA'AHS JSC.

[66] See *Salabiaku v France*[1988] 13 EHRR 37, *R v Lambert* [2001] UKHL 37, *Janosevic v Sweden (2004) 38 EHRR 473,* among other cases. See also David Hamer: The Presumption of Innocence and Reverse Burdens: A Balancing Act; *The Cambridge Law Journal* , Vol. 66, No. 1 (Mar., 2007), pp. 142-171, at p.147, for further reading on balancing the competing interests between individual rights and the rights of the public.

[67] S.35(6) of the 1999 Constitution, supra. See *Akibu v State*; supra.

[68] See Jeffrey R. Boles: *Criminalizing the Problem of Unexplained Wealth: Illicit enrichment Offenses and Human rights Violations*; New York University Journal of Legislation and Public Policy, Vol. 17, No. 4, 2014 ;Fox School of Business Research Paper No. 15-057. P. 880. As at 2010, Illicit enrichment have been criminalized in more than 40 jurisdictions, including Argentina, India, Brunei, Colombia, Ecuador, Egypt, the Dominican Republic, Pakistan, and Senegal. See also Muzila, Lindy, Michelle Morales, Marianne Mathias, and Tammar Berger. 2012. *On the Take: Criminalizing Illicit Enrichment to Fight Corruption.* Washington, DC: World Bank. DOI: 10.1596/978-0-8213-9454-0. License: Creative Commons Attribution CC BY 3.0. Available at

based forfeiture procedures, such as those contained in the proposed bill. This is designed to avoid undue delays occasioned by arguments on the compatibility or otherwise of Reverse burden presumptions with the constitutional rights of accused persons[69]. Since non-conviction based forfeiture is essentially civil proceedings, of course the PoI as captured in section 35(6) of the Constitution would not apply to such proceedings, as the Presumption of innocence only apply to persons charged with criminal offences[70]. Consequently, it is evident that there is really no conflict between the constitutional provisions on Presumption of innocence of an accused person and Section 126 of the proposed Bill, which merely places the civil standard of proof on the defendant in such civil proceedings. Indeed, referring to similar laws in South Africa, Namibia, the Philippines, and other countries, Mat Tromme comments that -

> *Noting that conventional criminal penalties are inadequate to deter organised crime, Justice Cameron of South Africa argued that there is "no reason to approach the powers POCA [Prevention of Organised Crime Act, 1998] confers on courts with reserve. We should embrace POCA as a friend to democracy, the Rule of Law, and constitutionalism, and as indispensable in a world where the institutions of state are fragile, and the instruments of law sometimes struggle for their very survival against criminals who subvert them.*[71]

https://documents1.worldbank.org/curated/en/958781468339641204/pdf/On-the-take-criminalizing-illicit-enrichment-to-fight-corruption.pdf last visited on 14.9.21.

[69] Presumption of Innocence as enshrined in s.35(6) of the 1999 Constitution is one of the fundamental principles of fair hearing in criminal proceedings.

[70] See s.20(1) of the proposed POCA Bill.

[71] Mat Tromme: *Waging War Against Corruption in Developing Countries: How Asset Recovery Can Be Compliant With the Rule of Law;* DUKE JOURNAL OF COMPARATIVE & INTERNATIONAL LAW [Vol 29:140 (2019) Pp. 166-210, esp. at pp.191-195. see NDPP v Elran (2013) (1) SACR 429 (CC) 35, cited in Matt Tromme; *Ibid*. The preamble to South Africa's POCA, states that "no person should benefit from the fruits of unlawful activity," See Prevention of Organised Crime Act, No. 121 of 1998). See also Deepak Gupta, *Republic of South Africa's Prevention of Organised Crime Act: A Comparative Bill of Rights Analysis*, 37 HARV. C.R.-C.L. L. REV. 159, 160 (2002), also cited in Matt Tromme; Ibid. See *Shalli v The Attorney-General* [2013] NAHCMD 5. See also POCA 9/2011 of Namibia. Also Republic of the Phil. v. Sandiganbayan, G.R. No. 152154 (S.C., Nov. 18, 2003) (Phil.), http://sc.judiciary.gov.ph/jurisprudence/2003/nov2003/152154.htm. See also JOHAN STEYN, DEMOCRACY THROUGH LAW 3 (N.Z. Ctr. for Pub. Law, 2002), cited also in Matt Tromme; *Ibid.* See David Hamer: The Presumption of Innocence and Reverse Burdens: A Balancing Act; *The Cambridge Law Journal* , Vol. 66, No. 1 (Mar., 2007), pp. 142-171, at p.147, for further reading

1.3.2 Duplication of Laws and Agencies

In addition to providing for an effective legal and institutional framework for the recovery and management of proceeds of crime or benefits derived from unlawful activities, the proposed POCA Bill also seeks to make provisions for the restraint, seizure, confiscation and forfeiture of property derived from unlawful activities and any instrumentalities used or intended to be used in the commission of such unlawful activities. It also provides for a non-conviction based procedure for the recovery of proceeds of crime and unlawful activities.

The Bill further seeks to prevent the reinvestment of proceeds of unlawful activities in furtherance of criminal enterprise. Contrary to the concern that enacting this law would amount to duplication of laws and agencies because there are already agencies empowered to seize and recover proceeds of crime, there is need to appreciate that in all the existing Anti-corruption laws, the named agencies, such as EFCC, and ICPC are only empowered to apply for interim attachment or forfeiture of assets on the basis of pendency of proceedings relating to either investigation or prosecution of a crime. However, non-conviction based forfeiture is civil proceedings and empowers the agency to recover funds or assets reasonably suspected to be or have been acquired through the proceeds of crime or unlawful activity, without securing conviction[72].

Most importantly, Part III of the proposed Bill creates a symbiotic relationship between the proposed agency and all other relevant organisations[73], while Section 134 proposes necessary amendments to the existing laws of such relevant organisations so as to create a strategic framework targeted at the achievement of the common goal of fighting corruption and making corrupt practices unprofitable and unattractive. Indeed, it is such a framework provided by the United Nations Convention Against Corruption (UNCAC), that has led to the recovery and repatriation of what is now widely known as the *Abacha loot.*[74]

[72] See Part IV, particularly ss. 19- 32 of the proposed POCA Bill.
[73] See s.135 of the proposed bill which lists all relevant organisations, including EFCC, NDLEA, ICPC, etc.
[74] The late Gen. Sanni Abacha is suspected of looting between US$3 and $5 billion in public money from 1993 when he became the Military Head of State in Nigeria to 1998 when he died. Since then, following series of agreements between Nigeria and the four major countries where he stashed the stolen funds away, a significant portion of those funds (more than US$3.5 billion) have been recovered. See Levinus Nwabughiogu: *Abacha loot: How much did the late Head of State Steal?* Available at

1.4 Recommendations

- This proposed Bill, if passed and assented to, would go a long way towards ensuring that the proceeds of corruption and other unlawful activities are promptly recovered and managed while awaiting the rigorous process of criminal prosecution and possible conviction. This would also minimise economic and other losses incurred as a result of delays in such criminal trials occasioned by several factors including challenges to the constitutionality or otherwise of reverse burden presumptions in anti-corruption laws in view of the constitutional rights of accused persons to the presumption of innocence.
- Since none of the existing anti-corruption laws have provisions for a non-conviction based forfeiture procedure, the passage of this Bill and its enactment as Law, would be a significant development in the fight against corruption in Nigeria.
- The relationship between the proposed agency and the other relevant organisations and entities as well as the Ministry of Finance, ought to be fine-tuned such that the role of each of these agencies and Ministry in the recovery and management of proceeds of crime or unlawful activities would be clearly streamlined.

1.5 Conclusion

Whereas the concern regarding the duplication of laws, agencies, and roles is quite a genuine one, we note that the functions ascribed to the proposed agency in this proposed POCA Bill are functions that would enable the existing agencies to perform their roles in a more efficient manner. This is because the introduction of a non-conviction based forfeiture procedure empowers the proposed agency to avoid the challenges posed by the PoI in the conduct of criminal proceedings, thus making it easier and more realistic for the agency to recover and manage the proceeds of crime and unlawful activities without undue delays, while working together with other relevant agencies to ensure the eradication of corruption in the society.

https://www.vanguardngr.com/2020/03/abacha-loot-how-much-did-the-late-head-of-state-steal/ Last visited on 13.9.21

ISSUES AND CHALLENGES OF PROMOTING EXCELLENCE IN ALTERNATIVE DISPUTE RESOLUTION IN AFRICA

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ABSTRACT

Access to justice is a situation where people in need of help find effective solutions from justice systems that are accessible, affordable, comprehensible to ordinary people and which dispense justice fairly, speedily and without discrimination, fear or favour. The inefficiency of the litigation process has led to the development of Alternative Dispute Resolution (ADR) mechanisms in Africa to enhance access to justice. The doctrinal research method was adopted and the data collected were both primary and secondary, consisting of both hard copies and online source materials. This paper examined the issues and challenges of promoting ADR in Africa and discovered that notwithstanding the track records of ADR in Africa, there exist huge challenges for ADR such as political interference, lack of funding, and lack of trained personnel among others. It was recommended that the African governments should endeavour that their citizens are enlightened on the benefits of ADR and more personnel should be trained to ensure efficiency of the processes. ADR centres should be supported financially to cater for remuneration of personnel and deficient infrastructure.

Keywords: Dispute Resolution, Alternative Dispute Resolution, Arbitration, Mediation, Conciliation, Negotiation

1.1 INTRODUCTION

Many African citizens have lost faith in the ability of their nations' courts to provide timely or just closure to their grievances. A 2009 survey in Liberia found that only 3 percent of criminal and civil disputes were taken to a formal court. Over 40 percent sought resolution through informal mechanisms. The remaining 55 percent went to no forum at all.[77] This includes cases where claimants felt the need to take justice into their own hands, often with violent consequences. In post conflict and fragile contexts, where societal tensions are already high and justice systems typically do not function, the need for prompt resolution of disputes is

[75] Secretary Nigerian Bar Association, Abuja Branch (Unity Bar)
[76] Nigerian Bar Association, Abuja Branch
[77] EE Uwazie, Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability (African Centre for Strategic Studies, 2011) 1.

particularly critical.[78] Without timely, accessible, affordable, and trusted mechanisms to resolve differences, localised disagreements or crimes can degenerate into broader conflict. This contributes to cultures of violence and vigilante justice. This timely mechanism is known as Alternative Dispute Resolution (ADR).

ADR consists of a range of processes used as an alternative means of resolving disputes between two or more parties rather than using the conventional means of going to court. ADR is often used to describe a wide variety of dispute resolutions that are sort of or alternative to full-scale court processes. The term can refer to everything from facilitated settlement negotiations in which disputants are encouraged to negotiate directly with each other prior to some other legal process, to arbitration systems or mini trials that look very much like a courtroom process.[79] ADR is not meant to replace the formal court system or diminish the need to improve the current system but only as an alternative to full-scale court processes.[80] It is usually not recommended for use in instances where cooperation between the parties to the dispute is lacking, where a court ruling on a case may result in the law being changed, where control offered by the justice system is required or where punishment by jail is required to show disfavour for criminal actions.[81]

Historically, traditional indigenous African societies were organised on the basis of clan or family relationships and leadership. Dispute settlement mechanisms were mostly amicable. Communities were traditionally led by an elder, who was regularly consulted and respected for his decisions when it came to sorting out disputes. The indigenous African justice system was indeed a tool for reconciliation, its goal being the resolution of conflict through peace and social harmony.[82] Thus, the concept of dispute resolution is not new to African nations. Over the last couple decades, ADR has been implemented across Africa, notably emerging democratic countries to enhance access to justice.

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[78] Ibid.

[79] Centre for Democracy and Governance, Alternative Dispute Resolution Practitioners' Guide 8 (Technical Publication Series, 1998).

[80] E Wychreschuk & B Boland, Making It Safe: Women, Restorative Justice and Alternative Dispute Resolution 8 (Department of Justice, Government of Newfoundland and Labrador, 2000).

[81] KA Atua, 'Alternative Dispute Resolution and Its Implications for Women's Access to Justice in Africa – Case Study of Ghana', *Frontiers of Legal Research* [2013] (1) (1) 37.

[82] A Dieng, ADR in Sub-Saharan African Countries (Arbitration, Mediation and Conciliation Centre of Dakar, 2011).

1.2 PRINCIPLES AND FORMS OF ADR

A. PRINCIPLES OF ADR

1.2.1 Equity

ADR programmes are conducted on the principle of equity rather than the rule of law.[83] Neutral third parties acting as mediators are employed in ADR proceedings or the parties involved are allowed to choose how proceedings should go based on how comfortable they feel. This is quite different from the mainstream court where there are standardised laid down rules and hence participants have no say in proceedings. ADR mechanisms are efficient due to its principle of equity over consistent norms of justice. Nevertheless, should the parties based on the outcome of the proceedings remain unconvinced; they are allowed to refer the matter to the judicial courts. However, due to the win-win goal of mediation, where parties deliberate until each has felt like he has had his day in court, seldom do they go back to the formal court unless in extreme cases where one party feels cheated. In societies where large parts of the population do not receive any real measure of justice in West Africa, ADR can be very useful in providing timely and efficient justice under the principle of equity, which speeds up the process of conflict resolution.[84]

1.2.2 Informality

Informality remains a distinctive feature of ADR. Most ADR procedures are less formal than the formal judicial court processes.[85] Normally, the rules of ADR are flexible without formal pleadings. In addition, there is hardly any extensive written documentation or evidence. Informality is important for ADR proceedings because its main aim is to make access to justice more flexible to the ordinary person who may be intimidated by the formal law courts or do not have the necessary financial resources to seek justice. Furthermore, it aids in reducing the delays associated with the bureaucracy in the formal judicial setting.[86]

1.2.3 Direct Participation

[83] B Scott, C Cervenak, and D Fairman, Alternative Dispute Resolution Practitioners Guide (Center for Democracy and Government, 1998) 21.
[84] Ibid.
[85] Ibid.
[86] Ibid.

ADR also seeks to give room for reconciliation and healing of relationships through direct participation.[87] Reconciliation through direct participation is particularly important for the African society where communal spirit is placed above individualistic style (western style) of living. As disputants negotiate through direct communication with each other, it gives room for reconciliation and healing.[88] This ensures confidentiality, trust, sincerity, understanding and a better appreciation of the issue at hand. Disputants are able to hear themselves out and detect where each party has erred and how the dispute can be resolved.

In addition, since the process is held in private with no formal documents needed, it allows creative methods to be used in resolving the conflict with various options available as solutions. There is also no imposed formal authority to impose decisions hence this gives room for fair resolution of the conflict. This remains distinctive from mainstream proceedings where the lawyer with the best case and evidence wins without giving room for disputants to analyse the issues at hand for themselves.

B. FORMS OF ADR

Forms of ADR

There are several methods of ADR in African countries. The most prevalent are negotiation, conciliation, mediation and arbitration. Below is an in-depth description of the various types of ADR available.

1.2.4 Arbitration

Arbitration is one of the various methods of dispute resolution but undoubtedly the most popular. Arbitration views the dispute as a legal analysis and seeks a solution based on entitlement and rights. It often "may ignore the interests and needs of an individual party and critically in international disputes, not embrace the cultural influences on the problem at hand. Like litigation, it is an adjudicative process whereby a single or panel of arbitrators impose(s) a settlement on the parties. Unlike litigation, it is usually subject to confidentiality agreements

[87] JA Edzii, Is Alternative Dispute Resolution a Solution to Interpersonal and Group Conflicts in West Africa? The Case of Ghana (Being a Masters' Dissertation submitted to the Faculty of Law, University of Ghana, Legon, 2018) 46.
[88] Ibid.

between the arbitrator, the parties and the seat of the arbitration.[89] Arbitration is a voluntary method of ADR, which is applied to both domestic and international contracts and is founded on the present or future agreement of the parties to submit any dispute between them to arbitration.

1.2.5 Conciliation

Conciliation is the process by which one or more independent person(s) selected by the parties to an agreement generally by mutual consent, either at the time of making the agreement or subsequently when a dispute has arisen between them, to bring about a settlement of their dispute through consensus between the parties by employing various persuasive and other similar techniques.[90] It is a process of confidence and faith. Sometimes, and in some systems it is also called mediation. Conciliation is an effective means of alternative dispute resolution and can be usefully deployed for both international as well as domestic disputes, except that in the conciliation of an international dispute certain facts assume greater importance than they would in a domestic conciliation.[91]

1.2.6 Mediation

Mediation is the process whereby a neutral third party helps conflicting parties arrive at decisions mutually beneficial to all parties' interest without imposing any decision on them.[92] Mediation is a voluntary process and parties have the choice to choose their own mediator acting in the capacity of an impartial third party guiding involved parties to arrive at amicable terms of settlements. The mediator's ultimate goal is to ensure mutual benefits for all parties by adopting an interest based approach of resolving conflicts.[93] This is attained by encouraging parties to concentrate on their needs and what they seek to gain at the end of the mediation process. Disputants on the other hand have the power to partake in the process by choosing the time, date, venue and agenda for the meeting with the help of the mediator. After the parties and the mediator have agreed on the rules necessary for mediation to take place, the mediator

[89] AP Phillips, ADR in Africa (Mediate.com, 2012) 4 <https://www.mediate.com/articles/PhillipsPbl20120625.cfm> Accessed on 9th May, 2021.
[90] V Argawal, Alternative Dispute Resolution Mechanisms (United Nations Institute for Training and Research, 2001) 9.
[91] Ibid.
[92] JA Edzii, Is Alternative Dispute Resolution a Solution to Interpersonal and Group Conflicts in West Africa? The Case of Ghana (Being a Masters' Dissertation submitted to the Faculty of Law, University of Ghana, Legon, 2018) 61.
[93] Ibid.

commences with the mediation process. Mediation therefore takes a more formal and organised process in comparison with the negotiation process.

1.2.7 Negotiation

Negotiation is a voluntary and informal process in which the parties seek out the best options for each other. The result is usually a mutually acceptable agreement. In this private process there is usually no limit to the argument, evidence, and interests that may be brought to the bargaining table.[94] It is the most available process among the ADR processes that anyone can utilise. It can be used in resolving already existing disputes or for laying the foundation for future relationships between parties. It can take place at the individual, corporate, national and international level.[95]

TRADITIONAL JUSTICE SYSTEM AND ADR IN AFRICA

1.3 Traditional Justice System in Africa

Over many centuries, citizens in many African countries have relied, and continue to do so, on traditional justice systems to resolve disputes. In pre-colonial times, many African communities organised themselves according to kingdoms and clans, each with its own dispute resolution systems to resolve intra- and inter-community disputes. For centuries, traditional justice systems utilised forms of negotiation, arbitration and mediation to resolve disputes.[96] These systems were rooted in the culture and history of the societies and built around the concepts of reconciliation, accountability, truth-telling and reparation.

All types of disputes were resolved using traditional justice, including theft, family disputes, commercial disputes, water and land rights disputes and other criminal matters, such as rape and murder.[97] In many communities, transgressions were not regarded as individual failings, but rather as a collective failure by the family, clan or community, to prevent individuals from

[94] AP Phillips, ADR in Africa (Mediate.com, 2012) 3 <https://www.mediate.com/articles/PhillipsPbl20120625.cfm> Accessed on 9th May, 2021.
[95] JA Edzii, Is Alternative Dispute Resolution a Solution to Interpersonal and Group Conflicts in West Africa? The Case of Ghana (Being a Masters' Dissertation submitted to the Faculty of Law, University of Ghana, Legon, 2018) 59.
[96] M Mutisi, The Abunzi Mediation in Rwanda: Opportunities for Engaging with Traditional Institutions of Conflict Resolution (Durban Accord, 2011).
[97] B Radar & M Karimi, Indigenous Democracy; Traditional Conflict Resolution Mechanisms; Pokot, Turkana, Samburu and Marakwet (Nakuru: ITDG-EA, 2004).

committing the transgression.[98] Therefore, transgressions and disputes were collectively owned and prioritised for urgent resolution within the community.

Central to the process of dispute resolution were food and spiritual rituals. The dispute resolution process started and/or concluded with an offering of an animal to the ancestors. Certain rituals were performed after the process, such as dancing, eating and drinking traditional beer. Even the compensation was often an animal offering, food or drink. These practices are still in place in many countries and more than half of the population in sub-Saharan Africa still rely on them to provide access to justice. In rural areas, only 36% of the population would consider referring the mattes to court.[99] Their first point of call when they have disputes is the traditional justice mechanisms or religious leaders.

1.4 Rationale for the Use of ADR

Africa's rationale for introducing ADR was no different to other parts of the world. ADR was seen as a possible solution to address lack of access to justice caused by case backlog, lengthy processes, cost of litigation and lack of human and financial resources. It was also seen as a way of simplifying court processes. Other challenges identified by the Institute for Security Studies (ISS), which hinder access to justice, included lack of court facilities in rural areas, where 62% of the people in Sub Saharan Africa still live,[100] low literacy levels', poverty, prohibitive costs of legal representation without sufficient legal aid, prohibitive cost of travel to the courts and, most relevant to this paper, the use of foreign, complex processes and languages, unfamiliar to many Africans.[101] The court processes seldom utilise restorative principles used in traditional justice systems, which people are accustomed to.[102]

The ISS' claim that access to justice is hindered by the use of foreign processes and languages in courts, can better be understood by looking at how the formal justice system came about in

[98] Ibid.

[99] J Loschky, Majority in Sub-Saharan Africa Wouldn't Use Formal Courts (Gallop News, 2016) <www.gallup.com/poll/190310/majority-subsaharan-africa-wouldn-formal-courts.aspx.30.> Accessed on 11th May, 2021.

[100] World Bank & International Monetary Fund, Global Monitoring Report 2013: Rural-Urban Dynamics and the Millennium Development Goals (Open Knowledge Repository, 2013) <https://openknowledge.worldbank.org/handle/10 986/13330> Accessed on 11th May, 2021.

[101] R Bowd, Access to Justice in Africa: Comparison between Sierra Leone, Tanzania and Zambia (Policy Brief of the Institute for Security Studies, 2009).

[102] M Spinks, Access to Justice in Sub-Saharan Africa: The Role of Tradition and Informal Justice Systems (Penal Reform International, 2001).

Africa. Many African countries inherited their legal systems during the time of decolonisation.[103] These inherited legal systems, comprising common law, civil law, religious law or hybrid systems, were far removed from the cultural systems which were in place in many African countries prior to colonialism. These legal systems were built on irrational, violent and malevolent practices, through which the colonial master achieved public control and deprivation of the colonised people.[104] They were established by autocratic, racist and chauvinistic colonial governments, whose focus was de-indigenization, divide-and-rule and to ensure that, by using foreign languages, principles and procedures, Africans had no way of dealing with the injustices of the state.[105] Colonial powers regarded African tradition and systems as primitive and only appropriate for the natives.[106] In fact, when disputes arose, race was the predetermining factor for which legal system Africans were entitled to.[107] When independence was proclaimed, these systems were passed down with their foreign languages and processes, regardless of whether they were French, British or Portuguese and without consideration of local conditions and cultural context.

1.5 Merging Justice System

The promotion of ADR has grown in many African countries. These countries have made great strides to incorporate the use of ADR in various forms in the formal justice system for the purposes of resolving disputes and creating better access to justice. Court connected mediation and the use of arbitration are becoming common occurrences in many African justice systems. Some African countries have taken things a step further by introducing ADR into the upper court of the formal justice system and merging traditional justice systems into the formal justice system so that they are used at the lower court level to become the first court of instance in resolving disputes.[108]

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[103] A Sium, Revisiting the Black Man's Burden: Eritrea and the Curse of the Nation-State (Being a Masters' Thesis submitted to the Department of Sociology and Equity Studies in Education, Ontario Institute for Studies in Education, University of Toronto, 2010).
[104] Ibid.
[105] B Davidson, *The Black Man's Burden: Africa and the Curse of the Nation State* (Three Rivers Press, 1992).
[106] SF Joireman, 'Inherited Legal Systems and Effective Rule of Law: Africa and the Colonial Legacy', *Journal of Modern African Studies* [2001] (39) (4) 571-596.
[107] Ibid.
[108] N Ntuli, 'Africa: Alternative Dispute Resolution in a Comparative Perspective', *Conflict Studies Quarterly* [2018] (22) 36-61.

The United Nations encouraged this approach in 2004 when Kofi Anan acknowledged that due regard should be given to traditional justice systems in the settlement of disputes to help them continue their vital role of resolving disputes, but to also help traditional justice conform with international standards.[109] Incorporating traditional justice into the formal justice system has proven to be a successful way to create better access to justice and to reduce case backlog in some countries because it is home grown, locally owned and culturally embedded.

1.6 Prospects of ADR in Africa

The notion of ADR fits comfortably within traditional concepts of African justice, particularly its core value of reconciliation.[110] The growth of ADR in its present form on the continent is certainly an overall positive step for the promotion of access to justice in the formal justice system. Ghana, South Africa and Uganda are among the countries in Africa who have recorded remarkable success in using ADR in the formal systems.[111] The track records of ADR in Africa can be summarised as follows:

(a) The introduction of ADR within the courts has aided in achieving its primary mandate of reducing the backlog of cases, reducing cost, promoting the ease of doing business and avoiding delays associated with the formal courts.
(b) It has promoted access to Justice for all, especially the less privileged in society.
(c) It has strengthened the trust in the judicial system as capable of delivering timely and efficient justice, which has helped in reducing crime rates in some countries.[112]
(d) It supports and reiterates the role traditional leaders play in resolving conflicts at both the national and community level. E.g. the Customary Arbitration Act of Ghana. Traditional rulers have played vital roles mitigating cross-cultural conflicts.[113]

[109] Ibid.
[110] EE Uwazie, Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability (African Centre for Strategic Studies, 2011) 3.
[111] N Ntuli, 'Africa: Alternative Dispute Resolution in a Comparative Perspective', *Conflict Studies Quarterly* [2018] (22) 56.
[112] Ibid.
[113] JA Edzii, Is Alternative Dispute Resolution a Solution to Interpersonal and Group Conflicts in West Africa? The Case of Ghana (Being a Masters' Dissertation submitted to the Faculty of Law, University of Ghana, Legon, 2018) 85.

(e) ADR has helped boost economic activities within the continent by providing workers, through training, with the requisite skills needed to resolve conflicts both at home and the work places.

(f) Equity as an ADR principle has also contributed in preventing unforeseen financial or material difficulties. People do not only experience damages because of lengthy years spent in courts but also experience sentimental losses.[114]

1.7 Challenges of ADR in Africa

Notwithstanding the track records of ADR in Africa, it has challenges impeding its promotion in the continent. Some of the notable challenges are discussed below.

1.7.1 Political Interference

Political interference remained the top most challenge hindering the implementation of ADR especially pertaining to resolution of group conflict. The objective of ADR is to restore faith in the justice delivery system by encouraging disputants to be a part of the settlement process. For this reason, disputants are given autonomy in selecting a neutral third party whom they trust to help them resolve their conflicts. However, politicians prevent the realisation of this objective by constantly meddling in the resolution of group conflicts.[115]

1.7.2 Indifference of Government

Despite the high number of ADR professionals within the continent, it is unfortunate that their skills are yet to come to bear on resolving conflicts. Governments resort to the expertise of security services in managing conflicts rather than relying on ADR practitioners.[116] In such events, security often uses curfews to calm down tensions within such communities. The danger is that such conflicts never die away and will keep recurring until trained professionals are employed to resolve these cases using their technical skills.

1.7.3 Poor Funding

Lack of funds, infrastructural deficiencies and poor logistics are equally challenging in the institutionalisation of ADR. ADR Centres continue to operate in dilapidated structures. This

[114] Ibid at 86.
[115] Ibid at 88.
[116] Ibid.

hinders the centre's effectiveness in handling disputes and in worse cases, threatens the existence of the centre as it could shut down at any point in time.

1.7.4. Resistance by Legal Professionals to Participate in ADR Processes

This is largely driven by lack of knowledge and understanding of ADR processes among legal professionals. There is also a perception that because ADR reduces the time for resolving disputes, it results in loss of revenue for legal practitioners. Furthermore, there is a concern that using ADR will erode the creation of jurisprudence. In every process of change, people first resist the change before embracing it.[117]

Even where lawyers have embraced ADR, their litigious nature, due to legal training, still results in an adversarial approach to ADR which is counter-productive. Remuneration is also a problem faced by most practitioners because the majority of citizens who benefit from the ADR services are mostly unable to foot the bill. Majority of the mediators are therefore not motivated to give off their best. Some judges may also resist ADR for fear of losing "control" over non-litigation processes of resolution or out-of-court settlements.

1.7.5. Lack of Knowledge

In Lesotho, and some other countries that have introduced ADR into the court system through court-annexed mediation, the lack of knowledge and understanding of ADR by court users, has resulted in reluctance to undergo mediation. Because the court administrative staff also had limited knowledge and understanding of ADR, they were ill-equipped to provide proper guidance to court users on ADR processes, thereby exacerbating the problem.[118]

1.7.6. Lack of Training of ADR Professionals

ADR requires specific skills and cannot be conducted by persons simply because they have knowledge of the law. Lack of training can have detrimental effects on the public's attitude towards ADR. The way the ADR practitioners conduct the process, can create confidence or mistrust in the process. When this happens, it is near impossible to get the parties to have a positive attitude towards ADR.

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[117] N Ntuli, 'Africa: Alternative Dispute Resolution in a Comparative Perspective', *Conflict Studies Quarterly* [2018] (22) 56.
[118] Ibid.

1.7.7. ADR is Only Used in Formal Justice

ADR is mostly introduced at the upper court level, from the High Court upwards. Few attempts have been made to see how ADR can be used to enhance traditional justice practices. Nor have traditional justice practices been used to enhance ADR initiatives introduced in the formal justice system. This exclusion of traditional justice, further enforces perceptions that the system is bias and systematically favour the more powerful, elite parties and perpetuate the dominant Western culture.[119]

1.8. Recommendations

In view of the identified challenges to the promotion of ADR in Africa, the following recommendations are proffered to serve as a panacea:

1. While most African court rules or policies permit the judge to encourage parties to settle out of court, enacting legislation would elevate the status of ADR before a sceptical disputant, build public confidence, and further increase ADR utilisation.
2. To develop and broaden adoption of ADR mechanisms, their benefits and contributions to legal professionals must be clear. For lawyers, strategic use or inclusion of ADR should offer an additional tool to enhance the efficiency of their practice, potentially increase revenue, and achieve greater satisfaction for both the lawyer and client.
3. To maximise the efficiencies and complementarities of ADR with the official judicial process, a systematic monitoring process should be established. This includes measuring key qualitative and quantitative data that would then lead to adjustments in the scope and focus of ADR efforts.
4. African governments must make a deliberate effort to market and sensitise the general public on the advantages of ADR in delivering effective and affordable and timely delivery of justice.
5. African governments must actively engage in the promotion of ADR by funding the respective centres and ensuring that more people are trained. Proper infrastructural development must be pursued to promote access to justice especially in the rural and deprived areas where access to justice is limited.

[119] N Ntuli, 'Africa: Alternative Dispute Resolution in a Comparative Perspective', *Conflict Studies Quarterly* [2018] (22) 57.

6. Politicians must ensure that trained ADR practitioners have their skills brought to bear when matters arise especially relating to communal conflicts. Conflicts of this nature must be properly managed.
7. Lawyers and other law enforcement agencies are advised to desist from attempting to resolve conflicts using ADR mechanisms when they are not properly trained. ADR requires a special skill and only trained professionals can fully utilise its power to yield the right results.

1.9. Conclusion

From the discussions made so far, it can be safely concluded that ADR is a solution to interpersonal and group conflicts in Africa using the various methods of resolving conflicts such as arbitration, mediation, conciliation and negotiation. It has helped to reduce the caseloads in the courts and promoted access to justice for all by delivering cheaper, faster and timely justice. Its principles of informality, confidentiality and equity continue to make it an attractive means of seeking justice.

Traditional justice mechanisms need to be incorporated into the ADR practices that are introduced in Africa. This will create familiarity and, in turn, better access to justice. This will also give recognition to existing systems of dispute resolution that are aligned to the social fabric of many African communities. However, modification of the systems is required to stem out discriminatory and oppressive cultural practises that are not in line with international human right doctrines, especially relating to women. The challenges confronting ADR institutions such as lack of funds, opposition from legal professionals and poor remuneration for practitioners amongst others, if addressed would promote ADR in reaching its full potential as a conflict resolution tool in Africa.

A RETROSPECTION OF THE REQUIREMENT FOR DOMESTICATION OF TREATIES IN NIGERIA: TOWARDS CONSTITUTIONAL AMENDMENT

Mercy Kazi Njila (LLM, LLB, BL)[120]

Abstract

One of the ways of making commitments under international law is to accept the text of the treaty that establishes such commitments. Intent to commit in such a manner is often demonstrated by becoming a signatory to such an agreement. However, sometimes such a contract must be domesticated or be adopted at national level by the state that accepts this obligation before its citizens can fully benefit from its provisions. This is as provided under Section 12 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), which mandates such a treaty to undergo legislative process before it can be admitted in Nigerian court. This paper examines the intention of the drafters of this section of the Nigerian Constitution and their shortcomings in enforcing treaty obligations. It concludes that for some, the domestication obligation acts as a shield by undermining contractual obligations. It makes recommendations for constitutional amendment, including extending it to human rights treaties, particularly those providing for socio-economic rights.

1.1 Introduction

Treaties are international agreements concluded in writing between States and governed by international law, whether enshrined in a single instrument or in two or more interrelated instruments, and regardless of their respective names[121]. They can be an important source of international law and they bear a close resemblance to treaties in the superficial sense, in which the parties create binding obligations for themselves[122]. When sovereign states come together to

[120] Lecturer, Faculty of Law, Taraba State University, Jalingo-Nigeria.
[121] See Article 2 (1)(a) Vienna Convention of the Law of Treaties 1969
[122] N. C. Okeke, 'The Use of International Law in the Domestic Courts of Ghana and Nigeria' (2015) (32)(2) *Ariz. J. Int'l & Comp. L.* 371; E. Egede, 'Bringing Human Rights Home: An Examination of the Domestication of Human Rights Treaties in Nigeria' (2007) 51 *J. Afr. L.* 249.

negotiate and agree on the text of a treaty, it is implied that the contracting states accept the obligation and responsibility derived from it.

Therefore, to claim incapacity due to lack of domestication is evidence of bad faith. In fact, the need and lack of contract domestication in dualistic countries, particularly third world countries, is often the cover that some people hide under to prevent commitments from fulfilling the contracts they signed. This has serious implications because of the role the treaty plays in international and even local law. It is considered to be the closest analogy to legislation that international law has offered and represents the primary means of concluding agreements in international law. It has significant implications for national law, national institutions, and the citizens of states[123].

In addition, treaties have ended wars, regulated shipping, promised troops, and sometimes encouraged trade. Nigeria is a member of the international community and as such has the ability to enter into international treaties. In fact, it is a signatory to a large number of international agreements. Such international contracts, no matter how good, do not automatically become law in Nigeria the moment they are signed. Section 12 of the Nigerian Constitution requires it to be ratified before it can enter into force in municipal courts. This paper examines the intent of this section of the Nigerian Constitution and concludes that this section is a protective shield for the political class to undermine treaty commitment. Thus the need for amendment of the Constitution Act (Third Amendment) of 2010 to that effect, as well as a provision for human rights treaties be included therein.

1.2 Domestication in the Context of Municipal and International Law

One available source for determining how a state's domestic law interacts with international law is the constitution. This interaction determines the extent to which individuals can use international law to enforce their rights within the national legal system. It is a fixed principle of international law that any state may enter into treaties over matters falling within its sovereignty. But sometimes finding the department in charge of negotiating and ratifying treaties in Nigeria is

[123] B. I. Olutoyin, 'Treaty Making and Its Application under Nigerian Law: The Journey So Far' (2014) 3 IJBMI 7

not as easy as expected. According to Nwabueze[124], such laws and procedures are not documented in the Nigerian Constitution. What is visible in the constitution is the implementation of the treaty.

The Nigerian Treaties (Making Procedure etc) Decree[125] classifies treaties into three categories and stipulates the conditions which they must be adopted. These are:

(a) law-making treaties (which affect or modify existing legislation or powers of the National assembly) these must be enacted into law,
(b) agreements (which impose financial, political and social obligations or have scientific or technological importance) these must be ratified and
(c) those that deal with mutual exchange of cultural and educational facilities and need no ratification by any legal instrument[126].

This is different from what is obtainable in other jurisdictions such as the United States of America and the United Kingdom, where the position is well detailed. In the latter case, the ability to make contracts is in the prerogative of the Crown[127]. Nigeria is a federal state and as such contracting is the responsibility of the federal government. Concurring, Nwabueze posited thus:

> *[T]he President, as the chief executive of the federal government, is designated head of state... As head of state, he represents the country in the totality of its international relations, acts for his State in its international intercourse, with the consequence that all his legally relevant international acts are considered to be acts of his State ... It comprises chiefly: reception and mission of diplomatic agents and consuls, conclusion of international treaties, declaration of war, and conclusion of peace.' These powers are not conferred upon the President by the Constitution in explicit terms, but apparently upon*

[124] B. O. Nwabueze, *Federalism in Nigeria under the Presidential Constitution* (London, Sweet & Maxwell, 1985) p. 25
[125] No 16 of 1992
[126] ibid
[127] O.O. Flora Alohan, 'A Re-Examination of the Requirement of Domestication of Treaties in Nigeria' (2016) *NAUJILJ*

the theory that the power is inherent in every independent, sovereign State, and is held on its behalf by its head…[128]

However, the constitutional provision is not sufficient in this regard. What is expected is a sweeping law detailing who will be responsible for making treaties with other nations. When it comes to the security of the nation, for example, is it the responsibility of the President and Commander-in-Chief of the Armed Forces, the Chief of Defence Staff or the Minister of Defence? As Nwabueze pointed out, this was not foreseeable[129].

Fortunately, however, the sovereignty of an independent state is recognized under international law regardless of any communal shortcomings. Every state is viewed as sovereign and equal despite the increasing effects of globalisation and the interdependence of today's international economy and political societies. This is because, to a reasonable extent, sovereign states are considered independent, at least in principle. Therefore, they can be signatories to international instruments such as treaties. In short, international law focuses primarily on relations between states, while local or domestic law governs the internal aspects of government and deals with matters between individuals and administrative bodies that are governed by law are related to each other or pursue the same goals. For example, in areas such as human rights, environment and investment law, the same issue could be regulated by both international and national law[130]. In addition, the obligations that the state assumes at the international level may be towards its citizens, in which case the citizens of that state may have to rely on the enabling instrument to benefit from it or to ensure that the state assuming such an obligation complies with them.

Moreover, relationships and issues that were formerly national, such as the economy and the environment, have taken on an international character and, as a result, matters that hitherto fell exclusively within the purview of domestic law are now governed by treaties and sometimes by international conventions. The goal of the treaty may not be to influence state behaviour but to regulate the activities of individuals and private entities within a state. According to dualists,

[128] B. O. Nwabueze, *Federalism in Nigeria under the Presidential Constitution,* cited in C. Nwapi, "International Treaties in Nigerian and Canadian Courts" (2011)19 Afr. J. Int'l & Comp. L. 38.
[129] ibid
[130] M. Shaw, International Law (6th ed. Cambridge: Cambridge University Press, 2008) p.130

international law and domestic law are two separate legal systems, neither of which can replace the other. Thus, when the rules of international law apply in a domestic court, they are considered part of the municipal law of the State in whose court the application is made, and not because the superior nature of international law before the domestic court[131]. The monist, on the other hand, represents a uniform legal opinion. For them, there is a logical unity between domestic law and international law, which leads to the existence of a unified legal order. That is, law in which international law applies in the event of a conflict[132].

1.3 Prerequisite for Domestication of Treaties in Nigeria

The requirements for the domestication of treaties in Nigeria provided under section 12 of the 1999 Constitution as follows:

(1) *No treaty between the Federation and 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 Assembly.*

(2) *The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the exclusive legislative list for the purpose of implementing a treaty.*

(3) *A bill for an Act of the National Assembly passed pursuant to the provisions of sub-section (2) of this section shall not be presented to the President for assent, and shall not be enacted unless it is ratified by a majority of all the Houses of Assembly in the Federation*.

In Nigeria, therefore, pursuant to the foregoing provision in Section 12, the courts have no authority to apply any provision of the contract without prior statutory approval. Beyond Nigeria being signatory to a treaty, such a treaty must also be approved by the National Assembly before it can become final in the Nigerian court[133]. Certainly, the National Assembly role here is limited

[131] A.O. Enabulele, 'Implementation of Treaties in Nigeria and the Status Question: Whither Nigerian Courts?' (2009) 17 *Afr. J. Int'l & Comp. L.* 326.
[132] Ibid
[133] O. Nwankwo, Briefing on the Domestication of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), Civil Resource Development and Documentation Centre (CIRDDOC) Nigeria available at www.aacoalition.org/domestic_cedaw.htm accessed 28th May 2015

to where it involves matters in the exclusive list, otherwise it will be by the State House of assembly. That is because only the National Assembly has the power to make treaties on matters included in the exclusive list. As stated earlier, legislative powers in Nigeria are shared between National and State assemblies. The Exclusive Legislative List contains a list of items including implementation of treaties relating to matters on the exclusive legislative list that only the National Assembly may legislate on. The Concurrent Legislative List contains items that both the National and State Assemblies may legislate on while matters that do not fall within these two lists are considered to be within the residual list and the implementation of treaties affecting matters in the exclusive list is on the exclusive legislative list. However, there are some challenges or conflicts presented by this constitutional provision[134].

Thus, a treaty that concerns a matter on the exclusive legislative list comes into force in Nigeria after it has been passed by the National Assembly. If the matter falls under the concurrent or remainder list, then it must be approved by the majority of members of the State Assembly[135]. In the case of *Abacha v. Fawehinmi*[136], Ogundare JSC reiterated that an international treaty concluded by the Nigerian government becomes binding only after it has been entered into force by the National Assembly. Prior to its passage into law, it has no such legal force that its provisions would be recognised in Nigerian courts. Shortly after, in *Mhwun v Ministers of Health and Productivity and Ors*[137], the Court of Appeal affirmed that the provisions of an International Labor Convention cannot be invoked and applied by a Nigerian court until re-enacted by an Act of the National Assembly.

Muntaka-Coomassie JCA had the following to say about the national application of the International Labour Convention in Nigeria:

> *.... There is no evidence before the court that the ILO Convention, even though signed by the Nigerian Government, has been enacted into law by the National Assembly. In so far as the ILO convention has not been enacted into law by the National Assembly, it has no*

[134] C. Nwapi, 'International Treaties in Nigerian and Canadian Courts" (2011)19 Afr. J. Int'l & Comp. L. 38.
[135] Ibid
[136] [2000] 6 NWLR (pt 660) p 228 at 228 24 [2005] 17 NWLR pt. 953 p. 120.

[137] Ibid, at p.155 – 157.

force of law in Nigeria and it cannot possibly apply....Where, however, the treaty is enacted into law by the National Assembly as was the case with the African Charter which is incorporated into our municipal (i.e domestic) law by the African Charter on Human and People's Rights (Ratification and Enforcement) Act, Cap. 10, Laws of the Federation of Nigeria1990, it becomes binding and our courts must give effect to it like all other laws falling within the judicial powers of the Courts[138].

As Oyebode pointed out, in Nigeria there are two methods of transposing contracts into domestic law. They are by reenactment and by reference. According to him, the transformation by retelling, also known as the legal force technique, is applied when the implementing law enacts specific provisions or the entire contract directly, usually in the form of a list in the statute. On the other hand, the implementing law can transform the contract into municipal law in general by mere reference to the treaty. However, the reference to a treaty may be contained in the long and short title of the act or in the preamble or calendar, although such a treaty does not appear to be an implementing law[139]. It can be considered as such when a comparison of the wording of the law with those of the treaty, together with an acknowledgment of the law, legislative history or other external evidence, shows that it is implementing legislation[140]. Nigeria adopts the transformational theory in the sense that no treaty is enforceable in Nigeria unless domesticated by legislation.

1.4 Deciphering the Drafters' Intention on the Provision for Domestication of Treaties in Nigeria

Section 1(1) of the 1999 Constitution affirms in clear and affirmative terms the primacy or supremacy of the Constitution and the consequent nullity of any law contrary to it. This undoubtedly arose from a desire and need to maintain its sovereignty and preserve its territorial integrity. At the same time, it was certainly not the intention of the drafters to prevent Nigerian citizens from benefiting from the benefits of international law. Therefore it should be a sword and not a shield.

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[138] Ibid

[139] A. Oyebode, 'Treaty Making and Treaty Implementation in Nigeria: An Appraisal' Cited in B. Atilola, "National Industrial Court and Jurisdiction over International Labour Treaties under the Third Alteration Act" <https://nicn.gov.ng/…/> Accessed 12 June 2022.

[140] Ibid

Furthermore, a close examination of Section 12 of the Constitution will show that the provision was intended to serve as a check on the powers of the executive branch, as is the case with other constitutional provisions designed to control and balance the powers of the various arms: the power of impeachment vested in the legislature[141], the power of veto vested in the President (the chief executive) over acts of Parliament, making him part of the legislature[142], the power vested in the judiciary to declare actions of the executive, and unconstitutional laws enacted by the legislature[143], legal support required for some executive acts such as declarations of war[144], legislative support for executive[145] and budgets[146], legislative and executive influence over the appointment of judges and the exercise of the clemency privilege accorded to the President – the chief executive.

Thus, if it is admitted that there is a need for some scrutiny of some other aspect of executive power, it should not be difficult to imagine that this would be the case, for situations in which the executive assumes international obligations for the country. This provision should therefore promote cooperation between the executive and the legislature, since the planned checks and balances would only work in a trusting cooperation. If the above is true, then the drafter's intention has also failed, because in the area of ratification and adoption of treaties, there is obviously a lack of cooperation between the executive and the legislative. According to the Honourable Dayo Bush-Alebiosu, Member of the House of Representatives and Chairman of the House Treaty Committee and Protocols, the National Assembly cannot accurately state the number of treaties signed by Nigeria, and the National Assembly had to issue a letter requesting the Executive to send its domestication treaties to the National Assembly[147].

This is a sad development as no treaty should ever be kept secret as that could never have been the intention of the drafters of Section 12 of the Constitution. In addition, this sad situation has

[141] See 143 and 188 for the removal of the president and governor respectively; Section 4 Constitution of the Federal Republic of Nigeria 1999
[142] Ibid Section 5
[143] Ibid Section 6
[144] Ibid Section 5 (4)
[145] Ibid Sections 147 (2), 154, 192 (2) and 198.
[146] Ibid Section 81
[147] Channels Television, 'Non-domestication of Treaties Deprives Nigerians of Expected Benefits — Bush Alebiosu' < www.channelstv.com/.../non-domestication> Accessed 12 Mar 2022.

resulted in non-domestication of international agreements, which in turn disadvantages Nigerians of the benefits that would have been gained, since few Nigerians who can afford to go abroad to sue will benefit if the claim is based on an international treaty that has not yet been nationalised in Nigeria[148].

Therefore, since the signing of treaties is an executive function, there must be cooperation with the legislature so that the intention of the drafters can be realised. Furthermore, since Nigeria's constitution does not authorise the National Assembly to initiate treaty domestication, lawmakers must wait for the executive branch to begin the process of domestication, which may not happen without cooperation between the two arms.

1.5 Treaty Domestication under the Amended Constitution 1999

The Constitution of the Federal Republic of Nigeria (Third Amendment) 2010 represents a turning point in the history of the Nigerian National Labour Court as it ushered in a series of radical but positive innovations in the structure, powers, status and jurisdiction of the court[149]. The law reinstates the court as the National Industrial Court of Nigeria and lists it among the courts of record in Nigeria. The Court has, among other things, exclusive jurisdiction over matters relating to best international labour practices, the application or interpretation of international law, and labour standards. Section 254(c)(2) specifically provides for the application of any international conventions, treaties or protocols that Nigeria has ratified and power of the Attorney General to deal with all matters arising on or in connection with the application of any international convention, treaty or protocol ratified by Nigeria in relation to labour, employment, workplace, industrial relations or related matters. It questions the constitutional requirement that no contract between the Federation and any other country shall have the force of law unless such a treaty has been enacted by the National Assembly.

This provision implies that plaintiffs can now challenge before the National Labour Court provisions of international treaties ratified by Nigeria, although they have so far not been

[148] J. A. Dada, "Impediments to Human Rights Protection in Nigeria" (2012) 18 Ann. Surv. Int'l & Comp. L. 67 and C. N. Okeke, "The Use of International law in the Domestic Courts of Ghana and Nigeria" (2015) 32 Ariz. J. Int'l & Comp. L. 396.

[149] B. Atilola, 'National Industrial Court and Jurisdiction over International Labour Treaties under the Third Alteration Act' <nicn.gov.ng/…/> accessed 19 June 2022

domesticated by an Act of the National Assembly. Therefore, the judicial authority of *Abacha v Fawehinmi*[150] on the domestic application of international conventions is no longer good law as far as international labour conventions or contracts are concerned. Similarly, the case of *MHWUN v Minister of Health and Productivity*[151] will be decided differently under this regime.

This development is welcomed because Nigeria was constantly criticised by the International Labour Organisation (ILO) before the Third Alteration Act of 2010 came into force, due to the lack of domestication of properly ratified international labour conventions.The criticism was not unfounded, because the principle of *pacta sunt servanda* applies internationally, which means that treaties are binding for the parties and must be fulfilled in good faith as against the "constitutional obstruction" in the wheel of application of international labour conventions duly ratified by Nigeria. The court now has the power to invoke and enforce a number of international labour conventions that have been duly ratified (but not yet domesticated) by Nigeria, most of which have acquired the force of customary international law recognized by civilised nations[152]. Unfortunately, however, this provision relates only to international conventions or treaties relating to labour, employment, workplace, or industrial relations and not to international treaties in general. This means that the wide range of human rights treaties will continue to suffer under Section 12's limitations unless something similar to the 2010 Third Amendment Act is done to remedy the quagmire.

1.6 Conclusion and Recommendations

International treaties arguably remain an important source of Nigerian law. The fundamental principle of treaty law is undoubtedly the statement that contracts are binding on the contracting parties and must be performed in good faith. This rule is known in legal language as *pacta sunt servanda* and is possibly the oldest principle of international law. However, each state has its own rules regarding the internal application of international treaties. While treaty provisions in some states automatically become law upon ratification, it must be domesticated by a legislative instrument before it can be enforced within the Nigerian legal system. As shown in this paper, Nigeria takes the latter approach and therefore no treaty is enforceable in Nigeria unless it has

[150] Supra
[151] Supra
[152] B. Atilola (n29)

been “converted” or domesticated by the legislature. However, it would be nothing more than a lack of sincerity for willingness to ratify an international treaty to be based solely on the "shield" of Section 12 of the 1999 Constitution.

Furthermore, the requirement that a treaty be enacted as national law before it can be enforced in Nigeria seems to be simply a historical event and a colonial relic. As a result of years of British colonial rule, upon gaining independence Nigeria automatically adopted the British practice that a treaty must become law before it can be applied locally. In the case of *Ibidapo v Lufthansa Airlines*[153] before the Nigerian Supreme Court, Wali JSC affirmed that Nigeria, like every other Commonwealth country, has inherited the rules of English common law which govern the local application of international law.

It is therefore time that Nigeria lived up to its status as an independent nation, and this removes unjustified traces of the colonial legacy, all the more so when clinging to them is not consistent with the modern realities. As we have shown in this paper, Section 12 of the Constitution was not intended to protect insincerity or to act as a cover for anyone to hide under in order to avoid fulfilling a voluntary obligation and thereby deny the average Nigerian the dividend of a truly just and progressive society duly recognized by the international community; Instead, it should be a sword to defend its sovereignty and territorial integrity as enshrined in the principle of supremacy of the constitution, which would still be done if the recommendations made in this work were implemented.

The need to preserve the supremacy of Nigeria's constitution and upholding its sovereignty can never be overstated. However, it should be noted that the concept of sovereignty is constantly being redefined in international law, so that the concept of sovereignty will definitely change at the time the constitution was drafted and today, things are not as they used to be. It is therefore necessary to amend or modify Section 12 to reflect modern realities and take advantage of globalisation, as no country can afford to remain isolated in the face of globalisation. It is true that Nigeria cannot allow its constitution to be attacked by international interference. But treaties

[153] [1997] 4 NWLR (Part 498) 124. 47 [1997] 4 NWLR (Part 498) 124 at 150.

also recognize that it is unfair to deny your citizens some of the rights they protect. Faced with these opposing extremes, a balance needs to be struck, which is achieved through a revision of Section 12 of the Nigerian Constitution. Since Section 12 is intended to ensure cooperation between the executive and the legislature, as can be seen from the regulation of mutual control contained therein, there is a need for coordinated efforts between the two branches of government. The signing of a contract must not be wrapped in a veil of secrecy. To this end, it is recommended to inform the legislator, whenever possible, before signing an international instrument; such prior knowledge on the part of the legislator is obliged to enforce contractual obligations.

In addition, it is recommended that the Constitution be amended similar to the Third Alteration Act 2010 in relation to human rights treaties, particularly those providing for social and economic rights which are currently unenforceable under the 1999 Constitution, as amended. Nigerian lawmakers should borrow a leaf from what is happening in other jurisdictions such as Canada that employ the same dualistic system, where courts and litigants turn to international law to resolve a variety of issues and resolve national legal issues, in contrast to the current situation in Nigeria, where international law is rarely applied and where there is a lukewarm attitude towards it. Finally, the recruitment of the legal professionals will go a long way in determining the extent to which international law can be used to enforce the rights of Nigerians in domestic courts.

TOWARDS REINFORCEMENT OF LEGISLATIVE CONTROLS OVER DELEGATED LEGISLATION IN NIGERIA

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Abstract

The aim of this paper was to provide ways to further strengthen the role of the Legislature of Government in Nigeria by embedding the concept of accountability in the devolved legislature in Nigeria. In doing so, this paper examined the concept of delegated legislation for the purpose of clarifying its meaning and dependence on the legislature for validity. It also examines the control mechanism for delegated legislation and insists on the power of the legislature to scrutinise decentralised legislation, as is the case in Britain and India, notably through legislative committees for subordinate or devolved legislation. This paper later found that statutory control over delegated legislation in Nigeria is porous, insufficient and restrictive. which makes the executive too powerful. The doctrinal method of inquiry was adopted to conduct this inquiry and the paper ended by advocating an urgent amendment to Sections 88, 89, 128 and 129 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

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1.1 Introduction

The legislature is one of the most sustainable democratic institutions, through which the wishes of the people are realised in many areas of civic existence. This paper focuses on the role of the Nigerian Legislature in the regulation and oversight of the subsidiary legislation. In the first part of the paper, the focus is on the legislators as elected representatives of the people, from whom the validity of delegated legislation is derived. It also looks at the development and concept of delegated legislation and the need to regulate the process. The paper examined Sections 88, 89, 128 and 129 of the CFRN, and found that the legislative power of the National Assembly and the chambers of assemblies of states to control and scrutinise delegated legislation is too restrictive and should be amended to reduce the possibility of abuse of delegated legislation power, particularly by the executive.

1.2 Meaning and Nature of Delegated Legislation

Legislation is a function traditionally reserved for the legislature of government. This tradition is clearly expressed in Section 4 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). The Section provides that the legislature of the Federal Republic of Nigeria is responsible for lawmaking both at the national and state levels[156]. The Supreme Court restated in *Akintokun v. LPDC*[157] that it was the legislature's duty to legislate for the public welfare and wellbeing.

However, there are cases where legislative power is delegated to another branch of government. Laws or regulations made pursuant to such delegated authority are known as delegated legislation. An example of a situation where a government entity other than the legislature is empowered to legislate is contained in Section 46(3) of the CFRN. This provision empowers the Chief Justice of Nigeria to issue rules for the application of human rights in court. Likewise by the provisions of Sections 274, 279, 236 of the CFRN, the Chief Justices, the Chief Justice and

[156] Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 4 (1) and (6)
[157] (2014) 13 NWLR (pt. 1423) 1 at 91, paras. A – B.

the Grand Khadi are empowered by the CFRN to make rules governing the proceedings of their courts. However, these rules must be consistent with the Law Establishing the Court or any other applicable law.

Delegated legislation arose out of the need for effective governance. As the responsibilities of government increased along with population growth, it became inevitable to develop a quick and efficient means of enacting legislation so that the legislature is not required to produce all legal documents necessary tool to run a government[158]. Tracing the historical origin, Oluyede observed that delegated legislation evolved as a result of commitment by governments all over the world, with respect to economic and social policies, administrative legislation. According this development is as a result of many reasons which includes the need to decentralise as a result of regional development or for dealing with matters that are too technical for effective handling by the law makers[159]. As such, another reason for the development of delegated legislation is the technical nature of the issue. When an item requiring legislation is too technical to exhaust the purview of the legislature, such matters are referred to a government department or agency having the competence and technicality in the matter[160].

This need for delegating legislative power arose in England in the 16th century when the Statute of Proclamation of 1539 empowered the king to make proclamations, which were acts of Parliament[161]. This initiative was sanctioned by Parliament because it considered that situations might arise that required quick redress by proclamation[162]. This power of the king terminated in 1547, but in practice the king continued to use it. Consequently, in 1611 Sir Edward Coke and three other judges were commissioned to consider the legitimacy of the king's authority to issue proclamations in the famous case of the proclamations[163]. The panel's decision effectively and

[158] A. W. Bradley and K. D. Ewing, *Constitutional and Administrative Law* (Edinburgh: Pearson Education Limited, 2011), 622
[159] P. A. Oluyede, Nigerian Administrative Law, (Ibadan: University Press Plc, 2007), 326 – 327
[160] B. O. Iluyomade and B. U. Eka, Cases and Materials in Administrative Law in Nigeria, (Ile-Ife, Obafemi Awolowo University Press, 2007), 72 – 73; P. A. Oluyede, Nigerian Administrative Law, (Ibadan: University Press Plc, 2007), 326 – 327; M. C. Okany, Nigerian Administrative Law, (Onitsha: Africana First Publishers, 2005), 48 – 49.
[161] A. W. Bradley and K. D. Ewing, *Constitutional and Administrative Law* (Edinburgh: Pearson Education Limited, 2011) 621.
[162] Ibid
[163] Ibid

significantly limited the Crown's authority to issue valid proclamations. In particular, the case definitively established the King's lack of powers to create a crime that did not exist on the day of said proclamation. Sir Coke's resolution of the case set the tone for the development of the concepts of separation of powers and delegated legislation.

By way of definition, delegated legislation refers to rules, instructions, guidelines issued by virtue of delegated legislative authority.The term has been defined by various authors, and it is repeatedly pointed out that these legal instruments are drawn up by bodies authorised to do so by the legislature[164]. While Egwummuo defines delegated legislation as laws duly made by subordinate legislatures[165], Okany defines the term as rules and regulations made by a person or body empowered to do so by an act of the legislature[166]. In any case, delegated legislation goes by many names, and includes laws, regulations, decrees, ordinances described severally as administrative legislation, sub-laws, secondary legislation and so on, but this term does not include departmental circulars. Thus, in *Maderibe v. F.R.N*[167], it was stated that departmental circulars are of great importance but that they have no legal effect whatsoever and have no statutory authority.

Subordinate/delegated legislation has also been defined as the legislation from which it emanates any authority other than the sovereign power and is therefore dependent on a higher or supreme authority for its continued existence and validity[168]. In principle, the delegated legislatures are subordinate to the laws under which they were enacted. Thus in NNPC Famfa Oil Ltd[169], where the plaintiff failed to follow the procedure established by the Petroleum Law, he did not lawfully acquire an oil mine lease which he allegedly acquired under a by-law. In this case, the Secretary of State for Petroleum had granted the defendant a Petroleum Prospecting Licence entitled OPL 126. The Complainant allegedly acquired 40% of OPL 216. Defendant filed a lawsuit to challenge the alleged acquisition and was successful. Process of an OPL.When it reached the

[164] For example, A. W. Bradley and K. D. Ewing, Constitutional and Administrative Law (Edinburgh: Pearson Education Limited, 2011) 621
[165] J. N. Egwummuo, *Modern Trends in Administrative Law* (Enugu: Academic Printing Press, 2000) 214.
[166] M. C. Okany, Nigerian Administrative Law, (Onitsha: Africana First Publishers, 2005), 39.
[167] (2014) 5 NWLR (pt. 1399) p. 92 para A – F
[168] John Salmond, Jurisprudence (9th ed., London: Sweet and Maxwell Ltd, 1937), 210.
[169] (2012) 17 NWLR (pt 1328) 148; *FGN v. Zebra Energy Ltd*. (2002) 18 NWLR (pt. 798) 162; *Ogunlaji v. A.G Rivers State* (1997) 6 NWLR (pt. 508) 209; *UNTHMB v. Nnoli* (1994) 5 NWLR (pt. 36) 376

stage of obtaining the OML, under a Petroleum Law regulation, Defendant allegedly acquired 50% of the OML through a process outside of the consideration of the Petroleum Law but under an ancillary legislation referred to as the Back-Law Regulations of 2003. The Supreme Court ruled that the subsidiary law has its origins in the principal law and as such, in the event of a conflict, the provisions of the principal law shall prevail and those of the subsidiary law shall prevail to the extent of the conflict.

An act of the delegate of power taken outside the purview of power may be regarded as an abuse of power and as such, *ultra vires* and null. Consequently, in the case of the President of the Internal Revenue Board v Joseph Rezcallah & Sons Ltd[170], it was held that if the court procedure was breached, the act allegedly taken would be considered null and void. Likewise, if the law provides a procedure for carrying out a particular claim, that specified procedure must be followed, otherwise the claim would be declared void by the court. The Supreme Court upheld this point in *Marwa v Nyako*[171] as it declared that when the law prescribes a way of doing something, it is only that way and no other. Furthermore, in the case of *Muhammed v ABU Zaria*[172] it was affirmed that exercising a delegated authority that is not provided for by law constitutes an abuse of power. The court also defined abuse of power to include instances where there is an assumption of jurisdiction to perform an act unauthorised by law or a refusal of jurisdiction where the same should be exercised.

Delegated legislation is designed to make governance effective and to respond to people's needs as they arise, and to be valid they must conform to the principles and provisions of the rule of law, natural justice and empowerment law. Delegated legislation has been criticised as prone to abuse, as managing authorities tend to overstep their powers when making regulations. This has led to calls for accountability in the formulation of government policy[173]. Accountability demands the government to justify its decisions by giving the reasons for them and opening their decisions to criticisms. To meet this sacred duty of accountability, many jurisdictions have developed various mechanisms to control, monitor and review the content of delegated legislation. One such mechanism, used for example in the UK, is that set up by Parliament. It

[170] (1961) NRNLR 32 at 38; *Goldmark Nig ltd v. Ibafon Co. ltd*. (2012) 10 NWLR (pt. 1308) 291 at 356 para E – H.
[171] 2012) 6 NWLR (pt. 1296) 199 at 360.
[172] (2014) 7 NWLR (pt. 1407) 500 at 535
[173] 30 A. W. Bradley and K. D. Ewing (n 3)

does this by establishing a joint committee of the House of Lords and House of Commons to scrutinise delegated legislation emanating from government departments and agencies.

1.3 Control over Delegated Legislation

Inspired by criticism that the power to pass by-laws is slippery and easily slipped out of the hands of legislators, checks and balances have evolved to scrutinise by-laws. In fact, the subordinate laws are subject to the controls of the three branches of government, namely: legislative, executive and judicial branches of government[174]. For the purposes of this paper, the focus is on the control of delegated legislation by the Nigerian legislature.

The legislature's authority to control subsidiary law is rooted in the legislature's inherent and constitutional authority to make laws.Consequently, if the legislative arm of government finds subsidiary legislation undesirable, it has the power to amend the relevant legislation and thereby revoke the power it has been given. Thus, in *Bamgboye v. University of Ilorin*[175], it was held that not only can the delegating power resume their authority, with which indeed they have never parted, but they can also revoke the authority which they have delegated.

On the basis of this power, in the UK a joint committee is formed of The House of Commons and the House of Lords have been appointed each year since 1944 to consider the advisability or otherwise of subsidiary legislation made by ministers[176]. Nigeria has not adopted the practice prevailing in the UK, as described above. To maintain some degree of control over the creation of delegated legislation which is common practice in Nigeria, Legislators create certain conditions to ensure that the rulemaking process eventually comes under legislative control. For example, Section 4(3) of the Official Secrets Act states that an order of the Minister has no effect unless the order has been approved by an order of each House of the National Assembly[177]. Essentially, the legislature exercises control through the following measures:

(a) Mere transfer without further instruction;

(b) placement subject to nullity, modification or dismissal;

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[174] B. O. Iluyomade and B. U. Eka, Cases and Materials in Administrative Law in Nigeria, (Ile-Ife, Obafemi Awolowo University Press, 2007), 93 – 177.
[175] 8 NWLR (pt. 207) 1 at 31
[176] A. W. Bradley and K. D. Ewing (n 4)
[177] Official Secrets Act, Cap. O. 3 LFN 2004, s. 4 (3)

(c) Subject to an affirmative resolution.

It should be noted that these legislative controls are usually not part of the laws establishing those agencies and subsidiary laws are therefore passed without the participation of the representatives elected by the people. This paper deals with those pieces of legislation that do not require legislative input. For example, Section 46 of the Police Act provides that the President may issue regulations on the Police Recommendation of the Nigerian Police Council and Police Services Commission and Rules of Procedure under Section 48 of the Police Act. What is interesting about the power of the Police Service Commission to issue rules of procedure with the consent of the President is that these are binding even if they are not published in the Federal Gazette[178]. Another critical example where broad legislative powers are delegated is Section 9 of the Petroleum Act, which states quite generously that the Minister may prescribe whatever the law requires of him[179]. The provision goes even further by empowering the Minister to generally regulate matters relating to licences and leases and the operations conducted under them[180]. In the latter case one can see how clearly Nigeria's largest source of foreign exchange earnings is simply under the control of a minister who has broad discretion to dictate whatever the law dictates. The law actually allows the Minister to determine what conditions to be met before licences and leases could be granted. To say the least, this kind of power is open to abuse[181]. To illustrate, ex-oil Minister, Alison-Madueke has been under corruption charges for leveraging on her influence as Petroleum Minister in Nigeria, to award multiple oil contracts to companies owned by Aluko and Omokore. In April, 2011, a company owned by businessmen was awarded four oil mining leases and even though the company failed to meet contractual obligations, the company was allowed to sell crude oil to the tune of $ 677 million. In exchange for the contracts, the minister allegedly got kickbacks. Court documents list four homes in the United Kingdom worth over $11.5 million bought by the companies owned by the business men for Alison-Madueke[182].

[178] Police Act, Cap 23 LFN, 2004, Section 47 (3).
[179] Petroleum Act, CAP P 10, LFN, 2004, Section 9 (1) (a). 4
[180] Ibid Section. 9 (1) (b).
[181] Police Force Order 237, paragraph 3, <http://policehumanrightsresources.org/wpcontent/uploads/2016/03/Nigeria-Force-order-237-Rules-for-Guildance-in-the-Use-of-Force-and-Firearms-bythe-Police.pdf> accessed 30 June 2021
[182] Yomi Kazeem, "The Most Fascinating Details in United States 54-Paged Case Against Nigeria's Corrupt Ex-Oil Minister," Quartz Africa

In the area of criminal justice, none of the criminal procedure statutes provide for a rule on the use of force, which is regulated by Police Force Order 237 (a delegated regulation of the Inspector General of Police). Thus, the Order provides that a police officer may use firearms in the following circumstances;

(a) When attacked and his life is in danger and there is no other way of saving his life;
(b) When defending a person who is attacked and he believes on reasonable grounds that he cannot otherwise protect that person attacked from death;
(c) When necessary to disperse rioters or to prevent them from committing serious offences against life and property. It should be noted that that twelve or more persons must remain riotously assembled beyond a reasonable time after the reading of the proclamation before the use of firearms can be justified;
(d) If he cannot by any other means arrest a person who being in lawful custody escapes and takes to flight in order to avoid re-arrest; provided the offence with which he is charged or has been convicted of is a felony or misdemeanour;
(e) If he cannot by any other means arrest a person who takes to flight in order to avoid arrest provided the offence is such that the accused may be punished with death or imprisoned for seven years or more[183].

This provision is open to abuse, justifies ill-treatment, torture, extrajudicial killings by police[184], and violates Section 33 of the CFRN and declarations under international law. It is thus possible for the police to kill a suspect on the simple grounds that the deceased was suspected of a capital crime and attempted to escape. Lord Denning had an opportunity to clarify his views on a Minister's unlimited discretion in the case of *Ashbridge Investments Ltd. v Minister for Housing and Local Government*[185] thus:

<https://qz.com/africa/1032997/nigeria-oil-corruption-diezani-alisonmadueke-and-kola-alukos-one57-manhattan-condo-luxury-yachts-and-ferrari-racing/> accessed 12 May 2022

[183] Force Order 237, in its paragraph 3

[184] Network on Police Reform in Nigeria and Open Society Justice Initiative, Criminal Force: Torture, Abuse and Extrajudicial Killings by the Nigeria Police Force, (New York: Open Society Institute, 2010), 51; see also Amnesty International, Nigeria: You have Signed Your Death Warrant (Torture and other Ill Treatment in the Special Anti-Robbery Squad (SARS), p. 9, <https://www.amnestyusa.org/files/nigeria_sars_report.pdf> accessed 12 June, 2022.

[185] [1963] 1 W.L.R 1320

> *It seems to me that the court can interfere with the Minister's decision if he has acted on no evidence; or if he has come to a conclusion, to which on the evidence, he could not reasonably come; or if he has taken into consideration matters which he ought not to have taken into account, and vice versa; or has otherwise gone wrong with the decision of a lower tribunal which has erred in point of law*[186].

Lord Denning was strongly opposed to unrestricted ministerial discretion and in many cases believed that unbridled ministerial discretion was an attack on the rule of law. Hence, the Nigerian legislature, the elected representatives of the people, must do more in this regard and one way of doing this is to adopt the practice in the UK of setting up a review board to assess, regulate and monitor delegated laws. In fact, India has adopted the practice. Without a Subsidiary Legislation Review Board, the possibility of blatant abuse of power is inevitable. however, a Nigerian version that has the power to oversee the activities of the government's executive branch. In Nigeria, the power of the legislature to oversee the executive branch of government at the federal and state levels, and by extension to control the activities of the executive branch, whose powers are inseparable from the power to make laws, is expressed directly or indirectly in Section 88, 89, 128 and 129 of the CFRN. It was also used in the case of the Governor of the state of Ekiti and Ors v Olayemi[187] that the CFRN, despite acknowledging the doctrine of the separation of powers, has expressly provided for this the legislature to exercise limited control functions over the executive[188].

Lord Denning re-echoed this in his book 'The Discipline of Law' thus:

> *What then does it come to? If the contention of the Attorney-General is correct, it means he is the final arbiter as to whether the law should be enforced or not. If he does not act himself – or refuses to give his consent to his name being used – then the law will not be enforced. If one Attorney-General after another does this, if each in his turn declines to take action against those who break the law – then the law becomes a dead letter. It may be that each Attorney-General would have a good reason of his own for not intervening. He may fear the repercussions if he lends the weight of his authority to proceedings*

[186] Ibid
[187] (2016) 4 NWLR (pt. 1501) 1
[188] *Gouriet v U.P.OT.W.* [1977] 2 W.L.R. 310

against the infringers. But as one like situation follows another – as it does here- it means that a powerful trade union *will feel that it can repeat its performance with impunity. It will be above the law. That cannot be*[189].

When examining subsidiary laws, it should be noted that it is in the prerogative of the legislature as representatives of the people to determine which criteria it wants to adopt.

1.4 Validity Tests for Delegated Legislation

Legislators will most likely consider whether subsidiary legislation falls within the scope of the higher-level law that allows for subsidiary legislation. If the subsidiary legislation is compliant, it is likely to be considered a good law. But if the delegated power is broad enough to be amenable to arbitrariness, then the legislature has a duty to reduce excesses by reviewing the law. Other criteria that legislators might consider when considering delegated legislation are: rule of law, democratic principles and accountability. While some of these principles, such as human rights and the rule of law, can be considered enshrined in Nigeria's Constitution, the principle of accountability must enjoy no such presumption. Before addressing the general compatibility of subsidiary law with accountability, it seems imperative to consider those expressed by Egwummuo as follows[190]:

1.4.1 Consistency Test

This test is targeted at ensuring that any subsidiary legislation conforms to the provisions of the Constitution. This is because the Constitution of the Federal Republic of Nigeria is supreme and any other law which is inconsistent with the provisions of the constitution shall be null and void to the extent of the inconsistency. Specifically, Section 1 (3) of the Constitution is assertive on the matter[191].

1.4.2 Objectives or Purpose Test

[189] Lord Denning, The Discipline of Law (Oxford: Oxford University Press, 1979, Reprinted in 2004 and 2007) 140
[190] J. N. Egwummuo, Modern trends in Administrative Law, (Enugu: Academic Printing Press, 2000), 234.
[191] Ibid

Subsidiary legislation must not depart from the objective or aim for which it is granted. In *Howard v. Bodington*[192], the Bishop of a Diocese received representations against a priest and being the patron of the benefice held by the priest, forwarded them to the Archbishop more than thirty days after. Later, a judge was appointed to investigate the matter but it was held that the proceedings were void because the requirement as to time was not complied with[193].

1.4.3 Reasonableness Test

This test seeks to ensure the reasonability or rationality of the delegated legislation. In Chief F.R.A. *Williams v Majekodunmi*[194], it was held that an order made by the Administrator pursuant to the Emergency Powers Act, 1961, restricting the plaintiff's movement to three miles from a certain address was unreasonable and baseless.

1.4.4 Subjective Language Test

Under this test, the language of the law grants a near absolute discretion to the subsidiary law maker. Such language includes phrases like; "where the Minister is satisfied," "where the Minister deems it necessary", etcetera. Notwithstanding the wide discretion granted to the subsidiary law maker, Courts are in the habit of enquiring into the validity of such subsidiary legislation[195].

1.4.5 Procedural Test

In granting power to make subsidiary legislation, sometimes, certain procedures are provided such as the one considered in Section 4 of the Official Secrets Act[196]. It provides that the Regulation made by the Minister shall not have the effect of law unless it has been adopted by a resolution by each of the House in the National Assembly[197]. Similarly, the Police Act provides that a Regulation shall be made by the President upon recommendation of the Nigeria Police

[192] (1877) 2 P. D. 203
[193] See also *Chairman of the Board of Inland Revenue v. Joseph Rezcallah & Sons Ltd*.
[194] (1961) NRNLR 32 at 38
[195] J. N. Egwummuo (n 36)
[196] Official Secrets Act, Cap. O. 3 LFN 2004, Section 4 (3)
[197] ibid

Council. If the President makes a Regulation without consulting the Council, that amounts to a procedural defect which might have the effect of invalidating the Regulation[198].

1.4.6 Judicial Test

Courts, in the exercise of judicial powers, have the inherent and constitutional powers to make pronouncements regarding the constitutionality or otherwise of a legislation as well as a subsidiary legislation. The Court restated this in the case of *Governor of Ekiti State & ors v. Olayemi*[199] that the Constitution has expressly donated the power to the court to pronounce on the constitutionality of the any law made by legislature. This power, as a matter of course, extends to subsidiary legislation.

1.5 Accountability

The need to make governments accountable to the people's elected representatives and ultimately to the people must be a priority and steps have therefore been taken in some climes such as the UK to ensure accountability[200]. In Nigeria, however, legal oversight of delegated legislation is patently weak and opens a Pandora's box of arbitrariness, corruption and waste.

This article builds on recommendations made by various committees in the UK to argue that the National Assembly should play a stronger role in promoting accountability in the exercise of delegated powers. For example, Section 9 of the Petroleum Act[201] empowers the Minister of Petroleum to do anything that requires a prescription under that Act.This is in addition to the full power to grant licences required by law[202]. This power has been abused as recent evidence has shown[203].

Unfortunately, this power is not checked by the legislature in addition to the exercise of the control function. The power to exercise the control function is limited. Articles 88, 89, 128 and

[198] See R v. Minister of Housing and Local Government Ex-Parte Chichester Rural District Council (1960) 1 WLR. 587.
[199] supra
[200] A. W. Bradley and K. D. Ewing (n 4)
[201] Petroleum Act, Cap. P. 10, LFN, 2004.
[202] ibid
[203] Hilary Okoeguale, 'Strengthening Legislative Controls over Delegated Legislation in Nigeria' NAUJILJ 10 (2) 2019

129 of the Constitution limits the power to exercise the control function for the purpose of law reform. Be that as it may, this is a valid function of the legislature. In *Keyamo's*[204] case, one of the issues to be resolved was whether the Lagos State Legislature had the authority to investigate the alleged misconduct of an incumbent governor. The Court of Appeal noted that "matters relating to forgery and perjury charges against a state governor are matters affecting State House of Assembly members" if found to be true could result in an impeachment proceeding.

1.6 Conclusion and Recommendation

It is submitted that the legislative oversight provision in the Constitution does not provide an adequate opportunity to conduct a thorough scrutiny of subordinate legislation enacted by the Executive arm of government, similar to Britain and India. Thus, it is recommended vigorously that subsidiary legislation should be subject to regular review by the National Assembly, in line with global best practices.

RATIFICATION AND ACCESSION TO TREATIES UNDER 21ST AMENDMENT TO THE SRI LANKAN CONSTITUTION

Dr. Dayantha Laksiri Mendis

1.1 BACKGROUND

It is an important issue to consider under the proposed 21st Amendment to the Constitution whether the President should sign, ratify or accede to treaties in consultation with the Prime Minister. In this article, it is proposed to provide an analysis of this important issue by reference to current constitutional law and practices of Commonwealth countries.

[204] (2000) 12 NWLR (pt 680). 196 at 218-9

Before I deal with this issue, it is useful to outline the importance of treaties as outlined in the following references: (Richard Ware, "Parliament and Treaties" in Parliament and International Relations, (1991), pp.37-48; Lord McNair, Law of Treaties, (1961), pp.83-94; Sir Kenneth Keith, 'New Zealand Treaty Practice: The Executive and the Legislature' (1964), 1 N.Z.L.R., pp.277-281. J.E.S. Fawcett, The British Commonwealth in international law, (1963), at p.65; Anthony Aust – Modern Treaty Law and Practice, OUP UK 2006; F.A. Mann – Foreign Affairs in English Courts, OUP, UK 1986).

1.2 TREATIES IN A CONSTITUTIONAL CONTEXT

Treaty is an ancient legal instrument. It contributes to global and national governance. Treaty is a generic term and includes conventions, agreements, protocols, letters of exchange, compacts, etc. It can be defined as Agreements between States or between States and Inter-Governmental Organisations (IGOs) and between IGOs.

In modern times, negotiation and conclusion of treaties are regulated by the 1969 Vienna Convention on the Law of Treaties (1969 VCLT) and the 1986 Vienna Convention on the Law of Treaties between States and International Organisations and between International Organisations (1986 VCLT). It is a specialised branch of international law and those who negotiate and conclude such treaties are diplomats and international civil servants. Usually, they have an understanding of the subject matter, as well as treaty law and practice.

Treaties can be multilateral, plurilateral or bilateral and they generally come into force on signature, ratification or accession. Important multilateral treaties signed, ratified and acceded to by Sri Lanka are: ICCPR 1966 and the Optional Protocol 1976, ICESCR 1966, Convention on the Rights of the Child 1989, Geneva Conventions 1949 and the Additional Protocols 1977, The Nuclear Non-Proliferation Treaty 1968, UN Convention on Climate Change 1992, UN Biodiversity Convention 1992, Paris Agreement, IMO Conventions, ICAO Conventions, etc.

Important plurilateral treaties signed or ratified by Sri Lanka are SAARC, BIMSTEC, IORAC, and they only apply to a group of states belonging to a particular region. Other famous plurilateral treaties are Treaty on European Union (Lisbon Treaty) and Revised Treaty of

Chaguaramas (CARICOM Treaty). These two treaties have established a single market and economy with free movement of persons, goods and services.

Important bilateral treaties signed by Sri Lanka are Rubber-Rice Pact 1956; 1987 Indo-Sri Lanka Accord, 1998 Indo-Sri Lanka Free Trade Agreement, and 2018 Singapore-Sri Lanka Free Trade Agreement. Other famous bilateral treaties are Camp David Accord 1976 and Shimla Agreement 1972.

Treaties must be distinguished from non-treaty instruments. Non-treaty instruments are MOUs, guidelines, codes of conduct and Resolutions of the UN Security Council, Human Rights Council, IMO, ICAO, etc. Unlike treaties, non-treaty instruments do not require consent of States. Some non-treaty instruments are legally binding on Member States and they are called "hard law" and some are not binding and they are called "soft law".

Geneva Resolution 2015 30/1 of the Human Rights Council is a non-treaty instrument which applies to Sri Lanka. It was intended to bring reconciliation between the parties involved in the North-East armed conflict in Sri Lanka for a period of 30 years. This Resolution has created constitutional problems for Sri Lanka than any treaty or non-treaty instrument.

Article 46 of the Vienna Convention on the Law of Treaties 1969 states, if a treaty (or non-treaty instrument) manifestly contravenes an internal rule of fundamental importance, a treaty could be rendered void at international level. This rule has evolved through Customary International Law and therefore it can be considered a part of Common Law of the United Kingdom and commonwealth countries.

In Sri Lanka, treaties do not apply at national level, as Sri Lanka is a dualist State where international law is considered a separate legal order. Hence, the transformation of treaties into national legislation by using suitable legislative techniques is necessary to give legal effect to treaties at national level as in other Commonwealth countries. (See: T. O. Elias, The Modern Law of Treaties, (1974), pp.142-50. According to Judge Elias, the question brings into focus the doctrinal controversy between monists and dualists schools of thought in international law. See also: D. L. Mendis, Legislative Transformation of Treaties, Statute Law Review, Volume 13, OUP, UK, 1992.

1.3 RATIFICATION OF TREATIES IN COMMON LAW COUNTRIES

In Sri Lanka, the President, under the 1978 Constitution has an inherent right to sign, ratify or accede to treaties without consulting the prime minister and without obtaining parliamentary approval by reference to constitutional provisions. This has led to bitter controversy among cabinet ministers since the Indo-Lanka Accord 1986.

In the United States of America, the President has to obtain approval of the Senate with a two-thirds majority to ratify treaties. Up to now, the President of the USA has not been able to obtain the approval of the Senate for ratification of the 1982 LOS Convention.

In the United Kingdom, Her Majesty the Queen signs, ratifies or accedes to treaties on the advice of the Prime Minister. However, the 'Ponsonby Rule' was introduced in 1924 by late Mr. Arthur Ponsonby (then Parliamentary Under-Secretary for Foreign Affairs) to obtain parliamentary approval prior to ratification of treaties with a view to encouraging open-government in foreign affairs.

The current application of the 'Ponsonby rule' is recorded in the twenty-first edition of Erskine May's Parliamentary Practice in the following manner –

> *When a treaty requires ratification, the Government does not usually proceed with the ratification until a period of twenty-one days has elapsed from the date on which the text of such a treaty was laid before parliament by Her Majesty's command. This practice is subject to modification, if necessary, when urgent or other important considerations arise.*

The 'Ponsonby rule' is followed in many Commonwealth countries with variations and such varied practices relating to the modification of the 'Ponsonby rule' in "urgent" or "important" situations are noted in the U.N.I.T.A.R. Study. (See: O. Schachter, M. Nawaz and J. Fried (eds.) – Toward Wider Acceptance of U.N. Treaties, (New York, 1971), pp.95-96). Several variations of the Ponsonby rule are noted in the UNITAR Study at p.95).

1.4 AN EMERGING PRACTICE IN COMMONWEALTH COUNTRIES

In recent times, there appears to be an emerging constitutional practice in Commonwealth countries to obtain approval of Parliament either in the form of implementing legislation or by way of the Resolution prior to signature, ratification or accession in regard to certain category of treaties as provided hereinbelow:

1. A treaty itself may mandate the approval of Parliament either by way of a Resolution or in the form of implementing legislation prior to signature, ratification or accession to treaties. It is necessary in such circumstances to obtain Parliamentary approval by way of a Resolution or in the form of implementing legislation prior to signature, ratification or accession to treaties.

For example, the Anglo-Irish Agreement (1985) entered into force for the U.K. only after it was subjected to a heated debate in Parliament in November 1985 and was approved by the Parliament as required by the text of the treaty. Similarly, a large number of treaties initiated by or under the auspices of international organisations may require enactment of implementing legislation at national level prior to signature, ratification or accession to such treaties. (See: Articles of Agreement of the I.B.R.D., I.M.F. and I.F.C. require such approval. In moving the second reading in the House of Commons of the Multilateral Investment Guarantee Agency (M.I.G.A.) Bill, the former Minister for Overseas Development, Mr. Chris Patten stated: “The Bill is required to enable the United Kingdom to ratify the convention establishing MIGA, which is an international organisation associated with the World Bank…”).

2. In some Commonwealth countries, a “binding constitutional practice” has emerged in the sphere of public policy to obtain parliamentary approval in the form of implementing legislation prior to signature, ratification or accession to “important” or “controversial” treaties at national level.

For example, in the United Kingdom, the Hong Kong Agreement 1984 and the Single European Act 1986 were approved by the House of Commons and implementing legislation was enacted before such treaties were ratified by the Executive. Some treaties initiated by international organisations are also enacted into national law before ratification or accession to such treaties because of their political and legal importance at international and national level.

3. Constitutional or statutory provisions may require parliamentary approval in the form of implementing legislation prior to signature, ratification or accession to a certain category of treaties.

For example, section 3 of the Ratification of Treaties Act 1983 (No. 5 of 1983) of Malta provides that a certain category of treaties require parliamentary approval in the form of implementing legislation.

Similar provisions are also found in the Ratification of Treaties Act 1987 (No.1 of 1987) of Antigua and Barbuda. In such situations, approval of Parliament is generally obtained in the form of implementing legislation before instruments of ratification are deposited. The draft Millennium Challenge Compact (MCC) required the enactment of implementing legislation prior to signature for purpose of its implementation.

1.5 CONCLUDING REMARKS AND RECOMMENDATIONS

In Sri Lanka, there is no reference whatsoever to treaties under article 33 of the 1978 Constitution. Hence, it is proposed that the following provisions should be inserted as article 33 (gg) the signature, ratification or accession to treaties by the President shall be undertaken in consultation with the Prime Minister."

In Sri Lanka, parliamentary approval is not necessary prior to signature, ratification or accession to a treaty, as there are no constitutional or statutory provisions requiring such approval.

Many Commonwealth countries have enacted legislation requiring the approval of Parliament for a certain category of treaties as illustrated in the preceding parts of this article.

In the UK, Constitutional Reform and Governance Act 2010 requires parliamentary approval for ratification of a certain category of treaties. Thus, this piece of legislation has taken the Ponsonby Rule to its logical end to ensure open government in foreign affairs.

In the Republic of India, the National Commission was established in 2001 to review treaty-making power under the Indian Constitution, as there are no constitutional provisions

regulating treaty-making powers. The Commission recommended such approval of Parliament. However, up to now, there has been no constitutional amendment enacted to ensure parliamentary approval for a certain category of treaties, although an attempt was made on 5th March 1993 by George Fernandez to introduce a Constitutional (Amendment) Bill to this effect in Lok Sabha.

In Sri Lanka, the Yaha Palana Draft Constitution inserted the following provision to fill the lacuna in the 1978 Constitution in the following manner:

> "47. XX *The Constitution would require that every treaty, along with a memorandum explaining its implication, be tabled in Parliament at least one month before ratification. Parliament may adopt a resolution recommending ratification, reservation or even non-ratification. The Executive would be bound by the terms of such resolution. Parliament shall be informed of the ratification of every such treaty forthwith.*

The provision of a human rights treaty shall become part of the domestic law on the expiry of a period of two years reckoned from the date of ratification. Parliament may by resolution extend such a period by one year or reduce such a period. Any further extension of the period not exceeding one year at a time would require a two-thirds majority. Where Parliament passes a law incorporating a part but not the entirety of a treaty before automatic incorporation, the unincorporated provision would become domestic law at the end of the period concerned.

In relation to human rights treaties to which Sri Lanka is a party at the time the new constitutional provisions come into effect, the two-year period shall begin to run from such time."

I humbly submit that in Sri Lanka parliamentary approval for a certain category of treaties is necessary prior to signature, ratification or accession to treaties. It is the Parliament and only the Parliament should be the final arbiter on granting approval for signature, ratification or accession to treaties. A draft Bill, on this subject, by the author of this article, is contained in the book titled: PERSPECTIVE ON CONSTITUTIONAL REFORM IN SRI LANKA, published by the International and Comparative Law Society, of Sri Lanka, 2021, pp. 492-501.

IMPLEMENTATION OF THE RESOLUTIONS OF PUBLIC ACCOUNTS COMMITTEES

Ebosetale David Aigbefoh, Esq

1.1. Constitutional and Legal Overview of Public Accountscommittees (PACs)

Constitutions of democracies across the globe (advanced or emerging democracies) have often provided a framework for defining the relationship between the various organs of government-the legislative, executive and the judiciary. This framework is predicated on the *principle of separation of powers* and its corollary doctrine of checks and balances. It is aimed at holding each of the organs of government accountable for the interest of public good. But most often, one aspect of the functions of the legislature that, hitherto was not given much attention, is its oversight functions over public finance. But now, the tide has changed. Good financial controls and oversight provide high standards in public life and engage with the public interest. Accountability and good governance are essential for the development of the state that encourages citizen participation and building political consent[205]. Citizen confidence in the democratic process and governance can be further boosted when the citizenry is fully convinced that public funds are disbursed and utilised effectively for the purpose for which it was earmarked. Herein comes the legislative oversight of the legislature which must ensure the executive is implementing budgetary allocations in accordance with the various applicable and extant laws of the State.

This vital function of the Legislature or parliament is usually discharged through its Public Accounts Committee (PACs). PACs may be institutionalised in different ways. A PAC may be established by a country's constitution. This is the case in Antigua and Barbuda (art. 98 of the 1981 Constitution); Bangladesh (art. 76 of the 1972 Constitution); the Cook Islands (art. 71(3) of the Constitution); Kiribati (art. 115 of the Constitutions); the Seychelles (art. 104(la) of the Constitution); Saint Vincent (art. 76 of the 1979 Constitution), Trinidad and Tobago (art. 119 of the 1976 Constitution); and Zambia (art. 103(5) of the Constitution).

There is a second group of countries in which PACs are institutionalised by the standing order of the assembly. PACs were instituted respectively by art. 70(2) of the Standing Order of the Parliament in Guyana; by art. 89 of the Standing Orders in Tanzania; by art. 122 (1) of the Standing Orders in Uganda; by art. 108(3) of the Standing Orders in Canada; by art. 120E of the Standing Orders in Malta; by art. 69 of the Standing Orders

[205] John F. McEldowney, Accountability and the Public Accounts Committee: Lessons in Parliamentary Oversight - the United Kingdom experience, Professor of Law, Warwick Law School, University of Warwick.

In Jamaica; and by the articles 308 and 309 of the Rules of Procedures in India. There is a third group of countries, which includes Australia and the United Kingdom, in which the PAC is instituted by an Act of Parliament— respectively the Public Accounts and Audit Committee Act 1951 in Australia (consolidated on November 6, 1997) and the National Audit Act in the United Kingdom (1861)[206].

In the United Kingdom, the Public Accounts Committee (PAC) has a long constitutional history dating from 1861 when Gladstone was Chancellor. It is constitutionally enabled to examine the value for money of Government projects, programmes and service delivery. Drawing on the work of the National Audit Office the Committee holds government officials to account for the economy, efficiency, and effectiveness of public spending. Thus, in the UK financial control is at the apex of its Parliamentary system and the Public Accounts Committee (PAC) is recognized as a necessity to provide the House of Commons with political authority for its financial decisions.

The PAC of the House of Commons has been recognized as serving the national interest in ensuring propriety in government accounts and a cornerstone of institutional building that embraces the need for independent assessment outside government interests in financial matters. The PAC provides a wealth of experience gained over many years and consequently this sets the political culture for it to operate with the Treasury and government departments[207]. It is well respected by parliamentarians. One of the reasons for this respect is because the PAC provides the link to Parliamentary scrutiny that enables the House of Commons to oversee government spending as well as to check that Parliamentary authorization is appropriate. The Government of the day rely on the PAC a means to monitor the effectiveness of its spending plans and the achievement of its financial objectives.

A broader research into some other jurisdictions shows the audit of accounts has traditionally been performed by a body distinct from the legislature, in some cases a court or an auditor general. However, it is parliament that is saddled with the responsibility of considering the results

[206] See Riccardo Pelizzo & Rick Stapenhurst, Parliamentary Oversight for Government Accountability, The International Bank for Reconstruction and Development /The World Bank 1818 H Street, N.W. Washington, D.C. 20433, U.S.A, 2006.
[207] Ibid

of such an audit. While it is true that some legislatures may not have a distinct PAC established for this, many like the United Kingdom have established PACs for this purpose.

In the congressional system of the United States, for instance, there is no comparable committee. In many francophone and continental European countries, the audit function is often subsumed into a finance or budget committee that also has other functions, relating for example to budget approval and *ex ante* scrutiny. But where the PAC is established, it traditionally enjoys a heightened status over other committees in the legislature. In many legislatures, the PAC is the oldest parliamentary committee[208].

A historical expedition of PACs cannot be undertaken without proper recourse to the oldest PAC still existing, that is, the PAC of the House of Commons of the English Parliament. This Committee of Public Accounts, more fashionably called the Public Accounts Committee, was established in 1861 as a" circle of control" during William Gladstone's period as Chancellor of the Exchequer. The PAC operates as a key part of Parliament's control over public spending that combines political oversight with technical expertise[209].

The Committee of Public Accounts (PAC) was first established on 8th April 1861. It owes its origins to the earlier appointment of the Commissioners of Public Account in 1780. The appointment of Commissioners regularised past practice as Parliament was concerned that there should be adequate accounts to show how grants and monies had been paid. The nature of form of control was the main way of bringing transparency to financial processes that were largely a matter of internal control[210].

There were many experimental forms of committees established to take forward the matter of accountability. A select committee to scrutinise public accounts was formed from 1797-98 and then again in 1822. A select committee on public accounts was set up in 1831 and another was established in 1832. Then there was a period of years when little was done other than when

[208] Joachim Wehner, Best Practices of Public Accounts Committees, Budget Information Service Institute for Democracy in South Africa (Idasa). 7 John F. McEldowney, op cit
[209] Ibid
[210] Ibid

MPs raised financial matters when the opportunity arose. A Committee on Public Moneys of 1856 and 1857 was established. This was a very ad hoc basis for proper financial control. There was little continuity from one year to the next and overall little consistency in approach. In a Memorandum by the then Chancellor of the Exchequer in 1857 it was recommended that "... there should be audited accounts annually submitted to the revision of a Committee of the House of Commons nominated by the Speaker"[211].

Under Gladstone's inspiration this recommendation was later accepted and implemented by resolution in 1861. A year later the annual resolution was turned into a Standing Order of the House of Commons. ***Standing Order No 86*** has the terms of reference for theCommittee to conduct an examination of the accounts showing the sums granted by Parliament to met public expenditure " and of such accounts laid before Parliament as the Committee may think fit[212].

The impact of setting up the PAC and its constitutional significance was realised at the time. John Morley, biographer of Gladstone, recorded that 1861 was a landmark by creating a unified budget and a set of principles of accountability: The House of Commons had asserted its authority that signalled to the House of Lords, the primacy of the Commons over public finance."

Undoubtedly the linking of parliamentary accountability to financial control strengthened the House of Commons and focused the working of government departments to the need for accountability. This coincided with the House of Commons taking its own authority very seriously and asserting Commons pre-eminence over the Lords. This pre-eminence originated from the 17th century when the Lords were disabled to amend financial bills for taxation and public expenditure. The Lords were weakened but not subservient as there remained the possibility of the Lords rejecting a Financial Bill in its entirety. The growing political power of the Commons made conflict with the Lords inevitable. The growth in party political government after the electoral reform of 1832 with popular suffrage left the Commons with a widening popular Liberal majority while the Lords retained

[211] Ibid
[212] Ibid

an inbuilt permanent Conservative majority based on hereditary. The basis for conflict between the two Houses was later resolved in the Parliament Acts 1911 and 1949[213].

Undoubtedly the foundations of political scrutiny over government finances gave the Commons, and in particular the PAC, an importance that was in touch with the need for political legitimacy as well as the right to exercise power. The role of the PAC and the primary purpose of the inquiries it undertook on behalf of Parliament were to ensure that the sums of money voted for a particular purpose were not exceeded and also were incurred for the purpose intended. From the outset this role included the constitutional function of ensuring that there was adequate legal authority for any expenditure and that propriety was observed in the performance of the duties set by Parliament.

One interesting feature of the PAC is that when it makes reports to Parliament, the Government responds in the following session through a Treasury Minute laid before the House of Commons. A Treasury Minute is the Government's response to the recommendations or observations made by the PAC. The PAC soon made its mark and reputation. Major changes to the audit and scrutiny of accounts were introduced by the Exchequer and Audit Departments Act 1866, the Bill had been subject to scrutiny by the PAC, who took evidence, and was then considered in Committee of the whole House of Commons — a sign of the constitutional importance of the 1866 Bill. The reputation of the PAC having been established, allowed it to maintain a significant role in financial scrutiny.

Currently, the PAC consists of up to sixteen members of Parliament and by long standing constitutional convention the PAC is chaired by a senior opposition MP. The choice of opposition MP is usually determined by prior ministerial experience or at least a senior politician with status and experience commensurate with the role. There are several procedural anomalies that determine the role of the PAC. The PAC may not meet when the House of Commons is adjourned. This is unlike other select committees.

[213] See McGee, D. G., 2002, 'The Overseers: Public Accounts Committees and Public Spending', Plut o Press, London

The PAC does not appoint specialist advisers - a common strategy adopted by many other select committees. This means that the PAC is heavily dependent on the work of the NAO and this is its strength in terms of external and independent expertise.

Current constitutional practice is for the PAC to meet regularly on Mondays and Wednesdays around 4pm. The main achievement in its role is to work in a non- party political or partisan way. This is taken seriously by the PAC and also distinguishes its work from that of the other select committees. Usually at its regular meetings the Comptroller and Auditor General or his deputy is in attendance. Technically when considering the estimates of accounts, the PAC is required to report on the basis that there is no formal objection to the accounts, and this includes any Excess Vote. The PAC has around 46 meetings and publishes over 40 reports annually.

The traditional working of the PAC developed over time as part of the annual cycle of financial control. Once expenditure is settled the question of scrutiny and audit arises. Since 1861 the PAC acts on behalf of Parliament to examine and report on accounts and the regularity and propriety of expenditure, which are matters usually covered by the Comptroller and Auditor General's (C & AG) certification audit. In more recent times value for money audit (VFM) examinations have become a major part of the work of the PAC. In that regard the PAC works with the assistance of the C & AG. The constitutional importance of the PAC is beyond question.

Select Committees generally may exercise ex post facto control over public expenditure. The Select Committee on Procedure and the Treasury and Civil Service Committee have been particularly active in assisting in developing strategies for obtaining more information on public expenditure and its more effective control. The PAC's authority and remit differ from those of other select committees in two ways. First is the non-party political approach it adopts to its task and the fact already noted that it is chaired by a senior opposition MP. Secondly, its inquiries are almost all audit based and it receives expert assistance from the C & AG through the work of the National Audit Office. In the case of VFM examinations its reports to Parliament carry

considerable weight.

What role do Public Accounts Committees (PACs) play in parliamentary scrutiny and good governance? What do they need in order to function? In 1999 the Commonwealth Parliamentary Association recognized the role played by committees in parliamentary oversight and commissioned a study group to consider how PACs function in parliaments of the Commonwealth.

The findings of the study group have established that to function at all PACs require information that will enable them to assess governance and performance issues. In most cases this information is provided by a State Auditor (or Auditor General). Although the relationship between the Auditor General and PACs has evolved differently in the different jurisdictions, the work of the Auditor General is the staple.

The PAC helps parliament to hold the government to account for its use of public funds and resources by examining the public accounts. Their remit is as wide as the extent of the public sector. Adequate funding for them is a perennial problem.

While a climate of suspicion between the PAC and bureaucracy is undesirable, officials ought to feel that they are obliged to justify their actions to them. Their work is performed through parliament for the public benefit, so it is fitting that the public should know as much about it as possible. Hearing evidence in public can ensure public access.

Both PACs and Auditors General can help to attract international capital investment to a country by providing assurances on the integrity of public sector finances. In developing countries where comiption is becoming endemic, PACs have a pivotal role to play in sustainable economic development, even though they are often confronted with very grave challenges.

1.2. Key Challenges Faced by PACs in Effectively Discharging their Oversight Role and Implementation of their Resolutions

Key Challenges

PACS irrespective of the clime, are often confronted with multifarious roadblocks to effectively discharging their functions. The first and common obstacle to the good functioning of a PAC is **PARTISANSHIP,** This simply means PAC members operating with a partisan spirit and using the investigative powers of the PAC to promote their own political fortunes (along with those of their respective parties). This problem is not necessarily due to institutional factors; rather it is a behavioural problem.'

However, insofar as institutions provide incentives for (political) behaviour, it may be possible to find institutional solutions to these problems. For example, in order to minimise the risk of partisan conflicts within a PAC, many parliaments assign the PAC's Chairmanship to a member of the opposition. Nonetheless, there exist PACs where the chairpersons are from the majority party. Even so, the challenge of partisanship can still be overcome, if there is sincerity of purpose and well entrenched institutional frameworks for making decisions.

A case in point is Australia; where the PAC's Chairperson is a member of the majority party, in instances such as this, the importance of reaching unanimous decisions on suggestions and recommendations should be encouraged and greatly emphasised.

If the impediment of partisanship is to be overcome in order to pave way for effective decision-making and implementation of PACs resolutions, parliaments must stress that the PAC's mandate is not that of assessing the political value or content of the policies enacted by the government, but instead assessing whether policies are implemented in an efficient and effective manner.

However, none of these solutions by themselves are sufficient to ensure bipartisan cooperation. What else can be done? When members join a PAC, they could be asked to underwrite a (formal or informal) code of conduct in which they pledge their loyalty to the good, non-partisan functioning of the committee. Their word would be considered binding and the PAC's Chairpersons could use this pledge to induce members to perform their functions and respect

their institutional duties[214].

A second, and more serious, problem for the effectiveness of the PAC's activity is that GOVERNMENTS MAY HAVE **LITTLE INTEREST IN (IF** NOT OPEN AVERSION TO) PARLIAMENTARY OVERSIGHT OF THEIR ACTIVITIES. Governments may consider parliamentary oversight as an intrusion in their sphere of influence. Similarly, governments may think that PACs are not sufficiently informed or competent enough to formulate suggestions, criticisms, and observations. This is a serious problem as it indicates poor understanding of the functions that the executive and legislative branches perform in parliamentary systems[215].

One other key challenge that often confronts some PACs is the ***LACK OF ADEQUATE SUPPORTING STAFF FOR THE SUCCESS OF PACS.*** In some cases, the number of supporting is very low. This poses a challenge for smooth processes and implementation of the PAC resolutions. It has been observed, that while it is likely that PACs that lack adequate staff support may struggle to perform their roles, a larger size of staff does not always lead to a superior or exceptional performance of PACs when there are no clearly legally defined steps for the implementation of its decisions. So, there must certainly be a well delineated legal procedures that PACs ought to take advantage of to implement their decisions. Some of such legal procedure and processes are outlined in chapters 3 and 4 of this book/manual.

It is imperative to note that in Nigeria, as in many other jurisdictions, the PACs of the National Assembly perform its functions by dealing with Auditor-General reports, conducting hearings, and ensuring that the recommendations of the Auditor-General are implemented. Herein lies another challenge for PACs especially in Nigeria. For one, ***AUDITORS' GENERAL IS OFTEN POORLY FUNDED, AND THEIR REPORTS*** *MAY* ***BE LENGTHY, COMPLEX, POORLY ORGANISED, AND DIFFICULT TO UNDERSTAND.*** Funding and staff shortages mean that audit reports are often years behind, so ministry officials needed for questioning might have moved on. In many cases auditors' generals are appointed by the executive and so may have little incentive to uncover problems that could embarrass those who appointed them. Investigating report findings is time and labour-intensive. Parliaments need

[214] See Riccardo Pelizzo & Rick Stapenhurst, Parliamentary Oversight for Government Accountability, op cit
[215] Ibid

professional staff, but they are often not available. Finally, governments are often not responsive to parliament, and there may be few tools at a parliament's disposal to compel government compliance. Oshisami (1992), Ogbanu (1999), Obazele (2000), Okaro (2004) agree that the following are the major reasons for the non-performance of the PAC:

(i) ***LATENESS IN SUBMISSION OF REPORTS OF THE AUD1TOR-GENERAL.*** This has affected PAC findings as there is no time to effectively investigate and contribute towards resolving the issues raised[216].

(ii) ***INABILITY OF SOME MINISTRIES AND DEPARTMENTS TO RESPOND TO AUDIT QUERIES*** due to a total breakdown of the system of accountability and internal control measures in the public sector[217].

(iii) ***ABSENCE OF PERSONNEL WITH REQUIRED SKILLS, KNOWLEDGE AND EXPERIENCE IN FINANCIAL MATTERS*** as there is no established laws and guidelines on appointment of members[218].

Another major concern surrounding the PAC is the LACK OF RULES SURROUNDING THE TESTIMONY OF PUBLIC SERVANTS BEFORE PARLIAMENTARY COMMITTEES. While public servants appear regularly before the PAC and other committees, the expectations and understandings surrounding their appearances can be very unclear. What questions can be asked? When should a public servant defer to answer what is deemed a "political" question? Without precise standards, it is up to members to struggle over these questions, often for their own tactical advantage.

1.3. Establishment of the PACs for the National Assembly

The Public Account Committees of the National Assembly is one of the committees established

[216] (Chukwunedu & Okafor, 2011)
[217] (Randle,2003)
[218] *Kenneth Enoch Okpala, Public Accounts Committee and Oversight Function in Nigeria: A Tower Built on Sinking Sand, International Journal of Business and Management; Vol. 8, No. 13; 2013 ISSN 1833-3850 E-ISSN 1833-8119, published by Canadian Centre of Science and Education.*

pursuant to the relevant sections of the Constitution and the inherent powers of the legislature[219].

For Instance, Section 62(1) of the 1999 Constitution empowers the National Assembly to:

(a) Create Committees of its members and delegate functions which the National Assembly has powers to exercise to such Committees;
(b) Direct any of its Committees to investigate any matter or thing over which it has powers to make laws; and to
(c) Investigate the conduct of any authority charged with the responsibility of administering laws or disbursing moneys appropriated by the National Assembly.

Section 89 of the Constitution empowers Committees to:

(a) Procure evidence and examine witnesses;
(b) Require such evidence to be given on oath;
(c) Summon any person in Nigeria to give evidence or produce a document;
(d) Issue a warrant to compel the attendance of any person who fails or refuses to appear; and, order payment of costs incurred in compelling such attendance and also impose a fine in consequence.

More particularly, the Public Accounts Committees of both the Senate and the House of Representatives also exist by virtue of sections 85 (5) of the Constitution of the Federal republic of Nigeria and the inherent powers of the legislative oversight of the National Assembly to ensure that the National Budget is implemented in the manner approved by it.

The *Order **XIII** Rule 97(5) of the **Senate*** as amended states that there shall be a Committee to be known as the Public Accounts Committee appointed at the commencement of the life of the Senate. The jurisdiction of the committee shall include:

(a) to examine the accounts showing the appropriation of the sums granted by the Senate to meet the public expenditure; together with the Auditor's report thereon. The Committee shall, for the purposes of discharging that duty, have power to send for any person, papers

[219] Pere, Ayapere and Osain, Orueze, Functional Impact of Public Accounts Committee on Public Accountability over Financial Crimes in Nigeria; Journal of Poverty, Investment and Development; An International Peer-reviewed Journal Vol.8, 2015; A Guide to the Nigerian National Assembly, published by Policy and Legal Advocacy Centre (PLAC),, 2015.

and records, to report from time to time to the Senate and to sit notwithstanding the adjournment of the Senate;

(b) the Committee shall have power to examine any accounts or report of statutory Corporations and Boards after they have been laid on the table for the Senate and to report thereon from time to time to the Senate and to sit notwithstanding the adjournment of the Senate; the Committee shall have power to enquire the report of the Auditor-General of the Federation with respect to any prepayment audit query which had been ovemiled by the Chief Executive of the Ministry, Extra-Ministerial Departments or Agency of the Federal Government and Courts of the Federation and to report same to the Senate.

Similarly, *Order X* ***VII Rule*** *A.****6. (1) the House of Representatives*** states that there shall be a Committee to be known as the Public Accounts Committee consisting of not more than 40 members appointed at the commencement of the life of the House. (2) The Committee's jurisdiction shall include:

(a) to examine the accounts showing the appropriation of the sums granted by the House to meet the Public expenditure, together with the auditor's reports thereon.

(b) Have power to summon persons, summon papers and records, and report its findings and recommendations to the House from time to time.

(c) The Auditor-General shall bring to the attention of the Committee any pre- payment audit queries raised by the Internal Auditors of a Ministry, Department or Agency but ovemiled by the Chief Executive.

(d) The Public Accounts Committee shall have the power to examine any accounts or reports of statutory corporations and Board after they have been laid on the Table of the House and to report thereon from time to time to the House.

Generally, the PACs of the National Assembly PACs have powers to scrutinise government accounts on a regular basis. This is not just to check that money is being spent according to the budget but also to assess whether or not the expected results are being achieved.

1.4. Composition and Membership of PACs

What should the membership of the PAC look like? Who should serve as chairperson of the committee, and what role does this function require?'[9]

1.4.1. *Composition and Size*

In the majority of parliaments, and as tends to be the case in most other committees, the proportion of government and opposition members reflects the proportions in the house. However, whether this is possible also depends on the total size of the committee, and the number of parties represented in the house. However, whether this is possible also depends on the total size of the committee, and the number of parties represented in the house. For example, the PAC of the Zambian Parliament, elected in December 2001, only has as many members as there are parties represented in the house. To ensure inclusiveness, each party is given one representative on the committee.[20] While the size of a PAC varies, it usually has an average of I I members.

1.4.2. Appointing the Chairperson

It is a long -standing tradition in many parliaments that the chairperson of the PAC has to be a member of the opposition. A recent survey indicates that this principle is adhered to in two-thirds of PACs, underlining the non-partisan tradition that underpins the work of the PAC and the willingness of the government to promote transparency through independent scrutiny.

In some cases, the tradition to award the chair of the PAC to an opposition member might simply reflect an unwritten convention, whereas elsewhere this principle has been written into the rules of the house. An example of the latter category can be found in the Standing Orders of the Legislative Assembly of Ontario (Canada). Section I 14(b) prescribes that "the Chair of the Standing Committee on Public Accounts shall be a member of the Party forming the Official Opposition[220].

[220] Pere, Ayapere and Osain, Orueze, Functional Impact of Public Accounts Committee on Public Accountability over Financial Crimes in Nigeria; Journal of Poverty, Investment and Development; An International Peer-reviewed Journal Vol.8, 2015.

1.4.3. The Role of the Chairperson

The chairperson is to play certain roles. He is to ensure the smooth and effective running of the committee. In particular, PAC chairpersons are responsible for setting the committee's agenda, usually in consultation with the committee and the auditor general. The latter should be able to indicate the flow of reports to be released, which should allow the committee to plan ahead reasonably well.The chairperson is also crucial in fostering a culture of consensus in the committee, by steering it clear of party-political divisions as far as possible.[22]

1.5. The PACs Processes and Audits

The PAC process has its starting point with a report from the auditor general. The prime mechanism for considering such reports is the hearing, at which witnesses are called before the committee to answer questions by members on critical issues raised. After the conclusion of a hearing, the committee has to finalise its own report based on its findings, and make sure that the government implements any recommendations[221]. The implementation of the findings of the PAC has in some several instances met a brick wall.

1.5.1. How PACs Prepare for Hearings

After receiving a report from the auditor, hearings are the principal mechanism by which officials from departments, agencies or other relevant bodies answer to the PAC. The PAC should plan its programme carefully in consultation with the auditor general, so that the release of reports is synchronised with parliamentary hearings. A quality hearing requires preparation by committee members as well as witnesses. In some PACs, individual members are asked to scrutinise separate sections of a report. In others, each member is responsible for every audit report. An audit report is in many systems accompanied by a briefing document from the auditor general, circulated prior to a hearing, which might suggest areas in a report that warrant particular attention. In addition, individual members sometimes conduct their own research on issues of their interest to supplement the available information.[24]

1.5.2. Decision Taking, Recommendations and Reports

There is a strong tradition in many parliaments that favours unanimity for PAC decisions. In

[221] Ibid

some cases, the unanimity principle is enshrined in rules, but in most countries' PAC reports can contain minority views. A rigid principle of unanimity in PAC decisions might be an unrealistic requirement, although all PACs should strive for consensus decisions to underline the nonpartisan approach to financial oversight.[25]

If minutes of evidence are published, witnesses should be given a chance to`check these for accuracy before their publication. Usually, it is the responsibility of the chairperson to draft a report, with assistance from the committee clerk. Some auditors prepare a set of recommendations as a basis for committee deliberations, to support this process.[26\]

However, in some countries, the auditor general does not participate in the drafting of PAC reports, to maintain the independence of the committee. The draft report is debated in the PAC, where any changes can be proposed, and accepted or rejected. While it is not normally required that PAC reports have to be adopted unanimously by the committee, some committees have found it useful to hold back reports until consensus has been established.[27]

In some cases, when unanimity is not a formal requirement, the committee might sometimes decide to delay a report in order to establish consensus. This is likely to add to the strength and impact of the report, but it may not always be a feasible option 28.

The minutes of evidence of a particular hearing as well as the committee report should be published as promptly as possible. In a recent survey, 87 percent of PACs indicated that their reports are freely available to the general public. In addition, 57 percent of PACs have their reports debated in the house[222].

1.5.3. Following Up on Implementation of PACs Resolutions

It is practice in many Westminster inspired parliaments that committee reports have to be followed by a formal response from the government. This usually occurs within two to six months. Some parliaments have special committees to subsequently monitor the implementation of government assurances. In the case of the PAC, the government's response is sometimes

[222] Ibid

known as the Treasury Minute or the Executive Minute.

The finalisation of a report by the committee should not be the end of the PAC process. Reports only have practical value if the government addresses the issues it raises, and implements the recommendations of the committee.

In practice, while experiences vary, the Treasury Minute is not always a satisfactory mechanism for ensuring that the committee's recommendations are acted upon. The responses it contains may not always be very specific, and it can be difficult, given parliament's often-limited resources, to ensure independently that sufficient action was taken by the government to address particular concerns of the PAC.

Some countries go further in their follow-up through the use of a formal tracking report produced regularly by the audit institution. Tabled at a later stage, for instance two years after an initial audit report, it systematically considers the extent of implementation of each set of recommendations adopted by the committee. Rather than a separate tracking report, some auditor-general's follow a process whereby they include a review of departmental action on previous recommendations in an annual audit report.

In addition, with regard to particularly important issues, it might be useful to consider interim reporting requirements to ensure that the government takes remedial action as speedily as possible. This might take the form of periodic briefings of the committee by relevant officials.

1.5.4. Auditor-General's Reports and Impunity of MDAs

As noted in the preface to this publication, there has been unending or protracted imbroglio over discrepancies discovered by the Auditor-General for the Federation in the financial reports filed by federal ministries, departments and agencies reflects sharply the failure of institutional financial oversight and the anti-corruption campaign. Just recently, the House of Representatives Public Accounts Committee probing unsubstantiated N4.97 trillion in federal balance sheets for 2019 once more summoned the Central Bank of Nigeria Governor, Godwin Emefiele, and four ministers and their permanent secretaries to appear before it to account for the funds.

As it is presently, despite being in dire financial straits, the Nigerian government's treasury continues to leak like a sieve. Notwithstanding numerous reports, parliamentary enquiries, and investigations over the years this disturbing haemorrhage has persisted, with sloppy accounting by MDAs and the authorities seemingly helpless to stop it, even despite robust reports of the Public Accounts Committees of both the Senate and the House of Representatives.

In a more recent case, the Auditor-General of the Federation, Adolphus Aghughu while submitting the 2019 audit report to the National Assembly, said his office uncovered unverified balances in the consolidated financial statement of the Federal Government. He said, "The N4.97 trillion unsubstantiated balances are above the materiality level of N89.34 billion set for the audit." Materiality means not just a quantified amount, but also the effect that amount will have in various contexts. Furthermore, required queries issued against agencies found to be involved in the infractions were not honoured in all cases[223].

According to the report, a whopping 25 MDAs failed woefully to account, submit, adhere and obey the extant laws governing the annual Auditor-General report as clearly stipulated in the ***Fiscal Responsibility Act.*** A major challenge which the PAC of the House of Representative encountered during this episode is the culture of unaccountable power that is now prominently apparent in all the strata of government MDAs.

There is also the intermittent inability or refusal of ministers and other public officers to provide satisfactory explanations for expenditures and revenues to parliamentary committees. The ministers summoned by the Reps committee include those of Works and Housing, Babatunde Fashola; Health, Osagie Ehanire; Interior, Rauf Aregbesola; and Communication and Digital Economy, Isa Panama. Like the CBN, their representatives in earlier appearances before the panel had failed to render full accounting of their activities, prompting the latest summons.

Similarly, the 2021 Ethics and Integrity Compliance Scorecard compiled by the Independent Corrupt Practices and Other Related Offences Commission (ICPC) has shown that 137

[223] Ibid

Ministries, Departments and Agencies (MDAs) did not submit their audited accounts to the Office of the Auditor-General of the Federation in the last three years[224].

The report also showed that 20 MDAs assessed by the commission did not have governing boards in place. Where boards were in place, 100 of the MDAs did not hold regular meetings even as 164 MDAs did not conduct periodic self-assessment for board members.

The findings, an indication of endemic competition in MDAs, revealed that 169 of them and 56 per cent of the number assessed did not have policies or codes regarding acceptance of gifts, donations, hospitality and therefore not enforced. "These lapses are veritable channels for receipts of gratification on pretexts of gifts and hospitality by staff in the identified MDAs," it stated[225].

The assessment contained in the "Ethics and Integrity Compliance Scorecard of MDAs in Nigeria," further stated that 174 MDAs did not comply with the Public Procurement Act 2007, while 100 MDAs, procurement planning committee composition were not in compliance with PPA 2007.

Same defect was noticed in 88 MDAs where tender boards composition was in contravention of the PPA 2007. "This promoted procurement and due process abuse and fraud," the report noted. The ICPC report, therefore, recommended that the Office of the Auditor-General of the Federation direct MDAs to submit audited accounts to OAGF and the public accounts committee."

These recent saga where about 25 percent of MDAs deliberately failed the threshold set by the federal government through the Fiscal Responsibility Act and other relevant statutes on accountability and transparency, should be a wakeup call for the National Assembly through its PACs who must stand firmly on its constitutional authority to demand and compel obedience to the law.

[224] Ibid
[225] Ibid

That the National Assembly can enforce any of its resolutions has been established by the Court of Appeal in the case of *El-Rufai v. House of Representative and National Assembly*[34] where the court held that the National Assembly has the power to enforce any of its resolutions to summon and investigate any person. This power is pursuant to Section 4, 5 and 6 of legislative Houses (Powers and Privileges) Act, Cap. 208, LFN 1990. It provides thus:

> *A committee of legislative house authorised by the standing orders thereof or by a resolution of the house to send for persons, papers, and records may order any person-to attend before it and to give evidence, or to attend before it and to produce any paper, book, record or other document in the possession or control of such person*[226].

The next Section shall now outline possible legal procedures and processes that can be explored in the implementation of the resolutions of the Public Accounts Committees of the National Assembly.

1.6. Legal Processes and Procedures for Implementing the Resolutions of Pacs of the National Assembly

1.6.1. The Public Accounts Tribunal

There should be a functional special Tribunal with full legal teething empowered to implement the recommendations and resolutions of the PACs of the National Assembly.

1.6.2. Establishment, COmposition and Powers

Recently, a private member bill sponsored by Chairman, House Committee on Public Accounts, Hon Oluwole Oke, which seeks for the repeal of the Public Accounts Implementation Tribunal Act 1990, was presented to the National Assembly. The Bill seeks to empower the Tribunal to recover public funds or properties found by the Public Accounts Committees of the National Assembly to have been misappropriated or due to the Government of the Federation and for related matters. Once this Bill is passed into law, the Public Accounts Tribunal will be a very

[226] 3PLR/2003/63 CA

effective machinery that can be utilised by the PACs in ensuring compliance with their resolutions.

According to Section 2 of the bill, the Tribunal shall consist of the following members: A retired Judge of a superior court of record who shall be the Chairman; a representative of the Federal Ministry of Justice, not below the rank of a Director; Federal Ministry of Finance, Accountant — General of the Federation; and two representatives from the Nigerian Bar Association (NBA) and the Institute of Chartered Accountants of Nigeria (ICAN) who shall serve for a single term of four years.

Sections 4(a and b) empower the Tribunal to examine the reports and recommendations of the Public Accounts Committee of either of the Houses of the National Assembly which shall be referred to the Tribunal, from time to time, by the President and initiate any steps to recover funds, assets or properties from any persons which have been investigated and found due to the government of the Federation by the Public Accounts Committee of either House of the National Assembly.

Sections 4(c, d and e) also empower the Tribunal to apply any appropriate sanctions against any erring official or officer of Government found to be negligent based on the reports, findings and recommendations of the Public Accounts Committee of either House of the National Assembly; at its discretion, refer a matter for criminal prosecution to the Federal Ministry of Justice, Economic and Financial Crimes Commission, Independent Corrupt Practices Commission, Code of Conduct Tribunal, Nigeria Police Force, or any other similar law enforcement agency; and make any appropriate recommendation to the President based on the report, findings and recommendations of the Public Accounts Committee of either House of the National Assembly.

Section 5 provides for the power of the Tribunal to confirm or vary the decision of the Public Accounts Committee. It states that: “After examining the reports of the Public Accounts Committee of either Houses of the National Assembly, as stated in section 4(a) of this Bill, the Tribunal shall have the power to consider the recommendations of the Public Accounts Committee and make any such order which the Tribunal considers appropriate in the

circumstances.

Section 6 also empowers the Tribunal to exercise any of the following powers: require any person to produce before it any books, documents or records as it may deem necessary or desirable; summon before it any person affected by such order and hear him or receive necessary representations from such person or his counsel, as the Tribunal may deem necessary or desirable; in pursuance of paragraph (b) of this section, admit any evidence, whether written or oral, which would assist the Tribunal to come to a just decision in the matter before it; and do such other things as are necessary and expedient for the full discharge of its functions under this Bill.

1.6.4. Appealing the Decisions of the PAT

Section 7 provides for an appeal from decisions of the Tribunal, among others. Section 7(1 and 2) provides that: "An appeal shall lie from the decision of the Tribunal to the Federal High Court. Any such decision of the Tribunal shall, where necessary, be communicated to the appropriate Public Institution for enforcement

1.6.5 Enforcement of PAT Orders

Any decision of the Tribunal for the recovery of any funds, assets or property shall, where the Tribunal deems appropriate, be referred to a team of enforcement officers who shall enforce any such order or orders of the Tribunal.

Section 10 of the bill which focuses on the 'Order about any property or matter considered by the Tribunal, provides that:

> *The Tribunal may, after due investigation or hearing, make an order for the refund of any sum of money against any person who has occasioned a loss or is responsible for any loss of public funds or property or is in any other way concerned with the loss of any public funds or property and the Tribunal may further order that the property or any assets of such person be charged with the payment of such amount due to the Government: provided that before the Tribunal makes an order under this Section it*

shall give the person concerned an opportunity of fair hearing including making representations before it.

Section 11 centers on the appearance of Counsel. It provides that: "Any person whose conduct or affairs are the subject of the recommendation of the Public Accounts Committee or who is in any way implicated, connected or concerned in the recommendation of the Public Accounts Committee shall be entitled to appear before the Tribunal in person or be represented by Counsel and shall be given a fair hearing by the Tribunal.

1.7. The Role of the President In implementing PACs Resolutions

Beyond regularly summoning ministers and heads of MDAs to grandstand and make headlines, the National Assembly should put strategies in place to effectively mount pressure on the President and the executive branch to bow to the law. One way is to refuse approving budgets for any MDA that has not met all accountability requirements stipulated by the law.

Where the President fails to act decisively to order MDAs to be accountable, the National Assembly can consider withholding assent on his requests for authority to obtain loans, confirm his nominees for public appointments, and withhold funding. In this connection, between 1976 and 2021, there have been 22 government shutdowns when the United States Congress failed to pass funding legislation for the next fiscal year because of disagreements between lawmakers and the executive branch. Though an undesirable scenario, it is the consequence of the parliament asserting its constitutional prerogative over spending and to compel accountability.

1.8. Other Key Legal Recommendations For An Effective Implementation Of Pacs Resolutions

The public Accounts Committees of the National Assembly should submit their Resolutions/list of defaulters to the EFCC or the ICPC with a timeline for investigation. Based on a recent judgement wherein the Court of Appeal has held that a petitioner is entitled to receive a copy of the outcome of the investigation by the EFCC or ICPC, the Public Accounts committees can demand for the outcome/reports of any of such investigations. Once the reports are received, they should be published in both GAZE l IES of the Federal government and the National

Assembly. The DEFAULTERS named in the in the Gazettes should not be allowed budget defence nor allocation by the appropriations committees of the National Assembly.

That the PACs can legitimately demand such reports from the investigative body has been clearly established in the recent case of ***Christian Iheanyichukwu Nwanguma v. The Chairman, Economic and Financial Crimes Commission (EFCC), Mrs. Farida Waziri & Anor (2017) LPELR- 50893(CA)*** where in the Court of Appeal held that EFCC has a duty to furnish complainant with its investigative report carried out in pursuance of a petition. *See Appendix 4 for a summary of the case.*

The Senate and House of Representatives Committees on Legislative Compliance should monitor and report on how MDAs comply with the resolutions of the National Assembly after the PACs are submitted to the plenary of the National Assembly.

The Public Accounts Committees of the National Assembly should report the Bursars, Accountants of the government MDAs of the defaulters to the Disciplinary Bodies of their professional Bodies namely ICAN or ANAN. Based on this, such defaulters should be removed from office, and the budgets of such defaulters/MDAs would not be released until compliance is 100%. Lists of defaulting MDAs can also be submitted to the President, SGF, and the ICPC.

The Resolutions of the PACs and the National Assembly can be published in the Gazettes of both the federal government and the National Assembly respectively thereby making them enforceable with recourse to the Executive arm of Government[227].

Another possible legal procedure that can be adopted by PACs is for them to submit the list of defaulters as published in the two Gazettes to a federal high Court and apply for such defaulters to be barred from holding public office for life or for a period of not less than 10 years depending on the quantum of infractions as was the case in ***Aondoakaa v. Obot & Anor[228].***

[227] See Appendix 3 for the procedure for publication in the gazette of the federal government ofNigeria.
[228] *(2021) LPELR-56605(SC).*

The facts prompting the litigations, which dragged on for about 15 years, is traceable to the People's Democratic Party primary election held in December 2006 for nomination of candidate for Uyo Federal Constituency of Akwa Ibom State for the general elections of April 2007. Obot, who emerged winner of the primary election, was substituted with the name of Bassey Etim after he (Obot) was duly presented to the Independent National Electoral Commission (INEC) as the PDP candidate.

On December 12, 2007, the Court of Appeal, Calabar division in appeal numbered CA/C/45/2007 delivered judgement in favour of Obot, ordering the President of the Court of Appeal to set up a new Tribunal to adjudicate over Obot's petition in Uyo.

Following a petition, he received from Etim, Aondoakaa, in his capacity as the AGF, wrote a letter to the President of the Court of Appeal, urging him not to comply with the decision of the Court of Appeal, Calabar division, which had ordered the constitution of new panel of judges to hear the matter. Notwithstanding Aondoakaa's letter, the President of the Court of Appeal went ahead by setting up a new panel of judges in compliance with the order of the court.

The new panel gave judgement on April 18, 2008 that Obot be sworn into the House of Representatives as the member representing Uyo Federal Constituency, and Etim's appeal to the Court of Appeal was dismissed with an order that INEC should issue Certificate of Return to Obot. Curiously, though by virtue of Section 246(2) of the 1999 Constitution, as amended, the decisions of the Court of Appeal are final regarding appeals emanating from National and State Houses of Assembly elections, the former AGF wrote to the then chairman of INEC, Maurice Iwu, urging him not to obey the judgement of the Court of Appeal, which he described in the letter as "obvious desecration of the institution of the judiciary. At the same time, he also wrote to the Speaker of the House of Representatives advising him to disregard the judgement but "*to allow the status quo ante to remain until the last word is heard from the Supreme Court.*"

Consequent upon Aondoakaa's letters to the INEC chairman and the Speaker of the House of

Representatives, Obot was not issued Certificate of Return nor sworn into the office he was elected to serve the people of Uyo Federal Constituency; hence he slammed a lawsuit on May 15, 2009 against the then AGF in his personal and official capacity at the Federal High Court, Calabar division through his lawyer, Uwemedimo Nwoko (SAN).[36]

In the Aondoakaa's case, the Supreme Court noted as thus:

> *"It was indeed highly reprehensible for the Chief Law Officer of the Federation to counsel disobedience to any judgement at all, talk less of a judgement from which there is no further right of appeal. I am in complete agreement with the learned trial Judge, as affirmed by the Court below, that having regard to the conduct of the appellant while occupying the sacred office of ChiefLaw Officer of the Federation, he ought not to be entrusted with any other public office at all.*
>
> *I agree with the Court below that the order made, though not specifically asked for, is a consequential order naturally flowing from the resolution of the questions for determination in the 1st respondent's favour and the grant of his reliefs. As held in Amaechi Vs INEC (supra) the Court has a duty to use its powers to do justice in the case where an attempt to subvert the administration of justice has occurred.*
>
> *Similarly, it was within the Court's power to make a consequential order referring the appellant to the NBA for disciplinary action having regard to his condemnable conduct which is against the ethics of the profession and in breach of the Rules of Professional Conduct for Legal Practitioners, 2007. Rule 30 thereof provides:*
> *"A lawyer is an officer of the Court and accordingly, he shall not do any act or conduct himself in any manner that may obstruct, delay or adversely affect the administration of justice.*

1.9. Following up on Audit Recommendations — the German Case

The lower house of the German Parliament, the *Bundestag,* receives an audit report about ten

months after the end of a fiscal year. The report is based on about 1000 individual audits, and focuses on about 100 of the most important ones. It contains information on broader financial management issues as well as detailed comments across departments. The report is considered in the Committee on Public Accounts, a subcommittee of the Budget Committee, where membership is proportionately distributed according to party representation in Parliament. Each member is assigned the role of rapporteur for a specific ministry, and has to scrutinise the remarks on this entity in the audit report. The relevant ministers, or at least high ranking bureaucrats, Finance Ministry officials and auditors take part in the relevant discussions.

The Federal Court of Audit prepares a draft recommendation for each item. If adopted, the executive is obliged to implement the recommendations, and has to report on its progress in this regard within a set timeframe. Most decisions are taken unanimously, and about 90 per cent of the recommendations of the Federal Court of Audit are endorsed. The Budget Committee generally accepts the views of the subcommittee and refers its report to the plenary. The Federal Court of Audit also produced a follow-up report two years later. This report documents whether the *Bundestag* adopted a recommendation by the Federal Court of Audit, and, if so, to what extent the relevant department implemented it. This tracking mechanism enforces compliance with committee recommendations by departments, which face expenditure cuts or reprimands during their budget hearings when compliance has been unsatisfactory[229].

1.10. Proposed PAC Members Guide

Governments are accountable to the legislature for the way they spend the money they raise from taxpayers and elsewhere. Before money is spent, legislatures will approve government income and expenditure plans. After the money has been spent, legislatures should demand assurance that the money has been spent in accordance with those plans in a way likely to achieve value for money, and should seek explanations and improvements when things have gone wrong. Post- expenditure scrutiny forms the heart of constructive Parliamentary Accounts Committee (PAC) work.

- Structures for undertaking parliamentary financial scrutiny may vary in line with respective constitutions. Many share similar features, in particular:

[229] Source: Wehner (2001)

- a legislature which requires the government to prepare income and expenditure plans (budgets) specifying how much money they intend to raise and how it will be spent;
- government ministries and other agencies which prepare accounts and related reports showing how the money was spent against the budget;
- an independent Supreme Audit Institution (SAI) which audits these accounts and reports to the legislature;
- a PAC within the legislature considers work undertaken by the SAI, makes recommendations to government, considers government responses and reports to the legislature.

In addition, some countries have:

- civil society organisations which review government action and provide expertise and insight from outside the legislative process; and
- the media

Undertaking financial scrutiny is challenging as public finance documents are often technical and contain a high volume of information. It is also a challenge for members of parliament to balance the demands of financial scrutiny alongside their other roles and responsibilities in the legislature.

The process of financial scrutiny can at times be intensely political. In dealing with the SAI's *(in the case ofNigeria, the office of the Auditor -General is the SAI)* reports the PAC should focus on improving the administration of public funds and not challenge government policies. Using these hearings and reports as a way of embarrassing a government and attacking ministerial decisions undermines the value and credibility of the PAC.

This Guide sets out:

- what an effective PAC looks like,
- on what it is based,
- what is its role and procedures

so that members may get the best out of the committee, improve the legislature's financial

scrutiny role and above all improve the effectiveness, efficiency and economy of government services.

The 'Essential Guide' covers the main ideas and procedures necessary for members to establish, maintain and improve the role and functioning of the committee.

1.10.1. The PAC

However complex or sophisticated the committee, there are five basic questions the committee seeks to answer in reviewing government accounts and performance:

(a) How does the government spend the money?
(b) On what does the government spend money?
(c) How do we know the money was spent as Parliament intended?
(d) How well have resources been applied to achieve desired results?
(e) In achieving results, has due regard been given to efficiency and economy?

Where the committee meets in public, and/or publishes proceedings and reports, the work helps ensure transparency and openness of government activities by providing a public arena in which government spending is explained, debated and actions are held accountable.

1.10.2. The work of the PAC

The process of financial scrutiny is based on collecting evidence on the appropriateness of government plans or actions, and communicating conclusions and any recommendations for improvement to Parliament and the public. Committees will generally collect evidence in the following ways:

- question government officials, suppliers, contractors and/or advisors at public meetings;
- question independent experts from universities, business or non-governmental organisations at public meetings;
- request and review written submissions from government or independent experts; and
- place reliance on reports produced by the Supreme Audit Institution (SAI)

Based on this work the Committee will usually produce a report containing its conclusions on the issues examined. The objective for post-expenditure scrutiny is to recommend changes and improvements that will prevent past problems recurring in future.

1.10.3. Characteristics of an Effective PAC

While PACs will differ in their structure, there are a number of shared characteristics contributing to effectiveness and impact. These typically blend formal powers and informal ways of working.

Effective financial oversight committees:

- focus on the management of public finances not policy, endeavouring to gain consensus on behalf of the taxpayer and citizen rather than on purely party-political considerations;
- call officials (on rare occasions only, ministers), suppliers, contractors and advisers as appropriate for constructive questioning relating to public expenditure;
- demand relevant documents to the inquiry, or rely on the independent audit of such documents mainly by the SAI;
- report directly to the legislature; and
- make recommendations to which the government must formally and publicly respond.

1.10.4. The Effective PAC Approach

The PAC works effectively when it:

- Is appropriately sized, involving members from across parliamentary parties reflecting the make-up of the legislature or includes non-members of the House with acknowledged relevant expertise;
- is chaired by a member from an opposition party or non-member of the House to increase public confidence in scrutiny of government;
- works with a non-partisan culture focusing on financial management improvement to

benefit citizen and taxpayer;

- preferably holds meetings open to the public and the media, with all documentation published soon after the meeting;
- publishes reports and recommendations which are easy for the public and the general reader to understand and which require a written response from government;
- maintains active and constructive relationships with the SAI;
- has access to appropriate support from parliamentary staff;
- engages in a balanced manner with the media to increase public awareness of PAC role and work;
- operates, often in conjunction with the SAI, effective systems to follow up recommendations and report regularly on the extent to which these recommendations have been implemented; and
- develops and publishes its own plans and reports regularly to the whole

Parliament on its activities and key findings, conclusions, and recommendations.

1.11. PLAN for **Core of PAC** Effectiveness

1.11.1. Scrutiny objectives

Parliaments expect governments to report back to them on how they spent the money allocated to them when the expenditure plan was approved. This is usually in the form of annual accounts.

Timetables for the production of financial reports will usually be set out in law or regulations. PACs will scrutinise accounts in order to check a range of risks to taxpayers' money including:

- the organisation spending more than expected;
- the organisation becoming less financially efficient; and
- examples of waste, fraud, or contentious payments

Serious problems with the legality and compliance of spending will usually be highlighted in the SAI's report on the accounts. Given the volume audited by an SAI, it is important that a

PAC prioritises its efforts focusing on the major problems emerging from the audits. Minor issues should be handled directly between the SAI and the relevant Ministry or Agency.

Scrutiny of financial reports can highlight issues around financial performance. It does not provide parliament or the public with a view of the outputs achieved with the money granted to the government. While the accounts may show expenditure increasing, judgement on efficiency and effectiveness can only really be made when the PAC has evidenced information on the extent to which outputs and productivity have increased too. Scrutiny of performance is therefore necessary alongside scrutiny of accounts in order to identify risks such as:

- Government delivering less output than expected;
- Government delivering lower quality output than expected; and
- Government delivering output to different beneficiaries than expected

1.11.2. Supporting the PAC

The PAC may be able to draw on a range of resources to support the committee's work:

PACs are more effective if they are resourced with parliamentary support staff saving members time and allowing them to focus on the major issues that require discussion and action. Potential roles are:

- providing advice on procedure to the committee chair and members; arranging meetings, managing correspondence, and finessing the smooth running of committee business; and

- providing expertise and necessary research, preparing briefing in advance of meetings and drafting reports and recommendations

Resources can be limited, and the committee may be able to draw on other resources to supplement parliamentary staff, especially the SAI. The Auditor General is, in effect, the principal adviser to the committee. The PAC may also call on other relevant experts as

witnesses on specific hearings. The Accountant General should attend all committee hearings as the representative of the Executive.

The SAI audits government accounts and performance on behalf of parliament. The SAI is the national body responsible for scrutinising public expenditure and providing an independent professional opinion on how the government has used public resources. This is the body referred to in the UN General Assembly Resolution A/66/209 ‘Promoting the efficiency, accountability, effectiveness and transparency of public administration by strengthening Supreme Audit Institutions’.

It provides most (if not all) of the reports the PAC will examine in the course of its work. The SAI may be able to provide additional briefing, advice and outputs to PAC members and staff when requested, depending on the skills and other resources available. There are two types of key support a) performance audit (value for money studies) and b) financial & compliance audit:

The SAI should be mandated to investigate financial management performance through performance audits (value for money studies). Such audits can consider:

Effectiveness: how well intended plans have been achieved in practice Efficiency: the relationship between output and resources applied to achieve it.
Economy: efforts made to obtain best resource price, quality, quantity & timeliness This is based on:

- The independence the SAI has to examine and report on any area of public expenditure;
- The ability of the SAI to research and publish information additional to the performance information used by government; and
- The SAI inviting government comment on the factual accuracy of the report prior to PAC involvement

The SAI is responsible for auditing the financial accounts of government organizations. This provides Parliament and the public with assurance that taxpayers' money has been spent on the purposes intended by parliament. Financial and compliance audit addresses the risks that:

- Government has spent more money than was authorised in each area of the expenditure plan;
- There have been financial losses to the taxpayer due to fraud or error;
- Government has failed to act in compliance with the law and public finance regulations in delivering its programmes ;
- Government has failed to maintain effective internal financial control systems in public organisations, and financial records have been poorly maintained; and
- Financial accounts and reports do not provide an accurate (or "true and fair") representation of the financial position of the organisation and are not prepared in compliance with laws, regulations and recognised professional standards

Outside of Parliament and the public sector, independent civil society organisations may also be useful sources of information, support and briefing for committee members and staff. Such organisations must be credible in their expertise and independence.

The media has a crucial role in reporting the work of the PAC to the public. Media scrutiny and the public interest that can result will increase the significance for governments to respond positively to PAC recommendations in a timely manner.

1.11.3. Performance:

A PAC can choose to hold meetings or wider inquiries in response to a SAI report. A single meeting will tend to focus on questioning senior officials from the organisation featured in the report; a broader inquiry may also involve the finance ministry, other ministries & agencies and experts from outside government.

In preparing for a PAC hearing with an accountable organisation, committee staff should:

- undertake analysis of the SAI report and identify the main findings. Key issues and data are usually highlighted in the summary section of the report. Chapter and paragraph headings may also point up the key issues;
- obtain clarification and further briefing on complex issues from the SAI if required;
- summarise the key facts from the report into a briefing for committee members; and
- prepare suggested questions for members to use during the meeting.

Depending on skills and other resources, the SAI may carry out most of the preparations for the briefing, leaving members and committee staff to review the briefings and possible questions and add additional points if necessary. Typical areas of questioning will include:

- reasons why performance fell short of expectations;
- what the impact of failure has been on service delivery and the public;
- whether expectations, targets and plans were realistic;
- what changes have been put in place to correct failures and prevent any recurrences; and
- what wider lessons the organisation might apply to similar programmes and activities

Where the audit work reveals serious concerns, the SAI will attach a report to the accounts detailing the issues. This report can form the basis of a hearing where the PAC will question the responsible officials about the problems that occurred. Typical questions to be considered when preparing a briefing may include:

- when management what caused the problem;
- became aware of the problem and how it was identified;
- what management could have done to prevent or contain the problem;
- what impact the problem had on what the entity was able to deliver; and
- how recurrence of the problem will be prevented in future

The aim is to encourage improvements in the way public resources are managed. A hearing's report should be publicly available and contain recommendations. This report should go to the government, directly or after a debate in the parliamentary chamber. The government should issue a formal reply indicating which recommendations it accepts and how it plans to implement them.

The PAC should ensure there is a monitoring system in place to track these recommendations. Parliament may put in place such a system, or the SAI may follow up the recommendations — bringing to Parliament's attention those cases where an entity has failed to act, or acts too slow.

The PAC is a parliamentary committee operating on behalf of parliament, even when non-parliamentary members sit on the PAC. The PAC is formally independent of the government.

Parliament will have Committee Standing Orders to regulate all committee proceedings. It is important that the PAC's Standing Orders clearly delineate the powers and authority of the committee and the Chair in relation to:

- terms of reference including mandate, make up and quorum, reporting, publication of reports, follow up of recommendations and accountability;
- planning and monitoring the committee's programme during the parliamentary year;
- the calling and conduct of meetings, including the legitimate subject matter, power to call witnesses and require government response, and the openness of committee hearings;
- support available to the committee, including parliamentary staff and SAI

Parliament should delegate authority to the PAC to act on its' behalf within committee mandate, ensuring formal accountability to parliament via timely reports and an annual parliamentary debate on the floor of the House on the PAC's work during the year. Individual reports can be:

- debated on the floor of the House before being sent for government response; or
- be sent directly to the government. (This is more efficient. It does place greater emphasis on the annual floor debate for formal accountability purposes).

It may be appropriate to appoint non-Members of Parliament onto the committee bringing acknowledged expertise on financial, legal and/or public sector matters, raising the level of technical debate and further enhancing the non-party political nature of the committee.

Verbatim transcripts of all hearings should be made and minutes of all meetings and hearings kept including any follow up hearings. Transcripts and minutes should be made public in a timely manner. Committee reports and government responses should also be published.

The public and media should have the right to attend hearings unless a resolution is made to hold the hearing (or part of a hearing) ‘in camera’. Reasons for the resolution should be published.

The PAC should always attempt to arrive at consensus so that one report is prepared. This reinforces the report's authority. On those (hopefully rare) occasions when consensus is not

reached, a minority report may be prepared and both majority and minority reports should be debated on the floor of the House so that parliament can make a determination before forwarding to the government for response.

The government should be required to respond formally to PAC recommendations within a given period (say two months) with responses made public. It is valuable for the government to coordinate responses to all PAC reports through a predetermined channel, usually the senior official in the Ministry of Finance, e.g. Financial Secretary level. A constructive PAC focusing on financial management rather than policy should provide the government with a level of assurance that policies are being implemented within the law, within parliamentary intentions and with due regard to effective, efficient and economical resource use.

INTERVIEW OF DR. TONYE CLINTON JAJA BY DR. STEPHANIE ELONGE, GUEST EDITOR, INTERNATIONAL JOURNAL OF LEGISLATIVE DRAFTING AND LAW REFORM

DR. ELONGE: "*What motivates and drives you in Legislative Drafting?"*

DR. TONYE CLINTON JAJA: ***"I found Rome (legislative drafting) built of bricks; I leave***

her (legislative drafting) clothed in marble."- Caesar Augustus.

The above quotation is my ideology, it is the undying desire to add value to the legislative drafting discipline of the legal profession that drives and motivates me. The innovations and initiatives that I bring to the legislative

drafting discipline of the legal profession are like the marbles to replace the bricks-the old, traditional methods previously applied. For example, in the year 2010, I mooted the idea that clinical legal education methods should be used to teach legislative drafting to students undertaking the Master of Laws (LLM) in Legislative Drafting programme at the Institute of Advanced Legal Studies (IALS), University of London. This resulted in the establishment of the IALS LEGISLATIVE DRAFTING CLINIC of which I was appointed as the pioneer Secretary. Records of this are to be found in the NEWSLETTER OF THE COMMONWEALTH ASSOCIATION OF LEGISLATIVE COUNSEL (CALC). Just as any great leader, there are always opponents who resort to lies, defamation etc. against me and my drive to improve the status of Legislative Drafting. These opponents and their criticisms which they place in my path, are like stepping stones that I climb to higher heights. I use their criticisms as firewood to fuel the fire of my motivation."

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Call for volunteers The Legislative Drafting Clinic, at the Sir William Dale Centre for Legislative Studies, Institute of Advanced Legal Studies, School of Advanced Study, University of London

In preparation for its official launch in October 2011, the IALS Drafting Clinic invites drafters, IALS alumni, IALS Research Fellows, PhD students, and LLM students (including distance-learning students) to register as volunteers for pro bono work at the Drafting Clinic. The IALS Legislative Drafting Clinic was established in December 2010. Its aim is to assist NGOs or governments in need while at the same time offering applied learning cases for the student cohort. For full details of the Drafting Clinic, please visit our webpage at: http://ials.sas.ac.uk/postgrad/LDclinic/LDclinic.htm.

Volunteers may be called upon to review existing legislation, respond to drafting instructions, and assist with drafting in cooperation with local experts. The Clinic matches volunteers to draft projects on the basis of their qualifications, local knowledge and understanding of the client's legal system, and interests. Matched volunteers may opt in or out of any project. Volunteers are listed in the webpage of the Clinic.

For further details and to request a volunteer's registration form please contact: Dr. Helen Xanthaki, Sir William Dale Centre for Legislative Studies, Institute of Advanced Legal Studies, 17 Russell Square, WC1B 5DR, London, UK, or by e-mail: Helen.xanthaki@sas.ac.uk or the Secretary of the IALS Drafting Clinic, Mr. Tonye Clinton Jaja at Tonye.Jaja@postgrad.sas.ac.uk

Secretary Contact Detail

If you wish to contact the CALC Secretary, Fiona Leonard, regarding membership or any other CALC matters, her email address is: fiona.leonard@parliament.govt.nz