

The Legislature and Challenges of Institutional Efficiency in Nigeria's Fourth Republic

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Abstract

Modern democracy is built on the informed and active participation of the citizens. The legislative institution represents the platform for such participation. In Nigeria, the National Assembly which symbolizes the arena of participation by the citizens derives its life from the constitution. Given its constitutional and extra constitutional roles therefore, the National Assembly is a pillar of current democratic practice in the country. However, evidence suggests that the legislature is challenged by some factors in the discharge of its responsibilities. This paper examines some of these challenges. Through an examination of secondary materials, the study finds that some of the challenges confronting the National Assembly in Nigeria derive from problems confronting the larger society. Equally, the existence of such challenges has negative consequences for governance in Nigeria. While the challenges are not insurmountable, there is a need for concerted efforts from state and non-state actors in order for the legislature to fully occupy its prime of place in Nigeria.

Keywords

Legislature, political party, challenges, constitution, lawmaker, corruption

Introduction

No legislature, no democracy is a phrase that captures the centrality of the legislature to democratic practice. If democracy is built on the informed and active participation of the people, a Representative Assembly, which the legislature symbolises represents the arena for effective participation by the people. Although the legislature goes by different nomenclature in different climes, what is central to virtually all legislatures is the business of lawmaking. However, beyond legislating for democracy, the legislature also performs functions such as oversight and representation. While these represent general standards in terms of functions of the legislature, the institution in specific contexts performs myriad of functions necessary for the sustenance of the political system. For example, Mazrui (2000) formulated ten purposes

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served by the existence of parliament in Africa which according to him 'are sometimes directly constitutionalised and sometimes *de facto*'. Similarly, Hopkins (1995) and Keefe and Ogul (1981), writing against the background of Kenyan Parliament and American Congress respectively identifies a number of purposes served by the legislature, as including, an arena for the training of political leaders; facilitating communication between the government and the citizens; articulating constituent and special interest demands; interpreting government responses and legitimizing decisions that are made outside the legislature; providing political education for the public; judicial function and that of leadership selection, among others.

In a similar argument, Salih (2005) notes that legislatures are more or less, a mirror of the state and its level of development. Based on this, he identifies separate groups of functions performed by legislatures in Africa and in different epochs that are concomitant to its level of development. These are Africa under colonial rule, Africa under one-party state and Africa in the era of multiparty democracy. According to him, during the colonial era, parliaments were the rallying points embodying the new hope for an Africanised machinery of government operating under the Africanisation banner (Salih, 2005). The role of the parliament at that period was therefore confined to some specific domains such as political socialization, modernization, constitutional development, legislation and representation. With regards to parliaments' role under one-party system, he argued that the role of parliament then could be described as 'muted at best and oppressive at worst'. This was because parliament's representative role at that period was curtailed and made subservient to the whim of authoritarian rulers. However, with the advent of multiparty democracy, legislatures in Africa began to effectively assume new roles that include, legislation; representation; ensuring accountability of elected leaders; political recruitment of a pool of talent and; conflict management (Salih, 2005).

Our central contention, however, is that irrespective of roles performed by the legislature in different contexts; its performance is in most cases affected by factors that are internal to it or externally motivated. This is the dilemma of the National Assembly (NASS) in Nigeria which has been battling to establish itself amidst some challenges, at least, since inception of the Fourth Republic in 1999. Although scholars (Zailani, 2002; Bassey, 2006; Ita-Giwa, 2004; Adejokun, 2004; Abdullahi, 2004; Wader, 2004; Nnamani, 2006; Anyanwu, 2007; Okoosi-Simbine, 2010) have tried to explore such challenges and their motivating factors, the magnitude of the problem makes it deserving of continuous probing. For instance, Nigeria's NASS since inception of the Fourth Republic had faced and is still facing challenges which tend to rub on its performance, credibility, image and perception in the eyes of the public as well as the level of trust by citizens in the institution. These challenges, no doubt, have formed a vicious circle on the activities of the institution as the public often becomes suspicious of any move by the institution even if it's a

genuine course. Conversely, the institution becomes suspicious of public reactions to its genuine intention. It is against this background that this paper examines challenges confronting the legislative arm at the national level in Nigeria. This is with a view to understanding the fundamental issues giving rise to these challenges and to highlight the implications of such challenges for the governance process in the country.

The Constitution and the Legislature in Nigeria

The constitution of any country embodies the ground norms of the society. It spells out the roles and functions of each arm of government. Unlike in the parliamentary system where the powers of various organs are fused, the constitution in a pure presidential system explicates such functions to the extent of entrusting them in different organs. While for example, the legislature legislates, the executive implements and the judiciary adjudicates in case there is conflict. This is not to suggest a water-tight separation of functions between the organs as there are overlapping of functions. That is, each organ in some cases performs the function of the other. This was the thought of Jinadu (2010) when he noted that the pure theory of Separation of Powers broke down almost at the very beginning of the American Republic, where the system originated from, necessitating its modification with the theory of checks and balances. In this case, each branch is given a limited role to play in the function of the other. Thus, the pure presidential system is characterised by balancing power with power. In Nigeria, the spirit and letters of the constitution are in line with this practice.

According to section 5 of the 1999 Constitution of Nigeria (as amended), the legislative power of the federation is vested in a NASS comprising of 109 Senators and 360 members of the House of Representatives (HoR). While the Senate was based on equality of representation from each of the 36 states of the federation in order to give equal voice to them (3 from each state and 1 from Federal Capital Territory), representation in the HoR was based on proportional representation of each state in terms of population. However, both houses are involved in the business of legislation as bills differently passed in both houses are harmonised through a conference committee of both houses before being transmitted to Mr President for his assent. According to section 58 (3) of the 1999 Constitution of Nigeria as amended:

Where a bill has been passed by the House in which it originated, it shall be sent to the other House, and it shall be presented to the President for assent when it has been passed by that other House and agreement has been reached between the two Houses on any amendment made on it.

The above provision sets the tone for inter chamber relations between the two houses of the NASS. But implicit in the provision is that the assent of the executive is a necessity for any bill to become law. In other words, both arms must cooperate in legislating for democracy.

As pointed out earlier, the constitution sets the tone for relations between the different chambers of the NASS. It also establishes superiority between the chambers as is implicit in section 53 subsection 2 which provides that at any joint session of the house, 'the President of Senate shall preside, and in his absence, the Speaker of the House of Representatives shall preside'. Thus, the Senate is regarded as the upper house while the HoR is the lower house. This distinction between the two houses extends to the scope of their functions and powers. Consequently, the Senate often exercises more powers and functions than the HoR in terms of specifics of the functions. For example, it is the Senate that has the power to ratify executive's nomination for appointments. All the same, they both perform the functions of rule-making, oversight and representation.

Overview of Development, Composition and Performance of the National Assembly

Nigeria is a country of profound ethno-cultural diversities. These diversities are reflected in the composition of the government of the federation especially its institutions. Little surprise, therefore, that the structure and composition of the NASS are such that reflect these diversities. For example, as stated earlier, the composition of the Senate, which is the Upper House, is based on equality of states of the federation while composition of the HoR reflects the diversities of the country in terms of population strength. Thus while states like Lagos and Kano could have up to 24 representatives, a state like Rivers has a smaller number of representatives in the HoR.

In terms of development, the legislature in Nigeria was not autochthonous to the country. It was a colonial creation. Like its development in global context, the legislature in Nigeria predates democratic practice but has come to be a core institution of democratic practice. Currently referred to as the NASS, the national legislative body was variously referred to as the Nigerian Council or the Legislative Council (under colonial rule) and later (under the First Republic) as Parliament. As mentioned earlier, the legislature emerged under colonial rule and not until 1922, there was no African or Nigerian representation on the council (Muhammad, 2015). According to Anyaegbunam (2010), the first semblance of a legislative arm in Nigeria's political history was the Nigerian Council of 1913. The council was merely an advisory and deliberative council with jurisdiction only over the colony of Lagos and the protectorate of Southern Nigeria. Essentially, the council which was made up of 30 members (17 official and 13 unofficial) was to consult the local and foreign commercial and mining interests on the subject of legislation (Hamalai et al., 2008). In other words, the council had no formal legislative authority.

Many scholars agreed that the formal recognition of a legislative body in Nigeria owes its origin to the 1922 Hugh Clifford constitution (Anyaegbunam, 2010; Hamlai *et al.*, 2008; Akinwunmi, 2004; Ojo, 1997; Ujam, 1995). The constitution not only provided for a legislative council with 46 members (27 official and 19 unofficial) but also allowed for the election of four out of the 19 unofficial members. Of these, 3 were to represent Lagos while 1 was to represent Calabar. However, the Council also had limited jurisdiction as it only legislated for Lagos and the protectorate of Southern Nigeria while the Governor legislated for the rest of the country. Also, the decision of the council was not binding on the Governor. What is, however, significant about this council is that, on the one hand, its existence and powers derived from constitutional law and on the other hand, it signified the introduction of elective principle in the country. This latter advantage of the constitution has been acknowledged to be a major landmark in the constitutional and political evolution of the Nigerian state (Ujo, 2000; Osaghae, 1998). For instance, it aided the development of political parties and also signalled a victory for the emerging nationalism in the country then.

The growing wave of nationalist agitations for representation and self-government led to the emergence of new constitutions such as the 1946 Richards constitution, 1951 Macpherson constitution and the 1954 Oliver Lyttleton constitution. Although each constitution had its peculiarities and each was an improvement on the previous one, each era of constitutional development was characterized by new developments in the structure and composition of the legislature. For instance, the 1946 constitution which comprised 17 official and 28 unofficial members (including the 4 elective posts granted by the 1922 constitution) unified the country under one legislative council and provided for regional Assemblies. The 1951 constitution built on this by enlarging membership of the Central Legislative Council to 149 with the regional Assemblies serving as Electoral College for the election of members. By 1954, the legislature became more enlarged and standardized with 184 members most of whom were directly elected – only the Northern region still maintained an electoral college. Also, the regional Assemblies had an improved legislative autonomy as it could legislate without the consent of the Central Legislative Council. This was made possible through the provision of different legislative lists in the 1954 constitution (Anyaegbunam, 2010). That is, the Exclusive, Concurrent and Residual lists. In the views of many scholars (Elaigwu, 2005; Akinyemi, 2001; Akindede, 2000; Tyoden, 2000; Jinadu, 1994; Oyovbaire, 1985), provisions of 1954 constitution marked the formal beginning of the practice of federalism in Nigeria.

With independence in 1960, the Legislative arm at the national level emerged as a bicameral parliament. It comprised of a Senate with 44 members and an enlarged HoR with 320 members. It also acquired full constitutional powers to legislate for the whole country although, the Queen of England (and

by 1963, the President) was required to assent bills passed by parliament. Remarkably, the regions had been operating bicameral house before independence in 1960. That is, the House of Assembly and the House of Chiefs. This was the position of the legislative arm up to the end of the First Republic in 1966.

During the first phase of military rule in Nigeria (1966-1979), the legislative arm was non-existent as it was scrapped by the military regime that took over power while the powers of law-making were usurped by the military council which also served as the executive council. The council is made up of top military officers. By 1979 when Nigeria returned to democratic rule, the existence of the legislature became guaranteed by constitutional provisions. This time, the country operated a bicameral house at the national level while unicameralism operated at the states level. The national parliament, then known as the National Assembly, comprised of a 95 member House of Senate and 450 members HoR, all of whom were directly elected. Unfortunately, the legislature at that period only existed for a little above 4 years as its life was truncated by another military coup in 1983.

Like the first phase, the second phase of military rule in Nigeria (1983 - 1999) also witnessed a complete eclipse of the legislative arm. Although a new legislative house as emerged between 1992 and 1993 (period of the moribund Third Republic), it was eventually short-lived because hardly had the Assembly settled down after inauguration when it was sent packing following the assumption of power by General Sanni Abacha and the sacking of the Interim National Government (ING) expected to complete the process of transition to a Third Republic. With this development, the legislative arm never resurfaced until 1999 when the Fourth Republic was inaugurated. Although ever since the legislature has continued to find its feet in the scheme of governance in the country, some facts are obvious in the course of its development. First, the legislature in Nigeria predates the advent of democracy in the country and its emergence was deeply rooted within an autocratic context. This perhaps informs Egwu (2005) assertion that the legislative council under the colonial government 'was not the organ of the colonized people in exercising power and influence' but a preference of the colonizers. Second, the legislature in post-colonial state has had an epileptic existence because of its constant truncation by military rule. This has been a major factor in the underdevelopment of the institution relative to other arms of government. It is axiomatic to note that the extent to which this institution is institutionalised bears directly on its level of performance in a democracy as well as its relation with other arms of government, especially, the executive arm in countries operating the presidential system of government.

In terms of performance, there had been mixed concerns over the performance of the NASS in its three functional areas of rulemaking, oversight and representation. For instance, Mobolaji (2014: 32) using the Inter

Parliamentary Union (IPU) template notes that although the NASS had made modest achievements more can still, be done. He noted further that:

The law-making process has been thorough and meticulous, the oversight function has been very effective in curtailing arbitrariness but the representation mandate has been weakly enforced.

Similarly, Bamidele and Alaba (2014) in providing a more nuanced assessment of performance of legislative functions between 2007 and 2010 argue that although several bills had been passed into law by the NASS, most were bills that enriched the pockets of the legislators and inadequate in moving the socio-economic and political base of the country forward. This was also the views of Ewuim, Nnamani and Eberinwa (2014) when they concluded that majority of members of NASS are driven more by selfish desires of wealth accumulation than the patriotic desire of leaving enduring legislative legacies. On oversight, Bamidele and Alaba (2014) have shown that this had been fairly accomplished to the extent that government officials are now conscious that they might be invited to give an account of their stewardship. In terms of constituency representation, Legislators have not been performing too well in respect of this as most lawmakers do not go to their respective constituencies. On the basis of their assessment, they concluded that legislature in Nigeria had not done exceedingly well in enhancing the growth of democracy (Bamidele and Alaba, 2014).

What can be inferred from various submissions on the performance of the NASS is that it has had a fluctuating performance both at the level of functions and in terms of legislative period. Second, the fluctuating performance of the NASS in Nigeria cannot be separated from some structural and environmental constraints faced by the institution.

Challenges Confronting the Legislature in Nigeria's Fourth Republic

As already noted, the NASS in Nigeria has overall responsibility of advancing democracy and good governance through its activities. But this has come with a lot of challenges. The dominant trend in the literature is to conceive of these challenges in terms of poor capacity, poor public perception, underdeveloped and under researched nature of the institution, among others (Saliu and Muhammad 2010; Watts, 2006). However, Suberu (2014) argues to the contrary. He maintained that Nigeria's NASS had exhibited tendencies such as 'unprecedented independence, increasing ambition, and a broader reach'. But while this contention may be plausible, it needs not to be stretched too far. First, Nigeria's NASS may possess the requisites to function as an autonomous body but it is largely constrained to exercise such powers. Second, when examined in their specifics, some of these challenges are yet to be resolved in a

manner that will make the NASS functional. For example, in the area of capacity. It is true that the constitution gives the NASS much powers but it lacks the capacity to assert and use such power because of its asymmetric human and material resources compared to the executive arm of government. These included an effective channel of communication and information processing of the executive arm which surpasses that of the legislature as well as the extent of technical expertise which the executive has in its civil servants. The challenge before the NASS, therefore, is asserting its powers and independence and, demonstrating the capacity to use its resources. On this, the NASS is seriously challenged owing to some factors which are examined below.

The Factor of Corruption

Corruption is seen as a situation or act whereby two or more parties in public and/or private organizations interact to pervert integrity or a state of affairs through undue influence, inducements, bribery, favouritism, moral depravity or other forms of behaviours that run contrary to the powers, duties and responsibilities of an office and with the intent of deriving some gains for themselves individually or collectively (Muhammad, 2011). This tendency often influences the performance of the NASS. The use of monetary inducement often occurs when either the executive or legislature wants to influence each other. While it may be difficult to determine which arm is more corrupt, a situation where the NASS has been unable to live above the menace of corruption since inception of the current democratic practice in May, 1999 is worrisome. It is axiomatic to note that the legislature has severally been engulfed in one problem or the other bordering on corruption charges against it as an institution or its principal officers. In other words, while the 1999 Constitution of Nigeria as amended, empowers the legislature through its oversight of the executive arm, in section 88 subsection 2b, to ‘expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it’, the perennial allegations of corruption against its members are rather embarrassing for an institution that is expected to live above board.

The series of corrupt allegations against the NASS are well documented in the literature (El Rufai, 2013; Muhammad, 2007; Obasanjo, 2005). Worse still, there has been what can be termed as “self-accusation” in the NASS with some lawmakers accusing the institution of peddling corruption and perverting integrity (The News Magazine, April 4, 2005 p 50; Newswatch, November 4, 2002 pp 50 – 57; The Punch, July 4, 1999 p 34; *The News*, April 4, 2005 p 52). Given the above scenario, therefore, one may be compelled to argue that even if there is improved capacity in terms of human and material resources at the disposal of members of the NASS, the prevalence of corrupt tendencies among lawmakers may erode its effectiveness.

Another tendency which derives from the pervasiveness of corruption in the NASS is the conception of politics as a means to attaining selfish ends. This pathological conception of politics makes it difficult for members of NASS to avoid being caught in the web of corrupt allegations as they see their presence in the legislative house more as an investment than an opportunity to serve. This perception was given credence by Adolphous Wabara, a former President of the Senate when he argued that:

Most of us came into the National Assembly with high expectations. It is an investment really to come to the National Assembly. When we go about campaigning and asking for votes, we don't get these votes free. You spend some money. Most of us even sold houses. (quoted in *The News*, April 4, 2005: 50)

While it may not be out of place for the executive or any of its agencies to provide monetary or financial assistance to the legislature or its committees to assist them in carrying out their constitutional duties, such need not be allowed to influence the objective judgement of the NASS when carrying out its oversight function or during debate on a bill. But attaining this level constitutes a challenge for the legislative arm. This is because no matter its level of sophistication in other areas, the ever presence of corrupt influence in the operation of the NASS will always have negative effects on its activities.

Complexities of Intra-Party Politics and Activities

Intra-Party politics implies the struggle for vantage position or influence within the parties by party faithful. The complexity of this struggle constitutes a challenge for the NASS in Nigeria. Tyoden (2002) identifies some factors that often shape relations within the parties either in the direction of conflict or harmony and these include (i) societal factors which relate to the origin of the parties and the identification of interests between hegemonic forces in the parties and the larger society. In other words, the interest of the dominant socio-political forces that saw to their formation will usually have an overriding influence on relationships between various organs and structures of the party. (ii) The contending ideological and political viewpoints within the party which at times become entangled with the ego of personalities leading the various ideological factions and, (iii) the personal idiosyncrasies of party leaders and elders. In Nigeria, these issues often serve as a breeding ground for intraparty disputes since the parties often lack effective internal regulatory mechanisms. Indeed, all the factors mentioned above define the complexities of party politics in Nigeria as they constitute influence at various levels. The overall consequence is the prevalence of party vagrancy and high turnover of lawmakers due to the absence of internal party democracy.

Indeed, one of the greatest challenges confronting the NASS in Nigeria is the high turnover of lawmakers which always robs it of experienced hands. For instance, since 1999, there has been an increase in the number of new entrants into the legislative arm. Similarly, between 2011-2015, 35 (32.1%) Senators were re-elected while only 103 (28.7%) members of HoR were re-elected (Richard and Eme, 2015). This trend has continued to date. In other words, most members of the NASS do not retain their seats largely because of the absence of internal democracy within the parties. In trying to explain the turnover, former speaker of the HoR, Aminu Bello Masari, attributes this to the pervasive influence of chief executives – governors at the state level and President at the national level – which eroded the existence of internal democracy within the parties. According to him, there are no political parties that champion real democracy within them as all the parties, without exception, have failed to promote internal democracy (Masari, 2009). For instance, ‘at the state level no matter how popular you were, if your governor does not want you, you are going nowhere’. In other words, ‘everybody was trying to bring in his own boy on board, not the party and not the people’. This factor according to him is what also led to a high turnover of lawmakers as new members are brought in by governors and has led to what he calls ‘institutional godfatherism’. That is a situation whereby Governors or Presidents become godfathers (Masari, 2009). For example, out of the 360 members of the House of Representatives (HoR) in 1999, 270 or 75% did not return in 2003. In the Senate, 76 or 70% of the 109 Senators did not return. In 2007, barely 20% of the 2003 Senators returned to the Senate while in the HoR, roughly 71% did not return (Anyanwu, 2007). This trend has continued to date. The implication of this scenario is that the NASS is largely denied of experienced hands to drive effective legislative activities.

Implications of Challenges Confronting the Legislature for Governance

A major implication of the challenges confronting the legislature for governance process in Nigeria is that its outputs, especially in lawmaking, do not reflect the wishes of Nigerians but a reflection of the preference of individual lawmaker or the power that installed him. This is because a lawmaker with the notion of recouping his or her investment will be more at home doing things that will satisfy his desire or in order to return to the NASS, fulfil the interest of his or her godfather. Thus the effectiveness of the legislature becomes debased. Mobolaji (2014) noted in this connection that, effectiveness of the legislature in all its functions is central to good governance and in turn, socio-economic development of Nigeria. But to be effective, the legislature must be accountable and transparent. One major consequence of the legislature’s reception to corrupt tendencies in Nigeria is the erosion of citizens’ confidence in the institution. There is no denying the fact that there is declining confidence of citizens in Nigeria’s democratic institutions -

executive, legislature and judiciary. But the legislature has been worse off to the extent that Nigerians are more often suspicious of moves by the legislature. - a trend which cannot be divorced from rampant cases of legislative corruption in the country (Muhammad, 2007). Even till date, this perception has continued. Thus, one must not expect democracy to grow in a context of negative correlation between citizens' perception, expectation and, legislative practices.

In terms of legislative-executive relations, the implication of a corrupt legislative institution is that it is not likely to be on the same page with an executive desirous of fighting corruption just as it may make the legislature susceptible to executive's manipulation. In other words, there are two sides to this. First, it may serve as the impetus for cooperation between the two arms and second, it could result in confrontation. However, whichever way it occurs, it has negative consequences for effective functioning of the legislative institution and by extension good governance.

Perhaps another implication which the challenges confronting the legislature have for democratic governance may be seen in its impact on legislative processes. On the one hand, Nigeria's legislature has been spending much time on managing one crisis or another emanating from corruption allegations. Recently, for instance, the Senate President was alleged to have made a false declaration of his assets while the HoR leadership was also accused of budget padding. These allegations pitched members of the NASS against one another and it is axiomatic that in such context, legislative activities will be at a low ebb. Indeed, precious times wasted on these could have been better utilized for improving the quality of deliberations. On the other hand, the prevalence of corruption in the legislature affects the quality of legislative oversight. Oversight function is a constitutionally sanctioned duty of the legislature to enhance the quality of service delivery to the citizenry by other arms of government. However, a compromised legislature is unfit to perform creditably and this constitutes a threat to democracy and good governance.

Also, poor service delivery arising from the dearth of experienced hands in legislative business is another implication of the challenges confronting the NASS. While the dearth of experienced legislators is a consequence the high turnover rate in the legislature, the situation is, in turn, a reflection of complexities in party activities one of which is the existence of godfathers and lack of internal party democracy. For more effective activities in the legislative arm, there must be consistency and continuity. However, where the prospect of this is challenged by a high turnover rate, the hope of an effective NASS turns gloomy. Perhaps Omotola (2014) had this in mind when he stressed the need for the emergence of democratic political parties and the need for the legislature to become more accountable as a way of achieving more positive developments in the country.

Conclusion

This paper examines challenges confronting the NASS in Nigeria. It argues that the NASS in Nigeria like every other democratic country has an important role to play in the democratic process. To effectively do this, it is constitutionally empowered. However, there are challenges confronting the institution which tend to rob on its effectiveness. Some of these challenges are rooted in the systemic problems confronting the Nigerian state such as corruption and lack of accountability. While scholars have engaged the challenges in their various manifestations, their intensity and continuity after several years of democratic practice in the Fourth Republic create incentives for further scholarly engagement. Thus, it may be concluded that although the NASS in Nigeria is a key democratic institution, it requires regular strengthening in order to perform effectively in its constitutionally endowed functions. Against this background, there is the need for more positive actions from formal (executive, legislature and judiciary) and semi-formal institutions (political parties and civil society organisations) on the need to urgently address the challenges in order to enhance institutional efficiency of the Nigerian legislature.

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