

# **“THE LEGISLATURE AND THE CHALLENGES OF DEMOCRATIC GOVERNANCE IN AFRICA: THE NIGERIAN CASE”**

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## **Abstract**

Democratic reversal rather than democratic consolidation is imminent in most African states. With the coups in Guinea, Mauritania and Madagascar; flawed electoral processes in Nigeria, Kenya, and Zimbabwe, conflicts in Congo Democratic Republic, Sudan, Cote D'Ivoire etc., the fluctuating fortunes of democracy in Africa cannot be doubted. In Nigeria, a decade after a political transition to democracy, citizens continue to face enormous challenges. More than 60% still wallow in poverty, corruption is endemic, HIV/AIDS is spreading like wildfire, unemployment is growing, about 70 million are illiterate and life expectancy year is decreasing. Besides, there are crises of legitimacy, constitutionalism, security, national question, and dwindling international image. Although, varied reasons have been adduced for these scenarios, it is assumed that most of these challenges facing democratic experiment in Africa, particularly in Nigeria have their root in the weak legislative institutions.

In view of the above, the paper investigated the power and roles of the legislature in resolving political corruption as one of the challenging challenges facing democratization project in Nigeria in particular and Africa in general. The paper revealed that contrary to the opinion that national legislatures are declining in terms of the roles they perform in a democracy, the National Assembly is central to the resolution of the challenge posed by corruption to Nigeria's democracy and development. The National Assembly through its exercise of investigative powers and establishment of some legal instruments was able to expose some corrupt practices between 1999 and 2008. Due to the identified limitations regarding its performance of this function, the paper argued that the effectiveness of the legislature in the resolution of democratic challenges hinges on the performance of its functions according to the rules and norms of democracy and the resolution of its internal crisis. The paper opined that democracy can flourish in Nigeria and in Africa; if the capacity of legislatures; federal, state and local could be strengthened to address critical issues relating to constitutionalism, corruption, poverty and national question, check the excesses of the executive, and collaborate with the judiciary to avert the consequences of "democracy by court order", as well as empower and work with the civil society. By implication, a more pro-active National Assembly that is ready to set the priorities right as well as resolve its internal crisis democratically, is critically needed in Nigeria.

**KEYWORDS: Democracy, Legislature, Sustainable Development, Africa, Nigeria**

## **INTRODUCTION**

Democratization project is facing a lot of challenges in Africa. Democratic reversal rather than democratic consolidation is imminent in most African states. With the coups in Guinea, Mauritania and Madagascar; flawed electoral processes in Nigeria, Kenya, and Zimbabwe, conflicts in Congo Democratic Republic, Sudan, Cote D'Ivoire as well as political repression and social dilemmas in Cameroon; the fluctuating fortunes of democracy in Africa cannot be doubted. In one of its recent meetings, the Economic Community of West African States (ECOWAS) agreed to resolve the crises in Guinea and Niger which are considered as threat to constitutional democracy, peace, security and stability in West African sub- region. Parties concerned were called to restore

constitutional order, and embrace democracy in order to prevent the consequences of wars, conflicts and instability witnessed in the sub-region two decades ago. However, the peaceful democratic transition via December 2008 and January 2009 elections in Ghana which is considered as a radical departure from existing norms broke the gremlin that African people are not capable of operating democracy.

It is important to point out that rampant electoral fraud is indicative of why democracy in some of the countries in Africa has continued to degenerate at an alarming rate<sup>1</sup>. The prevalence of electoral corruption and electoral violence in these countries is a manifestation of a trapped democratic process. As noted by Pastor<sup>2</sup>:

*The failure to conduct an election that is judged fair by all sides can preempt a democratic transition. Repeated failures can lead to violence and chronic instability.*

It is not surprising that after two decades of embracing multipartyism in most of the African countries, the democratization process has failed to bring about fundamental and lasting changes in domestic power structures. In addition, the democratization project, it is argued, “has not fundamentally led to a qualitative improvement in the living standards of the majority of the African population who continue to be mired in poverty, squalor, hunger and disease”<sup>3</sup>. Abrahamsen’s description of African situation with respect to democracy, a decade ago, remains valid. In his assessment, he pointed out:

*Democracy in Africa has largely failed to deliver on its promise of greater welfare and justice for all... in many African countries democratization was a victory for the liberal conceptualization of democracy and those who had most to gain from continued economic liberalization—the elite and the middle classes, as well as donors and creditors<sup>4</sup>.*

In other words, democracy characterized by an ability to respond to popular demands for socio-economic reforms and an ability to incorporate popular sectors into the political process in any meaningful way; is still absent. According to Abrahamsen, this is a key factor in explaining the social unrest and instability that has plagued so many of the new democracies in sub-Saharan Africa.<sup>5</sup> Worse still, the prevalent of one party state in order to contain civil disorder and silence critics has led to the formal trappings of multi-party democracy and the declining role of democratic institutions including most importantly, elections, constitutions, parliaments etc.

Specifically, in Nigeria, a decade after a political transition to democracy, citizens continue to face enormous challenges. More than 60% still wallow in poverty, corruption is endemic,

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<sup>1</sup> Tatab Mentan, (2009), “Cameroon: Gambling with Democracy”, *CODESRIA Bulletin*, Nos 1&2 p.23

<sup>2</sup> Robert Pastor, (1999), “The Role of Electoral Administration in Democratic Transitions: Implications of Policy and Research”, in *Democratization*, Winter

<sup>3</sup> Omano Edigheji, (2005), “A Democratic Developmental State in Africa? A concept paper” *Research Report*, 105 Centre for Policy Studies Johannesburg May

<sup>4</sup> Rita Abrahamsen, (2000), *Disciplining Democracy: Development Discourse and Good Governance in Africa*, London: Zed Books , p.109

<sup>5</sup> Rita Abrahamsen (2000) Op. cit 100

HIV/AIDS is spreading like wildfire, unemployment is growing, about 70 million are uninformed and life expectancy year is decreasing. Besides, there are crises of legitimacy, constitutionalism, security, national question, and dwindling international image. These attributes have contributed to the diminishing quality of human life in the country. Recently, over 70% of Nigerians are reported to be living below \$2 per day and the 2009 Global Corruption Barometer released by Transparency International listed Nigeria among the most politically corrupt nations in the world<sup>6</sup>. The pertinent question at this point is: Will democracy survive in the wake of electoral fraud and violence, unrest and instability, poverty and squalor as well as gradual erosion of democratic standards in Africa in general and Nigeria in particular?

Although, varied reasons have been adduced for the above scenarios, it is assumed in this paper that most of these challenges facing democratic experiment in Africa, particularly in Nigeria have their root in the weak legislative institutions. The legislature is the engine of democratic governance, as laws made by it set the agenda for the government and regulate the conduct of the people. Apart, its oversight and representational duties are critical to sustainable development which is considered as one of the ends of democracy. In essence, the paper investigates the power and roles of the legislature in resolving challenges facing democratization project in Nigeria.

Most of the studies on consolidation of democratic governance in developing countries place less prominence on the significance of the legislature in addressing challenges of democracy. This may be due to the perceived declining role of this institution of politics. Though there are negative connotations of the legislature as ‘rump’ assemblies, theatres of illusion, or even mere rubber-stamp chambers, it remains a veritable hub of democracy. This paper is about legislative institutions and the resolution of major challenges facing democratic governance in Nigeria, most especially, corruption. It does not assess the performance of the National Assembly nor state legislatures but attempts to document the significance of these political institutions in addressing the most challenging challenge of Nigeria’s nascent democracy. It provides the initial scaffolding of an analytical framework capable of increasing our understanding of the historical importance of Parliaments and a necessarily crude guide to policy in the ongoing effort at consolidating democratic governance to avert democratic reversal that is imminent in Africa.

This paper sets out to develop a framework for an analysis of the inevitability of the legislature’s policy making, representational and oversight functions in tackling major challenges facing democratic transition in Nigeria. Although the empirical illustrations throughout the paper are from Nigeria, it is assumed that the framework can also serve as a useful guidepost for analysis and comparison in sub-Saharan Africa. The major argument advanced in this paper is that the fortunes and misfortunes of democratic governance in Nigeria not unlike in other African countries are determined by the powers, functions and performance of established legislative institutions.

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<sup>6</sup> -----, “Nigeria Among the most Politically Corrupt – Transparency International”, *Nigerian Tribune*, September 24, 2009, Ibadan: Tribune Publishing House

## CONCEPTUAL AND THEORETICAL FRAMEWORK

It is pertinent to define some key concepts critical to the understanding of this piece and highlight the theoretical frame on which the paper is anchored. In view of this, attempt is made to define 'legislature' and 'challenges of democratic governance. The nexus between the legislature and democratic governance is demonstrated in the next section.

Although the term 'legislature' bears different names like 'Parliament', 'National Assembly', 'Congress' and the like, there is no serious contention about its definition. It is generally referred to as an official body, usually chosen by election, with the power to make, change, and repeal laws; as well as powers to represent the constituent units and control government. The Blackwell Encyclopedia of Political Science defines legislatures as political institutions whose members are:

*formally equal to one another, whose authority derives from a claim that the members are representative of the political community, and whose decisions are collectively made according to complex procedures*<sup>7</sup>

Loewenberg conceptualizes legislatures as "assemblies of elected representatives from geographically defined constituencies, with lawmaking functions in the governmental process"<sup>8</sup>. In the same vein, Jewell identified two features that distinguish legislatures from other branches of government. According to him, "they (legislatures) have formal authority to pass laws, which are implemented and interpreted by the executive and judicial branches and their members normally are elected to represent various elements in the population"<sup>9</sup>. This paper while subscribing to these definitions refers to the legislature as the central element of democracy due to its aforementioned significance. It is significant to note that legislatures vary in terms of composition, structure and role, from one democracy to the other.

Regarding the challenges of democratic governance, it is imperative to understand the concept of democratic governance. To Mhone, governance "may refer to the manner in which this institutional apparatus performs its role in terms of efficiency and effectiveness with respect to its outputs and outcomes respectively"<sup>10</sup>. According to *1989 World Bank Report on Sub-Saharan Africa: From crisis to sustainable Growth* governance is defined "as the manner in which, powers is exercised in the management of a country's economic and social resources for development"<sup>11</sup>. Thus, by implication, democratic governance refers to a democratic mode of exercising powers and performing functions by the established institutions to achieve developmental goals.

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<sup>7</sup> Vernon, Bogdanor, (1991), (ed.) *The Blackwell Encyclopedia of Political Science*, Oxford: Blackwell publishers p.329

<sup>8</sup> Gerhard, Loewenberg (1995), "Legislatures and Parliaments" in Seymour Martin Lipset 9ed), *The Encyclopedia of Democracy*, volume III, London, Rutledge, p.736

<sup>9</sup> Malcolm E. Jewell, (1997) "Legislature" in *The Encyclopedia Americana International* (ed.) Volume 17, Connecticut: Grolier incorporated, P172

<sup>10</sup> Guy C. Z. Mhone, (2003), "The Challenges of Governance, Public Sector Reform and Public Administration in Africa: Some Research Issues", *DPMN Bulletin*: Volume X, Number 3, May

<sup>11</sup> See Bayo Okunade (2000), "Good Governance and Public Trust" , A paper presented at workshop on accountability and Transparency at the Local Government level in Lagos state, organized by Lagos state Government with support from USAID/ Office of Transition Initiatives P.24

More appropriately, democratic governance can be understood in terms of its constitutive elements. For instance, the National League of Cities defines democratic governance as “the art of governing a community in participatory, deliberative, and collaborative ways.”<sup>12</sup>

Broadly speaking, it entails according to Roberts and Edwards:

*popular participation, absolute respect for the rule of law, a general guarantee of fundamental freedoms which lubricate popular participation, periodic, competitive, free and fair elections with the vote of every citizen counting equally, respect for majority rule as well as the readiness of minority to acquiesce in the decision of the majority, accountability, guarantee of separation of powers in practice, transparency, and responsiveness in governance and opportunity for change of government or any leadership found wanting*<sup>13</sup>.

Ideally, democratic governance operates with democratic institutions like political parties, the Judiciary and the legislature, which are adduced by classical democratic theory as bulwarks of democracy. The dominant role of the legislature in democratic governance is much stressed.

Therefore, challenges of democratic governance refer to those encumbrances hindering the manifestation of those elements mentioned above. Generally, they are forces and factors; though vary across countries of the world, inimical to democracy and development. As regards Africa and Nigeria in particular, these challenges are too numerous. To Ibeanu and Egwu, these challenges include:

*Authoritarian rule, the systematic closure of the political space, extreme personalization of power and corruption, gross human rights abuses, political exclusion of women, ethnic minority groups and youths, among other political vices.*<sup>14</sup>

Of course, corruption is considered in this paper as the gravest challenges because it involves the wrong allocation and use of public resources on the one hand, and on the other hand, it deals with moral and legal issues concerning public office holders. Besides, corruption can be a source or/effect of poverty, security crisis, legitimacy crisis, and conflicts, among others. It stifles development as the major end of democracy and promotes other challenges detrimental to the consolidation of democratic gains. For instance, when public funds are misappropriated by public officials, developmental projects suffer and people continue to wallow in abject poverty.

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<sup>12</sup> Paul Leistner, (2008), “Hopes and Challenges of Democratic Governance: Lessons from Portland, Oregon”, paper was prepared for distribution at a National League of Cities conference session in Orlando, Florida, *Democratic Governance at the Neighborhood Level: What Have We Learned?*, November 11

<sup>13</sup> See I. B. Bello-Imam and Mike Obadan, (2004), “Democratic Governance and Development Management in Nigeria’s 4<sup>th</sup> Republic, 1999-2003: The Prologue” in I. B. Bello-Imam and Mike Obadan, *Democratic Governance and Development Management in Nigeria’s 4<sup>th</sup> Republic, 1999-2003* (ed), Ibadan: Centre for Local Government and Rural Development Studies , P. 3

<sup>14</sup> Okechukwu Ibeanu and Samuel Egwu, (2007), *Popular Perceptions of Democracy and Political Governance in Nigeria* , Abuja: Centre For Democracy And Development

Theoretically, this paper is rooted in the neo-liberal democratic theory emphasizing increasing participation as the only antidote to ‘system creep’ toward despotism and the only independent check on governments, corporations, state apparatus, and other wielders of power. This is significant in the analysis of the role of the legislature as the representative assembly expected to promote popular participation and to serve as effective check on government.

To have a comprehensive understanding of the role of the legislature in the fight against corruption, which is considered as the bane of democratic governance, the paper adopts the accountability thesis. This thesis has been advanced by so many authors in explaining the ingredients of good governance. Although a comprehensive system of accountability comprises institutions of accountability of three forms - horizontal, vertical and external<sup>15</sup>, the emphasis of the paper is on the horizontal accountability. The most basic institution of horizontal accountability is the law, which must prohibit all forms of bribery, nepotism, conflict of interest, and misuse of public funds. Although comprehensive anticorruption legislation is necessary, according to Diamond, it is not sufficient particularly in detecting improper enrichment of elected public officials<sup>16</sup>. To him, declaration of assets by public officials which must be made publicly available for inspection especially on the internet is one of the effective ways of tackling corruption, while a comprehensive and coherent legal code that is well documented and accessible to the public, freedom of information, establishment of anti corruption bodies and ombudsman’s office and parliamentary oversight committees (to monitor and legislate on particular areas of government policy, such as health, public works, or defence) are also essential.

In Wang’s view, the legislature’s basic accountability relationship to the executive is expected to be determined by social legitimacy, constitutional powers and external agents<sup>17</sup>. He identifies the variables which can reinforce parliament’s accountability function, but not determine it as the committee system, party and party groups, and the various characteristics of the chamber in question.

## **THE LEGISLATURE AND DEMOCRATIC GOVERNANCE**

It is much more settled in scholarly literature that the legislature has important roles to play in a democracy. It is argued first and foremost that Parliaments occupy a central

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<sup>15</sup> Horizontal Accountability is the means by which different agencies of government hold other governmental (and political) actors answerable to the law and the public interest. Vertical Accountability is the means by which citizens, from below, hold their government officials answerable for their conduct. The most important instrument of vertical accountability is democracy- regular, free, fair, competitive and meaningful elections for all the principal positions of governmental power, and at different level of government. External Accountability: is the means by which international actors use their influence and leverage to make states answerable for the quality of their governance and to press or induce them to adopt institutional reforms (implementing or straightening horizontal and vertical accountability) to improve governance which is sine qua non to development. (for detail on accountability thesis see Larry Diamond, “Building A System Of Comprehensive Accountability To Control Corruption”, in *Nigeria’s Struggle For Democracy And Good Governance: A Festschrift For Oyeleye Oyediran*, ed. Adigun Agbaje, Larry Diamond, Ebere Onwudiwe, (Ibadan: Ibadan University Press, 2004), 227.

<sup>16</sup> Larry Diamond, “Building A System Of Comprehensive Accountability To Control Corruption” Op. cit., 228

<sup>17</sup> Vibeke Wang, (2005), “The Accountability Function of Parliament in New Democracies: Tanzanian Perspectives”, *CMI Working Papers*, Michelsen: Institute Development Studies and Human Rights, p. 2

position in comparative understanding of democratic experience in developing countries because “it is clearly the key institution in minimal and liberal democracies around the world”<sup>18</sup>. According to Bello-Imam,

*the legislature is indissociable from liberal democracies as they are constructed around it or on the basis of it. Any attack against the organization, composition or functioning of the parliament/ assembly is seen as a blow against democracy. Parliament can do anything except change a man to a woman.*<sup>19</sup>

In the same vein, Agbaje recognizes the legislature as the most representative of the three branches of modern democratic institution. To him:

*“the roles performed by legislature could facilitate the smooth functioning of the democratic systems or by default its decline and ultimate collapse”*<sup>20</sup>.

Similarly, it is adduced that “a powerful legislature is needed to engender a democracy in which people have some real decision making power over and above the formal consent of electoral choice”<sup>21</sup>. In their own analysis, Johnson and Nakamura pointed out that “effective legislatures contribute to effective governance by performing important functions necessary to sustain democracy in complex and diverse societies”. To them:

*Democratic societies need the arena for the airing of societal differences provided by representative assemblies with vital ties to the populace. They need institutions that are capable of writing good laws in both the political sense of getting agreement from participants, and in the technical sense of achieving the intended purposes*<sup>22</sup>.

In terms of democratization, it is explicit in the literature that “effective legislatures help to sustain democracy where it exists and elsewhere help to democratize by fulfilling the promise inherent in the public's right to be represented”<sup>23</sup>. Succinctly put, good representative institutions are expected to connect their constituents to their government “by giving them a place where their needs can be articulated, by giving them a say in shaping the rules that govern them, by providing them with recourse if governmental power is abused, and by contributing to the procedures and values that sustain a democratic culture”<sup>24</sup>. In the parliamentary system, the legislature is considered as the

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<sup>18</sup> W. Hout, (2006), “Parliament, Politics, and Governance: African Democracies in Comparative Perspective”. In *Between Governance and Government: African Parliament*, ed. M.A Mohammed Salih South Africa: HSRC Press, p. 26

<sup>19</sup> I.B Bello-Imam, (2004), “The Legislature: Its Role, Performance, Problems and Prospect in Nigeria”, in I. B. Bello-Imam and Mike Obadan, *Democratic Governance and Development Management in Nigeria's 4<sup>th</sup> Republic, 1999-2003* (ed), Ibadan: Centre for Local Government and Rural Development Studies P. 408

<sup>20</sup> Adigun Agbaje “Politics in the Legislature” *Abuja Mirror*, May, 2000.p.2

<sup>21</sup> Ake, Claude, (1996), *Democracy and Development in Africa*. Ibadan: Spectrum books. P.132

<sup>22</sup> John K. Johnson and Robert T. Nakamura, (1999), “A Concept Paper on Legislatures and Good Governance”, a Paper prepared for UNDP July

<sup>23</sup> *ibid*

<sup>24</sup> *Ibid*

soul of government, since the executive derives its power and legitimacy from parliament<sup>25</sup>.

Essentially, in a democracy, legislatures play three major roles: they express the will of the people, they pass laws, and they hold government, particularly the executive, to account. They also control and administer national budgets. Put differently, legislative institutions perform rule making, representational and oversight functions, which have serious implications for national development. These are fundamental responsibilities (as demonstrated in the paper) that needed to be effectively carried out, if challenges of democratization are to be addressed effectively. For example, the ultimate objective of the oversight function of the legislature is to promote accountability, transparency and responsiveness on the part of the executive and by extension check and balance his public actions. Though it is argued that the control ability of the legislature has waned in many democracies in both the North and the South owing essentially to party discipline<sup>26</sup>, it would be helpful if used in conjunction with public opinion to make it more effective on the Executive. However, the success of the legislature in carrying out its oversight duties depends mostly, on the legislators' individual and collective willingness to act as well as the constitutional capacity they have. Generally, the robustness with which the legislature could carry out its functions is always a function of its ability to maintain a degree of internal coherence, relative autonomy vis-à-vis the executive arm, and proximity to the pulse of the electorate. Also important is the extent to which the legislature is itself representative as an institution that captures the diversities of society.

In spite of the criticality of the legislature to democratic governance, it is clear from practical experience all over the world that legislatures pose perhaps the most fascinating problems of all structures of government, for they have been and continue to be the most decried and the most revered, the most hoped for and often the least successful institution in contemporary governments<sup>27</sup>. Historically, from the sixteenth and early seventeenth centuries, when the strengthening of powers of legislatures in England, France, and the United States of America was expected to provide a form of liberal rule and even democratic governance, the story of legislatures was one of ups and downs, of great expectations and almost total abjection. Before the dawn of the twenty first century, it is established that "first in the European dictatorial regimes of the inter-war years, and later in many parts of Africa, Asia, and Latin America, legislatures often became mere puppets, exercising little influence, meeting very rarely, and showing few signs of even moving toward greater activity in those instances when they were not simply abolished by military rulers"<sup>28</sup>

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<sup>25</sup> Eghosa E. Osaghae, (2004), "Local Government in Nigeria's Presidential System" in I. B. Bello-Imam and Mike Obadan, *Democratic Governance and Development Management in Nigeria's 4<sup>th</sup> Republic, 1999-2003* (ed), Ibadan: Centre for Local Government and Rural Development Studies, P340

<sup>26</sup> I. B. Bello-Imam, 2004, Op.cit P 421

<sup>27</sup> See Ebere Osieke (1987), "The Legislature of the Third Republic" in *Nigerian Journal of Policy and Strategy*, Vol.2, Number 1, June, P54- 63, W. Phillips Shively (5<sup>th</sup> ed). (1997). *Power and choice: An Introduction to Political Science*, New York: the McGraw Hill Components Inc. p.249 Frederick Solt, (2004), "Electoral Competition, Legislative Pluralism, and Institutional Development in *Latin American Research Review*, Vol. 39, No. 1, February

<sup>28</sup> Ebere Osieke (1987), op cit., p55

Specifically, in the case of Africa, some legislative houses are seen as either rubber-stamping all that the Executive does (particularly where a majority party or coalition overwhelmingly dominates) or as blindly opposing everything the Executive does (especially in the case of the minority or opposing parties)<sup>29</sup>. These deficiencies according to SIDA report are linked to the Parliaments' "frequent inability to perform the oversight role effectively".<sup>30</sup> Santiso argues that due to widespread corruption and nepotism, basic democratic institutions like legislatures are weak and discredited in most countries and fail to function adequately<sup>31</sup>. However, Ghana, South Africa and Uganda are listed as legislatures that are more active<sup>32</sup>.

From the foregoing, it is obvious that the legislature is critical to democratization project. Nevertheless, the significance of this representative institution in addressing challenges of democratic governance is less pronounced in most of the studies on democratization in Africa. This is the fissure that this paper attempted to fill.

## **LEGISLATIVE ASSEMBLIES AND DEMOCRATIZATION IN NIGERIA**

Prior to 1990, - the year of democracy in Africa- legislative politics came to be severely underdeveloped in every sense. This was due to absence of democracy and the consequential effects of prevailing political authoritarianism that either proscribed outrightly or completely subordinated the legislature to the executive arm of government. In Nigeria, the National Assembly experienced this, for almost three decades under different military regimes.

From 1990s, the idea that Africa is not ready for democracy becomes unacceptable, as most countries of the continent started embracing democracy as an ingredient for good governance. Most Nigerians were overwhelmed with hysterical happiness when the country returned to democratic governance in May, 29, 1999. The euphoria that greeted the re-inauguration of another civilian regime was for various reasons. For instance, according to Bello-Imam, "most Nigerians saw in the return of democratic rule an immediate end to totalitarian rule; an end to the pervasive corruption in the Nigerian society; a restoration to the rule of law and due process; and above, a return to transparency and accountability"<sup>33</sup>. More importantly, legislative houses were re-inaugurated to bridge the gap between the governed and the governors.

However, legislative houses had existed in form or the other in Nigeria before 1999. The history of Nigerian legislatures began with the formation of the Nigerian Council in 1914 by Sir Lord Lugard. Though the institution started as a deliberative organ of the colonial government, it has developed to become a full fledged legislative institution capable of making laws, representing the people and overseeing and controlling other organs after

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<sup>29</sup> SIDA, (2002), *The Political Institutions*, Division for Democratic Governance, July 2002, P 24

<sup>30</sup> *ibid*

<sup>31</sup> *ibid*

<sup>32</sup> *ibid*

<sup>33</sup> I.B. Bello-Imam, 2004, *Op. cit*, P. 411

several years of suspension by successive military regimes in Nigeria. For instance, the 1999 Constitution of the Federal Republic of Nigeria empowers the Assemblies both federal and state to perform the following functions among others:

- (a) law making and policy formulation functions;
- (b) oversight functions;
- (c) investigative functions;
- (d) the role of the watchdog of public funds, derived from the legislatures powers and duties with regard to public finance; and
- (e) representative or constituency responsibilities role.

Despite the powers, functions and privileges provided for the legislature in most Nigerian constitutions after independence, comments and observations have shown that this organ has not lived up to expectation. The Report of Political Bureau in 1987 is more revealing. According to the Report:

*It is a well known fact that up until 1979, legislatures were the weakest link in the making of public policies in Nigeria. Between the establishment of the Nigerian Council by Lugard soon after the amalgamation of the Southern and Northern Protectorates of Nigeria in 1914 and the end of the first thirteen years of military rule, public policy making was dominated by the executive. Indeed, a national daily newspaper in 1963 referred to the Federal Legislature as an “expensive and irrelevant talking shop”<sup>34</sup>*

The second and aborted third Republics’ legislatures did not improve significantly in terms of their performance. Even from recent analyses, the new democratic dispensation ushered in on May 29, 1999 has not significantly changed the situation. Ibeanu and Egwu while analyzing the eight years of democratic rule in Nigeria, vividly demonstrated that “basic institutions of democratic governance especially the legislature and the judiciary remain weak and vulnerable to executive manipulation under conditions of enormous concentration of power and resources in the executive presidency”<sup>35</sup>.

So many reasons have been adduced for the declining role of the legislature, particularly at the centre, in Nigeria. Long periods of military rule; absence of well established political parties and political process; personal ambition, interest and agenda of legislators; dysfunctional constituents; corruption; adverse legislative environment; as well as the presence of amateur legislators in great number, and the shortage of staff aides (due to the lack of continuity in legislative membership), as well as executive-legislative squabbles account for the poor performance of the National Assembly and state legislatures in the discharge of its functions<sup>36</sup>. Even at the level of the legislature, multi-party politics has actually led to a reduction in politics. In other words, the ruling party dominates its members as well as the nation, in the name of party discipline; while the so-

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<sup>34</sup> Federal Government of Nigeria, (1987) *Report of the Political Bureau*, Abuja: MAMSER, p. 94

<sup>35</sup> Okechukwu Ibeanu and Samuel Egwu, *Op. cit.*, 5

<sup>36</sup> Oyelowo Oyewo, (2007), “Constitutionalism and Oversight Functions of the Legislature in Nigeria”, Draft paper presented at African Network of Constitutional Law on fostering constitutionalism in Africa, Nairobi, Kenya April, p. 18-21, I.B Bello-Imam, 2004, *Op. cit.* P420

called opposition strives to take their place, without challenging the basic structure or content of political rule and economic framework.

To avert these challenges, many (donor) initiatives were introduced in the period from the 1990s onwards to "strengthen the capacity" of legislative houses in different parts of Africa, Nigeria inclusive. The major weak point of these initiatives is its failure to address political problems bedeviling these institutions, since the issues arising from the weaknesses of the legislature are not simply or only technical in nature. These problems have manifested themselves in a variety of ways, including:

*through the struggles for relative autonomy from the executive, tensions arising from the tendency towards presidentialism in Africa's new democracies, the instability and fragmentation of political parties, the poor structuring of the relationship between elected legislators and party bosses, the easy vulnerability of electoral systems to various kinds of manipulation, the frequent resort by the executive to a "security" cover for riding roughshod over parliament, the under-funding of parliament and poor harnessing of the funds available for deepening the foundations of democratic politics, the erosion of the domestic policy environment by donor conditionality, etc<sup>37</sup>.*

The fact remains that the institutional experience of the legislature, in the contemporary quest for democratic renewal, both mirrors and summarizes the entire record of the politics of the democratic process itself, particularly in Nigeria.

## **CHALLENGES OF DEMOCRATIC GOVERNANCE IN NIGERIA**

The emerging conclusions from studies on democratic governance all over the world as well as experience from elsewhere with regard to the practice of democracy, show that it is replete with serious problems everywhere. Diamond observed aptly that "democracy is the most widely admired type of political system but also the most difficult to sustain"<sup>38</sup>. With regard to Africa, two of the most daunting challenges facing the continent today revolve around the institutionalization of democratic governance and the achievement of sustainable human development. Some of these challenges are interwoven and have become endemic in most of contemporary African societies. To Matlosa, instability is one "of the major challenges for democratic governance in developing societies in general and Southern Africa in particular."<sup>39</sup>

In Nigeria, prior to 1999, there were myriad problems facing democratization process, some of which were identified by her past leaders<sup>40</sup>. When the first civilian regime was toppled in 1966, Major Chukwuma Kaduna Nzeogwu said:

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<sup>37</sup>Ibid

<sup>38</sup> Larry Diamond, Cited in I.B Bello Imam and Mike Obadan (2004), Op.Cit P4

<sup>39</sup> Khabele Matlosa, (2003), "Political Culture and Democratic Governance in Southern Africa", *African Journal of Political Science*, Vol 8 No. 1 p87

<sup>40</sup> See Onaolapo Soleye, (2005), "Democratic Sustenance in Nigeria and the Challenges of Retired Generals", a commemorative lecture delivered on 5<sup>th</sup> February, 2005 at LAUTECH Ogbomoso, P10

*“Our enemies are the political profiteers, the swindlers, the men in high and low places that seeks bribes and demand ten percent... those that have corrupted our society and put the Nigerian political calendar back by their words and deed”*

Similarly, General Murtala Mohammed made it clear after the overthrow of General Gowon’s military regime:

*... events of the past few years have indicated that despite our great human and material resources, the government has not been able to fulfill the legitimate expectation of our people. Nigeria has been left to drift. The situation if not arrested, would inevitably result in chaos and even bloodshed...*

The maiden speech of General Muhammad Buhari after the sack of Alhaji Shehu Shagari led civilian administration reads in part:

*It is true that there is a worldwide economic recession. However, in the case of Nigeria, its impact was aggravated by mismanagement.... The situation could have been avoided if the legislators were alive to their constitutional responsibilities. Instead, the legislators were preoccupied with determining their salary scales, fringe benefits and unnecessary foreign travels, et al, which took no account of the state of economy and the welfare of the people represented.*

In addition, General Ibrahim Babangida (now retired) said after the overthrow of General Buhari’s Military government:

*The last twenty months have not witnessed any significant changes in the national economy. Contrary to expectations, we have so far been subjected to a steady deterioration in the general standard of living; an intolerable suffering by the ordinary Nigerians have risen higher, scarcity of commodities has increased, hospitals still remain mere consulting clinic, while educational institutions are on the brink of decay, unemployment has stretched to critical dimensions.*

Surprisingly, most of these problems identified above still persist. Bad governance, foreign and local debts, infrastructural deficiency, loss of societal values, bad foreign image, corruption, legitimacy crisis, protests and strikes are some of the credits of 29 years of military interregnum in Nigeria. It was pointed out in the USAID Report on Nigeria for 2007 that Nigeria has not yet overcome a legacy of military rule. The challenges now, according to the Report, are “to struggle to consolidate democratic institutions and the rule of law, reduce rampant corruption; and boost public confidence in the democratic transition.”<sup>41</sup>

The restoration of constitutional rule in May 1999 heralded the new democratic order in which the numerous challenges of democratic governance and development facing Nigeria were expected to be effectively addressed. These challenges which are peculiar to developing African countries include, according to Ibeanu and Egwu,

*strengthening the basic institutions of democracy and governance such as the legislature; the sanctity of separation of powers and the rule of law;*

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<sup>41</sup> See International Republican Institute, “2007 Election Observation in Nigeria,” April 2007

*reducing corruption in the public and political spheres; transparency in the electoral system and the conduct of free and credible elections*<sup>42</sup>

Even the current Head of State and Commander in Chief, President Umaru Yar'Adua confirmed the challenges of Nigeria's nascent democracy. To him:

*As a nation, one of our greatest challenges has been the evolvement of a culture of disrespect for the rule of law... unbridled corruption, endemic crime, violence, infrastructural deficit and a general malaise in the polity. All these constituted a direct manifestation of disrespect for law and order.*<sup>43</sup>

Without mincing words, it is glaring from the above testimonies that corruption is a huge challenge in the management of the public space in Nigeria. Today, it has become a defining characteristic of both military and civilian regimes and described as the core of the crisis of governance, the establishment of a stable democratic order, rule of law, development and the welfare of citizens. Indeed, it is the bane of democratic governance. To corroborate this, the UN office on Drugs and Crime Report of June 2005 shows that, "crime and corruption aggravate the sufferings of the African people, make the poor one more vulnerable, distort economic values, rob national budgets, damages the entrepreneurial spirit, discourage foreign investment, promote capital flight and perpetuate human suffering."<sup>44</sup> In one of his speeches in 2005, former President Olusegun Obasanjo reiterated his government unwavering efforts to combat corruption because of its negative consequences. To him:

*We have made shy of our undiluted commitment to eliminating corruption from our national life because it compromises national development, contaminates collective morality and values, distorts national planning, corrodes integrity and discipline, and destroys the foundations of creativity, innovation, and democratic structure and development*<sup>45</sup>.

It significant to note that corruption is at the epicentre of the failure by many African countries to achieve the economic objectives; so finely articulated in their development plans.

In Nigeria, of all forms of corruption, political corruption has continued to be a major hindrance to democratization project and national development. It is defined as an act expressed either in the form of stealing public resources on the basis of access to state power or through money politics to subvert the will of the people <sup>46</sup>. Corruption in this sense, involves the use of state power to advance private gains at the expense of public interest. Diamond pointed out in his work on **Nigeria's Perennial Struggle**:

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<sup>42</sup> Okechukwu Ibeanu and Samuel Egwu, Op. cit., 4

<sup>43</sup> See Michael Kaase Aondoakaa, (2007) "Understanding the Concept and Application of the Rule of law in the Fight against Corruption", paper presented at the 2007 Senate Retreat, Presidential Hotel, Port Harcourt, Nigeria, 28<sup>th</sup> October - 2<sup>nd</sup> November, 143.

<sup>44</sup> See E. O. Ayoola, "The Legislative and Institutional Framework for the Fight Against Corruption: Challenges and Prospects", paper presented at the 2007 Senate Retreat, Presidential Hotel, Port Harcourt, Nigeria, 28<sup>th</sup> October - 2<sup>nd</sup> November, p. 136

<sup>45</sup> The nationwide broadcast by President Olusegun Obasanjo on Tuesday, March 22, 2005

<sup>46</sup> Okechukwu Ibeanu and Samuel Egwu, Op. cit., 185.

*No problem, however, is more intractable and more threatening to the future of Nigerian democracy than political corruption. The oil boom has given dramatic boosts to corruption, ostentatious display, and sheer waste*<sup>47</sup>.

It is not surprising that the 2009 Global Corruption Barometer listed Nigeria as one of the most politically corrupt nations in the world. That contemporary Nigeria's democratization experiment is facing a lot of challenges is incontrovertible. Wole Soyinka, Nobel laureate and social critic, in his analysis of President Obama's visit to Ghana in July 2009 established that:

*Nigerians, at home or residing in the United States during the past decade, have not been slow to observe that the eight previous years in United States governance were uncannily paralleled within Nigeria – eight years of waste, deception, divisiveness and corruption, of advancing bankruptcy, eight years of arrogant subversion of democratic norms....*<sup>48</sup>

He argued further that Nigeria's nascent democracy is challenged by a "a plague of incontinent rulers in relay, some in military uniform, others in civilian clothing, but all clones of one another, united in a commitment to unabashed profligacy, mutually assisted corruption and, to add insult to injury, an obsessive hankering for self-perpetuation, necessitating the cultivation of outright disdain for the elementary right of their citizens to a voice in leadership choice"<sup>49</sup>.

Like few electoral democracies in Africa, Nigeria's electoral democracy has problems of corruption and rotten governance. It denies people their right to choose their own leader through the ballot box due to electoral corruption and violence it exhibits. The Chairman of the Independent National Electoral Commission (INEC), Professor Maurice Iwu, confirmed this after the 2007 general elections, when he stressed that the elections were the worst in Nigerian history and were indescribably flawed in ways that initially signaled some threats to democratic consolidation in Nigeria<sup>50</sup>.

It is significant to point out that political corruption has been a recurrent phenomenon since the lowering of the Union Jack in 1960 in Nigeria. As Aondoakaa, the incumbent Attorney-General and Minister of Justice in Nigeria succinctly put it, citing Justice Lawal Uwais:

*As we went down sliding, there was hardly any probity, accountability, and transparency in government .... Respect for the rule of law and order was relegated to the background. Inefficiency, incompetence, mediocrity, dishonesty, commonality and all sorts of vices which are all by product of corruption, ruled the waves*<sup>51</sup>.

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<sup>47</sup> Larry Diamond, (1993), "Nigeria's Perennial Struggle," in *The Global Resurgence of Democracy*, ed. Larry Diamond and Marc F. Plattner, Baltimore and London: The Johns Hopkins University Press

<sup>48</sup>Wole Soyinka, (2009), "Obama's Choice" in, *The Guardian*, July 12

<sup>49</sup> Ibid

<sup>50</sup> Maurice Iwu, 2008, *The April 2007 Elections: What went Right? A lecture delivered at the Dept of Political Science, Faculty of the Social Sciences, Tuesday, 15<sup>th</sup> April, 2008, P 11*

<sup>51</sup> See Michael Kaase Aondoakaa, (2007), *Op. cit.*, p.143

A credible conclusion about the nexus between political corruption and governance in Nigeria is that civilian and military regimes are not impervious to corrupt practices. Assessment of these regimes from 1960 has shown that cases of corruption in the Nigerian polity were diverse and numerous<sup>52</sup>.

### **TACKLING THE CHALLENGES OF DEMOCRATIC GOVERNANCE: THE IMPERATIVE OF THE NATIONAL ASSEMBLY**

Since 1990s, in every African country, as democratic forms of politics were re-introduced on the back of the collapse of military and single party rule, there was a strong brogue placed, formally at least, on the role of the legislature in the building and consolidation of democracy. Inherent in this was the view, broadly shared, that the legislature is the embodiment of the sovereignty of the people. In this role, it was expected not only to make laws for the welfare of the generality of the populace but also to serve both as a democratically-empowered agency of restraint on the executive arm of government and a forum for the mobilization of popular participation in the broad governmental process<sup>53</sup>. In Nigeria, the story is not different, as legislative institutions were re-inaugurated at levels of governance as part of democratization programme in 1999. This section examines the significance of the National Assembly in addressing corruption as one of the biggest challenges of democratic governance in Nigeria.

Meanwhile, it is important to point out that democracy and some democratic institutions are not alien to Africa in general and Nigeria in particular. This might be one of the reasons why Lopes argues that “the idea that Africa is not ready for democracy is unacceptable. All countries, all societies and individuals are always ready for democracy”.<sup>54</sup> He argued further that it is possible to conceive that in pre-colonial times, in most parts of Africa, the citizens were involved in social participation due to the presence of democratic elements including codes of reference that play the same role as modern constitutions; effective counter-powers; effective participation of organized social groups in decision making; highly decentralized economic structure; rapid adaptation of the systems to the social changes produced in society.<sup>55</sup> For example in the pre colonial societies in Nigeria, particularly in Yoruba kingdom, there were certain representatives of the people called “*Oyomesi*” who acted as checks and controlled the paramount ruler-The *Oba*. Of course, powers were not concentrated in a single individual and there were legislative and judicial institutions.

Diamond posits that corruption can only be effectively controlled through the construction of a comprehensive system of accountability. Thus, for him, the existence of macro-political institutions of accountability, most importantly, the legislature becomes imperative

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<sup>52</sup> Okechukwu Ibeanu and Samuel Egwu, Op. cit. P 185- 187

<sup>53</sup> I. B. Bello-Imam, 2004, Op.cit

<sup>54</sup> Carlos Lopes (1996), “The Africanization of Democracy” in *African Journal of Political Science* New series Volume 1 Number 2 December 1996, 140

<sup>55</sup> Ibid P,147

for socio economic development<sup>56</sup>. To Bello-Imam, “the access to state resources without institutions to exercise oversight responsibilities has always provided political and administrative functionaries, who do not have altruistic tendencies, with huge opportunities and incentives for missive corruption”<sup>57</sup>. This, points out the significance of the legislature, as one of the budgetary and public expenditure management systems and procedures that guarantee transparency.

In the United States of America, like any other countries, the legislature is often used to change the rule of politics in order to obviate corruption. Specifically, it is pointed out that when corruption appears, the American response has typically been legalistic- to change the rules of politic and hand down extensive codes of ethics for those entrusted with public power<sup>58</sup>. Karlsson has also stressed that Parliament can hold governments accountable through the establishment of legislative committees such as Public Accounts Committee, establishment of mechanisms to strengthen financial accountability, for example, in transparent budgeting and audit systems; and establishment of centers of authority, such as ombudsmen, auditors and comptrollers general<sup>59</sup>. Thus, the legislature uses budget as an instrument of power and governance in a democracy.

Essentially, the role of the legislature in the budget process can be broadly categorized into two. Firstly, it examines how the government plans to spend public funds and secondly, how the government has spent public funds. According to Hamalai, the significance of legislative involvement in the budget process lies in the need to counterbalance executive dominance, broaden the budget process to capture wide array of interests to include opposition parties and constituencies, legitimize the budget process, ensure effective implementation through oversight roles, to promote balanced economic development, prioritization and inclusion of range of social needs and act as a buffer between the government and the people thereby strengthening the democratic process<sup>60</sup>.

Meanwhile, the success of anti corruption crusade rests on a number of structures. One would be the adequacy of the laws to effectively provide a comprehensive framework of offences relating to corruption, proper procedures and penalties. Most importantly, there must be overlapping agencies working on anti-corruption to ensure objectiveness and effectiveness. In many democracies, any legislative committee can investigate suspicions of waste, fraud, and abuse within the executive agencies under its jurisdiction. The legislature in the exercise of its oversight functions is expected to review from time to time the activities of the Anti-Corruption Bodies with a view to strengthening them.

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<sup>56</sup> Larry Diamond, (2004), “Building a System of Comprehensive Accountability to Control Corruption,” in *Nigeria’s Struggle for Democracy and Good Governance: a Festschrift for Oyeleye Oyediran*, ed. Adigun Agbaje, Larry Diamond and Ebere Onwudiwe, Ibadan: Ibadan University Press, p. 238.

<sup>57</sup> See E. O. Ayoola, Op.cit., 137.

<sup>58</sup> Michael Johnson, (1993), "Historical Conflict and the Rise of Standards." In *The Global Resurgence of Democracy*, ed. Larry Diamond and Marc F. Plattner, Baltimore and London: The Johns Hopkins University Press, p. 199

<sup>59</sup> Lara M. Gabriel and Stapenhurst Rick with Thomas Mary, (2001), *The Role of Bilateral Donors in Fighting Corruption*, Maastricht: The Netherlands World Bank Institute, p.13

<sup>60</sup> Ladi Hamalai, “The Role of the Parliament in Facilitating the Budget Process,” *Nigeria Journal of Legislative Affairs (NJLA)*, Vol. 1 No. 002, (2007):195

It is assumed that the Federal legislature in Nigeria with its constitutional powers ought to be in the forefront in making good laws to engineer national development that is vital to democratic sustenance. Strictly speaking, legislative input is desirable to match the budget more closely with developmental needs. Thus, the effective performance of democratic functions of the legislature as earlier adduced is critical in addressing several challenges facing democratization project in the country.

Laws made by the Assembly are required to set developmental agenda for the country as well as control corrupt practices. Also, members of National Assembly are expected to serve as a means of communicating the needs of the constituencies to government and ensure that those needs are taken care of. This is important if citizens are to be effectively mobilized to support government policies. In performing its representational role, the National Assembly is expected to ensure accountability and transparency in governance to engender public trust. Also, the powers that the National Assembly have over public funds empower it, to a large extent, to curb waste and misappropriation of public resources, while the investigative powers are provided to enable it restrain public officials from abusing public offices for private gains. The constitutional provision that “no money shall be withdrawn from the consolidated Revenue Fund or any other public fund of the Federation except in the manner prescribed by the National Assembly”<sup>61</sup> often provides it with the most direct route from legislative will to executive action. How both Houses of the National Assembly prescribe the manner in which federal spending is executed remains the responsibility of the Appropriation Committees.

Moreover, there is the rising tide of legislative activism in Nigeria with respect to budgetary process. Prior to this time, many legislative Houses had done little more than to rubber stamp the executive’s expenditure and taxation proposals. There is evidence in the 1999 Constitution with provisions in sections 58, 59(2), 59(3) and 59(4) that the Nigerian legislature particularly at the centre is constitutionally unconstrained in the scope and nature of amendments it can make to the budget.

However, for the National Assembly to play a significant role in addressing any democratic challenge, keeping the principle of legislative independence is essential. As Johnson pointed out; “a degree of legislative independence is a virtue in any system of representation, yet democratic politics inevitably keeps legislators and private interests in close contact”<sup>62</sup>. Thus, striking a balance between legislators’ independence and their responsiveness to such interests remains a critical task. Besides, a cordial relationship that has legal basis must exist between the National Assembly and other arms of government, most essentially between it and the executive. The critical moral dictum is the requirement that legislators place the public interest before their own private advantage. Specifically, members of House of Representatives and Senate are expected to demonstrate some level of seriousness by being more proactive on some of the sensitive national issues.

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<sup>61</sup> Section 80 (3) of the 1999 Constitution of the Federal Republic of Nigeria

<sup>62</sup>Michael Johnson, Op. cit., P.201.

For the National Assembly to build political will, which is needed to combat political corruption, legislative system must foster personal integrity of legislators through codes of conduct for legislators-disclosure of assets, conflict of interest, enacting legislation on campaign and political party finance; building transparency in wage levels and benefits; ensuring that legislative immunity is not abused; enacting legislation regarding the freedom of information; and protecting whistleblowers. It is important to bring about system adjustment in countries where these supporting mechanisms are absent. This may involve counterbalancing the power between the legislature and executive and in some cases between the state and civil society<sup>63</sup>.

## **THE NATIONAL ASSEMBLY AND THE ANTI-CORRUPTION INITIATIVES IN NIGERIA: THE JOURNEY SO FAR**

In Nigeria, it is the functional duty of the state to fight corruption. Section 15(5) of the 1999 Constitution provides that “the state shall abolish all corrupt practices and abuse of power”. Although external factors affect the type and outcomes of most anticorruption policies in Nigeria, a virile and strong legislature at all level of government is a critical factor in the crusade against corruption.

Since 1999, various international bodies have shown interest in helping the country to promote democracy and development. External interventions from international financial institutions like World Bank, International Monetary Fund (IMF), international donors like USAID and United Nations Development Programme (UNDP), international civil society groups like Transparency International (TI), among others, always emphasize good governance characterized with accountability and transparency to promote a corrupt free society. Most of their programmes are geared towards the support of national anticorruption initiatives and the strengthening of political institutions that are needed to control the menace of corruption.

At the domestic level, as bedrock for the fight against corruption, the 1999 Constitution of the Federal Republic of Nigeria created the office of the Code of Conduct Bureau and identifies its specific functions and powers (Section 153 and third schedule to the Constitution part 1). Specifically, section 153(3c) empowered the Bureau to receive complaints, investigate and where necessary refer same to the Code of Conduct Tribunal<sup>64</sup>. Section 8 of the fifth schedule defines the powers of the Tribunal to impose punishment for any violations of the provisions of the Code of Conduct for public officers. However, it should be mentioned that the history of this Bureau dates back to the 1979 Constitution, which first prescribed a code of conduct for public officers. To give more legal backing to the existing anti corruption agencies, the Babangida military regime in 1989 promulgated the Code of Conduct Bureau and Tribunal Act. The main objective of the Code of Conduct for public officers and public office holders is to internalize the principles of accountability, transparency and healthy work habits for sustainable development.

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<sup>63</sup> Lara M. Gabriel and Staphenurst Rick with Thomas Mary, *Op. cit.*, p. 9.

<sup>64</sup> See E. O. Ayoola, “The Legislative and Institutional Framework for the Fight Against Corruption: Challenges and Prospects”, *Op. cit.*, 137

Regarding the powers of National Assembly with respect to anticorruption crusade, provisions in Sections 88 and 89 of the 1999 Constitution empower it to direct or cause to be directed an investigation into any matter with respect to which it has power to make laws. This could be an investigation into the affairs of any person; agency; authority; government, department or ministry; charged with the duty of either administering the laws made by it; executing them or disbursing or administering money appropriated by it. This function is being carried out in addition to others identified earlier.

It should be noted that in the fight against corruption in Nigeria, the National Assembly, as the law making organ of government, has considered and passed laws to ensure accountability and transparency in every government sphere. Since May 29 1999, the federal legislature has made some attempts to fight against corruption. The first step in this direction was the enactment of the Corrupt Practices and Other Related Offences Act 2000 by the then National Assembly which was signed into law by Ex- President Olusegun Obasanjo on 13th June 2000. The Act established the Independent Corrupt Practices and other Related Offences Commission (ICPC). Section 2 of this Act defines corruption to include bribery, fraud and other related offences. This is followed by the establishment of Economic and Financial Crime Commission (EFCC) in 2003 through the enactment of EFCC Act 2002, which was reenacted in 2004. The Commission was created to enforce certain laws pertaining to economic and financial crimes. EFCC, like the ICPC was vested with investigative and prosecutorial powers for the efficient discharge of its statutory mandate. A Fiscal Responsibility Law was passed in 2007 to allow for a peer review mechanism, to bring executive heads of government together to exchange views on how well counterparts are performing, strengthening budget laws to define the role of stakeholders: the executive, the legislature and civil society so that clear benchmarks can be established.

Moreover, corruption was confronted frontally with several programmes initiated and institutions established and approved by the National Assembly to ensure accountability, probity and transparency in governance. Between 2000 and 2001, the Budget Office was created out of the Ministry of Finance; and the Budget Monitoring Unit and Price Intelligence Unit (BMPIU) popularly referred to as the Due Process Unit. The *raison d'être* was to bring sanity and prudence into public expenditure, budgeting and public procurement in Nigeria which before now were lucrative avenues for corrupt public officials to loot the treasury. To get public officers involved in the Anti-Corruption crusade, the presidency approved the recommendation that anti-corruption and transparency monitoring units in all government departments. The National Assembly, in compliance with the directive from the then Head of Service of the Federation vide a circular referenced OHCSF/MS/192/94, dated 2nd October 2001, accepted an Anti-Corruption and Transparency Monitoring Unit (ACTU) operating within its sphere of activity. In addition, the Federal Executive with the approval of the National Assembly created the Extractive Industries Transparency Initiative (ETTI) aimed at monitoring the extractive industry to know exactly what is being extracted and the revenue accruing there from. This step has encouraged transparency and accountability in the extractive industries as resource extracted and revenue paid by the companies and received by government and the sum

declared are expected to be published by government<sup>65</sup>. Although these anti-corruption initiatives came on board during the eight years rule of President Obasanjo; the present civilian administration under the leadership of President Umaru Yar'Adua has adopted and retained these programmes and institutions with some minor changes.

The anticorruption efforts of the National Assembly have yielded some positive results. The Senate Committee on Public Accounts in 2001 investigated the Nigerian National Petroleum Corporation (NNPC), Central Bank of Nigeria (CBN), and National Electric Power Authority (NEPA) now Power Holding Company of Nigeria (PHCN) and raised a lot of controversies on the activities of the administrative bodies<sup>66</sup>. The National Assembly also waded into the Petroleum Trust Development Fund (PTDF) saga in 2007, resulted into the indictment of the Vice President, Atiku Abubakar, and the Presidency and the recommendation that they face the Code of Conduct Tribunal for breach of trust and abuse of office. It was concluded by the Senate Review Committee Report on the PTDF, Chaired by Senator Umaru Tsauni, that the duo President Olusegun Obasanjo and Vice President Atiku Abubakar were guilty of breaching the laws setting up the Fund and misapplying its ample funds. It therefore recommended and expectedly, too, that both of them be disciplined by the Code of Conduct Tribunal<sup>67</sup>.

The Obasanjo government in 2005 continued its economic reform efforts under the new regime of anticorruption laws and won the praise from international creditors for attempt to fight corruption. The Paris Club announced in the same year that it was impressed by Nigeria's economic reform programmes and cancelled \$18 billion in debt. Some stolen public funds were also recovered. It was reported that in 2006, nearly \$460million found in Swiss Bank account linked to former military head of state, late General Sani Abacha was recovered by EFCC. Also, high profile corruption cases have been exposed and some persons involved were made to refund looted public funds<sup>68</sup>. In May 2006, during the

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<sup>65</sup> E. O. Ayoola, *Op. cit.*, P. 138-139.

<sup>66</sup> One of the most notable investigation of administrative bodies was, the controversy surrounding the #2.3 billion NEPA Fund, that could not be properly accounted for by the then National Electric Power Authority (NEPA) Officials. Similarly, the former Minister of Aviation, Dr.(Mrs.) Kema Chikwe, and the Director-General of the Bureau for Public Enterprise (BPE) were summoned to appear before the committee of the National Assembly on the privatization of the Nigerian Airways Limited (NAL), and the establishment of a new national Airline. The secret deals of the Ministry were exposed and the plans to purchase the assets of NAL under shrouded circumstances were scuttled. Although there have been accusations against members of the legislative committees for using this avenue to procure contracts from these administrative bodies, however, the power of investigation was employed by the National Assembly to summon most of the Ministers and the personnel of their ministries to appear before it to furnish them with explanations on certain major governmental policies and activities.

<sup>67</sup> Oyelowo Oyewo, *Op. cit.* p. 14-15.

<sup>68</sup> Mr. Tafa Balogun, former inspector General of Police, Chief Diepreye Alamaiyeseghia, former Governor of Balyesa state, Joshua Dariye, former governor of Plateau state and 3 ministers were removed over allegation of corruption between 2005 and 2006. They were arrested and charged with graft and money laundering. As at November 2006, 14 governors were under EFCC investigation. Two presidents of the House of Senate were removed over allegations of contract awards and bribes. The latest was the sacked of Patricia Etteh, the first female Speaker of the House of representatives due to inflation of contract awards and bribe, Halliburton scandal involving high profile politicians both former and serving public functionaries. Former Senate President Adolphous Wabara was forced to resign and charged with corruption he was accused of taking more than \$400,000 in bribes, and Education Minister, Fabian Osuji

debate on the report of National Political Reform Conference, the Senate effectively rejected the legislation that supposed to remove the two-term limitation and allowed third term presidency. Between 2005 and 2006 a sum of \$505.5 million was repatriated and according to study by the World Bank, a significant percentage of those funds were used by the Nigerian government toward meeting the country's Millennium Development Goals (MDGs)<sup>69</sup>.

According to the 2008 Ibrahim Index's comprehensive measures of governance performance, Nigeria improved across all five categories, with the greatest improvement in Rule of Law, Transparency and Corruption in which its score rose by 3.7 points. See the table below for the ranking.

**Table 1: Nigeria's 2007 and 2008 Governance Performance Index**

<b>INDEX</b>	<b>Category 2007 Score (out of 100)</b>	<b>2008 Score (out of 100)</b>	<b>2008 Ranking (out of 48)</b>
<b>Safety and Security</b>	62.8	63.7	39
<b>Rule of Law, Transparency and Corruption</b>	44.5	48.2	30
<b>Participation and Human Rights</b>	42.9	44.1	34
<b>Sustainable Economic Opportunity</b>	40.4	40.7	23 (joint)
<b>Human Development</b>	45.7	45.9	32

**Source: MO Ibrahim African Governance Index 2008**

The improvement in the score sheet is not unconnected to the various anticorruption reforms.

On budget review, which is generally regarded as the crucial test of surveillance, though the legislature makes its presence felt on occasions, however, it seldom gets high marks. Though, the National Assembly's handling of the budgets especially in 2000 and 2001 fell far below the mark, it has improved in the last six years. It can be said that subsequent

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was fired for allegedly bribing Wabara and six other lawmakers ; Senator John Azuta Mbata, Chairman, Senate Appropriation Committee; Senator Ibrahim Abdulazeez, Chairman Senate Committee on Education; Senator (Dr) Adighije, Senator Badamosi Maccido, Senator Emmanuel Okpede, a member of the federal House of Representatives, Honourable (Dr) Shehu Matazu who is the Chairman of the House Committee on Education to smooth passage his annual budget. After discovering that top officials were to have been among the beneficiaries, Obasanjo fired his Housing Minister- Mrs. Alice Mobolaji Osomo for allegedly trying to sell off more 200 government houses at cut-rate prices. Senator Iyabo Obasanjo-Bello as Chairperson, Senate Committee on Health was sometimes in 2008 alleged to be bribed by the Former Minister of Health, Mrs. Grange from the unspent budget allocation which was not returned.

<sup>69</sup> See World Bank December 2006 Report, "Utilization of Repatriated Abacha Loot", World Bank, <http://www.worldbank.org>

budgetary appropriation witnessed an improved oversight of the National Assembly, especially, the Committee Hearings and the defence of the Heads of expenditure by the Ministries and Departments of the Government. However, the attempts of the legislature to control just how and when the appropriated money were to be actually spent did not meet with any obvious success, until the impeachment big stick was employed to soften the President<sup>70</sup>.

As part of the strategy to curb electoral corruption, the National Assembly passed the Electoral Act 2001, which became effective in 2002 and later after some amendments, re-enacted in 2006. Also the EFCC in February 2007, circulate a list of those standing for political office that it considered to have been involved in corrupt practices, and who were considered “unfit to hold elected office”. The former vice president, Atiku Abubakar was one of the 135 candidates on the list. The list includes; 53 People Democratic Party (PDP) candidates, 27 from Action Congress (AC), 39 from All Nigeria People’s Party (ANPP) and 19 others.

In spite of the above, there are several reported cases of corrupt practices that have not been tracked. In addition, electoral malfeasance and other manifestations of political corruption have neither been investigated nor persons involved reprimanded<sup>71</sup>. Ibeanu and Egwu confirmed that “the efforts of EFCC that initially appeared to have brought corruption into the open and under check appears to have been compromised by the seeming selective enforcement and partisanship of the EFCC, and its use by the executive as a tool of political brinkmanship”. From all indications, anti corruption agencies established by different Acts of the National Assembly appear to be more accountable to the executive rather than to the National Assembly and citizens. In the view of some observers, president Obasanjo’s anti corruption campaign is seen as the most serious and effective effort in decades, but others contend there have been political motivations behind some investigations. Nevertheless, the political climate has started to change with the imprisonment of former Board Chairman (Nigerian Port Authority) and a PDP stalwart, Chief Olabode George and other members of the Board in October 2009. He was jailed for two years by the Court over allegation of corrupt practices brought against him by the EFCC.

There are various factors militating against the effectiveness of the National Assembly in its fight against corruption. The character of the Nigerian state and weak institutional capacity of the legislature, as the agenda setter and as the representative assembly of the people, constitute one of the factors. The Senate in June 2005 refused to ban the acceptance of gifts in its new code of ethics after arguing that bribery was already illegal and accepting gifts was part of Nigerian culture. According to the Report of the Economic Intelligence Unit, the National Assembly was plagued with allegations of corruption and the resultant compromise of their independence<sup>72</sup>. Senator Arthur Nzeribe at least confessed to bribing the leadership and members of the National Assembly during the saga of the impeachment of president Obasanjo, in order to dissuade them from supporting the impeachment. The

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<sup>70</sup> Oyelowo Oyewo, Op. cit. p. 18

<sup>71</sup> Okechukwu Ibeanu and Samuel Egwu, Op. cit., 189

<sup>72</sup> The Economic Intelligence Unit, (2007), “Nigeria at a Glance: 2007-08, February, p.7-9

executive was also alleged to have given money to legislators to compromise their integrity in the discharge of their functions. Recently some House of Representatives members were alleged to have misappropriated public fund in their custody. The House leader, Hon Tunde Akogu was being accused of misappropriating N200 million said to have been released to him to organize retreats for members in Kano and Uyo. Hon Emeka Ihedioha, Chief Whip was alleged to have mismanaged N150 million allegedly advanced to him by the House of Representatives for the celebration of 10 years of sustained democracy in the country. Honorable Baba Shehu Agaie, deputy House leader is also being asked to account for how he spent N130 million earmarked by the House to host the Afro-Arab parliamentary in April 2009<sup>73</sup>.

Political corruption in the legislature is considered a recurrent issue in Nigeria’s democratic experiment. To Ibeanu and Egwu, it ranges from blackmailing the executive with threat of impeachment as a strategy of attracting financial inducement to misappropriation of constituency votes<sup>74</sup>. A survey was conducted in 2007 to elicit the opinion of the elite on corruption in the Nigerian legislature. The result of the survey shows that most of the elites hold very strongly that the legislature is corrupt. Responses to the question asked: “How would you describe legislature on corruption?” are presented in table 2 below.

**Table 2: Public Perception of Corruption in the Nigerian Legislature**

<b>RESPONSES</b>	<b>North central (f=30)</b>	<b>North East (f=28)</b>	<b>North West (f=30)</b>	<b>South East (f=30)</b>	<b>South South (f=30)</b>	<b>South West (f=25)</b>	<b>Federal Capital Territory (FCT) (f=20)</b>
<b>No response</b>	3.3%	0.0%	0.0%	3.3%	0.0%	0.0%	0.0%
<b>Above Corruption</b>	0.0%	0.0%	0.0%	0.0%	3.3%	0.0%	0.0%
<b>Largely Free from Corruption</b>	3.3%	7.1%	3.3%	13.3%	10.0%	16.0%	5.0%
<b>Somewhat corrupt</b>	13.3%	25%	13.3%	50.0%	16.7%	24.0%	35%
<b>Fairly Corrupt</b>	50%	32.1%	30.0%	6.7%	33.3%	32.0%	35.0%
<b>Totally Corrupt</b>	30.0%	35.7%	53.3%	26.7%	36.7%	28.0%	25.0%
<b>Total</b>	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

**Adapted from Okechukwu Ibeanu and Samuel Egwu, 2007 (Elite/Decision Maker Interview October 2006, 196)**

<sup>73</sup> For detail see, Aaron Ossai, “House Of Reps: Another Storm In Their Tea Cup?,” *Nigerian Compass*, Tuesday June 23 2009, p.10

<sup>74</sup> Okechukwu Ibeanu and Samuel Egwu, Op. cit., p. 191

With regard to the effectiveness of Accounts committee of National Assembly, the survey reveals that majority of respondents think it is fairly effective while a significant percentage think that the Accounts Committee is totally ineffective<sup>75</sup>. To buttress this, Nzekwu, Senior Economist, World Bank while identifying the role of the legislators in the implementation and monitoring of NEEDS, pointed out that “lack of committees or weak ones may compromise the legislative ability to influence sound implementation and monitoring”<sup>76</sup>. Strong committees to him are generally characterized as having efficient resources, skilled staff, and plenty of time to study and debate the issues and take strong positions.

Despite House rules and ethical codes, conflict of interest remains a serious problem, in Nigeria’s legislative politics. For instance, in 2003, when the ICPC attempted to investigate certain allegations of a petition against the leadership of the National Assembly, the Assembly rose drastically against the Commission<sup>77</sup>. Constitutional anomalies constitute another critical factor affecting the role of the National Assembly in using its oversight power to control corruption in government. One of the deficiencies was pointed out in the Report of Phillips led Budget Review Committee:

*We observe that the 1999 Supplementary Appropriation Act was not complemented by any form of approved revenue estimate by the National Assembly... which section 81 (1) of the Constitution also enjoins the President to lay before the National Assembly. The Constitution does not specifically require the National Assembly to approve the annual revenue estimates or the financial plan of the government*<sup>78</sup>.

This is a gap which seriously undermines the scrutiny and approval functions of the legislature. The gap is suggested to be removed through a constitutional amendment which requires the National Assembly to also pass a Finance Bill in addition to the Appropriation Act. Moreover, the 1999 Constitution charges the President with tabling a draft budget before the financial year to which it applies; the constitution does not prescribe exactly when the budget has to be tabled. This omission has generated a lot of controversies between the National Assembly and the executive with respect to budgeting. The National Assembly has also observed instances where expenditures were undertaken for new items never approved by the legislature. Issues such as; excessive ‘virement’ involving the transfer of resources among different programmes or heads of expenditure within the same vote during the financial year and under-spending need to be addressed by forcing greater compliance with financial regulations<sup>79</sup>.

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<sup>75</sup> Ibid, p. 200

<sup>76</sup> Greg Nzekwu, (2007), “Implementation and Monitoring of NEEDS: the Role of the Legislators” (paper presented at the conference on NEPAD, NEEDS And MDGS: Approaches To National Economic Planning, HBC Resort Kuru-Vom Road, Jos, Plateau, Nigeria, 7th -8th September, p. 31.

<sup>77</sup> A law was swiftly passed sacking the Commission and staff while creating a commission with reduced powers. An action was filed against the National Assembly in the federal high court Abuja. The purported Act of the National Assembly was faulted and nullified by the court (See E.O. Ayoola , Op. cit., 139)

<sup>78</sup> Joachim Wehner, (2002), “Parliament and the Power of the Purse: the Nigerian Constitution of 1999 in Comparative Perspective”, *Journal Of African Law*, 46, 2, UK: School Of Oriental And African Studies, p.229

<sup>79</sup> Ibid, p. 219

More fundamental is the fact that most of the investigations that uncovered corrupt practices in Nigeria in the past one decade were initiated by the executive, particularly during regime of former President Obasanjo. More daunting aspect of these investigations is that some National Assembly members were indicted and found guilty of corrupt practices. It is opined that the present National Assembly will deviate from the past trend.

## CONCLUSION

Contrary to the opinion that national legislatures are declining in terms of the roles they perform in a democracy, which is prominent in most literature, it has been demonstrated in the paper that the National Assembly is central to the resolution of the challenge posed by corruption to Nigeria's democracy and development. The National Assembly through its exercise of investigative powers and establishment of some legal instruments was able to expose some corrupt practices between 1999 and 2008. It is not surprising that Nigeria is one of the countries that have the highest proportion of people rating their government's anti-corruption efforts as effective<sup>80</sup>. In fact, the performance of the legislature of the Fourth Republic in Nigeria gives a glimmer of hope for sustainable democracy in the country.

Nevertheless, the role of the legislature in tackling corruption as one of the major challenges of democratic governance was affected in the period of investigation by the character of the Nigerian state, weak institutional capacity of the legislature, constitutional deficiencies, and lack of integrity by members of the legislature who have been indicted one time or the other; undue executive interference among others. In Nigeria, therefore, the effectiveness of the legislature in the resolution of democratic challenges hinges on the performance of its functions according to the rules and norms of democracy and the resolution of its internal crisis.

To be more effective in tackling political corruption as one of the challenging challenges of democratic governance, the paper supports deep institutionalization of the legislature as against its de-institutionalization, since legislative institutions are expected to be governed by laws and not by men. From the foregoing discussion, it is evident that democracy can flourish in Nigeria and in Africa; if the capacity of legislatures- federal, state and local could be further strengthened to address critical issues relating to constitutionalism, corruption, poverty and national question, check the excesses of the executive, and collaborate with the judiciary to avert the consequences of "democracy by court order", as well as empower and work with the civil society. In Nigeria, *stricto sensus*, a more proactive National Assembly that is ready to set the priorities right as well as resolve its internal crisis democratically, is critically needed.

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<sup>80</sup> See 2009 Global Corruption Barometer released by Transparency International