

Legislative Oversight Manual

National Institute for Legislative Studies National
Assembly

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1. Objectives of Oversight

Legislative oversight is an important tool in promoting transparency and accountability in governance. It is an effective instrument deployed by legislators, as representatives of the citizenry, to hold government accountable.

Specifically, oversight of the executive is designed to achieve the following objectives among others:

1. Ensure executive compliance with legislative intent;
2. Improve the efficiency, effectiveness, and economy of governmental operations;
3. Evaluate programme performance;
4. Prevent executive encroachment on legislative powers and prerogatives;
5. Investigate alleged instances of poor administration, arbitrary and capricious behaviour, abuse, waste, fraud, and dishonesty;
6. Assess agency or officials' ability to manage and carry out programme objectives;
7. Assess the need for new federal legislation;
8. Review and determine federal financial priorities;
9. Protect individual rights and liberties; and
10. Inform the public about how the government is performing its public duties.¹

¹ Morton Rosenberg, *When Congress Comes Calling: A Primer on the Principles, Practices, and Pragmatics of Legislative Inquiry*, www.constitutionalproject.org. Accessed May 20, 2014

2. Perspectives on Oversight

Legislative Oversight is rooted in the theory of Separation of Powers (first developed in ancient Greece). Legislative oversight ensures that the body which administers does not adjudicate or legislate, i.e., no one arm of government (executive, legislature and judiciary) would have controlling power over another. This is for the purpose of preserving the liberty of the individual and avoiding tyranny. The arms of government are legislature, executive, and judiciary, which can be contrasted with the fusion of powers in a parliamentary system where the executive and legislature (and sometimes parts of the judiciary) are unified.² The concept of oversight is used differently to reflect scrutiny, review, inspection, control, supervision and watchfulness of public funds.

Oversight simply means the act or job of directing work that is being done or regulatory supervision of state expenditure towards transparency and accountability of public resources. With a deep legislative history, most definitions of oversight rely conceptually on the definitions of Mill and Montesquieu, and stem mostly from studies done on legislatures in the United States in the 1970s. These definitions reflect a varied approach to the term, and demonstrate more than anything else its ambiguity.

Oversight revolves around the act of checking, verifying, examining, criticizing, censuring, challenging, questioning and calling for account.³ This is achieved through varied oversight or legislative tools such as committee's activities e.g. site visit or project visitation, parliamentary questions, correspondence with MDAs, etc. The ability of a legislature to robustly monitor

² Woodrow, W., *Congressional Government: A Study in American Politics* (Baltimore: John Hopkins University Press, 1981), pp. 27, 215

³ Ibid

the executive is an indicator of good governance. According to Agora, parliamentary oversight is carried out in order to:

- i. ensure transparency and openness of executive activities
- ii. hold the executive branch accountable
- iii. provide financial accountability and
- iv. Uphold the rule of law.⁴

Pelizzo et al, (2006) in a WBI publication on "Parliamentary Oversight for Government Accountability" explain legislative oversight as the legislative supervision of the policies and the programmes enacted by the government. They also explain that oversight is the supervision of what the executive branch of government has done as well as policies and legislative proposals.⁵

These definitions either look at legislative oversight as a series of events that happen before and after (ex-post and ex-ante) policies and legislation are promulgated. Both systems of parliamentary practice (presidential or parliamentary), though at varying degrees of effectiveness, have legal frameworks for legislative oversight of executive actions. This manual of oversight in Nigeria shows how legislative oversight can be effectively carried out towards good governance in the country.

⁴ <http://www.agora-parl.org/resources/aoe/oversight> Accessed: June 5, 2014

⁵ Pelizzo, R., et al, *Parliamentary Oversight for Government Accountability*, Stock No. 37262. Available at <http://siteresources.worldbank.org/WBI/Resources/ParliamentaryOversightforGovernmentAccountability.pdf> Accessed June 5, 2014

3. Authority to Conduct Oversight

The authority to conduct oversight is conferred by the Constitution, statutes and standing rules of the National Assembly. The authority given to statutory bodies to conduct or respond to oversight functions requires that reports are submitted to the National Assembly through the relevant committees. These authorities include the following:

3.1. Constitutional Authority

The constitutional authority to conduct oversight falls under three groups: Appropriation Authority, Investigative Authority and Routine Authority:

3.1.1. Appropriation Authority: This is the authority which the National Assembly has to, through an appropriation or supplementary appropriation bill, approve, vary or question budgets (annual or supplementary) submitted to it by the executive and authorize a withdrawal by the executive of money so appropriated.

This authority is conferred on the National Assembly by sections 59 and 80 of the CFRN 1999 as Amended. The relevant provisions are:

59. (1) The provisions of this section shall apply to:

(a) an appropriation bill or a supplementary appropriation bill, including any other bill for the payment, issue or withdrawal from the Consolidated Revenue Fund or any other public fund of the Federation of any money charged thereon or any alteration in the amount of such a payment, issue or withdrawal; and

(b) a bill for the imposition of or increase in any tax, duty or fee or any reduction, withdrawal or cancellation thereof.

80. (1) All revenues or other moneys raised or received by the Federation (not being revenues or other moneys payable under this Constitution or any Act of the National Assembly into any other public fund of the Federation established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the Federation.

(2) No moneys shall be withdrawn from the Consolidated Revenue Fund of the Federation except to meet expenditure that is charged upon the fund by this Constitution or where the issue of those moneys has been authorised by an Appropriation Act, Supplementary Appropriation Act or an Act passed in pursuance of section 81 of this Constitution.

(3) No moneys shall be withdrawn from any public fund of the Federation, other than the Consolidated Revenue Fund of the Federation, unless the issue of those moneys has been authorised by an Act of the National Assembly.

(4) No moneys 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.

3.1.2. Investigative Authority: The National and State assemblies are empowered to investigate the conduct of any person and MDAs on matters over which the legislature has competence.

This power is provided for by the Constitution in sections 4 and 88-89 for the National Assembly (and replicated for State Houses of Assembly in sections 128-129). They provide thus:

88. (1) Subject to the provisions of this Constitution, each House of the National Assembly shall have power by resolution published in its journal or in the Official

Gazette of the Government of the Federation to direct or cause to be directed investigation into -

(a) any matter or thing with respect to which it has power to make laws, and

(b) the conduct of affairs of any person, authority, ministry or government department charged, or intended to be charged, with the duty of or responsibility for -

(i) Executing or administering laws enacted by National Assembly, and

(ii) Disbursing or administering moneys appropriated or to be appropriated by the National Assembly.

(2) The powers conferred on the National Assembly under the provisions of this section are exercisable only for the purpose of enabling it to -

(a) Make laws with respect to any matter within its legislative competence and correct any defects in existing laws; and

(b) Expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.

Section 4 of the CFRN provides for the legislative powers of the National and State Assemblies and accordingly, the matters over which they can conduct investigations.

3.1.3. National Assembly Legislative Authority:

(1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation, which shall consist of a Senate and a House of Representatives.

(2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.

(3) The power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States.

(4) In addition and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have power to make laws with respect to the following matters, that is to say:-

(a) any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and

(b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

(5) If any Law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other Law shall, to the extent of the inconsistency, be void.

3.1.4. State Houses of Assembly Legislative Authority

Section 4(6)-(7) of the CFRN provides for the legislative authority of State Houses of Assembly. It stipulates the matters over which, in accordance with sections 128 to 129, the State Houses of Assembly may conduct investigations.

According to section 4,

(6) The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State.

(7) The House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters, that is to say:-

(a) any matter not included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.

(b) any matter included in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and

(c) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution⁴.

3.1.5. Committee Authority: The authority conferred by the CFRN is exercisable by either the whole house, joint committees or special committees. Some of the authority of these committees are defined by the CFRN (by designation of their jurisdictions), while others are defined in the relevant legislatures' rules. Specifically, Sections 62 (1) (3), and 85(5) confer the power to create these committees and to define their jurisdiction in the relevant rules.

3.1.5. a. Special or General Committee

Section 62 (1) The Senate or the House of Representatives may appoint a committee of its members for such special or general purpose as in its opinion would be better regulated and managed by means of such a committee, and may

by resolution, regulation or otherwise, as it thinks fit, delegate any functions exercisable by it to any such committee.

3.1.5. b. Joint Finance Committee

According to section 62(3) CFRN, the Senate and the House of Representatives shall appoint a joint committee on finance consisting of an equal number of persons appointed by each House and may appoint any other joint committee under the provisions of this section.

NOTE: By section 4 (4) the various committees are only authorized to make recommendations to the House on matters within their jurisdiction.

3.1.5. c. Public Accounts Committee

*Under section 85 (5) CFRN, the Auditor-General shall, within ninety days of receipt of the Accountant-General's financial statement, submit his reports under this section to each House of the National Assembly and each House shall cause the reports to be considered by a **committee of the House of the National Assembly responsible for public accounts.***

3.1.6. Routine Oversight Authority

These are the routine oversight authority over public accounts conferred on the legislature to oversee the financial activities of the executive and all MDAs. These authorities are derivable from the CFRN section 85(2) for Federal Government and Federal agencies and section 125(5) for state government and agencies and are properly defined in the establishment statutes of each ministry, department and agency. To avoid unnecessary repetition, examples of such authority are as outlined under statutory oversight authority below.

Specifically, section 85(2) & (5) provides as follows:

(2) The public accounts of the Federation and of all offices and courts of the Federation shall be audited and reported on to the Auditor-General who shall submit his reports to the National Assembly; and for that purpose, the Auditor-General or any person authorised by him in that behalf shall have access to all the books, records, returns and other documents relating to those accounts.

(5) The Auditor-General shall, within ninety days of receipt of the Accountant-General's financial statement, submit his reports under this section to each House of the National Assembly and each House shall cause the reports to be considered by a committee of the House of the National Assembly responsible for public accounts.

3.2. Statutory Authority: The National Assembly, through statutes, confers some oversight duties on certain bodies and agencies. These bodies are then by law required to report to the National Assembly, who may also conduct oversight functions over the individual agencies. The National Assembly has the power to continue to expand their authority and or create new agencies subject to its legislative competence. Accordingly, only a few examples of such agencies are briefly explained below.

3.2.1. Fiscal Responsibility Commission Act 2007 which creates the *Fiscal Responsibility Commission*. This Act confers some statutory powers of oversight on the Commission which reports to the National Assembly. This is in consonance with the legislative competence of the National Assembly as per section 88 (1) of the Constitution “*to direct or cause to be directed investigation*”. The FRA Commission is an example of a body that may be directed to conduct an investigation. This the Act does in section 2.

3.2.1. a. Duties and powers of the Commission:

2.-(1) For the purpose of performing its functions under this Act, the Commission shall have power to:

(a) compel any person or government institution to disclose information relating to public revenues and expenditure; and

(b) cause an investigation into whether any person has violated any provisions of this Act.

(2) If the Commission is satisfied that such a person has committed any punishable offence under this Act violated any provisions of this Act, the Commission shall forward a report of the investigation to the Attorney-General of the Federation for possible prosecution.

3.-(1) The Commission shall:

(a) monitor and enforce the provisions of this Act and by so doing, promote the economic objectives contained in section 16 of the Constitution;

(b) disseminate such standard practices including international good practice that will result in greater efficiency in the allocation and management of public expenditure, revenue collection, debt control and transparency in fiscal matters;

(c) undertake fiscal and financial studies, analysis and diagnosis and disseminate the result to the general public;

(d) make rules for carrying out its functions under this Act; and

(e) perform any other function consistent with the promotion of the objectives of this Act.

(2) The Commission shall be independent in performance of its functions.

(3) The provision of Public Officers Protection Act shall apply to the members of the Commission in discharge of their functions under this Act.

3.2.2. The Corrupt Practices and Other Related Offences Act 2000 (ICPC Act) which creates Independent Corrupt Practices and other related Offences Commission:

This statute creates a Commission and vests it with some oversight functions and responsibilities in relation to corruption. These are clearly stated in section 6 of the Act which identifies the powers of the Commission.

3.2.2. a. Duties and power of the Commission:

According to Section 6 (a-f) of the ICPC Act 2000, it shall be the duty of the Commission -

(a) where reasonable grounds exist for suspecting that any person has conspired to commit or has attempted to commit or has committed an offence under this Act or any other law prohibiting corruption, to receive and investigate any report of the conspiracy to commit, attempt to commit or the commission of such offence and, in appropriate cases, to prosecute the offenders;

(b) to examine the practices, systems and procedures of public bodies and where, in the opinion of the Commission, such practices, systems or procedures aid or facilitate fraud or corruption, to direct and supervise a review of them;

(c) to instruct, advise and assist any officer, agency or parastatals on ways by which fraud or corruption may be eliminated or minimised by such officer, agency or parastatal;

(d) to advise heads of public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies as the Commission thinks fit to reduce the likelihood or incidence of bribery, corruption, and related offences;

(e) to educate the public on and against bribery, corruption and related offences; and

(f) to enlist and foster public support in combating corruption.

3.2.3. Economic and Financial Crimes Commission Establishment Act 2004 which creates Economic and Financial Crimes Commission. This statute creates a Commission and vests it with some oversight functions and responsibilities in relation to financial crimes and the enforcement of other financial crime related laws. These are clearly stated in section 6 of the EFCC Act which identifies the powers of the Commission below.

3.2.3. a. Duties and power of the Commission:

Section 6. (1) The Commission has power to

(a) cause investigations to be conducted as to whether any person has committed an offence under this Act; and

(b) with a view to ascertaining whether any person has been in offences under this Act or in the proceeds of any such offences, cause investigations to be conducted into the properties of any person if it appears to the Commission that the person's life style and extent of the properties are not justified by his source of income.

(2) The Commission is charged with the responsibility of enforcing the provisions of

(a) the Money Laundering Act 1995;

(b) the Advance Fee Fraud and Other Fraud Related Offences Act 1995;

(c) the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 1994, as amended;

(d) the Banks and other Financial Institutions Act 1991, as amended; and

(e) Miscellaneous Offences Act; and

(f) any other law or regulations relating to economic and financial crimes

3.3. Legislative Rules

Section 62(2) of the CFRN 1999 (As Amended) empowers the National Assembly to establish committees. These they do in accordance with the provisions of their individual rules.

3.3.1. House of Representatives Standing Orders

The House of Representatives Standing Orders pursuant to section 62(1) of the CFRN establishes several committees with specific and general jurisdictions upon which they are empowered to conduct oversight. These committees fall within any of special, standing or *ad hoc* committees. For *ad hoc* committees, their jurisdiction will be determined upon establishment and they cease to exist upon completion of their specific purpose.

Orders xviii Rules 117 to 124 of the House of Representatives Standing Orders 2014 establishes 7 special committees while Orders xviii Rules 126 to 209 establishes 84 standing committees and defines their respective jurisdictions.

In addition to the above committees, the Speaker in consultation with the Senate President and in consonance with section 62(3) CFRN appoint members to the Joint Finance Committee.

3.3.1. Senate Rules

The Senate Standing Orders pursuant to section 62(1) of the CFRN establishes several committees with specific and general jurisdictions upon which they are empowered to conduct oversight. These committees may fall within any of special, standing or *ad hoc* committees. Where they are *ad hoc* committees, their jurisdiction will determine whether they have investigatory power or not and also state the specific matter for which they are established.

With Regards to the Senate, the Senate Standing Orders 2011 (As Amended), (Order xiii 95-97 and orders 98) establishes 6 special committees and 52 Standing Committees and defines their jurisdictions.

These are in addition to the *Joint Finance Committee* established by the Constitution.

The *Public Accounts Committee*, although implied by the Constitution in section 85(5) must also be established by the Senate.

These committees and their jurisdictions are subject to change by the resolution of the Senate.

3.3.1. a. Power to Conduct Investigations: Senate Standing Order 103 gives all these committees where necessary, the power to conduct investigations pursuant to section 88 and 89 of the CFRN 1999 as amended.

The Senate Standing Orders provides under chapter XIV, Rule 2, the authority, procedure and rules of evidence for calling witnesses.

4. Types of Oversight

4.1. Appropriation Oversight

Appropriation Enactment process in NASS

Procedure

- ✓ The President lays the budget before the Senate and House of Representatives (see section 81(1), which may sit jointly or separately.
- ✓ The Rules and Business Committee in conjunction with the Appropriation Committee draw up a timetable for consideration of the different aspects of the executive budget proposal. The debate focuses on the priority frameworks, macroeconomic framework and fiscal policies, etc
- ✓ The Bill is thereafter committed to the Appropriation Committee for further deliberations
- ✓ The Appropriation Committee forms itself into some Sub-Committees. The Sub-Committees invite MDAs to defend their proposals. Inputs are obtained from interest groups and the public at large.
- ✓ This budget defence is oversight as it scrutinizes performance of the previous year budget and incoming year's estimates.
- ✓ The Sub-Committees of Appropriation thereafter collate a revised budget and report to the Appropriation Committee.
- ✓ Recommendations are made on the budget and forwarded to the plenary for consideration.

- ✓ Each House of the NASS communicates its approval to the other chamber.
- ✓ A Harmonisation Committee is thereafter set-up by the leadership of the two Houses to consider areas of divergence between the two chambers. The report of the Harmonisation Committee is signed by all its members and presented to each House at different times.
- ✓ After the budget is passed by the two houses, each house sends a clean copy to the Clerk NASS
- ✓ The Clerk NASS signs it and then forwards same to the President of Nigeria for his assent and thereby making the Appropriation Bill to become a law
- ✓ The Constitution requires the President to sign within 30 days. He may also refuse to sign the Bill into law.
- ✓ The President may within 30 days send his comments (why he refuses and the things he wants done) on the Bill to NASS or NASS may set aside the President's comments and with a two-third majority override the President's veto and the Bill becomes law.
- ✓ This overriding power of NASS is oversight.

4.2. Routine Oversight

Powers of oversight of the legislature as provided in the Constitution⁶ are to be exercised for the purpose of making laws with respect to any matter within its legislative competence and correct any defects in existing laws; and exposing corruption, inefficiency or waste in the execution or administration of laws within its

⁶ See sections 88 and 128 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended)