LEGISLATIVE ACCOUNTABILITY IN NIGERIA: LESSONS FROM THE UNITED STATES OF AMERICA

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A THESIS WRITTEN IN THE FACULTY OF LAW AND SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES IN FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF A DOCTOR OF PHILOSOPHY DEGREE (PhD) IN LAW OF THE UNIVERSITY OF BENIN, BENIN CITY, NIGERIA

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CERTIFICATION OF THESIS ON PLAGIARISM

This is to certify that the thesis titled **LEGISLATIVE ACCOUNTABILITY IN NIGERIA: LESSONS FROM THE UNITED STATES OF AMERICA** submitted by **Victor Eravbare OHIOSUMUA**, Registration Number **PG/LAW9900311**, has successfully passed the plagiarism test and does not violate any copyright regulations. The thesis is based on the student's own research and analysis and all sources used have been duly acknowledged.

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DECLARATION

I, **Victor Eravbare OHIOSUMUA**, Registration Number **PG/LAW9900311**, hereby declare that the thesis titled **LEGISLATIVE ACCOUNTABILITY IN NIGERIA: LESSONS FROM THE UNITED STATES OF AMERICA** is my original work. All sources of information have been duly acknowledged. I have not plagiarized any material from any source and that this thesis has neither in whole nor in part been submitted for another degree elsewhere.

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DEDICATION

This thesis is firstly dedicated to the Almighty God, the source of all wisdom and strength. His unwavering love, boundless mercy, infinite patience, and inexplicable grace have been the bedrock of this journey. Without His divine guidance, this work would not have been possible.

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LIST OF ABBREVIATIONS

ACN	Action Congress of Nigeria
AGF	Attorney General of the Federation
ANPP	All Nigeria Peoples' Party
APGA	All Progressives Grand Alliance
APP	All Peoples Party
ASUU	Academic Staff Union of Nigeria Universities
BC	Before Christ
CBO	Central Budget Office
CDD	Ghana-Ghana Centre for Democratic Development
CDF	Constituency Development Funds
CFRN	Constitution of the Federal Republic of Nigeria
CLEAR	Clear Legislative Accountability Reporting
CNN	Cable News Network
CPC	Congress of Progressive Change
CPTG	Government Project Tracking Group
CSOs	Civil Society Organizations
EU	European Union
FCT	Federal Capital Territory

FEDECO	Federal Electoral Commission
GAO	Government Accountability Office
GNPP	Great Nigeria's Peoples Party of Nigeria
GOPAC	Global Organization of Parliamentarians against Corruptions
ICPC	Independent Corrupt Practice and Related Offence Commission
ICT(s)	Information Communication Technology(s)
INEC	Independent National Electoral Commission
IPU	Inter Parliamentary Union
JCA	Justice of the Court of Appeal
JSC	Justice of the Supreme Court
LDP	Liberal Democratic Party
LP	Labour Party
MDAs	Ministries Department Agencies
MP(s)	Member(s) of Parliament
MWAA	Metropolitan Washington Airports Authority
NGOs	Non-Governmental Organizations
NOA	National Orientation Agency
NPC	National Population Commission
NULGE	Nigeria Union of Local Government Employees

PCIC	Parliamentary Constituency Information Centre
PCRC	The Post Conflict Research Center
PDP	Peoples Democratic Party
PIGB	Petroleum Industry Governance Bill
PLAC	The Policy and Legal Advocacy Centre
SAN	Senior Advocate of Nigeria
SDGs	Sustainable Development Goals
SERAP	Socio-Economic Rights and Accountability Projects
SLA	Strategic Legislative Agenda
SMEDAN	Small and Medium Enterprises Development Agency of Nigeria
C-SPAN	Cable-Satellite Public Affairs Network
TV	Television
UK	United Kingdom
UNDP	United Nation Development Programme
UNP	Unity Party of Nigeria
UN	United Nations
USA	United Sates of America
VIP	Very Important Person
WIBGIVA	World Bank Voice and Accountability index

ABSTRACT

Democracy is universally acknowledged as the most acceptable form of government, because it provides the opportunity for participation of the people in the running of their affairs within a given society. Again it advances an open, responsible, and accountable government. Since 1999, Nigeria practices presidential democracy with three main institutions, comprising of the Executive, Legislature and Judiciary. The Legislature is the most representative as it has the institutional mandate to project the interests of the various constituencies in the country. By virtue of the Constitution of the Federal Republic of Nigeria 1999, (herein 1999 Constitution) the Legislature performs three principal roles of law making, oversight of the executive arm, and representation. Upon election by the electorate, the principle of representation requires legislators to be accountable to their constituents in the performance of their constitutional duties. In Nigeria, there is no consensus of opinion on whether legislators after being elected into parliament constantly engage their constituents in policy decisions, until the next set of elections. The aim of this study was to examine legislative accountability as envisaged under the 1999 Constitution. The study focused mainly on the representational role of the National Assembly and its different models by evaluating its effectiveness. Thus several issues of legislative accountability were interrogated. The study adopted the doctrinal research methodology, using secondary data. The study examined whether there are enough constitutional mechanisms for the electorate to hold legislators accountable. The study analyzed the accountability mechanisms that are available to check the excesses of legislators, provided under the 1999 Constitution. These are free and fair election, recall, minimum sitting days' requirement, sanctity of party label, presidential veto, judicial review, internal mechanism of suspension, and the absence of immunity from criminal trial for legislators. Since Nigeria's constitutional practice is modeled after that of the United States of America, the study undertook a comparison of the American system in the context of the accountability mechanisms in order to draw useful lessons for Nigeria. The study found that the mechanism of recall is ineffective in enhancing legislative accountability due to its cumbersome process as provided in the 1999 Constitution. The study also found that election as a mechanism can only be effective if it is free and fair, which is hardly the case in Nigeria. It also found that although there are a number of mechanisms available in the 1999 Constitution to ensure accountability by the Legislature and its members, recall and periodic elections are the only formal accounting tools at the disposal of the electorates. The study proffered a detailed roadmap to legislative accountability. Consequently, the study identified novel measures such as roll-call, visible and recorded votes which can be adapted from the constitutional practice of the United States of America to promote effective legislative representation cum accountability in Nigeria. The Study recommends that these novel measures found in the U.S should be adopted in Nigeria in other to enhance legislative accountability.

CHAPTER ONE

GENERAL INTRODUCTION

1.1. BACKGROUND TO THE STUDY

There are many conceptual definition of democracy which will be analysed in the literature review. Suffice to say here that democracy can be seen as the ability of the people to participate more in the governance process, consciousness of the workings of governance, and the peoples' ability to discern the fidelity of the rulers, and judge them accordingly through periodic elections.

No matter how people feel about the gains of democracy, particularly as a means to attaining the good life for the majority of the people, it is incontestably the most emulated form of government in modern history. It is an intoxicating concept most people want to identify with. Even blatant autocratic and totalitarian regimes prove very comfortable when they are sometimes referred to as possessing democratic values or tendencies. This is why Ojo opines that: "our discussions about democracy, all argument whether for it or against it are stricken with the intellectual futility because the thing at issue is indefinite"[1].

Dictators like Benito Mussolini, Stalin, Marcus Nguema, Samuel Doe, Ibrahim Babangida, Sani Abacha among others had at different times alluded to their regimes as democratic. In spite of the differences in conceptualisation and practice of democracy, Osaghae[2] notes that all its versions whether liberal or capitalist, socialist and African brand, share the fundamental objective of "how to govern the society in such a way that power actually belongs to all the people. In fact these governments strive to impress on the

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1 E.O. Ojo (ed) *Challenges of sustainable democracy in Nigeria,* (John Archers Publishers Ltd. Ibadan 2006) 275.

2 E. E. Osaghae, *Crippled Giant: Nigeria since Independence*. (John Archers Publishers Ltd, Ibadan, 2006) 301.

outside spectators that they are democratic (just that they would not welcome most of the ingredients of democracy).

Every democratic state have a constitution (written or unwritten) which States the relationship between the rulers and the ruled. *Black's Law Dictionary* defines a constitution, "as the organic and fundamental law of a nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed".[3] According To Hobbes "a fundamental law in every Commonwealth is that, which being taken away, the Commonwealth faileth, and utterly dissolved, as a building whose foundation is destroyed"[4].

However, Aristotle's definition of a Constitution seems to be more relevant here. According to him:

> A Constitution is the arrangement which states adopt for the distribution of offices of power, and for the determination of sovereignty and of the end which the whole social complex in each case aims at realizing.[5]

It means the arrangement of offices in a state especially from the highest to the least. A legislature is the law-making body of a political unit, usually a national government, which has power to enact, amend, and repeal public policy. Legislatures observe and steer governing actions and usually have exclusive authority to amend the budget or budgets involved in the process. The legislature creates a complex interaction between individual members, political parties, committees, rules of parliamentary procedure, and informal norms. The concept of accountability denotes the process of being called to account to some authority for one's actions,[6] accountability of the

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3 Henry Campbell Black, and M. A. *Black's Law Dictionary* (Revised 12th Edn. Paul, Minn. West Publishing Co. 2024) 123

4 Thomas Hobbes, *The Leviathan*, (New York, Touchstone, 1997) 208

5 Aristotle, *The Politics*, in A. Dreizehnter (ed), (Penguin Classic, London 1970) 157

6 R. Mulgan, *Accountability: an ever-expanding concept*: *Public Administration*, 78 (3) 2000: 555-573. Though it is now a common term of art, the term accountability was more common in the financial

legislature finds bearing within the political space provided by democracy.

1.2. STATEMENT OF THE RESEARCH PROBLEM

Election is the best form of representative democracy. The roles of the legislators are lawmaking, oversight and representation. Upon election by the electorate, legislators are required by the principle of representation to be accountable to their constituents in the performance of their constitutional duties. In Nigeria since the advent of the fourth republic in 1999, the electorate has every four year circle, elected their representatives to the parliament. Once majority of the legislators get to the parliament, the constant engagement of the legislators with their constituents before the next parliamentary elections is called to question. The only way to remove non participtary and unaccountable legialators is not reelecting them or recall, but the process is very rigid base on Nigeria Constitution.[7]

While the electorate often expresses worries about ineffective representation,[8] legislators on the other hand contend that the electorate has poor understanding of representation and the challenges they face in carrying out their functions.[9]

In America, the practices of legislative accountability is well defined an tamden with modern democracy whereby the people are given the opportunity for the participation in the running of their affairs.

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context of accountancy and audit. It has a long tradition in both political science and financial accounting, but only more recent prominence in public administration and international development.

7 'See Ss 69(a) and 110(a) of the Constitution of the Federal Republic of Nigeria(CFRN),1999 (as Amended)'

8 PLAC 'A Guide to Effective Representation in the National Assembly' (Policy and Legal Advocacy Center, Abuja; Nigeria with support from Ukaid, 2016) 1

9 Ibid

1.3. AIM AND OBJECTIVES

The aim of the study is to examine legislative accountability under the Nigerian 1999 Constitution in comparison in what is obtainable in the United State of America. The objectives of the study were to:

1. Examine the concept of legislative accountability;
2. Assess the legislative frameworks;
3. Investigate oversight mechanism;
4. Compare institutional and legal framework between Nigeria and America;
5. Identify best practices
6. Recommend reforms

1.4. RESEARCH QUESTIONS

1. What are the constitutional and legal frameworks govering legislative accountability in Nigeria and the United States of America?
2. How do oversight function of legislators differs in practice between Nigeria and the United States of America?
3. What are the roles of political parties discipline in facilitating legislative accountability between Nigeria and the United States of America?
4. How does civil society, non-governmental organizations and public participation shape Legislative accountability in Nigeria and the United States of America?
5. What barriers hindes effective legislative accountability in Nigeria and the United States of America?
6. What legal and procedural lessons from the United States of America can be adapted to improve legislative accountability in Nigeria?

1.5. SIGNIFICANCE OF THE STUDY

This study is significant because it exposes the inefficiency of the existing models of legislative accountability and present the factors and challenges responsible for ineffective legislative accountability and the impact of limited accountability to Nigeria, and also prescribe an appropriate template for measuring legislative performance. In addition, the suggestions and recommendations proffered in this study will help improve the accountability of the legislative arm of government in Nigeria. Finally, this work will be useful to scholars who may wish to carry out further research on the subject matter of this study.

1.6. RESEARCH METHODOLOGY

The study adopted the doctrinal research methodology, using primary and secondary data. The study provided a detailed account of legislative accountability under the Nigerian Constitution using the National Assembly as a case study. It looked at the implications of lack of accountability by the legislature-and the implications of good governance for the electorate. Therefore, in furtherance of the aim and objectives of the study, it adopted the usual analytical research methodology which involved both explanatory and doctrinal approach.

The study relied on primary and secondary data. The primary data include statutes based on information and facts sourced from the Constitution of the Federal Republic of Nigeria, 1999, the Electoral Act 2022, the Legislative Houses (Powers and Privileges) Act, 2018, Lagos Constituency Projects Development Law of 2000, The Public Complaints Commission Act, 2004 and ancillary laws in relation to other jurisdictions like the American Constitution 1787, The Congressional Accountability Act, 1995, The Legislative Reorganisation Act of 1970, The Administrative Procedures Act of 1946, The Congressional Budget and Impoundment Act 1974, The Constitution of the Republic of

Ghana, 1992, Kenya's Constituency Development Fund Act, 2013. They were used to highlight the effectiveness and inadequacies of some mechanisms of the legislative accountability.

The study also relied on secondary sources of data, such as, textbooks, articles, journals, official publications, Newspapers, conference papers, rules and procedures of the Nigerian National Assembly, both the Senate and House of Representatives, internet sources and documentaries. Some of the secondary data relied on were sourced from the Independent National Electoral Commission (INEC), BudgIT, Tracka, Constituency Project Tracking Group (CPTG) Afrobarometer survey University of Denver Strategic Issues Program, National Institute for Legislative and Democratic Studies (NILDS) and so on.

The study also relied on prior reports on legislative accountability, debates, resolutions, Acts of the National Assembly and of the American Congress and judicial decisions. These various sources were used in reviewing and analyzing the concepts and theories of democracy, legislature, separation of powers, representation, accountability, populism and legislative accountability. A comparative analysis was also to evaluate the models and practices in the United States of America (USA) vis a vis the Nigeria model. This was done by using statutes like United States Constitution, 1787, Congressional Accountability Act of 1995 and the Congressional Budget and Impoundment Act 1974. Furthermore, judicial decisions were used to reveal the constitutional inadequacy and effectiveness of the institutional and legal framework in Nigeria as well as the need for reforms to enhance legislative accountability in the country.

1.7. SCOPE/LIMITATION OF THE STUDY

The study examined legislative accountability under the 1999 Constitution, using the National Assembly as a case study. Under the 1999 Constitution, the Legislature performs three principal roles: i) law making ii) oversight of the executive branch and iii) representation. The study focused mainly on legislators' representational role by seeking to evaluate their effectiveness. The study compared the Nigerian model with that of American.

1.8. STRUCTURE OF THE THESIS

This study is organized into six chapters. Chapter one serves as a general introduction to the study. It highlights the research problem, the aim and objectives of the study, the methodology employed in the study and scope of the study, amongst others.

Chapter two contains the review of the literature and the theoretical framework of the study. It centres essentially on previous and existing work on related subject matters to the study like democracy, separation of powers, legislature, accountability, representation and populism. It identifies the inherent gaps in the literature which is extensively dealt with in the chapter.

Chapter three deals with legislative representation and accountability under the 1999 Constitution of Nigeria, and gives a brief historical review of the development of the legislature pre-1999 Nigerian Constitution, challenges that the legislators face in representing their constituencies, the legislative agenda of the eight National Assembly and how effective was the agenda implemented. It also took a look at the mechanisms of legislative accountability under the Nigerian Constitution and their effectiveness; these include elections, recall, vacation of seat for non-attendance and floor crossing, power of veto, judicial review, and suspension from plenary and restricted immunity.

Chapter four deals with comprehensive analysis of the American Congress and how they have exercised the concept of legislative accountability in rendering account to the electorate and lessons that the Nigerian National Assembly can learn to enhance both institutional and individual accountability. Some of the lessons include a robust institutional framework of accountability which entails more transparency in voting process, roll call votes, a strong civil society, strong and effective media that aids the information decimation and enlightenment of electorate.

Chapter five deals with the road map to enhancing legislative accountability which include institutional and legal framework, constitutional review, strategic legislative agenda, clear legislative reporting, enlightenment of electorate, effective sanction regime, strong party leadership, and constituents input in decision making.

Chapter six focuses on the summary, conclusion and recommendations of the thesis.

CHAPTER TWO

LITERATURE REVIEW

2.1. INTRODUCTION

Accountability denotes the process of being responsible to some authority for one's actions.[1] The concept of accountability of the legislature finds bearing within the political space provided by democracy. No other form of government possesses a legislature, which is at the same time expected to be accountable to the electorates, for example autocratic, monarchical and military forms of government do not possess a legislature which can be held accountable. It must be a democracy; no democracy, no accountability. In accounting, the concept's long tradition is strictly limited to financial prudence and spending in accordance with regulations. A society without democratic practices will have challenges in holding their elected representative accountable.[2]

By the orientation and positioning of its Constitutional mandates, it is the responsibility of the legislature to ensure unreserved accountability, unpretentious political behavior, and openness in government. However, as the case of Nigeria, these elected representatives have been described as a trajectory of weakness.[3] Parliamentary representation largely involves service to constituents by representing their interests in the legislature and providing a direct link to government. The representation function is critical to the long-term sustainability of a democracy. Citizens need to feel that their representatives are listening to them and that their

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1 Richard Mulgan, 'Accountability: an ever-expanding concept', [2000] 78 (3) *Public Administration*, 555-573.

2 Andre Nollkaemper and Philip Dearmond Curtin, 'Conceptualizing Accountability in International and European Law', [2007] 36, *Netherlands Yearbook of International Law,* 3-20.

3 Alabi, Mojeed Olujinmi, 'The Legislatures in Africa: A Trajectory of Weakness', [2009] 3(5) *African Journal of Political Science and International Relations*, 233-241;.

issues or interests will be taken seriously and addressed.[4] It cannot be overemphasized that the legislature is one of the major attributes of democratic governance and if effective, could ensure good governance and provide a forum for grassroots representation. As legislators represent various constituencies, they have direct contact with the local populace and can have a feel of their needs and concerns.[5] It plays a dual role of governance and also of representing the citizens in government. It is the most singular institution that ensures representation of citizens giving them a feeling of inclusiveness; to feel that they own the government by having a say in how its affairs are conducted.[6]

The 1999 Constitution of the Federal Republic of Nigeria provides the powers and functions of the legislatures,[7] which includes lawmaking, oversight, and representation. The Constitution provides for a bicameral legislature at the national level. That is, the legislative powers vested in the National Assembly are to be exercised by two bodies made up of Senate and House of Representatives. The Constitution provides for a single legislative house, that is, unicameral legislature for the states of the federation.

Simply referred to as the government of the people by the people and for the people, the origins of democracy is rightly attributed to the Ancient Greek of 300 BC,[8] even though its modern forms, variations and attributes no doubt, would beat the imaginations of Cleisthenes, Solon, Ephialtes, Pericles, its most ambitious

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4 Meryl Davis, 'Government Accountability and Parliamentary Committees', (2016) <https://silo.tips/download/unit-6-government-accountability-and-parliamentary-committees> accessed 14th, July, 2021

5 *Guide to Effective Representation in the National Assembly,* (Policy and Legal Advocacy Centre (PLAC) Abuja, Nigeria 2016) 7.

6 Ibid, 8.

7 S. 4 (1) of the Constitution of Nigeria 1999, as amended.

8 Josiah Ober and Robert W. Wallace, 'Origins of democracy in ancient Greece' with chapters by Paul Cartledge and Cynthia Farrar (Berkeley and Los Angeles, California: University of California Press, 2007). 45

practitioners of this period.[9] In fact, as Momrak observed,[10] today, democracy is an international word of praise and a veritable export-article of the Western World. It takes pride of place among the Greek birth-gifts to Western Civilization, although modern democracy in many respects fundamentally differs from Athenian democracy.[11]

It was the Athenians with the laws of Draco, the creation of democratic institutions of Solon, the constitution of Cleisthenes, and the reforms of Ephialtes that culminated in the idea of democracy. According to Wallace, before the fifth-century development of the ideologies of political type (such as democracy or oligarchy), the Greeks had no names to designate different approaches to constitutional reform, or to help conceptualize coherent or consistent political solutions.[12] From its simple background, which relied on direct deliberations by adult male citizens of the early Greek City-States,[13] the concept of democracy has morphed over the ages into different forms, to the extent that it is no longer possible for the term to stand alone in present discourses. The word 'democracy' is now prefixed with different adjectives to indicate its numerous yet growing variations, these variations include; direct democracy, representative democracy, presidential democracy, parliamentary democracy, authoritarian democracy, participatory democracy, islamic democracy and social democracy. [14] It should be noted that these variations are relational and

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9 Solon, Ephialtes and Pericles, *Influences of the Solon Cleisthenes and Pericles on democracy*, (University of Loulsoville Institutional Repository. 1942) 'It was the Athenians with the laws of Draco, the creation of democratic institutions of Solon, the constitution of Cleisthenes, and the reforms of Ephialtes that culminated in the idea of democracy'.

10 Kristoffer Momrak, 'The Origins of Democracy Political Developments in Greece' ca. 1150 – 462/1 BCE as compared with the structures of Ancient Near Eastern Polities (Oslo, Norway: Institute of History, University of Oslo, 2004).

11 Ibid.

12 Josiah Ober and Robert W. Wallace, 'Origins of democracy in ancient Greece' with chapters by Paul Cartledge and Cynthia Farrar note 8, 49.

13 Ibid, 49.

14 Ibid, 50.

complimentary rather than oppositional. In fact, the presence of more of the variations combined in a single polity, the healthier the democratic practice of such state.

The variations notwithstanding, democracy as a modern form of government is predicated on a number of core attributes one of which is the presence of separation of powers of the state.[15] As a related concept, assumed of being of a later origin, separation of powers refers to the horizontal division of the major functions of the government of modern state; i.e. law-making, execution/administration and interpretation of laws made.[16]

The law-making function has come to assume the apex function of the State, since this act alone has the propensity to affect the majority of the citizens of the State, by regulating group and individual conducts. Nwabueze, asserts that "the sovereign power in a state is identified in the organ that has the power to make laws by legislation."[17] From here lies the overall importance of the legislature in modern state whose foremost function is to legislate.[18] Hayek, and Vile, believes the foremost function of legislature is representation and not to legislate.[19] As Carey observed, "the most fundamental policy decisions budgets, treaties and trade agreements, economic, environmental, and social regulation, elaboration of individual and collective rights all must be approved by legislatures".[20] Advocates of liberal democracy like Aristotle

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15 Abonyi Edigheji, 'A Democratic Developmental State in Africa: A concept paper' [2006] *Centre for Policy Studies Johannesburg*, 2-26.

16 'There is a consensus that Locke, and later Baron Montesquieu propounded and expounded the concept respectively, nonetheless, the Greeks, and later the Romans have always emphasis the separation of powers in the form of mixed government'.

17 Ben Nwabueze, 'Constitutional Democracy in Africa' [2003] (1) *Ibadan: Spectrum Books,* 182 & 183.

18 Maxwell A. Cameron and Tulia G. Falleti, 'Federalism and the Separation of Powers at the Subnational Level' (a Paper delivered at the 2004 Annual Meeting of the American Political Science Association, September 2 - September 5, 2004). <https://www.jstor.org/stable/4624711> accessed 12th, February, 2022.

19 *Friedrich* A.Hayek, 'Law, Legislation and Liberty', [1982] (3) *London: Routledge*, 22-40 and Maurice John Crawley Vile, 'Constitutionalism and the Separation of Powers', (2nd ed. Indianapolis Liberty Fund, 1998), 33

20 John M. Carey, *Legislative Voting and Accountability,* (Cambridge University Press, 2008) 4.

and Locke are of the view that the legislature should have an independent capacity to hold the executive accountable.[21]

This is premised on the role of the legislature as an instrument of accountability when fully developed, in terms of its capacity to perform its collective functions, the legislature is an institution of counterbalancing power that facilitates both horizontal accountability across government agencies, and vertical accountability to the public.[22] In other words, the legislature, as the representative body of the state and public interest, has the obligation to counterbalance the power of the executive in a matter that would promote the public good. As the representatives of the people, members of the legislature are bound to offer an environment conductive for the promotion of accountability in government through an effective oversight of executive decisions.[23]

Nonetheless, the mandate to carry-out the functions of law making, oversight and representation are inherent to the legislature as a body.[24] This mandate comes from the citizens who hold the power of sovereignty by electing persons adjudged to be able to represent their collective interest at the legislature. Accountability means the obligation to answer for the performances of duties. This goes beyond mere information; it includes the capacity to impose sanctions for the failure or abuse of responsibilities as a measure of remedy, with a view to rectifying the governance failure through deterrence.[25] Thus, accountability mechanisms such as parliamentary

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21 Barkan Joel. 'Emerging Legislature or Rubber Stamps: The South African National Assembly after Ten Years of Democracy' [2005] *Centre for Social Science Research (CSSR) Working Paper, University of Cape Town,* 134.

22 Omololu. Fagbadebo and Fayth Ruffin, Perspectives on the Legislature and the prospects of Accountability in Nigeria and South Africa: Advances in African Economic, Social and Political Development, (Springer International Publishing AG, part of Springer Nature, 2019) 2-3.

23 Barkan Joel, 'Emerging Legislature or Rubber Stamps: The South African National Assembly after Ten Years of Democracy' note 21.

24 Boris Odalonu, *The Role of Legislature in Promoting Good Governance in Nigeria*, (Book Works Publisher, 2020) 157

25 Richard Mulgan, 'Accountability: an ever-expanding concept' note 1, 409.

oversight and media investigations require the capacity to impose sanctions by the relevant agencies in a transparent manner. Accountability is not rhetoric of self-appraisal but a relationship between two or more parties, in which one party is subject to external scrutiny from others.[26] Schedler sees accountability as a measure to prevent and redress the abuse of political power. He says,

> It implies subjecting power to the threat of sanctions; obliging it to be exercised in transparent ways and forcing it to justify its acts.[27]

Donnell identifies two types of accountability; horizontal and vertical.[28] Vertical accountability represents the exercise of the voting power of the citizens in order to change leaders through the electoral process. Example includes: direct election, recall and referendum. Horizontal accountability, on the other hand occurs in-between elections through institutional measures and mechanisms. Examples are: judicial review, oversight, veto, executive assent, legislative approval of executive appointments, ratification of treaties, lawmaking with regard to executive bill, legislative approval of appropriation, and so on. Institutions, such as legislature as well as other government agencies, charged with the responsibility of conducting oversight activities over government administrations exercise horizontal accountability. Such institutions have the requisite powers and authority to take actions that span from the routine oversight to criminal sanctions or impeachment in relations to actions or omissions by other institutions of the state that maybe qualified as unlawful.[29] Adamolekun identifies diagonal and social-drawn horizontal accountability. Diagonal accountability, according to him, connotes the involvement of the citizens in enforcing horizontal accountability, examples are: Civil Society

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[26] Ibid

[27] Andreas Schedler, 'Conceptualizing Accountability' in Andreas Schedler and Larry Diamond, and Marc F. Plattnen (Eds), *the Self-Restraining State: Power and Accountability in New Democracies* (Lynne Rienner Publ. Inc. London 1999) 14.

[28] Guillermo O. Donnell, *Dissonances*, (Notre Dame University Press, 2008). 198

[29] Ibid, 28.

Organizations, CSOs and Non-Governmental Organizations, NGOs.[30] Since the legislature is the symbolic representation of the public, the citizens, as in the cases of impeachments in some Latin American countries mount pressure on their representatives to enforce accountability when the government seems to be working against the public interest.[31]

The World Bank sees the concept of accountability as the center of many social-scientific policy debates.[32] To underscore its importance, the United Nations makes the actualization of accountable public institutions one of the sustainable development goals (SDGs).[33] However Lindberg pointed out that analyzing accountability cross-nationally faces two impediments – first, the concept is "over stretched" and second, the only cross-nation accountability index (the World Bank Voice and Accountability index WIBGIVA) has limited temporal coverage in addition to being inconsistent and opaque.[34] The second view was equally canvassed by other scholars.[35] However this study is of the belief that in spite of these two impediments, a cross-national analysis of the concept of accountability is germane as it will open more windows for more research in the subject area and take benefits of comparative literature. Pelizzo sees accountability as one of the most important procedural characteristics of a well-functioning democracy. It is all about

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30 Ladipo Adamolekun, 'The Governors and the Governed: Towards Improved Accountability for Achieving good Development Performance'. [2010] (2) *Africa Review*, 105-138

31 Perez-Linan S. Anibal, *A Two-Level Theory of Presidential Instability* (Latin American Politics and Society, 2014, 56, 1) 35-54.

32 World Bank Institute, 'Social Accountability in the Public Sector'. (World Bank Institute Working Paper No. 33641, 2005).

33 This is recognized by SDG 16 and the 2030 Agenda for Sustainable Development by the UN resolution: A/Res/70/1.

34 Staffan I. Lindberg, *Mapping Accountability, Core Concept and Subtypes* (International Review of Administrative Sciences, 2013) 76.

35 Apaza, Carmen, 'Measuring Governance and Corruption Through the Worldwide Governance Indicators: Critiques, Responses, and Ongoing Scholarly Discussion'. [2009] 42 (1) *PS: Political Science & Politics*, 139–43; Langbein, Laura, and Stephen Knack. 2010. 'The Worldwide Governance Indicators: Six, One, or None?' *The Journal of Development Studies* 46 (2): 350–70; and Thomas, Melissa.. 'What Do the Worldwide Governance Indicators Measure?' *The European Journal of Development Research*, 2010 22 (1): 31–54.

questionability and answerability to those who have invested their trust, faith, belief and resources for you.[36] Also empirical studies show that, in some cases, transparency is a pre-condition of accountability. In other cases, transparency requirements can make accountability confusing and difficult to achieve.[37] In general, it is assumed that the existence of transparency would result in better governance, more accountability and less corruption.[38]

This study leans towards the view that the concept of accountability entails transparency, good governance and responsibility. Without accountability democracy is impossible, it is one of the bastions of democracy. Giving account by public officials both elected and non-elected sustains democracy and the electorate must have adequate information about what is going on in government in respect of the performance of their representatives that they elected into office.[39] The true test of democracy is the extent to which parliament can ensure government remains answerable to the people.[40] They must have the power to sanction erring representatives one way or the other.

The two forms of vertical and horizontal accountability are possible in a democracy where the principles of separation of powers are sacrosanct. It has been generally agreed by scholars that though there are other incidental functions of the legislature as an institution of elected representative of the people, its core or main

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36 Ricardo Pelizzo, 'Democracy, accountability, and parliament', [2013] (2).*Nigerian Journal of Legislative Affairs,* 5.

37 Nieves Zúñiga, Matthew Jenkins and David Jackson, *Does more transparency improve accountability?,* (Transparency International, 2018) 2.

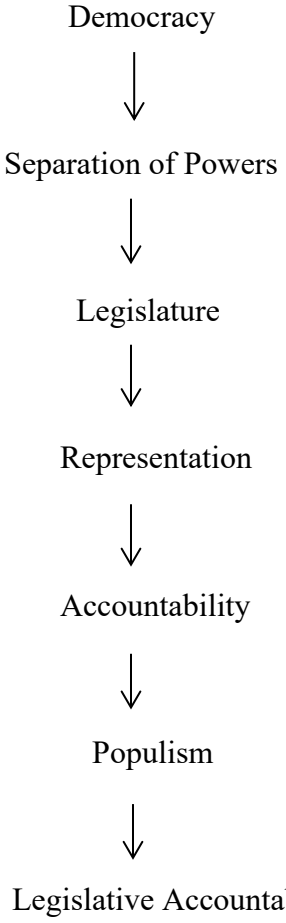
38 Bovens, M. 'Analysing and Assessing Accountability: A Conceptual Framework'. (2006); in Koppell, J. G. 'Pathologies of Accountability: ICANN and the Challenge of "Multiple Accountabilities Disorder"'.(2005); 189 Mulgan, R. Transparency and Public Sector Performance. (2012). 190

39 Alexis de Tocqueville, 'Democracy in America', [2012] (2) *Liberty Fund, Inc*, 1840.

40 Adebimpe Ofuson, 'Parliamentary Accountability: Why it Matters and their Challenges in South Africa', (DDP Admin, March 3, 2022)1.

functions are law making, oversight, and representation.[41] The question that now arises is how best voices of the people can be heard. Is it through popular participation like direct voting of the electorate, through referendum, or plebiscites? This is where the concept of populism comes in. Populism is gaining traction because there is a view point that believes that there is lack of responsiveness and accountability of various forms of representative system.[42] In this way, it is possible to represent a vertical relationship among these concepts, i.e., democracy, separation of powers, legislature, accountability, representation and populism. Aside the minimalist rendition of democracy, it is doubtful if democracy can exist without the provisions for accountability of elected representatives, particularly the legislature.

Figure 2.1



41 S. 4 (1-9) in respect of the National Assembly.

42 Love J. Gregory and Windsor C. Leah, 'Populism and Popular Support, Vertical Accountability, Exogenous Events, and Leader Discourse', (Venezuela, Political Research Quarterly, January 7, 2018) 1-14

In the following passages, the sequence as seen in figure 2.1 shall guide the review of the literature relevant to this study. In this sense, democracy shall be discussed before separation of powers. These shall be followed by the legislature, accountability, representation, populism and legislative accountability. As a concept in developmental discourse, the workability of legislative accountability is intricately linked to the existence of democracy and the concept of separation of powers. Therefore, by presenting these concepts, and in this sequence, our understanding of contemporary governance is further enhanced. What is striking however, is that, accountability of the legislature, representation and populism are now increasingly recognized as an essential ingredients of democracy. Democracy is presently described in terms of procedures of accountability inherent in a particular polity professing to be democratic, which include how a polity actually operates, its capabilities and capacities, routines, and standard operating procedures.[43]

2.2. CONCEPTUAL FRAMEWORK

2.2.1. DEMOCRACY

Democracy is universally acknowledged by the United Nations as the most acceptable form of government because it guarantees citizens participation and human rights.[44] Of the existing conceptual options, democracy is celebrated for providing opportunity for participation of the people in the running of their own affairs within a given society. Schedler is of the view that democracy epitomizes an open, responsible, and accountable government, and is "a system of government by which political

[43] Johan P. Oslen, 'Democratic Accountability and the Terms of Political Order', [2017] *Oxford Academy*, 23.

[44] The United Nations, 'Democracy', (UN) <https://www.un.org/en/ global-issues/democracy> accessed, 11th, October, 2022

sovereignty is retained by the people and exercised directly by citizens."[45] In his classical definition, Lincoln sees democracy as "the government of the people by the people and for the people."[46] According to this view, people are central in any democratic process. It is a process of aggregating the preferences of citizens in choosing public officials and policies. Without giving the people the power to decide who becomes their leader as well as hold their leaders accountable, democracy would be a mirage.[47]

According to Diamond, *et al*., democracy as a system of government entails healthy competition between parties for effective position of governance, devoid of violence, encompassing level of political involvement in the selection of leaders through the conduct of periodic free and fair elections, fundamental human rights, and political participation.[48] Ajayi posits that democracy offers participatory opportunities for residents in choosing political aspirants through periodic elections of reliable representatives to govern and protect their interest. It assures the satisfaction of the electorates and the rule of law as the chosen leaders are answerable to them. Any nation that claims democracy, but the citizens' votes and voices are not considered, such a nation is not practicing democracy.[49] From all the submissions above, one can infer that, democracy is essentially people-centered. It is a system of government that promotes citizens' participation in the entire electoral process.

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45 Andreas Schedler, 'Conceptualizing Accountability' in Andreas Schedler and Larry Diamond, and Marc F. Plattnen (Eds), *the Self-Restraining State: Power and Accountability in New Democracies* note 27, 18.

46 Abraham Lincoln in his famous address at the Day of the Gettysburg, November 19, 1863. < https://www.thoughtco.com/abraham-lincoln-and-the-gettysburg-address-1773573> accessed 28th, September 2022.

47 Guillermo O. Donnell., *Dissonances*, note 28.

48 Larry Diamond and Juan Linz and Seymour Martin Lipset, 'Democracy in Developing Countries' [1989] (2) *Boulder, CO: Lynne Reinner Publishers*, 24-27

49 Kayode Ajayi, 'Problems of Democracy and Electoral Politics in Nigeria', in Kolawole (ed), *Issues in Nigerian Government and Politics* (Ibadan: Dekaal Publishers, 1998) 43.

To Edigheji, democracy is a form of political system in which the decision makers are selected through fair, honest, periodic elections in which candidates freely compete for votes and in which virtually all adult population are eligible to vote.[50] To him, separation of powers, political tolerance, accountability, transparency, rule of law and equality are essential features for democratic government.[51] Democracy therefore involves popular participation in the process of governance, equality among citizens, sovereignty of the people, promotion and protection of human rights and essential freedoms, limited government, supremacy of the rule of law, and separation of powers between the three arms of government.[52]

In the main, democracy refers very generally to a method of group decision making characterized by a kind of equality among the participants at an essential stage of the collective decision making.[53] Four aspects of this definition should be noted. First, democracy concerns collective decision making, by which we mean decisions that are made for groups and that are binding on all the members of the group. Second, this definition means to cover a lot of different kinds of groups that may be called democratic. So, there can be democracy in families, voluntary organizations, economic firms, as well as states and transnational and global organizations. Third, the definition is not intended to carry any normative weight to it. It is quite compatible with this definition of democracy that it is not desirable to have democracy in some contexts. So, the definition of democracy does not settle any normative questions. Fourth, the equality required by the definition of democracy may be deep. It may be the mere formal equality of one-person one-vote in an election for

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50 Abonyi Edigheji, 'A Democratic Developmental State in Africa: A concept paper' note 15, 2-26.
51 Ibid, 4.
52 Ibid, 8.
53 Christian Tom and Sameer Bajaj, '*Democracy', The Stanford Encyclopedia of Philosophy (*Spring 2022) <https://plato.stanford.edu/archives/spr2022/entries/democracy/> assessed on Match, 26th, 2022.

representatives to an assembly where there is competition among candidates for the position. Or it may be more robust, including equality in the processes of deliberation and coalition building.[54]

Democracy may refer to any of these political arrangements. Sodaro believes that "the essential idea of democracy is that the people have the right to determine who governs them. In most cases they elect the principal governing officials and hold them accountable for their actions. Democracies also impose legal limits on the government's authority by guaranteeing certain rights and freedoms to their citizens."[55]

The function of normative democratic theory is not to settle questions of definition but to determine which, if any, of the forms of democracy may take are morally desirable and when and how. For instance, Schumpeter argues, with some force, that only a highly formal kind of democracy in which citizens' vote in an electoral process for the purpose of selecting competing elites is highly desirable while democracy draws on a more ambitious conception of equality is dangerous.[56] On the other hand, Rousseau is apt to argue that the formal variety of democracy is akin to slavery while only robustly egalitarian democracies have political legitimacy.[57] Plato et al, have argued that democracy is not desirable at all.[58]

Nevertheless, democracy is the most popular form of government and is now a universal norm.[59] The United Nations General Assembly has even made resolutions

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54 Christian Tom and Sameer Bajaj, '*Democracy', The Stanford Encyclopedia of Philosophy* note 53.
55 Michael J. Sodaro, *Comparative Politics: A Global Introduction,* (New York: McGraw Hill, 2004) 31.
56 Joseph Schumpeter, *Capitalism, Socialism and Democracy,* (New York: Harper and Row, 1956) XXI.
57 Jean-Jacques Rousseau, *The Social Contract,* Trans. Charles Frankel (New York: Hafner Publishing Co., 1947) 145
58 Plato Saunders and Trans Trevor J. Saunders, *The Laws*, (Harmondsworth: Penguin, 1970). 20
59 Francis Fukuyama, *The End of History and the Last Man* (Free Press, 1992). 12 – 15

on democracy as a minimum requirement of every government.[60] We need not canvases the utility or otherwise of it to the modern state. Other forms of government existed even before Athens, but these institutions could only have fallen because of their utility value. It is doubtful whether it is too premature to state that, the idea of democracy has crystalized the balances sought by the age-long struggle between the rulers and the ruled conceived in different theories such as the divine rights of king, vindiciae contra tyrannous (defenses [of liberty] against tyrants), social contract theory,[61] and so on, and occasioned in political movements like the American, French and the Bolshevik revolutions.[62] But if anything is left, this should be the ability of the people to participate more in the governance process, consciousness of the workings of governance, and the people's ability to discern the fidelity of the rulers, and judge them accordingly through periodic elections.

2.2.2. **Representative Democracy**

Man's political culture and tradition has remained the most constant of his enterprises. Even in times of violence and crises, man's intellectual investigation to the problems of his group life does not cease. The fact that the Athenian, Romans, and so on, bequeathed direct democracy to us has not stopped modern generation from thinking of how best to improve on her socio-political and economic status. As political communities change and evolve, so does our understanding of how

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60 Since 1998 the United Nations Assembly has adopted one resolution annually in support of democracy, the latest being resolution 76/165, promotion of a democratic and equitable international order which was adopted by the General Assembly on 16 December 2021. It recalls its previous resolutions on the same subject matter, including resolution 75/178 of 16 December 2020, and Human Rights Council resolutions 18/6 of 29 September 2011 and so on, <https://research.un.org/en/docs/ga/quick/regular/76> accessed September, 28, 2022.

61 George Holland Sabine, *A History of Political Theory*, (4th ed, Hinsdale, IL, Dryden Press, 1973); and John S. Dryzek, and Bonnie Honig and Anne Phillips, *The Oxford Handbook of Political Theory* (Oxford University Press, 2006) 25.

62 "On these Revolutions, Particularly the Connection Between the American and the French Revolutions", see H.A. Davies, *An Outline History of the World* (Oxford: OUP, 1964).

democracy should be implemented. The second feature of present day democracy is referred to as representative democracy.[63]

This political arrangement establishes an intermediary political actor between the individual and the policy outputs of the state. Through the electoral process, one person or a group of people are elected and assigned the task of making decisions on behalf of the group of citizens that they represent. In the United States, we have multiple intermediaries. Each state has two representatives in the upper house, or Senate. In the lower house, or House of Representatives, the number of intermediaries appointed is based on the population size of each state. It is important to note that while the power of the individual is diminished slightly, political representatives are still beholden to the group that they represent, also known as their constituency.[64]

In Nigeria and the United States, members of both the House of Representatives and Senate face regular elections, during which the public evaluates their performance. If citizens are pleased, then it is expected that the representative will be re-elected. This repetitive process creates a relationship of accountability between voters and those that they put into power. Electoral defeat serves as a deterrent to a politician's temptation to err from the preferences of his or her constituency.

2.2.3. **Principles of Democracy**

Less than a quarter-century ago, democracy appeared to be confined, with a few exceptions, to North America and Western Europe. These nations had advanced industrial economies, sizable middle classes, and high literacy rates-factors that many political scientists regarded as prerequisites for successful democracy. They were

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63 David Held, *Models of Democracy,* (5th ed., Cambridge: Polity Press, 2006) 21.

64 Philippa Strum, (ed), *Democracy in Brief* (Woodrow Wilson International Center for Scholars, 2006) 14

home not only to free and competitive multiparty elections but also to the rule of law and the protection of individual liberties. In short, they were what had come to be called "liberal democracies."[65]

In the rest of the world, by contrast, most countries were neither liberal nor democratic. They were ruled by a variety of dictatorships-military, single-party, revolutionary, Marxist-Leninist-that rejected free, multiparty elections (in practice, if not always in principle). By the early 1990s, however, this situation had changed dramatically, as an astonishing number of autocratic regimes around the world fell from power. They were generally succeeded by regimes that at least aspired to be democratic; giving rise to the phenomenon that Huntington termed the "third wave" of democratization.[66] Today, well over a hundred countries, in every continent in the world, can plausibly claim to have freely elected governments.

Outside of Africa, few of these aspiring new democracies have suffered outright reversions to authoritarianism. But many, even among those that hold unambiguously free and fair elections, fall short of providing the protection of individual liberties and adherence to the rule of law commonly found in the long-established democracies. Zakaria has contended that the promotion of elections around the world has been responsible for "the rise of liberal democracy" – that is, of freely elected governments that fail to safeguard basic liberties. "Constitutional liberalism," Zakaria argues, "is theoretically different and historically distinct from democracy. Today the two strands of liberal democracy, interwoven in the Western political fabric, are coming apart in the rest of the world. Democracy is flourishing; constitutional liberalism is not."[67]

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65 The Saylor Foundation, *Types of Democracy,* <www.saylor.org/courses/polsc221/#4.1.5/> accessed 19th, September, 2021.

66 Samuel P. Huntington, 'The Democracy's Third Wave: Journal of Democracy' [1991] 2 (2) *Spring*.

67 Fareed Zakaria: 'Conceptual Foundation of International Policies' (October 21, 2002) 2.

Longley holds the view that there is a consensus of opinion by political scientists[68] that most democracies are based on six foundational elements or principles which includes: popular sovereignty, an electoral system, public participation, separation of powers, human rights, and rule of law.[69]

However Day believes that the principles of democracy are 14 in number and this are: participation of citizens, equality, accountability, transparency, political tolerance, multi-party system, control over the abuse of power, freedom of economy, bill of rights, human rights, free and fair elections, free courts, accepting election results and rule of law.[70] This study believes that the principles of democracy are not exhaustive and overlaps each other. In taking Day's assertion the most relevant principles of democracy as it relates to this study are: participation of citizens, accountability, free and fair election, free court, accepting election results and rule of law. These principles allow the legislatures who are the true representative of the people to be collectively and individually held accountable in the performance of their duties to the citizens who elected them in the first place. Democracy as a concept enhances accountability of elected public officials to the citizens.

Ahlhaus on the other hand agues that membership politics could be democratized by introducing a randomly selected political institution, which he calls 'boundary assembly', that equally represents members and nonmembers and is

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68 Amongst which are Kapstein, Ethan B., and Converse, Nathan, *The Fate of Young Democracies*, (Cambridge University Press, 2008).

69 Robert Longley, 'What is Democracy? Definition and Examples', (2021), <https://www.thoughtco.com/democracy-definition-and-examples-5084624> accessed on July, 16, 2022.

70 Jonathan Day, '14 Principles of Democracy: What makes a democracy a democracy? Here are the 14 basic principles that define and support a democratic society', [2022] *Civic Space Policy Paper*, <https://www.liberties.eu/en/stories/principles-of-democracy/44151> accessed 26th, July, 2022.

charged with making binding decisions on a subset of a state's membership questions.[71]

Democratic assemblies can be defined as groups of citizens coming together to deliberate and sometimes also to decide public policy issues. As a tool of citizen participation, assemblies place relatively high costs on participants, as they require sustained physical presence and mental attention during a defined period.[72]

Whatever meaning and content is given to the term democracy, what essentially distinguishes it in essence from other systems of government is the right of popular participation in governance, and the legitimacy and legitimation of government and governance.[73] Democracy is based on the freely-expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. But, it would be misleading to read these assertions only in light of western cultural and socio-political experiences. As former Secretary-General Boutros-Ghali stated in his 1995 report to the UN General Assembly: "Democracy is not a model to be copied from certain states, but a goal to be attained by all peoples and assimilated by all cultures. It may take many forms, depending upon the characteristics and circumstances of societies".[74] This study holds the view that popular participation and accountability of public officials for their actions are the most essential elements of democracy. Though legitimacy and legitimization of government is also important in democratic settings, it can only be attained by the government being consciously accountable for its actions and decisions to the people. Legitimacy is not only applicable to democratic societies as,

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71 Svenja Ahlhaus, 'Boundary assembly: An institutional proposal for democratizing membership politics', [2024] Global Constitutionalism, 1

72 Daniel Kübler and Philippe E. Rochat, 'Nonparticipation in democratic assemblies: factors, reasons, and suggestions', [2024] *European Political Science Review*, 1

73 Vienna, Declaration on Human Rights. Pt I. para. 8. UN GAOR. UN Doc. A/CONF. 157/23 1993).

74 Boutros Boutros-Ghali, *An Agenda for* Democratization (United Nations, New York, 1995) 30.

undemocratic governments like military rule also seek to legitimize the government and their governance.

The basic principles of democracy are that the people have a right to a controlling influence over public decisions and decision-makers, and that they should be treated with equal respect and as of equal worth in the context of such decisions.[75] These could be called for short the principles of popular control and political equality, respectively. Therefore, for a state to be said to be democratic, some basic principles are expected to be present.

Democracy has its bedrock in the practice of accountability. Accountability in a democracy means that government officials whether elected or appointed by those who have been elected are responsible to the citizenry for their decisions and actions. In order that officials may be held accountable, the principle of transparency requires that the decisions and actions of those in government are open to public scrutiny and the public has a right to access government information. Both concepts are central to the very idea of democratic governance. Without accountability, democracy is impossible. In their absence, voters are necessarily ignorant in their electoral choices; elections and the notion of the will of the people lose their meaning and government has the potential to become arbitrary and self-serving.[76] Aigbokhaevbo et al, are of the strong believe that democracy is synonymous with representation and participation in the affairs of a state either directly or indirectly.[77] Governments that are truly

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75 Boutros Boutros-Ghali, *An Agenda for* Democratization note 74, 30.

76 Olowu Dele, 'Accountability and Transparency essential principles and history,' in Adamolekun , L. (ed) *Public Administration in Africa, Main Issues and Selected Country Studies*. (Spectrum Books Limited, Ibadan, 2002)139-158.

77 Aigbokhaevbo, V., Inegbedion, N., Arishe, G., Osarumwense, N., 'Election and Constitutionalism as a Catalyst for Sustainable Electoral Process' in Kabir, A., Shu'aib, U. M., Umar, I. A., Idris, M.N., (ed), [2023] *Law Democracy and Electoral Process, NALT Conference, A5, Media Enterprises, 237 – 253.*

accountable can more effectively prevent corruption, which involves the use of positions of power or privilege for personal, corporate, or group enrichment.[78]

2.3. THE CONCEPT OF SEPARATION OF POWERS

Separation of Powers has now come to represent the constitutionally acknowledged division of state powers into legislative, executive, and judicial powers, to be manned by respective organs of the state. Despite this simplistic meaning, 'separation of powers is not a simple and immediately recognizable, unambiguous set of concepts' and represents an area of political thought in which there has been an extraordinary confusion in the definition and use of terms.[79] As Vile aptly observed fifty years ago, that a major problem in an approach to the literature on the doctrine of the separation of powers is that few writers define exactly what they mean by the doctrine, what are its essential elements, and how it relates to other ideas? Thus, the discussions about its origin are often confused because the exact nature of the claims is being made for one thinker, or another are not measured against any clear definition. Some kind of preliminary analysis of the doctrine and its elements is therefore necessary before we step into the vast mass of material that history presents to us. The process of definition of a 'pure doctrine' of the separation of powers will of necessity have an arbitrary quality, and no doubt other opinions can be put forward as to what constitutes the 'essential doctrine', on the one hand, and what are modifications of, and deviations from, it, on the other.[80]

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78 Ibid, 159.

79 Gabriel O. Arishe, Developing Effective Legislature: The Country Specific Approach to Assessing Legislative Power (Paclerd Press Limited, Benin City, 2017). 122.

80 Maurice John Crawley Vile, 'Constitutionalism and the Separation of Powers', (2nd ed. Indianapolis Liberty Fund, 1998) 9.

Hapla is of the view that since fifty years ago, the situation has improved, but some chaos persists.[81] The word 'power' can already be very ambiguous.[82] Most authors admit in principle that several separate components are usually combined under the doctrine of the separation of powers. This is sometimes perceived as a consequence of the fact that the idea of separation itself is not sufficient to create a stable political system, but must be combined with other ideas, such as the theory of mixed government, the idea of balance, or the concept of checks and balances.[83] Such an attitude can be traced to Vile, who was the one who explained the mixture of checks and balances with separation of powers in order to achieve effectiveness, and subsequently other 19th century authors followed.[84] The result of this is a distinction between a pure doctrine that emphasizes separation, and a partial doctrine that is enriched by other elements, especially the already mentioned system of checks and balances.[85] In fact, nothing like a pure doctrine or a classical system of the separation of powers has ever existed. Such a conviction is rather a simple, powerful and misleading narrative.[86] Only with the greatest difficulty we find true proponents of such model concepts throughout history, let alone attempt to implement them in practice.

Babalola advances the point that modern state constitutions acknowledge and embody the doctrine of separation of powers in the delineation of governmental power to institutions and functionaries of government in such a manner that each circuit of governmental powers namely: legislative, executive and judiciary are

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81 Martin Hapla, 'The Twilight of the Separation of Powers: Proportionality as a Method of Solving Institutional Issues', [2020] (61) *Hungarian Journal of Legal Studies*, 73

82 Maurice John Crawley Vile, 'Law, Legislation and Liberty', note 19, 73.

83 Ibid, 72.

84 Ibid.74

85 Nick W. Barber, 'Prelude to the Separation of Powers', [2001] *Cambridge Law Journal*, 59–88.

86 Christopher Mollers, the Three Branches. A Comparative Model of Separation of Powers, (Oxford University Press, 2013). 54

administrated by separate and district individuals.[87] He defines separation of powers as the division of responsibilities into distinct branches to limit any one branch from exercising the core functions of another. The purposive and teleological intent of the doctrine of separation of powers is to prevent the concentration of untrammeled and unchecked power by providing for "check and balance" to avoid autocracy, over reaching by one branch over another, and the attending efficiency of governing by one actor without need for negotiation and compromise with any other.[88] Babalola further believes that the concept interacts with both the rule of law and the supremacy of the constitution; and the independence of the judiciary ensures that the executive will be kept within the legal powers conferred by the constitution, and thus simultaneously upholding the rule of law and the constitutional supremacy.[89]

The constitutional historian, Maitland, traces the doctrine of separation of powers in England to the reign of Edward 1, when he posited that "in Edward's day all became definite, there is the parliament of the three Estates, there is the king's crown, and there are the well-known court of law."[90] Henry similarly advanced the doctrine of separation of powers. He was concerned with the necessary balances of powers within the constitution, arguing that the protection of liberty and security within the state depended upon achieving and maintaining equilibrium with the crown, parliament, and the people.[91]

Bolingbroke observed that "since this division of power and these different privileges constitute and maintains our government, it follows that the confusion of them tends to destroy, the proposition is therefore true; that in a constitution like ours,

87 Afe Babalola, 'Relevance of Separation of Powers and its Application to Nigeria' *Vanguard Newspaper* ((July, 10 2019) 20.
88 Ibid, 21.
89 Ibid, 21.
90 Fredrick Williams Maitland, *the Constitutional History of England, a Course of Lectures*, (H.A.L Fisher, New College of Oxford, 1908) 171.
91 Henry Viscount and St. John Bolingbroke, *Separation of Powers* (John Willey & Sons, Ltd, 2014) 1678-1751.

the safety of the whole depends on the balance of the parts". Babalola believes that the significance of the doctrine rest in the fact that "it is trite and axiomatic aphorism that 'power corrupts and absolute power, corrupts absolutely" and that the arrogance of power is the worst form of arrogance ever known to man, among all the forms of arrogance to which men is susceptible.[92] Thus, the entire edifice or superstructure of all modern states and government ought to be established on the three pillars of separation of powers in executive, legislature and judiciary.[93]

Moore summarized the imperative of separation of powers when he stated "the basic premise of the constitution was a separation of power and a system of checks and balances because it was perceived as a fallen creature and will always yearn for more power.[94] It was also recently defined as the division of government responsibilities into distinct organs to limit any of the organs from usurping and exercising the core functions of another organ. The purpose is to prevent the concentration of power and provide for checks and balances.[95] Bassey listed the merits of separation of power as prevention of tyranny, specialization and efficiency, prevention of liberty, independence of each other.[96]

The independence of the legislature and judiciary is imperative for them to discharge their functions effectively without undue interference of the executive branch of government. Legislative accountability will be most ineffective if the legislature cannot oversight the decisions and policies of government. The judiciary will also not be able to put to effective use the mechanism of judiciary review in

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92 Afe Babalola, 'Relevance of Separation of Powers and its Application to Nigeria' note 87, 20.
93 Ibid, 23.
94 Roy Moore, former Senator of Alabama, United States Judge, <https://www.brainyquote.com/quotes/roy_moore_272758#:~:text=Roy%20Moore%20Quotes&text=The%20basic%20premise%20of%20the%20Constitution%20was%20a%20separation%20of,always%20yearn%20for%20more%20power.> accessed, May, 15, 2022.
95 Christopher Bassey, What is Separation of Power? Meaning, Origin, Merits and Demerits, (Wefinder, 2022) 1.
96 Ibid, 2.

holding both the executive and legislature accountable. For instance, the process of lawmaking is incomplete until the executive gives its assent.[97] The theory simply emphasize that the same body or person should not be in control of more than one arm of government. Power must not only be separated but must also be exercised by different people or body of persons.

Waldron differentiates five principles within the component of separation of powers, namely: the principle of the separation of powers; the principle of the dispersal of power from which we can derive the prohibition of its concentration in the hands of any person, group or office; the principle of checks and balances; the principle of bicameralism; and the principle of federalism consisting in the division of power between the federal government and the constituencies that represent its states.[98] A different classification is offered by Vile, who mentions the separation of agencies, the separation of functions, the separation of persons, and the system of checks and balances.[99] Kyritsis, for the purposes of his theories, also distinguishes between the system of checks and balances and the division of labour.[100] Finally, Mollers argues that:

> A closer look at the different traditions will help identify three basic meanings: the first demands an organizational division of different parts of the polity. The second unfolds a precept of alternating checks and balances for all institutions or offices. Finally, the third assigns to the powers specific tasks or functions and prohibits the exercise of these functions through other powers. [101]

We see that all approaches differ in certain ways, but they also have much in common. Some of them, such as Waldron, reflect the specific circumstances in the

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97 Christopher Bassey, What is Separation of Power? Meaning, Origin, Merits and Demerits note 95, 3, 4.

98 Jeremy Waldron, *Political Theory: Essays on Institutions,* (Harvard University Press, 2016) 49.

99 Maurice John Crawley Vile, 'Law, Legislation and Liberty'note 19, 17.

100 Dimitios Kyritsis, Where Our Protection Lies: Separation of Powers and Constitutional Review, (Oxford University Press, 2017) 40.

101 Christopher Mollers, the Three Branches. A Comparative Model of Separation of Powers, note 86, 43.

USA, where they operate with bicameralism and federalism, which, in the context of many other states, have only very limited significance.[102] The question that now arises is "what is the justification for separation of powers?" Fleiner-Gerster, for example, states that the separation of powers is an essential tool to prevent human error by government officials. [103] According to Ackerman, there are three legitimating ideals lying behind it: democracy, professional competence, and the protection and enhancement of fundamental rights.[104]

A considerably longer list is provided by Carolan, who states that the normative reasons justifying this concept may include that it can prevent tyranny by ensuring that power is not vested in any single individual or organ; secure a balance between institutions such that they are capable of supervising each other's actions through a system of checks and balances; ensure law is made in the public interest by establishing a balance of power between institutions, or representative groups; enhance efficiency by giving responsibility for individual tasks to the most appropriate institutional actors; prevent partiality and self-interest by separating the personnel involved in decision-making; ensure objectivity and generality in the creation of laws by separating the tasks of law creation and law enforcement; allow elected and representative officials to supervise the actions of executive officials and call them to account if necessary.[105]

This enumeration not only includes several different objectives, but also a few sub-instruments that we generally consider to be components of the separation of powers. Some of these goals can be considered instrumental to others. For example,

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[102] Martin Hapla, note 811, 74.
[103] Thomas Fleiner-Gerster, *Allgemeine Staatslehre*, (Springer, 1999) 337.
[104] Rose Bruce Ackerman, 'The New Separation of Powers', [2000] 113 *Harvard Law Review*, 633, 640.
[105] Carolan Eoin, The New Separation of Powers: a Theory for the Modern State, (Oxford University Press, 2009) 27, 28.

guarding the balance between institutions can be seen relatively simply as a means of ensuring liberty. So, we are faced with many goals, which can be structured in several ways. In spite of this, Mollers's words are true – a theoretical consensus on why a state organization needs the separation of powers has never existed.[106] Barber emphasized that the goal of the doctrine of the separation of powers is the protection of the liberty of the individual.[107] He argues that the core of the doctrine of the separation of powers is not liberty, but efficiency.[108] However, this represents a blank concept. If you intend to measure it, you must always consider some other purpose. Being effective means achieving a certain purpose successfully.[109] The fact that this concept alone is not enough to create a version of the separation of powers is also admitted by Barber.[110] In his opinion, it needs to be supplemented by a stronger normative thesis in order to generate a sufficiently comprehensive concept that could provide us with some institutional considerations.[111] From the foregoing it can be deduced that separation of powers seeks to secure good governance. This ultimately will lead to accountability of the various arms of government. However, this study opines that the doctrine is more beneficial to the legislature as it empowers it to perform its functions unhindered. This will make the legislative institution more accountable to its constituents in performing their roles of representation and oversight of the executive arm of government.

In a nutshell the concept of separation of powers is to prevent too much concentration of powers in the hand of an arm of the government in order not to create an authoritarian state. Linz and Stephen put it succulently as follows:

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106 Christopher Mollers, note 86, 49.
107 Nick W. Barber, note 85, 59–88.
108 Ibid, 76.
109 Martin Hapla, note 811, 79.
110 Nick W. Barber, note 85.
111 Ibid.

> There are a variety of different forms of authoritarian that fundamentally constrain any democratic transition in characteristic ways and systematically create obstacles to affect democratic consolidation. Different authoritarian regimes affect the subsequent trajectory of transition effort toward democratization in systematic ways.[112]

This is more partially relevant in most developing countries including Nigeria where there is high level of abuse of power and gross impunity especially by the executive arm of government that weld enormous constitutional powers.

Kennedy righty observed that "the bedrock of democracy is the rule of law and that means we have an independent judiciary, judges who can make decisions independent of the political winds that are blowing".[113] She believes that the doctrine is usually hampered by the usurpation of the functions of one arm of government over another. She states that arbitrary and blatant interference by the executive and the usurpation of the functions of the other institutions by the other could result in legal and constitutional deadlock. Thus, one organ of the government should not interfere with any other organ. For example, the executive should not interfere in the administration of justice by the courts.

In this light, separation of powers is formulated in the following way: it is essential for the establishment and maintenance of political liberty that the government be divided into three branches or departments -the legislature, the executive and the judiciary. To each of these three branches, there is a corresponding identifiable function of government- legislative, executive, or judicial. Each branch of government must be confined to the exercise of its own function and not allowed to encroach upon the functions of the other branches. Over the course of subsequent centuries, political theorists such as Aquinas, Grotius, Bodin, Hobbes, Locke,

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[112] Larry Diamond and Juan Linz and Seymour Martin Lipset, note 48, 196.

[113] Caroline Kennedy, 'Independence of Judiciary' (ed) Nyaay Shastra *Law, Social Justice* [2021] http://dx.doi.og/10.17613/c2v9-p544 accessed August, 29, 2021.

Machiavelli and Aristotle among others commented on how to organize state power, in particular with respect to apportioning it and keeping it in check from excessive abuse.

Beke posited that:

> What changed was the cultural and historical context as well as the nature of the 'sphere' within which the theory was intended to operate: the separation of church and state, the detachment of secular power from its supposedly divine origin, the emergence of the concept of the 'state', the notion of popular sovereignty and the differentiation between the constituent power of the people and the constituted power of the monarch are only a few of the fundamental upheavals theorists had to cope with over time.[114]

The writings in Locke's *Second Treatise of Government*, Montesquieu's *De l'esprit des lois* and the *Federalist Papers* by Hamilton, Madison and Jay represent the transition from mediaeval systems of government towards modern ones based on constitutions. To this day the writings of Locke, Montesquieu and the Federalists are credited with being the theoretical foundation for any modern theory on the separation of powers and its practical interpretation and application within present-day constitutional systems.[115]

With the French and American revolutions, concepts like the system of mixed constitutions, the notion of a social contract, and so on. That had constituted a common theoretical foundation for the constitution of the relationship between state and society were swept away. Written constitutions introduced values like democracy and rule of law and became the contextual foundation for the institutional framework. As of that point, in particular the separation of powers was interpreted and

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[114] Beke Zwingmann, Separation of Powers the 'German' way: The Relationship of the German Federal Government and Parliament in the EU Context, (Cardiff School of Law and Politics; 2016). 189

[115] Beke Zwingmann, Separation of Powers the 'German' way: The Relationship of the German Federal Government and Parliament in the EU Context, (Cardiff School of Law and Politics; 2016). 190

conceptualized in the light of the respective constitutional system the scholar worked with.

The doctrines of separation of powers have been given judicial imprimatur by the Nigerian Courts in some decided cases. In the case of the *President F. R. N. v National Assembly,*[116] the Supreme Court held that the separation of powers and the vesting of each in an arm of government require that each arm exercises its power separately and independent of the other except where the constitution expressly provides otherwise. The Court further held that by virtue of section 4(1) of the 1999 Constitution (as amended), 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 House of Representatives. Nowhere in section 4 of the Constitution, or any other provision of the Constitution, is the legislative power of the federation vested in either the President or the Court and vice versa. The Constitutional responsibilities do not overlap from one organ to another.

In the *case of Shell Petroleum Development Company v Ajuwa,*[117] the issue for determination before the court of Appeal was:

> 1. Whether the investigative power or any of the powers of the National Assembly or any of its committees under the 1999 Constitution extends to the exercise of judicial powers and award of damages. The court held that: The National Assembly, as a creation of the Constitution of the Federal Republic of Nigeria, 1999, cannot exercise any power not specially conferred on it. It does not enjoy the privilege of judicial inherent powers. The powers conferred on the National Assembly by the Constitution do not extend to the power to pass resolutions awarding damages or compensation for oil spillages or degradation of an area. The court further held that the Constitution does not permit the exercise of a jurisdiction which of its nature belongs to the judicial power of the commonwealth by a body established for purposes foreign to such power.

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116 [2023] 3 N.W.L.R [Pt. 1870] 23 at 27
117 [2015] 14 N.W.L.R [Pt. 1480] 424 at 4

The Court of Appeal in *National Assembly v Accord,*[118] held that the general principle of constitutional law is that one of the consequences of the separation of powers, which we adopted in our constitution, is that the court would respect the independence of the legislature in the exercise of its legislative powers and would refrain from pronouncing or determining the validity of the internal proceedings of the legislature or the mode of exercising its legislative powers.

This decision of the Court of Appeal was based on the earlier decision of in *Lakanmi v A. G., Western State of Nigeria*,[119] where the Supreme Court held that Decree No 45 of 1968 was ultra vires and a nullity as it purported to perform judicial functions, and submitted that the National Assembly or any of its Committees has no powers to make 'legislative judgment.' The Supreme Court in Lakanmi's case made the same point and emphasized that in Nigeria, then and now too, there existed separation of powers; legislative, executive and judicial, and ruled that the legislature then, by Decree No 45 of 1968, could not pass 'legislative judgment, an exercise of judicial powers.

Specifically on operation of the doctrine of separation of powers under 1999 Constitution the Court held that:

> The doctrine of separation of powers enshrined in the Nigerian Constitution is the foundation for the observance of the rule of law and sustenance of Nigeria nascent democracy. The powers of the legislature, the National Assembly, is to exercise legislative powers and investigative powers with a view to making new laws or correcting any defects or omissions in an existing law by amendment and for the purpose of investigation to expose corruption or inefficiency or waste in the execution of administration of existing laws or in the disbursement or administration of funds appropriated by the National Assembly. It is imperative that the principle of separation of powers is observed and respected to avoid anarchy. A situation where the National Assembly passes a resolution on disputes involving civil rights and obligations and pass on to the

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118 [2021] 18 N.W.L.R. [Pt, 1808] 209 at 11

119 suit no SC.58/69 (unreported)

court to rubberstamp is a step to constitutional breach and a denigration of the rule of law.

This principle also applies to legislative investigation, in the case of *Watkins v United States*,[120] the Supreme Court of the United States set out the following principles:

(a) The power of Congress to conduct investigations, inherent in the legislative process, is broad; but is not unlimited.

(b) Congress has no general power to expose the private affairs of individuals without justification in terms of the functions of congress.

(c) No inquiry is an end in itself; it must be related to, and in furtherance of a legitimate task of congress.

(d) The bill of rights is applicable to congressional investigations as it is to all forms of governmental actions.

(e) A congressional investigation onto individual affairs is invalid if unrelated to a legislative purpose, because it is beyond the powers conferred upon congress by the constitution.

(f) There is no congressional power to expose for the sake of exposure where the predominant result can be only an invasion of private rights of individual.

In authorizing an investigation by a committee, it is essential that the Senate or House should spell out the committee's jurisdiction and purpose with sufficient particularity to insure that compulsory process is issued only in furtherance of a legislative purpose.[121]

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[120] 354 U.S. [1957]

[121] [2015] 14 N.W.L.R [Pt. 1480] 424 at 9. These principles like Chief Akinjide rightly stated were adopted and approved in *Adikwu Innocent v Federal House of Representatives* [1982] 3 NCLR 394, *Tony Momoh v Senate & Or*s 099 [1981] 1 NCLR 105. And *Shell Petroleum Development Company v House of Representatives* [2010] 11 NWLR [Pt. 1205] 213.

2.4. THE LEGISLATURE AND ITS RELEVANCE

The fundamental expectation of the modern state is effective and efficient governance. This role is performed by the government which not only provides security to the people but also looks after their basic needs and ensures their political and socio-economic development.[122] These objectives are achieved by the government through the enactment of binding rules, the giving of direction to societal activities and the enforcement of the rules to ensure compliance.[123] A strong legislature is one of the determinants of public accountability and democratic survival.[124] Democracy survives if it brings about good governance and promotes the well-being of the citizenry. Thus, for democracy to have meaning, the individuals occupying public offices should be accountable for their actions or inactions. The existence of the legislature is central to the promotion of transparency and accountability in a democracy.[125] Thus, the institution is a crucial organ of the state in terms of the promotion of accountability. Liberal democracy is all about the people exercising their legitimate rights and power through their elected representatives.[126] The legislature, therefore, assumes the roles and responsibilities of projecting and defending the popular view of the people. This is particularly so in a presidential democracy where the legislatures represent pluralistic and bi-partisan interests in society.

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122 Hilary Okoeguale, Strengthening Legislative Controls Over Delegated Legislation in Nigeria, [2019] 10 (2) NAUJILJ. 17

123 Gill Mel, 'Building Effective Approaches to Governance', [2002] l9, (2) *The Nonprofit Quarterly,* 46-49.

124 Poteete Amy R., 'Renegotiation of Executive Powers and Executive-Legislative Relations in Botswana'. (Paper presented at the Annual meeting of the American Political Science Association, September, 2 -5, 2017).27<https://www.researchgate.net/publication/228162034_Renegotiation_of_Executive_Powers_and_Executive-Legislative_Relations_in_Botswana> accessed June, 19, 2022.

125 Ahmed M. Lawan, 'Corruption and the National Assembly, Subverting democracy in the Fourth Republic (1999-2007)' in A. M. Jega and H. Wakili and I. M Zango (eds) *Consolidation of Democracy in Nigeria Challenges and Prospects* (AKCDRT Kano, 2009.) 151-164.

126 Bennett Ozioma Orluwene. 'Nigerian Legislature and Public Accountability in Presidential Democracy', [2014] (27) *Mediterraneam Journal of Social Science,* 1411-1420.

Jones averred that powers and functions of government are vested in the legislature, the executive and the judicial organs of government which are coordinate or independent.[127] Constitutional governments all over the world recognizes these three basic departments of government. Laski reiterates this position when he averred that since the time of Aristotle, it has been generally agreed that political power is divisible into three broad categories. These authorities, according to him, include the legislature which makes the general rules for the society, the executive which seeks to apply those rules laid down by the legislature to particular situations and the judiciary which settles disputes between government and its citizens and those between citizens.[128] Kousoulas also lent his credence to the tripartite political administrative division of governmental functions. He viewed that all contemporary states, in practice, have three branches of government responsible for carrying out the basic functions of government. According to him, one set of officials has the primary function of enacting laws, another set of officials implement state policies and decisions while the third settles disputes and punishes those who contravene the law of the land.[129]

Legislature 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.[130] Bogdanor, defines legislatures as political institutions whose members are formally equal to one another, whose authority derives from a claim that the members are representatives of the political community, and whose decisions are collectively made according to complex

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127 P. Jones Mark, 'Legislator Behaviour and Executive-Legislative Relations in Latin America', [2002] 37 (3) *Latin American Research Review,* 176-188.

128 J. A. Laski, Harold, *Grammar of Politics* (George Allen & Unwin, London,1992). 111

129 Kousoulas, George D., *On Government and Politics*, (Belmont, Duxbury Press, Jan 28th 1997). 72

130 Adler Mortimer J., *The Common Sense of Politics Holt*, Rinehart and Winson (eds), (New York: Fordham University Press, 1996). 60

procedures.[131] Loewenberg conceptualizes legislatures as "assemblies of elected representatives from geographically defined constituencies, with lawmaking functions in the governmental process."[132] The legislature itself represents what the French Philosopher, Rousseau, referred to as the 'General Will,' constituting the central tenet of people's ideals and views. According to Rousseau, "a legitimate political order is one where the sovereign people are governed by their own personal will: where people are both rulers and subjects at the same time."[133] Thus, the legislature is a vital arm of any democratic government: it is the symbol of the geniality of the people participating in the government. A legislature has also been defined as an officially elected assembly formed to make laws for a political unit such as a nation, a state or a local government.[134]

The term "legg" means law and "lature" the place and etymologically legislature means a place for law-making, another term which is used as a synonym of "legislature" is "parliament." This word stands derived from the french word "parley" which means to talk "or to discuss and deliberate." In this way, we can say "parliament" means the place where deliberations are held. Combining the two views, we can say legislature or parliament is that branch of government which performs the function of lawmaking through deliberations. The legislature is that organ of the government which passes the laws of the government. It is the agency which has the responsibility to formulate the will of the state and vest it with legal authority and force. In simple words, the legislature is that organ of the government which formulates laws. Legislature enjoys a very special and important place in every

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131 Vernon Bogdanor, *The Blackwell Encyclopedia of Political Science*, (Oxford: Blackwell, 1991), 329

132 Loewenberg Gerhard, *Legislatures and Parliaments* in Seymour Martin Lipset (ed), The Encyclopedia of Democracy, (London: Rutledge, Vol III, 1995) 736.

133 Jean Jacques Rousseau, note 57, 403-419.

134 Christopher A. Simon; Brent S. Steel; and Nicholas P. Lovrich, *State and Local Government and Politics: Prospects for Sustainability*, (Origin State University, 2019) 15

democratic state. It is the assembly of the elected representatives of the people and represents national public opinion and power of the people.[135]

The term "legislature" has been given different names across nations of the world. It is referred to as "Parliament" in Britain, "National Assembly" (the central legislature) in Nigeria, "Congress" in United States, and so on.[136] However, there is no serious contention about its definition. The legislature is seen as occupying a key position in the machinery of government and as the people's branch with the singular purpose of articulating and expressing the collective will of the people.[137] As an organ of government, it is the forum for the representation of the electorate.

Legislatures may be unicameral or bicameral, their powers may include passing laws, establishing the government's budget, confirming executive appointments, ratifying treaties, investigating the executive branch, impeaching and removing from office members of the executive and judiciary, and redressing constituents' grievances. Members may be appointed or directly or indirectly elected; they may represent an entire population, particular groups, or territorial sub-districts. In presidential systems, the executive and legislative branches are clearly separated; in parliamentary systems, members of the executive branch are chosen from the legislative membership.[138]

A legislature that is representative and participatory is characterized by citizens having access to, and input in, the policy making process through the legislature; there is high degree of interaction between members and citizens; issues are addressed or legislation amended because of public input or pressure; and civil

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135 K. K. Ghai, Legislature: Meaning, Functions and Types of Legislature, [2021] *Your Article Library*.

136 The words 'legislature' and 'parliament' are often used interchangeably.

137 C. Betram, 'Rousseau's Legacy in Two Conceptions of the General Will, Democratic and Transcendent'. [2012] 74 (3) *The Review of Politics*, 403-419.

138 Adam Augustyn, *Legislature Government,* (The Editors of Encyclopaedia Britannica, 2019). 14

society organizations, advocacy organizations, and/or interest groups are active participants in the legislative process. In terms of enacting policy, a proactive legislature is one in which the policy formulation and law making processes are the product of informed decision-making, and legislation is well-thought out and drafted. In terms of policy implementation, accountability in legislature ensures that laws and government programs are being implemented fairly and effectively; the national budget is scrutinized and agreed upon; public revenues and expenditures are monitored; and issues of public corruption and mismanagement are addressed.

Perhaps, it is in the light of this, that Smith sees the legislature as the symbol of power and legitimacy because its decision is based on the collective wisdom of men and women who enjoy the confidence of the electorate.[139] Jewell, on the other hand, identifies two features that distinguish the legislature from other branches of government. The first feature, according to him, is that the legislature possesses formal authority to make laws, and secondly, members are normally elected to represent various elements in the population.[140] Thus, Davies avers that representative liberal democracy cannot exist without a healthy, lively and credible legislature. He noted that the establishment of the legislature rests on the assumption that in the final analysis, political power still resides in the people and that the people can, if they choose, delegate the exercise of their sovereignty to elected representatives.[141]

Loewenberg conceded to this important view of the legislature as the people's representative by viewing the legislature as assemblies of elected representatives from geographically defined constituencies, with lawmaking functions in the governmental

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[139] Anthony Smith (ed) 'Newspaper and Democracy' [1980] xiv *MIT press, Littleton, Mass,* 368.

[140] Jewell T. Edet, and J. A. Amadu 'The legislature and National Development: the Nigerian Experience', [1997] 2, (9) *Published by the European center for research training and development UK*, 63-78.

[141] Michael Davies, 'Parliament and the Legislative Process' [2004] (1) Published by the Authority of the House of the Lords: London; the Stationary office limited.

process of a country. [142] Awotokun, on his part notes that the legislature is an assembly of ambassadors who serve their constituencies in various ways as intermediaries between the citizens and government officials.[143] The strength and the state of the legislature have been identified as among the strongest predictors of a country's democratic development and survival.[144] As Lafenwa argues, the legislature is the central element of democracy. Legislatures vary both in their design, structure, pattern of organization and operational procedures, selection process as well as sizes, tenure of office and frequency and nature of meetings. The variation is contingent upon past traditions, theory of government, character of the regime and most importantly the nature of the society in question.[145] Modern legislative procedures derive from British procedures and thus serve as a model for the development of legislature and legislative procedure for many countries around the world.[146] Olufemi further reveals that in Nigeria legislative oversight which is a crucial function of the legislature has been severally compromised and often used as a hunting dog.[147]

There are however two main designs for the legislature. Some legislatures have two chambers popularly referred to as bicameral legislatures while some others have single chamber commonly known as unicameral legislature. Yugoslavia has, however, experimented with a five-chamber legislative assembly and South Africa, a three-chamber legislative assembly between 1984 and 1994.[148]

In a bicameral type of arrangement two legislative chambers exist in a country; one chamber seems to dominate the other. This situation is noted by Nwabueze, when

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142 Loewenberg Gerhard, note 132, 739.
143 A. Kunle Awotokun, 'Legislative, Executive and Judicial Duties in Sustaining Democracy: A Theoretical Discourse in Nigeria' [1998] XXIV *Indian Socio-Legal Journal*, 1-5.
144 Ibid, 4.
145 A. Lafenwa Stephen and E.I Gberevbie, Daniel, *Legislative Oversight and Cost of Governance in Nigeria*, (Ambrose Ali University Publishing House 2007). 69
146 Ibid.
147 Jacob Olufemi Fatile & Kehinde David Adejuwon, 39 – 57
148 O. Nwabueze Ben, Nigeria's Presidential Constitutional Democracy (London, Oxford, 1985) 39.

he viewed that in a bicameral legislature, there exists some forms of dominance of one chamber on the other in respect of some legislation, tenure of office of members, size and importance of the constituencies represented. He, however, added that intricate rules are usually adopted to harmonize the legislation function of the two chambers.[149] Adding that federal political structures, such as those found in Nigeria, the United States, the Soviet Union, Canada, Australia and Switzerland, often adopt bicameralism in order to protect the interests of the minorities. Some systems, such as Great Britain, the Third Republic in France and the former Nigerian House of Chiefs in the 1960s, adopt bicameralism to enable the upper house check against hasty legislations.[150]

In a similar argument, Edosa and Azelama averred that the bicameral type of legislative structure is more common with federal states stemming from the imperative of one house to protect the special interests of minority or regional groups in such states. They noted that some federal states such as Nigeria, United States, Switzerland, Canada, Germany and Australia have opted for bicameralism on this basis. According to them, however, some countries such as Britain, second chamber is adopted to play a somewhat conservative role or to serve as a check on radical legislation of the lower house. The British House of Lords, according to them, has usually been disposed to delaying, moderating or out-rightly preventing fierce legislations of the lower house – the House of Commons. A similar situation is found in the defunct post-independence Nigerian House of Chiefs at the regions. France

[149] O. Nwabueze Ben, Nigeria's Presidential Constitutional Democracy (London, Oxford, 1985) 39.
[150] Ibid, 40.

second chamber is made up of members who are elderly and are, therefore, expected to be conservative and also moderate the activities of the lower chamber.[151]

In countries where bicameralism operates, however, the constitutions ensure that one chamber provides the opportunity for equal representation of the federating units while the diverse interests are represented in the other chamber. In addition, bicameral legislature makes it difficult for the legislature to be controlled by a despot or demagogue. It also provides opportunity for wider representation of various interests groups in the country. Furthermore, the arrangement serves as check against hasty passage of law and gives opportunity for division of labour between the two houses.[152]

The legislature, dubbed the National Assembly in Nigeria, occupies a significant position that is fundamental to Nigeria's democratic sustainability and national development. In an ideal political environment, the legislature is duty-bound to offer the most comprehensive platform for citizens' participation in the governance of their affairs.[153] This, no doubt, is made possible through the election of their representatives at the National Assembly. This informs Edet and Attai's argument that democracy is all about ensuring popular participation and control of the process of government. As all the people cannot participate and individually control their government at the same time, they entrust these rights and duties to an elected few among them known as legislators.[154]

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151 E. Edosa and Azelama Julius, 'Institution of Government', in Ikelegbe, A.O (eds); Politics and Government, An Introductory and Comparative Perspective (Uri Publishing Ltd, Benin City, 1995). 22

152 *USAID's Handbook on Legislative Strengthening,* (USAID, 2001). <https://gsdrc.org/document-library/usaid-handbook-on-legislative-strengthening/> accessed May, 19, 2022.

153 S. Wapmuk, 'A review of the National Assembly elections'. In A. Osita (Ed.), *Elections and governance in Nigeria's Fourth Republic*, (Council for the Development of Social Science Research in Africa (CODESRIA), 2017) 56

154 J. T. Edet, and J. A. Amadu, Note 140, 63-78.

In a nutshell, the legislature must see to the promotion of national unity where members develop a sense of identification with the entire nation for which they make policies and laws and whose problems they set out to solve at each legislative session.[155] This negative perception, according to Ukase and Dzeka are of the view that the National Assembly has constantly and frequently engaged in clannish, primordial, and partisan interests. Their inclination towards themselves, implicit in their greed, personal aggrandizement, and self-centeredness, has contributed to this negative public perception.[156] They further explain that the legislature has failed to put itself on a moral high ground through the advancement of the ideas of transparency and accountability in the conduct of its activities. Hence, there is the perception that the institution is more of a liability or democratic deficit than an institution of government that is constitutionally created to serve the interest of the people. [157]

It is the view of this study, that a two or more chamber legislature will be more accountable to the citizens than a one –chamber legislature. Interests of the minorities, the vulnerable and less privileged are more protected in a bicameral legislature. For example in Nigeria and the United States, the House of Representatives consist of more representation of citizens than the Senate. The Senate usually consists of senior citizens who are most of the times difficult to access and usually hold very conservative views. It is easier to approach members of the House of Representatives that are younger and vibrant with progressive ideas. They are eager to protect the interests of their constituents. They usually moderate the conservative views of the Senate. For instance, it was the intervention of the leadership of Nigeria House of Representatives that resolved the 8 –months industrial action embarked

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155 Ibid, 76.

156 I. P. Ukase, and T. Dzeka, 'The Legislature, and the Challenges of Political Institutionalization in Nigeria's Fourth Republic', 2018 1(1) *Advances in Politics and Economics* 32-43.

157 I. P. Ukase, and T. Dzeka, 'The Legislature, and the Challenges of Political Institutionalization in Nigeria's Fourth Republic', 2018 1(1) *Advances in Politics and Economics* 32-43.

upon by the Academic Staff Union of Nigeria Universities, ASUU which they embarked upon on February, 14, 2022 which was eventually called off in September 2022. The other type of legislative structure is the single chamber legislature popularly referred to as unicameral. This type of legislative structure exists when there is only one legislative body in a country.

2.4.1. **Functions of the Legislature**

It is pertinent now to relate the concept to legislative accountability, particularly as it relates with the legislative function of representation, especially the accountability of the legislators to their constituents. Theoretically, the concept of legislative accountability is based on the premise that the National Assembly, sitting as the highest representatives of the electorate-cum-organ of government, has the mandate to checkmate the political activities of the executive arm of government (if it has not been weakened by the executive arm) through several measures. Within the ambit of constitutionally constituted parliament, the political instrument employed to achieve this is referred to as the parliamentary accountability, argued Adetiba and Asuelime.[158] Very close to this is the institutional accountability of members of parliament either collectively or individually to the people. It, therefore, means that the focus of the National Assembly must be on the interest of the state and socio-political and economic emancipation of the electorate if public acceptability must be retained.[159] It has been generally agreed by scholars that though they are other

[158] Toyin C. Adetiba, and L. E. Asuelime, 'ANC Accountability and Control of South African Parliament; in Whose Interest: the State or the Party?' [2018] 5(1) *Journal of African Foreign Affairs* 107-128.

[159] Toyin Adetiba, 'Nigeria's National Assembly and Accountability: To whom; the State, the Party or the People?', [2020] *Journal of Nation-building & Policy Studies (JoNPS)* 66.

incidental functions of the legislature as an institution of elected representatives of the people, its core or main functions are:[160]

(a) Law making

(b) Oversight, and

(c) Representation.

1. **Law-making:**

   Legislatures identify problems, study issues, receive expert and public input, formulate or approve policies, and implement those polices through laws designed to address or remedy the problem or issue.

2. **Oversight:**

   Legislatures oversee the implementation of laws, policies, and programs by monitoring, reviewing, and investigating government activities to ensure that government actions are transparent, accountable, consistent with, and uphold existing laws and regulations. In Nigeria, like other countries all over the world, the legislature performs oversight functions to stop the excesses of the executive arm of government and to check wastages in governance which is considered one of the ends of democracy. Considering the great responsibility assigned by the constitution, one would expect that the legislative power would be balanced with a high degree of public accountability which is the hallmark of modern democratic governance.[161]

3. **Representation:**

   Legislatures listen to, communicate with, and represent the needs and wishes of citizens in policymaking; and intercede with government on behalf of the citizens.

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[160] S. 4 (1-9) in respect of the National Assembly.

[161] Jacob Olufemi Fatile & Kehinde David Adejuwon, note 147, 39 – 57

In Nigeria the Constitution makes adequate provisions for the functions of the legislature.[162]

1. Law-making.[163]
2. Approval or confirmation of executive appointments.[164]
3. Oversight of the executive.[165]
4. Power to conduct investigations.[166]
5. Removal of elected executive officials in cases of gross misconduct.[167]
6. Removal of judicial officers.[168]
7. Power to amend the constitution.[169]
8. Creation of new states.[170]
9. Power over public funds.[171]
10. Deployment of Armed Forces.[172]
11. Ratification of treaties.[173]

In the same vein, Jewell identified two features that distinguish legislatures from other branches of government. He opines that legislatures have formal authority to pass laws, which are implemented and interpreted by the executive

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162 Samuel Oni, *Legislature and Constituency Representation in the Fourth Republic of Nigeria's Democratic Governance*, (department of political science & international relations covenant university, ota 2013). 41
163 S. 4 of the Constitution of Nigeria, 1999 as amended.
164 For example section 147(2), 174(4), 238 250(1), 261(1) and 266(1).
165 8, S. 4 of the Constitution of Nigeria, 1999 as amended.
166 S. 88 (1) (b) ibid.
167 Ss.143 & 188 ibid.
168 S. 292 ibid.
169 S. 9 ibid.
170 S. 8(1) (a) ibid.
171 S. 83 and 4 ibid.
172 S. 54(a) and (b) of the Constitution of Nigeria, 1999 as amended.
173 S. 12 of the Constitution of Nigeria, 1999 as amended.

and judicial branches and their members normally are elected to represent various elements in the population.[174]

The legislature is not merely a law-making body. Lawmaking is but one of the functions of the legislature. It is the center of all democratic political processes. It is packed with action, walkouts, protests, demonstration, unanimity, concern, and co-operation. All these serve very vital purposes. Indeed, a genuine democracy is inconceivable without a representative, efficient and effective legislature. This is indeed the very basis of representative democracy.

Ball on his part observed wide variations in status, powers and functions of the legislature among states.[175] According to him, in some political systems (e.g. the United States Congress), the legislative body assumes wide powers and exercises real power with respect to various decision-making processes. In some other political systems (e.g. the former Soviet Union), the legislature exists as a mere rubber stamp for decisions made elsewhere. Ornstein in the same vein classifies the legislature of the defunct Soviet Union as a rubber stamp assembly whose main role was to legitimize the policy of government.[176]

A similar observation is made on Africa's legislature by Nijzink, Mozaffar & Azevedo, according to them, such variables as colonial legacies, the appointment and dismissal powers of governing parties, executive control of state resources and role perceptions of legislators has contributed to the institutional and policy-making weakness of the legislature.[177] The institutional weakness thus limiting their capacity to represent citizens, make laws and perform their oversight role. In line with this

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174 Ibid.

175 R. Alan Ball, *Modern Politics and Governmen*t, (2nd Eds, London. Macmillan Press Ltd, 1977) 56.

176 Ornstein Norman. 'The Roles of the Legislature in Democracy' (*Freedom Paper No. 3. California: Institute of Contemporary Study*, (ICS,) 1992). 24

177 Nijzink Lia, Mozaffar Shaheen and Elizabete Azevedo, 'Parliaments and the Enhancement of Democracy on the African Continent, an Analysis of Institutional Capacity and Public Perceptions' [2006] 3-4 (12) *The Journals of Legislative Studies*, 13

argument, Burnell averred that Africa's legislature are mere institution for legitimizing government policies, recruiting and socializing new elites, and mobilizing public support for political regimes.[178]

Saliu and Mohammed are of the opinion that despite the powers, functions and privileges provided for the legislature in most Nigerian Constitutions after independence, the challenges of governance faced by the post-independent Nigeria which either put the legislature in abeyance or subjected it to manipulations and control of the patrimonial executive rulers, further reinforced the weaknesses of Nigeria's legislative institutions.[179]

While most scholars of Africa's legislatures agree that they are institutionally weak, Barkan, Ademolekun, and Zhou on the other hand after carrying out a research of this scenario, however disagrees with this assertion.[180] According to their comparative study of four Africa's legislatures, they conclude that although African legislatures are often labeled as weak, the authority of the legislature in Africa ranges from being very weak in Senegal, to moderately strong in Kenya with Benin and Ghana falling somewhere in between. Explaining the factors responsible for this variation, Barkan, Ademolekun and Zhou mentioned contextual factors which has to do with the structure of the society, constitutional provisions and formal rules and the internal structure of the legislature and the resources available to members.[181] In another dimension, Okoosi-Simbine observed that the design of a legislature in a given political system is contingent upon past traditions, theory of government, character of the regime and, above all, the nature of the society itself. In this context,

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178 Burnell Peter; 'Legislative-Executive Relations in Zambia: Parliamentary Reform on the Agenda', [2003] 1 (21) *Journal of Contemporary African Studies,* 5

179 Hassan A. Saliu, and Abdulrashed A. Muhammad, 'Exploring the Parliament'. [2010] *Nigeria Journal of Legislative Affairs* 1-2.

180 Joel D. Barkan and Ladipo Ademolekun, and Yuelong Zhou, *Emerging Legislatures: Institutions of Horizontal Accountability*, (Washington, World Bank Institute, 2004) 56.

181 Ibid, 57.

therefore, legislatures vary by manner of election, bases of election, size, frequency and nature of meetings and mode of power sharing by the two houses in the case of bicameral legislatures.[182]

Political scientists often make the generalization that ineffective assemblies - serving as a mere rubber stamp assembly for legitimizing the decisions made elsewhere or caves of the winds given more to venting than governing - are the most common type of legislature.[183] It is noted at this juncture that the issue of the legislature being a mere rubber stamp assembly is not limited to African Continent.

Okoosi-Simbine, however, noted a significant and growing group of legislatures which function as important governing partners because they represent, shape laws, and exercise a degree of oversight or control over the executive.[184] In line with this argument, Saliu and Mohammad averred that functioning legislatures in democratic nations have a greater and more predictable role representing publics, in making laws, and exercising oversight than those of less democratic societies. Performing these functions contributes to good government by increasing its capacity to monitor and respond to public sentiments/dissatisfactions, by playing a part in passing legislation capable of withstanding critical scrutiny, and serving as a vehicle for improving the degree of probity, efficiency, and responsiveness in the administration of laws.[185] Other discrete functions include; educating the electorate through public displays of competition; playing roles in executive removal (impeachment, votes of no confidence, censure); serving as a recruiting pools for other government positions (Brazil's congress and more commonly in many

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182 Antonia Taiye Okoosi-Simbine. 'Understanding the Role and Challenges of the Legislature in the Fourth Republic, The Case of Oyo State House of Assembly [2010]1 & 2 (3) *Nigeria Journal of Legislative Affairs* 3.

183 Ibid, 4.

184 Antonia Taiye Okoosi-Simbine, note 182, 6.

185 Hassan A. Saliu, and Abdulrashed A. Muhammad, note 179, 73 – 89.

parliamentary systems); and providing a place where policy ideas might be "incubated".[186] While the functions performed by the legislature may vary from country to country, some fundamental similarities exist among parliament. The major functions of the legislature as earlier stated above will now be examined in details;

2.4.1.1. Legislation:

Legislative functions are said to be the basic, primary and the most important role of the legislature. It is the belief of Tostensen et al that the first and foremost function of a legislature is to legislate i.e. to make laws.[187] The legislature formulates the will of the state into laws and gives it a legal character. Legislature transforms the demands of the people into authoritative laws/statutes.[188] Tostensen asserts that as an elected assembly in a representative democracy the members of parliament MPs have been mandated, through free and fair elections, to represent the constituents and to make laws on their behalf. The fundamental principle that no legislation can be passed without the consent of the people is thus exercised through elected representatives. In other words, consent is given via proxies by the indirect means of election.[189] Apart from making new laws they also have the power to amend or repeal old ones.

According to Laski, the legislature has the responsibility for passing laws. He averred that the legislature is the body which lays down the general rules of a society.[190] The legislature has the responsibility of making laws for the good

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186 K. Johnson, John and Nakamura, Robert T. 'Legislatures and Good Governance', (A Paper prepared for UNDP, 1999) in Edosa .E. and Azelama .Julius. note 151.

187 Samuel Oni, Legislature and Constituency Representation in the Fourth Republic of Nigeria's Democratic Governance, (Department of Political Science & International Relations Covenant University, ota 2013) 43

188 Arne Tostensen, Inge Amundsen, 'Report on Synthesis Study of Support for Legislatures', (Norad Norwegian Agency for Development Cooperation Oslo Ruseløkkveien 26, Oslo, Norway 2010). 1 - 23

189 M. L, Mezey, *The Functions of Legislatures in the Third World*, (Legislative Studies Quarterly, Vol. 8.) 4.

190 J. A. Laski, Harold, note 128.

governance of a state.[191] These laws may originate as private member's bills, or they may originate from the executive branch.

According to Awotokun, laws made by the legislature must be in the interest of the general populace with the expectation of modifying peoples' behaviour and response towards a given situation, be of good quality and self-sustaining.[192] Kousoulas, however, posited that while legislation is a function of the legislature, the inputs and sometimes, the overbearing attitude of the executive and some other factors such as concessions to the opposition and other concerned groups against some aspects of proposed laws had greatly reduced the legislative powers of the legislature to a mere deliberative assembly.[193] Heywood also alluded to the fact that the twentieth century witnessed a progressive weakening of legislation power in the form of a decline of legislatures. Noting that this situation had reduced many legislative assemblies to mere 'talking shops' that do little more than rubber-stamp decisions that have effectively been made elsewhere.[194]

2.4.1.2. Oversight:

The oversight function is another fundamental function of the legislature; it is a major component of the activities of modern legislature irrespective of the form of government in practice. Oversight is perhaps the most important function of any legislature. The importance stems from the continuous wielding of enormous powers by executive leaders. Arishe sees oversight as an "essential function for any democratic legislature because it ensures horizontal accountability of all other agencies of government to the one branch whose primary function is representation.[195]

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191 Benjamin Solomon Akhere, 'National Assembly, The Limit of Party politics In Legislative Process', [2010] 3 (1&2) *Nigeria Journal of Legislative Affairs*,

192 Kunle Awotokun, note 143, 1-7.

193 Kousoulas D. George, note 129.

194 Thomas Heywood, *Politics,* (New York: Palgrave Macmillian, 2007). 5

195 Gabriel O. Arishe, note 79, 201.

Saliu and Muhammad define legislative oversight as a process by which the legislative body takes active role in understanding and monitoring the performance of the executive arm and its agencies.[196]The legislature has the responsibility of overseeing the work of the government and holds it responsible for its actions and omissions.[197]

According to the Commonwealth Parliamentary Association, the principle behind the legislative oversight of the executive activity is to ensure that public policy is administered in accordance with the legislative intent. In view of this principle, the legislative function does not end at the passage of bills. Oversight is, therefore, the obvious follow-on activity linked to lawmaking. After participating in lawmaking, it is the responsibility of the legislature to ensure that such laws are being implemented effectively. Referring to the oversight functions of the legislature, Woodrow Wilson averred that:

> It is the proper duty of a representative body to look diligently into every affair of government and to talk much about what it sees. It is meant to be the eyes and the voice, and to embody the wisdom and will of its constituents. Unless Congress has and uses every means of acquainting itself with the acts and the disposition of the administrative agents of the government, the country must be helpless to learn how it is being served…The informing function of Congress should be preferred even to its legislative function.[198]

Oversight role of the legislature is a measure to control the tasks and assignments of the bureaucratic agencies of the government.[199] In this case, politicians directly monitor bureaucratic output or processes to gain the information necessary

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196 Saliu Hassan & Abdulrasheed Muhammad, note 179, 73 – 89.

197 Saliu Hassan & Abdulrasheed Muhammad, note 179, 87.

198 Commonwealth Parliamentary Association, Democracy*, Parliament and Electoral System,* M. A. Griffith-Traversy ed, (Pluto, 2002) 178.

199 Shikano Susumu, Stoffel. Micheal and Tepe M. Nicole, 'Information Accuracy in Legislative Oversight, theoretical -Implications and Experimental Evidence' [2017] 29 (2) *Rationality and Society*, 226-254.

for deciding whether to punish and/or correct undesirable behavior.[200] Thus, the primary purpose of legislative oversight is to ensure accountability.[201]

The oversight function enables the legislature to monitor the policy implementation process in order to uncover any defects and act to correct misinterpretation or maladministration. The legislative process is, therefore, an instrument for checks and balances.[202] Thus, the concept of oversight function of the legislature exists as an essential corollary to the law-making process. Examples of areas of oversight function of the legislature over the executive are in financial behavior in scrutinizing the national budget and appointments of key officials such as ambassadors, ministers/commissioners and so on. According to Lafenwa and Gberevbie, effective legislative oversight enhances the accountability, efficiency and fidelity of the government.[203]

However, the scope of the powers of the National Assembly to oversight the executive is limited as provided in the Nigerian constitution 1999 as amended.[204] In other words the power of investigation is not at large.[205] Also, the power of legislative oversight over public funds with a view to exposing corruption is limited to where public funds are involved and does not extend to private enterprises or where the subject of the probe is outside its legislative competence or is not with a view to

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200 Bundi Pirmin, 'Varieties of accountability, how attributes of policy fields shape parliamentary oversights Governance', [2018] 31, 163-183, <https://onlinelibrary.wiley.com/doi/abs/10.1111/gove.12282> accessed 4th, August, 2021.

201 Kasemets Aare, 'The Institutionalization of better regulation principles in Estonian draft Legislation: the rules of law-making, procedural democracy and political accountability between norms and facts', (The theory and Practice of Legislation, 2018). 5

202 Robert A. Bates, *The State of Democracy in Sub-Saharan Africa*, (Department of Government, Harvard University, 1737 Cambridge Street, Cambridge, 2012) 35.

203 A. Lafenwa Stephen and E.I. Gberevbie, Daniel, note 145.

204 "S 88 (2) of the Constitution of Nigeria, 1999 as amended.", which limited the power of investigation to aid the National Assembly in law making or correcting defects in existing legislation, exposing corruption in a government department, inefficiency or waste in the administration of laws within its legislative competence or in the disbursement of funds appropriated by the National Assembly.

205 Inegbedion Nathaniel, [2016] 'Scope of Legislative Oversight under the 1999 constitution', (1) *NIALS: Journal of Constitutional Law*, 63.

exposing corruption. Inegbedion also identified some other constitutional limitations like prohibition of inquiries into the private and personal life of an individual, or acting outside its terms of reference as contained in the resolution published in government gazette or asking questions that are irrelevant to the subject-matter of investigation.[206]

2.4.1.3. Representation:

Representation is one of the major functions of a democratic legislature. It forms the fulcrum on which other legislative functions revolve.[207] Representation is the central role of the legislature. This is because the complexity of modern administration has made it practically impossible for the people to directly run the affairs of the state as was the case of the early Greek City-States.[208] Awotokun averred that the legislative institution serves a mechanism through which the population, its special interests and diverse territory are represented and guaranteed a say in the scheme of things.[209] Edosa and Azelama thus, argued that the representation function of the legislature provides citizens the opportunity to have a say in governance. Different groups in a society are represented in the legislature which gives those groups the opportunity of articulating and advancing their interests and concerns.[210] Simmons thus sees the legislature as representing the interests of their constituencies.[211]

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206 Inegbedion Nathaniel, note 205, 64.

207 A.D Badaiki, '*Effective Legislative Representation*: Key to Social Economic and Political Development in the Owan Expirence since 2011 till date' (being a lecture delivered at the reception in Honour of Rt. Hon. Pally. I. O, 6th of July 2019) 8, 9.

208 A. Kunle Awotokun, note 143, 1-15.

209 A. Kunle Awotokun, note 143, 1-15.

210 Edosa .E. and Azelama Julius, note 151.

211 Charlene Wear Simmons, *Legislative Oversight of the Executive Branch* (California Research Bureau 2002) 26

One of the core functions of the legislature therefore is to represent and advocate for constituent views and concern for national issues.[212] This representational function is also referred to as vertical accountability. It entails that in taking major decisions especially those that directly affect their constituents, they should consult their constituents for their views because they are holding their mandates on their behalf. They are also to bring before the plenary major concerns or developmental challenges their constituents face in order to be addressed. They are also expected to as much as possible interact with their constituents through town-hall meetings, social media, visitation especially when they are on vacation or recess.

Goubadia, asserts that the legislator is expected to cater for the interest of constituents and be the guardian of his constituency.[213] Indeed, the legislator is the link between his constituents (his people) and government. By this device, the people's needs are not only articulated by effective legislatures, but also the people are connected to their government by giving them a place where some, if not all their articulated and aggregated interests, can be met.[214]

In Nigeria at the National Assembly, the legislators have devised several ways to effectively represent the interest of their constituents; these include constituency projects which are now part of the national budgeting process, setting up of effective constituency offices, appointed legislative aides from their constituencies, using new media technology like social media, (WhatsApp, Twitter e.t.c) to reach them and get a feedback. Those that have neglected to take this representational function seriously always bear the consequences electorally or are physically attacked anytime they eventually visit their constituencies. The legislature as the chief organ of popular government also performs tangential executive and judicial functions. For example, a

212 Meryl Davis, note 4.
213 A. D. Badaiki, note 207, 6-7.
214 Ibid, 8.

number of executive actions such as ratification of international treaties and appointment of ministers require legislative approval.[215]

The process of representation works at two distinct levels. First, at an individual representative's level, there is a connection between the legislators and the districts from which they are elected. And secondly — as a unit — the legislature pursues policies that reflect the statewide interests and preferences of citizens.[216]

How effective can legislators be in representing their constituents. According to the inter parliamentary union IPU, effective representation implies "articulating and mediating between the competing interests of these groups" as well as, guaranteeing equal rights for all parliamentarians, particularly those belonging to the opposition within a legislative assembly. Effective representation can also mean that legislators possess or acquire the resources, skills and characteristics that they need to execute their representative duties and consistently apply them in delivering service to their constituents. The logic of a representative assembly is informed by the need to take care of peculiar interest of the people they represent.[217] Effective and well equipped constituency offices also aid effective representation.

For the law makers, a bottom-up approach to representation to perceive voter opinion more accurately rather than a top-down representation approach be adopted. Therefore, the lawmaker must:[218]

i. be legitimately elected to represent the people,

ii. be willing to develop and expand his/her knowledge base and sharpen (already acquired) skills to enhance the performance of his/ her job,

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215 Kwaghga, 'Accountability and Transparency in Legislative Process in Nigeria: A Challenge', [2012] (3) *Beetseh Journal of Law, Policy and Globalization*.

216 A. Rosenthal, 'Heavy Lifting: The Job of the American Legislature', (Washington, DC: CQ Press, 2004). In Christopher A. Simon; Brent S. Steel; and Nicholas P. Lovrich, note 134.

217 Guide to Effective Representation in the National Assembly, note 5, 2.

218 Ibid, note 5, 3.

iii. be willing to consult his/her constituents vide town hall meetings or outreach station programmers for feedback,

iv. know the various competing interests in his/her constituency and strategize on how best to push them through,

v. learn to know the workings or operations of government and other environmental factors that will assist his/her effectiveness,

vi. learn effective utilization of modern communication channels both to put forth the wishes or desires of his/her constituents and publicize government efforts towards alleviating or addressing their specific needs.

Badaiki is of the view that the key indices for assessment of effective representation include:[219]

Good governance;

1. Transparency;
2. Accountability;
3. Community development;
4. Accessibility;
5. Communication;
6. People (constituents)-centricism;
7. Responsiveness; and
8. Constituency image projection.

In practice, however some legislators hardly carry out the wishes of their electorates in decision making. Also lack of consultation has hindered and affected the relationship between the legislator and his constituents. Some of them are

[219] A. D. Badaiki, note 207, 8 & 9.

physically attacked when they eventually go home to interact with their constituents or to attend an event. However, most of the legislators are top-notch in reaching out to their constituents regularly and through constituency projects, town hall meetings, social media have been able to warm themselves into the hearts of their constituents.

The process of representation, from the perspective of political scientists, consists of four principal components: maintaining communications with constituents; demonstrating policy responsiveness by reflecting the needs of one's constituency in one's votes on bills and budgets; affecting the allocation of resources across elective districts; and providing individualized service to constituents.[220] Another way to think about representation is in terms of the socio-demographic and gender composition of state and local legislative bodies. Many observers argue that legislative bodies should, to some significant extent, mirror the public they represent — in terms of race, ethnicity, gender and such — to adequately represent the public at large. In this regard, it should be noted, ―in the past, political scientists have convincingly demonstrated that race and gender matter in political representation.[221]

In Nigeria the Constitution provides: "The Senate shall consist of three senators from each state and one from the Federal Capital Territory, Abuja".[222] The constitution provides that subject to the provisions of the Constitution, a house of Assembly of a State shall consist of three or four times the number of seats which the State has in the House of Representatives divided in a way to reflect, as far as possible,

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220 K. L. Barber, 'American Government and Politics', [1983] 77, *American Political Science Review*, 1039-1040.; M. E. Jewell, *Representation in State Legislatures,* (Lexington, KY: University Press of Kentucky, 1982).

221 K. Bratton, 'The Effect of Legislative Diversity on Agenda Setting: Evidence from Six State Legislatures', [2002] 30 *American Politics Research*, 115.

222 S. 46-(5) of the Constitution of Nigeria, 1999 as amended

nearly equal population: provided that a House of Assembly of a State shall consist of not less than twenty-four and not more than forty members.[223]

2.5. REPRESENTATION

One of the ways of measuring legislative accountability is through the process of representation which is one of the three major functions of the legislature, the others being law making and oversight.

Thomas believes that the term representation goes back to the Latin words "*representatio*" (visual representation) and "*representare*".[224] These terms had several meanings and did not simply stand for a distinct political term. Both terms were used in a rather broad sense signifying a wide range of meanings such as vivid reality, visual appearance, to make something present, something currently happening or a current doing, all related to the reality of an action and its outcome.

The term 'representation' has been defined in diverse ways and its meaning is broad and at times contentious,[225] one of the earliest definitions was given by Pitkin's where she defined the term representation ideally as "re-presentation, a making present again."[226] In other words in political processes the interests and voice of the citizens are made "present" by their representatives. She further noted that "something is simultaneously both present and not present is to utter a paradox."[227] Her definition has been described as too vague to be empirically verified.[228] Pitkin however provided a more robust definition of representation as that of "acting in the interest of the

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223 S. 91 of the Constitution of Nigeria, 1999 as amended

224 Heberer Thomas, 'Reflections on the Concept of Representation and its Application to China', (workings papers on East Asian Studies No. 1101, University of Duisbura-Essen Institute of East Asian studies in East duisbura, 2016). 2

225 The entry *Political Representation* in the Stanford Encyclopedia of Philosophy, <http://plato.stanford.Edu/entries/political-representation>, accessed 29 June 2016.

226 Hanna Fenichel Pitkin, *The Concept of Representation,* (University of California Press, Berkeley, Los Angeles. 1967). 3-4

227 Ibid, 8-9.

228 Heberer Thomas, note 224, 3.

represented, in a manner responsive to them."[229] Hobbes, sees the concept as a means of a contract with the people, by an absolute Ruler who has neither accountability nor control.[230]

For Locke, the election of representatives of the people is crucial, since the exercise of public authority is carried out by elected representatives. The right of representation, however, should depend on the "proportion to the assistance, which [somebody] affords to the public."[231] It was later during the french revolution of (1789-1799) that the concept of representation acquired a new meaning by relating it with politics.[232] It was in 1967 that the 'bible' of the concept of representation was published by Pitkin in a work titled "the concept of representation". [233] Her work will be referred and analyzed subsequently. Suffice to say she introduced representation in a democratic setting as the normative sense of the term.

It is however argued,[234] that focusing merely on normative issues and democratic elections overlooks the dynamics of representation beyond the state, not only in a democratic but also in an authoritarian context. These 18th century concept of representation focus on the role and behavior of legislatures and legislators and was not specifically related to a democratic setting.[235] This study agrees with this argument, Saward on the other hand argues that there is need to move away from the idea that representation is first and foremost a given, factual product of elections,

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229 Lisa Disch: 'Democratic Representation and the Constituency Paradox in Perspectives on Politics', [2012] 10 (3), 599–616,

230 Thomas Hobbes, 'An Interpretation of Hobbes' Theory; David Runciman: 'Hobbes's Theory of Representation: Anti-Democratic or Proto-Democratic?' In Ian Shapiro, Susan C. Stokes, Elisabeth J. Wood, Alexander S. Kirshner (ed) 'Political Representation'. [2009] *Cambridge University Press* 15–34.

231 John Locke, 'Second Treatise', [2006] *Stanford Encyclopedia of Philosophy* 158, <http://press-pubs.uchicago/edu/founders/documents/v1ch13s2.html> accessed 26 August 2016.

232 Edmund Burke, *The Nature Policies,* (Oxford University Press, 2015) 1792-1797.

233 Ibid, 1795.

234 Hanna Fenichel Pitkin, note 226, 8

235 Heberer Thomas, note 224.

rather than a precarious and curious sort of claim about a dynamic relationship.[236] This study concurs with this view because the modern concept of representative democracy establishes an intermediary political actor between the individual and the policy outputs of the State. Through the electoral process, one person or a group of people are elected and assigned with the task of making decisions on behalf of the group of citizens that they represent. In most democracies this is represented by representatives in the parliament. It is important to note that while the power of the individual is diminished slightly, political representatives are still beholden to the group that they represent, also known as their constituency.[237] This is what is referred to in present day as representative democracy.[238].

An expert in Constitutional Law, Schmitt,[239] links representation to political unity. He is of the opinion that representation can be achieved not only by a democratic legislature but by an autocrat. The idea of an authoritarian representation, according to the famous french saying, ascribed to King Louis XIV, "L'etat c'est moi" "I am the state" meaning that even an absolute monarch could represent the unity and identity of a nation.[240] This view by Schmitt is no longer the norm. For representation to be effective, the people must be given the right to choose their leaders through a democratic election. This is the route that will give them the power to hold their representatives accountable. An authorial representation is a fallacy, since such an autocrat was not elected by the people and therefore not obliged to be accountable to them. Hall, believes that in the academic literature on representation, two principles are discernable (a) the political strand and (b) the cultural strand, which

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236 Saward Michael, *The Representative Claim* (Oxford: Oxford University Press, 2010), 34.
237 Philippa Strum, note 64, 15.
238 David Held, note 63, 21.
239 Carl Schmitt: *Verfassungslehre*, Berlin ed, (Duncker & Humblot, 1970) 205, 214.
240 Ibid, 208.

are based on the parallel systems.[241] Budde argues that political representation has two basic preconditions: (a) the existence of a function of representation warranting representation by a specific actor; and (b) the existence of an actor who is accepted by a specific audience as representative.[242]

Stimson gave a functionalist perspective of representation when he introduced representation as "dynamic" meaning the "representation exist when changing preferences lead to changing policy acts. In that sense representation is dynamic because the idea, in its essence, is structured in time".[243] Here the concepts consists not only a process in time out but also to processes of change and or the avoidance of change. Mayo position is that representation had developed into a catch-all term no longer in much use.[244] Rehfeld tells us that there is no general concept of representation comprising all political entities, settings and underlying ideas.[245] But rather than formulating in terms of one concept of representation, as Pitkin put it, he believed that it would be more useful to develop concepts of representation to study the broad array of phenomena that are often imprecisely classified as "representation." He asserted further that these concepts would usefully explore what a representative is and what activity he thinks is properly denoted by "representing," and separately explains what it means for one thing, or activity, to be "representative" of another. These concepts would further be developed by reference to a range of normative ideals of authority, accountability, consent, interests, responsiveness, recognition,

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241 Stuart Hall (ed.), 'Representation, Cultural Representations and Signifying Practices,' (London. Sage 1997) 28.

242 David Budde, 'Forms of Representation and its Legitimacy, the Presupposition Recognition of Representatives in Politics'. [2013] 3 *Center for Political Theory & History of Political Ideas, Berlin, Free University of Berlin* 19.

243 James A. Stimson and Michael B. Mackuen and Robert S. Erikson, 'Dynamic Representation', [1995] 89 (3) *American Political 1 Science Review,* 543–565.

244 Henry B. Mayo, *An Introduction to Democratic Theory,* (Oxford et al, Oxford University Press, 1960) 799.

245 Andrew Rehfeld, 'The Concepts of Representation' [2011] 105 (3) *American Political Science Review*, 1.

sovereignty, and policy correspondence, to name just a few. He concluded by saying that the attempt to discern or create a single covering concept of representation has led to some of the deepest confusions surrounding this topic since Pitkin's seminal work was first published over four decades ago.[246]

Rehfeld argues that the historic debate about the proper relationship between representatives and their constituents collapsed three kinds of decisions that representatives were making into the binary trustee/delegate framework. These three descriptive features of their decision-making process when they voted on laws were as follows:

a. representatives' source of judgment: Were they self-reliant, or did they depend upon their constituents' views about how to vote?
b. the aims of legislation: Were they promoting the good of all or the good of a part?
c. representatives' own responsiveness to sanction: Were they responsive to the prospect of re-election or other sanction?

With the alternatives framed in this way, a representative who acted as a trustee was usually described as (i) relying on his own judgment (ii) to promote the good of all (iii) in a manner that was relatively nonresponsive to electoral sanction. In contrast, a representative who acted as a delegate was usually described as (i) relying on his constituents' judgment (ii) to promote their narrower good (iii) in a manner that was extremely responsive to electoral (or other) sanction.[247]

Weber in his own definition, distinguished between "appropriate representation" of traditional societies (clan heads, chieftains of tribes, traditional village leaders, and so on.), the "estate type of representation" (German: Stände

[246] Andrew Rehfeld, note 245, 1.
[247] Andrew Rehfeld, 'Representation Rethought: On Trustees, Delegates, and Gyroscopes in the Study of Political Representation and Democracy', 2009 103 (2) *American Political Science Review* 30.

repräsentation), and "instructed representation" (freely elected representatives constrained by an imperative mandate).[248] This definition introduced the cultural distinctions between various forms of representation and the accountability of representatives beyond the mere assignment of "democratic" and/or "authoritarian".

Pitkin points to another important distinction, that is between the dualism of "acting for" and "standing for", which involves the dichotomy of political representation that is acting on the one hand for or in the interests of a constituency – and on the other embodying a person or a group of people.[249]

Nigerian scholars have also made various definitions and meaning of representation. Awotokun say representation is seen as the central role of the legislature, because the complexity of modern administration has made it impossible for the people to run the affairs of the State as it was in the early Greek City-States.[250]

Arishe believes that standard accounts of political representation depend upon democratic institutions like elections and other like deliberation and constituent accountability. [251] Edosa and Azelama argue that representative function provides a platform where citizens and different group is opportune to have a say in governance. They also believe that the function of representation enhances the legitimacy of public policy, reduces alienation and reduce estrangement between government and the governed to enhance stability in the system.[252] Roberts on the other hand, stated that representation plays dual roles, first, they represent their people to government, and

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248 Heberer Thomas, note 224, 7-8.
249 Hanna Fenichel Pitkin, note 226, 6.
250 Kunle Awotokun, note 143, 1-2. In Ewuim N.C, Nnamani, D.O and Eberinwa, O. M, 'Legislative Oversight and Good Governance in Nigeria National Assembly: An Analysis of Obasanjo and Jonathan's Administration'. 2014 6 (3) *Review of Public Administration and Management* 12
251 Gabriel O. Arishe, note 79, 271
252 E. Edosa and Julius Azelama, note 151.

second, they represent government in their constituency.[253] It is the opinion of Saliu and Muhammad that the fulcrum of a legislature is to articulate and aggregate diverse interests of the represented constituencies into the policy process.[254]

But how effective and practicable are these concepts in Nigeria. Since the advent of the fourth republic in 1999, the legislative role of representation has been topsy-turvy. In the early years, the legislature took a lot of bashing from the electorate as they were principally concerned with seeking the prerequisites of office like cars, housing allowances and so on. They hardly carried out the primary function of representing their constituencies. The Policy and Legal Advocacy Centre, PLAC sees the concept of representation in a democracy as "to represent the regions ethnic group, social classes and occupational interests or "acting in the interest of the represented (to whom sovereignty belongs) in a manner responsive to them through consultation and the exercise of such discretions and judgments aggregating the views of the governed."[255]

Eulua and Karps suggested that symbolic responsiveness is one of a representative's essential tasks.[256] Eulua criticized Burke for his excessive party loyalty and his tendency to ignore his constituency. He stated that "the core problem involved in representation is the relationship that exist between representatives and represented" and on this score, Burke fell disappointedly short.[257] It is this study opinion that Eulua's critique of Burke's theory of representation is apt, because it does not take into account the fact that the response by legislators to issues varies. It is

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253 F. O. Roberts, 'Performance Evaluation of the New Democracy' (2002) in Ajakaiye, D. (eds.), *Meeting the Challenges of Sustainable Democracy in Nigeria,* (Ibadan: NISER. Revenue Mobilization, Allocation and Fiscal Commission, 2011).

254 Hassan Saliu and Abdulrasheed Muhammad, note 179, 73 – 89.

255 PLAC 'A guide by Policy and Legal Advocacy Center', <https://placng.org/i/wp-content/uploads/2019/12/CSO-Advocacy-Toolkit-1.pdf> accessed 20th, June, 2022.

256 Heinz Eulua and Paul C. Karps, 'The Puzzle of Representation, Specifying Components of Responsiveness' [1977] (2) *Legislative studies quarterly* 233-254.

257 Ibid, 235.

also idealistic as it sees the legislator as above his constituents. Its good side however is that he gave us food for thought to continue to further interrogate the concept of representation.[258]

2.5.1. **Forms of Representation**

There are varied forms of representation as identified by various scholars and theorists. Pitkin identified four views of political representation –

1. Formalistic Representation, including: Authorization and Accountability.
2. Symbolic Representation.
3. Descriptive Representation, and
4. Substantive Representation.[259]

The Formalistic views of representation identify political representation with the formal procedures (e.g. elections) used in the selection of representatives. The authorization view states that a representative is an individual who has been authorized to act on the behalf of another or a group of others. Pitkin argued that a representative is an individual who will be held to account.[260] This is the accountability view.

Under Rehfied theory of representation, a person is considered a representative as long as the particular group she represents judges her as such.[261] He argued that his general theory of representation, unlike Pitkin and Mansbridge's, only seeks to describe what political representatives are, not what they should be or do. Hence under Rehfeld's theory, it does not matter to the status of representatives whether or not they are democratically elected or substantively "act for" the interests of the represented. It is the opinion of Patricia that in interpreting Rehfied's theory, he

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[258] Heinz Eulua and Paul C. Karps, note 256, 243.
[259] Heinz Eulua and John Wahlke, 'The Politics of Representation, Essays in Theory and Research' [1978] *Beverly Hills, CA: Sage*, 50.
[260] Hanna Fenichel Pitkin, note 226.
[261] Rehfeld Andrew, note 245, 66.

did not say that democratic political representatives can be representatives without being elected or be said to represent the represented without substantively acting for their interests, they do. Rather, Rehfeld only seeks to point out that political representation is not limited to the democratic case.[262]

There is also representation by population and area. Representation by population simply means representatives will be chosen by more or less numerically equivalent block of voters. In Britain this is referred to as "rep-by-pop". In Nigeria and United States the lower house of a bi-cameral legislature (of representation) is based on population while the upper house (the senate) is based on area. Representation by area is mainly to check the population imbalance between largely rural areas and overwhelmingly urban areas.

The Nigeria and American Constitutions contain a series of compromises between rep-by-pop and rep-by-area. In Nigeria it's three Senators per State and at least three representatives in a State depending on the population. In America, Senators and Representatives have unequal representation in Parliament relative to Ontario, British Columbia, and Alberta, partly for historical reasons, partly because those electoral allotments are constitutionally guaranteed. The United States,[263] established the "one-person/one-vote," standard that each individual had to be weighted equally in legislative apportionment.[264] Both types have their merits and demerits. However, it has come to stay in order to carry the represented along. Warren believes that within standard democratic theory, representation is primarily about scaling democracy onto mass societies. He stated, rightly in this study's opinion "that through election or selection, representation stand for, speak for, and act for those who cannot be present in the bodies and places in which political issues are

[262] Hurley A. Patricia, *Political Representation,* (Stanford encyclopedia of Philosophy, 2006). 6
[263] *Baker v Carr* 369 U.S. 186 [1962]
[264] Ibid.

deliberated and decisions made, owing to the constraints of scale, time, complexity and attentiveness."[265]

Nassfrom helpfully summarized the contribution as motivated by one or more of three sets of problems; (1) how the interests of the represented are constituted; (2) the contributions of representative relationships to political judgment, and (3) political representation outside of electoral democracy.[266] Pitkin had already framed the first set of these problems.[267] Representatives can make claims, which, when successful, at least partially define the interests of this claim to represent.[268] However, one of the major challenge is how constituency, different interests prevail and if the constituents cannot aggregate their common interest and preferences, it will be very difficult to hold the legislators to account collectively. More so the legislators are sometimes very powerful and can manipulate the preferences of the constituents in their favour.

Saward developed a new theory of constructivism where he sees representation as "is not just there, a thing, it is made or constructed by someone for someone and for a purpose".[269] Saward framework directs attention to the nature and status of "acceptance acts". But the question is how do we know that these acts are accepted by the electorate? And how does representative relationship undermine the electorate capacities to make political judgments. Constructivists believe that the answer to these two questions is to look at the conditions under which judgments are formed.[270]

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265 Mark E. Warren, 'How Representation Enables Democratic Citizenship', (FCPR General Conference 1050, Department of Political Science, Sept, 2017) 6-9.
266 Nasstrom Sofia, 'Representative Democracy as Tautology', [2006] *European Journal of Political Theory*, 330.
267 Hanna Fenichel Pitkin, note 226, 8.
268 Ibid, 8.
269 Saward Michael, note 236 34.
270 Ibid, 34

In relatively closed societies, it is more difficult for actors and observers to impute a degree of democratic legitimacy to representative claim in undemocratic or semi-democratic contexts, with, for example, limited information flows and freedoms, people may not have sufficient resources to make assessments of representative claimants, Thus, we need to ask, are the conditions conducive to open and uncovered choices by members of the appropriate constituency?[271]

Disch developed a "mobilization theory of representation that focuses on the ways groups articulate the needs, identities, and interest of constituents through successive formulations. Democratic responsiveness is more likely when political systems are "reflexive"-full of places and institutions within which claims are considered and reconsidered from differing perspectives, what induces reflexivity, Disch argues, is competition among claims. And competition is good because it 'may activate citizens' judgment.[272] Runciman, following Pitkin's theory of non-objection criterion suggests that democratic legitimacy can be constructed as such.[273] The non-objection criteria means "presence comes from an ability of individual to object to what is done in their name" such that representation takes place when there is no objection to what someone does on behalf of someone else. The question is when does an objection to a representative claim terminate representation? For those objections to count and the conditions for this kind of process involves competition among claims. Political representation is best understood not in the language of veto but of competition. Objections to the actions of representatives can prove decisive when they constitute a plausibly competing claim to speak in the name of the person or things being presented. Garsten offers a libertarian version of a similar logic,

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271 Ibid, 35.

272 Disch, Lis, 'Towards a Mobilization Concept of Representation' [2011] *American Political Science Review*, 22 -24.

273 Thomas Hobbes, note 230, 15–34.

arguing that 'a chief purpose of representative government is to multiply and challenge governmental claims to represent the people.[274] Representative institutions should 'prevent any one interpretation of the popular will from claiming final authority, accenting 'the negative function of popular sovereignty". If we extend Garsten's logic to individual level, however, what such institutions accomplish will be to induce reflexivity though competitive claim-making. Akersmit sees political representation as a pivot between individual self-understanding qua individual, and individual self-understanding as a member of a collectivity, people, or functions of representation.[275]

The concept of representation cannot be exhaustively discussed. It's wide and ongoing. However the aggregate opinion of most theorists is that once the constituents elect their representatives into a legislative body, those elected must represent the interests of those that elected them in the first place and not their personal interests.

2.6. ACCOUNTABILITY

There is no one way of defining accountability. There is no agreement as to what it means. In the introduction to this study, we have earlier defined accountability in the prism of Schedler who saw accountability as a measure to prevent and redress the abuse of political power.[276] The most accountable public sector agency or institution is the parliament. Parliament is the highest representative body that is collectively and individually accountable to the people. The core value of a limited government is the expectation of justification of the power of the state through effective service delivery. In other words, people anticipate that those acting on

[274] Garsten Bryan, 'Representative Government and Popular Sovereignty', in Ian Shapiro, Susan C. Stokes, and Elisabeth Jean Wood (eds.) *Political Representation* (New York, Cambridge University Press, 2009). 102

[275] Garsten Bryan, 'Representative Government and Popular Sovereignty', in Ian Shapiro, Susan C. Stokes, and Elisabeth Jean Wood (eds.) *Political Representation* (New York, Cambridge University Press, 2009)

[276] Andreas Schedler, note 27, 25.

behalf of others are more likely to act in accordance with the interest of the represented when they have to account for conduct and results. Accountability is an institutional instrument of political order. It 'involves establishing facts and assigning causality and responsibility, formulating and applying normative standards for assessing conduct and reasons given, and building and applying capacities for sanctioning inappropriate conduct'[277].The postulation here is that accountability affects and is affected by the orderly organization and exercise of responsibilities and power in a political society.

Accountability means being able to provide an explanation or justification, and accept responsibility, for events or transactions and for one's own actions in relation to these events or transactions. Accountability plays a particularly important role in the public sector: It is about giving an answer for the way in which one has spent money, exercised power and control, mediated rights and used discretions vested by law in the public interest. It is fundamental to our system of government that those to whom such powers and responsibilities are given are required to exercise them in the public interest fairly, and according to law.[278]

Accountability has also been defined as a relationship between two actors, where "A is accountable to B when A is obliged to inform B about A's actions and decisions, to justify them, and to suffer punishment in the case of eventual misconduct".[279] Lindberg sees accountability as constraining government use of

[277] Olsen P. Johan, 'Democratic Order, Autonomy, and Accountability, Governance' [2015] 28(4), *International Journal of Policy, Administration and Institutions* 425-440.

[278] Ibid, 434.

[279] Andreas, Schedler, Larry Diamond, and Marc Plattner, *The Self-restraining State: Power and Accountability in New Democracies*, (Boulder, CO: Lynne Rienner Publishers, 1999) 17.

power,[280] which entails both preventing illicit behavior and evaluating politician's performance.[281] According to Iührmann et al this definition raised three related issues:

a. To whom a government is accountable,

b. For what it is accountable, and

c. How it is held accountable.[282]

They then define accountability "as the de facto constraints on the government" use of political power through requirements for justification of its actions and potential sanctions by both citizens and oversight institutions.[283] Lindberg however argues that there is substantial variation in the degree to which accountability actors other than voters constrain governments; such institutions can also exist in non-democratic states.[284] Castiglione defines accountability as "a principle according to which a person or institution is responsible for a set of duties and can be required to give an account of their fulfillment to an authority that is in a position to issue rewards or punishment.[285]

Evans argues that in Western cultures accountability denotes that public officials must be punished for their unaccountable actions in order to build public trust.[286] The question now is why is accountability necessary and essential? Bentham best captures the idea behind the necessity of accountability when he pointed out that "the more strictly we are watched, the better we behave".[287] Nietzsche recognizes that

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280 Staffan I. Lindberg, *Accountability: the core concept and its subtypes*, (Africa Power and Politics, April, 2009) 125

281 Goetz, Anne Marie, 'Who Answers to Women? Gender and Accountability,' (New York: United Nations Development Fund for Women, 2008). 213

282 Anna Iührmann, Kyle I. Marquardt, Valeriya Mechkova, 'Constraining Governments: New Indices of Vertical, Horizontal, and Diagonal Accountability', [2020] *American Political Science Review*

283 Ibid.

284 Staffan I. Lindberg, note 34.

285 Dairo Castiglione, *Accountability,* <https://www.britannica.com/topic/indigenous-governance> accessed 23rd, July, 2022.

286 Stephen Evans, *Accountability as a Relational Virtue*, (Baylor University, 2021) 3.

287 Hood, Christopher, Oliver James, George Jones and tony Travers, *Regulation inside Government: Waste-watchers, Quality Police, and Sleaze-busters.* (Oxford: Oxford University Press, 1999).

people give account only when it is requested and only when that request is backed up by power.[288]

Lindberg opines that accountability is closely associated with authority though not necessarily political authority. Puppets acting as extensions of someone else will are not legitimately objects of accountability (even if puppets sometimes become scapegoats in practice).[289] He further stated that only actors with some discretion to make authoritative decisions can be the object of accountability relationships.[290]

Accountability is about holding organizations responsible for performance against pre-established objectives, as distinct from traditional financial accountability; the focus is on delivering outcomes rather than the correct allocation of inputs.[291] This kind of accountability is a response to what is known as the principal-agent problem. Because individuals are understood always to be in pursuit of their own selfish interests. The notion of principal-agent explains how policy intentions can be subverted by those designated to implement them.

Thus accountability denotes the mechanisms through which people entrusted with power are kept under check to make sure that they do not abuse it, and that they carry out their duties effectively'[292] Takaya defined accountability as "an" official personal obligations to carrying out assigned duties or activities and be responsible for results or outcomes.[293] Adegbite on the other hand conceptualized accountability as "the obligation to demonstrate that work has been conducted in accordance with

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288 J. Butler, *Giving Account of Oneself*. (New York: Fordham University Press, 2005) 11.
289 Staffan I. Lindberg, note 34.
290 Staffan I. Lindberg, note 34
291 Eyben Rosalind, 'Power, Mutual Accountability and Responsibility in the Practice of International Aid: A Relational Approach', [2008] *Institute of Development Studies 305*.
292 Eyben Rosalind, note 291.
293 Takaya J. Bala, 'Corruption and Public Accountability in the Nigerian Public Sector: Interrogating the Omission', [2013] *European Journal of Business and Management 4*.

agreed rules and standards and the officer reports fairly and accurately on performance results"[294]

Olowu posited that "accountability refers to answerability for one's actions or behavior."[295] Ujah sees accountability from the public sector point of view. He operationalized public accountability as "a system whereby public officers are made to give account of their stewardship to members of the public." He emphasized that public interest is supported to be crucial to public accountability; therefore public bureaucracy and policy making are expected to reinforce public administration.[296]

Adebayo made an attempt to exonerate the bureaucratic class by arguing that "officials are constantly conscious of public accountability and are, therefore, anxious not to make mistakes that would expose them and the system they operate, to public crictism."[297]

Ibietan does not agree with Adebeyo's assertion and asserts that his position does not reflect the correct and current situation and practice in the Nigerian public bureaucracy. This is because there is so much inefficiency, ineptitude and general rot due to rampant corruption, nepotism and sundry malfeasance in the public service.[298] Jide's assertion cannot be faulted. It is well known that corruption is endemic and pervades the Nigerian Public Service which renders accountability and transparency very difficult.

Olowu's definition of accountability has three crucial factors of responsibility regarding mechanisms and a review system, rewards and sanctions. These are the

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294 Adegbite O. Emanuel, 'Accounting , Accountability and National Development in Compass', [2009] (16) *Journals of Accountancy,* 33-34.

295 Olowu Dele, note 76, 139-158.

296 J. S. Ujah, 'Public Accountability in Nigeria; Problems and Prospects', [2010] 7(8), *International Journal of studies in the Humanities, (UNN),*. In Jide Ibietan, 'Corruption and Public Accountability in the Nigerian Public Sector: Interrogating the Omission', [2013] *European Journal of Business and Management*, 77-89

297 Adebayo A. Jide, *Principles and Practices of Public Administration in Nigeria,* (2nd Ed, Spectrum Books Limited Ibadan, 2000). 30

298 Adebayo A. Jide, note 297. 32

implied indispensable roles of due process, transparency and feedback.[299] In Adegbite's conception of accountability's involves:

1. Structures in the public sector which help to reflect the preferences of the public as citizen.
2. One of the five norms of good governance, the rest are efficiency; transparency, rule of law, and legitimacy.
3. It involves the need to curb waste occasioned by inefficient use of public resources and collusion between the top bureaucratic and political class in rent-seeking and sundry corrupt practices.
4. The need for efficient management of the meagre resources in the face of rising expectations from the populace for service delivery. [300]

Staffan, a renowned scholar holds the view that there are different definitions of the concept of accountability but he believes that the core characteristics of accountability can be summarized as follows:

1. An agent or institution who is to give an account (A for agent);
2. An area, responsibilities, or domain subject to accountability (D for domain);
3. An agent or institution to whom A is to give account (P for principal);
4. The right of P to require A to inform and explain/justify decisions with regard to D; and
5. The right of P to sanction A if A fails to inform and/or explain/justify decisions with regard to D.[301]

He emphasized that these characteristics may be expressed in various ways and that none of these conditions specifies that these relationships have to be formally

[299] Takaya J. Bala, note 293.
[300] Adebayo A. Jide, note 2947. 33-34.
[301] Staffan I. Lindberg, note 34, 8.

codified or that the agents and institutions involved are formal institutions or hold an official office. Even if the individuals involved are indeed office holders such as bureaucrats in a state body, their accountability relationship may be in part or wholly informal.[302]

Murphy, is of the view that the form of accountability varies depending on the context and, in particular, on who is the principal. When the principal is a higher authority the direction of accountability is "upwards". The direction of accountability can also be "downwards" when the principals are citizens or a community; and "horizontal" when it is part of a contract or partnership agreed for mutual benefit.[303] The concept of accountability is closely tied to concepts of democracy and legitimacy. Those who govern have to answer for their actions to a wider public either directly, when politically elected or appointed, or indirectly as subordinates of politically elected bodies. If they fail to do so they can be substituted in democratic elections. This constant threat forces the ruling government to respond to the demands of a constituency, who can thus hold their government to account.[304]

Accountability has its roots in the conceptualization of the state as a product of a social contract between the state and the citizens. Every democratic constitution espouses this ideal expressing the need to promote the interest of the citizens. The citizens surrendered their natural rights and freedom of self-government to the state in

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302 Ibid

303 P. Murphy, P. Eckersley, and L. Ferry, 'Accountability and Transparency: Police Forces in England and Wales', [2017] <http://dro.dur.ac.uk/19653/1/19653.pdf?DDD2+dng4alc+d700tmt> accessed on 14th November, 2022.

304 Edward Hedger and Andrew Black, *Enhancing Account Committees* (London SEIJP U.K, 2008). 106 - 107

exchange for the provision of social benefits. Thus, 'the balance of power shifted from the absolutist state to government by consent of the governed.'[305]

As regards the principal-agent model of accountability Brandsma and Adriaensen have noted, 'the principal has moral superiority, he is the ultimate judge of the agent's behavior. He may install a variety of controls that in the end allow him to sanction any misbehavior of the agent, whose pursuit of personal interests are curtailed since he rationally tries to avoid being sanctioned. If the agent did not behave according to the principal's preferences, we have a situation of agency loss which is considered a bad thing because the moral superiority of the principal has been impaired.[306]

In a representative government, the understanding is that elected political office holders exercise delegated authority.[307] In other words, the citizens entrust their collective powers to their representatives, periodically, to act on their behalf with an expectation of delivery of public goods and services. The implication of this is that the elected public officials do not have absolute power to determine their tenure, as the citizens have the power to evaluate their performances, vis a vis the interests they represented, and decide to either renew or terminate their mandates.

The main mechanism to ensure that representatives act in the best interest of the public is the existence of periodic elections, the key instrument that voters have to both retrospectively sanction elected officials and prospectively select "good" candidates who are honest and share their policy goals.[308]

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[305] Ricardo Pelizzo, and Stapengurst Frederick, *Government Accountability and Legislative Oversight* (New York: Routledge, 2013). 200 – 212

[306] Gijs Jan Brandsma & Johan Adriaensen, 'The Principal-Agent Model, Accountability and Democratic Legitimacy', in T. Delreux, J. Adriaensen (eds), *The Principal-Agent Model and the European Union*. (Palgrave Macmillan Cham. 2017) 35-54.

[307] Klasnja Marko & Titiunik Rocio, 'The Incumbency Curse, Weak Parties, Term limits, and Unfulfilled Accountability',[2017] 111 (1) *American Political Science Review,* 129-148. In Omololu Fagbadebo, note 22, 125.

[308] Ibid, 126.

2.6.1. **Components of Accountability**

Accountability comprises of four components.[309]

1. **Horizontal accountability**

   Abuses by public agencies and branches of government are checked by state institutions, such as the legislature and anti-corruption agencies.

2. **Vertical accountability**

   This is the means through which officials are enforced to perform effectively by citizens, mass media, and civil society.

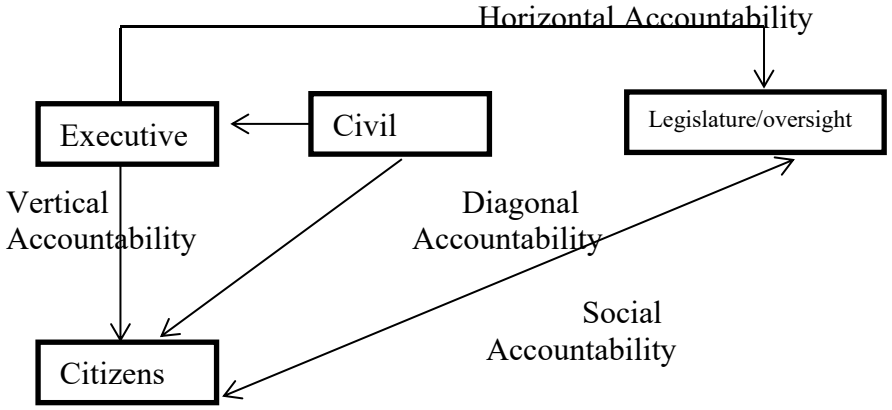
3. **Diagonal accountability**

   Citizens are directly engaged in horizontal accountability institutions. Limited effectiveness of civil society's watch dog function is augmented by breaking state's monopoly on responsibility for official executive oversight.

4. **Social accountability**

   Accountability is ensured by civic engagement. Regardless of the forms of government or accountability, the legislature plays a crucial role in promoting government accountability.

Figure 2.2: Concept of Accountability



Source: Improving Democratic Accountability Globally, a Handbook for Legislators on Congregational oversight in presidential systems.

[309] 'See diagram 1 as illustrated in Improving Democratic Accountability Globally, a Handbook for Legislators on Congregational Oversight in Presidential Systems, (GOPAC, World Bank Institute, 2013) 3-4.

In a networked governing system like the presidential system, with a fixed term of office for elected officials, vertical accountability occurs at the end of the constitutionally mandated term of office. Thus, 'elections are the chief mechanisms of vertical accountability'. As Love and Windsor have noted, the citizens could, through the ballot box, compel their leaders to take the preference of voters seriously by allowing the citizens to punish or reward leaders for the promises and performance.[310] The aim of horizontal accountability is 'to sanction malfeasant or corrupt officeholders before they have an opportunity to seek re-election.[311]

However, these two mechanisms could fail to ensure answerability and enforcement. For instance, in a political system where populism and popular supports blur vertical accountability, electoral process would fail to effect a change of leadership.[312] Similarly, agencies of government could be subject to manipulation or compromised to function ineffectively. In these cases, accountability becomes futile while the citizens suffer under the siege of governance crisis. To this end, a new sets of accountability, the diagonal relationship between the formal institutions of horizontal and vertical mechanisms and the non-formal agents such as the civil society and the media, to enforce accountability, directly, emerges beyond the formal institutions and agencies are the informal state actors that fill in the accountability gap that formal institution leave. In this wise, members of the public in conjunction with the 'civil society organizations' and an independent media can use a board range of actions and mechanisms to hold the government and public officials accountable, directly or through the formal institutions of accountability as in the case of some

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310 Love J. Gregory and Windsor C. Leah, note 42, 1-14.

311 Boas C. Taylor, F. Daniel Hidalgo, and M. A. Melo, 'Horizontal but Not Vertical, Accountability institutions and Electoral Sanctioning in Northeast Brazil', in, Thad Dunning, Guy Grossman, Macartan Humphreys, Susan Hyde, and Craig Melntosh, eds. Metaketa 1, *the Limits of Electoral Accountability.* (New York: Cambridge University press, 2018) 2-3.

312 Boas C. Taylor, F. Daniel Hidalgo, and M. A. Melo, note 311, 25.

impeachment episodes in Latin America.[313] A topology of Accountability was developed by World Bank Institute GOPAC which recognizes the different legislative oversight mechanism and these mechanisms are classified as having high or low enforcement/sanctions capacity as illustrated in table 2.1 below.[314]

Table 2.1:

Typology of Accountability with illustrative examples				
	Accountability Within government (horizontal)	Accountability outside government (vertical)	Accountability outside government (diagonal)	Accountability outside government (social)
high enforcement/ sanctions capacity	Supreme audit institutions Legislative committees Interpellations courts Enforcement agencies	Elections Professional Codes of Conduct National/ international standard-setting bodies Accreditation agencies Referenda	Parliamentary hearings Admin. Review Councils	Public interest law Freedom of Information laws
low enforcement/ sanctions capacity	Questions/ question period Ombuds offices Advisory boards Inter-ministerial committees Blue ribbon panels 'Sunshine laws'	Policy research Service delivery surveys Investigative journalism		Citizens' charters Citizen Oversight committees Civil society 'watchdog' institutions

See Table 2.1 as illustrated in Improving Democratic Accountability Globally, a Handbook for Legislators on Congressional oversight in presidential systems.

This typology has the following characteristics:

313 Omololu Fagbadebo & Ruffin Fayth, 'Between old and the new: Comparing the effectiveness of the pre- and post-colonial administrations in Nigeria', [2016] 16 (1) *African Journal of indigenous knowledge systems*, 148-159.

314 See Table 1 as illustrated in Improving Democratic Accountability Globally, a Handbook for Legislators on Congregational oversight in presidential systems, (GOPAC, World Bank Institute, 2013) 3-4

1. Accountability initiated by civil society has limited enforcement and sanctions capacity.
2. Strongest accountability institutions and mechanisms lie within the state.
3. Citizens and citizen groups and state accountability institutions are connected by social (and diagonal) accountability.

The following factors are crucial for both civil society and state institutions to play an effective role:

1. Quality of democracy and political space for legislative oversight, freedom of expression and information.
2. Capacity of citizen engagement, civil society and state accountability institutions.

The foregoing requires clear application of standards and access to information for utmost effectiveness.[315] There is also the notion of principal agent accountability that is similar to representative accountability which is defined as the relationship between the elected officials and the people who voted for them.[316]

Accountability is also associated with human rights. This can complement financial or results based management approaches "with a concern for impacts on individual or the effectiveness of redress mechanisms.[317] Piron observes that human rights *are* included in certain memoranda of understanding between donor and recipient governments as an integrated part of mutual accountability. However, she notes the understanding of human rights is a narrow one and does not cover economic and social rights, including the right to development that the civil society network demands. Rather, such agreements between governments tend to be about the

315 GOPAC, World Bank Institute, note 314, 4.
316 Richard Mulgan, note 1, 41.
317 Jide Ibietan, 'Corruption and Public Accountability in the Nigerian Public Sector: Interrogating the Omission', [2013] *European Journal of Business and Management*.

protection of political and civil rights and are used as a good governance condition if the recipient government violates these rights, donors can withdraw their aid.[318]

Accountability is also associated with the notion of civil society as the watchdog of the state, it needs watching because it can be not only corrupt but also tyrannical. Stemming from seventeenth and eighteenth century Western European political thought, what is seen as a fundamental challenge for society in sustaining its contract with the state is ensuring that those who exercise power can be held accountable and even punished.[319]

Accountability therefore can be seen on the necessity of those elected into parliament or government at any level to be responsive to the needs and desires of their constituents who elected them in the first place. Their actions as representatives of the people must be in consonance to the various interests of their constituents as they are holding their mandates on their behalf as a public trust. This concept is based on the premise that parliament, as the highest representative organ of government, has the duty to check on the activities of the executive through a number of measures. The mechanisms employed to achieve that has in modern literature been referred to as parliamentary accountability.

2.7 THE CONCEPT OF POPULISM

There is much debate in the academic literature as to the meaning of "populism," and indeed as to whether populism has a sufficiently fixed meaning for it to qualify as a useful concept in academic analysis. Within general discourse, the label populist is applied to a bewildering array of political figures and movements,

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[318] Laure-Hélén Piron. 'Human Rights and Poverty Reduction, the Role of Human Rights in Promoting Accountability' [2005] *Oversea Development Institute (ODI), London 51-64.*

[319] David I. Brown and Mark H. Moore, 'Accountability Strategy and International non-Governmental Organization, the House Center for Nonprofit Organization'. [2001] (7) *The Kennedy School of Government; Harvard University, working paper. 569-587*

from Donald Trump and Bernie Sanders in the United States to Hugo Chávez in Venezuela and Victor Orbán in Hungary. If anything unifies these political figures, it is not their political ideology. Nevertheless, it has been convincingly argued by scholars that populism retains a coherent core of ideas, notwithstanding the different ideological valence of self-described or ascribed populists.[320] Mudde and Kaltwasser adopt what they term an ideational approach, defining populism as "a thin-centered ideology that considers society to be ultimately separated into two homogeneous and antagonistic camps, 'the pure people' versus the 'corrupt elite,' and which argues that politics should be an expression of the volonté générale (general will) of the people."[321] They note three understandings of the people in this account: as sovereign, as the common people, and as the nation.[322]

In a similar vein, Müller argues that populism is a particular moralistic imagination of politics. It sets a "morally pure and fully unified people against elites who are deemed corrupt or in some other way morally inferior."[323] Populists are also anti-pluralist and believe that only they can represent this pure people.[324] Müller identifies broadly the same three senses of people as do Mudde and Kaltwasser, the body politic, the common people, and the nation.[325] The notion of a pure and unified people may be a fiction but it provides the ideological core of populism. Canovan characterizes populism as a reaction against existing power structures that claims legitimacy through its appeal to the sovereign people. She identifies three different, but often overlapping, senses of the people in these invocations, the united people (the

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320 Oran Doyle, 'Populist Constitutionalism and Constituents Power' [2019] *German Law Journal*, 164

321 Cas Mudde and Crisóbal Rovira Kaltwasser, 'Populism: A very Short Introduction' [2017] (5) *Oxford University Press*, 8

322 IbId, 9.

323 Jan-Werner Müller*, What is Populism* (University of Pennsylvania press, 2016) 19.

324 Ibid, 22.

325 Jan-Werner Müller note, 323

nation as against the parties and factions that divide it), the ethnically homogeneous nation, and the common people.[326]

Barber sees populism as a brand of groupthink in which a leader establishes a direct connection with the people and, by virtue of this connection, is able to govern outside the established constitutional processes of the state.[327] He argues that populism is a critique of how policy decisions have been made, an accusation that the proper mechanisms of constitutional government have been subverted. But not all forms of subversion are populist. Populism can be distinguished from other types of constitutional dysfunction. Populists are not tyrants or dictators, though, as populism develops, they might slide into these forms of state. Tyrants and dictators rule without the support of the bulk of the people, using fear and coercion as primary tools of government. Populists, in contrast, rely on the support of the people for their power-though, like all rulers, they buttress this support with coercion against some state members. Whilst we should doubt the claim commonly made by populists that they speak for the people as a whole, populists, as opposed to tyrants, succeed in securing the support of a sizable part of the people. Perhaps as a corollary of this, democratic structures of control continue to exist in the populist state, though in an attenuated form. Populists subvert constitutional government but do so in a manner that brings much of the people along with them, and which allows and requires the basic structures of a democratic state to remain in place.[328]

The primary feature of populism is the existence of a leader who claims to have and to a significant extent is able to make good on the claim to have a direct, unmediated, connection with the people of the state. Vladimir Putin in Russia and

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326 Margaret Canovan, Trust the People! Populism and the Two Faces of Democracy, [1999] (2) Political. Study, 47.
327 Nick W. Barber, *Populist Leaders and Political Parties,* (Cambridge University Press 2019) 129.
328 Ibid 130.

Recep Tayyip Erdogan in Turkey are two contemporary leaders who broadly fit this model, this study will add President Donald Trump. Jan-Werner Muller chronicles the ways in which populist leaders create what he calls an aesthetic of "proximity to the people." So, for example, some populist leaders make use of the media to communicate directly with their people, appearing on phone-in shows where callers can raise questions with the leader and, at times, making decisions in response to these calls. To give an extreme example, Müller recounts an incident in which Hugo Chávez ordered the deployment of tanks during one of these broadcasts. The importance of such exercises is twofold. The populist leader shows herself to have a direct connection to the people, listening to their concerns, and, in addition, can respond to these concerns without having to negotiate the decision through constitutional structures. As Müller notes, there are echoes of Rousseau's conception of democracy in the way in which populist leaders present themselves to their people.[329]

Rousseau, pointed out that the populist leaders asserts that there exists a general will within the people and, moreover, that she has a special capacity to identify and articulate that general will. Impediments to the vindication of this general will are, then, impediments to the operation of democracy. The populist leader in contrast to the tyrant-invokes democratic values to legitimate her decisions and the circumnavigation of constitutional processes in the execution of these decisions.[330]

[329] Jan Werner Moller, note 323, 130.
[330] Jean-Jacques Rousseau, note 57.

2.8 THEORITICAL FRAMEWORK

2.8.1 NOTABLE THEORIES OF LEGISLATIVE ACCOUNTABILTY

Some theories of legislative accountability were referenced when analyzing the conceptual framework. However it is still pertinent to briefly state some. These are:

I. **Prinicipal – Agent Theory**: This Theory posits that legislators (agents) are accountable to the people (prinicipals) who elected them.

II. **Sepereation of Powers Theory**: This suggests that separation of powers between the three (3) organs of government promotes accountability.

III. **Institutional Theories**: Emphasise the roles of Institutions in shaping behavior and promoting accountability.

IV. **Public Choice Theory:** Suggest that legislators are motivated by self interest and may priotize personal gain over public interest.

V. **Social Contract Theory**: Posit that government derives their authority from the consent of the governed.

VI. **Diffusion Innovation Theories**: This Theory suggests that ideas and practices can spread from one context to another. In Nigerian, studying the United States can inform innovations in legislative accountability.

Others Theories include:

VII. Organization Theory

VIII. Stakeholder Theory

IX. Transparency and Accountability Theory

X. Democralic Government Theory

2.8.2 CORRELATION BETWEEN POPULISM, ACCOUNTABILITY, AND REPRESENTATION

There have been debates about the mode of political representation, as to how best the voices of the people can be heard. Is it through popular participation like direct voting of the electorate, through referendum or plebiscite? The concept of populism is gaining traction because there is a viewpoint that believes that there is lack of responsiveness and accountability of various forms of representative systems. More so, the two basic mechanisms of horizontal and vertical accountability which are used to hold the legislators to account by the electorate can fail to ensure answerability and enforcement. For instance, Love and Windsor hold the view that in a political system where populism and popular supports blur vertical accountability, electoral process would fail to effect a change of leadership.[331] Similarly, agencies of government could be subject to manipulation or compromised to function ineffectively.[332] Roberts believes that contemporary scholarship mainly addresses the crisis of political representation as the key facilitator behind the emergence of populism.[333] Some scholars have stated rightly in my view that the major reason behind different root causes of the crises is government lack of responsiveness to citizens' demands and interests. This creates political space to mobilize anti-elite or anti-establishment popular sentiments.[334] Zilla on the other hand states that representative democracy brings with it two differentiations. On the one hand, a vertical difference between rulers and constituencies that allows inequality in access

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331 Love J. Gregory and Windsor C. Leah, note 42, 1-14.

332 Taylor C. Boas and Daniel F. Hidalgo and M. A. Melo, 'Horizontal but Not Vertical, Accountability Institutions and Electoral Sanctioning, Northeast Brazil', in, Thad Dunning and Guy Grossman and Macartan Humphreys and Susan Hyde and Craig Melntosh, (ed), *The Limits of Electoral Accountability.* (New York: Cambridge University press, 2018). 24

333 Kenneth Roberts, 'Populism, Political Mobilizations, and Crisis of Political Representation', in C de la Torre (ed), *The Promise and Perils of Populism, Global Perspectives* (University Press of Kentucky, Lexington, KY, 2015) 140–141.

334 Persson Tabellini, and Trebbi, 'Electoral Rules and Corruption', [2003] 1 (4) *Journal of the European Economic Association* 960

to political power and the risk of tyranny by the ruling minority. The author calls this 'the dilemma of incongruity' that can be attenuated by introducing power control and power dispersion mechanisms.[335]

On the other hand, a horizontal differentiation exists between preferences that are strongly represented (or considered in the decision-making process) and those that are only weakly represented (or not considered at all), with the risk of tyranny by majority will. He further stated that "from the perspective of those citizens whose preferences might not be included in the process of policy-making but who are nevertheless bound to or affected by political decisions, representative democracy might resemble heteronomy'.[336] He calls it "the dilemma of disparity', which can be reduced by protecting minorities, enhancing pluralism, diversifying representation, and fostering participation.

Issacharoff opines that "the problem is not a rejection of democracy, but too much democracy."[337] Citing the Brexit example and the UK's Supreme Court performance, Issacharoff asserts that court should serve to reinforce the constitutional constraints necessary for democratic governance. Muller explains the position in Western Europe democracies is to direct the whole political development 'toward fragmenting political power (in the sense of checks and balances, or even mixed constitution) as well as empowering unelected institutions or institutions beyond electoral accountability, such as constitutional courts, all in the name of strengthening democracy itself'.[338] He referred to this as "constrained democracy" as a model followed by the European Union. As a result, the outcome is a political order

335 Claudia Zilla, Defining Inclusion from the Perspective of Democracy and Citizenship Theory (IPSA Congress 2016) 9.

336 Claus, O., Referendum vs. Institutionalized Deliberation: What Democratic Theorists Can Learn from the 2016 Brexit Decision, [2017] *Daedalus: The Journal of the American Academy of Arts & Sciences. 19 – 21*

337 Samuel Issacharoff, 'Safeguarding Democratic Institutions', [2017] *International Journal of Constitutional Law Blog,* 4

338 Jan-Werner Müller*,* note 323, 19.

'particularly vulnerable to political actors speaking in the name of the people as a whole against a system that appears designed to minimize popular participation'.[339] This also affects party democracy.[340]

Aiterio believes that there are two approaches to populism, one is "reactive approach" and the other "structural."[341] The reactive approach means an intuitive response where popular participation is restricted by avoiding referendum or any type of popular public engagement.[342] Constitutional Courts and judicial review are instruments used in this approach to structural popular participation.

However it is the view of this study irrespective of the reasons the populace give in voting on any issue, their decisions must be respected and remains sacrosanct. It does not lie in the hands of the political elite to subvert the will of the people for whatever reason. This was ably demonstrated with the Brexit in the UK, despite reservations of the elite, the popular will of the people expressed in the referendum was carried through. This is how it should be, this study agrees that at times popular decisions by the people may be wrong but we are struck by it.

Arato suggested that "when representation through elections falls, courts potentially yield a second democratic channel that becomes all the more important under a populist regime.[343]

The reactive approach as discussed earlier seems to have its drawbacks and it is believed to be self-frustrating. So, the need for a structural approach that focuses on the creation of incisures, and inter-dependent institutions based on idea of

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339 Ibid, 96.

340 Christopher Bickerton and Invernizzi C. Accetti, 'Populism and Technocracy', (2015) in Rovira Kaltwasser and others. (eds), *The Oxford Handbook of Populism* (Oxford University Press, 2017) 337, 338.

341 Claudia Zilla, note 335, 9. in Ana Micaela Aiterio, *Reactive vs Structural Approach, a Public Law Response to Populism*. (Cambridge University Press, 2019) 271.

342 Ibid, 272.

343 Andrew Arato, 'Populism and the Courts' [2017] *International Journal of Constitutional Law Blog* ,

participation is more preferred. This approach believes that populism should be institutionalized by including it in the constitution of various countries. It emphasizes constitutionalism or put succinctly "popular constitutionalism" because of the crises of representation which include, but not limited to high levels of corruption, distrust between electorate and representatives, ineffective representation by elected representatives and so on., this approach of popular constitutionalism can be a useful concept in resolving the various crises of representation. [344]

Popular Constitutionalism advocates that 'the views of ordinary people about constitutional meaning should play at least as large a role in constructing the nation's constitutional understandings as do the views of elites, and especially the views of Supreme Court justices'. It also promotes the idea of a flexible, not fully comprehensive, constitution and of an extra governmental interpretation of it. This aspect challenges judicial supremacy, and in certain cases, even refutes any form of judicial review. It also seeks a greater democratization and participation in political and economic institutions, and reaffirms the relationship between law and politics. [345] Alterio believes that there are convergences and divergences between both concepts. The first and fundamental convergence is that both preserve the role of popular culture, of 'the people', in political, giving it a strong role.[346]

Tushnet's however prefer to use the term "General Will" instead of "Popular Will" in the conception of the effect of legislative impotence that will invariably lead to the 'capacity of the people to join together into a community and legislate to enforce their common interest'.[347] Thus, rather than a rational process constructed via

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344 Pierre Rosanvallon, *Democratic Legitimacy. Impartiality, Reflexivity, Proximity* (Princeton University Press, Princeton, NJ, 2011) 16.

345 Ibid, 17.

346 Andrew Arato, note 343.

347 Mark Tushnet, 'Popular Constitutionalism as Political Law',[2006] 81 *Chicago-Kent Law Review*. 991.

the public sphere, the populist notion of general will 'which is always in the right and always works for the public good' is based on the unity of the people.[348]

In this sense, the people become 'substantive' as they go beyond elections and representation, vindicating a more spontaneous relationship and a direct consensus between them and the leader. In this manner, populists seem to assimilate popular sovereignty and governmental institutions.[349] Since populist government is the government of the people, it is believed that it challenges precariousness.[350]

Populism is also related to the concept of constituent power constitutional checks and balances impede both the expression and the implementation of popular will, making them a prime target for populist dissatisfaction. Constitutional standards are managed by a legal and political elite that stands in putative opposition to the pure people, the will of whom the populist leader channels. There is thus a strong association between populism and the dismantling of constitutional constraints.[351] Yet in other ways, constitutional democracy may lend support to populism. Whereas the constituent power is unfettered by any legal or moral constraint, constituted powers are according to Schmitt, necessarily constrained. An important implication of this for Schmitt, to which we shall return later, concerns constitutional amendment: as the amendment power is constituted, it cannot be exercised in a way that erodes the identity and continuity of the constitution as an entirety.[352]

Corrias, presents a populist reading of constituent power stating, "The notion of constituent power refers to the authority to make the constitution and thus to institute the legal order. It belongs to the people. As constituent power, the people is

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348 Ibid, 992.

349 Ana Micaela Alterio, Reactive vs Structural Approach: A Public Law Response to Populism, (Cambridge University Press, 2019). 57

350 Cas Mudde and Rovira Kaltwasser note 321.

351 David Landau, *Populist Constitutions*, (University Chicago Law Review, 521, 2018) 85.

352 Samuel Issacharoff, 'Populism Versus Democratic Governance, in Constitutional Democracy' In Crisis 445 (eds. Mark A. Graber, Sanford Levinson & Mark Tushnet, 2018). 1-14

understood to already exist prior to and independent of the constitutional order."[353] Joel advances a democratic theory of constitutionalism based on an analysis of constituent power.[354] He argues that not just the ordinary workings of the constitution but also its manner of creation and alteration should be democratic. In particular, he maintains that the constituent power of the people should be allowed to reemerge to challenge an existing constitutional order. He builds this argument on Schmitt's theory of constituent power, describing constituent power as "par excellence a democratic concept."[355]

The suggestion of a populist constitutionalism is apt to raise heckles. Halmai contends that populist constitutionalism is an oxymoron: there can be populist constitutions, but there cannot be populist constitutionalism, because the values of populism are antithetical to the values of constitutionalism.[356] This approach insists on an understanding of constitutionalism as a moral value. This is a valid position within political thought, the most focused and distinctive claim being that constitutionalism connotes the value of constrained government.[357] Constitutionalism, however, is often used in a more neutral way to capture simply the practice of government under a constitution, which allows it to be juxtaposed with almost any adjective.[358] Populism supports top down mechanisms; popular constitutionalism upholds bottom up mechanisms of participation.[359]

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353 Luigi Corrias, 'Populism in a Constitutional Key: Constituent Power, Popular Sovereignty and Constitutional Identity', [2016] (6) *European Constitutional Law Review,* 10.

354 Joel I. Colón Ríos, Weak Constitutionalism: Democratic Legitimacy and the Question of Constituent Power, (Routledge, 2012).34

355 Carl Schmitt: *Constitutional Theory*. Berlin (Duncker & Humblot, 1970) 205, 214.

356 Gábor Halmai, 'Populism, Authoritarianism and Constitutionalism', [2019] 20 (3) *GERM. German Law Journal. 296- 313*

357 Will Waluchow, 'Constitutionalism', in The Stanford Encyclopedia of Philosophy, (ed. Edward N. Zalta, ed., Spring 2019). 70

358 For examples of such usages, see David Landau, note 351,189; Mark Tushnet, 'Authoritarian Constitutionalism', [2015] 100 *CornelL Law. Review*. 391.

359 Claudia Zilla, note 335, 10

Populism is a perversion of democracy rather than a refutation of it. The populist leader claims the support of the electorate and enjoys, to some significant degree, the support of a portion of that body. Whilst the subversion of constitutional structures may be a feature of populism, their maintenance, in some form, is also a feature of this form of rule.[360] But populism is far from being idea. In reality it is a matter of degree, it can be found in states and to some extent in leaders at various levels seeking elections or the people's mandates to political offices. Any sensible politician running for office will seek to appeal to people's emotions. Many will hope to convince the electorate that it is they, rather than their opponents, who truly speak for the people; most will seek to build a personal connection with voters. When the constitution is functioning well, those who succeed in the electoral process find that their capacity to act is constrained within constitutional structures that compel them to discuss and compromise with others.

Democracy as earlier stated here ensures accountableness of public officials to the electorate. This can be effectively done through the legislature as an institution and representatives of the people. The concept of populism seems to deviate from this norm. It creates a strong leader that instead of being accountable to the people through an elected legislature, panders directly to the emotions of the people therefore rendering the legislature impotence. This legislature's impotence will incredibly lead to unaccountability of the institution as the strong leader will have a direct strong connection with the people. Therefore, populism is averse to democracy and legislative accountability. It encourages legislative subversion and greatly declines legislative accountability, including the executive and judiciary. A populist leader is hardly accountable to the people. The most affected is the representational function of

[360] David Landau, note 351.

the legislature. The electorate will be more inclined to follow the strong leader and will not have time to hold the legislature accountable. The institution becomes irrelevant and impotent. The principle of separation of powers cum checks and balances will also be eroded.

The leader's personal connection with the electorate then becomes one source of her political capital; capital that is then used to facilitate their engagement within the constitutional order. On occasions, even in normally well-functioning constitutions, a leader may be able to use this political capital to by-pass these normal constitutional structures and to avoid the discussion and negotiation normally required before action. Here, the pathology of populism can arise within an otherwise non-populist system.[361] In a political system where political parties are strong and play their role as a medium between government and party members, populism will be weak. It only flourishes when parties are weak and unable to perform its role effectively. This study is of the opinion that the concept of populism seems to deinstitutionalize democracy as a popular leader will subvert democratic institutions like the parliament and deal with the people directly, in such situation accountability both vertical and horizontal will be seriously impelled.

The best democratic way of showing lack of public trust and disaffection with the peoples' representatives in the parliament is through a free and fair election and not through directly appealing to the emotions and sentiments of the electorate by a populist leader.

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[361] Archie Brown, The Myth of The Strong Leader: Political Leadership In The Modern Age, (Basic Books, 2014] 326

2.9 REVIEW OF LITERATURE

2.9.1. Legislative Accountability

It is pertinent now to relate these concepts to legislative accountability, particularly with the legislative function of representation, and the accountability of the legislators to their constituents. Jumbo and Fagbadebo hold the view that democracy survives if it brings about-good governance which in turn promotes the well-being of the citizenry.[362] A strong legislature is one of the determinants of accountability and democratic survival.[363]

Lawan holds the position that the existence of the legislature is central to the promotion of transparency and accountability in a democracy.[364] The importance of the legislature in advancing and promoting the interests of their constituents cannot be over emphasized. This is more so in a presidential system of government being practiced in both Nigeria and the United States of America where the effectiveness of good governance in its presidential system is anchored on the principles associated with public involvement and accountability. Accountability through reasoned decision making is central to administrative law both rulemaking and adjudication.[365] Rose-Ackerman is of the view that United States Congress passed the Administrative Procedure Act as a way to constrain the executive and remains a pillar of the modern administrative state that helps to justify the delegation of policymaking responsibilities to cabinet, departments and independent agencies,[366] The authority to adopt laws, allocate public resources and establish policies affecting individuals and

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362 Ojo C. Jombo and Omololu Fagbadebo, 'Integrity Deficit as an Impediment to Effective Legislative Oversight in Nigeria', Omololu Fagbadebo, note 22, 132

363 Poteete Amy R., note 124.

364 Ahmed M. Lawan. In Attahiru Muhammadu Jega, Haruna Wakili and Ismaila M. Zango (eds.) note 125, 151–164.

365 S. Rose-Ackerman, 'What Does "Governance" Mean?, [2006] An International Journal of Policy, Administration, and Institutions, 1–5.

366 Ibid, See The Administrative Procedures Act of 1946.

organizations makes legislatures among the most significant institutions in society.[367] As earlier stated in this literature, the legislature in carrying out its functions of oversight holds the executive horizontally accountable, while the representational function of the constituents holds their legislators vertically accountable. Some of the mechanisms used in holding individual legislators accountable include elections, recall and so on.

Ofuson asserts that the test of democracy is the extent to which parliament can ensure government remains answerable to the people and that parliamentary accountability should be encouraged because it helps to promote good governance and hold the government political appointees, and head of government agencies to account.[368] He further gave reasons why parliamentary accountability in general and in South Africa in particular should be promoted. These include:

1. It serves as a representative of the down trodden and common people of the country since members of parliament are elected representatives, they must act in the public interest and be accountable to the people.
2. Funds monitoring.
3. Law making.[369]

Parliamentary accountability, he affirms is one of the key to effective and efficient political administration. It serves the function of enhancing public confidence in government and ensures that the government is close and responsive to the people it governs.

Political or legislative accountability is of a more inscrutable nature. In democracies, it depends, on the one hand, on the form and mechanisms of political

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367 James Griesemer 'Searching for legislative accountability rebuilding citizen trust in the legislative process' (Report of the University of Denver Strategic Issues Panel on Legislative Accountability, 2015) 3.
368 Adebimpe Ofuson, note 40, 2.
369 Ibid, 3.

representation, linking citizens to their legislators, and, on the other hand, on the formalized relationship between executive and legislative powers. Both types of political accountability rely on a rather weak power of control because the position of the agents in those two relationships is comparatively stronger in either their knowledge or their ability to control the agenda. Ultimately, legislators can be voted out of office by their constituencies, although governments can be brought down by parliaments (though this does not apply in presidential systems), but whether this is the result of the process of strict accountability for what legislators or governments do while in office or of a more general political evaluation, subject to opinions trends, by the electorate remains a moot point.[370] Either way, legislative accountability gives power to the electorate to sanction their representatives that do not meet up to their expectations by refusing to re-elect them. This is a powerful mechanism tool.

Burke describes representative (legislative) accountability as your representative owes you not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion".[371]

MacCarthaigh sees parliamentary or legislative accountability as the "obligation of the executives to reveal and defend its decisions (both ex-ante and ex-post) to the elected representatives of the people.[372] This definition is however very restrictive, it deals with one of the functions of the parliament which is oversighting the executive. This entails only collective accountability, the legislatures need to be accountable to the people who voted them into power. Individual accountability of the legislators to their constituents was completely left out. The legislators also owe collective accountability to the electorate and the nation in general to ensure that laws

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370 Dairo Castiglione, note 285.
371 Edmund Burke, note 232, 148.
372 Muiris MacCarthaigh, *Governance and Parliamentary Accountability*, (Research Gate, December 2007). 78

enacted are for the general interest of the people. Accountability is the most fundamental element of government in democratic politics.[373]

To Senator Grassley of the United States Congress, legislators are merely representatives of the people. He says "We are not better than the people we represent and we are not, by definition and determination, different than the people we represent. We are, as representative government intends, the people themselves. I hold this view in all votes that I cast and all legislation that I introduce. The United States Government must be accountable to the people."[374] As a result of this advocacy for accountability he supported, along with other Senators [375] the passage and adoption of the Congressional Accountability Act. [376] With this passage members were subjected to the same accountability tests like businessmen and women.

A working definition of Legislative accountability therefore connotes that in taking policy decisions, legislators should collectively or individually take into consideration the interest and poly preferences of their constituents. This will enable the constituents to hold them responsible for specific decisions they make on their behalf, reward them, if they are accountable and punish them at the polls, if not.

However, there are scholars who are of the opinion that incorporating constituent's preferences into the factors guiding the exercise of legislative decisions will amount to them pandering to the wishes of their constituents. Critics use this term, under the assumption that the preferences of the constituents are ill informed, or just

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373 Ibid,

374 Charles Grassley, and Jennifer Shaw Schmidt, 'Practicing What We Preach: A Legislative History of Congressional Accountability', [2012] *Harvard Journal on Legislation*, 35.

375 Tim Mak, 'Senators Joseph Lieberman: Hold White House accountable', *Politico Now Blog*, (2012).

376 Congressional Accountability Act of 1995.

simply irrational. This is not limited to legislators but also relates to judges as to their exercise of judicial discretion.[377]

This study does not agree with this proposition. Elected officials like legislators must often than not 'pander' to the interest and preferences of the constituents as long as they are holding their mandates on their behalf. However if it becomes necessary to deviate from constituents interest and preferences, it must be for the overriding national or collective interest. Constituents must then be so informed and educated accordingly in order to carry them along.

In answering the questions earlier noted as to who is accountable, to whom, and for what? This study is of the view that it's easier in the case of legislative or political accountability, where this operates as a general mechanism through which citizens hold their legislators accountable through the electoral process. The questions of whom and to who would seem straightforward. Less clear is the answer to the question for what. Indeed, the relationship between the actions and decisions of politicians and the direct consequences is a matter of intense political contention. Besides, no simple mechanism can be devised to hold politicians and governments accountable for the series of often-unrelated decisions that they take during the period they are in office. The mechanism to be adopted in holding legislators accountable will depend on the circumstances of the case. If it is specifically directed to a policy issue affecting the constituents, then the legislator will be individually or vertically held accountable for such policy issues but if the issue is of general nature like passing or amending budget, contentions issues in the constitution, the legislators will be collectively or horizontally be held accountable.

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[377] James L. Gibson & Michael J. Nelson, 'The Least Accountable Branch', [2019] (55) *Connecticut Law Review*, 30

One of the factors that assist the electorate in holding their legislators accountable is information dissemination about their activities in parliament. The essence of information to the electorates in order for them to be able to hold their representatives accountable is a sine qua non. Madison captured this very sullenly in one of his federalist papers when he pointed out that:

> A popular government without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power knowledge gives.[378]

De Tocqueville puts it in other words: "The concentration of power and the subjection of individuals will increase amongst democratic nations in the same proportion as their ignorance."[379]

Carey asserts that legislative accountability depends on professional ambition among legislators. Professional ambition may be a purely venal desire for personal advancement, or a purely altruistic desire to serve others by promoting policies that advance some conception of the public interest, or some combination of these. Whatever the motivation, ambition implies the desire to cultivate electoral resource – re-nomination, or else nomination or appointment to an even better office, campaign financing, and good favor among voters. It also implies that legislators value access to resources within the legislature itself, such as leadership positions, assignments to key committees, access to support staff, big offices, perks, and such. Ambitious legislators curry favor with political actors who can provide these key resources. The ability to withdraw favor, and so deny the resources that fuel professional advancement, is the enforcement mechanism behind accountability. Overall, accountability should

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[378] James Madison, Letter to W. T. Barry, August 4, 1822. < https://www.loc.gov/resource /mjm.20_0155_0159/?sp=1>

[379] Alexis de Tocqueville, note 39, 1840.

maximize legislative effort and responsiveness to the principal's preferences, and minimize corruption and other abuses of power at the principal's expense.[380]

The question that now arises is "what is the rational for legislative accountability?" The rational is due primarily to an age of grave distrust of the fundamental institutions of democracy including the legislature. A panel of experts came to the conclusion that the absence of collective institutional accountability is one of the reasons that legislatures are a prime target of the political dissatisfaction expressed by many citizens.[381] In the American Congress, unfortunately, government stumbling and legislative ineffectiveness describe how many citizens view the situation in Congress.[382] This study leans towards this assertion and further states that in some states and local legislative bodies in Nigeria the level of distrust is higher as well. A significant consequence of this frustration has been a dramatic decline of citizen trust in government in general and in legislative bodies in particular.

2.9.2 Legislative Accountability and Representation

The concepts of accountability and representation have been exhaustively analyzed in this literature. One of the main functions of the legislature is representing the interest of their constituents that voted them into power. Representation is the central role of the legislature; the complexity of modern administration has made it impossible for the people to run the affairs of the state as it was in the early Greek City-States.[383] Roberts believes that legislators play dual roles. First, they represent their people to government, and second, they represent government in their constituency.[384] The functions of representation enhances the legitimacy of public

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380 John M. Carey, note 20, 12.
381 James Griesemer note 367, 4
382 Ibid, 4.
383 A. Kunle Awotokun, note 143, 1-2. In N. C. Ewuim, D. O. Nnamani, and O. M. Eberinwa, note 250, 145.
384 F. O. Roberts, note 253.

policy, reduces alienation and reduce estrangement between government and the governed to enhance stability in the system.[385] One of the voluminous works done on representation as stated earlier is that of Hanna Pitkin.[386]

However Karen and Amy believe that a crucial element in her work was relatively neglected, they referred to it as "potentiality", the subjective idea that to be represented, citizens must feel that someone would defend their interests if those interests were threatened.[387] They argue further that potentiality "illuminates" the representation provided by non-elected leaders and social groups. Third, it clarifies the reciprocal links between participation and representation; persons who are participatory have better grounds to believe that their interests will be protected, and those who have such a belief participate more.[388]

Accountability induces representation.[389] As Fiorina put it: "Given political actors who fervently desire to retain their positions and who carefully anticipate public reaction to their records as a means to that end, a retrospective voting electorate will enforce electoral accountability, albeit in an ex post, not an ex ante, sense.[390] This point about elite discretion is not novel. Downs, recognize it as an important modifier to the predictions implied by rational retrospective voting, [391] which states that every election is a judgment passed upon the record of the incumbent party. But the standards used to judge its record are of two types. When the opposition's policies have differed from those of the incumbents, the judgment expresses the voters' choice between the future projections of those two policy sets.

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385 E. Edosa and Azelama Julius, note 151.
386 Hanna Fenichel Pitkin, note 226, 9.
387 Karen Cells and Amy Gale Mazur, 'Hanna Pitkin's Concept of Representation Revisited', (Politics and Gender · December 2012) 535.
388 Ibid, 536.
389 V. O. Key, 'Voters are not Fools', (1966) 42 <https://www.electoralintegrityproject.com/s/EIP-Paper-Ratto-final.pdf> accessed on 13th, September, 2021.
390 Fiorina Morris, *Retrospective Voting in American National Elections*, (New Haven: Yale University Press 1981). 67
391 Downs Anthony, *An economic theory of democracy.* (New York, NY: Harper & Row., 1957). 66

But if the opposition's policies have been identical with those of the incumbents, mere projection provides the voters with no real choice.[392]

Urbinati believes representation has been rediscovered and thus alters the very valence of "representative democracy, this phrase that once struck participatory democrats as an "oxymoron."[393] It is only through representation that a people come to be as a political agent, one capable of putting forward a demand. Thus, representation cannot be regarded as either supplementary or compensatory; it is "the essence of democracy".[394] For proponents of the "rediscovery" of representation, "democratic politics is constituted partly through representation.[395] The question that now arises is, are legislators accountable to their constituents, who voted them into power and if not what mechanisms can the constituents use in holding them accountable. Scholars have agreed that elections are the most effective way that constituents can use in holding not only legislators accountable but also elected officials in the executive arm. In Nigeria, there is an additional mechanism of recall which is clearly stated in the Constitution of Nigeria 1999 as amended,[396] but in the United States there are no similar recall provisions in their constitution.

At its core, recall affords an elected representative the opportunity to confirm that the voters still have trust in him or her, while for the voters it is either a chance to repose their trust in the impugned representative, or to elect a new person. This really is the gist of the matter: that the constituents should have a say on who governs them, not only at the time of general elections but also when they feel that their elected representatives have abandoned their mandates. It has been said: "While deviations

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392 Downs Anthony, *An economic theory of democracy.* (New York, NY: Harper & Row., 1957). 42

393 Urbinati Nadia, *Representative Democracy: Principles and Genealogy*, (University of Chicago Press 2006), in Lisa Disch, note 229, 104.

394 Nasstrom Sofia, note 266, 104.

395 Plotke, David. 'Representation is Democracy'. (Constellations 1997) in Lisa Disch, note 229, 106.

396 SS. 69 and 110 which deals with the recall of a member of the National Assembly and House of Assembly respectively.

from that party-based mandate can be legitimated on the basis of the other roles a Member of Parliament, MP must play, changing party altogether is more difficult to justify to constituents. If constituents elect an MP as a member of one party, it is unlikely, though not impossible, that they would have chosen to elect that MP had they been standing for a different party. The Post Conflict Research Center, PCRC poll found that 52% of voters believed that an MP should be subject to recall for changing party between elections. Crossing the floor is rarely a decision that is taken in consultation with constituents, as the nature of party competition in Westminster necessitates the secrecy of the back-room deal. After the fact, the MP who crosses the floor may argue that their change in party is consistent with their mandate as an MP, yet the fact that few MPs who switch party remain to face re-election in the same constituency suggests that they are unwilling to test this argument."[397]

Some researchers concluded at the end of their research that the only mechanism for legislative accountability is election in the United States, which focuses on individual legislators.[398] This study agrees but however there is the mechanism of judicial review which involves institutional or horizontal accountability. By the doctrine of constitutional avoidance, legislatures are expected in carrying out their functions of law-making to draft laws that meet constitutional standards, but this is not always the case.

The democratic system is by its nature bound to produce laws now and again that reflect bias, ignorance, or hostility to certain groups or certain conduct.[399] Legislatures sometimes deliberately defy United States Supreme Court

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397 Pete Mills, 'Real Recall: A blueprint for recall (UK, Unlock Democracy, 2014) 12. <http://242408349-Real-Recall-a-blueprint-for-recall-in-the-UK.pdf>

398 James Griesemer note 367, 17.

399 Caitlin E. Borgmann, 'Rethinking Judicial Deference to Legislative Fact-Finding', [2009] (1) *Indiana Law Journal,* 84.

pronouncements with which they disagree.[400] When this happens, the court steps in to invalidate such Laws. These the courts can do through facial challenges by aggrieved persons in the face of the court and facial invalidation in court. This according to Borgmann will help to promote constitutional accountability among legislatures.[401] He further asserts that when a legislature defies constitutional requirement that the Supreme Court has clearly laid out, or when a legislature's stated justifications for a rights infringing law are not supported by a solid factual foundation, a legislature repudiates its duty to uphold the United States Constitution. That shortcoming infects the entire law; it is not limited to some subset of potential applications. It is the courts' duty in such cases, not to reward or accommodate the legislature's failure, but to protect individual rights from it.[402] Election and recall as mechanisms in Nigeria will be analyzed in chapter 3, however it is pertinent to take a view here as it mostly relates to the United States.

2.9.3. Electoral Accountability

It is not in doubt that elections constitute a key pillar of democratic governance by facilitating representation, ensuring accountability and peacefully regulating access to political power.[403] Electoral accountability is conceived by some scholars as the process of 'institutional aggregation' of citizens' voting behavior and the selection of policymakers through the contestation of free and fair elections, which represents the sine qua non of any minimal definition of democracy,[404] The

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400 Caitlin E. Borgmann, 'Legislative Arrogance and Constitutional Accountability', [2006] 753 *Southern California Law Review*, 79.

401 Caitlin E. Borgmann, 'Holding Legislatures Constitutionally Accountable through Facial Challenges', [2009] 563 *Hastings Constitutional Law Quarterly,* 36

402 Ibid, 37.

403 Powell G. Bingham, 'The Chain of Responsiveness', [2004] *Journal of Democracy*; and Schmitter Philippe and Karl Tarry-lynn, 'What Democracy is and is not', [1991] *Journal of Democracy*, 2. in Andrea Fumarola, *The Contexts of Electoral Accountability: Electoral Integrity Performance Voting in 23 Democracies*, [2020] *Government and Opposition*, 8.

404 Andrea Fumarola, 'The Contexts of Electoral Accountability Electoral Integrity Performance Voting in: 23 Democracies' [2020] *Government and Opposition*, 6.

existence of a 'vertical linkage' between voters and representatives gives citizens the prerogative to hold governments responsible for their actions, and governments the possibility of providing a public account of their decisions and actions.[405] Absence of these instruments for accountability and transparency, government is likely to succumb to corruption and the general abuse of power. This has occurred throughout history when no controls have been placed on governmental actions and leaders have sought merely to retain their positions of powers and privilege.[406]

The electoral institution provides the principal mechanism of vertical accountability, that is the means by which the voters may express their satisfaction or disapproval of the performance by their elected representatives.[407] Irrespective of electoral systems, it is expected of the elected MPs to be both responsive ex ante to the demands of their voters during election campaigns and accountable ex post to the same voters once elected into office.[408] The degree to which a political candidate is responsive to the concerns of the constituents will bear on his/her chances of election, and correspondingly the degree of accountability will determine the chances of re-election.[409] Klasnja and Titiunik also holds the view that the main mechanism to ensure that representatives act in the best interest of the public is the existence of periodic elections, the key instrument that voters have to both retrospectively sanction elected officials and prospectively select "good" candidates who are honest and share their policy goals.[410]

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405 Lusted, Marcia Amidon 'States Right and the Role of Federal Government', [2019] *Greenhaven Publishing LLC*, 78.

406 Ibid, 78.

407 Arne Tostensen, Inge Amundsen, *Report on Synthesis Study of Support for Legislatures*, (Norad Norwegian Agency for Development Cooperation Oslo Ruseløkkveien 26, Oslo, Norway 2010) 16.

408 Siri Gloppen, Lise Rakner and Arne Tostensen, *Responsiveness to the concerns of the poor and accountability to the commitment to poverty reduction*, (Chr. Michelsen Institute Development Studies and Human Rights 2003) 6.

409 Arne Tostensen, Inge Amundsen, note 188, 17.

410 Klasnja Marko & Titiunik Rocio, note 307, 129-148.

This vertical accountability measure is an indication that if internal control and evaluation tools fail to bring the office holders to account, the public has the electoral tool to determine the mandates of their elected representatives.[411] In order for constituents to be able to hold their legislators accountable during elections they will need to be abreast about their activities in the parliament by the way of information gathering. This will enable them form an opinion of how their representatives performed. Accountability in these contexts connotes that legislators are responsive to the preferences and demands of their principals, that information about legislator's actions is available to the principal(s), that principals can punish legislators for lack of responsiveness[412]. The issue of enlightened constituents is more advanced in developed countries than developing countries. Technological advancement has assisted greatly in improving sources of information available to constituents to hold their legislators accountable, the use of social media and opening of effective constituency offices are examples.

Voters can hold legislators accountable in different ways, but the most common accountability mechanism is sanctioning an incumbent by not voting for them. In contemporary Nigeria, democratic ethos, contained in the Constitution, as well as other statutes, such as the Electoral Act, in strict compliance with the principles of rule of law, guide the process of electing leaders into the positions of Authority. [413] Sagay, opines that elections in Nigeria no longer provide the platform for popular control over government, electoral choice between candidates and

411 Omololu Fagbadebo, note 22, 129.
412 John M. Carey, note 20, 12.
413 Ebenezer Oluwole Oni, Omololu Michael Fagbadebo and Dhikru Adewale Yagboyaju, *Democratic Practice and Governance in Nigeria*, (Routledge, 2021). 91

political programmes, while open access to political office and equality between electors are farfetched.[414]

Generally, Scholars have agreed that election is a powerful mechanism in enhancing the accountability of legislators. In democracies, electorates determine whether officials secure their reelection. Since officials typically seek reelection or election to a higher office, this potential sanction is regarded as a powerful inducement for them to explain their actions to electorates and serve their electorates' interests.[415] It has been stated that election function as a "veto" on incumbent politicians not fulfilling their electoral promises. Subjecting politicians to periodic evaluations by the electorate through the system of repeated elections not only ensures the removal of politicians who do wrong but also drives politicians' incentives to please their voters. If politicians want to win, and if voters condition their ballot on policy outcomes, the politicians will be encouraged to implement policies that benefit the electorate.[416] In public administration, the electorate vote for representatives to represent their interest and in the event that the elected officials deviate from representing the interest of the electorate, they have the right to remove them from office.[417]

Chikanda, asserts that the electoral process is the basis of democracy, it is only through an election process that democracy can be defined as it gives power to the people to select officials that represent their interest in the national government or in

414 I. E. Sagay, The Enforcement of Electoral Laws and Case Law of 2007 Election Petition Judgments. Ibadan, (Spectrum Books Limited, 2012) 76

415 Robert O. Keohane, 'The Concept of Accountability in World Politics and the Use of Force' [2003] *Michigan Journal of International Law* 1130.

416 Dinissa Duvanova and Jakub Zielinski, 'Legislative Accountability in a Semi-Presidential System: Analysis of the Single-Member District Elections to the Russian State Duma' [2005] *Europe-Asia Studies*, 162.

417 Kudzai Chatiza, Enhancing Local Democracy and Accountability, Zimbabwe, (Zimbabwe Institute, 2014). 89

various Arms of government.[418] The definition of election process is narrow and straight forward as it involves procedures related to electing representatives.

Classical democratic theory emphasized the value of elections as a means of expressing the will of the people,[419] or representing diverging social interests.[420] Schumpeter sees elections as an institutional device for the peaceful conduct of power struggles. Elections provide a venue for peaceful change of power and legitimize political conflict.[421] Elections are the means through which members of the legislature seek the people's consent to represent them.[422] Elections play a crucial role in every democratic system of government as a mechanism for producing a legislature that is representative of the policy preferences of the electorate,[423] 'linking citizens' priorities to the behavior of their policy makers.[424] According to Haurovi, elections are defined as the selection by vote of a person or persons from among candidates for a position especially a political office.[425]

While elections create an accountability mechanism, there must also be accountability within an election process if it is to be genuine. Accountability in an election process ensures those who conduct elections do so in compliance with the election legislation and relevant procedures, and in a manner that promotes the integrity of the process.[426] The central feature of the principal-agent theory is elections which provide checks on the elected agents by demanding accountability of their

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418 Vincent Chakunda, 'Central Local Government relations: Implications on the autonomy and discretion of Zimbabwe's Local Government', [2015] *Journal for Political Sciences and Public Fostering Social Accountability. 10*

419 Duma Dinissa Duvanova, note 416, 163.

420 Ibid, 164.

421 Ibid.

422 Guide to Effective Representation in the National Assembly, note 5.

423 J. J. A., Thomassen, Elections and democracy: Representation and accountability. (Oxford University Press, 2014). 56

424 G. B., Powell, Elections as Instruments of Democracy: Majoritarian and Proportional Visions. (New Haven, CT: Yale University Press, 2000).134

425 M., Haurovi, 'The Role of Cooperative Government Intergovernmental Relations in Institutions of Public Sector Oversight in India', [2012] *Public Management Review,* 3

426 'Accountability', (A research paper by National Democratic Institute, December 17, 2013).

actions and policies. However, in the event that these elections are not held to the satisfaction of the electorate it is impossible for principals to hold agents accountable.[427]

Another consideration that seems to weaken or obscure elections as accountability mechanism include economic conditions, multi-party systems, coalition governments and the salience of class distinctions.[428] Bad economic conditions decrease legislators' chances for re-election, while improving economic performance increases the probability of re-election. Also party labels affect the electoral fates of parliamentarians. When economic conditions in electoral districts deteriorate compared with the previous electoral period, it hurts the electoral prospects of legislative incumbents who belong to the governing party. Incumbents belonging to an opposition party, on the contrary, enjoy higher re-election chances when local economic conditions are bad.[429]

Any other condition that must exist for election to act as effective mechanism for accountability is information. Any accountability mechanism must aim to lessen information asymmetries between governments and citizens. First, governments must disclose information that is "actionable" to citizens, that is, information that can be used to hold governments to account.[430] They should strive for and constituents should demand high quality, accurate, timely and clear data disclosures relating to government activities.[431] The electorate must be aware of the actions and omissions of their legislators in order to access them and decide whether they deserve to be re-

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427 Moyo Nkosinesisa, Mechanisms of Holding Elected Officials Accountable Limitations and Areas For Possible Improvement, (Midlands State University, 2018) 10.

428 Dinissa Duvanova and Jakub Zielinski, note 416, 1150.

429 Ibid. Although the study relates to Russia, it is applicable to Nigeria and other democracies.

430 J. A., Fox, Social accountability: what does the evidence really say? (World Development, 72, 2015) 346- 361.

431 T., Schillemans, M., Van Twist, and I., Vanhommerig, 'Innovations in accountability: Learning through interactive, dynamic, and citizen-initiated forms of accountability', [2013] 36 (3) *Public Performance & Management Review,* 407-435.

elected or not. This function in open and liberal democracies is performed by a free press. If voters do not have the relevant information about the behavior of politicians or if the information is not salient or credible, perhaps because it is disseminated only by local newspapers with known partisan leanings, voters will not use it when deciding whether to reelect a corrupt, malfeasant, or unresponsive incumbent. Changes in public opinion arise when the informational environment undergoes significant alteration.[432] In Nigeria the press is relatively free to disseminate information about proceedings in the National Assembly. There is a live transmission of proceedings of the Senate every Wednesday and that of the House of Representatives every Thursday on Nigerian Television Authority and Channels Television.[433] Also civil society and non-government groups have websites in the social media where constituents can get information about proceedings in the legislature.

The potential of information communication technology, ICTs and digital spaces to provide for more accountability is based on capacity of ICTs to more effectively connect people and process information in a way that it is useful for citizen action.[434] For example, digital complaint mechanisms can potentially be employed to reach communities in sparsely populated areas, and to provide anonymity and security to those wishing to report corruption.[435] This unique complaint mechanism ensures that complains are responded to faster.[436] Furthermore ICT's can play a role in

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[432] Eric C. C. Chang and Miriam A. Golden and Seth J. Hill, 'Legislative Malfeasance and Political Accountability', [2010] (62) *World Politics* 181.

[433] However, of recent this initiative has been epileptically implemented as the National Assembly complains of paucity of funds.

[434] R., Wittemyer, S., Bailur, N., Anand, K. R., Park, and B. S., Gigler, *New routes to governance: A Review of Cases in Participation, Transparency, and Accountability*, (Closing the Feedback Loop, 2014) 43.

[435] Iñaki Albisu Ardigó, Roberto Martinez B. Kukutschka and David Jackson, *Local government accountability mechanisms,* (Transparency International, 2019) 8.

[436] T., Davies, & S., Fumega, 'Mixed incentives: Adopting ICT innovations for transparency, accountability, and anti-corruption', [2014] *U4 Issue*, 8.

amplifying citizens' voices in complaints, increasing awareness and civic education through mass communication, empowering citizens to engage, and monitoring and evaluating service delivery.[437]

The Senate and House of Representatives also have such websites where a summary of proceedings for the day are provided for constituents to access. Also important, vote on crucial national issues are televised live. However the mode of voting by secret ballot and voice vote has been criticized as being not transparent enough. Roll-call votes and electronic voting process have been suggested as the best way for constituents to know where their representatives voted in a particular issue and whether it conforms to their expectations.[438] Senator Adetumbi, speaking with newsmen at an orientation program for Senators- Elect and Members of the House of Representatives-Elect of the 9th National Assembly, said that Senators should be able to vote so that their constituents would know where they stand on very sensitive issues that concern the country, rather than the voice vote where echoes of 'Aye' and 'Nay' would be heard at the hallowed chamber. According to him, the incoming Senate should take the issue of voting on bills, motions, among others very seriously.[439]

The Senator who himself was just re-elected said, "In a democracy, the parliament is part of the mix, there is no substitute for it because it is the only means by which the people through representation will take part in public discourse, in law making and advocacy. "I am a very strong advocate of electronic voting within the chamber so that the public must know what a legislator is doing, the kind of issues he is canvassing, how he is voting and whether his activities and decisions that he is

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437 Wakabi, W., & Grönlund, Å., 'Enhancing Social Accountability through ICT: Success Factors and Challenges', (In 2015 Conference for E-Democracy and Open Government)

438 Senator Olubumi Adetunbi, 'Electronic Voting on Issues will Make Lawmakers Accountable', *The Vanguard*, (Lagos, April, 6, 2019) 12

439 Senator Olubumi Adetunbi, note, 24.

taking on the floor are in tandem with what his electorate expect of him". The infrastructure is there, a lot of money was spent to put it in place and I want people to know how I am voting. I don't want to be a part of a voice vote especially when it comes to substantive issues of public interest that the public want to know. I want the people to know that on this date, on this particular policy and on this particular legislation, this is how to vote. That is the beginning of accountability that is the beginning for value for money. Once there is information, there is communication and the performance of each legislator is put on record, not hidden within a voice vote that says 'AYE' or 'NAY', then the public will begin to recognize the value of public investment in sustaining the office of such legislator."[440] In the United States, there is a roll call in both the House of Representatives and the Senate with names of members and how they voted on issues boldly displayed. Constituents can easily go there and know how their representatives voted on any issue.

Legislators can be held accountable on different grounds: either because they have done something that everyone regards as bad (or good), in which case we might talk about valence-based accountability, or because they have taken a position which is distant from voters own position, in which case we talk about accountability for issue stances.[441] Nyhen is of the opinion that for legislators to be held accountable for their issue stances, those stances must be out of step with district opinion, and information about the incumbent's issue stance must be widely available.[442] Some scholars believe that sanctioning of legislators through election is moderated by several factors which includes but not limited to:

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[440] Senator Olubumi Adetunbi, note 438, 23.

[441] Chris Hanretty, Jonathan Mellon and Patrick English, 'Members of Parliament are Minimally Accountable for Their Issue Stances, (and They Know It)'. [2021] *American Political Science Review,* 2.

[442] Nyhan Brendan, Eric McGhee, John Sides, Seth Masket, and Steven Greene, 'One Vote Out of Step? The Effects of Salient Roll Call Votes in the 2010 Election'. [2012] *American Politics Research*, 844-879.

(a) Salience of the issue.[443]

(b) Composition of the electorate.[444]

(c) Importance of the electoral contest,[445] and

(d) Whether the incumbent faces a challenger whose issue stances are more congruent than their own.[446]

One of the issues that usually influence voters in casting their votes is economic issues. Some scholars believe that economic issues are the most important determinant influence on the voters in deciding whether to re-elect an incumbent or not. They concluded that Voters are 'rational', 'economic', 'retrospective', rewarding governments for good economic outcomes and punishing them for bad,[447] for example, in the United States, UK and France the major policy reforms introduced by Reagan, Thatcher, and Mitterrand when their respective countries faced economic crises, voters wanted change and expressed this desire at the polls, and the respective governments implemented their mandates.[448]

Notable scholars gave an account of how economic voting works: citizens receive information about the state of the economy, attribute some share of this evaluation to the government, and then use their vote to reject or reelect incumbents. Insomuch as the prospect of being removed from office induces incumbents to act on behalf of the electorate, this mechanism of citizen control appears to be sufficient for

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443 Fjelde, Hanne & Kristine Hoglund 'Electoral Institutions and Electoral Violence in Sub-Saharan Africa' [2016] *Cambridge University Press297-320.*

444 Griffin John, and Patrick Flavin. 'Racial Differences in Information, Expectations, and Accountability', [2007] *Journal of Politics*. in Chris Hanretty, Jonathan Mellon and Patrick English, note 441, 3

445 Steven Rogers, 'Electoral Accountability for State Legislative Roll-Calls and Ideological Representation', [2017] *American Political Science Review 555- 571.*

446 Hollibaugh Gary, Lawrence Rothenberg, and Kristin Rulison. 'Does It Really Hurt to Be Out of Step?' [2013] *Political Research Quarterly 856-86* .

447 Dassonneville Ruth and Lewis-Beck Michael, 'Macroeconomics, Economic Crisis and Electoral Outcomes: A National European Pool', [2014] *Acta Politica,* 3. in Andrea Fumarola, note 404, 7.

448 John T.S. Keeler, 'New Perspectives on Democratic Studies', [1993] *Comparative Political Studies*.

inducing representation.[449] Timothy believes that apart from the electorate's decision, political elites also matter.[450] If election outcomes are shaped by the performance of the economy, and if this is known by all, then we might expect politicians to adapt to the voters' considerations prior to the next election.[451]Economic voting implies that during hard time citizen's vote against the incumbent provided that parties contesting the election offer distinct policy positions.[452]

However studies of economic voting describe how economic conditions affect voting behavior. They do not, however, describe how economic performance affects the electoral prospects of individual politicians.[453] If repeated elections are to function as a mechanism of accountability, they must influence the electoral prospects of specific people. Information about the influence of economic outcomes on party vote shares or vote choice addresses the issue of electoral accountability only indirectly.[454] For elections to play its key role in holding legislators or elected officials of government accountable it must be credible, free and far. The integrity of electoral procedures is likely to play a decisive role in the functioning of the accountability mechanism, pushing voters to express dissatisfaction with less.[455]

However, Norris states that the notion of free and fair elections is conceived as referring to norms universally applied 'throughout the electoral cycle, including during the pre-electoral period, the campaign, on polling day, and its aftermath'. In other words, it concerns the efficient performance of electoral procedures and

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449 V. O. Key, 'The responsible electorate'. (New York, NY: Vintage, 1966) in W. Riker, *Liberalism against populism,* (Prospect Heights, IL: Waveland, 1982). 109

450 Timothy Hellwig, 'Constructing Accountability Party Position Taking and Economic Voting', [2012] 91 *comparative. Political studies,* 45.

451 Mansbridge Jane, **'**Rethinking Representation', [2003] *American Political Science Review*, 515-528.

452 Timothy Hellwig, note 450, 45.

453 Dinissa Duvanova and Jakub Zielinski note 416, 1148.

454 Ibid, 1150.

455 Andrea Fumarola, note 403, 3.

processes.[456] Free and fair elections involves several dimensions of elections, consisting in 11 sequential stages: electoral law, electoral procedures, boundaries, voter registration, candidate registration, campaign media, and campaign finance, voting process, vote count, results and electoral management bodies.[457] Apart from the integrity of the elections they're crucial factors that tend to play a decisive role in the functioning of this accountability mechanism, these are the roles of the political parties and the media. As earlier stated voters are usually influenced by their political parties, even though they are dissatisfied with their legislators they're still constrained to vote for them because of over bearing party influence. However Ghengina is of the view that citizens who are engaged in political parties but also dissatisfied with the way in which the incumbent government did its job are less inclined to vote according to personal evaluations because of their stronger ideological ties.[458] Conversely, those who are not close to any party will be more sensitive to this kind of short term factor.[459]

In Nigeria the institution charged with ensuring free and fair elections is the Independent Electoral Commission; INEC which has improved greatly in the integrity of the elections. The passage of the new Electoral Act, 2022, is a credit to this. INEC played a major role in the processes that led to its passage. New amendments were introduced, such as introduction of technology in the accreditation process (Section 37(2) (5)), electronic transmission of results (Section 60(5)), campaign finance

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456 Norris Pippa, 'Why Electoral Integrity Matters', (New York: Cambridge University Press 2014)21 in Andrea Fumarola, note 404, 6.

457 Alvarez R. Micheal, L. Atkeson and Susan T. Hall, (eds) 'Confirming Elections: Creating Confidence and Integrity through Election' (Auditing. New York: Palgrave. 2012). in Andrea Fumarola, note 404, 7.

458 Gherghina Sergui. 'Does Government Performance Matter? Electoral Support for Incumbents in Six Post-Communist Countries', (Contemporary Politics 2011). in Andrea Fumarola, note 404, 3.

459 James Tilley, Sara B. Hobolt, 'Is the Government to Blame? An Experimental Test of how Partisanship Shapes Perceptions of Performance and Responsibility', [2011] 73 (2) *Journal of Politics,* 73.

(Section 87, 88), and conduct of primaries to nominate candidates (Section 82, 83 and 84) and so on.[460]

Aigbokhaevbo et al believe that these series of amendments have not yet led to a sustained credibility in the electoral process. This is due largely to the fact that the series of amendments are not holistic and are driven by selfish considerations, such as party interests and self-interest, rather than the pursuit of democratic values. The end result has remained electoral fraud of diverse forms, threatened legitimacy or a lack of it, lack of transparency, electoral violence without consequences, voter apathy, and multiple/unending litigations on pre- and post-election matters.[461]

The individualist dissent from the strong-party ideal implies a case for accountability at the level of each legislator. The core of the argument rests in the critique of party-dominated representation as imbuing the most powerful legislative leaders with a sense of distance from voters that insulates them from public disapproval.[462]

In respect of the media influence on voters, studies show that people exposed to high-quality media coverage of political issues are better informed, more civically engaged and more inclined to participate in the election.[463] Fournier et al state that in order to judge their government's performance in terms of electoral integrity, citizens need to be informed about the activities of their representatives from parliament, in particular from the media. The media have the potential to make power-holders responsible and enforce sanctions by creating opportunities or structures for citizens to do this. Such an action is mostly carried out through specific effects, such as

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460 *The Guardian Newspaper*, (June 08, 2022), 23.

461 Aigbokhaevbo, V., Inegbedion, N., Arishe, G., Osarumwense, N., note 77, 237 – 253.

462 G. Bingham Powell JR & Georg S. Vanberg. *Election Laws, Disproportionality and Median Correspondance, Implications for Two Visions of Democracy,* (Cambridge University Press, Printed in the United Kingdom, 2000). 205

463 De Vreese CH and Boomgaarden HG, 'Media Effects on Public Opinion about the Enlargement of the European Union', [2006] *Journal of Common Market Studies*, 44.

agenda setting (that is, the influence of media coverage on the issue considered important) and priming (that is, the tendency to focus on the standards by which incumbents are judged, calling attention to specific issues), that shape individuals' perceptions about political reality,[464] these assertion cannot be faulted. The more the electorate are kept informed by the media of the performance of their legislators, the more enlightened they will be to take informed decision on election day.

Keohane sees electoral accountability as a distinctively democratic form of accountability. In democracies, electorates determine whether officials secure their re-election.[465] He believes that since officials typically seek re-election or election to a higher office, this potential sanction is regarded as a powerful inducement for them to explain their actions to the electorates and serve their interests.[466]

Mill's is of the consideration that representative government; assume that electing politicians who somehow mirror or reproduce the composition of the electorate achieves representation.[467] In his view the assembly is representative in this view if it is a miniature of the electorate, a sample of it. The hypothesis underlying this conviction is that if the assembly is descriptively representative, then it will act to represent interests of the represented,[468] As a consequence, discussions of representative institutions focus almost exclusively on electoral systems,[469] Przeworski et al are of the view that governments are "accountable" if voters can discern whether governments are acting in their interest and sanction them appropriately, so that those incumbents who act in the best interest of citizens win

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464 Fournier Patrick, Blais Andre, Nadeau Richard, Gidengil Elisabeth and Nevitte Neil, *Issue Importance and Performance Voting*, (Springeer, 2003) 25.

465 Robert O. Keohane, note 415, 1131.

466 Ibid, 1132.

467 John Staurt Mill's 'Considerations on Representative Government' (1991 [1861]) in *Democracy, Accountability, and Representation,* (The Press Syndicate of the University of Cambridge 1999) 32.

468 Ibid, 33.

469 Jon C Rogowski, Congressional Voting by Spatial Reasoning, Democracy, Accountability, and Representation, (The Press Syndicate of the University of Cambridge 1999) 32.

reelection and those who do not lose them. Accountability representation occurs when (1) voters vote to retain the incumbent only when the incumbent acts in their best interest, and (2) the incumbent chooses policies necessary to get re-elected.[470]

The power of the voter was aptly captured by Manin who pointed out that voters can decide whether to re-elect the incumbent on any basis they want, including qualifying for the World Cup, and that they can change their mind between the beginning and the end of a term. At least in this way, voters are sovereign,[471] the question now is how rational are voters in exercising their power of voter sovereignty? Sniderman et al claim that purely retrospective voting would be irrational: rational people look forward. Yet this is not right: if voters can credibly employ their vote only to sanction the incumbent, threatening to use it this way is a perfectly rational way of inducing governments to act well in the future. The fact remains that voters have only one instrument to reach two goals: to select better policies and politicians, and to induce them to behave well while in office.[472]

Ferejohn et al argued that a nightmare arise if voters always think that the challenger is better, then the incumbent can never be reelected, and he will always choose to extract high rents.[473] Benoit Guerin et al point out that political accountability is heritably based on informal political circumstances, these includes public opinion and the media's impressions.[474] Duvanova et al position on the central proposition of the modern theory is that repeated elections function as a mechanism of accountability. The underlying logic behind this claim is simple: if politicians want to be re-elected and if voters condition their ballots on policy outcomes, then politicians

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470 Adam Przeworski, Susan C. Stokes and Bernard Manin, *Democracy, Accountability, and Representation* (University of Cambridge 1999) 40.

471 Adam Przeworski, Susan C. Stokes and Bernard Manin, note 470, 41.

472 Sniderman, Glaser and Griffin, (1990); in *Democracy, Accountability, and Representation,* (The Press Syndicate of the University of Cambridge 1999) 45.

473 Ferejohn 1986; Banks and Sundaram 1993) 45 in Sniderman, Glaser and Griffin, note 472.

474 Benoit Guerin, Julian McCrae and Marcus Shepheard, 'Accountability in Modern Government' [2018] *Institute for Government*, 8.

have an incentive to implement policies that benefit the electorate, otherwise, they lose in electoral competition.[475] They argued that the institution of repeated elections induces politicians to take the interests of the electorate into account. Elections function as a 'veto' on incumbent politicians not fulfilling their electoral promises.

Thus holding repeated elections guarantees a certain level of voter control over policies adopted.[476] They argued that electoral or political accountability can only be realized imperfectly, even in well-established democracies, either because voters hold politicians responsible for things patently not under their control or because voters fail to take unresponsive or malfeasant representatives to task.[477] For example evidence from a variety of countries documents that elected officials who are charged with or convicted of criminal wrongdoing are typically reelected rather than repudiated by the electorate.[478] This is more so in Nigeria where many legislators in the National Assembly are facing corruption charges in courts though not yet convicted. However even those convicted by the court of first instance and serving their jail term like Senator Dariye are still receiving salaries and allowances simply because they are on appeal.[479]

As Menbridge aptly characterizes it, the "voter's power works forward" to hold representatives to the promises they made at election time, whereas the "representative's attention looks backward" to the previously expressed preferences of the constituency. [480] Empirical findings about preference formation sit uneasily with this norm because they defy this static portrait of preferences together with this linear dyadic model of influence. They reveal, instead, that the representative process

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475 Dinissa Duvanova and Jakub Zielinski, note 416 1143.
476 Ibid, 1146.
477 Eric C. Chang, Miriam A. Golden, and Seth J. Hill, note 432, 177.
478 Ibid,178.
479 Evelyn Okakwu, 'Appeal Court Reduces ex-Gov Joshua Dariye's Jail Term', *Premium Times*, (November 16, 2018).
480 Lisa Disch, note 229, 129.

is dynamic and interactive. ."[481] Achen and Bartels, asserts that elections are a necessary but flawed system in democracy. There are good reasons to vote and good reasons to hold elections, but "because that's how we hold representatives accountable" is not one of them.[482] They listed three big reasons why elections are imperfect mechanisms of accountability: these include limited agency, limited cognition, and oversensitivity. Limited agency is the term social scientists use to mean that individuals have the capacity to act on their own. Having individual agency is strongly connected to the idea of a meritocracy, where the deserving are granted rewards.

Limited cognition means that all voters have a limited cognitive capacity for processing information about politics. Most people are not highly attuned to political events and use various cognitive shortcuts to help them make rational choices while voting, anyway. Individual people hold conflicting views about politics that they try to rationalize, but people make regular cognitive errors.

Oversensitivity is the choices the voters make in elections that can be complicated and "over-determined" by so many factors that it's hard to pinpoint any one thing that caused them to vote the way they did. [483] However, despite these barriers they believe that elections have great value anyway. Like democracy itself, elections are a terrible mechanism that cannot ever hope to achieve its promise. But as Winston Churchill said, the alternatives are all worse. Elections are valuable and important.[484]

In theory, elections constitute a key pillar of democratic governance by facilitating representation, ensuring accountability and peacefully regulating access to

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481 Ibid, 129.
482 Christopher H. Achen and Larry M. Bartels, 'Democracy for Realists, Why Elections Do Not Produce Responsive Government', [2017] (4) *Princeton Studies in Political Behavior 367*
483 Christopher H. Achen and Larry M. Bartels, note 482.
484 Ibid.

political power. Indeed, a growing number of African leaders leave office after electoral defeat or when meeting their term limits, indicating the rising importance of formal institutions for regulating access to political power.[485] What has hindered the effective use of electoral mechanisms as an accountability tool is the level of election rigging and violence, although relatively peaceful elections have been held in Mozambique, Namibia and Zambia, widespread electoral violence by both government and opposition actors has marred recent elections in Kenya, Nigeria and Zimbabwe. This violence threatens to undermine not only electoral integrity, but also democratic gains in these Countries.[486]

In Russian that operates a semi-presidential system, studies shows that repeated elections provides the mechanism for political accountability,[487] especially if politicians' prospects for re-election are affected by their party affiliation and economic performance. It is noteworthy to state that it was in 1993 that Russia adopted its semi-presidential system; the executive power is shared by the President and the Prime Minister. The president is directly elected by the voters, while the Prime Minister is the leader of the largest party in the legislature and remains in office as long as it enjoys the confidence of the legislature. Some experts argue that presidential form of government is the most problematic. It is believed to be more likely to experience a breakdown of constitutional order and to be associated with higher levels of corruption.[488]

In the United Kingdom, UK which runs a parliamentary system of government, studies have shown that legislators know they are only minimally accountable for

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485 Fjelde Hanne and Kristine höglund, note 443, 297. 'Electoral Institutions and Electoral Violence in Sub-Saharan Africa', [2016] *Britsih Journal of Political Science* 46 (2): 297 - 320

486 Ibid, 298.

487 Dinissa Duvanova and Jakub Zielinski, note 416, 1143.

488 (Gopac) Improving democratic accountability globally, (Gopac November 2013).

their issue stances.[489] The UK is a case where it makes most sense to study issue accountability. It is in single-member districts where the idea of legislators' individual electoral accountability for issue stances is most easily understood. Dyadic representation the degree to which legislators' policy positions reflect their constituents' policy preferences is premised on a simple relationship between a legislator and their constituency, understood as a single principal.[490] A typical example in UK is the Brexit vote in June, 2016, where voters voted to leave the European Union, EU.[491]

In the United States Congress, constituents are well informed through roll-call votes, the position their legislators have taken on the floor of the house. This will influence them to decide whether they should re-elect them or vote them out. The U.S. case is a benchmark because the institution of public voting is firmly established and widely recognized to be politically consequential. In Latin America, however, demands for individual-level legislative accountability have increased in recent years, and the availability of reliable electronic voting equipment has dramatically reduced the logistical barriers to public voting.[492] Voting records provide important information about the actions of parties and of individual legislator.[493] Theories of electoral accountability predict that legislators will receive fewer votes if they fail to represent their districts.[494] McGrath in dissecting the work of Rogers is of the view that these concepts of electoral accountability and policy representation are inexorably linked, with accountability primarily referring to the dyadic links between elected

489 Chris Hanretty, Jonathan Mellon and Patrick English, note 441, 5.
490 Ibid, 6.
491 Chris Hanretty, Jonathan Mellon and Patrick English, note 441, 6.
492 Barczak Monica, 'Representation by Consultation? The Rise of Direct Democracy in Latin America', [2001] *Latin American Politics and Society*, 37-60.
493 John M. Carey, note 20, 39.
494 Steven Rogers, note 445.

representatives and their constituents, and representation signifying the collective links between the polices produced and those desired by the collective.[495]

2.9.4 Roll-Call Votes as Instrument of Electoral Accountability

Roll-call votes connote the way individual legislators vote on the floor of the legislature to policy decisions. Constituents can easily know where their legislators voted in any issue whether it conforms to their preferences. It is more in use in advanced democracies like that of the U.S.A. In Nigeria constituents are only able to access the voting pattern of their representatives in the legislature principally through the media if televised live on television or published in the media either conventional or social. It is also more effective if the voting is visible to the public like showing of hands as was done in the popular constitutional amendment in 2006 over the issue of third term for the president and governors in the 5th National Assembly. The question is, did the constituents punish electorally those legislators that voted for the amendment by not re-electing them in the 2007 general elections? This will be analyzed in subsequent chapters.

The principal of roll-call votes and accountability as said earlier is more institutionalized in advanced democracies. This is reflective of a statement by a Russian legislator when he stated that "Let us make public the names of those who voted in favor", so our children will know whom they should curse.[496] The U.S has institutionalized the concept of roll-call votes and public voting where it is firmly established and widely recognized to be politically consequential. Some scholars, Barczak,[497] Mayorga[498] and Rachailell,[499] however, believes that in Latin America

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[495] McGrath, Robert. 'Accountability in State Legislatures, by Steven Rogers'. [2024] *Publius: The Journal of Federalism. 10.1093/publius/pjae037*. 1

[496] Yuli Rybakov, Supply of Visible Votes in Legislative Voting Accountability (National Public Radio 2001) 38. in John M. Carey, note 20, 43.

[497] Barczak Monica, note 492, 43.

demands for individual-level legislative accountability have increased in recent years, and the availability of reliable electronic voting equipment has dramatically reduced the logistical barriers to public voting. In the United States voters can count on being alerted as to whom they should curse for any decision Congress makes. Interest groups publish widely cited report cards based on legislative voting records, challengers comb through their incumbent opponent's records, and incumbents whose voting records are out of sync with their districts interests pay an electoral price.[500] It is sometimes held that elected representatives generally operate according to a calculus familiar to United States legislators. In her cross-national study of corruption, for example, Susan Rose-Ackerman offers as axiomatic that, if politicians vote against the interests of their constituents, they can expect to suffer at the polls.[501]

However this is not always true, this is because other factors like strong party influence, incumbency, rigging, order of elections which usually lead to bandwagon effect especially in Nigeria lowers the effect of the actual choice of the electorate on Election Day. Sometimes the individual legislators that voted or acted against the interest of their constituents are re-elected against their wishes. Details as it affects Nigeria will be presented in subsequent chapters. But this does not diminish the importance of floor voting or roll-call voter as a critical procedure element of all democratic legislatures.[502] The view that floor voting patterns can provide relevant information about what it is that legislator's value, and about how effectively they,

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498 Mayorga Rene, *The effects of Bolivia's Mixed-Member Electoral System, the Best of Both Worlds*, (eds) Matthew S. Shugart and Martin P. Wattenberg. (New York: Oxford University Press .2001). 315

499 Rachadell, Manuel, 'The Electoral System and Party Reform In Venezuela, democracy and future: Political parties in the 90's. Reflections for a Necessary Change, (eds.) Blanco, Carlos and Edgar Paredes Pisani. Caracas, [1991] *Venezuela: Presidential Commission for State Reform*, 203-210., in John M. Carey, note 20, 190.

500 Brandice Canes-Wrone, David W. Brady and John F. Cogan, 'Out of Step, Out of Office: Electoral Account ability and House Members Voting American', [2002] *Political Science Review*, 96.

501 Susan Rose-Ackerman,. *Corruption and government: Causes, consequences, and reform.* (New York: Cambridge University Press 1999) 27.

502 John M. Carey, note 20, 41.

and the groups into which they organize themselves, pursue those values. This presents us with a puzzle, however –in many legislatures, most of the information contained in voting records is invisible to all but those present for the votes themselves.[503]

The question now is in the United States, where the principles of roll-call votes is entrenched to what extent elected leaders in the United States represent their constituent's policy preferences. It has been found that an important prediction of virtually every economic theory of political competition in a representative democracy is that elected officials of government are somewhat constrained by the will of the electorate.[504] More detailed empirical analysis will be provided in subsequent chapters. However suffice it to say here that the analysis of the study of the empirical relevance of the median voter theorem carried out by Lee, Moretti, and Butler, suggest that politicians are not responsive at all to constituent preferences.[505]

This study does not agree with the conclusion of these findings, it is not possible that politicians are not responsive to constituent demands. Many politicians including legislators are responsive to constituent's preferences because of the fear of being rejected at the polls despite the flaws in electoral systems, some legislators have lost elections and therefore not reelected, while others have been elected. Legislators are more accountable to the electorate especially during the election year as they crave to be re-elected.

Though Lee, Moretti, Butler, identified two critical problems which politicians including legislators who are desirous of being accountable to constituent preferences must confront as first, voters' preferences are difficult to quantify and measure, and

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503 Susan Rose-Ackerman, note 501, 28

504 David S. Lee, Enrico Moretti, Matthew J. Butler, 'Are Politicians Accountable to Voters? Evidence from U.S. House Roll Call Voting Records', (Center for Labor Economics University of California, Berkeley Working Paper 2002) 2.

505 Ibid, 3.

any arbitrarily chosen proxy for voter preferences may have unpredictable impacts on inferences about the extent of political competition, and the extent to which politician actions are implicitly constrained by the electorate. Second, even if voter preferences are presumed to be exogenous, they can easily be incidentally correlated with other unobserved determinants of politicians' actions, yielding the usual confounding problem.[506]

Carey holds the position that It is important to acknowledge that voting on the floor is far from the only consequential action that takes place in most legislatures, and that there are good reasons for caution in interpreting analyses of recorded votes even as manifestations of party unity. To begin with, much of the policy making and bargaining action in any legislature takes place before proposals reach the stage of recorded votes, during negotiations between executive and legislative actors, in legislative committees.[507] Figurredo and Limongi, consider a political system where voters have the ability to reward and punish individual legislators directly, perhaps because primary elections determine nominations, or because party lists are open and candidates win legislative seats according to their individual preference vote.[508] Barry sounds a cautionary note by documenting the incidence of executive policy initiatives in Brazil that are delayed, modified, or die outright before ever reaching the point of a recorded vote. Such action is clearly critical to the legislative process, but is effectively invisible to analyses that are limited to recorded votes taken on the legislative floor.[509] A related rationale for skepticism about the relevance of floor votes is that, if party leaders have good information about legislators preferences,

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506 David S. Lee, Enrico Moretti, Matthew J. Butler, 504, 3.
507 John M. Carey, note 20, 40.
508 Figueiredo Argelina Cheibub and Fernando Limongi, 'Presidential Power, Legislative Organization, and Party Behavior in Brazil', [2000] *Comparative Politics*, 32.
509 Ames Barry, *Party Discipline in the Chamber of Deputies In Legislative Politics in Latin America*, (ed.) Scott Morgenstern and Benito Nacif, (New York: Cambridge UP 2002) 185-221.

voting outcome themselves may be foregone conclusions. In the extreme case, the information available in floor votes might not be inconsequential, but rather unrepresentative of what goes on within legislatures.[510]

Carey argues that political parties, and specifically their leadership within legislative assemblies, are in many cases the main principals who command legislator loyalty. In many institutional settings, the level of accountability of legislators to voters pales in comparison to their accountability to party leaders.[511] The evidence also confirms the importance of a "party effect", as suggested by the findings of Levitt and other studies in political science.[512] In a study carried out by Rogers in respect of whether state legislators in the U.S will receive fewer votes or not if re-elected, if they fail to represent their districts, he found that though not compelling the evidence that elections holds most state legislators accountable.[513] He also discovered that legislators do not face meaningful electoral consequences for their ideological representation, particularly in areas where legislators receive less media attention, have larger staff, and represent more partisan districts. In a study of individual roll-call votes across 11 states, he found a weak relationship between legislators' roll-call positions and election outcomes with voters rewarding or punishing legislators for only 4 of 30 examined roll-calls. Thus, while state legislators wield considerable policy-making power, elections do not appear to hold many legislators accountable for their lawmaking.[514]

Focusing on the implications of individual roll-call votes, he also found that on average and in most cases there is little relationship between voters' opinions of

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510 John M. Carey, note 20, 40.
511 Ibid, 3
512 Steven D. Levitt, 'How Do Senators Vote Disentangling the Role of Voter Preferences, Party Affiliation, and Senator Ideology' [1996] *American Economic Review*, 86.
513 Rogers Steven, note 445.
514 Rogers Steven, note 445, 1.

legislators' roll-call positions and vote-share.[515] Jacobson,[516] and Nyhan et al,[517] provides evidence that voters sanction their representatives for unpopular roll-call votes concerning the budget, congressional salaries, or health care. Anold, on the other hand states that the media is a critical player in promoting electoral accountability.[518] Little media attention and uncompetitive political environments in addition to the institutional advantages of incumbency create unfavorable conditions for accountability in many states.[519] As characterized by a U.S House of Representative, when you are voting right, you build up points on a cumulative basis. You can lose them on a geometric basis; you can lose all your points on one vote.[520]

Studies of Congress repeatedly provide evidence of the U.S. House members incurring electoral punishment for individual roll-call votes.[521] Veto-referenda provide an excellent opportunity to evaluate whether legislators face electoral punishment for unpopular roll-call decisions, but there are limitations to using these elections to study accountability. 10 of 30 referendum elections did not occur during the November general election, and the types of voters who turnout in these elections may not reflect a district's typical voting population.[522] It was also argued that legislators in veto-referendum states may strategically alter their roll-call decisions knowing voters can ultimately veto legislation they pass or may decide not to pursue re-election if they

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515 Steven Rogers . *Accountability in State Legislatures,* (Chicago: University of Chicago Press 2023) 2.

516 Jacobson C. Gary, 'The 1994 House Elections in Perspective', [1996] *Political Science Quarterly,* 111.

517 Nyhan, Brendan, Eric McGhee, John Sides, Seth Masket, and Steven Greene, note 442, 844–879.

518 Arnold R. Douglas, *Congress, The Press, and Political Accountability*, (New York; Princeton, N.J.: Princeton University Press, 2006) in Steven Rogers, note 445.

519 John M. Carey, Richard G. Niemi, and Lynda W. Powell, *Incumbency and the Probability of Reelection in State Legislative Election* (The Journal of Politics 2000) 62.

520 Matsusaka G. John, 'Problems with a Methodology Used to Evaluate the Voter Initiative', [2001] *Journal of Politics,* 63.

521 Jacobson C. Gary, note 516, 112.

522 Steven Rogers, note 445.

realize they took a 23 unpopular roll-call position.[523] It was also found that incumbents who represented districts where less than 40 percent, 40-60 percent, and more than 60 percent of voters supported their roll-call position respectively sought re-election 73 percent, 69 percent, and 72 percent of the time, suggesting unpopular roll-call positions did not lead to more retirements.[524]

Evidence of accountability is particularly lacking amongst state legislators who represent safe districts, and there seems to be little association between unpopular roll-call decisions and election outcomes on most legislation.[525] State legislators have considerable authority over American lives. They determine who has the opportunity to vote, go to college, and even get married, and elections are the primary instrument by which citizens can exert control over those who govern them.[526] Similar findings are applicable to the U.S congress especially the House of Representatives, Rogers's states that a number of recent survey-based studies have provided reassuring evidence that voters hold representatives accountable at the ballot box for their roll call votes. The evidence in these studies suggests that legislators should be highly responsive to the preferences of their constituents.[527]

However, it does suggest that the modern America congress does not conform to these findings. In fact, there is little evidence that legislators' positions are consistently responsive to the preferences of voters.[528] He finds in a study that only modest evidence that legislators' roll call voting behavior affects the probability that citizens will support them on election-day. This suggests that legislators can take

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523 Gerber, Elisabeth R, 'Legislative Response to the Threat of Popular Initiatives', [1996] *American Journal of Political Science*, 40.

524 Gerber, Elisabeth R, note 523, 41.

525 Steven Rogers, note 445.

526 Ibid.

527 Ibid.

528 Chris Tausanovitch and Christopher Warshaw, 'Electoral Accountability and Representation in the U.S. House: 2004-2012' (Center for the Study of Democratic Politics, (CSDP)'s Research Colloquium on October 3, 2013)1.

virtually any spatial position with very little risk of repercussions at the ballot box. As a result, most legislators have few electoral incentives to be responsive to the views of their constituents. The Founding Fathers thought that elections were the key mechanism for ensuring that the "will of the people" is carried out. They believed that voters would elect politicians that represent their interests and preferences, and punish politicians that are out-of-step with their constituents. This electoral connection ensures that government follows the will of voters. A number of recent studies have provided normatively reassuring evidence that voters hold their representatives accountable at the ballot box for their roll call votes.[529] Clinton believed that voters would elect politicians that represent their interests and preferences, and punish politicians that are out-of-step with their constituents. This electoral connection ensures that government follows the will of voters. [530]

It is Jesse's position that a variety of studies have found that citizens are more likely to vote for legislators and other elected officials that share their ideological preferences[531]. Wilkins on the other hand finds that legislators paid a large price at the ballot box for ideological extremity from the mid-20th century throughout 1990. But he finds that the electoral penalty for roll call extremism has weakened in recent decades. In fact, he finds almost no evidence that legislators in recent Congresses have been punished on Election Day for ideological extremity.[532]

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529 Ansolabehere Stephen, Philip Edward Jones, 'Constituent Responses to Congressional Roll-Call Voting', [2010] *American Journal of Political Science*, 54.

530 Clinton D. Joshua, 'Representation in Congress: Constituents and Roll Calls in the 106th House', *Journal of Politics*, 68.

531 Jesse A.Stephen, 'Spatial Voting in the 2004 Presidential Election', [2009] *American Political Science Review*, 103.

532 Wilkins S. Arjun, 'Is Polarization Hurting the Re-election Prospects of U.S. House Incumbents The Effect of Roll-Call Voting Records on Election Results, 1900-2010', in Chris Tausanovitch and Christopher Warshaw, note 528, 5.

Montage and Rogowki also found no evidence that challengers increase their vote shares by adopting more moderate platform positions[533], it is stated that previous research has found that constituents seem to generally understand legislators' roll call positions.[534] But the party effect seems to water down the knowledge of the constituents and reduces their influence in electoral decision making.

Ansolabehere and Jones find that respondents to one recent survey held accurate beliefs about legislators' roll call votes about 75% of the time. Moreover; they held accurate beliefs about legislators' roll call votes when the legislators voted with their party 82% of the time.[535] It is not gain saying the fact that roll-call votes have assisted greatly constituents to hold their representatives in the parliament accountable especially in the United States of America where it is institutionalized.

2.10 CONCLUSION

This chapter on literature review thoroughly examines the Concepts of Democracy, Separation of Powers, Legislature, Accountability, Representation, Populism and Legislative Accountability which are closely intertwined. It investigated and evaluated the tools used in achieving and determining accountability and identified the challenges involved in the design and implementation of accountability processes and the limitations of legislators as regards accountability. It also threw more light on what legislature really does, their duties and responsibilities and how they can be held accountable both collectively and individually through the two mechanisms of horizontal and vertical accountability. It also brought to focus the inefficiencies and rigidity of laws relating to legislature and the functionalities. It also

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533 Montages, B Pablo, and Jon C Rogowski, 'Testing Core Predictions of Spatial Models: The Effects of Candidate Moderation on Election Outcomes' (2012) in Chris Tausanovitch, Christopher Warshaw note 528 7.

534 Chris Tausanovitch, Christopher Warshaw, note 528.

535 Ansolabehere Stephen, Philip Edward Jones, note 529, 55.

dealt extensively with the legislative accountability, mainly as it relates to the function of representation and how legislators can be electorally held accountable.

Generally, legislators are hardly accountable to their constituents that elected them. The issues of election, recall and other mechanisms emphasizes on electoral accountability. Elections remain one of the effective mechanisms for constituents to hold their representatives in the legislature accountable by either re-electing them or not. For election to play such a role it must be free, fair and credible in order to reflect the electorate choice but in Nigeria incidence of rigging, violence and manipulation of the electoral process before and on the Election Day are inhibiting the effective use of election as a mechanism to hold the legislators and the legislature accountable. The media, civil society groups play very crucial roles in disseminating the activities of the legislature to the public, aiding them to gauge the performance of legislature both collectively and individually. The system of roll-call votes and the use of technology practiced in advance democracies enhance easy access to information by constituents to activities of their representatives, the use of social media has become paramount

In-spite of the fact that democracy has different variations, its main aim is to ensure the accountability of government at various levels. Democracy cannot exist without performing this accountability role. And in fulfillment of that the legislature is the institution through which accountability can be achieved. Though there is argument as to the primary functions of the legislature whether it is legislation or representation or oversight. All the functions are important but the representation function is primary in determining its accountability. They must first be elected as representatives of the people before they can perform the other functions of legislation and oversight. In order for the legislature to be effective there would be need to increase its capacity, which in turn will lead to both horizontal and vertical

accountability. There is no agreement as to how to make the legislature more effective in performing its accountability role. Increase of its capacity in all its ramifications and reducing to large extent executive interference is a way to go. Though comparative cross –national accountability is said to be limited, inconsistent and opaque, it is still imperative in order to open more research in the subject area. There is general agreement amongst scholars that out of numerous mechanisms in ensuring legislative accountability, elections remain the most potent. It seems very effective in developed countries like the United States but not so in developing countries like Nigeria. The major precursor for elections to be effective is that it must be free and fair.

In Nigeria the other mechanism of recall is not very effective because of the tedious process it has to go through and the constitutional requirement of absolute majority fifty percent plus one of registered voters in a constituency to sign a petition against the lawmaker before it can be activated. It is almost impossible to meet; this can be reflected in the very few cases of recall of the legislators in Nigeria.

CHAPTER THREE

LEGISLATIVE ACCOUNTABILITY IN NIGERIA'S CONSTITUTION AND MECHANISMS FOR ENSURING ITS ACCOUNTABILITY

3.1 INTRODUCTION

The legislature or parliament is the harbinger of good governance. This is so because it plays a crucial role in gauging, collating and presenting the views and needs of the people, articulating their expectations and aspirations in determining the national development agenda. Parliament must be reflective of public and social concerns if it is to retain public legitimacy and ensure its institutional accountability.[175]

By the orientation and positioning of their constitutional mandates, it is the responsibility of the parliament to ensure unreserved accountability, unpretentious political behavior and openness in government.[176] However it will be shown in this chapter that parliament representation largely involves service to constituents by representing their interests in the legislature and providing a direct link to government. The representation function is critical to the long term sustainability of a democracy. Citizens need to feel that their representatives are listening to them and that their issues will be taken seriously and addressed.[177] Fagbadebo is of the view that liberal democracy is all about the people exercising their legitimate rights and power through their elected representatives.[178]

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175 (PLAC) *Guide to Effective Representation in the National Assembly,* (Policy and Legal Advocacy Centre (PLAC) Abuja, Nigeria 2016) 5.

176 Alabi, Mojeed Olujinmi, 'The Legislatures in Africa: A Trajectory of Weakness', [2009] 3(5) *African Journal of Political Science and International Relations*, 233-241;.

177 Meryl Davis, *Government accountability and parliamentary committees*, (April 16, 2016)58 <https://silo.tips/download/unit-6-government-accountability-and-parliamentary-committees> accessed 14th, July, 2021. 23

178 Omololu Fagbadebo, Perspectives on the Legislature and the Prospects of Accountability in Nigeria and South Africa, (Springer International Publishing AG, part of Springer Nature 2019). 26-27

In Nigeria the Constitution of the Federal Republic of Nigeria 1999, CFRN provides the powers and functions of the legislatures,[179] which includes lawmaking, oversight, and representation. The Constitution provides for a bicameral legislature at the national level. That is, the legislative powers vested in the National Assembly are to be exercised by two bodies made up of Senate and House of Representatives. The Constitution provides for a single legislative house, that is, unicameral legislature for the states. Legislative Committees undertake most of the detailed work of legislation.[180]

The development of the legislature in Nigeria has a long history which predates it. It started with the ancient Roman Republic which existed between 509 BC and 27 BC. Governmental institutions for making and implementing policies, and settle disputes had existed in the kingdoms and communities in Nigeria before the advent of the Colonial Master.[181] However the modern development of the legislature in Nigeria started with the creation of the Legislative Council in 1862 for the colony of Lagos.[182] Legislative institutes were created in subsequent Constitutional Conferences Organized by the Colonial British Government starting from 1922, 1933, 1945, 1951, 1954, and 1966. All these Constitutions had their various defects.[183] Alabi asserts that the colonial state could not perform legislative functions as the most important institution of a liberal democratic state. The colonial legislatures were designed to serve as agencies for articulation of views and ventilation of popular feelings that were not expected to radically change the patterns and policies of the

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179 S. 4 (1) of the CFRN 1999 (as amended).

180 Grace Ayodele Arowolo, 'Oversight Functions of the Legislature: An Instrument for Nation Building', [2010] *Journal of Indian Law and Jurisprudence*. 12

181 Fashagba, Joseph Yinka, 'Legislative Oversight under the Nigerian Presidential System', [2009] 15 (4) *The Journal of Legislative Studies*, 439

182 Oyediran, Oyeleye, '*Constitutional Development in Nigeria'*, (Ibadan: Oyediran International Consult 2007). 16

183 Anifowose Akinbobola, Remi and Ayo 'Party Discipline and the Electoral Process in Nigeria's Fourth Republic', (1999-2005): 'An Analysis of Problems and Prospects', [2005] 5 *Lagos Historical Review,*10

respective colonial governments.[184] Awotokun believes that they were just ratificatory Assemblies.[185] The 1951 Constitution introduced elections in the Nigeria political system unlike the past when the electoral process was limited to Lagos and Calabar.[186]

On 1st October 1960 Nigeria got independence and this is as contained in the Constitution of the Federal Republic of Nigeria.[187] Nigeria attained a Republican status on October 1, 1963, upon passage into law of the Constitution of the Federal Republic of Nigeria, by the Nigerian Parliament.[188] Even the 1963 Republican Constitution did not last as the democratic government was overthrown by the military government in 1966. In 1999, the fourth democratic government was given birth to with a new constitution. The legislature was again restored. The Constitution of Nigeria, 1999 as amended is almost a replica of the 1979 Constitution which introduced the presidential system of government and a bicameral National Assembly consisting of the Senate and House of Representatives. In spite of the checkered history of the development of the Legislature in Nigeria, the return to democratic rule in 1999, was the signpost of the beginning of the legislative representation in Nigeria.

This chapter will also deal with the issues of the mechanisms of legislative accountability that are embedded or codified in the Constitution of Nigeria 1999 as amended and other enactments.[189] Madison thought that:

> the aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust.[190]

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184 Alabi, Mojeed Olujinmi. note 2.
185 Awotokun, Kunle, 'the Development of Legislative and Executive Relations in Nigeria', (1861-1979). [2000] *Indian Socio-Legal Journal.* 92
186 Gabriel O. Arishe, Developing Effective Legislature: The Country Specific Approach to Assessing Legislative Power, (Paclerd Press Limited, Benin City, 2017). 148
187 Gabriel O. Arishe, note 12, 149.
188 S. 53 (2) of the Constitution of Nigeria 1999 as amended
189 The Electoral Act 2022 and the Legislative Houses (Powers and Privileges), Act 2018.
190 James Madison, *Federalist papers* (No 57).

In Nigeria, the National Assembly, consist of 109 Senators and 360 Representatives, who are collectively and individually accountable to the people. Some of the mechanisms used to enforce accountability are the vertical such as; periodic elections,[191] recall of members,[192] and the horizontal such as; assent to a bill by the president including the bill seeking to amend the constitution, judicial review.[193] Others include restricted immunity,[194] suspension, from plenary [195] vacation of seat for non-attendance,[196] vacation of seat for floor crossing,[197] and power of veto.[198] The external tools include reports of extra-legislative institutions charged with the responsibility of enhancing accountability of government. They are institutional arrangements outside the legislature to supplement and complement oversight activities.[199] This study is however mainly concerned with earlier stated mechanisms used to hold legislators both individually and collectively accountable such as elections, recall, and judicial review and so on.

For legislators to effectively be held accountable, especially by constituents, there must be mechanisms used to sanction them. Keohane says that sanctions are central to accountability, and mechanisms for sanctioning available to accountability holders are a key to the operation of accountability in a pluralistic administrative system.[200] Without mechanisms for sanctions, demands on power-wielders for answers are unlikely to be very effective.[201] This is the essence of democracy. Jefferson once said that the "mother principle" of democracy is that "governments are

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191 S. 70 of the Constitution of Nigeria 1999 as amended.
192 S. 69 ibid.
193 S. 4 (8) ibid
194 S. 3 of the Legislative Houses (powers and privileges) Act 2018.
195 S. 21 (1) & (2) ibid.
196 S. 68 (1) (f) of the Constitution of Nigeria1999 as amended
197 S. 68 (1) (g) ibid.
198 S 58 (4-5) ibid.
199 P. Bundi, 'What Do We Know About the Demand for Evaluation? Insights from the Parliamentary Arena' [2016] *American Journal of Evaluation* 522–541.
200 Robert O. Keohane, 'The Concept of Accountability in World Politics and the Use of Force', [2003] *Michigan Journal of International Law* 1130.
201 Ibid.

republican only in proportion as they embody the will of their people, and execute it.[202]

3.2 LEGISLATIVE ACCOUNTABILITY AND REPRESENTATION IN NIGERIA

In a parliamentary democracy the role and functions of parliament is to promote democracy and good governance.[203] It also acknowledges the fact that, parliament derives its powers directly from the consent of the people expressed through periodic elections and that parliament is to implement the will of the people, among other functions.[204] In the age of democracy therefore, the legislature or parliament represents a key institution of political representation. This is because members are known to represent the interests of different constituencies and groups within the political entity. In this light, the fulcrum of legislative activity is expected to be the articulation and aggregation of diverse interests of the represented constituencies into the policy process.[205]

Olufemi reveals that the legislature has not lived up to the expectation of Nigerians in terms of entrenching accountable and transparent governance that will guarantee good governance for the benefit of citizens.[206]

The concept of representation in a democratic system of government is, as aptly put, 'to represent the regions, ethnic groups, social class, and occupational interests' or "acting in the interest of the represented (to whom sovereignty belongs) in a manner responsive to them through consultation and the exercise of such

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202 Letter to Samuel Kercheval, June 12, 1816. In Chris Tausanovitch and Christopher Warshaw, 'Electoral Accountability and Representation in the U.S. House: 2004-2012' [2013] *Preliminary Draft Prepared for the Center for the Study of Democratic Politics CSDP)'s Research Colloquium* 2.

203 Steven D. Levitt, How Do Senators Vote Disentangling the Role of Voter Preferences, Party Affiliation, and Senator Ideology (American Economic Review, 1996). 56

204 Ibid.

205 PLAC, note 1,

206 Jacob Olufemi Fatile & Kehinde David Adejuwon, 'Legislative Oversight as Accountability Mechanism: The Nigeria Perspective', [2023] *advances in Africa Economic, Social and Political Development*, in: Omololu Fagbadebo & Mojeed Olujinmi A. Alabi (ed.), *The Legislature in Nigeria's Presidential Democracy of the Fourth Republic,* (Springer 2023) 39 – 57.

discretions and judgments aggregating the views of the governed.[207] The concept of representational role of parliaments aims at understanding the relationship between citizens and their representatives, the MPs. It focuses in particular on the questions of how MPs relate themselves to the electorate, whom they represent in their decision making and in what way they aim to represent a given constituency.[208] In most parliamentary systems of governance, the function of representation in parliament entails, among others, the following:[209]

(i) Make MPs stay in contact with their constituencies; these includes making resources and time available to MPs.

(ii) Invite citizens to parliament's sittings and to their MPs' offices;

(iii) Hold information workshops in the counties on the work of parliament (successfully conducted in Ghana, for instance);

(iv) Involve civil society in parliament's work (e.g. committees, discussion groups);

(v) Provide special training to MPs on their role as representatives of the people;

(vi) Request MPs to keep promises made during election campaigns, thereby delivering results for the constituencies (health, education, and infrastructure).

In Nigeria, the representational role of the parliament is reinforced by the provision of the Constitution.[210] It provides unequivocal terms that sovereignty belongs to the people of Nigeria from whom government through this constitution derives all its powers and authority. It is further consolidated by section 4(2) of the Nigerian Constitution as amended, which vests the National Assembly, (constituted

[207] Steven D. Levitt, note 29, 57.
[208] S. 4 of the Constitution of Nigeria 1999 as amended.
[209] (ECA), The Role of Parliament in Promoting Good Governance, (Economic Commission for Africa) 15.
[210] S. 4 of the Constitution of Nigeria 1999 as amended.

by legislators or the representatives of the people to whom sovereignty belongs) with powers to "make laws for the peace, order and good government of the federation or any part thereof with respect to any matter included in the exclusive legislative list set out in part 1 of the second schedule to this Constitution.

Legislators as representatives of the people are expected to reflect, articulate, harmonize and propagate the choices, preferences and preferment of the people that elected them. The electorate, have the right to recall them whenever there is proven loss of confidence, thus, the legislators are under constant scrutiny". There is provision for recall of a legislator if constituents are dissatisfied with his or her performance.[211]

In order to reinforce the role of the legislature as the eyes, ears, and the voice of the people, Section 80-84 of the Nigerian Constitution as amended largely assigns the power and control over public funds to it. It oversees and regulates public spending especially the national budget. Section 88 gives the National Assembly the power to conduct investigations of any governmental agencies, ministry, or parastatal in order to expose corruption, waste and inefficiency, of funds appropriated by it. For an effective representation of the people scholars have pointed out constituency delineation should be done in such a way as to reflect equality and population. In a federal system of government like Nigeria, it is the National Independent Electoral Commission INEC that is empowered by the Constitution to do so, in such a way to reflect the diversity nature of the country.[212] In exercise of its power INEC created 360 constituencies in the House of Representatives and 109 Senatorial seats representing 3 seats each per state and one for the federal capital territory. This is ordinarily subject to review every ten years.[213] But this has been observed more in

[211] SS. 69 and 110 as it relates to members of the national and state assemblies.
[212] S. 49 and 71, of the Constitution of Nigeria 1999 as amended.
[213] S. 69 of the Constitution of Nigeria 1999 as amended.

breach, the various numbers of constituencies per State and Zone are as stated in table 3.1 below.

Table 3.1

HOUSE OF REP — Constituency

STATE	ZONE	CONSTITUENCY
Abia	SE	8
Adamawa	NE	8
Akwa-Ibom	SS	10
Anambra	SE	11
Bauchi	NE	12
Bayelsa	SS	5
Benue	NC	11
Borno	NE	10
Cross River	SS	8
Delta	SS	10
Ebonyi	SE	6
Edo	SS	9
Ekiti	SW	6
Enugu	SE	8
FCT	NC	2
Gombe	NE	6
Imo	SE	10
Jigawa	NW	11
Kaduna	NW	16

STATE	ZONE	CONSTITUENCY
Kano	NW	24
Katsina	NC	15
Kebbi	NW	8
Kogi	NC	9
Kwara	NC	6
Lagos	SW	24
Nasarawa	NC	5
Niger	NC	10
Ogun	SW	9
Ondo	SW	9
Osun	SW	9
Oyo	SW	14
Plateau	NC	8
Rivers	SS	13
Sokoto	NW	11
Taraba	NE	6
Yobe	NE	6
Zamfara	NW	7
TOTAL MEMBERS		360

Source: inecnigeria.org

No new constituencies have been created since the advent of the fourth republic in 1999. The concept of representation requires that governments take into account the population of the people and adjust these constituencies or districts from time to time as the population grows.

How effective can legislators be in representing their constituents. According to the inter parliamentary union, IPU effective representation implies “articulating and mediating between the competing interests of these groups” as well as, guaranteeing equal rights for all parliamentarians, particularly those belonging to the opposition within a legislative assembly. Effective representation can also mean that legislators possess or acquire the resources, skills and characteristics that they need to execute their representative duties and consistently apply them in delivering service to their constituents. The logic of a representative assembly is informed by the need to take care of peculiar interest of the people they represent.[214] Effective and well equipped constituency offices also aid effective representation. For the law makers, a bottom-up approach to representation in order to perceive voter opinion more accurately rather

[214] PLAC, note 1, 2.

than a top-down representation approach be adopted. Therefore, the lawmaker must.[215]

1. Be legitimately elected to represent the people,
2. Be willing to develop and expand his/her knowledge base and sharpen (already acquired) skills to enhance the performance of his/ her job,
3. Be willing to consult his/her constituents vide town hall meetings or outreach station programmers for feedback,
4. Know the various competing interests in his/her constituency and strategize on how best to push them through,
5. Learn to know the workings or operations of government and other environmental factors that will assist his/her effectiveness,
6. Learn effective utilization of modern communication channels both to put forth the wishes or desires of his/her constituents and publicize government efforts towards alleviating or addressing their specific needs.

Badaiki is of the view that the key indices for assessment of effective representation include:[216]

- Good governance;
- Transparency;
- Accountability;
- Community development;
- Accessibility;
- Communication;
- People (constituents)-centricism;
- Responsiveness; and

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[215] Ibid.

[216] A.D. Badaiki, 'Effective Legislative Representation: Key to Social Economic and Political Development in the Owan Experience 'since 2011 till date', (being a lecture delivered at the reception in Honour of Rt. Hon. Pally. I. O, 6th of July 2019) 8, 9.

- Constituency image projection.

In practice however some legislators hardly carry out the wishes of their electorates in decision making. Also lack of consultation has hindered and affected the relationship between the legislator and his constituents.

3.2.1 Constituency Service and Projects

Representation is one of the key functions of the legislature. One of the mechanisms the legislators use to reach out to their constituents and ensure they are carried along in decision making is the concept of constituency service, and lately projects by which means legislators can be held to account.

3.2.1.1 **Constituency service**

In Nigeria following a chequered history of the development of the legislature in view of several military interventions that stunted the growth of the legislature, the idea of constituency service did not develop root until the advent of the Fourth Republic that has lasted over 20 years, the longest democratic experiment so far. There are several approaches legislators that are responsive to their constituents adopt in reaching out to them. It has been suggested that three major approaches stands out, these include; [217]

a. The outreach approach;
b. The visit approach; and
c. Collaborate, alliance with civil society groups and media.

1. **The outreach approach**

   The outreach approach was conceived to allow lawmakers effectively consult with citizens and constituents over policies of national and local significance. Outreach enables legislators to communicate and educate constituents and

[217] PLAC, note 1, 3.

citizens about government policies and also learn how government activities are received or perceived by the society. Outreach programmers are more practical in engaging the attention of the people. It may take the form of actual physical meetings or via media platforms.[218]

2. **The visit approach**

   This approach allows legislators to visit their constituents from time to time to engage them and receive feedback from them. It is up to the individual legislator to design programs suitable for its constituents such as town hall meetings for direct talks or discussions. To be effective, this must be a continuous process.[219] Most legislators have adopted town hall meetings. However of recent a town hall meeting in one of the constituency in Abia Sate was disrupted by thugs, the lawmaker Hon, Obinna Ichita and some journalists were attacked.[220]

3. **Collaborative alliance with civil society groups and the media**

   Lawmakers can work with civil society groups or the media towards achieving more effective representation, as they often have the ability to influence public opinion. An example of this was in the 7th National Assembly, where there was collaboration with the joint committees of both the Senate and House of Representatives on the constitutional amendments. Public hearings were done in very senatorial district and House of Representative Federal constituency to vote on specific item of amendment by the constituents. Some of these issues include legislature, and local government autonomy, having one legislative house (unicameral) at the national level, and so on. The civil society organizations provided their assistance to the legislators in ensuring that these town-hall meetings specifically called in respect of constitutional amendments

218 PLAC, note 1.
219 Ibid.
220 "lawmakers, journalists attacked in Abia State", *the Nation Newspaper*, (26th, August) 5.

were successfully held. They have also provided constituency and technical services to the National Assembly Committees especially in technical areas.

3.2.1.2 Constituency projects

The idea of constituency projects arose out of misconception about the actual functions of the legislature by the constituents. This study finds that the constituents in measuring the performance of their representatives in the legislature always use the provision of infrastructures and amenities like roads, water, light, health facilities as a basic assessment. Though the provision of these basic infrastructures is constitutionally within the preview of the executives who execute projects, constituents hold any elected or appointee of government responsible for lack of provision of these amenities. All explanation by legislators that their functions do not include execution or provision of amenities falls on deaf ears. Those seeking elections to the legislature as candidates or incumbents also compound this problem by campaigning to the electorate that they will provide basic amenities and infrastructure to the communities when in actual fact they do not strictly have such constitutional duties.

This study finds that most incumbents lost re-election mainly due to their inability to provide amenities to their communities. Their constituents punish them on Election Day. In fact former Senate President Olushola Saraki and House of Representatives, Speaker Yakubu Dogara stated this aptly in a national open week for legislators that:

> The role of legislators is seriously misunderstood. Saraki said the work of the parliament is to stabilize democracy and ensure accountability in governance is also misjudged by some people. [221]

While Dogara stated that contrary to some mischief makers' views, legislative oversight and scrutiny is very critical to good governance as the legislature remains

[221] 'Nigerians don't understand lawmakers duties say Saraki, Dogara' *the Nation Newspaper* (July, 17th 2018) .10

perhaps the only arm of government imbued with necessary constitutional powers to obtain information necessary to shine light on any form of abuse, inefficiencies or waste in governance. Saraki also stated thus:

> It remains a concern that, because the legislature is the youngest Arm of government in Nigeria, it is the most misunderstood. This is largely due to an abiding misconception as to the role of the legislature and the work we are doing to stabilize democracy and ensure accountability in governance. It is my expectation that this program will go a long way towards helping to deepen the public understanding of the very real, indispensible work done by lawmakers, in line with our constitutional mandate.[222]

It was in order to resolve this misconception about the role of the parliament that legislators for fear of losing re-election ingenuously introduced the concept of constituency projects. What are they? Constituency project is defined as any project that is conceived, designed or executed within a legislative constituency with the collaboration, input or influence of the legislator(s) representing that particular constituency in the legislature.[223] It was also defined as projects executed in the legislative constituencies with the active participation of the legislators.[224] It is synonymous with "Constituency Development Funds, CDF in other jurisdictions like Kenya, which was defined as "funding arrangements that channel money from central government directly to electoral constituencies for local infrastructure projects".[225] Undefuna et al, are of the opinion that in Nigeria, the phenomenon of constituency projects took root at the dawn of the fourth republic, with the quest by Nigerian

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222 The Nation News Paper, note 47, 10.

223 Machiko, *The Politics of Constituency Developments (CDFs) in Comparative Perspective*, (State University of New York Center for International Development: Constituency Development Funds). <http://ecgi.srn.com/.php?> accessed on 1st May, 2015

224 Albert Van Zyl, 'What is wrong with the constituency development funds? In International Budget Partnership (IBP)' [2010] (10) *Newsletter Budget Brief*. <http://tilz.tearfund.org/> both accessed on 20th, April, 2022

225 Ibid

legislators for more equitable distribution of resources to their constituencies as dividends of democracy.[226]

This Study stated earlier, that other jurisdictions have similar programs like that of Nigeria in respect of constituency projects. In the United States, it is referred to as "the Pork Barrel Projects"[227] or "Earmarks". Machiko identifies the difference between a CDF and the "pork barrel": "pork barrel" involves a case-by-case approach of allocation of congressional budgetary allocation to constituencies, on application or request; whereas the CDF is a global approach that treats each constituency equally.[228] There are also variants of such projects in Kenya, Uganda, Tanzania, India, the Philippines, Jamaica, Honduras, and so on.[229] In some of these Countries, there is institutional and legal framework for operation of CDFs.[230] The constituency project is usually nominated by the legislator, representing the constituency and included in the national budget. The legislator as a facilitator also nominated the contractor but the execution is done by the government ministry or agency the project is domiciled**.**

There has been a controversy as to whether constituency projects in Nigeria is constitutional or not. A perusal of the Nigerian Constitution as amended shows that there is no provision for constituency projects. It is the belief by some scholars that constituency projects are clearly an infraction of the provisions of the constitution as

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226 Udefuna, P. N., Jumare, F., Adebayo, F. O., 'Legislative Constituency Project in Nigeria: Implication for National Development in Mediterranean' [2013] 4 (6) *Journal of Social Sciences*, *MISER-CEMAD-Sapienza University, Rome*, 647-653.

227 Keefer and Khemani: 'When do Legislators Pass on "Pork"? The Determinants of Legislator Utilization of a Constituency Development Fund in India' (A Policy Research Working Paper for the World Bank Development Research Group, Macroeconomics and Growth Team). <https://openknowledge.worldbank.org/bitsream/handle/10986/4123/WPS4929.pdf?sequence=1> accessed on 1st July 2021.

228 Machiko, note 49.

229 Ibid.

230 Constituency projects are regulated in Kenya under the Constituencies Development Fund Act, 2013. These are earlier enactments of Constituency Acts of 2003 and 2007.

to the doctrine of separation of powers as it contradicts sections 4 & 5 of the Constitution.[231]

3.2.2 Legal Frame Work for Constituency Projects in Nigeria

There seems to be no clear cut legal frame work to legalize constituency projects in our budgeting process. Operation of constituency projects appears to be shrouded in bureaucratic secrecy. Also its only Lagos State that has a legislation that was passed into law titled the "Lagos Constituency Project Development Law",[232] it makes provision for the inclusion of constituency projects that are to be nominated by the legislators from their various constituencies at the state level.

The Law further establishes a "Project Monitoring Committee" in each of the constituencies. The Committee for each constituency comprises its representative in the House of Assembly and four other members, whose qualification is that, having regard to the diversity of the constituents, they should be community leaders. The functions of the Committee were enumerated in section 4 of the Law as follows:

(a) determine the type of project the constituency shall embark on in a particular year;

(b) convey the decision of the committee under the provisions of paragraph (a) of this section to the appropriate governmental agencies;

(c) Monitor the development of such projects and submit quarterly, a report of its activities to the House of Assembly.

The Senate through former Senator Stella Oduah,[233] proposed a Bill titled "Constituency Projects (Budgetary Provisions) Bill, 2019 (SB170)". Before the introduction of the Bill in 2019, there was another Bill introduced in 2016 called the

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231 Bridget Edokwe, 'Constitutionality or Otherwise of Constituency Projects in Nigeria and the way Forward' (Barrister.com July 9, 2020) and Orimogunje, Olusesan Olugbenga, 'Legislative Constituency Projects in Nigeria: A matter of Constitutionality or political Expediency? [2015] 41 *Journal of Law, Policy and Globalisation*, 180-182.

232 S.4, Lagos constituency projects development law of 2000.

233 Senator of PDP representing Anambra North, Deputy Chairman, Senate Committee on appropriation.

"Constituency Development Funds Bill 2016."[234] However till date the two Bills of 2016 and 2019 have not been passed by the National Assembly into law.

There is a clamour for the scrapping of constituency projects for some reasons ranging from its unconstitutionality,[235] to the fact that under a proper federal system (which Nigeria is not) the central government has no business sinking boreholes and building public toilets for local communities as these are jobs of the states and local governments. This study does not agree with the view of scrapping constituency projects as it has scaled up development especially in rural areas.

3.2.3 Implementation of Constituency Projects in Nigeria

Some indefinable common features of constituency projects are;

1. The constituency project sought to be carried out or implemented is usually identified by the legislator representing the host constituency, acting in the parliament, or in a CDF committee of his constituency[236]
2. The project is designed, funded and executed, with some participation or collaboration of the legislator in the process
3. The project is funded directly from the budget of the central or state government;
4. The project is usually identified with the legislator as his/her constituency project.[237]

Some benefits and advantages of the constituency projects are;

(a) The provision of infrastructure, promptly, without prolonged bureaucratic red-tape formality;

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234 The Guardian Newspaper , (December, 17, 2016).93.
235 Ibid.
236 Albert Van Zyl, note 50; Nontokozo Dube, Hardlife Zvoushe and Dominique Uwizeyimana 'Constituency Development Fund for Local Development: Experience of Mufakose Constituency' [2023] 20 *Sabinet African Journals* 2
237 Albert Van Zyl, note 50

(b) The active involvement of the constituents in the identification of developmental projects for implementation in their constituency;

(c) Better articulation and utmost satisfaction of the pressing needs of the constituency;

(d) The creation of opportunity for elected representatives to directly participate in the alleviation of the challenges or problems faced by their constituents.[238]

Controversies and disputations,[239] have arisen since the advent of the fourth republic in 1999 between the legislature and the executive over the inclusion of the constituency projects in National and State Budgets.[240] It is the opinion of the executives that this is clearly a usurpation of their functions and therefore negates the principle of separation of powers.[241] These disputations have led to long delay of the passage of the national budget. This was more so in the 8th National Assembly headed by Senator Bukola Saraki, when there was no love lost between both arms of government. The legislators on the other hand insisted that as representatives of the people who voted them into power they are in a better position to know the demands of their constituents and they need to be part of the design, funding and execution of projects in order to bring dividends of democracy to their constituents.[242]

President Mohammed Buhari in 2019 ordered the Independent Corrupt Practices and Related Offences Commission, ICPC to investigate contractors who collected money but failed to deliver such projects.[243] It was in President Buhari's view that Nigerians have not felt the impact of over ₦1,000,000,000,000 (one trillion)

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238 S. Lasun, 'Funds for Constituency Projects not Given to Lawmakers" in Information Nigeria of 29/6/15' <http://www.informationng.com/2015/06/funds-for-constituency-projects-not-given-to-lawmakersdeputy-speaker-house-of-reps-html> accessed 13th, July, 2021.

239 'The National Assembly has failed the nation , *The Punch Newspaper* (Jan. 31st 2013).

240 F. O. Olaoye, 'An Exploratory Evaluation of Legislative Lawlessness in the Nigerian Budget Process', [2014] 3 (2) *Singaporean Journal of Business Economics and Management Studies*. 1- 6

241 S. 4, 5, and 6 of the Constitution of Nigeria 1999as amended.

242 Nigerians not Feeling Impact of Constituency Projects, *Vanguard News Paper,* (November 20th, 2019) 45.

243 Ibid.

constituency projects appropriated in the last 10 years that is from 2009 to 2019. Following this, presidential detectives, ICPC did not waste time in carrying it out. They adopted a method of tracking the various constituency projects. The National Assembly responded swiftly to President Buhari directive and assertion by saying categorically that his statistics were misleading as the releases made out of the one trillion Naira budgeted was not up to 50 percent.

The opposition Peoples Democratic Party House of Representatives caucus led by Hon Ndudi Elumelu, Minority leader stated thus "last year (2018), only about 40 percent was released and we are not sure if releases will be up to 50 percent this year".[244] The Speaker of the House, Femi Gbajabiamila in response said that "it is okay to use the National Assembly as weeping boy, but let that be based on facts-- if the House embarked on an oversight and report non-factual figures, I don't think even the ICPC will appreciate that. So I am sending this massage to ICPC and other agencies to differentiate between monies budgeted and monies released".[245] The PDP Senate caucus reaction was that President Buhari should ask his ministers, especially as constituency projects are domiciled in the presidency.[246]

However the reaction from the National Assembly did not stop the ICPC from going ahead with the presidential mandate. In furtherance of this the ICPC with National Orientation Agency, NOA, and Action Aid were put in charge of monitoring the execution of the constituency projects by the presidency.[247] In March, 2020, the ICPC in its drive to stop corruption in the projects executed, launched its constituency projects tracking group it initiated in 2019.[248] In series of reports published in the news media, the ICPC has found infractions bordering on outright corruption by not

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244 'Constituency project; Reps, PDP, Senators tackle Buhari', *Vanguard News Paper*, (November 21st, 2019), 9.
245 Ibid
246 Vanguard Newspaper, note 70, 10.
247 '100BN constituency projects ICPC action aid NOA now in charge', *Vanguard News Paper*, (November 29th, 2019), 8.
248 'ICPC to stop corruption in projects execution', *The Nation News Paper*, (March 23, 2020), 42.

going to site at all for projects already paid for, abandonment and poorly executed projects. For example the Independent Corrupt Practices and Other Related Offences Commission, ICPC said empowerment items procured in 2019 are yet to be distributed in Oyi/Ayamelum federal constituency in Anambra state.[249] The items which included grinding machines, sewing machines and clippers are allegedly stored in a warehouse. The officers said checks with the listed beneficiaries, revealed that the items were procured in 2019 and 2020, but were not duly distributed.

However, when contacted, Vincent Ofumelu, lawmaker representing Oyi/Ayamelum federal constituency in the House of Representatives, accused ICPC of "witch-hunt".Ofumelu, while speaking, accused the ICPC officers of making demands outside their professional assignment. [250] Also the tracking by ICPC and NOA in Bayelsa State revealed that there were a lot of abandoned projects which were eventually completed due to their intervention. However according to the head of the tracking team the ICPC Commissioner in charge of Rivers and Bayelsa, Mr. C. Alexander, some anomalies was discovered. Hear him "the exercise also lead to the recovery of equipment and machinery meant for the benefit of ordinary people that was kept away and were not distributed." In the process as well, ICPC recovered money for government from those who did not execute the projects, underperformed or inflated the cost of projects.[251] Alexander called on community people to get involved in the selection, implementation and monitoring of the projects for the purpose of transparency and accountability.[252]

In reaction to the ICPC report that NGN100b Naira was recovered by them from the investigation of constituency projects for 2019, the House of

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249 'ICPC tracks 'missing' empowerment items in Anambra — but rep accuses agency of 'witch-hunt' *News Wire Law and Event* <https://newswirelawandevents.com/icpc-tracks-missing-empowerment-items-in-anambra-but-rep-accuses-agency-of-witch-hunt/> accessed September 26, 2021.

250 Ibid.

251 The Nation Newspaper, note 74, 42.

252 The Nation Newspaper, note 74, 42.

Representatives denied the report stating that only NGN660m, Naira was recovered.[253] Spokesman of the House, Benjamin Kalu stated that "the ICPC visited a little over 490 projects out of which they told us that about 380 were not actually separate projects, they also told us that the projects were spread across 423 locations. Out of this 423, they were able to visit 373. They confirmed that 255 were healthy. They also confirmed that 108 projects were ongoing'.

Kalu further stated that the ICPC in their report found that only five projects were abandoned and only three projects never started. They recommended only eight lawmakers for prosecution. But the news out there is that ₦1 trillion has been wasted and nothing to show for it and that ₦100 billion has been recovered from the National Assembly. So, you can imagine how the public will feel.[254] In the report eight House members were recommended for prosecution while one was declared wanted.[255]

Under the ICPC 2020 constituency projects tracking initiative**,** 722 projects with a threshold of ₦100M (490 constituency and 232 executive) were tracked across 16 states.

There was also the issue of the conspiracy between legislative aides of sponsors and implementing MDAs and contractors to undermine the quality of the project without the knowledge of the sponsor; vague project description that result in the diversion of funds by implementing MDAs or project sponsor with the collusion of contractors and the absence of community ownership of the projects because they were not consulted or largely ignorant of projects allocated to them.[256] In order to enlighten the various communities of the projects in their constituencies so that they can own them and ensure quality implementation, many non-government

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253 'Constituency projects; ICPC recovered ₦660m, not ₦100M', *The Nation Newspaper*, (December 15th, 2019), 5.

254 *The Nation Newspaper,* note 79.

255 Ibid.

256 'N2.67bn school feeding funds found in private accounts — ICPC', *The Nation Newspaper*, (September 29, 2020), 6.

organizations now publish the projects, the amount, the member facilitating it and the constituency it is domiciled in the news media especially social media. Some of this non-government organizations includes Socio-Economic Rights and Accountability Projects, SERAP, Action Aid, Udeme and so on. In fact SERAP goes beyond informing the public about the constituency projects, they also monitor and when they discover infractions they petition the ICPC.

One of such petition was against former Senator/Governor Godswill Akpabio of Akwa-Ibom State and Senator Isa Misau alleging that the duo diverted the funds for constituency projects and should therefore be investigated by ICPC. The petition was however found to be unmeritorious after a robust defense put forward by Senator Godwin Akpabio through his lawyer, [257] and his director in charge of projects development and Implementation Mallam Farouk Maitarure, [258]

It is pertinent here in this study to note that apart from the ICPC tracing group that was established in 2019, another group called Tracka have been involved in tracking constituency projects in many states in Nigeria. In 2010 they issued a Project Status Report which indicated the number of projects completed, ongoing, and abandoned from the 436 constituency projects tracked in 16 States They found that 145 of these projects were completed, 221 abandoned while 77 were ongoing at the time. This is illustrated in figure 3.1 below as presented by BudgIT.[259]

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257 'Akpabio's lawyer faults claim on constituency project diversion', *The Nation Newspaper*, (August 6th, 2019), 8.

258 'Ibid

259 www.ngyab.com

Figure 3.1

Project Status 2010

Source: www.ngyab.com.

In 2016 Tracka also reported that a ₦100 Billon was allocated for 2515 constituency development projects across the six geopolitical zones, which were now referred to as Zonal Intervention Projects.[260] It also reported that, due to the lack of monitoring by government authorities, 40.4% of the projects for that year were unexecuted although they had been signed off and paid in full,[261] the breakdown of the funds and number of projects allocated to the various Zones in the Country is as illustrated in the Table below;

Table 3.2

ZONE	Number of Projects	Amount
North Central	348	16,679,462,824
North East	385	18,039,734,670
North W	480	15,700,975,463
South East	460	14,377,900,000
South South	428	16,331,575,832
South West	393	17,428,342,218
Unknown	21	1,442,000,000
Grand Total	2515	100,000,000,000

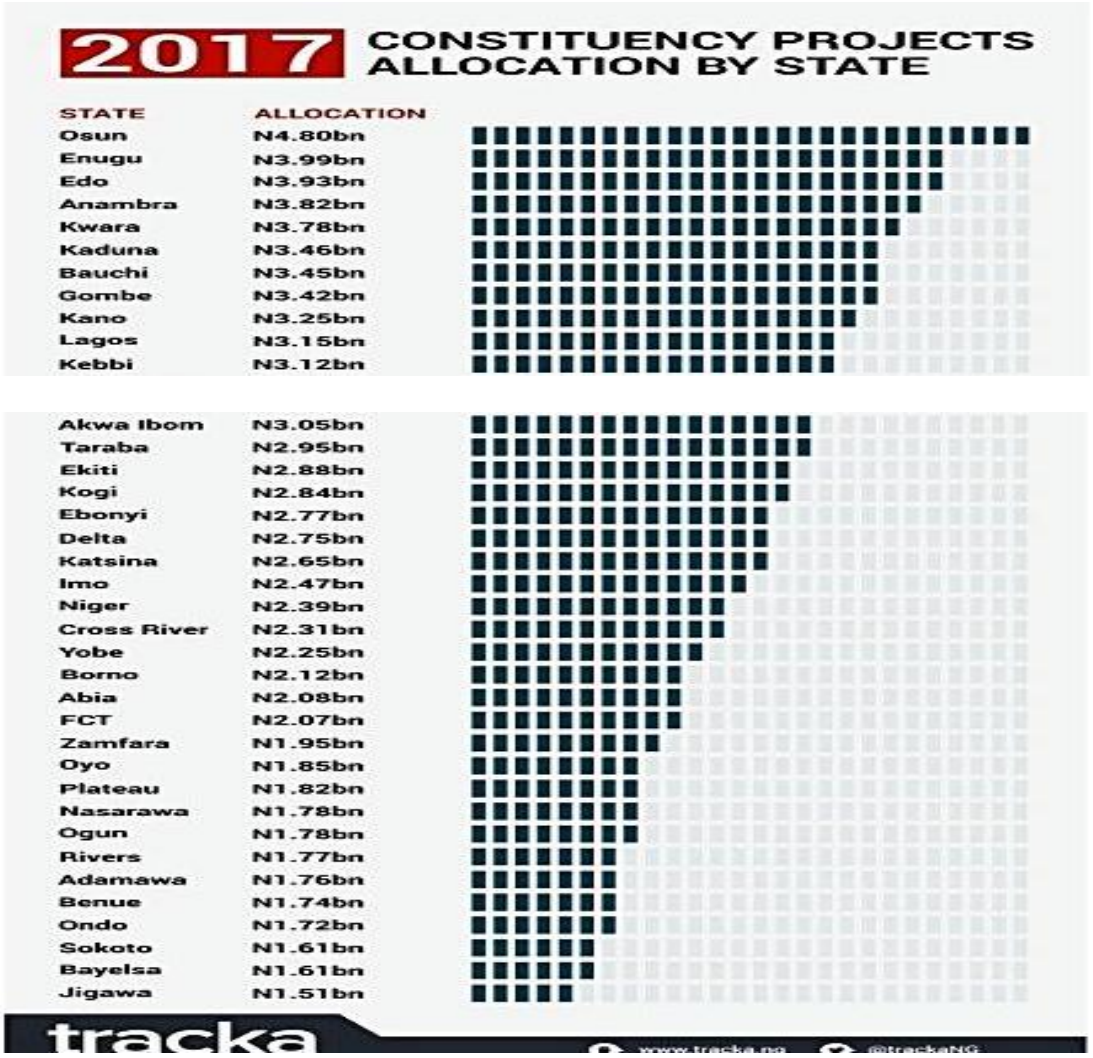
Source: www.slideshare.net/statistisense/2016-zonal-intervention-project-and-nass

260 www.slideshare.net/statistisense/2016-zonal-intervention-project-and-nass
261 www.tracka.ng

In 2017, according to Tracka 132 constituency allocation where assigned to each of the 36 states and the FCT. The table below shows the breakdown of funds allocated per state in 2017.

Figure 3.2

Constituency Projects Allocation by State

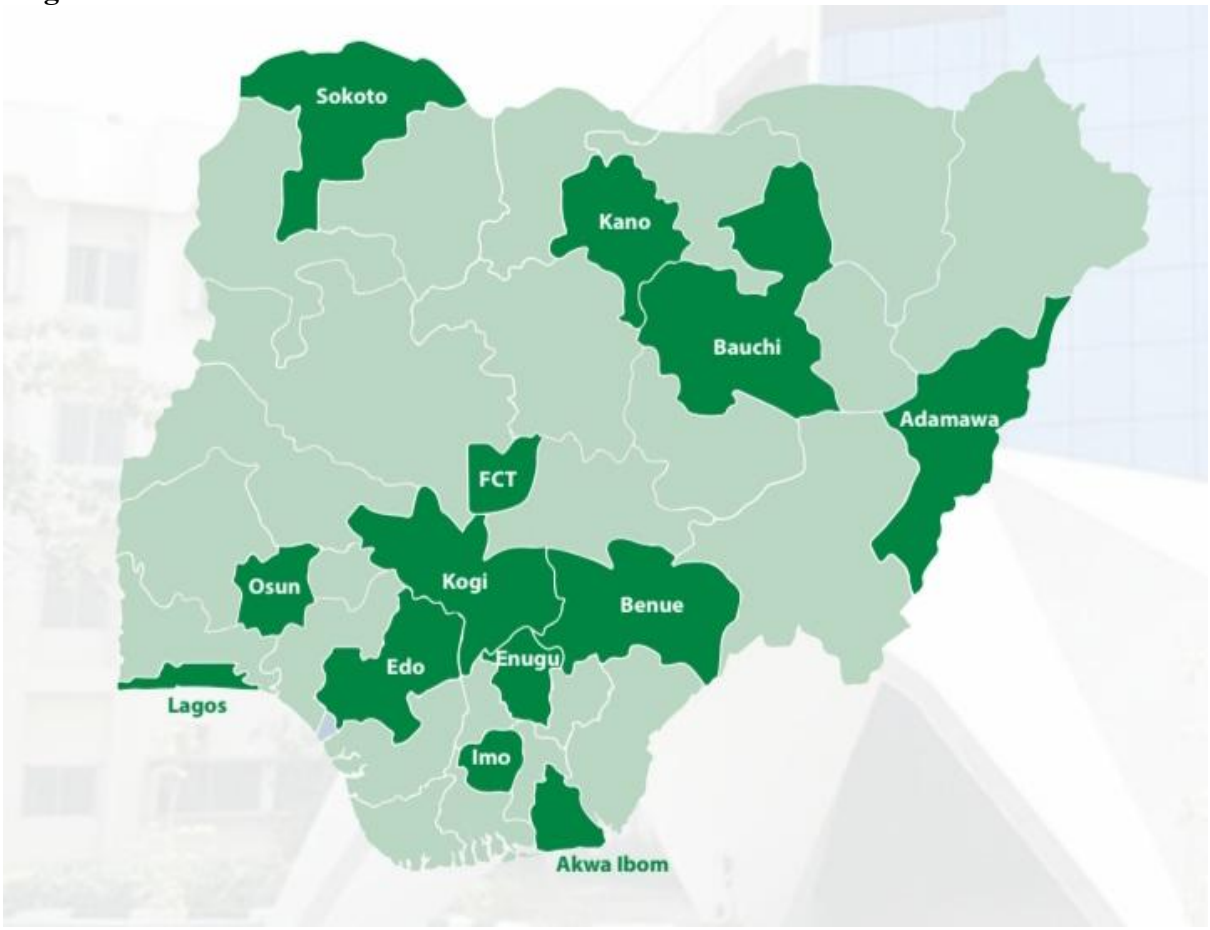


Source: http://statistisense.net

The Constituency Projects Tracking Group in 2019 under took the tracking of Eighty One (81) projects, that later metamorphosed into four hundred and thirteen (413) projects as some of the projects were split into two or more projects and awarded to different contractors owing to the spread/locations. In addition to these four hundred and thirteen (413), eleven (11) other projects reported through petitions or information otherwise obtained were tracked bringing the total to four hundred and

twenty four (424). The first phase of the tracking exercise conducted between June and August, 2019 was an exploratory one. Phase 1 covered 12 States of Adamawa, Akwa Ibom, Bauchi, Benue, Edo, Enugu, Imo, Kano, Kogi, Lagos, Osun and Sokoto with a few in the FCT being handled by the Headquarters as test cases. CPTG has 2 officers conducting the tracking exercise in each of the selected States.[262] The Map showing the States that the report covers is as illustrated in the figure below:

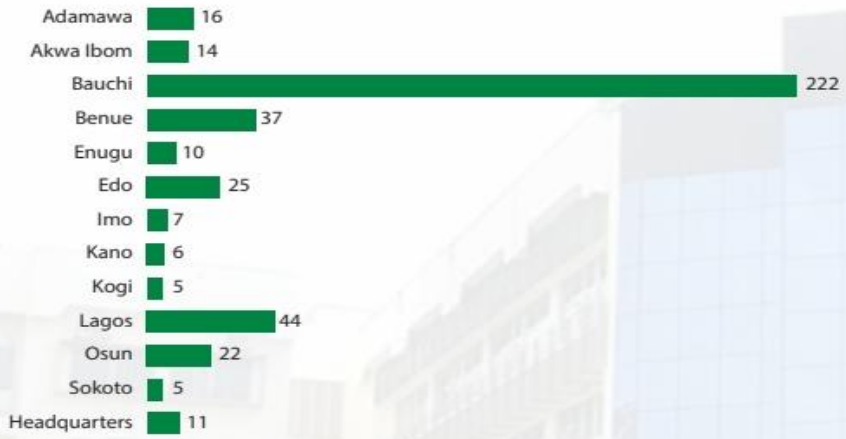
Figure 3.3



The Report of CPTG is as presented below with illustrations

[262] 'Reports of Phase 1 constituency project tracking group' [2-19] *ICPC/MacArthur Foundation*, 1-28<https://nigeria.actionaid.org/publications/2020/constituency-project-tracking-group-cptg-report> accessed 22nd October, 2021.

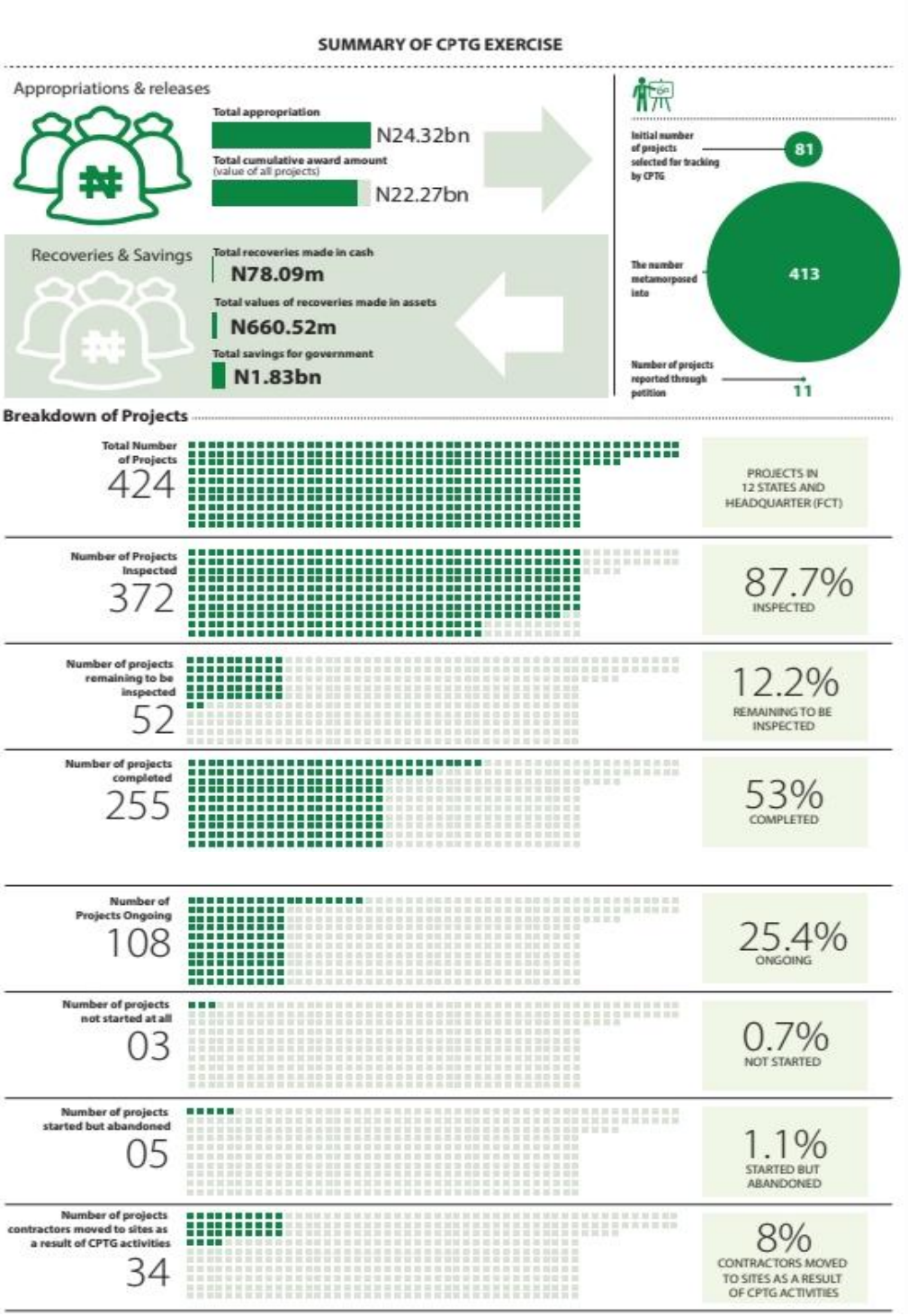
Below is the case distribution by States:



- The total appropriation for all the tracked projects was **Twenty Four Billion, Three Hundred and Twenty Seven Million, Ninety Two Thousand, Five Hundred and Eighty Nine Naira, Six Kobo (N24, 327, 092, 589.6)**
- Cumulative amount of awards (value of all projects) was **Twenty Two Billion, Two Hundred and Seventy One Million, One Hundred and Ninety Eight Thousand, Five Hundred and Seventy Six Naira, Eight Kobo (N22, 271, 198, 576.8)**

Total No. of projects	**424**
Total No. of projects inspected	**370**
No. of projects remaining to be inspected	**52**
No. of projects completed	**255**
No. of projects ongoing	**108**
No. of projects not started at all	**3**
No. of projects started but abandoned	**5**
No. of projects among the selected projects in which contractors moved to sites as a result of CPTG activities	**34**

No. of cases recommended for closure	**123**
No. of cases recommended for prosecution	**8**
No. of cases recommended for recovery of funds	**40**
No. of cases recommended for further investigation	**261**
No. of companies involved in the execution of the selected projects	**317**
Value of recoveries so far made	**N738, 621, 225. 01** (Cash and Assets)
Cumulative savings for Govt	**N1, 834, 771, 184. 84**



This report speaks for itself and emphasized the need why constituency projects should be continuously be monitored in order to ensure legislative accountability. However despite the hiccups and corruption associated with the concept of constituency projects, the fact of its relevance in helping legislators to perform the function of effective representation cannot be overemphasized.

Senator Francis Alimikhana,[263] on effective representation, acknowledged the fact that "if not for constituency projects, many communities in Nigeria, particularly in Edo North Senatorial districts, would not have enjoyed federal governments patronage.[264] Former Senator Gbenga Ashafa[265] who was seeking a third term return to the senate when asked what was his biggest achievement, he replied thus "In the past eight years I have equally committed myself to delivering constituency intervention projects that have been tailored to the needs of the people in various communities. These projects have been based on their requests through my constituency office and town hall engagements as well. Some of my projects include, construction of classrooms in schools in every local government area in the district, construction of ICT centers, boreholes across the district, transformers/rural electrification projects, entrepreneurship capacity, developmental trainings for constituents across board, free healthcare initiatives, annual back to school programs for children in schools across the district, and constant town hall meetings.[266]

Senator Andrew Uchendu,[267] in marking his first year in office, distributed items which included 74 computers sets, 38 sewing machines, 40 deep freezers sets.[268] It is common knowledge that most members of National Assembly also engage in distribution of items to their constituents periodically.

There also the difficulty in monitoring these constituency projects to ensure effective implementation.[269] It is obvious that constituency projects have come here to stay especially in the National Assembly. It is one of the effective methods that legislators can use to represent their people. This study also believes that the fears

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263 Representing Edo North Senatorial District and Deputy Chief Whip
264 'Senator Gives Tips on Effective Representation', *The Nation Newspaper*, (June, 17, 2021), 24.
265 Represent Lagos East Senatorial District from 2011-2019.
266 Ashafa, 'Why I Want to Return to the Senate', *The Nation Newspaper*, (September, 11, 2018), 33.
267 Represented Rivers East Senatorial District.
268 'East-West Road Repair- Uchendu Lauds Setraco for Prompt Response', *the Nation Newspaper* (October, 16 2018).
269 'Rethinking the constituency projects issue', *Vanguard News paper Editorial*, (November, 29 , 2019).

addressed by Vanguard News Paper Editorial can be taken care off. In fact the issue of monitoring of the projects has now been left for ICPC, Action Aid and NOA, and so far from media reports and from practical experience on the ground these agencies are doing a good job. The projects covered can be streamlined to include major projects only. However, this will entail increasing the value of the projects per constituency. NGN500 Million per Senatorial District can hardly do much as most of the Senatorial Districts have a minimum of 5 to 8 local governments in all. This study finds that the introduction of concept of constituency projects has greatly improved effective representation of the legislators to the constituents and should be sustained. But there is need for institutional and legal framework to give it some form of legality for constituency budgeting. The main attributes of the CDF Act of Kenya is the establishment of the framework for the identification, design, development and execution of constituency projects.[270]

The Fund is managed by a Constituency Development Fund Board.[271] The board is composed mostly of officials from the executive branch of the government, and does not include any member of the parliament.[272] However, the actual allocation of funds to each constituency is required to be "with the concurrence of the relevant parliamentary committee".[273] In each of the constituencies, a Constituency Development Fund Committee is established. [274] Such Committee includes the legislators from the constituencies (as ex -officio members) as well as some other stakeholders.[275] The need for a legal frame work cannot be over-emphasized. This will reduce juridical interventions,[276]and ensure proper and effective representation

[270] Ss. 3-6 of the Kenya's Constituency Development Fund (CDF) Board Act. 2013
[271] S. 5 Kenya's CDF Act.
[272] S. 5(2) Ibid.
[273] S. 10. Kenya's CDF Act.
[274] S. 24, ibid.
[275] S. 24 ibid.

[276] See the case of *Legal Defense and Assistance Projects LTD/GTE and Clerk of National Assembly* [2015] unreported, in suit no FHC/Abj/Cs/336/2013 where the Federal High Court in Abuja

and accountability

3.2.4 **Challenges of Representation and Accountability**

In performing their roles, the National Assembly and its members are not immune to challenges. They are often faced with the conflict of national and party interests, as well as the conflict of personal and national interests. Parliaments are also confronted with the challenge of abuse of privileges.[277]

Legislators have always been alleged of abandoning their constituents immediately after elections. In defense, they have pleaded for greater understanding from their constituents as they face certain challenges that inhabit their effective representation and accountability. Some identified challenges by scholars to effective legislative representation include the following;

3.2.4.1 Underutilization of Constituency Offices:

By not making judicious use of funds made available for establishing and operating constituency offices, most legislators have failed to establish an institutional communication channel with their constituents. Many legislators do not run operational constituency offices, even though financial support for this purpose is made to all members of the legislature. Those who have such offices rarely visit to use them for interactive purposes with their constituents. It therefore poses a challenge to effectively represent constituents where there is no basic relationship occurring through constituency offices.

3.2.4.2 Lack of Understanding of the Fundamental Purpose of Constituency Offices:

Poverty has remained endemic in the society hence, many constituents bring personal problems, particularly financial, to bear on their representatives. Rather than use the office of the representative to ventilate societal or communal problems, they

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granted the plaintiffs through the FOI Act, an order compelling the defendant to forward to the plaintiffs within 7days detailed budgeting allocations on Constituency Projects-2011 to 2013.

277 Adetiba, T. C., &Asuelime, L. E., 'ANC Accountability and Control of South African Parliament. In whose Interest: The State or the Party?', [2018] 5 (1) *Journal of African Foreign Affairs*, 107-128.

see the offices as avenues to lodge personal problems and get help as much as possible. Legislators on their own part, mostly to secure support for re-election, have also adopted an individual approach to responding to constituents' personal demands. This usually takes the following forms:

1. Using personal resources to finance development of micro-projects like boreholes, health clinics, electricity supply and so on,
2. Supporting local self-help development projects like access roads and so on.
3. Providing financial assistance to local notables, like traditional rulers who can deliver votes,
4. Getting jobs for youths and political allies,
5. Making available information on business opportunity to members of the community,
6. The financing of significant local celebrations like weddings, funerals and meeting personal needs of individuals,
7. Personal allowances to meet the expenses of legislative staff /team.

The pressure on lawmakers to play such direct roles in resource distribution distorts the traditional representation roles of lawmakers. While the foregoing are not illegal or wrong in themselves, they do not represent best practices on legislative representation nor do they provide a sustainable response to constituents needs.

3.2.4.3 Interference and Reduced Execution of Oversight Function:

One area that has attracted and continues to attract serious attention from scholars on legislative institutions is the aspect of its relation with the executive arm of government. In particular, scholars have alluded to a decline in the legislature in comparison to the powers and popularities of the executive arm. This constitutes another area of challenge for the legislative institution as it tries to assert its

independence and control over the executive. Indeed, if a general survey is made of the position and workings of the legislature in the present century it would be evident that barring a few important and striking exceptions, legislatures have declined in certain important aspects and particularly in respect of powers in relation to the executive power of government. In a minority of countries, legislatures constitute an essential part of the decision making process, while in some, they have been dominated by the executive. Also in several other cases, the legislatures are manipulated by authoritarian governments, and in a very few cases they are actually abolished or suspended, perhaps as a result of some form of military coup. The above simply highlights the dilemma of the legislative institution in comparison to an ever-burgeoning and dominate executive arm.

3.2.4.4 Illiteracy and Lack of Understanding of the System:

The high level of illiteracy in Nigeria has also been hampering effective representation by lawmakers. Many do not really understand the responsibilities of a lawmaker. Some do not understand the differences in functions of the executive, judicial and legislative arms of government. The construction of roads, building of schools, provision of pipe borne water and other sundry responsibilities of the executive are sometimes seen as the responsibilities of the legislature. When government is seen as not alive to its responsibilities in these areas, the legislator is blamed for the inefficiency of the executive. Although, the legislator is also expected to bring the attention of the executive to these issues, it is not within the responsibility of the legislature to execute these projects.

3.2.4.5 Personal Interests of Lawmakers:

Effective legislation experiences setbacks in the Nigerian context due to the personal interests of legislators themselves. There have been instances where the legislative process is delayed or hampered as a result of politically motivated

oppositions to otherwise beneficial government policies or absence of the number of lawmakers that is required for a legislative process to proceed. If lawmakers do not adequately represent the interests of the constituents or fail to balance competing interests, political or otherwise, it poses challenges to effective representation.

3.2.4.6 Lack of Capacity or Knowledge of Legislative Procedures by Lawmakers:

Insufficient level of knowledge and lack of interest in the legislative process is a major hindrance to effective representation as it makes it challenging for such lawmakers to effectively make contributions on the floor of the chamber. This in turn can lead to reduced level of confidence in the lawmaker by constituents.[278]

3.2.4.7 Abuse of privileges:

An abuse of privilege occurs when an MP compromises issues of ethics, crime and culpability under the guise of privilege.[279] Corruption; the issue of corruption bedeviling the legislature and Nigeria as a whole is well known, at the beginning of the forth republic in 1999 the Senate was embroiled in allegations of corruption immediately after the inauguration and swearing in of the Senators in June 1999. The senators purportedly received eight hundred and fifty thousand (₦850,000) naira each to vote Evans Enwerem instead of Chuba Okadigbo as Senate President and collected five million (₦5m) naira each as furniture allowance as against the three million, five hundred thousand (₦3.5m) naira they declared to the public.[280] Ibietan is of the opinion that the deduction or inference from extant literature, public commentaries, analyses, media (print and broadcast) including social networks seem to suggest that corruption is the largest industry with many practitioners in Nigeria.[281]

Adegbite averred that:

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278 PLAC, note 1, 7

279 Meryl Davis, note 3.

280 Ologbenla, D.K.Leadership, 'Governance and Corruption in Nigeria', [2007] 9(3) *Journal of Sustainable Development in Africa*; M. Aliu, 'Legislative corruption and democratic consolidation in the Nigerian Fourth Republic', [2013] *Journal of Sustainable*. 45

281 Jide Ibietan, Corruption and Public Accountability in the Nigerian Public Sector: Interrogating the Omission. [2013] 5(15) *European Journal of Business and Management 55*.

> Where there is no accountability, development will inevitably be stunted.

The author corroborated thus:

> In human history, no nation ever prospers with perverse values. In fact, no nation can prosper where personal will supplants the general will, where established procedures are observed in the breach, where governance is for self- enrichment rather than public service. Where there exist a yawning gap between leadership and stewardship… virtuous societies are built by leaders who are accountable to the led and are driven by the altruistic desire to improve the lot of the highest number of the people.[282]

Clark argued that colonialism introduced corruption to Nigeria. Corruption in politics was not regarded because it was alienated from the population.[283] Bills hardly sail through the legislature until members have had their hands greased. The implication of this, therefore, is that debates on such bills either at the plenary or committee levels cannot be subjected to thorough scrutiny in the best interest of Nigerians who are the objects of such bills eventually when they become laws.[284]

Attachiru Jega**,** immediate past chairman of the independent National Electoral Commission, INEC told a packed hall in Abuja that the National Assembly was notorious for taking bribes for sundry functions. Hear him:

> Members of the National Assembly engage in bribe taking when they pursue committee work and oversight; and I wonder what is happening with intelligence and investigative responsibilities of security agencies in policing our National Assembly. Some chairmen of the committees in the National Assembly,
>
> have become notorious on this issue of demanding bribes with impunity.[285]

He said this in the presence of the then leadership of the National Assembly including the Senate President, Bukola Saraki and Speaker of the House of Representatives, Yakubu Dogara. The National Assembly only provided a weak

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[282] E. O. Adegbite, 'Accounting, Accountability and National Development in Compass' (December 16 2009), 33-34.

[283] M. Ikejiani-Clark, 'Corruption in Nigeria', in J. O. C. Ozioko, and J. I. Onuoha (eds) *Contemporary Issues in Social Sciences*, (Nsuka: Topmost Publishers, 2001), 114.

[284] E. S. I. Ejere, 'Democracy, Human Rights, Rule', [2004] (9) *Nigerian Journal of Political Science*, 2.

[285] 'Perverse Parliament', *the Nation Newspaper*, (June, 6, 2018).

defense by challenging Jega to name the legislators involved rather than to generalize. The other challenge of pursuing personal interest by the legislators has greatly affected the quantum and quality of bills passed. In the first 12 years of the Fourth Republic, the legislature was able to pass only 134 bills, many of which were the various appropriation bills in which the lawmakers often have vested interests or to attract more contracts to enrich pockets of the House members without any radical approach to salvage the economic yearnings and aspiration of the public.[286] The 6th National Assembly for instance, passed only 91 bills over its four-year tenure (2007-2011) whereas the 112th U.S. Congress (2011-2012) passed a total of 326 bills over a two-year tenure.[287] Thus while the primary assignment of the legislature is to make laws for the good governance of the country and hold the executive accountable through oversight, the federal lawmakers of Nigeria has been able to make very few laws, pass ineffectual motions and engage in rampant absenteeism.[288] These pursuits of personal interest by the legislators inhibit them from combating the challenges of law making.[289] Members are mostly interested in contracts, fighting over leadership positions and juicy chairmanship or membership of so called Juicy committees.[290]

Some of the challenges can be understood from the legislators' points of view as inhibiting them from their representational functions. The pressure from their constituents seeking for personal favors like assistance in burials, birthdays, payment of school fees for their children, health challenges have sometimes come to overwhelm the legislators. These pressures discourage them from regularly visiting their constituencies in order to avoid such pressures as it entails huge financial cost to

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286 B.O.G. Nwanolue, and Ojukwu Uche Grace, 'Legislative Efficiency and Democratic Stability in the Fourth Republic Governance and Politics of Nigeria: A Re-Appraisal of National Assembly', [2012] 1 (9) *Kuwait Chapter of Arabian Journal of Business and Management Review*, 116-131.

287 O. Okigbo, Patrick and Mma Oyeka, 'Managing the Size of Nigeria's National Assembly'. [2012] *Abuja Nextier Limited* 7

288 'Our Unproductive National Assembly', *Punch Newspaper Editorial*, (March 7, 2012) 11-12.

289 Ewuim, Nnamani, D.O and Eberinw O.M, 'Legislative Oversight and Good Governance in Nigeria National Assembly: An Analysis of Obasanjo and Jonathan's Administration' [2014] 3 (6) *Public Administration and Management 17*.

290 Ewuim, Nnamani, D.O and Eberinw O.M, note 115.

the legislators. However, this is not to excuse them from carrying out their functions as it relates to their constituencies.

These challenges are however surmountable**.** The executive should first of all stop the overbearing influence they have over the legislative arm especially in the sub-national level where the Governors have become overlords over the legislators and turn them into rubber stamps. As both institutional and legal frame work are strengthened to give the legislature independence, from the control of the executives, it is hoped that the legislators should be bold and courageous enough to assert their independence. It is also imperative that the electorate on the other hand played their part in voting qualitative representatives into the legislature.

3.2.5 Legislative agenda

Taking into cognizance, public expectation of their roles in governance the Nigeria National Assembly usually at the beginning of each legislative term have a legislative agenda that contains what they will strive to do. The legislative agenda therefore tends to build public confidence and trust, and be responsive to citizens questions regarding the conduct of legislative business.[291] For example the 8th House of Representatives legislative agenda in its preamble stated equivocally that:

> It is against the background of huge expectations from Nigerians about the way government business is conducted. To address these expectations, the House of Representatives will implement a Legislative Agenda that will position the House to deliver legislation in aid of development and Reforms aimed at improving conditions of living in Nigeria.[292]

This agenda outlines steps and prioritizes legislative actions required to achieve set goals and objectives. This legislative agenda was based upon the experience garnered from the previous Assembly; its major aim is to assuage the discontent of the electorate over the functions of the legislatures. The agenda

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[291] The Legislative Agenda of the House of Representatives in the 8TH Assembly, (2015-2019).
[292] Ibid.

prioritizes the reduction in the cost of governance. The agenda also acknowledge that the House of Representatives needs to work in tender with the Senate, civil society organizations and other stakeholders in other for it to be able to achieve its agenda.

The agenda was hardly achieved due to rancorous way the House and Senate leadership emerged. The Senate President Olushola Saraki went against his party's decision on the choice of the office of the senate president and formed an alliance with minority Peoples Democratic Party Senators to contest and win the Senate Presidency. The PDP was rewarded with the Deputy Senate President. In the parliamentary history of Nigeria this was a first time that both the majority party (All Progressive Congress) and minority party PDP will share the two top most leadership positions in the Senate.

In the House of Representatives the APC choice of Speaker, RT. Hon. Femi Gbajaimala lost to Yakubu Dogara who formed an alliance with PDP House of Representative members. Their emergence in both chambers of the house and Senate against the wishes of their party led to series of frictions between the leadership of the National Assembly and the executives. This turn of events created acrimonious relationship between the executive and legislative arm of government, this eventually led to the trial of the Senate President for breaches of the code of conduct. He was convicted by the Tribunal, though its conviction was later upturned by both the Court of Appeal and the Supreme Court. These distractions did not allow the 8th National Assembly to concentrate and implement their legislative agenda. Though the then Senate President In his end of tenure report insisted that they achieved much.[293] Carey argues that governing parties, particularly their leadership should work constantly to turn the legislative agenda to their advantage.[294] Legislative agenda is a laudable idea, it promotes the legislative business and if implemented to the latter it will ensure

[293] Legislative legacy; 8th senate on record https://www.docdroid.net/kjpFCre/legislative-legacy-8th-senate-on-record-pdf

[294] John M. Carey *Legislative Voting and Accountability* (Cambridge University Press, June 2012) 2.

accountability and effective performance of the legislators. It will be a document that can be used to assess legislative performance.

3.3 MECHANISMS OF LEGISLATIVE ACCOUNTABILITY AND THEIR EFFECTIVENESS

As stated earlier some of the mechanisms used to enforce accountability are the vertical such as; periodic elections,[295] recall of members,[296] and the horizontal such as; assent to a bill by the president including the bill seeking to amend the constitution, judicial review.[297] Others include restricted immunity,[298] suspension from plenary,[299] vacation of seat for non-attendance,[300] vacation of seat for floor crossing,[301] and power of veto.[302]

3.3.1 Elections

The conventional way of thinking about elections is that they are a mechanism of accountability. The logic goes like this: politicians seek to be elected (or re-elected) and therefore they need to make their constituents happy. Constituents evaluate the performance of their representatives and reward those who are doing well and vote against those who are not.[303] The desire to be re-elected, and the ability of voters to hold the elected accountable, is seen as the critical mechanism that makes democracy work. Political Scientists call this the "folk theory" of democracy. They think elections are the mechanism by which citizens select and remove government representatives, giving politicians strong incentives to do right by their constituents.[304] It has been stated that repeated elections function as a mechanism of accountability

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295 S. 70 of the Constitution of Nigeria 1999 as amended
296 S.69 of the Constitution of Nigeria 1999 as amended.
297 S. 4 (8) of the Constitution of Nigeria 1999 as amended.
298 S. 3 of the Legislative Houses (Powers and Privileges) Act 2018.
299 S. 21 (1 & 2) of the legislative Houses (Powers and Privileges), Act 2018.
300 S. 68 (1) (f) of the Constitution of Nigeria 1999 as amended
301 S. 68 (1) (g) of the Constitution of Nigeria 1999 as amended.
302 S. 58 (4-5) of the Constitution of Nigeria 1999 as amended.
303 Victor Jennifer , 'What Good are Elections Anyway', [2018] *Vox Media*, 2
304 Christopher H. Achen and Larry M. Bartels, 'Democracy for Realists, Why Elections Do Not Produce Responsive Government', [2017] (4) *Princeton Studies in Political Behavior* 43

and if politicians want to be re-elected and if voters condition their ballots on policy outcomes, then politicians have an incentive to implement policies that benefit the electorate. Otherwise, they lose in electoral competition.[305]

Although election is not synonymous with democracy, it is central to the attainment of democracy irrespective of its variant. Representation and participation can only be achieved through the conduct of elections. In fact, it is a tool that confers authority and legitimacy on representatives who act for the electorate through the powers conferred on them through elections.[306]

In Nigeria the Constitution provides for a four-year tenure for legislators.[307] Unlike the executive that have a limited tenure of two terms of four-years each, the legislature has unrestricted tenure. They will remain in the parliament as long as their constituents re-elects them. This is the same practice in America where legislators has unfettered tenure. Since the advent of the fourth republic in 1999, there are some legislators that have consistently be returned to the House of Representatives and the Senate.[308] In other words, the will of the people manifested in the election of their representatives in a free, fair, credible and transparent atmosphere constitutes the leitmotif of the democratic process. For democracy to thrive, therefore, there must be a level playing field for all contestants to public office.[309] Furthermore, there must be fully operational variables such as a free press, independent judiciary, and an informed and discerning electorate, capable of making rational choices among

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[305] Dinissa Duvanova and Jakub Zielinski, Legislative Accountability in a Semi-Presidential System: Analysis of the Single-Member District Elections to the Russian State Duma (Europe-Asia Studies 2005)1143

[306] Aigbokhaevbo, V., Inegbedion, N., Arishe, G., Osarumwense, N., 'Election and Constitutionalism as a Catalyst for Sustainable Electoral Process' in Kabir, A., Shu'aib, U. M., Umar, I. A., Idris, M.N., (ed), [2023] *Law Democracy and Electoral Process, NALT Conference, A5, Media Enterprises, 237 – 253.*

[307] S. 64 of the Constitution of Nigeria 1999 as amended.

[308] The former Speaker, Rt. Hon Femi Gbajamialia and the former Senate President Ahmed Lawan are good examples.

[309] Mike Omilusi, 'Electoral Behavior and Politics of Stomach Infrastructure in Ekiti State (Nigeria)', [2018] *Intech Opens*. 6

competing ideologies and candidates put before them by the various political parties.[310]

In Nigeria as the process of election improves and the conduct becomes transparent, credible and fairer, constituents will become Kings and will determine the fate of their representatives in parliament. For those who have performed, they have no fear of re-election but for those who did not, they must worry as they shall meet the electorate at the polls. It must be stated that this study finds that most legislators for fear of losing re-election have become more pro-active by striving to meet the expectations of their constituents. The introduction of constituency projects has become a saving grace for some of them. They now pursue constituency projects with so much vigour and zeal to impress their constituents and take the legislative function of representation seriously.

Two cartoons below capture the essence of behavior of the legislator before election and the power of the voter during re-election. They speak for themselves.

Cartoon 1

Source vanguard,

July, 22nd, 2019. 5

[310] A. Oyebode, 'The Future of Democracy and the Rule of Law in Nigeria', (Lecture Delivered at Ikoyi Club, Lagos on May 28, 2012). 4

Cartoon 2

Source vanguard

September, 4th, 2019. 5

Every four years, since 1999, there are periodic elections in Nigeria to elect or re-elect office holders. The question now is how effective has the mechanism of election been in holding legislators accountable? Ordinarily once most constituents who are registered voters are dissatisfied with the representation of their representatives in the legislature, they reserved the right to vote him or her out during re-election once the elections are free and fair.

The Former President Mohammed Buhari who contested under the All Peoples Party, APP complained bitterly and went to the courts for redress but he lost up to the Supreme Court.[311] The Commonwealth Observer Group indicated in its report that there was a measure of rigging especially in Rivers and Enugu States.[312] Majority of the unacknowledged violence and serious abuses were perpetrated by members of the then ruling Peoples Democratic Party, PDP.[313]

The 2007 elections were worse. President Obasanjo declared the elections do or die.[314] President Obasanjo, after the declaration of the presidential result in which

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135 See the case of Buhari v Obasanjo, [2005] 2 NWRLR [pt 910] 241,487-488.

136 'Report of commonwealth observer group on Nigeria NA & presidential elections, April 2003' *Common Wealth* <http://www.thecommonwealth.org> accessed June, 23rd, 2021.

137 'Nigeria's 2003 elections; the unacknowledged violence', *Human Right Watch*, (June 1st, 2004) <http://www.hrw.org/report/2004/06/01/nigerias-2003-elections/unacknowledged-violence#> accessed July 23rd, 2022,

138 'Nigeria: Obasanjo explodes –April polls do or die Affair for PDP', *Vanguard News Paper*, (February, 11th 2007), Addressing elders and other stakeholders from Abeokuta North Local Government Area of Ogun State on preparations for the forthcoming polls, Obasanjo said that he

the candidate of his Party, PDP Musa Yar'dua was declared winner acknowledged flawed and other "lapses" in the vote but said the result reflected opinion polls.[315] Both the EU Observer mission led by Le Max Van, Den Berg and the U.S Department condemned the election as deeply "flawed"[316] The major beneficiary, the then President Musa Yar'dua admitted that his election and that of others were flawed[317]. This led to the setting up of the Mohammed Uwais Electoral Reform Committee which recommended major reforms in the electoral system including creating new institutions and amendments to the Electoral Act to ensure free and fair elections.[318] The elections of 2011, 2015 and 2019 were a marked improvement from that of 2003 and 2007.

Ordinarily once the majority of constituents who are registered voters are dissatisfied with the representation of their representatives in the legislature, they reserved the right to vote him or her out during re-election once the elections are free and fair. We compare the numbers of incumbent legislators that were not re-elected into the National Assembly and use it as a benchmark to measure the effectiveness of election as a mechanism of accountability.

It must however be stated that there are other reasons why a legislator would not be re-elected out-side the issue of performance. He may have done very well and constituents maybe willing to re-elect him but he may not even get the party's ticket if he has offended his benefactors or top party leaders who will deprive him of the ticket of the party irrespective of the performance. He may even win the election but rigged

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would give it all it takes to ensure his party's victory in the elections, adding that he was not prepared to hand over to criminals. <http://allafrica.com/stories/200702110015.html> accessed July, 29th, 2022.

139 'Ruling Party Candidate Wins "Flawed" Nigeria election"', *The Guardian Newspaper*,(April, 23rd 2007), <https://www.google.com/amp/s/amp.theguardian.com/world/2007/apr/23/chrismcgreal> accessed June, 12th 2022.

140 Ibid.

141 'Inaugural speech of President Umaru Yar'Adua' *Learn By Click,* (May 29th, 2007), <http://learnbyclick.com.ng/current-affairs/inaugural-speech-president-Umaru-yar-dua.html> accessed 12th, June, 2022.

142 See the report of the Uwais Electoral Committee, <http://nairametrics.com/wp-content/uploads/2012/01/uwais-report-on-electoral-reform.pdf> accessed June, 20th, 2022.

out. But generally, they are many instances were legislators have lost their re-election due to non-performance or for voting against the interest of their constituents. From the data on various tables especially table 3.2 shows that a large number of Senators were not re-elected by their constituents for one reason or the other.

This study concedes that there are various reasons why some Senators did not return to the Senate after their first term which include deaths, zoning, seeking higher office, voluntary choice not to return, loosing party primaries due to God-fatherism and most especially ineffective representation of their constituents. However it is worrisome that from the data displayed on the various tables an average of over 80% of Senators did not return or re-elected since the advent of the 4th republic in 1999. These tables[319] show unequivocally that election as a mechanism of accountability is a powerful tool to sanction legislators by their constituents when they do not effectively represent their interest.

[143] See Tables 3.1 to 3.5

Table 3.2

1999 Senators that were not Re-Elected in 2003 Election				
	State/Names	Party	Senatorial District	Numbers
1.	Abia			
	Ike Omar Sanda Nwachukwu	PDP	North	
	John Bob Nwannunu	APP	Central	2
2.	Adamawa			
	Abubakar Halilu Girei	PDP	Central	1
3.	Akwa Ibom			
	John James Akpanudo-Edehe	PDP	North-East	
	Emmanuel Ibok Essien	PDP	North-West	2
4.	Anambra			
	Mike N I Ajegbo	PDP	Central	
	Nnamdi Eriobuna	PDP	South	
	Chuba Okadigbo	PDP	North	3
5.	Bauchi			
	Bashir Mustapha	PDP	North	
	Idi Othman Guda	PDP	Central	
	Salisu Ibrahim Matori	PDP	South	3
6.	Bayelsa			
	Emmanuel W Tupele-Ebi Diffa	AD	West	
	Melford Okilo	PDP	East	2
7.	Benue			
	J K N Waku	PDP	West	2
8.	Borno			
	Maima Ma'aji Lawan	PDP	North	
	Ali Modu Sherrif	APP	Central	
	Abubakar MahdI	PDP	South	3
9.	Cross-River			
	Pius Adede	PDP	North	
	Matthew T Mbu	PDP	Central	
	Florence Ita Giwa	APP	South	3
10.	Delta			
	Fred Aghogho Brume	PDP	Central	
	Stella Omu	PDP	South	2
11.	Ebonyi			
	Sylvanus Ngiji Ngele	PDP	North	
	Obasi Vincent Usulor	PDP	Central	
	Anyim Pius Anyim	PDP	South	3
12.	Edo			
	Roland Stephen Owie	PDP	South	1
13.	Ekiti			
	Olatunji Joseph Ajayi	AD	North	
	Ayo Ade Oni	AD	Central	
	Gbenga Daniel Aluko	AD	South	3
14.	Enugu			
	Jim Nwobodo	PDP	East	
	Hyde Onuaguluchi	PDP	West	2
15.	Gombe			

	Umaru Usman Dukku	APP	North	
	Saidu Umar Kumo	PDP	Central	
	Idris Abubakar	APP	South	3
16.	Imo			
	Evan Enwerem	PDP	East	1
17.	Jigawa			
	Mohammed D Alkali	PDP	North-East	1
18.	Kaduna			
	Muktar Ahmed M Aruwa	APP	Central	
	Haruna Aziz Zeego	PDP	South	2
19.	Kano			
	Ibrahim Kuta Mohammed	PDP	Central	
	Masa'ud Doguwa El-Jibril	PDP	South	2
20.	Katsina			
	Abdul U Yandoma	PDP	North	
	Mohammed T Liman	PDP	South	
	Samaila Mamman	PDP	Central	3
21.	Kebbi			
	Adamu Baba Augie	APP	North	
	Abubakar Na'amo Abdullahi	APP	Central	
	Dandali Bamaiyi	PDP	South	3
22.	Kogi			
	Ahmed Tijani Ahmed	PDP	Central	
	Alex Usman Kadiri	APP	East	2
23.	Kwara			
	Ahmed Baba Zuruq	APP	North	
	Salman Is'haq Adebayo	APP	Central	2
24.	Lagos			
	Wahab Olaseinde Dosunmu	AD	West	
	Kingsley Adeseye Ogunlewe	AD	East	2
25.	Nasarawa			
	Patrick Aga	PDP	North	
	Harauna Abubakar	PDP	South	2
26.	Niger			0
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27.	Ogun			
	Femi Okurounmu	AD	Central	
	Afolabi Olabimtan	AD	West	
	Olabiyi Durojaiye	AD	East	3
28.	Ondo			
	Lawrence Olawumi Ayo	AD	North	
	Omololu Samuel Meroyi	AD	South	2
29.	Osun			
	Mojisoluwa O Akinfenwa	AD	East	

	Adebayo A Salami	AD	Central	
	Sunday Olawale Fajinmi	AD	West	3
30.	Oyo			
	Lekan Balogun	AD	Central	
	Brimmo Yemi Yusuf	AD	North	
	Peter Olawuyi Adeyemo	AD	South	3
31.	Plateau			
	Davou Zang	PDP	North	
	Silas Janfa	PDP	South	2
32.	Rivers			
	Adawari Michael Pepple	PDP	North	1
33.	Sokoto			
	Aliyu Mai Sango Abubakar III	APP	North	
	Bello Jibril Gada	APP	East	
	Abdallah M Wali	PDP	South	3
34.	Taraba			
	Bala A Adamu	PDP	North	
	Dalhatu Umaru Sangari	APP	South	2
35.	Yobe			
	Goni Modu Zanna Bura	PDP	PDP	1
36.	Zamfara			
	----------	----------	----------	0
37.	FCT/Abuja			
	Khairat Abdulrazaq-Gwadabe	PDP	FCT	1
	TOTAL			76

Table 3.3

2003 Senators that were not Re-Elected in 2007 Election

	Names/State	Party	Senatorial Districts	Number
1.	Abia			
	Adolphus Wabara	PDP	South	
	Chris Adighije	PDP	Central	2
2.	Adamwa			
	Jonathan Zwingina	PDP	South	
	Iya Abubakar	PDP	North	2
3.	Akwa Ibom			
	Effiong Dickson	PDP	North-East	
	Itak Bob Ekarika	PDP	North-West	
	Aniette Okon	PDP	North-West	
	Udoma Udo Udoma	PDP	South	3
4.	Anambra			
	Emmanuel Anosike	PDP	Central	
	Ugochukwu Uba	PDP	North	2

5.	Bauchi			
	Adamu Bala	APP	Central	
	Baba Tela	AD	North	
	Abubakar Maikafi	APP	South	3
6.	Bayelsa			
	John Brambaifa	PDP	West	
	Spiff Inatim Rufus	PDP	East	
	David Brigidi	PDP	Central	3
7.	Benue			
	Joshua Adagba	PDP	West	
	Daniel Saror	ANPP	East	2
8.	Borno			
	Mohammed Abba Aji	APP	Central	
	Mohammed Daggash	APP	North	2
9.	Cross-River			
	----------	---------- -	----------	0
10.	Delta			
	Felix Ibru	PDP	Central	1
11.	Ebonyi			
	Christopher Nshi	PDP	North	
	Emmanuel A. Azu	PDP	South	2
12.	Edo			
	Daisy Danjuma	PDP	South	
	Oserheimen Osunbor	PDP	Central	
	Victor Oyofo	PDP	North	3
13.	Ekiti			
	Clement Awoyelu	PDP	Central	
	James Kolawole	PDP	North	
	Bode Olowoporoku	PDP	South	3
14.	Enugu			
	Fidelis Okoro	PDP	North	
	Ken Nnamani	PDP	East	2
15.	Gombe			
	Abubakar Mohammed	PDP	Central	
	Haruna Garba	PDP	North	2
16.	Imo			
	Owerri Amah Iwuagwu	PDP	East	
	Okigwe Ifeanyi Godwin Araraume	PDP	West	
	Orlu Arthur Nzeribe	PDP	North	3
17.	Jigawa			
	Ibrahim Muhammed Kirikasama	ANPP	North-East	
	Dalha Ahmed Danzomo	ANPP	North-West	
	Bello M. Yusuf	ANPP	Central	3
18.	Kaduna			
	Dalhatu Tafida	PDP	North	

	Mohammed Aruwa	ANPP	Central	
	Isaiah Balat	PDP	South	3
19.	Kano			
	Usman Kibiya Umar	ANPP	South	
	Rufai Sani Hanga	PDP	Central	2
20.	Katsina			
	Abu Ibrahim	ANPP	South	
	Umar Ibrahim Tsauri	PDP	Central	2
21.	Kebbi			
	Sani Kamba	ANPP	North	
	Faruk Bello	ANPP	Central	
	Mohammed Sani Sami	ANPP	West	3
22.	Kogi			
	Ugbane Yahaye	PDP		
	Mohammed Ohiare	PDP	Central	
	Tunde Ogbeha	PDP	West	2
23.	Kwara			
	Suleiman Ajadi	ANPP	South	1
24.	Lagos			
	Tokunbo Afikuyomi	AD	West	1
	Musiliu Obanikoro	AD		
25.	Nasarawa			
	John Danboyi	PDP	North	
	Emmanuel Okpede	PDP	South	2
26.	Niger			
	Isa Mohammed	PDP	Central	1
27.	Ogun			
	Iyabo Anisulowo	PDP	West	
	Ibikunle Amosun	PDP	Central	
	Tokunbo Ogunbanjo	PDP	East	3
28.	Ondo			
	Titus Olupitan	AD	North	1
29.	Osun			
	Kola Ogunwale	PDP	South	
	Akinlabi Olasunkanmi	PDP	Central	2
30.	Oyo			
	Robert Koleoso	PDP	North	
	Abiola Ajimobi	PDP	South	2
31.	Plateau			
	Timothy Adudu	ANPP	North	
	Cosmos Niagwan	PDP	South	
	Ibrahim Mantu	PDP	Central	3
32.	Rivers			
	John Azuta-Mbata	PDP	East	
	Ibiapuye Martyns-Yellowe	PDP	West	2
33.	Sokoto			
	Sule Yari Gandi	ANPP	East	1
34.	Taraba			
	Zik Sunday Ambuno	PDP	North	

	Saleh U. Damboyi	PDP	South	
	Abubakar Ibrahim	PDP	Central	3
35.	Yobe			
	Usman Albishir	ANPP	North	
	Usman Adamu	ANPP	Central	
	Mamman Bello Ali	PDP	South	3
36.	Zamfara			
	Lawali Shuaibu	ANPP	West	
	Saidu Dansadau	ANPP	Central	
	Yushau Anka	ANPP	West	3
37.	Abuja			
	Isah Maina	PDP	FCT	1
	TOTAL			79

Table 3.4

2007 Senators that were not Re-elected in 2011 Election

No.	Names/States	Party	Senatorial Districts	Numbers
1.	Abia			
	Enyinnaya Abaribe Harcourt	PDP	South	
	Nkechi Justina Nwaogu	PDP	Central	
	Uche Chukwumerije	PPA	North	3
2.	Adamawa			
	Jubril Aminu	PDP	South	
	Mohammed Mana	PDP	North	
	Grace Folashade Bent	PDP	Central	3
3.	Akwa Ibom			
	Effiong Dickson Bob	PDP	North-East	
	Eme Ufot Ekaette	PDP	South	2
4.	Anambra			
	Annie Okonkwo	PDP	Central	
	Ikechukwu Obiorah	PDP	South	
	Joy Emodi	ANPP	North	3
5.	Bauchi			
	Mohammed A Muhammed	ANPP	Central	
	Sulaiman Mohammed Nazif	AD	North	
	Bala Mohammed	ANPP	South	3
6.	Beyelsa			
	Nimi Barigha-Amange	PDP	East	1
7.	Benue			
	Joseph Akaagerger	PDP	North-East	1
8.	Borno			
	Kaka Mallam Yale	ANPP	Central	
	Omar Hambagda	ANPP	South	2
9.	Cross-River			
	Bassey Ewa-Henshaw	PDP	South	
	Gregory Ngaji	PDP	North	2

10.	Delta			
	Patrick Osakw	APC	North	
	Adego Erhiawarie Eferakeya	PDP	Central	2
11.	Ebonyi			
	Anthony Agbo	PDP	North	
	Anyimchukwu Ude	PDP	South	
	Julius Ucha	PDP	Central	3
12.	Edo			
	Yisa Braimoh	PDP	North	1
13.	Ekiti			
	Adefemi Kila	PDP	Central	
	Ayodele S. Arise	PDP	North	
	Sola Akinyede	PDP	South	3
14.	Enugu			
	Chimaroke Nnamani	PDP	East	1
15.	Gombe			
	Audu Idris Umar	PDP	Central	
	Kawu Peto Dukku	PDP	North	
	Tawar Umbi Wada	PDP	South	3
16.	Imo			
	Osita Izunaso	PDP	West	
	Sylvester Anyanwu	PDP	North	2
17.	Jigawa			
	Ibrahim Saminu Turaki	PDP	North-East	
	Mujitaba Mohammed Mallam	PDP	South-West	2
18.	Kaduna			
	Ahmed Makarfi	PDP	North	
	Caleb Zagi	PDP	South	
	Mohammed Kabiru Jibril	PDP	Central	3
19.	Kano			
	Aminu Sule Garo	ANPP	North	
	Kabiru Ibrahim Gaya	PDP	South	
	Mohammed Adamu Bello		Central	3
20.	Katsina			
	Garba Yakubu Lado	PDP	South	
	Ibrahim M. Ida	PDP	Central	
	Mahmud Kanti Bello	PDP	North	3
21.	Kebbi			
	Abubakar Tanko Ayuba	PDP	South	
	Adamu Aliero	PDP	Central	
	Umaru Argungu	PDP	North	3
22.	Kogi			
	Nicholas Ugbane	PDP	East	
	Otaru Salihu Ohize	PDP	Central	2
23.	Kwara			
	Gbemisola Ruqayyah Saraki	PDP	Central	
	Ahmed Mohammed Inuwa	PDP	North	2
24.	Lagos			
	Adeleke Mamora	ACN	East	
	Munirudeen Adekunle Muse	ACN	Central	2

25.	Nasarawa			
	Abubakar Sodangi	PDP	West	
	Patricia Akwashiki	ANPP	North	2
26.	Niger			
	Dahiru Awaisu Kuta	PDP	East	
	Nuhu Aliyu Labbo	PDP	North	2
27.	Ogun			
	Felix Kolawole Bajomo	PDP	West	
	Iyabo Obasanjo-Bello	PDP	Central	
	Ramoni Olalekan Mustapha	PDP	East	3
28.	Ondo			
	Bode Olajumoke	PDP	North	
	Gbenga Ogunniya	PDP	Central	
	Hosea Ehinlanwo	PDP	South	3
29.	Osun			
	Isiaka Adetunji Adeleke	PDP	West	
	Iyiola Omisore	PDP	Central	
	Simeon Oduoye	PDP	South	3
30.	Oyo			
	Andrew Babalola	PDP	North	
	Kamorudeen Adekunle Adedibu	PDP	South	
	Teslim Folarin	PDP	Central	3
31.	Plateau			
	John Nanzip Shagaya	PDP	South	
	Satty Davies Gogwim	PDP	Central	2
32.	Rivers			
	Lee Maeba	PDP	South-East	
	Wilson Asinobi Ake	PDP	West	2
33.	Sokoto			
	Abubakar Umar Gada	PDP	East	1
34.	Taraba			
	Anthony George Manzo	PDP	North	
	Dahiru Bako Gassol	PDP	Central	
	Joel Danlami Ikenya	PDP	South	3
35.	Yobe			
	Adamu Garba Talba	PDP	South	1
36.	Zamfara			
	Ahmad Rufai Sani	ANPP	West	
	Hassan Muhammed Gusau	ANPP	Central	2
37.	Abuja			
	Adamu Sidi Ali	PDP	FCT	1
	TOTAL			83

Table 3.4.

2011 Senators that were not Re-Elected in 2015 Election

NO.	States/Names	Party	Senatorial Districts	Numbers
1.	ABIA			
	NWAOGU NKECHI JUSTINA	PDP	Central	
	CHUKWUMERIJE UCHE	PDP	North	2
2.	ADAMAWA			
	JIBRILLA BINDAWA	PDP	South	
	BARATA AHMED HASSAN	PDP	North	
	TUKUR BELLO MOHAMMED	PDP	Central	3
3.	AKWA IBOM			
	ETOK ALOYSIUS AKPAN	PDP	North	
	ENANG ITA SOLOMON JAMES	APC	South	
	ESSUENE HELEN UDOAKAHA	PDP	North-East	3
4.	ANAMBRA			
	EMEKA JOHN OKEY	PDP	North	
	NGIGE CHRIS NWABUEZE	CAN	Central	2
5.	BAUCHI			
	GUMBA ADAMU IBRAHIM	PDP	North	
	NINGI AHMED ABDUL	PDP	South	
	GARBA BABAYO GAMAWA	PDP	Central	3
6.	BAYELSA			
	HEINEKEN LOKPOBIRI	PDP	East	
	IKISIKPO CLEVER MARCUS	PDP	West	2
7.	BENUE			
	----------	----------	----------	0
8.	BORNO			
	LAWAN MAINA MA'AJI	ANPP	Central	
	ZANNA AHMED KHALIFA	PDP	North	2
9.	CROSS-RIVER			
	EGBA VICTOR NDOMA	PDP	South	
	AYADE BENEDICT BENGIOUSHUY	PDP	North	
	OTU PRINCE BASSEY	PDP	Central	3
10.	DELTA			
	ARTHUR OKOWA IFANYI	PDP	Central	
	PIUS EWHERIDO AKPOR	PDP	North	2
11.	EBONYI			
	NEAGU IGWE PAULINUS	PDP	North	
	NWANKWO CHRIS CHUKWUMA	PDP	Central	2
12.	EDO			
	UZAMERE EHIGIE EDOBOR	PDP	South	
	UGBESIA ODION MAGNUS	PDP	North	
	OBENDE DOMINGO ALABA	CAN	Central	3
13.	EKITI			
	ADETUNBI OLUBUNMI	CAN	Central	

	OJUDU BABAFEMI	CAN	North	
	ADENIYI ANTHONY	CAN	South	3
14.	ENUGU			
	EZE AYOGU	PDP	North	1
15.	GOMBE			
	ALKALI SAIDU AHMED	PDP	North	1
16.	IMO			
	NWAGWU MATHEW I.	PDP	North	1
17.	JIGAWA			
	USMAN ABDULAZIZ Gumel	PDP	North-West	
	HASSAN ABDULMUMINI MUHAMMAD	PDP	South-West	
	SANKARA DANLADI ABDULLAHI	PDP	North-East	3
18.	KADUNA			
	BABA-AHMED YUSUF DATTI	APC	North	
	USMAN NENADI ESTHER	PDP	South	2
19.	KANO			
	GWARZO BELLO HAYATU	PDP	Central	
	MOHAMMED BASHIR GARBA	PDP	North	2
20.	KATSINA			
	YAR'ADUA SADIK	CPC	North	
	SIRIKA HADI A	CPC	Central	2
21.	KEBBI			
	BAGUDU ABUBAKAR ATIKU	PDP	Central	
	GALAUDU ISAH MOHAMMED	PDP	North	
	MAGORO MOHAMMED	PDP	South	3
22.	KOGI			
	OCHEJA EMMANUEL DANGANA	PDP	Central	
	ABATEMI USMAN NURUDEEN	PDP	West	
	ADEYEMI SMART	PDP	East	3
23.	KWARA			
	SIMEON AJIBOLA SIMON	PDP	South	1
24.	LAGOS			
	SOLOMON GANIYU OLANREWAJU	CAN	West	1
25.	NASARAWA			
	NAGOGO YUSUF MUSA	CPC	North	1
26.	NIGER			
	KURE ZAYNAB ABDULKADIR	PDP	East	
	KUTA DAHIRU AWAISU	PDP	North	
	MUSA IBRAHIM	CPC	South	3
27.	OGUN			
	ONAOLAPO OLUGBENGA OBADARA	CAN	West	
	SEFIU ADEGBENGA KAKA	CAN	Central	
	ODUNSI AKIN KAMAR ,BABALOLA	CAN	East	3
28.	ONDO			

	AYO AKINYELURE PATRICK	LP	Central	
	BOLUWAJI KUNLE	LP	South	2
29.	OSUN			
	HUSSAIN MUDASIRU OYETUNDE	CAN	West	1
30.	OYO			
	ADESEUN AYOADE ADEMOLA	CAN	North	
	AGBOOLA AYOOLA HOSEA	PDP	South	
	LANLEHIN OLUFEMI	CAN	Central	3
31.	PLATEAU			
	DANTONG GYANG DALYOP	PDP	North	
	LAR VICTOR RAMPYAL	PDP	South	2
32.	RIVERS			
	AKE WILSON ASINOBI	PDP	South	1
33.	SOKOTO			
	MACCIDO AHMAD MUHAMMAD	PDP	North	
	DAHIRU UMARU	PDP	South	2
34.	TARABA			
	TUTARE ABUBAKAR UMAR	PDP	Central	
	ALHASSAN AISHA JUMMAI	PDP	North	2
35.	YOBE			
	LAWAN AHMED IBRAHIM	ANPP	South	
	JAFERE ALKALI ABDULKADIR	ANPP	Central	2
36.	ZAMFARA			
	YAU SAHABI ALHAJI	PDP	North	1
37.	ABUJA			
	----------	---------- -----	----------	
	TOTAL			73

Table 3.5.

2015 Senators that were not Re-elected in 2019 Election

	Names/States	Party	Senatorial Districts	Number
1.	ABIA			
	Mao Ohuabunwa	PDP	North	1
2.	ADAMAWA			
	Binta Masi Garba	APC	North	
	Ahmadu Abubakar	PDP	South	
	Abdulaziz Murtala Nyako	APC	Central	3
3.	AKWA IBOM			
	Godswill Akpabio	PDP	North-West	
	Nelson Effiong	APC	South	2
4.	ANAMBRA			
	Andy Uba Male	APC	South	1
5.	BAUCHI			

	Ali Malam Wakili	APC	South	
	Isah Hamma Misau	APC	Central	
	Suleiman Nazif Male	APC	North	3
6.	BAYELSA			
	Ben Murray-Bruce	APC	East	
	Emmanuel Paulker	PDP	Central	
	Ogola Foster	PDP	West	3
7.	BENUE			
	Barnabas Gemade	PDP	North-East	1
8.	BORNO			
	Baba Kaka Garbai	APC	Central	1
9.	CROSS-RIVER			
	John Owan Enoh	APC	Central	1
10.	DELTA			
	Peter Nwaboshi	PDP	North	1
11.	EBONYI			
	Sunday Oji Ogbuoji	PDP	South	1
12.	EDO			
	----------	---------- -------	----------	0
13.	EKITI			
	Duro Faseyi	PDP	North	
	Fatimat Raji-Rasaki	PDP	Central	
	Biodun Olujimi	PDP	East	3
14.	ENUGU			
	Gilbert Emeka Nnaji	PDP	East	1
15.	GOMBE			
	Joshua M. Lidani	PDP	South	
	Bayero Usman Nafada	APC	North	2
16.	IMO			
	Samuel Daddy. Anyawu	PDP	East	
	. Hope O. Uzodinma	APC	West	
	Athan Achonu	APC	North	3
17.	JIGAWA			
	Muhammad Shittu	APC	North-East	
	Abubakar Gumel	APC	North-West	2
18.	KADUNA			
	----------	---------- ----	----------	0
19.	KANO			
	Rabiu Kwankwaso	APC	Central	1
20.	KATSINA			
	Mustapha Bukar	APC	North	
	Abu Ibrahim	APC	South	
	Umaru Kurfi	APC	Central	3
21.	KEBBI			
	----------	---------- ----	----------	0
22.	KOGI			
	Ahmed Ogembe	APC	Central	

	Alli Atta Aidoko	APC	East	2
23.	KWARA			
	Mohammed Shaaba Lafiagi	APC	North	
	Abubakar Bukola Saraki	APC	Central	
	Ibrahim Rafiu	APC	East	3
24.	LAGOS			
	Gbenga Bareehu Ashafa	APC	East	1
25.	NASARAWA			
	Adamu Abdullahi	APC	West	
	Suleiman Adokwe	PDP	South	2
26.	NIGER			
	David Umaru	APC	East	1
27.	OGUN			
	Olanrewaju Tejuoso	APC	Central	
	Buruji Kashamu	APC	East	
	Gbolahan Dada	APC	West	3
28.	ONDO			
	Tayo Alasoadura	APC	Central	
	Yele Omogunwa	APC	South	2
29.	OSUN			
	Olusola Adeyeye	APC	Central	
	Omoworare Babajide	APC	East	
	Ademola Adeleke	PDP	West	3
30.	OYO			
	Monsurat Sunmonu	APC	Central	
	Adesoji Akanbi	APC	South	2
31.	PLATEAU			
	Jeremiah Useni	APC	South	
	Joshua Chibi Dariye	APC	Central	
	Jonah Jang	APC	North	3
32.	RIVERS			
	Magnus Abe	APC		1
33.	SOKOTO			
	Abdullahi Ibrahim	APC	South	1
34.	TARABA			
	Shuaibu Lau	PDP	North	1
35.	YOBE			
	Bukar Abba Ibrahim	APC	East	
	Mohammed Hassan	APC	South	2
36.	ZAMFARA			
	Tijjani Yahaya Kaura	PDP	North	
	Kabir M. Garba	PDP	Central	2
37.	ABUJA			
	----------	----------	----------	0
	TOTAL			62

Table 3.6

Summary of Number of Senators not Re-Elected

YEAR	NUMBER
2003	76
2007	79
2011	83
2015	73
2019	62
TOTAL	**373**

Source: The various tables from 3.1 to 3.6 were manually collated from the list of Senators from 1999 to 2019 by this study comparing the various preceding years when elections were held into the National Assembly in 2003, 2007, 2011, 2015 and 2019. The list of Senators used for the compilation was gotten from the data base of various institutions including INEC that are saddled with election management. This study accepts any error in this compilation. <https://www.inecnigeria.org/wp-content/uploads/2019/05/2019-general-elections-updated-list-of-elected-candidates-to-the-senate_mat28.pdf> accessed May 19, 2022

As a prelude to the 2023 general election in Nigeria, the various political parties conducted their primary elections into various elective offices including the legislature. However, from the results of the primaries, it is sad to say that over 60% of Senators and House of Representatives members did not returned to the parliament as they lost their various primary elections. In the Senate about 63 Senators were not part of the 10th National Assembly when it was inaugurated in June, 2023.[320] The main reason for this is that many lost their party's re-election ticket, while very few did not returned because they are eyeing either the presidential or governorship election in their states.

144 'Gbajabiamila questions failure of 170 Reps to win party tickets for Re-election', *Channels*, (August, 9th 2022), 27 <https://www.google.com/amp/s/www.channelstv .com/2022/06/14/gbajabiamila-raises-consern-over-loss-of-over-170-reps-during-primaries/amp/> accessed, August, 11th 2022.

Out of the 109 Senators, four are presidential aspirants on the platform of the APC. Fifteen opted for the governorship tickets of their parties in their respective states; seven successfully secured the tickets, while the eight others lost to their opponents during the primaries. Twenty-seven others vied for their parties tickets to return to the upper legislative chamber but lost the contest to opponents during primaries. Four withdrew from their primaries before the contest, while nine others did not seek re-election for several reasons. In all, 46 out of the 109 Senators secured their return tickets, while two resigned from the Senate to take up key positions. For instance, one resigned to become a deputy governor of Zamfara State.[321]

As for the House of Representative about 178 failed to secure their parties ticket to return to the House.[322] Speaker of the House of Representatives Femi Gbajabiamila[323] expressed concern over this development, according to him, "many members lost because of the process of primaries using the delegate system which is what the House fought for by making direct primaries compulsory in the Electoral Act, which the president did not assent to. That clause of Electoral Act had to be expunged, allowing political parties to decide their mode of primaries to select their candidates for various elections.[324]

However out of the 426 members elect that emerged after the 2023 elections, 306 are new lawmakers while 120 were re-elected. Winners are yet to be declared for the remaining 43 seats. The elections saw only 28 of the 109 senators re-elected, while 73 are new members. Eight seats are still vacant. Twenty states produced two new senators each. States, where all three senators are first-timers are Ondo, Katsina, Jigawa, Kaduna, Edo, Ebonyi and Delta.

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145 '63 Senators that will not return to 10th Assembly', *The Nation*, Newspaper (June, 8th 2022), 13.
146 'Over 107 Reps lose return ticket, others may follow', *The Nation*, Newspaper (May, 31st 2022), 28.
147 Channels, note 144
148 Ibid, 28.

In the House of Representatives, out of the 325 members elect that emerged after the poll, only 92 were re-elected, while the 233 others are coming into the parliament as first-timers. Thirty-five seats are yet to be occupied. After the supplementary election to fill the vacant seats held on the 15th of April 2023, nationwide, the numbers of returning senators were now increased to 32 and new senators are now 77, [325] while that of House of Representative the numbers of returning members were now increased to 105 and new members is now 251 giving a total of 356 House of Representatives members, 4 seats were still inconclusive as election were cancelled in those areas.[326]

The essence of representative democracy is that elected leaders relay the demands and grievances of their constituencies to the center of policy-making processes. When elected leaders reach out to their constituencies and take time to listen and give feedback, the cycle of representation is completed. But Afrobarometer results suggest that reality falls short of this ideal scenario.[327] The Afrobarometer national partner in Nigeria, NOIPolls, interviewed a nationally representative, random, stratified probability sample of 1,599 adult Nigerians between 20 January and 13 February 2020. A sample of this size yields country-level results with a margin of error of +/-2.5 percentage points at a 95% confidence level. Previous surveys have been conducted in Nigeria in1999, 2002, 2004, 2008, 2012, 2014, and 2017. CDD-Ghana provided technical backstopping for the survey.[328]

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149 Adamu Suleiman and Sanni Onogu, 'APC controls Senate with 59 seats', *The Nation Newspaper*, (17th, April, 2023), 4

150 Ibid, 4.

151 Afrobarometer, a nonprofit corporation with headquarters in Ghana, is a pan-African, nonpartisan survey research network that provides reliable data on African experiences and evaluations of democracy, governance, and quality of life. Seven rounds of surveys were completed in up to 38 countries between 1999 and 2018. Round 8 surveys in 2019/2021 are planned in at least 35 countries. Afrobarometer conducts face-to-face interviews in the language of the respondent's choice with nationally representative samples.

152 A survey compiled by Dr. Chike Nwangwu, Sunday Duntoye and Raphael Mbaegbu of NOIPolls.

Table 3.7

Q53A. Think about how elections work in practice in this country. How well do elections ensure that representatives to Parliament reflect the views of voters?

	Urban	Rural	Male	Female	Total
Not at all well	23.9	21.2	23.5	21.1	22.3
Not very well	35.8	35.8	33.5	38.1	35.8
Well	28.9	26.0	29.5	24.9	27.2
Very well	8.1	9.3	8.9	8.7	8.8
Don't know	3.3	7.7	4.5	7.2	5.8

Q53B. Think about how elections work in practice in this country. How well do elections enable voters to remove from office leaders who do not do what the people want?

	Urban	Rural	Male	Female	Total
Not at all well	34.1	26.4	29.3	30.0	29.6
Not very well	28.2	32.2	29.4	31.6	30.5
Well	22.9	22.4	24.1	21.1	22.6
Very well	12.0	11.2	12.6	10.5	11.6
Refused		0.1	0.2		0.1
Don't know	2.9	7.7	4.4	6.9	5.7

Source: Afrobarometer Round 8 survey in Nigeria, 2020 Compiled by: NOIPolls <https://afrobarometer.org/sites/default/files/publication/summary%20results/ab_nig_r8_summary_of_results27jan21.pdf> accessed July, 31st, 2022.

From the survey Key findings are:

1. A minority (26%) of Nigerians think that elections ensure that MPs reflect "well" or "very well" voters' views.
2. A majority (58.1%) of Nigerians think that elections do not ensure representatives to Parliament reflect "not at all well" or "not very well" voter's views.
3. A minority (34%) of Nigerians say that elections work "well" or "very well" as a mechanism to ensure that voters can remove from office leaders who do not do what the people want or hold non-performing leaders accountable.
4. A majority (60.1%) of Nigerians say that elections work "not at all well" or "not very well" as a mechanism to ensure that voters can remove from office leaders who do not do what the people want or hold non-performing leaders accountable.

From the key findings of this survey, it is obvious that majority of Nigerians still do not believe that election is a good mechanism to sanction members of parliament who do not represent them well.

Achen and Bartels, hold the view that election is not a good mechanism for holding politicians accountable and state that barriers for electoral accountability are limited agency, limited cognition and oversensitivity.[329] Sagay, opines that elections in Nigeria no longer provide the platform for popular control over government, electoral choice between candidates and political programmes, while open access to political office and equality between electors are farfetched.[330] Aigbokhaevbo et al are of the opinion that Nigeria, like many other African countries has a chequered history of electoral malfeasance in her democracy. This grave concern remains a constant threat to the smooth development and sustenance of her democracy. Although significant improvements have been recorded in the two decades of uninterrupted civil rule, recent elections are still far from acceptable standards and in contravention of electoral laws and practices.[331]

Nigeria has sadly suffered from this acute negative electoral culture since the post-colonial period. The Justice Uwais committee on electoral reform noted this challenge when it observed that the 85-year-old history of election in Nigeria showed a progressive degeneration of the outcomes.[332]

However this study is of the view that if the Independent National Electoral Commission improves in the conduct of free and fair elections by the introduction of technology in the electoral process, as exhibited in the recent Ekiti and Osun States governorship polls[333] which were adjudged by both local and international observers as relatively free and fair, more Nigerians will begin to believe and have confidence that election would be a good mechanism for holding legislators accountable.

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153 Christopher H. Achen and Larry M. Bartels, note 130, 42

154 I. E. Sagay, The Enforcement of Electoral Laws and Case Law of 2007 Election Petition Judgments. (Ibadan Spectrum Books Limited, 2012) 14.

331 Aigbokhaevbo, V., Inegbedion, N., Arishe, G., Osarumwense, N., note 132 *237 – 253.*

155 Justice Uwais, 'Report of the Electoral Reform Committee', [2008] (1) 19 *Abuja, Nigeria Federal Government Printer*

156 Held on 18th, of June, 2022, and on the 16th, of July, 2022, respectively.

A typical example where elections have acted as mechanism of accountability is the one, this researcher as a player in the political system especially in Owan federal constituency witnessed firsthand. The member representing Owan federal constituency[334] was elected by his constituents in 2003 elections under the Peoples Democratic Party. However during the live TV debate on the constitutional amendment on the tenure of the executive, to make it limitless, popularly referred to a third term agenda, his constituents were aghast when they saw him live on television voting favour of the amendment. His constituents in Owan East and West local governments making up the Owan federal constituency were furious with him considering that they never wanted a third term agenda. Messages inundated his phone castigating him for voting in favour of third term agenda that was very unpopular with his constituents. He was alleged to have collected as inducement a whopping sum of 50million naira which was the allegation that emanated from the floor of the House of Representatives.[335] Shortly afterwards, he sought the ticket of the partys for a second term in 2007.

In order to placate the electorate which he knew were very angry with him; he invited ward and local government executives including leaders of the party to his house for a meeting in order to explain his reasons for voting for third term and to also celebrate Sallah festivities with them. He has just completed a multi-million naira mansion in his village and it was the venue of the meeting. The invited party executives who are statutory delegates to nominate him as the party's flag bearer honored the invitation. The meeting was well attended. This researcher was present.

Seeing the gigantic mansion, invited constituents started murmuring by saying that he has used part of the 50 million naira third term largesse to build the mansion.

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157 Name withheld

158 Ademola Adegbamigbe, 'Obasanjo 3rd term agenda and those behind it', *The News/Sahara Reporters*, February, 6, 2006. <http://saharareporters.com/2006/02/16/obasanjos-3rd-term-agenda-and-those-behind-it-thenewssaharareporters> accessed 23rd, January, 2022.

He feted the invited guests with enough refreshments and money as transport. He made attempt to explain why he voted for third term but obviously he was not convincing enough. In the primaries that were held in Afuze, between him and one Hon Johnson Agbolagba who he defeated in 2003, he lost heavily, despite having spent a lot of money in vote-buying. The constituents did not even wait for him at the election proper; he was stopped at the primary election of the party. Hon Johnson Agbolagba later won the election, though he too was not re-elected in 2011 on the basis that his constituents were dissatisfied with his performance.

However contrast this with the House of Assembly elections of 2015 in Owan East Constituency. The then House of Representatives Member, representing Owan Federal Constituency[336] was very popular and was very effective in representing his constituents. He attracted a lot of constituency projects to the constituency. So when he sought to be re-elected, he had an overwhelming support. However the member representing Owan East Constituency in the House of Assembly,[337] voted against both local government and State Assembly autonomy in the constitutional amendment of 2015 when it got to the various State Houses of Assembly. These issues were resoundingly voted for at the stakeholders meeting organized by the member of the House of Representatives held in Afuze where the Edo State House of Assembly member was present.

Constituents unanimously voted for both local government and State Assembly autonomy. This researcher was a member of the organizing committee for the stakeholders meeting. The National Assembly after collating the views of Nigerians amended the Constitution accordingly. When the amendment got to the Edo State House of Assembly, who was sitting at the government House at that time and despite protestations by Civil Society Groups especially the Nigeria Union of Local

159 Hon Pally Isumafe Iriase.
160 Name withheld.

Government Employees, (NULGE), the state honorable member along with his colleagues voted against these issues already voted for by his constituents. Again the Owan East constituents were waiting for pay day –Election Day. But in this case it was not so effective, why? This study finds that the reason why it failed this time in the same constituency that it succeeded in 2011 was the concept of bandwagon effect.

The order of elections announced by the Independent National Electoral Commission in 2015 was that the presidential and national assembly elections will hold first on February, 14th, 2015 and gubernatorial, and state assembly elections on the 28th of February, 2015.[338] As stated earlier Hon Pally Iriase being a popular candidate for House of Representatives, won his election easily that was conducted first.

The constituents even though, were ready to vote for the opposition party in the State Assembly Election, the opposition party voters already lost steam having lost both the presidential election which President Mohammed Buhari won by defeating incumbent President Goodluck Jonathan. Many voters who voted for PDP started decamping to the wining party APC before the next assembly elections with a deflected electorate; the constituents that wanted to vote against the incumbent State Assembly Member dropped the idea. This was also influenced by the House of Representatives Member' Elect who just won his re-election going round the political wards of the constituency with the State Assembly Member, appealing for forgiveness for him and the need for the party to sustain its majority in the House of Assembly.

The bandwagon effect and the appeal by a popular House of Representatives Member who just won re-election made sure that the state member of the House of Assembly was not punished at the polls. The party could not also stop his nomination as they earlier appealed that those House of Assembly Members who supported the

[161] 'The Order of election released by INEC', *Vanguard,* (25th, January, 2014). <http://www.vanguardngr.com/2014/01/2015-elections-inec-releases-time-table/amp/> accessed 4th, October, 2021.

then Governor Adams Oshiomole when he was having challenges of impeachment should be compensated by giving them automatic tickets of the party for a re-election.

These two examples demonstrate clearly that at times elections are not effective in holding erring legislators to account. Most legislators that won elections to the National Assembly in Northern Nigeria in 2015 did so, on account of the then popular candidate Mohammed Buhari.

3.3.2 Recall

Another mechanism to hold legislators accountable is the constitutional provision of recall. While constituents must wait for every four years to decide whether they should re-elect an incumbent legislator seeking election or not, the process of recalling a legislator can be sooner. Constituents who cannot wait for the end of tenure of their legislators can decide to recall them anytime during there tenure.

A recall can be defined as a process through which a validly elected legislator may be removed from his or her seat in parliament. It is a voting process where the electorate decides via a referendum (a yes or no vote) whether they want the legislator to remain for the rest of his term or whether he should be recalled.[339]

The idea of a recall is inextricably linked to the calling of fresh elections. It is a procedure that allows citizens to remove and replace a public official before the end of a term of office.[340] It is a political mechanism that can be used when voters feel that their representative is neglecting them and their constituency, is no longer following the mandate of his or her party and its programmes, or has simply betrayed their trust and they no longer have confidence in him or her. In particular, a recall can afford a

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[162] Hanibal Goitom, *Mechanisms of legislative accountability under the Nigeria Constitution,* (2011) <www.loc.gov/law/help/Nigeria-election-law/index.php> accessed July, 4th, 2022

[163] European Commission for Democracy through Law (Venice Commission) 'Report on the Imperative Mandate and Similar Practices' [2009] *Strasbourg*, *Study No. 488/2008*, 7, 22.

representative the chance to stand again, and test whether he or she can be voted back into office.[341] Zick has said:

> Recall proceedings have from time to time been contemplated or initiated by disappointed constituents wishing to remove Members of Congress who have in the voters' view breached the public trust.[342]

As advocated in different jurisdictions, recall presents itself in different shades. Some have argued for narrower recall, pointing out that it is a weapon that can be used by those who have lost elections and their sympathizers to harass the victors. On the other hand, others see recall as an instrument that should be used, especially in Westminster Systems of Government, to hold elected representatives accountable to their constituents. Therefore, Mills has explained:

> Full recall represents a safety valve, which would come into play when the MP-constituent relationship has broken down and voters have lost confidence in their MP. There are a number of circumstances in which full recall would empower voters to hold MPs to account: not just misconduct, but failure to represent constituents, switching party and breaking election promises.[343]

Zick has noted:

> the recall has been mainly used to wipe out incompetent, arbitrary, or corrupt officials. It is a positive device reminding officials that they are temporary agents of the public they serve.[344]

One of the justifications for the recall mechanism is to avoid protest from disenchanted citizens that would eventually lead to violence. Tijani holds the view that some activists have trodden the path of demanding accountability from those who occupy public offices, such as that of the lawmakers, albeit with a less efficient approach, by organizing rallies and protests, geared towards forcefully compelling the target of the protest or rallies to agree to their demands. This approach is a less effective tactic to deploy, and at times places the conveyers or organizers of those

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164 Pete Mills, 'Real Recall: A Blueprint for Recall in the UK, Unlock Democracy', *London, United Kingdom*, 09 <http://242408349-Real-Recall-a-blueprint-for-recall-in-the-UK.pdf> accessed April, 5th, 2022.

165 Timothy Zick, *The Consent of the Governed: Recall of United States Senators*, William & Mary School Scholarship Repository, (Faculty Publications, Paper 817, 1999) 569.

166 Pete Mills, note 167.

167 Timothy Zick, note 165, 606.

rallies in a place where they would contravene the extant laws of society. Instructive to state, protests or rallies initiated on emotional sentiments have the potentiality to degenerate into violent scenes, which does not end well for the country. Libya, Iraq, Syria, Sudan just to name a few countries, are living reference points to show that protests or revolutions without proper structure or planning yield nothing, except destruction.[345]

In Nigeria the steps to be taken are outlined in sections 69 (a), 110(a) of the 1999 Constitution as amended and Section 113 of the Electoral Act, 2022 in respect of Councilors of the Federal Capital Territory.[346] Prior to the amendment of the 1999 Constitution, the old section 69 read as follows:

> A Member of the Senate or of the House of Representatives may be recalled as such a member if-
>
> (a) There are presented to the Chairman of the Independent National Electoral Commission a petition in that behalf signed by more than one half of the persons registered to vote in that member's constituency alleging their loss of confidence in that member; and
>
> (b) The petition is thereafter, in a referendum conducted by the Independent National Electoral Commission within ninety days of the date of receipt of the petition, approved by a simple majority of the votes of the persons registered to vote in that member's constituency.[347]

However in the last constitutional amendment section 69 was altered in paragraph (a) by inserting immediately after the word "member" in line 4, the words, "and which signatures are duly verified by the Independent National Electoral Commission, INEC".[348] The various stages of the recall of a member of the House of Representatives or Senate are outlined below:

Stage 1: Petition

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168 Hussain Tijani, 'Electoral Recall: A Process For Keeping Lawmakers Accountable', (16, 2020). <https://www.linkedin.com/pulse/electoral-recall-process-keeping-lawmakers-hussain-tijani> accessed May, 25, 2023

169 S. 69 (a) relates to the National Assembly while section 110(a) relates to the state House of Assemblies, and section 113 of the Electoral Act, 2022.

170 S. 69 of the Constitution of Nigeria 1999 before it was amended

171 The purpose of the amendment was to ensure the genuineness of the signatories to the petition

The process to recall a Senator starts once the Chairman of the Independent National Electoral Commission, INEC receives a petition signed by more than one-half of the persons registered to vote in that Senator's constituency alleging their loss of confidence in the Senator. The petition must be signed, and arranged according to polling units, wards, local government areas, and constituency.

Stage 2: Verification

If the petition is valid, the Commission will proceed to:

i. Notify the Senator sought to be recalled, stating that it has received a petition for the recall of the Senator

ii. Then issue a public notice or announcement stating the date, time and location of the verification

iii. Verify the signatures to the petition at the designation. The signatories must be individuals who appear on the electoral voters' register.

iv. Write to the petitioners stating that the minimum requirements for a referendum where not met, if the number verified is less than one half of the registered voters in that constituency. The petition will therefore be dismissed.

Stage 3: Referendum

If the minimum requirements for a referendum are met, the INEC must then conduct a referendum within 90 days, from when the petition was received. The referendum will be a simple yes or no vote on whether the Senator should be recalled, and will be decided by simple majority of the votes of the persons registered to vote in that Senator's Constituency. If a referendum is carried out and the voters in that Constituency vote to recall the Senator, then the Chairman of the INEC is obliged to send a Certificate of Recall to the Senate President to effect the recall.[349]

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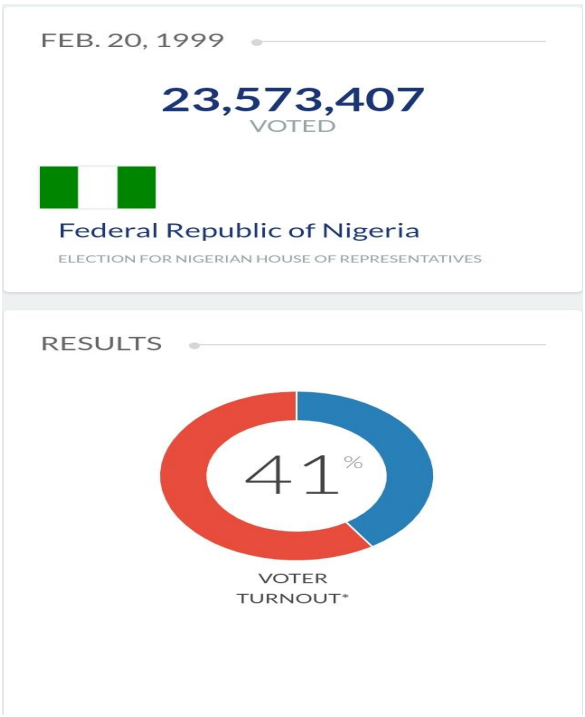
[172] S. 69(a) of the Constitution of Nigeria 1999 as amended

The recall processes have not been very effective in Nigeria because of its complex nature. It needs a lot of organization, mass mobilization and resources. The almost difficult aspect is stage 1, getting the signatories of the more than one-half of the registered voters in the affected constituency to sign the petition. This is an arduous task. From empirical study it is almost impossible to get fifty percent of registered voters to vote in any election in Nigeria despite the massive mobilization that all stakeholders undertake before the elections. A study of the result of elections especially at the national level from 1999 to 2019 shows clearly that voter's turnout hardly go above 50 percent on the average of total registered voters. In 1999, as shown in the Figure below, it was 41 percent voter's turnout.

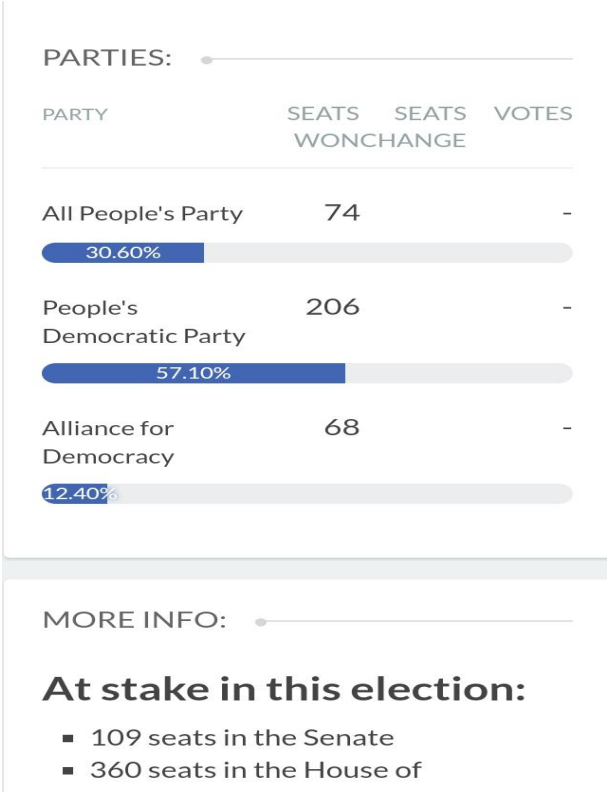
Figure 3.4[350]



Population and number of registered voters:

- Population: 119,826,231 (1999)
- Registered Voters: 57,938,945 (1999)

[350] 'Election Guide Democracy Assistance And Elections' *Election Guide* (February 20th, 1999), <http://www.electionguide.org/elections/id/237/> accessed 23rd, July, 2022



Source; http://www.electionguide.org/elections/id/237/

Though there was high voters turnout in the 2007 elections of 35,397,517 out of the registered voters population of 61,567,036, amounting to the total turnout of 57 percent,[351] this election cannot be a credible basis for analyzing the voters turnout as the election was massively marred by electoral malpractices which we have made reference to earlier in this study. In the 2019 Presidential and National Assembly election voters' turnout were 26,726,836 out of 84,004,084 registered voters amounting to 49.78 percent.[352]

The major reason, accounting for the low turnout of voters this study finds is due to over bloated and inflated voters register. Many registered voters are either duplications, outright inflation done by politicians in connivance with INEC officials, and inability of INEC to clean up the voters register of deceased persons. As a player

173 'Election Guide Democracy Assistance And Elections' *Election Guide* (April, 21st, 2007) <http://www.electionguide.org/elections/id/2038/> accessed July, 3rd 2022

174 'Election Guide Democracy Assistance And Elections' *Election Guide* (February, 23rd 2019) <http://www.electionguide.org/elections/id/158/> accessed August, 23rd 2022

175 Ibid

in the political field, this researcher knows as a fact that voters' inflation happens by importing registrants from neighboring communities and wards to register in other wards or the use of photographs from diverse sources like calendars and almanacs to register voters that are not actually from those communities. These electoral infractions where given judicial impetus in the case of *Ngige v Obi* in respect of the 2003 election were Aderemi JCA observed as follows:

> The results of the elections published by [the Independent Electoral Commission of Nigeria, INEC are its own making. It self-discrediting for the same INEC to now invite this court, in its notice of appeal, to hold that the April 19, 2003 gubernatorial election held in Anambra State was invalid and to order a fresh election on the ground, according to it, that [the] same was marred by widespread irregularities and malpractices and therefore was conducted in substantial non-compliance with the Electoral Act, 2002, This somersault must necessarily erode the confidence, which the generality of the populace must have in a body like INEC. It was the commission that voluntarily announced the results, which became the subject of contest at the tribunal below. The results are now being discredited by the same commission.[353]

There are litanies of other judicial decisions that have expressed similar views above.[354] In his dissenting judgement in *Buhari v Obasanjo* wherein the authenticity of the results declared in the 2003 presidential elections were challenged, Nsofor JSC held that:

> Because the non-compliance was fundamental, it was basic. And it succeeded to render the presidential elections in Nigeria on the 19/4/2003 to be an un-free and unfair election; a farce. Such non-compliance would murder "democracy" [...] May Nigeria and Nigerians never ever see, again, a "black Saturday" such as the 19th April, 2003! Di prohibeant![355]

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176 [2006] 14 NWLR (Pt 999) 196-197.

177 *Abubakar v Yar'Adua* [2008] 19 NWLR (pt. 1120) 177-178, 235; *Buhari v Obasanjo* [2005] 2 NWLR (pt 910) 241; *Buhari v Obasanjo* [2005] 13 NWLR (pt 941) 299; *Buhari v INEC* [2008] 19 NWLR (pt 1120) 246,; *Ukpo v Imoke* [2009] 1 NWLR (pt 1121) 177-178.

178 [2005] 2 NWLR [pt. 910] 241.

Pats-Acholonu JSC had the opportunity to echo this view when the same case went before the Supreme Court. While deriding the 2003 general elections, he opined as follows:[356]

> Some of the evidence elicited [is] so disquieting that one would wonder whether we have learnt or in fact can learn a lesson ... Some of the things that happened in [the] 2003 election can be likened to what Macduff the Thane of Cowdar said when he saw the bloodied murdered King Duncan in Macbeth by William E Shakespeare: 'O horror, horror, horror! Tongue nor heart cannot conceive nor name ...' Politics in Nigeria should not be a do or die affair.[357]

The 2007 electoral process was worse as there was wide spread of irregularities which led Nwabueze to argue that the 2007 general elections were invalid.[358] On Election Day, due to duplication and inflation of the voters register, it's not possible for them to be present in two places at the same time. Though multiple voting still takes place, it is drastically reduced due to the introduction of technology in accreditation and voting process by the Independent National Electoral Commission.

A typical example is the researchers polling unit in Owan East local government area.[359] Number of registered voters as at 2019, is 1,006, but results of all elections conducted in that polling unit show clearly total votes cast for all the parties is below 300. That has been the pattern. In such a polling unit in a recall process, how do you get over 500 registered voters to sign, when in the main election, it is not possible, despite the massive mobilization of voters. This accounted for why only a few cases of recall process has ever succeeded in Nigeria. One of the successful one is that of Hon. Farouk Adamu Aliu of the ANPP who represented Birnin Kudu/Buji constituency of Jigawa State, he was recalled by his constituents from the Federal

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179 *Buhari v Obasanjo*, (supra) note 155, 300-301

180 President Olusegun Obasanjo was widely quoted in the media to have said at the PDP rally that the 2007 general elections would be a 'do or die affair' and indeed the elections turned out to be so.

181 Ben Nwabueze, How President Obasanjo Subverted the Rule of Law and Democracy, In Gabriel O. Arishe, note 79, 34.

182 Polling Unit 003, of Ihievbe Ward 03, Owan East Local Government Area

House of Representatives in 2006.[360] Arishe, believes that his recall was a misjudgment this is due to the fact that he was punished because he refused to join the ANPP State Governor Sule Lamido, to defect to the ruling PDP at the center, he also refused to canvas for the 3rd term bid of President Obasanjo[361] Many have failed. These include Jubril Abdul Mumin and of recent Senator Dino Melaye, which will be discussed here as a case study.

3.3.2.1 Senator Dino Melaye Recall Process as a Case Study

Senator Dino Meleye was elected to the 8th Senate in 2015 to represent his Constituents of Kogi West Senatorial District, in Kogi State. Initially, he had a robust cordial relationship with his State Governor, Allaji Yahaya Bello. However midway to his 4-year tenure, he fell out with him and his Party, the All Progressive Congress, APC on several issues. This background led to his many trials and tribulations in the Senate. He was arrested, charged to court for sundry criminal offences. While he was battling his cases in court, the process to recall him from the Senate by his constituents began.

By the provisions of the Constitution and INEC guidelines issued thereto,[362] the constituents were to begin the process by presenting a petition signed by more than 50 percent of the registered voters in the Senatorial District.

A. Stage 1;- Presentation of the Petition to INEC

On June, 21st of 2017, the Independent National Electoral Commission received a petition signed by 188,588 registered voters from Kogi West Senatorial District demanding the recall of the Senator.[363] The signatories were about 52.3 percent of the Districts total registered voters of 360,098, thereby meeting the

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183 ThisDay Newspaper Editorial, (August 20th, 2006). 3 and Tokunbo Adedoja 'first to be recalled' (August 20th, 2006).
184 G.O. Arishe, note 12, 393.
185 S. 69(a) of the Constitution of Nigeria 1999 and INEC guidelines on recall of any legislator.
186 'INEC receives signatories on Dino Melaye's recall', *The Nation*, Newspaper (June 22, 2017), 8.

requirement of 50 percent+1 of the registered voters as required by section 69(a) of the 1999 Constitution as amended.

The breakdown of the signatories in the petition per the seven local governments' areas making up the Kogi West Senatorial Districts is as follows:

i. Yagba west from 35,966 registered voters, 20,029 signed (55.7) percent.

ii. Lokoja: 63,736 (54.8 percent) of 116,296 registered voters appended their signatures.

iii. Koton-Karfe, 24,703 (52.7 percent.

iv. Mopa-Muro: from 18,356 signed (50.04 percent)

v. Kabba/Bunu: 60,522, voters (28,277 signed-46.7 percent)

vi. Ijumu, 24,238 representing 51.8 percent from 46,819 registered voters signed.[364]

The petition was presented to the INEC with fanfare and publicity. The delegation was led by a prominent member of the APC in Ijumu local government area of Kogi State, Mr. Cornelius Olowo, who gave the reasons for the recall as follows:

> We want Senator Melaye back because of poor representation. He is also not accessible to us; he is unreachable and has no constituency projects. Apart from the fact that he has never called any town hall meeting, there has been a major gab between the senator and the people he claim to represent.[365]

Senator Meleye in reacting to the submission of the petition for his recall by some members of his constituents replied that it cannot succeed. It is a hoax he stated that most of the signatories to the petition were forged [366]

After the presentation of the petition to INEC, the next step was for INEC to carry out a verification exercise as to the genuineness or authenticity of the signatories. In furtherance of this, INEC notified Senator Melaye of the petition before it and

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187 '187,580 sign Melaye's recall list', *The Nation New Paper,* (June 20, 2017), 8.
188 "INEC receives signatories on Dino Melaye's recall*",* The Nation Newspaper, (June, 22, 2017), 8.
189 Ibid.

fixed July 3rd, 2017 for commencement of verification of signatories[367], but before INEC could do that, the Judiciary was called upon by Senator Meleye to intervene and put a further stop to the recall process.[368]

I. Judicial Intervention

Senator Meleye immediately on receipt of the notice from INEC filed a suit at the High Court, Abuja to restrain the Independent National Electoral Commission from proceeding with the process to recall him.[369]

He specifically asked for:

> An order of injunction restraining the Defendant from conducting any referendum predicated on the fictitious petition allegedly submitted to it by the purported constituents of the plaintiff, on the basis of the fundamentally and legally flawed petition.[370]

In spite of the institution of this suit in court, INEC went ahead on the 10th of July, 2017 to publish and pasted a notice of verification of the recall process at its State office in Lokoja. The notice fixed 19th August, 2017 for the verification exercise. In justifying its actions to go ahead despite being aware of a pending suit in the matter and contrary to the doctrine of lis pendis**,** the National Commissioner of INEC, in charge of North-Central Zone, Mallam Mohammed Haruna stated that:

> the Court of Appeal had since 2001 decided that a court cannot stop the recall of a Lawmaker.[371]

However he did not cite the Court of Appeal decision. The Federal High court, on July 6, 2017, later gave an interim order restraining INEC from proceeding with the recall process. Counsel to Senator Meleye, Chief Mike Ozekhome SAN, stated

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190 "INEC to Begin Melaye's recall process July 3", The Nation Newspaper, Friday, (June 23, 2017) 7.
191 Ibid.
192 With suit no FHC/ABJ/CS/587/2017.
193 'Melaye asks Court to restrain INEC from proceeding with recall process', *The Nation Newspaper*, (June 24, 2017), 45.
194 'INEC pastes notice of Meleye's recall process', *The Nation* Newspaper (Tuesday July, 11, 2017), 6.

clearly that the courts restraining order has been served on INEC on July 10th, 2017, the same day the notice of verification was pasted.[372]

Following the restraining order, INEC was forced to stay action on the recall process and proceeded to challenge the suit in court by joining issues with the claimant. INEC made an application before the court for accelerated hearing which was granted mindful of the fact that by the constitutional provisions of section 69(a), once the petition is submitted, INEC has a maximum 90 days window to complete the recall process. The court then moved forward the adjourned date to August 7 from the initial date of September 29th. The suit was eventually heard during the vacation period. [373] In a twist, the 188,521 registered voters who allegedly signed the petition filed a motion seeking to be joined as co-defendants as they were interested parties. The court granted the motion

They argued that Melaye cannot hide under the fundamental rights enforcement procedure to challenge his recall by merely pleading lack of fair hearing. They said the option opened to him was for Melaye to await the outcome of his recall process, which he can only query by way of a judicial review.[374] Chief Cornelius provided more reasons for initiating the recall process. He said "He (Melaye) was elected because he was sponsored by the APC (All Progressives Congress), and now he has taken up arms against the party and the leaders of the party at the state and national level. None of the numerous motions and bills he claimed to have moved or facilitated in the Senate is of any direct benefit to the state in general and to Kogi West in particular.[375] Eventually the Federal High Court dismissed the suit clearing

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195 Ibid.

196 'Court to accelerate INEC's case on Maleye's recall', *The Nation Newspaper*, (Friday, July, 28, 2017), 7

197 'Recall; why court can't save Meleye by Kogi West voters', *The Nation Newspaper*, (July , 30, 2017), 8

198 'Recall; why court can't save Meleye by Kogi West voters', *The Nation Newspaper*, (July , 30, 2017), 8

the way for the recall process to begin afresh. However before the recall process could be restarted by INEC, another intervention by the National Assembly especially the Senate set in.

II. Intervention By The Senate

The Senate in solidarity with their colleague rose to his defense and lampooned INEC for not following constitutional laid down processes in trying to recall Senator Meleye. In a debate on the floor of the Senate, Senator Meleye himself raised the issue that most of the signatures in the petition were forged. He alleged that they were over 120 dead persons signatures on that petition and that some of the signatories have disassociated themselves from the petition.[376]

In his contribution the then Deputy Senate President Ike Ekweremedu faulted INEC on the recall process alleging that they are not following due process and at the end of the day will be an exercise in futility as the final decision on the recall would be taken by the Senate itself following the amendment in 2010 of section 69 of the constitution. He stated "When they are done with that, they go back to Section 68, which states that the President of the Senate receives from the Chairman of INEC the recall of the member. They would also present evidence satisfactory to the House or the Senate.[377]

However INEC, through one of its Commissioners, Sam Egwu, said that the National Assembly has no role to play in the recall process of elected officials. He stated clearly that constituent members are empowered by the constitution to recall elected officials, who fail to perform up to their expectations. He further asserted that elected officials must be answerable to the people and not seen as only accruing wealth to themselves alone. They must as well be transparent and also disclose

199 'Senate dares INEC on Meleye's recall', *The Nation Newspaper*, (Wednesday, July 5, 2017)
200 Ibid.

information about what they are doing to their constituent members.[378] INEC also said that it embarked on the process in accordance with Section 68 and 69 of the 1999 Constitution and Section 116 of the Electoral Act 2010 (as amended). It said only a legitimate court order or an injunction can nullify the process.[379] Despite both judicial and legislative interventions in the recall process of Senator Meleye the verification of signatories of the petition still went ahead.

B. Stage 2;- Verification of Signatories to the Petition

After surmounting both judicial and legislative interventions, INEC eventually published the notice of verification,[380] where it notified the signatories that the exercise will hold on Saturday, 28th April, 2018 between the hours of 8.00 am to 2.00 pm in the various polling units in the seven local government areas of the constituency namely- Ijumu, Kofon Karfe, Lokoja, Mopamuro, Kaba Bunu, Yagba East and Yagba West.

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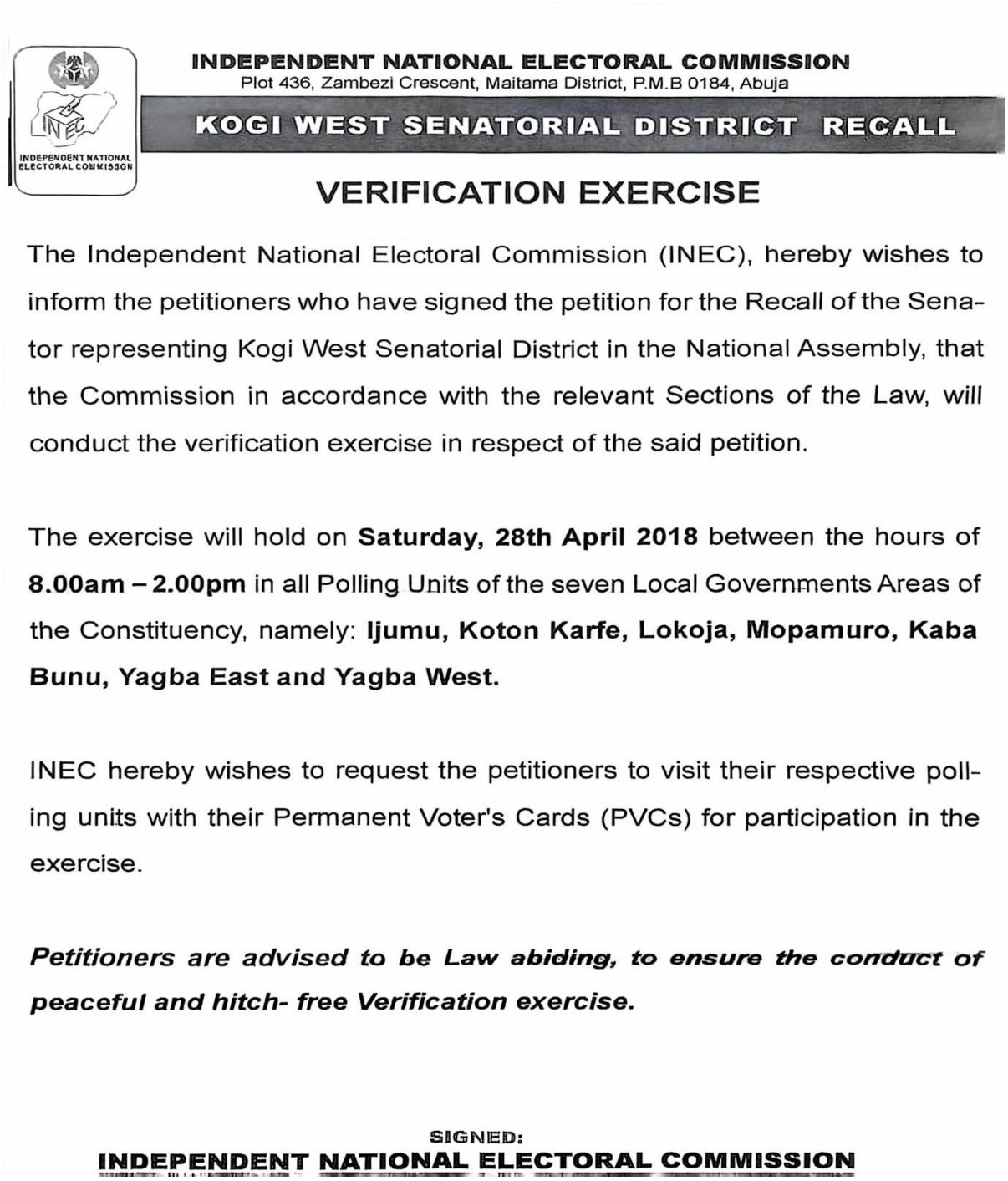
[201] 'Prof. Sam Egwu in a paper on promoting quality representation and accountable governance, organized by Alliance For Credible Election (ACE)', *The Nation Newspaper*, (Thursday, August 31, 2017), 43

[202] 'Does senate have role in recall prices', *The Nation Newspaper*, (Wednesday, June, 19 2017) 7

[203] 'Kogi West Senatorial District Recall Verification Exercise', *The Nation newspaper*, (Friday, April,27, 2018). 46.

Figure 3.5
INEC Notice of Verification



INDEPENDENT NATIONAL ELECTORAL COMMISSION
Plot 436, Zambezi Crescent, Maitama District, P.M.B 0184, Abuja

KOGI WEST SENATORIAL DISTRICT RECALL

VERIFICATION EXERCISE

The Independent National Electoral Commission (INEC), hereby wishes to inform the petitioners who have signed the petition for the Recall of the Senator representing Kogi West Senatorial District in the National Assembly, that the Commission in accordance with the relevant Sections of the Law, will conduct the verification exercise in respect of the said petition.

The exercise will hold on **Saturday, 28th April 2018** between the hours of **8.00am – 2.00pm** in all Polling Units of the seven Local Governments Areas of the Constituency, namely: **Ijumu, Koton Karfe, Lokoja, Mopamuro, Kaba Bunu, Yagba East and Yagba West.**

INEC hereby wishes to request the petitioners to visit their respective polling units with their Permanent Voter's Cards (PVCs) for participation in the exercise.

Petitioners are advised to be Law abiding, to ensure the conduct of peaceful and hitch- free Verification exercise.

SIGNED:
INDEPENDENT NATIONAL ELECTORAL COMMISSION

Source: The Nation, 27th, April, 2018, 46

The verification exercise was carried out on the said published date of 28th April, 2018. The next day, INEC released the results of the exercise. From the results released, the recall process failed woefully as only 5.34 percent out of a total 188,500 signatories were verified. Only 39,285 of the signatories were verified, out of which

18,762 signatories were genuine. Announcing the result, INEC presiding officer for the verification exercise, Prof. Okente Morthy of the University of Abuja, said the number of signatures verified fell short of the number required. [381]

The Senator Dino Maleye's case study has shown clearly, the difficulty in recalling lawmakers in Nigeria. The recall process failed at the second stage of the verification of the signatories. Writers, Lawyers, Rights Activists and Politicians are unanimous that the recall process is a herculean task. A lawyer, Tolu Babaleye,[382] is of the opinion that it is easier for the camel to pass through the eye of a needle than for a Senator to be recalled from the National Assembly. Oladesu,[383] argue that since the second republic, when Nigeria opted for presidential democracy, no lawmaker has been recalled. Well he is certainly wrong there. There have been on record of at least one successful recall of a lawmaker since the advent of the fourth republic.[384]

However the recall process provided for in section 69 of the 1999 Constitution as amended is very difficult, if not impossible to accomplish. The one successful recall earlier referred to was done before the amendment of section 69 in the Constitutional amendment of the National Assembly in 2010 that introduced the verification of signatories to the recall petition by INEC. If this amendment was made earlier, the successful recall processes would have been difficult.

Two other attempts were made to recall some legislators but they failed. The first was the recall of Abubakar Galadima Kuki.[385] INEC got the petition but on verification of signatories it failed,[386] secondly the attempt to recall Senator Rafiu

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381 'Maleye's recall fails as INEC releases results', *The Nation*, (Monday, April 30, 2018), 8

382 'A former member of the Ondo State House of Assembly in the Politics of recall, Kogi West as litmus test', *The Nation Newspaper*, (Friday, June 23, 2017), 2-3.

383 Emmanuel Oladesu, Group Political Editor of the Nation, The Nation Newspaper.

384 See the recall of Faruok Adamu Alyu representing Birnin Kudu/Buji Federal Constituency of Jigawa State in 2006.

385 A Member Representing Babeji Constituency Kano State House of Assembly.

386 'INEC gets petition for lawmakers recall', *The Nation Newspaper*, (Tuesday, August, 15, 2017), 44

Adebayo.[387] However the group that was campaigning for the recall could not muster enough signatories. They went to the press to make an appeal to their constituents to sign the petition. John Aegboye, leader of the group,[388] said:

> We are using this medium to inform citizens of Kwara South that now is the time to shed that garment of slavery and reject representatives who are not accountable. No one will do it for us. It is our responsibility Freedom and good governance will never be freely handed over to us by the oppressors.[389]

Despite this appeal he could not muster enough signatories. In a comparative analysis, the United Kingdom successfully completed a recall process on the 1st day of May 2019, when its people recalled Fiona Onasanya, a member of parliament. Also, the United States of America has enjoyed about eighty-five successes in its recall process, spanning across its various levels of government,[390] mostly in States Legislatures as there are no recall provision at the Congress Level.

However, in Nigeria, there has been little success in the use of the recall process. The most difficult aspect of the recall process to accomplish is the requirement that more than 50 percent of registered voters in the constituency must be signatories. For reasons earlier stated, this is practically impossible to meet. Mindful of this fact the Ken Nnanami led Political Reform Committee empaneled by President Buhari in 2016 and who submitted their report on May 2nd, 2017, recommended the amendment of the number of signatories to 10 percent of registered voters and summited a draft bill to that effect.[391]

The committee's report did not see the light of the day, it was dumped like others. Ojoye argues that the process of recall should be simplified, because if the legislator is aware that it is easy to recall him, unlike the cumbersome legal regime

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387 Senator representing Kwara South Senatorial District.
388 The Kwara South Unity Forum
389 'Group gets 100,000 signatories for senator recall', *The Nation Newspaper*, (Thursday, June, 7 , 2018), 42
390 Hussain Tijani, note 171.
391 See the report of 'the political reform committee headed by Senator Ken Nnamani submitted to the Attorney- General of the Federation, contention on 3rd of May, 2017', *Vanguard*, (May, 3, 2017)

presently, the person so elected to represent the people in the parliament will sit down and reason along with the people who elected him into office. After all, he is not representing himself. The people should always have a say and the right to have that say should not be made so stringent. He agrees that the present provision should be amended in such a way that it would be less cumbersome during implementation.

The process of recall should be simplified in such a way that it will be dispensed with, within a reasonable time.[392] However in the same article, Abiola disagrees and argues that the process of recall should not be more simplified than it is currently; it is simplified enough. It takes a lot of resources for the Independent National Electoral Commission to conduct elections and for candidates and political parties to campaign for these elections. The people go through a lot to vote for candidates of their choice. If at the end of the day their votes counted, their consent must also be sought if the person so elected must be recalled.[393]

However for the recall process to be effective in ensuring accountability of representation of legislators it should not be abused by lowering the requirements too much. It is this study contention that given our experience with the electoral process and the inability of INEC to have a truly genuine voters register, a lower percentage of registered voters as signatories to the petition of recall should be appropriate or it should be limited to accredited voters who voted during the election of the member. A 50 percent is too high to meet and a 10 percent is too low or else it should be subject to abuse.

3.3.3 Vacation of Seat for Non-Attendance

There are other internal and external mechanisms that the legislature can use to discipline or sanction any erring legislator. These include vacation of seat for non-

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[392] Taiwo Ojoye, 'Should the process of recall be simplified?', *The Punch Newspaper ,* (July, 14 2017).

[393] Olalere Abiola (Ekiti-based activist) in Taiwo Ojoye, 'Should the process of recall be simplified?', *The Punch Newspaper*, (July, 14 2017).

attendance, and floor-crossing, suspension from the House, restricted immunity and judicial review.

In Nigeria the Constitution sets out the grounds under which a law maker may lose his seat. Section 68(1) provides as follows:[394]

> 1. A member of the Senate or of the House of Representatives shall vacate his seat in the House of which he is a member if-
>
> (F) Without just because he is absent from meetings of the House of which he is a member for a period amounting in the aggregate to more than one-third of the total number of days during which the House meets in any one year
>
> Subsection (1) (h) provides as follows:
>
> (h) The President of the Senate or the Speaker of the House of Representatives as the case may be, shall give effect to the provisions of subsection (1) of this section, so however that the President of the Senate or the Speaker of the House of Representatives or a member shall first present evidence satisfactory to the House concerned that any of the provisions of that subsection has become applicable in respect of that member.

A member of the Senate or of the House of Representatives shall be deemed to be absent without just cause from a meeting of the House of which he is a member, unless the person presiding certifies in writing that the absence of the member from the meeting was for a just cause.

By the provision of section 63,[395] the Senate or House of Representatives must sit for a period of not less than one hundred and eighty-one (181) days in a year. A law-maker who is absent from the sitting of a legislative house in a year for more than 61 days[396] may lose his seat on that account, unless the presiding officer is satisfied

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394 Of the Constitution of Nigerian 1999 as amended. It should be noted that, while section 68 quoted above applies to the National Assembly, its equivalent provision which applies to State Houses of Assembly is found in section 109. There is no material difference between the two sections apart from the fact that while section 68 applies to the federal lawmakers, section 109 applies to the state' lawmakers.

395 S. 63 of the Constitution of Nigerian, 1999 as amended provides, "The Senate and the House of Representatives shall each sit for a period of not less than one hundred and eighty one days in a year." For the equivalent provision concerning State Houses of Assembly, see S. 104.

396 S. 68 (1) (f) of the Constitution of Nigeria, 1999, as amended.

that his absence for such period is for a just cause.[397] However, for the member to eventually lose his seat, the President of the Senate or the Speaker of the House of Representatives must give effect to it by the presentation of evidence by a member that the provisions of subsection 1 (f) has been met.[398]

One of the rationales for this mechanism is the habitual absence of some members from sittings of parliament. For example, in the whole of 2021, Nigerian Senators held plenary sessions for just 66 days. This could mean they held plenary for a little over two months. Or going by the legislative calendar of three days per week, one could say the lawmakers sat for about five months and six days. By holding plenary sessions for just 66 days in 2021, the lawmakers failed to meet the constitutional requirement of 181 plenary sessions in a year. Also, within the year, the Senators violated some of its standing rules by adjusting the number of days they sat in a week.[399] Arishe is of a strong opinion that the 181 minimum sitting days in a year for National Assembly is almost impracticable and a support for more of plenary action than committee activities.[400] His assertion is that when the non-working days of Saturday and Sunday and other public holidays are deducted, the actual working period for the legislature is a total of 65 days which are not enough for committee assignments, caucus meetings, constituency consultations, party conventions, legislative retreats, and inter-branch consultations.

It must be noted however that section 64 (1) (f) did not expressively provide that it should be plenary session as it simply says that a member that will be absent from "Meetings of the House," this study is of the view that meetings of the House can include plenary and committee meetings, once this interpretation is adopted it will be easy to meet the 181 day per year.

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397 S. 68 (3) ibid.
398 S. 68(2) of the Constitution of Nigeria, 1999, as amended.
399 Queen Esther Iroanusi, '2021, Nigerian Senate Sat for only 66 Days, Broke Own Rules', *Premium Times*, (Lagos, January, 2, 2022) 10.
400 Gabriel O. Arishe, note 79, 381-382

The locus classicus in Nigeria as to the vacation of seats for non-attendance by a legislator was the case of *Mike O. Oloyo. v Benson A. Alegbe,*[401] where the Supreme Court interpreted the provision of section 103(1) and section 103(2) of the Constitution of the Federal Republic of Nigeria, 1979 which was *impari-materia* with section 68 1(f) of the 1999 Constitution of the Federal Republic of Nigeria as amended.[402]

The Plaintiff sought a declaration, that the Speaker of the State House of Assembly is not competent to declare vacant his seat as the elected member for Akoko - Edo Constituency and an injunction restraining the said Speaker, his servants and agents, from illegally preventing or interfering with his right to hold his seat as such elected member of the State House of Assembly. The respondent as the Speaker of the House had written a letter to the appellant declaring his seat vacant as a result of his absence for more than one-third of the total number of days during which the House met for the parliamentary session beginning from 2nd October 1980–18th August 1981 as stipulated in section 103(1) (*f*) and section 103(2) of the Constitution of the Federal Republic of Nigeria 1979.

The High Court in dealing with the question of interpretation of section 103(1)(*f*) of the Constitution held that the Speaker could not declare the seat of a member vacant and that the wordings of section 103(1)(*f*) says

> that a member of a House of Assembly shall vacate his seat in the House, if he, without just cause, is absent from meetings of a House of Assembly for a period amounting to an aggregate of more than one third of the total days during which the House meets in any one year.

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401 [1983] 7 SC 85, 10

402 The only difference between the 1979 and that of 1999 Constitution is that the 1979 Constitution did not mention the enforcing authority while 1999 Constitution did. Also, the High Court assumed jurisdiction in *Mike Oloyo v Alegbe* because they were courts of unlimited jurisdiction in the 1979 Constitution. In the 1999 Constitution (1 alteration) courts are empowered to determine questions on vacancy of seat of legislators. S. 68(2) and section 251(4) and 272(3) of the 1999 Constitution of Nigeria (as amended) respectively.

The Court went on to say that according to the provisions in section 23 of the 1979 Constitution it is the Court that has the right to determine whether the seat of a member of a House of Assembly has become vacant if the person that has been so absent refuse to voluntarily vacate his seat.

The respondent being aggrieved with this decision appealed to the Federal Court of Appeal,[403] and the Court after reviewing the various submissions came to the conclusion that the correct approach is for the respondent, subject to the provisions of the standing orders of the House if any on the matter, to enforce the provisions of section 103 and if the member is not satisfied he can then come to Court for a decision on the matter and thus allowed the appeal. But what happens if the National Assembly itself does not meet up with Constitutional requirement of not less than 181 days in a year. Will the whole National Assembly be dissolved, or will their constituents have a right to ask for the vacation of seats by all the legislators who fail to meet the minimum number of sitting days?

This study is of the view that the mechanism of vacation of seat by non-attendance is not very effective in holding legislators either individually, or collectively accountable. From the provisions of sections 168(1) (f), 8(2) of the Nigeria Constitution, the procedure for declaring a legislator's seat vacant can only be initiated by another member of the legislature. The constituents have no role to play even if they are aware that the member has absented himself from the sittings of the legislature, thereby abandoning his legislative functions. This mechanism is weak unless the constituents or civil society groups or any concerned electorate can be given the power to initiate the process of the vacation of seat for non-attendance of sittings by way of a petition to the House or Parliament that is concerned.

[403] [1983] LLJR-SC 10,

3.3.4 Vacation of Seat for Floor-Crossing

The phenomenon of floor-crossing had its origin in the British House of Commons where a legislator changed his allegiance when he crossed the floor and moved from the government to the opposition side, or vice versa.[404] The term "crossing the floor" also refers to merely to voting with the opposition, not to changing party affiliation. Changing parties is also referred to as party "switching" outside the commonwealth.[405] Also "crossing the floor" has also been defined as to leave one's party and join another or must quite literally cross thigh an MP were to switch parties, they would also need to cross the floor.[406] Floor-crossing or carpet-crossing is a situation in which a legislator, elected under the banner of a particular political party, leaves that party during a legislative term either to join another, or to continue serving as an independent.[407]

Floor Crossing has generally been associated with two phenomena: first, where a legislator crosses the floor (the aisle) to go and vote with the party on the opposite side in defiance of his or her own party's position on that particular point, or secondly, where a legislator decamps from the political party which enabled him or her to win political office to join a different political party, thus depriving his or her party of that seat. Since floor crossing has the potential to have a disruptive influence in a parliamentary democracy, it is apposite to consider a number of definitions.

> Floor crossing is regular phenomenon in many commonwealth countries. In its most original sense, floor crossing is the act whereby a member of parliament, MP from either the government or opposition benches physically leaves his/her seat and votes with another party. The MP also leaves the party to which he/she was

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404 G. C. Malhotra, *Anti-Defection Law in India and the Commonwealth* (Metropolitan Book Company Private. Ltd, 2005) 66

405 Kenneth Jande, Vacation of Seats in the Parliament: A Study with the Decided Cases by the Higher Court of the Bangladesh (Australian parliamentary library, 2005). 24

406 Paul Merson and Lilia shetsova, 'Vacation of Seats in the Parliament: A Study with the Decided Cases by the Higher Court of the Bangladesh', (2008), 99 in the *Lawyers and Jurists, Barristers, Advocate and Legal Consultants*, (December, 05, 2010).

407 M. E. Blunt, 'Carpet Crossing' (18 Parliamentary Affairs, 1964) 82 in G. O. Arishe, Proscription of Floor Crossing in Nigeria: the Limits of the Constitution and the Supreme Court, [2017] *Africa Journal of Comparative Constitutional Law,* 128.

> affiliated when he/she was elected to the legislative body and joins another party represented in parliament.[408]

The term "defection" was derived from the Latin word "*Defectio*" indicating an act of abandonment of a person or a cause to which such person is bound by reasons of allegiance or duty, or to which he has willfully attached himself. It, similarly, indicates revolt, dissent, and rebellion by a person or a party.[409] It similarly connotes the process of abandoning a cause or withdrawing from it or from a party or programmer. It thus has an element, on the one hand, of giving up one and, on the other, an element of joining another. When the process is complete by reason of a person defecting from a cause or a party or a programmer, he is termed as a defector.[410]

Put saliently**,** party defection refers to the movement of political appointees, legislators and persons in executive offices appointed or elected under a political party platform from the party on whose platform they are appointed or elected to a different party.[411] However it must be stated that political party defection is a wider concept than floor-crossing. Defection refers to elected party officials, including the executive and legislature. Floor-Crossing on the other hand is restricted to legislators on the floor of the legislature. In Nigeria, the Constitution provides restrictions on the defection of legislators who wish to defect from the political party that elected them to any other.[412] Section 68 (1) (g) of the 1999 Constitution deals with the issue of defections, it provides that:

> a member of the Senate or the House of Representatives shall vacate his seat in the House of which he is a member if being a person whose election to the House was sponsored by a political party, he

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408 Jotham C. Momba, 'The Case of Zambia' in Konrad-Adenauer-Stiftung (Seminar Report on *The Impact of Floor Crossing* on Party Systems and Representative Democracy, March 2007) 3

409 G. C. Malhotra, note 230, 70.

410 Ibid, 71

411 S. 68 (1) of the Constitution of Nigeria1999 as amended. This section however limited defection to only legislators. The Constitution does not contemplate or control defection of the executive or political appointees.

412 S. 68 (1) (g) of the Constitution of Nigeria 1999 as amended.

> becomes a member of another political party before the expiration of the period for which that House was elected.
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> It went further in the provision to state the condition such defection will not have consequences, provided that his membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more political parties or fractions by one of which he was previously sponsored.

To further demonstrate the "control" as against prohibitive nature of the provision, the constitution makes vacation from office conditional on the decision of the President of the Senate or Speaker of the House based on evidence received by them. In essence, the Senate President or Speaker is the only person so authorized to bring to effect section 68 (1). It can only be done (a) if evidence is adduced and (b) the President or Speaker finds the evidence satisfactory. This is provided in the constitution in section 68 (2):

> the President of the Senate or the Speaker of the House of Representatives, as the case may be, shall give effect to the provisions of subsection (1) of this section, so however that the President of the Senate or the Speaker of the House of Representatives or a member shall first present evidence satisfactory to the House concerned that any of the provisions of that subsection has become applicable in respect of such a member.[413]

As can be gleaned from the above constitutional provision, the only instance for a defected legislator not to lose his seat is where he defected **as** result of a merger of his original party with another party or where there is a division. Defection or floor-crossing in Nigeria can trace its origin to as far back as 1951, when the first defections, then labeled 'carpet crossing' or cross-carpeting were rampant during the first Parliament of Nigeria from I960 to 1966. Thereafter, the period between 1966 and 1979 witnessed military regimes. The Presidential Constitution of 1979 which ushered in the Second Republic Civilian Administration, made provisions to curb such excesses. The Third Republic which existed from 1990 to 1992 did not record any case of defections. The Fourth Republic which came into existence on 29 May

[413] S. 68 (1) and (2) ibid

1999, under the 1999 Constitution, however, has been witnessing the incidents of carpet crossing.[414]

The first case on defection was in the second republic, the *Federal Electoral Commission v Goni and Ors*.[415] Mohammed Goni was the elected governor of the then Borno State, in 1979, under the platform of the Great Nigeria's Peoples Party, (GNPP) but later decamped to Unity Party of Nigeria, (UPN) and it was on this basis that the then Federal Electoral Commission, FEDECO sought to disqualify him from re-contesting as governor in the 1983 general elections on the platform of the UPN. He contended that his defection from the GNPP to the UPN was due to a division within the former. The Supreme Court decided the case in his favour, though the case was decided under the defunct 1979 Constitution which contained some provisions different from the current 1999 Constitution.[416]

In interpreting the *Goni's* cases, Arishe is of the opinion that the constitutional clause on division stating that: 'provided that his membership of the latter political party is not as a result of a division' in the former party, makes it clear that floor crossing was treated as an individual decision, whether or not it was done jointly with other members of the political party. However, he further asserted that the second ambit of the proviso, which contemplated a group action, and which restricted the legislator to the new merger implies that a legislator could not merge with another party all alone. He had to move with a faction made up of registered members of the party. Similarly, where his political party merged with another party or another faction of a party, the legislator was bound to remain in the new merger and the

414 '(AWO) Obafemi Awolowo In the Eyes Of The People'. (*Daily Times of Nigeria*, 1987), 17.

415 NSCC [1983] 481. also, *Political Parties' Divisions, Factions and Carpet-Crossing*, (Paul Usoro & Co., February 2014) available at <http://paulusoro.com/post/284.pdf.>accessed on 4, August, 2022.

416 Kehinde Adegbite the Law and Politics of Tenure Truncation of the Legislature in Nigeria, March [2019] *Journal of International Law and Strategic Studies* (JILSS) 131.

proviso did not allow him to move to another party of his choice.[417] However the question that arises from this assertion is that if the individual legislators do not agree with the merger of his former political party, will he/she not have the option to remain in its old party? This study is of the view that a legislator who disagrees with the merger of his party has a constitutional right to either remain in his former party or defect to a new one, he cannot be constrained to move to a new merged party if he does not believe in the merger.

This was the situation in 2014 when the faction of the All Progressives Grand Alliance (APGA) led by Governor Rochas Okorocha of Imo State, Action Congress of Nigeria, ACN, All Nigeria Peoples' Party, ANPP and the Congress for Progressive Change, CPC merged to form All Progressives Congress. The serving legislators who were in APGA and did not agree to the merger remained in their party. The other legislators in ANPP, CPC, and ACN who also disagreed with the merger defected to other parties and their seats were not declared vacant and there was no evidence of litigation.

In the 1979 Constitution elected executives officials were also restricted from defecting unless there was a division or merger of the parties. This provision is pari-material to the current section 68 (1) (g), though currently restricted to legislators. In 1979, it was of general application. This was giving imprimatur by the decision of the Supreme Court in the case of *Abubakar Atiku v A. G Federation*.[418] The Supreme Court decided in that case that the constitutional provision concerning loss of office on account of defection only applies to the legislature and not to the executive.

Since the advent of the fourth Republic in 1999, so many defections of both the executive and legislative elected officials have become very common, especially

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[417] G. O. Arishe, Proscription of Floor Crossing in Nigeria: the Limits of the Constitution and the Supreme Court, [2017] Africa Journal of Comparative Constitutional Law, 140.

[418] G. O. Arishe, Proscription of Floor Crossing in Nigeria: the Limits of the Constitution and the Supreme Court,note 243, 140.

as a prelude to an election year. In 2013, 37 members of the House of Representatives defected from the Peoples Democratic Party, PDP to the newly formed All Progressives Congress, APC.[419]

This followed the defection of five PDP Governors to the APC. It is clear that once a Governor defect to a new party, legislators will follow suit at both the State and National level. This study is of the view that this is so because of the overbearing attitude of the governors at the state level. The Governors often determine the nomination, election and re-election of legislators in their respective States. Once he defects to another party, legislators are afraid of their re-election and they quickly jump ship in anticipation of a re-election into the legislature which is largely determined by the governors, that the main political parties have designated as the leaders of the party in their states. The latest defection of three governors[420] of the PDP to APC has made many legislators both of the State Assembly and National Assembly to follow suit.[421] It was only in Ebonyi State that there was resistance from the members of the National Assembly as some PDP House of Representatives and the two Senators from the State refused to defect with the governor. This is commendable but how long they can hold out is unknown.

A law-maker may lose his seat, provided that section 68 (2) is complied with. This provision requires evidence to be first presented to the House, clearly showing that any of the preceding conditions outlined in section 68 (1) (a) to (h),[422] has crystallized. However the Supreme Court of Nigeria has defined what a Merger or

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419 'APC leads House of Reps as 37 PDP Members defect', *The Premium Times*, (December, 18, 2013) 2

420 Governors of Ebonyi, Dave Umehi, Cross-River, Prof. Benedict Ayede and Zamfara, Bello Mohammed Matawalle

421 'Four PDP Reps Defect to APC', *Vanguard*, (July, 6 2021), <http://www.vanguardngr.com/2021/07/ four-reps-defect-to-apc/amp/>. accessed 25 August, 2021; 'Three PDP Senators Defect to APC', *Vanguard*, (July, 1 2021), <http://www.vanguardngr.com/2021/07/three-pdp-Senators-defect-to-apc/amp/> accessed 25 August, 2021

422 The section provides, "being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected"

division of party means that will accord a legislator the right to defect or cross-carpet In the case of *Abegunde v Ondo State House of Assembly*.[423] A law-maker elected into the House of Representatives from Ondo State on the platform of the Labour Party, LP, who subsequently defected to the defunct Action Congress of Nigeria, ACN. In the case filed by him on 26th January, 2014, he sought for court orders to prevent his former party, LP from initiating a process that would activate the provision of section 68 (1) (g).for the ultimate purpose of making him vacate his seat in the House.

The case journeyed from the Federal High Court through the Court of Appeal and finally to the Supreme Court. The law-maker lost in all the courts. But ultimately in March 2015, the apex court ordered the federal law-maker to vacate his seat on the basis that the division that took place in his former party, LP, was limited to Ondo State; it did not affect the national structure of the party in any way. Therefore, he was not justified to defect to another party. His defection was held to be unconstitutional. The Supreme Court, per Musa Dattijo Mohammed (JSC) held thus:

> The principles enunciated by this court in the two cases, Fedeco v Goni supra and AG Federation v Abubakar supra, is to the effect that only such fictionalization, fragmentation, splintering or "division" that makes it impossible or impracticable for a political party to function as such will, by virtue of the proviso to Section 68 (1) (g), justify a person's defection to another party and the retention of his seat for the unexpired term in the house in spite of the defection. Otherwise, as rightly held by the courts below, the defector automatically loses (sic) his seat.[424]

In spite of this judgment**,** defection continues unabated and the legislators do not lose their seats. The Presiding Officers of the National Assembly, the Speaker and President of Senate are reluctant to declare seats vacant especially when it's their parties that benefit. The provision of section 68 (2) of the constitution, empowers them to declare seats vacant on account of floor-crossing but they have to be satisfied

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423 [2015] 8 NWLR (pt.1461) 314.
424 [2015] 8 NWLR (pt.1461). 320-321

that there was a division or not in a particular political party. Though they have refused to, insisting that only the courts can interpret the law.

A recent judgment of the Court of Appeal sitting in Rivers State sacked the member representing Brass constituency 1 in the Bayelsa State House of Assembly, Daniel Charles, over his defection from the All Progressives Congress, APC, to Peoples Democratic Party, PDP. APC had dragged Charles to court, praying for his sack after he defected from the party to the PDP but he won the case at the Federal High Court, Bayelsa, in a judgment by Justice Isa Dashen, prompting the APC to proceed to the Appeal Court. But the Justices of the Court of Appeal, Joseph Ikyegh, Gabriel Kolawole and Olabode Adegbehingbe, set aside the decision of the lower court delivered on January 11, 2022, on the legality of his defection. The Appellate Court held that upon his defection from the APC being the platform on which he was elected, Daniel Charles should have vacated his seat at the State House of Assembly since April 14, 2021, by virtue of section 109(1) (g) and (2) of the Constitution of the Federal Republic of Nigeria.

The Appellate Court added that the Speaker and the State House of Assembly were under constitutional and legal duties by virtue of section 109(1) (g) and (2) of the Constitution of the Federal Republic of Nigeria, 1999, to declare the Respondent seat vacant. The Court also declared the seat vacant and directed that Charles should, with immediate effect, return all salaries, allowances and other emoluments, received from April 14, 2021. It also ordered that the three respondents pay the cost of ₦250,000 each to the APC. The Respondent however filed an appeal to the Supreme Court.[425] In another recent case, the Federal High Court sitting in Abuja, sacked two Cross-River House of Representatives and 18 members of the House of Assembly over their defections from the Peoples Democratic Party to the All Progressives

[425] Samuel Oyadongha and Davies Iheamnachor and Emem Idio, 'Apeal Court sacks Bayelsa Assembly Member over defection', *The Vanguard*, (July, 15, 2022) 12.

Congress.[426] The PDP had challenged their defection, saying that there was no division in the party that warranted such.[427]

In spite of the Supreme Court decision in Abegunde's case,[428] the acts of defections are still notoriously rampart. Just like in the previous Assemblies, the 9th National Assembly in the 2020 legislative year witnessed a gale of defections with many of the main opposition federal lawmakers defecting to the ruling APC.

The Senator representing Adamawa North in the National Assembly, Elisha Abbo dumped the opposition PDP for the ruling APC. In the letter announcing his defection, which was addressed to the Senate President, Dr. Ahmad Lawan, Abbo attributed his decision to defect to the APC to the mismanagement of the PDP in Adamawa State by Governor Umaru Fintiri. Meanwhile, at the House of Representatives, on October 7 2020, two members, Ephraim Nwuzi from Rivers State and David Abel from Taraba State defected from the PDP to the APC. In their letters read at plenary by the Speaker, Hon. Femi Gbajabiamila, the lawmakers hinged their decision to join the ruling party on the charismatic and purposeful leadership of the Speaker. Again on October 17, another member of the House, Hon. Kolawole Lawal representing Egbado South/Ipokia federal constituency in Ogun State defected from Allied Peoples Movement (APM) to the APC.

The lawmaker announced the defection in a letter read by the Speaker, Gbajabiamila at the plenary. Also, on December 15, 2020, two members of the House of Representatives, Hon. Datti Yako from Kano State and Hon. Danjuma Shittu from Taraba State, defected to the APC. While Yako left the PDP, Shittu defected from the All Progressives Grand Alliance, APGA. In their defection letters equally read by the Speaker, Gbajabiamila, the lawmakers cited leadership crises and factionalization in

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426 The judgment was delivered on 21, day of March, 2022.

427 'Court Sacks 20 Cross River Lawmakers Over Defection', *The Nation Newspaper,* (Lagos, March, 22, 2022,) 4. See also 'Court Sacks 20 Cross River Lawmakers: Police mount heavy security at CRSHA complex', *The Vanguard*, (Lagos, March, 23, 2022) 12.

428 Ifedayo Sunday Abegunde v Ondo State House of Assembly & Ors, [Supra] Note 249

their respective states as reasons for leaving the parties upon which they were elected. Reacting as usual, House Minority Leader, Hon. Ndudi Elumelu urged Gbajabiamila to declare the two seats vacant, citing relevant sections of the constitution and the fact that he was not aware of any crisis in the party. Corroborating Elumelu's opinion, his deputy, Hon. Toby Okechukwu, insisted that there was no crisis in the party and urged the Speaker to put a stop to illegal defections. According to him:

> There is a subsisting Supreme Court judgment, which states that it was only a crisis at the national level of parties that could prompt a defection of any lawmaker.

Again, Gbajabiamila dismissed the protests by the opposition leaders and ruled in favour of his defecting colleagues, adding that with Yako's defection, all the 24 members from Kano State are now APC members.[429]

3.3.4.1 Rationale for Floor-Crossing:

Nigerian politicians have given different rational for floor-crossing or defection as follows:

1. To have better access to power and the spoils of office.
2. To escape political oppression and/or persecution.
3. As a result of a breakdown in the aims and objectives amongst the founding members of a party.
4. As a tactical and strategic political retreat to re-launch a political agenda on another platform.
5. For ideological reasons, when the initial platform has derailed from the ideals which inspired like minds to join the party and bring to bear these lofty ideals in the service of the people. Defections based on this idea are few and far between in Nigeria.[430]

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[429] 'National Assembly & Familiar Circle of defections,' *This Day Newspaper*, (July 25, 2021)

[430] A. Adewale, The history and law of political carpet crossing in Nigeria, (2009). <http://squibguest.blogspot.com/2009/11/history-and-law-of-political-carpet.html> accessed on 4 November 2021.

The Nigerian situation is in sharp contrast to the practice in the more established democracies. In the USA, generations of families vote and/or belong to one party; whereby it is seen as political apostasy for a member of a party to carpet-cross to another party. For instance, it is unimaginable for a member of the Kennedy family to become a Republican; or a member of the Bush family becoming a Democrat; or a Clinton becoming a Republican; that will cause political earthquake. Consequently, the consistent attitude of leaders is replicated amongst voters. It is commonplace for a man and his family to vote a particular party for years; as such, voting for an opposing party occurs only in extreme circumstances. Even whole cities and states follow the same pattern. In the US presidential race, it took a candidate like Barrack Obama for many United States like Florida, Texas and California who vote mainly Republican to vote for a Democratic Party candidate.[431]

The issues of defection of political office holders from their original platform to another can be linked to the concept of public trust. These various representatives of constituencies hold office in trust for their constituents, having been elected on platforms of respective political parties and they owe an obligation to maintain the status quo on which their elections were predicated. On the contrary, what is rampant presently is a spate of indiscriminate crisscrossing, in the name of cross carpeting, without regard for the interest or feeling of the constituents; as long as the selfish interest of the representative is served.[432]

Ihugba et al are of the view that apart from the issue of lack of ideology,[433] the other reasons or rational for defection are lack of adoption of, and unfaithfulness to the philosophy behind party objectives; the opportunistic behavior of both parties and

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431 Olaolu S. Opadere and Julius O. Agbana, 'Cross Carpeting in Nigerian Politics: Some Legal and Moral Issues Generated', [2015] 3 (2) *Frontiers of Legal Research*, 13

432 J. Oluwole, 'Ondo Deputy Gov Defects, Mimiko Wishes him Well', *The Punch Newspaper*, (Lagos, March 27, 2015) 24.

433 Bethel Ihugba and Charles Alfred, 'Legality of Defection and Implications for Democratic Consolidation in Nigeria' [2018] 2 *NILDS' Department of Democratic Studies*

politicians; and lack of party internal democracy.[434] Also authoritarian regimes use anti-defection laws to limit opposition,[435] particularly when the anti-defection laws are statutory laws. Party defections also occur because candidates self-interest, albeit political. Examples are loss of popularity of political party, desire of constituents and shift in party ideology. This is why some developed democracies use internal party regulations as control over party switching.[436] Okechukwu, and Ogbodie are of the opinion that politicians in Nigeria should not hide under their claim of fundamental right to freedom of association as a means of moving in and out of political groups at will, a development, though not alien to the nation's political system, which is however gradually assuming a frivolous status, thus raising concerns in the build-up to the 2015 general elections.[437]

In the U.S unlike Nigeria, where there is strong party Ideology, defection is few in between. For instance, a study shows that from 1947 to 1994, only 20 members of the House and Senate defected from one party to another. This is the case because party politics in the US is driven by ideology to which politicians are patriotically and passionately committed.[438]

The issue of ideological politics is the reason behind the fact that countries like, the USA, Canada, United Kingdom, Belgium, Germany and so on, do not have anti-defection laws or provisions in their Constitutions. This position is supported by research that indicates that anti-defection laws are rather symptoms of poor

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434 Michael B. Aleyomi, 'Election and Politics of Party Defection in Nigeria: A Clue from Kogi State Covenant University Journal of Politics and International Affairs' [2013] 1 (2) *CUJPIA Maiden Edition,* 118 -121

435 Csaba Nikolenyi, 'Constitutional Sources of Party Cohesion: Anti-Defection Laws Around the World' (Paper delivered at the Oslo---Rome Workshop on Democracy, November 7---9, 2011), 6.

436 Kenneth Janda. 'Adopting Party Law', in *Political Parties and Democracy in Theoretical and Practical Perspectives.* (Washington D.C.: National Democratic Institute for International Affairs. 2005)

437 Eme Okechukwu And Ogbochie, Andrew, 'The Legal/Constitution Basis of Political Party Defection in Nigeria',[2014] 3(11) *Arabian Journal of Business and Management*. 19-34

438 Kenneth Janda, in his paper titled "Assessing Laws That Ban Party Switching, Defecting, and Floor-Crossing in National Parliaments," The paper was delivered at the United Nations Development Program (UNDP) Workshop held at the University Guesthouse, Leysweg on August 11, 2007.

democracy than ideals of good democracy. This is demonstrated in the words used to describe countries with defection laws as newer democracies, semi democracies and non-democracies.[439]

The electorate having given a legislator a mandate in a political party to represent their interests does the legislator have the right to abandon the platform he was elected and still seek to remain in the legislative chambers. In Nigeria by the provision of section 221 of the 1999 Constitution there is no independent candidacy provision in the Constitution, so only political parties can canvass for votes. This was the position of the Supreme Court in the case of *Amaechi. v INEC.*[440]

By the provision of 1999 Constitution,[441] membership of a political party and sponsorship for that office are some of the qualifying pre-conditions. Furthermore, by virtue of section 106(e) of the Electoral Act, 2022 it is expressly provided that for a candidate to be qualified for election into the office of a Governor of a State, he must be sponsored by a political party. To underscore the importance of political parties in this regard, the Electoral Act made profuse provisions for the procedure for the selection of candidates for elective positions by the political parties. In addition, the Act also made elaborate provisions for a redress mechanism for persons who feel short-changed in the selection process of their political parties.[442] In view of these provisions, it will amount to betrayal of trust on the part of the legislator to his constituents if he abandons the party on whose platform he was elected to defect to another. He should vacate his seat, to allow the constituents to exercise their right again at the ballot box.

It is in the light of the above and in order to bring sanity into the issue of defection or floor-crossing by legislators that a bill is presently pending before the

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439 Kenneth Janda, *Laws Against Party Switching, Defecting, or Floor Crossing in National Parliaments*, (The Legal Regulation of Political Parties, working paper 2009)).5.

440 [2008] All FWLR [Pt. 407] 1; *A.D v Fayose* [2004] All FWLR [pt.218] 951

441 S. 177 (a-d) of the Constitution of Nigeria 1999 as amended

442 S. 87 (4) (b) (I) (II) of the Act in the case of a Governorship Candidate.

House of Representatives,[443] prohibiting defection under more stringent conditions if eventually passed will restore sanity into the riotous and ideologically deficient political culture.[444] In the proposed legislation, which is currently awaiting its second reading in the lower chamber, the House of Representatives is considering making the President or Governor and their Deputies to step down if they defect from the political party under whose umbrella they were elected, to another. It also seeks to amend Sections 144(d) and 189(1):

> to check incidents of defections, that is, cross-carpeting or abandoning the political party that sponsored a President, Vice-President, Governor or Deputy Governor, as the case may be, for another political party, in the absence of a merger of political parties, division or factions within the sponsoring political party.

However, this bill making it applicable to the executive does not address the abuse of defection of the legislators. The situation in Ghana is slightly different from that of Nigeria. Chapter Ten, Article 97 (1) (g) (h) and (2) of the 1992 Ghana's Constitution as amended provides as follows:[445]

> 97 (1) A Member of Parliament shall vacate his seat in Parliament –
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> (g) If he leaves the party of which he was a member at the time of his election to Parliament to join another party or seeks to remain in Parliament as an independent member; or
>
> (h) If he was elected a Member of Parliament as an independent candidate and joins a political party.
>
> (2) Notwithstanding paragraph (g) of clause (1) of this article, a merger of parties at the national level sanctioned by the parties' constitutions or membership of a coalition government of which his original party forms part, shall not affect the status of any member of Parliament.

From the above provisions, the Constitution of Ghana limits defection or floor-crossing of legislators to only where there is a merger of parties and not division or fraction as in Nigeria. This study supports the position in Ghana restricting the

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443 Sponsored by Hon. Rimande Kwenum, from Taraba State

444 'Defection should be Prohibited', *The Punch Newspaper*, (Lagos, August, 2, 2021) 23

445 Chapter Ten, Article 97 (1) (g) (h) and (2), of the Constitution of the Republic of Ghana, 1992 as amended

reason for defection only to mergers. That the provision of merger or division of a party as a reason for defecting should be amended, to limit it to only merger of political parties as it is currently the constitutional provision in Ghana.[446] There is also a gap that needs to be filled. If a political party expels a member from such party, will the legislator vacate his seat as a result therefrom or remain in the legislature without a party? This study is of the view that if the political party at the national level dully expels a legislator; he should be free to move to any other party.

However in order to check abuse, it is only the Party at the national level that should be given the power of expulsion, if not platoon expulsions will be orchestrated from the ward to the state level, to justify the movement of a legislator to another party. In this sense, it will no longer be a defection or floor-crossing since he has become party less as a result of his expulsion from his original party.

How effective is the mechanism of vacation of seats due to floor-crossing been in holding legislators accountable. As stated earlier, this is an internal mechanism only applied by members and the presiding officers are the only persons empowered by section 68 (2) of the constitution to give effect to the provision. Constituents who feel aggrieved that they voted for their representative in a political party, which he now ditches, have no remedy or cannot initiate the processes for the vacation of the seats. This can only be done through judicial review but the slow pace of the judicial process make it impossible to conclude the case from the court of first instance to the final court. Before it gets to the Supreme Court, the legislator would have completed his tenure. This mechanism therefore is not very effective in ensuring legislative accountability.

[446] Ibid.

3.3.5 Assent to Bill by the President

The initiation of the law making procedure begins with a presentation of a bill by either the executive, a member of the legislature, or civil society or non-governmental organizations who necessarily must go through any interested legislator. Before a bill is passed it goes through 1st reading, 2nd reading, Committee stage and finally 3rd reading. In Nigeria where you have a bicameral legislature, if there are differences between what was passed by the lower House of Representatives and the Senate, a joint conference committee is set up which will iron out the gray areas and report back to both chambers in plenary and then adopt the conference report and then forward the bill to the President for assent.[447] If the President withholds assent to the bill after it was transmitted to him within 30 days, the bill can be passed into law by two-thirds members of both chambers.[448] However In 2010, the National Assembly passed the Constitution (First Amendment Act 2010) without the President's assent.

They argued that having passed the amendment through the 36 State Houses of Assembly and approved by more than 2/3rd of the same, the President assent was no longer required. As a result of this Olisa Agbakoba,[449] challenged the amendment in court. He contended that the exercise by the lawmakers without the assent of the President was illegal and unconstitutional, urging the court to nullify the amendments on the grounds that the National Assembly had contravened section 58 of the 1999 Constitution. He prayed the court to hold that in view of the provisions of section 58 (1) of the 1999 Constitution, the assent of the President was a prerequisite before the amendments could become law.

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447 Ss. 58(2) and (3) of the Constitution of Nigeria 1999 as amended and standing orders of the Senate and House of Representatives

448 S. 58 (4) and (5) of the Constitution of Nigeria 1999 as amended.

449 Former National President of the Nigeria Bar Association (NBA).

In a well-considered judgment[450] the Federal High Court sitting in Lagos held that the amendments carried out on the 1999 Constitution by the National Assembly cannot become law and operational without the assent of the President. The Court also held that the purported amendment to the Constitution remained inchoate until it was presented to President Goodluck Jonathan for his assent. Justice Okechukwu Okeke declared the 2010 Constitutional Amendment Act as null and void. He said it would remain void until it was sent to the President for his assent. The National Assembly had filed a preliminary objection to the suit, urging the court to dismiss it with substantial cost. The federal lawmakers had formulated three grounds for the Court to strike it out. These were lack of locus standi, lack of jurisdiction and that the Court lacked the territorial jurisdiction to adjudicate on the matter. The National Assembly had argued that only the Attorney General of the Federation, AGF, was empowered under the law to institute such suit. It added that the cause of action arose in Abuja and that Lagos was a wrong place to have filed the suit.

Adoke, in his preliminary objection, argued that he was not a proper party to the suit, being a member of the executive arm of government, and that the suit disclosed no reasonable cause of action against him. Ruling on the preliminary objections, Justice Okeke held that the plaintiff (Agbakoba) had sufficient locus standi to institute the action since the suit was not a challenge to the debate on the floor of the National Assembly, but the refusal by lawmakers to send the amended constitution to the president for his assent. The Court dismissed the preliminary objection on the basis that by the provision of section 150 of the Constitution, Adoke was needed in the proceedings, being the Chief Law Officer of the country even as a nominal party or at least to witness the proceedings.

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[450] In the case of *Olisa Agbakoba v Attorney General of the Federation of Nigeria,* in suit no. FCH/L//CS/941/2010 delivered on the November, 8, 2010, (unreported).

Justice Okeke who cited Section 2 of the Interpretation Act to back his position, noted that the constitution, having come into law through an Act, can only be amended through an Act, and that an Act of the National Assembly cannot become law without the assent of the President. He added that the National Assembly can only go ahead to enforce the constitution where the President refused to sign it thirty days after receiving it. The Court held: "Having failed to comply with the provisions of Section 58 of the constitution, the purported 2010 amended constitution remains inchoate until it is presented to the President for his assent."[451]

Though the leadership of National Assembly initially said that they were going to appeal the judgment, they eventually did not as they subsequently sent the constitutional amendment to President Goodluck Jonathan for his assent, and this has been the norm for subsequent amendments including the last one done in 2018.[452] But there have been a debate as to whether the decision of the court was the right one as they were no legal precedent that the Judge followed.[453] For example in the United States the controversy over whether or not the President's assent is required was settled by the U.S Supreme Court in interpreting Article V of the U.S Constitution as far back as 1778 in the case of *Hollingswort v Virginia*,[454] where it held that the president has no formal role in the process of amending the United States Constitution.

> while it is permissible, a presidential signature is unnecessary. By the same logic, a president is powerless to Veto a constitutional amendment which has been officially proposed to the states to ratify. Further by the same logic, it is unreasonable to infer that a state governor is involved in the state's constitutional amendment process.

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451 'Court voids 2010 Constitutional of Nigeria 1999 amendments', *Vanguard Newspaper*, (November 9, 2010), 1

452 Of the Constitution of Nigeria 1999 as amended of the Federal Republic of Nigeria (As Amended) Fourth Alteration, 2018.

453 Kayode Oladele, The Decision in *Agbakoba v Attorney-General of the Federation of Nigeria et al* is a Clear Case of Judicial Activism, Saharareporters, November, 9 2010. <https://saharareporters.com/2010/11/09/decision-agbakoba-v-attorney-general-federation-nigeria-et-al-clear-case-judicial> Accessed 27 October, 2022.

454 3.U.S [3Dall] 378

This is the locus classicus or leading precedent in this controversy. This U.S Supreme Court Judgment is only persuasive as the Nigerian courts are not bound to follow it. This mechanism of Assent to Bill by the president in view of the court's decision in *Olisa Agbakoba's* case gives the president too much power to override constitutional amendment that has already passed through both the National and State Assembly. This is contrary to democratic norms.

This study strongly supports the provision of the U.S Supreme Court, that the amendment to the constitution having passed through the National Assembly and the various State Houses of Assembly it does not lie in the hands of one president to reject such amendments. If any of the amendments are unconstitutional it can be challenged in court through the mechanism of judicial review by interested parties to set such amendments aside by the court, this will act as a check on the legislature and enhance the principle of legislative –collective –accountability.

The power of the legislature to override the president's veto as provided for in section 58 (4) and (5) of the Nigerian Constitution 1999 as amended is very difficult to implement and in the present 4th republic it was successfully done only twice, the first being when the 4th National Assembly under the leadership of Senator Chuba okadigbo as President of the Senate and Ghali Umar Na' Abba Speaker of the House of Representatives passed the Niger Delta Development Commission Bill after it was vetoed by the then President Olusegun Obasanjo.[455]

The second successful override was the passage of the Electoral Act 2002 as amended after it was vetoed by the then President Olusegun Obasanjo in 2002. Even though this was later set aside by the Court of Appeal on the basis that the required two-third majority needed to override the president veto must be two-third of all the

[455] 'Jonathan, Law Makers Battle's Hots up; NASS to Override Veto on Constitutional Review', *Vanguard Newspaper* (May 12, 2015).

members and not those present and voting.[456] Parliament also has the additional role of ratifying international treaties by domesticating them in their respective jurisdictions.[457] In the exercise of its powers to make law, legislature can only make laws on matters as provided for by the constitution, which was the decision of the Supreme Court in the celebrated case of *A.G. Abia state v A.G. of the Federation and Ors*,[458] where the court held that the National Assembly is empowered to make laws only on matters within its competence and not outside it while exercising the power to make laws for the peace, order and good government.

3.3.6 Power of Veto

Legislative Veto, in the context of Administrative Law, refers to a resolution by a legislative body that invalidates an action by the executive branch. At the federal level, the legislative veto refers to a resolution by one House of Congress, both Houses of Congress, and a Congressional Committee that nullifies an executive action.[459]

Historically, the veto power was intended mainly as a passive instrument to protect the constitutional separation of powers and the rights of citizens as part of a system of checks and balances. It retains this function in many cases but has also emerged as an instrument of inter-institutional policy bargaining in democracies characterized by presidential leadership. The veto power puts great power and responsibility in the hands of one person: why should one person's decision outweigh the decision of a whole legislative assembly? Excessive presidential veto powers may unbalance the working relationship between the executive and legislative branches, resulting in a combination of autocracy and deadlock.[460]

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456 National Assembly v President of Nigeria & Ors, [2003] 9 NWLR (pt.824) 104 at 150.
457 S. 4 (1-9) of the Constitution of Nigeria 1999 as amended.
458 [2001] 11 NWLR (pt.689).
459 'Legislative Veto', *Legal Information Institute*, (September 18, 2018).
460 Elliot Bulmer, Presidential Veto Powers, [2017] *International IDEA Constitution-Building Primer 14*, 3.

A veto that can be overridden by a subsequent decision of the legislature is sometimes known as a 'qualified' veto. Most constitutions that provide for presidential vetoes on policy grounds also allow the legislature to override the president's veto by means of a supermajority vote. The required size of the supermajority varies from country to country. A two-thirds majority is most common (e.g. Argentina, Chile, Costa Rica, El Salvador, Ghana, Mexico, Philippines, Nigeria, Zambia), although in some cases only a three-fifths majority is required (Poland, for example). The rationale behind the requirement for a supermajority is that the president's veto is deployed in order to prevent the passage of partisan legislation or of legislation that is divisive or controversial or of legislation that does not promote the common good.

The re-passage of a bill by a supermajority indicates that these objections have been met and overcome. It is evident that the bill—far from being partisan, divisive or controversial—enjoys a broad consensus of support in the legislature.[461] There is also another type of veto referred to as 'weak qualify veto' this allow presidents to veto legislation by returning bills to the legislature for reconsideration, while allowing the legislature to insist on the bill in a second vote without a demanding supermajority requirement. In many cases, an absolute majority (50 per cent plus one) of the total number of members of the legislature is required.

When the legislative majority is resolute and united, such a weak veto may have a mainly symbolic effect. It allows the president to express his or her objections to a bill and to request the legislature to reconsider it, but without ultimately having the authority to prevent its enactment. However, when the legislative majority is uncertain or disunited, even such a weak veto can potentially be decisive. By forcing a delay and reconsideration (which allows members of the legislature to realign

[461] Ibid, 4.

themselves or even to change their minds without loss of face), the president might prevent the enactment of laws that would otherwise have been passed.[462] The power of veto is applicable to both the executive as personified by the president and the legislature. The word "veto" is derived from Latin which means "I forbid", power (used by an officer of the state, for example), to unilaterally stop an official action, especially the enactment of legislation.[463]

A veto can be absolute, as for instance in the United Nations Security Council, whose permanent members (China, France, Russia, United Kingdom, and the United States of America) can block any resolution, or it can be limited, as in the legislative process of the United States, where a two-thirds vote in both the House and Senate may override a presidential veto of legislation.[464] It may give power only to stop changes (thus allowing its holder to protect the status quo), like the US legislative veto mentioned before, or to also adopt them (an "amendatory veto"), like the legislative veto of the Indian president, which allows him to propose amendments to bills returned to the parliament for reconsideration. The concept of a veto body originated with the Roman Consuls and Tribunes. Either of the two consuls holding office in a given year could block a military or civil decision by the other; any tribune had the power to unilaterally block legislation passed by the Roman Senate.[465]

According to Tsebihis, veto power theory "is policy consequential" in that 'it takes policy outcomes as its primary concern and works its way backward to institutional and partisan characteristics that are responsible for the production of specific policy outcomes.[466] In other words, when the president vetoes policy

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462 Elliot Bulmer, Presidential Veto Powers, [2017] *International IDEA Constitution-Building Primer 14*, 6.
463 Hanibal Goitom, note 165, 5.
464 Ibid, 7
465 Ibid, 8
466 G. Tsebelis, 'Veto Players and Law Production in Parliamentary Democracies: An Empirical Analysis', [1999] *The American Political Science Review*, 591

legislation, the members of the legislature, upon the satisfaction of the required votes, can upturn the veto.[467]

Thus in a governing system characterized by veto power, the assumption is that actors seek to exercise power in relation to the larger consequences of the policy outcomes and outputs. The exercise of veto is a restraining tool to afford the actors, in the policy process, to ventilate and reconsider ideological posture toward public policy. In the presidential systems, presidential veto power therefore is limited to the ability of the legislature, as a counterbalance force, to muster the statutory unified support to override.[468]

In Nigeria the constitutional provision on the power of veto can be found in Section 58 (4-5),[469] which states that where a bill is presented to the president for assent, he shall within thirty days thereof signify that he assents or that he withholds assent. Where the president withholds his assent and the bill is again passed by each House by a two-thirds majority, the bill shall become law and the assent of the president shall not be required.

Fashagba avers that veto power is a significant oversight tool designed to ensure that policy outcomes fulfill the desired purpose. It affords the actors the opportunity of a second look to vet policy legislation and contents with a view to expressing the general interests of the public.[470] Bouard and Honniqie, state that the essence of the power of veto is to provide an opportunity to review public policy in manners that would promote accountability.[471]

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467 G. Tsebelis, Veto players: How political institutions work. Princeton, (NJ: Princeton University Press 2002) 302.

468 'Veto power and legislative oversight', in Omololu Fagbadebo, note 4.

469 The Constitution of Nigeria 1999 as amended.

470 Ibrahim Imam and M. A. Abdulraheem Mustapha, An Overview of the Concept of Legislative Assembly's Immunity in Nigeria [2008] 1, (3) *Akungba Law Journal*; *Faculty of Law, Adekunle Ajasin University, Akungba-Akoko, Ondo State* 17

471 S. Brouard, and C. Hönnige, 'Constitutional Courts as Veto Players: Lessons from the United States, France and Germany'. [2017] *European Journal of Political Research* 529–552, DOI: <https://doi.org/10.1111/1475-6765.12192> accessed 19, June, 2020

In interpreting section 58 (4 & 5), the Court of Appeal in the case of *National Assembly v the President of Nigeria*,[472] held that what the National Assembly did in merely passing a motion of veto to override 'the president's decline of assent as not meeting the requirement of S.58(5)'. It held that 'under section 58(5) of the Constitution, to override the veto of the 1st respondent each of the two Houses of the National Assembly has to pass the bill again. The language used by S.58 (5) is 'and the bill is again passed by each House'. This means that the bill must go through the same process it had previously gone through when it was first passed. It means the repetition of the earlier process.[473] This does not, however, make the executive a law-making organ or body. Executive veto is not absolute.[474] This is necessarily so to avoid a power play between the executive and the legislative arm that will hinder governance.

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Historically, the veto power was intended mainly as a passive instrument to protect the constitutional separation of powers and the rights of citizens as part of a system of checks and balances. It retains this function in many cases but has also emerged as an instrument of inter-institutional policy bargaining in democracies characterized by presidential leadership. The veto power puts great power and responsibility in the hands of one person: why should one person's decision outweigh the decision of a whole legislative assembly? Excessive presidential veto powers may

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472 [2003] 9 NWLR (pt.824)104 at 150.
473 Per Oguntade JCA (as he then was)
474 Uwadineke C. Kalu, 'Separation of Powers in Nigeria: an Anatomy of Power Convergences and Divergences' [2018] 9 (1) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence,* 13
475 'Legislative Veto', *Legal Information Institute*, (September 18, 2018).

unbalance the working relationship between the executive and legislative branches, resulting in a combination of autocracy and deadlock.[476]

A veto that can be overridden by a subsequent decision of the legislature is sometimes known as a 'qualified' veto. Most constitutions that provide for presidential vetoes on policy grounds also allow the legislature to override the president's veto by means of a supermajority vote. The required size of the supermajority varies from country to country. A two-thirds majority is most common (e.g. Argentina, Chile, Costa Rica, El Salvador, Ghana, Mexico, Philippines, Nigeria, Zambia), although in some cases only a three-fifths majority is required (Poland, for example). The rationale behind the requirement for a supermajority is that the president's veto is deployed in order to prevent the passage of partisan legislation or of legislation that is divisive or controversial or of legislation that does not promote the common good.

However, law-making cannot unjustly suffer in anticipation of a proposed legislation. Above all, nothing stops Mr. President or anybody for that matter from proposing an amendment to an existing law or even a repeal of an existing law. There is nowhere in the world where the president can propose to stop the law-making process by an Executive Fiat or Order. The President cannot withhold assent to a bill on the mere fact that consultations are on-going, which will enable him come up with a new bill.

Although Section 58 (5) of the 1999 Constitution provides that two-thirds of both legislative chambers of the National Assembly (73 senators and 240 members of House of Representatives) are required to override the president's veto, political commentators say this would be a tall order considering the fact that both chambers

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[476] Elliot Bulmer, Presidential Veto Powers, [2017] *International IDEA Constitution-Building Primer 14*, 3.

are polarized along party lines[477]. One of the major drawbacks in the effective use of this mechanism is reaching a two-thirds majority. In a two-party system, it merely requires that these two parties agree (assuming most members vote on party lines). If there is a multiparty system, then getting the same two-thirds majority may require a much broader agreement between perhaps half a dozen political parties. Similarly, if parties are coherent and have centralized leadership structures, peak-level agreements between the leaders will be sufficient to bring the legislative caucuses into line, while highly fragmented parties may require that agreements be made with the leaders of factions or with individual legislators, thereby increasing the difficulty of attaining any specified supermajority threshold. In addition, the degree of ideological polarization and even personal trust or antipathy between the parties may be a relevant consideration: a given supermajority requirement will be harder to reach if the parties are mutually antagonistic, and easier to reach if they are mutually cooperative.[478]

The mechanism of the power of veto is not a very effective tool in enhancing legislative accountability. It is hardly used in Nigeria while the President, on many occasions refuses to assent to bills passed by the National Assembly; they hardly have the required number of two-thirds to override the president's veto. It is suggested that the two-thirds requirement be reduced to simple majority.

3.3.7 Judicial Review

Judicial review as an accountability mechanism is applicable to both executive and legislative powers. It is a process that confers jurisdiction on the courts to play a supervisory role in the exercise of powers by other arms of government. Nwabueze, defines it as the power of the court or the process by which the court exercises a

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[477] 'Senate to override Buhari's veto on two bills,' *The Nation Newspaper*, (April, 11, 2019)

[478] Elliot Bulmer, 'Presidential Veto Powers', [2017] (14) *International IDEA Constitution-Building Primer* 24.

supervisory jurisdiction over the acts of the executive and legislative arms of government. According to him, judicial review is the power of the court in appropriate proceedings before it to declare a governmental measure either contrary or in accordance with the constitution.[479]

In general terms, judicial review refers to the judicial control by superior courts of record typified by the High Court, of both executive and legislative exercise of powers extending to exercise of powers by inferior courts and tribunals, such powers being exercised by the superior courts in their supervisory role.[480] Tate sees judicial review as:

> The power of the court of a country to examine the actions of the legislative, executive, and administrative arms of the government and to determine whether such actions are consistent with the constitution. Actions judged inconsistent are declared unconstitutional and, therefore, null and void. The institution of judicial review in this sense depends upon the existence of a written constitution.[481]

However it is agreed that courts in some democracies with written constitutions do not have power to review and declare an act of the parliament void.[482] Some without written constitutions also have some term judicial review. In which case the parliament may be sovereign in the sense that the courts lack power to set aside or void any law made by it.[483]

The essence of judicial review is based on constitutional democracy or constitutionalism which pre-supposed that the laws that govern, including the constitution, must be interpreted by the courts that are created for that purpose, and

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479 Ben O. Nwabueze, *Judicialism in Commonwealth Africa* (London: C. Hurst & Co. Ltd., 1977) 229.

480 Such a power is also to some extent vested on the Customary Court of Appeal being a superior court of record of first instance. See R v. Northumberland Compensation Appeal Tribunal, ex Parte Shaw (1952) 1 KB 338 on court with power of judicial review. In the case of the Court of Appeal and the Supreme Court, they also exercise powers of judicial review in an appellate capacity. Here, they do not exercise general powers but limit themselves to the legality of the questions raised.

481 E. Neal. *Tate-Judicial Review* <www.britannica.com>. accessed on May, 23, 2021

482 The third republic of France, and Canada are with written Constitutions, but without the courts having power of review; Malaysia and Swiss both have written Constitutions, but with limited power of review vested in the courts.

483 England is a good example of these countries.

that the decisions of the courts must bind all those who are directly or indirectly concerned or affected by the decision.[484]

The Constitution of Nigeria and those of most other African Countries contain impressive mechanisms for checking and restraining the exercise of executive and legislative powers.[485] It is the belief of Nwabueze that an important bulwark of constitutionalism is the existence of an efficient and effective mechanism controlling and compelling compliance with the letter and spirit of the constitution.[486]

Indeed it has been observed that there can be no constitutionalism in terms of respect for the constitution and the values and principles that underlie it if there are no secure review mechanisms, whether by ordinary courts or other specialized courts or bodies, that can independently enforce the provisions of the constitution, while checking and controlling any abuses of its provisions.[487] The responsibility of ensuring that the standards and procedures laid down in a constitution are observed rests with the courts.[488]

This study is however concerned with review of legislative powers by the Courts in Nigeria. The constitution provides 'save as otherwise provided, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law, and accordingly, the National Assembly or a House of Assembly shall not enact any

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484 Ben O. Nwabueze, *Constitutionalism in the Emergent States* (Associated University Press, 1973) 14.

485 Imo J. Udofa, 'The Power of Judicial Review in the Promotion of Constitutionalism in Nigeria: Challenges and Prospects' [2015] *Journal of Law, Policy and Globalization* 12

486 Ben O. Nwabueze, *the Presidential Constitution of Nigeria* (London: C. Hurst & Company Publishers Ltd in Association with Nwamife Publishers Ltd., 1982) 309.

487 Ibid.

488 I.T. Mohammad, 'Judicialism and Electoral Processes in Nigeria: What the Supreme Court Did; What the Supreme Court May Do', (being a paper presented at the 2012 Felix Okoye Memorial Lecture, Organised by Nigerian Institute of Advanced Legal Studies, University of Lagos, held at the Nigerian Institute of Advanced Legal Studies, University of Lagos, on 18th September 2012).

law that ousts the jurisdiction of a court of law and of a judicial tribunal established by law'.[489]

The Constitution further provides that 'if any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail and that other law shall to the extent of the inconsistency be void'. An application for judicial review can be brought by any person who can show that they have sufficient interest in the matter to which their application relates. An application for judicial review must be brought promptly and not later than three months after the grounds on which the claim is based first arose. The remedies available under judicial review include:

i. Certiorari (quashing order)

ii. Prohibition.

iii. Mandamus (writ of mandate).

iv. Injunction and declarations.

v. Damages.

The judicial review procedure involves two stages. The first is in bringing an application without notice to the other side (an ex parte motion) to seek the leave of the court to bring an application for judicial review. At this stage, among other things, the court will consider whether the motion raises any question of infringement of a public right and that the party seeking leave has a sufficient interest in the matter to invoke the jurisdiction of the court. It is only on a successful application for leave that the application can proceed to the second stage, at which point the judicial review application will be filed on notice to the other side and served on them. If the relief sought is an order of prohibition or certiorari and the judge so directs, the grant of

[489] S. 4 (8) of the Constitution of the Nigeria 1999 as amended

leave will operate as a stay of the proceedings to which the application relates until the determination of the application or until the judge otherwise orders.[490]

In relation to review of legislative enactments, any person claiming to be interested under an enactment can apply by originating summons for the determination of any question of construction arising under the enactment, and for a declaration of the rights of the persons interested.[491]

3.3.7.1 The Courts and Judicial Review

The Nigeria Courts have made many pronouncements in decided cases in respect of review of legislative acts. The locus classicus is the case of *Attorney-General of Bendel State v Attorney-General of the Federation & Ors.*[492] In this case, the AG of Bendel State sued the AG of the Federation in the Supreme Court, pursuant to Section 212 of the Constitution of the Federal Republic of Nigeria 1979, providing for the original jurisdiction of the Supreme Court. The AG of Bendel State challenged certain sections of the Revenue (Federation Account Act) of 1981 and pleaded with the court to declare those sections unconstitutional and void.

According to the Attorney General of Bendel State, because the provisions of Subsection 1 and 2 of Section 2 of the Revenue (Federation Account Act) of 1981, state that the Federal Government shall have the power to administer funds to ameliorate ecological problems and to develop mineral producing areas of Nigeria, it ought to be declared unconstitutional and void. In those sections, it was provided that 1% of the 35% to be allocated to the State Government is to be directed to a fund to be administered by the Federal Government, which fund will be used to ameliorate ecological problems and 1.5% of the 35% to be allocated to the State Government will be paid into another fund to be administered by the Federal Government, which

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490 Ngozi Efobi and Naomi Ekop, 'Legal Systems in Nigeria: Overview' <https://uk.practicallaw.thomsonreuters.com/w-018-0292?transitionType=Default&contextData=(sc.Default)> accessed September 22, 2021

491 ibid

492 [1981] NGSC 4; [1981] All N.L.R. 85

fund will be used to develop mineral producing areas of Nigeria. Also, the Plaintiff contended that because Subsection 2 of Section 6 provides for the creation of a Joint Local Government Account Allocation Committee in each state, to ensure that allocations made from the Federation Account and from the state are paid to the local government councils, promptly, it ought to be declared void and unconstitutional.

The AG Bendel State also pleaded a declaration that the government of Bendel State was entitled to the Statement of the Federation Account. The court held that, in the exercise of the power given to the National Assembly by Section 149, the National Assembly should take care not to infringe the powers of the State Government. It stated that there was no part of the said Section 149 that authorized the federal government to use revenue already allocated to the state government on behalf of the state government.

It held that the state government became owners of the revenue allocated to them as soon as it was distributed to them and had to have full control to maintain the principle of federalism. It was also stated that the National Assembly did not prescribe the manner in which the funds allocated to the state government is distributed amongst the States, thus, leaving it within the federal government's discretion and not fulfilling the part of Section 149 of the constitution that provides that the National Assembly will prescribe the manner of distribution.

It was finally held, in view of these considerations, that the National Assembly acted ultra vires, by setting aside some percentages of the state government allocation for purposes to be fulfilled and administered by the federal government.

In the case of *Oruobu v Anekwe and Ors*,[493] the Court of Appeal held that:

[493] [1997] 5 NWLR [Pt. 506] 618 at 634-635.

> By virtue of s. 4(8) of the 1979 constitution,[494] the courts have a supervisory jurisdiction over the exercise of legislative powers by the legislature and the National Assembly or a House of Assembly shall not enact any law that ousts or purports to oust the jurisdiction of the courts.

The supervisory jurisdiction, referred to by the Court of Appeal means that the courts must and generally recognize that the statutory responsibility for performing a given administrative task belongs first and foremost to the administrative agency (or legislative House as the case may be) and that no other person or authority is competent under the law to exercise that function. Therefore, the courts can only review the action taken by the agency solely for the purpose of determining whether or not the agency has acted within the limits prescribed by the enabling statute.[495]

Recently the Court of Appeal also affirmed the power of the court to judicially review the constitutionality of Acts of the National Assembly and Laws of States Houses of Assembly in the case of *National Assembly v Accord.*[496] Where it held as follows:

> Courts of law in Nigeria have the jurisdiction to judicially review the exercise of legislative powers by the National Assembly or by a House of Assembly by virtue of section 4(8) of the constitution of the Federal Republic of Nigeria, 1999 (as amended).

If the legislature makes any law that is in inconsistent with the constitution or any other Act, the courts can declare such law null and void and strike it down. In the case of *Uzodima v COP*,[497] the appellant was tried and convicted of stealing by an area court which refused to allow him a counsel to defend him because section 390 of the Criminal Procedure Code denies a right of lawyers in the area court. On appeal, the High Court of Benue State declared section 390 of the CPC as null and void on the ground that it is inconsistent with section 33 (6) (c) of the 1979 Constitution

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494 Which is impari materia with same S. 4 (8) of the Constitution of Nigeria 1999 as amended.
495 C. A. Ogbuabor, Expanding the Frontiers of Judicial Review in Nigeria: the Gathering Storm, [2011] Nigerian Juridical Review 4
496 [2021] 18 N.W.L.R. [Pt. 1808] 211 at 216
497 [1982] 3 NCLR 325

which provides that any person charged with a criminal offence shall be entitled to defense by a counsel of his choice.[498]

Similarly, in *INEC & Anor v Balarabe Musa & Ors*,[499] the National Assembly passed the Electoral Act 2001, which set out additional conditions an association must meet before being registered as a political party, apart from those already prescribed by section 222 of the 1999 Constitution. The respondent not being satisfied instituted an action in the Court of Appeal. The court declared certain sections of the Act unconstitutional, null and void. Not being satisfied, the defendants appealed to the Supreme Court.

The Court held, in part that Section 79 (2) (c) of the Act was invalid because it was inconsistent with section 40 of the Constitution. In terms of section 45 (1) (a) of the constitution, there is nothing reasonably justifiable in a democratic society in the submission that the restriction is a valid derogation from section 40 by virtue of section 45 (1) (a) of the constitution was erroneous.[500]

Also in *A.G. Ondo State v A.G.and 35 Ors*, the Supreme Court declared sections 26 (3) and 35 of the Independent Corrupt Practices and Other Related Offences Act 2000 unconstitutional, null and void.[501] There are litanies of judicial authorities that have confirmed the power of the judiciary to review both the legislative and executive actions.[502]

In *A.G. Abia state & 35 ors v A. G Federation*,[503] the Electoral Act, 2001 was the subject of contention before the Supreme Court. The Plaintiffs, all the component States of the Federation, contended that some of the provisions of the Act are ultra vires the constitutional powers of the National Assembly and they urged the court to

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498 S. 33 (6) (c) of the Constitution of Nigeria 1999 as amended
499 [2003] 13 NSCQR 39
500 [2003] 13 NSCQR 75–76
501 [2002] 10 NSCQR 1036, 1083–1084.
502 A.G. Abia State & 35 Ors v A. G. Federation [2002] 3 S.C. 106
503 [2002] 3 S.C. 106

accordingly declare the provisions invalid and unconstitutional. Their claims as contained in paragraph 12 of their amended statement of claim, briefly stated, were that; (1) the National Assembly lacks power to enact a law extending or otherwise alter the tenure of office of elected officials of local government councils in Nigeria against the clear provisions of Section 7(1) of the 1999 constitution, (2) the National Assembly lacks power to make laws with respect to the conduct of election into the office of Chairman, Vice Chairman or Councilors of a Local Government Council, (3) Section 25 of the Act has the effect of amending the relevant provisions of the constitution relating to qualification and disqualification of persons seeking election into the public offices without first complying with the provisions of Section 9 of the Constitution on amendment of the constitution, consequently (4) that Sections 15 to 73 and 110 to 122 of the Act are null, void and inoperative, and finally, (5) that the Act "is rendered null and void and inoperative in its entirety.

Delivering the judgment of the apex court, Kutigi, JSC, on the first, second and third claims found for the plaintiffs and declared that the National Assembly lacks powers:

(1) To make laws to increase or otherwise alter the tenure of office of elected officers or councilors of local government councils except in relation to the Federal Capital Territory.

(2) To make laws with respect to matters relating to or connected with elections to the office of the Chairman or Vice Chairman of local government council or to the office of Councilors and;

(3) To make laws with respect to the qualification or disqualification of candidates for elections "without first of all complying with the requirements of section 9 of the constitution.

Consequently, sections 15, 17 – 25, 110–115(1)-(6), 116– 118(1)-(8) and 121–122 of the Act were struck down for "duplication, inconsistency and lack of legislative competence.[504] This judgment is in respect of duplication of sections of the Law already in the constitution, under doctrine of covering the field.[505] See also the case of *Abdulkarim v Incar Nig LTD*,[506] where the Supreme Court, held that it can review court decisions including its own, when the need arises in order to ensure that the country does not suffer under the same regime of obsolete or wrong decisions.

In the case of *Anthony General, Lagos State v Attorney General of the Federation*,[507] the Supreme Court of Nigeria also held as null and void the decision of the federal government to withhold statutory financial allocations due and payable to the Lagos State Government in respect of the 20 existing local governments. The Court of Appeal in the cases of *Attorney General, Plateau State v Goyoi & Ors*,[508] and *Attorney General*, *Benue State v Umar and Ors*,[509] declared the actions of the Plateau State Governor and that of the Benue State Governor, respectively, in dissolving the local government councils in those States as unconstitutional, null and void.[510]

The Laws made by the two State Houses of Assembly which authorized the governors to impede the smooth running of the local government councils were also declared to be unconstitutional, null and void. The actions of the two State governments led to serious tension between the state governments and the elected

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504 [2002] 3 S.C. 106. at 129–132

505 see the concurring judgment of Ogundare, J. supra note 103, 198

506 [1992] 7 NWLR (Pt. 251) 1.

507 [2004] 18 NWLR (Pt. 904) 1.

508 [2007] 12 NWLR (Pt. 1059) 57.

509 [2008] 1 NWLR (Pt. 1068) 311.

510 See also Governor of Akwa Ibom State & Ors v Hon. Peter Umah (unreported) Suit N0. CA/C/30/2001, quoted in E. Okon, Local Government Administration in Nigeria 2003) pp. 193 – 218 where the Court of Appeal upheld the decision of the High Court declaring the dissolution of Ini Local Government Council of Akwa Ibom State by the Governor as illegal. However, the Court of Appeal further held that though the word "dissolution" is missing in the provisions of S. 7(1) of the 1999 Constitution, the House of Assembly which has the powers to make laws to regulate the affairs of a Local Government Council, that is, for establishment, structure, composition and so on, of such council, can make a law for dissolution of an erring local government council and for a bye election. If not there will be chaos and disorder.

council chairmen and councilors who formed themselves into associations to resist the dissolution.[511]

The role of the court in judicial review of legislative and executive actions was further emphasized in the case of *Attorney General, Abia State v Attorney General Federation,*[512] where the Supreme Court of Nigeria, per Tobi JSC, stated that where the National Assembly or the State House of Assembly, in the exercise of its constitutional power to make laws, strays from the constitutional purview of section 4(2) and section 4(7) of the Constitution respectively and a question as to constitutionality or constitutionalism arises, the courts in the exercise of their judicial powers, when asked by a party, will move in to stop any excess in exercise of legislative power. In the recent case of *Ajumon v Governor of Oyo State*[513] one of the impediments to judicial review in Nigeria is the issue of locus standi, which is the legal capacity to institute proceedings in a court of law. In the case of *Adesanya v President of the Federal Republic of Nigeria*,[514] the Supreme Court held that a person has locus standi if he or she can show sufficient interest in the action and that his civil rights and obligations have been or are in danger of being infringed.

This is derived from section 6(6) (b) of the Nigerian Constitution which provides that the judicial powers vested in the courts shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person. However, a major shift in judicial attitude on the requirement of locus standi in public law, manifested in the case of *Fawehinmi v President F.R.N.* where the Court of Appeal held that it will

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511 J. Amupitan, 'The Role of the Courts in Strengthening Democracy at the Local Government Level in Nigeria,' <http://www.ialsnet.org/meetings/constit/.../Amupitanjoash-Nigeria > accessed June, 20, 2022

512 [2007] 12 NWLR (Pt. 1048) 367.

513 [2021] 16 NWLR (Pt 1776) 475

514 [1981] ANLR 1.

definitely be a source of concern to any tax payer who watches the funds he contributed or is contributing towards the running of the affairs of the State being wasted when such funds could have been channeled into providing jobs, creating wealth and providing security to the citizens.[515] Such an individual has sufficient interest in coming to court to enforce the law and to ensure that his tax money is utilized prudently.[516]

Though the Court of Appeal allowed the appeal and held that the Appellant had locus standi to maintain the action, it still stressed the need to amend the constitution on the issue of locus standi and access to court, when it further held as follows:

> It will be appropriate at this point to proffer that for this country to remain governed under the rule of law in view of the controversies the problem of locus standi has generated especially in constitutional matters, it is suggested that any future constitutional amendment should provide for access to court by any Nigerian in order to preserve, protect and defend the constitution.[517]

From the foregoing judicial decision, it is obvious that before an Act or a Law of the Legislature can be set aside the process must be completed after the president has assented to it. The question that now arises is whether a bill that though, already passed by the National Assembly but not yet assented to by the president can be a subject for judicial review. This was the subject matter in the case of *National Assembly v Accord,*[518]where the Court of Appeal was called upon to determine whether the court should exercise its power of judicial review in setting aside Clause 25 of the Amended Electoral Act 2010 which prescribe the sequence order in which the general elections into office of President and Vice President of the Federal Republic of Nigeria, the Governor and Deputy Governor of a State, membership of the Senate, the House of Representatives and the House of Assembly of each State of

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515 [1981] ANLR 1.. at 341.
516 Ibid.
517 Ibid, 343.
518 [2021] 18 N.W.L.R. (Pt. 1808) 211

the Federation should take place before it was assented to by the President even if it was already passed by the National Assembly. The Court held as follows:

> The Legislative Powers of the Federal Government is vested in the National Assembly by section 4(1) of the constitution of the Federal Republic of Nigeria, 1999 (as amended) and the legislative powers of a State is vested on the House of Assembly by section 4(6) of the constitution of the Federal Republic of Nigeria, 1999 (as amended). The constitution does not provide that the courts shall share this power with the legislature. Section 4(8) by giving the court the power of judicial review of the exercise of legislative power by the legislature does not intend that this judicial review jurisdiction should be exercised at the embryonic stage of the law making process before the process becomes law. To allow this would result in the courts dictating the course of the legislative process and the legislative decisions to the legislature. This will erode the freedom, independence and sovereignty of the legislature and violate the principle of separation of power entrenched by sections 4, 5 and 6 of the constitution of the Federal Republic of Nigeria, 1999 as amended. The primary duty of the legislature, which is to legislate, would be bogged down and frustrated by pre-emptive litigations with the result that the making of most laws would have to await the determination of the litigations challenging the process of making those laws. This can disable the legislative arm of government; endanger the rule of law and the governance of the country.[519] There have been judicial reviews by the Nigerian court of the legislators of investigation as provided for in Section 88 of the 1999 Nigerian constitution as amended which is pari-matiria with section 82 of the 1999 constitution.

In the case of the *Senate of the National Assembly v Tony Momoh*,[520] the court held that:

> Section 82(2) is designed to eliminate abuse. Any invitation by the House to any person outside the purposes defined by Section 82(2) of the constitution is invalid. No power exists under the section for general investigation nor for the aggrandizement of the House. So, the appellants were not entitled to have invited the respondent in the first instance.

Also, in *El Rufai v House of Representatives*,[521] it was held inter alia:

> In my view their power under the section is further circumscribed and limited by subsection (2) of Section 82. They can only invite members of the public when they want to gather facts for the purpose of enabling them make law or amend existing laws in respect of any

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519 The Court made reference to the case of [A. G., Bendel State *v* House of Assembly, Bendel State B/166/82 delivered on 9/7/82]

520 [1983] 4 NCLR 269 at 295, Nnaemeka-Agu JCA (as he then was)

521 [2003] 46 WRN 70 at 100, Oguntade JCA (as he then was)

> matter within their legislative competence or as witnesses in a properly constituted inquiry under section 82(1)(b).

Same principle was upheld in the case of *Innocent Adikwu & Ors v Federal House of Representatives of the National Assembly & Ors,*[522] where the court held, inter alia, that the power of investigation of the National Assembly is limited to where they have powers to make law and does not include power to inquire into the source of information of the Plaintiff was held as follows:

> It must be remembered at all times that a free press is one of the pillars of freedom in this country as indeed in any democratic society. Free presses reports matters of general public importance, and cannot, in law be under an obligation, save in exceptional circumstances to disclose the identity of the persons who supply it with the information appearing in its report. Section 36 [now section 39] of the constitution which guarantees freedom of speech and expression (and press freedom) does provide a constitutional protection of free flow of information.

In the case of *Abdulraheem Maina v The Senate*,[523] the Federal High Court set aside the summons of the Senate on the Plaintiff to appear before it, for investigation, for failure to publish in its journal or in the official Gazette of the government of the federation as required by section 88 of the 1999 Constitution; failure to publish the decision/resolution would be deemed that no such investigation has been ordered or directed in the first place.[524] The court further held that where any House of the National Assembly is acting outside the scope of its investigative powers or fails to comply with constitutional requirements, no such act would be deemed to be contemptuous, as the person so summoned would not be bound to honour the summons.[525]

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522 [1982] 3 NCLR 394,

523 *Abdulrasheed Maina v the Senate of the Federal Republic of Nigeria & Ors* (Unreported) Suit No. FHC/CS/65/2013, Ruling delivered by Hon Justice Adamu Bello of the Federal High Court, Abuja on the 27th March, 2013.

524 Abdulrasheed Maina v the Senate of the Federal Republic of Nigeria & Ors, note 349.

525 Abdulrasheed Maina v the Senate of the Federal Republic of Nigeria & Ors, note 349.

The court also made a distinction in the case of *A. G. Bendel State v A. G. Federation*.[526] Where the Supreme Court held that when the constitution spelt out a procedure to be followed in the passing of a bill, that procedure must be followed and any breach will nullify the result - the Act passed. It was not the bill that was passed by the National Assembly which was challenged for its being unconstitutional, but the Act itself which was the offshoot of the bill earlier passed by the National Assembly.

The main question that arises is how effective has the doctrine of judicial review been as a mechanism in making the legislature accountable. By its many judiciary pronouncements, the Courts in Nigeria has been active in setting aside any law made by the legislature that is ultra-vires its powers. This mechanism acts as a check on the legislature collectively. For it to be very effective, the judiciary needs to be independent, its agreed that the Nigeria judiciary especially at the national level has displayed some form of independence. At the state level it cannot be said to be so, the latest constitutional amendment giving state judiciary autonomy should be encouraged and implemented to the latter.

In the recent case of *Ajuwon v Governor of Oyo State*[527] the Supreme Court set aside Sections 11 and 21 of the local government law of Oyo State which provided for the dissolution of duly elected local government councils and removal of democratic elected local government chairman or councilors and replace them with hand-picked non-elected transition/caretaker committees by the governor of the state for being inconsistent with the provision of Section 7 (1), of the 1999, Nigeria constitution (as amended). The case also dealt with and settles the issue of locus standi.

However, Nwabueze is of the opinion that judicial review should be peripheral and occasional, but its deferent effect is spread like net all over the whole lengths and

[526] [2021] 18 N.W.L.R. [Pt. 1808] 211 at 14
[527] [2021] 16 N.W.L.R, [Pt. 1803], 411 at 502-505.

breath of Nigeria jurisprudence.[528] He laments however, that in Nigeria, the constitutional democracy transmitted in May, 1999 is one that exist legally on pages of the constitution.[529] Oyewo, on the other hand observed that constitutional provisions that foster constitutionalism and rule of law are not being effectively enforced in Nigeria, and there is the need for the various arms of government, especially the legislature and the judiciary to be alive to their constitutional duties.[530]

This study avers that the admonition that judiciary review should be used minimally or peripherally and occasionally, should only be applicable in advanced democracies like that of the USA. In young and developing democracies like Nigeria, it should be applied as often as possible in other to check abuse of both legislative and executive powers. Until the practice of democracy is matured and institutionalized, the mechanism of judicial review should be deployed as many times as possible to check the excesses and abusive tendencies of the legislature and executive in order to hold them accountable. The significance of judicial review cannot be over emphasized. It is agreed that the courts power to scrutinize the actions of the other institutions of government should be sustained.[531] These mechanisms of judicial review have been very effective in checking the legislature so that they do not act ultra-varies to their constitutional powers.

3.3.8 Suspension from Plenary

Suspension from plenary is another internal mechanism by which the legislature disciplines its members. The legislature has consistently used suspension to practically remove or truncate a legislator's tenure. There is however no constitutional justification for the use of suspension as a disciplinary mechanism. The provision of section 68 (1) of the Nigeria Constitution does not provide suspension as

528 B. O. Nwabueze, Judicialism in Commonwealth Africa (London: C. Hurst & Co. Ltd., 1977) 229.
529 [1968] A C 997.
530 *Abacha v Fawehinmi* [2000] 6 NWLR [Pt. 660] 228.
531 A. T. Shehu, *Judicial Review: Still IN Search of the True Foundation* <https://ssrn.com/abstract=1331535> accessed 21st, April, 2020

a ground for disciplining a legislator to hold him accountable. In spite of these, the mechanism for suspension has become a tool in the hands of the legislature to sanction erring members.

Adebite, avers that apart from recall and removal for non- attendance which are provided for in the constitution through which a member may lose his mandate of representation, suspension in practice has been applied inappropriately in some cases to deprive and truncate lawmakers' mandate prior to the expiration of their tenure.[532]

The argument by the proponents of suspension of members of the legislature is that it is provided for in their rules and the Legislative Houses (Powers and Privileges) Act.[533] However some states also have similar Laws, for example the old Bendel State Law which is applicable in Edo State, Section 31 (1) of the Law,[534] provides as follows; "Subject to the provisions of this section, the punishment which may be imposed by the House for an offence under this part shall be the administration by the President or the Speaker of a reprimand at bar of the House or removal from the precincts of the House or Both".

Subsection (2) provides in the case of an offence committed by a member of the House may, in addition to or instead of any punishment specified in subsection (1) of this section, order his suspension from the service of the House for such period at it may determine. Provided that such period shall not extend beyond the last day of the meeting next following that in which the order is passed, or of the session in which the order is passed. The rules of the House of Representatives and the Senate usually make the duration of the suspension not more than 14 days.[535]

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[532] Kehinde Adegbite, 'The Law and Politics of Tenure Truncation of the Legislature in Nigeria', [2019] *Journal of International Law and Strategic Studies (JILSS)* 131

[533] S. 21 (1) & (2) of the Legislative Houses (Powers and Privileges), Act 2018.

[534] The Legislative Houses (Powers and Privileges) Law, Cap, 87, Laws of Bendel State.

[535] See Order 5, Rule (4) of the House of Representatives Rules.

In order to put this issue in proper perspective, it is necessary here to quote verbatim the constitutional provision of section 68 (1),[536] which sets out various grounds under which a legislator may lose his seat. The section provides as follows:

(1) A member of the Senate or of the House of Representatives shall vacate his seat in the House of which he is a member if-

a. he becomes a member of another legislative House;

b. any other circumstances arise that, if he were not a member of the Senate or the House of Representatives, would cause him to be disqualified for election as a member;

c. he ceases to be a citizen of Nigeria;

d. he becomes president, vice-president, governor, deputy governor or a minister of the government of the federation or a commissioner of the government of a state or a special adviser;

e. save as otherwise prescribed by this constitution, he becomes a member of a commission or other body established by this constitution or by any other law;

f. without just cause he is absent from meetings of the House of which he is a member for a period amounting in the aggregate to more than one-third of the total number of days during which the House meets in any one year;

g. being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected: Provided that his membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of

[536] of the Constitution of Federal Republic of Nigeria 1999, as amended.

two or more political parties or fractions by one of which he was previously sponsored; or

h. the President of the Senate or, as the case may be, the Speaker of the House of Representatives receives a certificate under the hand of the Chairman of the Independent National Electoral Commission stating that the provisions of section 69 of this constitution have been complied with in respect of the recall of that member.

(2) The President of the Senate or the Speaker of the House of Representatives as the case may be, shall give effect to the provisions of subsection (1) of this section, so however that the President of the Senate or the Speaker of the House of Representatives or a member shall first present evidence satisfactory to the House concerned that any of the provisions of that subsection has become applicable in respect of that member.

(3) A member of the Senate or of the House of Representatives shall be deemed to be absent without just cause from a meeting of the House of which he is a member, unless the person presiding certifies in writing that the absence of the member from the meeting was for a just cause.

The Courts in Nigeria have countless times intervened to interpret the above provision in several cases. However before analyzing some of them**,** there are many instances where the National and State Assemblies have suspended their members for different reasons, mostly on frivolous grounds, few will suffice here.

3.3.8.1 Instances of cases of suspension of members of the legislature

(a) The suspension of Hon, Dino Maleye and 10 others, from the House of Representatives in June, 2010[537]

[537] The others were, Hon West Idahosa, Austrin Nwachuduwal and Gbenga Onigbogi, Doris Uboh and Gbenga Oduaye, and Independence Ogunewe and A. Solomon and Kayode Musa and Anas Ablass and Bitrus Kaze

(b) Suspension of Hon. Jibrin Abdulmumin[538]

(c) Suspension of Senator Ali-Ndume[539]

(d) Suspension of Senator Ovie Omo-Agege[540]

(e) Others

A. The suspension of Hon, Dino Maleye and 10 others, from the House of Representatives in June, 2010

The motion to suspend them was moved by Hon Chile Ogbuagu, who stated that the members were making allegations that the House was corrupt. He cited section 60 of the CFRN 1999 and section 24 of the legislative Houses (Powers and Privileges Act 2018) to buttress his point. But Ogbuagu had hardly concluded his observation when some members booed him while chanting points of order. Hon. Doris Ugoh and Hon. Dino Melaye then went to Ogbuagu and snatched the paper he was reading from him. This action sparked off commotion in the House and a free for all ensued. Some members in the process were beaten to stupor while the sergeant-at-arm protected both the mace and the Speaker. In response to the assault on Hon Ogbuagu by the aggrieved members, others who were apparently in the majority resolved that the members causing crisis in the House should be sent out of the chamber and suspended.[541]

The motion was seconded by Hon Sehu Garba Natasu. The House simultaneously adopted the motion and the members were suspended indefinitely. The Speaker, while clarifying the resolution of the House, stated that in line with Order 10, Rule 5 (6) that the members will be suspended till the end of the legislative year, which is June 2011.[542]

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538 Lawmaker from Kano state

539 'Who can Suspend a Lawmaker', *The Nation Newspaper*, (April, 24, 2018) 22

540 'Sen. Omo-Agege absent from Tuesday sitting', *Vanguard Newspapers*, (May 15, 2018) 7

541 "Reps members exchange blows, melaye, others suspended for 1 year," PM News, June 22, 2010.

542 "Reps members exchange blows, melaye, others suspended for 1 year," PM News, June 22, 2010.

B. Suspension of Hon. Jibrin Abdulmumin [543]

Another notable suspension was that of Hon. Jibrin Abdulmumin, he was the Chairman of the Appropriation Committee in the 8th House of Representatives. He accused the leadership of the House of budget padding in respect of insertion of constituency projects into the budget. In a motion moved on 28th, September, 2016 by the House Ethics Committee Chairman, Nicholas Ossai, and adopted by the whole House, Mr. Jibrin Abdulmumin will also not be able to hold any position of responsibility for the span of the current National Assembly.[544]

C. Suspension of Senator Ali-Ndume[545]

The Senate on March 30, 2017, suspended Ali Ndume, the former Majority Leader for 90 legislative days (six months). Ndume is representing Borno South Senatorial District at the Red Chamber of the National Assembly. He was suspended for six months for raising a matter that the Senate investigates public allegations of impropriety against the Senate President, Bukola Saraki, and another Senator, Dino Melaye and for bringing Melaye, his colleagues, and the institution of the Senate to unbearable disrepute.[546]

D. Suspension of Senator Ovie Omo-Agege[547]

Another example is the suspension of Senator Omo-agege from the 8th Senate. The Senate on April 2, 2018, suspended Sen. Ovie Omo-Agege (Delta-APC) over a "dissenting comment'' on the decision of the Upper Chamber on adoption of the conference report on Electoral Act 2010 Amendment Bill. Omo-Agege's suspension which was based on his comment that amendment to section 25 of the Electoral Act, 2010 as amended, bordering on reordering of elections sequence was targeted at President Muhammadu Buhari.

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543 Lawmaker from Kano State
544 'House of Reps. Suspends Jibrin', *Premium Times*, (September, 28, 2016)
545 'Who can suspend a lawmaker, *"The Nation Newspaper*, (April, 24, 2018), 22
546 ibid
547 'Sen. Omo-Agege absent from Tuesday sitting', *Vanguard Newspapers*, (May 15, 2018)

E. Others

There are other numerous examples especially at the State Houses of Assembly. A few examples will suffice, in June 2012, a female lawmaker[548] in the Bauchi State House of Assembly was suspended by the leadership of the House because of the dissenting opinion she expressed on the House's decision to relocate the headquarters of Tafawa Balewa local government.[549]

Similarly, in Zamfara State, it was reported that the majority leader of the State House of Assembly, Alhaji Salisu Musa Tsafe, engaged in physical combat with the state governor's driver over a lady in public. The house reacted by first impeaching him as the Majority Leader and subsequently suspended him for the remaining part of his tenure in the House.[550]

In Kaduna, the House of Assembly suspended three members from all legislative activities for a period of nine months. They were two immediate former deputy speakers of the House, Mukhtar Isa-Hazo from Basawa constituency and Nuhu Shadalafiya from Kagarko constituency, as well as the lawmaker representing Makera constituency, Yusuf Dahiru.

They were suspended on 16th of June 2020, after the adoption of the report of the committee set up to investigate the immediate and remote causes of the fracas. The report recommended their suspension.[551] In Kwara State, the only PDP member of the House was suspended on 13th July 2021, over alleged contempt and abuse of

548 Adesomoju Ade, 'Suspension of Lawmaker, Violation of Constituents' Rights- Court', *Wordpress,* (January 29, 2015)

549 Kehinde N. Adegbite, note 242.

550 Ibid.

551 'June 11th fracas Kaduna Assembly suspends three', *Channel News*, (June, 16, 2020), <https://www.channelstv.com/2020/08/11/june-11-fracas-kaduna-assembly-suspends-three-lawmakers-for-nine-months/> accessed August 11, 2021

privilege. The Edo State House of Assembly on 22nd of February 2010 following a violent change of the leadership of the House suspended 6 members of the House.[552]

In most of the suspensions cited as examples and others, the victims always challenged the legality in court. In 2010, Hon Dino Maleye and others sued the Speaker, House of Representatives over their suspension. In the unreported case of *Hon. Dino Maleye & 4 ors v the Speaker, House of Representatives & 2 Ors,*[553] where the Federal High Court, Abuja held that the House of Representatives had no power to suspend the Plaintiffs for more than 14 days in line with the provisions of Order x (rule 5(4) of the rules of the House. The court declared the suspension null and void and ordered their re-instatement to the house.

The next judicial intervention was the case of *Hon. Francis Okiye v Speaker Edo State House of Assembly*, and [554] the same sister's case of *Levis Argbogun v Edo State House of Assembly.*[555] In Okiye's case the Claimant brought this action by way of a Complaint, dated 28th of December 2011 and filed on 23rd of January, 2012, seeking a declaration that the claimant is entitled to arrears of his monthly salary and monthly overheads from March, 2010 to May 2011 and severance allowance, the suspension placed on him by the 1st Defendant on 22/2/2010 having lapsed by the operation of law on the 24/2/2010.

The facts of the case briefly put are that the Claimant was elected a member of the Edo State House of Assembly to represent Esan North East constituency I following the general election in 2007. He was sworn in as such for a term of four years on 5/6/2007. Then on 22/2/2010 there was a change in the leadership of the House of Assembly and the claimant along with others were suspended. After the

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552 'Edo State House of Assembly in free for all', *Vanguard Newspaper*, (February, 22 2010) <https://www.vanguardngr.com/2010/02/edo-state-house-of-assembly-in-free-for-all/> accessed 9, November, 2021

553 Suit no FHC/CS/480/2010

554 Unreported in suit No. NIC/EN/06/2012

555 Suit No. NIC/EN/07/2012

claimant's suspension the 1st defendant continued to sit until its tenure expired on 4/6/2011. The claimant has alleged that he was prevented from continuing to sit by the 1st defendant after the 24th day of February 2010 up until the tenure of the House expired. The Defendants on the other hand maintained that the suspension on the claimant was lifted validly on the 20th of December 2010 but the claimant refused to resume sitting. The claimant has now come to court to claim for arrears of his salary, severance allowance and overhead costs.

After reviewing the case and considering sections 31 & 32 of the Legislative Houses (Powers and Privileges) Law the court held that indeed the House of Assembly has the power rightly to suspend a member of the House from the sitting of the House, but then such power has been circumscribed by the said law that gave it such power. Thus while the House of Assembly can suspend a member such suspension is limited to what has been provided in the proviso to the said Section 31(2) of the Legislative Houses (Powers and Privileges) Law of Bendel State, applicable to Edo State. The Proviso limits the duration of the suspension to "the last day of the meeting next following that in which the order is passed, or of the session in which the order is passed, whichever shall first occur".

The locus classicus on the illegality of suspension was the celebrated case of the Speaker, *Bauchi House of Assembly v Honourable Rifkatu Danna*,[556] where the Court of Appeal affirmed the judgment of the Bauchi State High Court, which had set aside the indefinite suspension of the respondent as a member of the Bauchi State House of Assembly. The court held as follows:

> The fact that the respondent was re-elected for another four-year term by the people of Bogoro constituency in Bauchi State to represent them in the House of Assembly was to ensure that she had the right to be in the House of Assembly for another four-year term to serve the constituency without undue interference. Secondly, it was to ensure that the constituency is represented in the Bauchi State House of

[556] [2017], 14 WRN 52.

> Assembly for the four-year lifespan of the Assembly. That is why Section 117(1) of the constitution provides as follows: "117(1) Subject to the provisions of this constitution, every state constituency established in accordance with the provisions of this part of this chapter shall return one member who shall be directly elected to a House of Assembly in such manner as may be prescribed by an Act of the National Assembly.

To suspend the respondent indefinitely is to preclude her from participating in the deliberations of the Bauchi State House of Assembly. The resultant effect is to deny Bogoro Constituency participation in the deliberations of the Assembly through their chosen representative. But, the Bogoro constituency has the right to be represented in the Bauchi State House of Assembly.

The court continued thus "in our humble opinion, any member of the Bogoro constituency could have timeously challenged the indefinite suspension of their choice representative in the Bauchi State House of Assembly on the grounds that their accrued rights had been violated or breached by the appellants. The conduct of the appellants is the tyranny of the majority against an elected minority of the Bauchi State House of Assembly. Even where there is a petition to recall a serving member of the House of Assembly, the Independent National Electoral Commission, INEC acts timeously within ninety days of the date of the receipt of the petition from the constituency to fill the vacancy. See Section 110 (a) and (b) of the constitution. That is not so in this regard. The exercise carried out by the appellants constitutes a mockery of democracy".

The Court referred to a South Africa case of the *National Assembly v Patricia De Lille MP & Anor*.[557] Where the respondent, a member of the South African National Assembly made several unsubstantiated allegations against other members in the course of a debate. On being reprimanded by the Speaker, the respondent unconditionally withdrew her remarks. Despite this, the South African House of

[557] [1999] ZASCA 50; [1999] 4 All SA 241 (A)

Assembly punished the member by suspending him for fifteen days. The suspension was challenged in the High Court of Justice. The High Court set aside the suspension. The National Assembly appealed to the South African Supreme Court. The Court held as follows:

> There is therefore nothing in the 'rules and orders' of the Assembly, which qualifies in any respect relevant to the appeal, the right to freedom of speech in the Assembly which Section 58(1) guarantees. More directly, there is nothing which provides any constitutional authority for the Assembly, to punish any member of the Assembly, for making any speech, through an order suspending such member from the proceedings of the Assembly. The right of free speech in the Assembly protected by Section 58(1) is a fundamental right crucial to representative government in a democratic society. Its tenor and spirit must conform to all other pro visions of the constitution relevant to the conduct of proceedings in parliament. In the result, the appellant has failed to persuade me that the National Assembly had any constitutional authority to suspend the respondent from the National Assembly in the circumstances disclosed by the evidence adduced before the High Court.

The Court defined suspension as the act of temporarily depriving a person's rights and privileges, especially in his office or profession. It should be the temporary withdrawal of privileges and rights from either an employment or an office pending the happening of certain events. But, to suspend a member of a House of Assembly indefinitely since 7th June 2012 is to muzzle the respondent's freedom of expression. It is a violation of the respondent's constitutional rights and those of Bogoro Constituency whom the respondent represents in the Bauchi State House of Assembly.

The Court relied on articles 8 & 9 of the African chapter and section 40 of the constitution, when it held further that “Articles 8 and 9 of the African Charter on Human and Peoples' Right (Ratification and enforcement) Act, 1983, guarantees freedom of conscience, the right to receive and disseminate information and to express opinions within the ambit of the law. The acts of the appellants violated these rights without lawful justification.

3.3.8.2 No law empowers lawmakers to suspend colleagues

To suspend the respondent indefinitely is to preclude her from participating in the deliberations of the Bauchi State House of Assembly. The defendants dissatisfied with these erudite ruling, appealed to the Supreme Court and filed motion for stay of execution of the judgment of the appeal Court but the Supreme Court declined. They subsequently abandoned the appeal.

One of the striking features of this judgment is the angle of representation it elucidated. It stated clearly that constituents cannot be deprived of their representation by indefinitely suspending a member as she was duly elected by the people. The only way to remove a lawmaker before the end of his tenure is through the constitutional provision of the mechanism of recall or by the courts. This was aptly captured by Femi Falana SAN when he said that:

> No legislative House can suspend or remove a member. It is only a court of Law or the constituency that elected them can order the removal or suspension of their Representative, This is because when you remove or suspend a legislator, his constituency no longer has a representative in that House and that is not legal.[558]

Senator Ndume challenged his suspension in court and on November 10, 2017, the Federal High Court Abuja, declared his suspension illegal and ordered that he be paid all his outstanding salaries and allowances[559]. Baba Funde Quardri, Judge held as follows:

> The suspension of the plaintiff (Ndume) is hereby declared illegal, unlawful and unconstitutional. The purported suspension contained in the letter of March 30 is hereby set aside. "The first and second defendants (the Senate president and the Senate) are hereby directed to pay the plaintiff his outstanding salaries and allowances forthwith.

The judge, however, refused to grant the N500 million damages Ndume asked the court to award him. The Senate appealed the judgment but was later abandoned. Hon Abdulmumin Jibrin, challenged his suspension in court but eventually a political

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[558] 'No legislative chamber has power to suspend or remove a member,' *The Cable News paper* (APRIL 19, 2018)

[559] 'Who can suspend a lawmaker,' *The Nation* Newspaper (April, 24th , 2020), 22

solution was used to resolve the matter and his suspension was lifted in March, 13th, 2017, after he wrote an apology letter to the House.

Senator Omo-Agege also challenged his suspension in court and the Federal High Court relying on Ndume's case,[560] set aside the suspension saying the Senate could not suspend a member beyond 14days.[561] The Senate appealed the ruling but in a statement while it was waiting for a stay of execution, it would not stop the lawmaker from resuming plenary. The stay of execution was not granted by the Court of Appeal. As usual the appeal was abandoned.

It is pertinent to say that the gale of suspensions in the legislature is worrisome as it is clearly unconstitutional as held by the various courts in cases earlier referred to above. This study believes that the provision of section 21 (1) & (2) of the Legislative Houses (Powers and Privileges), Act 2018, limits the duration by which a member of a legislative House can be suspended. The Act also regulates the conduct of members and other persons connected with the proceedings thereof and for matters concerned therewith.

Section 21, titled "Contempt of a Legislative House by members", states: (1) any member of a Legislative House who:-

> (b) being a member of a committee of the House, publishes to any person not being a member of such committee any evidence taken by the committee before it has been reported to the House; or
>
> (C) Assaults or obstructs a member of the Legislative House within the Chamber or precincts of the House; or
>
> (d) Assaults or obstructs any officer of the Legislative House while in the execution of his duty; or
>
> (e) Is convicted of any offence under this Act, shall be guilty of contempt of the Legislative House.
>
> (2) Where any member is guilty of contempt of a Legislative House, the House, may by resolution, reprimand such member or suspend him from the service of the House for such period as it may

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560 The Nation Newspaper, note 385, 23.

561 'Sen. Omo Agege Absent from Tuesday Sitting,' *Vanguard Newspaper*, (May 15, 2018)

> determine: Provided that such period shall not extend beyond the last day of the meeting next following that in which the resolution is passed, or of the session in which the resolution is passed, whichever shall first occur.
>
> (3) No salary or allowance payable to a member of a Legislative House for his service as such shall be paid in respect of any period during which he is suspended from the service of the House under the provisions of this section.
>
> (4) Nothing in this section contained shall be construed to preclude the bringing of proceedings, civil or criminal, against any member in respect of any act or thing done contrary to paragraph (b) or (c) of subsection (1) of this section.

Section 22 further says that, "a suspended member should be excluded from Chambers and precincts:-

> A member of a Legislative House who has been suspended from the service of that House shall not enter or remain within the Chamber or precincts of the House while such suspension remains in force, and, if any such member is found within the Chamber or precincts of the House in contravention of this section, he may be forcibly removed therefrom by any officer of the House and no proceedings shall lie in any court against such officer in respect of such removal.

This study is of the opinion that Section 22 thereof is in conflict with the constitutional provision of sections 6 (b), 40 and 69 which makes elaborate provision for a recall of a member. The courts have rightly declared laws or House rules under which the legislature suspends its members as null & void.

Comparatively, although there are instances of suspension or expulsion of lawmakers in the U.S. these has to be done by two-thirds majority votes. It is however scarcely used. Only 24 Senators have been expelled or censured in over 215 years of American Democracy.[562] In terms of representation and accountability, the mechanism of suspension is a weak one as it tends to supplant the power of constituents to recall their representatives.[563]

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[562] 'Who can Suspend a Law Maker', *The Nation Newspaper* (April 24, –2020), 22
[563] Ibid.

3.3.9 Restricted Immunity

Immunity is a word derived from the Latin word "immunities" which Romans used in describing the exclusion of an individual from service or duty to the State.[564] Immunity means a special or exceptional right or a protection enjoyed by a particular class of persons or individuals, which is not available to the rest of the people.[565] Legislative immunities are those which are enjoyed by the legislative assembly collectively, its committees, and its members individually without which they cannot discharge their functions efficiently and effectively.[566] It has a correlation with the word "privilege" in the sense of immunity under the law. The term "privilege" in relation to parliamentary privilege, refers to immunity from the ordinary law which is recognized by the law as a right of the Houses and their members.[567]

Game, defines privilege as, a special legal right, exemption, or immunity granted to a person or class of persons, an exception to a duty. A privilege grants someone the legal freedom to do or not to do a given act. It immunizes conduct that, under ordinary circumstances, would subject the actor to liability. Parliamentary privilege means the privilege protecting:

1. Any statement made in legislature by one of its members and
2. Any paper published as part of legislative business.[568]

The most known immunity is that related to the executive where they are not liable for both criminal and civil acts while they're in office. In Nigeria, section 308 of the constitution provides for the immunity for president, vice president, governor

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564 Silverstein, Arthur. 'The History of Immunology' (1999) in W. E. Paul, (Ed.) *Fundamental Immunology* (4th Ed Philadelphia: Lippincott-Raven Publishers, 2000). 34

565 M. V. Pylee, 'Free Speech and Parliamentary Privileges in India', [1962] 35(1) *Pacific Affairs* 11 In G. O. Arishe, *Rethinking Legislative Immunity in Nigeria,* [2015] 6 (1) *Ebonyi State University Law Journal*, 190.

566 G. O. Arishe, 'Rethinking Legislative Immunity in Nigeria', [2015] 6 (1) *Ebonyi State University Law Journal*, 192.

567 Rosemary Laing ed, 'Parliamentary Privilege: Immunities and Powers of the Senate' (Practice and Procedure, 2016) <https://www.aph.gov.au/about_parliament/senate/practice_ and_procedure/odgers_australian_senate_practice/chapter_02> Accessed 19, July, 2022

568 Garner B A, *Black's, Law Dictionary* (Thomson West, 2004).1234-35

and deputy governor from criminal or civil prosecution while in office. However this study is concerned with legislative immunity. It can be defined as immunity of a legislator from civil legal responsibility arising from the performance of his legislative duties[569]. It is a system in which members of a legislature are granted partial (or restricted) immunity from prosecution from civil or criminal offences.[570]

The rationale of the immunity clause, generally is based on the belief of practical obligation. It is important to state at this point that the same belief of practical obligation applies in international law in relation to diplomatic immunity and the immunity of Heads of State. This belief advocates the protection of political office holders enjoying the benefit of immunity from legal action or prosecution to permit them to carry out their functions without disturbance.[571]

Historically, the origin of parliamentary immunity dates back to a session of the English Parliament in 1397, when the House of Commons passed a bill denouncing the scandalous financial behavior of King Richard II of England. Thomas Haxey, the member who was behind this direct act against the King and his court, was put on trial and sentenced to death for treason.[572] Following the pressure applied by the House of Commons, however, the sentence was not carried out, and Haxey received a royal pardon.[573]

This event prompted the House of Commons to review the right of members of parliament to discuss and debate in complete autonomy and freedom, without

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569 Bryan A. Garner, note 394, 766.

570 'Rules on Parliamentary Immunity in the European Parliament and the Member States of the European Union', [2001] *European Centre for Parliamentary Research and Documentation* 6.

571 Abangwo Nzeribe and Adekunbi Imosemi, 'Who is Immuned; The Office Holder or His Assets? A Legal Analysis of Immunity in the three Arms of Government In Nigeria.' [2017] (15) *Abia State University Journal of Jurisprudence, International and Public Law*. <https://papers.ssrn .com/sol3/papers.cfm?abstract_id=3271136> accessed September 22, 2021

572 L R Yankwich, 'the immunity of Congressional Speech: It Origin, Meaning and Scope', [1951] *G. M. Trevelyan* 960-962. in P. S Watson, *Legislative Immunity in Minnesota,* [2008] 98, <http://malto.peter.wattson@senate.leg.state.mm.us.> or <www.senate.leg.mn.us/department/scr/.../immunity/legimm> accessed on 19/06/2021.

573 Robert. M. Henanaere, *The Immunities of Members of Parliament*, (Geneva: Inter-Parliamentary Union, 1998). 105-111

interference from the Crown. Freedom of speech, introduced into the House of Commons at the beginning of the sixteenth century was confirmed in the 1689 Bill of Rights, which expressly protected discussions and acts of members of parliament from any form of interference or objection from outside parliament.[574]

In the United States of America, the Supreme Court rationalized the concept of legislative privilege and immunity in the case of *Tenny v Bradlove*,[575]as follows:

> In order to enable and encourage a Representative of the public to discharge his public trust with fairness and success, it is indispensably necessary, that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of everyone, however powerful, to whom the exercise of that liberty may occasion offence.

The legal framework in Nigeria for partial or restricted immunity for legislators can be found in the Legislative Houses (powers and privileges) Act.[576] Section 3 provides:

> no civil or unlawful proceedings may be commenced against any person who is a member of legislative House in respect of words spoken before that house or committee or with regards to words written in a report to that‖ legislative House or to any committee of the House or in any petition, bill, resolution, motion or question brought or introduced by him therein.

There are two special types of legislative immunities**:**

(a) The exemption from arrest while attending a session of the body to which the member belongs excluding any arrest for treason, breach of peace or a filmy or

(b) The exemption from arrest or question for any speech in debate entered into during a legislative session.[577]

Some countries, like the United States, adopt a narrow scope of immunity, restricting protection to actions and statements that the legislator undertakes directly

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574 P. S. Watson, note 398.
575 341 U. S At 373(1951).
576 The Legislative Houses (Powers and Privileges) Act 2018.
577 Bryan A. Garner, note 394, 1234-35 see also United States of American's Constitution, Article 1 section 6.

in his or her capacity as a politically elected representative and lawmaker.[578] If the legislator engages in illegal activity outside his or her legitimate role as a representative, he or she is subject to investigation, prosecution, trial and potentially punishment like any other citizen.[579]

Imam and Mustapha state that the reasons why legislative immunity is significant in any democratic society are that:

a. It allows the legislature enjoy the supervisory role of the citizen body with oversight function.
b. The parliamentary immunity helps to ensure free flow and unhindered speech and debate in their legislative functions, so that the electorates are well informed about proposals and their merits, which will affect them when passed into law.
c. It gives the citizen confidence to appear before the house or committees of the house either as a witness or to make their contributions to legislative bills, proposal or matters of national interest without fear of intimidation, arrest or prosecution.
d. The parliamentary immunity affords them the opportunity to scrutinize, criticize, or vote against the wishes of the executive, or that, which may undermine accountability in governance or against the interest of the people they are representing. [580]

Legislative immunity extends to conducts of inquiries. Legislative Assembly or Parliament's major function in Nigeria and the world over is to legislate.[581] It also

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578 S. Magee, Rules on Parliamentary Immunity in European Parliament and Member States of the European Union, (Bussels: European Parliament, ECPRD, 2001) 12.

579 Salisu Buhari former Speaker of the House of Representative between 1999-2000 was prosecuted and convicted for using fake Toronto result for election into the House.

580 In Ibrahim Imam and M. A. Abdulraheem Mustapha, note 296, 3 .The failed third term bid of Olusegun Obasanjo is a typical example for the need to ensure immunity in Parliament.

581 S. 4 of the Constitution vested the Legislative power of the Federation in the National Assembly and Houses of Assembly.

covers the operation of committees of the legislature. In Nigeria legislation dealing specifically with individual committee and standing orders and resolutions of the Legislative Assembly that govern the activities of the various committees reinforces the power to call witnesses, compel attendance and answers and require the production of documents.[582]

Witnesses appearing before parliamentary committees are also accorded the same immunities and privileges as witnesses appearing before court.[583] It starts from the introduction of bills, reading, debate at plenary or committee levels and eventual passage into law. It includes voting or refusing to vote for the passage of bills into law, to seat or unseat a member, confirmation of an executive appointment, impeachment, declaration of state of emergency, ratification of treaty or declaration of war are all legislative activities which enjoys legislative immunity.[584] There is immunity that covers the whole House usually referred to as inviolability.[585] This entails that the approval or permission of the leadership of the legislature is needed. The scope of inviolability varies according to the degree of protection afforded to members: it may thus be the case that, unless the House concerned has given its prior authorization, members are protected only from arrest or, in addition, from enforcement of particular measures such as searches or, more widely still, from summons before a court or indeed any form of criminal proceedings,[586] especially at a pertains to criminal prosecution.

The legislative Houses (powers and privileges Act) provides:-

> Notwithstanding anything in any written law no processes issued by any court in Nigeria in the exercise of its civil jurisdiction shall be served or executed within the chamber or precincts of a Legislative House while that House is sitting or through the president, Speaker or

582 S. 62 and 103 of the Constitution of Nigeria 1999 as amended.
583 S. 4 of the Legislative Houses (Powers and Privileges) Act 2018.
584 P. S. Watson, note 398.
585 Ibrahim Imam and M. A. Abdulraheem Mustapha, note 296.
586 O. H. Philip, *Constitutional and Administrative Law*; (Sweet & Maxwell, 1970) 14-15

> any officer of a Legislative House.[587] Neither the president nor Speaker, as the case may be of a Legislative House nor any officer of a Legislative House shall be subject to the jurisdiction of any court in respect of exercise of any power conferred on or vested in him by or under this Act or the standing orders of the Legislative House, or by the constitutions.[588]

Unlike non-liability, inviolability is effective only during the period of the parliamentary mandate, and ceases to have effect after this has expired. Legal action is thus only postponed and not permanently prevented.[589] Once it is determined that the activities of a legislator fall within the parameter of legislative activities, the immunity or protection of speech, debate or vote is absolute.[590]

Legislative immunity is personal and belongs to individual member of the Legislative Assembly; it may be asserted or waived as each individual legislator wishes. Note also that the immunity against civil action continues even after a legislator has ceased to be in the House.

There are some limitations to legislative concept of immunity. The Nigerian Legislative Houses (powers and Privileges) Act[591] provides that:

> (1) Subject to the provision of this section, no meeting of more than fifty persons shall be conveyed or held within a radius of one mile of a Legislative House during any sitting day, and any meeting conveyed or held contrary to the provisions of this subsection, shall be deemed to be a sections meeting.
>
> (2) Nothing in this section shall be construed to apply to any meeting conveyed or held,
>
> (a) For the transaction of the business of a legislative House or
>
> (b) For any religious, chartable or scientific purpose. or

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587 S. 31 of the Legislative Houses (Powers and Privileges) Act 2018.

588 S. 30 ibid.

589 S. Magee, *Rules on Parliamentary Immunity in European Parliament and Member States of the European Union*, (Bussels: European Parliament, ECPRD, 2001); see also Masson's Manual of Legislative Procedure, (2000) 411-412; <http://www.wikipedia.com/Lgislative_immunity> accessed on 10/04/2021, for instance in India, protection against arrest extend to 30days before and ceased after 40 days of the session, Nigeria, Belgium United Kingdom immunity last for duration of the session.

590 Absolute defence is a complete defence to defamation and may be used as a defence in cases of proceeding before the courts or Houses of Assembly or where public policy demands see *Ojemen v Punch Newspaper Nig Ltd* [1996] 1 NWLR (pt 427) 70.

591 S. 33, Legislative Houses (powers and Privileges) Act 2018.

(c) For any other purpose with the consent of the President or Governor given on such terms as he may think fit.

(3) Every person who convenes, gives notice of or attend any meeting prohibited by this section, or as owner or occupier of any premises consents by any means to the use of the premises for the purpose of such a meeting, shall be guilty of an offence and be liable on summary connection to a fine of not less than one hundred naira or to imprisonment for a term not less than (6) six months or to both.

The limitation to restricted legislative immunity is as follows:

i. Speeches delivered outside parliament, press releases and so on, are non-legislative, therefore, legislators are accountable to the law for their action that fall within this limitation and accordingly can legally be questioned.[592]

ii. Note that while immunity may protect a legislator against intimidation molestation and threat of prosecution by authorities, it will not practically protect the maltreatment of the minority legislators by the majority in the House.[593]

iii. Unconstitutional procedure for enactment of legislation, thus legislative immunity does not prevent a court from issuing a declaratory judgment that the procedure used by the legislature was unconstitutional.[594]

iv. Legislative immunity does not protect otherwise legislative acts that are taken without legislative authority.

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[592] If a legislator delivered such a speech to the assembly, (whether it's considered offensive or defamatory provided it is fair) he cannot be prosecuted at any time. However, the position will be different where he delivered that same speech at a political campaign rally, and then he can be prosecuted in any of the following circumstances vis-à-vis, if he is caught at the scene, if consent is given by the parliament, or where he loses his electoral mandate (recall). B. H. Rosenwein, *Negotiating Space, Power, Restraint and Privilege of Immunity in Early Medieva Europe*, (Coraell University Press, 1999) 7-16 and 215-217.

[593] A Legislative House when a particular political party is in the majority there is tendency for maltreatment and intimidation of the minority by the majority, like Nigeria where PDP is in the majority.

[594] A.G. of the Federation v Attorney General Abia State (supra) note 248, 61, Attorney General of Ogun State v A. G. Federation [2002] 18 NWLR (pt 798) 232, Attorney General of Ogun State v A. G. Federation [2003] 12 SC 1, Attorney General of Ogun State v A. G. Federation [1982] 13 NSCC 1, Attorney General of Ondo State v A. G. Federation (supra) and Attorney General of Bendel State v A. G. Federation [1981] 10 SC.

v. Legislative immunity does not protect unlawful seizure of documents by the legislature or its committee without subpoenas after its authority had expired.

vi. Solicitation for bribes; immunity on speeches or debates does preclude inquiry into alleged criminal conduct of Legislator(s) apart from his action as legislature.[595]

vii. Legislative immunity does not extend to the issuance of press release that republishes speech made on the floor of the house or to mail materials to constituents and potential constituent.

In a recent case of *Lawan v FRCN* [596] the Court of Appeal held as follows:

> By virtue of Section 3 of the Legislative Houses (Powers and Privileges) Act, 2004, no civil or criminal proceedings may be instituted against members of the Legislative Houses:
>
> (a) In respect of words spoken before that House or a committee thereof; or
>
> (b) In respect of words written in a report to that House or to any committee thereof or in any petition, bill, motion or question brought or introduced by him therein.

Therefore, immunity only attaches to a member of a Legislative House in respect of words spoken before the House or a committee thereof or in respect to the House or committee thereof or in any petition, bill, resolution, motion or question brought or introduced by him in the House or its committee. In the instant case, the charge against the appellant cannot be categorized under section 3 of the Legislative

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595 Evidence abound that immunity does not avail a Senator defence against crime. For instance, Senator Iyabo Obasanjo (chairperson senate committee on health) was tried over the activities of health sector between 1999 to 2008 and mismanagement of ₦125,000,000, so also was Hon. Elumelu and other Senators (accomplice) were arrested by EFCC on their alleged involvement in the ₦5.6 Billion power plant probe. See The Nation of Monday June 27 & 30, 2008. Also former Senate President was also tried for breach of the code of conduct by the code of conduct Tribunal between 2015, 2016.

596 [2022] 7 N.W.L.R. pt. 1828, 279 at 288-289.

Houses (Powers and Privileges) Act not even by a far and long stretch.[597] The court went further to state that:

> By virtue of Section 32 of the Legislative Houses (Powers and Privileges) Act, no prosecution shall be instituted for an offence under the Act except by the Attorney-General of the Federation upon information given to him in writing by the President of the Senate or Speaker of the House of Representatives or by the Attorney-General of a State upon information given to such officer by the Speaker of the Legislative House of a State.

In a nutshell, the immunity is only designed to protect legislators actions, words, and votes and not the legislative decisions which can be subjected to review by the judiciary.[598] Therefore it is crystal clear that within the constitutional constraints, legislative assembly immunity does not render legislators not bound by the law.[599] As stated earlier, legislative immunity been personal to the legislator can be waived by him in writing. However, there is no known record of waiver in Nigeria.

There was an attempt to extend full immunity to the President, Deputy President, Speaker and Deputy Speaker of the Senate and House of Representatives and those of the State Houses of Assembly by the introduction of a Bill to amend the provision of section 308 of the Nigeria Constitution, 1999 as amended. The first attempt was in 2016, when the Bill was introduced in the House of Representatives. It was obviously a reaction to the charges filed against former Senate President Bukola Saraki by the code of conduct Bureau during the 8th Assembly. It did not see the light of the day, as majority of Nigerians and legislators, including the then majority leader, Femi Gbajabiamila kicked against the Bill.

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[597] See also the case of Lawan v Zenon Petroleum & Gas Ltd. [2014] LPELR-23206 Pp. 323-324, paras. F-B.

[598] A.G. of the Federation v Attorney General Abia State (supra) note 420.

[599] J. S. Mill, 'On Liberty and Other Essays', in John Gray (ed) [1991] *Oxford: Oxford University Press* 62.

Unfortunately, on 25th of February 2020 the bill was re-introduced by Hon Odebunmi Olusegun.[600] He argued that the rationale behind it is avoiding distraction for the leadership of the legislative arm. He said it is his aim to "protect, stabilize the house" and ensure "our democracy continues to flourish at national and state levels."[601] Within the House of Representatives there was opposition, though some supported the bill. The Minority leader,[602] Ndudi Elumelu opposed the bill. He stated that the bill should not be allowed as it is coming at the wrong time because "people should be held accountable for their actions." He called for the bill to be jettisoned and that attention should be redirected to tackle insecurity ravaging the country.

Also, Sergius Ogun,[603] frowned at the bill. He said if he had his way, he would "remove the immunity the president and the governors enjoy." As parliamentarians, I do not believe this is what we need today. We should lift the immunity that presidents and the governors enjoy.[604] Even the House Speaker, who opposed the bill in 2016, also opposed it in 2020. He noted that he would only support the proposal if it would take effect from 2023 after the end of the tenure of the current leadership. Notwithstanding, the House resolved to take the bill to Nigerians through a public hearing.[605]

Many Nigerians cried out in the media against it, of particular note is the opposition by Non-Governmental Organization, the Social-Economical Rights and Accountability Project, SERAP. It has consistently condemned the bill, saying that such immunity is intended to protect principal officers of the legislature from prosecution from corruption.

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600 'Representing Ogo-Oluwa/source federal constituency, Oyo State, in immunity for legislators', *The Sun Nigeria*, (March, 8, 2020) 12

601 'Nigerian Lawmakers Want Law Protecting Presiding Officers from Prosecution', *Premium Times*, (February 25, 2020)

602 'Immunity for Legislators', note 426.

603 'PDP, Edo representing Esan North East and South East constituency in Nigerian Lawmakers want Law Protecting Presiding Officers from Prosecution', *Premium Times* (February 25, 2020).

604 Ibid.

605 Joseph Onyekwere**, '**Why legislative immunity is unnecessary for principal officers', *The Guardian* Newspaper **(**March 10 2020)

The group warned that if the House of Representatives should have their way, it would rob Nigerians of their rights to accountable government, adding that public officials who are genuinely committed to the well-being of the state and its people, and to the establishment of an effective and functioning system of administration of justice, should have absolutely nothing to fear.[606] It is this study opinion that the bill is unwarranted, as the legislators are already covered by the immunity of the legislative Houses (Powers and Privileges) Act, 2018, which was passed by the National Assembly and assented to by President Buhari in 2018.[607]

An opinion poll carried out by Channel TV Shows clearly that about 77.5 Nigerians believe that the bill is totally unnecessary.[608] Though the bill has scaled through second reading, it has not yet been slated for public hearing. This study projects that the bill will not eventually be passed due to the overwhelming opposition to it by Nigerians. Even if it is passed, the president will not assent to it.

The effectiveness of the legislative immunity as a limited mechanism is good for legislative accountability as it is only available to individual members when they are performing their legislative duties or when the legislative assembly is conducting its business.[609] Arishe is of the strong view that the scope of legislative immunity presently is not sufficient and should be extended to aides of the legislators as they relate to the performance of their legislative duties whether plenary or committee hearings.[610] This view was given a legal teeth by the US Supreme Court in the case of *Kilbourn v Thompson*,[611] which was that though, immunity speaks only of legislators themselves, protection of their functions requires that the privilege be extended to

606 Joseph Onyekwere**,** note 431.
607 'Buhari signs bill conferring immunity on lawmakers, okays seven others', *The Punch Newspaper*, (January 26, 2018), <https://punchng.com/buhari-signs-bill-conferring-immunity-on-lawmakers-okays-seven-others/> accessed 9, July, 2021.
608 'Immunity for legislators,' *The Sun*, (March 8, 2020) <https://www.sunnewsonline.com/immunity-for-legislators/> accessed 10, August, 2021.
609 A. Sharma, 'The Privileged Legislature', [2003] 38 (48) *Economic and Political Weekly* 5018.
610 Gabriel O. Arishe, note 79.
611 *Kilbourn v Thompson,* 103 U.S 168, 204 (1881).

staff members who assist them. Counsel to the plaintiff also sought to broaden this argument to seek protection for "third parties," that is, parties other than Senators/House Members and their immediate staff members and aides who assist the legislator in performing his/her functions. The contention was that, for legislative immunity to be effective, it had to encompass the legislator's acquisition of papers containing information, the preparation for and conduct of committee meeting, and the subsequent publication of the committee record by an independent publisher contracted by the committee. The Court unanimously agreed that aides of congressmen must be treated as their alter egos for the purpose of the speech or debate clause.[612] The Court also agreed that the clause should be applied in a subject-matter form, that is, if a legislative activity were privileged, there should be no inquiry about it through the testimony of a witness. However, in *Gravel v United States*[613] a split Court held that the scope of activities protected by the clause is very narrow and does not include publication of the record or receipt of the material used in the committee.

This study however believes that an extension of restricted immunity to aides of the legislators should be treated with caution as it is susceptible to abuse especially in developing democracy like Nigeria. Restricted immunity for legislators is desirable and should be encouraged. This will enable them to freely represent their constituents and bring their issues before the legislature without any inhibition. The Legislative Houses (Powers and Privileges) Act, which provide for this mechanism has consistently been applied at various courts to prevent legislators from civil actions for acts done or words spoken on the floor of the parliament. It does not cover criminal acts of the legislators.

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612 This provides that 'for any speech or Debate in either House, they [the Senators and Representatives] shall not be questioned in any other place'. U.S Constitution. Art. 1, sub 6.

613 408 U.S 606 [1972]

3.4 CONCLUSION

In this chapter, nine mechanisms for legislative accountability have been analyzed. This study is of the opinion that elections and recall are the mechanisms that constituents have access to in ensuring effective legislative representation. It was found that as long as elections are free, fair and credible, constituents can use it to either punish or reward an incumbent legislator seeking re-election. Elections are a powerful tool in the hands of the constituents to put their legislators in check. The introduction of constituency projects in the legislature in Nigeria has greatly assisted the representational functions of the legislators in addressing the demands of their constituents and help to bridge the gap of communication and feedback from the representatives to the represented. The media has also played a key role in publicizing the activities of the legislature. This will help to keep the constituents informed for them to know the level of performance of their legislators.

Also, a three pronged approach was adopted which dealt with analysis of legislative accountability and the mechanisms used to enforce legislative accountability both vertical and horizontal legislative accountability and assessment of the effectiveness of these mechanisms. The role of legislative representation and its relationship with the constituents was also emphasized. In a nutshell legislators must take into cognizance policy preferences of their constituents in arriving at decisions in the parliament. The interest of their constituents in the parliaments must be paramount. The 1999 Constitution of Nigeria has placed the sovereignty on the people; this sovereignty is expressed through the elected representatives of the people in the National Assembly, when the legislators are not performing the roles satisfactory the constituents reserved the right to check their excesses through different mechanisms as provided in the constitution and other enactments. This study is of the view that the mechanisms of periodic elections, judicial review and restricted Immunity are more

effective in holding legislators both individually and collectively accountable to their constituents.

The judiciary has been very effective and robust in setting aside Acts of Parliament that are ultra- vires and inconsistent to the provisions of the constitution. They have been also very active in applying the provision of the Legislative Houses (Powers and Privileges) Act to protect legislators from civil actions done or words said on the floor of the parliament in consonant with the restricted immunity granted to them by the Act. There are many judicial authorities to this effect.

As for the mechanism of recall, this study asserts that it has not been very effective in holding legislators vertically or individually accountable to their constituents. This is principally due to the cumbersome nature of the procedure outlined in section 69 of the Nigeria constitution as amended which make it very difficult for its effective use. Particularly, the requirement of 50+1 percent of registered voters in a constituency as signatories to the petition of recall before it can be entertained. This is the reason why only few cases of recall have been successful since the advent of the fourth republic, this provision need to be reviewed.

The other mechanisms of vacation of seats for non-attendance, and floor-crossing, power of veto, and suspension from plenary have not been very effective as an accountability mechanism. However they play their roles in ensuring both individual and collective accountability of the legislators and the legislature itself as an institution. They all need to be strengthened in certain areas.

CHAPTER FOUR

COMPARATIVE ANALYSIS OF LEGISLATIVE ACCOUNTABILITY IN THE UNITED STATES OF AMERICA AND NIGERIA

4.1 INTRODUCTION

The presidential system of government in Nigeria as operated since the fourth republic in 1999 is similar to the same system being practiced in the United States of American. The American model of democracy has operated over 200 years and it is well established and institutionalized.

This study shall do a comparative analysis with the Nigeria National Assembly in terms of legislative accountability. Some scholars have done in-depth empirical research in the area of electoral accountability, especially in the area of roll call votes,[1] legislative voting, accountability[2]and representation.[3]

One of the mayor features of the American Congress is the issue of polarization and gridlock which has eroded public trust in it.[4] These and other issues will be analyzed subsequently.

4.2 BRIEF HISTORICAL BACKGROUND OF THE AMERICAN CONGRESS

In taking a look at the evolution of the American Congress, it is imperative to study the various constitutional developments of the American Nation as both are interlinked. Like Nigeria, the U.S has a long history of constitutional development that brought several reforms to the system of government they presently operate. Their constitutional evolution can be subsumed into different stages.

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1 Steven Rogers, 'Electoral Accountability for State Legislative Roll-Calls and Ideological Representation', [2017] *American Political Science Review.555-571* and David Rhode, *Parties and Leaders in the Postreform House*, (1st ed.,Chicago: University of Chicago Press, 1991). 1-239

2 John M. Carey, *Legislative Voting and Accountability,* (Cambridge University Press, 2008) 4.

3 Chris Tausanovitch and Christopher Warshaw, 'Electoral Accountability and Representation in the U.S. House: 2004-2012', [2013] *Research Colloquium*.1

4 James Griesemer 'Searching for Legislative Accountability Rebuilding Citizen Trust in the Legislative Process', (Report of the University of Denver Strategic Issues Panel on Legislative Accountability, 2015) 3.

4.2.1 The 1787 Philadelphia Constitutional Convention

The First draft of American Constitution was adopted on the 17th of September, 1787 in the Constitutional Conference held in Philadelphia of the same year.[5] The Constitution was finally ratified by the 13th State on May, 29th, 1790. [6]

4.2.2 The First Congress-1789-1791

The first American Congress was held in 1789 – 1791. James Madison introduced 12 amendments to the First Congress in 1789. Ten of these would go on to become the Bill of Rights.[7] The present Congress is the 118th.[8]

4.2.3 20th Century

In the 20th Century a major development in the House and Senate was the era of "Committee Government", legislation was produced by a number of autonomous committees headed by powerful chairmen who derived their positions from their seniority on the committee. Under this system, the role of the majority party and its leadership was limited.[9]

Also during this period the role of the media increased as they became increasingly important in the work of Congress. Activities of the Congress are sometimes being televised live.[10] The first TV coverage in the House was in 1977 where the House conducted a ninety day test of TV coverage.

During this period the US Congress completed a striking process of modernization. Many state legislatures followed, transforming from "18th-century

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5 Kimberly N. Brown, 'We the People, Constitutional Accountability and Outsourcing Government,' [2013] 10 (88) *Indiana Law Journal*, 4.

6 James Madison, The Constitutional Convention: A Narrative History from the Notes of James Madison, (Modern Library, 2005). 23

7 Ben Nwabueze, 'Constitutional Democracy in Africa',(Spectrum Books (4), 1978), 18

8 Library of Congress. 'The 118th United States Congress: A Survey of Books Written by Members'. (2013 Jan 10) <https://www.loc.gov/item/prn-13-005/> Accessed Nov 25 2022

9 Julian E. Zelizer, *American Congress,* ed (Haughton Mifflin Harcourt, 2004) 625.

10 The Legislative Reorganization Act, 1970 authorized television coverage of Committee Proceedings.

anachronisms" to become as "professional as many national legislatures". Variations in professionalism have since proven central to state legislative studies, especially after Squire united the field around a common measure. He combined three indicators—legislator salary, staff, and session length—each measured relative to the US House.[11]

4.2.4 Present Day

The Congress meets in the United States Capitol in Washington, D.C. Both Senators and Representatives are chosen through direct election, though vacancies in the Senate may be filled by a gubernatorial appointment. Congress has 535 voting members: 435 Representatives and 100 Senators. The House of Representatives has six non-voting members representing Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, the U.S. Virgin Islands, and the District of Columbia in addition to its 435 voting members. Although they cannot vote in the full House, these members can address the House, sit and vote in congressional committees, and introduce legislation.

The members of the House of Representatives serve a two-year tenure representing the people of a single constituency, known as a "district". Congressional Districts are apportioned to states by population using the United States Census results, provided that each state has at least one congressional representative. Each state, regardless of population or size, has two Senators. Currently, there are 100 Senators representing the 50 States. Each Senator is elected at-large in their State for a six-year term, with terms staggered, so every two years approximately one-third of the Senate is up for election. To be eligible for election, a candidate must be aged at least

[11] Brown, A. R. and Mitchell, E.M, Comparing Three Measures of Legislative Professionalism State Politics & Policy Quarterly, (Cambridge University Press 2024), 1–13.

25 (House) or 30 (Senate), have been a citizen of the United States for seven (House) or nine (Senate) years, and be an inhabitant of the State which they represent.[12]

The legislative branch is established by the constitution.[13] The Vice President of the United States serves as president of the Senate and may cast the decisive vote in the event of a tie in the Senate.[14] The Senate has the sole power to confirm those of the president's appointments that require consent, and to ratify treaties.[15] There are, however, two exceptions to this rule: the House must also approve appointments to the Vice Presidency and any treaty that involves foreign trade. The Senate also tries impeachment cases for federal officials referred to it by the House.[16] In order to pass legislation and send it to the president for his signature, both the House and the Senate must pass the same bill by majority vote.[17] If the president vetoes a bill, they may override his veto by passing the bill again in each chamber with at least two-thirds of each body voting in favor.[18]

4.3 CORE FUNCTIONS OF THE AMERICAN CONGRESS

The core functions of the US Congress are not radically different from that of its Nigerian counterpart, the National Assembly which has been exhaustively discussed in chapters two and three of this study. However, it is still pertinent to take a look at roles, powers and functions of the US Congress in order to distill some striking distinctions and features from that of Nigerias National Assembly. This is more so, given the fact that Nigeria copied from the presidential system of government from the US and there is a need therefore to practically learn experience.

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12 Art I, S. 3, Clause 3 and Art I, S. 2, Clause 2. The American Constitution
13 Article 2 of the American Constitution
14 Article 2 section 1 of the American Constitution
15 Article 2 section 2 of the American Constitution
16 Article 1 section 3 of the American Constitution
17 Article 1 section 7 of the American Constitution
18 Kermit L. Hall (Ed.), *The Oxford Guide to United States Supreme Court Decisions,* (Oxford University Press, 1999). 89

The three main functions of the US Congress are same with other legislatures in other jurisdictions. These are lawmaking, representation/constituent service and oversight. There has been a debate as to which of these functions is most likely to be taken more seriously. This study is of the view that in the U.S because of an enlightened and educated electorate, the institution of free and fair elections and the desire of most lawmakers to seek re-election, the function of representation or constituent service is taken more seriously. In that light it will be taken first here.

4.3.1 Representation/Constituent Service

Congress represents the people of the United States; members serve their constituents, the people who live in the district from which they are elected. The old adage that "all politics is local" applies to Congress, members must please their constituents if they want to stay in office, and every issue must therefore be considered from the perspectives of those constituents.[19]

Generally the representation of people and their interest is the basis of all parliamentary system. In all of its functions, the legitimacy of parliament and its members rest upon a central claim: that parliament institutionalizes political representation in society. The concept of representational role of parliaments aims at understanding the relationship between citizens and their representatives, the MPs. It focuses in particular on the questions of how MPs relate themselves to the electorate, whom they represent in their decision making and in what way they aim to represent a given constituency.[20]

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19 David, R. Mayhew, *Congress: The Electoral Connection*, (Yale University Press, 1974). 150

20 GPAD *The Role of Parliament in Promoting Good Governance* (Governance and Public Administration Division Economic Commission for Africa 2012) 55

Consequently, representational activity is present in all of the roles of a member of Congress. Representational activity is seen in the legislative process, constituent service, oversight, and investigation duties that members carry out.[21]

As part of their representational role members of Congress regularly draw attention to policy issues and federal government activities in order to educate constituents and other citizens and to encourage more robust citizen participation in public affairs. This educational function is typically performed through newsletters and special mailings sent to residents in the district or state, or through a variety of media outlets, which may include a member's website, and appearances and interviews on local television and radio programs.[22] In Nigeria legislators have not advanced to the stage of reaching constituents through sending personal mailings or newsletter to them, though they have recently started to use social media platforms to reach out to constituents like whatsApp, Twitter and so on. For example the member representing Owan East and West Federal Constituency in the House of Representatives, Professor Julius Ihonvbere created a whatsApp group where he interacts with the leaders in the constituency, to brief them about activities in the House of Representatives and he also gets a feedback from the leaders about what is going on in their communities. There are also several whatsApp groups created by his media aides where interested party members can join and interact with his Aides.[23] This study is aware that this is replicated by many members of the National Assembly in their various constituencies.

It is noteworthy to say that the Constitution of the U.S. made no mention of constituent service,that is the provision of direct government assistance to constituents

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21 Ibid, 56

22 GPAD The Role of Parliament in Promoting Good Governance, note 20, 54-5.

23 This study is a member of many of these whatsapp groups and participate actively in them.

by their representatives in Congress.[24] But in spite of these, the Congress members are keenly interested in constituent service to their constituents because of re-election fears. Constituent service is also referred to as "case work" in the US.

That the Congress members take the issue of representation and constituent service function seriously can be gleaned from an Administrative Review Survey carried out by the House of Representatives in mid 1970s,[25] amongst members to determine from them which out of their three key functions they believed they were expected to perform. The administrative review hired the research firm of Lovis Harris and Associates to conduct a survey of the public to gauge its expectations of Congress and its members.[26]

The Survey found that the three most frequently mentioned duties and activities were the drafting and introduction of legislation; helping constituents solve problems; and representing the interests of their districts and constituents. Other expectations included position taking and constituent education.[27] Some observers suggest that this narrow public focus is in part a reflection of the attention the public gives, or does not give, to political matters in general.[28] The question now is what makes this focus narrow? This study is of the view that the functions of the legislature should be mainly public focus based as they are the representatives of the people.

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24 David, R. Mayhew, note 19.

25 U.S. Congress, House, Commission on Administrative Review, Final Report of the Commission on Administrative Review, 2 vols., H. Doc. 95-272, 95th Cong., 1st sess. (Washington: GPO, 1977). While these observations are somewhat dated, there has been no similar study conducted more recently. There appears to be no reason to believe that the roles have changed since the survey was carried out in the mid-1970s. At the same time, it is possible that the emphasis placed on each role may shift over time.

26 Petersen, R. Eric, *Roles and Duties of a Member of Congress: Brief Overview* (Congressional Research Service, Feburary 15, 2022). 1-3

27 Findings are based on 146 responses by Members of the House to the question, "... what would you say are the major kinds of jobs, duties or functions you feel you are expected to perform as an individual Member of Congress?"

28 John R. Hibbing and Elizabeth Theiss-Morse, *What the Public Dislikes about Congress*; *Congress as Public Enemy*, (UK: Cambridge University Press 1995). in Lawrence C. Dodd, and Bruce Oppenheimer, 'Congress Reconsidered', [2005] (8) *Washington: CQ Press*, 55-76; Roger H. Davidson, 'Public Prescriptions for the Job of a Congressman,' [1970] 4 (14) *Midwest Journal of Political Science*, 648-666.

4.3.2 The lawmaking function

One of the constitutional primary functions of the Congress is lawmaking.[29] This is usually done through bills that must be passed by both the House of Representatives and the Senate. The Law making process in the United States Congress is similar to that of the Nigerian National Assembly. The House initiates revenue-raising bills, impeachment, while the Senate decides impeachment cases. A two-thirds vote of the Senate is required before an impeached person can be removed from office.[30]

When receiving a bill from Congress, the president has several options. If the president agrees substantially with the bill, he or she may sign it into law, and the bill is then printed in the statutes at large. If the president believes the law to be bad policy, he may veto it and send it back to congress. Congress may override the veto with a two-thirds vote of each chamber, at which point the bill becomes law and is printed.

There are two other options that the president may exercise. If Congress is in session and the president takes no action within 10 days, the bill becomes law. If Congress adjourns before 10 days are up and the president takes no action, then the bill dies and Congress may not vote to override. This is called a pocket veto, and if Congress still wants to pass the legislation, they must begin the entire process anew.[31]

4.3.3 The Oversight Function

Like Nigeria's National Assembly, the American Congress has oversight of the executive branch and its agencies. Congress review, monitor and supervise programs, activities and policies implementation of federal agencies where they have appropriated moneys in the annual budget.

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[29] Article 1 S. 18, Clause 18, of the United States Constitution which provides that congress has power "to make all laws which shall be necessary and proper" for effecting it's duties.

[30] Article 1, of the United States Constitution.

[31] 'The Legislative Branch.' *The White House.* <https://www.whitehouse.gov/about-the-white-house/our-government/the-legislative-branch/> accessed 15, August, 2021.

However unlike Nigeria where the power of oversight is constitutionally provided for, [32] in the United States, it is not, it is an implied power. The government charter does not explicitly grant congress the authority to conduct inquiries or investigations of the executive, to have access to records or materials held by the executive, or to issue subpoenas for documents or testimony from the executive. The implied power a logical consequence of the power to make law granted to the United States' Congress by the Constitution.[33] Feldman and Eichenthal postulated that for Congress to know what laws are 'necessary for carrying into execution' the powers the constitution gave it,[34] it had to know what the executive branch was doing, that is, it had to oversee its behavior. Thus, Eric wrote of the role of congress, 'Quite as important as lawmaking is vigilant oversight of administration.' The same logic applies to the role of any legislature in the United States, thus making oversight a core legislative function.[35]

However, though oversight function was not expressly provided for in the US Constitution, it gained judicial flavour when the Supreme Court made the oversight powers of Congress legitimate, subject to constitutional safeguards for civil liberties, on several occasions; this was the case of *Watkins v United States*[36], where the Court held as per Chief Justice Earl Warren.that: The power of the Congress to conduct investigation is inherent in the legislative process.

The Court further held that in investigating the administration of the Justice Department, Congress was considering a subject on which legislation could reconnect or would be materially aided by the information which the investigation was

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32 S. 88 of the Constitution of Nigeria 1999 as amended.
33 Article 1, Section 8 of the American Constitution.
34 Daniel L. Feldman & David R. Eichenthal, *The Art of the Watchdog* (Albany: State University of New York Press, 2013) 17-18
35 Petersen, R. Eric, note 26, 3
36 354. U.S. [1957].

calculated to elicit.[37] Like the National Assembly, oversight activities are carried out by Committees of the Congress in various public hearings and visit to government agencies.

Congress also maintains an investigative organization, the Government Accountability Office, GAO. Founded in 1921 as the General Accounting Office, its original mission was to audit the budgets and financial statements sent to Congress by the Secretary of the Treasury and the Director of the Office of Management and Budget. Today, the GAO audits and generates reports on every aspect of the government, ensuring that taxpayer dollars are spent with the effectiveness and efficiency that the American people deserve.[38] This clearly shows that the Congress has institutionalized the process of the oversight function. [39] This is clearly missing in the Nigeria context. This makes the American Congress more effective in terms of legislative accountability than that of the Nigerian National Assembly.

4.4 ACCOUNTABILITY AND REPRESENTATION IN THE AMERICAN CONGRESS

It is necessary to situate the concepts of accountability and representation in the applicability of the activities of the American Congress as already done in the Nigerian context. The concepts and their applicability will be treated separately, though they are interlinked.

4.4.1 Accountability in the American Congress

The necessity for accountability cannot be overemphasized. It is one of the indices for building public trust. In the US there have been high levels of distrust of Congress due to a number of reasons, which include; lack of performance and

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37 Petersen, R. Eric, note 26

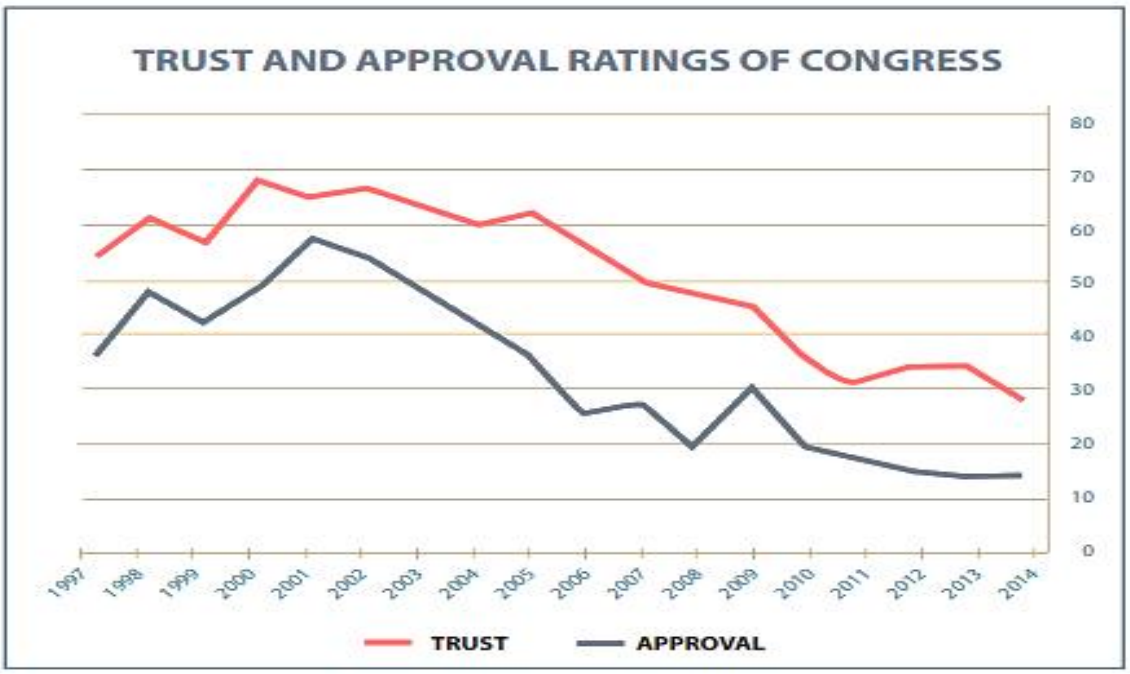
38 Kermit L. Hall (Ed.), note 18. 90.

39 Mathew D. McCubbins and Thomas Shwartz, Congressional Oversight Overlooked*: Police Patrols Versus Firs Alarms*,(Oxford University Press 2016) 165-179

accountability and legislative gridlock. In a survey on the US Congress, only 28 percent of respondents said they have a great deal or fair amount of trust in Congress, even fewer 14 percent approved of the job Congress is doing, this is as exemplified in figure 4.1 below.[40]

Figure 4.1

Trust and Approval Ratings for Congress



Source: James Griesemer 'Searching for legislative accountability rebuilding citizen trust in the legislative process' (Report of the University of Denver Strategic Issues Panel on Legislative Accountability, 2015) 8.

In fact, where the institution of Congress is concerned, surveys suggest that citizens have more confidence in many things like police, banks, newspapers, TV news, and big business than they do in Congress.[41] A poll reported by Governing Magazine indicated that Americans have a higher opinion of root canals, head lice, cockroaches, Brussels sprouts, Genghis Khan and colonoscopies than of Congress.[42]

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40 James Griesemer 'Searching for legislative accountability rebuilding citizen trust in the legislative process' (Report of the University of Denver Strategic Issues Panel on Legislative Accountability, 2015) 8.

41 James Griesemer, note 4, 4.

42 Ibid, 8.

Is the Congress collectively or individually accountable to the Nation or its constituents? Keohane believes that members of congress are not collectively responsible for the policies they enact, but individually accountable to their constituents and perhaps, in some degree, to their contributors.[43] On the contrary, opening more of the work of individual lawmakers to public scrutiny often exposes them all the more to the centrifugal pressures of special interests and constituent groups that make it so difficult to agree on well crafted, coherent legislation.[44]

The question now is what factors are responsible for the low level of accountability in the Congress? These include legislative gridlock, partisan polarization, and strong party leadership.

4.4.2 Legislative Gridlock

Legislative gridlock is a failure of one of the key functions of government to pass legislation. From the history of the Congress, this failure to pass key legislation has become more frequent.[45] One of the recent is the gridlock that happened in December 2018, which led to the shutdown of the US federal government when Congress members failed to reach agreement on the budget or at least, a continuing resolution.[46] The shutdown lasted 35 days, making it the longest in US history, and led to around 800,000 federal workers being furloughed or working without pay. Brief Federal Government shutdowns also occurred in January and February of 2018, while

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43 Robert O. Keohane, 'The Concept of Accountability in World Politics and the Use of Force', [2003] *Michigan Journal of International Law,* 1120

44 Charlotte Ku & Harold K. Jacobson, *Democratic Accountability and the Use of Force in International Law,* (Cambridge University Press, 2003). 245

45 Asger Lau Andersen & David Dreyer Lassen & Lasse Holbøll Westh Nielsen, 'Irresponsible parties, responsible voters? Legislative gridlock and collective accountability,' [2020] 15 (3) *PLOS ONE, Public Library of Science,* <https://ideas.repec.org/a/plo/pone00/0229789.html> accessed 20 May, 2021.

46 Ibid.

the federal shutdown of 2013 lasted 16 days and caused significant economic disruptions.[47]

What are the consequences of legislative gridlock on lawmakers? They can only be held electorally accountable. A study by Andersen et al, based on 20 years of budget enactment data suggest that voters hold legislators accountable for budget gridlock, with gridlock incumbent losing their seats more often than incumbents passing budget on time.[48]

According to Binder, legislative gridlock can affect as many as three-quarters of the salient issues on the agenda in Congress.[49] Epstein and Graham have observed that, as the ideological center of gravity of parties has moved farther apart, there has been a marked decline in legislative centrists who bridge the parties and broker crucial compromise.[50]

4.4.3 Partisan Polarization

Political parties formed on the basis of strong ideology are one of the bulwarks of democracy. This is more so in a presidential system of government. American politics is today dominated by two major political parties, the Democrats and the Republicans who majorly between themselves at different times control the House of Representatives and the Senate. Unlike Nigeria, parties in America are based on strong ideology of liberalism and conservatism. While this has some advantages, it

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47 W. Edelberg ,'The Effects of the Partial Shutdown Ending in January 2019' [2019]. *Congressional Budget Office*. <https://www.cbo.gov/system/files/2019-01/54937- PartialShutdownEffects.pdf> accessed 20, July, 2021. 1- 12

48 Asger Lau AndersenI, David Dreyer Lassen , Lasse Holbøll Westh Nielsen, note 45.

49 Binder, Sarah A. 'The Dynamics of Legislative Gridlock, 1947-96.' [1999] 93 (2) *American Political Science Review,* 519-536. in James Griesemer 'Searching for legislative accountability rebuilding citizen trust in the legislative process', note 4, 2-5

50 Diana Epstein and John Graham, *Polarized Politics and Policy Consequences,* (Rand Corporation, 2007)197.

has led to stalemate in important policy issues in the Congress with both parties voting always along party lines.

Why is this? Linz offers several reasons why presidential systems are so prone to crisis. One particularly important one is the nature of the checks and balances system. Since both the president and the congress are directly elected by the people they can both claim to speak *for* the people.[51] He further observed that the uniquely diffuse character of American political parties which, ironically, exasperates many American political scientists and leads them to call for responsible, ideologically disciplined parties -has something to do with it.[52]

Wattenberg cites the waning influence of party professionals, the rise of single-issue pressure groups, and an attendant fall in voter turnout as reason for the decline.[53] But Rosenfeld writes under-the-hood changes in the process for selecting presidential nominees and congressional leaders "ultimately helped to create a newly receptive institutional setting for issue-based activism within the parties.[54] We have strong gilded age-style parties, but organized around questions of principle rather than questions of patronage.[55]

Abramowitz finds that the only advantage of polarization is that its produces a less corrupt legislature due to active debate and transparency in deliberation.[56]

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51 Juan Linz, 'Presidentialism and Democracy: A Critical Appraisal', [2014] *Journal Storage* (JSTOR), 56

52 Ibid, 57

53 Martin P. Wattenberg, *The Decline of Political Parties in America*, (Havard University Press,1998) 145

54 Sam Rosenfeld, 'Project Abstract and Chapter Outline', (2013). <https://scholar.harvard.edu/files/samrosenfeld/files/rosenfeld_-_project_abstract_and_outline_-_sept._2013_1.pdf> accessed 12, July, 2021.

55 Matthew McWilliams, 'American Democracy is Doomed: Five Scenarios for the Collapse of Representative Government,' [2015] *City Journal*, 6.

56 Alan I. Abramowitz, The Disappearing Center: Engaged Citizens, Polarization, and American Democracy, (Yale University Press, 2010) 20.

4.4.4 Strong Party Leadership

Another factor that has made the public distrust Congress is the interference in policy-making decisions by the various dominated parties in Congress, the democrats and republicans. Though, there is a third force of liberal independents, their numbers are too few to effect any major policy change unless they form a coalition with any of the two big parties. Legislators do not only feel constrained by how their constituents feel over any policy decision, they are also constrained by their party leadership. Studies have shown that stable, conclusive outcomes of legislative deliberations were the result of institutional and procedural restrictions on the way in which a legislature made its choices.[57] A number of scholars regard the majority party within Congress as a coherent actor that has the prerogative to organize or to reorganize the institution.[58]

The effect of party leaders is more felt during roll-call voting,[59] roll-call votes cast by members of one party caucus in Congress may differ substantially from the roll-call votes cast by members of the other party or parties.[60] This means that the member of the Congress will vote along party line because of the influence of party leaders.

Krehbiel however holds a contrary opinion, which is that congressional parties are indeed collections of like-minded people, but parties as legislative organizations may exercise no significant influence over legislation. He calls this "significant party effects."[61]

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57 Gerhard Loewenberg, Peverill Squire and D. Roderick Kiewiet, *Legislatures Comparative Perspectives on Representative Assembly,* (University of Michigan Press, 2002), 2

58 David Rhode; Rodrick D. Kieweit, and Mathew Mccubbins *The Logic of Delegation,* (Chicago: University of Chicago press 1991) 28 and Gary Cox and Mathew Mccubbins, *Legislative Leviathan*, (Barkely: University of California Press 1993) and Douglas Dion, *Turning The Legislative Thumbscrew*, (Ann Arbor: University of Michigan Press 1997).

59 Ibid, 29.

60 Gerhard Loewenberg, Peverill Squire and D. Roderick Kiewiet, note 57, 2-3

61 Keith Krehbiel, *Information and Legislative Organization,* (Ann Arbor, MI: University of Michigan Press 1991) 26

Sinclair documents instances in which majority party members vote in favor of a restrictive rule in bringing a bill to the floor, but end up opposing the bill on final passage. She explains this inconsistency as members showing that they may support their party's position on legislation even though they themselves do not support it.[62] Nokken gives another example; he finds that the twenty members of Congress who from 1947 through 1997 changed their party affiliations altered their voting behavior dramatically at the time of the switch.[63]

The strong party influence in Congress is in one way a good idea as it institutionalizes the workings of Congress. But it seems that while other countries want to emulate the United States Congress for these, institutionalization has a drawback, it obviates individual accountability of the legislators. As a result, there is well-known popular desire in many parts of the world, and especially in the United States, for more citizen-based and less institutionalized legislatures. The popular yearning for term limits, staff reductions, salary cuts, and easy methods for demanding recall votes, and more referenda and initiatives all bespeak a public turned off by any sort of developed legislative structure.[64]

However as can be seen, these factors are not insurmountable and the United States Congress has overtime tried to find a way to serve the American people and to rebuild trust. This is imperative in order to enhance more legislative accountability.

4.4.5 Reforms in Congress

In response to the low opinion that Congress has in the eyes of the public, it introduced some reforms in order to enhance legislative accountability. Some of the

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62 Sinclair, Barbara, Do Parties Matter? Presented at the Annual Meeting of the Mid-West Political Science Organization, (Chicago Press, 1998) 13

63 Timothy Nokken, 'Dynamics of Congressional Loyalty: Party Defection and Roll-Call Behavior, 1947-1997'. (Paper Presented at the Annual Meeting of the Mid-West Political Science Association, 1998) 107

64 John R. Hobbing and Elizabeth Thesis-Morse, note 28, 21.

major reforms include more transparency by opening Congress to the media, the creation of a central budget office, roll-call, recorded and visible votes. The other two will be analyzed later in this chapter under electoral accountability. Suffice for now the two others will be dealt with here.

4.4.6 Openness to Media Coverage

A legislative house that does its business shrouded in secrecy can hardly be accountable to the public or constituents. To hold lawmakers both collectively and individually accountable, their activities in the legislature must be open to the public through the media. Due to the low public perception of Congress, it decided to open its activities to the media, the first thing that Congress did was to introduce a new practice of recording how each representative voted on floor amendments; the practice of not recording the votes had allowed representatives to cast votes in secret that they would not publicly acknowledge. It included making committee and subcommittee meetings public. For instance, a 1975 rules change opened all Senate committee meetings to public view.[65]

This led to the enactment of the Legislative Reorganization Act,[66] which for the first time authorized television coverage of committee proceedings. In 1977 the House conducted a ninety day test of TV coverage. The following year the House decided to broad cast floor proceedings and committee hearings, insisting that it would maintain control of its own television system, and began to buy equipment. In March 1979 the House began to broadcast live gavel-to-gavel coverage of floor proceedings through the new Cable-Satellite Public Affairs Network, C-SPAN.[67]

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65 Julian E. Zelizer, note 9, 675.
66 The Legislative Reorganization Act of 1970.
67 Julian E. Zelizer, note 9, 677.

The Cable News Network, CNN subsequently joined in 1980, print publications like Washington Post and others, have become more prominent and more influential in the past two decades.[68] The newly open, media-oriented, even media-friendly operation of Congress is part of a generally more public, participatory, and pluralistic system of decision-making in Washington. It has not made decisions more legitimate than before; it simply rewires how legitimacy is achieved in a world where institutional authority is widely and regularly challenged.[69]

4.4.7 Creation of Central Budget Office, CBO

As stated earlier, one of the main reasons for low level of public trust on congress was legislative gridlock occasioned especially by budget impasse. In order to resolve this situation, Congress created a Central Budget Office to co-ordinate budget matters once it is submitted to it by the executive for consideration. This was institutionalized by the enactment of the Congressional Budget and Impoundment Act.[70]

The Act succeeded in halting the presidential abuse of impoundment. In addition, the CBO established itself as a credible budget forecasting institution. Some close observers argued that its existence, together with the new budget procedures, had significantly improved the quality of Congress' deliberation over fiscal issues.[71]

4.4.8 Representing Constituents

Representing the interests of constituents is one of the fundamental functions of Congress members; they do these in a number of ways. In writing, supporting and passing bills, they take the interests of their constituents into account. Providing

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68 Ibid, 678.
69 Julian E. Zelizer, note 9, 678..
70 The Congressional Budget and Impoundment Act 1974, <www.budgetoffice.gov.ng> or <www.congress.gov> accessed 21 day of January, 2024.
71 James Savage, *Balanced Budgets and American Politics*, (Ithaca, N.Y. 1988), in Julian E. Zelizer, The *American Congress,* ed (Haughton Mifflin Harcourt, 2004) note 9, 677.

service to constituents by Congress members are varied and involve several activities including:-

(a) Outreach, in which members introduce themselves and inform constituents of the services typically provided;

(b) Gathering information on federal programs;

(c) Casework, in which congressional staff members provide assistance in obtaining federal benefits or in solving constituents problems with agencies;[72]

(d) Providing nominations to United States service academies;[73] and

(e) Arranging visits or tours to the Capitol or other Washington, DC, venues.

Assistance on behalf of firms and organizations may involve providing letters and other communication in support of grant or other applications for federal benefits. The constituency service role also allows a member the opportunity to see how government programs are working, and what problems may need to be addressed through formal oversight or legislation.[74]

In Nigeria one of the ways, legislators reach out to their constituents that has been very effective, is through constituency projects, though there have been some instances of abuse as enumerated in chapter three of this study. However in the United States of America it is referred to in several names like pork-barrel politics, "bringing home the bacon" and earmark. Pork-barrel is a federal spending on projects designed to benefit a particular district or set of constituents. It has been around since the

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[72] John R. Johannes, 'Casework in the House,' in Joseph Cooper, G. Calvin Mackenzie (Eds.) *The House at Work,* (University of Texas Press, 1981) 78- 96.

[73] R. Eric Petersen & Sarah J. Eckman, Congressional Nominations to U.S. Service Academies: An Overview and Resources for Outreach and Management, (Congressional Research Service Report, 2017) 15.

[74] Petersen, R. Eric, *Roles and Duties of a Member of Congress: Brief Overview,* note 26.

nineteenth century, when barrels of salt pork were both a sign of wealth and a system of reward.[75]

Earmark was derived from the practice in ranching were a small cut on the ear of a cow or other animal to denote ownership. In Congress, an earmark is a mark in a bill that directs some of the bill's funds to be spent on specific projects or for specific tax exemptions. Since the 1980s, the earmark has become a common vehicle for sending money to various projects around the country. Many a road, hospital, and airport can trace its origins back to a few skillfully drafted earmarks.

In 2011 the Congress outlawed earmark or pork-barrel, this seriously affected its own ability to "bring home the bacon." Although there are calls for its reintroduction by some who argue that Congress works because representatives can satisfy their responsibility to their constituents they remain outlawed. This is completely in contrast to the situation in Nigeria where constituency projects have become very robust and a call for it to be institutionalized by having a legal framework at the national level. A recent example is the passage of the 2022 budget by the National Assembly which was increased greatly by the legislators mostly by accommodating constituency projects. Though the executive frowned at it, the President however assented to the bill with a promise to forward amendments to the National Assembly subsequently.

Some scholars have done research on how Congress members should properly represent their constituents when faced with conflicting issues of national and constituents' interests. Miller and Stocks, like other scholars, assumed there was no single, overall way to characterize how members of Congress represented the policy

[75] Frederick, Brian, 'Congressional Representation & Constituents', [2009] *Routledge*.

preferences of their constituents in voting on legislative proposals. Instead, members might effectively provide different kinds of representation on different issues.[76]

On issues for which member's constituents of both parties share a common preference, the member was hypothesized to vote for the constituency-wide preference either because he or she shared the same view and was demonstrating belief-sharing representation or because the member felt compelled to follow constituency preferences as an instructed delegate.

In a nutshell, this study is of the opinion that lawmakers should adopt any of the model of representation either, delegate or trusteeship depending on the policy issues at stake. They must consider the one that best suits the nation at a time and that of constituents at another. Both interests of the nation and constituents sometimes agree, in this instance it is easy for the lawmaker to take a decision, the ultimate aim is to ensure legislative accountability.

4.5 MECHANISMS FOR LEGISLATIVE ACCOUNTABILITY

In chapter three, we extensively dealt with different mechanisms as it relates to the National Assembly under the 1999 Constitution of Nigeria as amended. These mechanisms range from election, recall, power of veto, judicial review, floor crossing, and vacation of seats for non-attendance and so on. The mechanisms of the power of veto, floor crossing, and vacation of seats for non-attendance were extensively analyzed and compared with that of the US; the mechanism of recall is not applicable to the US Congress even though it is applicable in some few States.[77] In the US, the

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[76] Soren Jordan, Kim Quaile Hill, and Patricia A. Hurley, Constituency Representation in Congress: In General and in Periods of Higher and Lower Partisan Polarization, (CQ Press, 2017) 1 – 22 .

[77] Hussain Tijani, 'Electoral Recall: A Process For Keeping Lawmakers Accountable', (16, 2020). <https://www.linkedin.com/pulse/electoral-recall-process-keeping-lawmakers-hussain-tijani> accessed (May, 25, 2023), 168

mechanisms of election and judicial review are very robust in ensuring legislative accountability.

4.5.1 Electoral Accountability

Elections remain the major mechanism for holding legislators accountable by their constituents; the fear of re-election is the beginning of wisdom for congress members in America. There are different theories and literature about the concept of electoral accountability that has been intensely analyzed generally in chapter 2 and 3 of this study, specifically as it relates to Nigeria. Many scholars have researched on theories of electoral accountability as it relates to American Legislatures including Congress and State Legislatures. [78]

Electoral accountability has been defined earlier in this study, but it's pertinent to recall a few, it can be seen as voters rewarding (by voting for) elected officials for good decisions and outcomes, and punishing (by voting against) them for bad ones.[79] It operates through the mechanism of retrospective voting, that is, voting on the basis of incumbents past records.

What this means is that electorates determine whether their representatives will secure their re-election. Since officials typically seek re-election or election to a higher office, this potential sanction is regarded as a powerful inducement for them to explain their actions to electorates and serve their electorates' interests.[80]

Moreover, as an accountability, mechanism elections can function both as ex-ante screening device (by allowing voters to gain information on and select competing candidates) and as an ex post sanction (by permitting voters to remove MPs from

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[78] These include Steven Rogers, Christopher Narshaw and Chris Tausanovitch, David S. Lee et al, John M. Carey.

[79] Nicholas O. Stephanopoulos, 'Accountability Claims in Constitutional Law', [2018] (112) © *Nicholas O. Stephanopoulos Printed in U.S.A.,* 993.

[80] David, R. Mayhew, note 19.

office).[81] Political parties also have roles to play, this is when the election approaches, and voters enter the campaign with this evidence of prior governing as a starting point for their evaluations. Citizens also look forward to what they expect of the government after the election.[82]

Elections therefore functions as a method of collective political choice and a dynamic method of steering the course of government. As this study stated in previous chapters, elections are most effective as an accountability mechanisms if they are free, fair and transparent. Another condition is that the electorate must know about the activities of legislators both individually and collectively and this can only happen if the goings-on in the parliament have media visibility. Information is the key to the electorate for them to be able to know how their representatives voted or contributed to every issue. In this regard, there are different measures that have been institutionalized in the congress in this regard. These include roll-call votes, recording of votes, visible votes. These theories were extensively analyzed in chapter 2 of this study.

However, we must take a deeper look specifically at some of these theories as it pertains to both state legislatures and congress in America. The first to be analyzed is Steven Rogers's research on electoral accountability.

A. Steven Rogers's Electoral Accountability for State Legislative Roll-Calls and Ideological Representation

In the course of this study, references have been made severally to Steven Rogers's research on electoral accountability as it relates to roll-call votes[83] and its

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81 Kaare Strom, Wolfgang C. Muller, and Torbjorn Bergman, *Delegation and Accountability in Parliamentary Democracies,* (Oxford Scholarship Online: January, 2005). 67

82 Russell J. Dalton, David M. Farrell and Ian McAllister, *the Dynamics of Political Representation,* (Amsterdam University Press, Amsterdam, 2018) 12

83 Steven Rogers, 'Electoral Accountability for State Legislative Roll-Calls and Ideological Representation', [2017] *American Political Science Review*. 555 - 571

effect on state legislatures in America.[84] In his abstract to his research, he stated the hypothesis, the methodology, the research itself and the findings.

i. He found that theories of electoral accountability predict that legislators will receive fewer votes if they fail to represent their districts.

ii. That legislator do not face meaningful electoral consequences for their ideological representation, particularly in areas where they receive less media attention, have larger staffs, and represent more partisan districts.

iii. He found a weak relationship between legislator's roll-call positions and election outcomes with voters rewarding or punishing legislators for only 4 of 30 examined roll-calls.

iv. That while state legislators wield considerable policy-making power, elections do not appear to hold many legislators accountable for their lawmaking.[85]

B. Electoral Accountability and Representation in the U.S House 2004 – 2012 by Chris Tausanovitch and Christopher Warshaw[86]

Both authors in their work earlier referrenced in chapters two, and three, of this study found as follows:

i. That there is reassuring evidence that voters hold representatives accountable at the ballot box for their roll call votes.

ii. They found that there is little evidence that legislators' positions are consistently responsive to the preferences of voters.

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84 Steven Rogers is an assistant professor in the department of political science, Saint Louis University, U.S.A, as at April 5 2017, when his research was published.

85 Steven Rogers, note 1.

86 Chris Tausanovitch is an assistant professor department of political science, UCLA and Christopher Warshaw is also assistant professor, department of political science, Massachusetts institute of technology as at October, 3, 2013, when their work was published.

C. Legislative Voting and Accountability John M. Carey

Like the two theories analyzed above, reference to John M. Carey's[87] work has been made in this study, especially in chapters two, and three.[88] He believes strongly that legislative voting must be visible and that questions about visible votes whatever else voters in the United States know or do not know, they can count on being alerted as to whom they should curse for any decision Congress makes.[89] He cited the work of Rose- Ackerman, in her cross national study of corruption, for example, Rose-Ackerman offers as axiomatic that, If politicians vote against the interests of their constituents, they can expect to suffer at the polls.[90] But is this true? In many legislatures, who voted for and against a given proposal is almost never revealed, and proposals to record votes at all are contentious.

He found as follows that:

i. Recorded voting has been integrally connected to legislative accountability throughout the history of the US Congress.

ii. Party leaders have a keen interest in monitoring votes but, except under exceptional procedural circumstances (for example secret voting in House officer elections), leaders face minimal obstacles to monitoring votes.

iii. Interest groups have long treated voting records as the currency of legislator's performance.

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87 John M. Carey, note 2, 4.

88 Ibid.

89 Canes-Wrone, Brandice, David W. Brady, and John F. Cogan, 'Out of Step, Out of Office: Electoral Accountability and House Members' Voting'. [2002] 96 (1) *American Political Science Review*, 127-40.

90 Rose-Ackerman, Susan, *Corruption and Government: Causes, Consequences, and Reform*. (New York: Cambridge University Press 1999). 488 – 491.

iv. The reduced procedural costs to publicizing votes that accompanied electronic voting in the House increased their importance and amplified their relevance as a tool of the legislative opposition.

In developing democracies like Nigerian and some Latin American Countries it is not easy to create voting records because it requires a certain infrastructures, a certain culture, and certain systematization. They're no independent centers that keep a record of the votes. But in the United States, there are lots that keep complete records of the details. That's more sophisticated.

All these mechanisms roll-call votes, legislative voting, visible and recording of votes are all geared towards ensuring greater accountability by the legislature. Although in Nigeria they are not fully developed like that of the U.S that is institutionalized, more years of practicing democracy will get Nigeria there.[91]

4.6 JUDICIAL REVIEW OF LEGISLATIVE ACTS OF CONGRESS

Judicial review of the constitutionality of both legislative and executive acts is an important element of the American system of government which it shares with the Westminster model. But the principle in so far, as concerns judicial review of the constitutionality of legislative acts, is of distinctly American origin.[92] Judicial review is an offshoot of the principle of separation of powers and the notion of the constitution as the supreme law.

The principle was first rationalized in the US by the judgment of Chief Justice John Marshall in the case of *Marbury v Madison*,[93] in 1803, which gave it the stamp of a definite constitutional device. However, in spite of the fact that the Supreme

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91 John M. Carey, *Legislative Voting and Accountability*, (Cambridge University Press, June 2012) 5.
92 Ben Nwabueze, note 7, 20.
93 U.S. (1 Cranch) 137 [1803].

Court has given the doctrine its constitutional meaning there have been difficulty in discerning exactly what it is the Court think about separation of powers.[94]

Decades ago, after a series of cases implicating the principle, scholars labeled the Courts approach to separation of powers elusive,[95] paradoxical,[96] and abysmal.[97] Since then, it has become no clearer. Indeed, the Courts approach to separation of powers as a whole remains incoherent.[98] As many scholars have noted, part of the problem derives from the fact that the Court relies on two divergent approaches to separation of powers problems.[99] One approach, labeled formalism, emphasizes the importance of the framers decision to divide the delegated powers of the new federal government into three defined categories, legislative, executive, and judicial.[100]

The other method the court employs evinces a more functional understanding of separation of powers. Following this approach, the court recognizes that the branches do not operate with absolute independence.[101] Instead, while the constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government.[102]

Nevertheless, it is possible to discern the concerns that animate the court and push it toward employing one approach over another. The court, for instance, is especially troubled by and therefore more likely to use a formalist approach to strike down efforts by Congress to bypass the traditional legislative process when it makes

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94 Michael J. Teter, 'Congressional Gridlock's Threat to Separation of Powers', [2013] *Wisconsin Law Review*. 56

95 Thomas W. Merrill, 'The Constitutional Principle of Separation of Powers', [1991] Supreme Court Review 225.

96 Erwin Chemerinsky, A Paradox without a Principle: A Comment on the Burger Court's Jurisprudence in Separation of Powers Cases, [1987] 60 S. California Law Review 1083.

97 Donald E. Elliott, 'Why our Separation of Powers Jurisprudence is so Abysmal', [1989] 57 *George Washington Law Review,* 506.

98 Rebecca L. Brown, 'Separated Powers and Ordered Liberty'[1991] 139 *University of Pennsylvania Law Review,* 1513, 1517.

99 Donald E. Elliott, note 97*,* 506.

100 *INS v Chadha*, 462 U.S. 919, 951 [1983].

101 *United States v Nixon*, 418 U.S. 683, 707 [1974].

102 Youngstown Sheet & Tube Co. *v* Sawyer, 343 U.S. 579, 635 [1952].

laws.[103] Process spelled out in article 1, section 7,[104] for enacting legislation and has relied on that constitutional language and a formalist vision of separation of powers to invalidate congressional attempts to legislate through some other means.[105]

However, Keohane asserts that it would be inappropriate to regard the United States Supreme Court, while exercising constitutional review, as the agent of the public. When the court strikes down a legislative act, it is not acting as an agent, but as a trustee of the public good, defending principles traditionally conceived of as valid, even in the face of public hostility.[106] Hamilton reintegrated in Federalist paper,[107] that no legislative act, contrary to the constitution, can be valid. To deny this would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves.[108]

4.6.1 Precedents on Judicial Review

The America Supreme Court has shot down some legislation passed by Congress either wholly or in part. In *Clinton v City of New York*,[109] the Court struck down the Line Item Veto Act that allowed a president to cancel an item of new direct funding.

The Court concluded that Article I, Section 7 regarding the veto power provided the only constitutional mechanism for a president to return a bill to Congress. This decision was based on past precedent. In the case of *INS v Chadha*,[110] the Court invalidated a statutory scheme that allowed a single chamber of Congress to veto a decision of the Attorney General. The Court held explicit and unambiguous

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103 Thomas W. Merrill, note 95.
104 Art. 1, S. 7, of the American Constitution.
105 *Clinton v City of New York*, 524 U.S. 417 [1998]; *Bowsher v Synar*, 478 U.S. 714 [1986]; *INS v Chadha*, 462 U.S. 919 [1983].
106 Robert O. Keohane, note 43, 1121.
107 Alexander Hamilton in Federalist Paper No.78, of the Constitution.
108 The Federalist Paper No. 10, at 57.
109 524 U.S. 417 [1998].
110 462 U.S. 919 [1983].

provisions of the constitution prescribe and define the respective functions of the Congress and of the executive in the legislative process. The explicit and unambiguous provisions of which the court spoke are found in Article I, Section 7, and are integral parts of the constitutional design for the separation of powers.

In *Bowsher v Synar*,[111] the Court also invalidated the Gramm-Rudman Holing's Act, which sought to eliminate the federal budget deficit by imposing automatic reductions in federal spending.[112] In *Metropolitan Washington Airports Authority v Citizens for Abatement of Aircraft Noise, INC*, the Court similarly invalidated an effort by Congress to transfer operating control of Washington National Airport and Dulles International Airport from the US. Department of Transportation to a new entity created by an agreement between Virginia and the District of Columbia. The new entity, the Metropolitan Washington Airports Authority, MWAA, would be overseen by a Board of Review, which was to be composed of nine congressmen, acting in their individual capacities.[113]

In *Morrison v Olson*, the Court swept aside concerns that the independent counsel law diminished executive authority. The Court held that the case did not involve an attempt by Congress to increase its own powers at the expense of the executive branch, nor did it work any judicial usurpation of properly executive functions.[114]

Also in *Mistretta v United States*, this involved the creation of the U.S. sentencing commission. There, the Court rejected arguments that the law establishing the Commission unconstitutionally accumulated power in the judicial branch by

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111 *Bowsher v Synar*, 478 U.S. 714 [1986].
112 Balanced Budget and Emergency Deficit Control Act of 1985, Public Law No. 99-177, 99 Stat. 1038, invalidated by; *Bowsher v Synar*, 478 U.S. 717–21.
113 501 U.S. 252, 255, 258–59 [1991]
114 487 U.S. 654, 680–81, 694–95 [1988].

giving it the authority to set sentencing policy, while also diminishing the judiciary's power by forcing judges to share their powers with non-judges. [115]

In *New York v United States*,[116] the Court applied the Tenth amendment to similarly confine the powers of a constitutional branch Congress, in that case due to the possibility that powerful incentives might lead officials to view departures from the federal structure to be in their personal interests. The question in New York was whether Congress could legislatively commandeer a state to dispose of radioactive waste. The Court said no, in part because members of Congress had an interest in avoiding the personal responsibility they would face from constituents if they passed federal legislation that identified radioactive disposal sites instead.

In *New York and Printz v United States*,[117] the Court embraced Justice O. Connor's theory of accountability, government transparency while striking down federal legislation regulating the states. As noted previously, New York involved a challenge to a statute requiring states either to enact legislation providing for the disposal of radioactive waste or take title to it. The Court found the legislation unconstitutional in light of the dual sovereignty principle embodied in the Tenth Amendment, explaining that, where the federal government compels States to regulate, the accountability of both state and federal officials is diminished.[118] This case underscores that the constitutions structure gives rise to essential principles that, though not express in its text, can do real doctrinal work in evaluating reallocations of power. One such principle is the requirement of identity transparency. To the extent

[115] 488 U.S. 361, 380–84 [1989].
[116] 505 U.S. 144 [1992].
[117] 521 U.S. 898 [1997].
[118] *New York v United States*, 505 U.S. 144, 168 [1992].

that a reallocation of power obscures clear lines of responsibility, it may unconstitutionally render the exercise of those powers unaccountable to the people.[119]

From the above cited few cases, it is obvious that the America Supreme Court has been very busy in reviewing legislative acts of the Congress and where it finds that it's unconstitutional, it does not hesitate to nullify such acts or status in whole or in part. Comparatively with the Nigerian Supreme Court it seems that the American Supreme Court is bolder and had dealt with a lot more cases considering the durability of its democratic practice, Nigeria still has a lot of catching up to do. In fact in electoral accountability claims, the Supreme Court has been involved in consolidating in the mechanism by giving several decisions in this respect. The Nigerian Supreme Court has also performed credibly well in respect of electoral jurisprudence. Recently[120] the decision of the Supreme Court in electoral matters has brought political stability in Nigeria.

4.7 ACCOUNTABILITY CLAIMS ACCORDING TO THE COURT

The American Supreme Court constitutional doctrines hinge on claims about electoral accountability, the Court amongst others believes that:

> Congress is less accountable when it farms out important decisions to agencies.[121]

Though some scholars including Stephanopoulos have faulted these accountability claims,[122] the Court's contribution to both executive and legislative accountability cannot be undermined. Certain Justices of the court maintain that

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119 Kimberly N. Brown, note 5, 4.

120 As recent as January, 2024. Where the Court dismissed several petitions involving the 2023 general election.

121 *Industrial. Union Dep't v Am. Petrol. Inst*., 448 U.S. 607, 687 [1980] (Rehnquist, J., concurring in the judgment) ("When fundamental policy decisions underlying important legislation about to be enacted are to be made, the buck stops with Congress . . . ."); S. II.B. This answer is phrased differently than the others (Congress is less accountable when it delegates, not more accountable when it does not).

122 Nicholas O. Stephanopoulos, note 79, 993.

Congress is more electorally accountable for decisions it does not delegate to agencies but rather makes itself. This alleged rise in accountability is one reason why the non-delegation doctrine nominally remains good law, in theory barring Congress from assigning certain policy choices to agencies.[123]

Then Justice William Rehnquist in *occupational safety and health administration*,[124] held that the non-delegation doctrine serves three important functions, one of which is that it ensures that important choices of social policy are made by Congress, the branch of our government most responsive to the popular will, not by politically unresponsive administrators.[125]

In a nutshell, Congress is more accountable if they do not delegate their powers to other agencies of government. As Schoenberg has written, when congress delegates its fingerprints are not left on the duties imposed on the public, and it obscures its responsibility for the eventual costs and disappointments.[126]

In a 2003 case, Justice Scalia objected to the prohibition that was later invalidated in *Citizens United* on similar grounds.[127] This legislation prohibits the criticism of members of Congress by those entities most capable of giving such criticism loud voice.[128] The law thus mutes criticism of Congress-members records and facilitates their reelection.[129] It is enough here from the foregoing that American Supreme Court has contributed greatly by displaying activism in ensuring legislative accountability of legislators both collectively and individually more than the Nigerian Supreme Court.

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123 Ibid, 994.
124 Industrial, Union Dep't v Am. Petrol. Inst., 448 U.S. 607, 611 [1980].
125 Industrial, Union Dep't v Am. Petrol. Inst., 448 U.S. 607, 611 [1980].
126 David Schoenbrod, Delegation and Democracy: A Reply to My Critics[1999]; 20, *Cardozo Law. Review*. 731, 744 see also Neomi Rao, Administrative Collusion: How Delegation Diminishes the Collective Congress, [2015] 90, *New York University Law Review* 1463, 1478.
127 Mistretta v United States, 488 U.S. 361, 372 [1989] in J. W. Hampton, Jr., & Co. v United States, 276 U.S. 394, 409 [1928].
128 Ibid, 371.
129 Ibid, 372.

The democratic system is by its nature bound to produce laws now and again that reflect bias, ignorance, or hostility to certain groups or certain conduct.[130] Legislatures sometimes deliberately defy United States Supreme Court pronouncements with which they disagree.[131] When this happens the court steps in to invalidate such Laws. These the Courts can do through facial challenges by aggrieved persons in the face of the Court and facial invalidation in court. This according to Borgmann will help to promote constitutional accountability among legislatures.[132] The United States Supreme Court has often claimed that separation of powers concerns require courts to tread lightly in invalidating laws, and, therefore, that as applied rulings are the preferred remedy for constitutional challenges.[133]

The Nigeria Courts most often apply the applied challenge model by invalidating sections of the Law that are contrary to the provisions of the constitution without necessarily invalidating the whole law or statute. The other provisions are saved. This study is of the opinion that the court should apply facial or applied challenges depending on the circumstances of the case. If the law sought to be invalidated contain substantial or fundamental sections that offends the provision of the constitution or its ultra-vires, and invalidation of those sections will substantially affect the law, the whole statute should be invalidated but if not, the offending sections should only be struck down. This is the current doctrine of the Supreme Court of Nigeria. This is the *blue pencil rule* of interpretation urged by Chief Rotimi Williams SAN in *A.G. Abia State v A.G. Federation,*[134] but which the Supreme Court

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130 Caitlin E. Borgmann, 'Rethinking Judicial Deference to Legislative Fact-Finding', [2009] 1 (84) *Indiana Law Journal.*

131 Caitlin E. Borgmann, 'Legislative Arrogance and Constitutional Accountability', [2006] 79 *Southern California Law Review*;,' [2006] 119 *Harver Law Reveiw*. 2552, 2562- 65;.

132 Caitlin E. Borgmann, 'Holding Legislatures Constitutionally Accountable through Facial Challenges', [2009] 36 *Hastings Constitutional Law Quartely.*, 563.

133 Richard H. Fallon, Jr. 'As Applied and Facial Challenges and Third-Party Standing', [2000] 113 *Harvard. Law. Review.*, at 1351-52. 1321

134 [2002] 6 NWLR (pt. 763) 264

rejected because there were still useful provisions that did not offend the constitution in the Electoral Act 2001.

4.7.1 The Other Accountability Mechanism

The other accountability mechanisms as stated earlier are similar in both the Nigerian and American context. The only difference is the power of veto. While the American President has only 10 days to indicate whether to accent or withhold it, the Nigerian President has 30 days. Vacation of seat for floor crossing (defection) is very rare in America Congress because of their ideological orientation. Studies have shown that floor crossing happens also in established democracies in Europe and even in the United States of America though not in massive proportions and considerable frequency as noticeable in young democracies.[135]

There is hardly any vacation of seat for non-attendance; this is partly due to the fact that the cultures of democratic practice are entrenched due to its long history. A better reason for the absence of a vacation of seat clause in the US constitution was offered by Owens and Loomis,[136] where they posited that:

> Senators and House members win (re-)election as individuals, not because of their party connections. Candidates nominate themselves, offer themselves to a party, often raise large amounts of money, create their own publicity, and direct their own campaigns…In other words, congressional candidates tend to recruit their parties, not vice-versa, and for the very good reason that parties cannot control nominations or provide candidates with many campaign resources… Not surprisingly, electoral campaigns are candidate-oriented, rather than party- or presidency-oriented, and once in office House and Senate incumbents cannot rely on the popularity, brand and reputation of their president or party to win re-election.

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[135] Carol Mershon & Olga Shvetsova, *Party System Change in Legislatures Worldwide* (New York: Cambridge University Press, 2013) 11, 23-31.

[136] John E. Owens & Burdett A. Loomis, 'Qualified Exceptionalism: The US Congress in Comparative Perspective,' in David Arter (ed.), *Comparing and Classifying Legislatures* (New York: Routledge, 2007) 6-7

4.7.2 Comparative Analysis

From the various analysis done in previous and this chapter of this study, the following are the comparisons.

Table 4.1

Comparisons

		AMERICAN CONGRESS	**NIGERIA NATIONAL ASSEMBLY**
		There is no constitutional provision for oversight, this power is implied.	There is constitutional provision for oversight (section.88 of the constitution).
		There are no recall provisions in the constitution.	recall is constitutionally provided in sections 68 and 69
		There are more established structures for the performance of representational function, these include special mailing, newsletters, websites, and so on.	Though communication with constituents has improved greatly through social media it has not yet been well established. It is work in progress.
		The tenure of the House of Representatives is two years while senators are 6 years. The elections are not held on same day or year with that of the president. This reduces the bandwagon effect and enhances electoral accountability for Congress-members that know they will face the electorate every two years, the fear of re-election makes them more responsive to constituents interests.	The election of the president and national assembly members are on same day, same with their tenure. Many legislators, who did not represent their constituents well, will hide under a popular presidential candidate of their party to win re-election because it is always difficult to separate the ballot on election day for a population that is largely illiterate. This does not enhance electoral accountability.
		In exercising the power of veto, the president has only 10 days to decide whether	The president has 30 days.

		he assent or withhold assent.	
		Strong ideological parties have led to frequent legislative and partisan polarization that result in legislative gridlock especially as it relates to the budget.	There is no frequent legislative gridlock, matters are quickly resolved. as ethnicity and religious affiliation play more roles in African politics than ideology.
		There are more established institutional means of constituents to know how individual legislators voted on an issue. These include Roll-call votes, recorded visible and electronic voting. These measures enhance legislative accountability.	There are no Roll-call votes. Though proceedings are recorded and voting is usually visible, it's difficult to know where individual legislators voted. The use of voice votes is prominent. This hardly helps legislative accountability.
		There is no insertion of constituency projects in the budget. They call it pork barrel or earmark, It was abolished in 2011.	There are constituency projects in the national budget. These have assisted greatly the constituents when they are executed and visible to all. Though there is no enactment providing for constituency projects at the national level, unlike in Lagos State where we have the Constituency Projects Development Law of 2000.
		The Supreme Court is more active and independent in performing the role of judicial review of legislative acts. It's bolder in setting aside legislative acts that are unconstitutional; it has also played a role by giving landmark judgment which enhances electoral accountability.	The Supreme Court is also active by giving judgments in nullifying some legislative acts all over the years, though it is not as bold.
		Due to strong ideological parties, there are fewer cases of defection of members on the floor as compared to the National Assembly of Nigeria.	It is very common here, though the constitution prohibit defection of elected legislators except on certain conditions (section 168(g)), it has continued unabated. once

			elections are near, defection of members is almost on a daily basis.
		The mechanism of vacation of seat for non-attendance or for floor crossing are rare and in between.	Though vacation of seat for non-attendance is rare, but that of floor crossing is still being done. But hopefully as democracy grow and institutionalized, it will drastically reduce.
		Stronger electoral mechanism as elections are freer and fairer.	Elections are still not that free and fair, it's still being influenced by money politics, ethnicity, religion and parochialism. Though the processes of conducting elections are getting better it's still a far cry.

Source: From analysis and research done in previous and this chapter of this study.

4.8 LESSONS ON LEGISLATIVE ACCOUNTABILITY FROM THE AMERICAN CONGRESS

Flowing from the above comparisons, the lessons Nigeria especially the National Assembly can learn from their American counterparts are as follows:-

4.8.1 Constituent Service

In congress, there is more robust constituency service; this is partly due to the fact that house members face their constituents for re-election every two years in a stand-alone election. Though in the Senate, they have 6 years tenure, their tenure is staggered as elections are not held at the same time. There are more established structures of communication between Congress members and their constituents. These are through special mailings direct to individuals through their emails, publication of newsletters, websites and so on. [137] There are also dedicated staff employed by them to address the needs of their constituents as the need arise. There are well staffed

[137] GPAD The Role of Parliament in Promoting Good Governance note 20, 54-55

established offices in their constituencies where they relate with their constituents. These robust public relations help them greatly in winning re-election.[138]

In Nigeria, the feedback mechanism is not well established; where constituency offices are opened they are not properly staffed. Constituents go to these offices and will not meet any staff except a security man or a typist who does not possess the knowhow on the way to address constituent's demands.[139]

The easiest way of communication is through phone calls or text or WhatsApp messages. When this platform is used, constituents get no response; legislators hardly pick their calls or reply to messages. Once in a while they hold town hall meetings, such interactions are usually interrupted by protest by aggrieved constituents on few occasions and end up in violence. Though, they rely more now on constituency projects, that itself only is not enough. Though in Nigeria, demands from constituents are sometimes very personal like school fees payments, burial ceremonies, naming ceremonies, health issues and this overburden the legislators. They must find a way to balance various interests. Abandoning their constituencies to avoid financial assistance is not the way to go.[140]

4.8.2 Legislative Voting Records

In the Congress there are more institutionalized legislative voting records, for constituents to hold their representative accountable. They must have information about their activities in the legislature. As a result a form of legislative voting is essential, constituents should know where their representatives voted on any policy issue that is of interest to them. There are established structures for this. roll-call

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138 David, R. Mayhew, note 19.

139 PLAC *Guide to Effective Representation in the National Assembly,* (Policy and Legal Advocacy Centre (Abuja, Nigeria 2016) 5.

140 A.D. Badaiki, 'Effective Legislative Representation: Key to Social Economic and Political Development in the Owan Experience 'since 2011 till date', (being a lecture delivered at the reception in Honour of Rt. Hon. Pally. I. O, July 6, 2019) 8, 9.

voting, recorded votes, visible and electronic voting are mechanism congress has embedded in their system, this aids legislative accountability.[141]

In Nigeria there is no such established mechanism the system of roll-call votes, recorded votes and visible votes have not been firmly established or non-existent. Voice vote is still the order of the day. The shout of "Ayes" and "Nays" do not argue well for accountability, as it is very difficult to know where your legislator voted on a particular issue.[142]

4.8.3 Strong Ideology

In America due to strong ideological parties, there are fewer cases of defection of members on the floor as compared to the National Assembly of Nigeria. The issue of declaration of seats for non-attendance is rare, democracy is highly entrenched in the America congress, this allows for certainty.[143]

However the situation is different in Nigeria as there are no strong parties based on ideology, a member who is elected on a platform of a political party can defect to another party without consulting the electorate that gave him the mandate in the first place. Though they usually say they have consulted them, this is hardly true. This lack of ideology has withered down legislative accountability, parties are supposed to influence some decisions in the legislature but were they are un-ideological and weak, legislators will ignore them and represent themselves.[144]

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141 John M. Carey, note 2, 4.

142 Senator Olubumi Adetunbi, 'Electronic Voting on Issues will Make Lawmakers Accountable', *The Vanguard Newspaper*, (Lagos, April, 6, 2019) 12

143 Juan Linz, note 51.

144 Kenneth Janda, in his paper titled 'Assessing Laws That Ban Party Switching, Defecting, and Floor-Crossing in National Parliaments,' (The paper was delivered at the United Nations Development Program (UNDP) Workshop held at the University Guesthouse, Leysweg on August 11, 2007).

4.8.4 Accessibility of the Legislature

The Congress building is open to the public so also it's in many public galleries where constituents can observe parliamentary proceedings. This accessibility promotes the role of parliament and the work it does, while also ensuring that citizens feel ownership of the parliament.[145] In Nigeria while the National Assembly is open to every citizen, they are hindered by the number of security posts and men at the various gates leading to the building. At times they are not allowed to pass the first gate unless you have a security pass which must be based on appointment. This restriction of access to the building of the National Assembly to citizens is not good enough. Though they site security reasons, they only allow some groups to observe proceedings on appointment. But any interested citizen is supposed to have access and observe proceedings unhindered.

4.8.5 Strong Professional Lobbyists and Civil Society Groups

Congress has strong professional lobbyists who work in the parliament. Their role is to lobby stakeholders in the passage of bills and motions. They are also employed by the executive and sometimes by the legislators to convince constituents as to why they should support a particular legislative policy. There are also strong civil society groups trained in the legislative process to help support the work of the legislature. They also help to educate citizens on the legislative process and inform them of bad legislation that is about to be passed, they are well established in America. In Nigeria however, though they exist, they lack basic training and knowledge about legislative process.

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[145] Adeshola Komolafe, 'Constituency Accountability Lessons from U.S Congress', *Amin News, Viewpoint Comments*, (August 27, 2017) 10.

Although in Nigeria, the civil society is growing by the day and helping the constituents and legislators alike in legislative business in order to enhance accountability, they are not well established like that of the America.

4.8.6 More Access to Information

The major factor that guarantees an incumbent's re-election is usually the various tools that the Congress member uses to be in constant torch with his constituents. America legislators ensure that citizens are provided with access to information about what is happening in the parliament and positions being taken by their representatives.[146] These enable the constituents to also relate back to their representatives their various interests.

This access to information guides the congress in proper oversight function of the executive. Learning from the congress, national assembly members must make themselves available for increased access and information sharing to their constituents. Though their efforts by them in promoting people's participation in decision-making processes, they still lack appropriate laws, policies and mechanism towards enhancing citizen's participation in decision-making, they however need access to resources.[147]

4.8.7 Research

One of the measures the Congress has taken to enhance accountability is in the area of research and survey in order for them to determine how well they are in performing their functions. The House carried out research in 1986 to survey the role of legislators, as it relate to constituent service, It's like self-examination. The result from such research assists legislators to consolidate or up their game in their constituent service to their constituents.

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[146] Adeshola Komolafe, note 145, 10.
[147] GPAD The Role of Parliament in Promoting Good Governance, note 20.

The National Assembly needs to learn from this, since the advent of the fourth Republic in 1999, there is no record of such research or any other and even the National Institute for Legislative and Democratic Studies has no record in its achieves of such research. Apart from this, research is also needed into subject matters presented as bills before legislature in order to be fully aware of the implication of passing such bills into law. The National Assembly established the National Institute of Democractic and Legislative Studies(NIDLS) to partly assist it in this regard, but have this been effective? This study doesn't think so. The cross-referencing errors discovered in the Electoral Amendment Bill 2022, which President Buhari declined assent to is a sad example. The institute capacity needs to be upgraded in the area of research into legislative bills and carry out the reaction or feedback from constituents on very important policy decision.

4.8.8 More Structures

The American Congress has more structures that help it enhance its functions and thereby make it more accountable. Apart from conventional library, Congress has a Congressional Budget Office that helps it greatly to oversight the national budget submitted to it by the executive. The budget is crucial as no projects can be executed in the various constituencies when it's not captured in it. The Congress also has strong committees and sub-committees that deal with technical and specific matters. Though the Nigeria National Assembly has a similar Budget Research Office, it is not yet codified as attempts to do so since 2005 has failed.

4.9 THE MECHANISM OF ELECTION

One of the major mechanisms in the congress that aids legislative accountability is the fear of re-election. Elections must be free and fair to be an effective mechanism. The lessons to be learnt in respect of elections in America as

stated by Ademoyo, who identified five lessons which this study fully endorsed;[148] these are:

(a) **Election as a voters act**: The voter in the American election considers himself or herself rightly or wrongly but both consciously and unconsciously as a moral agent that has the power to choose and make a difference. Hence, even when there are divides of all sorts, every voter watches, and is always trying to make the best decision. And because the voters are taken to be moral agents, and they take themselves as moral agents, candidates are obliged to go to them to present themselves and persuade them. That is not the case in our country, Nigeria. The parties are business companies. In Nigeria the party that controls the electoral body and police wins. These two are instruments of rigging. The voter does not consider himself as a moral agent of choice, neither is he so considered by the candidates.

(b) **Election as a rational act**: The rational is that which one can turn into a universal law. To this extent a lot of rationality is brought into losing and winning elections in America. In other words, losing and winning become an indivisible duality. The losing party knows it can win, while the winning party knows it can lose. In our country Nigeria, election is embedded in complete irrationality for the ruling party, which controls the police, and electoral body knows it will always win.

(c) **Election as a programmatic and a problem-solving act**: America election today is about issues and programs such as taxation, employment, economy, health, immigration, foreign policy and defense. Just as some of Nigerian political leaders in the first and second republics tried to do. Today it is no

[148] Adeola Ademoyo 'Five Lessons Nigeria can learn from the American Election', *Premium Time*, (December, 2, 2012) 3.

longer the case, as there is hardly any difference in the programs of all the political parties. Almost all the parties attempted to define the electoral conversation around security, education, rural development, agriculture and food production, full employment, economy and health. The difference is that in American politics elections are contested on the basis of strong ideological issues with the two main parties sticking to their different ideological view point, in Nigeria all the parties are saying the same things; there is no strong ideological difference.

(d) **Election as a post victory listening act:** Listening and the capacity to listen is a moral act. The Nigerian politician maintains an immoral relationship with Nigerian taxpayers. This is not the case with the American election. During President Obama's tenure, he constantly met with voters to abreast them of his programs, he knows to be trusted is a moral act.[149]

4.10 CONCLUSION

Throughout this chapter, an analysis of the historical evolution, core functions, accountability, and representation of the American Congress was conducted, juxtaposed with the Nigerian National Assembly. These comparative examinations aimed to identify areas from which both legislative bodies can draw lessons.

The American Congress, tracing its roots back to its inaugural session in 1786 and evolving into the present 118th Congress, has maintained consistent core functions akin to those of the National Assembly, including lawmaking, oversight, and representation. Notably, the American Congress places significant emphasis on representation, driven by the imperative of re-election, particularly for House of Representatives members facing biennial elections.

[149] Adeolu Ademoyo, note 148, 4.

Accountability mechanisms, particularly election, are robust and institutionalized in America, fostering legislative accountability through free and fair electoral processes. Structural supports such as roll-call votes, a robust ideological party system, professional lobbyists, and institutional resources like the congressional library and budget office enhance accountability within the American Congress, offering valuable lessons for the Nigerian National Assembly.

Conversely, the National Assembly's oversight function is expressly enshrined in the constitution, bolstered by robust recall provisions and a lesser degree of legislative gridlock. Additionally, the implementation of constituency projects provides a direct link between legislators and their constituents, a feature not prominent in the American context, offering insights for potential adoption.

This comparative analysis underscores the importance of cross-cultural learning between the American Congress and the Nigerian National Assembly. By leveraging each others strengths and addressing respective weaknesses, both legislative bodies can enhance their effectiveness in serving their constituents and upholding democratic principles.

CHAPTER FIVE

ROADMAP TO ENHANCING LEGISLATIVE ACCOUNTABLITY IN NIGERIA

5.1 INTRODUCTION

One of the hallmarks of good governance is improving organizational preference and accountability.[1] The study of legislative accountability is not only to facilitate good governance but to ensure full participation of citizens in their affairs. This ultimately builds public trust in our democratic institutions. Performance and accountability frameworks take account of a range of mechanisms used by governments and organizations. These mechanisms include election, recall, judicial review, assent to a bill by the president, restricted immunity, suspension, vacation of seat for floor crossing and non-attendance, power of veto, and so on.[2]

Having analyzed in this study the concepts of democracy, separation of powers, legislature, representation, accountability, populism and legislative accountability itself and its application in Nigeria and America, it is pertinent in this chapter to take a critical look at measures that can be taken in enhancing legislative accountability. This is necessary in order for the gains of democracy to be consolidated and actualized in its original meaning. Overtime the debate about democracy and development arising partly from disappointments with the result of democratization have been on, it has been found that democracy itself, elections and representative institutions does not necessarily produce justice and prosperity. On the contrary, they may facilitate state capture by elites more interested in opportunities for

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1 Policy Division, ACT Chief Minister's Department, *Strengthening Performance and Accountability: A Framework for the ACT Government* (Australian Capital Territory, Canberra, February 2011) 1.

2 Michael Johnston, *Good Governance: Rule of Law, Transparency, and Accountability*, (Nations Public Administration Network, 2006) <https://www.academia.edu/33994953/good_governance_rule_of_law_Transperency_and_accountability > accessed 8, day of July, 2022.

corruption than in serving the people. This experience underscores the importance of effective public participation in the political process, particularly if one hopes to empower marginal groups in society and reduce poverty.[3]

The roadmap to enhancing legislative accountability is to ensure a parliament that is politically representative and takes the interests of the electorate into consideration in decision making processes. In furtherance of these, this chapter will deal with issues of institutional and legal framework, constitutional review, strategic legislative agenda, clear legislative reporting, information dissemination and enlightenment of electorate, effective sanction regime, strong party leadership and constituent input in decision making all geared towards ensuring a more robust and effective legislative accountability, some of these issues are interrelated and will be analyzed together.

5.2 INSTITUTIONAL AND LEGAL FRAMEWORK

To enhance more accountability in various spheres, be it political, economic or social, the need for strong institutions is a given. Institutional and legal frameworks are imperative, in order to have good governance, rule of law, transparency and accountability. First let's take a look at institutional framework as it relates to legislative accountability.

5.2.1 Institutional Framework

Institutions are essential to sustain and restrain orderly competition within, and essential boundaries between politics and the economy, and to enable developing societies to shape their own destinies in an increasingly interdependent world, many such institutions like the Legislature will have the task of checking the excesses of the

[3] PC-WBI 'Parliaments that Work: A Conceptual Framework for Measuring Parliamentary Performance'**.** (Project report by the Parliamentary Centre and World Bank Institute, 2010).

powerful in the name of ordinary citizens.[4] Similarly, the representational function of the legislature was highlighted.

In all these aspects laying down procedures for handling them was considered part of the legislative institution-building endeavor, in order to preclude arbitrariness. Legislative Institution-building means achieving predictability in the processing of bills and other policy matters through the iterative application of rules and procedures that are known. Institutionalization means narrowing the scope for individual whims.[5] The conceptualization of professionalization requires direct consideration of session length, salary, or some other indicator, then that study would be best served by setting aside all three measures considered here in favor of direct indicators.[6]

Institutions must not only be well designed but also have social support at all levels of society. This is what Evans called embedded autonomy.[7] This is however, just one of the goals for good governance; Johnson provides a list of specific goals for good governance amongst which are:

i. Vertical accountability:
   - government that answers to citizens
   - citizens who accept and abide by laws and policies

ii. Horizontal accountability leaders, and among segments of government:
   - access to information
   - the right to be consulted

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4 Michael Johnston, note 2, 2

5 Arne Tostensen and Inge Amundsen, 'Report on Synthesis Study of Support for Legislatures' (Norad Norwegian Agency for Development Cooperation Oslo Ruseløkkveien 26, Oslo, Norway 2010) 145.

6 Brown, A. R. and Mitchell, E.M, Comparing Three Measures of Legislative Professionalism State Politics & Policy Quarterly, (Cambridge University Press 2024), 1–13.

7 Evans Peter *Embedded Autonomy: States and Industrial Transformation*, (NJ: Princeton University Press 1995). 34

- the power to check excesses and abuses.[8]

Specifically, institutional framework as it relates with the legislature, started with reforms and institutions-building in Nigeria since the advent of the fourth republic in 1999. In the United States of America, it is obviously longer. These were constitutional reforms, stating clearly the relationship between the executive and the legislature, and other forms of horizontal accountability; to define unequivocally the authority of parliament to pass legislation and approve budgets; to specify organizational aspects such as the committee structure, the office of the speaker, party groups, and the role of the opposition.

There has been support from donors organization including the United Nations Development Programme, UNDP in building parliamentary institutions in many African Countries including Nigeria.[9] These external supports are geared towards enhancing legislative capacities especially in the performance of their core functions of law making, representation and oversight.

Also legislators capacity are enhanced by consistent training in order for them to acquire skills that will enable them to perform their functions effectively, especially in the area of communication skills with members of their constituents and in the performance of legislative work. It should be noted that institutions are made of individuals. Although, the legislative frame work in terms of infrastructure and procedures is a necessary precondition for a workable parliament, it does not help much if the caliber of the legislator is below par. Unfortunately, a fair proportion of elected legislators in the developing world have limited formal education, some may even be only semi-literate.[10]

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8 Michael Johnston, note 2, 3.
9 Michael Johnston, note 2, 5.
10 Ibid, 6.

In addition, other institutions such as an independent judiciary, a free and competitive press and a strong civil society (both an institution and an aspect of participation) will be essential partners in improving and sustaining legislative institutions over the long run.[11]

5.2.2 Legal Framework

As earlier stated in this study in previous chapters, election is the most effective mechanism that the electorate or constituent have in holding their representatives accountable. Election will not be an effective mechanism if it's flawed, un-free and unfair and this will make it difficult for elected representatives to fulfill their roles.[12]

There is also the need for constitutional review as analyzed below. It has a profound effect on the short and long term functioning of parliamentary institutions. Legal framework in respect of rules of procedure, budget laws, and freedom of information laws are also crucial.[13]

In Nigeria there where several amendments to the Electoral Act 1999 that has now been repealed and the new Electoral Act 2022 has been enacted by the National Assembly. This is in line with its legislative agenda, which include a review of archaic, obsolete laws, constitution amendment and reform of the Electoral Act.[14]

This is however different in the United States of America where there is a well solid legal framework that has made their elections to be largely free and fair. Apart from statute, there is need for a constitutional review that will enhance legislative accountability.

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11 Ibid, 4.

12 GPAD *The Role of Parliament in Promoting Good Governance* (Governance and Public Administration Division (Economic Commission for Africa 2012) 2

13 The legal framework has aptly been described in items 1 and 2 in table A in entry points for UNDP parliament development.

14 'Senate to Review Archai, Obsolete Laws, Amend Constitution, Reform Electoral Act', *Vanguard Newspaper*, (September 30, 2019) 8.

5.3 CONSTITUTIONAL REVIEW

As stated above, there is need for a constitutional review in other to enhance legislative accountability in Nigeria. It is suggested that the constitutional review should take into cognizance the following.

a. A four year residency requirement to qualify for the legislature from any given constituency, designed to ensure that representatives know firsthand the needs and preferences of constituent voters.
b. Legislators should be obliged to render accounts of their activities each year in public forums or town hall meetings in their constituencies to explain and defend their behavior and their votes.
c. That the 50% + 1 signatories' requirement to initiate a recall petition should be drastically reduced.

These suggested reviews were successfully done in Venezuela's Constitution.[15] This study has argued in chapter three that the 50% plus one requirement of registered voters to initiate a recall petition in Nigeria is on the high side. Though a ten percent requirement seems to be on the low side, a 25% requirement of the number of accredited voters during the election of the legislator will be appropriate in initiating the recall petition. But however, all the registered voters will be given an opportunity to vote during the recall process. This is more so when fictitious, duplicate or deceased names are still on the voters register.[16]

However the requirement that legislators should render accounts of their activities every year in public forums in their constituencies should not be a matter that should be codified in the constitution. These can be left to statutes or rules and regulations of the parliament. A constitution of a country should not contain every

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15 The Venezuela's of the Constitution of Nigeria, 1999 as amended.
16 'INEC requests NPC's Data on Deceased Nigerians to Enhance Voters Register', *The Vanguard Newspaper* (Lagos, September, 24, 2021) 23.

detail of policy. It is to set broad guidelines. However this does not take away the innovation introduced by these amendments, it's a bold step to constitutionally enhance legislative accountability.

5.3.1 Legislative Houses (Powers and Privileges) Act

The legislative Houses (Powers and Privileges) Act also needs to be reviewed, especially as it relates to the suspension of a member from plenary.[17]

It is a known notion of constitutional law that what is not expressly provided for in the constitution is excluded. It is only the mechanism of recall or vacation of seats for non-attendance and floor crossing that can deprive a legislator of his seat. Suspension from plenary having not been provided, it's deemed to be excluded. It cannot be provided for in any other statute or enactment. It will be overreaching the constitution which is the grundnorm. Ancillary to this is that parliamentary rules and regulations not in agreement with constitutional provisions should also be abolished.

A study carried out by a panel of scholars in America emphasizes that legislative accountability process should be firmly established as a matter of statute or constitutional amendment, not simply through a revision or procedures which can be changed with little or no public notice.[18]

5.4 STRATEGIC LEGISLATIVE AGENDA

Strategic planning is very crucial in any institution if its aims and objectives would be achieved. It relates more closely to the way in which services are planned and delivered. Identified strategic priorities define where the government will focus its attention and effort from a high-level policy perspective. It also requires

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[17] Sections 21 and 22 of Nigeria's Legislative Houses (Powers And Privileges) Act, 2018

[18] James Griesemer 'Searching for Legislative Accountability Rebuilding Citizen Trust in the Legislative Process', (Report of the University of Denver Strategic Issues Panel on Legislative Accountability, University of Denver Strategic Issues Program, 2015) 6.

identification of priority actions and achievements that will contribute to the longer-term goals of government.[19]

The public cares that government delivers on its commitments rather than the minutia of the accountability of the organizations involved in delivering services.[20] At times, a lack of accountability means that some objectives that matter to the public are missed repeatedly, with no reasons provided on why this is happening and how the situation can be improved.[21]

However of more concern to this study is the strategic agenda of the legislature. It has been stated earlier in this study, that the first step a legislature that intends to gauge its performance at the end of its tenure is to have a legislative agenda that is strategic. It is the research findings of a team of panel in the US who researched on legislative accountability that institutional legislative accountability begins with the establishment of a strategic legislative agenda.[22] They equated it to the legislature's institutional equivalent to the American President's State of the Union Address or a Governor's States Speech. The agenda should determine the most important issues and opportunities facing the jurisdiction and guide legislative attention toward matters of strategic importance.[23] The panel recommended strategic legislative agenda must have the following features:

a. Focused on a limited number of high-priority issues.
b. Developed prior to the session.
c. Created through a collaborative process involving leaders of the legislative body representing the major political parties.

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19 Policy Division, ACT Chief Minister's Department, note 1, 3.
20 Benoit Guerin, Julian McCrae and Marcus Shepheard, 'Accountability in Modern Government: What are the issues-A discussion paper', [2018] *Institute for Government*, 21-22.
21 Ibid, 23.
22 James Griesemer, note 18, 21.
23 Ibid, 22.

d. Presented at the opening session of the legislature.

e. Publicized widely as evidence of institutional leadership.

f. Used to guide legislative attention throughout the session.

g. Evaluated by the public as evidence of the legislature's ability to identify both near- and longer-term issues of strategic significance.

These are illustrated in Table 5.1

Table 5.1

S/N	STRATEGIC LEGISLATIVE AGENDA	
1	IDENTIFIES THE MOST IMPORTANT ISSUES	
		Limited in number.
		Reasonably specific, clearly expressed
	REFLECTS A COLLABORATIVE INSTITUTIONAL PROCESS	
2		Developed by legislative leaders
		Created prior to the legislative session
		Collaborative, unified leadership effort
3	DEMONSTRATES INSTITUTIONAL LEADERSHIP	
		Strategic Legislative Agenda widely publicized
		Proactive statement of legislative direction
		Comparable to State of the Union address
4	GUIDES LEGISLATIVE ATTENTION	
		Presented at opening session

		Topics are addressed throughout the session
5	SERVES AS A BASIS FOR PERFORMANCE EVALUATION	
		A reasonable basis for public assessment
		A foundation for increased citizen trust.

Source: University of Denver Strategic Issues Program (2015).[24]

The essence of the Strategic Legislative Agenda, SLA, as an accountability process would present an opportunity for political leadership by the legislative body, provide citizens with an informed basis for evaluating legislative performance, and serve as a foundation for building public trust.[25]

There have been debates that legislative agenda should not be party caucus based so as not to let it to be abused by political parties. Cos et al,[26] demonstrate that the long dominant LDP in Japan used its control over the parliamentary agenda to prevent proposals that might generate internal divisions in the governing party from coming to the floor. Amorim et al,[27] provide evidence that, multi-party legislative coalitions in Brazil act similarly, as cartels that limit legislative proposals to protect the policy interests of member parties. However, In Nigeria, there are no strong legislative parties as to warrant this fear.

In Nigeria each successive National Assembly has a legislative agenda which is usually unveiled at the beginning of each session of the legislature.[28] However it does not meet up with the requirements outlined above. Sometimes the agenda is too

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24 James Griesemer, note 18, 23.
25 Ibid, 24.
26 Gary W. *Cox*, Mikitaka *Masuyama* and Mathew D. *McCubbins*, 'Agenda Power in the Japanese House of Representatives', [2000] 1, *Japanese Journal of Political Science.* 1-21
27 Amorim Octavio Neto, Gary W. Cox, and Mathew D. McCubbins, 'Agenda Power in Brazil's Camara Dos Deputados, 1989-98', [2003] 55 (4) *World Politics*, 550-78.
28 See the legislative agenda of the 8th and 9th National Assembly of Nigeria.

bulky and contain many pages. It is difficult to understand. Though some areas are prioritized, a proper evaluation at the end of the session is not carried out in assessing legislative performance. The various agenda are always frustrated by extraneous factors that impede its successful implementation. The 8th National Assembly as an example was so engrossed in crisis with the executive that it barely paid attention to its legislative agenda.

5.4.1 The Legislative Agenda of the 9th National Assembly

In the 9th National Assembly (2019 to 2023), both the Senate and the House of Representatives had their legislative agenda. For example in the Senate, the following areas were listed:

1. Return Nigeria to the January - December budget circle.
2. Approved legislative framework to curb increasing youth on employment.
3. Alleviate poverty, and menace of out-of-school children.
4. Creation of special health centers in the six geo-political zones.
5. Fast tracking the passage of the petroleum industry bill, PIB.
6. Electoral reform.
7. Blocking revenue leakages.
8. Open National Assembly policy.
9. Cutting down federal government agencies.
10. Security of lives and property.
11. National unity and progress.
12. Fight against corruption.
13. Eradication of ethnicity and religion.
14. Development of infrastructure.

15. Mass housing.

16. Gender issues.

17. Oil and gas.

18. Revenue generation.[29]

It is obvious that this legislative agenda is nebulous and unwinding. This is because too many items on the agenda will make it very difficult to implement, it is better to concentrate on few important items that are implementable and achievable**.** Out of the items listed only the return of the budget cycle from January to December, the passage of the PIB and amendments of the Electoral Act and the 1999 Constitution were achieved. The 9th House of Representatives also have some unwinding list of items in its legislative agenda. This study believes that for an effective strategic legislative agenda, only few priority areas should be concentrated on by the National Assembly. When the items are too many, it is difficult to achieve and this will not enhance legislative accountability.

5.5 CLEAR LEGISLATIVE REPORTING

As part of the roadmap to enhancing legislative accountability, it is necessary that the legislature should after rolling out its legislative agenda, report periodically on actions taken to address these issues. This process of reporting has been referred to as Clear Legislative Accountability Reporting, CLEAR.[30]

Reporting usually captures an overall picture of performance.[31] An effective reporting system that improves accountability generally across government operations must:

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29 '9th Senate's Legislative Agenda: How Far So Far', *Business Day*, (February 23, 2020) 5.

30 James Griesemer, note 18, 23.

31 Queensland Government, 'A Guide to the Queensland Government Performance Management Framework. 2009 in Strengthening Performance and Accountability: A Framework for the ACT Government', (Australian Capital Territory, Canberra, February 2011), 15.

1. Identify whether desired outcomes are delivered and opportunities for improvement in the future;
2. Cover an appropriate range of activities and achievements;
3. Use both quantitative and qualitative measures of performance where appropriate; and
4. Explain, analyse and interpret performance outcomes.[32]

5.6 INFORMATION DISSEMINATION AND ENLIGHTENMENT

For citizens to be able to hold elected officials accountable in government, they must believe information about the activities of various arms of government be it the legislature, executive and judiciary. However, this only works if voters know how politicians are performing and are willing to base their vote on this information.[33] There must be a deliberate effort by policy makers to disseminate information by enlightening the citizens of their activities.

In the history of the legislature, they have been gradual efforts in making its activities open to the public and individual legislators have diverse different ways of informing and enlightening their constituents about their activities in the legislature. Therefore information is very important for the functioning of democratic legislatures. Lowenberg and Patterson asserted that the need for information is probably even greater in democratizing and developing countries, in which "substantive, policy-relevant information is often exclusively the province of the executive-the government."[34]

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[32] The Allen Consulting Group, 2009 and 2010, in *Strengthening Performance and Accountability: A Framework for the ACT Government* (Australian Capital Territory, Canberra, February 2011), 16.

[33] Guy Grossman, Macartan Humphreys, and Valerie Mueller, 'Information and electoral accountability', [2019] *growth brief, state.*

[34] Gerhard Loewenberg, Samuel C. Patterson, *Comparing Legislatures* (University Press of America, August 29, 1988). 19

The major institution that usually performs the role of information dissemination is the media usually referred to as the fourth estate of the realm. How well has it fared in the performance of this role? It must be stated that in this age of sweeping media resolution, the media profession is faced with threats and opportunities. These days anybody with access to a phone with Internet is already a reporter. Blogs cost barely nothing to maintain. On the other hand, preponderance of online mediums has put the conventional media on the edge. Also Abraham Lincoln American's charismatic President once said "let the people know the facts and the country will be safe". The solution is to be more creative and go extra mile by investigating stories beyond the mundane.[35]

In Nigeria the media has undoubtedly played this role of unearthing series of scandals, sustain it in the public consciousness and push for a proper resolution of such matters. One example was the exposure of the then Speaker of the House of Representatives, Salisu Buhari, over his certificate forgery scandal that he never attended Toronto University, Canada.[36] Apart from the media the legislature must partner and communicate with civil society groups,[37] the electorate and public at large.[38]

There are many ways and processes that citizens generally can get information and be enlightened about the activities of the legislature and legislators both collectively and individually in order to hold them to account. These differ from different jurisdictions but generally include:

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35 Abraham Lincoln, 'The Lincoln Year Book: Axioms and Aphorisms from the Great Emancipator', [1907] *Library of Alexandria*, 28. < https://www.azquotes.com/quote/593246> accessed August, 20, 2021.

36 Segun Akande, 'The story of Salisu Buhari, fake certificates and the 1999 Toronto Saga', *Pulse Nigeria*, (February 22, 2018).

37 For example N.G.Os, Trade Unions, Community Organizers Clubs, and so on.

38 Meryl Davis, 'UNIT 6. Government Accountability and Parliamentary Committees' (2016) <https://docplayer.net/14431147-Unit-6-government-accountability-and-parliamentary-committees.html#download_tab_content> accessed June, 19, 2020.

1. Public Access and Involvement in Parliament.

   As earlier stated in previous chapter of this study, there are public galleries in most legislative houses which are open to the public during sittings. The public gallery is attached to the parliamentary chamber and sometimes has a glass wall through which people can see in the chamber and view proceedings.

2. Submissions to Legislative Committees.

   People can make submissions to legislative committees or make submissions on a specific bill.

3. People can write to their member of Parliament about issues

   People can write to their member of parliament about issues that they believe ought to be addressed by the government or by the parliament. In addition, people can visit their member of parliament individually. All members of parliament other than those in the cabinet have office spaces in the parliament building in order to do parliamentary work and meet with their constituents. In addition, if someone wishes to access parliamentary documents that they cannot find on the parliament's website, or if they have questions about parliament that are not answered on the website, people can then write directly to the Clerk of the Parliament stating their concerns.[39]

4. Internet and Television:

   Many parliament use video link to broadcast their proceedings in real time through their website or a dedicated TV channel. Some use zoom. This enables them reach citizens abroad, who otherwise would not be able to

[39] GPAD, note 12, 5: This is particularly the case in the Republic of Nauru, formerly known as Pleasant Island, the world's smallest Island Nation.

follow legislative proceedings directly. Example is the Portuguese and Mexican Parliaments.[40] Telecasting and broadcasting parliamentary proceedings lead to first hand political education of the common people. Constituents now have the opportunity of seeing for themselves the role being played by their elected representatives in ventilating their grievances.[41]

5. Radio and Newspapers:

   Despite the rising use of the internet, television broadcast, the importance of the radio for countries and communities where ownership of TV sets is low should not be underestimated. Radio remains the most important source of information for countries in Africa.[42] For example in South Africa a report about its radio project found that the radio, which aims to educate and inform the public of what happens in parliament, how laws are made and how citizens are participating in law-making processes, has become the most important means of communicating with the South African public.[43] Same is applicable in Nigeria where the rural large population of over half of the population (100 million) do not have access to internet or television, and even if it does no electricity to engage the internet or watch television, but the radio come to their aid.

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40 David Beetham, Parliament and Democracy in the Twenty-First Century a Guide to Good Practice, (Inter-Parliamentary Union 2006) 59.

41 David Beetham, Parliament and Democracy in the Twenty-First Century a Guide to Good Practice, (Inter-Parliamentary Union 2006) 60.

42 Ibid, 61.

43 Thomas Jefferson, 'Investigative Reporting Work of Legislature: A paper by Imam Imam, a Former Legislative Aide, Delivered at a 2-day Training on Legislative Reporting Organized by the Akwa Ibom State House of Assembly', *The Cable*, (May, 17, 2017).

Apart from radio, newspapers are also a major source through which citizens get information about the activities of the parliament. Due to the introduction of the internet, newspaper can also be read online in various social media platforms.[44] Hard copies of newspapers are still popular today and many citizens still rely on them for detailed information about the activities of government including the legislature. The importance of newspapers cannot be overemphasized as Thomas Jefferson stated:

> 'Were it left to me to decide whether we should have a government without newspapers or newspapers without government, I should not hesitate to prefer latter'.[45]

6. Parliamentary Websites:

   Parliamentary website has become a popular and major source of information dissemination to the citizens by various parliaments. It keeps citizens abreast of parliamentary proceedings and to provide a record of legislation and in many cases, an internal site for improving communication with their members,[46] it is also interactive as constituents can engage the parliament through the websites and get feedback. In Nigeria both Houses of the National Assembly have their respective Websites where daily proceedings can be assessed by interested citizens who can ask questions, send comments, take part in discussion forums and opinions survey and subscribe newsgroups according to their personal preferences.

7. Dedicated Centre in the Parliament Buildings:

   In some parliaments there are dedicated centers for information and education in the parliament building for organized visits. Visitors can follow parliamentary proceedings on screen, access information on parliament through a variety of

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44 Ibid.
45 Thomas Jefferson, note 43
46 David Beetham, note 40, 59.

media and engage in systematic research.[47] Some parliaments hold open days, whether at set times in the year or to mark some special anniversary.[48] On such visits or for a special question time is arranged for the guests in the parliamentary chamber with members of the government participating and answering questions. The parliament also holds information days in rural areas and counties, where local people are able to question members on their work.[49]

Another example of taking the parliament to the people is as practiced in Botswana, where it instituted a parliament on wheels in which members of the Speaker's and Information offices tour villages to explain the role of parliament in society. South Africa has organized 'democracy roadshows' whose aim has been 'to take parliament to communities that do not have ready access to it, so as to educate and inform people of how laws are made and how citizens can participate in law-making processes.' Its second chamber, the National Council of the Provinces, locates itself in a different province for a week each year, to hold meetings with various stakeholders, especially from rural areas. Instances of citizen participation beyond electoral democracy are spreading across the globe, assemblies play an increasingly important role in democratic practice today.[50] But aside from low turnout, assemblies also often suffer from participation inequality. This is a common problem in any form of political participation, but particularly so when turnout is low.[51]

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47 For example the Italian Chamber of Deputies, in May-2005, Inaugurated a Multi-Functional and Multi-Media Center of Information in its Building.

48 The parliament of Kiribati opens itself to the whole public once a year to coincide with the date when the parliament first opened in October, 2000.

49 David Beetham, note 40, 62-63.

50 Min Reuchamps, Julien Vrydagh, and Yanina Welp, eds. '*De Gruyter Handbook of Citizens' Assemblies.* (Berlin/Boston: De Gruyter, 2023) 19-35

51 Dacombe, Rod, and Phil Parvin. 'Participatory Democracy in an Age of Inequality.' [2021]: *Representation 57*, 145–57

Interestingly in Nigeria these laudable ideas of taking parliament to the people have not gained traction. The National Assembly and the various states legislatures do not have dedicated centres in their various buildings were the citizens or their constituents can visit to have access to information. Such facilities do not exist. Apart from occasional town hall meetings legislators in Nigeria hardly take their activities to their constituents. One of the excuses they usually give is that anytime they visit their constituencies, the financial demands on them by the constituents are overbearing. The second reason is insecurity.

8. School Based Initiatives:

   School based initiatives involve teaching about parliaments as part of the school curriculum. Young students are usually thought the process of Law Making. Mock Parliamentary Sittings are carried out to imbibe the young ones at an early age about the working of the parliament. In Nigeria, part of the teaching is embedded in the subject "Government" where parliamentary processes are thought. Many long established democracies[52] also have a curriculum for school students that make them experience what it is like to run their own parliaments.

9. Constituency Facilities:

   As stated earlier in previous chapters,[53] constituency offices provide a context point for communication between the legislator and his constituents. There was a pilot programme carried out as to determine what type of model of constituency offices would be more appropriate in the circumstances between:

   i. The fixed office;

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52 For example America, Iceland, Turkey and Denmark.
53 See chapters 3 and 4 of this study.

ii. The travel budget office, where an MP was provided with funds for travelling around the constituency in person;

iii. The mobile office located in a Land Rover, and equipped with a computer and satellite phone.

After the pilot programme the result was that the fixed office proved to be the most effective in the pilot studies.[54] Apart from a fixed office, it is necessary for effective constituency representation, that the community should be involved in deciding on location of the offices, a well adequate trained staff that are non-partisan and well equipped with basic literature or library including computer and internet facilities.

In Nigeria, most legislators set up constituency offices; this is individually done, not by the parliament directly, though parliament provides the funding through constituency allowances paid to the legislator monthly as part of his allowances. Few however abuse this by either not setting up such offices or if set up, poorly equipped. Sometimes these offices are most times locked with no staff to attend to constituents.

However the system in Zimbabwe is different as the parliament itself that established Parliamentary Constituency Information Centres, PCICs in all 120 constituencies in the Country. The centres hold a socio-economic database of the area, regularly updated, which serves to identify some of the most pressing issues and areas of need in the constituency.[55]

The centers provide a meeting place for the sitting member of Parliament and his or her constituents. Since these centers belong to Parliament, not political parties, they give all members of the area, regardless of political affiliation, an opportunity to discuss constituency issues with their representatives in parliament. The PCICs are

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54 These pilot studies were carried out by the Zambia Parliament.

55 David Beetham, note 40, 70-71.

centrally located and are easily accessed by the majority of people in that constituency. They are also located close to local or government authorities for coordination purposes. The PCIC is manned by the Office Assistant who is an employee of parliament on contract.[56]

This is a very good example on how a constituency office should be run. This will definitely check the constituency funds given to legislators to set up constituency offices and yet they don't. In the United States of America, constituency offices are well-equipped with facilities and trained staffs.

10. Town Hall Meetings:

Town hall meetings are also a medium through which legislators can interact and inform their constituents about the activities of the parliament. It requires face to face meeting with constituents. This has previously been analyzed in previous chapters.

However it is pertinent here to draw some lessons from the Sri-Lanka parliament. It usually set aside the second and fourth week of a month for members to work in their constituencies while the first and third weeks, parliament will be in session. In Chile, it's three weeks in session every month and the last week, members work in their constituencies.

In Nigeria there is no such procedure; no specific time during the month is set aside for constituency visits. However when the National Assembly is on vacation, some legislators usually visit their constituencies.

All the foregoing clearly show that information dissemination and enlightenment of the citizens about the activities of the parliament both as an institution or individually is crucial in enhancing legislative accountability. There's a

[56] Ibid.

need therefore for a free and independent press or media that will not be inhibited in discharging its core functions of reporting the news. All the various media are good, be it the traditional or the social media as they help in information dissemination.

Though they have their challenges especially the social media, including email overload, network issues and attempts by governments to regulate it, its importance cannot be overemphasized. This was why the attempt by the 8th National Assembly management to introduce stringent accreditation measures for journalists covering the National Assembly failed. The then Senate President, Olushola Saraki disowned those behind the issuance of the guidelines and vowed to investigate the matter.[57] The stringent accreditation measures were subsequently dropped.

5.7 SANCTION REGIME EFFECTIVE

It has been stated in previous chapters of this study that for legislators to be held accountable to the electorate there must be an effective sanction regime. Elected representatives who betray public trust are vulnerable to electoral retribution with loss of office.[58] It must be noted that the various mechanisms for sanctions including election, recall and so on, has been extensively analyzed in previous chapters.

5.8 STRONG PARTY LEADERSHIP

In every democratic setting, political parties are important ladder through which elected representatives climb into political offices. In many democratic systems, where there is no independent candidature, voters vote for parties in electing their representatives. Therefore political parties perform vital functions in any

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57 'NASS Drops Stringent Accreditation Measures For Journalists', *Vanguard Newspaper*, (May, 23, 2019), 4.

58 Eric C. C. Chang, Miriam A. Golden, and Seth J. Hill, *Legislative Malfeasance and Political Accountability*, (Cambridge University Press, April 2010), 177-220.

representative democracy, providing the principal vehicles for the representation of citizens' interests, framing political choices at elections.[59]

This is more so in legislative elections, where parties are the gate keepers of the formal offices that control action without the legislature.[60] Carroll, Cox and Pachon, demonstrate that, as democracies mature, parties expand their control over the offices that determine legislative activity, and the distribution of these offices among parties grows increasingly regular. In short, as party systems stabilize, so do the key partisan elements of legislative organization.[61]

Before elections, parties campaign on behalf of their candidates and make promises on the basis of their manifestos to the electorate. After the legislators are voted for as a result of such promises, should the legislator be loyal to the party policy choices as against that of his constituents when such choices conflict? The legislator will be in a dilemma as to who he is accountable to, the party under which he won elections or the electorate that voted for him.

Carey asserts that a legislator elected by a purely personal vote, the support constituency is clearly a primary principal, but even such a legislator generally confronts two principals, voters and party leaders because party leaders control resources within the legislature itself even when electoral rules encourage individualism. He asserts further that the extent to which legislative individualism predominates over collective, partisan representation depends on:

i. The relative value of the resources controlled by voters versus party leaders, and

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59 GPAD, note 12, 14.
60 John M. Carey, *Legislative Voting and Accountability* (Cambridge University Press, June 2012) 3.
61 Carroll Royce, Gary W. Cox, and Monica Pachon, 'How Political Parties Create Democracy, [2006] 31 (2) *Legislative Studies Quarterly*, 153-74.

ii. The propensity of voters and party leaders to want different things, and thus pull 'their' legislators in opposite directions.[62]

Apart from party control, the executive arm of government especially the president also has a lot of influence on the legislators in making policy decisions on the floor of the parliament. So when a legislator deviates from the party line, it often indicates an effort by him to act on behalf of his constituents. This is associated with the idea of the personal vote, and of individual level accountability in the simplest sense.[63] However, it is not all the time that party choices and that of the constituents differ, most times they coincide. In those instances, the legislator has no difficulty in aligning to both the party choices and that of his constituents.

There are two main variables that are necessary for the party to have an effective influence over their members in parliament, these are Political Party Majority and Party Cohesion. Stable political party majorities in the legislature help to ensure the predictability of voting outcomes. On the other hand, party cohesion, as party majorities only ensure the predictability of legislative behavior when matched with tight party discipline. It entails voting along party lines, even if the outcome does not fully match the preferences of the individual legislator. Where party cohesion is strong, there may be less opportunity for legislators from the governing party to play an objective oversight role.[64] In other words, an effective party system requires that the parties are able to bring forth programs to which they commit themselves and

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62 John M. Carey, note 60, 4.

63 Cain Bruce, John Ferejohn, and Morris Fiorina, *The personal vote: constituency service and electoral*. (Cambridge, MA Harvard University Press, 1987) and John M. Carey, and Matthew Soberg Shugart. 'Incentives to Cultivate a Personal Vote: A Rank Ordering of Electoral Formulas', [1995] 14 (4) *Electoral Studies,* 417-39.

64 WBI/GOPAC 'Improving Democratic Accountability Globally; A handbook for legislators on congressional oversight in presidential systems', (World Bank Institute and GOPAC, November 2013), 22.

second, that the parties possess sufficient internal cohesion to carry out these programs.[65]

Party unity therefore connotes collective representation and disunity, legislative individualism. Carey believes that the type of accountability that is possible in any given legislature depends on what sort of representation is provided as illustrated in figure. 5.1, 5.2 and 5.3 below:[66]

Figure 5.1

Party-Dominant Representation

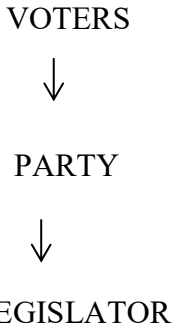
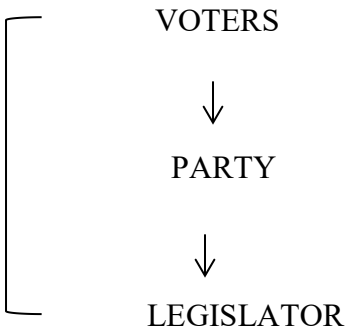


Figure 5.2

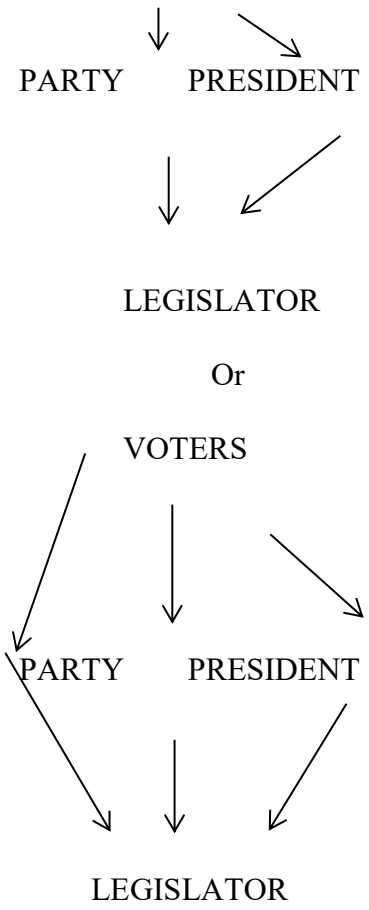
Parties and Voters as Competing Principals
Individual-predominant representation



[65] 'Report on Refunds of the two Major U.S Parties in the name of Enhancing Collective Accountability and or "Responsible Party Government', (The American political Science Association, 1950) 1.

[66] John M. Carey, note 60, 13 - 19.

Figure 5.4
Presidents as Competing Principals with Party Leaders[67]



Source: John M. Carey, *Legislative Voting and Accountability* (Cambridge University Press, June 2012) 17 - 19.

FIGURE 5.1: In terms of legislative principals, representation is party-dominant when the party leadership is the only political actor to which legislators are directly accountable. Under such conditions, accountability is entirely collective, at the party level. The relationships among legislators, parties, and voters are portrayed in this Figure, where the arrows indicate control by a principal with the political resources to reward and punish.

FIGURE 5.2: This figure takes into consideration a political system where voters have the ability to reward and punish individual legislators directly, perhaps

[67] John M. Carey, note 60, 12.

because primary elections determine nominations, or otherwise.[68] Under these circumstances, the voters are a legislator's direct principal. Because party labels are generally attached to the candidates for whom voters vote, and because in the aggregate, a party's fortunes depend on the success of its candidates, voters are also, indirectly principals to the parties. Meanwhile, party leaders, in all likelihood, remain important principals for legislators, to the extent that they control resources within the assembly itself that legislator's value. They may also retain control over electoral resources, such as influence over nominations and financing. Thus, legislators now confront two principals, who may well make competing demands. The relationships are shown in this Figure.

FIGURE 5.3: The formal powers of presidents over the legislative powers are enormous. The array of powers of most directly elected presidents provides substantial leverage with which to influence legislative behavior. As with a direct electoral connection to voters, presidential influence adds another, potentially competing, pressure to that exerted by party.

FIGURE 5.4: The list of potential principals placing demands on legislators could expand, and these could include governors of state. Unlike presidents, the governors do not exercise direct authority over the national legislative agenda, but they do direct the flow of many resources that are essential to legislative re-election prospects, and they control access to state-level appointed posts. These suggest how such additional principals might map onto the accountability relationships described so far.

This study is of the opinion that in collective national interest, the legislator should toe the Party/Godfather line but where the interests of their constituencies and

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[68] John M. Carey, and Matthew Soberg Shugart. 'Incentives to Cultivate a Personal Vote: A Rank Ordering of Electoral Formulas.' [1995] 14 (4) *Electoral Studies,* 417-39.

the party line is in conflict, they reserve the right to deviate from such party line that won't serve the interests of their constituents.

5.9 CONSTITUENTS' INPUT IN DECISION MAKING

One of the hallmarks of democracy is citizen's participation in the democratic process. Citizens need to be carried along by both elected and appointed officials in government in decision-making process. This is basically because such decisions weather political, social, economic or cultural will invariably affect the wellbeing of citizens one way or the other. The legislature represents the aggregate interests of their constituents and therefore legislative decisions taken must reflect their interests. How then do constituents make their input into the decision making process of the legislature in order to project and protect their interests? This is more so as it was them that donated their powers to the legislators by electing them into the parliament as their representatives.

In addition the legislature can access the input of their constituents before taking decisions on any issue through several methods which includes public opinion, office of Ombudsman, civil society groups, public hearing, petitions, town hall meetings, peoples assembly, political parties, or citizens initiatives and referendum. This is similar to and it aids the Clear Legislative Accountability Reporting. These methods will be treated seriatim.

5.9.1 Public Opinion

Public opinion is a powerful source of gauging the mood of the public in respect of any given legislative decision that is about to be taken. It can be in respect of a bill, motion or any issue of public opinion interest. The legislature ignores public opinion at their peril. Apart from the media, the legislature can gauge public opinion through surveys and community meetings to identify what people believe about the

current state of affairs are essential. So are sustained efforts to educate the public about key problems, the justification for proposed changes, the costs of better governance, and actual results.[69] Taking public opinion into consideration before making decisions builds constituents trust in the legislature and it enhances good governance and accountability.

A good example in Nigeria is the recently assented Electoral Act, of 2022. When the issue of electronic transmission of results came before both Houses of the National Assembly, it was voted down by the Senate. The public uproar against the Senate's decision made the House of Representatives to pass a different version allowing electronic transmission of results when practicable. It was at the conference to harmonize the bill that the Senate backed down to public opinion and allowed the clause permitting the electronic transmission of results.[70]

5.9.2 Ombudsman

An ombudsman system to which citizens can make complaints and report is essential. The ombudsman system originated from Scandinavia and it is sometimes referred to as public protector. It is a well-established avenue for individual's complaint against the actions of public authorities including the parliament. It investigates actions of public bodies which involve an infringement of human rights, abuse of office or other maladministration.[71]

Though its decisions are not binding, in Argentina for example they report to the National Parliament. Its role is to protect the interests of the citizens, groups of citizens and the community in general in the face of any government act that violates

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69 GPAD, note 12, 16.

70 'Senate bow to public outcry, adopts electronic transmission of results', *The Guardian Newspaper*, (October, 12, 2021), <https://guardian.ng/news/senate-bows-to-public-outcry-adopts-electronic-transmission-of-election-results/> accessed on 12, March, 2022.

71 David Beetham, note 40, 70.

the fundamental rights of citizens.[72] In some countries the office of Ombudsman report to the executive branch but for proper accountability it has been suggested that it should be responsible to parliament.[73] For example in Malta, it reports to parliament through the Speaker and the ombudsman is an officer of parliament same with Namibia.[74]

In Nigeria, the office exists in several forms; there is the Public Complaints Commission and the Human Rights Commission established by the Acts of Parliament.[75] Though the National Assembly can oversight them, they are institutions that have assisted the legislature in enhancing legislative accountability.

5.9.3 Public Hearing

Public hearing is a popular mechanism through which the general public and civil society groups can make input into a legislation or bill pending before the legislature. This can be done by way of making submissions before committee proceedings. Public hearing is usually given wide publicity by the legislature by advertising it in the media like television, newspapers and the social media.

In Nigeria it's frequently used by both Houses of the National Assembly in gauging the feelings of the public towards a particular legislation. It however had its drawbacks as only the elites that can participate in public hearing. Majority of constituents are in the rural areas and since these public hearings are held mostly in the capital cities of the Nation and States, the rural poor cannot afford to foot the travel expenses. There have been attempts to decentralise public hearing to local government headquarters. This has only happened once during the 7th National

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72 Ibid,
73 Ibid 70
74 Ibid, 71
75 S. 1 of the Public Complaints Commission Act 2004 and S. 1 of the Nigeria Human Rights Commission Act 2010.

Assembly when public hearings were done in the 360 Constituencies and 109 Senatorial Districts during the alteration of the Constitution in 2018.

5.9.4 Public Petitions

Public petitions are usually written by constituents or civil society organizations to the parliament which usually refers them to the appropriate committee on public petitions. However an example in Portugal is worth mentioning here, in that Country where a petition is signed by over 200 signatures, the petitioners must be heard whether the parliament likes it or not, and unlike the procedure in Nigeria, an endorsement of the petition by a member of parliament from petitioner's constituency is not required.[76]

5.9.5 Civil Society Groups and Non-Governmental Organizations

The role of Civil Society Groups or Non-Governmental Organizations (NGOs) in citizen's participation in legislative process cannot be overemphasized. This study has extensively made reference to this in previous chapters of this study. In fact the CSO's and NGO's are the medium citizens usually use to make their inputs into the legislative process. They are very active in this regard, they galvanize public opinion about legislative decisions and are very prominent in public hearing where they usually submit written response to the passage of a bill or motion that is of most concern to the citizens. In Nigeria, CSO's and NGO's made very useful contribution to the eventual passage of the amended Electoral Act, 2022.[77] They kept on the pressure on the parliament by mobilizing the citizens, which eventually led to its passage and assent by President Buhari after initially declining assent.[78]

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[76] David Beetham, note 40, 57.

[77] Ikechuckwu Nnochiri '70 CSOs beg Buhari to assent to Electoral Bill, urge NASS to veto President', *Vangaurd Newspaper,* (December, 18, 2021)

[78] Finally, President Buhari Signs Electoral Act Amendment Bill Into Law', *Channels,* (February, 25, 2022)

5.9.6 Citizens Inactiveness

Citizens can on their own initiatives submit proposals for legislation themselves directly to parliament. In Nigeria however, such proposals must be endorsed by a constituent's representative in the parliament before it can be brought before it. It has been suggested earlier in this study that citizens should be allowed to have direct access to the parliament without unnecessary bottlenecks.

The roadmap to enhancing legislative accountability can be graphically summarized as follows:-

The roadmap to enhancing legislative accountability can be illustrated in the diagram below:-

Figure 5.5

The roadmap to enhancing legislative accountability

Source: www.hrfibreglass.co.uk and further modified by this study

Once this roadmap is implemented practically, legislative accountability will be greatly enhanced.

5.10 CONCLUSION

The roadmap to enhancing legislative accountability has many ingredients and processes. These include institutional, legal framework and constitutional review, strategic legislative agenda, clear legislative reporting, information dissemination and enlightenment of electorate, effective sanction regime, strong party leadership and constituent's input in decision making. From the analysis done in this chapter, this study believes that to enhance legislative accountability process, there is need for institutional and legal framework including constitutional review in certain aspects that have already been pointed out.

A strategic legislative agenda which identifies the most important issues affecting the nation, is needed at the beginning of the legislative session and then to monitor and review the legislative agenda to ensure that its implementation is not hindered by unforeseen circumstances. Then at the end of the session, legislative

reports are issued which is called Clear Legislative Reporting, CLEAR, which is a unique institutional mechanism for legislative bodies.[79]

For citizens to be able to hold legislators to account they need information and enlightenment of what is going on in the parliament. These will also enable them make their inputs into decision making process of the parliament. There has been a great deal of technological advancements in the area of information dissemination while the traditional sources are still relevant. The advent of the social media has greatly improved access to information by the electorate.

There is now internet, parliamentary websites and so on, where electorate can know what is happening in parliament. There is also the need to have a strong party leadership in political parties who should play a greater role in the activities of its members of parliament to ensure they serve their constituents and the nation in general. The fear of re-election for legislators is the major impetus for legislative accountability.

[79] James Griesemer 'Searching for legislative accountability rebuilding citizen trust in the legislative process', note 4, 16.

CHAPTER SIX

CONCLUSIONS AND RECOMMENDATIONS

6.1. SUMMARY OF FINDINGS

The Findings from this study are as follows:

1. There are expressly enshrined constitutional provisions and legal frameworks governing legislative accountability in Nigeria unlike that of United State of America where the powers are mostly implied.

2. The mechanisms provided in the Nigerian Constitution like election, recall, power of veto, vacation of seat for floor crossing and non-attendance, judicial review, suspension of member and restricted immunity were inadequate to make the legislators accountable to the electorate. But in the United States of America these mechanisms, are more robust and effective in practice.

3. In Nigeria there are no strong idealogical and disciplined political parties, while in United States of America the parties are idealogically strong and disciplined which facilitates legislative accountability.

4. Civil Societies, Non- Governmental Organisations and Public Participation strongly shape legislative accountability in both Nigeria and United States of America.

5. Lack of information and feedback mechanism, poor constituency offices, corruption, lack of resources, god-fatherism, individual demands of the constituents and one-party dominance inhibits legislative accountability in Nigeria, while in the United States of America legislative gridlock and partisan polarization are barriers to legislative accountability.

6. Existing literature revealed that accountability mechanisms, particularly election, foster legislative accountability through free and fair electoral processes. Structural supports such as roll-call, visible and recorded votes, a robust ideological party system, professional lobbyists, enhance accountability within the American Congress, offering valuable lessons for the Nigerian National Assembly.

6.2. CONCLUSIONS

The legislature stands as the true representative of the people, obligated to be accountable to the electorate that entrusted them with their mandate. However, a prevailing lack of trust between legislators and their constituents persists, stemming from various factors.

This study emphasizes that accountability, fundamentally, encompasses transparency, good governance, and responsibility. The litmus test of democracy lies in the extent to which parliament can uphold government's answerability to the populace.[1] Legislators must possess the authority to censure errant representatives, thereby reinforcing the principles of popular participation and accountability, cornerstones of democracy.

The concept of separation of powers, aimed at securing good governance, holds promise in ensuring accountability across governmental branches. Particularly advantageous to the legislature, this doctrine empowers it to discharge its functions without encumbrance, thereby facilitating oversight of the executive arm of government.

Despite commendable efforts by many legislators to engage with their constituents through various platforms, challenges persist, including instances of

[1] Adebimpe Ofuson, 'Parliamentary Accountability: Why it Matters and their Challenges in South Africa', [2022] (3) *DDP Admin*, 1.

physical assault during constituency visits. Yet, sustained democratic practice promises to refine legislative representation.

The mechanisms for holding legislators accountable, whether through horizontal or vertical means, may encounter limitations. In contexts where populist sentiments overshadow vertical accountability, electoral processes may fail to effect leadership change.[2] Furthermore, the advent of populism risks undermining institutional democracy, diverting focus from parliamentary processes and diluting accountability mechanisms.

Navigating competing interests be it constituents, party, or nation in decision-making underscores the complexity faced by legislators. Contextual considerations dictate the appropriate mechanisms for holding legislators accountable, be it individual or collective.

Critical to accountability, the judiciary's role in scrutinizing governmental actions is paramount.[3] In nascent democracies like Nigeria, judicial review should be deployed liberally to curtail legislative and executive overreach.[4]

While restricted immunity for legislators facilitates uninhibited representation, extending such immunity to legislative aides may invite abuse. Regarding the assent to bills, the principle that constitutional amendments, having passed through legislative channels, are beyond unilateral presidential rejection find1s resonance in this study.[5]

Nine mechanisms for legislative accountability have been examined, with election and recall emerging as constituents' primary avenues for ensuring effective

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2 Ibid, 25
3 A. T. Shehu, 'Judicial Review: Still in Search of the True Foundation', (2020) <https://ssrn.com/abstract=1331535> accessed April, 21, 2020
4 Ibid, 7.
5 Ibid, 4.

representation. Notwithstanding, judicial review, and restricted immunity stand out as more effective mechanisms for holding legislators accountable.[6]

The comparative analysis between the American Congress and the Nigerian National Assembly underscores lessons to be gleaned from both sides. While the American Congress excels in electoral accountability and institutional structures, these are needed to fortify legislative accountability in Nigeria. Embracing these insights promises to enrich accountability processes and democratic governance.

Enhancing legislative accountability demands a multifaceted approach, encompassing institutional, legal, and constitutional reforms. Clear legislative reporting, robust sanction regimes, and informed constituents engagement are essential facets of this endeavor. Upholding legislative accountability is not merely a matter of procedural adherence but a commitment to democratic principles and the welfare of the populace.

6.3. RECOMMENDATIONS

This study makes the following recommendations:

6.3.1. Institutional Strengthening

Before the legislature can be both vertically and horizontally be held accountable it must be strengthened in terms of capacity, structures and so on. Institutions must not only be well designed but also have social support at all levels of society.

The legislature as an institution can be strengthened in the following areas:

a. More focused, frequent and consistent training of legislators in other for them to acquire skills that will enable them to perform their functions effectively especially in the area of communication skills with members of

[6] James Griesemer 'Searching for Legislative Accountability Rebuilding Citizen Trust in the Legislative Process, note 30, 4

their constituents and in the performance of legislative work. Though this is being done by the National Institute for Legislative and Democratic Studies, there is need for this to be improved upon.

b. More research and survey should be undertaken to determine the role of legislators in relationship to service to their constituents. This is done to know whether legislators are serving the interest of their constituents or not.
c. More established structures for the performance of representational function, these include special mailing, newsletters, websites, and so on. Though in Nigeria the communication with constituents has improved greatly through social media it has not yet been well established. It is work in progress.
d. A more established institutionalized means of constituents to know how individual legislators voted in an issue. These include roll-call votes, recorded, visible and electronic voting.
e. In addition there should be an institutionalized Assembly Budget Office. This will help the legislators in oversighting the executive especially the budget.
f. Apart from the legislators itself, there should be stronger civil society organisation with more capacity, well trained to assist the National Assembly in legislative functions and constituent service.

6.3.2. Legal Framework and Constitutional Amendments

The various mechanisms analyzed in this study that are used to enhance legislative accountability need to be strengthened to make them more effective.

Election for example will not be an effective mechanism if it is flawed, un-free and unfair and this will make it difficult for elected representatives to fulfill their roles.

There is need therefore to have a legal framework to ensure that electoral processes and structures, that is (electoral laws, electoral system, political parties and voters registration, processes of voting, ballot counting, proclamation of results, and the adjudication of electoral disputes) must be perceived as credible, transparent and legitimate if the elected representatives are to be true representatives of the people.

There is also the need for constitutional reform as it has a profound effect on the short and long term functioning of parliamentary institutions. Legal framework in respect of rules of procedure, budget laws, and freedom of information laws are also crucial.[7] Also there is need to have a legal framework for constituency projects as it is only Lagos State that presently has one.

Flowing from above, this study recommends the following amendments to the Nigeria Electoral Act 2022 and the 1999 Constitution as amended.

a. In Nigeria, since the advent of the fourth republic in 1999, the major law governing elections is the Electoral Act 1999, which was re-enacted in 2010 and 2022. The Act introduced novel previsions like electronic transmission of the results from the polling units and accreditation of voters.[8] There should be another amendment to section 47 (2) (3) to introduce electronic and diaspora voting. The issue of electronic transmission of results which is presently in the INEC guidelines[9] should now be incorporated as a provision in the Electoral Act and made mandatory.
b. The issue of violence and vote buying has persistently been problematic. The study endorses the recommendation of the Mohammed Uwais Electoral Panel report that an Electoral Offences Commission be set-up to handle prosecution

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7 The legal framework has aptly been described in items 1 and 2 in table A in entry points for UNDP parliament development.
8 S. 47 (2) (3), of the Constitution of Nigeria 1999 as amended.
9 Article 38 (1) (2) of the INEC Regulations and Guidelines for the Conduct of Elections, 2022.

of electoral offenders as INEC presently constituted is overburdened and overwhelmed. The new arrangement by INEC collaborating with the NBA to prosecute electoral offenders is adhoc and is unsustainable in the long run.

c. In order to remove the bandwagon effect that usually affect our elections, the tenure of the National Assembly and that of the Executive should be different, so that the elections should not be held on the same day as this is the case in the United States of America, where the tenure of the House of Representatives is two years while Senators are 6 years. The elections are not held on same day or year with that of the President.

d. As stated earlier in this study, the mechanism of recall provided for in section 69 (A) has not been effective due to the 50percent plus one requirement of registered voters in the affected constituency to initiate the process, which is on the high side. This requirement should be lowered to 25percent of the accredited voters who voted during the election of the legislator, this will be appropriate in initiating the recall petition.

e. Other amendments:

   i. Section 68 (1) (f) that deals with the vacation of seats for non-attendance. The procedure for declaring a legislator's seat vacant can only be initiated by another member of the National Assembly. This study recommends that any member of the constituency or civil society group should be given the power to initiate the process. This can be done by a petition to the parliament by a concerned constituent.

   ii. Section 68 (I) (g) and (2) provide for vacation of seats for floor-crossing. Again the presiding officers are the only persons empowered by Section 68 (2) to give effect to the provision. Constituents who feel aggrieved cannot

initiate the process in the parliament. They can only go to court, the court process is very slow. However what needs to be amended is the provision that allows legislators to defect to another party on the ground that their parties are divided or have merged, this has really been abused. Legislators' floor-crossing privilege should be strictly limited to situations involving party mergers. The exception for party division should be abolished.

iii. Section 58 (5) that requires 2/3 majority of the National Assembly to override the president's veto should be amended to simple majority of 50percent plus 1. It has become very difficult to get two third of members to override the president's veto,[10] or in the alternative the amendments proposed by the 9th Assembly, that the veto can be overridden by a joint sitting of the National Assembly by 2/3rd of those present and voting. It is no longer 2/3rd of all the members of the National Assembly.[11]

The new amendment provides a new section 59 (4) as follows: "where the president, at the expiration of 30 days after the presentation of a bill to him, fails to signify his assent or where he withhold his assent, then (a) the president of the Senate shall, within seven days, covene a joint sitting of the National Assembly to reconsider the bill and (b) if approved by two-thirds majority of members of both houses at such joint sitting the bill shall become law and the assent of the president shall not be required or his veto shall be deemed overridden by the National Assembly).

iv. An amendment to section 9 of the Constitution by inserting a new sub section that the assent to bill by the president will no longer be necessary

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10 'Constitution Review: Senators, Representatives Push Stronger Law to Override President's Veto', *The Nation Newspaper*, (February 27, 2022), 6.

11 'Constitution Review: Senators, Representatives Push Stronger Law to Override President's Veto', *The Nation Newspaper*, (February 27, 2022), 6.

once the constitutional amendment processes as passed through both the National Assembly and two-third of both State Houses of Assembly.

f. The legislative Houses (Powers and Privileges) Act as it relates to the provision of suspension of a member need to be reviewed to bring it in line with judicial pronouncements that has severally declared such suspensions as illegal. This study is of the view that since the provision of section 68 (I) of the Nigerian constitution did not provide suspension as a ground for disciplining a legislator in order to hold him accountable, the provisions relating to suspension should be expunged from the Act, especially, section 22 thereof.

6.3.3. Strengthening the Legislative Agenda

The agenda should determine the most important issues and opportunities facing the Citizens and guide legislative attention toward matters of strategic importance.

6.3.4. More Access to Information by Constituents

The various ways and processes that citizens use to access their legislators should be strengthened, these include:

1. Public Access and Involvement in Parliament
2. Submissions to legislative committees
3. People can write to their member of Parliament about issues
4. Internet and Television
5. Radio and Newspapers
6. Parliament Websites
7. Dedicated Centre in the Parliament Buildings

8. School Based Initiatives
9. Constituency Facilities, which include constituency office with well-trained staffs.
10. Town Hall Meetings

6.3.5. Clear Legislative Reporting

There should be a feedback mechanisms between the legislators and their constituents, legislators themselves need to evaluate their performances from time to time in other to review the agenda and strengthen areas of weakness in forms of implementation.

6.4. Contribution to Knowlegde

The study provides a comprehensive comparative analysis of legislative accountability in Nigeria and the USA, identifying strengths, weakness and best practices that can be adopted to improve accountability in Nigerian's legislative system in order to deliver to the people the dividends of democratic governance.

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