ISSUES IN APPRAISING THE IMPACT OF LEGISLATIVE ASSEMBLIES IN EMERGING DEMOCRACIES

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Abstract

This article examines the basic issues in appraising the effectiveness of legislative assemblies of emerging democracies using Nigeria as a case study with the aim of therewith enhancing a better understanding of legislative work and engendering grounds for further research into legislative processes and work in these countries. Four issues identified and examined revolve around the concept of legislative process; the problem of defining the goals of the appraisal, the factors which affect the effectiveness of legislative processes, and a rudimentary assessment of the performance level of the Nigerian National Assembly. It was discovered that using these issues as units of analysis will normally reveal the strengths and weaknesses of the legislative processes in focus, enabling the repositioning of legislative business for the 'peace, order and good government' of the nation. The article concludes by suggesting the institutionalization of routine generation of legislative data to enable more empirical studies of legislative processes in emerging democracies.

Introduction

Serious studies of legislative processes of emerging democracies are at low ebb and the main reason may not be far-fetched. The legislature has always been the worst casualty of the instability in the polity created by incessant incursions of the military into governance. Nigeria has for example experienced eight military administrations over a period of 29 years of its 59 years post-independence experience. During this period, the legislative Houses remained largely abolished. The last 20 years in fact are the longest period of democratic rule in the country.[1]

The legislature as a basic democratic and constitutional institution in nascent democratic countries no doubt deserves targeted research efforts to make it more responsive, responsible, effective and efficient in the exercise of legislative powers for the 'peace, order and good government' of these countries. This article by

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[1]See second footnote of Oyelowo Oyewo, 'Constitutionalism and the Oversight Functions of the Legislature in Nigeria' (Nairobi: African Network of Constitutional Law conference on Fostering Constitutionalism in Africa, 2007).

exploring the basic issues in appraising the effectiveness of legislative processes in emerging democracies hopes to therewith enhance a better understanding of legislative work and also engender grounds for further research into legislative processes and work in these countries with Nigeria as case study.

Four basic issues immediately present themselves in any effort to appraise the effectiveness of legislative processes. The first deals with the concept of legislative process while the second relates to the problem of defining the goals of the appraisal. The third basic issue concerns the factors which affect the effectiveness of legislative processes, while the fourth revolves around determining the degree of effectiveness ascribable to the Nigerian legislature.

Legislative Process

Legislative process is often synonymously used with law-making process and, when used in this sense, it refers to the sequences, steps, ways or procedures adopted by or constitutionally mandated for a legislative assembly in the translation of policy proposals into enactments. This, according to Abayomi,[2] refers to the 'various stages from the formulation of concrete proposals, be they political, social, economic, cultural or otherwise to the finished product which is the statute.'

This usage of the phrase 'legislative process' is a restrictive one. In the expansive sense, legislative process would refer to the functions, powers, procedures, structure and all other things relating to all of the activities of the legislature.[3] It refers to how the legislature conducts its business in the exercise of its functions and powers under the Constitution. It is noteworthy in this regard that the legislative powers of the Federal Republic of Nigeria and the power to 'make laws for the peace, order and good government of the federation' are separately assigned by the Constitution of the Federal Republic of Nigeria (CFRN), 1999.[4] Appraising legislative process therefore amounts to appraising the conduct of all legislative businesses and procedures.

Legislators, being representatives of their constituents, broadly perform a representational function but from the constitutional standpoint, legislative functions in Nigeria are basically three. These are the law-making function, power over public finance and the oversight function. The law making functions of the

[2] K. Abayomi, 'A Critical Analysis of Legislative Process in Nigeria' (2000) 4(2) *Nigerian Law and Practice Journal* 26.

[3] JO Arowosegbe 'A Comparative Appraisal of the Committee System and Legislative Process in Nigeria' (2013) 5 *Port-Harcourt Law Journal* 278.

[4] See Constitution of the Federal Republic of Nigeria (Promulgation) Decree 24 1999 (now Cap. C23, Laws of the Federation of Nigeria, 2004) as altered by Constitution of the Federal Republic of Nigeria (First Alteration) Act, 2010; Constitution of the Federal Republic of Nigeria (Second Alteration) Act, 2010; and Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010. All subsequent references to the Constitution or constitutional sections shall be to those of the CFRN 1999 (as altered) except where otherwise indicated. See s. 4(1) & (2). See also s. 4(6) & (7).

National Assembly include the power 'to make, alter, amend and repeal laws'[5] in respect of matters listed in the exclusive legislative list, the concurrent legislative list (as prescribed therein) and as contained in other constitutional provisions.[6]

Power over public finance is a fundamental legislative power. While the executive can be said to hold the power of the sword, the legislature certainly holds the power of the purse. Generally, no moneys can be withdrawn from the Consolidated Revenue fund or any other public fund of the federation, except in the manner prescribed by an Act of the National Assembly.[7] The Assembly thus has the power to determine how public funds are to be spent and how the moneys in the Federation Account are to be shared among the federal, state and local governments of the federation.[8] It also exercises powers over the audit of the 'public accounts of the Federation',[9] the determination of the remuneration, salaries and allowances of certain public officers [10] as well as the manner of raising income for the federation through taxation of incomes, profits and capital gains.[11]

The oversight function of the National Assembly focuses at making the executive and other governmental agencies accountable in the performance of their duties; thus serving as a check on the exercise of executive power. The National Assembly, pursuant to this function, has ample powers under the Constitution. Its powers include the power to conduct investigations into 'any matter or thing with respect to which it has power to make laws' and the conduct of any person or body vested with the duty of executing moneys appropriated by it.[12] The assembly can, by so doing, 'expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.'[13] The assembly, for the purposes of such investigations, enjoys judicial powers of issuance of warrants and summons, taking of evidence on oath, cross-examination and imposition of fines on recalcitrant witnesses.[14]

Another power exercisable by the assembly as part of its oversight function is that of the removal of the President or Vice-President from office for commission of gross misconduct in the performance of the functions of their offices.[15] Pursuant to its oversight function, the National Assembly also has the power to appoint into and remove certain public officers from office;[16] power to approve or stop the President

[5] KM Mowoe *Constitutional Law in Nigeria* (Lagos: Malthouse Press Limited, 2008) 93.
[6] CFRN, 1999 (as amended), s 4(3), (4).
[7] Ibid, s 80.
[8] Ibid, s 162.
[9] Ibid, ss 84 & 85.
[10] Ibid, s 84.
[11] Ibid, item 59, Exclusive List.
[12] Ibid, 88 (1).
[13] CFRN 1999 (as amended), s 88(2).
[14] Ibid, s 89.
[15] Ibid, 143.
[16] See for example ibid, ss 154,157,147(2), 171(4), 231(2), 238(1) & 292.

from declaring war between the Federation and any other country or from mobilising members of the Armed Forces of Nigeria on operational duty outside Nigeria[17]; and power to approve or stop the President's declaration of a state of emergency in any part of the Federation.[18]

Defining the Appraisal Goals

Measuring the effectiveness of any process, activity, institution, policy or programme is often fraught with methodological imprecision except where an attempt is made to achieve some level of exactitude in the setting of parameters for the measurement. Attempting to appraise the effectiveness of legislative processes no doubt suffers from the same limitation; hence the need to clearly define the goals of such an effort.

A basic goal of appraising the effectiveness of legislative processes is to be able to match input with output. That is, a determination of the extent to which the processes permit maximum legislative outputs based on the number, frequency and quality of legislative inputs where legislative inputs stand for quantifiable values such as number of bills introduced into each House of the National Assembly, plenary sessions, public hearings, committee meetings and motions in a legislative session.

Legislative outputs in this regard will refer to values such as number of bills passed, resolutions made, reports produced and adopted and the likes. The challenge facing researchers of legislative processes in emerging democracies is that of the absence of statistical data to enable proper measurements. Research efforts to generate these data are thus needed.

Another desired appraisal goal is to determine the extent to which the legislative branch of government has been able to effectively carry out its basic functions. As previously noted, the Nigerian legislature is vested with three basic functions namely: law-making function, power over public finance and oversight function. To what extent for instance has the Nigerian legislature been able to curb or reduce public corruption, inefficiency or waste in public spending? To what extent has it contributed to the 'peace, order and good government' of Nigeria and to what extent has it given adequate representation to the peoples of Nigeria?

In considering the representation function for example, the parameters used for assessment may be a determination of (1) the number of sittings each legislator attends in a legislative session; (2) the number of times each legislator makes contributions during plenary sessions; (3) the significance of contributions made by

[17] Ibid, s 5(4), (5).
[18] Ibid, s 305.

each legislator; and (4) the extent to which each legislator's contributions reflect the views of his or her constituents.

Factors Affecting the Effectiveness of Legislative Processes

Any effort devoted to appraising the effectiveness of legislative processes must also take into consideration certain factors which in one way or the other define legislative outputs. These factors can be broadly classified into four. These are constitutional or legal factors, institutional factors, political factors and individual or personal factors.

Constitutional Factors

Constitutional factors are basic since Nigeria as a federation operates a written constitution which is the *fons et origo* of the legal system. The legislature itself is a creation of the Constitution. Its activities including laws passed can thus be declared void by a court of competent jurisdiction in deference to the principle of constitutional supremacy[19]. Among the important constitutional provisions that do affect legislative processes are those on separation of powers, powers and functions of the legislature and legislative processes.

Separation of Powers

Separation of powers is a constitutional doctrine which depicts the division of governmental powers into legislative, executive and judicial powers with each exercised by a distinct and independent branch of government to serve as a guard against arbitrariness., tyranny and abuse of the powers by the sovereign. As put by Locke:

> *It may be too great a temptation to human frailty, apt to grasp at power, for the same persons who have the power of making laws, to have also in their hands the power to execute them, whereby they may exempt themselves from obedience to the laws they made, and suit the law, both in its making and execution, to their own private advantage.*[20]

However, as noted by Ojo, 'a complete separation of powers is neither practicable nor desirable for effective government.'[21] For example, as previously noted, the National Assembly is in sections 88 and 89 of the 1999 Constitution vested with some powers normally exercised by the executive and the judicial branches of government.

The doctrine would also have each branch of government serve as a check on other branches. A central issue in appraising legislative processes of emerging

[19] Ibid, s 1(3).
[20] John Locke *Second Treatise on Civil Government*, 1690, chapter XII.
[21] Abiola Ojo 'Separation of Powers in a Presidential Government' (1981) *Public Law Journal* 105.

democracies such as Nigeria's is to determine the extent to which the doctrine of separation of powers is operative in each administration and, in particular, the extent to which each administration can boast of an independent legislature including the extent to which each branch acted and acts as a check on the others.

Legislative Procedures

Legislative processes in Nigeria, such as the law making process and the procedure for removal of a President or Vice-President from office, are as largely provided for by the Constitution as well as by applicable Standing Orders and Rules. This is because section 60 of the Constitution confers on the Senate or House of Representatives the power to regulate its own procedure, including the procedure for summoning and recess of the House.

At every sitting of the National Assembly for law making or any other business, the Senate President presides in the case of the Senate while the Speaker presides over the House of Representatives. Upon their absence, the Deputy Senate President or the Deputy Speaker presides respectively.[22] In the case of a joint sitting of both the Senate and the House of Representatives as may be occasioned when the joint finance committee fails to resolve differences between the two Chambers over a money bill, the Senate President presides, and in his absence, the Speaker does. Where both are absent, the Deputy Senate President will preside and, in his absence, the Deputy Speaker will.[23] However, where both are absent any member of either Chamber elected by the other members will preside.[24]

Before any legislative business could be conducted, the members present and voting must form the required quorum which is one-third of all the members of the respective Chamber or of both Chambers in the case of a joint sitting. An objection based on the quorum issue may be made by any member and the person presiding must ascertain that the quorum is formed before proceeding with the sitting of the House or otherwise adjourn the House where quorum is not formed.[25] A question may be raised as to the effect of conducting legislative business in breach of the required quorum particularly in the light of the provision of section 61 that '…the presence or participation of any person not entitled to be present at or to participate in the proceedings of the House shall not invalidate those proceedings'.

It seems that any legislative business conducted in breach of the quorum requirement would be unconstitutional and thus invalid as the provision of section 61 is obviously meant to obviate the implied nullifying effect which the presence and participation of strangers in legislative proceedings would have had on those

[22] CFRN 1999, s. 53(1).
[23] Ibid, s.53(2).
[24] Ibid, s 53(3).
[25] Ibid, s 54.

proceedings. The purpose is not to legalise the presence and votes of strangers at proceedings which in the first place ought not to hold due to lack of quorum which the Constitution specifically puts at 'one-third of all the members of the legislative House concerned'[26] or 'one-third of all the members of both Houses'[27] during a joint sitting.

The business of the National Assembly is normally conducted in English and may only be conducted in Hausa, Ibo and Yoruba when adequate arrangements have been made therefor. [28] Up till the time of writing this article, such arrangements have not been made. The use of these major indigenous languages has been criticised by Mowoe on the basis that it is in contrariety to the spirit of federal character principles contained in section 14(3) of the Constitution as it ignores 'the rights of minorities who are also represented in the National Assembly'. The professor then went on to canvass that English, being the nation's *lingua franca* should be the only language for conducting legislative business at the National Assembly while state legislatures may conduct their businesses in their indigenous languages when practicable.[29]

This criticism seems well intentioned but the solution canvassed is, with respect, not quite satisfactory. It would have been more satisfactory if the professor had canvassed for the inclusion of certain minority languages in the constitutional list and argued that the making of the adequate arrangements should be mandatory rather than canvassed the exclusion of all indigenous languages in the list. It is obvious that all Nigerian languages cannot be included but certainly, some can be included based on criteria such as popularity, number of speakers, geographical spread or location and the likes. This is important as national concerted efforts should consistently be made to promote rather than denounce, neglect or relegate these indigenous languages which are under the threat of extinction unless such national efforts are made. It is perhaps for this important reason that the Constitution of the Republic of South Africa recognises indigenous languages such as Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, isiNdebele, isiXhosa and isiZulu and Afrikaans[30] alongside English as the country's official languages. The South African State, according to its Constitution, must take practical and positive measures to elevate the status and advance the use of these languages with all enjoying parity of esteem and equitable treatment[31]

Any question proposed for decision in the Senate or the House of Representatives must be determined by the required majority of the members present and voting,

[26] Ibid, s 54(1).
[27] Ibid, s 54(2).
[28] Ibid, s 55.
[29] Mowoe (n 5) 97-98.
[30] Afrikaans though descended from and similar to Dutch language is now regarded as indigenous to South Africa.
[31] See Constitution of the Republic of South Africa Act 108 of 1996, s 6.

and the person presiding should cast a vote whenever necessary to avoid an equality of votes but he should not vote in any other case.[32] The required majority vote for passing a bill into law is normally a simple majority.[33] However, in the event of the refusal of the President to assent to a bill which has been successfully passed by the National Assembly, the bill could only become law upon its being passed by two-thirds majority of each House.[34]

Non-compliance with the required majority votes rule can be fatal. In *Dapianlong* v. *Dariye,*[35] 10 members out of the 24-member Plateau House of Assembly proceeded to remove the Governor from office on grounds of gross misconduct. Fourteen members had previously crossed the carpet from their party (PDP) to another party (ACD) and thus lost their seats in line with constitutional provisions. Eight out of the 10 remaining members signed the petition and continuously approved all the processes of removal from office. The issue before the Supreme Court was whether the removal of the Governor from office by 8 out of the 10 remaining members was constitutional. The Supreme Court held that not less than two-thirds of all the 24 members of the House are required under section 188 to approve the investigation of allegations against and eventual removal of the governor from office. The removal was therefore unconstitutional and void.[36]

The Constitution also requires any member that has a direct pecuniary interest in a matter coming before the House for deliberations to so declare unless he decides not to vote or participate in the deliberations. Upon such declaration, the House may, by resolution, decide whether or not such member may vote or participate in the said deliberations.[37] This requirement, according to Erskine May, similarly obtains under the parliamentary practice of the Parliament of the United Kingdom provided the interest is personal and immediate and not of a general or remote character.[38] The obvious purpose of this provision is to prevent self-seeking legislation or resolutions designed not in the best interest of the nation but to advance the pecuniary interests of members of parliament.

The law making power of the National Assembly is exercisable only through bills passed by both Houses.[39] A bill is a 'measure submitted to either House of Parliament for the purpose of being passed into law.'[40] As put by *Black's Law Dictionary*, it is a 'legislative proposal offered for debate before its enactment.'[41] A

[32] CFRN 1999, s 56(1).
[33] Ibid, s 56(2).
[34] Ibid, s 58(5). See also ibid, s 59(4).
[35] (2007) 27 WRN 1.
[36] See also *Inakoju* v *Adeleke* (2007) 4 NWLR (Pt. 1025) 427; 1 SC (Pt.1) where the court reached similar conclusions concerning the unconstitutional removal of Governor Rasheed Ladoja from office.
[37] CFRN 1999, s 56 (3).
[38] Erskine May, *Parliamentary Practice* pp 407, 1086-1087 quoted by Mowoe (n 5) 98.
[39] Ibid, s 58(1).
[40] JE Penner *Mozley & Whiteley's Law Dictionary* (12th edn, London: Butterworths, 2001) 31.
[41] Bryan A. Garner, *Black's Law Dictionary* (9th edn, St Paul: Thomson Reuters, 2009) 186.

bill may originate in either House but not in both houses concurrently. It must first be passed by the House where it originates before it is sent to the other House for passage.[42]

The House Standing Orders and Rules contain the procedure for the passage of a bill. The first stage is the presentation or introduction of the bill into the House. Leave of the House must be obtained for the presentation of any bill that is not an executive (government) bill. Notice of presentation is given by publication of the provisions of the proposed bill in the official gazette or journal, a copy of which is distributed to each member. Next, the Rules and Business Committee schedules the bill for the first reading and this is constituted by the Clerk reading aloud the bill's short title. At the second reading of the bill, its general merits and principles but not its details may be debated upon. After the bill has been successfully read a second time, it stands committed to a standing committee unless the House, on motion made, commits it to the Committee of the Whole House.

The Senate President or Speaker, as the case may be, has a discretionary power to allocate a bill to a specific standing committee although it should be assigned to a standing committee with jurisdiction over its subject matter. Where a bill touches on the jurisdiction of two or more committees, it is assigned to the committee possessing dominant jurisdiction while the other committees would be constituted into sub-committees thereof for the purpose of considering and reporting to the main committee on aspects of the bill touching their areas of competence.

At the committee level, the bill is subjected to a thorough clause by clause consideration of its details and of proposed amendments (if any). Each clause is specifically voted upon and adopted with approved amendments (if any). A standing committee to which a bill has been committed generally has power to make any amendments it deems fit, provided such amendment is relevant to the bill's subject-matter and to the clause to which it relates. Where any amendment is not within the title of a bill, the title may be amended accordingly and a report on this made to the House.

The standing committee, after completing its task, reports back to the House and the bill will be ordered for its third reading forthwith or at a later date. Any member of the House who wishes to amend or delete any provision contained in the bill or to introduce any fresh provision may at this stage give notice of his intention to move for the re-committal of the bill for committee deliberations. Upon the success of the motion for third reading of the bill, any further debate on it could only be on its merits and principles. No further amendment may be moved except for purely

[42] CFRN 1999, s 58(3).

verbal corrections or oversights and this could only be by the permission of the Senate President or Speaker.

After the success of the third reading, a printed copy signed by the Clerk and endorsed by the Senate President or Speaker will be sent to the other House for its concurrence and passage. The bill will be subjected to the same procedure as in the originating House and, if successfully passed with no amendment, the originating House will be so informed. Where amendments are proposed, the bill with the amendments is sent back to the originating House for consideration. It is only when both Houses are in agreement on all the provisions of the bill that it will be deemed passed by the National Assembly.[43] Upon this, clean copies of the bill will be sent to the President for his assent and this must be given or denied within 30 days of receipt.[44] The President's assent transforms the bill into law although it takes effect only from the date of its publication in the gazette, provided its commencement is not suspended.

The bill can however still become law where the President fails to give assent provided it is again passed by each House by two-thirds majority.[45] This provision has been interpreted in *National Assembly* v. *President of the Federal Republic of Nigeria*[46] to mean that the bill must go through the same processes it had previously undergone when it was first passed. Therefore, overriding the President's veto of the Electoral Act 2002 by a motion supported by two-thirds of a quorum of the members of each House was in this case held contrary to this provision of the Constitution.[47]

The Constitution also makes specific provisions for the mode of exercising legislative power over money bills. A money bill in this respect relates to

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

(b) a bill for the imposition of or increase in any tax, duty or fee or any reduction, withdrawal or cancellation thereof.[48]

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[43] Ibid.
[44] Ibid, s 58(4).
[45] Ibid, s 58(5).
[46] (2003) 41 WRN 94.
[47] Ibid at 107-108.
[48] CFRN 1999, s 59(1)

Where, within two months from the commencement of a financial year, a money bill is passed by one of the Houses of the National Assembly but not by the other House, the Senate President should within 14 days thereafter arrange for and convene a meeting of the joint finance committee to examine the bill with a view to resolving the differences between the two Houses.[49] It is mandatory under the Constitution for the National Assembly to establish a joint committee on finance composed of an equal number of persons appointed by each House.[50] Should the joint finance committee fail to resolve the differences, the bill will then be presented to the National Assembly sitting at a joint meeting and if the bill is passed at the joint meeting, it shall be presented to the President for assent.[51] If the President within 30 days after the presentation of the bill fails to signify his assent or withholds assent, the bill may still become law if it is again presented to the National Assembly sitting at a joint meeting and it is passed by two-thirds majority of members of both Houses.[52]

Some interesting questions beg for answers from the above provisions. First, why refer the bill to a joint committee? It seems that the main objective of this lies in the need to expeditiously pass money bills, especially the annual Appropriation Bill, due to their strategic importance to the smooth running of the government and national economy. A committee being necessarily composed of a smaller number of members compared with the Houses in plenary session is envisaged as a micro unit of human and organisational behaviour and social relationships where the possibility of irreconcilable conflicts or differences is greatly minimised and where decisions can be more readily arrived at based on compromise or consensus.

Secondly, where the Joint Finance Committee resolves the differences, is the Money bill deemed passed or must it go back to each House for passage? It should be noted that the Constitution clearly forbids each House of the National Assembly from delegating its law making power to any committee.[53] But then, the Joint Finance Committee is constitutionally empowered to resolve the differences between the two Houses on a money bill. The committee's power is therefore not by delegation but by direct constitutional grant. All the same, despite the ambiguity in section 59, the Constitution is quite explicit in the mode of passing a bill by the National Assembly. Of importance is the provision of section 58 (3) as follows:

> *Where a bill has been passed by the House in which it originated, it shall be sent to the other House and it shall be presented to the President for assent when it has been passed by that other House and agreement has been*

[49] Ibid, s 59(2).
[50] Ibid, s 62(3).
[51] Ibid, s 59(3).
[52] Ibid, s 62(4).
[53] Ibid, s 62(4).

reached between the two Houses on any amendment made on it.

Thus, it is required that each House in plenary must pass a bill before such can be presented for presidential assent. The intendment of section 59 (2), therefore is to specifically prescribe how 'agreement' on 'amendment' made on a money bill can be reached. It is not to confer the power to pass the bill on the Joint Finance Committee. No wonder the Supreme Court in *Attorney General (Bendel State)* v *Attorney General of the Federation*[54] had no problem in holding that where the Joint Finance Committee has resolved the differences in a money bill, 'until the bill goes back to the two Houses and passed in the form resolved by the committee or at least passed by the House in whose favour the differences have not been resolved, it is not yet law.'

It also flows from the above analysis that the two Houses have no discretion to exercise where the Joint Finance Committee has successfully resolved the differences in a money bill. They must pass the bill as resolved by the committee. The last question concerns the implication of a joint meeting of the two Houses failing to resolve differences in the money bill? It seems that another (or other) joint meeting (s) of the two Houses would have to be called in order to resolve the differences and pass the money bill. The Joint Finance Committee no longer has jurisdiction over the matter.

Institutional Factors

Institutional factors are of course very crucial in any effort at appraising the effectiveness of legislative assemblies particularly when the legislature is analysed from institutional perspectives. Institutional factors such as organisational structure of the House(s); mode of appointment of House leaders; constitution of legislative committees and appointment of their leaders; institutional values such as the existence and efficacy of a sound code of conduct; effectiveness of the disciplinary process; and composition of the House to a great extent without any doubt shape the nature and quality of legislative outputs. Also important is the overall image of the legislative assembly.

Organisational Structure

The Nigeria's National Assembly is for example a bicameral Assembly consisting of the Senate and the House of Representatives.[55] The Constitution only provides for the head and deputy head of each House while House Rules provide for other House leaders such as the majority leader and minority leader. The Senate is led by a President and a Deputy President while the House of Representatives is led by a

[54] (1982) 3 NCLR 1. (SCN).

[55] Ibid, s 47.

Speaker and a Deputy Speaker.[56] The work of the National Assembly is facilitated by the Clerk and other staff of the Assembly.[57] Legislative work is in particular facilitated by the constitution of various standing committees organised around different subject-matters, each headed by a chairman. The adequacy and efficiency of this structural arrangement are no doubt important considerations in appraising the effectiveness of legislative processes.

Emergence of Leaders

Also relevant is the process by which legislative leaders emerge. The head and deputy head of each House are elected by members of the House from among themselves while other leaders are appointed by the heads of each House. An important point to note here is that in Nigeria, the process by which legislative leaders emerge is purely political as there are no valid objective determinative criteria. Rather, political factors such as political party membership (where being member of a party with majority seats is more important than personal factors of eligibility for the posts); zoning formula (a derivative of ethnic politics constitutionally recognised as federal character[58]) and political alliances are the main guiding principles determining who gets what.

Institutional Values

Institutional values are very important in ensuring that legislative processes are not compromised. Institutional values are typified by the existence and level of adherence to a code of conduct for and by members. The content of and institutional modelling of members into conformity with such a code are of course important in determining whether or not legislative processes will be compromised especially in legislative-executive relations which will in turn dictate the level to which the legislature will be able to appreciably perform its oversight functions.

Disciplinary System

Effectiveness of the disciplinary process is another important institutional factor as ‘moral suasion’ is often not enough to make people conform to institutional standards and guidelines. The members of an institution are more likely to conform to institutional rules (such as a code of conduct) where an effective disciplinary system is in place. House Rules should thus contain sanctions such as suspension of erring members; loss of office (committee chairmanship for example) and even pecuniary loss for effectiveness and the sanctions should be applied as a matter of rule without political considerations interfering.

Composition of the House

[56] Ibid, s 50(1).
[57] Ibid, s 51.
[58] Ibid, s 14 (3).

Still on institutional factors is the issue of the composition of the House. This is a pre-eminent factor as a legislative assembly can never rise above the capabilities, experience, skills, qualifications, expertise, integrity and versatility of its members. In Nigeria, the Senate is composed of three senators from each state and one from the Federal Capital Territory (FCT), Abuja, while the House of Representatives consists 360 members representing various constituencies across the country.

The main qualifications for election are fact of Nigerian citizenship; attainment of 35 years for senators or 30 years for members of the House of Representatives; education up to at least School Certificate level or its equivalent; and membership of and sponsorship by a political party.[59] A prospective legislator must also not be a lunatic or otherwise adjudged to be of unsound mind; or be under a sentence of death or fine for an offence involving dishonesty or fraud; or be an undischarged bankrupt. He or she must not be a member of a secret society; or be a public servant without withdrawing or retiring from such public service 30 days before the day of election. Neither must they present a forged certificate to the Independent National Electoral Commission (INEC).[60]

The point here is that these qualifications are by themselves not enough to guarantee that competent candidates in terms of being well fitted for legislative business to actualise the constitutional goal of legislating for the ‘peace, order and good government’ of the country will get elected. This is more so as the political scene of emerging democracies such as Nigeria is often saturated with charlatans whose only political relevance lies in their manifest loyalty to certain political ‘godfathers’ whose political relevance themselves is sustained by the phenomenon of ‘money politics’ perpetuated by their ill-gotten wealth.

Generally speaking, institutional factors such as the process by which leaders emerge, institutional values, disciplinary system and composition of the House seem to impact negatively on legislative processes in Nigeria. A process whereby an unqualified candidate not only won election but also emerged as Speaker of the House of Representatives as exemplified in the ‘Buhari-Gate’ scandal is certainly questionable.[61] The financial scandals that have also rocked the National Assembly and the fact that both the leaders and members were not exempted clearly demonstrate that the necessary institutional values for effective legislative work are yet to be inculcated. Till now, the actual salary and emoluments of a legislator in Nigeria is yet to be ascertained satisfactorily by Nigerians.[62]

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[59] Ibid, s 65.

[60] Ibid, s 66(1).

[61] See E. Ihediora ‘The Legislature: Roles, Misconceptions and Experience in the Consolidation of Democracy in Nigeria’ (Lagos: Paper presented to Department of Political Science, University of Lagos, 2012).

[62] It is in fact generally asserted that Nigerian legislators are the highest paid worldwide. While conservative figures put the annual pay of a Nigerian senator at $450,000, some have put it at $1.7 million. See BBC, ‘Nigerian senator salary calculator: How do you compare?’ <https://www.bbc.com/news/world-africa-43516825> (accessed on 27 January 2020); Vincent Nyewusira and Kenneth Nweke, ‘Anti-Corruption Crusade in Nigeria: An Assessment of

Overall Image

The overall image of the legislative assembly is ambivalent factor; ambivalent in the sense that it could suffice as a factor impinging on legislative effectiveness as well as an outcome of the degree of effectiveness of the legislative assembly. The assumption here is that a legislative assembly is likely to be more effective where it possesses an overall positive image which aligns it with the concerns of the constituents and vice versa.

Political Factors

Legislative business, though basically regulated by constitutional cum legal provisions, is essentially political in nature and practical realities. Political interplays thus determine a lot of legislative decisions and outputs. Among the crucial political factors are party politics, political alliances (intra party and inter party politics), ethnic or regional interests, public sentiments and pressure from civil society and lobbyists.

Party Politics

Party politics is dominant as each political party normally seeks to use the House platform to advance its ideology and programmes. Where the party with majority seats also controls the executive arm, the party will use all means to ensure that the House supports and approves all executive bills, policies and programmes and vice versa where otherwise. The opposition party in the House naturally uses all means to undermine all legislative processes by concentrating on the weaknesses, deficiencies and faults of all executive bills, policies and programme

Political Alliances

Political alliances are very strong in defining legislative outputs. This sometimes manifests in intra-party caucuses composed of members who are like-minded on a particular issue or a number of issues. It is also not rare to find such caucuses drawing members across party lines where the major qualification for belonging becomes being a member of the House, the party under whose platform the individual was elected becoming irrelevant.

Ethnic Politics

Ethnic politics is a very strong factor in the ever ethnic conscious Nigeria of today — a factor shared by other emerging democracies especially in Africa. The centenary-old marriage arbitrarily contrived between the various ethnic nationalities composing the country is definitely yet to overcome the initial feelings of mutual distrust, near or total enmity, and other ethnocentric features predominant among

the Disposition of the National Assembly (1999-2013)' (2017) 8(4) *Mediterranean Journal of Social Sciences* 195 at 200.

Nigerians even as at the date of amalgamation in 1914. The ethnic conflict thereby generated is still very much apparent today as ever. Ethnic conflict, according to Wolff,[63] could be conceptualised as a conflict where 'the goals of at least one conflict party are defined in… ethnic terms, and in which the primary fault line of confrontation is one of ethnic distinction.' Such a conflict is further characterised by the fact that

> *At least one of the conflict parties will explain its dissatisfaction in ethnic terms – that is – one party to the conflict will claim that its distinct ethnic identity is the reason why its members cannot realize their interest, why they do not have the same rights, or why their claims are not satisfied. Thus ethnic conflicts are a form of group conflict in which at least one of the parties interprets the conflict, its causes and potential remedies along an actually existing or perceived discriminating ethnic divide.*[64]

It may be noted that the ethnic politics characterised in particular by the phenomenon of ethnic based political parties which became intensified during the colonial period as a result of the scramble for the control of regional legislative assemblies is still very much a great factor today in Nigeria. Federal legislators still first see themselves from an ethnic perspective rather than from a national or Nigerian perspective

Personal Factors

Some factors personal to individual legislators also do naturally affect legislative processes. Personal factors such as innate abilities, acquired skills, ability to cultivate new skills, institutional positioning, desire for re-election, constituents' influence and personal bias must thus be reckoned with.

1. Innate Abilities

Innate abilities are perhaps very fundamental in determining how effective a legislator will be. In other words, some people may naturally be better suited for legislative work than others. These abilities, according to Volden and Wiseman, are 'not easily measured or quantified. Some lawmakers ... not only see policy solutions

[63] Quoted by AK Adegehe 'Federalism and Ethnic Conflict in Ethiopia: A Comparative Study of the Somali and Benishangul-Gumuz Regions' (PhD Thesis, Department of Political Science, Faculty of Social and Behavioural Sciences, Leiden University, 2009).

[64] Ibid.

to pressing problems, but they also know how those solutions must be modified to become politically viable.'[65]

2.Acquired Skills

Some skills acquired through educational qualifications, work experience and life situations may also make some people better suited for legislative work than others. The level and quality of skills brought into the House by members will definitely affect the level and quality of legislative outputs in any particular legislative year or session.

3.Cultivated Skills

A related personal factor is the ability of a legislator to cultivate and acquire a critical skill set. Whether a member of the House starts with high or low innate abilities or with insufficient acquired skills, the degree to which he or she improves over time in legislative business is critical. As put by Volden and Wiseman,[66] '[A]s members interact with their colleagues, they understand one another's passions and constituent needs. They come to know legislative rules and procedures and they start to see broader coalitional possibilities than they had known before.'

4.Re-election and Constituents' Influence

There is a relation between desire for re-election and constituents' influence as legislators who desire re-election will conduct legislative business in the perceived interests of their constituents. The assumption is that this will propel them to give their best to the job, thereby enhancing the effectiveness of legislative processes.

4.4.5 *Personal Bias*

Despite all that has been said however, the impact of the personal bias and idiosyncrasies of individual legislators in the effectiveness of legislative processes cannot be brushed aside. The level of altruism or egoism of members is therefore a significant determining factor.

Effectiveness of the Nigerian National Assembly

Appraising the effectiveness of legislative processes in emerging democracies is no doubt highly needful in correctly positioning and strengthening the legislature as a crucial democratic institution thus making it better suited to occupy its place in the rebuilding of these societies. A quick appraisal of legislative processes in Nigeria, taking the issues discussed in this article into consideration, will definitely disclose the extent to which the Nigerian legislature has been able to effectively perform its basic functions.

[65] Craig Volden and Alan E. Wiseman, 'Legislative Effectiveness in Congress' *<https://my.vanderbilt.edu/alanwiseman/files/2011/08/LEP_Zwebpage_090710.pdf> (accessed 27 January 2020). See also* Craig Volden and Alan E. Wiseman, 'Legislative Effectiveness in the United States Senate' (2018) 80(2) *The Journal of Politics* 731.

[66] Volden and Wiseman, 'Legislative Effectiveness in Congress' Ibid.

Such an appraisal will obviously reveal that the Nigerian legislature has been better able to perform its law making function than those of oversight, and of budgeting and control over public finance. The intolerable level of corruption in the country is for example yet to abate if not still on the rise - a poor attestation to the execution of the oversight function specifically granted by the CFRN 1999.

As aforesaid, the Constitution with the aim of stemming corrupt practices in the country in section 88(2) (b) vests the Nigerian National Assembly (NNA) with authority to use its investigative powers to 'expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.'[67] The NNA can in stemming corrupt practices not only reveal the particulars of such instances but also by resolution demand the prosecution of indicted public officials and cut off or substantially reduce the funds of concerned governmental in the face of failure of the executive to comply with its resolution.

It is indeed disheartening that the Assembly instead of combatting corruption, is reputed to be one of the most corrupt national institutions in Nigeria.[68] Its performance on the anti-corruption index is certainly not salutary.[69] While it is true that the NNA has since 1999 enacted various anti-corruption legislation[70], its compromised stance surely makes it highly ineffective in the fight against corruption in the country.[71]

The Assembly is also yet to meet the constitutional expectation of passing the annual Appropriation Bill before the commencement of new financial years[72] even though the blame equally goes to the executive branch. It is unfortunate that the application of the contingent provision permitting expenditure in default of appropriations[73] has now been allowed to become the norm instead of the exception it ought to be.

In fact, it seems that the Nigerian legislature is yet to operate at an optimum level partly due to the fact that legislators are yet to fully understand the extent of

[67] See CW Ogbondah, 'State-Press Relations in Contemporary Nigeria' in I.B Bello-Imam, & M.I. Obadan (eds.), *Democratic Governance and Development Management in Nigeria's Fourth Republic (1999-2003)* (Ibadan: JODAD Publishers, 2004).

[68] See Sunday Aborishade, Leke Baiyewu, Oladimeji Ramon & Tobi Aworinde, 'Nigerian lawmakers, police, judges most corrupt, says TI, National Assemby kicks' *Punch*, 12 July 2019.

[69] See Richard A. Onuigbo, 'Corruption in Nigeria: An Examination of Failed National Assembly Probes' (2015) 4(4) *Singaporean Journal of Business and Management Studies* 30; Joshua Olufemi, Richard Akinwumi & Chinenye Ugonna, 'Top 10 corruption scandals Nigeria's National Assembly hasn't resolved' *Premium Times*, 26 April 2015.

[70] Such as the Corrupt Practices and other Related Offences Act 2000, the Economic and Financial Crimes Commission (Establishment) Act, 2004; the Advance Fee Fraud and other Fraud Related Offences Act 2006, the Public Procurement Act 2007, and the Money Laundering (Prohibition) Act 2011.

[71] Vincent Nyewusira and Kenneth Nweke, 'Anti-Corruption Crusade in Nigeria: An Assessment of the Disposition of the National Assembly (1999-2013)' (2017) 8(4) *Mediterranean Journal of Social Sciences* 195.

[72] CFRN 1999, s 81.

[73] Ibid, s 82.

legislative powers constitutionally assigned them and the dynamics of legislative processes. This could be traced to the impact of personal factors such as innate abilities, acquired skills, cultivated skills and personal drive.

The legislative branch under the present democratic experiment no doubt enjoys desirable levels of independence due to the principle of separation of powers which is explicitly provided for by the 1999 presidential Constitution. Recent legislative history has happily seen the NNA resisting executive attempts at subjugating it but it is sad to note that State Houses of Assembly have not been so assertive. They have in reality operated more like appendages to their Governors' offices than as an independent constitutionally created arm of government. In short, constitutional provisions are in favour of a very vibrant, productive as well as highly effective legislature, and where it is not, the blame surely rests squarely on members.

Generally speaking, institutional factors such as the process by which leaders emerge, institutional values, disciplinary system and composition of the House seem to impact negatively on legislative processes in Nigeria. A process whereby an unqualified candidate not only won election but also emerged as Speaker of the House of Representatives as exemplified in the 'Buhari-Gate' scandal is certainly questionable.[74] The financial scandals that have also rocked the National Assembly and the fact that both the leaders and members were not exempted clearly demonstrate that the necessary institutional values for effective legislative work are yet to be inculcated.

The impact of political factors on the effectiveness of legislative processes must also be pointed out. It may be noted that the ethnic politics characterised in particular by the phenomenon of ethnic based political parties which became intensified during the colonial period as a result of the scramble for the control of regional legislative assemblies is still very much a great factor today. Federal legislators still first see themselves from an ethnic perspective rather than from a national or Nigerian perspective.

Conclusion

This paper has examined some issues in appraising legislative assemblies and processes in emerging democracies. It, in doing this, used the Nigerian situation as a case study. The discussion opened with an examination of the fact that appraising legislative processes invariably amounts to appraising the conduct of all legislative businesses and procedures. The broad representational function of legislators and their three basic constitutional functions of budgeting and control over public finance, law-making and oversight, were also discussed.

[74] See Ihediora (n 61).

Discussion in the second section then moved on to a consideration of the problem of methodological imprecision that inheres in any attempt at appraising the effectiveness of legislative processes. Basic goals of seeking to match input with output and of assessing the extent to which the particular legislative assembly has been able to effectively carry out its basic functions. This could be a performance assessment of legislative functions such as those of representation, budgeting, law- making, and oversight.

Factors that impinge on the effectiveness of legislative assemblies and processes were thereafter examined. These factors could be constitutional or legal, institutional, political, and individual or personal. An attempt was then made to evaluate the effectiveness of the Nigerian legislature vis a vis its constitutional mandate. It was discovered that the NNA has been more successful in churning out legislation (its law-making function) than in its budgeting and oversight functions.

For example, despite the series of legislation enacted to combat corruption, the NNA has not been able to rid itself of its image as one of the most corrupt institutions in Nigeria. There is thus a great need to revamp the institutional machinery of the NNA to make the perpetuation of corrupt practices difficult if not impossible. Perhaps of primal importance here is the need to immediately address the bogus emoluments of legislators; making it to favourably compare with same of (non-political) officials in the public service of the State.

The above findings are no doubt germane but they could be better enriched by more detailed studies backed up by empirical data. Routine generation of data such as: number of bills introduced into the House; number of bills passed; number of plenary sittings and number attended by each member; number and sponsor of motions; number of motions passed; and contributions of members in plenary sessions and committee meetings in a legislative year should thus be institutionalised as individual researchers may find it difficult to generate these data successfully taking time and financial constraints into consideration