

## ENSURING GOOD GOVERNANCE THROUGH PARLIAMENTARY CONTROL OF ADMINISTRATIVE AGENCIES: A CRITIQUE<sup>1</sup>

### Abstract

Parliamentary institutions are central to most systems of government but their role within the structure of government varies from one country to another. Not only are there differences in terms of their specific powers, but also in measure of power/influence exercised within the framework of normative rules or legal system of a nation to guarantee good governance. The objectives of this paper are to overview parliaments around the world vis-à-vis their control of administrative agencies, especially in Britain and United States of America and to highlight the forms of control that the Nigerian National Assembly exerts on the administrative agencies. The writers rely on published and unpublished materials such as textbooks; articles in journals, conferences and work shop documents, law reports; newspapers; magazine; and internet facility. The paper concluded that the parliamentary control of administrative agencies depends largely on the type of parliamentary system being practiced either uni-cameral or bi-cameral legislature or even presidential or parliamentary. It is suggested that care must be taken not only to ensure that the electorates choose their proper representatives to National or State Assembly, but there should equally be good electoral laws to ensure that, the choice of the people are not defeated as a result of electoral fraud because the failure or success of a state depends largely on the nature of its legislators.

**Key words:** Legislature, Good Governance, Oversight, Impeachment, Investigation

### 1. Introduction

Legislative Assembly or Parliament is the organ of government saddled with the responsibility of making laws for the peace and orderliness of a country.<sup>2</sup> The structure of Legislative Assembly varies from one country to another, for instance, Nigeria at federal level operates bi-cameral system, that is, Nigeria has two Houses, namely, the Senate which is known as Upper House and the House of Representatives which is normally referred to as Lower House. The legislative or parliament refers to the law making body in any democratic political system. Though there is a general consensus on the primary function of the legislature, there are variations in the theoretical discourse about the performance of the legislature and the factors responsible for the difference in performance of legislatures across political systems.<sup>3</sup> One of the famous studies about the legislature that provides a theoretical grounding is the work of Mezey, based on the perceived contributions of various legislative institutions to the governing and democratic process.<sup>4</sup> Section 4(1) of the 1999 Constitution of the Federal Republic of Nigeria provides that “The legislative power of the Federal Republic of Nigeria shall be vested in the National Assembly for the federal which shall consist of a Senate and House of Representatives.” The above law is similar to the provision of Article 1 section 1 of the American Constitution which states that “The legislative power shall be vested in the Congress consisting of the Senate and House of Representatives.” Similarly, United Kingdom operates a bicameral legislature which consists of House of Commons, the Lower House and House of

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<sup>2</sup> H A Hanafi, ‘The Privileges and Immunities of the Legislators in Nigeria: A Critique’ (2011), Vol.3, No. 1 *SSpringboard Journal, Al-Hikimah University, Ilorin, Kwara State-Nigeria*, pp. 108-129 at p. 108.

<sup>3</sup> F. O Fagbohun, *Development and Powers of the Legislature in Nigeria (Perspectives on the Legislature in the Government of Nigeria, 2010)*, pp. 45-69 at p. 48.

<sup>4</sup> M Mezey, *Comparative Legislatures, (Darham NC: Duke University Press, (1979)*.

Lords, the Upper House. Though the two houses are responsible for law making for the country, yet also by design, the House of Lords is equally the highest court in Britain.<sup>5</sup>

The Constitution of the Federal Republic of Nigeria 1999 fully empower the National Assembly and the State House of Assembly to make law for the peace, order and good governance of the country on any matter whatsoever.<sup>6</sup> Nwabueze quoted by Popoola postulated that the legislative power given to these Assemblies by the Constitution appears misleading most especially as regards the scope of their legislative powers. He observed<sup>7</sup> that when it is said that the legislative power granted to the state by the Constitution has the widest aptitude, what is intended to be conveyed is not that the power is without any limitation whatsoever rather, no subjective matter is included from it. The extent or type of control of a particular subject matter which it permits may indeed be limited by the Constitution.

Good governance, on the other hand, is a relatively new concept having entered the political lexicon in the 1970s and 1990s as a large number of underdeveloped countries were struggling to deal with the political and economic problems which poor political leadership had generated for their countries.<sup>8</sup> It is a controversial concept, especially to the governing elites in Africa who are reluctant to be held accountable. Yet, it is at the heart of the process of conflict prevention. Indeed, conflict prevention through proactive measures has been known to be the best method of resolving conflicts.<sup>9</sup> Good governance may be defined as the running of the affairs of government in positive and progressive manners beneficial to the governed and which delivers the public goods. It is relatively a term to which there is no consensus but most will agree that it is characterised by democratisation, maintenance of law and order, accountability and transparency, responsiveness on the part of government, due process, the rule of law, competence, separation and devolution of powers, a free press and a virile civil society arena, competition for power and the existence of a credible opposition, the respect for minority rights among other human rights, etc.<sup>10</sup> Good governance helps to diffuse tension and remove problems as they evolve. Decision makers take the right decisions as and when due. In so doing, the rulers gain the support of the citizenry. In many African countries, conflicts are started and government-generated, as a result of the insensitivity and incompetence of the regimes on the continent. One of the consequences of such public actions is that they easily lead to the escalation of major crises because the wrong decisions were taken or decisions are not taken at all. Democracy as opposed to dictatorships is an ideal setting for the practice of good governance. Sadly, in many African states, democracy is mistaken for elective governments, multi-party politics and longevity of regimes. There are many dictatorial democracies in Africa. Such regimes do not promote and practice good governance. These are the conflict generators of the African continent.<sup>11</sup> Good governance refers to a system of government based on good

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<sup>5</sup> H A Hanafi, (n. 2), p.109.

<sup>6</sup> A O Popoola, 'The Place of the Legislature in the Nation's Political Process,' Paper delivered at the National Workshop on the Nature of the Legislative Process Under the 1999 Constitution, Organised by the Capital Research Consulting Limited and Itse Sagay & co (Law firm), (2003), p.4. Also see Section 4 of the 1999 Constitution of the Federal Republic of Nigeria.

<sup>7</sup> Ibid. See Section 4 (2) & b (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)/

<sup>8</sup> C N Odock, 'Democracy and Good Governance,' (National Open University of Nigeria, Calabar 2006) 3. <http://www.nou.edu.ng/noun/NOUN.OCL/pdf/pdf2/PCR%20104.pdf>> accessed on 25 March 2011.

<sup>9</sup> H A Hanafi and E K Sarinus, 'African Peer Review Mechanism and Crisis of Good Governance in Africa,' (2013), Vol. 19, *Journal of Law, Policy and Globalisation*, University of North Carolina, United States, pp. 14-25.

<sup>10</sup> G B Shedrack, *The Methods of Conflict Resolution and Transformation' in University for Peace: Introduction to Peace and Conflict Studies in West Africa: A Reader*, (Ibadan: Spectrum Books Limited, 2011), pp. 93-163, p. 102.

<sup>11</sup> Ibid, 103.

leadership, respect for rule of law and due process, accountability of political leadership to the electorates as well as transparency in the operations of government. Good governance is generally understood as a set of eight major characteristics and they are: Participation, Rule of law, Transparency, Responsiveness, Consensus oriented, Equity and Inclusiveness; Effectiveness and efficiency and Accountability.<sup>12</sup>

Good governance presupposes functioning state institutions, existence of decision making process, policy formulation, information flows, effectiveness of leadership and transparent relationship between the rulers and the ruled, particularly on the allocation of scarce resources and power to allocate resources in society. Where there are failures in governance, violent conflicts are inevitable and peace and stability are absent.<sup>13</sup>

It is submitted that the constitution as the supreme law of the land embodies the legislative power conferred and exercised by the various arms of government. As a result, there can be no supremacy of the legislature. Although the legislature may be so powerful to amend the constitution or any part thereof, it is still subordinate to the constitution whose overriding control is implied in its supremacy.<sup>14</sup> Consequently, the National Assembly has full power to make laws for the peace, order and good governance of the federation or any part thereof only with respect to the matters within its assigned sphere of competence. It is therefore not a prerequisite for competent law making by the National Assembly or any other legislative assembly that a law must be for peace, order and good governance. Consequently, the phrase is not a definition of the purpose for which the power is given and law cannot be faulted or nullified on the ground that it is not for peace, order and good governance and its validity cannot be challenged on the basis of motives which promoted it.<sup>15</sup>

The control that parliament exerts over the executive stems from one fundamental principle. Parliament embodies the will of the people and must therefore be able to supervise the way in which public policy is carried out in order to ensure that the yearnings and aspirations of the entire nation are in concordance with the said public policy.<sup>16</sup> The strength of a parliament resides in its abilities to scrutinize the whole of the political and administrative actions of the executive, even to the point of calling it to order (by arresting its misdeed), if same are not in consonance with public policy/opinion. It is worthy of note that a variety of procedures are available to enable parliament discharge this duty and to resolve any conflict with the executive.

## **2. Parliamentary Control of Finance**

### **2.1. A Case Study of Britain**

The power over money goes to the heart of government. The nature of the financial bargain struck between legislature and executive determines whether liberty and representation are effective. In Britain, the historic development of this bargain hinges on the relationship of the monarch to parliament and later, after much blood had been spilt of a strong executive power

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<sup>12</sup>W Mamah, 'NEPAD, Good Governance and the Rule of Law,'

<<http://info.worldbank.org/etools/docs/library/108366/session5.pdf>> accessed on 09 March 2011.

<sup>13</sup>Millsand Serageldine

<<http://www.eac.int/politicalfederation/index.php?option=comdodman&task=docdownload&gid=52&intemid=125>> accessed on 23 April 2011.

<sup>14</sup> A O Popoola, (n. 6), p. 5.

<sup>15</sup> Section 1 (1) & (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

<sup>16</sup> H Valentine, *Parliament of the World*, (New York: Walter De Guiter, 1976) pp. 801-802.

operating through the crown's prerogative to parliament. May has summed up this relationship succinctly:

The crown demands money, the commons grant it and the lords assent to the grant; but the commons do not vote money unless it is required by the crown, nor do they impose or augment taxes unless such taxation is necessary for the public service as declared by the crown through its constitutional advisers.<sup>17</sup>

This historic declaration in the Bill of Right 1688 “that levying money for or the use of the crown by pretence of prerogative without grant of parliament, for longer time or in other manner than the same is or shall be granted, is illegal” disposed formally a royal claims to impose taxation on its own authority.<sup>18</sup> From the earliest days, the monarch had possessed large revenue from crown lands and customary dues and was independent of parliament except for his extraordinary needs, of which the waging of wars was the chief. In order to cater for those extra needs, he had traditionally looked to the House of Commons, from whom a “bill of aids and supplies” could be elucidated. This bill provided the basis for the bargain which the commons were able to make with the king: i.e. the commons refused to grant supply until remedies were provided by legislation or administrative action.<sup>19</sup> As an instrument of control, the bill of aids and supplies was not powerful and all-encompassing because it granted the king not a definite sum of money but the power to levy specific taxes.

Furthermore, the foreign and defence policies of William and Mary and subsequent monarchs helped commons to bring into being an effective control of public finance, an essential part of which was the regular appropriation of moneys for particular purposes; in other words, to say how it should be expended.<sup>20</sup> As a result of warfare in Europe and subsequently in other continents, as the great powers staked their colonial claims, there was the need for standing professional army. According to Redlick, House of Commons was required to attend annually to a new department of public business.<sup>21</sup>

In order for the parliament to have control over finance, a small committee of investigation was set up which on behalf of parliament ensures that a close grasp is kept on financial policy in every field of government. Example of this committee of investigation could be seen in the parliaments of Elizabeth I and James I. In Pepy's time, small committees were set up specifically to investigate the manner in which public funds were misappropriated and under William and Mary, there were particular estimates of expenditure being referred to as small committee.<sup>22</sup> Note that the committee of “ways and means” (sitting in 1640), though committees only in name, since every member of the house belonged to them, allowed the commons to discuss the Royal demands for finance informally and under a chairman of their own choosing rather than under the “king's man,” as the speaker was then regarded.<sup>23</sup>

It is worthy to note that the power of authority of the monarch was trimmed by the civil war and the revolution of 1688. But the English Constitution remained monarchical in essence. The

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<sup>17</sup> Erskine May, *Parliamentary Practice*, London, Butterworth, 1971, pp. 77-82.

<sup>18</sup> K Bradshaw, & D Pring, *Parliament and Congress*, (New Ed, London: Quest Books, 1980), p. 306.

<sup>19</sup> Ibid.

<sup>20</sup> M Kenneth, *The English Parliament*, (7<sup>th</sup> Ed, 1968) pp. 65-68.

<sup>21</sup> G Redlich, *Procedure of the House of Common*, (Vol. III, 1908) p.165.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

new dimension taken in England was to leave the power of initiating expenditure where it had originally been, that is, with the crown, but now with the crown acting through ministers responsible to itself. A giant stride was taken in this direction in 1706 when the House of Commons passed a resolution which has since become its standing Order No.89. It provides thus: "This House will receive no petition on any sum relating to public service, or proceed upon any motion for a grant or charge upon the revenue... unless recommended from the crown."<sup>24</sup> This resolution sets out of the cardinal principles of the British Constitution. Though, it has been a standing order of the House since 1713, it has never been made statutory and same could be overthrown by a simple majority of the House, notwithstanding that the principle has stood for more than 250 years and the terms of the standing order have been reaffirmed and spelt out on several occasions.<sup>25</sup> This resolution prevents a private member from getting through committee any bill, or any provision in a bill, which would increase public expenditure except by the leave of the Crown (i.e. the government which executes through its administrative agencies). It equally prevents implementation without ministerial approval of any recommendation of a select committee which would result in greater expenditure. In a nutshell, by giving the power of initiating expenditure to the Crown (i.e. the government), the House has basically confined its own function in the field of supply and appropriation to criticism of what the government does. For this function, the committee of supply, in reality, the House itself was an apt debating forum.<sup>26</sup>

## 2.2 Congressional Control of Finance in the United States of America

As a reaction from British experience of parliamentary control of finance and by virtue of their experience of the British rule, the founding fathers wrote into the Constitution, the exclusive function of Congress to impose taxes and its duty to control public expenditure by appropriation. The supply of money was not distinguished in the Constitution from its appropriation. The two processes were then considered together and have since been treated as inseparable.<sup>27</sup>

The Congress was confronted with the problem of how to supervise the business of appropriation. In the early years, it was by no means clear what the answer was to be. The first Congress (1789) passed an Act setting up the executive in the field of finance. Even before those debates were accomplished, the House of Representatives in July 1789 appointed a small committee of ways and means of thirteen members (one from each state). The terms of reference of the committee read thus: "To prepare an estimate of supplies requisite for the service of the United States in the current year and report thereupon."<sup>28</sup>

One of the duties imposed by the Act on this officer was to prepare and report estimates of the public revenue and the public expenditure. It was a role and an opening which Hamilton was equipped by talent and temperament to exploit. Hamilton who was thirty-two years old on appointment had made his name at the Convention at Annapolis and Philadelphia as an expert on public finance and an outstanding administrator. From 1780 to 1795, it was Hamilton that Congress looked for advice on estimates and appropriate and having received that advice, proceeded to enact its substance after debate but without reference to a small committee for detailed scrutiny.<sup>29</sup>

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<sup>24</sup>G Redlich, (n. 20) p. 22.

<sup>25</sup>Hatselled, *Precedent of Proceedings in the House of Common*, (1818) p. 241.

<sup>26</sup>Ibid.

<sup>27</sup>Journal of the House of Representatives, (24<sup>th</sup> July and 17<sup>th</sup> September, 1789).

<sup>28</sup>Ibid.

<sup>29</sup>K Haris, *Congressional Control of Administration*, (1964) p. 288.

### 3. Forms of Parliamentary Control of Administrative Agencies: A General Overview

#### 3.1 Control of the Executive

Oversight of the executive is a function of all parliaments regardless of the system of government. The effectiveness of the control depends on the extent of parliament's power in relation to the executive and this is a variable factor. In countries where the executive is directly responsible to parliament, the latter can bring about the fall of a government by carrying a vote of no confidence.<sup>30</sup> Where the parliament concerned is bicameral, the power is usually vested exclusively in the popularly elected lower house. In countries where the executive does not look to the legislature to sustain itself in office, there are nevertheless methods calling the executive to account. Thus, Congress makes extensive use of its committee system for this purpose. A British observer of the scene in the late 19<sup>th</sup> century noted the immense amount of works which committees were doing in Congress in the following words:

It is a committee man that a member does his real work. In fact, the house becomes not so much legislative assembly as a huge panel from which committees were selected... it is through these committees chiefly that, the executive and the legislative branches of government touch one another. Yet contact, although, the most important thing in a government is the thing which the nation least notices, and has the scantiest means of watching.<sup>31</sup>

In the socialist countries, government report regularly on their activities to the representative assemblies which in most cases have constitutional power of appointment, dismissal and recall. In practice, these powers are entrusted to the presidium or equivalent body which provides parliamentary leadership in much the same way that the communist party provides political leadership.<sup>32</sup> Ministers are answerable and accountable to the parliament in some of the one-party states of Africa and governments could find themselves facing votes of confidence on some of them, including Kenya and Zimbabwe. In others, such as Cote d'Ivoire and Senegal, ministers are responsible only to the president of the republic, although a procedure which exists enable parliament to question the action of the executive. Equally, in most one-party states, it is highly unlikely that the executive will be brought down by parliamentary action.<sup>33</sup>

#### 3.2. Parliamentary Control of Appointments

One of the checks and balances built into the United States Constitution is the power given to the Senate to confirm or reject high-ranking federal officers nominated by the President. They include judges of the Supreme Court, ambassadors and members of the cabinet together with a wide range of other appointments.<sup>34</sup> The power is nevertheless a very real one which the Senate does not hesitate to use in highly controversial/ knotty cases. The moment members of the cabinet are confirmed by the Senate, they are directly responsible to the President although they may be summoned before congressional committees to testify in a congressional investigation. It should be borne in mind that the executive power of the President in relation to his Cabinet is overriding, as can be exemplified by the wordings of President Lincoln following a major disagreement between himself and his cabinet where he summed up the

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<sup>30</sup>K Brashaw, & D Pring, (n 18), pp.210-211.

<sup>31</sup> Bryce, *The American Commonwealth*, (Vol. I, 1889) pp.154-155.

<sup>32</sup>L Philip, *Parliament in the Modern World*, p.85.

<sup>33</sup> Ibid.

<sup>34</sup> Valentine, H., (n. 16), pp. 801-805.

conclusion of the meeting thus: “it appears gentlemen, that all except myself are opposed to the resolution before us. It is therefore carried.”<sup>35</sup>

In Peru, the Senate appoints or ratifies the appointment of the judges of the Supreme Court, the Attorney-General, the Superintendent of Banking and Insurance, the Controller-General of Accounts and the highest officers of the Armed Forces. Magistrates are elected at the joint sitting of both Houses. The Senate of Mexico authorizes the appointment of ministers, diplomatic representatives and heads of the Armed Forces and judges of the Supreme Court. The Senate of Argentina enjoys similar powers. In the defunct Soviet Union, the Supreme Soviet was charged with the responsibility of appointing and dismissing the high command of the Armed Forces and confirmed the composition of the council of defence.<sup>36</sup> It also elected the committee of the public inspection and the judges of the Supreme Court, appointed the Procurator-General and the chief state arbiter and confirmed the composition of the board of procurator’s office and the board of the state of arbitration. In Bulgaria, the judge of the Supreme Court and the Attorney-General are appointed by the National Assembly. In Switzerland, both Houses together elect the federal council (cabinet), the 30 judges of the federal tribunal (Supreme Court) and the nine judges of the Federal Insurance Tribunal. In Portugal, the Assembly of the Republic elects the ten judges of the Constitutional Court and other senior judges, the *provedor de justice* (ombudsman), the president of the National Council for the plan and the members of the various public organisations.

### 3.3. Impeachment as a Form of Control

Another power vested in the parliament is the power to impeach. Although it has fallen into disuse in Britain, the parliament of that country records numerous cases of impeachment by the House of Commons of ministers, of the crown and others, for high crimes or misdemeanors. Persons thus accused were tried by the House of Lords sitting in the dual capacity as court and jury. In the United States, the impeachment process is by no means obsolete and might have been invoked against President Nixon had he not resigned in 1974. The constitution empowers the House of Representatives to initiate Impeachment proceedings against federal office holders, including the president before the Senate which tries the accused person.<sup>37</sup> Judgment extends only to removal or disqualification from office but if a criminal offence is involved, the judgment of the Senate does not preclude the initiation of criminal proceeding against the person concerned in the ordinary courts of law.<sup>38</sup> Should the president be impeached, the chief justice of the Supreme Court presides over the Senate for the purpose of the trial. It should be noted that the only president ever to have been impeached was Andrew Johnson in 1868 and the Senate failed by one vote to carry the two thirds majority required for his conviction. It is manifestly clear that, it was the power of the impeachment exercised by the House of Representatives in the United States against President Nixon which forced him to resign his appointment as a result of his alleged complicity in the Watergate cover-up.<sup>39</sup>

The rationale for impeachment as a means of control by parliament is succinctly summarized thus: “Impeachment today may be less significant as a positive deterrent than as constitutional statement of congress’ duty to ensure that persons elected or appointed of high public office

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<sup>35</sup> Ibid.

<sup>36</sup> L Philip, (n. 32) pp. 40-41.

<sup>37</sup> Note that this was the position as at 1989.

<sup>38</sup> Article II of the United State of American Constitution.

<sup>39</sup> Articles I, II & III.

are not corrupted by the temptation of power.”<sup>40</sup> Many parliaments possessed the power of indictment although it limits the process involved very considerably. Brazil, Ireland and Mexico have systems which resemble that of the United States. In India, either House could gather two-third majority to impeach the president and proceed to investigate the charge itself. In Austria, both Houses would be involved if the president is charged with the violation of the constitution and his trial would take place before the Constitutional Council. In West Germany, either House may gather a two-third majority to indict the president for willful violation of basic law.<sup>41</sup> In France, the two Houses acting together could indict the president for high treason and also charge ministers of the government, the trials taking place before the high court of justice. In Cyprus, three-quarter of the membership of the House of Representatives could indict the president and the vice-president for high treason. In Greece, the chamber of deputies is entitled to bring charges against the president and members of the government and trial usually takes place before an ad hoc court presided over by the Chief Justice of the Supreme Court.<sup>42</sup>

Note that South Korea, Spain, Sweden, Portugal and Cote d’Ivoire are among countries having special impeachment procedure leading to trial by the highest court in the land. Some parliament has special procedures for the indictment of judges. Judges and certain high official varying from country to country may be removed by resolution of the house or both houses in the case of bicameral parliaments, without any impeachment process being involved. As regards China, the National People’s Congress has power to recall or remove office holders and same extends to the highest offices of the state.<sup>43</sup>

### **3.4. Ombudsman as a Means of Parliamentary Control of Administrative Agencies**

In some countries, another element in the machinery of administrative control is the institution known as the ombudsman.<sup>44</sup> It originated from Sweden as far back as 1908 and same has been imbibed in many countries. The office is to be found at the various levels of government in widely dispersed countries. The function of the ombudsman is to investigate the complaint of the citizen who claimed to have suffered unjust and arbitrary treatment at the hands of Public officials. Ombudsman is an officer appointed by the legislature and acts independently of executive control and he makes his report to the legislature.

Sweden has the most sophisticated system and has about four ombudsmen of whom one is the chief ombudsman and administrative director. These four ombudsmen share the same office and staff but each is allocated a defined field of responsibility and they decide their cases independently. The chief ombudsman is in charge of taxation and execution of judgment; the second covers the courts, police and prisons; the third handles social welfare and education and the fourth, the armed forces and all other matters. It should be noted that with that, cover all agencies or levels of government.

Denmark, Finland, New Zealand and Norway were among the first countries to have followed Sweden’s example. Great Britain appointed a parliamentary commissioner for administration in 1967. Investigation can only be carried out on the initiation of a member of parliament and

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<sup>40</sup> Note that President Nixon declined to honour the subpoenas concerning the president’s record especially tapes of conversation in the White House which eventual to the inquiries of Senators Sam Ervin Committee and Mr Achibald Cox-the Special Prosecutor.

<sup>41</sup> K Brashaw, & D Pring, (n. 18) p. 444.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> L Philip, (n. 36), pp. 44-45.



a complainant cannot approach him directly.<sup>45</sup> He reports to the parliament annually and the said reports are examined by the select committee of the parliament to the exclusion of all others. Equally in France, the office of mediator has common features with the British office and like the parliamentary, commissioner can only be approached through members of the parliament.

In the American governmental system, the Comptroller-General of the United States performs a function in this field. In a situation where a contracting officer in a department of the executive branch awards contract erroneously, any one whose economic interest is involved in the award may make a "bid protest" to the Comptroller-General; or his office, the general accounting office. Whatever the Comptroller-General decides is final and conclusive. Some of the protests are channeled by the aggrieved party through a congressman and a decision is reached on average in ninety days. Between 1967 and 1969, about 1,500 bid protests were made and about 100 (out of the 1,500) were successfully sustained by the Comptroller-General. In addition to these were many cases where protests were withdrawn because the contracting officer was careful and prudent enough to offer some satisfactory/convincing relief to the protester.<sup>46</sup>

Note that, apart from this machinery, nothing like ombudsman exists in the American central governmental system although the standing committees can investigate administrative failings which come to light and many complaints made to congressmen are taken up with the executive departments or agencies concerned or with the general accounting office.<sup>47</sup> There has been some pressure for an ombudsman to be set up in the United States but same has not materialized and even the joint committee on the organization of congress in 1962-1966 considered a memorandum on the subject, but they did not take any action on it in their final report.<sup>48</sup>

### **3.5. Questions and Interpellations as Means of Parliamentary Control**

Many parliaments make provision for a question period which at times takes place on a daily basis and this provides an important avenue of calling the governor and individual ministers to account. Interpellation is an important element in the practice of some parliament (in relation to procedure with parliamentary question) because it can give rise to a debate and in some instances lead to vote of confidence issue. This is the case in a French National Assembly where the rules require that motion of censure signed by at least one-tenth of the members must be attached to an interpellation. The rules of the Western German Bundestag make provision for major and minor interpellation. If the government fails to reply a major interpellation, a debate may be demanded by a parliamentary group or 5% of the membership. The interpellation procedure features in the parliament of most European countries including some of the Socialist states. It is also to be found in countries like Argentina, Peru, Brazil, Jordan, Egypt and Thailand and in some other Parliaments.<sup>49</sup>

Under the British system of parliamentary question, no debate is permitted. Although in some parliament, matters arising out of question period may be set down for debate on the adjournment motion at the end of the day. The British system provides for oral and written question. The former has been employed by members wishing to give publicity to an issue, the latter by member seeking information of a more detailed nature in a written reply. In the British

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<sup>45</sup> H Valentine, (n. 16), pp. 922-924.

<sup>46</sup> Ibid.

<sup>47</sup> See 'The Government Contractor,' Briefing paper, June, 1970 (Federal Publication Inc.).

<sup>48</sup> Take note that Hawaii has had an Ombudsman since mid-1969. Hawaii is a state in United States.

<sup>49</sup> Ibid. p. 857.

House of Commons, notice is required as all questions answered orally in the House, but supplementary questions are permitted which provide the essence and excitement of the question period. The cardinal principle governing question period is that ministers will only respond to questions on matters which they are responsible, although there is no obligation on them to respond at all. The speaker is responsible for enforcement of compliance with the rules relating to questions and this is probably one of the exacting tasks the chair has to face.

### **3.6. Oversight by Committees**

In the United States, congregational oversight of the executive is effective and encompassing notwithstanding the doctrine of Separation of Powers. Early in each new session of Congress, the president delivers his "State of the Union address" to a joint sitting of both Houses. This is followed shortly afterwards by the submission of presidential budget and a wide variety of departmental reports on executive activities. These reports are referred to the committees having appropriate jurisdiction in the areas concerned.<sup>50</sup> The committees of both Houses oversee government departments and agencies and conduct investigations into their activities. They are equipped with the research and support staffs that are necessary for effective performance of their duties. They are empowered to *subpoena* witnesses, including members of the cabinet and to require the production of document. It is noteworthy that much of the works of these committees are delegated to sub-committees. Among the committees appointed are those appointed by each House, charged with a general oversight of government operations. Congress uses its committee system as a formidable work of control over the executive activities.<sup>51</sup>

## **4. Forms of Parliamentary Control of Administrative Agencies in Nigeria**

Nigeria is operating the doctrine of Separation of Powers where each organ of government is independent of the other branches (legislative, executive and judiciary).<sup>52</sup> Whatever is the relation between the legislative and the executive organs of government, there is inevitably some measures of control exercised by the legislative arm over the executive arm (i.e. administrative agencies) of government in Nigeria. Some areas of control exercised by the legislature are examined below:

### **4.1. The Legislative Control of Public Finance**

Any democratic government derived its power and authority from the people. If the activities of such government are to be deemed as the actual will of the people, then the electorates must reserve their powers of ensuring that the resources they put at the disposal of the government officials and agencies are judiciously expended for the public good.<sup>53</sup> In order to achieve this objective, there is need to put machinery in motion to control such finance and how they are effectively and efficiently spent. To achieve this, there is need for the legislative control of public finances in order to give such control a legal backing.

As revenue or money raised or received by the government is required to be paid into one form of consolidated revenue fund, payment in some other fund is authorized by the constitution or by an Act of the National Assembly. No withdrawal can then be made from the consolidated revenue fund without legislative authorization.<sup>54</sup> Note that such legislative authority for

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<sup>50</sup> L Philip, (n. 36), p. 91.

<sup>51</sup> H Valentine, (n. 16), p. 90.

<sup>52</sup> H A Hanafi, (n.2), pp.108-129 at 109.

<sup>53</sup> A O Nwabueze, 'The Individual and State under the New Constitution,' (*N.I.I.A. Lectures No.25*, 1980).

<sup>54</sup> O Dejo, 'Parliament Control of Public Fund Finance in Nigeria: The Constitutional and Structural Dimension Examined,' (2001), Vol. IV, Issue I, *LASU Law Journal*, 10.

expenditure cannot take the form of an act permanently charging particular items of expenditures on the consolidated revenue fund or some other funds. It can only be given year by year by an annual appropriation law. Consequently, the issue of embezzlement of public fund is curtailed for no withdrawal can be made (by the executive) from the said fund without authorization of the legislature. This in turn serves as a check on the financial recklessness of the executive.

Under the constitution, the preparation of the budget is vested in the president or governor. The effect of this is that an appropriation bill can only be initiated by the executive.<sup>55</sup> The head of expenditure contained in the estimate prepared by the president (other than the expenditure charged upon the consolidated revenue fund by the constitution) shall be included in a bill to be known as “appropriation bill” providing for the issue for the consolidated revenue fund of the sums necessary to meet the expenditure and the appropriation of the sum for the purpose specified therein. Where it is realized that the money appropriated by the appropriation law for any purpose is insufficient or there is need for expenditure for a purpose which no amount has been appropriated by the law, a supplementary estimate to be prepared by the executive showing the sums required shall be made before the legislature and the head of any such expenditure shall be included in a supplementary appropriation bill.<sup>56</sup> Note that no money can be released from the consolidated revenue fund except with the warrant of the minister for whom the responsibility of the management, supervision, control and direction of the expenditure of finances of the government is entrusted. The minister is charged with the responsibility of exercising his supervision in such manner as to ensure that full account is made to the legislature.<sup>57</sup>

#### **4.2. Post-Appropriation Control**

The legislature is charged with the responsibility of ensuring that money appropriated and withdrawn for government services is properly spent on purposes/projects for which it is appropriated. This responsibility is executed and achieved through the Public Account Committee. The Account of all the various services are required to be audited by the Auditor-General and his report is required to be laid before the legislature. The accounts and the Auditor-General’s Report are required to be examined by the public account committee. Note that the control which the legislature exerts on the expenditure of public money is required in three cases. Certain expenditure is charged on the consolidated revenue fund directly by the constitution. This requires no separate legislature authorization. Under this head are the salaries and allowance of specified constitutional office holders, the pension and gratuity of the President and Vice-President, Governor and Deputy-Governor, the recurrent expenditure of judicial officers other than the salaries and allowances of judges and the share of federal collected revenues due to state.

Besides, before an appropriation bill in respect of any financial year is passed into law to enable service of the government to be carried on for a period not exceeding six months until the coming into operation of the appropriation whichever is earlier, the President or the Governor may authorize the withdrawal from the consolidated revenue fund of money not exceeding the appropriate amount authorized by the appropriation law for the corresponding period in the immediately preceding financial year.<sup>58</sup> However, such supplementary appropriation bill must however be presented in earnest to enable the amount so advanced to be replaced. There is also

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<sup>55</sup> (n. 15), Section 80.

<sup>56</sup> *Ibid*, Section 81 (1) (2).

<sup>57</sup> *Ibid*, Section 81 (4).

<sup>58</sup> *Ibid*, Section 84 (1), (2), (4) & (5).

development fund. Note that the withdrawal from these funds warrants statutory authorization. The authorization is not required by the constitution to be given annually by appropriation or supplementary appropriation law. A standing approval in the form of an annual appropriation is all that is required. The approval of the Minister-in-charge is required before actual withdrawal of money is made and in the case of withdrawals from the development fund, the warrant can only be issued with the authority of a resolution of the House of Representatives.<sup>59</sup>

#### **4.3. Establishment and Funding of Ministries or Departments and Public Corporations**

The president in most African countries with the presidential system (Nigeria inclusive) is empowered to establish offices and constitute public administrative offices or agencies. This power really allows the president to structure the administrative machinery of government but certainly, it does not confer substantive powers upon the structures or offices created and this can only be achieved by an Act of the legislature.<sup>60</sup> In a nutshell, it is from the enactment of the legislature that the ministers and public officers derive their powers.

It is noteworthy that the situation in the United States and Britain as regards the establishment and funding of ministries or departments are by the executive instrument and are rarely established by an Act of the legislature. Equally, the President under the supreme law of the land (i.e. the constitution) is empowered to assign to the Vice-President specific responsibility for any business of the government of the federation including the administration of any department of government.<sup>61</sup> For instance, Alhaji Abubakar Atiku (the Vice-President of the Federal Republic of Nigeria) was appointed by President Obasanjo as the Chairman for the National Committee on Privatization.

For the fact that ministers derive their substantive powers from the enactment of the legislature, it clearly shown that the legislature has some forms of control over them as regards their ministries, departments and other public corporations since the said organization (or department etc) depends on money duly authorized by the legislature for their operation. This was what influenced the decision of the former Nigerian Minister of Education, who had to lobby the National Assembly members just in bid to secure substantial fund for his ministry.<sup>62</sup>

#### **4.4. Controls by Way of Criticism and Scrutiny**

The legislature achieves this function during debate on matters presented to it for legislation, resolution or approval. Note that any other matters within the competence of the legislature can however be subject of criticism and scrutiny, even where no bill or motion is presented on it for formal action. Members of the legislature may raise any important question and same may be debated upon in the House, although same has to be subject to the prescribed rules of debate.<sup>63</sup> Also, the legislature is competent to criticize and scrutinize other tiers of government (i.e. executive and judiciary) in terms of their activities/functions notwithstanding that it cannot competently pass a law on such matters. This is due to the fact that legislators like other citizen enjoy freedom of expression which includes freedom to comment on public affairs. Consequently, legislators are free to criticize and discuss any matters relating to the administration of government whether federal, state and local government level.<sup>64</sup>

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<sup>59</sup> Ibid.

<sup>60</sup> Ibid, Section 83 (1).

<sup>61</sup> Ibid, Section 148 (1) & (1).

<sup>62</sup> Daily Independent, Monday 21<sup>st</sup> March, 2005 Vol. III, No.665, pp.1-2a.

<sup>63</sup> (n. 60), Section 148 (1). Also see *Tony Momoh v Senate of the National Assembly & Ors* [1981]H A 1 NCLR, 21.

<sup>64</sup> Hanafi, (n 2), p. 111.

#### **4.5. Impeachment as a Means of Control**

The Constitution of the Federal Republic of Nigeria 1999 (as amended) provides for the removal of the President or Vice-President, the Governor or Deputy-Governor and the chairmen of parastatals.<sup>65</sup> In each case, where a motion is passed that the allegation made against any of this functionaries should be investigated, the Chief Justice of Nigeria or the Chief Judge of State shall on the request of the presiding officer, appoint a panel of 7 persons who in his opinion are of proven integrity, not being members of public service, legislative House or political party to investigate the allegation(s).<sup>66</sup> Note that no proceedings or determinations of the said panel or of the legislature or any matter relating thereto shall be entertained or questioned in court of law.<sup>67</sup> The exclusion of judicial review of impeachment is premised on the belief that impeachment is a political question which should and exclusively be reserved for the political arms of government. It is important for legislature not to likely resort to the power of impeachment. The power should be judiciously invoked as the last resort; if not, its usage as a form of control on the executive will be meaningless and the rationale for its enshrinement in the constitution may not be justified.

#### **4.6. Legislative Control over the Executive by Investigation**

The Constitution of the Federal Republic of Nigeria empowers each House of the National Assembly and the State House of Assembly by resolution published in its journal or in the appropriate Gazette to direct or cause to be directed an investigation into:

- i. Any matter or thing with respect to which it has power to make laws; and
- ii. The conduct of affairs of any person, authority, ministry or government department, charged with the responsibility for executing or administering laws enacted by the National Assembly or as the case may be, the state House of Assembly.<sup>68</sup>

For the purposes of power of investigation conferred on the legislature, the legislature or its appropriate committee shall have power:

- a) To procure all such evidence written or oral, direct or circumstantial, as it may think necessary or desirable and to examine all persons as witnesses whose evidence may be material or relevant to the subject matter;
- b) To require such evidence to be given on oath;
- c) To summon any such person in Nigeria to give evidence at any place or to produce any document or other thing in his possession or under his control and to examine him as a witness and require him to produce any document or other thing in his possession or under his control, subject to all just exceptions; and
- d) To issue a warrant to compel the attendance of any person who after having been summoned to attend, fails, refuses or neglects to do so and does not exercise such failure, refusal or neglect to the satisfaction of the House or the Committee in question and to order him to pay fine or cost which may have been occasioned in compelling his attendance or by reason of his failure, refusal, or neglect to obey the summons and also to impose such fine as may be prescribed for any such failure, refusal or neglect and any fines to be imposed shall be recognizable in the same manner as a fine imposed by a court of law.<sup>69</sup>

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<sup>65</sup> (n.60), Section 143 (1)

<sup>66</sup> Ibid, Section 143, (5)

<sup>67</sup> Ibid, Section 143 (1)

<sup>68</sup> Ibid, Sections 88 & 128.

<sup>69</sup> Ibid, Sections 89 & 129.

It is clear from the provision of the constitution that the legislature is empowered to investigate the activities/functions of the executive with a view to preventing and exposing corruption, inefficiency, ostentatiousness or waste by the executive. Equally, based on the legal competence of the state House of Assembly to make provision of statutory allocation of public revenue to local government within the state, it should be able to monitor how the money will be judiciously expended. It is submitted that State House of Assembly is competent to invoke its investigative power in the affairs/administration of local government.

The Senate Committee on Public Accounts in 2001 investigated the Nigerian National Petroleum Corporation (NNPC), Central Bank of Nigeria (CBN) and National Electric Power Authority (NEPA) and later now Power Holding Company of Nigeria (PHCN) and raised a lot of controversies on the activities of their administrative bodies.<sup>70</sup> The notable investigation of the administrative bodies was the controversies surrounding the N 2.3 billion PHCN fund that could not be properly accounted for by NEPA officials, though there have been accusations against members of the legislative committee for using this avenue to procure contracts from these administrative bodies. However, the power of investigation was employed by the National Assembly to summon most of the ministers and personnel of their ministries to appear before it and furnish them with explanations on certain major governmental policies and activities. This was the case when the then Minister of Aviation, Dr (Mrs) Kema Chikwe and the Director-General of the Bureau for Public Enterprises (BPE) were summoned to appear before the committee of National Assembly on Privatisation of the Nigerian Airways Limited (NAL) and the establishment of new National Airline.<sup>71</sup> The secret deals of the ministry were exposed and the plans to purchase the assets of NAL under shrouded circumstances were scuttled. Other exercise of the investigative power of National Assembly was the Petrol Trust Development Fund (PTDF) saga where the then Vice-President, Atiku Abubakar and the Presidency were indicted and recommended that they should face the Code of Conduct Tribunal for breach of trust and abuse of office

From the foregoing, it is apt that legislature uses committees to collect and analyze information concerning the administration of the state programmes and implementation of governmental policies as any aspect of government activities may come under legislative examination.

## **5. Conclusion**

This paper carried out an overview of parliamentary control of administrative agencies. It is clear from the body of the paper that the parliamentary control of administrative agencies depends largely on the type of parliamentary system being practiced either uni-cameral or bi-cameral legislature or even presidential or parliamentary. It must however be noted that this power of control vested in the legislature is not meant or calculated at usurping the constitutional powers inherent in the executive; rather it is meant for the promotion of effective governance which could in turn help in meeting the yearnings and aspirations of the people. In the light of the above, it is suggested that considerable care must be taken by not only ensuring that the electorates chose their proper representatives to National or State Assembly, but there should equally be good electoral laws to ensure that the choice of the people are not defeated as a result of electoral fraud as the failure or success of a state depends largely on the nature of its legislators. Lastly, there must be independence of judiciary to play the role of an unbiased umpire to resolve disputes emanating from electioneering process in the state or country at large.

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<sup>70</sup> Newswatch Magazine, 2001, p.12.

<sup>71</sup> S H A Hanafi, (n. 2), p.112.