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Centre for Constitutionalism and Demilitarisation
Suite 4 & 5, Eko Plaza, Acme Road,
P. O. Box 14165, Ikeja-Lagos, Nigeria.
Tel: 234-1-773-0321, 7914518
cencod98@yahoo.com

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LEGISLATIVE BUSINESS AND THE IMPERATIVE OF THE RULE OF LAW IN NIGERIA

Fagbemi Sunday Akinlolu

Abstract

This article deals with the legislature, its evolution, types, legislative bureaucracies and functions. It further focuses on the processes of legislative business especially the rituals of law-making and drawing abundantly from the Nigerian turf. The article outlines some patterns of legislature-executive relations. In conclusion, the article recommends transparency and accountability undermined by mutual checks and balances as imperatives of a healthy legislature-executive relationship.

1. Introduction

Legislation is the process of making or enacting a positive law in written form, according to some type of formal procedure, by a branch of government constituted to perform this process.[1] The definition is in accord with the view expressed by the positivist school of jurisprudence, and according to Salmond, the tendency in modern times is towards the process which, since the days of Jeremy Bentham has been known as Codification, that is to say, the reduction of the whole *corpus juris* so far as practicable to the form of enacted law.[2]

In virtually all the known jurisdictions, legislative power is exclusively the preserve of the legislative arm of government. However, such power is vested by the country constitution or in an enabling statute recognized by the populace as having force of law. In Nigeria, section 4 of the 1999 Constitution vests legislative power of the Federal Republic of Nigeria in the

Akinlolu Lectures at the Department of Public and International Law, Faculty of Law, University of Ibadan, Ibadan, Nigeria

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Legislature, that is, the National Assembly and the State House of Assembly, at present we have a bicameral legislature consisting of a Senate and House of Representatives at the Federal level and a legislative power of a state of the federation in the House of Assembly of the state, a unicameral legislature.[3]

This paper is aimed at examining legislative business and the imperative of the rule of law in governance. In this regard, the paper will briefly trace the evolution of legislative process underlining types of legislative houses, their bureaucracies and functions. In the main, it will focus on legislative processes and procedures in order to bring into fore the core value of legislation. Presently, Nigeria operates three tiers of government, and each tier of government has its own legislative house; however, for purpose of clarity, this paper is limited to the examination of legislative business at the federal and state assemblies. In conclusion, the paper will discuss the concept of the rule of law and its impact on governance in Nigeria.

2. The Evolution of Legislative Practice

The emergence of the modern legislature could be traced to the Greek City-States. At the period, the Greek City-States of which Athen was the most outstanding, was organized and legislated for by the Assembly of "Ecclesia" which comprised all the citizens above the age of twenty who met forty (40) times in a year.[4]

The Constitution of Rome in the 3rd Century B.C. provided for four (4) Classes of lower assemblies namely: *Comitia Curiata; Comitia Conturiata; Comitia tribute and Concilium Plebis*.[5] One of the lasting legacies of the Roman Parliamentary system is the constitution of the Senate as the upper legislative chamber. The Roman Senate comprised of three hundred (300) eminent citizens, membership of which was revised by the censors once in five years.[6]

At the inception of the legislative practice in the ancient cities of Greek and Rome, direct democracy unlike representatives democracies where all citizens could speak and vote in the assemblies were in practice, this was due to the size of the city-state. In spite of the direct democracy being practice, the ancient democracy did not presuppose equality of all individuals as the majority of the populace notably slaves and women had no political rights. Athens, the most renowned of the Greek city-states, limited the franchise to native-born citizens. Roman sometimes granted citizenship to men and non-Roman descent. The Roman Stoic philosophy, which defined the human rule as part of a divine principle and the Jewish and Christian religions which emphasized the

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rights of the underprivileged and the equality of all before God, contribute to the development of modern democratic theory.[7]

The birth of British parliament could be traced to the Norman Conquest of 1066, which adversely affected the political history of the British. It resulted in the selection of high-ranking nobles and clergy who constituted an advisory body to William the Conqueror and subsequent Kings. That initial informal advisory group later graduated into a formal assembly known as the 'Great Council' or '*Magnum Concilium*'. The assembly met three times in a year to help the King in public administration and the enactment of laws.[8]

In the 1200s, King John broadened the membership of the advisory council by extending invitation to the Knights who where elected from the Shires (Counties). King John motive was to secure their approval and support to collect taxes which he had levied, thereby, according political legitimacy to his taxation policy.[9]

The turning point in the advancement to representative governance in Britain was the initiative of King Edward I in 1295. The monarch summoned the lay and spiritual peers, the representatives of the lower clergy, two Knights from each Shire, and some members, generally two, from each town or Borough to the 1295 meeting. The peculiar and impressive composition of that meeting earned it the name 'model parliament'. The assemblage was evidently the root of modern representative parliaments.[10]

The official separation of parliament occurred in the mid 1300. That was when the elected representatives begun to act separately from the noble and bishops. Thus, the parliament was divided into two: the House of Lords and House of Commons.[11] Essentially, the main function of the two Houses is to make law for Britain.

In the United States of American, the early Colonists, especially those from Britain, arrived on the shores of the new world around the mid 1600s with liberal ideas, charged with the spirit of freedom from oppressive laws. The revolutionary influence of the Petition of Rights, the Bill of Rights and other related experiences informed their ideas of governance.[12]

Their liberal ideas were manifested in the establishment of representative assemblies in their new American base in 1660s. These representative assemblies were the platform on which the Colonists expressed their disaffection with the policies of the British-appointed colonial governors. The official relationship between Britain and the American Colonies deteriorated in the 1760s because of prohibitive tax legislation. The embittered Colonist dubbed these obnoxious tax laws

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'coercive acts'. The colonial representative assemblies were readily available and equipped to take up the cause of the Colonists. It was the meeting of the Colonial representatives in Philadelphia on September 5, 1774, that becomes the historic watershed. That meeting was "to consult upon the present unhappy state of the Colonies". It has been popularly referred to as the 'First Continental Congress'.

The Continental Congress, no doubt, laid the foundations for the First National Assembly in the United States. The first-five delegates to the meeting were drawn from all the Colonies except Georgia. The meeting concluded with a declaration of rights and grievances, addressed to Great Britain. The Second Continental Congress met in Philadelphia on May 1775 and declared the colonies independent of Britain. It served as the transitory national government until the adoption of the Articles of Confederation by the State in 1781. It was then that a national legislature called the Congress of the Confederation was inaugurated.

In May, 1787, the Constitutional Convention convened in Philadelphia State House. The Convention deliberated exhaustively for sixteen weeks and provided a workable constitution for the United State. It approved the principle of separation of powers and thereby created independent legislative, executive and judicial arms of government.[13] The American Constitution provided for a two-chamber congress unlike the earlier congress of only one chamber. At present there are 50 States with two Senators from each State making one hundred Senator, the United States House of Representatives presently has four hundred and thirty-five members. The Senators are elected for a period of six-year term and their counterparts in the House of Representatives for a two-year term.[14]

The revolutionary experience of France also shaped her parliamentary history. The radical policies of Philip IV, which culminated in the inauguration of the First Estate General in 1302, were the forerunner of the French Parliament. This body of Frenchmen rallied together by Philip V constituted the foundation of the French Parliament.[15] In the course of the French revolution, King Louis XVI summoned the Estate-General in May, 1789. The Estate-General were comprised of three estates or classes namely: the clergy, the nobility and the commoners. The revolutionary spirit erupted when the third estate or the Commoners declared themselves a National Assembly in June, 1789. They also assumed full power to write a new constitution for France. At present, the French National Assembly is made of the Chamber of Deputies and the Senate. The Chamber of Deputies has

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greater power than the Senate. There are 577 Deputies who are elected every five years, while the Senate has 319 members, who are elected for nine-year term.[16]

The centralized administrative structure of the British colonial regime left an abiding mark on the Nigerian political culture and administrative process.[17] The first semblance of a legislature in Nigeria's political history could be traced to the Nigerian Council of 1913. The Council was merely an advisory and deliberative Council of Lagos and the Protectorate of Southern Nigeria. The Colony and Protectorate of Southern Nigeria and the Protectorate of Northern Nigeria were amalgamated in January, 1914, to form the Colony and Protectorate of Nigeria. Thus Nigeria as a political unit came into existence on that date.[18]

The problem of administering the new nation was compounded by the commencement of the First World War in 1914, the war, with its attendant human causalities and material loses, came to an end in 1916. The British Government, Nigeria's colonial master, after the civil war, enacted for Nigeria eight constitutions in quick succession between 1922 and 1960. These Constitutions provided for legislative houses in different regions of the country. These legislative houses, at the inception were not conceived to be law making houses but merely deliberative as the ultimate power of legislation lied in Britain. However, in the last lap of the transitory process to independence, the central government established an Upper Chamber (the Senate) in January, 1960, with forty-four pioneer members. Thus, a bicameral National Assembly (the Senate and House of Representatives) was created at the centre. The House of Representatives membership was further increased to 320 members.[19] In 1960, the constitutional legislative powers of the National Parliament resided in the Queen of England. The assent of the governor-general was required to transform a bill passed by the National Parliament into a binding law.

In 1963, Nigeria became a republic and thus ushering in the Republican Constitution of the 1963. Under the Republican Constitution, the legislative powers of the National Assembly resided in the President, the Senate and the House of Representatives. The assent of the President was required to transform a bill passed by the National Parliament into a binding law.[20] The collapse of the first Republic in 1966 by means of a military coup terminated the country's democratic institutions and the military ruled until 1979 when the country returned to civilian rule. On return to democratic rule, Nigeria adopted a presidential system of government fashioned after the United State of American Constitution. The

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1979 Constitution vested the legislative powers of the country in the National Assembly consisting of a Senate and House of Representatives at the centre and a House of Assembly in the federating states within Nigeria, which has a single House of Assembly.[21]

In December, 1983, the military struck again and thus brought to an end the Second Republic. However, on May 29, 1999, after three successive military heads of State and a three-month interim Government headed by Chief Ernest Shonekan, the country returned to Civilian rule with a Presidential system of Government. Under the present dispensation, the legislative powers of the central government are vested in the National Assembly with two legislative houses consisting of the Senate and House of Representatives.[22] The composition of the Senate is based on equality of State, while that of the House of Representatives is based on proportional representation. At present, members of the Senate are 109 while House of Representatives has 360 members.[23] At the state level, a unicameral legislative house is operated; hence, each state within Nigeria has its respective House of Assembly. Since Nigeria operates three tiers of government comprising of the Federal, State and Local Government, all the Local Governments also has their own legislative house.

3. Sources of Legislative Powers

Legislature is the body of persons in a country or state invested with the power to make, alter, and repeal laws. It may consist of one or two Legislatives Chambers with similar or differing powers.[24] The legislative powers be it at the Federal or State level depends on the form of government that is in place. Essentially, the legislative powers of any country would be derived from any of the following sources:

(a). Constitution.

The constitution of a country constitutes the most important primary sources of legislative power, practice and procedure.[25] The constitution is the supreme law of the land. It enjoys overriding supremacy over all other laws, authorities and institutions within its scope of jurisdiction.[26] The Constitution as superior law of the land provides for the establishment, composition and regulations that govern the sittings of legislatives houses. As a matter of fact, the Constitution being the grundnorm and the organic law of the land, all other legislations take their hierarchy from the provisions of the Constitution. The provision of the Constitution take precedent over all other law, including the law made by the National Assembly, even though the National Assembly has the power to amend the Constitution itself.

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By virtue of section 4 of the 1999 Constitution the powers of the legislature are provided for. Section 4 (1) provides as follows:

> *"The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consists of Senate and a House of Representatives"*

Similarly, under section 4 (6) of the Constitution, the legislative powers of the State within the Federal Republic of Nigeria is vested in the State House of Assemblies. The above legislative houses are constitutionally enjoined to make law for the peace and good governance of the Federal Republic of Nigeria and all the constituent states.

(b). Statutes

Statutes and other legal documents that are not inconsistent with the provisions of the Constitution also serve as veritable sources of legislative law, practice and procedures.[27] It must be submitted that the adoption of statutes as source of legislative power is very rare and it is only on exceptional cases.

4. Composition of Officers and Staff of Legislative House.

The National Assembly and the State House of Assembly are assisted in their functions through an administrative structure which has been laid down in the Constitution. Section 47 of the 1999 Constitution establishes for the Federation of Nigeria a National Assembly that consists of a Senate and a House of Representatives. Similarly, at the state level, section 90 of the Constitution establishes for the state a House of Assembly, the composition of which shall consists of three or four times the number of seats which that state has in the House of Representatives divided in a way to reflect as far as possible, nearly equal population. Provided that a House of Assembly of a state shall not be less than twenty-four and more than forty members.[28] In order to assist the house in the performance of its various functions, there are designated officers constitutionally provided for, these officers are listed hereunder.

(a). National Assembly

In the National Assembly, five principal officers are recognized as follows:

i. The presiding officers; at the Senate there is President of Senate, while Speaker presides over the proceedings of the House of Representatives.
ii. The Deputy President of the Senate and the Deputy Speaker of the House of Representatives

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iii. The Leader of the Senate and Leader of the House of Representatives.
iv. The Party Leaders in the Senate and House of Representatives
v. The Party Whips
vi. The Chairman of Committees and
vii. The Clerk of the National Assembly

(b). State House of Assembly

Every State House of Assembly has its principal officers who are responsible for coordinating the legislative business of the house. These officers are the following:

i. Speaker of the House of Assembly
ii. Deputy Speaker of the House of Assembly
iii. Clerk of the State House of Assembly
iv. The Leaders of the House of Assembly
v. The Chief Whip and other Whips
vi. The Chairman of Committees

Each of the officer mentioned above have specific functions perform by their office, which are all aim at enabling the legislative house to perform its onerous business with less rancour and unhealthy bickering.

5. Inauguration of the Legislative House

Law as defined by John Austin (1790-1859) is a rule laid down for the guidance of an intelligent being by an intelligent being having power over him.[29] Nigerian courts recognize that the legislature has the right to legislate on any topic and that no other body may legislate except on the authority of the legislature. Before the commencement of legislative business, legislative house must observe the hallowed laid down rules of procedure otherwise christened legislative inauguration.

In Nigeria, after the election and official inauguration of members into Legislative Houses, the President, in the case of National Assembly, will issue a proclamation for the holding of the first session of the Assembly.[30] After the Proclamation, the house is expected to go into deliberations with a view to appointing among them the principal officers of the House. Usually, most appointment must have been done at the party's caucuses and the House will only need to ratify it in order to fulfill all righteousness. The president and the Speaker of the National Assembly, after their appointment, will be made to subscribe to the oath of office and allegiance which they will in turn administer for other members.

In similar fashion, the Governor of the State will issue a Proclamation for the

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holding of the first session of the State House of Assembly.[31] After the Governor might have issued the Proclamation, he will take his leave to allow members to elect the principal officers of the House. Upon election, the Speaker will be made to subscribe to an oath of office and allegiance to be administered by the Clerk of the House, the Speaker, in a similar fashion will administer the oath of allegiance to other Principal Officers of the House.

By virtue of the provision of the 1999 Constitution, each legislative house is empowered to make Rules governing its internal working and regulate its business. Accordingly, section 60 of the Constitution provides thus:

> *"Subject to the provisions of the Constitution, the Senate or the House of Representatives shall have power to regulate its own procedure, including the procedure for summoning and recess of the House"*

In the same vein, section 101 of the Constitution empowers State House of Assembly to make Rules governing its internal working and regulate its business and procedures. At the end of their tenure of office, that is, from the date of first sitting of the House, members of all legislative Houses both at the federal and state level must stand dissolved.[32]

6. Legislative Business of the Legislature.

The legislative chamber is the hallow office complex where legislative business is discussed. The chamber is equipped with the state-of-the-earth Communication gadgets which makes communication and recording of proceedings efficient and effective. It must, however, be stressed that inside the hallow chamber, members enjoy unparallel immunity for whatever that transpired in the course of performing their legislative duties. As stated above, each of the legislative house has designated presiding officer, the major duties of these presiding officers are to regulate the conduct of legislature business and enforce the observance of the rules and the standing order governing the business of the house. Decision in the house is decided by majority of members present and voting. The presiding officer can only cast vote whenever there is equality of votes. Essentially, in the performance of its legislative business, a legislative house is expected to follow the following procedures.

(a). Ceremonial Procession

Part of the Colonial tradition, which legislative houses still keep till today is the ceremonial procession, that usually heralds the entering and leaving of the

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house chamber by the presiding officer.[33] Every time the House meets, the procession must be led before the house commences business. The formal procession is normally led by a Badge Messenger followed by the sergeant-at-arms with the mace on his shoulder, followed by the presiding officer, his train-bearer and finally his Chaplain and Secretary.[34]

(b). Nature and Conduct of Proceedings

The legislative business is quite different from business of governance. Basically, the business of governance involves the provision of security of life and property, social amenities, payment of salaries and wages of public officers amongst others. However, legislative business is essentially, a law-making process. It covers legislative proceedings in form of debates, deliberations and review of governmental activities. Legislative business creates opportunity to deliberate on proposed bills with a view to passing them into law.[35]

At any level, legislative proceedings are characterized by heated arguments on issue particularly on public finance, screening of ministers, commissioners, or supervisors. The legislative wields enormous power because of the singular privilege of housing the largest concentration of elected representatives of the people.[36] Discussion in the house usually toe party line but most importantly, the interest of the country is expected to be considered over and above the party manifestoes or interest. The standing orders of the house provide for such procedure as the right of audience of members. However, the presiding officer must recognize and call a member before he or she speaks. Only one member of the house is allowed to speak at a time. During the sitting of the house, members must conduct themselves with respect and conscious of the authority of the Presiding Officer, since; he represents the dignity and pre-eminence of the legislative house.

(c) Scope of Legislative Powers in the Conduct of their Business.

The Constitution prescribes the limits of the power of each organ of government and of the various tiers of government as well. Accordingly, section 4 of the 1999 Constitution clearly delimits the scope of power of each legislative House at the three tiers of government in Nigeria. The scope of each lLegislative house is determined by the number of subjects on which a Legislative House can legislate otherwise called Legislative Lists. Consequently, section 4 (2) of the Constitution provides thus:

> "The National Assembly shall have power to make laws for the

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> peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in part I of the second Schedule to this Constitution"

The power of the National Assembly to make law as stated above is to the exclusion of the State House of Assembly.[37] For the avoidance of doubt, section 4 (7) (a) of the Constitution in an unmistaken term, delimit the scope of the legislative power of the State House of Assembly when it provides thus:

> The House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters, that is to say (a) any matter not included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.

In addition to the scope of legislative power of the National Assembly, the Constitution further vests in that assembly power to make law with respect to matter listed in the Concurrent Legislative List set out in Part II of the Second Schedule to the Constitution.[38] It has been observed that, this Constitutional subject-matter is held on the basis of partnership between the central government and the component units/states forming the federation of Nigeria. However, in any other matters not included in the eExclusive or concurrent lists, only the State Assemblies can legislate on such matter and this has been christened residual legislative Lists.[39]

It should be noted that in special circumstances, e.g during the period of war, or when a State Assembly is unable to perform its functions, the National Assembly may make such laws for the peace, order and good government or to maintain public order in that State.[40] As stated earlier, both the National Assembly and State House of Assembly are competent to make law on matter listed in the concurrent legislative lists, however, where the law made by the State House of Assembly is inconsistence with the law made by the National Assembly on the same matter, the law made by the National Assembly shall supersede and the law made by the State House of Assembly shall to the extent of the inconsistency be void.[41]

The origin of the above constitutional provision is traceable to the doctrine of covering the field commonly observed in country that practice federal system of government. The doctrine is to the effect that where identical legislations on the same subject-matters are validly enacted by the National Assembly or State House of Assembly, it is

considered more appropriate to invalidate the identical law passed by the State House of Assembly on the ground that the law enacted by the National Assembly has covered the whole field of that particular subject-matter..[42]

In the case of Independent National Electoral Commission v. Musa & other.[43] The nature of the doctrine was enumerated as follows:

> The doctrine of covering the field can arise in two distinct situations. First, where in the purported exercise of the legislative powers of the National Assembly or a State House of Assembly, a law is enacted which the Constitution has already made provisions covering the subject matter of the Federal Act or the State Law. Second, where a State House of Assembly by the purported exercise of its legislative power, enacted a law which an Act of the National Assembly has already made provisions covering the subject matter of the State Law. In both situations, the doctrine of covering the field will apply because of the federal might which relevantly are the Constitution and the Act

Though the principle has dominated democratic governance in many Commonwealth countries, the phenomenon seems to derogate from the very essence of federalism which advocates autonomy of each entity in the sense of being able to exercise its own will in the conduct of its own affairs free from direction by another entity.[44]

The residual legislative lists is traditionally the preserve of the component or federating States. The residual list contains items that were neither listed in the Exclusive or Concurrent Legislative Lists. Accordingly, the Supreme Court in the case of *A.G Abia State v. A.G. Federation*[45] stated thus:

> And by virtue of section 4 (7) (a) of the 1999 Constitution, residual, matters are for the state, and not the federal to legislate upon

Nowhere in the Constitution was the word "residual list" defined, since the constitution does not categorize any other legislative list beyond the exclusive and concurrent legislative lists, due to this lacuna, support must be found in judicial authority. Thus, in the case of *A.G Ogun State v. Aberuagba*[46] Bello JSC (as he then was) observed as follows:

> A careful perusal and proper construction of section 4 (of the 1979 Constitution) would reveal that the residual legislative powers of government were vested in the States. By residual legislative powers within the context of section 4, is meant what was left

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after the matters in the exclusive and Concurrent Legislative Lists and those matters which the Constitution expressly empowered the Federation and the States to legislate upon had been subtracted from the totality of the inherent and unlimited powers of a sovereign legislature. The Federation had no power to make laws on residual matters.

The implication of the above judicial authority is that, the State House of Assembly enjoys exclusive power to legislate on matters in the residual legislative lists.

7. The General Functions of the Legislature.

i. Law Making.

The primary functions of the legislature is law-making. As stated earlier, the legislative powers of each legislative houses are divided into legislatives lists between these Houses to avoid conflicts in the process. It should be noted that law making functions of the legislature is a political weapon that can be used to bring sanity into the society through the instrumentality of laws.

ii. Oversight Functions

Apart from the aforementioned primary functions of the legislatures, they also perform several other oversight functions aimed at checking the executive and shaping public policies for the benefit of the country and these functions include the following:

(a) Confirmation of Appointment.

In many countries, the constitution requires that the chief executive submits the list of its nominations for appointments into political offices like ministers, ambassadors, federal judges, special advisers, commissioner, chairmen of statutory commissions, boards and some important public officials to the Senate or State House of Assembly as the case may be, for scrutiny and approval. In the exercise of this function, the legislature can reject such nominee.

(b) Foreign Policy Function

The executive with the legislative perform a collaborative function in the area of foreign policy and diplomatic relations. In Nigeria, the House Committee on Foreign and Diplomatic Relations offers good partnership and work closely with the foreign relation department of government.

Again, the legislature collaborate with the executive in making various international treaties or agreement entered by the executive workable. For instance, before any treaty between the federation and any other country have force of law in Nigeria; it must be

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enacted into law by the National Assembly.[47]

(c) Approval of Public Spending

Public money cannot be raised or spent without legislative approval, thus, at the beginning of each financial year, the appropriation bill has to be passed into law before the executive could incur expenditure. On approval by the legislature and the same having been given assent by the chief executive, it becomes an Appropriation Act or law for the running of the country within the specified periods.[48] It should be noted that if for any unjustifiable reason, the legislature tarried in the passage of appropriation bill; the executive could incur expenditure from the Consolidated Fund Account or the State/Local Government Joint Account Fund.

The function of the legislature in controlling public finance extends to the control of domestic and foreign loan, hence, before the executive borrow money either within or from outside the country, it must seek the approval of the legislature. At the state level, similar power is conferred on the State House of Assembly under section 121 (1) (2) of the 1999 Constitution. Again, the legislature has the power to reduce the funds allocated by the executive; however, it lacks power to increase or appropriate independent funds to different department.

(d) Power to Conduct Hearing and Investigation

An outstanding method of legislative control of administration is Committee hearing and Investigation into the executive branch's operation. Public trust of governance demands that legislators must monitor government programme, policies and projects for proper implementation.[49] Thus the power to investigate and expose is probably one of the most well known instruments through which legislators could supervise the administration.[50]

By virtue of sections 88 (1) and 128 (1) of the 1999 Constitution, both the National Assembly and State House of Assembly respectively have the power to investigate any matter over which it has the right to make laws and to conduct investigation into the affairs of any person, government, its department/ministry, or the activities of members of the house themselves. The objective of the legislative power to conduct investigation or inquiry under the Constitution is to correct any defects in existing laws, and to expose corruption or inefficiency or waste in the execution or administration of law.

In the performance of their investigation function, both the National Assembly and State House of Assembly may issue summons, or warrants to compel the appearance of any person before it for the purpose of answering any issue in

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question.[51] It should be noted that, failure to honour an invitation or summons by the legislative houses amount to contempt and thus every Legislative House has power like the court to punish anyone who is guilty of contempt; the punishment can take various forms like the issuance of warrant of arrest or imprisonment.

8. Impeachment Power of the Legislative House

The Constitution provides formidable checks and balances to the actions of the executive arm of government through the impeachment instrument which could be used by the legislature to check executive excesses.[52] Once the chief executive either at the Federal or State level of government commits an impeachable offence, the legislature is constitutionally empowered to impeach the erring chief executive. An impeachable offence has been defined as a gross misconduct which may mean a grave violation or breach of the Constitution or a misconduct of such a nature as amounts in the opinion of the House of Assembly to gross misconduct.[53]

The impeachment procedure for the President and Vice-President are clearly stated in section 143 of the 1999 Constitution, while that of Governor of the State are stated in section 188 of the Constitution. The procedures for the impeachment of the chief executive under the above sections of the constitution are very cumbersome. However, more often than not, it has been observed that members of the various states houses of assembly, where the above provisions had been invoked, carried out impeachment exercise of the chief executive in clear violation of the constitution.

The application of impeachment power by Nigerian legislature date back to the Second Republic and the following impeachment proceedings are instructive: During the Second Republic, the Kaduna State House of Assembly removed Governor Balarabe Musa from office through a questionable application of the power of impeachment. Under the present dispensation, Nigerian have watched helplessly several attempts to impeach or outright impeachment of the chief executive or their deputies from office without due regard to Constitutional provisions on impeachment. In April, 2000, Senator Arthur Nzeribe, without due process, introduced a motion in the Senate for the impeachment of President Olusegun Obasanjo. In a more brazen fashion, the House of Representatives arrogated to itself the constitutional prerogative of the Senate President under section 143 (2) (a) and that of National Assembly under section 143 (4) by proceeding with impeachment charges against President Olusegun Obasanjo in 2002. The scenario was

repeated in 2005, when some members of the House of Representatives again embarked on a plot to impeach the President.[54]

The trend from the states since 1999 revealed that deputy governors are easy victim of the provisions. It was a veritable instrument in the hand of the Governor to deal with uncooperative and disloyal deputies.[55] In this Fourth Republic, impeachment drive started with the Abia State House of Assembly's removal of Enyinnaya Abaribe as the State's deputy governor in 2000. Iyiola Omisore, the deputy governor of Osun State, was impeached in 2002, the Anambra State House of Assembly Impeached Dr. Okey Udeh as deputy governor of the State in 2003. Christopher Stephen Ekpenyong, was impeached by the Akwa Ibom State House of Assembly as deputy governor on 23 June 2005. However, he was later reinstated following the intervention of the ruling Peoples Democratic Party (PDP). In 2005, the Ekiti State House of Assembly impeached Abiodun Aluko as the deputy governor. The Abia State House of Assembly followed suit on 14 February 2006, by impeaching Dr. Chima Nwafor, the deputy governor of the state.

The governors too have experienced impeachment saga, starting with the hasty impeachment of Diepreye Alamiyeseigha, the governor of Bayelsa State, on 7 December 2005. Similarly, on 12 January 2006, 18 members out of 32 members in a bizarre manner and lack of respect for procedure on impeachment commenced at the D'Rovan Hotel impeached Governor Adewolu Ladoja of Oyo State. On 16 of October 2006, amid political confusion and the dissenting pronouncement of two different Impeachment Panels of Investigation, Ayo Fayose of Ekiti State and his deputy Mrs. Abiodun Olujimi were impeached as governor and deputy governor of Ekiti State respectively.

Anambra State later joined the wagon when 21 Lawmakers, at 5:30 p.m on 2 December 2006, impeached Governor Peter Obi from office, almost in quick successions, the faction of six legislators out of a house of 24 members, brazenly impeached Joshua Dariye as governor of Plateau State at 6.30 a.m. on 13th November, 2006 as if the Legislative Houses enjoy the sole responsibility of impeaching a governor from office. In the case of *Inakoju v. Adeleke & ors*[56] the Supreme Court held as follows:

> I respectfully agree, under the Constitution particularly under section 188 thereof, it is wrong to assert that a House of Assembly is the sole and only tribunal in matters of impeachment and that the decision of the Legislature is always final

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The implication of the Supreme Court decision in the above case is that although, the legislative houses enjoy very wide power in impeaching a chief executive and their deputies who have violated the provisions of the constitution. However, they must follow the constitutional laid down procedures.

10. Procedures For Passing of Bills by the Legislature.

Legislation is a collective responsibility of the representatives of people. In the process of legislation, the legislature performs unique representative function. In addition, it performs the function of educating and informing the general public of the activities of government.[57] The law-making power of the legislature is exercised through the passage of bills which are initial drafts of what may eventually become laws. The prescribed mode of exercising federal legislative power is provided for in section 58 (1) of the 1999 Constitution thus:

> The power of the National Assembly to make laws shall be exercised by bills passed by both the Senate and the House of Representatives and, except as otherwise provided by subsection (5) of this section, assented to by the President

Section 100 (1) of the 1999 Constitution is a replica of section 58 (1) on the power of the State House of Assembly to exercise its legislative power in passing bills into law within its sphere of authority. It should be noted at this juncture that the prerogative power of the legislature to pass bill into law is subject to the overriding jurisdiction of the court, since, the court will not hesitate to declare as unconstitutional, null and void any law enacted by the legislative houses without following the acceptable procedures.

A bill can be public or private bill. A public bill is usually introduced by the government or its agencies, for example an appropriation bill; private bill on the other hand, deals with the promotion of legislation relating to individuals, companies, corporation or an organization. A bill may originate in either the Senate or the House of Representatives at the federal level of government, while bill at the State level can only originate in the State House of Assembly.[58]

A bill cannot become law unless same has been passed and assented to by either the president or state governor as the case may be. The practices and the procedures regulating the conduct of the legislative house is governed by the standing order of the respective house, hence, the law-making processes are strictly followed by the legislature, most especially, the rules governing the introduction of bills as well as the stages to which the bill must pass through

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before it eventually become an Act of government or state laws. The following stages are essential in the passage of bills.

(a) Initiation of Bills

The first step in legislation is the introduction of a bill. A bill introduces either a change in an existing law or making proposal for a new law, and is an initial draft of the proposed law.[59] Bills can come from a variety of sources, bills can be initiated by the executive branch of government, a member of the legislature, a standing or special committee of the legislative house, a special interest group like trade unions or ethnic associations and private individuals. However, the theory of separation of functions between the legislature and the executive has expeditiously given way to the practice whereby the executive take large initiative in introducing, initiating and drafting proposals for legislation.[60] The reason for this is borne out of the impression that the government may be technically better equipped than individual's members of the legislature to draft bills which are acceptable from the legal stand point.[61]

In practice, an executive bill initiated from the president shall be accompanied by a covering letter personally signed by the president and sent to the Senate president and the Speaker of the House of Representatives. A bill emanating from the judicial arm of government shall be forwarded to the Speaker of the House of Representatives and the Senate President under a covering letter personally signed by the Chief Justice of the Federal Republic of Nigeria. For a private member bill, the sponsor shall forward the draft to the Speaker of the House of Representatives if in that chamber.

Upon receipt of the bill, the Speaker of the house will then send it to the Rules and Business Committee. In the Senate, however, the sponsor of a bill can simply hand over the proposed bill to the Clerk, who will, in turn, submit it to the Rules and Business Committee. On the receipt of the message, the chairman of the Committee on legislation to whom the Speaker referred the President's message is expected to present the bill to the legislature either as proposed and drafted by the president or as amended. This practice is largely followed in Nigeria[62] in the National Assembly and the State House of Assembly.

At the House of Representatives, all government or executive bills must be published once in the official gazette or house journal by the office of the Clerk. In the case of private bill, it must be published three times in the official gazette. At the Senate, executive bill need not be published; however, a private bill must be published twice in the official gazette. Usually, a sponsor of a bill is

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required to follow same with a motion of the intent to introduce the bill.

(b) The Stages of Passing Bill

However liberal any legislature may have been in accommodating bills, whether public or private bills, the bill so initiated must follow both constitutional and standing rules of procedure. To comply with the requirement, the legislature in most countries will ensure that the introduction of a bill involves a member of parliament handing over such bill to the officer responsible for receiving it. This fulfillment sets the process of law-making in motion.[63] Once a bill is properly introduced into the legislative house, the bill usually passes through the following stages, which are the core of the legislative business, before it becomes law.

i. First Reading

A bill slated for introduction will be on the order paper of the house for that particular day. This stage is the formal declaration of the short title of the bill. If it is a government bill, the majority leader will move a motion for the presentation of the bill for first reading. The Clerk to the house then read aloud the short title of the bill; a copy of it will be symbolically laid on the table of the house by the sponsor or by the Clerk of the house.[64]

Upon the fulfillment of the foregoing, the bill is deemed to have been read the first time. At this stage, no debate is entertained, however, after the reading, the bill is then ordered to be printed as recorded in the house and member will be given copies of the bill for study. A day will be appointed by the member presenting the bill for the second reading.

ii. Second Reading

This stage offers the members of the house the opportunity to deal adequately with the general principles of the bill. It is at this stage that a bill will receive the first in depth of scrutiny, which usually occurs in the form of heated debate. Debate at this stage is strictly limited to the contents of the bill and may include reasonable references to:

(a) matters relevant to the bill,

(b) the necessity for the proposals,

(c) alternative means of achieving the bill's objective,

(d) the recommendation of objective of the same or similar nature, and

(e) reasons why the bills progress be supported or opposed.[65]

The house is deemed to have approved the bill in principle if it sails through this stage. If, however, the second reading

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is defeated, that is the end of the bill. A bill rejected is often regarded as being 'kicked' by members as they walk out of the legislative chamber.[66]

iii. Committee Stage.

The bill, having passed the second reading stage is referred to the appropriate standing committee, or in the case of finance or appropriation bill to the committee of the whole house for a detailed scrutiny. At this stage, the committee go through the bill clause by clause, line by line and if necessary word by word. The Committee at this stage invites public and private contributors, especially experts and practitioners in the subject area of the bill. After deliberations and consideration, the committee makes its recommendation to the house. It can also suggest areas of improvement or amendment on the bill. Where a bill is favourably reported by a Committee and there is no objection by the house, the bill is then placed on the house calendar. Such bills are considered at a date to be determined by the Committee on rules and business.[67]

iv. Report Stage.

The Chairman of the Standing Committee that handled the bill and the Rules and Business Committee of the house will then pick a date for the presentation of their findings on the bill to the whole house, the bill may be presented either with or without amendment. A bill reported by the committee with amendment is reprinted as amended and distributed to members before being considered by the house. After the presentation of bill to the whole house, the bill is then considered clause by clause, under the leadership of a presiding officer. At the end of the proceedings, the presiding officer returns to his seat after the mace has been put in its place. He will then give report of the bill, as amended or without amendment, to the house, the bill is then ordered to be read a third time.

v. Third Reading.

At this stage, there is limited debate on the bill; it is hardly subjected to any further amendment. Thereafter, an accurate record of votes is taken by voice or roll call of all the members present and voting. If the bill is supported by the required majority, it is said to have passed the third reading. At this stage, the bill can technically be said to have become an act or bye law as the case may be. It should be noted that, the National Assembly, being bicameral, after the third reading, the bill, if successfully adopted by the first house, depending which of house the bill originated, is passed to the second legislative house, where the bill will go through the same stages of enactment as in the first house. Where a bill has been accepted and passed by both

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houses, a copy of it will be prepared for engrossment.

vi. Engrossment of a Bill.

Engrossment involves the production of a final 'clean copy' of a bill, certified by the clerk to the originating chamber, and sending same to the other house for consideration and final endorsement. In line with the provision of section 2 (1) of the Acts Authentication Act[68], the Clerk of the National Assembly or of the State House of Assembly forthwith after enactment of a bill, prepare a copy of each bill as passed by the house embodying all amendment agreed to and shall endorse on the bill and sign a certificate on the bill that it is a true copy of the bill.

The duplicate copies of the bill and attached schedules are then sent to the president or state governor for his assent

vii. Assent to a Bill.

What transpires in the process of passing a bill into law is an internal affair of the legislature. There are usually series of debates as highlighted above on the issues raised in the bills; and such issues are in most cases considered by the appropriate committee of the house, but a citizen may not be concerned about what transpires in the passage of a bill. What is of moment to him is what emerges as an act of National Assembly or a law of a State Assembly.[69]

Until the two houses of National Assembly sitting either separately or jointly, as the case may be, pass a money bill or the version of the joint committee on finance set up thereon, into law, it is not a bill passed by the National Assembly, and cannot, therefore be assented to by the President of the Federal Republic of Nigeria.[70]

For a bill to become an act or law the assent of the President or the Governor is required, however, if there exists some areas that do not receive the blessing of the President or of the Governor and he declines his assent, the bill is referred back to the legislative house for reconsideration.[71]

Where this is the case, the bill is allowed to pass through the legislative machinery of the house the second time, and after this, the legislature will be expected to take a definite stand on it. Once the bill is passed by the two-third majority of the total number of members of the legislative houses, the bill becomes law without either the President or Governor assent.[725]

Upon the bill receiving an assent of the appropriate person, the government printer will publish the act on vellum and return the copies to the Clerk to the National Assembly or State House of

Assembly, who would return a copy for official records and send a copy to the President or Governor. The third copy will be sent to the Chief Justice of Nigeria or State Chief judge, where it will be enrolled as an act of the National Assembly or as Law of State House of Assembly.

11. The Concept of the Rule of Law and its Impact in Governance.

The law making function of the legislature is a political weapon that can be used to bring sanity into the society through the instrumentality of law.[73] Before the emergence of modern democracy, authoritarianism was the order of the day. The introduction of the rule of law has definitely saved mankind from what John Locke described in his state of nature as brutish, nasty and short. Thus, the rule of law is now generally understood as a doctrine of political morality which concentrates on the rule of law in securing the correct balance of rights and powers between individuals and the state in free and civilized societies.[74]

As stated earlier, it is the duty of the legislature to debate and enact bills into law. However, the importance of the rule of law in governance could be appreciated in the working of the ancient philosophers like Plato and Aristotle. To these philosophers and their likes, they observed that man is by his nature self-centred and will stop at nothing to annihilate opponents at all cost, hence, to prevent arbitrary rule of men against men, they postulated several theories that will guaranteed liberty and freedom to humanity. The early Philosophers believed in the concept of natural law as conceived by God Himself, by natural law is meant objectives moral principles which depend on the essential nature of the universe and which can be discovered by natural reason, and ordinary human law can only be true law in so far as it conforms to these principles. Thus, in the middles age, the concept of natural law became popular for its conservatism, liberalism, religion and political convenience, the progression in the search for a principle by which the power of a state could be justified led writer to evolve the theory of the social contract, which later became of great practical importance.

Under the social contract, the individual who make up a state are deemed to have surrendered some of their fundamental rights to the ruler in consideration of the latter providing them with the benefit of an organized political life, that is, security and the basic amenities of life. By implication, if a stage is reached when the ruler breaks the social contract, thus violating the right of the individuals, the latter is deemed to be naturally entitled to revolt and rescind the social contract.

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The ideal of social contract assisted Philosophers such as John Locke, who believed that man lived in a state of nature. In that state, governed by laws of nature, man realized that, since all were equal, none should be harmed. But such state of nature involved a lack of security where each man was a judge in his own cause. To end the insecurity, men entered into social contract, however, such social contract did not involve total subjection to the government. According to Locke, the law of nature stood as an eternal rule made to all men, the sovereign, legislators as well as others.[75]

Where the legislature forgot its trust it could be replaced. There were limits to the power of the state. The legislature, though supreme, was limited in its powers. It should not rule in a purely arbitrary way. Its power was one which had no other end than the preservation of rights, and therefore, could never have a right to destroy, enslave or designedly impoverish the subject. It could not transfer the power of making laws to any other persons. It should not deprive a man of his property without his consent.[76]

One of the greatest Contributors to the development of the concept of the rule of law was Albert Venn Dicey, a Vinerian Professor of English Law at Oxford. According to Dicey, the doctrine of the rule of law has three major aspects, the observance of which will promote good governance.

In the first pace, it means the absolute supremacy or predominance of regular law as oppose to the influence of arbitrary power and exclude the existence of arbitrariness or wide discretionary authority on the part of the government. The rule of law on this context means other than that everything must be done according to law, thus, all government departments and functionaries must be able to justify their actions according to law.

The second aspect of the rule of law means equality of the citizens before the law. In other words, it means equal subjection of all classes to the ordinary law of the land administers by the ordinary courts and that the state should not be given advantage over the ordinary citizen. Dispute as to the legality of the acts of the government or executive will be entertained by judges who are independent of the executive.[77]

The third meaning which Dicey gave to the doctrine of rule of law is that the rule of law indicates the principle of fundamental rights of the people which according to him are expressed through the various decisions of the court.

Another important aspect of the rule of law provided by the Nigerian constitution is the fact that no citizen can be punished except for some legally

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defined crime. In this connection, section 36 (8) of the Constitution provide that no person shall be held guilty of a criminal offence on the account of any act or omission that did not, at the time it took place, constitute such offence and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed.[78]

The legal effect of the rule of law on the activities of the legislature in their constitutional assigned role of law making could be appreciated as follows:

i. The rule of law demands that the courts should prevent the use of discretionary power, especially when such powers are centered in excessively sweeping language and they are, sometimes, exercised in a manner that amounts to an abuse by overzealous official;

   Faced with the fact that the legislature in many developing countries like Nigeria freely confers discretionary powers with little regard to the dangers of abuse, the courts in Nigeria have attempted to strike a balance between the needs of fair and efficient administration and the need to protect the citizens against arbitrary government.[79]

ii. The right to engage in a dispute with government whether the legislative, executive or even the judicial arm that is involved, before the judges of the highest independent is one of the most outstanding elements in the concept of the rule of law in this country or in any other country where such is the practice.[80]

iii. Another important contribution of the rule of law to modern governance is that the law is even-handed between the citizen and the state. Equally important is the fact that the citizens are equal before the law.

12. Conclusion.

The foregoing attempt has been made to capture the legislaure, evolution, dynamics and its imperatives in the governance process, especially in Nigeria.

An independent legislature is a *sine qua non* to good governance. The purpose of the rule of law is to guide legislature in their constitutional assigned role of law making as well as other oversight functions.

The Nigerian constitution is built on the principle of federalism with separated organs of government, each organ of government is expected to check excesses of the other arms of government in order to give to the citizenry the dividend of democracy. In other words, their relationship with each other must be based on the rule of law.

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However, experience in Nigerian has shown that this hallowed concept of law is honoured in the breach but in observance. For instance, in most democracies including Nigeria, legislature is often perceived by the executive as overstepping her constitutional boundaries in the performance of her oversight duties.[81] In short, the legislature is viewed as an interloper or busybody whose activities hinder the government from speedily meeting the needs of the public.

In turn, the legislature, being the constitutionally watchdog of the people, views the frustration of her investigative role by the executive as a direct affront to the people's mandate. Indeed, the legislature sees the executive uncooperative attitude as a denial of the citizenry's right to know.[82] This cycle of mutual suspicion usually degenerate into a frosty relationship between both arms of government. The experience in most countries has established three identifiable patterns of relationship between the executive and the legislative arms of government.

(a) Polarized Relationship

In this pattern, the legislature is unmistakably antagonistic to the executive. The experience of Balarabe Musa's government in Kaduna State before his eventual impeachment provides an extreme instance of this pattern of relationship. The Nigeria Senate under the leadership of Senator Chuba Okadigbo (2000-2001) and the House of Representatives under the leadership of Ghali Umar Na'aba (1999-2003) and the conclusive phase of the Senate leadership under Senator Anyim Pius Anyim typified this pattern of relationship at the National level.

This worrisome pattern of executive-legislative relationship was the case in Anambra State as could be gleaned from the antagonism between the Speaker of the Anambra State House of Assembly under Michael Balonwu led faction against Governor Peter Obi between 2006 and 2007.

(b) Cordial Relationship

In this pattern, executive-legislature disagreement over policies is resolved through healthy consultation and understanding. A good example of this was the era of Senator Evans Enwerem as the Senate President and the initial stage of Senator Pius Anyim's leadership of Senate.

The kind of relationship between the senate and the executive since 2003 before the crisis that rocked the two arms of government due to an attempt to elongate the president tenure in 2006 is a good example of cordial relationship between the executive and legislature. Similarly, at the state level, except in few states, the relationship between most state houses of assembly and their

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Governors from the inception of the present republic has been cordial. However, the development after the 2003 general elections where the Governor, also double as the party leader in their respective state and controlled party primaries and selection of candidates has dealt heavy blow on the legislative arm of government in Nigeria.

The result is that, most house of assemblies have lost their constitutional oversight duties to the overwhelming influence of the executive thereby hampering the necessary checks and balances which should aid the social, economic and political well being of the electorate.

(c) Mild Hostility

This pattern reveals a relationship of mild and inconsistent hostility short of outright antagonism between the executive and the legislature. This has been the trend of the relationship between the House of Representatives and the Presidency from 1999 to date.

It is pertinent to note that the spate of impeachments witnessed in some of the states was initiated by the external influence of the Economic and Financial Crime Commission (EFCC) and the Independent Corrupts Practice Commission (ICPC). For instance, the removal of Governor Diepreye Alamieyeseigha of Bayelsa State, Governor Ayo Fayose of Ekiti State and Joshua Dariye of Plateau State were executed on the strength of the EFCC allegation of corruptions against these chief executives.

The democratic experience world over has shown that executive-legislative conflicts are inevitable. However, public interest must be of utmost concern in the mind of both the executive and the legislature in the performance of their duties so as to give to the electorate the expected "democracy dividend". Undue legislative interference in the administrative process can easily destroy the public service, while a docile legislative can result in excessive recklessness and tyranny on the part of the executive.

To bridge these gaps, a viable balance of influence among these arms of government is suggested in order to preserve the well-being of the electorate whose mandate produced these officials. To curb frosty and unhealthy relationship between the two arms of government without jeopardizing public interest, it is suggested that the following measures should be put in place:

i. There must be an active and independent judicial system that can checkmate the executive recklessness and domineering posture over the legislature;

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ii. Interactive session, seminar, workshop and retreat should be organized regularly with official from both arms of government in attendance;

iii. Legislative arm must be adequately funded to be able to discharge her constitutional role of law making. It is suggested that legislative arm should be independent financially to guarantee its independence;

iv. The legislature on their part should desist from enacting law that has retrospective application or penal in nature;

v. The legislature should also ensure that the application of the law is in accordance with the rules of natural justice as envisaged by the concept of the rule of law;

vi. A law made by the legislative houses should be general, prospective, open and clear and not discriminatory.

Finally, both the legislative and executive arms of government must adopt transparent and accountability measures in the implementation of government policies and projects. As observed over the years, the central root of controversies between the two arms of government is lack of prudence, financial indiscipline and clear departure from the established standard of accountability and auditing system. It is therefore suggested that periodic audit checks of the financial reports of all government's statutory corporations, ministries and agencies should be institutionalized.

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