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The Legislature and Anti-corruption Crusade under the Fourth Republic of Nigeria: Constitutional Imperatives and Practical Realities

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ABSTRACT

The role of the legislature in the anti-corruption initiatives of the Nigerian government is critical given the centrality of the role of the legislature. This paper examines how the legislature has faired in performing its constitutional duties in this regard. It finds a wide gulf of difference between constitutional prescriptions and political realities in a country where the legislature itself is confronted by daunting challenges.

Introduction

One major challenge to Nigeria's search for enduring socio-economic, political and technological development as well as efficient and productive utilization of allocated resources in the new millennium is the pervasive corrupt practices in the polity. The devastating effects of corruption in the nation have manifested in lopsided distribution of wealth, malfunctioned or decayed infrastructure and degrading living conditions among a great proportion of the citizenry. These have impacted negatively on all aspects of the developmental agenda. The country cannot but therefore respond to both domestic and international pressures to confront corruption with all possible strategies available. Ironically, the institutional mechanism offered by the Constitution for the fight against corrupt practices is itself not immune from the plague. Indeed, the creation of extra-legislative institutions saddled with the tasks of fighting corruption is itself an indictment of the constitutional framework and a pointer to the wide gulf of difference between the

constitutional prescriptions and the practical realities in an emerging democracy preceded by long years of military rule marked by massive corruption and rule with impunity.

For reason not unconnected with the damaging impact of corruption on any nation where it is deeply rooted and the limitation imposed on international bodies by observance of rule of national sovereignty, the fight against corruption has often been domesticated. Thus, while international institutions like the World Bank and International Parliamentary Association (IPA) have continued to champion the need to combat corruption, such efforts could only serve as catalyst for domestic institutions to confront corruption. It serves no guarantee that national institutions so saddled with the task would perform their duties at all or as required.

Although, a broad-based coalition of actors, especially comprising the executive, legislature and the judiciary is needed if any progress will be made in curbing corruption (Leautier, 2006), the role of the legislature particularly appears all encompassing and very important (Wolffowitz, 2006). For one, the legislature as the accredited representatives of the people has the duty of protecting public funds and other resources. As the controller of the purse, it has the additional duty of serving as the guardian of the public treasury. Moreover, appropriation of funds for public expenditures requires the legislature to monitor the use of such funds to ensure judicious utilization for the overall benefit of the people. It occupies a vantage position in the making and unmaking of all laws, including those pertaining to the eradication/reduction of corrupt practices in public and private life. There, indeed, appears to be a convergence of views not only among the World bank and the IPA, but also among other commentators on corruption that national

representative assemblies stand in good stead to curb corruption (Stapenhurst, Ulrich and Strohal (2006).

It is against this background that the role of the legislature in a deeply corruption infested society like Nigeria may be appreciated. Prior to the return of democracy in 1999, corruption had become institutionalized under successive military regimes. The culture of ethical behaviour and accountability in government were not only glaringly assaulted but also grossly eroded. Therefore, the restoration of democracy and by implication the return of a representative assembly was seen as the appropriate medium required restoring accountability and efficiency in the utilization of public resources. This, in fact, is what the scrutiny of administration by the assembly seeks to achieve in a democratic regime. Apart from this, the law-making and representational powers of the legislature are further boost to a willing assembly to curb corruption.

The 1999 Constitution of the Federal Republic of Nigeria places enormous responsibility on the legislature as far as the control of public funds is concerned. Under it, there are constitutional, political and operational mechanisms specifically empowering the legislature to hold those saddled with the responsibility of executing laws made by it as well as expending resources appropriated by it accountable. The legislature is the main institutional anchorage provided for in the Constitution for the fight against corruption. It is also permitted by law to create other institutions and frameworks to assist it and the government in the discharge of that onerous duty. In fact, the legislature appeared sufficiently equipped under the Constitution to serve as effective check on the executive and its administrative agencies in all aspects of public administration. Yet, it appears that the legislature at all levels of government- federal, state and local – have been unable to

adequately discharge the onerous duties devolved upon it by the Constitution in this regard. In the circumstances, the critical questions that come to mind is 'where lies the fault?'

This paper examines the extent to which the legislature has served as anti-corruption agent since Nigeria redemocratised in 1999. While it has been acknowledged that the role of the legislature is important in curbing corruption, there has not been any attempt to examine how the young legislature in Nigeria has fared in the performance of the responsibility. This paper therefore directs attention to the unique role of this important organ of the emerging Nigerian democracy. This is important since competitive democracy, according to Klitgaard (1991), is capable of institutionalizing accountability with the consequential reduction of corruption. Conversely, failure to curb corruption, in the various dimensions and magnitude that the malaise is manifested in a fragile democracy like Nigeria (Diamond, 1991:73), has a tendency to threaten democratic sustainability and cripple economic development. The paper adopts the descriptive and analytical methods to analyze data retrieved from both primary and secondary sources. The work is divided into five sections. The next section is the theoretical anchor for the study. Following after is the dimensions of corruption in Nigeria. Other sections include mechanism of anti-corruption in Nigeria – ICPC, EFCC, media and Parliament; an examination of the performance of the legislature and concluding remarks.

Conceptual Perspective and Issues in Corruption in Nigeria

Corruption, according to J. S. Nye, is

> behavior which deviates from the normal duties of a public role because of private-regarding (family, close private clique), pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding

> influence. This includes such behavior as bribery (use of reward to pervert the judgment of a person in a position of trust); nepotism (bestowal of patronage by reason of ascriptive relationship rather than merit); and misappropriation (illegal appropriation of public resources for private regarding uses). *(p. 419.)*

It is a behaviour that abuse societal legal or social standards as well as public role or resources for private benefit (Johnston, 1991). Klitgaard's (1991) explanation of the concept followed similar pattern. According to him, corruption is the misuse of office for private ends. These definitions, however, narrow corruption to the public sphere because they are concerned with political corruption as against corruption in the private sphere.

Attempt to broaden the definitional scope of corruption prompted Kobonbaey (2004) to define it as the abuse of formal rules of the game by actors for their private gains. Although Kobonbaey notes that this definition is inexhaustive, it nevertheless captured all types of actions and organizations (public, private and non-governmental). By this, any individual, either a public officer or private operator who deliberately refuses to follow due process in the course of carrying out his or her assigned responsibility for the purpose of personal gain is engaging in corrupt practices. At the center of corrupt behaviour, therefore, is the motive for private gain, either as private citizen or public officer.

Our conception of corruption in this paper tilts towards the latter view. This is because in certain respects development in the public sphere is known to re-echo in and affect other spheres of national life. The interrelatedness is evident in that political corruption may be aimed at private and group enrichment, and for power preservation purposes. From this perspective, political corruption may be seen as the use of governmental powers by government officials for illegitimate private gains. As Klifgaard (1991) notes, some forms of corruption overlap are inevitable as they both feature in

discourse and relations of both private and public nature. In the public sphere, political corruption appears in diverse shapes and forms, as it is naturally dynamic. Perhaps, because of the size of government institutions and the pervasiveness of their activities, political corruption has become a major and all encompassing aspect of discussion on politics.

Lederman, Loayza & Soares (2006: 28) underscores the prominence of political corruption when they argue that, 'A large part of the growing literature in the determinants of corruption has focused on the political nature of corruption and how different institutional designs affect its extent'. While this is located mainly in the three organs of the state - executive, legislature and judiciary - other sectors or institutions of the state where corruption is deeply rooted, in the developing countries especially, have included the military, para-military, bureaucracy, political parties and other government agencies which may not be entirely captured by political corruption even though they are major culprits.

The bureaucratic sector of the state in the developing countries appears enmeshed and largely trapped in the corruption web. As Friedrich notes,

> corruption may therefore be said to exist whenever a power holder who is charged with doing certain things, that is a responsible functionary or office holder, is by monetary or other rewards, such as the expectation of a job in the future, induced to take actions which favor whoever provides the reward and thereby damage the group or organization to which the functionary belongs, more specifically the government….(p. 15).

According to him, these opportunistic activities of corrupt bureaucrats can severely damage the public interest and should be considered important variables in the study and evaluation

of corruption. In many countries, bureaucratic corruption appears to be a very strong avenue for civil servants to earn illegitimate income and thereby raise their compensation above what the law prescribes. This arises, as Blackburn, Bose and Hague (2005) note, because opportunities exist for bureaucrats to appropriate public funds by misinforming the government about the cost and quality of public goods provision. A critical review of the various dimensions and features of corruptions suggested by the foregoing perspectives will show that in both political and bureaucratic realms of Nigeria these features and dimensions are apparent.

Although corruption appears in different forms and contexts, certain factors often tend to aggravate or encourage it. According to Kaufmann & Dininio (2006), corruption flourishes in conditions of poverty and weak public institutions. Given the pervasive grip of poverty on the citizenry of some developing countries, therefore, corruption becomes not only inevitable but also prevalent. Furthermore, Kaufmann and Dininio argue that bad incentives and systems, rather than bad ethics, induce people to act corruptly. If poverty and bad incentives system are critical to the ethical erosion in a state then high incidence of corruption in the Nigerian public sector may rightly be attributed to poor and inadequate compensatory and remuneration structure. This view is corroborated by Bello-Imam (2005: 27) who argues that 'low wages and salaries (nominal or real) in the public sector relative to wages in the private sector are a source of low level corruption', insisting that 'where there is extreme poverty, the citizens are less able to resist corruption.'

The intrusion of the military into the political arena in post independence Nigeria has only succeeded in aggravating income distortion (Dibie, 2007). Considering the level

of corruption and economic waste under successive military regimes (Babawale, 2006) and the poor resource management under the civil rule of the Second Republic, not only was the gap between the rich and the poor became widened, but the real income of the majority also plummeted to starvation level (Omotola, 2008). The implication of this, especially in the face of ostentatious display of corrupt wealth, was the aggravation of unethical behaviour among public office holders and civil servants in general in Nigeria.

However, the incidence of poverty may not capture in its entirety the underlining rationale for the pervasive dimension of corruption in Nigeria. This is due to the high level of primitive accumulation of wealth among public officers in the country. For instance, it is unlikely that poverty could be the reason for the diversion of public fund of between two and five billion naira into foreign private account by late General Sanni Abacha (Nigeria's military head of state between 1993-1998). Perhaps sheer greed provides an alternative explanation for such an inordinate thirst for wealth acquisition in Nigeria. Bello-Imam (2005) rightly captures this when he avers that, where there is extreme greed and immense taste for materialism as in Nigeria, corruption will be very prevalent.

In the argument of Kaufmann & Dininio (2006), corruption may also be evident in society with weak public institutions. This opinion receives support from Lederman, Loayza and Soares (2006: 29) who observe that 'the specific design of political institutions affects corruption mainly through two channels'. As the trio aver, the first of the channels is political accountability. According to them, 'any mechanism that increases political accountability either by encouraging the punishment of corrupt individuals or by reducing the informational problem related to government activities,

tend to reduce the incidence of corruption.' The implication of this is that weak public institutions will translate into low political accountability and vice-versa, and this will ultimately affect the moral basis and erode accountability in public institutions.

This, perhaps, explains the level of corruption in Nigeria. To be sure, political instability, patron-client orientation of the public service, nepotism and politicization of the public service, coupled with frequent changes in rules, as well as the absence of effective oversight mechanism, especially while the military held sway, are factors which did not only weaken public institutions in Nigeria, but also erode the mechanism for political accountability. For instance, the judiciary was often weakened through series of ouster clauses under successive military regimes. The implication of this was that the judicial institution was greatly handicapped in performing its statutory role. In a similar vein, the legislature was often disbanded each time military personnel stepped into politics. The prevailing view among the few writers on legislative studies in Nigeria is that the legislative institution has been very weak (Omoweh, 2006, Lafenwa, 2006, Alabi, 2008).

However, each time the legislative and judicial institutions came under military assault, the oversight role which they should provide over the executive arm was always the victim. In the face of a weakened judiciary and the absence of the legislative institution, the military assumed control and through effective grip on the bureaucracy, public servants did the bidding of the military. This is understandable because the military personnel who were naïve in administration needed the support of the civil servants. From experience, it appears there is sufficient reason to believe that the civil servants find their indirect involvement in governance most desirable because it satisfied

their expectation to accumulate private wealth. Thus, the bureaucrats appear to often capitalise on the ignorance of the military personnel to make policies that advance their private interest for personal benefits. The end result of this is the high level of corruption in the Nigerian public service.

Largely, corruption of political and administrative nature has been dominant and pervasive in Nigeria because public institutions have been weak. It is not out of place to note that the weakness of state institutions, especially as it relates to ineffectiveness in enforcing rules, equally account for the current level of high incidence of corruption of private nature in the Nigerian society.

Dimensions of Corrupt Practices in Nigeria

Corruption permeates all facets of governmental institutions and structure in Nigeria. In the public sphere, corruption in the various arms of government appears in various shapes. In the executive branch, corruption takes the form of over invoicing, conversion of public properties to private use, inflation of contract cost, kick-back paid to monitoring officers on contract awarded, distribution or sharing of public resources as patronage to certain individuals to secure political support. For instance, several allegations of corruption have been alleged and some investigated against government officers, both the elected and appointed members of the executive arm, since democracy returned to the Nigerian political space in 1999.

Although Tables I focusses on corruption in the central legislature, some of the corrupt practices listed on the tables were perpetrated in connivance with members of the executive arm. This is evidenced by the alleged involvement in corrupt practices and subsequent arraignment in courts of Professor Fabian Osuji, a former Minister of

Education (2003-2005) under Obasanjo administration and Professor Adenike Grange, a former Minister of Health (2007-2008). Apart from the two ministers, several other administrative officers including permanent secretaries and directors have been alleged and sometimes arraigned in courts over charges relating to corruption. The arraignment in an Abuja high court of the permanent secretary of the ministry of power along with nine others on 13th and 18 of May 2009 over financial impropriety involving the sum of #5.2 billion naira ($34,666,666.67 US Dollars) rightly justifies this. (*The Nation*, Tuesday, May 12, 2009: p.1 & 2)

Furthermore, at the lower levels of government, the trend is for state and local executive to use substantial part of their annual budgets to buy expensive cars for traditional rulers in their domains. Contracts are awarded to cronies, especially family members, friends, party officers and associates or club members. Most often, such contracts were awarded in utter disregard for due process, as official bidding or set standard are neglected. In every level of government in Nigeria, incompetent and, in extreme cases, non-existent construction engineering companies may be awarded contracts for the purpose of siphoning funds from the public purse. In fact, security vote was (and is) often considered as part of the personal emolument of the chief executive of the state or local government. Consequently, security vote of the state often ends up in the private accounts of office holders. There are other numerous sundry means by which corruption had been perpetrated in the government, especially since the return of democracy in 1999.

In the legislative organ, even though accountability was largely expected to be facilitated through scrutiny of administration, the legislature appeared concerned with the

material and financial benefits it could amass using its office and power. Indeed, several committees of the central legislature have at various times been indicted over allegation bordering on shady financial deal. As shown in the tables on page 37 and 38, this claim finds credence in the indictment of the chairmen and members of committees on education of the Senate and House of Representatives, respectively, in 2005. The legislators were alleged to have demanded for financial inducement of about fifty million naira (#50,000,000) so as to raise the amount due to the Ministry of Education in the 2005 annual appropriation (Osuji, 2005).).

Illegal funding of legislative committee's activities by government departments and agencies was another means by which the legislators extracted money from government ministries or agencies over which they have responsibility to oversight. This was evident, for instance, in the scandal in the Ministry of Health in 2008 in which Minister of Education, Professor Adenike Grange and Senator Iyabo-Bello Obasanjo, Chairman, Senate Committee on Health among others were alleged to have shared the unspent part of the 2007 budget. Senator Iyabo-Bello Obasanjo had pointed out that the money was collected to fund an official trip to Ghana in April 2008 (*Saturday Tribune*, 24 May, 2008. p. 39). The inflation of contract cost was a major reason why a former Senate President (Senator Chuba Okadigbo, 1999-2000) and a former speaker of the House of Representatives, Patricia Etteh (2007), lost their seats in 2000 and 2007 respectively.

In the judiciary, the accusation of large-scale corruption among the electoral tribunals adjudicating over series of electoral disputes has further dented the image of the Nigerian judiciary. Many have often doubted the objectivity and neutrality of most

Nigerian judges who are perceived as corrupt and often subvert justice. By this, court rulings are occasionally believed to go the way of highest bidder. In the face of this, the judiciary is incapable of providing fairness and justice, thereby rendering the innocents helpless and hopeless.

Corruption has remained an endemic problem in government bureaucracy in Nigeria. The occurrence of corrupt practices in the bureaucracy cuts across various cadres and levels in the service. For instance, in most government offices in Nigeria, government paid workers introduced different categories of illegal tolls before providing the services for which they are officially remunerated. When it appears difficult for such corrupt public officers to collect the toll directly from the people, an agent may be hired by the officers to collect such illegal tolls before services could be provided to the people for whom it was meant. A clear example of this is the registration of vehicle and collection of driver's license among others. Such illegal tolls often translate into additional cost of procuring whatever service the officer is meant to provide. Another dimension of corruption in Nigeria is that revenue officers may issue private receipt in place of official receipt to convert revenue collected to private use. In addition, government officers may prepare over bloated over-time bill for job not performed. Similarly, public funds are siphoned of by retaining the names of dead or retired staff and sometimes ghost workers on pay roll by bursary personnel or account unit. The introduction of e-payment by the federal government and some states of the federation in 2009 have revealed how public officials, especially, those in charge of payment of salaries and wages in ministries and extraministerial departments, have been inflating

monthly wage bill. The excess of each month is shared by members of the bursary department.

In similar vein, the Nigerian military and para-military is equally neck deep in corruption (Smith, 2007; Babawale, 2006). It appears the military deliberately foster corruption to facilitate unhindered appropriation of national or collective resources for private benefit. Corruption in the security sector cuts across the various outfits in Nigeria. For instance, illegal toll collection at several thousands checkpoints illegally mounted by the Nigerian police remain an eyesore. Smith, (2007) rightly presented a graphic detail of the criminal extortion perpetuated by the Nigerian police at various illegal checkpoints across the country. The inability of government to stop such illegal tolls by the police is popularly believed among Nigerians to result from the protection the rank and file enjoy from the top management of the command who shared from the tolls at various levels.

In the Nigerian custom, corruption takes different dimensions. Often contraband goods seized by custom officers are converted into personal properties. Also, extortion is a general attribute of the custom. Apart from forcefully extorting money at the borders, the custom service equally harasses innocent Nigerians commuting between two states. For instance, Nigerian customs are fond of hanging around the borders of two adjourning states for the purpose of harassing and extorting money from people riding fairly used car. Fairly used car is the most popular and patronized car in Nigeria currently, because most Nigerians are incapable of acquiring new cars due to extreme poverty level. Corruption in the Nigerian customs cuts across the hierarchy. For instance, one of the reasons for which the former Nigerian Custom boss, Hamman Ahmed, was sacked in

December 2008 was alleged corruption. (for recent case of lack of accountability in the Nigerian custom see The Punch, Thursday, 7th May, 2009, p.11)

In the University system, admission racketing and monetization of grades is another dimension of corruption. Apart from this, sexual harassment of female students by male lecturers is rampant (The Vanguard, July 10, 2009). However, some female students, especially in the public universities, trade their bodies for good grade of their own volition. Furthermore, examination agencies of government have often been alleged to have colluded with candidates to sell question papers and alter grades. Often, the staffers of the West African Examination Council (WAEC) and the Joint Admission and Matriculation Board (JAMB), institutions serving as gate keeping between high school and higher institution have been accused of complicity in examination malpractice. The Nigerian University Commission (NUC), that is responsible for maintaining academic quality in Nigerian universities, appears not immune to the social malaise. Occasionally, members of accreditation panels (members are selected from the academic staff of universities across the country) of NUC have often been alleged by the newspapers of succumbing to the pressure of financial inducement to give accreditation to undeserving programmes and institutions in Nigeria.

Another disturbing dimension of corruption is in relation to securing appointment in government establishments in Nigeria. Securing appointment into government paid jobs in modern Nigeria is tied to patron-client trend. Securing appointment of any sort in the Nigerian public service either at the federal or state level depends, in the main, on the applicant's relationship and connection with those at the helms of affairs. Inability to get an influential individual as sponsor often mean an applicant will remain jobless for a long

time, unless such individual is absorbed by the fast growing private sector, especially the banking and telecommunication sectors.

Although while the foregoing is inexhaustive of the shapes that corruption takes in Nigeria, other forms of corruption are seen in the larger society and private life. In fact, the operators of mass media are not spared as they doctor their reports after been 'settled' (names for bribe in Nigeria), especially by government officers. Corruption among the Nigerian journalists is as endemic as in any other institution of state in the country. This has led to what is generally known as the phenomenon of 'brown envelop' among the Nigerian journalists. The religious organizations appeared not to be immune against the web of corruption in which the larger society is currently trapped. This is evidenced by upsurge in the number of worship centers and self-made priests whose major concern is the extortion of money from unsuspecting members of the public. Traditional rulers equally aid and abet corrupt practices by conferring chieftaincy title on rogues, robbers and public officers known to have corruptly enriched themselves. In other words, corruption appears in different forms in the polity.

Institutional and Constitutional Framework for Anti-corruption

Either paying lip service or not, government has always expressed some form of resentment against corruption in the society, especially in the institutions of government. Consequently, efforts have always been made to reduce or check the occurrence of corruption. Basically, two major overlapping means are commonly adopted to combat the monster. These are legal or constitutional instrument and institutional framework deliberately established, empowered and focused to combat the monstrous social vice.

However, the constitutional instrument often provides the basis and ambit within which the institutional framework for fighting corruption operates.

More than any other anti-corruption instrument, the Nigerian Constitution of 1999 created the legislature and empowered it to check the abuse of power by those who execute its law. The provisions are made for the purposes of achieving and entrenching ethical conduct and accountability in governance. The necessity to provide checks among the institutions of government means that a legal basis to question those who hold the power to execute laws, expend public resources as well as raise revenue must be spelt out. In addition to this, a separate body must be established to scrutinize administration. This is what sections 85 to 88 and 143 of the 1999 constitution specifically address. In section 88, the Nigerian central legislature is vested with power to direct or cause to be directed an investigation into-

(a) any matter or thing with respect to which it has power to make laws; and
(b) the conduct of affairs of person, authority, Ministry or government department charged, or intended to be charged, with the duty of or responsibility for-
(i) executing or administering laws enacted by the National Assembly, and
(ii) disbursing or administering moneys appropriated or to be appropriated by the National Assembly.

While these powers are vested in the legislature, they were supposed to be utilized to-

(*a*). make laws with respect to any matter within its legislative competence and correct any defects in existing laws; and
(b). expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.

To achieve the objectives of the constitution, section 89 gives power to procure all forms of evidence, written or oral, direct or circumstantial and examine all persons as witness whose evidence may be material or relevant to the subject matter. Furthermore,

by the provisions of section 89 (1b and c) the legislature is also equipped with power to summon any person in Nigeria and to issue warrant to compel the attendance of any person who may want to disregard or ignore legislative summon. In addition to this, the legislature may, in extreme cases, sanction the executive and any of its officers or members of the judiciary. By this, erring judicial official or executive may be removed from office by the legislature when it has been established that the government officer has violated his or her oath of office or engaged in certain unethical behaviour.

With specific reference to the executive, section 143 of the 1999 constitution empowers the legislature to investigate and remove from office any executive who has been indicted as alleged by a panel set up for that purpose by the legislature. In Section 89 (9), it is provided that,

> where the report of the panel is that the allegation against the holder of the office has been proved, then within fourteen days of the receipt of the report, each house of the National Assembly shall consider the report, and if by a resolution of each House of the National Assembly supported by not less than two-thirds majority of all its members, the report of the panel is adopted, then the holder of the office shall stand removed from office as from the date of its adoption of the report.

This power is a major weapon in the hand of the legislature to check the executive and by implication make accountability a watchword in governance. More so when it is considered that the legislature is given power in Section 143 (11) to determine what constitutes 'gross misconduct' or breach of the constitution, then it becomes clearer that the assembly is sufficiently equipped to check abuse of office. This form of accountability is what Kaufmann and Dininio (2006) called horizontal accountability. Having the legislature as the focus of anti-corruption crusade in the constitution equally suggests an institutional approach to combating the monster.

Certain institutions, other than the legislature, which are either created by the legislature itself or founded based on constitutional prescription, exist to serve as bulwark against corrupt practices both in government establishments and private life. Under the new democratic enterprise in Nigeria, such government agencies specifically created by Acts of the National Assembly to fight corruption include: the Economic and Financial Crimes Commission (EFCC) created by EFCC Act 2000 and the Independent Corrupt Practices and Related Offences Commission (ICPC) Act 2000. In addition to this, there is the Code of Conduct Bureau (CCB) which, although predated the fourth republic, but was incorporated into the 1999 constitution to ensure transparency among public officers. The Fifth Schedule of the 1999 Constitution established a code of conduct for public officers. Although sections 66, 107, 172, 173, 209, 292 and 318 provide basis for taking appointment in public office or contesting for elective office, part I of fifth schedule of the constitution put in place series of provisions as guide to conduct in public office. For instance, the provisions of sections 6 to 8 of the part I of the fifth schedule are good examples.

To achieve the set objectives of a corruption free public service through the various provisions of Part I of the Fifth Schedule, the Code of Conduct Bureau was vested with the responsibility of documenting information submitted by individual public office holders, the aim of which is to monitor the conduct of public officers. Apart from the Code of Conduct Bureau, a Code of Conduct Tribunal is established to try and convict any public officer found to have breached or contravened any of the provisions of the code. The punishment, which contravention of any of the provisions of the Code of

Conduct may attract, according to section 18 of the part 1, Fifth Schedule of the 1999 constitution include,

> (2a) Vacation of office or seat in any legislative house, as the case may be;
> (b) disqualification from membership of a legislative house, as the case may be;
> (c) seizure and forfeiture to the state of any property acquired in abuse or corruption of office.

In addition to the above, it is provided that where the conduct is criminal in nature necessary penalties may be imposed by any law.

Consequently, the legislature, in section 15 (4) of part I of the Fifth Schedule of the 1999 Constitution, is given a discretionary power to be exercised by way of conferring more power on the Code of Conduct Tribunal as may appear to it to be necessary to enable the tribunal to be effective in the discharge of the functions conferred on it.

What is evident from the foregoing is that sufficient constitutional and institutional framework exists within which a corruption-free public service could be or was meant to be achieved. From all indications, the Nigerian legislature is equipped through scrutiny of administration, law making and other auxiliary roles to serve as enforcer of transparent and accountable government in the state. The question, however, is that, to what extent has the legislature performed its role as anti-corruption agent since the country returned to democracy in 1999.

Assessing Legislature's Performance in Anti-Corruption Crusade in Nigeria

Stapenhurst, Ulrich and Strohal (2006) identify three legislative prongs with which to combat corruption in a democratic society. The necessity for the deployment of the weapons- law making, oversight and representational roles- is contingent on the fact

that in a functional democracy, citizens look to their parliament. This is due largely to the fact that the enormous economic and social costs of corruption are borne by the poor citizens. As Mathekga (2008) avers, parliament is indeed the rightful institution to ensure the accountability of the executive. By extension, the expansive administrative agencies of the state equally come under the ambit of the executive arm over which the legislature is expected to oversee for the purpose of ensuring accountability.

The first area where effective anti-corruption war may be waged by the assembly is combating corruption through law-making. Although writers on the anti-corruption role of the legislatures have identified series of constraints that anti-corruption legislation could face, nevertheless, two key areas are seen as where legislative intervention could help to reduce corruption. One is enacting laws to address what they consider appropriate behaviour by both individuals and organizations. Stapenhurst, Ulrich and Strohal equally advocate the inclusion of medium of surveillance and penalties in the law so enacted. The second area where legislative role is considered desirable is focusing on bolstering integrity in governance.

Assessing the Nigerian legislature on the basis of the first criterion, which is law making, the legislature appears weak and incapable of effectively utilizing its law-making power to curb corruption. The legislature appeared bereft of initiative to tackle corruption. This is evident in the dearth of ideas as well as the ineffectiveness of the legislature to push its initiative on anti-corruption through. For instance, out of the five bills on anti-corruption over which the lower chamber deliberated upon between 1999 and 2003, the executive initiated three, while the remaining two originated from the lower chamber. Worthy of note, however, is that one of the two private members

initiatives was a proposed amendment to the Corrupt Practices and Other Related Offences Bill 2000. The private member bills could not achieve their aims as they were not passed by the house. Although the inability of the legislature could not have been due to lack of power to act, rather the assembly appears to be deficient in political will (David Mark, 2009). Apart from this, the legislators have consistently demonstrated that their personal interests overrode national interests. The initial resistance and reluctance of the legislature to pass the ICPC Act 2000 rightly lend credence to this (IRIN Africa, 2009).

Furthermore, out of the eleven bills on anti-corruption that the lower chamber received between 2003 and 2007, the executive was responsible for nine. One of the nine bills was a United Nations convention against crime. From available records, eight of the executive bills were passed while one was killed (negatived). The remaining two bills which originated from the house did not pass. It is important to point out, however, that apart from the Economic and Financial Crime Commission Amendment (EFCC) Bill 2004, all other anti-corruption bills emanating from the lower chamber of the central legislature during the period were proposed amendments to previous Acts. In the Senate, about ten bills relating to anti-corruption were received between 2003 and 2007. This was the period when government mustered concerted efforts to put in place necessary legal framework for combating corruption in Nigeria. The executive accounted for about eight out of which five were passed. The two private member bills, one of which sought to amend an executive bill on money laundering, failed. It suffices to mention that all the bills received by both chambers were just on three areas- ICPC, EFCC and money laundering.

Surprisingly a bold effort of the United Nation to criminalize corruption through the UN convention on corruption of 2003 was never accommodated through ratification by the Nigerian legislature. Specifically, the convention requires countries to criminalize behaviour such as: (a) the bribery and the embezzlement of public funds (b) influencing trading (c) the concealment and laundering of the proceeds of corruption.

The domestication of the convention was expected to create: arrangement to strengthen international co-operation; arrangements to prevent the transfer of funds obtained through corruption and lastly, ways of monitoring a country's compliance with the Convention. Agreed that the ICPC, EFCC and Money Laundering Acts would have captured some of the issues addressed by the convention, but the domestication of such international articles would have strengthened the extant rules against corruption. Perhaps, the lackadaisical attitude of the Nigerian lawmakers towards domesticating such an important anti-corruption law accounts for the unabated corrupt practices. For instance, New Zealand, which is ranked by transparency international as the least corrupt country in the world in 2006 took immediate steps to domesticate the convention. The political will on the part of the New Zealand policy makers, which their Nigerian counterparts lacked, thus accounts for the rating and position of each country on the corruption index.

In fact, it appears that the passage of bills on anti-corruption in Nigeria, most of which were amendments, was not done with the intent of stamping out corruption by the legislators, but rather out of fear of negative public opinion. The fact that the central legislature was responsible for initiating over 30 per cent of bills passed between 1999 and 2003 and successfully counter vetoed four of the ten bills vetoed by the executive

during the period suggest that the legislators, perhaps, with the mindset of recouping what they invested in election was unwilling to introduce legislation that could abort their objective of private accumulation. This, perhaps, explains the lukewarmness and reluctance of the legislature in playing effective role to curb corruption. Hence, initiative on matter relating to anti-corruption legislations often emerged from the executive, while the legislature merely deliberated and passed.

Furthermore, despite the latitude accorded the legislature to decide whether any subject may be considered criminal and added to the range of subjects on which the Code of Conduct Tribunal could act, the legislature has simply been inactive and clearly demonstrated that it is bereft of the initiatives to strengthen the extant rules. Thus, it is not out of place to say that the legislature has failed to utilize its power of law making to fight corruption, as envisaged by the constitution, since the country returned to democracy in 1999. Hence, the legislature has played only a very fringe role in the fight against corruption through its power of legislation

For instance, the Freedom of Information Bill 2007 which was passed by the fifth assembly (2003-2007) was vetoed by the former president. The bill, from all intents and purposes, would have granted the public, especially the mass media and civil society, an unfettered access to information in government establishments. The inability of the legislature to override the presidential veto, or re-pass the bill since it was represented in 2007, does not portray the assembly as having the political will to stamp out corruption in the society. Indeed, the manner in which the legislators have handled the bill is a further indictment on the capability of the Nigerian central legislature to provide the required platform to combat corruption under the fourth republic. Despite the seeming popular

consensus among media practitioners, civil society groups and members of the public that the freedom of information bill, pending in the assembly, has the potential to entrench accountability and transparency in governance, political consideration appeared to have over-ridden reason, perhaps, because of the source of the bill. The bill is a private member bill with the lead sponsor (Hon. Abike Dabiri from Lagos state) being a member of Action Congress, one of the opposition parties in the central assembly. Hence, the bill appeared to have been undermined by party politics, irrespective of whatever benefits the nation stands to derive from its passage.

Free information access and flow is strongly believed to be capable of reducing corruption in any society. According to Pope (2006), although making anti-corruption laws may not by itself stamp out corruption, but focusing laws on specific areas might help curb corruption. Thus, freedom of information laws which has, as a component, a requirement for disclosure of assets by public officials as well as giving unfettered access to information, especially on public spending and resources may likely reduce corruption. If freedom of information possesses the capability to reduce corruption, the inability of the Nigerian central legislature to successfully push through the information bill which has hibernated in the house for three years translate into a further undermining of the anti corruption war by the legislature. In a similar vein, the several calls by the International Parliamentarian Association (IPA) on national legislature and the formation of the Global Organisation of Parliamentarians Against Corruption to sensitise local legislature to put in place appropriate legal framework by national legislatures to curb corruption has remained unheeded by the Nigerian parliamentarians. This is evident by the inability of

the legislature to sponsor a bill on anti-corruption and pass the same irrespective of the position of the executive on such bill.

Furthermore, the legislature has also consistently demonstrated in the past ten years that it is bereft of the political will to check corruption through its power of oversight. However, in certain respects, the legislature has largely proved that it did not lack the power to expose corrupt practices as evidenced by the exposure of abuse of power in the executive branch. The investigation of former president Obasanjo and his deputy, Alhaji Atiku Abubakar, over the mismanagement of Petroleum Technology Development Funds PTDF and the power sector spending between 1999 and 2007 are few examples of successful investigations undertaken by the assembly to expose abuse of power in the executive arm (Reps probe concessioning with Atiku's firm, 2008; PTDF report destabilizing, 2007; Power probe: Reps panel erred on Obasanjo-Masari, 2008).

While the foregoing suggest that the legislature could effectively expose and by implication reduce corruption in governance, the personal gain to be derived by members of the assembly through acquiescence or compromise often override the imperative to check corrupt practices. The tendency to compromise has often eroded the capability of the Nigerian legislature to serve as bulwark against corrupt practices in government institutions. The implication of this is that the legislature has been incapable of discharging its oversight responsibility effectively (Fashagba, 2009). The compromise, as Fashagba points out, has taken the form of committee members colluding with administrative officers to appropriate public fund for private use (SGF bars ministries from funding N'Assembly's activities, 2008). Furthermore, the tendency of members of

the Nigerian legislature to seek for opportunity to extort money from people having contact with them has negatively affected its capability to serve as anti-corruption agent.

The legislature has exhibited incapability in ensuring transparent and accountable government. This it demonstrated in lack of interest to scrutinize the audited accounts of the federation on the floor of the house since 1999. The public account committees of the two-chamber legislature did not consider it worthwhile to present to the central legislature any audited report of the federation account between 1999 and 2007 while President Obasanjo was in power. Until 2008 when a mention of audited account of the federation was made on the floor of the assembly, the legislators appeared not too concerned with embarking on a systematic scrutiny of public spending. Most often, only spontaneous reactions have been made on public spending, especially when the assembly seeks to attack the executive over certain actions. This was most evident during the tenure of Alhaji Umar Ghali Na'abba as the speaker of the lower chamber between 1999 and 2003 and between 2007 and 2009 under Speaker Oladimeji Bankole. By this, despite some sporadic public hearings on certain activities of government and some of its agencies, especially between 1999 and 2009, the legislature has been lethargic in holding government to account by scrutinising public spending

Beyond this, however, is the evident erosion of moral basis on which the legislature could anchor any anti-corruption posture. The legislature, as Fashagba avers, has been home to series of scandals bordering on financial impropriety. The incident of scandals in the legislature has resulted in the removal of at least three Senate Presidents and two Speakers of the House of Representatives between 1999 and 2009 (Bello-Imam, 2005; Global Integrity, 2004). The disturbing dimensions of scandals in the Nigerian

National Assembly, especially the one involving a former Senate President, Senator Adolphus Wabara (2003-2005), prompted the former President, Olusegun Obasanjo, to assert that, 'it is disheartening that the number three man in the government hierarchy in the country is involved in this sordid matter' (USA/Africa Dialogue, 2005). Perhaps, more than any other reason, the high profile scandals that a large number of members of the assembly have been involved in appeared to have undermined, and indeed, crippled the capacity of the assembly to serve as anti-corruption agent. Between 1999 and 2009 different forms of corrupt practices involving both principal officers and members of the two-chamber assembly have been experienced as shown in Table I. Often the Ministries over which committees of the two houses have oversight responsibilities are taking advantage to extort money or other material benefits (SGF bars ministries from funding National Assembly's activities, 2008). This attitude has crippling effect in the fight against corruption. Consequently, rather than scrutinizing administration to ensure prudence in the utility of appropriated resources and ensuring compliance with set rules among the implementing agencies and departments of government, the legislature has, through lack of self restraint, mortgaged its moral basis to demand transparency and accountability.

This appears to have affected the extent to which the legislature would have performed in this respect. This is because the legislature has demonstrated that when it is ready to work it could check corruption and expose abuse of office. This is evident in the number of investigations and public hearings through which several incidents of abuse of office by government officers have been exposed. Through public hearings by different legislative committees, the disappearance of an oil bunkering ship, MT Africa Pride kept

in the custody of the Nigerian Navy, was exposed (Babawale, 2006). Also the discrepancy in the account of and mismanagement in the Nigerian National Petroleum Corporation (NNPC); the abuse of office by former political and career officers of Federal Capital Territory (FCT) between 2003 and 2007; and the mismanagement of the Power Project fund between 1999 and 2007 were exposed when different committees of the house beamed search light on the activities of different agencies and ministries.

Apart from using its law-making and oversight powers to curb corruption, the third identifiable basis on which the legislature is expected to serve as anti-corruption agent is that elected members are the representatives of the people. The legislators, especially of the developing countries are aware of the pervasiveness of poverty among the greatest number of people. In most cases, mismanagement and/or misappropriation of public funds and other forms of abuse of office by state elites are the immediate cause of the pervasive poverty. Hence, the legislature is looked upon to ensure prudence and accountability by publicizing government activities and reflecting the wishes and concerns of members of their constituencies in policy-making. However, the legislators appear not to have served as the 'eyes and ears' of their various constituencies in ensuring that appropriated resources are channeled to projects and programmes for which they were meant. So far under the Nigerian fourth republic, the legislators are yet to prove that intervening in the political process to secure maximum goods for the majority of the represented is their concern.

Over and over again disputes over budgetary provisions, for instance, have resulted more from the refusal of the executive to allow the legislature to allocate a huge sum to itself. In 2008, the President denied assent to the appropriation bill on the ground that the

legislature increased the amount due to it by over 70 per cent. By this, the legislature, largely concerned with private gain, pay little or no attention to the fight against corruption in the executive arm. This negates the expectation of constituents and citizens which according to Transparency International (TI) (2007),

> Expect parliamentarians to maintain a high moral standard in their professional and private lives. They expect parliamentarians to serve out of conviction and a commitment to the public good, rather than for aspirations of personal power and the pursuit of private profit.

The arraignment of the Chairman, Senate committee on power, Senator Nicolas Yahaya Ugbane and Chairman, House committee on power, Honourable Ndudi Elumelu in a Federal High Court in May 2009 over misappropriation of about $5.2 billion appropriated for power sector under the 2008 amended budget lends credence to the fact that most members of the Nigerian legislature are self-serving (N5.2bn power scam: EFCC freezes contractors' accounts, 2009). The legislators were able to perpetrate the act by smuggling the amount into the amended Appropriation Bill 2008. The misappropriation of the power sector funds was perpetrated by the legislators acting in concert with top officers of the Ministry of Power. Considering the collapse of the power sector in Nigeria, the legislators were expected to play a major role and work toward resuscitating the power sector in the interest of the represented. However, the problem in the power sector was seen by the lawmakers as a means of siphoning money from the public purse.

Explaining the Legislature's Ineffectiveness

The failure to make laws that confront corruption headlong may not be unconnected with the fact most members of the National Assembly emerged or won their seats through

fraudulent means. Perhaps, because of the overwhelming burden of crisis of legitimacy hanging over a huge proportion of the Nigerian legislators, due to their penchant for undermining the credibility of the electoral process, either by way of violence, rigging and/or vote buying, the legislators lacked the moral basis to secure, ensure and facilitate integrity in governance.

Also, in Nigeria, election is taken to be another form of investment that requires a huge financial commitment. People who succeed at poll, most often, after investing so much or their political godfather had done the investment for them, see their membership of the legislature as an opportunity to harvest substantial return. The implication of this is that the legislators readily compromise or get involved in cutting corner to line their pockets. Consequently, putting in place any legislation which purports to criminalize such anti-social behaviour like corruption of which members of the legislatures are themselves culprits will be suicidal. Hence the absence of any such moves.

Furthermore, a major constraint against effective anti-corruption crusade in Nigeria is the fact that Nigeria has gradually metamorphosed into a distributive rather than a productive state, especially from the 1970s. Most public and political office holders in Nigeria appear to have imbibed an orientation of corruption bequeathed to the state by the military but further deepened by General I. B. Babangida led military government (1985-1993). Consequently, any opportunity to hold any public office is seen as avenue to take a deserving share of the national cake. It is with such mentality that members of the legislature go to the National Assembly, hence the level of compromise by members.

In a similar vein, the legislature has largely proved and remained insincere in its fight against corruption in the society. For instance, investigations undertaken by various

committees of the central legislature were often meant to arm twist government ministries or agencies into giving money to members of the assembly. Lack of sincerity has, in most cases, affected the extent to which the various committees of the house could provide effective check against abuse of executive power. The arraignment of Ndudi Elumelu over alleged financial impropriety rightly justifies this. This is because, following the inauguration of the sixth assembly in 2007, the lower chamber decided to investigate why the power sector could not be revived after several billions dollars were claimed to have been spent on the sector between 1999 and 2007. The house committee on power carried out the investigation under the leadership of Elumelu. The report of the committee was not only politicized but also rejected by the lower house due to an alleged mishandling of the power sector investigation. Although, the rejected report of Elumelu led committee indicted certain former public office holders, Elumelu himself was later arraigned in court in May 2009 over alleged misappropriation of a colossal sum allocated for the power sector under the 2008 budget. This is captured by the table at the end. Thus, the evident lack of sincerity constitutes a threat to the ability of the legislature to fight corruption in Nigeria.

Concluding Remarks

Evident from the few investigations that the legislature has successfully undertaken, with demonstrable capability to expose corruption, is that the task set for the legislature under the 1999 Constitution is not out of reach for the body. In fact, the Constitution gives adequate safeguards for effective performance of the legislative duties as far as the anti-corruption fight is concerned. Rather, the inability of the legislature to perform was not unconnected with the absence of political will to get involved and

prosecute anti-corruption war. Equally, the inability of the legislature to hold the executive branch accountable stems less from the fact that the ruling party controlled dominant majority in the two-chamber federal legislature of Nigeria. The legislators, of varying political persuasion and 'ideological' divide simply lack the moral courage to fully bring the constitutional prescriptions to bear on their day-to-day legislative and other activities.

Evident in Nigeria since the country returned to democracy since 1999, especially between 1999 and 2007, is that the executive was a lone ranger and the only major visible anti-corruption crusader among the organs of government. The legislature has failed in providing serious commitment to anti-corruption crusade of government, because individuals' personal motive appears to contrast with the service and responsibility which the office demanded and the public expected. The absence of institutional and functional support from an important institution like the legislature cannot but weaken the attainment of a corrupt free society.

The implication of absence of visible legislative support to complement anti-corruption efforts of the President, especially between 1999 and 2007, was the deepening culture of national cake sharing syndrome. Even among people recruited into the executive arm, the corrupt tendency of the legislature served as psychological boost, which explains the inability of the executive to stem or control corruption in the arm. Largely, the anti-corruption crusade appears only potent on paper but in reality only little has been achieved.

Occasional flashes of anti-corruption posture of the legislature usually have vendetta undertone. Most anti-corruption agitations of the legislature have been in

response to executive's attacks or insinuations against certain legislative misconduct. Consequently, rather than scrutinizing the executive to ensure accountability, the legislature is constantly on the defensive trying to clear itself over one form of scandal or the other.

Consequently, if the legislature must demonstrate an acceptable level of effectiveness in anti-corruption crusade, the process must ensure that there are means by which the legislature could be made accountable. The legislature under the present legal framework is vested with power to sanction erring executive and any of its officers as well as the judicial officials. However, there is no specific institution to control the legislature, except the weak and poverty stricken populace, to which the legislature is accountable. The question then is who monitors the monitor? The EFCC has been evidently cautious in handling issues or allegation relating or affecting members of the legislature. This, perhaps, is due to the fact that the EFCC as a body was the creature of the legislature. For the fight against corruption to succeed, therefore, the legislature must make up its mind to be committed to anti-corruption war. Furthermore, the Nigerians, especially the masses, needed to be educated on the need to vote people with integrity into the assembly, without basing voting decision on ability to squeeze money from contestants.

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Table 1 Reported Cases of Corruption in the National Assembly, 1999 – 2009.

1	Names of Culprits	Status/ Designation	Chambers	Year	Nature of Allegations	Outcomes
2	Salisu Ibrahim	Speaker	House of Reps(HoRs)	1999	Falsified academic claim	Forced to Resign and arraigned, received presidential parson
3	Evans Enwerem	President	Senate	1999	Falsified age, names and academic qualification	Forced resignation
4	Pius Chuba Okadigbo	President	Senate	2000	Awarded contract to cronies at inflated price	impeached
5	Haruna Abubakar	Deputy senate president	Senate	2000	Embezzled #16.9 million ($140833) as Xmas and Sallah gift	impeached
6	Unnamed members	Members, HoRs	HoRs	2002	Took money from the executive to impeach the speaker	Allegation not proved
7	Maurice Ibekwe	Member	HoRs	2004	Defrauded a German businessman of #350000 and 75000	Died in prison while still under trial

					Dutch marks in 1993	
8	Ibrahim Mantu led committee for screening political nominees	Deputy senate president	senate	2003	Nasir el-Rufai alleged that the committee requested for #54 million as a condition for confirming his nomination	Case swept under the carpet
9	Adolphus Wabara	president	senate	2005	Connived with chairmen senate and House committees on education to take bribe of #55million ($458333) from education ministry	Resigned, arraigned but prosecution inconclusive
10	John Mbata, Abubakar Maccido, Emmanuel Chris Adighije Abdulazeez Irahim	Leaders and members, senate committee on education	senate	2005	As above	Chairman and vice lost the committee's leadership positions, arraigned, but prosecution inconclusive, but
11	Garba, S. Matazu Osita Izunaso Gariel Suswam	Leader and members, house committee on education	HoRs	2005	As above	As above
12	Ad-hoc committee that investigated PTDF case	members	senate	2006	Alleged to have taken bribe from the vice president to cover the truth on PTDF stolen fund	Report rejected and new committee set up

	Names	Status/ designation	chamber	year	Nature of allegation	Remarks
13	Patricia Etteh	speaker	HoRs	2007	Award contract at inflated price of #628million ($ 233,333)	Forced resignation
14	Iyabo Obasanjo	Chairman, senate committee on health	senate	2008	Collected #10million ($83,333) as share of senate committee from unspent budget of 2007	Arrested and arraigned.
15	Iyabo Obasanjo	Chairman, senate committee on health	senate	2008	Alleged to have taken contract worth #3.5billion for power generation along side an Austrian firm, but failed to executive the contract after taken certain amount	The crime was committed while Obasanjo, her father was the president
16	Leaders and members of the HoRs	Leaders and members of various committees	HoRs	2005	Alleged to have collected money from ministries,	Dr Haruna Yerima accused his colleagues in the

					departments and agencies of government (MDA) before approving their budget	house of extorting money from MDA before passing their budget
17	Dimeji Bankole	Speaker	HoRs	2008	Alleged to have over-invoiced the bill for the purchase of vehicles for oversight functions at the rate of #2.4billion	Cleared of allegation in a controversial manner. Note: allowances for vehicle, housing and furniture among others are already monetized for public servants in Nigeria
18	Ndudi Elumelu, and Paulinus Igwe; Mohammed Jibo	Chairman and Deputy Chairman of committee on power, Chairman, house committee on Rural development respectively.	HoRs	2009	Alleged complicity in #5.2billion power contracts (The Nation, Tuesday, May12, 2009:p.1&2)	Arrested by Economic and Financial Crime Commission on 11th May, 2009, and arraigned in court on 13th and 18th May, 2009. remanded in Kuje prison between 18th May and 4th June, 2009.
19	Senator Nicolas Yahaya Ughani	Chairman, Senate committee on power	Senate	2009	As above	As above