

FISCAL RESPONSIBILITY ACT 2007: A POSITIVE INSTRUMENT FOR PRUDENT MANAGEMENT OF NATION'S RESOURCES AND ENHANCEMENT OF LEGISLATIVE OVERSIGHT IN NIGERIA*

Abstract

Fiscal Responsibility Commission is a body established by the Fiscal Responsibility Act. The Commission shall have power to compel any person or government institution to disclose information relating to public revenues and expenditure; and caused an investigation into whether any person has violated any provisions of this Act. This means that the Commission monitors and enforces the provisions of this Act and by so doing, promotes the economic objectives contained in section 16 of the 1999 Constitution of the Federal Republic of Nigeria. Legislative oversight, on the other hand is the review, monitoring and supervision of government and public agencies, including the implementation of policy and legislation. It involves keeping a check on the activities of governmental agencies especially the executive branch while discharging their responsibilities under the Constitution of Federal Republic of Nigeria for the people of Nigeria. This paper recognizes and x-rays the importance of Fiscal Responsibility Act for the legislatures in their oversight function. This study also considers the significance of this Act, justiciability of the provisions, African Charter on Human and Peoples Right, and legislative control limit. It equally makes some recommendations.

Keywords: Fiscal Responsibility, Act, positive instrument, enhancement and legislative oversight.

1. Introduction

Separation of powers or classification of government powers is the division of government powers into the three branches of legislative, executive and judicial powers, each to be exercised by a separate and independent arm of government as a preventive measure against abuse of power, which will occur if the three powers are exercised by the same person or group of people. Separation of powers is the division of the powers and functions of government among the three independent and separate arms of government; that is, the legislature, executive and the judiciary, to act as a check and balance on one another and prevent the excesses and abuse of powers. Thus, separation of powers is the constitutional doctrine of the division of the powers, each to be exercised by a different group of persons as a means of check and balance in the government structure itself, to protect the people against tyranny.¹ Under this constitutional doctrine, one branch of government should not encroach on the domain of another branch of government nor exercise the powers of another branch of government. The three traditional arms of government or types of government powers or division of government are the: Legislature -the law making arm of government, Executive - the implementers of the laws and Judiciary-the interpreters and judges of the law.²

The origin of this doctrine started from the British philosopher John Locke³ (1632-1704) who observed the conditions of 17th century England. He thought that it was convenient to separate the legislative and executive powers of government so that: Legislature can act quickly and at intervals; and the executive can constantly be at work.

So that lawmakers will not exempt themselves from obedience and make the law to suit their individual interests. In the words of John Locke in his Second Treatise on Civil Government,

It may be too great a temptation to human frailty, apt to grasp at power, for the same persons who have the power of making laws, to have also in their hands the power to execute them, whereby they may exempt themselves from obedience to the laws they made, and suit the law, both in its making and execution, to their own private advantage.⁴

The doctrine of separation of powers as understood today came largely from the work of the French Jurist, Baron de Montesquieu, in his book *'The Spirit of Law'* (Esprit Des Lois, Chapter XI) who studied and expanded the work of

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¹Ese Malemi, *The Nigerian Constitutional Law* (Lagos: Princeton Publishing Company, 2006) p 65

²*Ibid*

³ *Infra*, see foot note 2 below

⁴ John Locke, *Second Treatise on Civil Government*, Chapter 12-13. Quoted in Wade & Philips, *Constitutional Administrative Law*, 9th ed by Bradley, p. 45

John Locke. He was concerned with the preservation of the political liberty of the citizen. According to Montesquieu:

Political liberty is to be found only when there is no abuse of power. Experience shows that every man invested with power will abuse it by carrying as far as it will go... To prevent this abuse, it is necessary from the nature of things that one power should be a check on another... When the Legislature, Executive and Judicial Powers are united in the same person or body..., there can be no liberty... Again there is no liberty if the judicial power is not separated from the legislative and executive... There would be an end of everything if the same person or body, whether of the nobles or of the people, were to exercise all three powers.⁵

Therefore, concentration of powers in the same person or body would no doubt lead to tyranny, because power corrupts and absolute power corrupts absolutely. Power if not limited by a boundary will become absolute. Power needs to be clearly limited for it to be safely exercised. Power is nothing without control. Likewise, speed in a motor vehicle is nothing if breaks cannot be applied when necessary. Power without control is like a motor vehicle without breaks. In this vein, Nwabueze said: 'Concentration of government powers in the hands of one individual is the very definition of dictatorship, and absolute power is by its very nature arbitrary, capricious and despotic.'⁶

2. Economic Objectives

16-(1) The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution:

- (a) Harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy;
 - (b) Control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;
 - (c) Without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy, manage and operate the major sectors of the economy.
 - (d) Without prejudice to the right of any person to participate in areas of the economy within the major sectors of the economy, protect the right of every citizen to engage in any economic activities outside the major sectors of the economy.
- (2) The State shall direct its policy towards ensuring:
- (a) The promotion of a planned and balanced economic development;
 - (b) That the material resources of the nation are harnessed and distributed as best as possible to serve the common good;⁷
 - (c) That the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group;⁸ and
 - (d) That suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.⁹
- (3) A body shall be set up by an Act of the National Assembly, which shall have power:
- (a) To review, from time to time, the ownership and control of business enterprises operating in Nigeria and make recommendations to the President on same; and
 - (b) To administer any law for the regulation of the ownership and control of such enterprises.
- (4) For the purposes of subsection (1) of this section:
- (a) The reference to the 'major sector shall be constructed as a reference to such economic activities as may, from time to time, be declared by a resolution of each House of the National Assembly to be managed and operated exclusively by the Government of the Federation; and until a resolution

⁵*Espirit Des Lois*. (Spirit of the Laws) Chapter 11, pp. 3-6. See also *Lakanmi & Anor v. A.G. Western State* (1971) IU. 1 R. 201. *Liyana v. The Queen* (1967) A.C. 259 PC. *Governor of Kaduna State v. House of Assembly Kaduna State* (1981) 1 NCLR 444 HC

⁶*The Presidential Constitution of Nigeria*, 1981 p. 32. See also O Abiola, *Separation of Powers in a Presidential System of Government*, Public New (1981) p. 105

⁷ *Ibid*

⁸ *Ibid*

⁹*Agbo v. Metro Police Commr* (1969) 1 WLR 703 CA. *Momodu v. NULGE* (1994) 8 NWLR Pt 362, p. 336 CA.

to the contrary is made by the National Assembly, economic activities being operated exclusively by the Government of the Federation on the date immediately preceding the day when this section comes into force, whether directly or through the agencies of a statutory or other corporation or company, shall be deemed to be major sectors of the economy;¹⁰

- (b) 'economic activities' includes activities directly concerned with the production, distribution and exchange of wealth or of goods and services; and
- (c) 'participate' includes the rendering of services and supplying of goods.

3. Fiscal Responsibility Act 2007

The extant legislation on prudent management of the Nation's Resources, ensure long-term macro-economic stability of the National Economy, secure greater accountability and transparency in fiscal operations within a medium term fiscal policy framework and the establishment of the fiscal responsibility commission to ensure the promotion and enforcement of the nation's economic objectives; and for related matters.

Establishment of Fiscal Responsibility Commission

There shall be established, a body to be known as the Fiscal Responsibility Commission (in this Act referred to as 'the Commission'); the Commission shall be a body corporate with perpetual succession and a common seal and may sue and be sued its corporate name; for the purpose of performing its functions under this Act, the Commission shall have power to: compel any person or government institution to disclose information relating to public revenues and expenditure; and cause an investigation into whether any person has violated any provisions of this Acts; If the Commission is satisfied that such a person has committed any punishable offence under this Act violated any provisions of this Act, the Commission shall forward a report of the investigation *to the Attorney-General of the Federation for possible Prosecution*(emphasis supplied)1(1), (2)-2(1)(a), (b)-(2).

Functions of Fiscal Responsibility Commission

The Commission shall – monitor and enforce the provisions of this Act and by so doing, promote the economic objectives contained in section 16 of the Constitution; disseminate such standard practices including international good practice that will result in greater efficiency if the allocation and management of public expenditure, revenue collection, debt control and transparency in fiscal matters; undertake fiscal and financial studies, analysis and diagnosis and disseminate the result to the general public; make rules for carrying out its functions under this Act; and perform any other function consistent with the promotion of the objectives of this Act 3(1)(a)-(e). The Commission shall be independent in the performance of its functions. The provisions of Public Protection Act shall apply to the members of the Commission in discharge of their functions under this Act 3(2)-(3).

Powers of the Commission

The Commission shall have power to - formulate and provide general policy guidelines for the discharge of the functions of the Commission; superintend the implementation of the policies of the Commission; appoint for the Commission, such numbers of employees as may in the opinion of the Commission be expedient and necessary for the proper and efficient performance of the functions of the Commission; determine the terms and conditions of service in the Commission, including disciplinary measures for the employees of the Commission; do other things, which in its opinion are necessary to ensure the efficient performance of the functions of the Commission; and regulate its proceedings and make standing orders with respect to the holding of its meetings, notices to be given, the keeping of minutes of its proceedings and such other matters as the Commission may, from time to time determine 7(a)-(g).

4. Oversight Functions of the Legislature under the Fiscal Responsibility Act

The oversight function of the legislature plays a leading role in policy formulation and law making.¹¹ The whole idea of democratic governance is that government should be accountable to the people. Accountability and restraint are generally regarded as the warp and woof of democratic governance. The legislature has the main functions

¹⁰ Petroleum is a major sector of the Nigerian economy, other mineral resources and industries apart. See the Nigeria National Petroleum Corporation Act, Cap. N124, 2004 and so forth

¹¹I.K.E. Oraegbunam, 'Separation of Powers in Nigerian Democracy: Need for Constitutional Reform', *Legislative Practice Review: Nigerian Journal of Law, Practice and Procedure of Legislature*, Vol. 2, No. 1, March 2010, pp.15- 48. Available at <http://www.marymartin.com/web/mmbs/country>

namely, representation, law making and oversight of the executive.¹² Section 88 of the 1999 Constitution of the Federal Republic of Nigeria which deals on the oversight function of the legislature specifies as follows,

88(1) Subject to the provision of his Constitution, each House of National Assembly shall have power by resolution published in its journal or in the Official Gazette of the Government of the Federation in direct or cause to be directed as investigation into –

- (a) any matter or thing with respect to which it has power to make laws; and
- (b) the conduct of affairs of any person, authority, Ministry or Government department charged or intended to be charged, with the duty of a 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.

(2) The powers conferred on the National Assembly under the provisions of his section are exercised only for the purpose of enabling into –

- (a) made 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 of funds appropriate by it.

Thus in *El-Rufai v. House of Representative*¹³ where the issue was whether it is part of constitutional duty and power of the defendant to investigate issues of alleged defamatory statement by the plaintiff. The court held that the power and duty of investigation constitutionally conferred on the legislative cannot extent to investigation of the alleged defamatory statements made by the plaintiff. This is because the defendant can only conduct the stated investigation in two situations for the purpose of enabling it to,

- a. Make laws with respect to any matter within its legislative competence and correct any defects on existing laws; and
- b. Expose corruption, inefficiency or waste in the execution or administration of law within its administration of funds appropriated by it.

In *Military Governor of Lagos State v. Ojukwu*¹⁴ it was held that under the Constitution of the Federal Republic of Nigeria, the executive, the legislative and the judiciary are equal partners in the running of a successful government. The powers granted by the constitution to these organs by section 4 (legislative powers) section 5 (Executive powers), and section 6 Judiciary powers) are classified under an omnibus umbrella known under part II to the constitution as powers of the Federal Republic of Nigeria. The organs wield these powers and one must never exist in sabotage of the order or else there is a chaos.¹⁵ The supervisory powers of the legislature can also be called the investigative or oversight function of the legislature. It must be recalled that it is the responsibility of the legislative to make laws for the peace, order and good government of the people. Their work does not stop at just making the laws, but also to follow up to make sure that the laws being made by the legislature is properly implemented by the Executive whose task is to execute the law. The legislature makes the laws and appropriates the money required for running the government. It is therefore fair that, as the people's representative, it ask questions about how laws written by the legislature are being executed and how government agencies, department and ministries are spending the money appropriated to them.¹⁶ Legislative oversight of the executive is designed to accomplish several objectives but underpin constitutional democracy. The main goals of legislative oversight are as follows: to obtain information or classification about the execution of laws, policies, and programmes authorized and funded by the legislature;¹⁷ to obtain information that will enable it to institute corrective measures through new legislation or the appropriate of more money to help underperforming arms of government meet their obligation; and to shed light on the activities of the government to enable the public to obtain information upon which to evaluate the performance of their government.

Oversight responsibilities enable law makers to ensure that the executive branch performs in a manner consistent into existing laws, regulations, and the activities of legislators. Oversight especially public investigation, provides

¹² Ibid p.7

¹³ *El-Rufai v. House of Representative* (2003) FWLR (Pt. 173) p. 163

¹⁴ *Military Governor of Lagos State v. Ojukwu* (1986) AU N.L.R. 233 p. 18

¹⁵ Ibid

¹⁶ O Oko, *Legislators in changing and challenging times, An Analysis of the Nigerian Assembly* (Goldine and Jacobs Publishing New Jersey 2014) p. 96

¹⁷ Ibid

information necessary for citizens to make informed judgments about their government such hearing uncover and expose errors fraud and waste no government and help the authorities concerned to avoid similar, mistakes. Oversight conducted objectively and in good faith enables the legislature to ask pertinent questions about government policies and programs, obtain vital information, and push for change whenever abuses or exercises are uncovered. Moreover, whenever public officials know that their actions will be subjected to public review and scrutiny by the legislature, they are likely to act with greater care and diligence.¹⁸ Legislature oversight does not just identify problems but equally discourages deviation from policies and laws mandated by the legislature. Oversight has two broad components namely: Inquiring about past activities and actions address specific instances of wrong doing and examining ongoing activities to identify problems and recommend remedial measures. It may be formal or informal. Informal oversight occurs when the legislators ask for more information from government officials or agencies concerning the execution or implementation of projects or policies. Formal oversight typically involves writing public officials responsible for a ministry, agency or department under review to appear before the appropriate committee of the legislature to answer questions about how a project or program is being implemented. Prospects of submitting to legislature oversight challenge the executive to engage in self-examination, to reevaluate and reassess programs and policies to ensure that they in line with law and policy guideline. Oversight is not just about finding faults or castigating government functionaries rather it mostly engages in information gathering upon which to evaluate the implementation of policies and the execution of projects authorize by the National Assembly through its appropriations.¹⁹

Consequently, freedom of information plays a very important and significant role to enhance and facilitate the legislative oversight. This is because without information, oversight may be impeded and the people to be supervised may be reluctant to provide relevant information as this may reveal some of their secret activities which they may not be willing to uncover as it will unmask them. Freedom of information specifically access to information held by public authorities is a fundamental element of the right to freedom of expression and vital to the proper functioning of legislative oversight. It is an act that makes provision for the disclosure of information held by public authorities or by persons providing services for them.²⁰ This means that the act enables one to see a wide range of public information because it gives the right to ask any public body for all the information they have on a subject.²¹ Again, it has been contended that unchecked Executive action of emergency (actual or perceived is undesirable, it tends to endanger individual rights unnecessary degree.²² The legislative oversight was the key feature of a meaningful representative assembly is to watch and control the government²³ oversight is necessary to ensure the triumph of representative government by lines of accountability running through the organ that embodies popular sovereignty. Representatives, rather than effectiveness is the irreducible core.²⁴ The oversight functions of the legislature under the 1999 Constitution of the Federal Republic of Nigeria can also be discussed under the following heads: Oversight of public funds, Oversight of appointment; and Investigative powers.

Over Sight of Public Funds

The Constitution mandates the President to prepare and lay before each House of National Assembly at any time in each financial year, estimates of the revenues and expenditure of the Federation for the next following financial year,²⁵ and such monies can only be utilized through an Appropriation Act passed by the National Assembly pursuant to Section 81 of the Constitution.²⁶ The passing into law of the Appropriation Bill is a very significant aspect of legislative oversight because the process enables the legislature to act as watching over public funds. As a result the Constitution has given the legislature to raise alarm of the approved estimate is executed poorly or

¹⁸ Ibid

¹⁹ Ibid

²⁰ A Afolagon, A critical Analysis of Freedom of Information Act in Nigeria, <https://odinakadotnet.wordpress.com/2012/08/01/a-critical-analysis...> Accessed 6/3/2019, 9:48pm

²¹ Ibid

²² Londrass & F F Davis: 'Controlling the Executive in terms of Terrorism: completing perspective on effective oversight mechanism' (2010) 30 *Oxford Journal of Legal Studies* (1) 19, 20-21

²³ J S Mill, *Consideration on Representative Government Considerations on Representative Government* (London: Parker, Son and Bourn 1861 (104)

²⁴ N A Inegbedion, *Scope of Legislative oversight*, NIALS Journal of Constitutional Law, NIALS Press, Abuja 2013 pg 49

²⁵ Section 81(1) 1999 Constitution as Amended

²⁶ Ibid

improperly.²⁷ The legislative oversight over public funds is a phenomenal legislature tool that can ensure accountability of government of the people.²⁸

Oversight of Appointments

The senate which is upper chamber of the National Assembly is empowered to confirm the appointments of key officers in the public services of the Federation.²⁹ These include the appointment of the Auditor-General of the Federation, the Chief Justice of Nigeria,³⁰ the Justice of the Supreme Court, President of the Court of Appeal,³¹ Ministers of the Government of the Federation,³² Ambassadors, High Commissioners or other principal Representatives of Nigeria abroad³³ and the appointments of Governors and Deputy Governors of the Central Bank of Nigeria.³⁴ The power of the legislature to scrutinize these appointments is probably to check and curb the excesses of the Executive but the situation is completely different in Nigeria now where the President does anything he wants, and from all indications we are heading to rule of terror.

Investigative Powers

The most visible oversight function of the legislature is its power to conduct investigations.³⁵ This power has been defined as a formal inquiry conducted by a legislative body incident to its legislative authority. The legislature has many of the same power as a court to support a legislative inquiry. Including the power to *sub-poena* and cross-examine a witness and to hold a witness in contempt.³⁶ This include the power to investigate any matter or thing with respect to which it has power to make laws and the conduct of affairs of any person, authority, ministry or government department charged or intend to be charged, with the duty of or responsibility for executing or administering laws enacted by the National Assembly, and disbursing or administering moneys appropriated or to be appropriated by the National Assembly.³⁷ For any investigation to be effective and proffer permanent solution to the problem sought to be solved, there must be source and availability of relevant information. This is the gap to which Freedom of Information Act 2011 sought to bridge and therefore remains a veritable instrument for effective and successful oversight function of the legislature.

Limits of Legislative Oversight

Though the investigative powers of the legislature is wide and quite overwhelming it is not without limit. That power is limited to where public funds are involved and does not extend to private enterprises or where the subject of the probe is outside its legislative competence or is not with a view to exposing corruption, inefficiency and waste. Legislative oversight is restricted where the inquiries is into the private and personal life of an individual just to expose for the sake of exposure or acting outside its terms of reference as contained in the resolution published in Government Gazette or asking questions that are irrelevant to the subject matter of investigation which has been described as jurisdictional concept of pertinency or convert itself into roving commission.³⁸ Thus in *Oil Palm v. Attorney General Bendel State* where the then Bend State House of Assembly attempted to investigate the functions of a limited liability company. The court held that the question that immediately arises is; has the House of Assembly any power to make laws with respect to Oil Palm Company Ltd (the Plaintiff/Applicant). The answer is unequivocally 'No'. Also an attempt by the National Assembly under the second Republic to investigate the source of a news item published in a newspaper was met with judicial disavowal when the court held that such an attempt was a branch of the constitutionally guaranteed right of freedom of information.³⁹ Therefore in the case of *Tony Momoh v. Senate of the National Assembly and Ors*,⁴⁰ the Supreme Court held that the Senate would be acting ultra vires its powers under the constitution to summon an editor for the purpose of asking him to disclose the sources of

²⁷ M G Yakubu, 'The Legislature as the Watchdog of Public Funds' in I A Umezuruike (ed); *Towards the Stability of the 3rd Republic* (Lagos, Federal Ministry of Justice, 1993) p. 62, 66

²⁸ Op.Cit (No. 20)

²⁹ Section 231(1) 1999 Constitution as Amended

³⁰ Section 231(2) 1999 Constitution as Amended

³¹ Section 238(1) 1999 Constitution as Amended

³² Section 147(2) 1999 Constitution as Amended

³³ Section 171(4) 1999 Constitution as Amended

³⁴ See Section 8(1) of the Central Bank of Nigeria (Establishment) Act, cap. C4 laws of Federation of Nigeria 2004

³⁵ Section 88 1999 Constitution as Amended

³⁶ B A Garner, *Black's Law Dictionary* (7th ed, Minn: Klest Group, 1999)

³⁷ Op Cit (No.)

³⁸ *Oil Palm v. Attorney General Bendel State* (1985) 6 NWLR 334

³⁹ *Tony Momoh v. The Senate of the National Assembly* (1981) 1 NCLR

⁴⁰ *Ibid*

his information in respect of publications in his newspaper. In summary, though the legislative oversight is essential and wide in scope but then it is not unlimited. Consequently the oversight function of the legislative is limited and confined to the provisions of Section 88 of the 1999 Constitution of the Federal Republic of Nigeria.

5. Comments/Review

The Commission despite its lucrative objectives is limited by challenges such as non-justiciability of Chapter II of the Constitution of Federal Republic of Nigeria, 1999 (as amended) where section 16(1) and where economic objective is contained. Again, the requirement of consent and authority of the Attorney General of the Federation before any possible prosecution can be taken against someone who commits punishable offence under law. The above conditions run contrary to section 1(2) of the Act to the effect that it is a body corporate with perpetual succession, common seal and may sue and be sued in its corporate name. If the commission has this power, requiring consent of Attorney General of the Federation is a mark of its non-independence despite its corporate personality. To achieve its objectives, section 1(2) of the Act and Chapter II of the Constitution should be amended to make the commission total independent and economic objectives justiciable under our laws.

6. Conclusion

Fiscal Responsibility Commission as a body corporate with perpetual succession was enacted with good and innovative objectives by the National Assembly to provide for prudent management of our national resources. However, these objectives and functions of the Commission are limited by some provisions of the Act establishing the Commission. It is therefore imperative that National Assembly should undertake amendment to the Act to provide for its total independence in order to carry out its functions as provided by the Act. This is only way the objective of the Commission and proper oversight functions can be achieved for greater efficiency, effectiveness, productivity and sustainability development of our country.