

LEGISLATIVE POWERS AND CONSTITUENCY PROJECT IN NIGERIA'S FOURTH REPUBLIC

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Abstract

Modern democracy is all about representation and there is no arm of government where this is better symbolized than the legislature. As a matter of fact, the legislative institution is the least developed of the three arms of government in Nigeria because that institution remained abolished all through the years of authoritarian rule. More so the many years of autocratic rule in Nigeria saw resource allocation appropriated on the whims and caprices of the military leaders where the practice was to unduly favour some communities whereas others neglected because such communities had nobody speaking for the administration. However, the dawn of the Fourth Republic in 1999, brought in a legislature with representatives from the various communities in the country whose responsibility is to ensure that their communities benefit from government projects, thus constituency project as a mechanism used by legislators to ensure equity and spread of government presence across the country became an integral part of the appropriation bill. The insistence of the legislature on constituency project, its operation or implementation over the years has caused controversy and row between the legislature and the executive, sometimes resulting in delays in the passage of budgets. What are the powers of legislative powers of appropriation? Is Constituency project constitutional? In what ways has the appropriation of constituency projects been managed over the years since Nigeria transitioned to democracy in 1999? What has been the experience in other climes outside of Nigeria? And what lesson can Nigeria draw from these experiences? This paper examined the concept of constituency projects, its constitutionality, practicability and management. Data was sourced mainly from documentary method and analyzed by descriptive analysis. The paper argues that constituency project is constitutional and practiced in other climes, but that the controversy in Nigeria was due to problem of adjustment by the other arms of government that remained in place during the years of the military. The paper concludes that with the deepening of representative democracy in Nigeria, the tension which has been intense will ease with better understanding of democratic practice.

Keywords: Legislative Powers, Constituency Project, Budget, Democracy

Introduction

The legislature is without doubt the organ of government that embodies democracy more than the other two arms of government. The transition to democratic rule in 1999 marked the beginning of democratic era in Nigeria never experienced in

the history of the country due to frequent military intervention that formed the hallmark of the country (Duruji, 2010). In most of those years of military autocratic rule, the other two branches of governance, the executive and judicial largely remain untouched, whereas the legislature remained proscribed. Consequently the working of the legislature in Nigeria has not been well developed and the interaction of the legislature with the other arms which has been hitherto working without them make their existence an irritant to those manning those administrative organ of government and to some extent the populace who are not used to legislative powers and responsibilities (Tajudeen, 2013). But the fact that modern democracy is all about representation, makes the existence of the legislature inevitable because it is the arm of government that symbolized democracy. The area in which legislative power and those of the executive has produced frictions in Nigeria is the area of appropriation which requires the executive to submit a proposal to the legislature which has the power to examine the proposal and make approval for the money to be made and spent in a given financial year (Ekpu & Iweoha, 2017). Before now, the autocratic military rulers determines where and when to spend based on the whims and caprice of the military leaders in which some were unduly favoured and others neglected because such communities had nobody speaking for the in the administration. Consequently, the dawn of the Fourth Republic in 1999, ushered in a phenomenon known as constituency project in which the legislators uses to equitably spread government presence to the entire country in their exercise of the power of appropriation (Turaki, 2010). The insistence of the legislature on constituency project; its operation or implementation over the years has caused controversy and row between the legislature and the executive, sometimes resulting in delays in the passage of budgets (Tajuden, 2013). What are the powers of legislative powers of appropriation? Is Constituency project constitutional? In what ways has the appropriation of constituency projects been managed over the years since Nigeria transited to democracy in 1999? What has been the experience in other climes outside of Nigeria? And what lesson can Nigeria draw from these experiences? This paper examined the concept of constituency projects, its constitutionality, practicability and management. Data was sourced mainly from documentary method and analyzed by descriptive analysis. The output is expected to help deepen the practice of democracy in Nigeria.

To achieve this paper is structured into thirteen parts covering issues like the impact democratic instability has had on the legislature Nigeria; the constitutional powers of the legislature in Nigeria, the concept of constituency project and its relation to the roles of legislative. The paper also examined the practice of constituency projects in other climes and Nigeria, before concluding.

Review of Related Literature: Functions of the Legislature

The functions of the legislature vary from country to country (Abonyi, 2006; Okoosi-Simbine, 2010) bur in most democracies the following functions of the legislature are noticeable. Legislation: This is the primary and the most important role of the legislature (Edosa&Azelama, 1995; Abonyi, 2006). The legislature has the

responsibility for passing laws. In other words, the legislature lays down the general rules of a society and makes laws for the good governance of a state (Laski, 1992).

These laws may originate as private member's bills, or they may originate from the executive branch of government (Abonyi, 2006; Benjamin, 2010). However, these laws made by the legislature must be in the interest of the general populace with the expectation of modifying peoples' behaviour and response towards a given situation, be of good quality and self-sustaining (Awotokun, 1998).

According to Ball (1977), there are wide variations in status, powers and functions of the legislature among states. According to him, in some political systems the legislative body assumes wide powers and exercises real power with respect to various decision-making processes. In some other political systems, the legislature exists as a mere rubber stamp for decisions made elsewhere. A typical example of this system was obtainable in the defunct Soviet Union where the legislatures act as rubber stamp to legitimize the policy of government (Ornstein, 1992).

However, in Africa Scholars argue that the legislature are mere institution for legitimizing government policies, recruiting and socializing new elites, and mobilizing public support for political regimes (Thomas & Sissokho, 2005; Burnell, 2002; Burnell, 2003; Mezey, 1983; Pakenham, 1983). According to Nijzink, Mozaffar & Azevedo (2006). African legislature is plaque by colonial legacies. According to them, the appointment and dismissal powers of governing parties, executive control of state resources and role perceptions of legislators has contributed to the institutional and policy-making weakness of the legislature. The institutional weakness, limits their capacity to represent citizens, make laws and perform their oversight role.

Naturally, the bills that come to the legislature are supposed to be thoroughly examined and passed through various stages, and in the process, could be altered through addition or deletion (Abonyi, 2006). This becomes necessary through robust debate at the floor of the parliament, taking cognizance of inputs of the public. In some cases the overbearing attitude of the executive and some other factors such as concessions to the opposition and other concerned groups against some aspects of proposed laws had greatly reduced the legislative powers of the legislature to a mere deliberative assembly (Kousoulas, 1975). Heywood (2007) examined this holistically and concluded that over the years there has been a progressive weakening of legislation power in the twenty-first century

Besides passing of bills, another important function of the Legislature is oversight (Fashagba, 2009; NDI, 2000; Saliu & Muhammad, 2010). Legislative oversight is the process whereby the legislative body takes active role in the monitoring of performance of the executive arm and its agencies. This power is a derivative of the power of legislature over the purse. The responsibility is to hold the executive accountable for its actions and omissions (Fashagba, 2009; Okoosi-Simbine (2010). In the exercise of this power, the legislature scrutinizes and examines the activities in the exercise of executive power (Adebayo, 1986). Commonwealth Parliamentary Association (2002) posits that the principle behind the legislative oversight of the executive activity is to ensure that public policy is administered in

accordance with the legislative intent. In the words of NDI (2000) legislative oversight of the executive is, the obvious follow-on activity linked to lawmaking. Oversight therefore enhances the accountability, efficiency and fidelity of the government (Lafenwa&Gberevbie, 2006).

Representation is at the core of modern democracy and the legislature provides that platform. It is therefore the central role of the legislator (Awotokun, 1998). The representation function of the legislature gives the constituents voice in the government (Edosa&Azelama, 1995). Representation is vital in democracy because of the plurality of modern societies with varying interests and the fact the direct democracy may not be obtainable (Simmons, 2002). It is the bid by members of the legislator in Nigeria to fulfill this role particularly in the exercise of the power of appropriation that is imbued with controversy in the Fourth Republic with very little study to explain the phenomenon and contribute in building harmonious legislative-executive relations in Nigeria.

Theoretical Framework

This paper adopts institutional theory which explains the basic fundamental facts about the particular institution. The theory stipulates that laws governing an institution will affect the way they act in attempts to fulfill its purpose. The way operators of the institution understand them, impact greatly on the ways the institution relates to other institutions within the state. For instance, a legislator who believes the purpose of the legislature is to achieve a compromise reflecting the relative political influence of competing special interest groups may act one way, whereas another legislator who believes the purpose of the legislature is to promote the general welfare by creating or maintaining the conditions that will allow each individual in the community to flourish may act another way (Amenta& Ramsey, 2010). Another important aspect of this theory is the stipulation that those outside the institution may influence their attitude towards that institution. Those who believe that legislators by and large simply promote the agendas of special interest groups to whom they are beholden may have a cynical attitude towards the legislature. Those who believe that legislators by and large attempt to promote the common good as they see it may have a more positive attitude (Amenta & Ramsey, 2010). The institutional approach has been a fundamental theoretical framework to the study of legislature-executive relations (O'Donnell, 1994; Linz, 1994; Fish, 2001; Hammond & Butler, 2003; Valenzuela, 2004; Lijphart, 2004). This approach assumes that conflict and cooperation between the executive and the legislature are conditioned by fundamental questions of institutional design (Linz 1994). According to this theory, features of a country's institutional framework account for observed political, economic and social outcomes in the country (Hammond & Butler, 2003). Institutions do not merely shape the strategies of actors, they also affect the probability distribution of certain political outcomes, and thus, a countries political structure therefore, has great implications on policy outcomes (Lijphart, 2004; Cheibub 2007). While admitting the importance of institutional design as a predictor of legislature-executive relations, it is imperative to note that other informal or paraconstitutional

behavioural factors equally shape the nature of legislature-executive relations observable in a political system. As argued by Weaver & Rockman (1993), Steinmo & Tolbert (1998) and Hammond & Butler (2003) although institutional designs affect government capabilities, several other non-institutional factors sometimes mediate the impact of institutions.

This theory is sufficient and adequate to explain the legislative-executive relation and the frictions that is the hallmark of this relationship in Nigeria's Fourth Republic. This friction became unavoidable due to the underdevelopment of the legislature after military intervention in Nigeria's politics when the legislature was abolished and the other two arms flourished particularly the executive branch which assumed so much power. But the transition to democracy that provides for the existence of legislature makes it imperative for powers to be separated thereby producing frictions due to the fact that the executive branch is unwilling to release powers accumulated under military rule, whereas the legislature is assertive of its role in a representative democracy.

The Powers of the Legislature in Nigeria

The powers of the legislature in Nigeria were enunciated in chapter one, part two of the 1999 constitution as amended under the title. 'Powers of the Federal Republic of Nigeria' section 4 sub-section 1 of that constitution states inter-alia 'the legislative powers of the Federal Republic of Nigeria shall be vested in the National Assembly for the Federation which shall consist of a Senate and a House of Representatives (Ekpu & Iweoha, 2017; FGN, 1999). The same constitution in chapter five spelt out the powers of the National Assembly including the power of appropriation which means that before any more can be earned or spent by the government it must be approved by the National Assembly (FGN, 1999).

Legislative Constituency Projects in Nigeria: A Conceptual Background

A legislative constituency project is any project that is conceived, designed or executed within a legislative constituency with the collaboration, input or influence of the legislator(s) representing that particular constituency in the legislature (Micah, 2015). Such projects are however funded from the national or state budgets (Micah, 2015) Constituency projects were instituted in the Nigerian budgetary process under the administration of Olusegun Obasanjo. The agreement between the legislature and executive is the earmarking of a lump-sum in every budgetary year which is divided by the number of constituencies represented in the National Assembly and other formulas devised by the legislators. Each of the Assemblymen determines the project for his/her constituency for that year. Constituency projects are not peculiar to Nigeria (Turaki, 2010). In fact, they are now a growing phenomenon in some developing nations, where such projects are generally referred to as the "Constituency Development Funds" ("CDFs") (CID, n.d). Although there are different models of the CDFs some common features identifiable with most constituency projects or CDFs are as follows:

1. The constituency project sought to be carried out or implemented is usually identified by the legislator representing the host constituency, acting in the parliament, or in a CDF Committee of his constituency.
2. The project is designed, funded and executed, with some participation or collaboration of the legislator in the process.
3. The project is funded directly from the budget of the central or state government.
4. The project is usually identified with the legislator as his/her constituency project.

Legislative constituency projects represent an obvious departure from the traditional constitutional role of the legislature under the doctrine of separation of powers, and usurpation of the role of the executive by the legislature (Ekpu & Iweoha, 2017). However, CDFs may arguably be credited with some advantages or benefits, such as;

- a. the provision of infrastructure, promptly, without prolonged bureaucratic red-tape formality;
- b. the active involvement of the constituents in the identification of developmental projects for implementation in their constituency;
- c. better articulation and utmost satisfaction of the pressing needs of the constituency; d. the creation of opportunity for elected representatives to directly participate in the alleviation of the challenges or problems faced by their constituents (“The constituency project”, 2013).

In Nigeria, the phenomenon of constituency projects took root at the dawn of the Fourth Republic, with the quest by Nigerian legislators for more equitable distribution of resources to their constituencies as “dividends of democracy” (Udefuna, Jumare, & Adebayo, 2013). Largely, the operation of constituency projects in Nigeria appears to be shrouded in bureaucratic secrecy (“Court orders N’ Assembly to disclose allowance”, 2015). With the exception of Lagos State, there appears to be no clear-cut legal framework for such projects, at the national or state levels of government (Udefuna, Jumare & Adebayo, 2013). What is clear however is that constituency projects are always included in the budgets of the Federal and State governments (Anyanele, 2009). So far, it has been estimated that a total of N900 billion has been appropriated for legislators’ constituency projects, at the National Assembly, from 2004 to 2013 (“N900 billion on constituency project”, 2015).

The concept of constituency projects has, from its inception in Nigeria, been controversial (Olaoye, 2014). Several disputes have occurred between the executive and the legislative arms of government on the issue of inclusion of such projects in the budgets (Udefuna, Jumare, & Adebayo, 2013). Indeed on some occasions, budgets were delayed and when the appropriation bills were eventually passed into law there were increased differences between the estimates submitted by the executive and the amount eventually approved by the legislature as the budget (Olaoye, 2014). The increase in such budgetary estimates was in several instances due to the

accommodation or the inclusion of constituency projects (Olaoye, 2014).

The Concept of Constituency Projects

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1. The constituency project sought to be carried out or implemented is usually identified by the legislator representing the host constituency, acting in the parliament, or in a CDF Committee of his constituency (Lasun, 2015).
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Before an examination of the constitutional implication of constituency projects, it is proper to situate the quest for such projects, in its proper historical context. At the advent of the Fourth Republic, Nigerians experienced full-fledged democracy for the first time since the military incursion into governance on the 31st December 1983, when the Second Republic was terminated in a coup d’etat. The post-independence, First republic was short lived, as the military seized power in Nigeria’s first coup d’etat in 1966. That incident was followed by turbulence marked by a counter coup that led to a civil war which ended in 1970. At the end of the war, the military consolidated its power. It however ceded power to politicians in the

Second Republic from 1979 to 1983. At the close of 1983, the military came back, and did not finally leave until 1999, though, in between, an attempt made to return power to the politicians in an aborted Third Republic, ended with inconclusive presidential elections in 1993.

Altogether, the military held power in Nigeria, albeit, under different juntas, for the periods of 1966-1979 and 1983-1999. The hallmarks of military regimes in Nigeria were their dictatorial tendencies, which could be attributed to the traditional hierarchical or regimented nature of the military institution itself (Ojo, 1997). Primarily, the exercise of the executive and legislative powers of the Federation and the States were practically fused in the same military rulers (Nwabueze, 1974). Thus effectively there was little or no separation of governmental powers under the military regimes in Nigeria. However, even at the height of their power, none of the military regimes in Nigeria totally emasculated or abrogated the judicial arm of government, although there were several instances of decrees and edicts made with retrospective effect and ouster clauses (Nwabueze, 1974).

In the final analysis, the legislature came into being with the 1999 Constitution, as a distinct organ of government after a long while of usurpation of its role by the military. In the circumstances, the legislators appeared to have been tempted to seek more relevance among their constituents who had been used to the “immediate effect” nature of military governance. Also, the military regimes’ unitary approach to governance had engendered some lopsidedness in the allocation of resources and infrastructures, which partially resulted in intervention through the constituency projects.

The legislature at the Federal level and in some States of the Federation developed the practice of inclusion of funds for constituency projects in the budgets-albeit with no enabling constitutional or legal framework, in almost all the cases (Ekpu& Iweoha,2017).

Constituency Projects and Constitutional Separation of Power

Nigeria runs a bi-cameral federal parliament, known as the National Assembly. The upper House, the Senate is composed of 109 senators, with each State having three members on the basis of equality of the States. However, the Federal Capital Territory, Abuja is represented by one senator (FGN, 1999). The other House of the National Assembly, the House of Representatives comprises 360 members. Allocation of seats in the House of Representatives is on the basis of population. The legislature in the States is unicameral, and the membership of each State’s House of Assembly depends on the number of constituencies prescribed by the Constitution for the State. The executive power of the Federation is vested in the President (FGN, 1999). He may, however, delegate his powers to the Vice-President, ministers or any other public officials. Specifically, section 5 of the Constitution states that subject to the provisions of this Constitution, the executive powers of the Federation;

- (a) shall be vested in the President and may, subject as aforesaid and to the provisions of any law made by the National Assembly, be exercised by him

directly or through the Vice-president and Ministers of the Government of the Federation or officers in the public service of the Federation.

- (b) shall extend to the execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time being, power to make laws (FGN,1999).

Likewise, section 4 of the Constitution vests the legislative power of the Federation in legislature as follows:

- (1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives
- (2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part 1 of the Second Schedule to this Constitution.
- (3) The power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States. The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State.
- (4) The House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any other part of thereof with respect to the following matter.

The exact extent and nature of the executive powers granted by the Constitution is open to several connotations. For example will the executive powers be limited to only matters authorized by law in a statute or law passed by the National Assembly or a State House of Assembly? Alternatively, would such executive powers be implied to extend to the performance of all things and acts that are clearly outside the competence and province of the legislative and the judicial branches of government? Learned author, Nwabueze, has identified three theories on the powers of the executive in a presidential system (Nwabueze, 1974). These are:

- (i.) The residual power theory, which postulates that the executive is vested with all the powers that do not fall within the purview of the legislative or judicial branches of government. Such executive power extends to the initiation and execution of governmental policies even where there are not yet specific laws thereon in operation.
- (ii.) The inherent power theory: this is a theory that connotes the extension of the executive powers to any function which is “inherently executive”. It ascribes to the executive all the powers involved in the execution process, even where there is no extant legislation on the matter in issue.

- (iii.) The specific grant theory: this theory postulates that the executive can exercise and administer only the precise powers granted it by the Constitution, other statutes and the international laws.

Each of the above stated theories on the nature of the executive powers has its own advantages and drawbacks. Whichever way one looks at it, section 5 of the 1999 Constitution envisages that the execution of all projects relating to infrastructural development in Nigeria, including those undertaken as constituency projects should be within the province or competence of the executive rather than the legislature, in the best tradition of constitutional federalism (Nwabueze, 1974). The above conclusion is accommodated under the doctrine of separation of powers of government as enshrined in sections 4, 5 and 6 of the Constitution. The main role and function of the legislature is law making (FGN, 1999). However the Constitution ascribes other roles to the legislature, pursuant to the principle of checks and balances. Some of the provisions on such checks and balances under the 1999 Constitution are as follows:

1. The Acts and Laws passed by the legislature require the assent of the President or the Governor respectively. The President or the Governor may however withhold his assent, thereby making resort to his veto power against the passage of any bill into law.
2. The National Assembly and the State Houses of Assembly are given an oversight function to investigate the executive arm of government. This oversight function relates to powers to conduct investigation.
3. The power of the legislature to consider and pass as law the Appropriation Bill based on the estimates made by the executive.

None of the areas where the Constitution allows the sharing of power contemplates the direct participation of the legislature in any form in the actual planning, designing and execution of infrastructural projects. Now does the Constitution grant indirect power to the legislature to influence or participate in project execution? An answer to this will be attempted by considering only the constitutional provisions that assign roles to the legislature in the process of passage of budget and control of public funds and the oversight powers.

Legislative Control Over the Budget

A major component of the oversight function of the legislature in Nigeria is the power of the legislature to consider and pass the Appropriation Bill into law (Hornby, n.d). Indeed no money can be withdrawn or spent from the Consolidation Revenue Fund or any other public funds, except with the authorization of the National Assembly, through an Appropriation Act or some other Act of the National Assembly (FGN, 1999). The provisions of section 81 of the Constitution offer a glimpse into the frontiers of the legislative control over expenditure in the consolidated funds, as follows:

1. The President shall cause to be prepared and laid before each House of the

National Assembly at any time in each financial year estimates of the revenues and expenditure of the Federation for the next following financial year.

2. The heads of expenditure contained in the estimates (other than expenditure charged upon the Consolidated Revenue Fund of the Federation by this Constitution) shall be included in a bill to be known as an Appropriation Bill, providing for the issue from the Consolidated Revenue Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein.

It is submitted that the provisions of section 81 of the Constitution cannot be stretched under any guise to accommodate, validate or authorize the direct or indirect participation or involvement of legislators in the designing, planning or execution of any infrastructural projects. The wording of the constitutional provisions is clear, and without any ambiguity. Therefore the ordinary meaning of the operative words therein should apply.

The role of the legislature is constitutionally limited to the authorization of any spending by the executive from the Consolidated or any other public funds. In that regard, it will appear to be contrary to the constitutional provisions should the National Assembly or the State House of Assembly impose its constituency projects under any guise in the Appropriation Bill. It is apparent that the powers donated by the Constitution to the legislature on passage of the Appropriation Bill or the budget relate to the granting of assent to the proposals or estimates made by the executive, fully or partially. The legislature may only accede to, or decline the authorization of any proposed withdrawal from the Consolidated Funds if such proposals do not meet the primary criterion for the exercise of the legislative powers conferred on the National Assembly, which is “to make laws for the peace, order, and good government of Nigeria” (FGN, 1999). Therefore the legislature appears to have no constitutional power to include in the budget the funding of any project that was not made part of the estimates of the executive in the Appropriation Bill (Micah, 2015). Furthermore, it would be unconstitutional by any canon of interpretation to read into the provisions of section 81(3) of the Constitution the inclusion of funds for constituency projects as part of the “amount standing to the credit of the National Assembly ...in the Consolidated Revenue Fund”, so as to pay such money or funds directly to the National Assembly. The provisions of section 81 (3) of the Constitution will more appropriately refer to the sum constitutionally appropriated for the day-to-day running or operation of the National Assembly. The conclusion that will inevitably be drawn is that constituency projects are not within the contemplation of the provisions of section 80 or 81 of the Constitution.

Constituency Projects and Oversight Powers of the Legislature

The Constitution vests powers of oversight or supervision of certain executive matters in the legislature. Could the validity or constitutionality of the legislative constituency projects in Nigeria be anchored on the constitutional

provisions on legislative oversight functions? The appropriate provisions are contained in section 88 of the Constitution. The said provisions grant powers to the National Assembly for the purpose of conducting investigation into certain matters relating to governance. Such investigation can validly be instituted in respect of:

1. any issue or matter within the legislative competence of the National Assembly;
2. the conduct of any person, or governmental department or authority either vested with some duty of the execution or administration of any law made by the National Assembly or has the responsibility to disburse or administer some funds appropriated under the hands of the National Assembly.

The investigative power of the National Assembly under section 88 is however only exercisable for two broad purposes:

1. to enable the National Assembly to make new laws, or correct defects or flaws in any law that is already in existence, all within its legislative competence or powers, and
2. for the purpose of exposure of corruption, inefficiency, ineptitude or waste in governance or administration.

The power to investigate, pursuant to section 88 of the Constitution, cannot be interpreted in any case, to authorize any legislative incursion into the realm of matters within the competence of the executive. The investigative powers will not authorize the participation of legislators in the design, conceptualization, and execution of constituency projects. Rather the provisions of section 88 have vested supervisory or oversight functions in the legislators on the prescribed issues.

The phenomenon of constituency projects touches at the root of the two major roles assigned to the legislature (FGN, 1999). Constituency projects erode the principle of separation of powers when, by such projects, the legislature seeks to usurp the role of the executive (). Secondly, the involvement of legislature in constituency projects derogates from the exercise of qualitative legislative supervisory or oversight function over executive actions, as contemplated by the Constitution (FGN, 1999). There is likely to be conflict of interest when legislators, who are interested in the execution of particular legislative constituency projects, are called upon to perform their constitutional supervisory role in respect of such projects().

Constituency Projects and the Appropriation Powers of the Legislature

Constitutionally, the federating units of the Nigerian Federation are the 36 States and the Federal Capital Territory. For the purpose of allocation of resources, the Constitution also recognizes the system of Local Governments in Nigeria. In this aspect, the Constitution empowers the National Assembly and the States' Houses of Assembly to make provisions for the statutory allocation of funds to the local governments (Lasun, 2015). The Constitution does not recognize legislative

constituencies as federating units or recipient units in the allocation of resources and infrastructures. The constituencies are rather recognized by the Constitution as units of legislative representation. Any allocation of financial resources to electoral constituencies, in any form of constituency projects, attacks the roots of the doctrine of constitutional federalism, as enshrined in the Constitution (Micah, 2015).

The challenge in this regard could also be examined from another perspective. Since most of these projects undertaken as constituency projects are rather appropriately handled or maintained by the States or the local governments, would such trend not amount to duplication of efforts?

Constituency Projects and the Legislative Role of Representation

The global trend favours zero tolerance for corruption. In general, the inward flow of direct foreign investment is always associated with accountability and transparency and respect for the rule of law. The Nigerian Constitution contains several provisions on accountability. Thus, as an example, the office of the Auditor General is mandated to cause audit to be regularly made into all the spending on any appropriated money, and give report of such audit to the National Assembly (“N900 billion on constituency project”, 2013). The phenomenon of constituency project will most likely raise the issue of conflict of interest on the part of the National Assembly when considering the budgetary allocations to constituency projects in which members are interested.

In order to block leakages and ensure that the Nigerian public obtains value for amount expended from the public purse, a regime of legal and institutional framework for due process has been established in Nigeria. In illustration, the Procurement Act 2007 regulates the mode of procurement of goods and services in any government or governmental institutions, thus promoting public accountability, probity, transparency and openness in such transactions. The process of bidding and the choice of the suppliers of any service or goods are required under the provisions of the Act to be made open to all persons or business entities that are qualified for the process. There is no room for the exercise of power to award contracts based on an interest other than that of securing the maximal value from the public money spent. In fact, under section 18 of the Act, each procuring entity of the government is saddled with the responsibility of identifying the goods, works or services that will be required in public interest. Thus, assuming that the role of the legislators was only limited, as generally admitted, to the identification of the projects for execution in their constituencies, would such practice not amount to usurpation of the role of the executing agencies - the procuring entities - under the aforesaid provisions of the Procurement Act? Departures from the provisions of the Act are criminalized under the Act. The intendment of the Procurement Act and the reported vested interest of legislators in nominating constituency projects appear to be at cross-purposes. Does it mean that the interest of legislators should override the public?

Constituency Projects and the Electoral System

The existence of constituency projects under any guise will now be examined vis-à-vis the constitutional and statutory framework for free election in Nigeria. The bedrock of any meaningful democracy is the regular and periodic elections conducted under the atmosphere of each participant being granted equal opportunities. Constituency projects are always identifiable with serving legislators. This phenomenon detracts from the principle of providing a level playing ground for all nominees and candidates standing for legislative elections, as enshrined in the Electoral Act (Micah, 2015). The equal opportunity is not only required in the inter-party contests but it is also a requirement of the internal democracy tenets obtainable in the pre-election selection of candidates to stand for elections.

The Practice of Constituency projects in other Democracies

Legislative constituency projects as a political phenomenon are not novel. Variants of such projects have been known to be in existence in several countries in Africa, Asia, and South America. Indeed similar projects existed in developed polities such as the USA, where it is known as “the Pork Barrel Projects” or “Earmarks” (Kesfer&Kemani, n.d). Thus under various names constituency projects featured in countries like Kenya, Uganda, Tanzania, India, the Philippines, Jamaica, Honduras, etc (Machiko, 2015).

There are legal and institutional structures and framework in some of the countries operating CDFs. For example in Kenya, constituency projects are regulated under the Constituencies Development Fund Act, 2013 (Micah, 2015). The main attributes of the Act is the establishment of the framework for the identification, design, development and execution of constituency projects. The Fund is managed by a Constituencies Development Fund Board. It is a matter of note that the Board is composed mostly of officials from the executive branch of the government, and does not include any member of the parliament. However, the actual allocation of funds to each constituency is required to be with the concurrence of the relevant Parliamentary Committee. In each of the constituencies, a Constituency Development Fund Committee is constituted to nominate projects for the eventual approval of the relevant Parliamentary Committee. Such Committee includes the legislators from the constituencies in issue (as ex -officio members) as well as some other stakeholders (Machiko, 2015).

Two divergent trends can be deciphered in respect of judicial attitude to the CDFs in countries where they are operated. There is a judicial school of thought that views CDF as an aberration, which runs contrary to the spirit of the universally recognized constitutional principles of separation of powers between the executive and the legislative branches of government. For instance in The Institute of Social Accountability versus The National Assembly, the constitutionality of the Kenya’s 2013 CDF Act was successfully challenged in the High Court of Kenya. Despite the fact that CDF had been in existence in one form or the other for a considerable length of time in that country, the court decided that the Fund was not in conformity with the Kenyan Constitution. Some of the grounds for the decision were that the Fund went

against the principles of separation of powers, and that the Act sought to render the constituencies, rather than the counties, units for the allocation of resources. The Court however suspended the effect of its decision for one year. It remains to be seen if this development will bring to the eventual close of the operation of such funds or in the alternative whether the decision will be made a subject of an appeal to higher courts in the country.

The contrary second judicial school of thought holds that CDFs are not unconstitutional, and such Funds are within the legislative competence. The Philippines' Supreme Court held in *Philippines Constitutional Association versus Enriquez* that the appropriation under the General Appropriation Bill, 1994, for the Countrywide Development Funds, (the precursor to the current Priority Development Assistance Fund) was a valid and proper exercise by the legislature of her constitutional power to legislate on budget (Micah, 2015). In reaching the decision the Court took into consideration the fact that the Constitution is a framework of a workable government and its interpretation must take into account the complexities, realities and politics attendant to the operation of the political branches of government (Machiko, 2015). It would appear that the view in *The Institute of Social Accountability's* case is preferable to that in *Enriquez*, especially in respect of any developing nation, such as Nigeria, where democracy is just taking deep roots. The approach of strict adherence to strict constitutionalism and the universally recognized division of labour among the branches of government will go a long way to avert or curb corruption and abuse of office.

The Imperative of Constituency Projects

As the concept of a constituency projects in Nigeria lacks the backing of the Constitution, and is generally bereft of any legal or institutional framework for its existence, the question that begs for an answer is: should constituency projects continue or stop considering the extant conditions that had brought about such projects? Would their continued existence not have a non-salutary effect on the body politic, in the long run? Or could their existence be justified in the light of the present or near-future political realities?

It is conceded that the *raison d'être* for constituency project as earlier identified as the quest for the equitable delivery of the dividends of democracy reflects the concern for the public good. Udefuna *et al* even argued that such legislative constituency projects are "a move towards the devolution of resources and development bring about even development and encourage popular participation in politics" (Udefuna, Jumare & Adebayo, 2013). This may well be so in theory. However, in reality, it is left to be seen any meaningful contribution to development that might be made to the citizens when the only visible legislative constituency projects appear to be of pedestrian nature, such as installation of boreholes, distribution of motorcycles to constituents, refurbishing of some existing classroom infrastructures, etc. (Udefuna, Jumare & Adebayo, 2013). Most of such projects have no bearing to the genuine effort towards industrialization or empowerment of the masses with a view towards the institutionalization of meaningful and sustainable

development.

Moreover, the concept of legislative projects itself contains the seed of the self-interest or political self-preservation of the political elite, occupying legislative positions. Some of the legislators tend to directly or indirectly ascribe the “ownership” of such projects to themselves, for electoral advantages, especially during an electioneering period. This obviously confers some electoral mileage on such legislators, over their political opponents, who may not have had any opportunity of being credited with any constituency project (“The National Assembly has failed”, 2013).

Furthermore, the issues with accountability may arise in manners earlier identified. Such challenges on accountability may not only detract from the democratic credentials or pedigree of Nigeria, but even go to the issue of sustenance of constitutionalism. The Constitution frowns at any law that challenges its supremacy. Indeed such law, act or policy that derogates from the Constitution is deemed null and void to the extent of its discrepancy or inconsistency with the Constitution.

Constituency projects in Nigeria violate the spirit of section 1 of the Constitution, and are therefore unconstitutional. As earlier identified, the path of growth of any democracy can only be found in the strict adherence to the Constitution. This can only be the case if each of the branches or organs of government performs only the roles assigned to it, within the limits of constitutional checks and balances. Outside the provisions for emergency in the Constitution in the strict sense, the only condition for an act of departure from the Constitution is the doctrine of necessity. According to the learned author, Nwabueze, the doctrine of necessity can only be justifiable in a case of national exigency, when there is the need to preserve the society (Nwabueze, 1974). It cannot be said that constituency projects fall under the doctrine of necessity, to justify the existence thereof, and necessitate a departure from the Constitution.

Conclusion

Constituency projects or what is referred to as the zonal intervention project became necessary in Nigeria’s fourth republic dispensation because of the need to deliver dividends of democracy equitably to the nooks and crannies of the country. But it is a fact that whatever is practiced in Nigeria has always ended up in abuse but the concept is constitutional because it stems from the representative role of the legislators and their legislative powers to make laws including appropriation laws that covers the budget. To eliminate the friction that often arises between the executive and legislature particularly at the Federal level, the paper recommend that the process of budgeting in the country must be overhaul to allow for input by the legislators. As such the executive in carrying out the function of preparing the budget must carry the legislators along. The legislator in Nigeria should establish a fully functional budget office in the mold of the budget and planning department of the executive that will complement the legislators on cost and feasibilities of budget matters just like it is done in other advance countries. This will bring about harmony and ensure that when

these constituency projects are passed, it is executed by the appropriate ministry, department or agency of government.

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