

# Postscript: Neglect, Abuse and Misuse of Legislative Oversight Mechanisms

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## Introduction

The difference between a democratic and an authoritarian regime is the adherence to the principles associated with constitutionalism. This includes horizontal accountability, rule of law, civil liberties, public participation in the political process, deliberation and political equality (Coppedge et al. 2017; Diamond and Morlino 2004). Inherent in these principles is the centrality of the people as the object of the state. Thus, the core responsibility of the democratic state includes the promotion of the interest of the public through an inclusive government characterised by public participation. These features are lacking in an authoritarian society.

The simplest understanding of the definition of democracy is the rule by the people (Coppedge et al. 2017). This presupposes that in every democratic government, sovereignty belongs to the people who, in turn, advantage on the dividends of their collective will. On other words, democratic principle incorporates some degree of self-government. Diamond and Morlino (2004) identify the core ideals that a state should attain for a minimal adherence to democratic principles. These are the ‘political and civil freedom, popular sovereignty (control over public policies and the officials who make them), and political equality (in these rights and powers)—as well as broader standards of good governance (such as transparency, legality, and responsible rule’ (Diamond and Morlino 2004, p.21).

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These ideals are measurable considering the procedures, contents and the results of the political process. Procedure entails the ‘controlled process carried out according to precise, recurring methods and timing’ while the content reflects the structural characteristics of the political process (Diamond and Morlino 2004, p. 21). The result is the degree of the satisfaction of the public with service delivery. Thus, in a democratic state, the people’s sovereign power create a responsible government that is responsive to their needs.

Such a regime will satisfy citizen expectations regarding governance (quality of results); it will allow citizens, associations, and communities to enjoy extensive liberty and political equality (quality of content); and it will provide a context in which the whole citizenry can judge the government’s performance through mechanisms such as elections, while governmental institutions and officials hold one another legally and constitutionally accountable as well (procedural quality) (Diamond and Morlino 2004, p.22).

To exercise this sovereign power, the public delegate their elected representatives with the authority to act in their behalf, bearing in mind respect for these principles. This is a problem in Africa. The summary of the submissions of the authors in this book is that, rather than act as redeemers, African representatives are more of political predators.

## Misuse of Legislative Oversight Mechanisms

The cardinal role of the legislature, as a representative body, is to hold the executive accountable for the exercise of power (Barkan 2009). Representing the interest of the public connotes that the legislators must ensure that the power delegated to the state for service delivery conforms to satisfying the expectations of the citizens. Thus, the legislatures ‘are mechanisms for achieving both vertical and horizontal accountability of the rulers to the ruled’ (Barkan 2009, p.1). This accountability responsibility is exercisable through regular oversight of executive activities. In the African state, this is very crucial bearing in mind the immediate past experiences with the colonial and military authoritarian regimes

As an emerging state institution, legislatures also promote “horizontal” accountability across and between other state and quasi-state institutions by scrutinizing the operations of the executive, including the civil service, as well as the operations of the judiciary, the military, independent agencies, and state-owned enterprises (Barkan 2009, p.1).

Nevertheless, the political environment, mostly defined by the attitude of the citizens and the political class, has not been able to provide the avenue for the development of the political culture amenable to these ideals. Evidently, modern legislature is a distinct representative institution that is central to the realisation of the democratic ideals. As the repository of the collective power of the people, it occupies a high status of primacy among the other three organs of the government (Alabi 2010). Unfortunately, the citizens and the political practitioners in Africa are yet to appreciate the enormous importance of the legislature as the beacon of voice of the people.

In emerging and nascent democracies like Nigeria and South Africa, Alabi (2010) contends that the citizens and the practitioners are yet to accord the legislative institution the required prominence as an effective check on the other organs of government. He attributes this to the emerging nature of the legislature as a new institution of government, its weakness as an independent organ and the lack of experience of the practitioners (Alabi 2010). Consequently, the operation of the legislature becomes ineffective and thus susceptible to manipulation and misuse of power. This deficiency characterised the practice of legislative process in Nigeria and South Africa, as authors have noted in their contributions in this volume.

## **Neglect, Abuse and Misuse of Legislative Oversight Mechanisms in Nigeria**

The advent of civil rule in Nigeria on May 29, 1999, heralded a new era of democratic dispensation in government administration. The post-independent Nigeria had experienced a series of hiccups in advancing democratic rule since the British colonial power left on October 1, 1960. The immediate post-independent Parliamentary system broke down when the military struck in January 1966, following the spate of arsons and killings that characterised the political system (Diamond 1988; Ejimofor 1987). Intra party crisis coupled with the intermittent inter-party hostilities, at the Regional and National Parliament, made the first experience in constitutional democracy a bad case (Diamond 1988; Ejimofor 1987).

Parliamentary process at the regional and national levels were characterised by misuse and abuse of the legislative oversight powers. In the Western Region, the intra-party crisis within the ruling party, the Action Group (AG), dominated the regional parliamentary debates and activities. Thus, parliamentary oversight mechanism of the removal of the leadership became an abused instrument to settle political scores among the political leaders (Ejiofor 2010; Ojo 2012; Falola 1998, 2004; Anifowose and Odukoya 2012). The Governor of the Region, the late Oba Adesoji Aderemi had pronounced the removal of the Premier, Chief S. L. Akintola, without a recourse the parliamentary process (Okere 1987).

Section 33(10a) of the Constitution of the Western Region empowered the Governor to remove the Premier when ‘it appears to him that the Premier no longer commands the support of a majority of the members of the House of Assembly’ (The Constitution of the Western Region, Nigeria, 1960). Nevertheless, the exercise of this power, according to the Supreme Court, had to follow the normal parliamentary procedure (Okere 1987). In this case, the Governor pronounced the removal of the Premier without parliamentary meeting or resolution. The Chief Justice of the Federation, Justice Adetokunbo Ademola had ruled that the action of the Governor was in breach of the parliamentary procedure.

The governor cannot validly exercise power to remove the premier from office under section 33 sub-section 10 of the Constitution of Western Nigeria except in consequence of proceedings on the floor of the House whether in the shape of a vote of no confidence or a

defeat on a major issue, or of a series of defeats on measures of some importance showing that the premier no longer commands the House of Assembly (cf. Okere 1987, p.793).

Nevertheless, The Privy Council upturned this interpretation of the Section 33(10a) of the Western Nigeria Constitution, thereby validating the removal of the Premier by the Governor (The Privy Council 1963). In view of the political situation in the Country at the time, the Western Region Parliament had to amend the section of the constitution, retroactively, in a bid to revalidate the judgment of the Supreme Court (Fagbadebo 2016). The political fracas that followed this stalemate brought the Nigeria's First Republic to its knees.

This precedent became the culture of parliamentary politics in Nigeria. In the Second Republic, 1979–1983, the Nigerian presidential system, which exhibited greater autonomy and independence to the legislature, became a victim of the abuse and misuse of the oversight mechanisms. In Kaduna State, for instance, the lawmakers exploited the divided-government situation to refuse the approval of the nominees of the governor, whose political party was in the minority in the State legislature (Nwabueze 1985; Akinsanya 2002). Without any significant breach of the Constitution, the lawmakers removed the Governor, using the power of the majority.

Rather than exercise the oversight powers to ensure accountability, the lawmakers in the Second Republic exploited their power to perpetrate what Richard Joseph describes as prebendal politics (Joseph 1991). The legislature neglected its constitutional role as an instrument of accountability (Awotokun 1998). Corruption and mismanagement of the resources of the state compounded governance crisis that crept into the country in spite of the abundant wealth of the nation. The political violence that followed the inability of the legislature to control the executive brought in the military in December 1983 (Sklar et al. 2006; Nwabueze 1985; Falola and Ihonvbere 1985).

This abuse and misuse of the legislative oversight mechanisms continued in the Fourth Republic. Since May 29, 1999, when Nigeria returned to civil rule after 16 years of military rule, the political process has been characterised by the failure of the legislature to uphold accountability (Fashagba 2009; Banjo 2013; Fagbadebo 2016). The exercise of legislative oversight power, especially at the state level, was in abeyance of the intendment of the drafters of the Constitution (Fagbadebo 2016). The legislators misused their oversight power of impeachment; they exploited it as an instrument of political vendetta. Judicial intervention halted the desecration of the legislative institution by the lawmakers at the state level.<sup>1</sup>

Aside from this, while some legislatures misused and abused their power, others neglected to exert their power to make their governors accountable. For instance, a former State Governor who spent 8 years in office escaped the scrutiny of the legislature only for a court in London to detect that he was involved in laundering the resources of the state in oversea banks (Crawford 2012). While

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<sup>1</sup> *Inakju& 17 Ors v. Adeleke & 3 Ors*, P.51); *Hon. Michael Dapialong and others v. Chief (Dr.) Joshua Chibi Dariye and another*, [2007] 8 NWLR, pp.424–426.

the Nigerian judiciary absolved him of all charges of corruption, the London Court found him guilty and sentenced him to 13 years imprisonment in the United Kingdom (Gesinde et al. 2012; Glanfield 2014).

## **And the Judiciary Became and Effective Accountability Mechanism in South Africa**

In South Africa, the party and the electoral systems, as noted by contributors in five chapters in this volume, have remained the greatest obstacles to the effective use of the legislative oversight mechanisms to make the executive accountable. In view of this docile accountability responsibility of the legislature, the judiciary, notably, the Constitutional Court, assisted by the activism of the Office of the Public Protector, have stepped in as an effective accountability institution. In a series of landmark judgments with respect to accountability of the government, reviewed by Mcineka and Ntlama, in Chap. 3 of this volume, the judiciary had indicted the legislature on its failure to hold the executive accountable.<sup>2</sup>

A former Finance Minister, Malusi Gigaba, had admitted that state-owned companies were fraught with ‘governance failures, corruption, operational inefficiency’ that have prompted government financial bailouts to keep them running (cf. Capazoro 2017). Yet, there were no tangible legislative actions to hold the culprits accountable for their misdeeds. The central vision of the South African constitutional democracy ‘is the improvement of the quality of life of all citizens and the optimisation of the potential of each through good governance’.<sup>3</sup> The South African parliament neglected to explore its oversight mechanisms to remove former president, Jacob Zuma, in spite of the evidence of the malfeasances he allegedly committed while in office. The South African president, by virtue of his constitutional responsibilities, plays pivotal as ‘an indispensable actor in the proper governance’.<sup>4</sup> Nevertheless, the exercise of his power was sandwiched by a series of accountability measures including legislative scrutiny, judicial review and oversight activities of the Institutions Supporting Constitutional Democracy (ISSCD).

The perspectives of the contributors to this volume have shown the gap in the operation of the legislative institution in Africa. Using Nigeria and South Africa, two largest economies in the Continent, provided a window of a comparative analysis of the performance of the democratic process. A peep into the governance crisis in the two countries is an indication of a paradox of poverty in the midst of abundance. The bottom line is that the two countries are characterised by impotent legislative institutions that have failed to harness their constitutional powers in the direction of promoting the public good.

<sup>2</sup>Economic Freedom Fighters and Others v Speaker of the National Assembly and Another [2017] ZACC 47.

<sup>3</sup>*United Democratic Movement v Speaker of the National Assembly and Others* [2017] ZACC 21, paragraph 1.

<sup>4</sup>*ibid.*, para 6.

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