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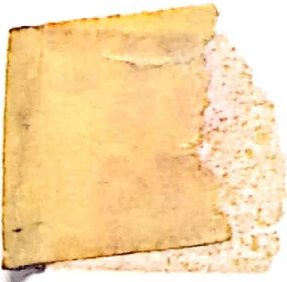
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COMBATING CORRUPTION IN NIGERIA: THE ROLE OF THE LEGISLATURE EXAMINED

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&
M. A. MUSTAPHA (MRS)

1.0 INTRODUCTION

There is no doubt that crime of corruption in government threatens the moral integrity of a nation and hampered development, this thus make the topic of discourse very interesting especially looking at the global effect of corruption on democracy and development generally¹. It is apposite to state that some statutes² define or listed acts that constitute corruption in Nigeria. For instance Economic and Financial Crime Commission Act (EFCC)³ define corruption to, includes "*bribery, and other related offences*". In the same vein B.A Garner⁴ defines corruption thus:



The act of doing something with an intent to give some advantage inconsistent with official duty and the rights of other; a judiciary's or official's use of a personally or for someone else contrary to the rights of others.

Corruption⁵ in Nigeria has become a malignant disease that has eaten deep down all the fabrics of the Nigerian government; this is evidently supported by the observation of Ambassador William Twaddle⁶, that: It

1 Lecturers, Department of Public Law, Faculty of Law, University of Ilorin Nigeria For a long time now the problem of corruption has elicited deep concerns in Nigeria according to vision 2010 Committee Report, Corruption appear to have become a way of life of doing things, though it is resented by a significant number of people See M. I. Obadan, Economic Management Administration and Corruption. Any correlation? Paper presented at a National Symposium on corruption and National Rebirth, organised by ICPC Abuja Jan 22-23, 2001
2 Section 2 & 8-26 Corrupt Practices and Other Related Offences Act Cap C31 Vol 4 and Sections 98-111 of the Criminal Code Act Cap C38 Vol 4 Laws of Federal Republic of Nigeria, section 15(5), 107(c), (d) & (h) and 172 of the Nigeria Constitution 1999

3 Section 2 of the Economic and Financial Crime Commission Act

4 B. A. Garner, Black's Law Dictionary (8th edition, Thomson West, 1999) page 371

5 Just within one year in office as the chairperson of EFCC, Mrs Farida Waziri had secured the convictions of 65 corrupt officers and recoveries in excess of N50 billion. This evidenced the level of corruption in Nigeria. See The Nation of Monday June 8, 2009

6 W. Twaddle, Crossroad; (vol 4 No 3 Publication of United States Information Service, 1998) p 1.

is no exaggeration to say that if a calculating enemy of Nigeria had set out to undermine and destroy Nigeria's reputation and Nigeria's potential to become an active respected member of the international community, that enemy could not have contrived a scheme more effective and more damaging than the campaign conducted today by Nigeria's home-grown and home-based

The perception of corruption in public is not a new idea in Nigeria, thus, the idea of preventing corruption is as old as mankind, though the method has changed and more sophisticated today. The system of government putting up policies and programme as well as legislation and adjudication to combat corruption are relatively new in the society. Nevertheless, the criminal justice system has not been able to prevent corruption⁷.

However the tendency for offenders to commit act of corruption in Nigerian democratic government since 1999 is evoking compassion, this is because a good numbers of these corrupt offenders are a product of long time Military dictatorship era⁸. Therefore those who engaged in the acts of corruption in government are the innocent victim of immoral, unjust, dictatorial practice and a product of the undemocratic, autocratic and despotic Military experience in Nigeria.

It has been observed that corruption in public office has existed in Nigeria since the establishment of modern structures of public administration in the country by the British Colonial Administration⁹. However, its increase has coincided with the expansion of administrative structures and fully developed in the public sector. An observer of the scenario described the situation thus:

⁷LAB, Stevens. *Crime Prevention; Approaches, Practices and Evaluation*, (5th edition, Cincinnati: Anderson Publishing Company, 2004) 22.

⁸ Military ruled the country Nigeria for almost 48 years (1960-1966 Agui Irosi, 1966-1975 General Yakubu Gowon, 1975-1976 General Murtala Rahmat Muhammed, 1976-1979 General Olusegun A. Obasanjo, 1984-1985, General Muhammed Buhari, 1985-1993, General Ibrahim B. Babangida 1993-1997 General Sanni Abacha, 1997-1999 General Abdulsalam Abubakar). Since independent these are era Nigeria witnessed government, which were mostly characterised with unaccountable and highly corrupt system in governance.

⁹ C. C. Sunday, *Corruption in Nigeria* (Afro-orbis & Snaap Press Ltd, 2004) page 19

Since the nationalist politicians had gained control of regional state apparatus in 1950s the exercise of state power was closely linked to the economic advancement of individuals, community, sectarian and ethnic interest¹⁰.

Corruption is a problem that has deeply affected the lives and stirred the resentment of honest citizens and people of Nigeria and other countries of the world.. It is also a problem that lies at the intersection of the public and private sectors¹¹, as rightly observed by Uwais CJN¹² that, Corruption is not a disease which afflicts public officers alone but society as a whole. If it is therefore to be eradicated affectively the solution to it must be pervasive to corer every segment of the society.

Corruption in Nigeria has also been characterized by lack of culture of accountability, inefficiency, weak government structures; excessive concentration of power in the executive arm of government and lack of transparency. These phenomena in governance characterize the practice of shameless act of stealing of public funds and properties, wasteful mismanagement of national resources and public assets. Successive governments from Colonial era had attempted through several policy formulations and commission of inquiries¹³ to address the menace, notwithstanding, the plaque ever continue to linger even with coming of democratic system of government in Nigeria in 1999. This aptly captured the observation of Prince Bola Ajibola¹⁴ that;

Corruption and other forms of economic crimes have since been on upsurge. The alarming dimension taken by such crimes has not gone unnoticed. In our acquisitive society, many people are rated in terms of

10 T. Forrest, *Politics and Economic Development in Nigeria* (West view Press, 1995) page 32

11 T.A Oyeyipo, *Strides in Anti-Corruption Campaign; The Nigerian Experience, In Judicial Integrity, Independent and Reforms, Essay in Honour of Hon Justice M.L. Uwais* (Snaap Press Ltd, 2006) page 3-4.

12 Attorney-General of Ondo State v. Attorney-General of the Federation (2002) FWLR (pt iii) 1972 at 2070-2071

13 Successive government had made attempt to put in place legislations to combat corruption in Nigeria i.e. General Gowon 1966, Public Officer (Investigation Assets) Decree No 5 of 1966, General Muritala Muhammed 1975 The Corrupt Practices Decree, Buhari and Idiagbon, 1984, War Against Indiscipline and Special Tribunal on Recovery of Public Property, I B. Babangida, Structural Adjustment Programme 1985, and General Sanni Abacha 1993, introduced Failed Bank Tribunal Decree.

14 B. Ajibola, Speech at National Conference on Corruption and Economic Crime, held from 13th 15th December, 1988 under the auspices of the Federal Ministry of Justice, Lagos page 5

what they own and not in terms of what they are. Social climbing based on illicit wealth is not frowned upon. Public office is regarded as a vehicle for acquiring wealth and unbridled affluence and not as a merit avenue for rendering invaluable services to the Nation for our collective good.

Thus, the focus of this paper is to examine the Legislative Assembly's¹⁵ power in the realm of constitutional jurisdiction, power of appropriation, oversight and investigative powers to investigate and expose corruption and mismanagement. To put the paper in proper perspective, a brief exposition of meaning and concept of separation of power will be examined, the constitutional provisions on the power of Legislative Assembly in Nigeria and the use of oversight functions and its powers of investigating corrupt practices, shall be looked into while suggestions shall be offered to further the effective participation of Legislative Assembly in investigating and exposing corruption in the society.

2.0 The Concept of Separation of Power

The concept of separation of power is a notable feature of the Nigerian Constitution¹⁶ like in any other constitutional democratic governance in the world¹⁷ that is, the distribution of the exercise of governmental functions among the three principal and separate institutions of the Legislature, the Executive and the Judiciary. ¹⁸The Constitution also prescribed the scope and limits for each institution and that within its

¹⁵ Legislative Assembly in this paper refers to the official bodies vested with the power to make law in Nigeria that is, the Nigeria National Assembly and the States House of Assembly

¹⁶ 1963, 1979 and 1999 Constitution of the Federal Republic of Nigeria, the doctrine was adopted by the convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments to save people from autocracy. See P. Roscoe, *Development of Constitutional Guarantees of Liberty* (The H.W. Wilson. Company, 1957) 94, T. A. Aguda, *Understanding the Nigerian Constitution of 1999* (MIJ Publisher, 200) page 9-13 and J Oloka-Onyango (ed), *Constitutionalism in Africa, Creating Opportunities, Facing Challenges* (Kampala, Fountain Publisher, 2001) page 2-3

¹⁷ United State of America, German, Ghana, South Africa, Niger, India and Pakistan etc

¹⁸ Section 4, 5 and 6 of the Nigerian Constitution 1999 this shall simply be refer to as "the Constitution"

¹⁹ Re- Olafisoye (2004) 1 SC (pt I) 27 at 54.

jurisdiction, the exercise of power are Supreme. In *Re-Olafisoye*¹⁹, the doctrine of separation of powers was reaffirmed per Tobi JSC to the extent that the doctrine rests upon necessary implication that the principle of autonomy in a federal system implies that neither the central government nor its regional ones can confer functions or impose duties, obligations, restrictions and liabilities on the functionaries of the other. The division of government powers among three institutions, the Executive, the Legislature and the Judiciary, is an established doctrine in any constitutional democratic governance as propounded by great philosophers²⁰. Separation of power is defined as;

*The division of governmental authority into three branches of government legislative, executive and judicial each with specified duties in which neither of the other branches can encroach, the constitutional doctrine of checks and balances by which the people are protected against tyranny*²¹.

The philosophy behind the doctrine is based on the danger inherent in vesting government powers on single individual or group of people, thus the significance of distributing and specifying the powers of government within the three institutions. The object of this doctrine is to prevent despotism, arbitrariness and totalitarian in governance. The philosophy equally contemplates non-interference, usurpation and or infringement of the powers of an institution by the other. The philosophy behind this principle is aptly captured in the word of Professor Ben Nwabueze²² that;

That concentration of government's powers in the hands of one individual is the very definition of dictatorship and absolute powers by its very nature arbitrary, capricious and despotic.... Limited government demands therefore that the organization of government should be based on some concepts of structure whereby; the functions of law-makings, execution and adjudication are vested in separate

²⁰ John Mostesques; *The Spirit of Law* (1948) page 18; John Locke; *Treaties on Government* (1960) p 76

²¹ B. A. Garner, (n 4) 1396-1397

²² B. O. Nwabueze, *The Presidential Constitution of Nigeria*; (London Sweet & Maxwell 1982) pages 32-33

agencies, operating with separate personnel and procedure. We are not prepared write Vile, "to accept that government can become, on the ground of efficiency' or for any reason, a single undifferentiated monolithic structure, nor can be allowed to become simply an accidental agglomeration of purely pragmatic relationship....By separating the function of execution from that of lawmaking, by insisting that every execution must in so far at any rate as it affects an individual have authority of some laws, and by prescribing a different procedure for lawmaking the arbitrariness of the executive action can be effectively checked.

Notwithstanding the separate jurisdiction emphasized in the doctrine, there is however some level of interactions among the three institutions vis-à-vis acting as necessary checks and balances to one another. While the judiciary checks the Legislature and the Executive through its power of interpretation, determination of legal disputes and the validity of their actions, the Legislatures can re-enact a law invalidated by the judiciary, they can, subject to constitutional limitation remove a judicial officer or Executive this is the spirit behind the doctrine. This position was given credence by Uwais²³ CJN thus,

In a democracy, it is not appropriate that the authority of any branch, organ or arm of Government be absolute or not liable to appeal. Therefore, the idea of judicial imperialism or supremacy is unreal. It is unreal because, the court's powers are ultimately as limited as it is that of the Legislature or the Executive of their several assignments. Undoubtedly, the permissive limitations of judicial power do exist. Judicial activism may be connected with legislative activism, legislature may modify a court decision by rewriting or re-passing a void decision or a judicial decision may later be reversed by a later judicial decision resulting from adverse public opinion.

23 The Guardian, Sunday of 15th June, 2003 page A8

3.0 The powers of the Legislature

The power of the Legislature to investigate and expose corruption in Nigeria has its foundation and legitimacy in the Constitution and it is a mechanism employ to monitor and keep a watch on the actions of the other arms of government. The exercise of power by any of the three institutions of government and its legitimacy must however, be traced to the Constitution of Nigeria. The significance of this principle can be seen from the observation of the Supreme Court in the case *Dapialong v Dariye*²⁴ to the effect that; the Constitution of any country is what is called the organic law or ground norm of the people. It contains all the laws from which the Constitutions of states derive their creation, legitimacy and very being. Thus, it is the unifying force in the nation, appropriating rights and imposing obligations on the people who are subject to its operation.

This makes legislative investigative an inevitable veritable instrument necessary for exposing, preventing and enacting legislation to address the menace in our society for the sustenance and stability of democratic rule in Nigeria.

Investigation as oversight or surveillance of the executive, the judiciary and administrative agencies is premised on the ground of exposition of corruption in government. The legislature may decide to change statutory or administrative policy because, among other things, legislators may have learnt hardships that have been imposed on the public because of corruption and mismanagement in governance. And if for no other reason, the legislature's self interest demands that it oversees administration to learn whether the executive and its agencies are complying with the legislative intent, or the constitutional objectives and principles²⁵.

In any democratic government where the rule of law is observed²⁶, no act is a crime until it is expressly prohibited and punished under the law provisions, which had been properly enacted by the Parliament. Thus the

²⁴ *Dapialong v Dariye* (2007) 8 MJSC140 at 199

²⁵ W.J. Keefe, *State Legislatures in American Politics* (Prentice Hall, 1966) pages 44-47.

²⁶ Since coming on board as the President of Nigeria President Umar Musa Yaradua 2007, he has persistently emphasis the observance of the rule of law and due process. This is highly commendable in view of the arbitrary arrest, detention and non prosecution of people alleged of corruption by some agencies.

²⁷ W. J Keefe (n 23) page 45

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parliamentary function in checking corruption, after proper investigation and identification of the possible reason(s) for the menace is to put in place the necessary legislation to combat it. Thus, it is significant that, the legislature should enact appropriate laws to establish effective mechanism of accountability by the agencies responsible for the administration of criminal justice; otherwise they may become law unto themselves²⁷.

The Legislature is placed in a critical environment. It is as it were a channel between the elected and the electorate. It feels the sentiments of the people, transform them into policies, which it passes to the executive to execute and administer. The executive on its own, with the massive machinery of governance at its disposal, competes with and supplements the role of the legislature to ascertain the wishes of the people, the electorate by suggesting what is good for the people.

The Nigerian Constitution provides that 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 List²⁸.

Significantly thus, Legislative Assembly's activities are the making of new law and the alteration or repeal of existing laws. Legislation is the formulation of law by the appropriate organ of the State; in such a manner that the actual words used are themselves part of the law. The words not only contain the law, but in a sense they constitute the law²⁹.

28 Section 4(1) of the Constitution (n 16)

29 O. H. Philips, *Constitutional and Administrative Law* (Sweet & Maxwell, 1987) p. 11

30 Though the lists (Exclusive and Concurrent) clearly mention the matters to be legislated upon, various section of the Constitution contains the substance of some of these matters. It must be appreciated that different levels of government coordinate each list. The Exclusive list is the preserve of the Federal Government while the state exercise prerogative within the Federal Government. This delineation led to the doctrine of covering the field where in a situation the Federal Government legislates on an item on the concurrent list as and with the intention of taking care of all issues thereon, no state can pass any legislation on same, see *Attorney General Abia State and 35 others v Attorney General of the Federation* (2002). There is also the unmentioned residual list on which the state has exclusive legislative powers.

31 Section 88 or 128 of the Constitution (n 16)

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The legislature being creation of the Constitution has powers as laid down in it (the Constitution). In this regard, a look through the provisions of the 1999 Constitution reveals various substantives matters in respect of which the National Assembly and House of Assemblies have powers to pass laws³⁰. Such areas include among others, the power to conduct investigation³¹, the power to expose corruption³² and to make law for the peace and good governance of the country³³.

Therefore, the control Legislature exert in any democratic governance stem from one fundamental principle, that, Legislature embodies the will of the people (the electorate whom they are representing) and must be able to supervise the way in which public policy is carried out to ensure a peaceful society free of corruption, embezzlement, mismanagement and bribery in all sectors of Nigerian society and as a nation.

Nigeria's 1999 Constitution contains several provisions geared towards good governance, supported by legislations by the Parliament and judicial validation in vigorous pursuit of addressing Public corruption in Nigeria and encourages accountability and transparency in governance.

It is instructive to note that the presence of corruption in every institutions of government and private life of Nigeria is not refreshingly new. It is instructive to observe, however that the nascent constitutional democratic government grapples with the threatening quality of corruption in Nigeria and how to it can honestly dealt with it had taken bold step in policy formulation. It has enacted legislation and prosecuted some culprit to check and prevent if not totally eradicate corruption, this has been firmly impressed in the mind of Nigerian as a value system and psyche, euphemistically termed the "Nigerian Factor"³⁴. The Nigerian Legislature is not left out in the struggle it has risen it head high within the constitutional limitation to fight against corruption in Nigeria.

32 Section 15 *ibid*

33 Section 4(1) & (2) *ibid* see also *Attorney-General of Ogun State v. Attorney-General of the Federation* (1982) 3 NCLR 166 at p. 193-194

34 The general perception in Nigeria is that every public official has a "price" at which he/she may be "bought". It also translates into the general belief that public office/public service is for personal enrichment and accumulation of wealth, (thus must share out of the National cake) as part of every Nigerians share of the "national cake" for himself/herself and for his/her family, tribe/ethnic group. See J.P. Oliver de Sardan "A Moral Economy of Corruption in Africa? (1999) 37 *Journal of Modern African Studies* 25-55. He articulated certain social norms widely represented in

4.0 Oversight function and Power of Investigating Corruption

Legislative Assembly³⁵ is a legislative body, but it must have procedures that enable it to acquire information. Furthermore, it must keep a critical eye on those who administer the laws it enacted and who spend the money it appropriated. The business of Legislature is not to govern the country by usurping the powers of the executive or pass judgment upon their investigative power, which is within the realm of judicial power, rather, the Legislature's function herein, is only to ensure that those who do govern perform their functions properly, transparently with accountability. To perform its legislative functions effectively, the Legislature must have the power to investigate. Investigatory powers can be defined simply as the powers to establish a fact or set of facts by way of an inquiry³⁶. The Constitution states that each House of the National Assembly has power to direct or cause to be directed an investigation into:

- (a) Any matter or thing with respect to which it has power to make laws; and
- (b) The conduct of affairs of any person, authority ministry or government department charged or intended to be charged with the duty of or responsibility for executing or administering laws enacted by the National Assembly or disturbing or administering moneys appropriated or to be appropriated by the National Assembly³⁷.

However, the power to conduct investigation is not limitless it must be exercised for certain specified purposes being to enable it to:

- (a) Make laws with respect to any matter within its legislative competence and correct any defect in existing laws; and
- (b) Expose corruption, inefficiency or waste in the execution or administration of laws within its legislative

³⁵ It may be referred to as the Parliament, National Assembly, Congress, or Bundestag in some jurisdictions

³⁶ B. A. Garner, (n 4) 1115

³⁷ See sections 88 and 128 of the Constitution (n i6)

competence and in the disbursement or administration of funds appropriated by it³⁸.

It is important to note that the power of the Legislature to oversee is in substance to the power to investigate by the House; this is done through Committees³⁹ of the Senate and the House of Representatives, which is encouraged in or the Nigerian National and State Houses of Assembly Parliament⁴⁰.

However, a committees power to control or investigate corruption does not *sine quanon* amount to the exercise of judicial power even the appointing authority the Congress/House cannot exercise judicial power. Therefore, the power to investigate vested in the committees is subject to the constitutional provision as aptly observed by Kanu G. Agabi⁴¹ (SAN) that:

...Section 88 appreciates its own limitations by making itself subject to the provisions of the constitution. The expressions "notwithstanding anything in the constitution" used in section 6, when contrasted with the expression "subject to the constitution" used in section 88, makes the point even more apparent. Whenever and wherever the need arises, section 6 overrides section 88. All judicial power, therefore are vested in the court...

³⁸ See Sections 88(2) and 128(2). It must be noted that for the purposes of the investigation, the House or its committee is empowered to procure all necessary evidence, to summon any person in Nigeria to give evidence or to produce any document in his possession and to issue a warrant to compel his attendance if, having been summoned to attend, he fails, refuses, or neglect to do so without satisfactory excuse (Sections 89 and 129).

³⁹ In the Nigerian parliamentary system, like the American, the National Assembly sets up committees, which reflect the ministerial portfolios in the country on special topical issues, which require investigation? The review of the specific agencies and programmes by committees are made easy because most of the committees parallel the structure of Administrative Agencies. See sections 62 and 103 of the Nigeria Constitution 1999

⁴⁰ D. M. Olson, *The Legislative Process: A Comparative Approach* (London, Butterworth, 1980) page 204

⁴¹ K. G. Agabi, *Oversight Powers of the National Assembly, Limit, Myth and Reality*, a paper presented at the Nigerian Bar Association conference, Calabar, 2001 pages 1-15 at 12
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It can thus rightly be concluded that the legislature's power of investigating and exposing corruption is a reality having its legitimacy from the Constitution of the Federal Republic of Nigeria.

One of the important activities to be undertaken by the Legislature at any level are regular monitoring of the activities of the other institutions of government and its agencies especially for the purpose of preventing and exposing corruption and in order to effectively support the activities of the executive in combating corruption in society. This is what is fondly refers to as the "oversight function" and a very important responsibility of Legislature. Oversight involves keeping eyes on how the executive branch carried out the provisions of the laws passed by Legislature, to check possible abuses of power by its officials, including the prevention corruption by the President, the Vice President, the Governors or the Deputy Governors, Ministers, Heads of Missions etc. Oversight is primarily within the province of the committees and sub-committees of Legislature/Congress, and it is among their most visible and dramatic actions⁴².

One of the most important implied powers of Legislative Assembly is her power or authority to investigate and oversee the executive branch and its agencies, such as the Ministries, Departments, Parastatals and the judiciary even private sectors like Banks⁴³, Companies and Corporations. As part of this responsibility, which is known as oversight, Legislative Assembly summons officials to answer questions from members, order audits of agencies, and holds public hearings to air grievances of citizens and in the context of this paper investigate allegation of corruption. The Legislative Assembly's power of investigating corruption derives its legal existence from the powers to investigate as contained in the Constitution as earlier stated. It is pertinent to State that the powers herein conferred on the Legislature are exercisable only for the purpose of enabling it:

- (a) To make laws with respect to any matter within its legislative competence and to correct any defects in existing laws: and
- To prevent and expose corruption, inefficiency or waste in the execution

42 S. G. Edward. *The Struggle for Democracy*, (Harper Collins University, 1993) page 401

43 Following the list and exposure of Bank debtors in Nigeria by the Central Bank, the EFCC arrested some banks chief executives for complicity in the deal. *The Nation News Paper*, August 19, 20 and 21, 2009. It is one of the efforts at combating corruption in Nigeria.

or administration of laws within its legislative competence (a) and in the disbursement or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it. These purposes should be kept in view whenever the legislature intends to exercise its power of investigation⁴⁴.

It is instructive to note that, for the purpose of investigating corruption, Legislature do holds public hearings on the matters, which are of general public concern⁴⁵. Sometimes the Legislature conduct these hearings to identify reasons for corruption in society, this may eventually give rise to the enactment of new laws aimed at tackling the menace of corruption in society. In other cases Legislature holds hearings to expose corruption and raise public awareness about the issue. In recent years, public attention has been especially drawn to committee investigations a number of which are still on⁴⁶. It is relevant to state that for the purpose of investigating corruption under the Constitution, the Legislative Assembly or its appropriate committee do have the power, to procure all such evidence written or oral, direct or circumstantial or require such to evidence be given on oath. It may equally summon any person within and outside Nigeria to give evidence or produce any document and may even issue a warrant to compel attendance of witness or witnesses as it may think necessary or desirable whose evidence may be material or relevant to the subject matter under investigation. A refusal or neglect of attendant may incur penalty to be imposed by a court of law⁴⁷.

⁴⁴ See sections 88, 89 and 128 and 129 of the Constitution (n 16)

⁴⁵ These hearing in most recent in Nigeria include. Investigation into the controversial N19 Million Aviation Intervention Fund, see *The Nation* of Tuesday, July 8, 2008. Investigation of the activities of Health sector between 1999 to 2008 N125 or N300 billion Senator Iyabo Obasanjo (chairperson senate Committee on Health) is one of those indicted in the matter) and the investigation of an illegal withdrawal of N30.9 Billion by Alison Madueke Minister for transport against the President directive on remittance of unspent money to the Federation account between 26th and 31st December 2008 which falls on Weekend, see *The Nation* of Monday June 27 & 30, 2008 and Olabode George and others were sentenced to 28 years imprisonment upon arraignment by EFCC for an offence bordering on wilful disobedience to constituted authority, contract splitting and conspiracy see *The Nation* of 27th October 2009

⁴⁶ *ibid*

⁴⁷ *ibid*

It is instructive to note that the Legislature in the exercise of its investigative powers since inception of democratic rule in Nigerian has succeeded in exposing a great number of corrupt practices in the public sector consequent upon which most of those implicated⁴⁸ are presently being prosecuted⁴⁹ in various courts in Nigeria by the Economics and Financial Crime Commission (EFCC) and the Independent Corrupt Practice Commission (ICPC).

4.2 *Limitations of Legislative Assembly Power to Investigate Corruption*

It must however be recognized that the Legislature's power to investigate and expose corruption and other related offences pursuant to their power to investigate is not absolute⁵⁰. The legislature is not empowered to punish following the result of the investigation. The prosecution of any person found guilty of corrupt practices or gross inadequacies or misconduct in the discharge of the public office is left to the executive. Thus the legislature's investigative powers must not however, be conducted in such manner as to infringe on the Fundamental Rights guaranteed the citizen under the Constitution⁵¹. A. G. Kanu⁵² quoting Chief Justice Warren⁵³ said;

The power of the Congress to conduct investigation is inherent in the legislative process. That power is broad; it encompasses inquiries concerning the

48 Fani-Kayode, Babalola Borishade and Iyayi were charged with the offences of criminal conspiracy, Breach of Official Trust, Forgery and Misappropriation of about N19.5 billion Federal Government Fund meant for the renovation of International Airport Abuja, Lagos Port-Harcourt and Kano see *The Nation* of Thursday, July 3, 2008, Iyabo Obasanjo Senate chairperson of Health Committee, she was arrested after many day of hiding against arrest and prosecution. The investigation of public crime against Dariye led to his impeachment though nullified by the Supreme Court. Even in the United States, the House of Representative used the investigative power of Parliament against President Bill Clinton for offence of Perjury; the Senate stalled his presidency.

49 *ibid*

50 *T. Momoh v. Senate of the National Assembly* (1982) 3 NCLR 394, *Adikwu and Others v. Federal House of Representatives and Others* (1981) 1 NCLR 105 and see generally B. O. Nwabueze, *The Presidential Constitution of Nigeria*, (Sweet & Maxwell, 1982).

51 *Tony Momoh V The Senate* *ibid*

52 K. Agabi, (n 41) page 12

53 S. S. Ulmer, *Supreme Court, Policy-making and Constitutional Law*; (New York, USA, McGraw-Hill, 1986) pages 107-108 *Imam Esq & m. A. Mustapha (mrs)*

administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defect in our social, economic or political system for the purpose of enabling the Congress to remedy them. It comprehends probes into department of the Federal Government to expose corruption, inefficiency or waste. But, broad as is this power of inquiry, it is not unlimited. There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the congress... nor is the congress a law enforcement or trial agency. There are the functions of the executive and judiciary department of government. No inquiry is an end in itself; it must be related to, and in furtherance of a legitimate task of the congress. Investigation conducted solely for the personal aggrandizement of the investigators or to "punish" those investigated is indefensible" ... (Emphasis ours)

It is imperative to state further that, the powers of the National Assembly or the House to investigate is subject to the jurisdiction of court, which has powers to supervise the activities of the National Assembly in order to prevent tyranny and abuse of powers⁵⁴. The Constitution does not contemplate an absolute role on the National/State Assembly or its committees in the supervision of officers charged with the execution of the laws it enacts except only for the purpose of exposing corruption nor has a committee of the House, once, the National Assembly enacted legislation, its participation ends. Criminal investigation and prosecution is an executive function. Legislative powers to investigate should be exercised squarely for the purpose of achieving the peace, order and good government of the Federation and should be restricted to matters within the Exclusive Legislative List or as specified elsewhere in the Constitution⁵⁵.

54 Ibid pages 12-14

55 Ibid page 7

56 Tony Momoh's case (n 48)

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However it must be rightly observed that, the investigatory power of the Legislature cannot be used to inquire into private affairs unrelated to a valid legislative purpose or an area in which Congress/Legislature is forbidden to legislate⁵⁶. The power to investigate must not be confused with any of the powers of law enforcement, which are assigned by the Constitution to the executive and the judiciary. All legislative power of investigation is subject to the specific individual guaranteed rights⁵⁷.

These expressed limitations on the Legislature's power of investigation are not as impressive as they may seem to be at first glance. It is abundantly clear that the powers of Legislature, including the power to propose constitutional amendments on almost any subject, are broad enough to justify almost any investigation. Furthermore, when legislature authorizes an investigation, the courts presume a legislative purpose⁵⁸. Witnesses who refuse to testify are subject to punishment for contempt⁵⁹.

However, to allow free and unhindered investigation members of National/State Assembly enjoy immunity against liability (e.g., for slander) under the Legislative Powers and Privileges Act of the Constitution.⁶⁰

4.3 Combating Corruption through the power of Impeachment

One of the Legislature's mechanisms to check and investigate public

57K. L. Hall, (n 37) see the statement of Chief Justice Earl Warren, in *Quinn v United States* (1955) see also S. Oyovbaire, *Legislating for Good Governance: Ethic and Political Considerations*, (NIALS Publication, 2001)

58By virtue of section of the Evidence Act Cap E12 Laws of the Federal Republic of Nigeria, Legislative activities are presumed unless it is proved otherwise

59 See section 88 (3) 1999 the Constitution (n 16)

60 See section 3 of the Legislative Houses (Power and Privileges) Act Laws of the Federation 1958 now L12, cap 2004. This immunity allows the legislature enjoy the supervisory role of the citizen-body with oversight functions. The parliamentary immunity helps to ensure free flow and unhindered speech and debate in their legislative functions, so that the electorate are well informed about proposals and their merits, which will affect them when passed into law. The parliamentary immunity affords them the opportunity to expose corruption, scrutinize, criticize, or vote against the wishes of the executive, or that, which may undermine accountability in governance or against the interest of the people they are representing. It gives the citizen confidence to appear before Committees of the House either as a witness or to make their contribution to legislative Bills, proposal or matters of national interest without fear of intimidation, arrest or prosecution. R. J. Robertson, *The Effect of Consent Decrees on Local Legislative Immunity*, (University of Chicago Law Review 56, no. 3 1989): 1129-31 and Will Maslow, *Fair Procedure in Congressional Investigations: A Proposed Code*, (Columbia Law Review 54, 1954): 839892

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officers alleged for perpetrating corruption in office is through the Legislature's power of impeachment⁶¹. It began with a formal allegation against public officers for misconducts in the performance of their constitutional duties, which of course include the act of corruption, lack of transparency and accountability in government. Such accusations when investigated may upon the application of due process and rule of law lead to removal of the indicted officers⁶². The Senate investigation of Petroleum Development Trust Fund exposed several corrupt dealings by President Olusegun Obasanjo and his Vice President Alhaji Atiku Abubakar⁶³.

It is instructive to note as well that at state level of governance, the investigative power of Legislative Assembly on corruption and gross misconduct led to the impeachment of some Governors. Governor Alamesieagha of Bayelsa State was impeached and subsequently prosecuted by Economic and Financial Crimes Commission (EFCC); Joshua Dariye of Plateau State (though his impeachment was voided by the Supreme Court for non compliance with section 188 of the Constitution, he is still being prosecuted by Economic and Financial Crimes Commission (EFCC); Adebayo Fayose of Ekiti State was also impeached on the allegation of corruption and misappropriation of State funds. In Dariye's case,⁶⁴ Supreme Court per Aderemi JSC has this to say on the allegation of corruption against the Governor:

I shall end this discourse by saying that the allegations levelled against the 1st Respondent as contained in the records, are despicable to the highest degree. If

61 J.O.Akande, *Introduction to the Nigerian Constitution of the Federal republic of Nigeria 1999* (MIJ Publisher, 2000) pages 294-299

62 S. M. Lipset, *The Encyclopaedia of Democracy*, Vol. 11, (London: Routledge, 1995) 275 J. M. Shafritz, *The Dorsey Dictionary of American Government and Politics* (Chicago: The Dorsey Press, 1988) page 594

63 There was impeachment threat against Obasanjo pursuant to a motion moved by the Senate on August 14, 2002, though it was aborted, while the attempt to use the indictment against Atiku Abubakar's presidential ambition was stalled by the Supreme Court in the case of *Atiku v Attorney General of the Federation* (2007) 6 MJSC 1, see Oyewole O, *Constitutionalism and the Oversight Functions of the Legislature in Nigeria*, (Network of Constitutional conference on Fostering Constitutionalism in Africa Nairobi, 2007) pages 1-24

64 *Diapanlong v Dariye* (2007) 8 MJSC 140

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proved in accordance with the laws of our land, by the cardinal principle of morality, justice and democratic government that the Court should sentence an offender guilty of crime to such penalty as his crime merits, the 1st Respondent must not be allowed to run away from justice. But before this can be done, due process of law must be followed from the beginning to the end. An act may be morally reprehensible unless there is a law properly enacted which makes that act punishable and goes ahead to prescribe the punishment for it, a judge, indeed, any Court of law is hamstrung to sentence and punish the perpetrator,

The apex court did not doubt the investigative powers of the Parliament as well as its ability to impeach as a result of the investigations. However due process must be followed.

In America, Parliament can impeach the President and judicial officers for treason, bribery, and other serious offences employing the legislative powers of investigation under the Constitution⁶⁵. Impeachments as a basis of investigative power of American Congress on allegation of crime till date remain part of the Constitution,⁶⁶ which provide thus:

The President, Vice President and all civil officers of the United States shall be removed from office on impeachment for, and on conviction of Treason, Bribery, or other related crimes and misdemeanours.

The House of Representatives vote on whether to charge officials with impeachable offenses. If the House votes to impeach, then the Senate conducts the impeachment trial itself and Chief Justice of the Supreme Court presides over the proceedings. A two-thirds majority vote of senators present at an impeachment trial is necessary to secure conviction.⁶⁷ There is the usual argument whether impeachment is a legal or political act. Hitherto in Nigeria the position of our courts is that it is a political act⁶⁸. However, this trend appears to have changed with the decision of the Supreme Court in the case of *Inakoju v Adeleke*.⁶⁹ The

⁶⁵ Article 1 sections 2 and 3 of the United States of America Constitution

⁶⁶ *ibid*

question that the Supreme Court addressed in that case was that before a legislative body can impeach any political office holder if on allegation of corruption and other related offences, all the steps spell out in the constitution must be strictly followed.

It is pertinent to note that Legislative Assembly power to investigate corruption exist in all democratic system of government world over, and evidence abound⁷⁰ that the use of this power has succeeded in exposition and punishment of erring public officer found guilty pursuant to the investigation by competent courts.

4.4 Combating Corruption through Legislation

Legislation is defined as, "*The process of making or enacting a positive law in written form, according to some type of formal procedure, by a branch of government constituted to perform this process*".⁷¹ Law making is an essential primary constitutional function⁷² of the Nigerian National and State Assemblies. Thus, it is within the purview of its jurisdiction to make laws that deal with issues of crime in our Society. The globalization in the adoption of international instruments of curbing and preventing corruption did not only raise focus on crime an corruption in developing countries but also change the approach with the use international financial institutions like International Monetary Fund, World Bank and African Development Bank in admonishing the developing countries to implement anti corruption laws within their domestic Legal frame work⁷³. Thus, the experience of the National Assembly and State Assemblies in law making and the consequences of

67 Article II section 4 *ibid*

68 *Balarabe Musa v Kaduna State House of Assembly* (1982) 3 NCLR 23

69 (2007) 2 MJSC 1, see also *Abaribe v Speaker Abia State House of Assembly* (2002) 4 NWLR (pt 788) 466

70 Bill Clinton former American President was alleged of perjury and was investigated by the house of Representative but the Senate through the veto, which overrides the position of the House, voided the impeachment. Collor de Mello, was the first Brazilian President to be impeached upon allegation, investigation and conviction for criminally mismanaging public fund of \$2.5 Million used for lund scrapping of his house and \$20,000 a month for personal expenses. Collier's Year Book, 1997, macrosoft@student.2008 visited on 16 May 2009. South Korea's President Roh was the Country's first President to be impeached by 2/3 votes of the National Assembly, see Peterson, M, macrosoft@student.2008, visited on 16 May 2009.

71 B. A. Garner (n 4) page 918

72 See section 4 of the Constitution (n 16) see T. O Aguda, *Understanding the Nigerian Constitution of 1999* (MIJ Publisher, 2000) pages 9-13

all the exposed criminal activities in every facet of the Nigerian polity justify the promulgation of Independent Corrupt Practices Commission (ICPC) Act, 2000.

Corruption has become a common phenomenon in every facet of the Nigerian polity, a malignant disease that is being so indiscriminately practiced at every level of governance as if it is legalized⁷⁴. It is an innate and cancerous problem, which virtually all Nigerians openly seem to disclaim and detest but which unfortunately is the bane of the society. This made the government through the Legislative Assembly to put in place the institutions (Economics and Financial Crime Commission and Independent and Corrupt Practice Commission to check corruption in our society. The judiciary compliments the position of the Legislation Assembly's posture stood firm against corruption in our society⁷⁵. This is evidenced in its pronouncement in the case of *Re: Olafisoye*⁷⁶ on the dispute as to the constitutionality of ICPC Act 2002 where Niki Tobi JSC observed:

...In my view, a corrupt society will trouble or disturb the peace, order and good government of the entire country. For instance where it is realized that persons in government freely put or dip their hands in the treasury and steal government money at will, the masses will complain and such complains could threatened the stability and social equilibrium of the nation. In most nations, including Nigeria, the masses abhor corruption and that is one reason, though not most important reason, why ICPC Act was enacted. The people will certainly regard a government, which embarks upon a large- scale scheme to stop corruption, as good government as to respond to the economic needs of the people, such a government action will certainly vindicate section 15 (%) of the constitution.⁷⁷

⁷³ D. C. Paul, *Law and Social Change: A Socio-Legal Analysis of the Nigerian Corrupt Practices and other related offences Act, 2000*; *Journal of African Law*, (2001) page 178-180, the Transparency International also rated Nigeria among the most corrupt countries in the world, see *Transparency International Annual Corruption Perception Index*, <http://www.transparency.org/cpi/2005/dnld/media>, visited on 25th May 2009.

⁷⁴ T. A. Oyeipo (n 10) pages 1-7

⁷⁵ *Attorney General of Ondo State V Attorney General of the Federation* (n 11)

⁷⁶ *Re: Olafisoye* (n 17) 27 at 54

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This position is also corroborating the importance of the power of the Legislative assembly's power to investigate corruption by effective putting measures in place to ensure that no crime is committed as well as providing for adequate punishment in case of violation of such laws.

It must be noted that the legislative power to investigate corruption is laudable for a sustainable and virile democracy and this is inherently part of the law-making power of the legislative assembly.⁷⁸ The investigative power of the Legislative Assembly generally may prompt the need for putting in place or making law for the purpose of dealing with corruption for the state to abolish all corrupt practices and abuse of power.⁷⁹

Investigative power of Legislative Assembly on corruption came to bear in what later metamorphosed into the Independent Corrupt Practices and other Related Offences Act 2000⁸⁰. The General Abdulsalam Abubakar five months government was looked into following complaint of financial improprieties⁸¹ this informed the newly established democratic government 1999 to sign a desire to fight and curb what could be regarded as the malignant corruption in every facet of Nigerian life. The government sent anti Corruption Bill to the National Assembly. The Independent Corrupt Practices (and Other Related Offences) Commission (ICPC) Act was thus enacted and passed into law on June 13th, 2000, Money Laundering (Prohibition Act) 2004 and the Economic and Financial Crimes Commission (EFCC) Act 2004. The EFCC Act empowers the Commission to investigate, prevent and prosecute offenders who engage in:

Money laundering, embezzlement, bribery, looting and any form of corrupt practices, illegal arms deal, smuggling, human trafficking, and child labour;

⁷⁷ Ibid page 54

⁷⁸ D. A Gubadia; *The Legislative and Good Governance under the 1999 Constitution* (NIALS Publication, 2001) page 43 at 45-7

⁷⁹ See Section 15(5) and item 60(a) of the Constitution (n 16) and *Attorney-General Ondo State v. Attorney-General of the Federation* (n 11) 1972

⁸⁰ See *Attorney General Abia v AGF* (2002) 4 SC (pt II) 1, *INEC v Musa* (2003) 1 sc (pt i) and *Re: Olafisoye v FRN* (2004) 14 WRN 1

⁸¹ When General Abdulsalam Abubakar came on board after the death of General Mohammed Sanni Abacha, the foreign exchange reserve, which he met at \$6.7 Billion, was left at \$4 billion within five months. See *Economic Intelligence Unit, London First quarterly 2000 Nigeria Country Report*.

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*illegal oil bunkering, illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes, and prohibited goods*⁸².

It is not an over statement that the Legislative investigation of corrupt practices can go a long way to assist the National Assembly in identifying and using its legislative might to combat same. This will definitely reaffirm the confidence of Nigerians in our nascent democracy and show the legislatures' response to the need to put in place effective legal framework for investigation, exposure, prosecution and sanctioning perpetrators of corruption in our society⁸³.

One highly commendable aspect of the legislative Assembly's power of investigating corruption is the fact that they did not sphere their members by trying to shield them from being exposed. The most recent event on the Nigerian National Assembly investigation of N5.6 Million power probe evidenced their commitment to deal decisively with corruption in our society.

5.0 Suggestions/Recommendations

5.1 It is widely believe that things are not as they should be in the National Assembly with regard to ethic behaviour this is evidenced in the investigation of N55 Million Naira Bribery Saga involving Senate President Adolphus Wabara, the allegation of corruption against Iyabo Obasanjo, Etteh Elumelu and others, thus, it is suggested that, members of legislature at all level of legislative process be above board, accountable, transparent and shun all forms of corruption.⁸⁴

5.2 There is the need for the Legislature in exercise of its investigative power to be mindful of its limitations and not to usurp the judicial (the adjudicative power on corruption) and the executive (represented by the police power to investigate and prosecute offenders) functions. The National assembly can only investigate but cannot conclude on the investigation by pronouncing anybody guilty.

5.3 The legislature should check incidental and irrelevant interest and the attempts to control what they ought not or engage in activities aim at the destruction of a person's reputation for which is a right guarantee by the constitution.

⁸² Sections 6(a) - (g) and 7 of Economics and Financial Crime Commission Act 2004

⁸³ There is the need to address the use of political thugs to perpetrate crime in our society a great numbers of political killings prior to, during and after election against perceived political enemies does not augur well for Nigeria. The brutal Marshall Harry, Bola Ige SAN and the wife of Abubakar Rimi are pointer to this.

⁸⁴ The Punch News Paper Monday 21, March 2005.

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5.4 It must also be noted that the Legislature cannot under the guise of its investigation of corruption takes over the function of the executive. If care is not taken the avowed principle of separation of powers will be violated. This will serve as antithesis of the goal for which the power is originally exercised.

5.5 It is respectively suggested that citizen should at all times make themselves accessible to investigation if any and when called upon by the legislature.

5.6 There Legislative Assembly should however be cautioned on criminal laws enacted to punish, and find solutions to all sorts of moral social economics, political, cultural and religious problems, otherwise the country will be saturated with laws that may be too burdensome to enforce. This in event may lead to overload, duplication and ineffectiveness of the criminal justice system.

6.0 Conclusion

Significantly the Legislative Assembly in Nigeria particularly since inception of democracy has witnessed remarkable achievement in combating corruption through their investigative power. The Legislature has played its role as lawmaker for the peace and good governance of Nigeria in investigating and legislating on corruption at critical moments for sustenance and correcting the image of Nigeria in the world over.

Without doubt, it has been established from our discourse that the Legislative Assembly all over the world has moved miles away from the traditional rule-making Assembly; it has also been saddled with many responsibilities including quasi-judicial function exercised through oversight function. It is appreciated that there is a ranging controversy whether the powers exercised are quasi-judicial, purely administrative or purely legislative power. However the Constitution highlighted the scopes and limits of how the power can be carried out without undermining the constitutional rights of others.

The act of corruption is a very bad experience in Nigeria and like in most nations in the world is not condoned, therefore, exposition of corruption in our society evidence the wishes of Nigerians to have a corrupt free society.

Legislative Assembly's investigative actions at the national and state levels supported with the prosecution of corrupt officers by a free and independent judiciary would go a very long way towards securing desire objects of a free corrupt society for a stable and an egalitarian democracy system in Nigeria. It is significant to note that the power has served as a weapon of exposing corrupt elements to most of whom are presently being prosecuted through the instruments created by it.

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