

Parliamentary Oversight and Corruption in Nigeria

Policy Brief, Presenting Key Issues & Lessons Learned

Introduction

Corruption in Nigeria, Africa's most populous nation, is rampant —136th out of 176 countries in the 2016 Transparency International Corruption Index. Stakeholders are looking to the Executive rather than the legislature to take the lead in anti-corruption efforts, and executive-legislative relations are underdeveloped.

Through interviewer-led and self-administered questionnaires from 48 members of the legislative community (including MPs, staff, CSOs and the Media) and a focus group of eight from the National Assembly in Nigeria (NASS) conducted in 2016-17, research found that while there have been notable attempts to improve legislative oversight functions and reduce corruption in Nigeria, there is much more that can be done.

The Nigerian Political Context

Legislative powers. NASS and the Executive have a mandate to share legislative initiatives evenly, so while the legislature has the formal lawmaking responsibility, the Executive gives assent to bills, can delay or veto a bill. While a two-thirds majority in the legislature can overturn a veto, this has *rarely* occurred in the past five years. To the average Nigerians, it is unclear where lawmaking originates.

Budgetary Process. Since May 1999, when Nigeria returned to democracy, legislative budget activism has increased, and NASS is now a budget-making legislature with the capacity to amend or reject the Executive's budget proposals, and the ability to substitute (part of) a budget.

Political parties and party dynamics. Political parties in Nigeria rarely act as a check on the Executive. Party discipline within the legislature is tightening.

External Oversight Institutions. Various external oversight institutions have been set-up, as well as the media, freedom of information law (FOI), and CSOs.

- **Auditor General.** The Auditor-General (AG) in Nigeria is in charge of the Supreme Audit Office and appointed by the President upon the recommendation of the Federal Civil Service Commission with Senate confirmation. Awareness of the AG is broad. The President can only remove this person in response to a two-thirds Senate majority for failure to properly discharge his or her function. The AG is considered ineffective in uncovering fraud and corruption.
- **Ombudsman.** Nigeria's Ombudsman, the Public Complaints Commission (PCC), makes inquiries into public complaints about government, public institution, and private and public company administrative actions. The Commission has the statutory power to request

documents from these institutions and makes reports public. Nigerians are mostly unaware of the PCC (no MPs), do not know how it is run and to whom it reports, and were not considered effective in uncovering fraud and corruption.

- Anti-Corruption Agencies. Nigeria has two anti-corruption agencies: the Independent Corrupt Practices and Other Related Offenses Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC). Respondents were fully aware of these agencies, though there does not appear to have been a stable legislative relationship.
- Access to Information. The Executive and bureaucracy do not readily provide information to the public and NASS. The Freedom of Information Act has since 2011 guaranteed the right of any person to access or request information in the custody of any public institution. The FOI is considered *somewhat ineffective*.
- The Media. The Media is perceived to be influenced by the government, so media oversight is ineffective. Parliamentarians are least impressed with media's oversight capacity followed by media themselves, and then parliamentary staff.
- Civil Society Organizations (CSOs). CSOs are considered neither effective nor ineffective overall. Parliamentary staff rank CSOs better than CSOs themselves. Most of those surveyed did not know about CSO's involvement in corruption at all, and most CSO activity did not reinforce parliamentary actions against corruption or for oversight. This is disappointing as CSOs can fulfill the investigation and reporting of corruption role.

Internal Oversight tools and mechanisms

- Confirmation of ministerial appointments. Minister appointment begins with the President's nomination, the Senate President's subsequent referral to the Committee on Ethics, Privileges and Public Petition or other Committee for scrutiny and recommendations, and a Committee of the Whole House's screening. NASS confirms the position, but only the President can dissolve it, and the reality is that the legislature does not exercise its constitutional power.
- Censure and Impeachment. Despite NASS's constitutional power to initiate impeachment proceedings against the President for misconduct in the performance of the functions of his office, the legislature's role in censuring a minister or impeaching the President is uneven. Nigeria has never impeached a President.
- The Committee System. Legislative Committees include Special and Standing committees and have the power to initiate and conduct investigations into any matters of governance. Oversight committees are not considered to be particularly effective in uncovering fraud and corruption. Special legislative commissions/committees of inquiry are more effective than oversight committees in fighting corruption. However, instead of investigating corruption using a bipartisan approach, Select Committee inquiries strengthen party *political ties* by acting as a weapon with which to attack the party to which those under investigation belong, often benefiting members of the victorious bloc and bringing into question the motivation for

establishing Inquiries. Technical support to each committee averages between five and six members of staff, in addition to the support provided by NILS, NABRO, and CSOs that increasingly provide training and support. Legislative committees meet roughly eight to eleven times a year.

- Chamber. The House of Representatives is constitutionally mandated to sit for 181 days in a year but rarely meets this requirement. Approximately 8-11 plenary sessions are held per year but not fully attended. The average respondent felt that the Question Period was not adequately effective at uncovering fraud and corruption. Many respondents say the culprits would suffer naming and shaming, referral for investigation, punitive measures and discipline, or no consequences at all. This reduces the effectiveness of such oversight tools as their gravity, and thus potential, for influence is minimized.
- Procedural Safeguards. The legislature possesses formal autonomy in establishing its own rules of procedure, selecting its Presiding Officers and determining its budget, but fails to discharge its powers responsibly as the detail and operation of the budget lack transparency. Since 2015, NASS has not provided detailed expenditures. It is considered to be autonomous in establishing its administrative procedures and determining its budget. NASS' staff resources are *considerable*.
- Resources. Members have research and technical support budget, though often used to employ family and friends. NILS functions like the capacity-building agency of NASS. The Library, Research, and Computer Services carry out vital research functions used by parliamentary staff. Conference reports, advisors, consultants, think-tanks, and NABRO, which provides non-partisan analysis of the Executive's budget, parliamentary committee scrutiny, and economic analysis of legislative proposals, are also made available. It also analyzes NASS' budget and helps Committees to develop their annual budgets. NABRO is not permitted to make recommendations to NASS.
- Informal Structures. Even though informal structures exist, the researchers did not have a high response rate from MPs in questions relating to their effectiveness. The legislature may not use existing informal structures to fulfill their oversight roles. There is substantial lobbying for ministerial appointments since nominees may be political associates of the President and may *not* be specialists. Lobbying the Senate and government stakeholders to ensure candidate success at the screening stage, maybe one reason informal oversight structures are underutilized.

Research Findings

The legislature in Nigeria has the power to scrutinize executive appointments and make amendments to the budget.

- Ministerial nominees who have served in NASS are usually told to leave the floor of the Senate. Given the accusations of misconduct and corruption often thrown at former Members, this practice is somewhat dubious. Senate has conditions for screening nominees, including proof of assets declarations, approval of nomination by at least two senators from their states, and clearance of corruption, abuse of office, and embezzlement by the Senate Public Petitions Committee. Based on the agreed template for the screening and the heightened political tension between political parties, some nominees go through very rigorous grilling during the screening. NASS is considering a constitutional amendment to ensure that the President assigns portfolios to persons nominated as ministers before confirmation by the Senate.
- Executive appointments. Recent cases had shown that the Senate is willing to exercise its power over broader executive appointments, including in 2016, when the Senate declined to confirm the Chairman of the Economic and Financial Crimes Commission, following formal corruption reports. Likewise, following public petitions regarding corruption allegations, nominees for the Niger Delta Development Commission (NDDC) board were also rejected.
- Budget Controversies. Deep distrust persists between the legislature and Executive over the budget process. In 2016, controversial “Budget Padding” accusations between the Executive and Legislature showed that the trend had occurred in Nigeria since 2005’s Appropriation Bill when some senators were alleged to have padded the budget of a ministry after receiving a large bribe from the minister. Other forms of misuse of the legislative power of the purse include soliciting and accepting contracts from ministries, parastatals, government agencies/departments, and private organizations using proxy companies. These acts of abuse of powers have generated massive controversy over parliament’s influence in the budget process. The Speaker of the House disputes accusation of wrongdoing because of the legislature’s constitutional budgetary responsibilities. In contrast, the Transition Monitoring Group, and the Coalition Against Corrupt Leaders have called for a thorough inquiry into the practice, and the Socio-Economic Rights and Accountability Project (SERAP) has described budget padding as corruption.
- Power of the Purse. The study found an unhealthy difference of opinion between the legislature and civil society over whether budget oversight shortcomings were due to the power of the purse or corruption. NASS has the authority and does alter the budget, but often at the expense of overall budget credibility or discipline. The Senate and House of Representatives Committees on Ethics and Privileges have begun reminding members of the ethical rules on financial matters. They were explicitly barred from allocating funds to their constituencies during legislative scrutiny of the 2017 budget proposal.
- Public Hearings. The Senate and House of Representatives held the first joint Public Hearing on the 2017 budget to legally allow greater public participation in the budget process through public hearings, surveys, focus groups, to capture a range of public perspectives. A Bill being debated aims to intensify links between constituents and NASS, which would identify constituent needs for projects in the budget that legislators would not directly control. There is, however, a corruption concern without appropriate safeguards.

- *Political Parties.* Political parties in Nigeria are not seen as helpful but as aiming to protect their own against external allegations rather than rooting out wrongdoing.
- *Internal Oversight Tools.* The NASS' internal oversight tools are perceived to be more effective than external institutions, the media, CSOs, and freedom of information legislation. The research support available to the NASS has improved with NILS and NABRO as established institutional players. More legislators are using the library and research facilities. Nigeria's AG lacks independence due to its government appointment, and cannot hire and fire audit staff, nor is it adequately resourced. The PCC was placed under the control of NASS instead of the Presidency in 2014. MPs in the survey were unaware of the PCC. The PCC's budget was halved, leading to office closures nationwide, and the PCC's inability to respond to public complaints against public and private organizations. The President intervened, and the Commission's Commission's labor union blamed the crisis on the National Assembly.
- *Oversight Committees.* Oversight committees are less active today than in 2009/10 in uncovering fraud and corruption, partly due to increasing partisanship within the oversight committees and somewhat because the committee and governance systems in Nigeria have become bloated. According to NILS, in 2016, there were 65 committees in the Senate and 96 committees in the House of Representatives, compared to 54 and 84 in 2010. Today, anyone Member could belong to as many as five committees, each with between 25 and 40 Members, and suffer from high meeting absenteeism (37% participation in House committees on average).
- *Staff.* NASS builds the capacity of both staff and parliamentarians in budgeting and public financial management.
- *External Oversight Institutions.* External oversight institutions lack qualified staff and financial resources. The failure of follow-up is due to a combination of insufficient political will, enforcement power, and executive independence. According to survey responses, Anticorruption Agencies do not report to the legislature or exercise independence over budgeting and staffing, and the Executive, without the consent of the legislature, can disband them.
- *Civil Society Organizations.* CSOs are not considered to be especially effective in tackling corruption. However, the Nigerian Civil Society Legislative Advocacy Centre (CISLAC) has highlighted the problem of the abandonment and non-domestication of various Treaties and Conventions¹ by the National Assembly, including the African Convention on Preventing and Combating Corruption. There are also unresolved high profile corruption cases at the end of the 7th Assembly. The 8th House has pledged that its relationship with CSOs will be a partnership to deliver citizens' expectations. A Bill to supervise, monitor, and co-ordinate

¹. While the Federal Executive Council is mandated to sign and ratify treaties, the National Assembly and State Houses of Assembly are constitutionally charged with the responsibility of enacting or domesticating them into law.

CSOs and Community Based Organizations (CBOs) is being discussed in the House. However, opponents fear it could attempt to manage CSO financing and stakeholders.

Recommendations

Nigeria should consider amending the Constitution to clarify legislative powers on executive estimates. Restricting the ability of the legislature to either reduce or disallow an expenditure item and not to either introduce extraneous details or increase any figure may not be suitable or desirable. A public debate about whether the legislature should have the power to amend with or without restriction is needed.

Additionally, the limits and extent of NASS' constitutional budget approval and supervision powers should be clearly stated. Nigeria has no budget law, and there are special government funds that lack transparency and accountability.

NABRO's mandate to review and monitor Government programs and budgets may help reduce corruption, but the government must publish "In-Year Reports" for this to be realized. A bill to establish NABRO has been passed by both the Senate and the House of Representatives and is now moving towards presidential assent. NABRO has already played a role in encouraging the NASS to question executive estimates, and committees are also seeking NABRO's input when evaluating ministry and agency estimates. NABRO should be sufficiently independent to fulfill its role, as stakeholders question NABRO's links between staff seconded to the office and the presiding officers. A competitive hiring process would emphasize the professional qualifications of candidates and reject those who demonstrate partisanship. NABRO should be better funded to perform its mandate.

The legislature rarely overrides a presidential veto. A higher degree of consensus needs to do this in Nigeria's tense bicameral system. Nigerian stakeholders often perceive a presidential veto as positive because it can prevent bad legislation from weakening the fight against corruption. Proposed amendments to the Code of Conduct Bureau (CCB) and Code of Conduct Tribunal (CCT) Act in 2016 have been criticized for seeking to protect the Senate President, who was being investigated for violation.

The legislature's credibility is waning. In 2011 the NASS attempted almost to double its budget mainly to enhance the lawmakers' salaries and allowances. DFID Nigeria is working with PLAC to support an Independent Needs Assessment Committee to determine optimum needs, management, and oversight of the NASS budget. A National Assembly Service Commission will help strengthen the autonomy of the legislature.

External accountability institutions are not considered effective. To improve the effectiveness of FOI legislation, the government should ensure public institutions are equipped to meet their responsibilities and sanctions enforced when public institutions do not provide information under the FOI.

A closer relationship between the AG and NASS, as in the 2015 Audit Bill passed by NASS, awaiting presidential assent, will not likely improve the audit regime. The AG cannot examine the books of corporate entities and cannot audit the accounts of Statutory government Corporations, Commissions, agencies, and other bodies established by an Act of the NASS, despite allegations of malpractice.

There are not adequate follow up mechanisms to enforce decisions or ensure that the government has implemented the recommendations. The Constitution does not expressly specify what NASS should do with audit reports. The audit report would allow the NASS to determine if the Executive complied with rules. The AG should be empowered to prosecute offenders.

The PAC should play a vital role in the audit; however, they do not regularly submit reports to the AG, and few PAC recommendations are deliberated in the House. The PAC should hold public hearings or direct discussions on how to correct anomalies in audited accounts and statements.

There are also problems on the audit demand-side with limited interest and capacity amongst civil society and the media reported. Nigeria should establish formal mechanisms for the public to assist the SAI in its audit program and investigations.

The legislature needs to be fully transparent, including setting its budget, to be a more responsive institution with the moral authority to demand transparency from other agencies.

The President's anti-corruption campaign shows political leadership at the highest level. This campaign will need to include sensitive areas such as corruption in the defense and security sector, aligning reform plans to political cycles.

If attitudes and expectations across Nigerian society are to change, they will need to see a change of behavior on the part of the legislature. Allegations of corruption against individual Members trigger tit-for-tat charges among MPs. Developing and enforcing a workable legislative Code of Conduct will help to rebuild trust in legislators.

It would be helpful to start a discussion between NASS and CSOs as to what constitutes corruption (e.g., deliberate; refusal to act; supporting corrupt activities).

Currently, Nigeria is focused on strengthening judicial systems, convictions, and prosecution, but the AG and Ombudsman also need further support to promote prevention. Implementing audit recommendations to improve accountability is essential. The focus of change must be based on how governance relationships work rather than good international practice. There is no guarantee that moving the Audit Office away from the influence of the Executive towards the legislature will improve its capacity to oversee public funds.

The passage of key legislation such as the Petroleum Industries Bill is also essential to promote transparency and accountability in the operations of the oil and gas industry. Care must be taken to ensure that enforcement is sufficient.

With the support of CSOs and the media, the Senate can ensure that executive appointments suspected of corrupt acts are not appointed to public positions, using 2015's strict criteria in the screening process for this power. NABRO promises to enhance parliamentarians' budget analytical capacity and their access to crucial information needed for budget review. CSOs and the media are supporting anti-corruption efforts, although without much legislative awareness.

The constitutional amendments and legislation being considered by NASS to offer an opportunity to show a constructive relationship between the Executive and the legislature. DFID should actively support this process, and ensure the participation of CSOs, as many of the proposed changes are sensible and will improve the status quo.

Changes in NASS require the cooperation of political parties. The cost of becoming and remaining an MP is a root cause of political corruption in the legislature. The need to pay back the cost of getting elected has created an inflationary bias into the cost of politics generally and encourages corrupt behavior. Spending more money on political parties and parliamentarians may prove counter-productive without greater transparency about how this expenditure is spent. Training and travel opportunities by the international community for parliamentarians may be used to reward those Members who are supporting positive change, leadership in oversight, and demonstrate anti-corruption efforts.

Demand-side governance programs should be replicated at the federal level. The oversight of critical areas such as the extractive sector will be improved by utilizing the research, advocacy, and networking skills of CSOs. Oversight of the national budget is also vital, and parliamentarians should not be allowed to hide behind the power of the purse. The legislature should demonstrate that it is using public funds effectively to support development rather than on dubious constituency projects or material and financial benefits for its members. Public debates between the legislature and CSOs on the meaning of the power of the purse promise to be widely beneficial.

Integrating civil society within the formal institutional oversight arrangements for approving and monitoring the budget will help drive change. Efforts to consider increased citizen and stakeholder participation before legislative approval of the budget and formal mechanisms for the public to assist the AG's Office to formulate its audit program and participate in audit investigations should be encouraging. Finally, civil society must be closely involved in constituency project discussions in the Annual Budget. Institutions working to promote good governance in Nigeria need to observe this legislative proposal to ensure that it does not institutionalize existing bad practice within the legislature.

Conclusion

NASS's oversight role has been compromised, and oversight tools alone are insufficient. Parliamentarians consider internal oversight tools to be effective, but legislators are slow to hold the government to account.

Parliament is increasingly seen as part of the problem of corruption. Trust in legislators and the NASS is low and declining, and 75 percent of respondents think the country is heading in the wrong direction. Meanwhile, respondents believe the legislature either has remained as active or decreased in legislative oversight. Stakeholders, including parliamentary staff, are looking to the Executive rather than the legislature to take the lead in anti-corruption efforts since the Executive publicizes most anti-corruption cases.

Legislative Oversight potential in Nigeria exists. The NASS must take responsibility, find solutions and reach across political divides, past corporate temptations, *and* with the Executive to ensure that Nigeria's political, environmental, social, and economic future improves for *all* stakeholders.

Reference

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Further information can be found in Rick Staphenurst, Brooke Larson, Rasheed Draman, and Anthony Staddon (2020) "Anti-Corruption Evidence: The Role of National Parliaments in Curbing Corruption" New York: Springer.