

# GUIDE

to



## LAWMAKING

IN

# THE NATIONAL ASSEMBLY

# GUIDE TO LAWMAKING IN THE NATIONAL ASSEMBLY

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## List of Abbreviations

CAN	-	Clerk to the National Assembly
CBOs	-	Community Based Organizations
CFRN	-	Constitution of the Federal Republic of Nigeria
CSOs	-	Civil Society Organizations
DP/I	-	Development Partners/International
FBOs	-	Faith Based Organizations
ICT	-	Information and Communication Technology
IDPs	-	Internally Displaced Persons
IPPIS	-	Integrated Personnel Payroll Information System
IPU	-	Inter-Parliamentary Union
INEC	-	Independent National Electoral Commission
LFN	-	Laws of the Federation of Nigeria
LGC	-	Local Government Council
LGA	-	Local Government Area
MDAs	-	Ministries, Departments and Agencies
MPs	-	Members of Parliament
NASS	-	National Assembly

NDI	-	National Democratic Institute
NILS	-	National Institute for Legislative Studies
NGOs	-	Non-Governmental Organizations
PAC	-	Public Accounts Committee
PDP	-	Peoples Democratic Party
PIB	-	Petroleum Industry Bill
SB	-	Senate Bill
HB	-	House Bill
SHoA	-	State Houses of Assembly
TI	-	Traditional Institutions
TSA	-	Treasury Single Account
VAPP	-	Violence Against Persons Prohibition



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# Chapter One

## 1.0 Introduction

This guide seeks to provide a background on issues related to law making in the National Assembly. It highlights its procedure in the context of relevant constitutional provisions, which empowers the National and State Houses of Assembly to carry out this role. This is because the power to make laws, which is one of the major responsibilities of a legislature, serves as the main pillar or instrument of governance. It is the Legislature that lays down the basic principles which the Judiciary has to interpret and use as a framework of reference in adjudicating cases and which the Executive has to apply in the implementation of policies and execution of laws.

Constitutionally and specifically under **Section 4 (2)** of the 1999 Constitution

“The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part 1 of the Second Schedule to this Constitution”

**Section 58 (1)** expressly provides that the law making powers of the National Assembly can be exercised by bills passed by National Assembly and assented by the President. Likewise, section 9 of the Constitution empowers the National Assembly to alter any part of the 1999 Constitution. This however requires the support, by way of resolution, of the House of Assembly of two-third of all the states of the Federation.

The House of Assembly of a State has power to make laws for peace, order and good government of the State or any part thereof with respect to matters with which it has power to make laws under the Nigerian Constitution. Similarly, a Local Government Council has power to make bye-laws for a Local Government Area, in respect of the functions assigned to it by the Nigerian Constitution, or any other law (Gidado, 2012). This is why in a democratic setting, the Legislature takes precedence over the other two arms of government, for it represents the sovereign will of the people. Only the Legislature is competent to express the will of the people in form of

legislations. However, it is not enough to enjoy this enormous power without the corresponding responsibility of ensuring that the law making process in the legislature is a reflection of a credible procedure addressing the needs of society.

The National Assembly through its constitutional mandate can serve as an agent of reform where the issues involved are of public or mass appeal. Since the Assembly is usually a forum for the discussion of ideas and policies, it provides a platform for deliberation among important political forces in a democracy. The National Assembly has on a number of occasions adopted measures that have resulted in amendments to a number of legislations and even the Constitution itself. The position of the National Assembly in the botched third term bid for the office of the President during the Obasanjo era is a clear example of this testament. Additionally, the adoption by the National Assembly of the doctrine of necessity to solve a political and constitutional crisis that arose following the demise of President Yar'Adua is another case in point (Osagie, 2017).

This guide focuses on the application of rules of practice and procedure by the National Assembly. It is prepared to give a good understanding of the effects of the legislative process in the National Assembly with inputs that will aid the consolidation of the democratic process in Nigeria. It gives an overview of the Bill process and examines the effectiveness, realities and challenges of law making in Nigeria (i.e. since 1999) with particular focus on the reasons behind the poor quality of policy developments and Bills- a common recurrence in our law making process. In doing so, it seeks to proffer solutions of the current dilemma by appraising the role of relevant Departments of the National Assembly in charge of ensuring quality of legislation; exposing users of the guide to the critical role of stakeholders in the law making process and highlighting the challenges of Law making in Nigeria before drawing up lessons on best practices in law making and suggestions on how to improve the law making process in the National Assembly. This is intended at creating awareness for the need to ensure efficiency and result oriented legislation that will facilitate good governance in Nigeria.

## Chapter Two

### 2.0 Stakeholders in the Law Making Process

While Section 4 of the Constitution invests the legislature with the powers to make laws, Section 14(2) stipulates, "Sovereignty belongs to the people of Nigeria from whom Government through this Constitution derives all its power and authority." This is an unequivocal constitutional statement that 'Nigeria is a State based on the principles of democracy and social justice' in recognition of its divergent stakeholders.

Although the Constitution categorically declares that 'sovereignty belongs to the people of Nigeria...' it provides for representation in Government administration as not all Nigerians can legislate or take decisions on governance at the same time. Since the wheels that smoothly turn the engines of democratic society is the representation by law-makers, it can safely be said that representation means, acting in the interest of the represented (to whom sovereignty belongs), in a manner responsive to them vide consultation and due exercise of discretion and judgment while aggregating the views of the governed.

It must however be noted that real and effective representation is about articulating the views and concerns of constituents in policy making and legislative programs in a way that is beneficial to them but not about equality of numbers or a descriptive import of some representation adopted by some legislatures such as USA, Australia, Canada and even in Nigeria, through affirmative actions to allow marginalized members of the society to belong by or through such representation.

A stakeholder in the law-making process can be described as persons or groups whose role or contribution to the process are determined by the degree to which the proposed law or Bill may affect their aspirations or interest. Figure 1 below gives a diagrammatic view of critical stakeholders in the law making process



**Fig 1: Stakeholders in the Law Making Process**



Among the prominent stakeholders are the three arms of government namely the Legislature, Executive (who is expected to implement the law in the manner it is passed e.g. budget or Appropriation Act) and the Judiciary who interpretes the law. These categories can be further broken down into different units or segments. For example, within the legislature are legislators who enjoy the monopoly to introduce Bills during plenary, the Committee staff who are responsible for its actual referral to the committee, aides who conduct research to support their legislators interest, experts recruited to add value to the legislative process, the legislative Bill office whose role is to scrutinize Bills and the legal unit responsible for ‘cleaning up’ the Bill before forwarding for presidential assent, etc.

During a public hearing, the public is expected to play a very crucial role as stakeholder by making oral observations or submitting memoranda on the Bill(s) under scrutiny to the Committee(s) that convened the hearing. This helps to inform legislators of their position on a proposed Bill.

We review hereunder the critical stakeholders in the law making process as follows:

## 2.1 The Legislature

As outlined above, law-making and the processes adopted ought to be in consonance with the preferences of the constituents, and oversight function which invariably provides accountability and transparency in governance; allowing constituents through the legislature to monitor governmental activities and know if their wishes are being carried out or not.

The Committee System operated by the National Assembly enables efficiency in law making. **Section 62(1&2)** of the 1999 Constitution empowers the National Assembly to establish Committees, for such specific or general purpose and may delegate any functions exercisable by it to any of such Committee.

Flowing from the above, each Chamber of NASS delegates part of its law making duty and its constitutional oversight functions or responsibilities to each and every Committee set up to oversee the activities of the executive through Ministries, Departments and Agencies (MDAs). Since such MDAs may be specialized in nature, this imperative for Committee Members to be knowledgeable or acquire requisite skills and technical expertise to handle peculiar complex matters whether they relate to law making or investigations.

## 2.2 Legislative Staff

Having regard to the complex nature of contemporary democracies and demands as well as schedules of work, the need for efficient legislative staff to assist and augment the efforts of each legislator and indeed the legislature as an institution cannot be over emphasized.

## 2.3 The Executive

The Executive arm of Government though constitutionally charged with the execution or implementation of legislations passed by the legislature, has a role to play in lawmaking. Most of the bills passed into laws such as the Appropriation Act and major socio-political and economic laws are initiated by the executive arm, which in legislative parlance is referred to as 'Executive

Bills'. But whether executive or privately sponsored bills by members of the legislature or professional bodies, all bills passed into law require the assent of the executive via the President before the same becomes law and operative. Section 58(5) of the Constitution provides that, "where a bill has been passed by the National Assembly, the same shall be presented to the President for his assent."

However, by Section 58(5) thereof, if the President fails or withholds assent, the legislature could veto same and pass it into law by a two thirds majority of the Members at such sitting. Furthermore, constitutional democracies allow President or Heads of Government to exercise legislative powers through issuance of executive orders. An example of this was President Obama's executive orders issued on assumption of office relating to the Guantanamo Bay prisons where terrorists were held.

In Nigeria, by virtue of Section 315(2) of the Constitution, the President is empowered to modify laws subsisting before 1999 to the extent that, "the laws passed or modified by the President shall be as if such laws were passed by the National Assembly." This particular power of the President was confirmed by the Judiciary in the case of **AG Abia & 35 Ors vs. AG Federation** where the actions of the President in amending the Allocation of Revenue Act 1990 were considered valid and constitutional. In the same judgment, it was declared that except for powers given to the National Assembly with respect to the registration of voters and the procedure regulating elections to Local Government Council, as well as, power to make provisions for statutory allocation of public revenue to Local Government Councils in the Federation pursuant to section 7(6)(a) of the constitution, no provision in the Constitution empowers the National Assembly to make laws affecting local governments.

## 2.4 Judiciary

Even though the Judiciary is not conferred with law making powers, it makes laws or amend laws vide interpretation and judgments with respect to repugnant provisions of existing laws or laws that have become obsolete and no longer serve useful purpose to the political economy nor societal justice.

## 2.5 Civil Society

Civil society groups are Non-Governmental Organizations established and organized by individuals or group of individuals to promote accountability and the rights of the people. They advocate for the welfare of the people, promote better living conditions, lobby Governments directly or through the legislature for better living conditions of the citizenry.

Since the provisions of Section 14(2) of the constitution stipulates that “sovereignty belongs to the people from whom Government . . . derives all its power and authority”, it can be argued that this provision contemplates the participation of organized groups or civil society in constitutional democratic governance with a view to demand and enforce minimum standards of democratic principles and social justice. Civil society can contribute to the planning and execution of public policies and the realization of collective social, political and economic justice envisaged by relevant legislations put in place for societal development.

Civil society groups have played a tremendous role in influencing or shaping both the National and State Assemblies and Governments at large in the formulation and execution of public policies and the discharge of their respective roles. Though not elected, they represent and act in the interest of individuals, group of people or community, similar to what the legislature is designed to do. However, their powers are not derived from statute or vide elections but rather from their autonomous or independent status not being attached to the Government. It is this autonomous status that allows them to challenge Governments on issues by championing the interest of the people through awareness creation and advocacy campaigns. Civil Society Groups have been alluded to as one of the legs of democracy; performing similar functions as the legislature, while co-operating and greatly assisting legislators in the performing of their core functions more effectively.

In summary, Civil Society Groups as pressure groups have contributed greatly in smoothly running the engine and turning the wheels of society urging government to be responsive to the demands of the people in the exercise of their responsibilities.

## **2.6 Members of the Public**

Members of the public also play a role in lawmaking. The public hearing forum avails legislators the benefit of the views and inputs of the public who may be experts in certain fields. It affords legislators the opportunity to obtain valuable information that may be helpful in policy and lawmaking.

The imperative is for legislators to creatively find new and better ways of effectively representing the people, hence the need for a bottom up approach to representation in order to perceive voter opinion more accurately rather than a top-down representation that is more dictatorial.

## Chapter Three

### 3.0 Bill to Law: Law – Making Process in National Assembly

#### 3.1 Bill

A Bill is a draft of a proposed law that is presented before a Legislative House for deliberation and consideration. It is a legislative proposal and the first step in creating a new law. Every bill is assigned a unique number that either begins with “HR or HB” (to show the bill originated in the House of Representatives) or “S or SB” (to show it originated in the Senate). However, most bills never become law. For the bill to become a law, it must be passed in identical form by both the Senate and House of Representatives and then assented to by the President, where it is a Federal bill or Governor, in the case of a State. A Bill can originate from the executive arm, the legislature (private member Bill) or from citizens. However, where it emanates from a citizen, it can only be sponsored for consideration by a serving member of a Legislative House.

Once a bill is received in either House of the National Assembly, the President of the Senate or Speaker of the House of Representatives forwards it to the Rules and Business Committee for the House of Representatives and Committee on the Rules and Procedure for the Senate to determine its suitability or otherwise for legislative action. Where defects are noticed, the Bill is forwarded to the Legal department of the National Assembly for clean up, re-drafting and any other further amendments that make it conform to the standard of legislative consideration. The Rules and Business Committee of either chamber is also expected to determine the day and the time a Bill is to be tabled before the plenary for further legislative process.

#### 3.2 Bill Process in NASS

Bills are read three times before passage by the National Assembly (although a number of procedures take places within these three stages of the Bill process).

**At the First Reading**, the Clerk of the Senate/House usually does the reading of Bills i.e. the Clerk reads the short title of the bill and then proceeds to ‘table’ it before the Speaker of the House of Representatives or the President of the

Senate as the case may be. There is no debate or discussion of the bill on the floor of the Senate or House of Representatives as the stage is to simply inform legislators that a particular Bill has been introduced for legislative consideration.

**The second reading** marks the beginning of the debate on the general principles of the Bill. For a Bill to be read the second time, it must be moved by a motion. The legislator moving the motion is expected to highlight the subject matter, objectives, benefits, and general principles of the bill if it is eventually passed into law. Other members may also signify their intention to speak on the bill. If it is an Executive bill, the debate commences with a motion by the Senate or House Leader that the bill be read the second time. The motion must be seconded (supported) by any of the other parties' leaders. However, if the bill is one initiated by a legislator, the sponsor of the bill will move the motion that the bill be read the second time, which must be seconded (i.e. supported) by another legislator in the chamber where it is being read. If the motion is not seconded, the bill cannot proceed to second reading and therefore will be rejected. After the bill is debated, it is put to a vote on whether it moves to Committee stage. If the bill has the support of the majority, it moves to the Committee Stage; if it does not, it cannot be discussed again until it is re-introduced at a later stage. If it is referred to the Committee stage, the Senate President/Speaker of the House is empowered by the relevant rules of either the Senate or the House to determine the relevant Committee(s) to which the Bill is referred.

**A Bill referred to a Committee** at the second reading stage is geared towards value addition and further input by critical stakeholders and the public who can make useful contributions on the Bill (e.g. public hearing). The House and the Senate have different types of Committees. The first one is the Committee of the Whole House (made up of all legislators during the plenary) and the second is the Standing Committees on specific subject areas (e.g. Committee on Health, Committee on Education, etc.). The Committees are to make input on a Bill after its referral at the second reading stage. Nonetheless, all amendments made on the Bill must be in line with the general principles of the Bill. Where a bill has to do with multiple subjects cutting across different Standing Committees, it will be referred to the Standing Committee that has the dominant issue

while others will form subcommittees to consider areas that concern them and report to the main Committee. It will then be the responsibility of the main Committee to collate and aggregate all suggestions and amendments of the "Sub-committees" and make a full report to the Senate/House. Likewise, where the leadership does not mention the lead Committee to examine a Bill, the first committee mentioned by the Senate President or Speaker assumes leadership of the Bill referred for further legislative input.

After the Committee has concluded its work, it will report back to the Whole Senate/House in plenary with or without amendments. The Chairperson of the Committee is expected to report progress on the bill through a motion. After the report of the Committee and the deliberation of the Committee of the Whole House, a motion may be moved that the bill be read the third time either immediately or at a later date.

Generally, once the bill has passed **the third reading stage**, no amendment can be made to it. However, in certain circumstances if a legislator wishes to suggest an amendment, s/he must move a motion that the bill be 're-committed' to the Committee stage for the purposes of including the amendment. If the motion is agreed upon, the Senate/House will dissolve at plenary to discuss the amendment(s). After all necessary amendments, the Senate/House will then proceed to third reading and passage. (Lawpadi, 2017).

After a bill has scaled the third reading stage and been passed, a clean printed copy of it, incorporating all amendments will be produced, signed by the Clerk and endorsed by the Senate President and Speaker of the House of Representatives. The copy will then be forwarded to the Clerk of the Senate or House as the case may be accompanied with a message requiring the concurrence of the receiving chamber.

### **3.3 Conference, Presidential Assent & Veto**

Where there is any disagreement or there are different provisions between the two Chambers on a Bill, a Conference Committee is constituted to harmonize their positions and reconcile the differences in an agreed copy. The Conference



Committee is convened with a distinct mandate – to harmonise the positions of both chambers on the disputed recommendations/amendments. The outcome is a report of a Joint Conference Committee, which is presented in both chambers for consideration. If both chambers adopt the report, the Bill is sent to the Clerk of the originating chamber, and a clean copy of the Bill is sent to the Clerk of the National Assembly for enrolment and onward transmission to the President for his/her assent. The President has thirty (30) days to sign a Bill sent to him/her by the National Assembly. A Bill does not become law until the President signs it.

The President may veto the Bill if s/he disagrees with its provisions or some aspects of it, by withholding his/her signature. When this happens, the President can state the areas s/he wants amended before s/he signs the Bill (Danwanka, 2017). If the National Assembly agrees with the President the Bill can be withdrawn for deliberation on the amendments suggested by the President. If the amendments are agreed to, it is forwarded to the President who then assents to it. The President is also empowered under the Constitution to veto the Bill. If the National Assembly does not agree with the veto, it is empowered to overrule the President's veto as prescribed in section 58(5) of the 1999 Constitution (as amended). This states that if the Bill is again passed by each House by two-thirds majority, the Bill shall become law and the assent of the President is not needed.

### **3.4 Exceptional Cases of Bill Process**

Lastly, it should be noted that there are exceptions to the general Bill process. For instance, where urgent state matters deserve legislative action or consideration; Bills may be speedily passed by suspending the rules of legislative procedure to meet up with the objectives of the issues at hand. However, although it is rarely done, it occasionally happens in the National Assembly. As earlier mentioned, the Constitution grants the National Assembly powers to regulate its own proceedings. This Constitutional provision serves as the basis upon which 46 Bills were given accelerated consideration and passage in the Senate at the tail end of the 7<sup>th</sup> National Assembly.

## Chapter Four

### 4.0 Effectiveness of Law Making in NASS (1999 - 2015)

#### 4.1 Overview of Bills in Senate and House of Representatives from 1999-2015

The legislative activities of both the Senate and House of Representatives in relation to Bill processing and progression has been unsteady over the years largely due to the socio-political circumstances within the period under reference. The high turnover rate at the end of each general election within the period for instance, has affected both the quality and output of National Assembly's power of law making. However, gradual capacity development and confidence initiation demonstrated by returned Senators and Members of the House of Representatives have significantly enhanced output of the two chambers respectively as shown in the tables below.

√ *Senate:*

**Table 1: Bills Received and Considered in the Senate June 1999-June 2015**

Category of Bills	Number of Bills
<b>Bills Received</b>	1,788
<b>Executive Bills</b>	458
<b>Members Bills</b>	1, 330
<b>Bills transmitted from House for concurrence</b>	149
<b>Bills referred to Committees</b>	592
<b>Bills Passed</b>	390
<b>Executive Bills Passed</b>	173
<b>Members Bill Passed</b>	217

*Source: NILS, 2016 – 16years of Law Making in Nigeria.*

**Table 2: Bills Passed by the Senate**

<b>Year</b>	<b>Number of Bills Passed</b>
<b>June 1999-May 2000</b>	6
<b>June 2000-May 2001</b>	4
<b>June 2001-May 2002</b>	22
<b>June 2002-May 2003</b>	32
<b>June 2003-May 2004</b>	18
<b>June 2004-May 2005</b>	47
<b>June 2005-May 2006</b>	26
<b>June 2006-May 2007</b>	38
<b>June 2007-May 2008</b>	11
<b>June 2008-May 2009</b>	12
<b>June 2009-May 2010</b>	14
<b>June 2010-May 2011</b>	35
<b>June 2011-May 2012</b>	21
<b>June 2012-May 2013</b>	7
<b>June 2013-May 2014</b>	18
<b>June 2014-June 4<sup>th</sup> 2015</b>	79

*Source: Ibid*

From June 1999-June 2015, a total of 390 Bills were passed by the Senate.

## **4.2 Factors Responsible for Low Bills passage by the Senate**

The first challenge to the exercise of oversight functions of the National Assembly derives from the method of selection and election of Members of the National Assembly. There is a challenge in the way and manner Members are chosen to represent Constituencies, as it often does not allow for the most competitive and knowledgeable candidate who appreciates the nature of legislative responsibility and how to apply himself/herself to the arduous task of representation. The consequence of this is that the constituency usually gets an ineffective representative who cannot contribute to critical national issues either at plenary or committee levels. Partly, this is so because of the lack of internal party democracy and the over bearing influence of state chief executives who

impose their cronies on Constituencies. There is also the influence of money and “godfatherism” in the selection of candidates. Other notable factors include:

- ✓ The inability or lack of capacity of Senators to show interest in pursuing a Bill to its passage.
- ✓ Other competing priorities- For instance, the Senate is required constitutionally to do certain things besides law making e.g., screening and confirmation of political appointees for various positions.
- ✓ The first legislative session is generally used for many other government business not connected to Bill processing. E.g. passing of resolution takes much of their time.
- ✓ Effect of an election year- the volume of legislative activities tends to reduce as many Senators attend conventions, seek re-election etc. The effect of this is that a quorum may not be formed

### 4.3 Review of the House of Representatives:

**Table 3: Bills Received and Considered in the House of Representatives  
June 1999 - June 2015**

Category of Bills	Number of Bills
<b>Bills Received</b>	1,963
<b>Executive Bills</b>	513
<b>Members Bills</b>	1,450
<b>Bills transmitted from Senate for concurrence</b>	113
<b>Bills referred to Committees</b>	1,042
<b>Bills Passed</b>	615
<b>Executive Bills Passed</b>	247
<b>Members Bill Passed</b>	368

*Source: Ibid*

**Table 4: Bills Passed by the House of Representatives**

<b>Year</b>	<b>Number of Bills Passed</b>	<b>Remarks</b>
<b>June 1999-May 2000</b>	10	
<b>June 2000-May 2001</b>	6	
<b>June 2001-May 2002</b>	13	
<b>June 2002-May 2003</b>	74	
<b>June 2003-May 2004</b>	25	
<b>June 2004-May 2005</b>	36	
<b>June 2005-May 2006</b>	40	
<b>June 2006-May 2007</b>	67	
<b>June 2007-May 2008</b>	10	
<b>June 2008-May 2009</b>	37	
<b>June 2009-May 2010</b>	45	
<b>June 2010-May 2011</b>	60	
<b>June 2011-May 2012</b>	19	
<b>June 2012-May 2013</b>	41	
<b>June 2013-May 2014</b>	30	
<b>June 2014-June 4<sup>th</sup> 2015</b>	102	

*Source: Ibid*

#### **4.4 Factors affecting the passing of Bills**

- ✓ Stages of a Bill i.e. Normal process or accelerated consideration
- ✓ Nature of the Bill- Executive or Members Bill:
  - New Bill or Amendment Bill.
  - Controversial or non-controversial, e.g. Petroleum Industry Reform Bill, Gender and Equal Opportunities Bill etc.
- ✓ Issues addressed in the Bill i.e. National or Sectional interest.
- ✓ Loss of interest by the sponsor.

Ordinarily legislators are to attend, participate, initiate and sponsor bills, motions as well as lobby and influence the passage of bills, believed to bring good governance to the people. However, the election of incompetent, inexperienced representatives or persons with lower levels of education affects the quality of the legislative process. This is because such representatives hardly attend sittings i.e. either at the plenary or Committee levels let alone initiate bills or lobby/influence projects that can benefit their constituencies. Still, others hardly visit their constituencies after elections or once elected. With this kind of scenario, the entire system of oversight responsibility on the Legislature or law making can be adversely affected, thus bringing about ineffective representation.

The high level of legislative turnover in the National Assembly since 1999 is also worrying. In the words of Hamalai et al (2017) the trend in the 2015 NASS election where more than 70 and 250 members of the National Assembly were not re-elected into the Senate and House of Representatives respectively (i.e. 62% turnover rate and 69.5%) shows very low re-election rates and a high legislative turnover. Dogara (2017) attributed this to reasons including “godfatherism” and the clamour for rotational representation at the expense of quality legislation. For instance, people who have acquired some dominance in politics often influence the selection process picking candidates they prefer that satisfy their own personal interests. In other cases, it is based on a local arrangement or consensus so that a constituency consisting of 2 or 3 Local Governments for example can take turns to be represented at the National Assembly. Nonetheless, the high turnover of legislators is an issue that is being discussed across board, since so many factors are responsible due to Nigeria’s peculiar practice of democracy.

Poor communication between lawmakers and the citizens they represent is also a factor that affects legislators in carrying out their law making function. A good flow of communication is expected to occur between legislators and constituents. In the National Assembly, this is a major challenge as most Nigerians are unable to understand the essence of some of the legislations or Bills under consideration by the National Assembly or ironically, the need for citizen inputs.

Communication is very vital for the sustenance of a viable legislative process or law making as the National Assembly needs the buy-in of the populace into whatever steps they take in law making; as their elected representatives.

Other identified factors that affect law making in Nigeria are:

- ✓ The lack of follow-up on a Bill by its sponsor(s);
- ✓ The lobbying capacity of a sponsor, in terms of his/her ability to mobilize support;
- ✓ The importance attached to the Bill by the Senate or House of Representatives;
- ✓ The committal of Bill to a Standing Committee or Committee of the Whole House;
- ✓ The promptness of attention from the Committee to which the Bill is referred to;
- ✓ The exigencies of organizing a public hearing on the Bill;
- ✓ The sponsorship of Bills with no intention of passing them;
- ✓ The political and cultural disposition of members on the Bill; and
- ✓ The effects of some events taking attention out of a Bill e.g. An Appropriation Bill.

#### **4.5 Challenges with the Bill Process**

- ✓ Large number of Bills.
- ✓ Capacity to engage with Bills by members of the Committee
- ✓ Quality of Bills
- ✓ Concurrence requirement for Bills.

- ✓ High rate of turnover of Legislators.
- ✓ ICT capacity.
- ✓ Bills that are not fully processed when the lifespan of the Assembly ends.
- ✓ Delay in Enacting Vital Bills.



## Chapter Five

### 5.0 Factors Responsible for Poor Quality of Bills and Policy Development

This section attempts to explain the factors responsible for poor quality of Bills in the National Assembly and the role that relevant Departments of the National Assembly can undertake to increase the quality of legislation.

The Bill process is a web or a function of several units or departments and legislative committees in the law making process. However, trends indicate that despite the engagement of several NASS units in the Bill process, the quality and content of some Bills have been contested by civil society groups, members of the public, academics, and lawyers on many occasions. There is therefore need to examine the basis of such contentions and recommend appropriate measures to overcome the challenge.

Some of the reasons for poor quality of Bills or Policy analysis are highlighted below:

#### 5.1 Poor Conception or Policy Formulation

The first problem might be from the conceptualization of the legislative intervention or policy formulation i.e. when the sponsor of a given Bill conceives an idea of a particular legislative proposal. Ideally, at this stage the policy maker is expected to take the following into consideration:

- i) Expertise of the subject matter for legislative proposal;
- ii) Whether the proposal is within the limits of National Assembly's legislative powers (that is under the Exclusive or Concurrent legislative list in the Constitution) that empowers the National Assembly or State Houses of Assembly to legislate on certain items ;
- iii) Whether the proposal conforms with the Constitution of the Federal Republic of Nigeria;
- iv) Whether the proposal will not create legislative duplicity or inter agency rivalry (a recurring challenge in the National Assembly is the

quest by legislators to sponsor Bills seeking to establish an agency or duplicate agencies often resulting in conflict with the role of an already functional or existing agency);

- v) Whether the proposal will not add more burden on government i.e. whether the costs of administering or implementing the proposal outweighs its benefits; and
- vi) Whether the proposal if passed, can be enforced or implemented.

Scholars of legislative studies are unanimous that a greater percentage of Nigerian law makers do not have a sound knowledge of the subject matter undergoing the legislative process and do not consult competent consultants or departments that can assist in developing credible legislative proposals.

## **5.2 Political Factor**

A major challenge is the lack of ideological base or focus of the political parties- the platform under which a lawmaker is elected. The electoral system plays a huge part in who gets elected into the legislative body.

The current party structures are loose and very weak, with no party discipline or internal democracy. The two major political parties today, namely, the APC (ruling party) and the PDP have manifestly broken into factions due to internal fighting on political positions and not ideological differences. Political party processes are run by what is described as “Neopatrimonialism” meaning; “God fatherism” which is the determinant factor for distributing patronage and political positions. The combination of the weak party structure and flawed political and electoral process with diverse loopholes for manipulation often results to absence of democracy and the enthronement of chaos as currently witnessed in the body polity.

The Nigerian experience is that the nomination or selection of a candidate by a particular Party perceived to be influential or powerful means automatic victory for the candidate at the general elections. This often raises the question of whether the results are a true reflection of the choice of the voters.

### **5.3 “Copy and Paste” Syndrome**

Often times, legislation is copied from foreign countries and put forward as legislative proposals for consideration in a given house without regard to the specificities of the Nigerian cultural or legal system. This contributes to the poor quality of Bills in Nigeria as it fails to assess compatibility. What is applicable in Europe may not be applicable in Nigeria owing to variations in the two Legal Systems.

Political beliefs and positions largely influence lawmaking. Proposals that are not aligned to politicians’ ideologies are unlikely to get their support and will probably fail no matter how good they seem. Conversely, a problematic proposal could get support if it aligns with or serves a political purpose. Politicians have been known to go against the advice of technical or subject matter experts and insist on their positions on bills.

### **5.4 Lack of Technical “Knowhow”**

Knowledge of the law and knowledge of legislative drafting are two different issues. Legislative drafting, which entails converting the ideas or intents of a sponsor of a legislative proposal into a Bill, is an area of specialization in the legal profession. If a lawmaker does not consult with professional drafters, there will always be poor quality of Bills due to lack of skilled input.

### **5.5 Bill Scrutiny/Legal Services Department**

These departments are important bureaucratic offices whose services policy makers should utilise. They are responsible for ensuring the quality of Bills for consideration by the legislators. Accordingly, they must be composed of competent staff with technical knowhow of Bills. The inability to utilize this unit or equip it with technical staff that can deliver on scrutiny will surely affect the quality of legislations or Bills in NASS.

## **5.6 Consideration of Bills by Committee and Plenary Session**

The composition of members of the National Assembly in terms of level of education, committee leadership/membership, House Leadership, etc. is an important determinant of the nature/quality of Bills. If members are knowledgeable on a subject matter in a legislative proposal, there will be better legislative scrutiny. Conversely, where the knowledge is poor or the level of education is low and experts are not engaged to support the process, the quality of the Bill will be affected or compromised.

## **5.7 Poor Stakeholder Engagement**

The engagement of stakeholders is one of the best ways to support a qualitative legislative process. After a bill is referred to the relevant Committee or Committee of a whole for further legislative action, the general public or relevant stakeholders are usually involved in a public or stakeholders hearing on the bill. The opportunity usually presented at this stage for interested parties, the public and government officials to make inputs on the bill goes a long way in ensuring that a quality bill is presented by the committee for passage.

## **5.8 Poor Research Data Base**

The absence of data or relevant information has a significant effect on the quality of Bills or policy development in Nigeria. The culture of poor record-keeping and information-gathering means that legislators are unable to be apprised of facts that would enable them make informed decisions.

## **5.9 Corruption**

In Nigeria, corruption is not only endemic and degrading but has eroded merit and weakened institutional structures. Corrupt tendencies can lead to the development of bad bills that does not serve the interest of the people or that seeks to create loopholes to prevent mischief-makers from being punished for offences in the event of enforcement.

## Chapter Six

### 6.0 Challenges of Law Making in Nigeria

There are numerous challenges confronting law making in Nigeria. Broadly speaking, the effectiveness of Nigerian law makers are constrained by many issues such as:

- High turnover in NASS membership/leadership positions
- Inadequate capacity
- Lack of legitimacy as a result of rigged election mandate
- Entrenched systemic corruption that has weakened societal fabric
- Failure of the executive to adopt or buy into legislative agenda of the legislators who are better positioned to suggest workable policies for their constituencies
- Lack of political will to enforce or implement express constitutional powers

This section focuses on some of these major challenges.

#### 6.1 High Turnover of Legislators

Unfortunately, one of the major challenges of our democratic experience borders on the massive turn-over of Members of the Legislatures at each election reducing returning Members to a margin of about 30%, with over 70% or more of old and experienced Members ousted thereby reducing the Legislatures to a theatre of experiments. This creates problems for the legislature.

First, new members are not only strangers to legislative processes and functions but to the whole business of governance who are now saddled with legislative responsibilities on wobbly feet. The exception in recent times are the Governors or Commissioners or Ministers that get elected as legislators but even then, the legislative business is distinct and requires special training to achieve the requisite skills to function effectively.

Secondly, the laws passed by the last Assembly are consigned to the archives; new Members are either unaware of such laws or in an attempt to seek popularity, ignore same laws and undertake new ones, possibly repackaged with or without substantial difference in content and context.

Much more would be achieved as regards passage of laws and motions as well as the implementation of such legislations/motions if there were a higher retention rate of legislators at subsequent elections.

## **6.2 Change of Legislative Leadership**

Frequent change of leadership is among the leading causes of poor legislative output and outcome by legislature. This can be in the form of change of Committee Chairman, Sub-Committee Chairman, Committee Clerk or the Speaker or Senate President, etc. Such changes do not foster development of key legislative skills and transfer of knowledge.

## **6.3 Time Constraint**

Legislators all over the world are constrained by time. They have to divide their time between policy-making functions, Committee sitting and research work, oversight function, constituency service and personal time. Barkan, (2009) drawing attention to this said a fundamental challenge to the development of the legislature in emerging African democracies is how to restructure the incentives facing Parliamentarians so that they will devote more time and effort to the functions of legislating in the broad sense and to oversight, while ensuring that their constituency services are not compromised.

## **6.4 Inter/Intra Party Crisis**

Inter/intra party crisis affects the law making process in several ways. This often comes from poor party formation, weak electoral processes, party discipline, politics of “godfatherism”, etc. In some cases, politicians or legislators decide on Bills not necessarily on merit but on part or group interests.

## **6.5 Poor Legislature – Executive Relations**

In Nigeria, the friction between the Legislature and the Executive represents one of the major challenges to law making. In theory, although the principle of separation of powers envisages that the three arms of government are separate and independent, the opposite is actually true in practice and especially in the Nigerian context. Interactions between the two arms often involve conflict and trading of blames, which makes it difficult to pass critical legislation in Nigeria. Such conflict have manifested in many ways. For example, in the 7<sup>th</sup> Assembly, the former president Goodluck Jonathan refused to sign constitution alterations passed by the National Assembly into law leading the matter to become a subject of litigation towards the end of his tenure.

## **6.6 Inadequate Working Facilities**

Whilst legislators appreciate the role of committee staff in the management of Committee activities and guidance on legislative rules and procedure, there is usually weak research support for committees, and this is often seen in their law making (Danwanka, 2017). Inadequate office facilities, books, journals, ICT equipment, etc. is an impediment to the performance of legislators.

## **6.7 Weak Oversight**

Weak oversight as experienced by most Committees is a challenge to the law making process especially as the principal role of the legislature is not just to make laws but also to ensure that the laws are serving the purpose for which they were made. In some cases, amendment to existing legislations are proposed without recourse to the level of implementation of the law or investigation as to why it was passed in the first place. Weak oversight also makes it possible for the Legislature to give expeditious consideration to certain bills or matters presented by the Executive without considering the interest of the public.

## Chapter Seven

### **7.0 Recommendations**

#### **7.1 Development of a functional legislative agenda**

An important mechanism in addressing the challenges of law making in Nigeria is to ensure that there exists a functional legislative agenda where all critical stakeholders in the legislature can contribute immensely to its formulation and work towards its actualization. The 7<sup>th</sup> & 8<sup>th</sup> National Assemblies have adopted this process, however it is not as functional as expected due to poor stakeholder engagement. This reflects in the lack of clarity on public views or interest or parliamentary principles/values. Therefore, a credible legislative agenda is expected to guide the development of a work plan or parliamentary work schedule, predict the scale for parliamentary action/work and set out targets/measurable goals, stimulates parliamentary reform process, etc.

#### **7.2 Institutionalization of strategic and work plan culture**

Law making goes beyond just moulding ideas and drafting same into legislation. The National Assembly should ensure the institutionalization of a strategic plan and work plan culture to enrich the law making process. This is because strategic planning gives direction to legislative agenda that can be moulded into the work plan of the legislature to support the legislative process and promote healthy law making by the legislature. Furthermore, a work plan enables the legislature set targets in terms of output, outcome and financial implications of plan activities which is expected to safeguard the danger of poor job prescription by legislators, legislative committees, etc.

#### **7.3 Capacity development for legislators and staff**

Lack of capacity of Members to utilize; internet services, materials from e-library and otherwise, failure to collaborate and work with Civil Society Groups and



effective utilization of research fellows, legislative staff and assistants and effective utilization of legislative skills and knowledge grossly militates against the capacity or attitude of the individual in preparing and processing legislative bills and/or motions.

Capacity development should be a continuous process in a legislature. To address the gaps in law making process by a legislature, the capacity of staff, legislators, aides, etc. must continuously be built to meet up with the challenge of time and reflect the dynamic nature of the society. Likewise, developing the culture of research based formulation of Bills and debates on Bills can be achieved through the engagement of legislative aides who have the competence to conduct research. In addition, legislators should be encouraged to key into the direction of technology driven legislation.

#### Skills Needed by Legislators for Effective Lawmaking

- a) Educational background of an individual Member
- b) Exposure of each Member
- c) Attitude and effective deployment of skills acquired or readiness to acquire such new skills and apply them
- d) Passion for the legislative assignment
- e) Training and ability to learn and adjust for effective performance.
- f) Effective use of legislative materials/staff

Beyond the effective use of legislative assistants to work with the legislators is the need for a well furnished and equipped Legislative Budget and Research Office with state of the art infrastructure, rapid internet services and libraries stocked with relevant books and e-library materials. A parliamentary budget and research office should have skilled and knowledgeable staff with diverse specializations to match the executive arm MDAs for appropriation purposes and monitoring of budget performance to ensure compliance with stated bill of quantities etc. Research fellows can assist with relevant local and international materials in view of a pending bill for passage.

## **7.4 Strategic exchange or experience visits**

Parliamentary exchange visits continue to play an important role in enhancing ties with other countries and facilitating the exchange of ideas, values, knowledge and experience. This is widely practised by legislatures around the world where legislators from one country visit the legislature of another country to learn or share experiences or practices for the purpose of enhancing law making and other legislative activities. Such experience visits are usually conducted by delegations, who study the structure and functions of the other parliaments as well as the working relationship between their Legislature and the Executive. Such legislative interface and dialogue has the capacity to broaden the knowledge and strengthen the competence of law makers as they are intended to share, compare and contrast experiences in order to have deeper perspectives in law making.

Since 1999, the National Assembly through the Inter Parliamentary Relations Committees have exploited parliamentary exchange visits to the UK Parliament, Canadian Parliament, and the US Congress. Such Parliamentary visits/exchanges have exposed and encouraged Nigerian lawmakers in diverse ways in the discharge of their constitutional roles.

## **7.5 Increase in Committee Funding**

Committee chairmen have often identified poor funding to committee operations as a leading challenge to effective law making in Nigeria. There is need to ensure that Committees are properly funded to support the bills process at the Committee level especially considering the fact that the committee is where the most work on a bill is carried out.

## **7.6 Improved Legislature – Executive Relations**

Confrontation and disagreement over a legislative proposal is not uncommon in Nigeria's legislative process. Cooperation and cordial relationship should guide the law making process. There should be focus on the substance of the issues at stake when it comes to law making.

## **7.7 Improved Transparency/Accessibility in Law Making**

The National Assembly should promote the attitude of transparency through strong media relations to educate the public about parliamentary activities and law making. Furthermore, there is need to improve public accessibility in the law making process via visits, correspondence, NASS website, as well as easy access by the public into the National Assembly premises.

## **7.8 Concurrence/Neglect of Important Bills**

The concurrence requirement for Bills has tended to delay the passage of some Bills into an Act. There is the need to reform the process to minimize delays such as specifying a time period for concurrence and amending some provisions of the standing rules to enable crucial bills skip some procedures in such circumstances.

## **7.9 End of Tenure Bills**

The issue of the life span of a Bill ending at the end of an Assembly appears to slow down the process of law making. Such Bills should be re- introduced with a new number and given preference when processing.

## **7.10 Code of Ethics**

Most parliaments have developed a set of standards for the purpose of governing the conduct of members, called a Code of Ethics. In most cases, the Codes of Ethics also contain a system to administer those standards. The need for a Code of Ethics is not necessarily as a result of corruption on the part of legislators but due to the fact that legislators are expected to continually face difficult ethical dilemmas by the nature of their positions.

There is need for an established legislative code of ethics that will clearly define and demarcate the boundaries of acceptable conduct and require legislators to disclose their assets and interest in all their dealings. The code ought to be clearly articulated and in easy language understood by both legislators and

ordinary citizens with established aggressive channels of enforcement.

### **7.11 Electoral Reform**

There is the need for the establishment of a credible and competitive election process hinged on internal democratic practices within the Political parties to allow the National Assembly discharge its law making mandate effectively.

Consequently;

- a) Legitimately elected (and not selected) membership of the Legislature is key.
- b) The ability of constituents to identify good and worthy representatives and sustain them in the legislature for a reasonably longer period is also key

Simply put, impunity in selection of candidates militates against the progress of the law making institution.

The doctrine of internal democracy must be allowed to prevail in each political/ party. The Nigerian experience is not about deficit of laws or regulations but rather, lacking 'the will to do the right thing' as and when required or necessary. The stability of political parties and the observance of internal democracy in the parties are crucial if the National Assembly is to have qualified and committed legislators.

### **7.12 Effective Representation**

It goes without saying that the quality of legislative representation is linked to the quality of law making. Lawmakers should improve public consultation on legislation or policy. Unfortunately, there are few mechanisms in place to ensure that legislators account for their action to constituents. This is manifested in poor or non-functional constituency offices across the country. The National Assembly could update their rules or standing orders to prescribe a mechanism for enhancing constituency relations in law making. Lawmakers on their own can forge better links with their constituents, civil society and the media through outreach programmes and publication of their committee outputs and reports via personal and institutional websites.

## CONCLUSION

The National Assembly has a key responsibility for law making. In addition to reinforcing policy initiatives, legislation plays a role in creating or abolishing rights, reiterating collective commitment to specific targets, reaffirming moral or ideological principles, or simply reassuring the public that their concerns and interests are respected by lawmakers.

Unfortunately, the massive turn-over of Members of the Legislature at each election cycle leads to a loss of old and experienced Members and reduces the legislature's capacity in terms of the requisite knowledge, skill and experience to develop and sustain institutional memory.

Going by history and contemporary developments, law making is a serious legislative business requiring some good measure of relative knowledge, skills and experience as legislators often work under pressure to balance the demands and interest of their respective constituencies in the allocation of State resources, the time to generate chambers debates and committee assignments, as well as oversight functions and constituency services.

Notwithstanding identified challenges, the legislature/National Assembly can take concrete steps and adopt available solutions to address these challenges. The making of a responsible and responsive legislature goes beyond the laws creating it and the powers bestowed on it by the law. A legislature, perceived by the people it seeks to represent as self-seeking and irresponsible will not be trusted and will hardly impact on constituents. Thus, for the legislature to be effective and efficient in its law-making role, it must earn the trust of the people it represents and strive to articulate citizens' views, needs, yearnings and aspirations into good laws.

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## About PLAC

Policy and Legal Advocacy Centre (PLAC) is a non-governmental organization committed to strengthening democratic governance and citizens' participation in Nigeria. PLAC works to enhance citizens' engagement with state institutions, and to promote transparency and accountability in policy and decision-making processes.

The main focus of PLAC's intervention in the democratic governance process is on building the capacity of the legislature and reforming the electoral process. Since its establishment, PLAC has grown into a leading institution with capacity to deliver cutting-edge research, policy analysis and advocacy. PLAC receives funding support from donors and other philanthropic sources.

