

THE LEGISLATURE AND LAW MAKING PROCESS IN A TRANSITIONAL DEMOCRACIES: PERSPECTIVES ON NIGERIA AND SOUTH AFRICA

by

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Abstract

The primary responsibility of the legislature in any democracy includes law making, constitutional review, oversight functions on federal agencies' programs and activities as well as law implementation. The legislators represent the people in their various constituencies, so it is critical that they ensure the passage and implementation of laws that benefit the common man. The paper employed a qualitative approach in its analysis, with secondary data sourced from books, journals, and online resources. While elite theory was adopted as its theoretical framework. This paper compares the legislative systems of Nigeria and South Africa. This is due to the two countries' unique histories. It should be noted that South Africa was under the minority rule of Apartheid until their independence in 1994, whereas Nigeria was under military rule with a brief period of democracy until 1999, when the military handed over the mantle of leadership to the civilian government. Comparing these systems brought to light the similarities and differences inherent in their legislative procedure. The study revealed that both the Nigerian and South African legislatures continue to face numerous challenges in carrying out their responsibilities, ranging from institutional

arrangements, operational procedures, and individuals' attitudes toward their legislative role. The paper concludes by suggesting that there is a need for a unified political party guided by strong ideology, capable of exercising party discipline, upholding justice, mediating and reducing inter-organ conflict.

Keywords: Legislature, Law Making Process, Transitional Democracy, Nigeria, South Africa.

Introduction

The legislature is perhaps the most essential organ of government in the sense that no society can exist without law. It is also believed that an elected legislature is a major distinguishing feature between a democratic and a military government, because all forms of government make laws. This is the body authorized by law to enact legislation to the other through which sovereignty is exercised (Obiora, 2019).

Nigeria transitioned into democratic rule in May 1999 after 16 years of military control of the state apparatus and institutions of governance. Similarly, South Africa is one of the African countries that became a democratic state following the democratic resurgence of the 1980s and 1990s. Prior to this time, South African politics was

dominated by white minority rule. The apartheid regime imposed a reign of terror. Thus, in 1994, the restoration of democracy through a political reform that liberalized the process of governance with a multiparty constitutional democracy resulted in the emergence of a completely new era of constitutional democracy (Picard and Mogale 2015; Pypers and Pothier 2015). As a result, both Nigeria and South Africa returned to democratic governance in the 1990s, with legislatures assigned key roles under the new administration.

Despite the fact that the Nigerian constitution adopted a presidential system, and the South African constitution is essentially a hybrid drawing certain provisions from both the parliamentary and presidential systems, the two constitutions give the legislature significant powers (Fashagba 2009). South Africa and Nigeria have a common colonial history, but their experiences have been very different. It's interesting to note that while British colonialists colonized both countries, their methods of colonization differed.

It is against the foregoing background that, this paper focuses on Nigerian and South African legislative institutions and attempts a comparative analysis of their functions and constitutional roles in their respective countries.

Literature review

The legislature simply means a meeting for deliberation in the context of the Greek assembly, where vital issues for the good of the people are discussed. These deliberative assemblies are known by designations in modern states, which are largely determined by the official language of the state's or nation's history. In Nigeria, for example, the legislature is known as the National Assembly, Parliament in South Africa. It is known as the National Congress in Brazil and the Congress in the United States of America. In all modern democracies, these deliberative assemblies have the authority to enact laws for the good governance of society. This is because the legislature is a body of people

with the authority to create, amend, or repeal laws for a country. Aside from making laws, the Legislature's other functions include representation and oversight of the Executive (Maurice et al, 2014)

The term "legislative process," refers to the process by which a proposed law becomes law.

The term "legislative process," according to Abayomi (2002), has both restrictive and vast connotations. In its most restrictive sense, it may refer to the procedure that the legislature must follow before enacting policy proposals into laws or statutes. It describes the various steps, stages, and processes involved in the legislative process. However, to Maurice et al, (2014) legislative process can be understood or defined as the entire legislative process or processes. This meaning depicts the ways of the legislature, the legislature's powers in their entirety, not just its powers as they relate to the law-making process. For example, in a bicameral legislature, legislative bills must go through several stages (debates and amendments), and then they must pass through numerous committees and subcommittees in both houses of the parliament before receiving the President's approval or being finally amended into law.

The term "legislative process" also refers to the procedure through which a proposed law goes in order to become law. Legislative processes vary between legislature across the globe, but some common elements in democratic legislatures include the following: when a bill is introduced into the Parliament, Congress or Assembly, it is scrutinized by the legislature or legislative sub-committees and amendments may be proposed. Then a debate on the final proposal and a vote on the bill requiring majority approval signature of the head of state (polyas.com).

It is not an overstatement to say that the legislative history of both countries is the history of British colonial dominance. British colonialists established the first Legislative Council in Lagos in 1862 to administer the

British colonies in the region until the formation of the Colony and Protectorate of Nigeria in 1914. (Nwabueze 1985). The subsequent adoption of the 1922 Constitution, with forty-six members, strengthened the legislature as an institution (Nwabueze 1985). Following the 1922 Constitution, subsequent constitutional developments and reforms have sought to build on the previous ones (Nwabueze 1985). As a result, the legislative institution's composition and operations have changed on a regular basis.

By 1960, when Nigeria became independent and a sovereign state, the parliamentary system of government, modeled after the British Westminster model, had been fully adopted and operational. When Nigeria re-democratized in 1979, the failure of parliamentary democracy in 1966 became a drawback to its further adoption (Akinsanya and Idang 2002). After debates among political and educated elites, the parliamentary system was rejected, and the presidential system was eventually adopted (Political Bureau 1987; Constitution Drafting Committee 1976). As a result, the 1979 presidential Constitution replaced the 1960 parliamentary constitution, with a clear separation of powers between the country's various organs of government.

From the late eighteenth century until 1910, the British colonialists ruled South Africa through the Westminster parliamentary system (Pypers and Pothier 2015; Picard and Mogale 2015). Following the end of British rule in 1910, the parliamentary system underwent a number of reforms and modifications, particularly those implemented by the National Party (NP) in the 1960s and 1980s (Picard and Mogale 2015; Pypers and Pothier 2015). With its Republican status in 1961, the White Minority government severed all ties with Britain and replaced the Queen's title as head of state with the president of the state, while the Prime Minister retained power as the head of government (Pypers and Pothier 2015; Picard and Mogale 2015).

Another reform in 1983 removed the position of Prime Minister by establishing the executive presidency as the position of head of state and government (Picard and Mogale 2015). The creation of a segregated "Tri-cameral Parliament," which provided limited and contentious representation to "coloured" and "Indian" South Africans in separate chambers, was a key component of this reform (Pypers and Pothier 2015, p.3). The White minority government excluded the black majority from participation in government, and the White parliament remained superior to the colored and Indian South Africans.

This arrangement remained in place until 1994, when the apartheid regime was overthrown and replaced by an inclusive democratic government presided over by a president. The national, provincial, and local governments were the three levels of government, along with the executive branch of government (Pypers and Pothier 2015; Picard and Mogale 2015). Despite being a hybrid institution, the South African system is fundamentally based on the Westminster system (Picard and Mogale 2015; Pypers and Pothier 2015).

Theoretical Framework

This paper adopted elite theory as its theoretical framework. Elite theory is a state theory that aims to explain and describe power dynamics in modern society. According to the theory, a small minority of members of the economic elite and policy-planning networks wield the most power, and that this power is independent of democratic elections (Witten, 2015).

This theory's fundamental premises are that power is concentrated, elites are unified, non-elites are diverse and powerless, elites' interests are unified due to shared backgrounds and positions, and institutional position is the defining attribute of power. (Glasberg and Shannon, 2011). The central theme of this theory is power. Political actors are primarily concerned with gaining or retaining state power (Higley 2011).

According to Fukuyama (2015, 12), the essence of state power is the promotion of the public good. Most democracies have institutions that constrain the exercise of power in a way that defines the behaviors of legitimate political actors wielding state power (Fukuyama 2015).

The relevance of elite theory to this study is that it helps us understand the constant power concentration on the hand of few political elites, which are a group of individuals with a legitimate connection to the institutions of power to affect the state's decision-making process. These people hold and exercise control over the highest positions in government. These individuals also work in both the formal and informal institutions of government in both Nigeria and South Africa. In terms of the federal structure, Nigeria's presidential system encourages individualized politics. As a result, individual politicians frequently have sway over elected and administrative government officials (Fagbadebo, 2018; 2016). While personalised politics exist in South Africa, their effectiveness is more closely related to the power of specific individuals within the dominant political parties. The principle of party supremacy in the governing system allows the political elite to exert control over governmental activities and decisions by encouraging strict adherence to party rules and discipline (Fagbadebo, 2018). This explains why members of the ANC failed to hold the former president accountable during cases of misconduct against him for using public funds to upgrade his private residence.

Finally, according to this theory political actors are primarily concerned with gaining or retaining state power; this is evident in both Nigerian and South African legislatures, where the legislature's primary concern is to maintain power at any cost. For example, in Nigeria some members have been in the House since 1999, owing to their ability to manipulate the system to their advantage.

Methodology

Research methodology is referred to as the sources of data on the research and the method of investigation used for a study. Also included are the methods of data analysis Used by the researcher. This research is basically analytical and Descriptive, using secondary sources in looking at the trends of studies relating to legislature and legislative process with a focus on Nigeria and South Africa. The secondary data used in this study were books, updated articles, news concerning the issue, textbooks, newspapers, and internet materials including relevant research papers and studies addressing on this issue obtained from different sources.

The Nigerian Legislature

The Nigerian National Assembly is a bicameral legislature in terms of its structure. The Senate makes up the Upper Chamber, while the House of Representatives makes up the Lower Chamber. The Senate has 109 members, with three representatives chosen from each of the 36 states and one from the Capital Territory. This is the equality of states tenet. No matter how big a state is in terms of its population and land area, it has three members, plus one to represent the Federal Capital Territory (FCT), Abuja (Fashagba 2015). The House of Representatives, on the other hand, has 360 members representing 360 federal constituencies spread across the country's thirty-six states. The number of representatives that each state sends to the Nigerian House of Representatives is proportional to its population size. As a result, each state has a different number of representatives in the lower chamber (Fashagba 2014). Members of the two chambers serve four-year terms with no limit on the number of times they can serve if re-elected. This explains why some members of the National Assembly have served since 1999.

Members of the National Assembly elect their Principal Officers. To facilitate its work, each chamber usually creates a number of committees (Fashagba 2009). The

committees aid in the smooth operation and activities of the National Assembly and serve as a platform for public interaction. In modern democracies, the legislature wields enormous power beyond the traditional function of making laws (Onwe et al. 2015: 73). Thus, the main functions of the legislature are spelled out in Nigeria's 1999 constitution.

The South African Parliament

South Africa's parliament is divided into two chambers: The National Assembly (NA) and the National Council of Provinces (NCOP). The National Assembly (NA) is the parliament's first and most important representative body (Chaskalson and Klaaren 1999). As a result, the National Executive is answerable to it. Section 46 (1) of the constitution states that the NA must be composed of between 350 and 400 elected members. Members are elected for a five-year term through a closed list proportional representation system. The NA is chaired by the Speaker, who, by convention, is above party politics and acts on behalf of the legislature. Section 52 also establishes the position of Deputy Speaker.

The National Council of Provinces is South Africa's second chamber of parliament (NCOP). The NCOP is made up of nine provincial delegations of ten people each. The delegates represent the interests of the province. There are 90 delegates, 54 of whom are permanent and 36 of whom rotate. The various provisions of the country's Constitution capture the Constitutional roles of the South African Parliament. According to Seedat (2015: 8), the South African parliament is a self-governing body governed solely by the Constitution. Thus, the main functions of both houses are spelled out in South Africa's 1994 constitution.

Law Making Process in Nigerian Legislature

Since the return to civilian rule in 1999, the Nigerian legislature has been in charge of making laws. Many bills have been passed into law by the assembly. Bills have been

introduced by both private members and the executive branch. From 1999 to 2015, and under each legislature the executive played a dominant role; the majority of bills passed and signed were executive bills (Fashagba 2015). However, despite the fact that the ruling All Progressive Congress (APC) has also controlled the two chambers of the National Assembly since 2015, the culture of legislative assertiveness fostered, nurtured, and developed during the PDP's 16-year reign has been preserved. For example, according to the Senate President, the Senate was able to reject sixteen executive nominees between June 2015 and March 2018 (Vanguard 31/08/2018).

In a similar vein, the National Assembly occasionally contributed significantly to the Medium Term Economic Framework, which is typically submitted to the National Assembly before the executive submits the annual budget. Undoubtedly, the National Assembly changed the benchmark oil price used by the government to develop its annual budget proposals in 2016 and 2017 (Ayado and Isah 2017). Nigeria's economy is dependent on oil; as a result, her annual budget is frequently correlated with the price of world oil.

Despite the fact that legislative bills have a lower chance of being passed, as evidenced by the realities in the National assembly since 1999, the legislature shaped the majority of executive bills passed to meet its expectations by introducing amendments. To be sure, the Senate received a total of 1788 bills between June 1999 and June 4, 2015. (National Institute for Legislative Studies 2016). The executive bill had 458 components, while the private members' bill had 1330. However, only 390 of the bills were passed by the legislature. 44.36% of the bills passed were executive bills, while 55.64 were member bills (National Institute for Legislative Studies 2016). From 1999 to 2015, the Nigerian Senate passed 24.37 bills per year on average. However, 274 were passed between 2015 and 2019. (The Nigerian Senate, 2019)

It is sufficient to note that while the president refused to sign several bills passed by the National Assembly during the Obasanjo administration (1999–2007), the legislature was able to muster a two-thirds majority to override the presidential veto and pass some of the bills (Fashagba 2009, 2011; Lewis 2009). The executive has similarly refused to sign off on some bills under the APC administration, but since 2015 there hasn't been a legislative counter-veto.

It is also worth noting that the Nigerian legislature has evolved from a nascent institution in 1999 to a mature body over the past 19 years of the current democratic regime. For example, between 1999 and 2007, the majority of members lacked experience and were unaware of legislative proceedings (Lewis 2009).

A major setback for the institution has been caused by the legislative members' display of corrupt behavior, leadership disputes, turnover, and intra-party disputes (Akomolede and Akomolede 2012). The result of the aforementioned was that business and legislative activities suffered. For instance, Akomodele and Akomolede (2012) pointed out that between the National Assembly's founding in 1999 and 2012, only 195 bills were passed into law by the two chambers of the National Assembly, while 189 bills were still pending in the Senate. This suggests that over the course of 13 years, the legislature passed 13 bills into law on average. This may help to explain why many observers believe that Nigerian legislators have not done a good job of making laws (Fashagba and Ruffin, 2019).

Law Making Process in South African Parliament

South Africa's two chambers of parliament—the National Assembly (NA) and the National Council of Provinces (NCOP)—have been responsible for enacting laws since the country's multiparty democracy began in 1994. The national legislature is independent and distinguished by high institutional

capacity in the forms of resources, according to Mamogale (2015, p. 199), which allows it to exercise its formal powers of lawmaking, oversight, and representation.

The South African Constitution's Section 73-79 provides for the passage of bills as part of the legislative process for passing laws (The Constitution of the Republic of South Africa 1994). Regarding the adoption of laws with particular jurisdictions, the sections describe the nature of the relationship and interaction between the NA and the NCOP. While any legislator or member of the Cabinet could introduce any bill, Section 73 of the Constitution expressly grants the Cabinet members the right to introduce money bills. The constitution specifies the parameters and order of action for the NA and the NCOP for every step of the legislative process of bills.

The Parliament has had an exceptionally heavy legislative workload since 1994. This is due to the high number of bills that have been passed, which does not accurately reflect the workload. Members took part in other activities that took up a lot of their time as a result (Grant 2016). Numerous important bills that introduced significant changes in policy were passed. Provincial legislatures haven't passed a lot of legislation compared to the National Parliament in the years since they've been in existence (Grant 2016).

Despite the foregoing, the National Assembly passed 290 house resolutions and parliament passed 12 bills in 2014/2015. (Grant 2016). Apart from that, the South African National Assembly (MPs) asked the President and Cabinet Ministers 4822 questions, while the NCOP (MPs) asked 549, and minutes were taken for 963 committee meetings during that financial year. Moreover, between April 2014 and March 2015, there were 126 plenary sessions (Grant 2016). According to the National Assembly's Annual Report for the 2016/2017 parliamentary year, the National Assembly held 15 bill debates and passed 24 bills into law (Annual Report 2016/2017). There were 45 committee reports on bills and 70

committee reports on the fiscal framework. The differences in the two countries' activities and what they focused on are largely a result of their different political systems (Fashagba and Ruffin 2019). A total of 20 bills were recently passed between January 2021 and January 2022. (Annual Report 2021/2022)

The Legislature in Nigeria and South Africa: A Comparison

So far, our discussions have brought to light some of the key elements or features of the Nigerian National Assembly and the South African Parliament. Using the comparative method, we bring a few of them to light in this section. The presidential-parliamentary mix in operation distinguishes the South African system from that of Nigeria. The American presidential system is in place in Nigeria. South Africa's executive is accountable to the National Assembly, not the National Council of Provinces, according to the country's constitution. The parliament appoints the president and holds power at the members' request (Picard and Mogale 2015; Pypers and Pothier 2015). The president appoints Cabinet members who are responsible to and accountable to the legislature. Members of the executive in Nigeria, on the other hand, are not accountable to the National Assembly. Rather, the Nigerian president is accountable to the electorates, while his cabinet members are accountable to him.

It is also worth noting that, while members of the legislature in South Africa are elected for 5-year terms using closed list proportional representation ballots, members in Nigeria are drawn from single-member constituencies for 4-year terms (Siks 2008). A look at South Africa's second chamber reveals that members are not only delegates of their provinces, but that ten delegates represent each province, as opposed to three senators representing each state in Nigeria. Furthermore, not all parliamentary seats in South Africa are permanent, as some are rotated, particularly at the NCOP.

The South African NCOP serves as a deliberative platform or forum for discussing issues affecting any of the provinces. In Nigeria, the Senate does not function as a deliberative body. A member whose constituency is involved, or any other concerned member, could introduce a motion to intervene in matters affecting any particular state. The Senate can appoint an investigative committee to either visit the state for an on-site assessment or invite stakeholders from the state for interaction with the goal of determining what happened and suggesting possible solutions to the Senate for deliberation and possible approval.

Section 9 of the amended constitution grants the National Assembly (House of Representatives and Senate) in Nigeria the authority to amend the constitution. Any amendment, however, must be approved by two-thirds of the 36 states. The parliament of South Africa, comprised of the NA and NCOP, has the authority to amend the constitution (Siks 2008). Lastly both countries have a bicameral legislature, where both countries have upper and lower houses.

The Challenges of Legislative Process in Nigeria and South Africa

Every democratic institution faces unique or inherent challenges, depending on the nature and environment in which it operates. These challenges can be similar or differ to some extent in many democratic societies, particularly in Africa, due to the type of political system adopted by the states. Seedat (2015: 3), for example, notes that in South Africa, members of parliament were sometimes rude to the speaker and disobeyed the rules and procedures of parliament with impunity over the years. Similarly, Manona (2016: 80) has observed that the fact that the majority of members of parliamentary committees are drawn from the ruling party weakens and erodes their ability to indict members of the ruling party. It becomes more difficult when committee members must hold senior members of the same party accountable. To be sure, some of the

Ministers were either colleagues or seniors within the ruling ANC. This was evident during the cases of misconducts against the former president for using public funds to upgrade his private residence.

All of these events severely harmed the South African parliament's functionality, integrity, and stability, as well as diverting the parliament's attention away from its primary responsibilities of improving the welfare of their representatives and promoting good governance in the state. Another issue affecting the legislature in the Nigerian National Assembly, on the other hand, was the lawmakers' attitude toward their legislative responsibilities. Some legislators regard their role as a part-time job and devote more time to other business and personal matters (Onwe et al. 2015: 77).

Furthermore, the majority of these private interests frequently undermine their legislative responsibilities. There was also a lack of trust between legislative and executive branch members. Antagonism between the executive and the legislature was a major issue from 1999 to 2015 under the PDP administration, and from 2015 to the present under the APC administration. Between 1999 and 2003, the inter-organs conflict led to some legislators calling for the impeachment of the then-president, Olusegun Obasanjo, while others called for military intervention (Coleman 2002).

Despite the fact that Nigerian legislators were the highest paid in the world, with a monthly salary of \$700,000 (\$1944 at 360 naira to \$1) and a running cost of \$36,388 (Vanguard, 8th March, 2018), corruption among members was widely reported from 1999 to 2015. Since the establishment of the Fourth Republic, the constant turnover of legislative leadership, particularly between 1999 and 2007, has been attributed to alleged corruption charges against House leadership.

Akomolede and Akomolede (2012) observed that members of the legislative house pursued their selfish interests at the expense of their primary responsibilities. Furthermore,

members of the National Assembly frequently see themselves as representing their party and national interests rather than the interests of their constituents. This interferes with the free flow of communication between electorates and their representatives in the National Assembly, undermining legislation governing the general welfare of the citizenry.

Conclusion

This paper compares the legislative systems of Nigeria and South Africa. This is due to the two countries' distinct histories. South Africa was under the minority rule of "Apartheid" until it gained independence in 1994. Nigeria was under military rule for a long time before returning to democracy in 1999. As a result, both countries' legislatures were given key roles under the new administration.

Despite this, it is important to note that the two legislatures continue to face numerous challenges in carrying out their responsibilities. Some of the challenges are related to institutional arrangements, operational procedures, and individuals' attitudes toward their legislative role. All of these challenges had severely harmed both countries' legislative functionality, integrity, and stability, while also diverting their attention away from their primary responsibilities of improving the welfare of their representatives and promoting good governance in the state.

Based on the foregoing, this paper recommends the following

There is a need for a unified political party guided by strong ideology, capable of exercising party discipline, upholding justice, mediating and reducing inter-organ conflict. Also, the legislatures of both countries perform their primary assigned responsibilities rather than pursue their selfish interests. Finally the legislatures of both countries, particularly Nigeria, should prioritize their constituents over their political parties, because they are in

parliament to represent their constituents, not their political parties.

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