

Legislative Constituency Projects in Nigeria: A Matter of Constitutionality or Political Expediency?

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Abstract

At the dawn of the Fourth Republic in Nigeria there was the quest by legislators to provide visible evidence of “dividends of democracy” to their constituencies. The quest has resulted in the implementation of constituency projects in one form or the other in Nigeria. The operation or implementation of these projects has caused controversy, sometimes resulting in delays in the passage of Appropriation Bills into law. This paper examines the concept of constituency projects in Nigeria, from the point of view of the constitutionality, legality and practicability thereof. The author comes to the conclusion that as laudable as the avowed goal of the concept is, the path to robust constitutionalism in a developing democracy, like Nigeria, is to discontinue constituency projects.

Keywords: constituency projects, “dividends of democracy”, constitutionality, constitutionalism.

1.0 Introduction

The advent of the Fourth Republic of democratic experience after a long military interregnum has presented an opportunity for the enthronement of good governance and rule of law in Nigeria.¹ The period has witnessed different measures taken by politicians at all levels of governance to deliver “dividends of democracy” to the populace.² Although, the 1999 Constitution explicitly provides the framework for rule of law, separation of powers, checks and balances amongst the organs of government, an area of controversy experienced in the operation of the Constitution is the constituency projects. These are projects executed in the legislative constituencies with the active participation of the legislators.³ Several questions may be asked on such constituency projects, such as: what is the constitutional basis or the legal framework in Nigeria for such projects? Would the implementation of such projects not be contrary to the principles of accountability and transparency enshrined in the Constitution and some other statutes? Should such projects be sustained in view of the answers that might be derived from the questions posed above? This paper is dedicated to the examination of the issues raised by these questions and other inter-related matters that pertain to legislative constituency projects in Nigeria.

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¹ The Fourth Republic in the Federal Republic of Nigeria refers to the democratic system of government in the country, since the coming into effect of the 1999 Constitution (as amended). The system of government is presidential, with the executive powers vested in the President at the Federal level and the Governors in the constituent States. The legislative power is vested in a bi-cameral National Assembly. In each of the 36 States of the Federation the legislative power is vested in a uni-cameral State House of Assembly.

² “Dividends of democracy” or “democratic dividends” is a popular term, widely used in Nigeria by several persons, including politicians, scholars, and political commentators, etc. The common denominator of all the usages of the term is that it is about development of the generality of the populace in any democratic culture. It was stated by L.U Edigin and A. Otohile in *Good Governance and Democratic Dividends in Nigeria: The Nexus* in *Pakistan Journal of Social Sciences* 2011(PJSSCI) Vol. 8, issue 1, 23-26, at p. 25 that: “Since democracy is about the people, their wishes and aspirations then the dividends of democracy is simply how democracy can bring about development in the society through good governance”; see also, Udefuna, *et al: Legislative Constituency Project in Nigeria: Implication for National Development* in *Mediterranean Journal of Social Sciences* vol. 4 no.6 (July 2013) (MISER-CEMAD-Sapienza University, Rome. P.647-653.

³ Albert Van Zyl: *What is wrong with the constituency development funds?* In International Budget Partnership (IBP) newsletter Budget Brief No. 10, available at <http://internationalbudget.org/publications/brief10/>

2.0 Legislative constituency projects in Nigeria: a conceptual background

A legislative constituency project is any project that is conceived, designed or executed within a legislative constituency with the collaboration, input or influence of the legislator(s) representing that particular constituency in the legislature.⁴ Such projects are however funded from the national or state budgets.⁵ Constituency projects are not peculiar to Nigeria. In fact, they are now a growing phenomenon in some developing nations, where such projects are generally referred to as the “Constituency Development Funds” (“CDFs”).⁶ Although there are different models of the CDFs some common features identifiable with most constituency projects or CDFs are as follows:⁷

1. The constituency project sought to be carried out or implemented is usually identified by the legislator representing the host constituency, acting in the parliament, or in a CDF Committee of his constituency;⁸
2. the project is designed, funded and executed, with some participation or collaboration of the legislator in the process.⁹
3. The project is funded directly from the budget of the central or state government;¹⁰
4. The project is usually identified with the legislator as his/her constituency project.¹¹

Legislative constituency projects represent an obvious departure from the traditional constitutional role of the legislature under the doctrine of separation of powers, and usurpation of the role of the executive by the legislature.¹²

However, CDFs may arguably be credited with some advantages or benefits, such as:¹³

- a. the provision of infrastructure, promptly, without prolonged bureaucratic red-tape formality;
- b. the active involvement of the constituents in the identification of developmental projects for implementation in their constituency;
- c. better articulation and utmost satisfaction of the pressing needs of the constituency;
- d. the creation of opportunity for elected representatives to directly participate in the alleviation of the challenges or problems faced by their constituents.

In Nigeria, the phenomenon of constituency projects took root at the dawn of the Fourth Republic, with the quest by Nigerian legislators for more equitable distribution of resources to their constituencies as “dividends of

⁴ State University of New York Center for International Development: *Constituency Development Funds* <http://www.cid.suny.edu/publications1/CDF%20Albany%20Workshop%20Report.pdf> ; Thisday Newspaper of 31st March 2013: *The constituency project trap* (viewed at <http://www.thisdaylive.com/articles/the-constituency-projects-trap/143662> on 1-2-2015). For a general definition of the concept of legislative constituency projects, see: Albert Van Zyl: *What is wrong with the constituency development funds?* In International Budget Partnership (IBP) newsletter Budget Brief No. 10, available at <http://internationalbudget.org/publications/brief10/> where the term “Constituency Development Funds” was defined as : “...funding arrangements that channel money from central government directly to electoral constituencies for local infrastructure projects.”; Micah Challenge/tearfund: *Constituency Development Funds, Transparency in grassroots development or political patronage* at <http://tilz.tearfund.org/> (viewed on 1/4/15)

⁵ Albert Van Zyl, *op.cit*

⁶ Constituency Development Funds exist in one form or another in over 20 countries in the world: see Albert Van Zyl *op. cit*

⁷ *Ibid.*

⁸ S. Lasun: “Funds for Constituency Projects not Given to Lawmakers” in Information Nigeria of 29/6/15 viewed at <http://www.informationng.com/2015/06/funds-for-constituency-projects-not-given-to-lawmakers-deputy-speaker-house-of-reps-html>. In the report the Dep. Speaker, Nigeria’s House of Representatives was reported as stating that the legislators only identified the projects for execution by the executive branch of government. See also the Lagos State (Constituency) Project Development Law, 2000.

⁹ *ibid.*

¹⁰ See the Lagos State (Constituency) Project Development Law, 2000

¹¹ This is obviously the case in several constituencies where any casual observer will notice infrastructural projects, such as water boreholes, school renovations, and other similar projects that boldly bear advertisements/notification which associate such projects with the serving legislators.

¹² See sections 4,5 and 6 of the Constitution.

¹³ see Albert Van Zyl *op. cit*; Micah Challenge/tearfund: *Constituency Development Funds, Transparency in grassroots development or political patronage* at <http://tilz.tearfund.org/>

democracy”.¹⁴ Largely, the operation of constituency projects in Nigeria appears to be shrouded in bureaucratic secrecy.¹⁵ With the exception of Lagos State, there appears to be no clear-cut legal framework for such projects, at the national or state levels of government.¹⁶ What is clear however is that constituency projects are always included in the budgets of the Federal and State governments.¹⁷ So far, it has been estimated that a total of N900 Billion has been appropriated for legislators’ constituency projects, at the National Assembly, from 2004 to 2013.¹⁸

The concept of constituency projects has, from its inception in Nigeria, been controversial.¹⁹ Several disputes have occurred between the executive and the legislative arms of government on the issue of inclusion of such projects in the budgets.²⁰ Indeed on some occasions, budgets were delayed and when the appropriation bills were eventually passed into law there were increased differences between the estimates submitted by the executive and the amount eventually approved by the legislature as the budget.²¹ The increase in such budgetary estimates was in several instances due to the accommodation or the inclusion of constituency projects.²²

Before an examination of the constitutional implication of constituency projects, it is proper to situate the quest for such projects, in its proper historical context. At the advent of the Fourth Republic, Nigerians experienced full-fledged democracy for the first time since the military incursion into governance on the 31st December 1983, when the Second Republic was terminated in a coup d’etat. The post independence, First republic was short-lived, as the military seized power in Nigeria’s first coup-d’etat in 1966. That incident was followed by turbulence marked by a counter coup that led to a civil war which ended in 1970. At the end of the war, the military consolidated its power. It however ceded power to politicians in the Second Republic from 1979-1983. At the close of 1983, the military came back, and did not finally leave until 1999, though, in between, an attempt made to return power to the politicians in an aborted Third Republic, ended with an inconclusive presidential elections in 1993.

¹⁴ There appears to be no record of such projects under any of the previous Republics. See Udefuna, *et al*: *Legislative Constituency Project in Nigeria: Implication for National Development* in *Mediterranean Journal of Social Sciences* vol. 4 no.6 (July 2013) (MISER-CEMAD-Sapienza University, Rome. P.647-653.

¹⁵ The dearth of information on the operation of constituency projects and allowances or budgetary allocations made to the members of the National Assembly on account of such projects led to a Non-Governmental Organization, commencing a Freedom of Information Act action in the Federal High Court against the National Assembly. See *Court orders N’ Assembly to disclose allowance paid to lawmakers*: reported in the “Premium Times” newspaper on 7th April 2015, (viewed at www.premiumtimesng.com/news/headline/constituency-allowance-paid-to-lawmakers.html. on 10/06/15). See also the text of the judgment of the Federal High Court in suit no FHC/ABJ/CS/336/2013 between *Legal Defence and Assistance Project Ltd./GTE v. Clerk of National Assembly* delivered on 3rd Feb. 2015 at www.medium.premiumtimesng.com/wp-content/files/2015/04/150206-judgment-in-LEDAP-V-NASS.pdf. The said Court granted the specific order compelling the defendant to disclose to the plaintiff within 7 days of the Order “...(c) the details of all budgetary allocations made in respect of each constituency project (d) The details of the stages of each project...”

¹⁶ Lagos is one of the 36 States in Nigeria. Also see the Lagos State Constituency Project Development Law 1999.

¹⁷ “The Punch” newspaper: “The National Assembly has failed the nation” – an editorial dated 31st Jan. 2013. (viewed at <http://www.punchng.com/edials/the-national-assembly-has-failed-the-nation/>).

¹⁸ See “Nigeria Intel” of 8th October 2013: “N900 billion on constituency projects.” The report attributed the information to the then Chairman, Senate Committee on Millennium Development Goals. Also see Pointblanknews.com: “FG releases N50bn for constituency projects”, of 16th July, 2013 which reported the then Nigerian Minister of Finance as stating that N50 billion had been released for the execution of constituency projects in the 2013 budget. (viewed at <http://pointblanknews.com/pbn/news/fg-releases-50bn-for-constituency-projects-okonjo-iwl/> on 1st Feb, 2015)

¹⁹ F.O Olaoye: *an exploratory evaluation of legislative lawlessness in the Nigerian budget process*. In the “Singaporean Journal of Business Economics and Management Studies” vol. 3 no 2, 2014 at [http://www.singaporeanjbem.com/pdfs/SG_VOL_3_\(2\)/5.pdf](http://www.singaporeanjbem.com/pdfs/SG_VOL_3_(2)/5.pdf) ; see also Udefuna, *et al*, *op. cit*

²⁰ See the response of a member of the House of Representatives on the impasse on the passage of the budget in 2013 in Femi Gbajabamila: *Constituency Projects, Budget Process and Related Matters – Role of Legislature and General Misconceptions* in Premium Times of 8th March, 2013- viewed at www.premiumtimesng.com/opinion/123687-constituency-projects-budget-process-and-related-matters-role-of-legislature-and-general-misconceptions-by-femi-gbajabamila.html

²¹ *ibid*

²² *Ibid*: F.O Olaoye, *op cit*.

Altogether, the military held power in Nigeria, albeit, under different juntas, for the periods of 1966-1979 and 1983-1999. The hallmarks of military regimes in Nigeria were their dictatorial tendencies, which could be attributed to the traditional hierarchical or regimented nature of the military institution itself.²³

Primarily, the exercise of the executive and legislative powers of the Federation and the States were practically fused in the same military rulers.²⁴ Thus effectively there was little or no separation of governmental powers under the military regimes in Nigeria.²⁵ However, even at the height of their power, none of the military regimes in Nigeria totally emasculated or abrogated the judicial arm of government, although there were several instances of decrees and edicts made with retrospective effect and ouster clauses.²⁶

In the final analysis, the legislature came into being with the 1999 Constitution, as a distinct organ of government after a long while of usurpation of its role by the military. In the circumstances, the legislators appeared to have been tempted to seek more relevance among their constituents who had been used to the “immediate effect” nature of military governance.²⁷ Also, the military regimes’ unitary approach to governance had engendered some lopsidedness in the allocation of resources and infrastructures, which partially resulted in intervention through the constituency projects.²⁸

The legislature at the Federal level and in some States of the Federation developed the practice of inclusion of funds for constituency projects in the budgets- albeit with no enabling constitutional or legal framework, in almost all the cases.²⁹

The Lagos State Constituency Project Development Law, which appears to be the only statute in Nigeria on the operation of constituency projects, will now be briefly examined.

The Lagos State statutory provisions on constituency projects

In the teeth of opposition from the executive branch of the State government, well-meaning members of the public and the organized civil societies, the Lagos State House of Assembly passed into law, the Lagos State (Constituency) Project Development Law, (hereinafter “the Lagos Law”) in the year 2000. Majorly, the Law provides for the setting aside of a minimum of 15 per cent of the annual capital expenditure budget of the State for release on a quarterly basis for distribution amongst the 40 State constituencies. The money is set aside for

²³ See R. Luckham: *The Nigerian Military a Sociological Analysis of Authority and Revolt 1960-1967* (Cambridge University Press, Cambridge, 1971).

²⁴ See R. Luckham: *The Nigerian Military a Sociological Analysis of Authority and Revolt 1960-1967*, *op cit.* The body or organ with such fused powers was known at different times under various military regimes as the “Supreme Military Council”, or “the Armed Forces Ruling Council.” The Decrees of the military were accorded superiority over the Constitutions and any other law. Perhaps two factors could be identified to have contributed to the fusion of powers in a single military body under the different Nigerian military regimes. Firstly, all military governments that held power in Nigeria drew their top brass from the military institution, known for its hierarchical command system that demands total allegiance to superior authority. Secondly, the first Nigerian military government in 1966 enthroned a unitary system of government at the national level. Although subsequent military regimes restored the federal system of government, it was more of recognition in principle than in reality- see *Attorney Gen. Federation v. Guardian Newspaper* [1999] 9 NWLR (Pt. 618) 187; *Lakanmi v. Att. Gen* (1970) NSCC 143.

²⁵ R. Luckham *supra*

²⁶ See *Attorney Gen. Federation v. Guardian Newspaper (supra)*. The military often introduced their regimes as revolutions with the implication that the erstwhile Constitutions were suspended and made subject to any Decree made by the military authority. See for example the Constitution (Suspension and Modification Decree) of 1994. See the case of *Lakanmi v. Att. Gen (supra)*

²⁷ The crave for relevance by the legislators may be further explained by the circumstances of the legislative work which is, most often, not directly seen or felt by the constituents- see Keefer and Khemani: *When do Legislators Pass on “Pork”? The Determinants of Legislator Utilization of a Constituency Development Fund in India – A Policy Research Working Paper for the World Bank Development Research Group, Macroeconomics and Growth Team.* See <https://openknowledge.worldbank.org/bitstream/handle/10986/4123/WPS4929.pdf?sequence=1> (last viewed on 1/6/15)

²⁸ See Udefuna, *et al*, *op. cit.*

²⁹ The projects are mostly infrastructural in nature, including water boreholes, repair of schools, building and maintenance of bridges, roads, etc

the provision and maintenance of public infrastructures and basic social amenities in each of the constituencies. The Law further establishes a “Project Monitoring Committee” in each of the constituencies. The Committee for each constituency comprises its representative in the House of Assembly and four other members, whose qualification is that, having regard to the diversity of the constituents, they should be community leaders. The functions of the Committee were enumerated in section 4 of the Law as follows:

- a. determine the type of project the constituency shall embark on in a particular year
- b. convey the decision of the committee under the provisions of paragraph (a) of this section to the appropriate governmental agencies
- c. monitor the development of such projects and submit quarterly, a report of its activities to the House of Assembly.

Like any other CDF, constituency projects as conceived under the Law in review appear to have invaded the realm of the principles of separation of powers. Furthermore, that Law has not given a clear cut guide on the means of determination of the qualification of the members of the Project Monitoring Committee, other than a nebulous criterion that any prospective member should be a community leader

3.0 Constituency projects and constitutional separation of power

Nigeria runs a bi-cameral federal parliament, known as the National Assembly.³⁰ The upper House, the Senate is composed of 109 senators, with each State having three members on the basis of equality of the States. However, the Federal Capital Territory, Abuja is represented by one senator.³¹ The other House of the National Assembly, the House of Representatives comprises 360 members.³² Allocation of seats in the House of Representatives is on the basis of population.³³ The legislature in the States is unicameral, and the membership of each State’s House of Assembly depends on the number of constituencies prescribed by the Constitution for the State.

The executive power of the Federation is vested in the President.³⁴ He may, however, delegate his powers to the Vice-President, ministers or any other public officials.³⁵ Specifically, section 5 of the Constitution states that:

Subject to the provisions of this Constitution, the executive powers of the Federation-

- (a) shall be vested in the President and may, subject as aforesaid and to the provisions of any law made by the National Assembly, be exercised by him directly or through the Vice-president and Ministers of the Government of the Federation or officers in the public service of the Federation; and
- (b) shall extend to the execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time being, power to make laws.³⁶

Likewise, section 4 of the Constitution vests the legislative power of the Federation in legislature as follows:

- (1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives
- (2) 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.
- (3) The power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States.
- (4) ..
- (5) ..

³⁰ Section 47 of the 1999 Constitution (as amended). The National Assembly is divided into the Senate and the House of Representatives.

³¹ Section 48 Constitution.

³² Section 49 Constitution.

³³ Section 49 Constitution.

³⁴ Sections 5 and 130 (2) of the Constitution

³⁵ Section 5(1) and 5(2) of the Constitution.

³⁶ See the provisions of section 5(2) Constitution. For similar provisions which vest the executive powers of each component State of the Federation in the Governor of the State. The Governor may also exercise the powers directly or delegate same to the Deputy-Governor, commissioners or any other State public officers.

- (6) The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State.
- (7) The House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any other part of thereof with respect to the following matters...

The exact extent and nature of the executive powers granted by the Constitution is open to several connotations. For example will the executive powers be limited to only matters authorized by law in a statute or law passed by the National Assembly or a State House of Assembly? Alternatively, would such executive powers be implied to extend to the performance of all things and acts that are clearly outside the competence and province of the legislative and the judicial branches of government? Learned author, Nwabueze, has identified three theories on the powers of the executive in a presidential system.³⁷ These are:

- (i.) The residual power theory, which postulates that the executive is vested with all the powers that do not fall within the purview of the legislative or judicial branches of government. Such executive power extends to the initiation and execution of governmental policies even where there are not yet specific laws thereon in operation.
- (ii.) The inherent power theory: this is a theory that connotes the extension of the executive powers to any function which is “inherently executive”. It ascribes to the executive all the powers involved in the execution process, even where there is no extant legislation on the matter in issue.
- (iii.) The specific grant theory: this theory postulates that the executive can exercise and administer only the precise powers granted it by the Constitution, other statutes and the international laws.

Each of the above stated theories on the nature of the executive powers has its own advantages and drawbacks. Whichever way one looks at it, section 5 of the 1999 Constitution envisages that the execution of all projects relating to infrastructural development in Nigeria, including those undertaken as constituency projects should be within the province or competence of the executive rather than the legislature, in the best tradition of constitutional federalism.³⁸

The above conclusion is accommodated under the doctrine of separation of powers of government as enshrined in sections 4, 5 and 6 of the Constitution. The main role and function of the legislature is law making.³⁹ However the Constitution ascribes other roles to the legislature, pursuant to the principle of checks and balances. Some of the provisions on such checks and balances under the 1999 Constitution are as follows:⁴⁰

1. The Acts and Laws passed by the legislature require the assent of the President or the Governor respectively. The president or the Governor may however withhold his assent, thereby making resort to his veto power against the passage of any bill into law.⁴¹
2. The National Assembly and the States Houses of Assembly are given an oversight function to investigate the executive arm of government. This oversight function relates to powers to conduct investigation.⁴²
3. The power of the legislature to consider and pass as law the Appropriation Bill based on the estimates made by the executive.

³⁷ B. O Nwabueze: *Presidentialism in Commonwealth Africa* (C. Hurst & Co, London 1974) p. 1-14

³⁸ See exposition of the separation of powers amongst the federating units on the one hand and amongst the three branches or organs of government in the case of *Attorney General, Abia State v. Attorney General of the Federation* [2006] 16 NWLR (Pt.1005) 265.

³⁹ Section 58 Constitution.

⁴⁰ See Ojo: *The Nigerian Legislature- A Historical Survey* (Administrative Staff College of Nigeria Press, Badagry, Lagos (1997)) vol. 3 page 274, *et seq.* Other areas where the Constitution provides for collaboration, checks and balances amongst the three organs or branches of government, include: (i) impeachment proceedings against the President, Vice-President, Governors and Deputy- Governor, under sections 143 and 148; (ii) the appointment of the Chief Justice of the Federation, and the heads of other superior courts of records- sections 231, 250, 254(B), 256, and 271 of the Constitution; (iii) The removal of the Chief Justice of Nigeria and any other head of superior court of records, by the President acting on an address supported by two thirds majority of the Senate -see section 292(1) Constitution; the right of the President to attend and address a joint or separate meetings of the Houses of the National Assembly- see section 67 Constitution, etc.

⁴¹ Section 56 (4) of the Constitution.

⁴² Section 88 Constitution.

None of the areas where the Constitution allows the sharing of power contemplates the direct participation of the legislature in any form in the actual planning, designing and execution of infrastructural projects. Now does the Constitution grant indirect power to the legislature to influence or participate in project execution? An answer to this will be attempted by considering only the constitutional provisions that assign roles to the legislature in the process of passage of budget and control of public funds and the oversight powers.

Legislative control over the budget

A major component of the oversight function of the legislature in Nigeria is the power of the legislature to consider and pass the Appropriation Bill into law.⁴³ Indeed no money can be withdrawn or spent from the Consolidation Revenue Fund or any other public funds, except with the authorization of the National Assembly, through an Appropriation Act or some other Act of the National Assembly.⁴⁴ The provisions of section 81 of the Constitution offer a glimpse into the frontiers of the legislative control over expenditure in the consolidated funds, as follows:

- (1) The President shall cause to be prepared and laid before each House of the National Assembly at any time in each financial year estimates of the revenues and expenditure of the Federation for the next following financial year.
- (2) The heads of expenditure contained in the estimates (other than expenditure charged upon the Consolidated Revenue Fund of the Federation by this Constitution) shall be included in a bill to be known as an Appropriation Bill, providing for the issue from the Consolidated Revenue Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified therein.

It is submitted that the provisions of section 81 of the Constitution cannot be stretched under any guise to accommodate, validate or authorize the direct or indirect participation or involvement of legislators in the designing, planning or execution of any infrastructural projects.⁴⁵ The wording of the constitutional provisions is clear, and without any ambiguity. Therefore the ordinary meaning of the operative words therein should apply.⁴⁶

The role of the legislature is constitutionally limited to the authorization of any spending by the executive from the Consolidated or any other public funds. In that regard, it will appear to be contrary to the constitutional provisions should the National Assembly or the State House of Assembly impose its constituency projects under any guise in the Appropriation Bill. It is apparent that the powers donated by the Constitution to the legislature on passage of the Appropriation Bill or the budget relate to the granting of assent to the proposals or estimates made by the executive, fully or partially. The legislature may only accede to, or decline the authorization of any proposed withdrawal from the Consolidated Funds if such proposals do not meet the primary criterion for the exercise of the legislative powers conferred on the National Assembly, which is “to make laws for the peace, order, and good government of Nigeria.”⁴⁷ Therefore the legislature appears to have no constitutional power to include in the budget the funding of any project that was not made part of the estimates of the executive in the Appropriation Bill.⁴⁸

⁴³ Sections 80 and 81 Constitution.

⁴⁴ See section 80 of the Constitution. The only exception to the aforesaid constitutional principle is any withdrawal to satisfy any expenditure that is constitutionally charged upon the consolidated funds.

⁴⁵ This conclusion can be made from the application of the golden rule of interpretation of the Constitution. Thus, where the Constitution has used clear and unambiguous words in its provisions, then, such words ought to be assigned their literal ordinary meaning.

⁴⁶ Indeed section 80 (2) that permits the authorization of any public fund takes the matter beyond controversy, when it provides thus; “No moneys shall be withdrawn from the Consolidated Fund of the Federation except to meet expenditure that is charged upon the fund by this Constitution or where the issue of those moneys has been authorized by an Appropriation Act, Supplementary Appropriation Act or an Act passed in pursuance of section 81 of this Constitution.” The operative word “authorized” is only referable to “official permission” to take a step. See A. S Hornby (J. Turnbull, *et al* eds.): *Oxford Adv. Learner’s Dictionary*, (8th edition, Oxford Univ. Press) p.83.

⁴⁷ Section 44, Constitution.

⁴⁸ F.O Olaoye, *op cit*.

Furthermore, it would it be unconstitutional by any cannon of interpretation to read into the provisions of section 81(3) of the Constitution the inclusion of funds for constituency projects as part of the “amount standing to the credit of the National Assembly ...in the Consolidated Revenue Fund”, so as to pay such money or funds directly to the National Assembly. The provisions of section 81 (3) of the Constitution will more appropriately refer to the sum constitutionally appropriated for the day- to- day running or operation of the National Assembly. The conclusion that will inevitably be drawn is that constituency projects are not within the contemplation of the provisions of section 80 or 81 of the Constitution.

Legislative supervisory or oversight powers and constituency projects

The Constitution vests powers of oversight or supervision of certain executive matters in the legislature. Could the validity or constitutionality of the legislative constituency projects in Nigeria be anchored on the constitutional provisions on legislative oversight functions? The appropriate provisions are contained in section 88 of the Constitution. The said provisions grant powers to the National Assembly for the purpose of conducting investigation into certain matters relating to governance. Such investigation can validly be instituted in respect of:⁴⁹

1. any issue or matter within the legislative competence of the National Assembly;
2. the conduct of any person, or governmental department or authority either vested with some duty of the execution or administration of any law made by the National Assembly or has the responsibility to disburse or administer some funds appropriated under the hands of the National Assembly.

The investigative power of the National Assembly under section 88 is however only exercisable for two broad purposes:⁵⁰

1. to enable the National Assembly to make new laws, or correct defects or flaws in any law that is already in existence, all within its legislative competence or powers, and
2. for the purpose of exposure of corruption, inefficiency, ineptitude or waste in governance or administration.

The power to investigate, pursuant to section 88 of the Constitution, cannot be interpreted in any case, to authorize any legislative incursion into the realm of matters within the competence of the executive. The investigative powers will not authorize the participation of legislators in the design, conceptualization, and execution of constituency projects. Rather the provisions of section 88 have vested supervisory or oversight functions in the legislators on the prescribed issues.

The phenomenon of constituency projects touches at the root of the two major roles assigned to the legislature.⁵¹ Constituency projects erode the principle of separation of powers when, by such projects, the legislature seeks to usurp the role of the executive.⁵² Secondly, the involvement of legislature in constituency projects derogates from the exercise of qualitative legislative supervisory or oversight function over executive actions, as contemplated by the Constitution.⁵³ There is likely to be conflict of interest when legislators, who are interested in the execution of particular legislative constituency projects, are called upon to perform their constitutional supervisory role in respect of such projects.⁵⁴

4.0 Constituency projects: derogation from constitutional federalism?

Constitutionally, the federating units of the Nigerian Federation are the 36 States and the Federal Capital Territory. For the purpose of allocation of resources, the Constitution also recognizes the system of local

⁴⁹ *Attorney General, Abia State v. Attorney General of the Federation (supra)*

⁵⁰ Section 88 (2) Constitution.

⁵¹ Micah Challenge/tearfund: *Constituency Development Funds, Transparency in grassroots development or political patronage* at <http://tilz.tearfund.org/>

⁵² Ibid.

⁵³ Ibid; Albert Van Zyl: *What is wrong with the constituency development funds?* In International Budget Partnership (IBP) newsletter Budget Brief No. 10, available at <http://internationalbudget.org/publications/brief10/>

⁵⁴ Albert Van Zyl: *op. Cit.*; Micah Challenge/tearfund, *op. cit*

governments in Nigeria.⁵⁵ In this aspect, the Constitution empowers the National Assembly and the States' Houses of Assembly to make provisions for the statutory allocation of funds to the local governments.⁵⁶ The Constitution does not recognize legislative constituencies as federating units or recipient units in the allocation of resources and infrastructures.⁵⁷ The constituencies are rather recognized by the Constitution as units of legislative representation.⁵⁸ Any allocation of financial resources to electoral constituencies, in any form of constituency projects, attacks the roots of the doctrine of constitutional federalism, as enshrined in the Constitution.⁵⁹

The challenge in this regard could also be examined from another perspective. Since most of these projects undertaken as constituency projects are rather appropriately handled or maintained by the States or the local governments, would such trend not amount to duplication of efforts?

5.0 Constituency projects and the extant constitutional, legal and institutional framework for accountability

The global trend favours zero tolerance for corruption. In general, the inward flow of direct foreign investment is always associated with accountability and transparency and respect for the rule of law. The Nigerian Constitution contains several provisions on accountability. Thus, as an example, the office of the Auditor General is mandated to cause audit to be regularly made into all the spending on any appropriated money, and give report of such audit to the National Assembly.⁶⁰ The phenomenon of constituency project will most likely raise the issue of conflict of interest on the part of the National Assembly when considering the budgetary allocations to constituency projects in which members are interested.⁶¹

In order to block leakages and ensure that the Nigerian public obtains value for amount expended from the public purse, a regime of legal and institutional framework for due process has been established in Nigeria. In illustration, The Procurement Act 2007 regulates the mode of procurement of goods and services in any government or governmental institutions, thus promoting public accountability, probity, transparency and openness in such transactions.⁶² The process of bidding and the choice of the suppliers of any service or goods are required under the provisions of the Act to be made open to all persons or business entities that are qualified for the process. There is no room for the exercise of power to award contracts based on an interest other than that of securing the maximal value from the public money spent.⁶³ In fact, under section 18 of the Act, each procuring entity of the government is saddled with the responsibility of identifying the goods, works or services that will be required in public interest. Thus, assuming that the role of the legislators was only limited, as generally admitted, to the identification of the projects for execution in their constituencies, would such practice not amount to usurpation of the role of the executing agencies- the procuring entities- under the aforesaid provisions of the Procurement Act? Departures from the provisions of the Act are criminalized under the Act.⁶⁴ The intentment of the Procurement Act and the reported vested interest of legislators in nominating constituency projects appear to be at cross- purposes. Does it mean that the interest of legislators should override the public

⁵⁵ Section 7 constitution.

⁵⁶ Section 7(5) of the Constitution.

⁵⁷ See similar view expressed by the High Court of Kenya in *The Institute of Social Accountability v. The National Assembly & Ors*, Petition no 71 of 2013, Kenya High Court, Nairobi, [2015] eKLR (viewed at <http://kenyalaw.org/caselaw/cases/view/105977/> on 3/7/15), on the unconstitutionality of treating legislative units in Kenya at par with the counties.

⁵⁸ Section 71 of the Constitution is explicit as it vests power in the Independent National Electoral Commission to divide each State of the Federation into 3 senatorial districts and the entire country into 360 federal constituencies, for purposes of elections to the Senate and the House of Representatives.

⁵⁹ Sections 2 and 3 of the Constitution, which recognized the States and the Federal Capital Territory as the federating units in the Federation of Nigeria.

⁶⁰ Sections 85, 86 and 125 Constitution

⁶¹ This will definitely negate the express provisions of sections 4,5 and 6 of the Constitution. See also Albert Van Zyl: *What is wrong with the constituency development funds?* *Ibid* ; Micah Challenge/tearfund: *Constituency Development Funds, Transparency in grassroots development or political patronage* at <http://tilz.tearfund.org/>

⁶² Section 16(1) Procurement Act.

⁶³ *Ibid*.

⁶⁴ Section 58 Procurement Act.

interest in ensuring that the proper procedure for procurement in the Procurement Act is followed in all situations?⁶⁵

6.0 Constituency projects and the electoral process

The existence of constituency projects under any guise will now be examined vis a vis the constitutional and statutory framework for free election in Nigeria. The bedrock of any meaningful democracy is the regular and periodic elections conducted under the atmosphere of each participant being granted equal opportunities. Constituency projects are always identifiable with serving legislators. This phenomenon detracts from the principle of providing a level playing ground for all nominees and candidates standing for legislative elections, as enshrined in the Electoral Act.⁶⁶ The equal opportunity is not only required in the inter-party contests but it is also a requirement of the internal democracy tenets obtainable in the pre-election selection of candidates to stand for elections.⁶⁷

7.0 Constituency projects in other climes

Legislative constituency projects as a political phenomenon are not novel. Variants of such projects have been known to be in existence in several countries in Africa, Asia, and South America.⁶⁸ Indeed similar projects existed in developed polities such as the USA, where it is known as “the Pork Barrel Projects” or “Earmarks”.⁶⁹ Thus under various names constituency projects featured in countries like Kenya, Uganda, Tanzania, India, the Philippines, Jamaica, Honduras, etc.⁷⁰

There are legal and institutional structures and framework in some of the countries operating CDFs. For example in Kenya, constituency projects are regulated under the Constituencies Development Fund Act, 2013.⁷¹ The main attributes of the Act is the establishment of the framework for the identification, design, development and execution of constituency projects.⁷² The Fund is managed by a Constituencies Development Fund Board.⁷³ It is a matter of note that the Board is composed mostly of officials from the executive branch of the government, and does not include any member of the parliament.⁷⁴ However, the actual allocation of funds to each constituency is required to be “with the concurrence of the relevant Parliamentary Committee”.⁷⁵ In each of the constituencies, a Constituency Development Fund Committee is constituted to nominate projects for the eventual approval of

⁶⁵ The provisions of Procurement Act seek to prevent politics of patronage that might inhere in projects such as constituency projects. Also see Micah Challenge/tearfund: *Constituency Development Funds, Transparency in grassroots development or political patronage* *ibid*.

⁶⁶ A constituency project advertises a sitting legislator, even during the period of elections. This runs contrary to the spirit of section 100 of the Electoral Act, 2010, (as amended), which provides that: “State apparatus including the media shall not be employed to the advantage or disadvantage of any political party or candidate in any election.”

⁶⁷ See section 228 Constitution which empowers the National Assembly to make law for the guidelines and rules for internal democracy within the political parties. See Micah Challenge/tearfund: *Constituency Development Funds, Transparency in grassroots development or political patronage* *ibid*

⁶⁸ Machiko: *The Politics of Constituency Developments (CDFs) in Comparative Perspective* (viewed at <http://ecgi.srn.com/.php?> on 1/5/15); State University of New York Center for International Development: *Constituency Development Funds*

<http://www.cid.suny.edu/publications1/CDF%20Albany%20Workshop%20Report.pdf>; Keefer and Khemani: *When do Legislators Pass on “Pork”? The Determinants of Legislator Utilization of a Constituency Development Fund in india –ibid*.

⁶⁹ *Ibid*. Machiko identifies the major difference between a CDF and the “pork barrel”: “pork barrel” involves a case-by-case approach of allocation of congressional budgetary allocation to constituencies, on application or request; whereas the CDF is a global approach that treats each constituency equally.

⁷⁰ *Ibid*.

⁷¹ The front runners of this Act were enacted as the Constituency Acts of 2003 and 2007, respectively.

⁷² See ss. 3-6 of the Kenya’s CDF Act.

⁷³ S. 5 Kenya’s CDF Act

⁷⁴ *Ibid*. s. 5(2)

⁷⁵ S. 10. Kenya’s CDF Act

the relevant Parliamentary Committee.⁷⁶ Such Committee includes the legislators from the constituencies in issue (as ex-officio members) as well as some other stakeholders.⁷⁷

Two divergent trends can be deciphered in respect of judicial attitude to the CDFs in countries where they are operated. There is a judicial school of thought that views CDF as an aberration, which runs contrary to the spirit of the universally recognized constitutional principles of separation of powers between the executive and the legislative branches of government. For instance in *The Institute of Social Accountability v. The National Assembly & Ors*,⁷⁸ the constitutionality of the Kenya's 2013 CDF Act was successfully challenged in the High Court of Kenya. Despite the fact that CDF had been in existence in one form or the other for a considerable length of time in that country, the court decided that the Fund was not in conformity with the Kenyan Constitution. Some of the grounds for the decision were that the Fund went against the principles of separation of powers, and that the Act sought to render the constituencies, rather than the counties, units for the allocation of resources. The Court however suspended the effect of its decision for one year. It remains to be seen if this development will bring to the eventual close of the operation of such funds or in the alternative whether the decision will be made a subject of an appeal to higher courts in the country.

The contrary second judicial school of thought holds that CDFs are not unconstitutional, and such Funds are within the legislative competence. The Philippines' Supreme Court held in *Philippines Constitutional Association v. Enriquez*⁷⁹ that the appropriation under the General Appropriation Bill, 1994, for the Countrywide Development Funds, (the precursor to the current Priority Development Assistance Fund) was a valid and proper exercise by the legislature of her constitutional power to legislate on budget.⁸⁰ In reaching the decision the Court took into consideration the fact that:

“The Constitution is a framework of a workable government and its interpretation must take into account the complexities, realities and politics attendant to the operation of the political branches of government.”⁸¹

It would appear that the view in *The Institute of Social Accountability's* case is preferable to that in *Enriquez*, especially in respect of any developing nation, such as Nigeria, where democracy is just taking deep roots. The approach of strict adherence to strict constitutionalism and the universally recognized division of labour among the branches of government will go a long way to avert or curb corruption and abuse of office.

8.0 Expediency of constituency projects

As the concept of a constituency projects in Nigeria lacks the backing of the Constitution, and is generally bereft of any legal or institutional framework for its existence, the question that begs for an answer is: should constituency projects continue or stop considering the extant conditions that had brought about such projects? Would their continued existence not have a non-salutary effect on the body politic, in the long run? Or could their existence be justified in the light of the present or near-future political realities?

It is conceded that the *raison d'être* for constituency project as earlier identified as the quest for the equitable delivery of the dividends of democracy reflects the concern for the public good.⁸² Udefuna et al even argued that such legislative constituency projects are “a move towards the devolution of resources and development ... bring about even development and encourage popular participation in politics”⁸³ This may well be so in theory. However, in reality, it is left to be seen any meaningful contribution to development that might be made to the citizens when the only visible legislative constituency projects appear to be of pedestrian nature, such as

⁷⁶ S. 24, *ibid.*

⁷⁷ S. 24 *ibid.*

⁷⁸ Petition no 71 of 2013, Kenya High Court, Nairobi, [2015] eKLR (viewed at <http://kenyalaw.org/caselaw/cases/view/105977/> on 3/7/15)

⁷⁹ (235 SCRA 507 [1994]) viewed at http://www.lawphil.net/juri1994/aug1994/gr_113105_1994.html on 3/7/15

⁸⁰ *ibid.* Per Quason J, in the lead judgment. The Honourable Judge referred to this power as the “power of the purse” (citing James Madison), and observed that under the Constitution of the Philippines such legislative power over the budget was absolute, subject only to the presidential veto power.

⁸¹ *ibid.*

⁸² Udefuna, et al: *Legislative Constituency Project in Nigeria: Implication for National Development* in Mediterranean Journal of Social Sciences vol. 4 no.6 (July 2013) (MISER-CEMAD-Sapienza University, Rome. P.647-653.

⁸³ *ibid* at p.652.

installation of boreholes, distribution of motorcycles to constituents, refurbishing of some existing classroom infrastructures, etc.⁸⁴ Most of such projects have no bearing to the genuine effort towards industrialization or empowerment of the masses with a view towards the institutionalization of meaningful and sustainable development.

Moreover, the concept of legislative projects itself contains the seed of the self-interest or political self-preservation of the political elite, occupying legislative positions. Some of the legislators tend to directly or indirectly ascribe the “ownership” of such projects to themselves, for electoral advantages, especially during an electioneering period.⁸⁵ This obviously confers some electoral mileage on such legislators, over their political opponents, who may not have had any opportunity of being credited with any constituency project.⁸⁶

Furthermore, the issues with accountability may arise in manners earlier identified. Such challenges on accountability may not only detract from the democratic credentials or pedigree of Nigeria, but even go to the issue of sustenance of constitutionalism. The Constitution frowns at any law that challenges its supremacy.⁸⁷ Indeed such law, act or policy that derogates from the Constitution is deemed null and void to the extent of its discrepancy or inconsistency with the Constitution.⁸⁸

Constituency projects in Nigeria violate the spirit of section 1 of the Constitution, and are therefore unconstitutional. As earlier identified, the path of growth of any democracy can only be found in the strict adherence to the Constitution. This can only be the case if each of the branches or organs of government performs only the roles assigned to it, within the limits of constitutional checks and balances.⁸⁹ Outside the provisions for emergency in the Constitution in the strict sense, the only condition for an act of departure from the Constitution is the doctrine of necessity. According to the learned author, Nwabueze, the doctrine of necessity can only be justifiable in a case of national exigency, when there is the need to preserve the society.⁹⁰ It cannot be said that constituency projects fall under the doctrine of necessity, to justify the existence thereof, and necessitate a departure from the Constitution.

9.0 Conclusions and suggestions

Constituency projects are obviously not in consonance with the Nigerian Constitution. Such projects also lack any legal framework for their continued existence. As it has been demonstrated above, the concept is abhorrent to the constitutional federalism in Nigeria, and is open to abuse and corruption. The following recommendations are hereby made in conclusion:

1. Ultimately, constituency projects should be discontinued. Nevertheless it may be prudent to complete such constituency projects that are on-going.
2. Any on-going constituency project should be divested of all forms of attachment to individual legislators. Ownership of such projects should be vested in the proximate local government councils. This will reduce the partisan colouration that has characterized constituency projects hitherto, and which caused the abandonment of such projects whenever the particular legislator who initiated the thereby projects vacates office.

⁸⁴ Omorotionwa, J: “Constituency projects, whose projects?” in the Vanguard Newspaper of 4th Nov. 2010 viewed at <http://www.vanguardngr.com/2010/11/constituency-projects-whose-projects/>

⁸⁵ This trend is noticeable in several countries where the CDFs operate: see Micah Challenge/tearfund: *Constituency Development Funds, Transparency in grassroots development or political patronage* at <http://tilz.tearfund.org/>

⁸⁶ S. 100 Electoral Act.

⁸⁷ Section 1(1) Constitution.

⁸⁸ Section 1(3) of the Constitution.

⁸⁹ Keefer and Khemani: *When do Legislators Pass on “Pork”? The Determinants of Legislator Utilization of a Constituency Development Fund in India – A Policy Research Working Paper for the World Bank Development Research Group, Macroeconomics and Growth Team.* See <https://openknowledge.worldbank.org/bitstream/handle/10986/4123/WPS4929.pdf?sequence=1>

⁹⁰ Nwabueze, *op. cit.*

3. The Constitution should be amended to forbid the Legislature from increasing any appropriation recommended by the executive in the Appropriation Bill.⁹¹ This measure would prevent the insertion of the funding of constituency projects or any other projects in any Appropriation Bill or Act.
4. Each legislator should be encouraged to concentrate on their core legislative and supervisory roles, in order to maximize the gains of democracy, in the best tradition of representative democracy.
5. There should be a conscious effort to sensitize and remind the constituents/electorates on the real roles of the legislators as lawmakers and not the executors of policy and projects.

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⁹¹ See section 24 of the 1987 Constitution of the Philippines, for provisions similar to the recommendation made above.

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