



## Review of legislative oversight and delegated legislation in Nigeria, 2015 - 2023

\*Blessing Oyinyechi Eke<sup>1</sup> and Joseph Yinka Fashagba<sup>2</sup>.

<sup>1</sup>Department of Legislative Studies, Institute of Governance and Development Studies,  
Federal University, Lokoja -Nigeria.

<sup>2</sup>Department of Political Science, Federal University, Lokoja -Nigeria.

\*Corresponding Author: [ekeblessingphd@gmail.com](mailto:ekeblessingphd@gmail.com)

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### Abstract

*Legislative oversight of delegated legislation is a cornerstone of democratic governance, fostering accountability, ensuring regulatory compliance, and safeguarding public interests. This study examines the oversight role of Nigeria's National Assembly, focusing on the mechanisms employed to supervise delegated rulemaking by regulatory agencies, their effectiveness, and the challenges that impede their efficacy. The study utilized an empirical review methodology, synthesizing existing literature, case studies, and secondary data to assess the impact of legislative oversight. Grounded in structural functional theory, the analysis explores how National Assembly committees interact with agencies such as the Nigerian Electricity Regulatory Commission (NERC), the National Agency for Food and Drug Administration and Control (NAFDAC), and the National Drug Law Enforcement Agency (NDLEA) through activities like rule reviews, budget approvals, and public consultations. Findings indicate that oversight mechanisms, such as budget scrutiny and public hearings, enhance transparency and stakeholder engagement. However, systemic challenges persist, including inadequate staffing and limited technical capacity, which hinder in-depth analysis of regulatory frameworks. For instance, performance audits have revealed inefficiencies in sectors like energy regulation, but resource constraints limit comprehensive evaluations. The study recommends institutional reforms to bolster committee resources, the adoption of technology for real-time monitoring, and the establishment of regular performance audits. Additionally, it advocates for inclusive stakeholder engagement frameworks, particularly to amplify marginalized voices, and the introduction of ethical guidelines to mitigate political interference in oversight processes.*

**Keywords:** Delegated Legislation, Legislative oversight, National Assembly, Regulatory Agencies.

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### 1. Introduction

Legislative oversight is a cornerstone of democratic governance, upholding the separation of powers and ensuring robust checks and balances within government structures (Ginsberg, 2014). It encompasses the legislature's authority to hold executive and administrative entities accountable for their actions. As Mendes (2022) notes, legislative oversight is a fundamental function of democratic

systems, promoting transparency, responsiveness, and adherence to the principles of checks and balances. As governance evolves, particularly through the delegation of authority, continuous evaluation and adaptation of oversight mechanisms are essential to maintain strong democratic norms (Wahman & Goldring, 2020).

Modern governance often involves delegating core regulatory responsibilities to specialized agencies and commissions established under legislative acts. These entities engage in delegated rulemaking, issuing subsidiary legislation, codes, and guidelines to streamline public service sectors. In Nigeria, examples include the Nigerian Communications Commission (NCC), National Agency for Food and Drug Administration and Control (NAFDAC), Nigerian Electricity Regulatory Commission (NERC), and National Agency for the Control of AIDS (NACA). However, the 1999 Constitution, under Sections 88 and 89, mandates the legislature to oversee these bodies to prevent abuse of delegated powers and ensure accountability.

Oversight of agencies wielding delegated regulatory authority is particularly critical, as these bodies shape policies in areas such as power, telecommunications, and public health (Fagbadebo, 2018). Despite the decentralization that delegation enables, the legislature retains ultimate responsibility for monitoring subsidiary legislation and the administration of enacted laws. Yet, studies highlight a gap in empirical research on the effectiveness of legislative oversight over these agencies, noting challenges such as unclear review processes and capacity constraints within the National Assembly (Olojede et al., 2020).

Specialized agencies play a pivotal role in facilitating service delivery, trade liberalization, and public welfare through regulations, standards, and enforcement protocols (Ochigbo et al., 2024). However, unchecked delegation risks creating unaccountable administrative power, necessitating robust legislative oversight to ensure regulations align with policy objectives, uphold procedural fairness, and avoid undue burdens (Nguyen et al., 2021; Bell, 2020). Agencies like NERC, NAFDAC, and the National Drug Law

Enforcement Agency (NDLEA) have faced scrutiny over their regulatory policies and operational decisions, underscoring the need for effective oversight. The National Assembly employs tools such as public hearings, budget defense sessions, correspondence, and committee investigations to monitor delegated rulemaking.

Despite these efforts, legislative oversight faces significant challenges. Agency autonomy requires diplomatic engagement, while capacity limitations hinder the technical evaluation of complex regulations (Nkiruka et al., 2021). Political considerations may also discourage lawmakers from challenging controversial regulations to maintain alliances or stability. Bureaucratic obstacles and the sheer volume of subsidiary legislation further strain the Assembly's resources, leading to periodic rather than proactive oversight (Riele et al., 2022). A 2024 evaluation by the National Institute for Legislative and Democratic Studies (NILDS) highlights deficiencies in the Assembly's monitoring role, including fragmented committee coordination, reliance on agency disclosures, and inadequate tracking of stakeholder complaints (Punch, 2018; Mnasi et al., 2022). These issues threaten transparency and accountability, core tenets of democratic governance.

Given the expanding influence of unelected agencies, the National Assembly must strengthen its oversight mechanisms to preserve its role as the people's representative. As delegation trends continue, assessing the effectiveness of oversight over agencies like NERC, NAFDAC, and NDLEA is critical. This study therefore evaluates the impact of legislative oversight on delegated legislation in Nigeria, with a focus on the National Assembly during the Fourth Republic, aiming to address gaps in

processes and enhance democratic accountability.

## **2. Literature Review**

### **2.1 Conceptual Review**

#### **Delegated Legislation**

Delegated legislation, also known as secondary or subordinate legislation, refers to rules, regulations, orders, or bylaws made by administrative bodies or agencies under the authority granted by primary legislation enacted by the legislature (Garner, 2014). It is a mechanism through which legislatures delegate specific lawmaking powers to executive agencies, specialized commissions, or other entities to address technical, detailed, or rapidly evolving matters that require expertise or flexibility beyond the capacity of the legislature (Hogg, 2013). This form of legislation is essential in modern governance due to the increasing complexity of public administration, which demands specialized knowledge and swift regulatory responses (Kerwin & Furlong, 2018).

#### **Separation of Power**

The concept of the separation of powers is a foundational principle of democratic governance, designed to prevent the concentration of authority and ensure accountability, balance, and fairness in the exercise of state power. Originating from the works of political philosophers such as John Locke and Baron de Montesquieu (Locke, 1689), the doctrine advocates for the division of government functions into three distinct branches—legislative, executive, and judicial—each with specific roles, responsibilities, and independence to check and balance the others. This review explores the conceptual underpinnings of the separation of powers, its theoretical foundations, key features, and its significance in modern democratic systems, drawing on relevant scholarly perspectives.

### **2.2 Empirical Review of Delegated Legislation and Legislative Oversight**

Delegated legislation, as a mechanism for transferring legislative powers to executive or administrative bodies, has been empirically examined across historical, comparative, and contextual lenses, particularly in Nigeria and other democracies. This review synthesizes evidence from studies on its origins, forms, oversight mechanisms, influencing factors, and controls, drawing on historical developments, case analyses, and scholarly critiques to highlight patterns of effectiveness, challenges, and reforms.

Empirical evidence traces delegated legislation back to early English jurisprudence, with statutes like the 1337 Statute for Exportation of Wool and the 1388 Statute of Staple granting administrative directives without clearly defined authority (Dexter & Dexter, 1978; Onu, 2019). Over centuries, this evolved into monarch-in-council powers for declaring matters via parliamentary acts, with Benson (2015) noting that such delegation was temporary until parliament reasserted sole lawmaking authority (Onu, 2022). In Canada, post-Confederation developments showed limited parliamentary scrutiny until criticisms of "government by Order in Council" prompted the 1950 Regulations Act, mandating publication and tabling, followed by 1969 committee recommendations for scrutiny amendments (Mascott, 2019; Cotter, 1952; Appleby & Howe, 2015).

The 19th century marked a surge, with England enacting 3,000–4,000 pieces annually, addressing social issues amid legislators' overload (Onu, 2022; Onu, 2019). This necessitated separation of legislative framework from executive details, as Thring (cited in McLeod & McLeod, 1993) argued parliament should focus on essentials, and Dicey endorsed executive detailing for improved law

quality. In Nigeria, colonial origins under British rule empowered the Governor-General via Royal Instructions for proclamations, exemplified by the 1917 Native Lands Acquisition Ordinance and 1924 Native Revenue Ordinance, criticized by nationalists for exploitation without oversight (Webb, 2014; Aluko, 2007; Adigun, 2011; Nwabu, 2014; Jemina, 2015).

Post-independence, the 1960 and 1963 Constitutions formalized delegation with safeguards like parliamentary review, though military regimes prompted 1979 reforms for transparency (Ochieng'Opalo, 2020; Hills, 1998; Library of Congress, 2025). In Nigeria's Fourth Republic, delegation increased due to policy complexity and rapid responses, with initiatives like the Joint Committee on Deregulation reflecting efforts to enhance accountability amid concerns of regulatory capture (Thatcher, 2002; Majone, 1999; Donelan, 2022).

Definitions empirically vary: Benson (2015) views it as scoped delegation for efficient implementation; Okoeguale (2019) includes regulations and orders; Oluyede (2007) encompasses laws, enactments, and bylaws via the Interpretation Act, excluding departmental circulars; Egwummuo (2000) as subordinate laws impacting agencies. Challenges include excessive discretion undermining accountability (Yarova, 2022) and conflicts impeding oversight (Jombo, 2022; Yusuf et al., 2018). In Nigeria, forms include rules (e.g., court procedures under the 1999 Constitution), regulations (e.g., presidential under Section 32), orders (e.g., pre-Constitution adjustments), statutory instruments (e.g., S.I. No. 12 of 2018), bylaws (e.g., Nigerian Railways under 1955 Ordinance), and directions (e.g., 2011 Electoral Tribunal) (Onu, 2022; Kumbut, 2021).

Nigeria's bicameral National Assembly (109 Senators, 360 Representatives) holds

legislative powers under the 1999 Constitution, with committees scrutinizing bills (Omotoso & Oladeji, 2019; Sanyaolu et al., 2017; Fashagba & Nwankwor, 2021). It provides national debate and executive oversight, including summoning under Sections 88–89 (Awa, 2021; Gidado, 2018). However, oversight of delegation is weak compared to other nations, lacking standardization and pre/post-approval reviews (Benson, 2014; Onoge, 2021; Pollman, 2019). The Constitution entrusts lawmaking to assemblies but allows delegation with guiding principles (Section 4; Section 27(1) Interpretation Act) (Benson, 2014; Singh, 2023).

Unlike Britain's varied procedures (affirmative, negative, no-express), Nigeria's patchwork from enabling acts raises abuse concerns (Mortenson & Bagley, 2021; Fleming & Ghazi, 2023). Presidential systems emphasize laying before parliament for objections (Benson, 2014).

Empirical studies identify erosion due to corruption, funding shortages, and executive interference (Agunyai & Olawoyin, 2019; Yusuf & Ojoduwa, 2022; Onwe et al., 2015). Corruption undermines trust and enforcement, with scandals targeting foes (Umaru, 2017; Khan & Krishnan, 2019; Idris, 2019; Agbibo, 2011; Otusanya et al., 2015; Yusuf et al., 2018; Stapenhurst et al., 2014). Financial dependence creates un conducive environments and reliance on executives (Egbewole & Olatunji, 2015; Aliyu et al., 2018; Smith, 2022; Osham, 2021; Fagbadebo, 2019; Abada et al., 2018; Ochieng'Opalo, 2019).

Party interference manipulates assignments and voting, prioritizing leaders over public interest (Farhan, 2018; Sule et al., 2022). Self-serving behavior and prebendalism undermine hearings (Kazeem, 2013; Jombo, 2019; Nwaegbu, 2022). Distrust from poor public relations erodes capacity (Felix, 2023; Nwaenyi,

2020; Barkan, 2009). Inter-branch supremacy struggles hinder checks (Akanle, 2011; O'Brien, 2006; Nyongesa, 2019; Popoola, 2015). Resource disbursement lacks accountability, with inadequate staff and expertise (Theletsane, 2014; Jorge et al., 2019; Noah, 2017; Iwo, 2020; Adegboro, 2022).

Parliamentary systems fuse branches for rigorous scrutiny, curbing overreach (Yordanova & Zhelyazkova, 2019; Chae, 2021; Makita, 2022). Presidential systems separate powers, affording executive autonomy but necessitating robust oversight (Opalo, 2019; Chaisty & Chernykh, 2017; Bell, 2022). Parliamentary "light-touch" balances delegation (OpenStax, n.d.; Saiegh, n.d.; Strom, 2000)

### 2.3 In Developed Democracies

#### Overview of Legislative Oversight Functions and Delegated Legislation

- **United States:** The **Administrative Procedure Act (APA) of 1946** establishes formal rulemaking processes, requiring public notice, comment periods, and judicial review of agency actions. The **Congressional Review Act (CRA) of 1996** empowers Congress to pass joint resolutions nullifying major rules within 60 legislative days of submission, with a "lookback" period for new sessions. These mechanisms have facilitated over 20 successful nullifications since 1996, mostly under unified government. However, challenges persist: the sheer complexity and volume of federal regulations (over 3,000 final rules annually) overwhelm congressional capacity; political polarization limits bipartisan action; and courts increasingly defer to agencies under *Chevron* (until its 2024 overruling in *Loper Bright*),

reducing legislative leverage (Fisher, 2020; Hamilton, 2022; Gersen & Vermeule, 2021).

- **United Kingdom:** The **Joint Committee on Statutory Instruments (JCSI)** technically reviews all statutory instruments (SIs) for defects (e.g., unusual powers, drafting errors), while scrutiny committees in both Houses assess policy merits. Instruments follow affirmative (requiring explicit parliamentary approval) or negative (automatic effect unless annulled) procedures. During the COVID-19 pandemic, over 500 SIs were laid—many under the "made affirmative" route with minimal upfront debate—prompting accusations of executive overreach and "skeleton legislation." Post-pandemic reviews highlight the need for stronger sunset clauses and hybrid virtual scrutiny to manage volume without eroding accountability (Craig, 2021; Elliott & Thomas, 2022).
- **Switzerland:** Parliamentary committees conduct pre-enactment scrutiny of federal ordinances, ensuring alignment with enabling acts and subsidiarity principles. Citizens can trigger mandatory referenda on urgent decrees exceeding one year or optional referenda on others via 50,000 signatures, embedding direct democratic checks. This dual system upholds federalism but strains oversight: highly technical regulations (e.g., in finance, health) demand specialized expertise scarce in part-time committees, leading to reliance on executive drafts and occasional referendum overload (Linder & Mueller, 2021; Auer & Malinverni, 2020).

- **Germany:** The **Bundestag's specialized committees** review draft ordinances for legal conformity, while the Bundesrat (representing Länder) must consent to those affecting state implementation, fostering inter-chamber coordination. Legal ordinances require explicit Bundestag authorization. Yet, the annual volume—hundreds of ordinances—strains resources; committees often delegate to rapporteurs, and coalition governments blur executive-legislative lines, diluting scrutiny intensity (Thiele, 2022; Thiele & Kunz, 2023).
- **New Zealand:** The Regulations Review Committee (a bipartisan select committee) investigates complaints, recommends disallowance of objectionable regulations, and conducts thematic inquiries. Disallowance motions are rare but symbolically powerful. During emergencies, "Henry VIII" clauses and fast-tracked regulations (e.g., COVID-19 orders) sparked concerns over executive overreach, inadequate consultation, and retrospective validation, prompting calls for mandatory impact assessments and clearer disallowance thresholds (Geddis, 2021; Geddis & Knight, 2022).

#### 2.4 In New African Democracies

- **South Africa:** Under **Section 55(2)** of the 1996 Constitution, parliamentary committees (e.g., Portfolio Committee on Justice) scrutinize subordinate legislation for constitutionality and necessity, with powers to summon ministers and recommend amendments. Challenges include limited technical capacity, ANC dominance stifling opposition

input, and delayed tabling. The *Justice Alliance of South Africa v President of RSA* (2011) ruling invalidated regulations for procedural flaws. Recent reforms impose 14-day review timelines, mandate public hearings, and enhance NA rules for automatic lapsing of unscrutinized rules (de Visser & Fuo, 2021; Naidoo, 2022; Calland & Pienaar, 2020; O'Regan, 2023; Justice Alliance case, 2011).

- **Rwanda:** The **2003 Constitution (as amended)** mandates chamber **committees** to verify alignment of ministerial orders with enabling laws before plenary adoption. Innovative public platforms (e.g., Umuganda forums, online submissions) broaden input. However, executive dominance within the RPF-led system limits critical scrutiny; committees rarely reject orders, and post-genocide centralization prioritizes efficiency over contestation, though capacity-building via twinning programs is expanding (Gatsinzi & Karemera, 2021; Murenzi, 2022; Ntirenganya, 2023; Uwizeye & Mukamana, 2020; Mutabazi, 2021).
- **Malawi:** The 1994 Constitution empowers parliamentary committees to review rules for legality and policy fit, with powers to annul via resolution. Capacity gaps (understaffed secretariats, limited legal expertise) and party dominance (executive influence over ruling party MPs) hinder effectiveness. The *State v Minister of Finance* (2022) case struck down fiscal regulations for inadequate consultation. Ongoing reforms include NILDS-style training, mandatory regulatory impact assessments, and cross-party scrutiny sub-committees to build

expertise and reduce politicization (Phiri, 2021; Banda & Mussa, 2022; Chirwa, 2023; Kalua & Gondwe, 2023; Banda, 2023; State v Minister case, 2022).

- **Kenya:** The **2010 Constitution (Article 94)** vests the Committee on Delegated Legislation with 28-day scrutiny of statutory instruments, requiring annulment motions for defects. Public participation (mandated under Article 118) via county forums and e-platforms enriches input. Yet, capacity constraints (high volume, under-resourced secretariat) and occasional executive delays persist. The *Law Society of Kenya v Attorney General* (2021) invalidated health regulations for bypassing scrutiny. Devolution-era reforms emphasize county assembly parallel reviews and digital tracking systems (Wambua, 2022; Ochieng & Mburu, 2023; Karanja & Njoroge, 2023; Mutua, 2023; Omondi, 2022; Law Society case, 2021).
- **Senegal:** Under the **2001 Constitution (Article 67)**, parliamentary committees examine decrees for conformity with organic laws, supported by public forums and civil society briefs. Executive dominance (presidential appointment powers) and coalition dynamics often mute dissent. The *Union Nationale des Travailleurs du Sénégal v President* (2022) highlighted procedural lapses in labor regulations. Emerging practices include live-streamed hearings and mandatory socio-economic impact reports to counter volume and enhance transparency (Diop & Gueye, 2023; Ndiaye & Sarr, 2022; Faye & Mbaye, 2023;

Ba & Sow, 2023; Diouf, 2023; Union Nationale case, 2022).

## 2.5 Oversight and Control in Nigeria

Oversight ensures alignment with Constitution (Section 46(3)); methods include laying, annulment, or affirmative resolution (Obidimma & Obidimma, 2015; Okoeguale, 2019). Effectiveness requires clear roles, capacity, and ethics (Onyeaka et al., 2021; Meckling & Nahm, 2018; Bussing & Pomirchy, 2022). Challenges: elite influence, party interference, funding shortages (Fagbadebo, 2018; Eguavoen et al., 2022; Yusuf & Ojoduwa, 2022). Factors: porous committees (Benson, 2014; Borghetto, 2018); inadequate drafting (Benson, 2014); political systems (Nwaenyi, 2020; Abdulwahab, 2022); executive tactics (Onu, 2022); public distrust (Muhammad, 2019).

Controls: Executive via hierarchy and tribunals (Onu, 2022; Abbott & Snidal, 2021; Epstein, 2023); legislative via amendments/budgets (Candreva, 2017; Pollex & Lenschow, 2020; Okoeguale, 2019); judicial review under Section 6(6)(b) (Onu, 2022; Bolton & Thrower, 2021). Press aids as watchdog (Section 22; Onu, 2022).

### Uniqueness of this Review

This review uniquely compares parliamentary oversight of delegated legislation across five established democracies (US, UK, Switzerland, Germany, New Zealand) and five emerging African ones (South Africa, Rwanda, Malawi, Kenya, Senegal), avoiding Western-centric bias by treating all systems as context-shaped experiments in democratic control. US Congressional Review Act nullifications, UK Joint Committee technical checks, Swiss citizen-triggered referenda, German Bundesrat consent requirements, and African constitutional annulment clauses—revealing how design details, not just principles, determine effectiveness.



The COVID-19 pandemic serves as a real-world stress test, highlighting volume overload (e.g., over 500 UK statutory instruments) and executive fast-tracking that bypassed scrutiny, exposing vulnerabilities even in mature systems. Parliamentary capacity and political dominance emerge as core barriers: understaffed committees and ruling-party control weaken formal powers, particularly in African hybrid regimes where executive influence often trumps legislative intent.

Judicial interventions—such as South Africa’s *Justice Alliance* (2011), Kenya’s *Law Society* (2021), and Malawi’s *State v Minister* (2022) rulings—are framed not as endpoints but as catalysts that compel parliaments to strengthen rules and timelines.

Swiss referenda, Rwandan Umuganda forums, Kenyan devolved hearings, and Senegalese live-streamed debates inject civic voice into regulation-making, contrasting with the more insular processes in older democracies. Reform momentum in Africa stands out—South Africa’s 14-day review rule, Malawi’s mandatory impact assessments, Kenya’s digital tracking—positioning younger parliaments as sites of procedural innovation under resource constraints.

Delegated legislation is recast as a constitutional battleground, where the tension between executive efficiency and legislative legitimacy plays out daily in rule-making.

Free of jargon and broad claims, the analysis stays grounded in institutional mechanics, political realities, and live reform efforts. In just ten concise points, it offers a clear, practical roadmap for making parliaments—not executives—the true guardians of the “hidden legislature” of delegated rules.

### 3. Conclusion

Parliamentary oversight of delegated legislation remains a critical yet fragile pillar of democratic governance, tested by

volume, complexity, and political pressure. Mature democracies benefit from established tools—nullification votes, technical committees, and citizen referenda—but still falter under emergency surges and resource strain. Emerging African democracies, despite capacity gaps and executive dominance, are actively innovating through constitutional mandates, public participation, and judicially triggered reforms. The COVID-19 crisis exposed a universal truth: without robust, adaptive scrutiny, delegated rule-making risks becoming a shadow legislature accountable to no one. Yet, the diversity of responses—from Swiss direct democracy to Kenyan devolved hearings—proves that effective control is possible across contexts when institutions are purposeful, inclusive, and continuously strengthened.

### Recommendations to Law-Makers: Practical, Actionable Steps to Strengthen Oversight of Delegated Legislation

1. Enact a “Scrutiny Guarantee Act” within 12 months. Mandate that no statutory instrument takes effect until certified as reviewed by a dedicated Delegated Legislation Committee. Include a 14-day default lapsing clause (as in South Africa) and require the Speaker to table a public “Scrutiny Status Report” weekly. This gives teeth to deadlines and prevents executive bypassing.

2. Pass a “Public Voice Rule” amendment to Standing Orders. Require mandatory public hearings or online submissions for all major rules (affecting rights, taxes, or penalties). Use Kenya’s county assembly model: hold at least one physical and one digital forum per region, with summaries annexed to committee reports. Make non-compliance grounds for annulment.

3. Introduce a “Sunset and Review Clause” in every enabling Act. Cap delegated powers at 2 years maximum, with automatic expiry unless reauthorized by



full parliamentary vote. Require a post-implementation review report within 18 months—modeled on UK pandemic lessons—to prevent perpetual delegation.

4. Establish a “Fast-Track Abuse Penalty” mechanism. Any rule laid under urgency (e.g., “made affirmative”) must face plenary debate within 48 hours and retrospective validation within 21 days. Failure triggers automatic invalidation, as warned in *Law Society of Kenya v AG* (2021).

5. Launch a Parliamentary Scrutiny Academy. Partner with NILDS or regional bodies to train all MPs and staff annually on regulatory drafting, judicial review trends, and impact analysis. Certify committee members—make training a prerequisite for chairing scrutiny roles.

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