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**L E G A L
N E W S L E T T E R**

**AN EVALUATION OF THE POWER OF THE NATIONAL
ASSEMBLY TO CONDUCT INVESTIGATIONS**



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INTRODUCTION

It is not uncommon to see either chamber of the National Assembly inviting different heads/personnel of ministries, departments and agencies (MDAs) and companies to appear before one or more of their standing committees due to one or more issues for determination before them. As a matter of fact, we have severally witnessed face-offs between either chamber and those they invite, often times owing to challenges by those people or bodies on the propriety or legality of such invitations or the conduct of proceedings. A significant example of this was the embarrassing face-off between the Senate and the Inspector-General of Police in 2018 due to the latter refusing to honour the former's invitation for investigation into the insecurity, mass violence and extra-judicial killings being witnessed in the country.¹ Another is the legendary 'trial by fire' of the ex-Director-General of the Securities and Exchange Commission (SEC), Ms. Arunma Oteh, in 2012. It even so happened that the Association of Licensed Telecommunications Operators of Nigeria (ALTON), the official industry body for telecommunications companies and operators in Nigeria, dragged the National Assembly before the Federal High Court in 2018, complaining that the constant invitation of their CEOs to appear before different committees of the

National Assembly affected their daily business operations, and seeking a judicial clarification of the oversight functions carried out by lawmakers in the telecoms sector.²

In view of all the above, this article evaluates the investigative/oversight powers of the National Assembly as guaranteed by the Constitution viz-a-viz highlighting the extent or limit of that power.

CONSTITUTIONAL OVERSIGHT POWERS OF THE NATIONAL ASSEMBLY

The legislative oversight power bequeathed upon the National Assembly and the State Houses of Assembly (HoA) by the Constitution³ is an important part of the fabric of our democratic system of government. It is a power given to the legislature to assist it in performing its role of checks and balances in a democracy.



It allows the legislature to review and evaluate selected activities of the executive branch of government by conducting investigations into governance issues through their committees and by monitoring activities and performance of MDAs (ministries, departments and agencies) for the benefit of the populace.⁴ To this end, section 88 of the 1999 Constitution provides as follows:⁵

“S. 88 (1) Subject to the provisions of this Constitution, each House of the National Assembly



shall have power by resolution published in its journal or in the Official Gazette of the Government of the Federation to direct or cause to be directed an investigation into –

- a) any matter or thing with respect to which it has power to make laws; and
- b) the conduct of affairs of any person, authority, ministry or government department charged, or intended to be charged, with the duty of or responsibility for –
 - I. executing or administering laws enacted by the National Assembly, and
 - II. disbursing or administering moneys appropriated or to be appropriated by the National Assembly.

To exercise this power, **S. 89 (1)** empowers the National Assembly or any of its chambers to:

- a) "procure all such evidence, written or oral, direct or circumstantial, as it may think necessary or desirable, and examine all persons as witnesses whose evidence may be material or relevant to the subject matter;
- b) require such evidence to be given on oath;

c) summon any person in Nigeria to give evidence at any place or produce any document or other thing in his possession or under his control, and examine him as a witness and require him to produce any document or other thing in his possession or under his control, subject to all just exceptions; and

d) issue a warrant to compel the attendance of any person who, after having been summoned to attend, fails, refuses or neglects to do so and does not excuse such failure, refusal or neglect to the satisfaction of the House or the committee in question, and order him to pay all costs which may have been occasioned in compelling his attendance or by reason of his failure, refusal or neglect to obey the summons, and also to impose such fine as may be prescribed for any such failure, refused or neglect; and any fine so imposed shall be recoverable in the same manner as a fine imposed by a court of law."



Similar provisions to the above equally exist under **Sections 4, 5, 6, 7 and 11 of the Legislative Houses (Powers and Privileges) Act (the LHPP Act)**. Specifically, S. 4 of the Act provides that: "A committee of a Legislative House authorised by the standing orders thereof or by a resolution of the



House to send for persons, papers and records may order any person:

- (a) to attend before it and to give evidence; or
- (b) to attend before it and to produce any paper, book, record or other document in the possession or control of such person.”

QUALIFICATION OF THE POWER

This oversight power given to the National Assembly is, however, not without qualification. As evident from the spirit and letters of the Constitution, the power is not a *carte blanche* for the legislature to usurp the general investigative functions of executive agencies or the adjudicative functions of the judiciary,⁶ In that regard, **s. 88 (2)** of the Constitution gives the qualifications for the exercise of the power as follows:

“The powers conferred on the National Assembly under the provisions of this section are exercisable only for the purpose of enabling it to:

- a) make laws with respect to any matter within its legislative competence and correct any defects in existing laws; and
- b) expose corruption, inefficiency or waste in the execution or administration of laws within its

legislative competence and in the disbursement or administration of funds appropriated by it.”

Flowing from the above provision, therefore, it is clear that the oversight powers granted to the National Assembly in this section are to be exercised “by resolution published in its journal or in the Official Gazette of the Federal Government... [and it is] to direct or cause to be directed an investigation” into the matters enumerated under subsection (1) of the section.



It is also important to note that, as clearly stated in subsection (2) of the section, the powers “are exercisable only for the purpose of enabling” the legislature to (a) make or amend laws with respect to certain specified matters within its legislative competence and (b) expose corruption, inefficiency or waste in the execution or administration of laws.

Based on the foregoing, the legislature do not have as much oversight powers as they purport to wield and cannot just summon or investigate anyone or any (corporate) body for just about anything that catches their fancy.⁷ Any invitation by the legislature to any person and any investigation of any (corporate) body outside the purview of the purpose defined by section 88 (2) is invalid as the clauses do not lend themselves to such an interpretation.⁸

In the locus classicus case on this issue - Senate of the National Assembly v. Tony Momoh,⁹



- **the Court of Appeal, per Nnaemeka-Agu JCA (as he then was), in interpreting s. 82 of the 1979 Constitution, which is in parimateria with s. 88 of the 1999 Constitution, held that:** "Section 82(2) is designed to eliminate abuse. Any invitation by the House to any person outside the purposes defined by Section 82(2) of the Constitution is invalid. No power exists under the section for general investigation nor for the aggrandizement of the House."¹⁰ Similarly, in **El Rufai v. House of Representatives**,¹¹ the Court of Appeal, per Oguntade JCA (as he then was) held *inter alia*: "in my view their power under the section is further circumscribed and limited by subsection (2) of Section 82. They can only invite members of the public when they want to gather facts for the purpose of enabling them make law or amend existing laws in respect of any matter within their legislative competence or as witnesses in a properly constituted inquiry under section 82(1) (b)".

Consequently, from the spirit and letters of the hallowed provisions of the Constitution, it is clear that the oversight powers of the National Assembly and State Houses of Assembly do not extend to the investigation of the affairs of private companies, although they may nevertheless be rightly summoned under s. 89 to give evidence or produce documents in any legislative investigation legitimately instituted under s. 88. As the Supreme Court held in the case of

Attorney-General of Abia State vs. Attorney-General of the Federation,¹² "oversight functions can only be exercised within the lawmaking powers of the National Assembly. The functions are not at large and must be exercised within the provisions of the Constitution."

CONCLUSION

Flowing from the above, while not being a flagrant abuse of the doctrine of Separation of Powers as some may like to contend, the oversight powers of the National Assembly and State Houses of Assembly are a part and parcel of our democratic system of government.



Nonetheless, this power is not an end in itself and is not without its own qualifications. As the Constitution itself provides, the legislative oversight powers of investigation "are exercisable only for the purpose of enabling" the legislature to (a) make or amend laws with respect to certain specified matters within its legislative competence and (b) expose corruption, inefficiency or waste in the execution or administration of laws. Consequently, any invitation or investigation beyond that scope is unconstitutional and, thereby, null and void.



REFERENCES

1. Between the Senate and the IGP of Police (May 14, 2018) <https://businessday.ng/editorial/article/senate-igp-police/> See also Police reply Senate: Why turn back IGP's representatives if you're worried about killings? (May 12, 2018) <https://www.thecable.ng/police-replies-senate-turn-back-igps-reps-worried-killings>
2. In particular, they asked for the court to determine the extent of the National Assembly's "oversight functions as it relates to private companies...the specific nature of information which the NASS can lawfully request from private companies including telecommunications companies, and whether it includes companies' confidential information and information within the purview of government agencies; specific nature of directives that can be made by NASS pursuant to the outcome of their investigative activities.": Telcos sue NASS, Seek Judicial Interpretation of Oversight Functions (April 2, 2018) <https://www.thisdaylive.com/index.php/2018/04/02/telcos-sue-nass-seek-judicial-interpretation-of-oversight-functions/>
3. See sections 88, 89, 128 and 129 of the 1999 Constitution of the Federal Republic of Nigeria.
4. This can be done by investigation into activities of government agencies either at plenary, or through standing or *ad hoc* committees, depending on the resolution of the legislative House. See ss. 88 (1) & (2) for the National Assembly and s. 128 (1) & (2) for the Houses of Assembly.
5. See s. 128 for the oversight powers of the various State Houses of Assembly. Section 89 and 129 provide that, as it relates to their power to investigate, the legislature also have the power to procure evidence; require the evidence to be given on oath; summon anyone to give evidence or produce documents; and issue a warrant to compel the attendance of any such witness.
6. See ***Tony Momoh v. Senate of the National Assembly***(1982) NCLR 105
7. It was for this reason that Prof. Itse Sagayin 2017 rightly refused to appear before the Senate when they summoned him over his comment in a publication by The PUNCH criticising the Senate for refusing to clear the 27 Residential Electoral Commissioners until the President removed Mr Ibrahim Magu as the Acting Chairman of the Economic and Financial Crimes Commission. He rightly publicly denounced the summons as being beyond the purview of the powers of the National Assembly as delineated in the Constitution.\
8. The Constitution only gives the legislature the power to investigate the actions of the executive arm within the ambit circumscribed under s. 88 and also the power to summon anyone to give evidence or produce documents during such investigations under s. 89. Anything beyond that is unconstitutional.
9. **(1983) 4 NCLR 269 at 295.** See also *Obayuwana v. Alli & Ors* (1983) 12 SC147 at 191-192
10. The Court held that legislative oversight is not a justification for the legislature to usurp the general investigative functions of the executive nor the adjudicative functions of the judiciary.
11. **(2003) 46 WRN 70, 100/** (2003) FWLR (Pt. 173) 162
12. (2006) All FWLR (Pt. 338) 604, 674. See also *Guardian Newspapers Ltd V. Attorney General of the Federation* (1999) 9 NWLR (Pt. 618) 187 at PP 249-250

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